

F *Your Co-op* **lathead Electric**

Community...Integrity...Reliability

2510 U.S. Highway 2 East, Kalispell MT 59901
406-751-4483 or 800-735-8489

121 West 4th Street, Libby, MT 59923
406-293-7122

January 9, 2009

Mr. Robert J. Harris
Regional Manager, Upper Great Plains Region
Western Area Power Administration
2900 4th Avenue North,
Billings, MT 59101-1266.

RE: Flathead Electric Cooperative's Application for an allocation of Federal power for its Cooke City/Silver Gate and Elk Basin area membership from the Pick-Sloan Missouri Basin Program--Eastern Division and comments on the proposed procedures for the Post-2010 Resource Pool.

Dear Mr. Harris:

In November of 1998, Flathead Electric Cooperative, Inc. (Flathead), a rural electric cooperative organized under the laws of Montana in 1937 acquired the distribution assets and service territory of PacifiCorp Montana. Prior to that time, Flathead served primarily the rural areas of the Flathead Valley in Northwest Montana. The acquisition included the Cooke City/Silver Gate and Elk Basin service areas just across the border from Wyoming in south central Montana, east of the Continental Divide and within the Pick-Sloan Missouri Basin Program-Eastern Division (P-SMBP-ED) marketing area of the Western Area Power Administration (Western). After the acquisition, Flathead became an eligible new customer in Western's P-SMBP-ED marketing area and Flathead's application for an allocation of Western power for the Cooke City/Silver Gate and Elk Basin members is respectfully submitted with these comments.

Flathead's comments include two parts:

- 1. Comments on the proposed procedures for allocating the Post-2010 Resource Pool.**
- 2. Comments on issues specific to Flathead's application for an allocation for our Cooke City/Silver Gate and Elk Basin area members.**

Western has communicated that all comments received prior to January 13, 2009 on the process would be weighed equally with other comments received during the public process. Since applications are due prior to the process being finalized, Flathead is submitting both its application (completed based on available information of the proposed procedures and previous allocation proceedings) and comments on finalizing the procedures that Western will use to evaluate the application at the same time.

1. Comments on the proposed procedures for allocating the Post-2010 Resource Pool.

A. Consistency with Prior Marketing Initiatives and the Energy Planning and Management Program (EPAMP) Rules and Regulations.

Many commentators from throughout the P-SMBP-ED marketing area submitted written comments requesting that Western do the following:

Western received comments stating that any commitment of the Post-2010 Resource Pool should be in amounts sufficient to be meaningful subject to existing laws, regulations, and guidelines, as well as contract terms and conditions, set forth in previous marketing initiatives under the Program. Western agrees that any allocation made from the Post-2010 Resource Pool must comply with existing laws, regulations, and guidelines, as well as contract terms and conditions applied to allocations made in previous marketing initiatives under the Program. The Program limits allocations to new preference entities, therefore Western agrees that preference entities that had a prior allocation of Federal power are not eligible to receive a new allocation in the Post-2010 Resource Pool. (61110 Federal Register / Vol. 73, No. 200 / Wednesday, October 15, 2008 / Notices)

Flathead agrees that Western should follow procedures set forth in previous marketing initiatives as long as Western is consistent with the intent of the original EPAMP. Western in its federal notice stated that it also agrees. However, there are inconsistencies regarding whether Western is actually following the same procedures as set forth in the prior marketing initiatives and a demonstrated use of discretion in applying the eligibility criteria.

The Original Power Marketing Rules and Regulations October 1995 notice reads:

New customer eligibility is addressed in section 905.35. Western's policy on allocation of power to new customers in the future is as follows. In order to increase widespread distribution of hydropower resources, Western will allocate a fair share of power to eligible new preference entities who do not have a contract with Western or are not a member of parent entity that has a contract with Western. (54173 Federal Register / Vol. 60, No. 203 / Friday, October 20, 1995 / Rules and Regulations)

The passage is important to Flathead from a procedural standpoint. It clearly indicates that in order to be excluded from an allocation an entity would have had to already be purchasing federal power from Western specifically. Further in the complete EPAMP section on "New Customer Eligibility" below, the criteria is limited to being a preference customer, as defined in Reclamation law, being included within the established marketing

area of the project, and having Utility Status (i.e. the entity has responsibility for load growth, has a distribution system, and is ready, willing, and able to purchase power from Western).

