

6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Application of the Energy Planning and Management Program Power Marketing

Initiative to the Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Decision.

SUMMARY: The Western Area Power Administration (Western) is applying the Energy Planning and Management Program (EPAMP) Power Marketing Initiative (PMI) to the Salt Lake City Area Integrated Projects (SLCA/IP), as modified and discussed herein. For most of the current customers, Western will extend 93 percent of the customer's pro rata share of the SLCA/IP power resource available on October 1, 2004. Effective on that same date, Western will make allocations of SLCA/IP power to eligible new customers. Application procedures for new customers will be set forth in a separate Federal Register notice in the near future.

FOR FURTHER INFORMATION CONTACT:

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DATES: Western's decision to apply the PMI, as modified herein, to the SLCA/IP will become effective on (insert 30 days from date of publication in the FEDERAL REGISTER).

SUPPLEMENTARY INFORMATION:

Authorities: This decision about the future marketing of the SLCA/IP power resources was made pursuant to the Department of Energy (DOE) Organization Act (42 U.S.C. 7101-7352); and the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), 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 published its proposal to apply the EPAMP PMI to the SLCA/IP on February 26, 1997 (62 FR 8709-8710). Western proposed to extend 96 percent of the SLCA/IP firm Federal resources available on October 1, 2004, to its current firm-power customers for 20 years. The remaining 4 percent of resources was proposed to be made available for new customers. Further resource reductions of 1-percent each were proposed to be made available to new customers on October 1, 2009, and October 1, 2014.

In its February 26, 1997, notice, Western requested comments on its proposal. Interested parties were given until May 27, 1997, to comment in writing. In addition, public information and comment meetings were held in Sandy, Utah; Golden, Colorado; Albuquerque, New Mexico; and Phoenix, Arizona. Comments were received from firm-power customers, Native American tribes, environmental organizations, and members of Congress.

In a separate public process that started on December 1, 1998, at 63 FR 66166, Western published a Notice of Inquiry to explore the impact of electric utility industry restructuring on Western's power allocation policies. A

forum was held in Denver, Colorado, on January 6, 1999, to receive public comment on this matter, and written comments were accepted from the public until the end of a 45-day consultation and comment period. The comments received during this process are being addressed in a separate Federal Register notice published concurrently with this notice.

Several of the comments Western received on the Notice of Inquiry concerned the size of the proposed new customer power pool, particularly the adequacy of the pool to meet the needs of Native American tribes. Consequently, on January 29, 1999, at 64 FR 4646, Western published a notice of an additional opportunity to comment on the appropriate size of the new customer power pool and to consider the needs of eligible Native American tribes. Western accepted comments on this topic until

March 1, 1999. Informational meetings were held on the SLCA/IP resources in Phoenix, Arizona, and Albuquerque, New Mexico, to better explain to potential new customers the opportunities available to them under the proposal. Several comments were received from Native American tribes, Native American organizations, and current Western customers.

Availability of Information: All documents made or kept by Western for the purpose of developing this decision are available for public review, inspection, and copying at the CRSP Customer Service Center, at 257 East 200 South, Suite 475, Salt Lake City, Utah.

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 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.

Determination 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.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.); Council on Environmental Quality Regulations (40 CFR parts 1500-1508); and DOE NEPA Regulations (10 CFR part 1021), considerable environmental documentation has been prepared addressing EPAMP, and the marketing of SLCA/IP power. Western completed an environmental impact statement (EIS) on EPAMP. The Record of Decision was published in the Federal Register

(60 FR 53181, October 12, 1995). Western also completed the SLCA/IP Electric Power Marketing EIS, and the Record of Decision was published in the Federal Register

(61 FR 56534, November 1, 1996). In the Marketing EIS, Western stated that when EPAMP was applied to the SLCA/IP that if further environmental review was required it would be completed at that time. Since then, Western has determined that this action is categorically excluded from preparation of an additional environmental assessment or EIS. Accordingly, no further environmental review will be conducted.

Major Comments and Western's Responses: Western has considered the comments presented by all parties on the

proposal. The major comments received and Western's responses to those comments are summarized below.

1. The Extension of Existing Commitments to Current Customers

Existing firm-power customers and Native American tribes were generally supportive of Western's proposal. Many customers pointed out that EPAMP had two components: a requirement that Western's firm-power customers must prepare integrated resource plans (IRP), and that Western extend a major percentage of the existing Federal resources to Western's existing firm-power customers through the PMI, with the exact amount to be determined on a project-specific basis. The customers stated they have complied with the IRP requirement and believe that Western is now obliged to extend resource commitments. The customers further argued that in order to prepare meaningful IRPs, they reasonably had to assume that a stable Federal resource would continue to be available to them since an uncertain Federal resource would make it very difficult to determine future resource needs.

