Calendar No. 615

111TH CONGRESS
2d Session

SENATE

REPORT
111–329

HOOVER POWER ALLOCATION ACT

SEPTEMBER 27, 2010.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 4349]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 4349) to further allocate and expand the availability of hydroelectric power generated at Hoover Dam, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 4349 is to amend the Hoover Power Plant Act of 1984 (43 U.S.C. 619) to further allocate and expand the availability of hydroelectric power generated at Hoover Dam, and for other purposes.

BACKGROUND AND NEED

The Boulder Canyon Project Act of 1928 (Public Law 70–642) authorized the Secretary of the Interior, among other things, to construct Hoover Dam and enter into contracts for the sale of power generated at the dam. In 1984, Congress enacted the Hoover Power Plant Act (Public Law 98–381) and, among other things, authorized the Secretary of Energy to allocate power produced at the dam. The 1984 act recognizes three categories of power allocations:

"Schedule A" authorizes contracts to: Metropolitan Water District of southern California; California cities of Los Angeles, Glendale, Pasadena, and Burbank; Southern California Edison Company; Arizona Power Authority; Colorado River Commission of Nevada; and the City of Boulder City, Nevada. These contractors represent the original contractors for power from Hoover Dam.

"Schedule B" authorizes contracts to: the southern California cities of Glendale, Pasadena, Burbank, Anaheim, Azusa, Banning, Colton, Riverside, and Vernon, as well as the States of Arizona and Nevada.

"Schedule C" allocates excess power production, if any, to the States of California, Arizona, and Nevada.

The current power contracts were signed in 1987, and will expire in 2017. The approximate percentage of power delivered to each state is: 23.4 percent to Nevada; 19 percent to Arizona; and 57.6 percent to California.

H.R. 4349 allocates hydroelectric power generated at Hoover Dam to current power customers in Arizona, Nevada, and California in accordance with revised Schedules A, B, and C and creates a new pool of "Schedule D" power to be allocated to Indian tribes and other new entities. Two-thirds of the Scheduled D pool will be allocated in accordance with procedures developed by the Western Area Power Administration and the remaining one-third will be allocated in equal shares by the Arizona Power Authority for new contractors in Arizona, the Colorado River Commission of Nevada for new contractors in Nevada, and the Western Area Power Administration for new contractors in California.

LEGISLATIVE HISTORY

H.R. 4349 was introduced by Representative Napolitano on December 16, 2009 and passed the House of Representatives by voice vote on June 8, 2010. Companion legislation, S. 2891, was introduced in the Senate by Senator Reid on December 16, 2009. The Subcommittee on Water and Power held a hearing on H.R. 4349 and S. 2891 on June 9, 2010. The Committee on Energy and Natural Resources considered H.R. 4349 at its business meeting on July 21, 2010, and ordered it favorably reported without amendment.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 21, 2010, by voice vote of a quorum present, recommends that the Senate pass H.R. 4349.

SECTION-BY-SECTION ANALYSIS

Section 1 sets forth the short title as the "Hoover Power Allocation Act of 2010".

Section 2(a–c) amends section 105(a)(1) of the Hoover Power Plant Act of 1984 (43 U.S.C. 619a) (Hoover Power Act) by specifying that the new contracts for the allocation of power as provided in Schedules A, B, and C shall commence on October 1, 2017. Section 2 also designates specific, revised allocations to the existing contractors and States.

Section 2(d) amends section 105(a) of the Hoover Power Act by adding a new subsection that establishes a new contingent capacity and firm energy pool designated as Schedule D for delivery beginning on October 1, 2017. Section 2(d) also specifies that the Western Area Power Administration (Western) shall allocate 66.7 percent of the Schedule D contingent capacity and firm energy to new entities or Indian tribes within 36 months of enactment of this Act.

