

# Arizona Power Authority

**Administrative Code and**

**Title 30 – Arizona Revised Statutes**

**Title 45 – Arizona Revised Statutes**

*As Amended Through October 9, 2018*

**Title 12. Natural Resources**  
**Chapter 14. Arizona Power Authority**  
(Authority: A.R.S. § 30-101 et seq.)

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**Article 1.**  
**General**

**R12-14-101. Definitions**

In this Chapter, the definitions in A.R.S. Title 30, Chapter 1 and in A.R.S. Title 45, Chapter 10 apply and, unless the context otherwise requires, the following definitions also apply:

1. "Banked energy" means the electric energy held under an agreement for later delivery.
2. "Banking" means an agreement under which an Entity agrees to retain a portion of the Purchaser's electric energy for later delivery.
3. "Capacity" means the electric capability of an Electric Power System.
4. "Conference" means an informal proceeding before the Commission at which formal action will not be taken by the Commission.
5. "District" means any Power or water organization governed by A.R.S. Title 30, Chapter 1 or A.R.S. Title 48.
6. "Electric Power System" means the electric facilities and equipment by which:
  - a. Power is made available to a Purchaser; and
  - b. Power is delivered to a Purchaser's customer.
7. "Energy" means electric energy made available to a Purchaser.
8. "Entity" means any District, governmental agency, Operating Unit, or Person.

9. "Exchange" means a transfer of electric Power by a Purchaser to another Purchaser that is obligated to return a similar amount of Power upon terms and conditions and at the time or times approved by the Authority under R12-14-401(K).
10. "Load" means the electric Power required to meet a Purchaser's demand for electric service.
11. "Long-term Power" means any supply of Power that is available to the Authority for a period more than 366 consecutive days and that is subject to the jurisdiction of, and disposition by, the Authority, including any Power recaptured by the Authority and any Power tendered or relinquished by a Purchaser.
12. "Point of Delivery" means the point of points on a transmission system where the Authority makes Power available for delivery to a Purchaser.
13. "Power pooling" means an agreement for aggregating or commingling the Long-term Power supplies of two or more Purchasers.
14. "Power Purchase Certificate" means the certificate required before a Purchaser enters into a Power Sales Contract under A.R.S. § 30-151 et seq.
15. "Power Sales Contract" means a contract under which the Authority sells Long-term Power to a Purchaser.
16. "Preference" means the priority of entitlement to Power according to A.R.S. § 30-125 or A.R.S. § 45-1708.
17. "Purchaser" means any Qualified Entity that contracts to purchase Power from the Authority under A.R.S. Title 30, Chapter 1 or under A.R.S. Title 45, Chapter 10.
18. "Qualified Entity" means any Entity that is eligible to purchase Power from the Authority under A.R.S. Title 30, Chapter 1 or A.R.S. Title 45, Chapter 10.
19. "Recapture" means the recovery or retaking by the Authority from a Purchaser of Long-term Power that exceeds the Purchaser's needs, for reallocation among other Qualified Entities.
20. "Relinquish" means a Purchaser's return of unneeded Power to the Authority.
21. "Secretary" means the person designated by the Commission to act as the official Secretary or as the Assistant Secretary of the Authority.
22. "Service Territory" means the geographic area in which Power is sold or used by a Purchaser and is described in a Power Purchase Certificate or an amendment to a Power Purchase Certificate.
23. "Short-term Power" means any supply of Power made available by or through the Authority for a period of no more than 366 consecutive days.
24. "Tender" means a Purchaser's offer to return unneeded Power to the Authority.
25. "Wheeling" means delivery of Power over the transmission system of another Entity.

#### **Historical Note**

*Former Rule Article I. Not in original publication, correction, paragraph (5) (Supp. 75-1). Former Section R12-14-01 renumbered as Section R12-14-101 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp.03-01).*

#### **R12-14-102. Repealed**

#### **Historical Note**

*Former Rule Article II. Former Section R12-14-02 renumbered as Section R12-14-102 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).*

**Article 2.**  
**Availability of Long-term Power;**  
**Application for Electric Service;**  
**Power Purchase Certificates**

**R12-14-201. Availability of Long-term Power; Contract Negotiations**

- A. Except as provided in R12-14-401(B), if the Authority decides that a supply of Long-term Power is available, the Authority shall give public notice that it will receive applications for electric service from prospective Purchasers. The public notice shall include the date, time, and place for the public information Conference at which the Authority shall provide a preliminary proposal for the allocation and marketing of available Long-term Power.
- B. The Authority shall give public notice of the date, time, and place for a public comment Conference to be held not more than 60 days after the date of the public information Conference held under subsection (A). An interested party may appear at the public comment Conference and present oral and written comments on the Authority's Long-term Power proposal provided at the public information Conference held under subsection (A).
- C. Public notice required by subsections (A) and (B) shall be mailed to:
  - 1. Existing Purchasers;
  - 2. Prospective Purchasers that notify the Authority of their interest in applying for Long-term Power; and
  - 3. Other Qualified Entities on the Authority's mailing list.
- D. Public notice required by subsections (A) and (B) shall be published in a newspaper of statewide circulation once each week for two consecutive weeks.
- E. A Qualified Entity wanting to enter into a Power Sales Contract shall file an application for electric service under R12-14-202. The application shall be filed on or before the due date specified in the Authority's notice of intent to receive applications for electric service.
- F. Not later than 60 days after the due date for filing an application for electric service, the Authority shall notify all interested parties of the names and addresses of the prospective Purchasers that are eligible to enter into a Power Sales Contract. The Authority shall include in the notice a proposed allocation of Long-term Power to the eligible prospective Purchasers.
- G. Not later than 90 days after notification of eligibility and of the proposed allocation, the Authority shall present a draft form of contract to each eligible prospective Purchaser and begin contract negotiations.
- H. After contract negotiations are completed, the Authority shall prepare Power Sales Contracts and fix a date for contract signing.
- I. In allocating Long-term Power, the Authority shall consider:
  - 1. The financial interest and obligation of the Authority; and
  - 2. The needs and interests of the Purchaser, customers of the Purchaser, and prospective Purchasers.
- J. Within each class of preference priorities established by A.R.S. § 30-125(A), the Authority shall allocate Long-term Power equitability among Qualified Entities in the same preference class based upon the needs of the Entities and the type of use of Long-term Power.
- K. In deciding whether to allocate or reallocate Long-term Power, the Authority shall consider other sources of Power available to the prospective Purchaser from the federal government.

**Historical Note**

*Former Rule Article III. Not in original publication, correction, paragraph (5) (Supp. 75-1). Former Section R12-14-11 renumbered as Section R12-14-201 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

**R12-14-202. Application for Purchase of Electric Service**

- A. A Qualified Entity that desires to purchase Long-term Power shall file a written application for electric service with the Authority. The application shall include the following:
  - 1. The Entity's proposed use of Long-term Power;
  - 2. The Point or Points of Delivery where the Entity will receive electric service;
  - 3. The annual energy requirement stated in kilowatt-hours, for each Point of Delivery;
  - 4. The maximum capacity requirement stated in kilowatts, for each Point of Delivery during a continuous 12-month period; and
  - 5. A statement of the Entity's kilowatt and kilowatt-hour sales or usage during each of the 24 months immediately preceding the date of the application, divided into reference classifications, such as residential, commercial, irrigation pumping, industrial, public use, or other classification used by the Entity or recognized in the electric utility industry.
- B. An application form for electric service is available at the Authority's business office.
- C. If the Authority determines that an applicant is eligible to enter into a Power Sales Contract for Long-term Power offered under A.R.S. Title 30, Chapter 1, the applicant, within 30 days after receipt of notice of eligibility, shall file an application for a Power Purchase Certificate under R12-14-203.
- D. The holder of an existing Power Purchase Certificate is required to re-apply for a Power Purchase Certificate only if the holder wants to use the Long-term Power acquired under A.R.S. Title 30, Chapter 1, in a Service Territory that differs from the Service Territory described in the holder's existing Power Purchase Certificate.

**Historical Note**

*Former Rule Article IV. Not in original publication, correction, Paragraph (6) (Supp. 75-1). Former Section R12-14-12 renumbered as Section R12-14-202 (Supp. 85-6).  
Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

**R12-14-203. Power Purchase Certification; Application**

- A. An application for a Power Purchase Certificate, or an application to amend an existing Power Purchase Certificate, shall be dated, signed, and verified by the applicant or the applicant's authorized representative. An original and five copies of the application and any documents, maps, or other written material to which reference is made in the application shall be filed with the Authority.
- B. An application form for a Power Purchase Certificate is available at the Authority's business office.
- C. The application shall include the information required by A.R.S. § 30-152 and the following:
  - 1. A statement of the nature of the applicant's business, and applicant's legal status (for example, a corporation, a partnership, or other business type);
  - 2. The applicant's mailing address;
  - 3. A detailed description of the proposed Service Territory;

4. The name and mailing address of the principal executive director or secretary of each Entity engaged in the distribution of Power within the proposed Service Territory or contiguous to the Proposed Service Territory;
  5. The estimated amount of Long-term Power for each use proposed by the applicant;
  6. Whether the applicant intends to sell Long-term Power on a profit or a non-profit basis;
  7. Whether the applicant intends to use Long-term Power for its own use, resell Long-term Power, or use and resell the Long-term Power.
  8. A detailed description of the applicant's Electric Power System for the use of Long-term Power;
  9. A copy of any agreement under which the applicant intends to use an Electric Power System owned by another Entity;
  10. The details of any plan under which the applicant proposes to construct, purchase, lease, or obtain the use of an Electric Power System for sales or distribution of Long-term Power; and
  11. An explanation of any arrangements with other Entities for the use of electrical equipment or facilities that the applicant needs in order to use Long-term Power. If any other Entity claims ownership of, or transmission rights on, any electric facilities to be used or if the applicant will duplicate another Entity's electric facilities, the applicant shall disclose that information. If the applicant's arrangements appear to conflict with the rights of another Entity, the applicant may file an affidavit signed by an authorized officer of the affected Entity, describing the affected Entity's agreement to the arrangements for the applicant's use.
- D. When the application is filed, the Authority shall immediately set a date for a hearing under A.R.S. § 30-152.
- E. A Power Purchase Certificate is in effect only during the time the holder of the Power Purchase Certificate has an existing Power Sales Contract with the Authority.
- F. The holder of a Power Sales Contract shall use Power acquired under A.R.S. Title 30, Chapter 1 only in the Service Territory established by the legal description in the Power Purchase Certificate.
- G. The holder of a Power Purchase Certificate shall not assign the Power Purchase Certificate without the prior written approval of the Authority.

#### **Historical Note**

*Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

### **Article 3.**

#### **Service to Purchasers**

##### **R12-14-301. Authority's Service to Purchasers**

- A. The Authority shall contract with a Purchaser to deliver Long-term Power only if transmission capability is available to ensure delivery of Long-term Power to the Purchaser at the Point or Points of Delivery to be designated in the Power Sales Contract. The Authority may also contract with a Purchaser to provide opportunities for connection between the Purchaser's Electric Power System and the Electric Power System of other Entities.
- B. Before Long-term Power is made available to a Purchaser, the Purchaser shall provide evidence to the Authority that a transmission system is available to enable the Purchaser to take and receive Long-term Power at the locations and voltages designated by the Authority.

- C. Unless the Authority agrees to provide facilities or enter into agreements for the transmission of electric Power, the facilities or agreements must be provided by the Purchaser.
- D. The Authority may obtain an alternative or an additional source of transmission service to serve the needs of a Purchaser.
- E. The Purchaser shall pay any costs or expenses necessary to provide transmission service to the Purchaser.
- F. By agreement with one or more Purchasers, the Authority may construct electric lines and related facilities of the voltage and capacity needed to serve the Purchaser. The agreement must assure full payment by the users of the operating costs, depreciation and interest, and any other costs or expenses associated with the project, during a 40-year amortization period or other period established by law or contract. If the Authority constructs the facilities, the Authority shall determine the incremental costs to be paid by the Purchaser or other user benefitting from the facilities constructed by the Authority.
- G. With the aid of Purchasers, the Authority shall work to maintain a system of load scheduling and records so that the Authority may reasonably predict:
  - 1. A Purchaser's current and future Power needs;
  - 2. Whether a Purchaser should be allowed or required to relinquish Long-term Power that is surplus to the Purchaser's needs; and
  - 3. Whether a Purchaser will have Long-term Power that is temporarily or permanently surplus to the Purchaser's needs.
- H. The Authority shall periodically perform surveys to:
  - 1. Identify sources of Power or transmission service that may be temporarily or permanently available to the Authority;
  - 2. Identify possible markets for available Power resources; and
  - 3. Identify possible markets for recaptured, relinquished, tendered, or temporarily available surplus Long-term Power.

#### Historical Note

*Former Rule Article V. Former Section R12-14-21 renumbered as Section R12-14-301 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

#### **R12-14-302. Systems and Operation Plans**

For the Authority's information and assistance in the administration of its Power Sales Contracts, a Purchaser that does not manage and operate its own Electric Power System shall, at the Authority's request, submit a plan for the use and administration of Long-term Power. The Purchaser shall attach to the plan, maps, specifications, and agreements necessary to disclose the nature and extent of the plan.

#### Historical Note

*Former Rule Article VI. Not in original publication, correction, subsections (C) and (D) (Supp. 75-1). Former Section R12-14-22 renumbered as Section R12-14-302 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

**R12-14-303. Repealed****Historical Note**

*Former Rule Article VII. Former Section R12-14-23 renumbered as Section R12-14-303 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).*

**Article 4.****Administration of Power****R12-14-401. Sale, Use, Transfer, and Administration of Long-term Power**

- A. A Purchaser shall not enter into an agreement for power pooling affecting Power under the Authority's jurisdiction without the prior written approval of the Authority. The Authority shall not unreasonably withhold approval.
- B. Subject to the terms of a Purchaser's Power Sales Contract, a Purchaser may tender or relinquish surplus Long-term Power to the Authority for resale by the Authority.
- C. The Authority shall use its best efforts to sell a Purchaser's tendered or relinquished Long-term Power and shall apply the net proceeds from the sale toward the Purchaser's payment obligations under the Purchaser's Power Sales Contract.
- D. Long-term Power tendered or relinquished to the Authority shall be returned to the Purchaser not more than 60 days after the Authority's receipt of the Purchaser's written notice that the Purchaser requires a return of the tendered or relinquished Long-term Power to meet the Purchaser's loads.
- E. The tender or relinquishment of Long-term Power shall not relieve the Purchaser of its obligations under its Power Sales Contract. The tender or relinquishment of Long-term Power shall not be deemed to be a recapture by the Authority unless:
  1. The tender or relinquishment is for the unexpired term of the Purchaser's Power Sales Contract; and
  2. The Authority has contracted to sell the tendered or relinquished Long-term Power to another Qualified Entity under the same terms and conditions as those contained in the Purchaser's Power Sales Contract.
- F. Subject to the terms of a Purchaser's Power Sales Contract, if the Long-term Power purchased from the Authority exceeds the Purchaser's electric load for three consecutive contract years, the Authority may recapture the excess Long-term Power as follows:
  1. The Authority shall give the Purchaser at least 30 days' written notice of a conference concerning the Authority's consideration of a possible recapture of Long-term Power;
  2. The Authority shall determine whether any portion of the Purchaser's Long-term Power allocation can reasonably be expected to exceed the Purchaser's future needs, and the Authority may recapture the excess portion;
  3. Subject to Article 6 of this Chapter, any recapture of Long-term Power is effective 60 days after the Purchaser receives a Notice of Recapture from the Authority, or at a later date specified in the Notice of Recapture; and
  4. Any recapture of Long-term Power reduces the Purchaser's allocation of Long-term Power by the amount of Long-term Power recaptured by the Authority.
- G. A Purchaser shall not transfer or assign a Power Sales Contract or any interest in a Power Sales Contract without prior written approval by the Authority. The transfer or assignment of a Power

Sales Contract or any interest in a Power Sales Contract does not relieve the Purchaser from any obligation under the Purchaser's Power Sales Contract.