Several customers also suggested that Federal power has become more expensive in recent years; and, if the trend continued, Federal power would soon become a noncompetitive resource. They commented that revenues from the sale of power also repay up to 90 percent of the Federal Government's investment in the irrigation features of the SLCA/IP water development projects. These customers argued that Western should offer contract extensions while customers are willing to enter into longer term arrangements, thus assuring the Federal Government of a stable revenue stream to repay its investment in power and irrigation facilities. Further argument was made that the electric industry is undergoing many changes and that an extension of resources would help stabilize volatile resource markets.

Other arguments were made that this is not an appropriate time to extend resource commitments. According to these other commentors, changes in the electrical industry create uncertainties about who should be Western's future customers and that Western should wait until it has better knowledge of the marketplace. Concern was also expressed that the extension would impede the progress of legislation to privatize power marketing administration assets.

Western's Response

After consideration of the comments received and in light of the broad discretion Congress has provided Western to implement policy changes when warranted, Western has decided to modify its proposal. For most of the current customers, Western will extend 93 percent of the customer's pro rata share of the SLCA/IP power resource available on October 1, 2004. No further reductions will be made in subsequent years to meet the needs of new customers. Western will amend current contracts to extend the term for 20 years effective October 1, 2004.

Western has decided it is appropriate to proceed now with application of the PMI to the SLCA/IP. Western's determination about whether to apply the PMI to the SLCA/IP was delayed until the EIS on the Post 1989 SLCA/IP Power Marketing Plan was completed and the associated marketing criteria were finalized and implemented. That EIS was completed in October 1996, and the associated post-1989 marketing criteria were finalized and implemented April 1, 1997. Customers have already completed IRPs in compliance with the requirements of EPAMP and should be able to rely on Western's resources. Western also believes that it is in the best interest of the United States to help ensure that the Federal Government's investment in the Federal power projects be repaid. All of the investment in power facilities, as well as up to 90 percent of the irrigation investment and substantial new environmental expenses, is being repaid by revenues received from the sale of electricity. Extending resource commitments provides relative assurance to the United States of a continued revenue stream to repay these expenses and obligations.

Western also believes that although the electric industry is undergoing many changes, it is important to extend

resource commitments now. These changes are affecting not only the competitiveness of Western's customers, but also the diversity of energy providers in the marketplace. Western must be able to operate in the new utility environment in order to fulfill its mission of marketing Federal power. Western's mission under current statutes is ongoing.

For many of Western's customers, Federal power is an essential component of their resource mix, and a resource extension is critical to planning strategies for dealing with the utility restructuring. Western recognizes the need for flexibility to respond to the changing utility industry and to changing dam operations. Recently, Western and its SLCA/IP customers entered into an amendment to power sales contracts which provides great flexibility for dealing with changing hydropower situations.

Western recognizes that the Bureau of Reclamation is under a continuing obligation to ensure that the operation of the hydroelectric facilities comply with Federal environmental laws. Western may revise the amount of power marketed by the SLCA/IP as required to respond to changes in hydrology and river operations, upon 5 years' notice to customers. Any such changes will be applied on a pro rata basis among all customers.

2. Allocations to Native American Tribes

Native American tribes commented that they should be entitled to an allocation of Federal power to help compensate them for the impacts to their lands and lifestyles caused by the construction of the Federal dams and power facilities. The tribes argued that the proposed power pool of 4 percent of the SLCA/IP marketable resources was inadequate to meet their current or future needs. Several comments were received that the pool should be increased to 10-30 percent and if the tribes did not use the total amount it could be returned to the current customers after the reallocation process. The tribes were also concerned that the 30-day comment period was not adequate for them to determine their loads and to make a reasonable recommendation of pool size.

Some commentors suggested that Western should provide enough power to supply 100 percent of tribal loads as well as meet future needs. Others commented that it is not appropriate or even possible for Western to do this.

Western's current customers commented that the proposed power pool was adequate to give tribes and other new customers a fair share of the resource. They suggested that Western consider advancing the 2009 and 2014 resource pools to enhance the initial pool in 2004, with no further changes in allocations for the term of the contracts, to allow Native American tribes to make appropriate resource decisions. Both tribes and customers commented that Western should work out arrangements for tribes to receive the benefits of Federal power through bill crediting or other beneficial arrangements.

A comment was also made that Western should commission a study to determine tribal loads within the SLCA/IP marketing area.

Western's Response

Effective October 1, 2004, Western will make allocations of SLCA/IP power to eligible new customers which apply for SLCA/IP power. The source of electricity for allocations to the new customers will be a resource pool of SLCA/IP power not extended to existing customers and available beginning October 1, 2004. Western has determined that a resource pool size of 7 percent of resources available on October 1, 2004, combined with an additional reduction to Tri-State Generation and Transmission Association's (Tri-State) SLCA/IP resource commitment, will enable Western to supply

up to 12.5 percent of the current load of new utility applicants and 65 percent of the load of Native American entities that apply.

