Grand Canyon State Electric
Cooperative Association, Inc.
Your Touchstone Energy® Cooperatives

VIA EMAIL

Mr. Michael Gazda
Executive Director
Arizona Power Authority
1810 W. Adams St
Phoenix, AZ 85007-2679

Re: Arizona Power Authority Issue Papers

Mr. Gazda:

We appreciate the opportunity to participate in the workshops and share our views on the upcoming allocation process. As we have mentioned previously, the Cooperatives desire an open and transparent allocation process. In particular, when the final allocations are made, it should be clear why certain allocations were made and the rationale that was used in supporting an allocation. The workshop and discussion effort to date has assisted the Arizona Power Authority ("APA" or "Commission") in pursuing this approach.

There are a number of discussions and issues that have been raised which affect the allocation process for the cooperatives in Arizona. We have endeavored to limit our comments to those areas where a decision could diminish the opportunities for the cooperatives to participate in the allocation process. In some instances, we have made suggestions that encourage the Commission to adopt an approach in order to establish a uniform baseline for understanding allocation decisions, and adhere to existing law and regulations.

In our prior comments we have offered suggestions that are aimed at facilitating the allocation process, ensuring transparency, and developing a record that is entirely defensible if challenged. In many respects, our comments have sought to preserve as much discretion as possible for the APA to give the greatest latitude possible in developing a proposed allocation. In some instances, discretion may have to yield to existing statutory guidance. However, if existing laws and regulations are followed, the result for the Commission remains quite similar, a decision is rendered that can be defended if challenged in a Court of law. Simply put, our comments and suggestions are oriented towards making the allocations process more simple and straightforward.

In the discussion below, we have highlighted several points related to the most recent edition of the Issue Papers. We continue to have concerns that the conclusions on the eligibility of a "new allottee" foreclose rather than open opportunities and that the legal basis for the proposed division of Schedule D rests on faulty assumptions.

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Schedule D Applicants Are Eligible to Apply for Hoover A or B Power

The Issue Papers has responded favorably in part to the concern of the Cooperatives that the Commission may take a narrow view of "new allottee." Recognizing the "illogical result" if 43 U.S.C. § 619a(a)(2)(B) is read without further analysis or consideration of Congressional policy, the authors have correctly determined that "new allottee" means any entity that did not benefit from Hoover power under the Hoover Power Plant Act of 1984 ("1984 Act"). However, the Issue Papers inexplicably concludes that a "new allottee" should "not receive post-2017 Schedule A or B power."[1]

While the Commission can easily conclude that a "new allottee" asking for power under Schedule A or Schedule B should not receive an allocation after consideration of the criteria set forth in Titles 30 and 45, there is nothing in the HPAA that imposes the restriction that the Issue Papers otherwise advances. The HPAA and accompanying House Report remain entirely silent on the question of eligibility. Thus, a matter of law, the Issue Papers cannot declare that a "new allottee" is legally ineligible from receiving power made available under the HPAA pursuant to Schedules A or B.

This is an outcome that is supported by the reference to the legislative history that the Issues Paper conducts and a review of the plain meaning of the statute. Indeed, the Commission should presume that Congress only went as far as declaring that existing beneficiaries of the 1984 Act are precluded from receiving power made available from Schedule D but intentionally remained silent with regard to the suggested ineligibility of a "new allottee" to receive power under Schedules A and B. *See Oregon Natural Resources Council v. Kantor* 99 F.3d 334 (9th Cir., 1996) (Congress is presumed to act intentionally when it includes a statutory requirement in one section but omits it in another) If Congress had intended for a "new allottee" to receive no benefit from the allocation of power pursuant to Schedules A and B in the process conducted by the Commission, it would have expressly stated as such in the legislation or accompanying report.

In the larger context, it remains important for the Commission to retain as much flexibility as possible in order to consider alternative allocations that promote the widespread use of power without creating a tremendous disruption for the existing Hoover contractors. Foreclosing the option for an entity to receive power made available to the APA under Schedules A or B at the outset of the allocation process needlessly complicates the process. In the interest of allowing the greatest flexibility possible for the consideration of alternative options for the allocation of Hoover power, the Cooperatives encourage revising the Issues Papers to clarify that a "new allottee" is eligible to receive power made available to the APA under Schedules A and B of the HPAA.

