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DEPARTMENT OF ENERGY (DOE)
Western Area Power Administration

10 CFR Part 905

RIN 1901-AA84

Energy Planning and Management Program; Integrated Resource Planning Approval Criteria

64 FR 62604

DATE: Wednesday, November 17, 1999

ACTION: Notice of proposed rulemaking and public forum.

To view the next page, type .np* TRANSMIT.
To view a specific page, transmit p* and the page number, e.g. p*1

[*62604]

SUMMARY: The Western Area Power Administration (Western) is seeking public comment on its proposed revisions to current regulations that require customers to prepare integrated resource plans. Western is proposing revisions to allow customers more alternatives in meeting the integrated resource planning requirements, thereby enhancing customer competitiveness through increased flexibility and reduced burdens in complying with this rule.

DATES: Written comments, in hard copy or via email, must be received no later than 5 p.m. Mountain Standard Time on December 30, 1999. A joint public information and public comment forum will be held starting at 1 p.m. Mountain Standard Time on November 30, 1999.

ADDRESSES: Written comments should be sent to Mr. Simmons Buntin, Power Marketing Support Office, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228-8213. Prior to November 30, 1999, comments can be sent by fax to (303) 275-1616; after November 30, 1999, the fax number is (720) 962-7427. Comments also can be sent by electronic mail to buntin@wapa.gov. The public forum will be held at the Radisson Hotel Denver, 3333 Quebec Street, Denver, Colorado 80207.

FOR FURTHER INFORMATION CONTACT: Mr. Simmons Buntin, prior to November 30, 1999, telephone number is (303) 275-1739; after November 30, his number is (720) 962-7419. Mr. Buntin's electronic mail address is buntin@wapa.gov.

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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 completion of the Energy Planning and Management Program (Program) in October 1995. The Program was published in the Code of Federal Regulations at 10 CFR part 905.

Western's Administrator is required by EPAct to initiate a public process to review Western's integrated resource planning (IRP) regulations within 1 year of January 1, 2000. The Administrator is authorized at that time to revise Western's criteria for approving integrated resource plans "to reflect changes, if any, in technology, needs, or other developments."

Both the wholesale and retail aspects of the electric utility industry are changing, and change is expected to continue. The 15 States within which Western markets power have taken very different approaches to deregulation with diverse schedules for implementing any changes to the status quo. Additionally, the timing and scope of any Federal restructuring legislation is uncertain. Given the increasingly competitive and deregulated electricity marketplace, Western's integrated resource planning regulations, which were adopted under the traditional utility planning framework, warrant review.

Western is proposing an approach that features customer choice and flexibility, and reflects the transition of the electric utility industry. Customers can choose to continue preparing IRPs, or can adopt approaches that are emerging in lieu of IRP requirements. These new approaches include compliance with a defined level of investment in energy efficiency and/or renewables, compliance with an established public benefits program, or compliance with mandated energy efficiency and/or renewable energy reporting requirements.

Only subparts A and B of the existing regulations are proposed for revision.

II. Section by Section Discussion of Changes

Many wording and format changes contained in the proposed rule have been drafted to comply with the President's initiative to use plain language in government writing.

The purpose statement in § 905.1 would be updated to describe acceptable customer activities, in light of the changes taking place in the electric utility industry, that meet the objectives of section 114 of EPAct.

In § 905.2, we have proposed removing the definition for applicable IRP and adding new terms (energy efficiency and/or renewable energy report, minimum investment report and public benefits charge) in order to clearly describe the new alternatives for customer compliance. We propose shortening the definition of integrated resource planning,

modifying the definition of small customer to include end-use customers, and removing the definition of least-cost option since a customer is free to pursue renewables and energy efficiency even if other resources appear to be less costly. Additionally, definitions would be added for Region, IRP cooperative, and renewable energy.

Changes to § 905.10 would be consistent with the broader array of compliance options available to customers under this proposed regulation. The exception for State-regulated, investor-owned utilities that exists today would be deleted, in order to assure equitable compliance by all of Western's long-term firm customers.

Section 905.11, which deals with the contents of an integrated resource plan, would be streamlined and simplified. The number of IRP criteria would be reduced from seven to six, eliminating least-cost designation as a separate criteria while combining its relevant parts with the identification of resource [*62605]options criteria. One prominent theme in this area is confidentiality of information. To ensure that proprietary information is not made available to competitors, customers would not have to submit sensitive information to Western. Summaries of customer activities would be adequate, as long as Western can obtain more detailed supporting information upon request. This proposal also intends to lessen the paperwork burden on customers. In recognition of the fast-paced change in the industry, Western proposes to allow customers to define their own action planning horizons to carry out IRP.

Several regulatory provisions would be renumbered to improve organization and flow. Proposed §§ 905.12 and 905.13 would reorganize the current provisions of § 905.12 for clarity, but Western proposes no substantive change to IRP submittal requirements. A more detailed discussion of the cooperative IRP submittal process would be added in § 905.13. Proposed § 905.14 contains the provisions of currently effective § 905.13. Proposed § 905.15, which deals with annual IRP progress reports, contains the substance of existing § 905.16.

Sections 905.15 and 905.16 would be modified to include statements that annual progress reports and update letters can be submitted outside of the 30-day anniversary date window if previously approved by Western.