§905.35 New Customer Eligibility. (a) Allocations to new customers from the project-specific resource pools established under §905.32 shall be determined through separate public processes in each project's marketing area. New customers receiving an allocation must execute a long-term firm power contract to receive the allocated power and are required to comply with the IRP requirements in this part. Contracts with new customers shall expire on the same date as firm power contracts with all other customers of a project. (b) To be eligible for an allocation, a potential new customer must be a preference entity, as defined in Reclamation law, within the currently established marketing area for a project. (c) Entities that desire to purchase power from Western for resale to consumers, including municipalities, cooperatives, public utility districts and public power districts, must have utility status. Native American tribes are not subject to this requirement. Utility status means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis for resale to retail consumers. To be eligible to apply for power available from a project's initial resource pool, those entities that desire to purchase Western power for resale to consumers must have attained utility status by December 31, 1996, for the Pick-Sloan Missouri Basin Program-Eastern Division, and by September 30, 2000, for the Loveland Area Projects. To be eligible to apply for power from subsequent resource pool increments, these entities must have attained utility status no later than 3 years prior to availability of the incremental addition to the resource pools. Deadlines for attaining utility for other projects will be established at a later date. (54179 Federal Register / Vol. 60, No. 203 / Friday, October 20, 1995 / Rules and Regulations)

Clearly, the original rule-making's intent was to limit allocation to "new" preference entities within the P-SMBP-ED marketing area. The scope of eligibility criteria is limited to Western's jurisdiction.

Final 2000 Allocation Procedures included the following:

II. General Eligibility Criteria. Western will apply the following general eligibility criteria to applicants seeking an allocation of firm power under the Post 2000 Resource Pool Allocation Procedures. A. All qualified applicants must be preference entities in accordance with section 9c of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented. B. All qualified applicants must be located within the currently established P-SMBP-ED marketing area. C. All qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P-SMBP-ED firm power allocation. Qualified Native American applicants are not subject to this requirement. D. Qualified utility and nonutility applicants must be able to use the firm power directly or be able to sell it directly to retail customers. E. Qualified utility applicants... (41146 Federal Register / Vol. 61, No. 153 / Wednesday, August 7, 1996 / Notices)

The Final 2000 Allocation procedures added and modified the exclusions beyond the original EPAMP to exclude entities that “*currently receiving benefits, directly or indirectly, from a current P–SMBP–ED firm power allocation.*” Again, this exclusion is specific to power from Western.

Final 2005 Allocation Procedures included the following:

II. General Eligibility Criteria. Western will apply the following general eligibility criteria to applicants seeking an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures. A. All qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented. B. All qualified applicants must be located within the currently established P–SMBP–ED marketing area. C. All qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P–SMBP–ED allocation or other firm Federal power commitment. Qualified Native American applicants, who did not receive an allocation from the Post-2000 Resource Pool, are not subject to this requirement. D. Qualified utility and non-utility applicants must be able to use the firm... (67416 Federal Register / Vol. 68, No. 231 / Tuesday, December 2, 2003 / Notices)

The Final 2005 Allocation procedures added and modified the exclusions beyond the original EPAMP to exclude entities that “*currently receiving benefits, directly or indirectly, from a current P–SMBP–ED allocation or other firm Federal power commitment...*” Here, this exclusion is broadened significantly.