Subdivision of Schedule D Must Have a Basis in Fact and Law

[1] Issue Papers at p. 6.

In comments previously submitted on this proposal, the cooperatives raised concerns regarding the division of Schedule D between Title 30 and Title 45. As explained and supported with accompanying materials, the capacity in excess of 1340 MW at the Hoover project is attributable to the upgrade of the Hoover project. Pursuant to state law, power attributable to the uprating is allocated pursuant to Title 45.[2] Therefore, power available under Schedule D should be allocated under Title 45.

However, the Issue Papers takes a divergent path and explains that "[i]n 2011, to develop the Schedule D pool, Congress raised each 1984 allocation by about six percent (on paper) to 1,538 MW for Schedule A, and 534 MW for Schedule B, respectively (2,074 MW collectively)."[3] Drawing upon this assertion of fact, the Issue Papers explains that each schedule was reduced by five percent and that given the approximate even split between Schedule A and B power that the Commission should allocate Schedule D capacity on a similar basis yet keep roughly 75% of the energy under Title 30.

In responding to a request for a citation by counsel for Arizona Electric Power Cooperative ("AEPCO"), the consultant has explained that the calculation of 1,538 MW for Schedule A power is derived from calculations pursuant to the consultant's own interpretation of the HPAA. This "inference" is based in part on reading language that directs the return of unallocated power made available under Schedule D to Schedule A and Schedule B. However, as explained in the affidavit of J. Tyler Carlson (attached), there is a custom and practice in allocating Federal power resources to allow for the potential that a resource may not be fully subscribed. An act of Congress to memorialize this practice and anticipate a contingency does not establish Congressional intent for the APA to allocate the Schedule D power in accordance with the division suggested in the Issue Papers.

In this context, the Issue Papers have failed to reconcile the obligation to apply the requirements in Title 45 to address how power should be allocated pursuant to the authorities that govern the APA's actions. Notably, the consultant's approach misses the fact that existing state law does not dictate that the APA allocate power on the basis on Schedules. Relying on this approach erroneously presumes that Congress intended to preempt existing state law in the allocation process.

While in the past power made available under Schedules A and B have been allocated pursuant to Titles 30 and 45 respectively, this demarcation is a function of the mandate to allocate all power associated with the uprating pursuant to Title 45. ***Nowhere in Title 30 or 45***

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[2] §45-1703(C) "Power and energy of the authority from the Hoover power plant modifications project and the Hoover power plant uprating project shall be sold by the authority pursuant to this article."

[3] Issue Papers at pp. 8-9.

has the legislature used the term Schedule A or Schedule B to refer to the resource that the APA has to allocate. Rather, the legislature has indicated that the power to be allocated must track either the uprating or the original contract executed by the Federal Government with the APA for the delivery of Hoover power from the original power plant or the plant associated with the uprating. Specifically, Title 45 Section 1703 (C) states:

> Except as otherwise provided in this subsection, nothing in this article shall authorize the inclusion in the state water and power plan of the power and energy under the Hoover energy contract 1-1r-1455 dated November 23, 1945 as it may be supplemented, amended, renewed or replaced and the rights to deliver such power and energy under the 1964 Wheeling contract 14-06-0300-1444 dated January 1, 1965 as it may be supplemented, amended, renewed or replaced which power and energy and Wheeling rights shall continue to be administered under chapter 1 of title 30. Power and energy of the authority from the Hoover power plant modifications project and the Hoover power plant uprating project shall be sold by the authority pursuant to this article.

Thus, the dividing point between Title 30 and Title 45 revolves around the original Hoover contract as it has been amended over the years, and the power attributable to uprating. While we may reasonably infer that the original contract refers to the power that Congress has deemed Schedule A power, the APA must still follow the direction of the legislature in dividing the power between Title 30 and Title 45. Power specifically attributable to the uprating shall be sold pursuant to Title 45.