Western believes that it would be in the best interests of both current customers and potential customers including Native Americans to establish one resource pool of a definite size at this time. Western performed a study of tribal loads within the SLCA/IP marketing area. Western received information on loads from tribes and serving utilities for many potential customers. Others were estimated using data about the size of the tribe and use of electricity in the local area. Western determined that a power pool that would provide Native American tribes enough power to serve 65 percent of their current loads would be equitable to the tribes and to current customers. Serving tribal load at this level would be consistent with DOE policy and the trust responsibility that exists between Native Americans and the Federal Government. Western's study indicates that a resource pool of the size described in this Federal Register notice would be sufficient to meet a fair share of Native American loads as well as those of other potential new customers.

In an exemption to the general policy, the four existing firm-power customers of the SLCA/IP that are Native American entities – the Navajo Tribal Utility Authority, the Ak Chin Indian Community, the Bureau of Indian Affairs' Colorado River Agency, and the San Carlos Irrigation Project – will be extended 100 percent of their pro rata share of the SLCA/IP resource available on October 1, 2004. In addition, Western will, if necessary, allocate additional SLCA/IP resources from a resource pool to these or

other Native American organizations such that a minimum of 65 percent of the current load of each is served by Federal power resources.

For Native American tribes which currently receive power from utilities that have allocations of Federal power, Western will take into account the benefit received through the existing supplier when determining the power allocation to the tribe.

During the process of allocating the resource pool to customers, which will begin after conclusion of this process, further information on actual loads will be collected and used to determine the final allocations from the resource pool. Western, to the extent it is able, will provide technical assistance to tribes requesting assistance in preparation of their applications and load data. After applications are received and power allocated, unallocated power remaining in the pool may be returned to current customers. If a tribe receives an allocation but is unable to accept power on October 1, 2004, the power allocated to the tribe will be provided to existing customers until such time as the tribe is able to use the power.

Western has also decided that the interest shown by tribes and other potential new customers indicates that the resource pool should be used to serve these loads rather than, as proposed in February 1997, for encouragement of new technologies, conservation, or renewable resources, or held in reserve by Western for contingencies. Other eligibility criteria for allocations of SLCA/IP resources will be addressed in subsequent Federal Register notices and mailings to interested parties about the availability of SLCA/IP resources to new customers. Western will initiate a separate public process soon to accept applications from Native American tribes and potential new customers for firm electric service of SLCA/IP power from October 1, 2004, through September 30, 2024.

Finally, Western has agreed to work out arrangements for tribes to receive the benefits of Federal power through bill crediting or other beneficial arrangements.

3. Other Comments

A comment was received that the prices charged by Western for its power sales are too low and that the price should be raised to finance development of alternative forms of energy. Although comments about the pricing of Western power are outside the scope of Western's proposal, Western has a long record of encouraging its customers to conserve energy and develop renewable resources without the need to introduce changes in how its rates are set. Additionally, Western prohibits its customers from profiteering by reselling their Federal power to entities other

than their end users. Comments on Western's rates may be addressed when Western issues notices of proposed rate changes. Comments on actions Western might take to further encourage its customers to conserve energy and to develop renewable resources may be addressed later this year when Western begins a formal public process to reconsider its regulations concerning its customers' IRPs.

Another comment suggested that Western should provide an official public comment forum or official public record. Western has provided adequate opportunity for formal comment. Four information and comment forums were held in 1997, and an additional public comment forum was held in Denver, Colorado, on January 6, 1999. Interested parties also were encouraged during each of the three informational meetings, held in early February of 1999, to comment in writing. Letters submitted in response to the January 29, 1999, Federal Register notice on resource pool size are part of Western's formal and official record. Western has considered the comments presented by all parties on the proposed 2004 marketing plan. Western has also responded in detail to the comments received as a result of the Notice of Inquiry in a separate document published separately in the Federal Register. Those additional comments are incorporated herein by reference.

Several comment letters were received regarding the impact of a pending merger between Tri-State and Plains Electric Generation and Transmission Cooperative (Plains). One member of Plains, Navopache Electric Cooperative (Navopache), is choosing not to participate in the merger and cannot receive a portion of the SLCA/IP power allocated to Plains under the terms of the currently effective power sales contract between Western and Plains. Navopache has asked to receive an independent allocation of power in 2004 to remediate the "overallocation" to Tri-State.

In another exception to the general policy concerning the allocation to Tri-State, Western has decided to allocate to Tri-State 7 megawatts less than 93 percent of Tri-State's pro rata share of the SLCA/IP resource available on October 1, 2004. The 7 mega-watts will be part of the resource pool to be made available to new customers. This additional reduction to Tri-State's allocation is being taken in recognition of the fact that Tri-State would otherwise receive a post-2004 resource commitment based on all of the SLCA/IP power allocation of Plains, even though Navopache has chosen not

to use Tri-State as its power supplier. Navopache is welcome to apply for power from the resource pool as a new customer.

In order to provide additional flexibility in addressing changing conditions, the new contracts will have language that gives the Administrator the discretion to adjust a customer's power allocation in the event the customer merges with another organizational entity, acquires or "spins off" another utility, joins or withdraws from a membership-based organization, or adds members from a membership organization.

Dated:

Michael S. HacsKaylo

Administrator