The most recent published eligibility criteria from the October 2008 Notice read:

II. General Eligibility Criteria. Western proposes to apply the following General Eligibility Criteria to applicants seeking an allocation of firm power under the proposed Post-2010 Resource Pool Allocation Procedures. A. Qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented. B. Qualified applicants must be located within the currently established P–SMBP–ED marketing area. C. Qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P–SMBP–ED firm power allocation or other firm Federal power commitment. Qualified Native American applicants who did not receive an allocation from the Post-2000 or Post-2005 Resource Pools are not subject to this requirement. D. Qualified utility and non-utility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.... (Federal Register / Vol. 73, No. 200 / Wednesday, October 15, 2008 / Notices)

The proposed Post-2010 allocation procedures continue the exclusions beyond the original EPAMP to exclude entities that “*currently receiving benefits, directly or indirectly, from a current P–SMBP–ED firm power allocation or other firm Federal power commitment.*” Here, this exclusion broadened significantly in the previous process is *proposed* to be continued.

Of concern to Flathead is that Western has continued to broaden this exclusion over time and appears not to have maintained consistency with the original EPAMP. Flathead does not believe the broadened exclusion is consistent with the original goal of the program which was to “*Increase widespread distribution of federal hydropower resources*” to otherwise eligible new preference entities. In addition, this exclusion does not recognize that members of a cooperative may be located in the P-SMBP-ED marketing area while other *non-contiguous* members of the same cooperative entity may be located outside the P-SMBP-ED marketing area. Flathead was not able to participate in the 2005 process when this exclusion was broadened and urges careful consideration of its application if it is continued.

Flathead does note that in the Post-2000 Resource Pool, Western was able to deal with a unique situation involving members of a cooperative that requested an allocation and were granted an allocation that did have direct benefits of Federal power from a power agency other than Western. In this case, rather than Western providing and allocation directly to the cooperative, Western allocated directly to a member of the cooperative. Flathead believes the reason for the allocation was that the broadened exclusion is not consistent with the original intent of the EPAMP and is counter to the goal of the program to “*Increase widespread distribution of federal hydropower resources*” to preference entities within the P-SMBP-ED marketing area.

Flathead urges Western to consistently exercise this kind of discretion based on the particular circumstances of each applicant. Flathead also urges Western to maintain consistency with the original intent of the EPAMP.

B. Allocation to Cooperatives.

Rural Electric Cooperatives are preference entities eligible for Federal power under Reclamation Law.

In previous marketing initiatives, no cooperative entities have been given an allocation under any of these initiatives. To Western’s credit, it appears that Western has provided limited allocations directly to the “member(s)” of cooperatives such as members of various tribes or municipalities who are also members of rural electric cooperatives. However, the list below of entities receiving an allocation does not include a single cooperative. This could be coincidental, but hardly seems consistent with the goal of the program to “*Increase widespread distribution of federal hydropower resources*” to preference entities within the P-SMBP-ED marketing area.

Post-2000 Allocations:

Utility and Nonutility Customers	Post-2000			
	1994 Summer Season Load	1994-95 Winter Season Load	Power Allocation Summer	Power Allocation Winter
	kilowatts	kilowatts	kilowatts	kilowatts
Village of Emerson, NE	1,454	1,146	361	412
City of Estherville, IA	11,040	7,820	2,743	2,814
City of Randolph, NE	1,861	1,386	462	499
City of Pocahontas, IA	3,980	3,144	989	1,131
City of Madison, NE	10,034	8,759	2,493	3,152
City of South Sioux City, NE	1/ 24,977	21,846	5,000	5,000
City of Sergeant Bluff, IA	6,076	3,888	1,510	1,399
City of Wakefield, NE	4,717	3,667	1,172	1,320
City of Fairmont, MN	2,330	2,464	579	887
City of Marathon, IA	520	764	129	275
City of Stanton, ND	656	850	163	306

1/ 5,000 kW is the maximum allocation allowed under the Final Procedures.

