

Rules and Regulations

Federal Register

Vol. 73, No. 120

Friday, June 20, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 905

RIN 1901-AB24

Energy Planning and Management Program; Integrated Resource Planning Rules

AGENCY: Western Area Power Administration, DOE.

ACTION: Final rule; notice of decision.

SUMMARY: The Western Area Power Administration (Western) is publishing this final rule to adopt revisions to current regulations that require customers to prepare integrated resource plans (IRP). These revisions are the result of a periodic review of IRP regulations. On August 21, 2007, Western published a **Federal Register** notice proposing three changes to its integrated resource planning rules. The first change proposed to eliminate the requirement that a member-based association's (MBA) members unanimously approve the MBA's IRP. Approval would only be required by the MBA's governing body. The second change proposed language to encourage customers to prepare regional IRPs even if a customer is not a member of an MBA. The third change proposed to make customer IRPs more readily available to the public by requiring customers to post their IRPs on a publicly available Web site.

DATES: *Effective Date:* These regulations will become effective July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Horstman, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228-8213, phone 720-962-7419, fax 720-962-7427, and e-mail Horstman@wapa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

II. Discussion of Comments

- A. Overview
- B. Approval of an MBA IRP
- C. Regional IRPs
- D. Public Availability of IRPs
- E. Other Comments

III. Procedural Requirements

- A. Determination Under Executive Order 12866
- B. Review Under the Regulatory Flexibility Act
- C. Review Under the Paperwork Reduction Act
- D. Review Under the National Environmental Policy Act
- E. Review Under Executive Order 13132
- F. Review Under the Unfunded Mandates Reform Act of 1995
- G. Review Under Executive Order 12988
- H. Review Under the Treasury and General Government Appropriations Act of 1999
- I. Review Under Executive Order 13084
- J. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
- K. Approval of the Office of the Secretary

I. Introduction and Background

Section 114 of the Energy Policy Act of 1992 (EPAct), Public Law 102-486, requires integrated resource planning by Western's customers. Western implemented EPAct through the Energy Planning and Management Program (EPAMP) in October 1995. EPAMP was published in the Code of Federal Regulations at 10 CFR part 905.

Western may periodically initiate a public process pursuant to 10 CFR 905.24 to review the IRP regulations to determine whether they should be revised to reflect changes in technology, needs, or other developments.

A public process to review the IRP regulations was initiated due to recent changes in the electric utility industry. These changes include an increase in the number of competitive resource options utilities must consider, and the diversity and uniqueness of Western's customer needs.

Western published a notice of proposed rulemaking in the **Federal Register** on 72 FR 46570 August 21, 2007. A formal public information and comment forum was held in Denver, Colorado on September 6, 2007. The public comment period extended through November 19, 2007. Ten Western customers submitted written comments. All comments were posted on Western's Web site for public viewing. All comments were reviewed and, where appropriate, incorporated into this final rule. The following

section entitled "Discussion of Comments" provides Western's responses to all comments. Comments and related responses were consolidated where possible.

II. Discussion of Comments

A. Overview

Representatives from the Platte River Power Authority and the Colorado Association of Municipal Utilities provided comments for the record at the public forum. Written comments were received from the following nine entities by the comment deadline of November 19, 2007: Colorado River Energy Distributors Association (CREDA), Delta-Montrose Electric Association (Delta-Montrose), Irrigation & Electrical Districts Association of Arizona (IEDA), Kansas Electric Power Cooperative (KEPCo), Platte River Power Authority (Platte River), Salt River Project (SRP), Tri-State Generation and Transmission Association (Tri-State), Utah Associated Municipal Power Systems (UAMPS), and the Utah Municipal Power Agency (UMPA). In addition, a comment letter was received from the Arizona Municipal Power Users' Association (AMPUA) after the end of the comment period. Western considered all the written comments referenced above.

All of these comment letters, and a transcript of the public meeting, can be found at: <http://www.wapa.gov/es/irp/irpchanges.htm>.

B. Approval of an MBA IRP

Western proposed to eliminate the requirement that members of an MBA unanimously approve the MBA's IRP given the large number of members of some MBAs and the diversity of the members' interests. Instead, Western proposed to require approval only by the governing body of an MBA, which serves the interests of each MBA member through representation on the MBA board.