The division as suggested by the consultant can only be supported if there is clear direction from Congress that state law was to be preempted in the allocation of Hoover power.[4] However, nothing in the HPAA unequivocally indicates that the power made available under Schedule D to the APA should be divided to afford a super preference to a particular class of customers.[5] As highlighted *infra,* Congress expected the APA to undertake a process that provides fair and equitable treatment of all classes of customers.

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[4] *See Eastern Vanguard Forex, Ltd. v. Arizona Corporation Commission* 206 Ariz. 399, 79 P.3d 86, 92, (App. 2003) (State law is preempted under the Supremacy Clause in three instances: (1) express preemption—when Congress explicitly defines the extent to which an enactment preempts state law; (2) field or implied preemption—when state law regulates conduct in a field Congress intended the Federal Government to occupy exclusively; and (3) conflict preemption—when state law actually conflicts with federal law. *Citing English v. Gen. Elec. Co.*, 496 U.S. 72, 78–79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990)

[5] As discussed *supra* if the Commission believes that the Federal legislation did require such subdivision, the pre-emption must be consistent and also preempt a super preference for districts.

Nonetheless, the Issue Papers pursues a short cut in lieu of the required analysis by assuming that all power allocated under Schedule A is related to the original power plant. As explained in earlier comments, and confirmed with correspondence from Western, the original capacity of the power plant was 1340 MW. In order to determine how to allocate the power allocated to the APA under the HPAA, the Commission must determine what power is attributable to the uprating. This requires a factual inquiry beyond an assumption that power attributed to Schedule A is related to the original power plant.

Indeed, the Commission cannot declare as a matter of a factual predicate that 1,538 MW of Hoover Capacity is solely related to the original power plant when evidence in the record explicitly states otherwise. The failure to rely on information that depicts Western's calculation of the original power plant would be arbitrary and capricious and subject to legal challenge.

The 95% Agreement Cannot Dictate Ignoring State Law

Underlying the assertion that power should be allocated evenly between Title 30 and Title 45 is the claim that existing contractors gave up 5% of their allocations to create Schedule D. In other words, if power was taken away from Schedule A and Schedule B to create Schedule D, the power that was taken away should be allocated pursuant to Title 30 and Title 45 – presumably to capture the advantage of preference for new Districts set forth in Title 30 Section 125. However, the Issue Papers accurately observes that "[t]here is no statutory language in the 2011 Act that binds the Authority's allocation of Schedule A and B power under its jurisdiction with respect to its existing customers."

Viewed in the context of the proposed Subdivision of Schedule D power, it also remains clear that no party has relinquished capacity post 2017 to establish Schedule D. The legislation makes this quite clear. In the 1984 Act, Congress allocated 189 MW of capacity to the APA under Schedule A. In addition, 188 MW was allocated pursuant to Schedule B for allocation upon the completion of the uprating. The APA is due to receive slightly more than 190 MW of capacity under Schedule A and slightly more than 189 MW of capacity under Schedule B for allocation post 2017. As a factual matter, there has been no reduction in Schedule A or Schedule B capacity from the 1984 Act.

Western's current definitions for the Boulder Canyon Project Act confirm that the capacity that is not marketed from Hoover does not currently belong to the current contractors. As set forth in 10 CFR § 903.4 excess capacity shall mean capacity which is in excess of the lesser of: (1) [c]apacity that Hoover Powerplant is capable of generating with all units in service at a net effective head of 498 feet, or (2) 1,951,000 kW. If Western has defined capacity above the amounts allocated under the 1984 Act as excess, how do the existing contractors claim it as a relinquished resource? Furthermore, if current contractors cannot claim that the excess capacity belongs to them, how can the Issue Papers claim that Excess Capacity was taken away from Schedules A and B.

