TESTIMONY OF
NAVOPACHE ELECTRIC COOPERATIVE,
MOHAVE ELECTRIC COOPERATIVE, AND
SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE
BEFORE THE HOUSE OF REPRESENTATIVES
WATER AND POWER SUBCOMMITTEE
HEARING ON H.R. 4349 – THE HOOVER
POWER ALLOCATION ACT OF 2009
MARCH 18, 2010

H.R. 4349 as it affects Arizona is critically flawed from a national and Federal perspective.

In the proposal there are superficial allocations to a Reservation of Hoover Power and Energy in a Federal Pool of 5% which is less than the historic Federal Pool reservations in re-marketing of Federal Resources of the last 20 years amounting to between 6% and 8%. This small reserve pool amount is to be marketed appropriately under federal law. However it is inadequate to meet the reasonable needs of new entities seeking access to Hoover.

Under Federal law there is a right of equal and equitable access granted to cities, towns, municipalities, Indian tribes and rural electric cooperatives to power generated from a Federal Hydroelectric facility.

The Hoover facility and its uprates and the costs associated with the facility are all paid by the allottees through the cost of the power remarketed, and in Arizona the cost of Hoover to the Arizona Power Authority is recovered through its rates to its customers. Beginning in 2017, as it is today, the Arizona Power Authority will recover any Hoover related costs through the rates that it charges its customers for the Hoover power and energy resold to them.

The H.R. 4349 reallocation of Hoover as proposed to the Arizona Power Authority, as an agent of the State, does not require it to follow the Federal Reclamation Project Act of 1939 in remarketing and perpetuates discrimination against cooperatives and municipalities by relegating them to an inferior and lesser eligible class of customer. It should be noted that Federal policy on the marketing of resources from Federal projects was set by law upon passage of that act. It is national federal policy to encourage distribution of federal resources for the widespread use first of public bodies, cities, towns, municipalities, cooperatives and tribes and then to others.

Since inception, contrary to the widespread use principles and philosophy of Federal Law, the Arizona statutes controlling sale of Hoover power by the Arizona Power Authority (A.R.S. §30-125) have favored a single class of customer - special irrigation and electric and other districts - to the disadvantage of cities, towns, tribes, municipalities and electric cooperatives. The Federal Preference law does not have such discrimination.

H.R. 4349 which enacts new federal national policy concerning the marketing of the Hoover resource should not permit such continued discrimination by the Arizona Power Authority (APA) and H.R. 4349 should be revised to require the APA, as a condition of receipt of its Hoover allocation, to follow the Federal preference law giving equal and equitable access to cities, towns, rural electric cooperatives, municipalities and tribes.

Beginning with the original allocations of Hoover and its remarketing in the three states, Nevada through its Colorado River Commission, a preference customer under Federal Law, we understand markets to rural electric distribution cooperatives, Valley and Lincoln, consistent with the provisions of the 1939 Act.

Within the Hoover marketing area, California has made an effort to distribute Hoover for the widest use consistent with law. The California municipal entities which currently receive and will receive 2017 allocations are all considered to be Federal preference customers, except for Southern California Edison. Recognizing the wide customer base of Southern California Edison and the fact that Edison was an original investor and purchaser of Hoover in the original marketing, it continues to receive under this legislation an allocation of Hoover even though it is not qualified as a Federal Preference customer. We do not oppose the way in which California and Nevada propose to manage their Hoover allocation for wide spread use consistent with Federal law.

It should be noted, unlike the Nevada Colorado River Commission and the cities of California which are eligible under the 1939 Act, the Arizona Power Authority is not qualified under Federal law as an entity entitled to preference in marketing federal hydroelectric resources under the 1939 Reclamation Project Act. It is ineligible to receive federal power allocations from the Federal Parker Davis Project. It was declared ineligible to receive allocations of federal power from the Federal Colorado River Storage Project (CRSP) because of its discriminatory law.

Contrary to the policy of encouraging wide spread use, the APA Act A.R.S. §30-125 gives preference only to special districts and relegates electric cooperatives, cities, and towns to a second class of customer while the 1939 Federal Law puts

all three classes and Indian tribes on an equal and equitable footing. Since applicants for use of Hoover exceed the resource allocated to Arizona, the APA does not make the resource available for widespread use and after 2017 will continue to discriminate against what after 2017 will be over two million people in Arizona, within the marketing area, unless H.R. 4349 is amended.