Within 1 year of enactment, the Secretary of Energy shall make 33.3 percent of the Schedule D contingent capacity and firm energy in equal allocations, available for delivery commencing October 1, 2017 to the Arizona Power Authority for new allottees in the State of Arizona; the Colorado River Commission of Nevada for new allottees in the State of Nevada; and Western for new allottees with the State of California, provided that Western shall have thirty-six months to complete such allocation. New Schedule D contractors must execute the Boulder Canyon Project Implementation Agreement. Contracts must also include a provision requiring new contractors to pay a proportionate share of their State's contribution to the cost of the Lower Colorado River Multi-Species Conservation Program. Any of the 66.7 percent of the Schedule D contingent capacity and firm energy that is not allocated and placed under contract by October 1, 2017 will be returned in the same proportion to the contractors in Schedule A and Schedule B. Any of the 33.3 percent of Schedule D contingent capacity and firm energy that is to be distributed within the States of Arizona, Nevada, and California that is not allocated and placed under contract by October 1, 2017, shall be returned to the Schedule A and Schedule B contractors within the State in which the Schedule D contingent capacity and firm energy were to be distributed.

Sections 2(e) and *2(f)* make technical and conforming changes to the Hoover Power Act.

Section 2(g) amends the Hoover Power Act to specify the expiration date for the new allocation contracts as September 30, 2067. Western is also authorized and required to collect a pro rata share of Hoover Dam repayable advances from new allottees prior to October 1, 2017. Further, transactions with an independent system operator are permitted.

Section 2(h) amends section 105(b) of the Hoover Power Act to change the year "2017" to "2067".

Section 2(i) amends section 105(c) of the Hoover Power Act to specify the procedures the Secretary of Energy is to follow in order to make available the contingent capacity and firm energy if an existing contractor fails to accept an offered contract.

Section 2(j) amends the Hoover Power Act by stating that the obligation of the Secretary to Energy to deliver contingent capacity and firm energy is subject to the availability of the water needed to produce the contingent capacity and firm energy.

Section 2(k) repeals sections 105(e) and (f) of the Hoover Power Act.

Section 2(l) provides for continued congressional oversight regarding the terms and conditions of the governing contracts for power generated at Hoover Dam until September 30, 2067.

Sections 2(m) and *2(n)* make conforming changes to the Hoover Power Act.

Section 3 sets forth the requirements for compliance with the Statutory Pay-As-You-Go Act of 2010.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

H.R. 4349—Hoover Power Allocation Act of 2010

H.R. 4349 would update the statutory allocation of electric power generated at the Hoover Dam among various users. The current allocation expires at the end of fiscal year 2017. The legislation would increase the amount of electricity to be marketed by the Western Area Power Administration (WAPA) and would allocate much of the dam's currently unallocated electricity to Native American Indian tribes and other entities. The revised allocations would remain in effect from 2017 through 2067. Based on information from WAPA, CBO estimates that implementing this act would have a negligible effect on net direct spending and spending subject to appropriation.

In the absence of this legislation, CBO expects that WAPA would allocate the electricity from the Hoover Dam by regulation. CBO estimates that any differences between the electricity allocation under H.R. 4349 and the allocations developed under such regulations would have a negligible effect on offsetting receipts (a credit against direct spending) from electricity sales because the agency is required by law to keep electric rates as low as possible while recovering all costs of generation and marketing over time. CBO also estimates that implementing the act would have no significant impact on WAPA's administrative costs, which are funded by appropriations and offset by proceeds from the sale of electricity.

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4349 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON JULY 21, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
NET INCREASE OR DECREASE (−) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	0

H.R. 4349 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

On May 20, 2010, CBO transmitted a cost estimate for H.R. 4349, as ordered reported by the House Committee on Natural Resources. The two versions of the legislation are similar and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Kathleen Gramp. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4349.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 4349 as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 4349, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

STATEMENT OF TIMOTHY J. MEEKS, ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION, DEPARTMENT OF ENERGY

Madam Chairwoman and Members of the Subcommittee, I am Timothy J. Meeks, Administrator of the United States Department of Energy's Western Area Power Administration (Western). I am pleased to be here today to discuss S. 2891, the Hoover Power Allocation Act of 2009. 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, 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. In the 1984 Act, Congress directed the Secretary of Energy to offer renewal contracts to existing contractors and provided guidance for marketing the capacity gained through the uprating program.