New Native American Customers	Estimated Demand	Average Current Western Service		Post-2000 Power Allocation	
		Summer	Winter	Summer	Winter
		kilowatts		kilowatts	kilowatts
Blackfeet Nation	18,600	32%	27%	5,507	5,271
Cheyenne River Sioux	13,500	33%	29%	3,862	3,556

Chippewa Cree-Rocky Boy	5,000	55%	44%	330	567
Crow Creek	4,100	50%	47%	476	342
Crow	12,500	55%	44%	826	1,417
Devils Lake Sioux	7,700	22%	14%	3,050	3,183
Flandreau Santee Sioux	2,355	55%	56%	156	0
Fort Belknap Indian Community	6,200	28%	22%	2,084	2,067
Fort Peck Tribes	15,300	34%	31%	4,224	3,724
Lower Brule Sioux	3,100	33%	29%	887	817
Lower Sioux	3,750	0%	0%	2,310	2,075
Northern Cheyenne	9,400	36%	37%	2,407	1,724
Oglala Sioux-Pine Ridge	29,600	28%	24%	9,948	9,277
Omaha Tribe of Nebraska	5,100	15%	14%	2,377	2,108
Ponca Tribe of Nebraska	2,100	8%	6%	1,126	1,036
Rosebud Sioux	21,300	33%	29%	6,093	5,610
Santee Sioux Tribe of Nebraska	1,100	10%	8%	568	521
Sisseton-Wahpeton Sioux	7,500	40%	38%	1,620	1,300
Standing Rock Sioux	12,900	30%	29%	4,077	3,398
Three Affiliated Tribes	8,000	30%	25%	2,529	2,427
Turtle Mountain Chippewa	18,000	35%	18%	4,789	6,721
Upper Sioux	1,250	42%	39%	245	204
White Earth Indian Reservation	3,500	6%	7%	1,946	1,692
Winnebago Tribe of Nebraska	3,100	10%	8%	1,600	1,468
Yankton Sioux	5,300	25%	24%	1,940	1,661

(11180 Federal Register / Vol. 62, No. 47 / Tuesday, March 11, 1997 / Notices)

Post-2005 Allocations:

New customers	2002 summer season load kilowatts	2002 winter season load kilowatts	Post-2005 resource pool power allocations	
			Summer kilowatts	Winter kilowatts
City of Auburn, IA	515	409	128	147
City of Pocahontas, IA	4,236	2,980	1,052	1,072
Montana State University—Bozeman, MT	8,506	8,536	2,113	3,072

(60858 Federal Register / Vol. 69, No. 197 / Wednesday, October 13, 2004 / Notices)

Post-2010 Allocations:

[?]

Flathead is obviously not aware of all the internal decision-making that occurred in previous marketing initiatives or whether many cooperatives actually applied for an allocation. However, on its face, the process appears to have taken at least some power from electric cooperatives with pre-EPAMP allocations and given allocations to municipalities and tribal entities. The allocations to tribal entities likely were integral to the first round of the program, but Flathead urges Western to consider giving allocations to cooperatives a higher priority in the final initiative.

2. Comments on issues specific to Flathead's application for an allocation for our Cooke City/Silver Gate and Elk Basin members.

A. FLATHEAD MEETS THE EPAMP GENERAL ELIGIBILITY CRITERIA as an Eligible New Preference Customer in the P-SMBP-ED marketing area.

The EPAMP Criteria for consideration for an allocation as detailed above. Flathead is not currently a customer of P-SMBP-ED, nor has Flathead previously been a customer of P-SMBP-ED.

- A. Flathead is a rural electric cooperative and is a preference entity under Reclamation Law.
- B. Flathead's Cooke City/Silver Gate and Elk Basin membership is located within the P-SMBP-ED marketing area.
- C. Flathead's Cooke City/Silver Gate and Elk Basin membership is not currently receiving benefits, directly or indirectly from a current Western or P-SMBP-ED firm power allocation.
- D. Flathead is able to use the requested allocation of power directly for the Cooke City/Silver Gate and Elk Basin membership.
- E. Flathead obtained Utility Status in the P-SMBP-ED as of November 1998 (has been a Cooperative in Montana since 1937) and continues to be an entity responsible for load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis.

