

STATEMENT OF
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U.S. DEPARTMENT OF ENERGY
BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON ENERGY AND NATURAL RESOURCES
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Madam Chairwoman and members of the Subcommittee, I am Darrick Moe, Regional Manager of the Desert Southwest Region, speaking on behalf of Timothy J. Meeks, the Administrator of the Department of Energy's Western Area Power Administration (Western). I am pleased to be here today to discuss S. 519, the Hoover Power Allocation Act of 2011. This legislation seeks to amend the Hoover Power Plant Act of 1984. The legislation proposes revised allocations of the generation capacity and energy from the Hoover Dam power plant, a feature of the Boulder Canyon Project (BCP), after the existing contracts expire on September 30, 2017.

Western's mission is to market and deliver reliable, renewable, cost-based hydroelectric power from facilities such as Hoover Dam. Hoover Dam was authorized and constructed in accordance with the Boulder Canyon Project Act of 1928. Pursuant to this Act, the Secretary of the Interior was authorized to contract for the sale of generation based upon general regulations as he may prescribe. Subsequent power sales contracts were executed that committed Hoover power through May 31, 1987. With the passage of the Hoover Power Plant Act of 1984, Congress authorized the Secretary of the Interior to implement an uprating program, which increased the generation capacity of the Hoover Dam facilities, to make additional facility modifications, and to resolve issues over the disposition of Hoover power, post-1987. Western proceeded to market Hoover Dam power and entered into 30-year term contracts with the current Hoover contractors in accordance with the Hoover Power Plant Act of 1984, and Western's Conformed General Consolidated Power Marketing Criteria. This process resulted in the allocation of 1,951 megawatts of contingent capacity with an associated 4,527,001 megawatt-hours of firm energy. Contingent capacity is capacity that is available on an as-available basis, while the firm energy entails Western's assurance to deliver.

The Hoover power plant is a significant Federal hydroelectric power resource in the Desert Southwest with a maximum rated capacity of 2,074 megawatts. Under existing Federal law and policy, Western markets Hoover power at cost. Hoover power is hydropower and is considered “clean energy” with a minimal carbon footprint. The Hoover Dam power plant is able to ramp up and down rapidly and is used by contractors for various power-related ancillary services. For these reasons, Hoover power is an extremely valuable resource for power contractors in the southwestern United States.

The existing power sales contracts between Western and the contractors will expire on September 30, 2017. As this expiration date becomes more prominent on the planning horizon, efforts have progressed among both Federal and non-Federal sectors to determine the allocation of Hoover Dam power after 2017.

In accordance with policy and existing Federal law, Western’s post-2017 power allocation effort comprises a series of proposals introduced to the public through public information forums and public comment forums. Western makes policy decisions only after all interested parties have been provided ample opportunity to be engaged in the process and public input has been carefully considered to develop new Hoover Dam allocations that are in the public’s best interest and provide widespread use of this Federal resource.

Western’s public process to allocate Hoover Dam electricity was initiated on November 20, 2009, in a *Federal Register* notice that proposed several key aspects of the allocating effort. Among other things, this *Federal Register* notice proposed the application of Western’s Power Marketing Initiative (PMI) developed under the Energy Planning and Management Program (EPAMP), the extension of a major percentage of the marketable resource to existing contractors, reservation of an approximate 5% resource pool to be allocated to eligible contractors, and provision of 30-year contract terms. Western conducted three public information forums from December 1-3, 2009. These public information forums were well attended by current customers and interested parties, including Native American tribes, and engaged the attendees through question and answer sessions. Public comment forums were held from January 19-21, 2010. All interested parties were provided an opportunity to submit comments related to Western’s proposals contained in the November 20, 2009 *Federal Register* notice. After considering comments received, in an April 16, 2010 *Federal Register* notice, Western extended the comment period from January 29, 2010, to September 30, 2010. This extension provided interested parties additional time to submit comments and allowed Western to consult with tribes to inform them of the remarketing process.