Section 905.16 describes the proposed requirements of the small customer plan alternative for eligible customers. Changes to the existing rule would include expansion of the small customer plan method of compliance to include all end-use customers regardless of size. Small utilities could take advantage of the small customer provision, even if they belong to member-based associations or joint-action agencies.

Section 905.17 is a new section that would allow customers to comply with the regulation by adopting a minimum level of financial or resource investment in energy efficiency initiatives and/or renewable energy activities required by State, Tribal, or Federal law. In order to avoid duplication and conflicting mandates, Western is proposing to accept these customer efforts as satisfying the provisions of the EAct. Such a minimum investment standard has already been adopted in the State of Iowa.

Section 905.18 is another new section that would allow customers to comply with the regulation by participating in a public benefits program required by State, Tribal, or Federal law, under which a defined minimum percentage of a customer's gross revenues is devoted to public purposes. In order to avoid duplication and conflicting mandates, Western proposes to accept these customer efforts as satisfying the provisions of EAct. Such a public benefits mandate has already been adopted in the States of California, Montana, and New Mexico.

State and Federal end-use customers often must comply with standards and reporting requirements that document efforts in IRP, energy efficiency, and renewable energy. An example of this compliance is Executive Order 13123, which requires Federal agencies to aggressively reduce energy consumption and to expand the use of renewable energy. Section 905.19 would accept these compliance efforts if they meet the objectives of EAct.

Former §§ 905.15-905.21 would be renumbered as §§ 905.20-905.25 and would be modified to enhance understanding and clarity.

A redline-strikeout version comparing the proposed revisions with the current subparts A and B is available on Western's Website at www.wapa.gov.

III. Public Information/Comment Forum Procedures

Interested parties may submit comments on Western's proposed revisions to subparts A and B of the regulations in two ways: either (a) directly to the project manager via mail, e-mail, fax, or hand delivery no later than 5 p.m. Mountain Standard Time on December 30, 1999; or (b) in person or through a representative at the joint public information and public comment forum to be held beginning at 1 p.m. Mountain Standard Time on November 30, 1999, at the Radisson Hotel Denver. Addresses for comments and the forum are provided earlier in the preamble.

The joint public information and public comment forum will feature a presentation by Western staff summarizing proposed revisions to subparts A and B of the regulations, the reasons for revisions, and anticipated benefits arising from revisions. After the formal presentation of 30 minutes or less, attendees will have the opportunity to ask Western staff questions related to proposed revisions. Once all questions are asked and individually responded to by Western, the public comment forum will begin and interested parties will have the opportunity to comment on Western's proposed revisions. A court reporter will record the proceedings, and a transcript will be prepared. The public will be able to review the transcript at Western's offices, or may order a personal copy from the court reporter.

Comments from the public comment forum will be considered along with all other comments received prior to 5 p.m. Mountain Standard Time on December 30, 1999. Comments will be incorporated into the final rule as appropriate, and all comments will be addressed upon publication of the final rule in the Federal Register.

IV. Procedural Requirements

A. 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 (OMB) is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, *5 U.S.C. 601*, et seq., requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western's Administrator certifies that this proposed rule will have no significant adverse impact on a substantial number of small entities because the proposed revisions to these regulations reduce paperwork and financial and other burdens, as well as reporting redundancies for small entities.

C. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, *44 U.S.C. 3501-3520*, Western has received approval from OMB for the collection of customer information in this rule, under control number 1910-1200.

D. Review Under the National Environmental Policy Act

Western prepared an environmental impact statement and record of decision pursuant to the National Environmental Policy Act of 1969 (NEPA) for the Energy Planning and Management Program, which established the existing IRP requirements for Western power customers. This met the requirements of NEPA, *42 U.S.C. 4321*, et seq., the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500-1508), and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021). Since the proposed revisions would modify those IRP requirements, Western is conducting a review to determine if a supplemental environmental analysis is required.
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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 examined this rule and determined that it does not preempt State law and does not have a substantial direct effect on the States, 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 proposed 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 proposed regulations meet the relevant standards of Executive Order 12988.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposal would not have any 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 incremental amendments involved in this proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

List of Subjects in 10 CFR part 905

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

Issued in Washington, D.C. on November 3, 1999.

Michael S. HacsKaylo,

Administrator.

For the reasons set forth in the preamble, 10 CFR part 905 is proposed to be amended as set forth below.

PART 905--ENERGY PLANNING AND MANAGEMENT PROGRAM

1. The authority citation continues to read as follows:

Authority: *42 U.S.C. 7152 and 7191; 32 Stat. 388, as amended; and 42 U.S.C. 7275-7276c.*

2. Subparts A and B are revised to read as follows:

Subpart A--General Provisions

Sec.

905.1 What are the purposes of this part?

905.2 What are the key definitions of this part?

Subpart B--Integrated Resource Planning

905.10 Who must comply with this part?

905.11 What must an IRP include?

905.12 How must IRPs be submitted?

905.13 When must IRPs be submitted?

905.14 What are the criteria for Western's approval of IRPs?

905.15 What are annual IRP progress reports?

905.16 What are the requirements for the small customer plan alternative?

905.17 What are the requirements for the minimum investment report alternative?

905.18 What are the requirements for the public benefits report alternative?

905.19 What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?

905.20 How are plans and reports processed?

905.21 When are customers in noncompliance with this rule, and how does Western ensure compliance?

905.22 What is the administrative appeal process?

905.23 How does Western periodically review plans and reports?

905.24 What are the opportunities for using the Freedom of Information Act to request data?

905.25 How often is this program reviewed?

Subpart A--General Provisions

§ 905.1 -- What are the purposes of this part?