Flathead understands that Western may have some concern regarding Flathead's current Federal power purchases from the Bonneville Power Administration (BPA) to serve Flathead Valley area loads and whether the Cooke City/Silver Gate and Elk Basin membership receives benefits from this Federal power.

Although Flathead is the entity that is applying for an allocation, Flathead is only applying for an allocation specific to the Cooke City/Silver Gate and Elk Basin loads and only in those amounts for use of those members. These members have separate rates (Western can view these separate Tariffs at www.flatheadelectric.com) that are significantly higher than the membership of the Flathead Valley area which benefits directly from Federal power delivered to the Flathead Valley area system.

For example a Small General Service member in Cooke City pays a Basic Charge of \$16.00 and an energy charge of 8.3¢ whereas a Small General Service member in Kalispell pays a basic charge of \$16.00 and an energy charge of 5.7¢. This is a result of the cost-based rates for Flathead Valley area members being based on federal power purchases from BPA and Cooke City/Silver Gate and Elk Basin area members' rates being based on higher cost non-federal purchases. Hence, the Cooke City/Silver Gate and Elk Basin members do not receive the benefits from a firm Federal power commitment.

Furthermore, although the exclusion language is not consistent over time, Western often refers to an “allocation” of Federal power. This is clearly meant to refer to an “allocation” from Western as other Federal Power Marketing agencies do not all “allocate” the Federal Base System, including BPA. Flathead does not have an “allocation”; BPA has not and has no plans to “allocate” its system, even in its proposed Tiered Rate Methodology. In BPA’s Post-2011 marketing program (The Regional Dialogue), BPA has chosen not to allocate its system. Instead it will assign High Water Mark amounts of power to preference entities. However, it will not allow pooling or delivery of Preference power in excess of net requirements should a preference entities load drop. The result is that under no circumstances will Flathead be able to use Federal Power from BPA to serve Cook City/Silver Gate and Elk Basin loads.

Western has addressed the issue of Federal power from BPA in previous marketing initiatives. For example, Western mentioned in its Final Allocation determination of the Post-2000 Pool,

The Blackfeet Nation is served by Glacier Electric Cooperative, which is a total requirements customer of Bonneville Power Administration, therefore the Blackfeet Nation does not receive Western service, but does receive the benefit of Federal hydropower. (11180 Federal Register / Vol. 62, No. 47 / Tuesday, March 11, 1997 / Notices)

Despite this benefit, the Blackfeet Nation (a member of Glacier Electric Cooperative) was provided 18 MW of power from the pool. Flathead appreciates that the allocation to New Native customers was a proper use of discretion and followed the primary intent of the EPAMP. However, this is in spite of the fact that the members of Glacier Electric Cooperative are in a *contiguous* service territory that is *geographically eligible* for Preference power from BPA which is not the case for Flathead’s Cooke City/Silver Gate and Elk Basin membership.

Flathead’s Cooke City/Silver Gate and Elk Basin members currently don’t and cannot receive benefits of the BPA power. And, since these members were previously customers of PacifiCorp Montana before becoming member-owners of Flathead, and Flathead was not a customer of the P-SMBP-ED; Flathead is truly an eligible “new” customer and did not have a prior allocation that was relinquished.

B. Western is the ONLY Federal agency that Flathead’s Cooke City and Elk Basin membership can obtain Federal power.

These members can only be served by Federal power from Western.

Flathead cannot contractually or physically transmit any part of current Federal power purchases from BPA to the Cooke City/Silver Gate and Elk Basin membership. Under the Northwest Power Act, these members would only have been eligible for Federal Power from Bonneville through Flathead if their service area was contiguous with the Flathead Valley area and if Flathead had been serving them prior to December 1, 1980. BPA has limited authority to sell Preference power in the following geographic area:

839a(14)(A). the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and 839a(14)(B). any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on December 5, 1980, which has a distribution system from which it serves both within and without such region. [Northwest Power Act, §3(14)(B), 94 Stat. 2700.]

Since the Cooke City/Silver Gate and Elk Basin areas are *not contiguous* with Flathead Valley area properties and these members did not join the cooperative until November 1998. Hence, the Cooke City/Silver Gate and Elk Basin is not geographically or contractually eligible to receive Federal power from BPA.