Comment: The majority of the comments received supported Western's proposed change to the regulation. Platte River's comment letter in particular describes why additional approval by each member is inconsistent with Platte River's fundamental decision-making process. Tri-State commented that approval of an IRP by each MBA member was a

duplicative process that was unnecessary and unwarranted.

Delta-Montrose opposed the proposed change, claiming that it would lose its voice in the IRP development and approval process if individual MBA members were denied the opportunity to approve the IRP. Delta-Montrose contends that the proposed change would result in the "averaging" of its MBA's governors and deny it the opportunity to promote issues that it believes are important.

Response: Western appreciates the support of Platte River, Tri-State, and others and understands the concerns raised by Delta-Montrose. Western notes that anyone, including an MBA member, can voice its opinion on an MBA's IRP through the MBA's public participation process, which is still required under Western's regulations. Moreover, an MBA member's representative on the MBA's Board of Directors can actively participate in board discussions of the IRP. 10 CFR part 905.12(b)(2) states that an IRP submitted by an MBA must specify the participation level of individual members and also allows any member of an MBA to submit an individual IRP instead of being included in an MBA IRP. Accordingly, Western will adopt the proposed change to its regulation.

C. Regional IRPs

Western proposed to add a paragraph to its IRP regulations to encourage cooperation among customers in the preparation of regional IRPs, with advance approval by Western, even if the participating customers are not members of an MBA. Western stated in the proposed rule that collaboration on transmission projects through a regional planning approach is particularly appropriate.

Comment: Comments generally supported regional IRPs as long as this compliance approach is optional and not mandatory. CREDA asked that any proposed language on this issue be very explicit, with Western's customers being given an opportunity to review and comment on the language before it is adopted. Tri-State supported this initiative and asked Western to clarify that this proposal is focused on collaborative regional transmission planning.

Response: Western appreciates the commentators' general support of this proposal. Western will adopt the proposed change by modifying existing cooperative IRP regulations to clarify that regional IRPs, though voluntary, are encouraged and that participants need not be members of an MBA or a Western customer. Rather than adding explicit

language which could impede joint planning in ways that cannot be readily foreseen or predicted, Western will draft relatively broad language that will permit non-MBA members, with Western's advance approval, to work cooperatively in preparing regional IRPs.

D. Public Availability of IRPs

Consistent with the requirement for full public participation in the preparation, development, revision or amendment of an IRP, Western proposed to make current customer IRPs more readily available to the public such as by posting IRPs on Western's Web site. Western proposed to continue to allow customers to request confidential treatment of sensitive information covered by an exemption in the Freedom of Information Act (FOIA) before the IRP is posted. If Western agrees, the sensitive information would be redacted and not released when the IRP is posted.

Comment: Customers expressed concern about third party access to IRPs without the knowledge or consent of the submitting entity. AMPUA and IEDA asked Western to provide assurance that any changes to EPAMP rules were consistent with customer obligations under FERC Critical Energy Infrastructure Information rules and Homeland Security and Rural Utilities Service regulations. Several commenters insisted that Western's regulations provide due process by offering IRP submitters an opportunity to be heard and the right to appeal a decision by Western to release information that the submitter believes is proprietary.

CREDA pointed out that this proposal is not mandated by EPAct 1992. CREDA further commented that the existing EPAMP rule already requires a customer to describe how it will share information with the public, and that this requirement is sufficient to accomplish Western's goals. CREDA stated that its membership had a variety of viewpoints on the proposal, which led CREDA to recommend as a general rule that Web postings of IRPs by Western only occur for those customers requesting it. CREDA and others commented that customers, not Western, should make the determination what information is considered proprietary or confidential. This approach, they contend, would avoid placing Western in an awkward or time-consuming position of determining what information should or should not be redacted. CREDA, KEPCo and others also warned that the proposal might result in additional direct and indirect costs being borne by customers through

power rates, as it departs from the approach of assessing the costs of a FOIA request to the requesting party. UMPA, IEDA and UAMPS supported CREDA's comments.