- H. The Authority shall not approve an assignment of a Power Sales Contract, or any interest in a Power Sales Contract that:
  - 1. Conflicts with any provision of law;
  - 2. Conflicts with the Authority's regulations;
  - 3. Conflicts with any provision of a Purchaser's Power Sales Contract;
  - 4. Disrupts established Power practices, an Electric Power System, or electric facilities;
  - 5. Results in an increased cost of service to other Purchasers; or
  - 6. Confers a preference upon an Entity not entitled to preference.
- I. The Authority shall not approve an assignment of a Power Sales Contract or an interest in a Power Sales Contract if the Authority determines that the assignment is discriminatory or that the Long-term Power or rights to Long-term Power should be recaptured by the Authority for reallocation, sale, or other disposition to other Qualified Entities.
- J. A Power Sales Contract may restrict or prohibit the wholesale sale or resale of Long-term Power by the Purchaser.
- K. The holder of a Power Purchase Certificate shall use Long-term Power only for the purposes and uses for which it is allocated and sold. Long-term Power allocated and sold under A.R.S. Title 30, Chapter 1 shall be used only within the Service Territory established in the Purchaser's Power Purchase Certificate, unless otherwise authorized in writing by the Authority. The Authority may authorize banking of electric energy and exchange of banked energy between Purchasers under terms and conditions approved by the Authority.

#### Historical Note

*Formal Rule Article VIII. Not in original publication, correction, subsection (G) (Supp. 75-1).*

*Former Section R12-14-31 renumbered as Section R12-14-401 (Supp. 85-6).*

*Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4).*

*Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

#### **R12-14-402. Changing Points of Delivery; Switching of Electric Service Among Points of Delivery**

The Authority may allow a Purchaser to change its electric service from a Point of Delivery to another Point or Points of Delivery. Each Point of Delivery shall be a separate Point of Delivery for the Authority's billing purposes unless a new Point of Delivery replaces an existing Point of Delivery. A Purchaser cannot change or switch its electric service between the Purchaser's Points of Delivery and the Points of Delivery of other Purchasers without the prior written approval of the Authority.

#### Historical Note

*Former Rule Article IX. Former Section R12-14-32 renumbered as Section R12-14-402 (Supp. 85-6).*

*Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4).*

*Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

#### **R12-14-403. Wheeling and Operating Agreements**

- A. A Purchaser who wants to enter into an agreement for power pooling or an agreement with another Entity with regard to power operations, transmission, or wheeling involving Long-term Power shall:

1. Petition the Authority for permission to enter into an agreement;
  2. State in the petition all relevant facts and the reasons for the proposed agreement; and
  3. Give the Authority a copy of any proposed agreement and other information, data, and documents requested by the Authority.
- B. A Purchaser shall not enter into an agreement for the transmission or wheeling of Long-term Power over the facilities of another Entity without the prior written approval of the Authority.
- C. An operating agreement, transmission agreement, power pooling agreement, or wheeling agreement shall not be approved by the Authority if the agreement:
1. Conflicts with the provisions of any Power Sales Contract;
  2. Results in disruption of established electric service, operations, practices, systems, or facilities; or
  3. Endangers electric service to other Purchasers, to third parties, or to the general public.

#### Historical Note

*Former Rule Article X. Former Section R12-14-33 renumbered as Section R12-14-403 (Supp. 85-6).  
Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4).  
Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

#### **R12-14-404. Disposition of Short-term Power**

The Authority may negotiate and enter into contracts with Qualified Entities for the sale, purchase, exchange, or other disposition of Short-term Power.

#### Historical Note

*Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

#### **R12-14-405. Petition For Information, Advice, or Assistance**

- A. Under A.R.S. § 30-129 and A.R.S. Title 45, Chapter 10, any Entity may petition the Authority for information, advice, or assistance regarding any matter within the jurisdiction of the Authority. The petition shall be in writing and shall include:
1. The names of all interested or affected Entities;
  2. The basis for the requested information, advice, or assistance;
  3. The location of any Project involved;
  4. The action requested of the Commission; and
  5. Other information or relevant matter that may assist the Commission in acting upon the petition.
- B. The Commission may direct the Authority staff or an Authority consultant to conduct preliminary studies, surveys, or investigations with respect to any requested action.
- C. If appropriate, the Commission shall schedule a Conference. The Authority shall notify all interested Entities that they may make an oral or written presentation and file documents, reports, or other material relevant to the requested action.

#### Historical Note

*Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

**Article 5.  
Records**

**R12-14-501. Purchaser's Records**

At the request of the Authority a Purchaser shall file copies of agreements for the purchase, sale, exchange, transmission, banking, power pooling, or wheeling of Long-term Power between the Purchaser and any Entity other than the Authority, together with all current rate schedules and amendments.

**Historical Note**

*Former Rule Article XI. Former Section R12-14-41 renumbered as Section R12-14-501 (Supp. 85-6).  
Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4).  
Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

**R12-14-502. Repealed**

**Historical Note**

*Former Rule Article XII. Not in original publication, correction subsections (A) and (B) (Supp. 75-1).  
Former Section R12-14-42 renumbered as Section R12-14-502 (Supp. 85-6).  
Section repealed effective November 1, 1993 (Supp. 93-4).*

**Article 6.  
Conferences; Appeal of Agency Action**

**R12-14-601. Conferences**

- A. After first giving not less than 10 days' public notice and an opportunity to comment, the Commission may hold a Conference concerning any subject matter within the jurisdiction of the Authority. The Commission shall determine the Conference agenda. A Conference is intended to provide information and receive comments regarding any pending or proposed course of action by the Commission. A formal or binding action shall not be taken by the Commission at a Conference.
- B. Except as otherwise provided in these rules, the Commission shall establish the date, time, and place of any Conference and may continue, adjourn, or reschedule any Conference.

**Historical Note**

*Correction, not in original publication; former Rules of Practice and Procedure, Article I, adopted effective November 14, 1952, renumbered as Section R12-14-601 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Former Section R12-14-601 repealed; new Section R12-14-601 renumbered from R12-14-607 and amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).*

**R12-14-602. Repealed**

**Historical Note**

*Correction, not in original publication; former Rules of Practice and Procedure, Article II, adopted effective November 14, 1952, renumbered as Section R12-14-602 (Supp. 85-6). Section repealed, new Section adopted*

*effective November 1, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). Section repealed by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-603. General**

- A. This article applies to any Appealable Agency Action arising from a decision or action of the Commission.
- B. The Commission shall conduct any administrative hearing, pursuant to the requirements of this article, acting as the Administrative Law Judge pursuant to A.R.S. § 41-1092.01.
- C. Because state statutes provide many of the procedural requirements for the conduct of administrative hearings, these rules will cross reference such statutes where appropriate. Copies of the statutes and these rules may be obtained from the Arizona Power Authority at its office at 1810 W. Adams Street, Phoenix, Arizona, during normal business hours.

**Historical Note**

*Correction, not in original publication; former Rules of Practice and Procedure, Article III, adopted effective November 14, 1952, renumbered as Section R12-14-603 (Supp. 85-6). Section Repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-604. Definitions**

For purposes of this article, the following definitions apply unless otherwise stated:

1. As used in this article, the terms “Commission” and “Administrative Law Judge” have the same meaning as in the relevant statutes and are used interchangeably.
2. “Appealable Agency Action” means any decision or action by the Commission determining matters related to the allocation of and contracting for power resources and associated services marketed by the Commission.
3. “Arizona Power Authority” or “Authority” means the agency established pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
4. “Commission” means the Arizona Power Authority Commission as established and organized pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
5. “Party” has the meaning described in A.R.S. § 41-1001(14).
6. “Person” has the meaning described in A.R.S. § 41-1001(15).

**Historical Note**

*Correction, not in original publication; former Rules of Practice and Procedure, Article IV, adopted effective November 14, 1952, renumbered as Section R12-14-604 (Supp. 85-6). Section Repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-605. Applicability; Authority**

- A. These rules apply to any Appealable Agency Action heard by the Commission. Unless otherwise required by law or waived pursuant to subsection (B), all hearings shall be scheduled at the convenience of the Commission and shall be held at the Arizona Power Authority's business office in Phoenix, Arizona. The rules in this article were drafted, proposed, and adopted pursuant to A.R.S. § 41-1003 and A.R.S. § 41-1092.01(F).

- B. The Commission may waive the application of any of these rules to further administrative convenience, expedition, and economy:
  - 1. With the consent of the parties to the appeal, or
  - 2. If the waiver does not conflict with law, and does not cause undue prejudice to any party.
- C. If a procedure is not provided by statute or these rules, the Commission may issue an order using the Arizona Rules of Civil Procedure or related local court rules for guidance.

#### Historical Note

*Correction, not in original publication; former Rules of Practice and Procedure, Article V, adopted effective November 14, 1952, renumbered as Section R12-14-605 (Supp. 85-6). Section Repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-606. Notice of Appealable Agency Action**

- A. The Authority shall serve notice of an Appealable Agency Action pursuant to A.R.S. § 41-1092.04. Pursuant to A.R.S. § 41-1092.03, the notice shall:
  - 1. Identify the statute or rule on which the action is based.
  - 2. Include a description of any party's right to file a notice of appeal or to request a hearing on the Appealable Agency Action.
  - 3. Include a description of any party's right to request an informal settlement conference pursuant to A.R.S. § 41-1092.06.
- B. Each Appealable Agency Action shall be posted to the Arizona Power Authority website within 48 hours after the action is taken. The posting shall constitute official notice of the action. The Authority additionally may elect to provide any party, and such other interested persons as have officially requested to be included, electronic notice of the posting which may be accompanied by the referenced document. Otherwise, each person or entity which has participated in the process leading to the Appealable Agency Action shall be provided with written notice thereof, with notice at the Person's last address of record within five days of the notice being published on the Arizona Power Authority website.

#### Historical Note

*Correction, not in original publication; former Rules of Practice and Procedure, Article VI, adopted effective November 14, 1952, renumbered as Section R12-14-606 (Supp. 85-6). Section Repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-607. Request for Hearing; Setting the Hearing**

- A. A party may initiate an appeal by filing a notice of appeal or request for a hearing with the Arizona Power Authority within 30 days after receiving the notice prescribed in R12-14-606(A). The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the Appealable Agency Action. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the Appealable Agency Action and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the

party, the party's address, and the action being appealed and shall contain a concise statement of the reasons for the appeal or request for a hearing. If requested, the Authority shall schedule an appeal hearing pursuant to this section.

- B. If good cause is shown, the Commission may accept an appeal or request for a hearing that is not filed in a timely manner.
- C. A party filing a notice of appeal or requesting the Commission schedule an administrative hearing shall provide the following information:
  - 1. Caption of the Appealable Agency Action, including the name and address of each party;
  - 2. The date the party appealed the agency action;
  - 3. A concise statement of the reasons for the appeal
  - 4. Any request to expedite or consolidate the appeal; and
  - 5. If a hearing is requested:
    - a. the estimated time for the hearing;
    - b. the proposed hearing dates; and
    - c. any agreement of the Parties to waive applicable time limits to set the hearing.
- D. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause, pursuant to A.R.S. § 41-1092.05.
- E. Within 10 days of the Commission's receipt of a request for hearing, the Commission shall provide notice of the date, time, and location of the hearing in the same manner as provided in R12-14-606(B).

#### Historical Note

*Correction, not in original publication; former Rules of Practice and Procedure, Article VII, adopted effective November 14, 1952, renumbered as Section R12-14-607 (Supp. 85-6). Section Repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section renumbered to R12-14-601 at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-608. Summary Dismissal**

An appeal to the Commission may be subject to summary dismissal by the Commission for any of the following causes:

- 1. If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;
- 2. If the notice of appeal or request for hearing is not filed within the time required.

#### Historical Note

*Correction, not in original publication; former Rules of Practice and Procedure, Article VIII, adopted effective November 14, 1952, renumbered as Section R12-14-608 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-609. Waiver of Rights**

Except to the extent precluded by another provision of law, a Person may waive any right conferred on that person by this Article.

#### Historical Note

*Correction, not in original publication; former Rules of Practice and Procedure, Article IX, adopted effective November 14, 1952, renumbered as Section R12-14-609 (Supp. 85-6).*

*Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-610. Intervention; Amicus Curiae**

- A. A person who wishes to intervene in an appeal must file a motion to intervene. Except for good cause shown, a person must file the motion within 10 days after the Commission issues its notice pursuant to R12-14-607(E).
- B. A motion to intervene must set forth the basis for the proposed intervention, including whether the person had a right to appeal the Appealable Agency Action or claims an interest in the subject of the action and the person is so situated that disposition of the action may as a practical matter impair or impede the person's ability to protect that interest, unless the Person's interest is adequately represented by existing parties.
- C. The Commission may:
  1. Grant the motion to intervene;
  2. Deny the motion to intervene for good cause, e.g., where granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal; or
  3. Grant the motion to intervene but limit the person's participation in the appeal.
- D. A person may file a motion to file a brief as amicus curiae.
  1. The motion must state the person's interest in the appeal and how its brief will be relevant to the Appealable Agency Action.
  2. The motion must contain a certification that the movant or movant's counsel has read any relevant filed briefs of the parties and that the movant's arguments are not duplicative of those presented by the parties.
  3. The Commission may grant or deny the motion in its discretion. The Commission may also allow a Person to file a brief as amicus curiae if it denies the Person's motion to intervene.
- E. A person granted full or limited intervener status is a party to the appeal, while an amicus curiae is not. A person granted amicus curiae status shall serve its brief on the parties to the appeal.