Yet, the argument persists that 5% percent of the Hoover power was taken away from existing contractors to create the Schedule D pool. This argument presumably follows from the following statement in the HPAA:

> (a) (2) (A) The Secretary of Energy is authorized to and shall create from the apportioned allocation of contingent capacity and firm energy adjusted from the amounts authorized in this Act in 1984 to the amounts shown in Schedule A and Schedule B, as modified by the Hoover Power Allocation Act of 2011, a resource pool equal to 5 percent of the full rated capacity of 2,074,000 kilowatts, and associated firm energy, as shown in Schedule D (referred to in this section as 'Schedule D contingent capacity and firm energy')

However, to assume that this provision represents a concession by existing contractors requires the presumption that all power made available under Schedules A and B power would be allocated by the APA to existing customers in excess of current amounts as a matter of law and fact.[6] Indeed, given the fact that the APA will not have the power to allocate until post 2017, the alleged foregone allocation assumes action by the Commission that has not yet taken. As noted *supra* the Issue Papers has already concluded that there is no promise of a continued allocation.

If there is no promise or guarantee of an allocation in the future, the argument that Schedule A and Schedule B contractors "gave up" power for the creation of Schedule D lacks foundation. However, the absence of any such quid pro quo agreement accrues to the benefit of the Commission. Indeed, in reviewing the record that accompanied the passage of the HPAA, Congress was quite explicit that it expected the Commission to conduct an open and transparent allocation process that presumably is not a preordained outcome. Specifically, the House Resources Committee explained,

> The Committee expects that Western and the state regulatory bodies in Arizona and Nevada will conduct a full and open public hearing and review process upon the enactment of this legislation. The administrative process should fairly and equitably determine allocations from the new power pool. With the opportunity for irrigation districts, rural electric cooperatives and other eligible entities to receive allocations from the new proposed Schedule D, the Committee expects that Western and the state regulatory bodies will undertake an open, thorough and transparent assessment of the relevant power requests of potential new Hoover power recipients, including an assessment of the applicants' power needs and the classes of customers they serve, and act in an impartial and unbiased manner to make allocation determinations in an objective manner consistent with state and federal preference standards. The Committee further

[6] Spreadsheet 1 circulated by the consultant at the April meeting provided modest increases in capacity for each of the Schedule A contractors contradicting in part the assertion that the existing contractors will see 5% less of their Hoover allocations post 2017.

expects that the process and analytical results will be documented and made available for examination.[7]

At present, the Commission continues to steer toward a course of an open and transparent allocation process. There is no indication that an existing Schedule A or Schedule B allocation of capacity has been reduced which would otherwise suggest that the reduced amounts transferred to Schedule D should be subsequently treated under Titles 30 and 45 respectively.

While there is evidence that Congress expected that state law would be followed in making allocations, the test for the APA is to apply state law consistently and in such areas where it is not preempted by Federal law. As presently stated in the Issue Papers, however, the proposal to divide the allocation of Schedule D between Title 30 and Title 45 requires the Commission to ignore the requirements set forth in Section 1703 (C) of Title 45 in order to apply the preference for Districts captured in Section 125 of Title 30. This uneven application requires further elaboration and explanation to avoid a decision that is facially arbitrary and capricious. Moreover, it requires a foundation in fact that is not present in the record before the Commission.

The Allocation of Schedule D Power Does not Require Tagging Electrons

In defense of the proposal to sub-divide Schedule D between Title 30 and Title 45, the Issue Papers suggests that the Cooperatives' argument in favor of allocating Schedule D pursuant to Title 45 would require tagging electrons to specific generators. In particular, the authors explain:

> Western "socializes" Hoover power for various reasons, including the need to eliminate confusion about which entities are entitled to power when Hoover generation is lost. "Socialize" means that Western does not tie each electron leaving Hoover to a specific generator. Without Western tying each electron to a specific generator, the Authority cannot tie the capacity and energy it receives directly to the original and uprating capacity, respectively.

The statements in this paragraph ignore the fact power allocated under Schedules A and B are commingled as a matter of operational dispatch. In fact, taken to its logical extreme this argument would suggest that none or all of the power should be allocated under Title 30. Yet, as a matter of historic practice, the Commission has been able to develop an allocation which allows an entity to schedule a portion of Hoover power, regardless of the sourced generator.