After considering comments received, Western announced in an April 27, 2011 *Federal Register* notice its decision to apply its EPAMP PMI to the BCP remarketing effort. The PMI has been applied to all of Western’s remarketing efforts since it was announced as a final rule in 1995 following a four-year public process. Application of the PMI to the BCP expressly protects and reserves a major portion of the existing customers’ allocations while also providing potential customers, such as tribal governments and other eligible customers, an opportunity to acquire an allocation. The PMI has historically provided a balancing of the needs of the existing customers with

those of prospective customers. Western also decided on a 30-year contract term to achieve a balance between resource certainty and providing for an allocation opportunity for future customers at an appropriate time. Finally, Western also made additional proposals and is seeking further comments on the amount of marketable contingent capacity and firm energy, the size of the resource pool to be created for new customers, and excess energy provisions. As described in the *Federal Register* notice, a public information and comment forum was established for all interested parties to provide written and oral comments on these proposals. The comment period for these proposals was initially set to close June 16, 2011.

Western is currently in the process of publishing a *Federal Register* notice that will extend the close of the comment period established in the April 27, 2011 notice to September 1, 2011. This *Federal Register* notice will also extend the effective date of the decisions announced in the April 27, 2011 notice to December 31, 2011. Western is also rescheduling the public information and comment forums for later this year. This extension provides additional time for on-going legislative activities, as well as additional opportunity for interested parties, including Native American Tribes, to consult with Western and comment on the proposals.

There are numerous steps ahead in the administrative process. Western currently projects that this process will be completed with finalized contracts in the spring of 2015. It is important that the process be finalized well in advance of 2017 to provide customers the time to balance their energy portfolios and make required transmission arrangements, and to allow related state agencies time to carry out their allocations process.

Western has reviewed S. 519. There are several similarities between the draft legislation and Western's proposals, and there are some departures. To provide background that may be useful to the Subcommittee members as this bill is considered, I'll address some of these differences in my comments.

All of Western's allocation efforts are open to public participation and conducted in accordance with the Administrative Procedure Act. At each stage of the process, Western proposes actions and/or policy to be considered and is open for public comment and input. Western believes soliciting and integrating public input into policy decisions allows Western to develop results that are in the public's best interest and lead to the most widespread use of this resource.

Western has 15 current contractors who receive an allocation of Hoover power. Two of those existing contractors are the Colorado River Commission (CRC) and the Arizona Power Authority (APA). CRC and APA sub-allocate their Hoover power to customers under prescribed guidelines and regulations. Both S. 519 and Western's administrative effort propose an amount of resource to be allocated to new customers, including Native American Tribes. S. 519 proposes certain quantities to be allocated to APA and CRC for their disposition to new customers. While it is anticipated that new customers to APA and CRC could result from this effort, Western's process affords the opportunity to fully seek public input and assures all interested parties are considered in the power's disposition.

Western has received numerous written comments and statements from Native American tribes expressing concern that their interests have not yet been fully vetted and considered. In recent years, tribes have been active in Western's remarketing efforts, and one goal of Western's Strategic Plan is to seek partnerships with tribes on numerous initiatives. I believe that soliciting input from tribes and other entities that do not already have an allocation of Hoover power is in the public interest. Western has reached out to tribes specifically in this remarketing effort through letters, phone calls, meetings, site visits, and consultations.

S. 519 would direct that Hoover's full maximum rating of 2,074 megawatts of capacity be allocated to Hoover customers in a multi-faceted approach. As described in Western's April 27, 2011 *Federal Register* notice, we propose to market 2,044 megawatts of contingent capacity; 30 megawatts below the maximum rating. Retention of project capacity to support the reliability of the Federal electric system is relatively common among the Power Marketing Administrations. Western is currently able to utilize Hoover Dam capacity that is available in excess of 1,951 megawatts. The preservation of 30 megawatts of contingent Hoover Dam capacity for use by Western for project integration purposes should provide the tools we need to meet our mission and statutory requirement of delivering reliable Federal hydro-generation. Western manages multiple federally owned generation and transmission projects in the Desert Southwest on a minute-by-minute basis 24 hours a day. While these projects are financially segregated, they are operated as an integrated system. This 30-megawatt capacity to be held by the Federal Government would provide significant benefit to the operation of the integrated projects and the Western Area Lower Colorado balancing authority that Western operates. Retaining 30 megawatts would also likely allow our Hoover Dam power customers to experience cost-neutral conditions. Should Western be unable to retain approximately 30 megawatts, we would expect to procure replacement power from the market at a higher cost, if it is available. These higher costs would in turn need to be passed through to Western customers in the form of higher rates.