The purposes of this part are to meet the objectives of section 114 of the Energy Policy Act of 1992 (EPAct) and to extend the long-term firm power resource commitments while supporting customer integrated resource planning (IRP), energy efficiency and conservation, and the use of renewable energy. Subpart B allows customers of the Western Area Power Administration (Western) to meet the objectives of section 114 of EPAct through integrated resource planning or

by other means, such as attaining a minimum level of investment in energy efficiency and/or renewable energy, collecting a charge to support defined public benefits, or complying with a mandated energy efficiency and/or renewable energy reporting requirement.

§ 905.2 -- What are the key definitions of this part?

Administrator means the Administrator of Western.

Customer means any entity that purchases firm capacity, with or without energy, from Western under a long-term firm power contract. The term also includes a member-based association (MBA) and its distribution [*62607] or user members that receive direct benefit from Western's power, regardless of which holds the contract with Western.

Energy efficiency and/or renewable energy (EE/RE) report means the report resulting from a mandate to conduct energy efficiency and/or renewable energy activities imposed by a State, Tribal, or the Federal Government upon a State, Tribal, or Federal end-use customer within its jurisdiction.

Integrated resource planning means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to a customer's electric consumers.

Integrated resource planning cooperative (IRP cooperative) means a group of Western's customers and/or their distribution or user members that Western has approved for IRP cooperative status.

Member-based association (MBA) means:

- (1) An entity composed of utilities or user members, or
- (2) An entity that acts as an agent for, or subcontracts with, but does not assume power supply responsibility for its principals or subcontractors, who are its members.

Minimum investment report means the report resulting from a mandatory minimum level of financial or resource investment in energy efficiency initiatives and/or renewable energy activities, such as investment of a set minimum percentage of the utility's gross revenues in renewable resources, which is imposed by State, Tribal, or Federal law upon a utility or other entity under its jurisdiction.

Public benefits charge means a mandatory financial charge imposed by State, Tribal, or Federal law upon a utility under its jurisdiction to support one or more of the following: energy efficiency, conservation, or demand-side management; renewable energy; efficiency or alternative energy-related research and development; low-income energy assistance; and/or other programs defined by applicable State, Tribal, or Federal law. This term is also known as a public goods or system benefit charge in the utility industry.

Region means a regional office or management center of Western: the Desert Southwest Customer Service Region, the Rocky Mountain Customer Service Region, the Sierra Nevada Customer Service Region, the Upper Great Plains Customer Service Region, or the Colorado River Storage Project Management Center.

Renewable energy means any source of electricity that is self-renewing, including plant-based biomass, waste-based biomass, geothermal, hydropower, ocean thermal, solar (active and passive), and wind. This term is also known as renewable resources in the utility industry.

Small customer means a utility customer with total annual sales and usage of 25 gigawatthours (GWh) or less, as averaged over the previous 5 years; or any end-use customer.

Western means the Western Area Power Administration.

Subpart B--Integrated Resource Planning

§ 905.10 -- Who must comply with this part?

(a) Integrated resource plans (IRP). Each customer of Western must address its power resource needs in an IRP prepared and submitted to Western as described in this part.

(b) Alternatives to IRP. Alternatively, customers of Western may submit a small customer plan, minimum investment report, public benefits report, or EE/RE report as described in §§ 905.16 through 905.19 of this subpart.

(c) Rural Utility Service and state utility commission reports. For customers subject to IRP filings or other electrical resource-use reports from the Rural Utilities Service or a state utility commission, there is nothing in this part that would require a customer to take any action inconsistent with those requirements.

§ 905.11 -- What must an IRP include?

(a) General. An integrated resource plan supports customer-developed goals and schedules. The plan must take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; must take into account the ability to verify energy savings achieved through energy efficiency and the projected durability of such savings measured over time; and must treat demand and supply resources on a consistent and integrated basis.

(b) IRP criteria. IRPs must consider electrical energy resource needs and may consider, at the customer's option, water, natural gas, and other energy resources. Each IRP submitted to Western must include:

(1) Identification of resource options. Identification and comparison of all practicable energy efficiency and energy supply resource options. This is an assessment and comparison of existing and future supply- and demand-side resource options available to a customer based upon its size, type, resource needs, geographic area, and competitive situation. Resource options evaluated by the specific customer must be identified. The options evaluated should relate to the resource situation unique to each Western customer as determined by profile data (such as service area, geographical characteristics, customer mix, historical loads, projected growth, existing system data, rates, and financial information) and load forecasts. Specific details of the customer's resource comparison need not be provided in the IRP itself. They must, however, be made available to Western upon request.

(i) Supply-side options include, but are not limited to, purchased power contracts and conventional and renewable generation options.

(ii) Demand-side options alter the customer's use pattern in a manner that provides for an improved combination of energy services to the customer and the ultimate consumer.

(iii) Considerations that may be used to develop the potential options include cost, market potential, consumer preferences, environmental impacts, demand or energy impacts, implementation issues, revenue impacts, and commercial availability.