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 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 is composed of a series of proposals introduced to the public through *Federal Register* notices, 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 the most 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 proposes several key aspects of the allocation effort. Among other things, this *Federal Register* notice proposes the application of Western's Energy Planning and Management Program, extends a major percentage of the marketable resource to existing contractors, reserves an approximate 5 percent resource pool to be allocated to new contractors, and provides for 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 and engaged the attendees through question and answer sessions. Public comment forums were held from January 19–21, 2010. Interested parties were provided an opportunity to submit comments related to Western's proposals contained in the November *Federal Register* notice. The comment period was extended from January 29, 2010, to September 30, 2010, via a *Federal Register* notice dated April 16, 2010. Western is in the process of reviewing the submissions received to date. Depending on the public input received, Western projects that some initial decisions will be made later this year. In the event that a resource pool is established, Western will conduct a public process

to determine what marketing criteria would be applicable to the disposition of the resource pool. Western projects that final allocations will be determined and contracts executed by the spring of 2013, giving other entities time to plan prior to the expiration of the contracts in 2017.

Western has reviewed S. 2891. There are several similarities between the draft legislation and Western's initial proposals brought forward in the November *Federal Register* notice, and there are some distinct 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 Procedures 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 the public input into policy decisions allows Western to progress to results that are in the public's best interest and lead to the most widespread use of this resource.

S. 2891 directs Western to allocate certain amounts of Hoover power within eighteen (18) months after enactment. Based on historical practice and in review of Western's marketing project plans, an 18-month time frame may not be sufficient to thoroughly solicit and integrate public input into our marketing criteria and final allocations. Western supports the action that the House of Representatives Committee on Natural Resources took on H.R. 4349, which revised the amount of time allowed for the allocation of power to new customers from 18 months to thirty-six (36) months after enactment.

Western has 15 current contractors who receive an allocation of Hoover power. Two of those existing contractors are the Colorado River Agency (CRC) and the Arizona Power Authority (APA). APA and CRC sub-allocate their allocations to customers under State prescribed guidelines and regulations. Both S. 2891 and Western's administrative effort propose an amount of resource to be allocated to new customers. Western's process affords the opportunity of full public input and ensures all interested parties are considered in the power's allocation. Western supports the House of Representatives Committee on Natural Resources elimination of language in H.R. 4349 that would have required a state role in developing criteria associated with the allocation of power to new customers. This language potentially restricted the open public process for creating marketing criteria for those power allocations. 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 history, 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 have an allocation of Hoover power is in the public interest. Western has identified 59 federally recognized Native American Tribes in the BCP marketing area and is in the process of ensuring they are afforded an opportunity to participate in the public process. Western supports the revision made to the House version of this bill that expressly provides for the tribes to contract directly with Western to obtain a Hoover allocation.

S. 2891 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 November 20, 2009, *Federal Register* notice, Western proposes to market 2,044 megawatts of contingent capacity; 30 megawatts below the maximum rating. The retention of 30 megawatts of contingent Hoover Dam capacity for use by Western for project integration purposes would assist in providing the tools needed 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. 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. Should Western be unable to retain approximately 30 megawatts, Western expects to procure replacement power from the market at a higher cost, if it is available. These higher costs would in turn be passed through to Western's customers in the form of higher rates.

S. 2891 would direct that the existing contractual amounts totaling 4,527,001 megawatt-hours annually be allocated. In consultation with the Bureau of Reclamation (Reclamation) and in review of the most recent hydrologic studies, Western observed and proposed that 4,116,000 megawatt-hours would better align with the actual availability of the resource. Western's historical practice is to market an amount of generation that is based upon projected available generation. Remarketing the existing 4,527,001 megawatt-hours is possible; however, the 4,527,001 megawatt-hour level of generation has only been achieved a few times in the last 30 years. Reclamation's forecast studies exhibit that this level of generation would be fairly improbable.