**Historical Note**

*Correction, not in original publication; former Rules of Practice and Procedure, Article X, adopted effective November 14, 1952, renumbered as Section R12-14-610 (Supp. 85-6).  
Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-611. Informal Settlement Conference**

- A. If requested by any party to an appeal of an Appealable Agency Action, the Commission shall hold an informal settlement conference within 15 days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the Commission no later than twenty days before the hearing. If an informal settlement conference is requested, the party shall notify the Commission of the request and the outcome of the conference. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to A.R.S. § 41-1092.05.
- B. If an informal settlement conference is held, a person designated by the Commission shall represent the Commission at the conference. The Commission representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the

conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. By participating in the settlement conference, the party or parties waive their right to object to the participation of the Commission representative in the final administrative decision.

#### Historical Note

*Correction, not in original publication; former Rules of Practice and Procedure, Article XI, adopted effective November 14, 1952, renumbered as Section R12-14-611 (Supp. 85-6).  
Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-612. Ex Parte Communications**

A party shall not communicate, either directly or indirectly, with the Commission or individual Commissioners about any substantive issue in a pending appeal unless:

1. All parties are present;
2. It is during a scheduled proceeding, provided that a party that fails to appear after proper notice waives its right to object to the subjects discussed or any rebuttal of these subjects [;] or
3. It is in writing, including facsimile or other electronic means, with copies to all Parties.

#### Historical Note

*Correction, not in original publication; former Rules of Practice and Procedure, Article XII, adopted effective November 14, 1952, renumbered as Section R12-14-612 (Supp. 85-6).  
Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-613. Motions**

- A. Purpose. A party requesting a ruling from the Commission shall file a motion. Motions may be made for rulings such as:
  1. Consolidation or severance of issues pursuant to R12-14-616;
  2. Continuing or expediting a hearing pursuant to R12-14-617;
  3. Vacating a hearing pursuant to R12-14-618;
  4. Prehearing conference pursuant to R12-14-619;
  5. Quashing a subpoena pursuant to R12-14-620;
  6. Telephonic testimony pursuant to R12-14-621; and
  7. Reconsideration of a previous order pursuant to R12-14-630 and R12-14-631.
- B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to R12-14-615. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C. Time Limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Commission at least 10 days before any scheduled hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:
  1. A ruling on the motion will further administrative convenience, expedition or economy;  
or
  2. A ruling on the motion will avoid undue prejudice to any party.

- D. Response to Motion. A party may file a written response stating any objection to the motion within 5 days of service, or as directed by the Commission.
- E. Oral Argument. A party may request oral argument when filing a motion or response. The Commission may grant oral argument if it is necessary to develop a complete record.
- F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

#### Historical Note

*Correction, not in original publication; former Rules of Practice and Procedure, Article XIII, adopted effective November 14, 1952, renumbered as Section R12-14-613 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-614. Computing Time**

In computing any time period, the Commission shall exclude the day from which the designated time period begins to run. The Commission shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Commission shall exclude Saturdays, Sundays, and legal holidays.

#### Historical Note

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-615. Filing and Service of Documents**

- A. Docket. The Authority shall open a docket for each Appealable Agency Action upon receipt of a notice of appeal or request for hearing. All documents filed in an Appealable Agency Action with the Authority other than by electronic means shall be date stamped on the day received by the Authority and entered in the docket.
- B. Definition. "Documents" include papers such as notices of appeal, requests for hearing, motions, responses, notices, and briefs.
- C. Form. A party shall state on the document the name and address of each party served and how service was made pursuant to subsection (E). A document shall contain the Authority's caption and docket number.
- D. Signature. A document filed with the Authority shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document and has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment. Signatures can be either hand-written or electronic.
- E. Filing and service. A copy of a document filed with the Authority shall be served on all parties. Filing with the Authority and service shall be completed by personal delivery; first-class, certified or express mail; or facsimile or other electronic means.
- F. Date of filing and service. A document is filed with the Authority on the date it is received by the Authority, as established by the Authority's date stamp on the face of the document, the facsimile date or the electronic receipt date. A copy of a document is served on a party as follows:
  - 1. On the date it is personally served;
  - 2. Five days after it is mailed by express or 1st class mail;
  - 3. On the date of the return receipt if it is mailed by certified mail; or
  - 4. On the date indicated on the facsimile transmission or the electronic receipt date.

- G. Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the Commission and every other party to the action to the party's last address of record with the Authority. Each party shall inform the Authority of any change of address within five days of the change. Such service may include delivering the document by electronic means, such as email or facsimile, unless a party has specifically requested not to receive notice or service through electronic means, such as email or facsimile.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-616. Consolidation or Severance of Appeals**

- A. Standards for consolidation. The Commission may order consolidation of pending appeals, if:
1. There are substantially similar factual or legal issues, or
  2. All parties are the same, or If there are different parties, all parties consent to the consolidation.
- B. Order. The Commission shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The Commission shall designate the controlling docket number and caption to be used on all future documents.
- C. Severance. The Commission may sever consolidated Appealable Agency Actions to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the Commission's own review, or a party's motion.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-617. Continuing or Expediting a Hearing; Reconvening a Hearing**

- A. Continuing or expediting a hearing. When ruling on a motion to continue or expedite, the Commission shall consider such factors as:
1. The time remaining between the filing of the motion and the hearing date;
  2. The position of other parties;
  3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
  4. Whether testimony of an unavailable witness is authorized by law, and, if so, whether it can be taken telephonically or by deposition; and
  5. The status of settlement negotiations.
- B. Reconvening a hearing. The Commission may recess a hearing and reconvene at a future date by a verbal ruling during the initially noticed hearing or thereafter during any continuation of the hearing.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-618. Vacating a Hearing**

The Commission may vacate a calendared hearing if:

1. The parties agree to vacate the hearing;
2. The Commission dismisses the matter;
3. The party withdraws the appeal;
4. The party fails to comply with any order of the Commission; or
5. Facts demonstrate to the Commission that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition and economy and does not conflict with law or cause undue prejudice to any party.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-619. Prehearing Conference**

- A. Procedure. The Commission may hold a prehearing conference. The conference may be held telephonically. The Commission may issue a prehearing order outlining the issues to be discussed. As outlined by A.R.S. § 41-1092.05, prehearing conferences may be held for any of the following reasons:
1. Clarify or limit procedural, legal or factual issues;
  2. Consider amendments to any pleadings;
  3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;
  4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law;
  5. Schedule deadlines, hearing dates and locations if not previously set;
  6. Allow the Parties opportunity to discuss settlement; or
  7. Any other similar reason determined by the Commission to further administrative convenience, expedition, and economy, or to avoid undue prejudice.
- B. Record. The Commission may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-620. Subpoenas**

- A. Form. As provided by A.R.S. § 41-1092.07 and A.R.S. § 41-1092.10, any party may request a subpoena in writing from the Commission and shall include in the request:
1. The caption of the Appealable Agency Action;
  2. A list or description of any documents sought;
  3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
  4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
  5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B. The Commission may require a brief statement of the relevance of testimony or documents.

- C. Service of subpoena. Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the Arizona Power Authority a certified statement of the date and manner of service and the name of the person served.
- D. Objection to subpoena. A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the Commission. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.
- E. Quashing, modifying subpoenas. The Commission shall quash or modify the subpoena if:
  - 1. It is unreasonable or oppressive, or
  - 2. The desired testimony or evidence may be obtained by an alternative method, or
  - 3. The existing administrative record contains the information and evidence that would otherwise be proffered pursuant to the subpoena.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-621. Telephonic Testimony**

The Commission may grant a motion for telephonic testimony if:

- 1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
- 2. Telephonic testimony will not cause undue prejudice to any party; and
- 3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-622. Rights and Responsibilities of Parties**

- A. Generally. A party may present testimony and documentary evidence and argue with respect to the issues and may examine and cross-examine witnesses.
- B. Preparation. A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. Exhibits. A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the Commission, unless it was previously provided through discovery.
- D. Responding to Orders. A party shall comply with an order issued by the Commission concerning the conduct of a hearing. Unless objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the Commission to reconsider the order.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-623. Hearings; Depositions**

- A. Pursuant to A.R.S. § 30-107, all members of the Commission shall attend all hearings, unless excused from attendance for a justifiable excuse which shall be made part of the record. Three members shall constitute a quorum for conducting a hearing.
- B. The Parties to an Appealable Agency Action have the right to be represented by counsel, or to proceed without counsel, to submit evidence and to cross-examine witnesses.
- C. The Commission may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served pursuant to R12-14-620(C) and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil proceedings. The Commission may administer oaths and affirmations to witnesses.
- D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the Commission may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The Commission shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.
- E. All hearings shall be recorded. The Commission shall secure either a court reporter or an electronic means of producing or preserving a clear and accurate record of the proceeding at the Authority's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.
- F. Unless otherwise provided by law, the following apply:
  - 1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.
  - 2. Copies of documentary evidence may be received in the discretion of the Commission. On request, Parties shall be given an opportunity to compare the copy with the original.
  - 3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.
  - 4. On application of a party and for use as evidence, the Commission may permit a deposition to be taken, in the manner and on the terms designated by the Commission, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the Commission if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees

for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or Arizona Power Authority rule. Notwithstanding A.R.S. § 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this subsection or subsection (C).

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.
6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

#### **Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

#### **R12-14-624. Conduct of Hearing**

- A. Public access. Unless otherwise provided by law, all hearings are open to the public.
- B. Opening. The Commission shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. Stipulations. The Commission shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- D. Opening statements. The party initiating the appeal may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the Commission.
- E. Order of presentation. After opening statements, the party initiating the appeal shall begin the presentation of evidence, unless the parties agree otherwise or the Commission determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party.
- F. Examination. A party shall conduct direct and cross examination of witnesses in the order and manner determined by the Commission to expedite and ensure a fair hearing. The Commission shall make rulings necessary to prevent argumentative, repetitive, or irrelevant presentation of evidence, including testimony, and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. Closing argument. When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the Commission. The Commission may permit or require closing oral argument to be supplemented by written memoranda. The Commission may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the Commission may prescribe.
- H. Conclusion of hearing. Unless otherwise provided by the Commission, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

#### **Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-625. Failure of Party to Appear for Hearing**

If a party fails to appear at a hearing, the Commission may proceed with the presentation of the evidence of the appearing party, vacate the hearing and return the matter to the Authority for any further action, or dismiss the appeal and conclude that there is a final action on the existing administrative record.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-626. Witnesses: Exclusion from Hearing**

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the Commission, the Commission may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-627. Proof**

- A. Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. Burden of proof. Unless otherwise provided by law:
  1. The party asserting a claim, right, or entitlement has the burden of proof;
  2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
  3. 3. The proponent of a motion shall establish the grounds to support the motion.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-628. Disruptions**

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the Commission may order the disruptive person to leave or be removed.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-629. Hearing Record**

- A. Maintenance. The Commission shall maintain the official record of appeal and hearing.
- B. Transfer of record. Before the Commission makes a final administrative decision, the party may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Commission and shall pay the reasonable costs of duplication.
- C. Release of exhibits. Exhibits shall be released:
  1. Upon the order of a court of competent jurisdiction; or

2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-630. Final Administrative Decisions; Review**

- A. For purposes of this article, the decision of the Commission on appeal is the final administrative decision.
- B. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except that if a party has not requested a hearing upon receipt of a notice of Appealable Agency Action pursuant to section 41-1092.03, the Appealable Agency Action is not subject to judicial review.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-631. Rehearing or Review**

- A. A party may file a motion for rehearing within 30 days after service of the final administrative decision pursuant to A.R.S. § 41- 1092.09.
- B. Any other party may file a response to the motion for rehearing within 15 days after the date the motion for rehearing is filed.
- C. After a hearing has been held and a final administrative decision has been entered pursuant to A.R.S. § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- D. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.
- E. Except as provided in this subsection, the Commission shall rule on the motion within 15 days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**R12-14-632. Notice of Judicial Appeal; Transmitting the Transcript**

- A. Notification to the Arizona Power Authority. Within 10 days of filing a notice of appeal for judicial review of a final administrative decision, the party shall file a copy of the notice of appeal with the Arizona Power Authority. The Authority shall then transmit the record to the Superior Court.
- B. Transcript. A party requesting a transcript shall arrange for transcription at the party's expense. The Authority shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Authority, together with one unbound copy.

**Historical Note**

*New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).*

**Arizona Power Authority  
Title 30.  
Arizona Revised Statutes**

**Article 1. Administration**

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- 30-172. Repealed.
- 30-173. Repealed.
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**Article 5. Performance Bond or Collateral Security Required of Operating Unit**

- 30-191. Indemnity or performance bonds as security; collateral security in lieu of bond.
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**Article 6. Financial Provisions**

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- 30-221. Authority to issue revenue bonds.
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- 30-224. Repealed.
- 30-225. Repealed.
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**Article 1.**  
**Administration**  
**Termination Under Sunset Law**

*The Arizona Power Authority shall conditionally terminate on July 1, 2024, unless continued. See §§ 41-3024.16 and 41-2955.*

**§ 30-101. Definitions**

In this chapter, unless the context otherwise requires:

1. “Authority” means the Arizona power authority.
2. “Commission” means Arizona power authority commission.
3. “Commodity” or “commodities” means electric power or energy.
4. “District” or “power or water agency” means power organizations comprehended in this title or water organizations comprehended in title 45, or both.
5. “Operating units” means districts, state agencies, federal Indian agencies, cities and towns.
6. “Person” means and includes natural persons engaged in the distribution of electric power, mutual and cooperative concerns or organizations by whatever name called, corporations, firms, business trusts and partnerships.
7. “Power” means electric power or electric energy, or both.
8. “Project” or “work” or “works” means each and every facility necessary or convenient for producing, generating, firming or transmitting power, and all rights of way, lands or interests in land, the use or occupancy of which are necessary or appropriate in the maintenance and operation of all such facilities.
9. “Qualified distributors” means persons and operating units.
10. “Qualified purchasers” means persons and operating units privileged under this chapter to purchase power developed on the main stream of the Colorado River.
11. “Retail” means sales to others than persons or operating units.
12. “State” means the state of Arizona.
13. “Transmission lines or systems” means each and every facility necessary or convenient for receiving electric energy from production or transmission systems and transmitting it to wholesale customers.
14. “Wholesale” means sales to qualified distributors of power.
15. “Zone” means an area within a fixed radius or distance from Hoover dam or other point of receipt or production.