KEPCo commented that purchase power information (and contractual terms and conditions) were more sensitive than in the past due to the competitive nature of the wholesale power business. KEPCo also warned that sensitive information could be excluded from a customer's IRP in response to a greater risk of public exposure, therefore diluting the value of the IRP to Western. KEPCo suggested that if a request for a customer's IRP is made, Western should notify the customer of the requesting party and the nature of the request prior to the release of any information.

SRP stated it was willing to have its IRP posted to Western's external Web site if proprietary and confidential information was not posted. SRP agreed with other comments that customers, and not Western, should determine what information is proprietary and confidential.

Tri-State pointed out that it has voluntarily posted its IRP on Tri-State's Web site, but asked Western to be careful not to place itself in the middle of communication between interested parties and customers regarding IRPs.

IEDA asked Western to honor FOIA's national security exemption, and to consider redrafting the proposed regulations with a further opportunity for public review and comment.

Response: Western appreciates all the comments submitted on this issue particularly with respect to the treatment of proprietary and confidential information. FOIA regulations, which apply under Western's existing IRP regulations, would continue to apply under the proposed change. Western cannot waive its authority to decide what information is released under FOIA regulations. Prior to releasing information to the public, Western will continue to examine IRPs in light of recognized FOIA exemptions that preclude the release of national security information and confidential commercial or financial data, among other exemptions. Western also notes that customers must continue to develop their IRPs in an open process allowing for public participation.

Western notes that the protocol under 10 CFR 1004.11 (Handling information of a private business, foreign government, or an international organization) remains in place and will be used in determining the course of responding to a FOIA request.

Accordingly, Western will adopt a modification of the proposal to make IRPs more readily available to the public by requiring IRPs to be posted on either the customer's publicly available Web site or Western's Web site. Customers that post on their own Web sites must notify Western of this decision when they submit their IRP. Western will create a hotlink on its Web site to IRPs posted on customer Web sites, thereby giving interested parties ready access to those IRPs. Western's Web site will, however, carry a disclaimer that an IRP posted on a customer Web site may not duplicate the IRP that the customer provided to Western. An interested party that seeks a copy of a customer IRP filed with Western could submit a FOIA request to obtain the document.

Western will post on its Web site the IRPs of customers that do not post on their own Web sites. Prior to posting, however, Western will, consistent with existing IRP and FOIA regulations, provide the customer an opportunity to submit its views on whether information contained in the IRP is exempt from the FOIA's mandatory public disclosure requirements.

E. Other Comments

Comments: Tri-State raised two additional comments in its comment letter, asking that additional changes be made to Western's IRP regulations. Specifically, Tri-State asked that EPAMP be amended to incorporate specific language recognizing the limited ability of wholesale suppliers to influence retail demand. Tri-State also asked that Western recognize the changing regulatory backdrop it faces, such as adoption of a renewable portfolio standard in Colorado and a defined level of expenditure for renewable resources requirement in New Mexico. Tri-State pointed out how existing language in EPAMP requires a Western customer with a service territory in multiple States to adopt the highest requirement and apply it to all members. Tri-State believes compliance with different State mandates seems to be impossible when integrated with other regulatory requirements. Tri-State urged Western to drop the multi-State requirement and eliminate additional and duplicative requirements within the IRP regulations.

Response: These comments are outside the scope of this process.

III. Procedural Requirements

A. Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under

Executive Order 12866; accordingly, no clearance of this rulemaking by the Office of Management and Budget (OMB) is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Analysis 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's Administrator certified that the proposal would have no significant adverse impact on a substantial number of small entities because the proposed revisions to these regulations streamline the IRP process, encourage customers to realize the benefits of regional IRPs, and protect customer sensitive IRP information. Western did not receive any comments on this certification.

C. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

Western completed an environmental impact statement on EPAMP under the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** on October 12, 1995 (60 FR 53181). Western's NEPA review assured all environmental effects related to these actions have been analyzed.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the need for such actions. Western has determined that this final rule does not preempt State law, does not have a substantial direct effect on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by Executive Order 13132.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and Tribal Governments and the private sector. Western has determined that this regulatory action does not impose an additional Federal mandate on State, local, or Tribal Governments or on the private sector.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposed on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. Western has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277, 112 Stat. 2691-528) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The final rule has no impact on the autonomy or

integrity of the family as an institution. Accordingly, Western has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Western may not issue a discretionary rule that significantly or uniquely affects Indian Tribal Governments and imposes substantial direct compliance costs. The amendments involved in this rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

J. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

K. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of today's final rule.