S. 2891 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 Contract No. 95–PAO–10616. Western finds significant value in the provisions and results of the Implementation Agreement. However, this agreement was constructed for unique circumstances that existed in 1994. Should we retain this feature, I recommend that the current Implementation Agreement be evaluated and po-

tentially 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. 2891 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. 2891 recognizes these funding requirements and obligates new power customers to contribute to this funding in a proportional manner. Supporters of S. 2891 note that the 50-year obligation of the LCR MSCP is, in part, reason to proceed with 50-year Hoover power supply contracts. 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 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. The landscape of potential customers in decades to come has the capability to yield new prospective customers, and we strive to meet the needs of all our customers; existing and future.

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 as work continues on this legislation. In the absence of congressional action, Western will uphold its 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. I would be pleased to answer any questions you or Members of the Subcommittee might have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill H.R. 4349, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is

printed in italic, existing law in which no change is proposed is shown in roman):

THE HOOVER POWER PLANT ACT OF 1984

(August 17, 1984, Public Law 98–381, 98 Stat. 1333, 43 U.S.C. 619; as amended by the Act of October 24, 1992, Public Law 102–486, 106 Stat, 2776)

AN ACT To authorize the Secretary of the Interior to construct, operate, and maintain certain facilities at Hoover Dam, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Hoover Power Plant Act of 1984".

TITLE I

* * * * * * *

SEC. 105. (a)(1) The Secretary of Energy shall offer:

(A) To each contractor for power generated at Hoover Dam a [renewal] contract for delivery commencing [June 1, 1987] *October 1, 2017*, of the amount of capacity and firm energy specified for that contractor in the following table:

[SCHEDULE A

[LONG TERM CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY RESERVED FOR RENEWAL CONTRACT OFFERS TO CURRENT BOULDER CANYON PROJECT CONTRACTORS

[Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Metropolitan Water District of Southern California	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	488,535	209,658	698,193
Southern California Edison Company	277,500	175,486	75,208	250,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada	189,000	452,192	193,797	645,989
United States, for Boulder City	20,000	56,000	24,000	80,000
Totals	1,448,000	2,631,651	1,128,136	3,759,787]

SCHEDULE A

LONG-TERM SCHEDULE A CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY FOR OFFERS OF CONTRACTS TO BOULDER CANYON PROJECT CONTRACTORS

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
Metropolitan Water District of Southern California	*249,948*	*859,163*	*368,212*	*1,227,375*
City of Los Angeles	*495,732*	*464,108*	*199,175*	*663,283*
Southern California Edison Company	*280,245*	*166,712*	*71,448*	*238,160*
City of Glendale	*18,178*	*45,028*	*19,297*	*64,325*
City of Pasadena	*11,108*	*38,622*	*16,553*	*55,175*

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
City of Burbank	*5,176*	*14,070*	*6,030*	*20,100*
Arizona Power Authority	*190,869*	*429,582*	*184,107*	*613,689*
Colorado River Commission of Nevada	*190,869*	*429,582*	*184,107*	*613,689*
United States, for Boulder City	*20,198*	*53,200*	*22,800*	*76,000*
Totals	*1,462,323*	*2,500,067*	*1,071,729*	*3,571,796*

[(B) To purchasers in the States of Arizona, Nevada and California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified in the following table:

[SCHEDULE B

[CONTINGENT CAPACITY RESULTING FROM THE UPRATING PROGRAM AND ASSOCIATED FIRM ENERGY

[State	Contingent capacity	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Arizona	188,000	148,000	64,000	212,000
California	127,000	99,850	43,364	143,214
Nevada	188,000	288,000	124,000	412,000
Totals	508,000	535,850	231,364	767,214

[Provided, however, That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: Provided further, That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.]

