

STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
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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 HR 4349, 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 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 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 allocating 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% 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 ended on January 29, 2010. Western is in the process of reviewing the submissions. Depending on the public input received, Western projects that some initial decisions will be made or additional public sessions will be scheduled for this summer. 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 HR 4349. 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 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.

HR 4349 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 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 prescribed guidelines and regulations. Both HR 4349 and Western's administrative effort propose an amount of resource to be allocated to new customers. HR 4349 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 of full 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 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 already have an allocation of Hoover power is in the public interest.

HR 4349 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, we propose 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 likely 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. 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.

HR 4349 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 this level of generation would be fairly improbable.

HR 4349 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 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.

HR 4349 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. HR 4349 recognizes these funding requirements and obligates new power customers to contribute to this funding in a proportional manner. Supporters of HR 4349 note that the 50-year obligation of the LCR MSCP is, in part, reason to proceed with 50-year Hoover power supply contracts. While Western's process has not yet proposed contracting requirements related to the LCR MSCP, this requirement seems appropriate. 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 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 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.