(iv) The IRP discussion of resource options must describe the options chosen by the customer. The IRP may strike a reasonable balance among the applicable resource evaluation factors. It should clearly demonstrate that decisions were based on a reasonable analysis of resource options and environmental effects, were based on public input, and/or were required by State, Tribal, or Federal mandates.

(2) Action plan. An IRP must include an action plan describing specific actions the customer will take to implement its IRP.

(i) The IRP must state the time period that the action plan covers, and the action plan must be updated and resubmitted to Western when this time period expires. The customer may submit a revised action plan with the annual IRP progress report discussed in § 905.15.

(ii) For those customers not experiencing or anticipating load growth, the action plan requirement for the IRP may be satisfied by a discussion of current actions and procedures in place to periodically reevaluate the possible future need for new resources. The action plan must include a summary of: [*62608]

(A) Actions the customer expects to take in accomplishing the goals identified in the IRP;

(B) Milestones to evaluate accomplishment of those actions during implementation; and

(C) Estimated energy and capacity benefits for each action planned.

(3) Environmental effects. The customer must minimize adverse environmental effects of new resource acquisitions and document these efforts in the IRP. Customers are neither precluded from nor required to include a quantitative analysis of environmental externalities as part of the IRP process. IRPs must include a qualitative analysis of environmental effects in summary format.

(4) Public participation. The customer must provide for full public participation in the preparation and development of an IRP (or any revision or amendment of an IRP). The IRP must include a brief description of public involvement activities, including how the customer gathered information from the public, identified public concerns, shared information with the public, and responded to public comments. Customers must make additional documentation identifying or supporting the full public process available to Western upon request.

(i) As part of the public participation process, the governing body of an MBA and each MBA member (such as a board of directors or city council) must approve the IRP, confirming that all requirements have been met. To indicate approval, 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.

(ii) For Western customers that do not purchase electricity for resale, such as some State, Tribal, and Federal agencies, the customer can satisfy public participation if there is review and concurrence by a top management official with resource acquisition responsibility. The customer must note this concurrence in the IRP.

(5) Load forecasting. An IRP must include a statement that load forecasting was conducted. Load forecasting should include data that reflects the size, type, resource conditions, and demographic nature of the customer using an accepted load forecasting methodology, including but not limited to the time series, end-use, and econometric methods. The customer must make the load forecasting data available to Western upon request.

(6) Measurement strategies. The IRP must include a brief description of measurement strategies for options identified in the IRP in order to determine whether objectives in the IRP are being met. These validation methods must include identification of the baseline from which a customer will measure the benefits of its IRP implementation. A reasonable balance may be struck between the cost of data collection and the benefits resulting from obtaining exact information. Customers must make performance validation and evaluation data available to Western upon request.

§ 905.12 -- How must IRPs be submitted?

(a) Number of IRPs submitted. Only one IRP is required per customer, regardless of the number of long-term firm power contracts between the customer and Western.

(b) Method of submitting IRPs. Customers must submit IRPs to Western under one of the following options:

(1) Customers may submit IRPs individually.

(2) MBAs may submit individual IRPs for each of their members or submit one IRP on behalf of all or some of their members. An IRP submitted by an MBA must specify the responsibilities and participation levels of individual members and the MBA. Any member of an MBA may submit an individual IRP to Western instead of inclusion in an MBA IRP.

(3) Customers may submit IRPs as IRP cooperatives when previously approved by Western.

(c) Alternatives to submitting individual IRPs. Customers that Western approves for submittal of small customer plans, minimum investment reports, public benefits reports, or EE/RE reports may substitute the applicable plan or report instead of an IRP. Each customer that intends to seek approval for IRP cooperative, small customer, minimum investment report, public benefits report, or EE/RE report status must provide written notification to Western. A new customer must provide this notification to the Western Regional Manager of the Region in which the customer is located within 30 days from the time it becomes a customer. Any customer may resubmit an IRP or notify Western of its plan to change its compliance method at any time so long as there is no period of noncompliance between this part and Western's IRP regulations in effect before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999).

§ 905.13 -- When must IRPs be submitted?

(a) Submitting the initial IRP. Except as provided in paragraph (d) of this section, customers that have not previously submitted IRPs must submit their initial IRP to the appropriate Regional Manager no later than 1 year after [the effective date of the final rule], or after becoming a customer, whichever is later. Customers already complying with Western's IRP regulations in effect before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999) must maintain their current submission and resubmission schedules.

(b) Western's review of IRPs. If an IRP submittal is insufficient, Western will provide a notice of deficiencies to the entity that submitted the IRP. Western, working together with the entity, will determine the time allowable for resubmitting the IRP. However, the time allowed for resubmittal will not be greater than 9 months after the date of the disapproval, unless otherwise provided by contract language in effect as of [the effective date of the final rule].

(c) Updates and amendments to IRPs. Customers must submit updated IRPs to the appropriate Regional Manager every 5 years after Western's approval of the initial IRP. Customers may submit amendments and revisions to IRPs at any time.

(d) IRP cooperatives. Customers that have geographic, resource supply, and other similarities may join together and request, in writing, Western's approval to become an IRP cooperative. Western will respond to IRP cooperative status requests within 30 days of receipt of the request. If Western disapproves a request for IRP cooperative status, the requesting participants must maintain their currently applicable integrated resource or small customer plans, or submit their initial IRPs no later than 1 year after the date of the letter of disapproval. Western's approval of IRP cooperative status will not be based on any potential participant's contractual status with Western. Each IRP cooperative must submit an IRP for its participants within 18 months after Western's approval of IRP cooperative status.