(B) To each existing contractor for power generated at Hoover Dam, a contract, for delivery commencing October 1, 2017, of the amount of contingent capacity and firm energy specified for that contractor in the following table:

SCHEDULE B

LONG-TERM SCHEDULE B CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY FOR OFFERS OF CONTRACTS TO BOULDER CANYON PROJECT CONTRACTORS

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
City of Glendale	*2,020*	*2,749*	*1,194*	*3,943*
City of Pasadena	*9,089*	*2,399*	*1,041*	*3,440*
City of Burbank	*15,149*	*3,604*	*1,566*	*5,170*
City of Anaheim	*40,396*	*34,442*	*14,958*	*49,400*
City of Azusa	*4,039*	*3,312*	*1,438*	*4,750*
City of Banning	*2,020*	*1,324*	*576*	*1,900*

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
City of Colton	*3,030*	*2,650*	*1,150*	*3,800*
City of Riverside	*30,296*	*25,831*	*11,219*	*37,050*
City of Vernon	*22,218*	*18,546*	*8,054*	*26,600*
Arizona	*189,860*	*140,600*	*60,800*	*201,400*
Nevada	*189,860*	*273,600*	*117,800*	*391,400*
Totals	*507,977*	*509,057*	*219,796*	*728,853*

(C) To the Arizona Power Authority and the Colorado River Commission of Nevada and to purchasers in the State of California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing [June 1, 1987] *October 1, 2017,* of such energy generated at Hoover Dam as is available respectively to the States of Arizona, Nevada, and California in excess of 4,501.001 million kilowatthours in any year of operation (hereinafter called excess energy) in accordance with the following table:

[SCHEDULE C

[EXCESS ENERGY

[Priority of entitlement to excess energy	State
[First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: Provided, however, That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in the amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	Arizona
Second: Meeting Hoover Dam contractual obligations under schedule A of section 105(a)(1)(A) and under schedule B of section 105(a)(1)(B) not exceeding 26 million kilowatthours in each year of operation.	
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	Arizona, Nevada, California]

SCHEDULE C

EXCESS ENERGY

Priority of entitlement to excess energy	*State*
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: Provided, That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in an amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	*Arizona*
Second: Meeting Hoover Dam contractual obligations under Schedule A of subsection (a)(1)(A), under Schedule B of subsection (a)(1)(B), and under Schedule D of subsection (a)(2), not exceeding 26 million kilowatthours in each year of operation..	*Arizona, Nevada, and California*
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	*Arizona, Nevada, and California*

(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 2010, 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'):

SCHEDULE D

LONG-TERM SCHEDULE D RESOURCE POOL OF CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY FOR NEW ALLOTTEES

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
New Entities Allocated by the Secretary of Energy	69,170	105,637	45,376	151,013
New Entities Allocated by State:				
Arizona	11,510	17,580	7,533	25,113
California	11,510	17,580	7,533	25,113
Nevada	11,510	17,580	7,533	25,113
Totals	103,700	158,377	67,975	226,352

(B) The Secretary of Energy shall offer Schedule D contingency capacity and firm energy to entities not receiving contingent capacity and firm energy under subparagraphs (A) and (B) of paragraph (1) (referred to in this section as 'new allottees') for delivery commencing October 1, 2017 pursuant to this subsection. In this subsection, the term 'the marketing area for the Boulder City Area Projects' shall have the same meaning as in appendix A of the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the Federal Register on December 28, 1984 (49 Federal Register 50582 et seq.) (referred to in this section as the 'Criteria').

(C)(i) Within 36 months of the date of enactment of the Hoover Power Allocation Act of 2010, the Secretary of Energy shall allocate through the Western Area Power Administration (referred to in this section as 'Western'), for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 66.7 percent of the Schedule D contingent capacity and firm energy to new allottees that are located within the marketing area for the Boulder City Area Projects and that are—

(I) eligible to enter into contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d); or

(II) federally recognized Indian tribes.

(ii) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for new allottees other than federally recognized Indian tribes shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively. Schedule D contingent capacity and firm energy allocated to federally recognized Indian tribes shall be contracted for directly with Western.