Nonetheless, the Cooperatives remain concerned that consultant's proffered rationale provides a factual basis for the subdivision of Schedule D power. The attached affidavit of J.

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[7] House Report 112-159 pt. 1, at 3.

Tyler Carlson, former manager of Western's Desert Southwest Office, provides a description of the actual practices employed in the allocation process in order to provide a factually accurate record for the Commission's consideration.[8] In the affidavit, Mr. Carlson explains that the allocation process is a fundamentally different activity from the actual delivery of power. This is a point that the Issue Papers appears to misapprehend in the cited paragraph above.

More importantly, the affidavit confirms that Western has the material and records to assist in the evaluation of what capacity is attributable to the uprating. In this context, the Commission has the information available to make an informed determination on what power is attributable to the Hoover energy contract 1-1r-1455 dated November 23, 1945 as amended and renewed. All other power shall be sold pursuant to Title 45. Indeed, the Commission could err by not performing the appropriate due diligence and instead rely on the calculations by the consultant that "infer" an intent by Congress to decrease the power available under Schedules A and B.

An Erroneous Interpretation Could Adversely Affect the Cooperatives

While the discussion above highlights the legal issues that will arise if the APA moves forward with a division of Schedule D power that relies on inferences derived from the consultant's interpretation of the HPAA, a practical concern remains with the suggested approach. As the Cooperatives have highlighted in prior correspondence, there is an underlying desire for an open and transparent process. Inherent in this request, the Cooperatives have sought a fair shot at the Schedule D power.

The legislative history of the HPAA explicitly indicates that electric cooperatives would be eligible for the new pool of Schedule D power. This accommodation was reached recognizing that existing state preference for Districts would essentially preclude the cooperatives from receiving power under Schedule A. As explained by John Sullivan testifying on behalf of the Salt River Project during Congressional hearings on the H.R. 470,

> Passage of H.R. 470 is necessary to secure power allocations for those entities that have invested in and rely on Hoover power, but is also important so that Indian Tribes, electric cooperatives and other eligible entities not currently benefiting from Hoover power can receive allocations.[9]

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[8] While Mr. Carlson as the general manager of Mohave Electric Cooperative has a vested interest in the outcome of the allocation process, he also is able to offer a factual depiction of Western's practices in the allocation process of a federal resource based on his professional experience.

[9] Testimony of John F. Sullivan before the House Subcommittee on Water and Power, May 12, 2011. *See also* Testimony of Phyllis Currie on H.R 470, the Hoover Power Allocation Act of 2011, House Water and Power Subcommittee, May12, 2011 ("In anticipation of the expiration of current contracts for Hoover, in 2017, power users in Arizona, California and Nevada got

Nothing in the legislative history, however, suggested that electric cooperatives would be denied a fair shot at the Schedule D power through the application of state preference for Districts. Yet, the Issue Papers advances this position without a policy rationale or consideration of Congressional intent that cooperatives receive the opportunity to request power from the Schedule D pool on equal terms with other potential applicants.

Nonetheless, if the Commission believes that there was intent to supersede the application of State law, i.e., Title 45 in the allocation of the power made available under Schedule D, it remains clear that such intent also preempts the application of the super preference in Title 30-125. There must be consistency in policy positions such that an asserted Federal preemption of state law – the basis for subdividing Schedule D – must apply equally to the application of underlying statutes that govern the allocation process. The peril for the Commission arises when certain provisions of state and federal law are arbitrarily followed and others ignored.

With concern for the consistency and transparency for the APA process, the Cooperatives also recognize that the subdivision of Schedule D could create a disadvantage once an allocation is made. If a new district located within a cooperative service territory receives an allocation, the affected cooperative will effectively lose a customer. The loss of load has a financial impact on the other member/customers of the cooperative as they must now shoulder a portion of fixed expenses that were previously recouped from district's load.