§ 905.14 -- What are the criteria for Western's approval of IRPs?

(a) Approval criteria. Western will approve plans and reports based upon:

(1) Whether the plan or report satisfactorily addresses the criteria in this part; and

(2) The reasonableness of the plan or report given the size, type, resource needs, geographic area, and competitive situation of the customer.

(b) Review of resource choices. Western will review resource choices in [*62609]accordance with section 114 of EAct and this subpart. Western will disapprove IRPs if resource choices do not meet the reasonableness test in paragraph (a)(2) of this section and the provisions of section 114 of EAct.

(c) Accepting IRPs under other initiatives. If a customer or group of customers implements integrated resource planning under a program responding to other Federal, Tribal, or State initiatives, Western will accept and approve the plan as long as it substantially complies with the requirements of this subpart.

(d) Water-based plans and reports. In evaluating a plan or report, Western will consider water planning, efficiency improvements, and conservation in the same manner it considers energy planning and efficiencies. Customers that provide water utility services and customers that service irrigation load as part of their overall load may include water

conservation activities in the plan or report. To the extent practicable, customers should convert their water savings to energy values.

§ 905.15 -- What are annual IRP progress reports?

Customers must submit IRP progress reports each year within 30 days of the anniversary date of the approval of the currently applicable IRP. The reports must describe the customer's accomplishments achieved under the action plan, including projected goals and implementation schedules, and energy and capacity benefits and renewable energy developments achieved as compared to those anticipated. Western prefers measured values, but will accept reasonable estimates if measurement is infeasible or not cost-effective. Instead of a separate progress report, the customer may use any other annual report that the customer submits to Western or another entity, at the customer's discretion, if that report contains all required data for the previous full year and is submitted within 30 days of the approval anniversary date of the currently applicable IRP. With Western's approval, customers may submit reports outside of the 30-day anniversary date window.

§ 905.16 -- What are the requirements for the small customer plan alternative?

(a) Requesting small customer status. Small customers may submit a request to prepare a small customer plan instead of an IRP. Requests for small customer status from electric utilities must include data on total annual energy sales and usage for the 5 years prior to the request. Western will average this data to determine overall annual energy sales and usage so that uncontrollable events, such as extreme weather, do not distort levelized energy sales and usage. Requests from end-use customers must only document that the customer does not purchase electricity for resale. Western will respond to small customer status requests within 30 days of receipt of the request. If Western disapproves a request, the customer must maintain its currently applicable IRP, or submit its initial IRP no later than 1 year after the date of the letter of disapproval. Alternatively, the customer may submit a request for minimum investment report, public benefits report, or EE/RE report status, as appropriate.

(b) Small customer plan contents. Small customer plans must:

(1) Consider all reasonable opportunities to meet future energy service requirements using demand-side management techniques, new renewable resources, and other programs that provide retail consumers with electricity at reasonable cost;

(2) Minimize, to the extent practicable, adverse environmental effects; and

(3) Present in summary form the following information:

(i) Customer name, address, phone number, e-mail and Website if applicable, and contact person;

(ii) Type of customer;

(iii) Current energy and demand profiles and data on total annual energy sales and usage for the previous 5 years for utility customers, or current energy and demand use for end-use customers;

(iv) Future energy services projections;

(v) How paragraphs (b)(1) and (b)(2) of this section were considered; and

(vi) Actions to be implemented over the customer's planning timeframe.

(c) When to submit small customer plans. Small customers must submit the first small customer plan to the appropriate Western Regional Manager within 1 year after Western's approval of the request for small customer status. Small customers must submit in writing a small customer plan every 5 years.

(d) Maintaining small customer status.

(1) Every year on the anniversary of Western's approval of the plan, small customers must submit a letter to Western verifying that either their annual energy sales and usage is 25 GWh or less averaged over the previous 5 years, or they continue to be end-use customers. The letter must also identify their achievements against their targeted action plans, as well as the revised summary of actions if the previous summary of actions has expired.

(2) Western will use the letter for overall program evaluation and comparison with the customer's plan, and for verification of continued small customer status. Customers may submit annual update letters outside of the anniversary date if previously agreed to by Western so long as the letter contains all required data for the previous full year.

(e) Losing eligibility for small customer status.

(1) A customer ceases to be a small customer if it:

(i) Is a utility and exceeds total annual energy sales and usage of 25 GWh, as averaged over the previous 5 years; or

(ii) Is no longer an end-use customer.

(2) Western will work with a customer who loses small customer status to develop an appropriate schedule for submittal of an IRP or other report required under this subpart.

§ 905.17 -- What are the requirements for the minimum investment report alternative?

(a) Request to submit the minimum investment report. Customers may submit a request to prepare a minimum investment report instead of an IRP. Requests to submit minimum investment reports must include data on:

(1) The source of the minimum investment requirement (number, title, date, and jurisdiction of law);

(2) The initial, annual, and other reporting requirement(s) of the mandate, if any; and

(3) The mandated minimum level of investment for energy efficiency and/or renewable energy.

(b) Minimum investment requirement. The minimum investment must be a mandatory set percentage of customer gross revenues or other specific minimum investment in energy efficiency and/or renewable energy mandated by a State, Tribal, or Federal Government with jurisdictional authority.

