

6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Collections from Central Valley Project Power Contractors to Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures.

SUMMARY: The Western Area Power Administration (Western) is proposing revised procedures for the assessment and collection of restoration fund payments from the Central Valley Project (CVP) power contractors as required by the CVP Improvement Act of 1992 (Act). Under the existing procedures, which became effective May 9, 1994, Western reviews the existing procedures every 5 years, or if: (1) there is a significant change to, or suspension of, the legislation; (2) a material issue arises; or (3) an apparent inequity in the assessment method is discovered. Western reviewed the existing procedures and found that revised procedures are needed due to an apparent inequity in the existing procedures. The proposed procedures will supersede the existing procedures. This Federal Register notice initiates the formal process for the proposed procedures.

DATES: The consultation and comment period will begin on the date of publication of this Federal Register notice and will end [insert 30 days after date of publication in the FEDERAL REGISTER]. A public information forum at which Western will present a detailed explanation of the proposed procedures is scheduled for April 29, 1998, beginning at 10 a.m. PDT, and will be followed by a public comment forum at which

Western will accept oral and written comments, beginning at 1 p.m. PDT. The forums will be held at the Sierra Nevada Regional Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA. Western should receive written comments by the end of the consultation and comment period to be assured consideration.

ADDRESSES: Written comments are to be sent to: Mr. Jerry W. Toenyas, Regional Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630-4710.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Dietz, Rates Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, California, 95630-4710, (916) 353-4453.

SUPPLEMENTARY INFORMATION: Section 3407 of the Act (Pub. L. 102-575, Stat. 4706, 4726) establishes in the Treasury of the United States the CVP Restoration Fund (Restoration Fund) to carry out the habitat restoration, improvement, and acquisition provisions of the Act. The Act further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP water and power contractors (Restoration Payments). The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining and collecting the CVP water and power contractors' shares of the annual Total Restoration Payment Obligation.

Western is responsible for the marketing and transmission of CVP power. Western has agreed to administer the assessment and collection of the Restoration Payments from CVP power contractors. Western has executed a letter of agreement

with Reclamation to establish procedures for depositing the collections from CVP power contractors into the Restoration Fund.

The annual Power Restoration Payment Obligation, determined by Reclamation, will be assessed to CVP power contractors. Every month each CVP power contractor will receive a bill reflecting the amount to be paid into the Restoration Fund. The CVP power contractor will pay that amount to Western, who will transfer all amounts collected from CVP power contractors to Reclamation for deposit into the Restoration Fund.

The Administrator of Western approved the existing procedures for the assessment and collection of the Restoration Payments from CVP power contractors on March 30, 1994. At a minimum, Western reviews the existing procedures every 5 years or if: (1) there is a significant change to, or suspension of, the legislation; (2) a material issue arises; or (3) an apparent inequity in the assessment method is discovered. Western has reviewed the existing procedures and has determined that revised procedures are needed due to an apparent inequity in the existing procedures.

Under the existing procedures, Western may adjust the capacity and energy multipliers that are applied to each CVP power contractor's actual capacity and energy amounts delivered by or scheduled with Western at midyear (on or about April 1) based on Reclamation's midyear adjustment to the annual Power Restoration Payment Obligation. Western applies the adjusted multipliers to each CVP power contractor's capacity and energy purchases for the remaining months of the subject assessment year. The apparent inequity occurs during this midyear adjustment process when the adjusted multipliers are applied to CVP power contractors with higher capacity and

energy purchases from Western during the remaining months. This process could adversely impact these CVP power contractors. If the midyear adjustment is distributed over the capacity and energy purchases during the entire assessment year, then this apparent inequity would not occur.

The proposed procedures will incorporate the existing procedures, with the exception of the following:

1. During each assessment year's midyear adjustment period, any adjustments to the capacity and energy multipliers will be based on Western's total capacity and energy sales to all CVP power contractors during the entire assessment year. Under the existing procedures, any adjusted multipliers resulting from the midyear adjustment process are based on Western's total capacity and energy sales from the prior year.
2. An alternative method for assessing the annual Power Restoration Payment Obligation will be offered by Western. If requested by the CVP power contractor, Western will determine the CVP power contractor's equal monthly Restoration Payment amounts for the assessment year. Under the existing procedures, the monthly Restoration Payments are variable amounts depending upon the CVP power contractor's actual monthly capacity and energy purchases from Western.
3. Revised provisions for late payment charges assessed to delinquent Restoration Payments, are described in detail in the Proposed Procedures section.