The Arizona Indian tribes and the Arizona communities of Safford, Thatcher, Marana, St. Johns, Eagar, Springerville, Mesa, Duncan Valley Electric, Graham County Electric, Navopache Electric, Williams, Gilbert, Wickenburg, and Reserve, New Mexico, and Mohave Electric, Trico Electric and Sulphur Springs Valley Electric Cooperatives and their currently over 250,000 meters and what by 2017 will be more than 2 million customers are prejudiced under the proposed H.R. 4349 legislation by the current Arizona Power Authority statutory provisions unless H.R. 4349 is amended.

The relevant necessary H.R. 4349 provision is in Section 619 (a) Renewal of Contracts section and what we would propose is that the language of H.R. 4349 should be amended to read as follows:

> "..... Provided, however, that in the case of Arizona and Nevada, such renewal contracts shall be offered to the Arizona Power Authority to be remarketed and resold only in compliance by the Arizona Power Authority with the provisions of the Federal Reclamation Project Act of 1939, 53 Stat. 1187, 1194, 43 U.S.C. 485h(c) with respect to preference in marketing of Federal Power and upon assurance of meaningful allocations of Hoover A to the Arizona rural distribution cooperatives within the State of Arizona, and the Colorado River Commission of Nevada....."

The economic circumstances of 1946 used to justify the A.R.S. §30-125 discriminatory provisions of the Arizona Power Authority Hoover law favoring agricultural special irrigation and electrical districts, and denying for 70 years widespread use of the resource, no longer will exist in 2017. As they continue to be urbanized and as acreage devoted to irrigated agriculture decreases, those districts no longer require a super-preference in the allocation of Hoover contrary to Federal law as opposed to a continuing opportunity for equal consideration.

The needs of inhabitants of Arizona cooperatives, cities and towns and Indian tribes have expanded since 1946 and an equal and equitable opportunity for them to receive an allocation of Hoover power and energy will be vitally important to their electric operations as we all pursue development of renewables, use of hydroelectricity in the integration of wind, integration of solar, and flexibility in operating electric systems to reduce green house gasses and lessen coal

dependence.

Perpetuation of the APA refusal to comply with the 1939 Federal Preference laws, in the receipt and resale of a vital Federal resource, is unconscionable. Hoover is a resource which belongs not to the special favorites of the APA but to the people of the United States to be marketed in accord with Federal law. H.R. 4349, which disposes of this Federal Resource should be amended to require compliance by the APA with Federal Preference laws as a condition of receipt by it of a renewed 50-year allocation of Hoover. After 70 years, equity, fairness and equal opportunity under Federal laws should be the benchmark for a renewed 50-year allocation to the APA of Hoover.

Hoover power is a vital resource for customers in the States of Arizona, California and Nevada. Over 29 million people rely on this power. In the 1984 remarketing of Hoover, Arizona cities and towns and cooperative were denied equal and equitable access.

Under the 1984 legislation, these current contracts are scheduled to expire in 2017.

The 1984 Hoover Power Act distributed power under three schedules:

Schedule A: Provided allocations to the original contractors of Hoover power as authorized by the 1928 Act. Metropolitan Water District of Southern California, Cities of Los Angeles, Glendale, Pasadena, and Burbank (preference customers); the Southern California Edison Co.; the State of Arizona through its Power Authority; Nevada through the Colorado River Commission of Nevada (a preference customer); and the City of Boulder City, Nevada (a preference customer).

Schedule B: Provided an allocation to contractors that advanced funds for modification of Hoover power turbines as authorized by the 1984 Act: these were the States of California (Cities of Glendale, Pasadena, Burbank, Anaheim, Azusa, Banning, Cotton, Riverside, Vernon who are all preference customers under federal law); and the Colorado River Commission of Nevada (a preference customer); and the Arizona Power Authority of the State of Arizona.

Schedule C.: Governs allocations of excess Hoover energy, if any, to the states of Arizona, California and Nevada as negotiated by the states and federal government.

The Hoover Power Allocation Act of 2009-H.R. 4349:

Under the proposed H.R. 4349 legislation, Congress would distribute Hoover Power pursuant to Schedules A, B, and C. However, each of the current Hoover contractors would contribute 5% of their allocated power to a pool that would be distributed under a new Schedule D. Schedule D power would be allocated to federally recognized Native American Tribes and the other eligible entities that do not currently purchase Hoover power. Such a miniscule amount is grossly unfair and inadequate.

Two thirds of the Schedule D pool would be distributed through the Western Area Power Administration and the remaining one third would be allocated in equal shares to the Arizona Power Authority (for new Arizona contractors subject to the discriminatory Arizona law); and the Colorado River Commission of Nevada (for new contractors); and through Western (for new contractors in California).