We have heard in a number of presentations that the current customers ask the Commission to do no harm in the allocation process. If this is a guiding approach for the APA, it should also apply to the cooperatives that may not receive an allocation but find that they are in a worse position because the APA has taken away load served by virtue of granting an allocation to a new district. Skewing the allocation process for the Schedule D pool to favor new districts increases that potential dramatically and in a manner that appears inconsistent with Congressional intent.

Conclusion

The cooperatives appreciate the opportunity to present their views in an open and transparent manner. Our suggestions to allow all new entrants apply for Schedule A and B does

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together more than three years ago to begin negotiations that led to the H.R 4349. These negotiations led to the legislation before you today. The key features of this legislation are as follows:...Creates a 5% "set aside" of capacity and energy for new entrants, including Indian tribes, municipalities, rural electric cooperatives and irrigation districts that do not now receive Hoover power")

not reach a foregone conclusion on eventual allocations. Further, if the power made available under Schedule D is allocated without preference for one class of customer, the Commission achieves an important objective set forth by Congress in the HPAA.

We remain available to answer any questions about the issues we raise above and cooperative program in Arizona.

Sincerely,

John Wallace
Chief Executive Officer

CC: Stephen M. Brophy, Chairman
Joe A. Albo, Vice Chairman
Dalton H. Cole, Commissioner
Russell L. Jones, Commissioner
Richard S. Walden, Commissioner
J. Tyler Carlson
Chuck Moore
Creden Huber
Vincent Nitido
Patrick Ledger
Michael Curtis
David Fitzgerald
Philip Bashaw

Before the
Arizona Power Authority
Affidavit of J. Tyler Carlson
July 28, 2014

Please state your name, title, company affiliation, and business address:

J. Tyler Carlson, Chief Executive Officer, Mohave Electric Cooperative, 1999 Arena Drive, Bullhead City, AZ 86442

Have you been previously employed by the Western Area Power Administration, and if so, the duration of your employment? Yes, I worked for the Western Area Power Administration in the Desert Southwest Office for 18 years.

In what capacity did you work at the Desert Southwest Office? I held the senior position in the office, the Regional Manager, for 14 years. Prior to being elected as the Regional Manager, I was the Deputy Regional Manager.

During your tenure at the Desert Southwest Office of the Western Area Power Administration did you work on any matters related to the allocation of power from a Federal multipurpose project?

Yes, as the regional manager I oversaw the remarketing and allocation of power for the Parker-Davis Project, a re-regulation project for the Boulder Canyon Project (Hoover).

Are you familiar with any instance in which a resource marketed by Western is not fully subscribed in the allocation process?

Yes, I was fully aware of, and participated in, the remarketing of number of projects in Western. In only one instance was there a need to return the pool to the existing customers. In this rare case there simply were enough resources in the pool to satisfy the new interested applicants and the pool amount remaining after the process was returned. In fact, in most cases the number of new applicants and request for power far exceeded the resource pool. In every one of those cases the resource pools were a larger percentage of the existing resource than is being proposed in the BCP remarketing. In the rare instance when this happened, the pool was much larger than being proposed by the BCP remarketing and a larger majority of public power entities (including cooperatives) and tribal entities already had allocations of the project. In the unlikely event that all interested and qualified applicants can be satisfied with the smaller BCP resource pool that leaves an amount of pool to be without proposed allocations to those interested new customers, a method has been used or could be found to return, or reallocate to the new interested applicants, the remaining resource.

Did the Western allocation process that you administered require the identification of electrons for delivery to a specific customer?

No, electrons are commingled on the grid. It is impossible to identify the source of a particular electron when delivered to an ultimate customer. This is a fundamental aspect of the electric industry in general, as well as Western Area Power Administration marketing and operations.

If Western did not identify electrons how did it ensure that energy was delivered to designated customers?

Typical of industry practice, Western executes a contract with a customer. A series of meter readings and schedules can document how energy in the proper amount was injected onto the grid by the resource and ultimately delivered to the Customer. A reconciliation of schedules and meter readings at the load depict the amount of energy that was delivered. Moreover, industry practice relies on E-tagging that accounts for the power delivered by a resource onto the grid and eventually to the customer.