(D) Within 1 year of the date of enactment of the Hoover Power Allocation Act of 2010, the Secretary of Energy also shall allocate, for delivery commencing October 1, 2017, for use in the marketing

area for the Boulder City Area Projects 11.1 percent of the Schedule D contingent capacity and firm energy to each of—

(i) the Arizona Power Authority for allocation to new allottees in the State of Arizona;

(ii) the Colorado River Commission of Nevada for allocation to new allottees in the State of Nevada; and

(iii) Western for allocation to new allottees within the State of California, provided that Western shall have 36 months to complete such allocation.

(E) Each contract offered pursuant to this subsection shall include a provision requiring the new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (as defined in section 9401 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1327)), and to execute the Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 (referred to in this section as the 'Implementation Agreement').

(F) Any of the 66.7 percent of Schedule D contingent capacity and firm energy that is to be allocated by Western that is not allocated and placed under contract by October 1, 2017, shall be returned to those contractors shown in Schedule A and Schedule B in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy. Any of the 33.3 percent of Schedule D contingent capacity and firm energy that is to be distributed within the States of Arizona, Nevada, and California that is not allocated and placed under contract by October 1, 2017, shall be returned to the Schedule A and Schedule B contractors within the State in which the Schedule D contingent capacity and firm energy were to be distributed, in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy.

[(2)**]** *(3)* The total obligation of the Secretary of Energy to deliver firm energy pursuant to **[**schedule A of section 105(a)(1)(A) and schedule B of section 105(a)(1)(B)**]** *paragraphs (1)(A), (1)(B), and (2)* is 4,527.001 million kilowatthours in each year of operation. To the extent that the actual generation at Hoover Powerplant in **[**any**]** *each* year of operation (less deliveries thereof to Arizona required by its first priority under **[**schedule C**]** *Schedule C* of section 105(a)(1)(C) whenever actual generation in any year of operation is in excess of 4,501.001 million kilowatthours) is less than 4,527.001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said **[**schedules A and B**]** *Schedules A, B, and D* in the ratio that the sum of the quantities of firm energy to which each contractor is entitled pursuant to said schedules bears to 4,527.001 million kilowatthours. At the request of any such contractor, the Secretary of Energy will purchase energy to meet that contractor's deficiency at such contractor's expense.

[(3)**]** *(4)* Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983 (48 Federal Register commencing at 20881), hereinafter referred to as the "Criteria" or as the "Regulations" shall be deemed to have been modified to conform to this section. The Secretary of Energy shall cause to be in-

cluded in the Federal Register a notice conforming the text of said Regulations to such modifications.]

(4) Subdivision E of the Criteria shall be deemed to have been modified to conform to this section, as modified by the Hoover Power Allocation Act of 2010. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of the regulations to such modifications.

[(4)] *(5)* Each contract offered under subsection (a)(1) of this section shall:

[(A) expire September 30, 2017;]

(A) in accordance with section 5(a) of the Boulder Canyon Project Act (43 U.S.C. 617d(a)), expire September 30, 2067;

(B) not restrict use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California: Provided, That to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California [shall use] *shall allocate* such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water; [and]

(C) conform to the applicable provisions of subdivison E of the Criteria, commencing at 48 Federal Register 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified[.]*;*

(D) authorize and require Western to collect from new allottees a pro rata share of Hoover Dam repayable advances paid for by contractors prior to October 1, 2017, and remit such amounts to the contractors that paid such advances in proportion to the amounts paid by such contractors as specified in section 6.4 of the Implementation Agreement;

(E) permit transactions with an independent system operator; and

(F) contain the same material terms included in section 5.6 of those long-term contracts for purchases from the Hoover Power Plant that were made in accordance with this Act and are in existence on the date of enactment of the Hoover Power Allocation Act of 2010.

(b) Nothing in the Criteria shall be construed to prejudice any rights conferred by the Boulder Canyon Project Act, as amended and supplemented, on the holder of a contract described in subsection (a) of this section not in default thereunder on September 30, [2017] *2067.*

[(c)(1) The Secretary of Energy shall not execute a contract described in subsection (a)(1)(A) of this section with any entity which is a party to the action entitled the "State of Nevada, et al. against the United States of America, et al." in the United States District Court for the District of Nevada, case numbered CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims, as the case may be, and also agrees to file with the Secretary a document releasing the United States, its officers and agents, and all other parties to that action who join in

that stipulation from any claims arising out of the disposition under this section of capacity and energy from the Boulder Canyon project. The Attorney General shall join on behalf of the United States, its officers and agents, in any such voluntary dismissal and shall have the authority to approve on behalf of the United States the form of each release.

