

State of Arizona
Governor's Regulatory Review Council
Five-Year Regulatory Review
Arizona Power Authority
March 27, 2013

Pursuant to A.R.S. §41-1056 the Arizona Power Authority (Authority) submits the following five-year review report. A.R.S. § 41-1056 requires that “[a]t least once every five years, each agency shall review all of its rules [...] to determine whether any rule should be amended or repealed. The agency shall prepare... a written report summarizing its findings, its supporting reasons, and any proposed course of action”. *Id.*

The Authority has published a single short set of rules which appear in the Arizona Administrative Code at R12-14-101 *et seq.* (APA Rules). The APA Rules establish parameters for the Authority to allocate and manage power supplies which become available to the Authority. The Authority's primary source of power supply per A.R.S. §30-101 *et seq.*, is federal hydropower from Hoover Dam on the Colorado River.

1. General and Specific Statutes Authorizing Rules. The general enabling statute for the APA Rules appears at A.R.S. §30-101 *et seq.* The Authority enjoys some additional powers related to the State Water and Power Plan which appears at A.R.S. §45-1701 *et seq.*

A.R.S. §30-103(A) states that “[t]he authority shall determine its organizational structure and methods of procedure in accordance with the provisions of this chapter, and may adopt, amend or rescind the routine and general rules, regulations and forms, and prescribe a system of accounts”.

Next, A.R.S. §30-124(D) states in part that “[t]he authority may fix and prescribe the terms and conditions of its electric sales contracts and services and adopt such rules and regulations it finds necessary or convenient respecting electric services and disposition of electric power”.

A.R.S. §45- 1708(B) gives the Authority similar power over the output of power projects included in the Title 45 State Water and Power Plan.

2. Objective of the APA Rules. The purpose of the APA Rules, R12-14-101 *et seq.*, is to allocate, contract for, and oversee the administration of primarily long-term federal hydropower supplies which have been contracted by the federal government to the Authority as agent on behalf of the State of Arizona.
3. Effectiveness of APA Rules in Achieving Objectives. The Authority presently has a 30-year Electric Service Contract dated June 1987 with the U.S. Department of Energy, Western Area Power Administration (Western) whereby the Authority receives Arizona's allocation of power and energy from Hoover Dam. The

Authority marketed and scheduled this entitlement in 1987 to 30 power customers in the State of Arizona. Those customers consist of cities and towns, irrigation and electrical districts, and also water conservation districts as required by federal and state law.

The Authority has worked effectively since 1954 with both publicly-owned and privately-owned utilities in making Hoover Power Plant hydropower and other power supplies available to all major load centers throughout Arizona at the lowest possible cost. It has also provided leadership in meeting the many challenges brought about by the constant changes in the electric utility industry.

A copy of the annual Audit Report for the Arizona Power Authority is attached. The report reflects the fact that the APA Rules have worked effectively in assisting the Authority in providing ongoing service at low costs to the customers under long-term power and energy contracts.

4. Consistency of Rule with State and Federal Statutes and Rules and List of Statutes or Rules Used in Determining Consistency. First the Authority only has a single set of rules, the APA Rules as noted above. Therefore, the Authority has no intra-agency consistency types of issues with its regulations.

The APA Rules are written primarily with the general enabling statute in mind. A.R.S. §30-101 *et seq.* The Authority also considered relevant terms of the State Water and Power Plan which appears at A.R.S. §45-1701 *et seq.*

Next the Western Area Power Administration issued the 1987 federal hydropower contract to the Authority pursuant to the Boulder Canyon Project Act of 1928, 43 USC §617 *et seq.*, and the Hoover Power Plant Act of 1984. 43 U.S.C. §619 *et seq.*, as amended by the Hoover Power Allocation Act of 2011. The APA Rules are properly consistent with all of the above relevant statutory authorities.

