

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### Power Allocation Issues

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Inquiry on the Impact of Electric Utility Industry Restructuring.

SUMMARY: The Western Area Power Administration (Western) is initiating an inquiry to explore the impact of electric utility industry restructuring on Western's power allocation policies.

DATES: The consultation and comment period will begin on the date of publication of this Federal Register notice and will end [Insert date 45 days after date of publication in the FEDERAL REGISTER]. A public comment forum at which Western will receive oral and written comments will be held on Wednesday, January 6, 1999, beginning at 1 p.m., Mountain Standard Time, at the Four Points Denver Central Hotel, 3535 Quebec Street, Denver, Colorado. To be assured of consideration, written comments must be received by the end of the consultation and comment period.

ADDRESSES: Written comments may be hand-delivered, mailed, emailed, or faxed to Robert C. Fullerton, Project Manager, Corporate Services Office, Western Area Power Administration, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401-0098, telephone (303) 275-2700, fax (303) 275-1290, email: fullerto@wapa.gov. All documentation developed or retained by Western during the course of this public process will be available for inspection and copying at this address. FOR FURTHER INFORMATION CONTACT:

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David Sabo, Customer Service Center Manager, Colorado River Storage Project, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147-0606, telephone (801) 524-6372, email: sabo@wapa.gov.

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(406) 247-7405, email: wegner@wapa.gov.

## SUPPLEMENTARY INFORMATION:

### Authorities

This public process is being conducted pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, et seq.); the Reclamation Act of 1902

(43 U.S.C. 371, et seq.), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

### Background

Western is a Federal power marketing administration, charged with the responsibility of marketing electricity generated by power plants operated by the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission. Created in 1977, Western markets on a wholesale basis and transmits Federal hydroelectric power throughout 1.3 million square miles to more than 600 customers, including rural electric cooperatives, municipal utilities, public utility districts, Federal and State agencies, and irrigation districts. Western's power customers, in turn, provide service to millions of consumers in 15 western States.

Western markets power on a project-specific basis. A marketing plan for each project is developed through a public process, with opportunity for comment on a marketing proposal before publication of the final marketing plan in the Federal Register. Reclamation law governs how Western markets electricity, including the requirement that Western offer power first to non-profit entities such as rural electric cooperatives and municipalities.

In the first decade of Western's existence, marketing plans were relatively inflexible. Unless new generation was available, the amount of power made available for potential new customers was relatively small. Contracts with terms up to 30 years were negotiated and signed. No capability existed under contracts to adjust Western's marketable resources in the event that power plant operational changes were necessary due to environmental considerations.

In recent years, Western added more flexibility to its marketing policies and power sales contracts. On October 20, 1995, Western adopted a final rule for the Energy Planning and Management Program (Program) (60 FR 54151), which established a framework for the project-specific allocation of hydropower. Pursuant to the Program, Western signed resource extension contracts with existing customers for the sale of power from the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects. These 20-year contracts contain withdrawal opportunities at 5 and 10 years to meet the needs of potential new customers and other purposes as determined by Western. Western also reserved the contractual ability to adjust power commitments in response to changes in operations and hydrology. In addition, Western has full flexibility to adjust its power rates under the terms of the contracts. Resource pools of up to 6 percent of the marketable resource were set aside to meet the needs of new customers, including Indian tribes.

While the Program did not immediately impact the marketing of power from the Central Valley Project (CVP), Washoe Project, and Salt Lake City Area Integrated Projects (SLCA/IP), Western anticipated that Program application would be evaluated for these projects in the future. Much work has already been done to advance the completion of the marketing plans for the CVP, Washoe Project, and SLCA/IP, pursuant to the Program's framework.

There is now a further need to consider the impact of electric utility industry restructuring on the way that we allocate power. Western seeks public input on six questions to help in this consideration.

Upon completion of this public process, Western will consult with the Department of Energy (DOE) prior to taking further action to complete pending power marketing plans. While this public process was triggered by marketing proposals for CVP, Washoe Project, and SLCA/IP firm power, Western regards the issues addressed in this public process as relevant to all of our power allocation efforts. However, the conclusions we reach will be applied prospectively, and will not impact existing marketing plans and contracts.

As electric utility industry restructuring progresses over time, Western likely will evaluate the impact of industry change on a periodic basis to assure that our power marketing policy continues to be responsive to public needs.

### Regulatory Procedure Requirements

#### Review Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

### Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

### Environmental Compliance

DOE National Environmental Policy Act (NEPA) regulations categorically exclude marketing plans from NEPA documentation unless they involve new generation, new transmission, or a change in operations. Therefore, Western will not conduct further evaluation under NEPA. Considerable environmental evaluation has already occurred under the Energy Planning and Management Program and during project-specific marketing plan development.

SCOPE OF ISSUES: Public comment is requested on the following questions:

1. Should Western's power allocations system, including the term of firm power contract renewals, be modified to take into account changes in electricity markets that have occurred, and are expected to occur in the future, due to the enactment of California Assembly Bill 1890 and other State retail competition statutes? If so, please explain what modifications would be desirable. If not, please explain why the present system should be preserved.
2. To the extent a utility with an allocation of preference power loses load due to retail competition, should it receive the same allocation as it received previously or should its allocation be reduced proportionately?
3. Should Western allocate power directly to electricity end-users that are preference entities such as publicly-owned schools in States or localities that permit retail access? If so, how much power should be allocated for this purpose? Alternatively, should Western continue to allocate power primarily to its traditional customers such as municipal and cooperative utilities and Federal and State agencies?
4. In a retail choice environment, what additional steps, if any, should Western take to ensure that the full economic benefits of preference power are passed through to end-users served by the distribution utility that receives a power allocation from Western?

5. Should a distribution utility be permitted to transmit the economic benefits of preference power exclusively to industrial and/or commercial end users? Conversely, should a distribution utility be required to pass on the benefits of preference power exclusively to a certain class of customers such as residential or small business?

6. Should a distribution utility be required to offer retail access to its distribution customers as a condition of receiving a preference power allocation in the future?

Dated:

Michael S. HacsKaylo

Administrator