(c) Western's response to minimum investment report requests. Western will respond to requests to accept minimum investment reports within 30 days of receipt of the request. If Western disapproves a request to allow use of the minimum investment report, the customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the letter of disapproval. Alternatively, the customer may submit a request for small customer plan, public benefits report, or EE/RE report status, as appropriate.

(d) Minimum investment report contents. Reports documenting compliance with a minimum level of [*62610] investment in energy efficiency and/or renewable energy must include:

(1) Customer name, address, phone number, email and Website if applicable, and contact person;

(2) Authority or requirement to undertake a minimum investment, including the source of the minimum investment requirement (number, title, date, and jurisdiction of law); and

(3) A description of the minimum investment, including:

(i) Minimum percentage or other minimum requirement for energy efficiency and/or renewable energy;

(ii) Actual or estimated energy and/or capacity savings resulting from minimum investments in energy efficiency, if known;

(iii) Actual or estimated energy and/or capacity resulting from minimum investments in renewable energy, if known; and

(iv) A description of the energy efficiency and/or renewable energy activities to be undertaken over the next 2 years as a result of the requirement for minimum investment in energy efficiency and/or renewable energy, if known.

(e) Minimum investment report approval. Western will approve the minimum investment report when it meets the requirements in paragraph (d) of this section.

(f) When to submit the minimum investment report. The customer must submit the first minimum investment report to the appropriate Western Regional Manager within 1 year after Western's approval of the request to accept the minimum investment report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999) including annual progress reports or update letters, until submitting the first minimum investment report to ensure there is no gap in compliance with section 114 of EPAAct.

(g) Maintaining minimum investment reports. (1) Every year on the anniversary of Western's approval of the first minimum investment report, customers choosing this option must submit a letter to Western verifying that they remain in compliance with the minimum investment requirement. The letter must also contain summary information identifying energy and capacity savings associated with minimum investments in energy efficiency, if known, and energy and capacity associated with minimum investments in renewable energy, if known.

(2) Western will use the letter for overall program evaluation and to ensure customers remain in compliance. Customers may submit letters outside of the anniversary date if previously agreed to by Western if the letter contains all required data for the previous full year. Instead of a separate letter, a customer choosing this option may submit the State, Tribal, or Federal required annual report documenting the minimum investment and associated energy efficiency and/or renewable energy savings and/or use, if known.

(h) Loss of eligibility to submit the minimum investment report. (1) A customer ceases to be eligible to submit a minimum investment report if:

(i) A State, Tribal, or Federal mandate no longer applies to the customer, or

(ii) The customer does not comply with the minimum level of investment in applicable State, Tribal, or Federal law.

(2) Western will work with a customer that is no longer eligible to submit a minimum investment report to develop an appropriate schedule for submittal of an IRP or other report required under this subpart.

§ 905.18 -- What are the requirements for the public benefits report alternative?

(a) Requests to submit a public benefits report. Customers may submit a request to prepare a public benefits report instead of an IRP. Requests to submit public benefits reports must include data on:

(1) The source of the public benefits requirement (number, title, date, and jurisdiction of law);

(2) The initial, annual, and other reporting requirement(s) of the program, if any; and

(3) The required public benefits charge, including charges to be collected for and spent on energy efficiency, conservation, or demand-side management; renewable energy; efficiency and alternative energy-related research and development; low-income energy assistance; and any other applicable public benefits category.

(b) Public benefits requirement. Participation in a public benefits program requires either a mandatory set percentage of customer gross revenues or other specific charges to be applied toward the programs as determined by the applicable State, Tribal, or Federal authority. The revenues from the public benefits charge may be expended directly by the customer, or by another entity on behalf of the customer as determined by the applicable State, Tribal, or Federal authority.

(c) Western's response to public benefits report requests. Western will respond to requests to accept a public benefits report within 30 days of receipt of the request. If Western disapproves a request to allow use of the public benefits report, the requesting customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the letter of disapproval. Alternatively, the customer may submit a request for small customer plan, minimum investment report, or EE/RE report status, as appropriate.

(d) Public benefits report contents. Reports documenting participation in a public benefits program must include:

(1) Customer name, address, phone number, email and Website if applicable, and contact person;

(2) Authority or requirement to participate in a public benefits program, including the source of the public benefits requirement (number, title, date, and jurisdiction of law); and

(3) A description of the public benefits program, including:

(i) Overall public benefits charge, whether minimum investment or other set charge, including charges to be collected for and spent on energy efficiency, conservation, or demand-side management; renewable energy; efficiency or alternative energy-related research and development; low-income energy assistance; and any other applicable public benefits categories;

(ii) Actual or estimated energy and/or capacity savings associated with energy efficiency and resulting from participation in the public benefits program, if known;

(iii) Actual or estimated energy and/or capacity associated with renewable energy and resulting from participation in the public benefits program, if known;

(iv) A description of the energy efficiency and renewable energy activities to be undertaken by the customer over the next 2 years as a result of participation in the public benefits program, if known.

(e) Public benefits report approval. Western will approve the public benefits report when it meets the requirements in paragraph (d) of this section.

(f) When to submit the public benefits report. The customer must submit the first public benefits report to the appropriate Western Regional Manager within 1 year after Western's approval of the request to prepare the public benefits report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect [*62611] before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999), including annual progress reports or update letters, until submitting the first public benefits report to ensure there is no gap in compliance with section 114 of EPCAct.