These new contracts would continue for 50 years until September 30, 2067.

Widespread Use of Federal Resources.

The driving intent and objective of Federal law in marketing power resources as expressed in the 1939 Reclamation Act is to encourage widespread use in marketing of the Federal Resource to as broad a public audience as possible. Examples of encouraging the widespread use of federal electricity in Arizona would be to include, with the existing districts, the cooperatives and municipalities that do not now have Hoover allocations with equal and equitable access.

Examples of Cooperative Use – All Customers, Not Just Water.

Arizona electric distribution cooperatives, consistent with the intent of the original Rural Electrification Act serve a wide and broad based membership as not for profit entities.

Navopache Electric Cooperative in Northeastern Arizona and Western New Mexico serves: 2 accounts for the Village of Reserve in the state of New Mexico, needs of the State of New Mexico, 4 New Mexico Fish and Game needs and 2 State of New Mexico accounts. Also it delivers electricity to and serves 3,973 accounts on the White Mountain Apache Reservation reaching approximately 12,000 Native American people. It delivers to 14 Arizona Department of Transportation accounts, 29 United States Forest Service accounts, 2 Arizona prison accounts, 59 Arizona school districts, and 8 Arizona Fish and Game accounts.

Mohave Electric serves 36 Federal installations and 5 Department of Interior accounts, 39 Fort Mohave Tribe accounts, 6 Havasu National Wildlife accounts, 600 Hualapai Tribe accounts or about 1200 Native American persons, 87 Bullhead City, Arizona municipal accounts, and 7 community college accounts. There are also 11 mining accounts and 33 farm accounts.

Sulphur Springs Valley in Southeastern Arizona along the Mexico border delivers electric service to many installations of the United States Army, the United States Customs and Border Service, the United States Forest Service, The Arizona Game and Fish Department, the Arizona Department of Transportation, the Arizona Nature Conservancy, the University of Arizona, multiple schools, municipal buildings, the Arizona Department of Veteran Services and the Arizona Department of Public Safety.

Misconceptions and Recent Developments

You may hear some rendition of history that the cooperatives did have an allocation of Hoover power in the early 1960's. That particular portion of history provides the example of why this amendment is needed. Prior to 1963, the State of Arizona -- through the APA -- did market a blended product of Hoover power, Parker-Davis Project power, and purchased steam power as Colorado River Power. The APA had excess surplus of this blended power and some of the cooperatives in Arizona did purchase this power along with entities such as investor-owned utilities. Those of us that purchased this excess power from the APA did not have allocations. It is important to note that the Parker-Davis Project power was required by law to be marketed in accordance with federal preference rules. In 1963, the federal government decided that Arizona's "super preference" laws were not consistent with the Federal Preference laws and took the Parker-Davis Project power away from the State and marketed it directly to preference entities in accordance with

preference power provisions. It was then that the cooperatives received Parker-Davis power in 1963. Since 1963, the cooperatives have not received an allocation of Hoover power, and the power they received prior to 1963 was actually a blend of Parker-Davis Project power, Hoover power, and purchased steam power and, again, not an allocation.

We are here seeking an amendment to a federal legislative action that we did not initiate, we are simply responding to it. We have sought since May of 2008 to come together to mutually create the Arizona State position on allocations within the state, to no avail. We sought a parallel path of a State allocation solution and federal legislation development, but were also denied. We sought these positions so all in Arizona could support the legislation when it was developed and introduced. But some entities felt compelled to thwart and prevent the Arizona cooperatives input. We could not, and did not, support a federal legislative solution that did not solve the Arizona State allocation issues first, and are forced to seek federal legislative relief because the legislation has been introduced.

It is only within the last few weeks, and with the knowledge that we are here to testify that the Arizona Power Authority and their existing customers have asked to meet with us. And, yet, they have not proposed any solutions or alternatives to seek a mutual resolution of the problem, and in fact, have not even presented us with a proposal to address the existing inequity. We view these initial overtures as gratuitous and disingenuous.

In closing, we reiterate our commitment and willingness to work with you and your staffs as we explore the issues concerning Arizona's allocation of Hoover power. We are committed to finding a solution that will be valuable to the State of Arizona and all of its qualifying participants.

Arizona Revised Statutes Conflicting with Federal Power Marketing Law:

Attached is a copy of A.R.S. §30-125; and a statistical summary of customers from Mohave, Navopache and Sulphur Springs, and the Arizona Revised Statutes regarding the Arizona Power Authority.

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