

APA Receptionist

From: Michael A. Gazda
Sent: Friday, October 03, 2014 4:55 PM
To: Julie@powerauthority.org
Subject: FW: Comments on Draft Application form for Hoover Post-2017

From: Jay Moyes [mailto:jimoyes@law-msh.com]
Sent: Friday, October 3, 2014 4:47 PM
To: Mike Gazda (mike@powerauthority.org)
Cc: James D. Downing (jim@harcuvar.com); Jeff Woner (jjw@krsaline.com); Eric Buckley; Jason Moyes
Subject: Comments on Draft Application form for Hoover Post-2017

Dear Mike:

The Authority has asked for comments on the Draft Application developed by Somach Simmons & Dunn and Mike Powell of UC Synergetic, LLC. The below initial comments are submitted on behalf of the following current customers of the Authority:

Aguila Irrigation District, City of Safford, Electrical District Number Eight, Harquahala Valley Power District, McMullen Valley Water Conservation & Drainage District, and Tonopah Irrigation District.

1. The "usage classifications" need to be standardized throughout the application. The Draft Application at item 4 on page 2 asks for percentage of "Agriculture, Commercial, Industrial, Residential, Municipal and Other" uses. Then, at item 7 on page 5, it asks for usage history for "Residential, Commercial, Irrigation Pumping, and Industrial." And at page 7 dealing with "in lieu" water use, it limits the usage data to "Ag Purposes". Does "agriculture", therefore, mean only "irrigation pumping"? Is "Ag Purposes" the same as commercial agricultural operations other than and in addition to irrigation pumping? At a minimum, the agricultural use classification needs to be defined and standardized for all purposes of the application.
2. In some places the Draft Application suggests choices of requiring "substantiated data" -- or not -- and "With Documentation" -- or without. We believe the Authority should require that all substantive data dealing with power and/or water usage, loads or resources be substantiated using the most credible and informative documentation reasonably available to the applicant from whatever sources.
3. The Draft Application raises several policy concerns. If the application form is to support an efficient allocation process, certain policy decision points should be reached -- and decided -- by the Commission before the application form is finalized.

For example: We suggest that the Commission should issue a final decision, as dictated by the Hoover Power Allocation Act of 2011 (HPAA), that applicants cannot receive allocations of *both* Hoover D *and* post-2017 Hoover A or B. As correctly stated by the Authority's "Issue Papers" of June 24, 2014, "[t]here is nothing ambiguous about [the] language" of HPPA making allocations of Hoover D and allocations of post-2017 Hoover A and B *mutually exclusive*. Therefore, the Commission should wait until after Western finalizes the D-1 allocations to commence the Authority's formal application and allocation process, so that the roster of Arizona D-1 allottees will be set. Then, if the application form is to provide a check-box for requesting each of the three schedules A, B, and D, it should at a minimum contain a clear and concise notice that (i) requests for Hoover A and/or B will not be considered from recipients of a Hoover D-1 allocation from Western; (ii) requests for Hoover D-2 will not be accepted from current

Hoover A and/or B customers; and (iii) allocations of both Hoover D-2 and Hoover A and/or B will not be made to the same applicant.

A more efficient approach may be to have two *alternative* application forms -- one for Hoover D-2, and one for Hoover A and/or B. Instructions could be given confirming the mutual exclusivity required by HPPA. The Authority should not have to deal with "all of the above" requests, when the law mandates an "either/or" choice.

The process will be simplified by early determination of all issues that clarify exactly which resources an applicant is qualified to receive, whether a new entrant or an existing customer.

As another example: the Commission should help simplify the process by reaching an early, formal decision confirming the self-evident fact that (i) there is insufficient Hoover A to satisfy the easily predicted magnitude of requests from qualified Districts that hold a first preference for Hoover A under A.R.S. § 30-125, and, consequently, (ii) requests for Hoover A from applicants in the lower preference categories will not be considered.

There are other policy decisions that, if reached *prior* to the application process, can make the application form and process more simple and efficient for all by eliminating data and documentation assemblage in furtherance of application requests that, by definition of legal requirements and finalized policies, cannot be considered or granted. We encourage further identification, dialogue and decisions of such policy issues that will make the application process more simple and efficient.

Thank you for this opportunity to make comments on the Draft Application form and its role in the broader allocation process.

Jay Moyes

Jay I. Moyes

MOYES SELLERS & HENDRICKS

1850 N. Central Avenue, Suite 1100
Phoenix, Arizona 85004-4541
Office (602) 604-2106
jimoyes@law-msh.com