(g) Maintaining the public benefits report. (1) Every year on the anniversary of Western's approval of the first public benefits report, customers choosing this option must submit a letter to Western:

(i) Verifying that they remain in compliance with the public benefits program; and

(ii) Identifying energy and capacity savings associated with energy efficiency, and energy and capacity associated with renewable energy, for the customer's public benefits contribution, if known.

(2) Western will use the letter for overall program evaluation and to ensure customers remain in compliance. Customers may submit letters outside of the anniversary date if previously agreed to by Western if the letter contains all required data for the previous full year. Instead of a separate letter, a customer choosing this option may submit the State, Tribal, or Federal required annual report documenting the public benefits charge and associated customer energy efficiency and/or renewable energy savings and/or use, if known.

(h) Loss of eligibility to submit the public benefits report. (1) A customer ceases to be eligible to submit a public benefits report if:

- (i) A State, Tribal, or Federal mandate no longer applies to the customer, or
- (ii) The customer does not comply with the public benefits requirement in applicable State, Tribal, or Federal law.

(2) Western will work with a customer that is no longer eligible to submit a public benefits report to develop an appropriate schedule for submittal of an IRP or other report required by this subpart.

§ 905.19 -- What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?

(a) Requests to submit an EE/RE report. Customers may submit a request to prepare an EE/RE report instead of an IRP. Requests to submit EE/RE reports must include data on:

- (1) The source of the EE/RE reporting requirement (number, title, date, and jurisdiction of law);
- (2) The initial, annual, and other reporting requirement(s) of the report; and
- (3) A summary outline of the EE/RE report's required data or components, including any requirements for documenting customer energy efficiency and renewable energy activities.

(b) EE/RE report requirement. The EE/RE report may include only electrical resource use and subsequent energy efficiency and/or renewable energy activities, or may additionally include other utility resource information, such as water and natural gas data. At a minimum, the EE/RE report must annually document energy efficiency and/or renewable energy activities undertaken by the customer.

(c) Western's response to EE/RE report requests. Western will respond to requests to accept EE/RE reports within 30 days of receipt of the request. If Western disapproves a request to allow use of the EE/RE report, the customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the letter of disapproval. Alternatively, the customer may submit a request for small customer plan, minimum investment report, or public benefits report status, as appropriate, within 30 days after the date of the letter of disapproval.

(d) EE/RE report contents. EE/RE reports must include:

- (1) Customer name, address, phone number, email and Website if applicable, and contact person;
- (2) Authority or requirement to complete the EE/RE report, including the source of the requirement (number, title, date, and jurisdiction of law); and
- (3) A description of the customer's required energy efficiency and/or renewable energy activities, including:
 - (i) Level of investment or expenditure in energy efficiency and/or renewable energy, and quantifiable energy savings or use goals, if defined by the EE/RE reporting requirement;
 - (ii) Actual or estimated energy and/or capacity savings, if any, associated with energy efficiency and resulting from the EE/RE reporting requirement;
 - (iii) Actual or estimated energy and/or capacity, if any, associated with renewable energy and resulting from the EE/RE reporting requirement;
 - (iv) A description of the energy efficiency and/or renewable energy activities to be undertaken over the next 2 years as a result of the EE/RE reporting requirement.

(e) EE/RE report approval. Western will approve the EE/RE report when the report meets the requirements in paragraph (d) of this section.

(f) When to submit the EE/RE report. The customer must submit the first EE/RE report to the appropriate Western Regional Manager within 1 year after Western's approval of the request to accept the EE/RE report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999), including annual progress reports or update letters, until submitting the first EE/RE report to ensure there is no gap in compliance with section 114 of EPAct.

(g) Maintaining EE/RE reports.

(1) Every year on the anniversary of Western's approval of the first EE/RE report, customers choosing this option must submit an annual EE/RE report to Western. The report must contain summary information identifying customer energy and capacity savings associated with energy efficiency, if any, and customer energy and capacity associated with renewable energy, if any. If this information is not contained in the EE/RE report, the customer must submit this information with the report as a separate letter. The letter must also verify that the customer remains in compliance with the EE/RE reporting requirement.

(2) Customers may submit annual EE/RE reports outside of the anniversary date if previously agreed to by Western if the report contains all required data for the previous full year.

(h) Loss of eligibility to submit the EE/RE report. (1) A customer ceases to be eligible to submit a EE/RE report if:

(i) The EE/RE reporting requirement no longer applies to the customer, or

(ii) The customer does not comply with the EE/RE reporting requirements in applicable State, Tribal, or Federal law.

(2) Western will work with a customer that is no longer eligible to submit an EE/RE report to develop an appropriate schedule for submittal of an IRP or other report required under this subpart.

§ 905.20 -- How are plans and reports processed?

Western will review all plans and reports submitted under this subpart and notify the submitting entity of the plan's or report's acceptability within 120 days after receipt.

§ 905.21 -- When are customers in noncompliance with this part, and how does Western ensure compliance?

(a) Penalties for noncompliance. Western will impose a penalty on the long-term firm power customer for failure to submit or resubmit an IRP and action plan, small customer plan, minimum investment report, public benefits report, or EE/RE report as required by this subpart. Western will [*62612] also impose a penalty when the customer's activities are not consistent with the applicable plan or report unless Western finds that a good faith effort has been made to comply with the approved plan or report.