S. 519 expressly requires that each contract offered to a new allottee for Hoover Dam power should require the new allottee to execute the Boulder Canyon Project Implementation Agreement. Western finds significant value in the provisions and results of the Implementation Agreement. However, this agreement was jointly constructed between Western and our customers for unique circumstances that existed in 1994. Should this requirement be retained, the current Implementation Agreement would need to be evaluated and potentially revised to accommodate current conditions. We support the universal benefits achieved by the Implementation Agreement and will work with our customers to determine the appropriate documentation to meet all of our customers' needs; both current and future.

S. 519 expressly requires that each contract offered to a new allottee for Hoover Dam power includes a provision requiring the new allottee to pay a proportional share of its State's funding contribution for the Lower Colorado River Multi-Species Conservation Program, known as the LCR MSCP. The LCR MSCP is a 50-year, multi-stakeholder, Federal and non-Federal partnership, responding to the need to balance the use of lower Colorado River water resources and the conservation of native

species and their habitats in compliance with the Endangered Species Act (ESA). The LCR MSCP is a comprehensive approach to species protection developed after nearly a decade of work. This program is funded on a cost-share basis comprised of 50-percent Federal and 50-percent non-Federal. The states of Arizona, California and Nevada have worked internally with water and power customers to fund each state's respective share. S. 519 recognizes these funding requirements and obligates new power customers to contribute to this funding in a proportional manner. Supporters of S. 519 note that the 50-year obligation of the LCR MSCP is, in part, reason to proceed with 50-year Hoover power supply contracts. Western continues to review the LCR MSCP requirements in our administrative process. However, Western's position is that the 50-year LCR MSCP term need not coincide with the Hoover Dam power sales contracts' term. The adoption of a 50-year contract term, as opposed to Western's decision to apply 30-year contract terms, could potentially exclude evolving classes of customers in decades to come. The modern day electrical industry is dynamic in its regulations, technologies, operations and participants. Western notes that we currently provide Federal hydropower allocations to 87 federally recognized Native American tribes. Many of these tribal customers are new to Western in the last 20 years. The landscape of potential customers in decades to come has the capability to yield new Hoover customers, as we strive to meet the needs of all our customers; existing and future.

As drafted, S. 519 states that Subdivision E of the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the *Federal Register* on December 28, 1984, (Criteria) shall be deemed to have been modified to conform to this legislation. Western would like to refine this statement as Western's December 28, 1984, *Federal Register* notice is more precisely titled Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria). Western published the Criteria on May 9, 1983, which was in need of conformance per the Hoover Power Plant Act of 1984. Pursuant to the Hoover Power Plant Act of 1984, Western conformed the 1983 Criteria in its December 28, 1984, *Federal Register* notice. In doing so, the pertinent section is now Subdivision C of the Conformed Criteria. If S. 519 is to move forward, edits would be needed to refer to Subdivision C Western's Conformed Criteria and not Subdivision E of the Criteria.

Western respectfully recognizes that our administrative process is not the exclusive means of allocating Hoover power. I would welcome the opportunity to work with this Subcommittee to address the technical concerns I have raised and to ensure the widespread use of this valuable resource as work continues on this legislation. In the absence of congressional action, Western will uphold our authority and responsibility to market Hoover power consistent with historical statutes and in concert with the rules and regulations as the Secretary of Energy prescribes.

This concludes my prepared remarks and I would be pleased to answer any questions you or members of the Subcommittee might have.