If energy is mixed on the grid, how did Western ensure that a customer receives power pursuant to a contract?

The resource is subject to an E-tag and metering, but there is also a reliance on entities that provide scheduling and balancing services. Specifically, there are utilities in Arizona that will provide balancing and load following services for any number of Western's customers. These utilities have a responsibility to ensure that the energy is provided to the end customer at the time when it is needed. These utilities may rely on the capacity and energy from Hoover to help meet that responsibility.

If there are utilities that provide balancing and load following services for recipients of Western power including output from the Hoover Dam, can these utilities guarantee that an electron from a particular generator is delivered to a particular customer?

No. In fact, because there are additional utilities involved in managing resources for an eventual contractor with Western, or the Arizona Power Authority, there is absolutely no way to identify energy associated with a particular turbine at a particular project.

If Western does not track individual energy, how does it avoid confusion regarding deliveries?

As stated previously, the energy is metered and tracked against schedules to determine a delivery. While Western cannot track particular electrons, it will rely on a generation schedules, E-tags, resource meters, Balancing Authority metering, and customer's load meter to determine what energy flowed to a particular entity at a particular time.

Is there a schedule that is arranged for delivering the energy?

There are schedules for delivering power which are coordinated with the utilities and entities that provide balancing and load following services. These schedules must be consistent with

the contracts that are executed pursuant to the allocation process, and with the industry requirements by way of oversight agencies such as NERC and WECC.

Is the schedule determined by the contract for preference power?

The contract will not determine the schedule, but will dictate the amount of power that a contractor may schedule.

Does the contract for preference power specify precise generators from which energy shall be delivered?

No, but a contract will specify the amount of capacity that is being sold to the contractor and the amount of energy that the contractor may schedule relative to that capacity.

Does the allocation of a power resource by Western require tying an electron to a particular generator?

No. The question assumes that the allocation process and delivery of power from a federal resource is the same transaction. These are two fundamentally different activities. First, the allocation process sets the amount of power that an entity is entitled to receive from a project or system of projects. The contractor executes the contract which specifies how much capacity it may call upon and the related amount of energy that it may use. The schedules are developed pursuant to the contract and in accordance with industry scheduling requirements.

Can capacity at a Western project change?

In terms of nameplate capacity, there is no change unless Congress authorizes an addition of a generator and/or an uprating to the units increases the available capacity, as was the case with the Hoover Power Plant Allocation Act of 1984.

Given your prior experience at Western, are you familiar with the scheduling and sale of power from the Hoover Power Project?

Yes, the Desert Southwest Office has the responsibility to administer the Hoover Power Plant Act of 1984 including the sale of power to the Arizona Power Authority.

In the delivery of power from Hoover Dam, did or does Western divide electrons between the A and B Schedules prescribed by the Hoover Power Plant Act of 1984?

No, as explained earlier, energy from a Western project, including Hoover is delivered on the grid without any differentiation. In terms of actual electric energy, there was no difference between an electron generated for a customer designated to receive energy under Schedule A from an electron generated for a customer designated to receiver energy under Schedule B. In fact, for the ultimate customer, there may be electrons generated at a thermal generating station that are used to meet load.

Could Western delineate which capacity is associated with uprating for purposes of allocating capacity among preference customers?

Yes. In fact, Western had to make a determination on capacity availability for purposes of allocating power that was made available under the Hoover Power Plant Act of 1984. It could not sell capacity that did not yet exist until the uprating was complete.

After the uprating was completed how did Western differentiate power deliveries between recipients entitled to receive power pursuant to Schedules A and B?

With new power plant available, new capacity was made available that was obligated under contract. Congress specified the amount of energy that could accompany that new capacity. To account for the new capacity, and new resources, new contracts were executed that entitled the contractor for a portion of capacity and energy. The contracts set the amount of power available which was eventually turned into a schedule for purposes of delivery.

Does this conclude your affidavit?

Yes.