**§ 30-102. Arizona power authority; powers and jurisdiction**

- A. The Arizona power authority shall perform the duties and exercise the privileges provided by this chapter.
- B. The authority is a body corporate and politic and shall have an official seal which shall be judicially noticed. The principal office of the authority shall be in Phoenix. The authority may sue and be sued in its official corporate name, make contracts, hold, use, handle, enjoy, lease, sell, pledge, or otherwise dispose of any and all real and personal property, and shall have all the rights appertaining or belonging to general bodies corporate except as limited, modified or otherwise provided by this chapter.

- C. All electric energy or power coming under authority jurisdiction and all property acquired by it shall be public property, and as such shall have the tax exemptions, rights and privileges granted to operating units.
- D. If the authority ceases to exist, all its assets remaining after its obligations and liabilities have been satisfied or discharged shall be ceded and surrendered to the state.

**§ 30-103. Administrative powers of authority; compensation of assistants**

- A. The 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.
- B. The authority shall provide necessary records, including order, resolution and minute books. It may act, effectuate, manifest and record its actions by motion, resolution, order or other appropriate method. Minute, order and resolution records shall be orderly arranged and conveniently indexed. Records of the authority shall be public and open for inspection during business hours.
- C. Subject to title 41, chapter 4, article 4, the authority may employ engineering, accounting, skilled and other assistants, define their duties and provide the conditions of employment. All positions shall be filled by persons selected and appointed on a nonpartisan, fitness and qualification basis.
- D. Assistants, employed under the provisions of this section, shall receive compensation as determined pursuant to section 38-611.

**Historical Note**

*Amended by Laws 1970, Ch. 204, § 85; Laws 2012, Ch. 321, § 37, eff. Sept. 29, 2012.*

**§ 30-104. Cooperation with land department and director of water resources**

The authority shall cooperate with the state land department and the director of water resources in the duties and functions of the department and the director relating to this chapter. The authority shall also cooperate with the director of water resources in planning of the hydroelectric power generation aspects of the development and use of the state's water resources.

**Historical Note**

*Amended by Laws 1971, Ch. 49, § 32, eff. April 13, 1971;  
Laws 1980, 4<sup>th</sup> S.S. Ch. 1, § 8 eff. June 12, 1980.*

**§ 30-105. Arizona power authority commission; membership; terms of office**

- A. The purposes of the authority shall be effectuated by and through the Arizona power authority commission and other necessary personnel. The powers and authority vested in the commission shall be exercised by a majority of the members then in office.
- B. The commission shall consist of five electors appointed by the governor pursuant to section 38-211. The members shall be electors qualified by administrative and business experience. A member shall not hold any other salaried public office or be associated with any public service corporation engaged in generating, distributing or selling power to the public generally in this state for profit. Title 38, chapter 3, article 8 applies to all members of the commission.
- C. The term of office of each member is six years. The terms of two members expire on the third Monday in January of each odd-numbered year, except that on the third Monday in January of

each sixth year the term of one member expires. The governor may remove members of the commission for cause.

**Historical Note**

*Amended by Laws 1972, Ch. 163, § 23; Laws 2017, Ch. 3, § 1.*

**§ 30-106. Organization of commission; compensation; oath**

- A. The commission shall select a chairman and a vice-chairman from among its membership who shall each hold office for terms of two years, to begin and end on the first Monday in January.
- B. Members of the commission shall receive compensation as determined pursuant to section 38-611 for time actually spent in the service of the authority, but the total compensation shall not exceed three thousand dollars per annum, exclusive of allowable expenses.
- C. Members of the commission in order to qualify for office shall take and subscribe to an official oath to perform the duties of their office. The oath shall thereupon be filed with the secretary of state. All official oaths required by this chapter shall be in the form prescribed by law for official oaths of state officers.

**Historical Note**

*Amended by Laws 1970, Ch. 204, § 86;  
Laws 1971, Ch. 125, § 33; Laws 1990, Ch. 107, § 1.*

**§ 30-107. Meetings of commission; executive session**

- A. All meetings of the commission are public. All members of the commission shall attend all meetings of the commission unless excused from attendance for a justifiable excuse, but three members shall constitute a quorum for the transaction of business.
- B. The commission shall keep minutes of the commission's meetings and executive sessions in accordance with section 38-431.01 or 38-431.03, as appropriate.
- C. This section does not prevent the commission from holding an executive session in accordance with section 38-431.03.

**Historical Note**

*Amended by Laws 2017, Ch. 3, §2.*

**§ 30-108. Powers and duties of commission; annual report**

- A. The members of the commission shall devote to their duties as members such time and attention as is necessary to effectuate the purposes of this chapter and to carry out their duties and exercise their powers. The commission shall designate a person or persons who shall execute all documents and instruments on behalf of the authority.
- B. The commission shall acquire suitable offices, furnishings, and articles of equipment and necessary supplies.
- C. Subject to title 41, chapter 4, article 4, the commission may employ a person in the capacity of director, manager, or chief engineer who shall be a duly licensed engineer, but who need not be a resident or licensed in this state. The person shall be actively engaged in the practice of the person's profession and trained and experienced in the performance of the person's duties. The person shall not hold any other public office or have any interest in a business that may be

adversely affected by the operation of the authority in the exercise of the authority's powers and discharge of the authority's duties.

- D. The commission shall make and submit to the governor, the president of the senate, the speaker of the house of representatives, the chairman of the senate natural resources, energy and water committee and the chairman of the house of representatives energy, environment and natural resources committee, or their successor committees, on or before December 1 each year a report containing a full and complete account of the commission's transactions and proceedings for the preceding fiscal year, together with other facts, suggestions and recommendations deemed of public value.

**Historical Note**

*Amended by Laws 2012, Ch. 321, § 38, eff. Sept. 29, 2012; Laws 2017, Ch. 261, § 1.*

**§ 30-109. Powers and duties formerly held by Colorado River commission**

The authority shall have the following powers and duties formerly vested in and imposed upon the Colorado river commission:

1. Gathering of data regarding projects for the development and use in the state of power from the waters of the Colorado river.
2. Discovery of potential users of power and encouragement of feasible enterprises looking to the utilization of Colorado river power.
3. Any other rights, powers and duties of the Colorado river commission pertaining to the development and sale of power, including the application pending before the federal power commission for a permit to construct Bridge Canyon dam.

**§ 30-110. Appealable agency actions; office of administrative hearings; exception; definition**

- A. Notwithstanding section 41-1092.01, subsection F, the office of administrative hearings shall conduct all administrative hearings related to appealable agency actions as defined in section 41-1092 that relate to the proceedings, orders or actions of the authority.
- B. This section does not apply to appeals arising from the post-2017 Hoover power allocation process.
- C. For the purposes of this section, "post-2017 Hoover power" means the capacity and firm energy allocated to entities in sections 2(a), 2(b), 2(c) and 2(d) of the Hoover power allocation act of 2011 (P.L. 112-72; 125 Stat. 777; 43 United States Code section 619a), for delivery commencing October 1, 2017, to be further allocated by the authority to entities in this state.

**Historical Note**

*Amended by Laws 2016, Ch. 107, § 1, eff. May 6, 2016.*

**Article 2.**

**Powers and Duties of Authority**

**§ 30-121. Acquisition and encouragement of development of electric power**

- A. The authority shall bargain for, take and receive, in its own name on behalf of the state, electric power developed from the waters of the main stream of the Colorado river by the state or the United States or any agencies thereof which by provisions of state or United States law,

agreement or regulation may be made available, allotted or allocated to the state in its sovereign capacity.

- B. The authority shall encourage activities deemed by it to be feasible for the production of electric power or energy from solar energy, nuclear energy or geothermal energy, and may bargain for, take and receive such energy or the electrical power generated therefrom in its own name on behalf of the state.
- C. For the purpose of making such power available to marketing areas of the state, the authority may acquire or construct and operate electric transmission systems, standby or auxiliary plants and facilities and generate, produce, sell at wholesale, transmit and deliver such electric power to qualified purchasers, and if conducive to efficiency and convenience, may enter into agreements for interconnection or pooling with projects, plants, systems or facilities of other distributors of electric power. The authority shall not by definitive contract or agreement obligate or bind itself to take or purchase power from any source until it has previously or simultaneously procured purchasers therefor.
- D. All rights of persons and operating units under contracts existing on March 27, 1944, or any renewals thereof or supplements thereto, with the United States or any agency thereof, to power generated, or which may be developed or generated, at Park Dam or at any other point below Hoover Dam on the main stream of the Colorado river are preserved, and such rights shall not be impaired or modified by any provisions or powers granted by this chapter.
- E. In addition to the power provided for under subsections A, B, C and D of this section, the authority may purchase, transmit or deliver for the state, or any person or operating unit, power generated or produced from projects or works owned or operated by the United States or any agency thereof, or any state, person, or operating unit, and for the purpose of delivering such power to available marketing areas the authority shall have the powers provided for by subsections A, B, C and D of this section. No person or operating unit in the state shall become a purchaser of electrical power under this subsection unless a power purchase certificate is obtained as provided in article 3 of this chapter.

#### **Historical Note**

*Amended by Laws 1974, Ch. 21, § 1.*

#### **§ 30-122. Cooperation with public agencies; limitations upon powers of authority**

- A. The authority, in the acquisition, construction or operation of electrical transmission systems and other related facilities, shall as far as the best interests of the state permit and as far as consistent with the purposes and policies of this chapter, cooperate with established and existing organizations and with the department of interior of the United States or any other federal agency or department for use, interconnection or utilization of any suitable transmission lines or other facilities for distribution and operating purposes. The authority shall when practical bargain and negotiate with United States and its departments or agencies for the inauguration, construction or operation of new projects or enlargement of works or facilities, and shall provide for repayment of such work or project costs accruing to the federal agency or department concerned by the application of revenue produced from the operation of the works or projects.
- B. Operating units or persons engaged in distribution of electric power may construct, conduct, operate, handle, acquire and dispose of projects, works, systems or facilities not belonging to or under the jurisdiction of the authority, and may also bargain and contract directly with the United

States or any department thereof for electric power from the main stream of the Colorado river not under jurisdiction of the authority after first obtaining a power purchase certificate as provided by article 3 of this chapter.

- C. The authority shall not create any mortgage lien upon its operating property or facilities, or impose any debt, or suffer or create any financial obligation whatever upon the state or any of its subdivisions.
- D. This chapter shall not be construed to modify, alter or change the provisions of chapter 1 of title 45 or the functions, powers and duties of any agency or officer pertaining thereto. Nothing in this chapter shall be construed to authorize or empower the authority to engage in the retail distribution of electric energy, but the authority may sell and deliver electric energy to consumers located adjacent to its transmission lines who may be without other means of adequate electric supply.

**§ 30-123.01. Construction, operation and maintenance of dams; generation of electrical energy; construction of storage and diversion facilities; limitations**

The authority shall take such steps as may be necessary, convenient or advisable to construct, operate and maintain at the Bridge Canyon dam site or other sites, dams for the generation of electrical energy and in connection therewith the facilities in or at the site of said dams for the storage and diversion of water. Such dams shall be deemed to be a project within the meaning of the definition of such term contained in paragraph 8 of section 30-101.

**Historical Note**

*Added by Laws 1956, Ch. 151, § 2, eff. April 19, 1956.*

**§ 30-124. Disposition of electric power; limitations; establishment of power rates**

- A. The authority shall take such steps as may be necessary, convenient or advisable to dispose of electric power within its jurisdiction.
- B. The authority shall not operate primarily as a source of public revenue. Electric power, as nearly as practical, shall be disposed of in an equitable manner so as to render the greatest public service and at levels calculated to encourage the widest practical use of electrical energy.
- C. Subject to the provisions of this chapter, electric rates of the authority shall be established and include such price components as are necessary to establish and maintain the authority, together with any works constructed or acquired by it, as a self-financing and liquidating project and to provide and maintain reasonable working capital and depreciation and other necessary and proper reserves. The rates for electrical energy generated from the bridge canyon project or other hydroelectric power facilities constructed after the effective date of this act may include such additional price components as the authority shall deem necessary to defray or contribute to the cost of storing, diverting or delivering waters of the main stream of the Colorado river with respect to facilities hereafter constructed and for the cost of construction of facilities for such purposes. Nothing herein contained shall be deemed to authorize the construction of aqueducts, canals or laterals, nor shall the authority have any jurisdiction or control whatsoever over diversions of water or rights to divert water from the main stream of the Colorado river. The rates shall include proportionate general price components, costs of purchases or production, transmission, depreciation, maintenance, amortization and such other appropriate price factors as the authority deems necessary or advisable, but no rates established by the authority shall increase

rates to purchasers fixed in existing power contracts with the purchasers during the term of their respective contracts.

- D. The 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. The authority may provide that the purchaser will pass along to its customers the reduction in its cost of service to its customers which results from its purchase of electrical energy covered by its contract with the authority, but nothing contained in this section shall give the authority power to fix, prescribe or control the rates to be charged by any public service corporation.
- E. The authority may establish appropriate rate schedules for its different classes of service or for its different zones of service. Rates shall not be discriminatory as between purchasers or classes of purchasers and rates may be uniform within zones or throughout the state.
- F. Contract schedules may be modified by the authority when such action is necessary to achieve the purposes and policies of this chapter, but shall not operate to change the provisions of existing power contracts during the term thereof unless the contract so provides or unless with the consent of the holder of the contract.

#### **Historical Note**

*Amended by Laws 1956, Ch. 151, § 3, eff. April 19, 1956.*

#### **§ 30-125. Preferences when power supplies insufficient**

- A. When available power supplies are insufficient to meet pending power applications, preferences shall be given to:
  - 1. Districts.
  - 2. Any incorporated city or town, or any cooperative serving its own members only, to the extent of the difference between its existing contracts for purchase of power generated by the waters of the main stream of the Colorado river from whomever purchased and seventeen million five hundred thousand kilowatt hours per annum.
  - 3. Applicants other than districts for power supplies to be used primarily for irrigation or drainage purposes or both.
  - 4. Any qualified applicants including any named in this subsection.
- B. No reduction in power supplies under power contracts existing on March 31, 1947 shall be made except with the consent of the purchaser because of any power scarcity arising after execution of the contracts, and such contracts shall remain in force and effect during the term thereof.

#### **§ 30-126. Designation of transmission lines upon which uniform transmission voltage rate applicable**

The authority shall designate certain sections of main transmission lines and facilities in the state for delivery of Colorado river power, including lines to be constructed or acquired by the authority and any transmission lines and facilities which may become available through the United States or an agency thereof, or other public or private sources, to the extent that the authority may be able to arrange for the use of the lines and facilities, as to which sections a uniform rate for power at transmission voltage shall also be made applicable. The sections shall initially include all portions of the lines between the points of

generation on the Colorado river and distribution centers where substantial power loads exist as established by the authority.