These members are geographically eligible to receive a Federal power allocation from Western.

The marketing area of the P-SMBP—ED is Montana east of the Continental Divide, all of North Dakota and South Dakota, Nebraska east of the 101 ° meridian, Iowa west of the 94 1/2 ° meridian, and Minnesota west of a line on the 94 1/2 ° meridian from the southern boundary of the state to the 46° parallel and then northwesterly to the northern boundary of the state at the 96 1/2 ° meridian. (67416 Federal Register / Vol. 68, No. 231 / Tuesday, December 2, 2003 / Notices)

The Cooke City/Silver Gate and Elk Basin service areas are in Montana and east of the Continental Divide. In addition, although current non-federal power purchases delivered to these members require transmission on Western-Loveland and the PacifiCorp Wyoming transmission systems, these members are not geographically eligible for an allocation from Western-Loveland.

C. An allocation to Flathead would be FAIR AND JUST in furtherance of the goal of the EPAMP

An allocation to Flathead would be the first, to our knowledge, direct allocation in the EPAMP process to a rural electric cooperative. Rural electric cooperatives are clearly an eligible preference entity and clearly part of the intent of the program.

The Cooke City/Silver Gate and Elk Basin members of Flathead are in a unique position. Their membership in a non-contiguous cross-jurisdictional Preference entity should not preclude them from a reasonable and just allocation of Federal power in the district they are actually located. The Cooke City/Silver Gate and Elk Basin members were part of PacifiCorp prior to PacifiCorp desiring to exit Montana. These members have been fortunate to become members of a member-owned and cost-based preference entity. However, because these members are not able to be served with the same low cost power that Flathead's Flathead Valley area members are served with, they are subject to

separate rates and higher costs. These members are far removed from the majority of Flathead's member service, but they are in Montana, are part of Flathead's membership and are in the P-SMBP-ED marketing area and are deserving of an allocation from Western of low-cost Federal power.

Flathead does not believe it would be fair and equitable that these members would be punished for being "out there" and between and across jurisdictions. Not giving them an allocation would be counter to the whole purpose of this marketing initiative to "*Increase widespread distribution of federal hydropower resources*" and also would be counter to the longstanding tradition of rural electrification.

D. The allocation of LESS THAN 2MW to the Cooke City/Silver Gate and Elk Basin loads would have minimal impact on current Western customers, but would be meaningful to the members in Cooke City/Silver Gate and Elk Basin.

Some commentators on this process and previous process have expressed concern about their current allocations being reduced by Western's allocation to new eligible customers. In the case of Flathead's application, the total load to the Cooke City/Silver Gate and Elk Basin membership is less than 2 MW peak and average load is typically less than 1 aMW as it was in calendar year 2007. This is less power than was allocated to MSU-Bozeman in the 2005 final allocations and would have a minimal impact on current Western customers that already have an allocation. However, following the theme of the proposed procedures, "*any commitment of the Post-2010 Resource Pool should be in amounts sufficient to be meaningful.*" An allocation would be *meaningful* to the Cooke City/Silver Gate and Elk Basin membership of Flathead, in that the benefits of the Western hydro system would reduce power costs and thus member bills.

Summary

Flathead feels that it would be good public policy and proper administration of Western's mandate to adopt final procedures that fairly enable Western to provide a just allocation to Flathead's Cooke City/Silver Gate and Elk Basin membership. Flathead believes that it is entirely within Western's authority and it is consistent with the rules and regulations set forth in the EPAMP to provide an allocation to Flathead of Preference power to serve the Cooke City/Silver Gate and Elk Basin loads. These are legitimate members of a Preference entity and shouldn't be disclaimed by both Western and BPA.

Please contact us if you have any questions or need any additional information or clarification. We appreciate your careful consideration.

Thank you,



John M. Goroski
Director of Regulatory Affairs
Flathead Electric Cooperative, Inc.