(b) Good faith effort to comply. If it appears that a customer's activities may be inconsistent with the applicable plan or report, Western will notify the customer and offer the customer 30 days to provide evidence of its good faith effort to comply. If the customer does not correct the specified deficiency or submit such evidence, or if Western finds, after receipt of information from the customer, that a good faith effort has not been made, Western will impose a penalty.

(c) Written notification of penalty. Western must provide written notice of the imposition of a penalty to the customer, and to the MBA or IRP cooperative when applicable. The notice will specify the reasons for imposition of the penalty.

(d) Imposition of penalty. (1) Beginning with the first full billing period following the notice specified in paragraph (c) of this section, Western will impose a surcharge of 10 percent of the monthly power charges until the deficiency specified in the notice is cured, or until 12 months pass. However, Western will not immediately impose a penalty if the customer or its MBA or IRP cooperative requests reconsideration by filing a written appeal under § 905.22.

(2) The surcharge increases to 20 percent for the second 12 months and to 30 percent per year thereafter until the deficiency is cured.

(3) After the first 12 months of imposition of the surcharge and instead of imposing any further surcharge, Western may impose a penalty that would reduce the resource delivered under a customer's long-term firm power contract(s) by 10 percent. Western may impose this resource reduction either:

- (i) When it appears to be more effective to ensure customer compliance, or
- (ii) When such reduction may be more cost-effective for Western.

(4) The penalty provisions in existing contracts will continue to be in effect and administered and enforced according to applicable contract provisions.

(e) Assessing and ceasing penalties. Western will assess the surcharge on the total charges for all power obtained by a customer from Western and will not be limited to surcharges on only firm power sales. When a customer resolves the deficiencies, Western will cease imposing the penalty, beginning with the first full billing period after compliance is achieved.

(f) Penalties on MBAs and IRP cooperatives. In situations involving an IRP submitted by an MBA on behalf of its members where a single member does not comply, Western will impose a penalty upon the MBA on a pro rata basis in proportion to that member's share of the total MBA's power received from Western. In situations involving noncompliance by a participant of an IRP cooperative, Western will impose any applicable penalty directly upon that participant if it has a firm power contract with Western. If the IRP cooperative participant does not have a firm power contract with Western, then Western will impose a penalty upon the participant's MBA on a pro rata basis in proportion to that participant's share of the total MBA's power received from Western.

§ 905.22 -- What is the administrative appeal process?

(a) Filing written appeals with Western. If a customer disagrees with Western's determination of the acceptability of its IRP, small customer plan, minimum investment report, public benefits report, or EE/RE report submittal, its compliance with an approved plan or report, or any other compliance issue, the customer may request reconsideration by filing a written appeal with the appropriate Regional Manager. Customers may submit appeals any time such disagreements occur and should be specific as to the nature of the issue, the reasons for the disagreement, and any other pertinent facts the customer believes should be brought to Western's attention. The Regional Manager will respond within 45 days of receipt of the appeal. If resolution is not achieved at the Regional Office level, the customer may appeal to the Administrator, who will respond within 30 days of receipt.

(b) Alternative dispute resolution. Upon request, Western will agree to use mutually agreeable alternative dispute resolution procedures, to the extent allowed by law, to resolve issues or disputes relating to compliance with this part.

(c) Imposition of penalty during appeal. Western will not impose a penalty while an appeal process is pending. However, if the appeal is unsuccessful for the customer, Western will impose the penalty retroactively from the date the penalty would have been assessed if an appeal had not been filed.

(d) Meeting other requirements during appeal process. A written appeal or use of alternative dispute resolution procedures does not suspend other reporting and compliance requirements under this part.

§ 905.23 -- How does Western periodically review plans and reports?

(a) Periodic review of customer actions. Western will periodically review customer actions to determine whether they are consistent with the approved IRP, minimum investment report, or public benefits report. Small customer plans and EE/RE reports are not subject to this periodic review.

(b) Reviewing representative samples of plans and reports. Western will periodically review a representative sample of IRPs, minimum investment reports, and public benefits reports, and the customer's implementation of the applicable

plan or report from each of its marketing areas. The samples will reflect the diverse characteristics and circumstances of the customers that purchase power from Western. These reviews will be in addition to, and separate and apart from, the review of initial and updated IRPs, minimum investment reports, and public benefits reports to ensure compliance with this subpart.

(c) Scope of periodic reviews. Periodic reviews may consist of any combination of review of the customer's annual IRP progress reports, minimum investment letters, or public benefits letters, telephone interviews, or on-site visits. Western will document these periodic reviews and may report on the results of the reviews in Western's annual report.

§ 905.24 -- What are the opportunities for using the Freedom of Information Act to request data?

IRPs, small customer plans, minimum investment reports, public benefits 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. Customers may request confidential treatment of all or part of a submitted document under FOIA's exemption for confidential business information found in 10 CFR 1004.11. Western will make its own determination whether particular information is exempt from public access and, if so, Western will treat this information as confidential and not disclose it to the public.

§ 905.25 -- How often is this program reviewed?

At appropriate intervals, Western may initiate a public process to review the regulations in this part to determine whether they should be revised to [*62613]reflect changes in technology, needs, or other developments.

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