**§ 30-127. Uniform transmission voltage rate; wholesale power rates; limitations**

- A. The uniform transmission voltage rate shall include proper components of cost for power delivered over the sections of line designated under the provisions of section 30-126 at high voltage transmission levels, and power shall be sold at the uniform transmission voltage rate for transmission voltage delivery at any point on such sections of line. Power may be sold at the low voltage side of substations located on such sections of line at rates covering the uniform transmission voltage rate plus proper added cost components for low voltage delivery, and at locations served by extensions from such sections of line at rates covering the uniform transmission voltage rate plus proper added cost components for delivery over the extensions and related facilities. The authority shall be under no obligation to construct or furnish any substations or other facilities for delivery on the low voltage side or any extensions from the main transmission lines.
- B. The application of the uniform transmission voltage rate may from time to time be extended to other sections of the main transmission lines and to sections of high voltage transmission lines subsequently constructed when the application of the rate to the other sections of line and subsequently constructed lines will not result in a material increase in the rate, but no increase from this cause shall apply to or affect the rates in existing contracts.
- C. If electric power is purchased by the authority directly from facilities owned and operated by the United States, an agency thereof, or other public or private sources, at a cost to the authority not consistent with the uniform transmission voltage rate, the rates for the power to purchasers from the authority shall be based upon the cost of power to the authority together with all additional cost components pertinent thereto.
- D. Wholesale power rates set forth in any power contract for sale of power by the authority shall be limited as to modifications upward to the extent of variations in the cost of power to the authority in its power purchase contracts, or variations in the actual costs, including operating costs, to the authority of the facilities which shall be specified in the power contract to be taken into account in determining costs.
- E. Contracts or agreements for sale by the authority of electric power and energy at wholesale shall recognize all applicable provisions of this chapter and may be executed for such period as the authority deems necessary, but if such contracts or agreements are made for a period exceeding twenty years they shall be made subject to termination upon reasonable notice by the authority at any time after the initial twenty year period.
- F. No revenue bond issued by the authority, or agreement of the authority with respect thereto, shall in any respect impair, modify or change the provisions of any contract of the authority for the sale of electrical energy entered into pursuant to the provisions of this chapter.
- G. If secondary, dump, off-peak, or emergency energy becomes available to the authority from Colorado river developments, or other public or private sources, it may be purchased and resold by the authority to the extent of transmission facilities available, at rates which will be adequate to cover the costs of delivering such energy, and under terms and conditions suited to the uses which may be made of the energy.

**Historical Note**

*Amended by Laws 1956, Ch. 151, § 4, eff. April 19, 1956.*

**§ 30-127.01. Water rights**

Nothing in sections 30-123, 30-123.01, 30-124, 30-127 and 30-127.01 shall be construed as affecting or intended to affect or to in any way interfere with the laws of the state relating to the control, appropriation, use, or distribution of water used in irrigation or any vested right acquired therefor, and the authority, in carrying out the provisions of sections 30-123, 30-123.01, 30-124, 30-127 and 30-127.01, shall proceed in conformity with such laws, and nothing herein shall affect any right of the state or of any landowner, appropriator, or user of water in, to, or from any interstate or intrastate stream or the waters thereof.

**Historical Note**

*Amended by Laws 1956, Ch. 151, § 5, eff. April 19, 1956.*

**§ 30-128. Construction work and purchases by bid only; exceptions; award of contract; bond**

- A. The construction of projects or facilities undertaken by the authority shall be by contract and not by force account. No contract for construction work exceeding five thousand dollars, except in cases of emergency to prevent imminent loss or danger, shall be entered into by the authority except after notice published for not less than ten days. All such contracts shall be let by public bid to the lowest responsible bidder, and the authority shall be authorized to call for sealed bids and to accept or reject any or all bids. Bids shall be accompanied by a reasonable bid bond in an amount the authority demands. The provisions of this subsection shall not apply to any contracts entered into with a federal agency.
- B. All purchases and contracts made by the authority for material or services other than personal services shall be made after advertising in such manner and at such times sufficiently in advance of opening bids as the authority deems adequate to insure appropriate notices and opportunity for competition. Advertisement shall not be required when:
  1. An emergency requires immediate delivery of the supplies or performance of the services.
  2. Repair parts, accessories or supplemental equipment or services are required for supplies or services previously furnished or contracted for.
  3. The aggregate amount involved in the purchase of supplies or procurement of services does not exceed two thousand five hundred dollars.
- C. In the instances provided for by paragraphs 1, 2 and 3 of subsection B the purchase of supplies or procurement of services may be made in the open market in the manner common among businessmen.
- D. In comparing bids and in making awards the authority shall give due consideration to such factors as:
  1. The relative quality and adaptability of supplies or services.
  2. The bidder's financial responsibility, skill, experience, record of integrity in dealing and ability to furnish repair and maintenance services.
  3. The time of delivery or performance offered.
  4. Whether the bidder has complied with the specifications.
- E. The provisions of subsection D shall not apply to any contracts entered into with any federal agency.

- F. The authority shall protect its interests by providing for and securing such bond or bonds as are required under the provisions of title 34, chapter 2, article 2.

**Historical Note**

*Amended by Laws 1969, Ch. 52, § 7.*

**§ 30-129. Cooperation with operating units**

- A. Any person or operating unit, or combination thereof, may petition the authority for the exercise of its powers and privileges in making any project or proposed project survey or investigation, or for authorized assistance in the inauguration or completion of any works or projects authorized by this chapter.
- B. Upon filing the petition, the authority may conduct hearings and conduct investigations deemed necessary and advisable, and thereafter take action as it deems appropriate in the premises and within its sphere of cooperative action. The authority may:
1. Act as a bargaining and negotiating agency in transactions and dealings between the various departments of the federal government and any petitioning persons or operating units.
  2. Serve as a connecting, intermediate or contracting medium for the petitioners when for united or joint participation such a medium is convenient or essential to the receipt, acceptance or enjoyment by the petitioners of any financial proposals, grants or other benefits made available by any federal statute or federal department.
  3. Act as a coordinating, clearing, administering, supervising or activating instrumentality by and through which petitioners may cooperate or unite through or by contracts or agreements in the application or pooling of their resources, functional rights or privileges for common purposes cognizable by this chapter.
- C. Notwithstanding the provisions of any general, special or local law or statutory regulation, operating units may enter into contracts, agreements and arrangements which may be found necessary for effectuating the intent and securing the benefits of paragraphs 1, 2 and 3 of subsection B. If found convenient and essential to the accomplishment of such purposes, the cooperators may associate themselves in a cooperative corporation under the incorporation laws of the state, and it shall be their respective duties to do and perform all things on their respective parts undertaken by them to be done or performed thereby or thereunder.
- D. Nothing contained in this section shall be construed to alter or change any debt limitation of the operating units.

**Article 3.**

**Power Purchase Certificate**

**§ 30-151. Certificate prerequisite to purchase of power**

No person or operating unit in the state other than the retail purchasers from the authority permitted by section 30-122, shall become a purchaser of electrical energy generated by the waters of the main stream of the Colorado river, unless it first obtains a power purchase certificate issued by the authority as provided by this chapter.

**§ 30-152. Application for certificate; hearing; multiple applications**

- A. Any person or operating unit desiring to become a purchaser of electrical energy described in section 30-151 shall file with the authority an application verified under oath, stating:
  1. Its principal place of business.
  2. A reasonably accurate description of the territory in which the energy will be sold or used.
  3. The purposes for which the energy will be used.
  4. The names and addresses of all persons and operating units engaged in distribution of electrical energy, and all districts not engaged in such distribution, in the territory described in the application and in territory contiguous thereto.
  5. Other relevant information the authority by regulation requires.
- B. The application shall be accompanied by copies thereof at least equal in number to the persons and operating units required to be named therein.
- C. Upon filing the application the authority shall immediately fix a time and place where a hearing will be held thereon. The date of hearing shall be not less than ten nor more than thirty days after the date of the filing, exclusive of the date of filing. Written notice of the time and place fixed for the hearing shall be given forthwith by the authority by mail to the persons and operating units named in the application. The notice shall be accompanied by a copy of the application.
- D. If more than one application is filed for the same territory, or part of the same territory, the authority may consolidate all the applications for hearing at the same time and place and shall give notice accordingly.

**§ 30-153. Issuance of certificate; conflicting applications**

- A. If an application is granted in whole or in part, a power purchase certificate shall be issued by the authority in accordance with its order. Power purchase certificates shall be numbered consecutively according to date of issuance, shall set forth the name of the applicant to which issued and the territory for which issued. The certificate so issued may be assigned by the holder after first securing the approval of the authority, but a transfer by operation of law or by virtue of any judicial, trustee's or other involuntary sale shall not require the authority's approval.
- B. The application of any applicant shall be granted for so much of the territory included in its application as is then being served with electrical energy by it. No power purchase certificate shall be issued to an applicant for territory which is then being served with electrical energy by a person or operating unit, subject to the applicable provisions set forth in section 30-154 respecting districts and incorporated cities and towns. If applications for power purchase certificates are filed by two or more applicants covering wholly or in part the same geographical area, and no electrical service is then being rendered in the area by any person or operating unit, the authority shall award a certificate to the applicant or applicants which, in the judgment of the authority will best serve the area after giving due consideration to the preparedness of competing applicants to serve the territory in question, the investments involved, the adequacy of the service proposed to be rendered to consumers therein, and the time required to furnish the service and any other relevant and pertinent matters bearing upon the controversy.
- C. No applicant for the whole or any part of an area in which no electrical service is then being rendered shall, after the filing of the first application for the unserved territory, begin service therein pending final decision by the authority on all conflicting applications covering the territory.

- D. No applicant for a power purchase certificate shall be granted a certificate until it first enters into a contract with the authority for the payment to the authority, in the manner and at the time required by the authority, of the current administration charge, if any, applicable to the power to be purchased under contracts with the authority.

**§ 30-154. Certificates granted as matter of right**

- A. Notwithstanding anything in this chapter to the contrary, the authority shall grant as a matter of right:
  - 1. The application of any district for a power purchase certificate for electrical energy solely for use for irrigation or drainage purposes, or both, within the boundaries of the district, or where all lands included within a district are not contiguous, on intervening lands substantially enclosed by lands included within the district, if so requested of the authority by duly executed petition of the owners or legally authorized custodians or administrators of such lands.
  - 2. The application of any district for a power purchase certificate for electrical energy to be distributed to inhabitants of the district where the district has acquired or consummated all steps necessary to acquire the electric facilities of the distributor or distributors then serving the inhabitants of the district.
  - 3. The application of any incorporated city or town for a power purchase certificate covering territory within its corporate boundaries not otherwise served with electrical energy.
  - 4. The application of any incorporated city or town for a power purchase certificate for electrical energy to be distributed generally within its corporate boundaries where the city or town has acquired or has consummated all steps necessary to acquire the electric facilities of the distributor or distributors then serving the inhabitants of the city or town.
- B. If the authority fails to make any order on any application of a district or incorporated city or town for sixty days after the date fixed for hearing on the application, a power purchase certificate shall be deemed to have been issued to the applicant by the authority, and the applicant may thereafter proceed to exercise its rights thereunder to the extent and for the purposes permitted by this chapter and as set forth in its application.

**§ 30-155. Rights of certificate holders; cancellation or amendment of certificate**

- A. The holder of a certificate may enter into a contract or contracts for the purchase of electrical energy generated by the waters of the main stream of the Colorado river, and the rights of the holder of a certificate may not be abrogated, modified or amended without consent of the holder, except as provided in this section.
- B. The authority may cancel a certificate if the holder does not, within six months from the date when electrical energy is first available to the holder, actually and in good faith begin rendering the service or using the electrical energy for the purpose for which the certificate was issued, unless the authority, upon written application, has for good cause shown, prior to the expiration of such period, extended the time for beginning the service or use.
- C. The holder of a power purchase certificate may apply to the authority for amendment of its certificate to include additional territory. All provisions of this article relating to original applications for power purchase certificates shall apply to any application for amendment.

- D. Any person or operating unit holding a power purchase certificate and otherwise qualified under the provisions of this chapter to purchase electrical energy may sell the energy at wholesale to any other person or operating unit holding a power purchase certificate, but the use of the electrical energy by the purchaser shall be confined to the uses and the territory for which the purchaser holds a certificate.

**Article 4.**  
**Hearing and Appeals (Repealed)**

**§§ 30-171 to 30-173. Article 4 was Repealed by Laws 1997, Ch. 221, § 103.**

**§ 30-174. Repealed by Laws 1980, Ch. 231, § 34.**

**Article 5.**  
**Performance Bond or Collateral Security Required of Operating Unit**

**§ 30-191. Indemnity or performance bonds as security; collateral security in lieu of bond**

- A. Operating units may execute and deliver indemnity or performance bonds as required by the United States or the state as security or assurance for performance of or indemnity for liability under any contract made with them or either of them.
- B. The operating units may at their election establish, tender and deliver collateral security in lieu of the indemnity or performance bond required. The amount or penalty of any indemnity or performance bond or pledge shall be the amount determined by the pledgee as sufficient for and proportionate to any contract undertaking involved.
- C. The bond or pledge shall be in appropriate and effective form as the circumstances require. The pledge may consist of:
1. An uncommitted or unencumbered fund on hand or to be received or to be thereafter created.
  2. Proceeds of any uncommitted or unencumbered district assessment.
  3. Income or proceeds from any district, state agency or municipal operation not otherwise committed or encumbered.
  4. Revenue bonds.
  5. Real or personal property.
  6. Any other valuable right or thing satisfactory to the pledgees or either of them.

**§ 30-192. Authorization for bond or collateral security**

The governing or administrative body of an operating unit, if it finds the giving of the bond or pledge, or both, necessary or advisable and for the best public interest, may by two-thirds vote of its members at any regular or special meeting, pass and adopt a resolution or take other appropriate action authorizing the making and delivery of the bond or pledge, or both, as circumstances indicate. The findings of the body and its determination respecting the bond or pledge shall be final and conclusive. The authorized officers of the district, state agency or municipality may execute and deliver the bond or pledge on its behalf.

**§ 30-193. Provisions of bonds; powers of operating unit**

Indemnity or performance bonds or pledges may be in the form and contain terms, conditions and agreements as required by the pledgees to fulfill the purposes thereof within the broadest scope of this

chapter. The governing body of the operating unit may enact, pass and adopt necessary bylaws, ordinances, resolutions, rules and regulations not in conflict with this chapter for effectuating and carrying out the provisions and purposes of this article.