List of Subjects in 10 CFR Part 905

Electric power, Electric utilities, Energy, Energy conservation, Hydroelectric power and utilities, Reporting and recordkeeping requirements, Resource planning.

■ For the reasons set forth in the preamble, 10 CFR part 905 is amended as set forth below:

PART 905—ENERGY PLANNING AND MANAGEMENT PROGRAM

■ 1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 7152, 7191; 42 U.S.C. 7275–7276c.

■ 2. Section 905.11(b)(4)(i) is revised to read as follows:

§ 905.11 What must an IRP include?

* * * * *

(b) * * *

(4) * * *

(i) As part of the public participation process for an MBA, the governing body of an MBA must approve the IRP in accordance with the MBA's by-laws, confirming that all requirements have been met. To indicate approval in the case of an individual IRP submitted by an entity with a board of directors or city council, a responsible official must sign the IRP submitted to Western or the customer must document passage of an approval resolution by the appropriate

governing body included or referred to in the IRP.

* * * * *

■ 3. Section 905.12(b)(3) is revised to read as follows:

§ 905.12 How must IRPs be submitted?

* * * * *

(b) * * *

(3) Customers may submit IRPs as regional/IRP cooperatives when previously approved by Western. Western encourages customers to prepare "regional" IRPs. Regional IRPs are voluntary and participants need not be members of an MBA or a Western customer. Regional/IRP cooperatives may also submit small customer plans, minimum investment reports, and EE/RE reports on behalf of eligible IRP cooperative members.

* * * * *

■ 4. Section 905.23 is revised to read as follows:

§ 905.23 What are the opportunities for using the Freedom of Information Act to request plan and report data?

IRPs, small customer plans, minimum investment reports and EE/RE reports and associated data submitted to Western are subject to the Freedom of Information Act (FOIA) and may be made available to the public upon request. IRPs must be posted on a customer's publicly available Web site or on Western's Web site. Customers posting their IRPs on their own Web site must notify Western of this decision when they submit their IRP. A hotlink on Western's Web site to IRPs posted on customer Web sites gives interested parties ready access to those IRPs. Western will post on its Web site the IRPs of customers that do not post on their own Web sites. Prior to posting, Western will provide the customer the opportunity to submit its views on whether information contained in the IRP is exempt from the FOIA's mandatory public disclosure requirements. Customers may request confidential treatment of all or part of a submitted document consistent with FOIA exemptions. Western will determine whether particular information is exempt from public access. Western will not disclose to the public information it has determined to be exempt, recognizing that certain competition-related customer information may be proprietary.

Dated: May 29, 2008.

Timothy J. Meeks, Administrator.

[FR Doc. E8-14031 Filed 6-19-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

Miscellaneous Markings and Placards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects a typographical error that appeared in a final rule, which the FAA published in the Federal Register. In that final rule, the FAA inadvertently changed a word. The intent of this action is to correct the error in the regulation to ensure the requirement is clear and accurate.

DATES: Effective Dates: Effective on June 20, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Stegeman, Regulations and Policy, ACE-111, Federal Aviation Administration, 901 Locust Street, Kansas City, MO 64106; telephone (816) 329-4140; e-mail robert.stegeman@faa.gov.

SUPPLEMENTARY INFORMATION: On August 6, 1993, the FAA published in the Federal Register (58 FR 42166) a final rule that, among other changes, amended § 23.1557(c)(1). In revising § 23.1557(c)(1), the word "filler" was inadvertently changed to "filter." This document corrects § 23.1557(c)(1) to reflect the correct word "filler." This correction will not impose any additional requirements.

Technical Amendment

This technical amendment corrects a typographical error that appears in 14 CFR 23.1557(c)(1).

Justification for Immediate Adoption

Because this action corrects merely a typographical error, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The Amendment

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 23 is amended as follows: