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To: Mike Gazda, Interim Acting Executive Director

From: Doug Milligan, SRP Term Trading

Date: July 29, 2014

Subject: SRP written comments on the Issue Papers, June 30, 2014 workshop

Written comment #1

Under the provisions of the Hoover Power Allocation Act of 2011 (HPAA) the Hoover Schedule A and B power users' were required to give up 5% of their current Hoover firm energy allocation in order to create the Schedule D pool.

On June 30, 2014, the Authority held a Workshop to receive comments on the Public Information and Comment Draft authored by Somach Simmons & Dunn, that is, Stuart Somach and his colleagues. One topic of discussion was whether or not the 5% of which was given up to create the Schedule D pool was all that could be reallocated from Schedule A and B power users. During the discussions Mr. Somach made it clear that he has concluded that the HPAA does not address this explicitly. He invited the participants in the Workshop to direct his attention to any relevant legislative history that could shed light on this critical question.

Because this is perhaps the most critical issue for the Schedule A and B power users SRP looked into this point and has the following observations.

SRP recognizes that when interpreting statutes the first responsibility of the court is to try to implement the intent of Congress or the Legislature (in this matter, that would be the intent of Congress). The courts do this by looking first and only at the language of the act at issue. If the act is plain and answers the statutory question before the court, then that is the end of the matter. If the act is not plain then, and only then, is the court (or adjudicating body, in this case APA) permitted to look elsewhere to determine the intent of Congress.

Any formal report of the committee recommending the bill, that being the Committee on Natural Resources in the case of the HPAA, is the first document that the APA should look to if there is a question about the intent of Congress. If this Report does not resolve the matter, then the Authority can look to other resources, and in particular, the statements of the Committee members, particularly the sponsors.

SRP believes that the Report resolves the issue as to whether the 5% "haircut" was all that Congress mandated be given up by the Schedule A and B power users. Our view is supported below and by reference to the Report, a copy of which is attached for your reference.

On page 2, in the third full paragraph, the report states that the Act mandates that Schedule A and B power users "give up five percent of [their] Hoover power resource[s]." In the final paragraph on page 2 the Report also notes that the HPPA "reduces the Schedule A summer energy and winter firm energy by 5% of the amount to be provided after October 1, 2017, to the existing Schedule A contractors." (Emphasis added.) This appears to completely answer the question of whether the existing contractors can be compelled to give up any more of their existing allocations under the provisions of the HPPA. Clearly the Act does not compel this result.

Further support can be found in the Report's explanation as to what happens if any Schedule D firm energy is not allocated. As noted in the third paragraph on page 3, an unallocated firm energy will be returned in the same proportion to the contractors in Schedule A and B." This clearly contemplates that the proportion remaining to the existing Schedule A and B power users will remain unchanged.

Finally, SRP can state that this interpretation clearly reflects the understanding of the parties at the time the 2011 Act was being legislated, that is, that the haircut imposed on the Schedule A and B power users was to be 5% of the up-rated energy and no more.

Written comment #2

Referring to Federal Register Volume 78, Number 250 (Monday, December 30, 2013)
Notices – Pages 79436-79444, FRN Doc No: 2013-31214
DOE-WAPA-Action: Notice of final marketing criteria and call for applications

Page 79443, Section I. b - Final Post-2017 Resource Pool Marketing Criteria
"Allocations will be made on to new allotees, defined in the HPAA as entities not receiving Schedule A and Schedule B contingent capacity and firm energy. An entity receiving Schedule A or Schedule B contingent capacity and firm energy from APA and CRC will not be eligible for an allocation as a new allottee."

Current APA customers are not eligible for Post-2017 allocations as described in the HPAA. Current APA customers, among others, agreed to give up a portion of the Hoover power they currently hold to create a new resource pool that would be available Post-2017, Schedule D. Current APA customers have a long standing Hoover allocation and should move forward Post-2017 with their respective allocation balance.

Written comment #3

Additionally, SRP continues to support the renewal of current customers allocations for existing Hoover A and Hoover B capacity and energy, adjusted proportionately to recognize the new allocation made to the APA under the Hoover Power Allocation Act of 2011, and taking into consideration the 5% reductions made to create a resource pool for new entities. This was the

expectation of SRP, as well as the other Arizona Hoover customers, when considerable time and resources were spent supporting the federal legislation and is consistent with California and Nevada's allocation process. Allocations to eligible new entities should be made from the Schedule D resource pool allocated to the APA in accordance with the Hoover Power Allocation Act of 2011.