5. Agency Enforcement Policy. The Authority's rules are enforced as written. The Authority and/or persons working for the Authority do not engage in activities or publish any decisions which are contrary to the requirements of the APA Rules.
6. The Clarity, Conciseness, and Understandability of the APA Rules. The APA Rules are short, consisting of twelve or less pages of double-spaced typed materials, and to the point in terms of use in leasing available power and then administering the subsequent power contracts. The APA Rules employ topical headings, logical organization, and also define key technical terms. Collectively that helps the reader understand relevant contract terms as well as the regulatory concepts contained in the regulations.

7. Summary of Written Criticisms of the APA Rules Received During the Previous Five Years. None.

8. Estimated Economic, Small Business and Consumer Impact of the Rules as Compared to the Economic, Small Business, and Consumer Impact Statement Prepared on the Last Making of the Rules. The Authority last made some technical revisions to the APA Rules on March 15, 2003. At that time, the Authority estimated no economic, small business, or consumer impact would result from the modest 2003 revisions to the APA Rules.

Since 2003 there have been no further revisions to the rules, none are currently proposed, and none are anticipated. The current rules deal primarily with the process for the allocation of power to customers. That allocation occurred in 1987, and the customer contracts based thereon will remain in effect through September 30, 2017. For that reason, the Authority anticipates no economic, small business, or consumer impact due to the rules for the next five-year review period or through March 2018.

9. Any Analysis Submitted to the Agency by Another Person That Compares the Rule's Impact on This State's Business Competitiveness to the Impact on Businesses in Other States. No such analysis has been submitted by any party to the Authority.

10. If Applicable, Whether the Agency Completed the Course of Action Indicated in the Agency's Previous Five-Year Review Report. As noted in its last five-year review report, the Authority intended to "stay the course" for the five years following the March 2008 Review and manage and deliver Hoover power to its customers under its current regulatory structure. The Authority has achieved that goal, and indeed will continue on the same course of action to the benefit of the Authority's customers.

11. A Determination That the Rules Impose the Least Burden and Costs to Persons Regulated by the Rule Including Paperwork and Other Compliance Costs Necessary to Achieve the Underlying Regulatory Objective. The Authority sells and has sold Hoover power in Year 2012 at an average of 3.09 cents/kilowatt hour range. Over the life of the current federal power contract, the Authority has generally sold and delivered the federal hydropower to its numerous customers for two cents to four cents/kilowatt hour. In addition the customers have the ability to schedule the Hoover power whenever they need the power the most, usually into their summertime peak loads. As a result the Hoover power which the Authority provides to its Arizona customers remains significantly cheaper than other available power sources.

In addition as of January 2013, approximately 94.6% of the total costs of obtaining and delivering Hoover power to our customers represent the cost of paying the federal government for the power and transmission services themselves. This suggests that the Authority's regulations represent a light footprint upon the Authority's efforts to obtain and deliver federal hydropower to its Arizona customer base. See attached Expense Percentage Pie Chart.

12. Rules Made Pursuant to a Full or Partial Exemption from the APA to be Included in the Five-Year Review Report. A.R.S. § 41-1056(A). The Authority has or maintains no rules which were made pursuant to a full or partial exemption from the requirements of the Arizona Procedure Act.
13. A Determination That the Rule is Not More Stringent Than a Corresponding Federal Law Unless There is Statutory Authority to Exceed the Requirements of That Federal Law. A.R.S. § 41-1056(A)(10). The Authority's rules implement and/or comply with the requirements contained in its 1987 federal power contract as well as federal regulatory requirements applicable to the sale of Hoover hydropower. For that reason the Authority's regulations are consistent with the federal laws and regulations applicable to the sale of Hoover hydropower.
14. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits). A.R.S. § 41-1056(A)(11). All of the provisions contained in the Authority's regulations were adopted prior to July 29, 2010.
15. Course of Action Regarding APA Rules. The Authority intends to maintain its current set of rules at least through March 2018, that is, until the current customer power purchase contracts expire in late 2017 and new power purchase contracts are in place.

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