

DEPARTMENT OF ENERGY
AMENDMENT NO. 3
TO DELEGATION ORDER NO. 0204-108
DELEGATION ORDER FOR APPROVAL OF
POWER MARKETING ADMINISTRATION
POWER AND TRANSMISSION RATES

Pursuant to the authority vested in me as Secretary of Energy and by sections 203(a), 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act (Pub. L. 95-91), there is hereby delegated to the Deputy Secretary of Energy all authority which was previously delegated to the Assistant Secretary for Conservation and Renewable Energy in Department of Energy Delegation Order No. 0204-108, as published in the Federal Register, December 14, 1983 (48 FR 55664), as amended on May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN-10-89 dated August 3, 1989, and subsequent revisions, and as amended on August 23, 1991 (56 FR 41835). Department of Energy Delegation Order No. 0204-108 is hereby amended to reflect such revision to that delegation of authority and to reflect related changes so as to read and provide in its amended form as follows:

1. There is hereby delegated to the respective Administrators of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations on a nonexclusive basis the authority to develop power and transmission rates for their respective power marketing administrations (PMA). A rate developed by an Administrator shall not become effective on a final basis unless and until such rate is confirmed and approved by the Federal Energy Regulatory Commission (Commission) acting under section 3 below. In submitting a rate the Administrator shall certify that the rate is consistent with applicable law and that it is the lowest possible rate to customers consistent with sound business principles.
2. There is hereby delegated to the Deputy Secretary of Energy on a nonexclusive basis the authority to confirm, approve, and place into effect on an interim basis power and transmission rates for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations for such periods as the Deputy Secretary may provide.
3. There is hereby delegated to the Commission on an exclusive basis the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove, rates developed by each Administrator under section 1. The Commission review will be limited to: (a) Whether the rates are the lowest possible to customers consistent with sound business principles, (b) whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and (c) the assumptions and projections used in developing the rate components that are subject to Commission review. The Commission may require the Administrator to provide any information relevant to the Commission's confirmation and review function.

The Commission shall not review policy judgments and interpretations of laws and regulations made by the non-PMA power generating agencies (i.e., the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission). The Commission shall reject decisions of the PMA Administrators only if the Commission finds them to be arbitrary, capricious, or in violation of the law. Provided, That the Commission may reject decisions that are not in accord with (a) the standards set forth in RA6120.2, or any revisions or modifications to such standards, adopted pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.) and the Department of Energy Organization Act (42 U.S.C. 7191), and (b) the standards set forth in any interagency agreement between the Administrator and the power generating agency that is applicable. Should the Commission reject such decisions, the PMA Administrator will have 30 days in which to seek rehearing.

4. In the event a rate developed by an Administrator is disapproved by the Commission, the Administrator shall, within 120 days or such additional time periods as the Commission may provide, submit to the Commission a substitute rate for action by the Commission under section 3 hereof.

A rate confirmed, approved, and placed in effect by the Deputy Secretary on an interim basis that is disapproved by the Commission shall remain in effect, as provided by the Deputy Secretary, until a substitute rate is confirmed and approved on a final basis by the Commission, unless the original interim rate has been superseded by a subsequent rate placed in effect on an interim basis. Provided, That if the Administrator does not file a substitute rate within 120 days or such greater time as the Commission may provide, and if the rate has been disapproved because the Commission determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the Commission, and revenues collected in excess of those generated by such rate during the interim period will be refunded with interest to the extent determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is lower than the rate in effect on an interim basis, any overpayment shall be refunded with interest as determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is higher than the rate in effect on an interim basis, such rate, if no subsequent and higher rate has been put into effect by the Deputy Secretary, shall become effective on a subsequent date set by the Commission. If at any time it is determined by the Commission that the administrative cost of a refund would exceed the amount to be refunded, no refund will be required.

5. Notwithstanding any other provisions of this delegation order, there is hereby delegated to each Administrator the authority to develop and place into effect on a final basis rates for short-term sales of capacity, energy, or transmission service. Short-term sales are those sales that last no longer than one year.
6. For the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration:

- A. All rates placed into effect on a final basis pursuant to any authority delegated prior to this order shall remain in full force and effect.
 - B. Rates filed on or before the effective date of this order, and for which the Commission has issued any substantive orders, will be governed by the terms of Amendment No. 2 to Delegation Order No. 0204-108 until placed in effect by the Commission on a final basis.
 - C. Rates filed under previous delegation orders for which the Commission has not issued any substantive orders on or before the effective date of this order will be governed by the terms of this delegation order.
7. In exercising the authority delegated by this order, the delegates shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or the Secretary's delegates.
8. Nothing in this order shall preclude the Secretary from exercising any of the authority delegated to the Deputy Secretary and the Administrators whenever in the Secretary's judgment the exercise of such authority is necessary or appropriate to administer the functions vested in the Secretary.
9. For the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration:
- A. All rates placed into effect on a final basis pursuant to any authority delegated pursuant to Delegation Order No. 0204-108 as such order existed prior to the effective date of Amendment No. 3 thereto shall remain in full force and effect.
 - B. All rates filed before the effective date of Amendment No. 3 to Delegation Order No. 0204-108 which rates, as of the effective date of said Amendment No. 3, are in effect but which have not been placed in effect on a final basis, shall continue in effect subject to the provisions of this amended Delegation Order. In no event shall any rates which have been filed on or before the effective date of Amendment No. 3 to Delegation Order No. 0204-108 be invalidated solely by virtue of the change in the delegation of authority from the Assistant Secretary for Conservation and Renewable Energy to the Deputy Secretary, provided for in said Amendment. All actions heretofore taken by the Assistant Secretary for Conservation and Renewable Energy pursuant to Delegation Order No. 0204-108 with respect to such rates are hereby confirmed, and such rates shall not be subject to challenge on the ground that any such actions were taken by the Assistant Secretary for Conservation and Renewable Energy rather than by the Deputy Secretary.
 - C. All rates filed on and after the effective date of Amendment No. 3 to Delegation Order No. 0204-108 shall be governed by that order as thus amended.

10. This amended order becomes effective upon publication in the Federal Register.

Issued in Washington, DC November 4, 1993.

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Hazel R. O'Leary
Secretary of Energy