**Article 6.**  
**Financial Provisions**

**§ 30-201. Administrative and operation budgets**

- A. The authority shall on or before July 1 in each fiscal year adopt an administrative budget for the next succeeding fiscal year. The budget shall not exceed the amount of seventy-five thousand dollars for each fiscal year, and shall consist of a complete statement of administrative expenditures from the fund during the past fiscal year and an estimate of the different amounts which may be deemed necessary to meet administrative requirements of the authority for the ensuing fiscal year, fixing the amounts proposed for all recurring items of expense and an amount for contingencies or emergencies not anticipated. No administrative expenditures shall be made therefrom in excess of the total amount of the budget. Economies resulting in remaining balances for any fiscal year shall be available for subsequent administration or operating purposes.
- B. The authority shall likewise for each similar period prepare an operation budget covering operations and including capital items. The budget shall consist of a full and complete statement of all incoming receipts and expenditures for the past fiscal year and an estimate of anticipated income and expenditures for the next ensuing period. The budget shall also give a complete asset and liability statement and statement of profit and loss, together with an itemized statement of cash on hand, commitments, reserves and obligations anticipated for the ensuing fiscal year, together with such other information as will give a full and complete disclosure of the current financial condition of the authority.
- C. The original budgets shall be filed with the department of administration and copies thereof with the governor and state treasurer.

**Historical Note**

*Amended by Laws 1970, Ch. 190, § 37; Laws 1972, Ch. 141, § 21;  
Laws 1983, Ch. 98, § 39;*

**§ 30-202. Appropriated and operation funds defined; debt reserve fund; application of general fiscal laws**

- A. Any funds made available to the authority by legislative appropriation shall be classified "appropriated funds." All other funds derived from operations or otherwise acquired or accruing to the authority shall be classified "operation funds." Appropriate classifications and designations shall be set up in the authority accounting records as set forth by section 30-103 to provide for accurate and systematic control and allotment of all monies received, including a debt reserve fund embracing all monies required for the payment of principal and interest on revenue bonds, and any and all other obligations for which a reserve is required. No withdrawals from the debt reserve fund shall be made except for the express purposes for which the monies have been deposited therein.
- B. The provisions of chapter 1, title 35 not in conflict with this article shall, as far as applicable, apply to the handling and disbursement of appropriated funds of the authority. The fiscal year of the authority shall not be divided into fiscal quarters, and appropriated monies shall be placed in separate funds as budgeted and not in the general fund. Warrant limitations, lapsing of

appropriations, quarterly allotments and continuing or recurring appropriation provisions shall also be inapplicable.

- C. Nothing in chapter 1, title 35 shall be construed to require the reversion to the general fund or otherwise of any monies, balances or biennium appropriations made for the authority.

**§ 30-203. Receipt of monies; disbursements; operation of accounting system; annual audit**

- A. Monies due the authority under agreements for the sale of electric power or other service, proceeds of revenue bond issues or any other obligations may be made payable at the office of the authority. All monies derived from operations of the authority of any nature and received by any officer, agent or employee of the authority shall be deposited, pursuant to sections 35-146 and 35-147 in the Arizona power authority fund. All operation monies of the authority received shall be accounted for and kept separate from any monies made available to the authority by any legislative appropriation and shall be paid out only in accordance with the regularly adopted authority operation budget on warrants in discharge of claims and obligations approved by the authority commission, signed by the authority chairman and countersigned by the authority director or other duly authorized authority officer.
- B. The appropriate claim vouchers shall be regularly entered in the operations accounting system of the authority and preserved and exhibited for auditing purposes. The operations accounting system set up by the authority shall conform as nearly as practicable to the uniform accounting system prescribed for public service corporations.
- C. The department of administration may at any time examine the books, accounts and vouchers of the authority. On notice from the authority, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

**Historical Note**

*Amended by Laws 1968, Ch. 89, § 22, eff. Jan. 2, 1969; Laws 1972, Ch. 141, § 22; Laws 1980, Ch. 108, § 6, eff. April, 22, 1980; Laws 1984, Ch. 61, § 15, eff. April, 6, 1984; Laws 1990, Ch. 107, § 2; Laws 2000, Ch. 193, § 260; Laws 2001, Ch. 117, § 16.*

**§ 30-204. Annual audit of operation funds and collateral deposits**

- A. District and state agencies authorized to issue revenue bonds subject to approval of the state certification board shall cause an annual audit to be made of their respective operation funds. Districts, state agencies and municipalities pledging any assessments, funds or property presently owned or to be provided, accumulated or acquired shall similarly cause an audit to be made of their respective collateral deposits. The audits shall be made by a certified public accountant within thirty days after the close of the respective fiscal years of the districts, state agencies and municipalities, and each shall file a certified copy thereof with the auditor general.
- B. The auditor general may, if he deems it advisable, at the expense of the district, state agency or municipality concerned, make such further audits and examinations as he deems necessary and take appropriate action in relation thereto as provided by title 41, chapter 7, article 10. Unless the auditor general takes official action within thirty days after filing the audit, it shall be deemed sufficient.
- C. The audits shall be in lieu of all other official audits of all operation funds or collateral deposits of the districts, state agencies and municipalities, except as ordered by a court of competent jurisdiction.

**Historical Note**

*Amended by Laws 1968, Ch. 177, § 8, eff. Jan. 1, 1969; Laws 1983, Ch. 224, § 13.*

**Article 7.  
Revenue Bonds**

**§ 30-221. Authority to issue revenue bonds**

- A. When the authority finds other financing methods or procedure inadvisable, inadequate or insufficient to acquire or construct transmission lines, projects, works or facilities, it may independently or in conjunction with any other optional or alternative plans provided in this chapter issue bonds as provided by this article.

**§ 30-222. Prerequisites to issuance;**

No revenue bonds shall be issued until provision is made by power or transmission purchase contracts in accordance with the provisions of this chapter adequate in the judgment of the authority to insure all necessary fiscal reserves, operation costs, maintenance and depreciation charges and payment of principal and interest of any bonds relating to any proposed project or facility involved and within the time fixed.

**Historical Note**

*Amended by Laws 2010, Ch. 165, § 1, eff. April 26, 2010.*

**§ 30-223. Repealed**

**Historical Note**

*Amended by Laws 2010, Ch. 165, § 2, eff. April 26, 2010.*

**§ 30-224. Repealed**

**Historical Note**

*Amended by Laws 2010, Ch. 165, § 2, eff. April 26, 2010.*

**§ 30-225. Repealed**

**Historical Note**

*Amended by Laws 2010, Ch. 165, § 2, eff. April 26, 2010.*

**§ 30-226. Issuance of bonds; provisions of bonds**

- A. Bonds issued under this article shall be authorized by resolution of the authority and may be issued in one or more series, shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding nine per cent per annum, be in such denomination or denominations and in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, payable in such medium of payment, at such place or places, and subject to such terms of redemption, with or without premium, as such resolution, any trust indenture, or the bonds so issued may provide. Bonds may be sold at public or private sale at premium, discount or par with accrued interest. Notwithstanding any provision of law to the contrary, bonds issued pursuant to this article shall be negotiable. The proceeds of the bond issue shall be controlled and administered solely by the authority as provided in this chapter.

- B. The bonds shall provide that:
  - 1. The bond is purchased and taken after a complete disclosure of and with a full knowledge of all the surrounding relevant facts and circumstances and not upon the representation, faith or credit of the state of Arizona or any of its subdivisions.
  - 2. The holder in order to obtain payment may not compel the state or any subdivision thereof to exercise its appropriation or taxing power.
  - 3. The bond does not constitute a debt of the state and is payable only from revenues of the authority.
- C. The gross or net revenue of any project or any part thereof may be pledged to secure payment of any series of bonds.

**Historical Note**

*Amended by Laws 1970, Ch. 89, § 15, eff. April 27, 1970;  
Laws 2010, Ch. 165, § 3, eff. April 26, 2010.*

**§ 30-227. Additional provisions of bonds; certification by attorney general; sale**

- A. The authority may provide for reimbursement to the holder of all expenses of litigation and attorney fees incurred in collection of the bonds in the event of default, and may provide for and fix the powers and duties of a trustee if necessary to enforce collection. Bond resolutions, agreements and bonds may be in such form and contain such other conditions and terms as the authority deems appropriate or necessary to make the bonds fully salable and marketable.
- B. The authority may provide that any holder of bonds, or a trustee designated by the authority at the time of issuing the bonds, may upon proper showing secure by mandamus, or other proper proceedings, an order of court requiring the authority, subject to the provisions of contracts with purchasers of electrical energy or transmission service from the authority then in effect, to fix and collect rates and charges which will produce revenues and income permitting the setting up of adequate yearly reserves with which to meet future payments in accordance with the terms of the bond.
- C. All bonds issued by the authority and agreements of the authority with respect thereto shall be subject to the provisions of this chapter, and no bond or agreement shall contain any provisions in conflict with this chapter. No amendment of this chapter shall ever diminish or impair the remedy and rights of the bondholder.
- D. The bonds shall be signed by the chairman or vice-chairman and the secretary of authority in office at the date of signing, and shall be valid obligations of the authority although before delivery or sale the persons whose signatures appear on the bonds have ceased to be members of the authority.
- E. The validity of the bonds shall not be dependent on or affected by the legality of any proceeding relating to the acquisition, construction, improvement or extension of a project for which the bonds are issued. The bonds shall recite that they are regularly issued pursuant to this chapter and such recital shall be prima facie evidence of their legality and validity.
- F. Before delivery or sale the authority may submit the bonds to the attorney general of the state, and he shall examine them and inquire into the legality of all proceedings bearing upon the validity of the bonds. If satisfied that they are legally issued, he shall certify in substance on the back of each bond that it is issued in accordance with the constitution and laws of this state.
- G. Bonds so issued may be sold if and when the money is needed for the purposes for which they were issued. Pending the preparation or execution of definite bonds, interim receipts or certificates or temporary bonds may be delivered to the purchaser or purchasers of bonds.

**Historical Note**

*Amended by Laws 2010, Ch. 165, § 4, eff. April 26, 2010.*

**§ 30-228. Validity of bonds**

This chapter without reference to other laws of the state shall constitute full authority for the authorization and issuance of bonds hereunder. No other law with regard to the authorization or issuance of obligations or which in any way impedes or restricts the carrying out of the acts authorized by this article shall be construed as applying to any proceedings taken or acts done pursuant to this article.

**Arizona Power Authority  
Title 45.  
State Water and Power Plan**

**Article 1. In General**

- 45-1701. Declaration of purpose and policy.
- 45-1702. Definitions.
- 45-1703. State water and power plan.
- 45-1704. Construction, acquisition and operation.
- 45-1705. Construction of works across public or private property.
- 45-1706. Right of eminent domain.
- 45-1707. Issuance of bonds and notes.
- 45-1708. Contracts.
- 45-1709. General powers.
- 45-1710. Powers of municipalities, districts and other public bodies and officers.
- 45-1711. State water and power development fund.
- 45-1712. Agreement of state.
- 45-1713. Exemption from taxation.
- 45-1714. Remedies of bondholders and noteholders.
- 45-1715. Certification of bonds by attorney general.
- 45-1716. State not liable on bonds and notes.
- 45-1717. Bonds and notes legal investments.
- 45-1718. Water rights.
- 45-1719. Reversion of projects to state.
- 45-1720. No jurisdiction of Arizona corporation commission.
- 45-1721. Joint ownership of power projects.
- 45-1722. Exclusive law.

**Article 1.  
In General**

**§ 45-1701. Declaration of purpose and policy**

The legislature declares and finds:

1. That the development of an adequate supply of water for agriculture, municipal, industrial and fish and wildlife uses within the state of Arizona is vital for the well-being, health and prosperity of the people of the state.
2. That the state's right and obligation to receive two million eight hundred thousand acre feet of main stream Colorado river water annually having been confirmed by the United States supreme court in *Arizona v. California*, 376 U.S. 340 (1964) [84 S.Ct. 755], it is essential to the continued well-being, health and prosperity of the people of the state that the state proceed promptly to establish, develop and execute an appropriate program for the development and utilization of such water.
3. That the development of the state's power resources is an essential and integral part of the effectuation of such program, including the financing thereof.
4. That such power resources and the use of the energy therefrom must be developed in order to provide effective support for and implementation of the state's water program and to promote the general welfare, health, safety and prosperity of the people of the state.

**Historical Note**

*Added as § 45-2501 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967.  
Renumbered as § 45-1701 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1702. Definitions**

In this article, unless the context otherwise requires:

1. "Authority" means the Arizona power authority created pursuant to title 30, chapter 1.
2. "Bonds" and "notes" means bonds and notes, respectively, of the authority issued pursuant to this article.
3. "District" means any irrigation district, power district, electrical district, agricultural improvement district or water users association now or hereafter organized under the laws of this state that is directly engaged in the sale, distribution or delivery of municipal, industrial or irrigation water or in the sale, distribution or use of electric power or energy.
4. "Municipality" means any incorporated city or town or other corporation organized for municipal purposes.
5. "Power" means electric power or electric energy or both.
6. "Project" or "work" means:
  - (a) Any of the projects or works authorized by this article or hereafter authorized, including each and every facility or improvement necessary or incidental thereto and all rights-of-way, lands or interests in lands, the use or occupancy of which is necessary or appropriate in the construction, reconstruction, replacement, extension, betterment, development, improvement or operation and maintenance of such facilities and improvements.
  - (b) Financing or refinancing authorized by section 45-1703, subsection A, paragraph 5.
7. "Public utility" means any person, corporation, district, electric cooperative, public agency or political subdivision of the state that provides electrical service to the public by means of electric facilities or provides water for municipal, industrial, irrigation, recreation and fish and wildlife purposes to the public.

8. “Real property” means lands, rights in lands, interests in land, including lands under water, appurtenances, improvements and any and all other things and rights usually included within the term and includes also any and all interest in such property less than full title, such as easements, permanent or temporary rights-of-way, uses, leases, licenses and other such incorporeal hereditaments.
9. “Retail” means sales to persons, corporations, firms, partnerships or other entities for their use and not for resale.
10. “State” means the state of Arizona.
11. “State water and power development fund” means the fund by that name established by section 45-1711.
12. “State water and power plan” means the plan established pursuant to section 45-1703.
13. “Wholesale” means sales to municipalities, districts or public utilities for resale or distribution.