[(2) If after a reasonable period of time as determined by the Secretary, the Secretary is precluded from executing a contract with an entity by reason of paragraph (1) of this subsection, the Secretary shall offer the capacity and energy thus available to other entities in the same State eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act.**]**

(c) OFFER OF CONTRACT TO OTHER ENTITIES.—If any existing contractor fails to accept an offered contract, the Secretary of Energy shall offer the contingent capacity and firm energy thus available first to other entities in the same State listed in Schedule A and Schedule B, second to other entities listed in Schedule A and Schedule B, third to other entities in the same State which receive contingent capacity and firm energy under subsection (a)(2) of this section, and last to other entities which receive contingent capacity and firm energy under subsection (a)(2) of this section.

[(d) The uprating program authorized under section 101(a) of this Act shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal purchasers described in subsection (a)(1)(B) of this section. Funding provided by non-Federal purchasers shall be advanced to the Secretary of the Interior pursuant to the terms and conditions of such contracts.**]**

(d) WATER AVAILABILITY.—Except with respect to energy purchased at the request of an allottee pursuant to subsection (a)(3), the obligation of the Secretary of Energy to deliver contingent capacity and firm energy pursuant to contracts entered into pursuant to this section shall be subject to availability of the water needed to produce such contingent capacity and firm energy. In the event that water is not available to produce the contingent capacity and firm energy set forth in Schedule A, Schedule B, and Schedule D, the Secretary of Energy shall adjust the contingent capacity and firm energy offered under those Schedules in the same proportion as those contractors' allocations of Schedule A, Schedule B, and Schedule D contingent capacity and firm energy bears to the full rated contingent capacity and firm energy obligations.

[(e) Notwithstanding any other provisions of the law, funds advanced by non-Federal purchasers for use in the uprating program shall be deposited in the Colorado River Dam Fund and shall be available for the uprating program.**]**

[(f) Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program.**]**

[(g)**]** *(e)* The provisions of this section constitute an exercise by the Congress of the right reserved by it in section 5(b) of the Boulder Canyon Project Act, as amended and supplemented, to pre-

scribe terms and conditions for [the renewal of] contracts for electrical energy generated at Hoover Dam. This section constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning [June 1, 1987, and ending September 30, 2017] *October 1, 2017, and ending September 30, 2067.*

[(h)] *(f)*(1) Notwithstanding any other provision of law, any claim that the provisions of subsection (a) of this section violates any rights to capacity or energy from the Boulder Canyon project is barred unless the complaint is filed within one year after the date of enactment of [this Act] *the Hoover Power Allocation Act of 2010* in the United States Claims Court which shall have exclusive jurisdiction over this action. Any claim that actions taken by any administrative agency of the United States violates any right under this title or the Boulder Canyon Project Act or the Boulder Canyon Project Adjustment Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal of such agency to correct the action complained of.

(2) Any contract entered into pursuant to section 105 or section 107 of this Act shall contain provisions by which any dispute or disagreement as to interpretation or performance of the provisions of this title or of applicable regulations or of the contract may be determined by arbitration or court proceedings. The Secretary of Energy or the Secretary of the Interior, as the case may be, if authorized to act for the United States in such arbitration or court proceedings and, except as provided in paragraph (1) of this subsection, jurisdiction is conferred upon any district court of the United States of proper venue to determine the dispute.

[(i)] *(g)* It is the purpose of [subsections (c), (g), and (h) of this section] *this Act* to ensure that the rights of contractors for capacity and energy from the Boulder Canyon project for the period beginning [June 1, 1987, and ending September 30, 2017] *October 1, 2017, and ending September 30, 2067,* will vest with certainty and finality.

* * * * * * *

○