#### **Historical Note**

*Added as § 45-2502 by Laws 1967, Ch. 57, § 1. Amended by Laws 1971, Ch. 49, § 30, eff. April 13, 1971; Laws 1980, 4th S.S., Ch. 1, § 124, eff. June 12, 1980; Laws 1982, Ch. 63, § 3, eff. April 9, 1982. Renumbered as § 45-1702 and amended by Laws 1987, Ch. 2, §§ 13, 37, eff. Feb. 27, 1987. Amended by Laws 2013, Ch. 230, § 1.*

#### **§ 45-1703. State water and power plan**

- A. A water and power plan for the state is established, consisting of all or part of the following works and facilities:
  1. Central Arizona project, including:
    - (a) Granite Reef aqueduct to extend from Lake Havasu to a point in central Arizona on the Salt river near the city of Phoenix, together with pumping plants therefor.
    - (b) The Salt-Gila aqueduct to extend from the terminus of the Granite Reef aqueduct in central Arizona to the Tucson aqueduct, Colorado source, in the vicinity of Picacho reservoir, together with pumping plants therefor.
    - (c) The following alternative to Orme dam:
      - (i) New Waddell dam.
      - (ii) Cliff dam.
      - (iii) Modifications to Roosevelt dam.
    - (d) Buttes dam and reservoir on the Gila River east of the town of Florence.
    - (e) Tucson aqueduct to extend from the terminus of the Salt-Gila aqueduct in the vicinity of Picacho reservoir to and beyond the city of Tucson, together with pumping plants and terminal storage therefor.
  2. Montezuma pumped storage power project to be located approximately twenty-five miles south of the city of Phoenix.
  3. The authority’s interest in or rights to capacity and any associated energy of the Hoover power plant modifications project consisting of an additional powerhouse or powerhouses at the Hoover dam and power plant located on the Colorado river in Clark county, Nevada and Mohave county, Arizona and Lake Mead, the reservoir formed behind Hoover dam.
  4. The authority’s interest in or rights to capacity and any associated energy of the Hoover power plant uprating project consisting of an increase in capacity of existing generating units at Hoover dam and power plant as a result of replacement and improvement of equipment for such units. In each case the project shall include any improvements thereto and any incidental or associated capacity, energy, buildings, structures, transmission lines or mains, and all other appurtenances and facilities necessary or appropriate thereto.

5. The financing or refinancing of this state's proportionate share of the costs incurred by the United States with respect to the Hoover visitor facilities as defined in section 101(a) of the Hoover power plant act of 1984 (P.L. 98-381; 98 Stat. 1333; 43 United States Code section 619) and this state's proportionate share of the costs incurred by the bureau of reclamation with respect to the air slot treasury loan for the construction of air slots at Hoover dam.
- B. The state water and power plan may also include such further water and power projects, either in addition to or in substitution of the projects set forth above, or any portion thereof, as the Arizona legislature may from time to time authorize. However, in no event may such further power projects include thermal generating plants or interests therein, except that the authority may enter into an agreement with other electric power interests proposing to construct a thermal generating power plant whereby the state shall acquire the right to such portion of the capacity of such plant, including delivery of power and energy over appurtenant transmission facilities to mutually agreed upon delivery points as is required to provide central Arizona project pumping. Power and energy acquired thereunder may be disposed of intermittently by the authority when not required in connection with the central Arizona project.
- C. Except as otherwise provided in this subsection, nothing in this article shall authorize the inclusion in the state water and power plan of the power and energy under the Hoover energy contract 1-1r-1455 dated November 23, 1945 as it may be supplemented, amended, renewed or replaced and the rights to deliver such power and energy under the 1964 Wheeling contract 14-06-0300-1444 dated January 1, 1965 as it may be supplemented, amended, renewed or replaced which power and energy and Wheeling rights shall continue to be administered under title 30, chapter 1. Power and energy of the authority from the Hoover power plant modifications project and the Hoover power plant uprating project shall be sold by the authority pursuant to this article. The contracts for the sale of the power and energy of the authority from such projects shall be treated as contracts under this article. Notwithstanding title 30, chapter 1, the authority may pledge its contracts, rights and interests in or to power and energy from the Hoover power plant modifications project, the Hoover power plant uprating project, the 1945 Hoover energy contract or the 1964 Wheeling contract, or any supplements, amendments, renewals or replacements of such contracts, or any other contract or contracts for the purchase or transmission of power and energy from the United States or any United States agency as security for any bonds or notes of the authority issued under this article for the purpose of the Hoover power plant modifications project, the Hoover power plant uprating project, the Hoover visitor facilities or the air slots at Hoover dam.

#### Historical Note

*Added as § 45-2503 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1982, Ch. 63, § 4, eff. April 9, 1982; Laws 1986, Ch. 21, § 2, eff. April 9, 1986. Renumbered as § 45-1703 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987. Amended by Laws 2013, Ch. 230, § 2.*

#### **§ 45-1704. Construction, acquisition and operation**

- A. The director of water resources may plan, construct, operate and maintain the central Arizona project, or any portion of the project, and any other water projects hereafter included in the state water and power plan, acquire all real property required therefor in the name of the state and take such actions and proceedings as may be necessary or desirable in connection therewith. The authority may plan, acquire, construct, operate and maintain any power project included in the state water and power plan, or any portion of any such project, and any other power projects hereafter included in the state water and power plan, acquire all real property required therefor

in the name of the state and take such actions and proceedings as may be necessary or desirable in connection therewith. In carrying out their functions hereunder, the director and the authority shall consult with each other and with appropriate state officials and shall coordinate their activities so that the development of the state water and power plan shall proceed with all reasonable dispatch and efficiency.

- B. Before either the director or the authority undertakes the financing or construction of any portion of the central Arizona project, the director or authority shall file with the president of the senate and the speaker of the house, at least thirty calendar days prior to the scheduled adjournment of the legislature's regular session or within five days following the convening of a special session called for that purpose, a feasibility report on such project. Such feasibility report shall set forth estimated costs, the financing steps contemplated, and the anticipated means and schedule of debt payment. Upon approval in whole or in part of such feasibility report by the legislature, the director or the authority shall thereupon be authorized to proceed in accordance with the approval granted by the legislature and the provisions of this article.
- C. The state consents to the use and occupation of any real property now or hereafter owned by it, and not dedicated to public use, necessary for the construction, operation or maintenance of any project or projects included in the state water and power plan subject, however, to such payment as lawfully may be required.

**Historical Note**

*Added as § 45-2504 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 125, eff. June 12, 1980; Laws 1982, Ch. 63, § 5, eff. April 9, 1982. Renumbered as § 45-1704 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1705. Construction of works across public or private property**

The director or authority may construct facilities or works pursuant to this article across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, flume or private property. If the director or authority and the persons, firms, corporations, municipalities, federal or state agencies, state trust lands or political subdivisions of the state owning or controlling any property or installation to be used or crossed cannot agree upon the amount to be paid for the taking, use or privilege thereof, such amount shall be ascertained and determined in the manner provided by law for the taking of land for public uses.

**Historical Note**

*Added as § 45-2505 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 126, eff. June 12, 1980. Renumbered as § 45-1705 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1706. Right of eminent domain**

- A. Condemnation proceedings may be brought by the director or authority and all laws of the state relating to the exercise of the right of eminent domain and the taking of private property for public use and obtaining immediate possession thereof shall apply to the proceedings. The use of property which is condemned, taken or appropriated under the provisions of this article is declared to be a public use subject to regulation and control by the state in the manner provided by law.
- B. When real property has been appropriated to public use by any person, firm or corporation, the taking of the property for the construction and operation of the state water and power plan by the director or authority shall be deemed a more necessary public use than the use of the property by such person, firm or corporation.

- C. Notwithstanding any other provision of this article, the director or authority shall have no authority to condemn, take or destroy the whole or any part of property belonging to any district, public utility or municipality unless and until the director or authority has provided and substituted for the property to be taken, condemned or destroyed new property of like character and at least equal in usefulness with suitable adjustment for any increase or decrease in the costs of operating and maintaining thereof, or unless and until the taking, condemnation or destruction has been permitted by agreement executed between the director or authority and such district, public utility or municipality. Nothing contained herein shall grant the authority or director the authority to condemn, take or use the generating, transmission or distribution facilities or other real or personal property of any type whatsoever of a public utility except for the purpose of procuring rights-of-way across real property of the public utility.
- D. In the event any property is to be acquired hereunder pursuant to a license granted by the United States department of energy, such property may be acquired through the exercise of the right of eminent domain as provided in section 21 of the federal power act, as amended.

#### Historical Note

*Added as § 45-2506 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 127, eff. June 12, 1980. Renumbered as § 45-1706 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

#### **§ 45-1707. Issuance of bonds and notes**

- A. The authority:
  - 1. Shall have the power and is authorized from time to time to issue its negotiable bonds and notes in such principal amount as, in the opinion of the authority, shall be necessary to provide sufficient monies for the construction, reconstruction and improvement of the projects included in the state water and power plan or any portion thereof, or for payments required with respect to any such project, together with suitable facilities and appurtenances, the cost of acquisition of all real property, the expense of maintenance and operation, interest on bonds and notes during construction and for a reasonable period thereafter, establishment of reserves to secure bonds or notes, and all other expenditures of the authority incident to and necessary or convenient to carry out the aforesaid purpose. Notwithstanding any other provision herein, the director shall determine whether bonds or notes shall be offered for public or private sale for the central Arizona project or any part thereof, or any future water projects, the time of the offering, the amount, and the terms and conditions thereof. When such determination has been made, the authority shall proceed to offer the bonds or notes, or cause the same to be offered for sale in accordance with the determination of the director. In the event the authority fails to do so, the director may proceed to issue the bonds or notes for the water features of the state water and power plan. In such event the director shall have all of the rights and powers invested in the authority under the terms of this article to issue such bonds or notes.
  - 2. Shall have power from time to time to issue renewal notes, to issue bonds to pay notes, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then-outstanding and partly for any other purpose. Whether or not the bonds or notes are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, title 47, chapter 3, the bonds or notes shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the negotiable instrument law, subject only to the provisions of the bonds for registration.

- B. The bonds and notes shall be authorized by resolution of the authority, shall bear such date or dates and mature at such time or times, in the case of notes and any renewals thereof within five years after their respective dates and in the case of bonds not exceeding sixty years from their respective dates, as such resolution or resolutions may provide. The bonds and notes shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The bonds and notes shall be sold at public or private sale at such price and on such terms as the authority may determine, provided that bonds or notes to fund or refund other bonds or notes may be exchanged with the holders of such bonds or notes being funded or refunded on such terms as the authority may determine.
- C. Any resolution or resolutions or trust indenture or indentures authorizing or securing any bonds or notes or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:
1. Pledging all or any part of the fees, charges, gifts, grants, rents, revenues or other monies received or to be received by the authority or the director from or in connection with the ownership or operation of the projects included in the state water and power plan and leases or agreements to secure the payment of the bonds or notes or of any issue thereof, including any amounts deposited in the state water and power development fund, subject to such agreements with bondholders or noteholders as may then exist.
  2. The rates of the fees, charges or rents to be established for the projects included in the state water and power plan, and the amounts to be raised in each year thereby and the use and disposition of the fees, charges, gifts, grants, rents, revenues or other monies received or to be received therefrom.
  3. The setting aside of reserves or sinking funds, and the regulation and disposition thereof.
  4. Notwithstanding the provisions of section 30-203, the custody, collection, securing, investment and payment of any monies held pursuant to any such resolution or trust indenture in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes. Such monies and the deposits thereof may be secured in the same manner as monies of the authority, and all banks and trust companies are authorized to give such a security for such deposits.
  5. Limitations on the purpose to which the proceeds of sale of any issue of bonds or notes then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof.
  6. Limitations on the issuance of additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured and the refunding of outstanding or other bonds or notes.
  7. The procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given.
  8. Limitations on the amount of monies to be expended for operating, administrative or other expenses with respect to the projects included in the state water and power plan.
  9. Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this article, and limiting or abrogating the right of the bondholders to appoint a trustee under this article or limiting the rights, duties and powers of such trustee.

10. Any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.
- D. It is the intention in the enactment of this article:
  1. That any pledge made pursuant to this article of all or any part of the fees, charges, gifts, grants, rents, revenues or other monies received or to be received by the authority or the director from or in connection with the ownership or operation of the projects included in the state water and power plan shall be valid and binding from the time when the pledge is made.
  2. That the monies so pledged and thereafter received by the authority or the director shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority or the director irrespective of whether such parties have notice thereof. Neither the resolution nor trust indenture nor any other instrument by which a pledge is created need be recorded.
- E. Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof. In case any one or more of the officers who shall have signed manually or by facsimile or sealed any of the bonds or notes shall cease to be such officer before the bonds or notes so signed and sealed shall have been delivered, such bonds or notes may, nevertheless, be issued as if the persons who signed or sealed such bonds or notes had not ceased to hold such offices. Any bonds or notes may be signed and sealed on behalf of the authority by such persons as at the actual time of the execution of such bonds or notes shall be duly authorized or hold the proper office in the authority, although at the date of such bonds or notes such persons may not have been so authorized or held such office.
- F. The authority shall have power out of any funds available therefor to purchase bonds or notes, which shall thereupon be cancelled, at a price not exceeding either of the following:
  1. If the bonds or notes are then-redeemable, the redemption price then applicable plus accrued interest to the next interest payment date thereon.
  2. If the bonds or notes are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds or notes become subject to redemption plus accrued interest to such date.

#### Historical Note

*Added as § 45-2507 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 128, eff. June 12, 1980; Laws 1982, Ch. 63, § 6, eff. April 9, 1982. Renumbered as § 45-1707 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987. Amended by Laws 1988, Ch. 104, § 32, eff. May 24, 1988; Laws 2013, Ch. 230, § 3.*

#### **§ 45-1708. Contracts**

- A. The director may enter into and carry out contracts with water users for the delivery of Colorado river water through the facilities of the central Arizona project and for the sale and delivery of water from other sources included in the central Arizona project or other water projects, if any, hereafter included in the state water and power plan. The director shall provide in all contracts executed for the delivery of water from the central Arizona project that such contracts shall be subordinate to the satisfaction of all existing contracts between the United States secretary of the interior and users in Arizona heretofore made pursuant to the Boulder canyon project act. It may be required as a condition in any contract under which water is provided from the central Arizona project that the contractor agree to accept main stream water of the Colorado river in exchange for or in replacement of existing supplies from sources other than the main stream. Water which

has been developed, stored or appropriated shall be sold only at wholesale rates which will not be unreasonably discriminatory for the same.

- B. The authority may enter into and carry out contracts for the sale and transmission of power from power projects included in the state water and power plan. Notwithstanding the provisions of title 30, chapter 1, articles 2, 3 and 4, the power from such power projects included in the state water and power plan shall be sold at wholesale only to such power purchasers, located within or without the state, in such manner and upon such terms and conditions, as shall be determined by the authority to be necessary or advisable to effectuate the purposes of this article, except that power and energy of the authority from the Hoover power plant modifications project and Hoover power plant uprating project shall be sold to power purchasers within this state. Any public utility providing electrical service and any district organized to provide electrical service may enter into such contracts with the authority for the sale and transmission of power and energy by which such public utility or district is obligated to make payments in amounts which shall be sufficient to enable the authority to meet all its costs allocable thereto, including interest and principal payments, whether at maturity or upon sinking fund or other mandatory redemption, for its bonds or notes, reasonable reserves for debt service, operation and maintenance expenses and amounts to pay for renewals, replacements and improvements and to meet the requirements of any rate covenant with respect to debt service coverage and any other amounts required for reserves or other purposes, all as shall be provided in the resolution, trust indenture or other security instrument of the authority; except that nontax-exempt public utilities shall be granted an option to purchase the maximum amount of said capacity permitted by federal regulations governing the issuance of tax-free bonds. Such contracts may contain such other terms and conditions as the authority and such public utility or district may determine, including provisions by which the public utility or district is obligated to pay for power irrespective of whether energy is produced or delivered to it or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project.
- C. The surplus revenues derived by the director from the central Arizona project and any other water project and by the authority from any power project shall be paid into the state water and power development fund in the amounts and in the manner and at the times specified in an agreement which shall be entered into by the authority and the director prior to the issuance of any bonds or notes. For this purpose, surplus revenues shall mean the revenues of any such project remaining after payment therefrom of operating and maintenance expenses of such project, debt service with respect to bonds and notes issued for such project, payments for renewals and replacements of such project and improvements thereof, any payments required under any license from the United States department of energy with respect to such project and any other charges or liens with respect to such project payable out of such revenues, including in each case reserves therefor, all to the extent required to be paid or provided for under the terms of any resolution or resolutions or trust indenture or indentures authorizing or securing bonds or notes issued for such project or any license from the United States department of energy with respect to such project. Such agreement may also provide for reasonable limitations on the amounts of the necessary operation and maintenance expense for the projects included in the state water and power plan, and it may contain such other terms, conditions and provisions consistent with the provisions of this article as may be necessary or desirable to effectuate the state water and power plan. It is recognized that such agreement will provide additional security for the bonds and notes of the authority and that the same may be pledged by the authority for such purpose.
- D. The director or authority may enter into any obligation or contract with the United States necessary or required in carrying out or accomplishing any of the purposes or power authorized

or permitted by this article and may conform to such requirements, rules or regulations not otherwise inconsistent with the laws of this state as may be prescribed by the United States in accordance with the acts of Congress applicable thereto now in effect or which may hereafter be adopted and the rules and regulations promulgated thereunder. Contracts or agreements entered into with the United States may contain such terms, conditions, covenants and restrictions for the security of the United States or any subsequent holders of bonds issued to evidence such loans, grants or advances of money. The director or authority may do any and all acts and things considered necessary or advisable by the United States and the director or authority in connection with or additionally to secure any such loans, grants or advances of money or issuance or sale of bonds provided for in the contract or agreement with the United States.

#### **Historical Note**

*Added as § 45-2508 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1974, Ch. 99, § 1, eff. May 7, 1974; Laws 1980, 4th S.S., Ch. 1, § 129, eff. June 12, 1980; Laws 1982, Ch. 63, § 7, eff. April 9, 1982. Renumbered as § 45-1708 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

#### **§ 45-1709. General powers**

The director and the authority, respectively, may:

1. Cooperate with the appropriate agencies or officials of the federal government and of the state and political subdivisions of the state to the end that the purposes of this article shall be realized.
2. Apply to the appropriate agencies or officials of the state and of the federal government, including the United States departments of energy and of the interior, for such licenses, permits, easements and such other approvals or authorizations as may be necessary or advisable and accept the same upon such terms and conditions as may be deemed appropriate.
3. Accept any gifts or any grant or advance of funds or property from the federal government or from the state or any other federal or state public body or political subdivision or any other person and comply with the terms and conditions thereof.
4. Fix and establish the prices, rates, rents and charges for water and power delivered or produced by the projects authorized by this article.
5. Retain and employ engineering, accounting, legal, financial and other private consultants on a contract basis for rendering professional and technical assistance and advice.
6. Promote, foster and encourage the use, development, protection and conservation of water and power.
7. Institute and maintain actions and proceedings necessary to enforce, maintain, protect or preserve all rights, privileges or immunities created or granted by this article or otherwise in pursuance thereof, and in all courts, actions and proceedings the director or authority may sue, appear and defend in person in their respective names.
8. Enter into contracts and agreements and do all things which are necessary or convenient for the effectuation of the state water and power plan.
9. Exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, and as incidental thereto, own, lease, construct, operate, maintain and dispose of real and personal property of every kind and character, acquire real and personal property and any or every interest therein for its lawful purposes by purchase, lease, condemnation or otherwise, and generally do anything and everything necessary or convenient to carry out the purposes of this article. The authority may not at any time pledge the credit of the state nor shall any of its obligations or securities be deemed to be obligations of the state.
10. Be specifically charged with the responsibility to begin immediate studies and continue them in an effort to determine alternate ways and means to finance and fund the construction of the

central Arizona project and bring those studies to the legislature so that this water project may be constructed at the earliest possible time.

**Historical Note**

*Added as § 45-2509 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 130, eff. June 12, 1980. Renumbered as § 45-1709 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1710. Powers of municipalities, districts and other public bodies and officers**

Notwithstanding any provision of law but subject to the exceptions prescribed by this section, all municipalities, districts and other public bodies are authorized and empowered to enter into contracts with the director or the authority as provided in section 45-1708 for the sale or delivery of water or the sale or transmission of power, on such terms and conditions as shall be determined by the parties, and to carry out their obligations under the contracts, except that groundwater replenishment districts established under title 48, chapter 27 are not eligible to contract for the sale or transmission of power under this chapter. Eligible municipalities, districts and other public bodies, their officials and all state agencies and officials may do such acts and make such additional agreements not inconsistent with law as may be necessary or desirable in connection with the construction, operation, maintenance and financing of any project or projects included in the state water and power plan.

**Historical Note**

*Added as § 45-2510 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 131, eff. June 12, 1980. Renumbered as § 45-1710 and amended by Laws 1987, Ch. 2, §§ 13, 38, eff. Feb. 27, 1987; Laws 1991, Ch. 211, § 27.*

**§ 45-1711. State water and power development fund**

The state water and power development fund is established. The resolution or trust indenture of the authority securing the bonds or notes shall fix the amount and the provisions of the application of a bond reserve to be held by the state treasurer in such development fund. The surplus revenues as determined pursuant to section 45-1708 from each project included in the state water and power plan shall be deposited, pursuant to sections 35-146 and 35-147, in the fund in accordance with the agreement between the director and the authority referred to in section 45-1708, together with any other funds which may be made available for the purposes of this article, including funds from the state or federal government. Amounts in such development fund in excess of the bond reserve therein shall be paid by the state treasurer in such manner and at such times as shall be specified in the bond resolution or trust indenture securing such bonds or notes to the trustee appointed by the authority thereunder. The bond reserve in such development fund shall be applied by the state treasurer as provided in such resolution or trust indenture.

**Historical Note**

*Added as § 45-2511 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1974, Ch. 99, § 2, eff. May 7, 1974; Laws 1980, 4th S.S., Ch. 1, § 132, eff. June 12, 1980. Renumbered as § 45-1711 and amended by Laws 1987, Ch. 2, §§ 13, 39, eff. Feb. 27, 1987. Amended by Laws 2000, Ch. 193, § 537.*

**§ 45-1712. Agreement of state**

The state of Arizona does pledge to and agree with the holders of the bonds and notes that the state will not limit or alter the rights hereby vested in the director and the authority to maintain, reconstruct and operate the projects included in the state water and power plan, and to establish and collect such charges, fees and rentals as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation and to fulfill the terms of any agreements made with the holders of the bonds

and notes, or in any way impair the rights and remedies of the bondholders or noteholders, until the bonds and notes, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and noteholders, are fully met and discharged. The authority as agent for the state is hereby authorized to include this pledge and undertaking by the state in its resolutions and indentures securing the bonds and notes.

**Historical Note**

*Added as § 45-2512 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 133, eff. June 12, 1980. Renumbered as § 45-1712 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1713. Exemption from taxation**

The director and the authority shall be regarded as performing a governmental function in undertaking and carrying out the state water and power plan and shall be required to pay no taxes or assessments on any of the property thereof or upon their activities in the operation and maintenance thereof or upon the revenues therefrom. The bonds and notes, their transfer and the income therefrom shall at all times be free from taxation within the state.

**Historical Note**

*Added as § 45-2513 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 134, eff. June 12, 1980. Renumbered as § 45-1713 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1714. Remedies of bondholders and noteholders**

- A. In the event the authority defaults in the payment of principal of or interest on any issue of bonds or notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event the authority shall fail or refuse to comply with the provisions of this article, or shall default in any agreement made with the holders of any issue of bonds or notes, the holders of twenty five percent in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the clerk of Maricopa county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes provided in this article.
- B. Such trustee may, and upon written request of the holders of twenty-five percent in principal amount of such bonds or notes then outstanding shall, in his or its own name:
  1. By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the bondholders or noteholders, including the right to require the authority to collect fees, rentals and charges adequate to carry out any agreements with the holders of such bonds or notes and to perform its duties under this title.
  2. Bring suit upon such bonds or notes.
  3. By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes.
  4. By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes.
  5. Declare all such bonds or notes due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five percent of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.
- C. Such trustee, whether or not the issue of bonds or notes represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any

project or projects included in the state water and power plan or any part of the plan, the fees, rentals, charges or other revenues of which are pledged for the security of the bonds or notes of such issue and such receiver may enter and take possession of such project or projects and, subject to any pledge or agreement with bondholders, shall take possession of all monies and other property derived from or applicable to the construction, operation, maintenance and reconstruction of such project or projects, and proceed with any construction thereon which the director or the authority is under obligation to do and shall operate, maintain and reconstruct such project or projects, and collect and receive all fees, rentals, charges and other revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders or noteholders relating thereto and perform the public duties and carry out the agreements and obligations of the director and the authority under the direction of the court. In any suit, action or proceeding by the trustee the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any fees, rentals and other revenues derived from such project or projects.

- D. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.
- E. The superior court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in Maricopa county.

#### **Historical Note**

*Added as § 45-2514 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 135, eff. June 12, 1980. Renumbered as § 45-1714 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

#### **§ 45-1715. Certification of bonds by attorney general**

The authority may submit to the attorney general of the state of Arizona any bonds to be issued under this article after all proceedings for the authorization of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this article, and such bonds when delivered and paid for will constitute binding and legal obligations of the authority enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of such bonds that it is issued in accordance with the constitution and laws of the state of Arizona.

#### **Historical Note**

*Added as § 45-2515 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Renumbered as § 45-1715 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

#### **§ 45-1716. State not liable on bonds and notes**

Neither the state nor any political subdivision thereof shall be liable on the bonds or notes of the authority and such bonds and notes shall not constitute a debt or liability of the state or of any such political subdivision.

#### **Historical Note**

*Added as § 45-2516 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Renumbered as § 45-1716 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1717. Bonds and notes legal investments**

The bonds and notes are hereby made securities in which all public officers and bodies of the state and all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds and notes are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state and all municipalities and political subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

**Historical Note**

*Added as § 45-2517 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Renumbered as § 45-1717 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1718. Water rights**

Nothing contained in this article shall be construed as affecting or be intended to affect or to in any way interfere with the laws of the state or the United States relating to the control, appropriation, use or distribution of water used in Arizona, or to any contract or vested right acquired therefor, and the powers and duties herein set forth shall be limited and restricted to only that quantity of water which may be available for use in the state of Arizona, after the satisfaction of all existing contracts between the secretary of the interior and users in the state of Arizona for the delivery of water of the main stream of the Colorado river, and shall not extend to any such contracts, any amendments or supplements thereto, or to any federal statute enacted before the effective date of this article pertaining to any federal reclamation project within the state of Arizona constructed and using water of the main stream of the Colorado river before the effective date of this article.

**Historical Note**

*Added as § 45-2518 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Renumbered as § 45-1718 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1719. Reversion of projects to state**

When all bonds and notes issued under the provisions of this article to finance the state water and power plan and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and notes and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the holders of such bonds and notes, all projects then included in the state water and power plan shall thereafter be operated and maintained by the director and the authority, and water and power rates shall be reduced accordingly unless the legislature shall provide that the revenues therefrom shall be deposited in the general fund of the state, in the state water and power development fund or as the legislature may otherwise direct.

**Historical Note**

*Added as § 45-2519 by Laws 1967, Ch. 57, § 1, eff. March 1, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 136, eff. June 12, 1980. Renumbered as § 45-1719 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1720. No jurisdiction of Arizona corporation commission**

The rates, services and practices relating to the generation, transmission, distribution and sale of power or to the distribution and sale of water pursuant to this chapter shall not be subject to regulation by or the jurisdiction of the Arizona corporation commission or any successor agency or department.

**Historical Note**

*Added as § 45-2520 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Renumbered as § 45-1720 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*

**§ 45-1721. Joint ownership of power projects**

Notwithstanding anything to the contrary in this chapter or in title 30, chapter 1, the Arizona power authority may participate in the Montezuma pumped storage power project, the Hoover power plant modifications project or Hoover power plant uprating project as a joint owner with other publicly-owned or privately-owned utilities. In such event, the authority's undivided interest or share of such project shall be deemed to be the power project included in the state water and power plan for the purposes of this chapter, provided that the authority may contract with other joint owners or the United States or any United States agency to act as agent for the acquisition, construction and operation of the entire project and for this purpose the authority shall have all powers with respect thereto necessary to carry out its obligations under such contract, including, without limitation, the powers set forth in section 45-1706.

**Historical Note**

*Added as § 45-2520.01 by Laws 1974, Ch. 99, § 3, eff. May 7, 1974. Amended by Laws 1982, Ch. 63, § 8, eff. April 9, 1982. Renumbered as § 45-1721 and amended by Laws 1987, Ch. 2, §§ 13, 40, eff. Feb. 27, 1987.*

**§ 45-1722. Exclusive law**

The powers conferred by this article shall be in addition to and supplemental to the powers conferred by any other law, general or special. This article shall, without reference to title 30, chapter 1 or chapter 1 or 2 of this title, or to any other law, general or special, be deemed full authority for the construction, acquisition, reconstruction, improvement, operation and maintenance of the projects herein provided for and contracts in connection therewith, and for the authorization, issuance and sale of the bonds and notes pursuant to this chapter and without regard to the procedure required by any other such law. Except as otherwise provided in this article, the provisions of title 30, chapter 1 and chapter 1 or 2 of this title, insofar as they relate to the matters herein contained, are superseded, it being the legislative intent that this article shall constitute the exclusive law on such matters.

**Historical Note**

*Added as § 45-2521 by Laws 1967, Ch. 57, § 1, eff. March 14, 1967. Amended by Laws 1980, 4th S.S., Ch. 1, § 137, eff. June 12, 1980. Renumbered as § 45-1722 by Laws 1987, Ch. 2, § 13, eff. Feb. 27, 1987.*