The existing procedures will be superseded by the proposed procedures. The final procedures are to become effective not less than 30 days after publication of notice of final procedures in the Federal Register, or August 1, 1998, whichever occurs later.

Acronyms and Definitions

As used herein, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration.

Assessment Month: The service month, which is 1 month prior to the Billing Month.

Assessment Year: The period that uses the service months from August 1 through July 31 for which CVP Power Contractors will be billed Restoration Payments.

Billing Month: The month CVP Power Contractors will be billed for the Restoration Payments.

Central Valley Project (CVP): A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield.

CVP Improvement Act of 1992 (Act): Title 34 of Public Law 102-575, 106 Stat. 4706 et seq. A legislative act, which was enacted on October 30, 1992, and defines provisions for habitat restoration, improvement and acquisition, and other fish and wildlife restoration activities in the CVP area of California.

DOE: United States Department of Energy.

Fiscal Year (FY): The fiscal year, which begins October 1 and ends September 30.

Interior: United States Department of the Interior.

kW: Kilowatt, the electrical unit of capacity that equals 1000 watts.

kWh: Kilowatt-hour, the electrical unit of energy that equals the generation of 1000 watts over 1 hour.

Letter of Agreement: Letter of Agreement No. 93-SAO-10156, a written agreement between Reclamation and Western that established procedures to deposit the Restoration Payments collected from CVP Power Contractors into the Restoration

Fund.

Load Adjustment(s): The adjustment(s) to CVP Power Contractors' forecasted monthly capacity and energy purchases from Western as determined by Western based on CVP Power Contractors' actual capacity and energy amounts delivered by or scheduled with Western.

Midyear Adjustment: The adjustment to the annual Power Restoration Payment Obligation determined by Reclamation on or about April 1 of the Assessment Year.

Power: Capacity and energy.

Power Contractor: An entity purchasing firm capacity and/or energy from Western for a period in excess of 1 year.

Power Restoration Payment Obligation: The portion of the Total Restoration Payment Obligation calculated and assigned annually to CVP Power Contractors by Reclamation.

Reclamation: United States Department of Interior, Bureau of Reclamation.

Restoration Fund: The CVP Restoration Fund, established by Section 3407 of the Act, into which revenues provided by the Act are deposited, and from which funds are appropriated by the Secretary to carry out the habitat restoration, improvement and acquisition provisions of the Act.

Restoration Fund Bill(s): The instrument prepared and issued monthly by Western as a mechanism for collecting the Restoration Payments from CVP Power Contractors.

Restoration Payment(s): The amount(s) recorded as payable on CVP Power Contractors' Restoration Fund Bills.

Secretary: Secretary of DOE.

Total Restoration Payment Obligation: The total amount of payments to be collected

from the CVP water and power contractors, calculated annually by Reclamation.

Western: United States Department of Energy, Western Area Power Administration.

Proposed Procedures

Determination of the Power Restoration Payment Obligation

Reclamation is responsible for determining the annual Power Restoration Payment Obligation for CVP Power Contractors. Prior to each Assessment Year, on or about July 1, Reclamation will, by letter, provide to Western's Regional Manager of the Sierra Nevada Region the amount determined to be the Power Restoration Payment Obligation and a detailed explanation of the computation of the amount for the upcoming Assessment Year. Upon receiving this letter from Reclamation, Western's Sierra Nevada Region will notify each CVP Power Contractor of the annual Power Restoration Payment Obligation, the capacity and energy multipliers for the Assessment Year, and for CVP Power Contractors choosing the alternative method for assessing the annual Power Restoration Payment Obligation, the resulting monthly Restoration Payment amount. Any adjustments to the annual Power Restoration Payment Obligation will be accomplished through the Midyear Adjustment determined by Reclamation.

Assessing the Power Restoration Payment Obligation

For each Assessment Year, Western will prorate the annual Power Restoration Payment Obligation to actual capacity and energy amounts delivered by or scheduled with Western for each CVP Power Contractor. Western will assess 50 percent of the annual Power Restoration Payment Obligation to capacity and 50 percent to energy. Western will determine a capacity multiplier and an energy multiplier using projected

Power sales based on CVP Power Contractors' forecasts and/or prior FY total capacity and energy amounts delivered or scheduled to all CVP Power Contractors. Prior to July 1, when Western receives Reclamation's letter for the annual Power Restoration Payment Obligation, Western will request each CVP Power Contractor to submit to Western its forecasted monthly capacity and energy purchases from Western. The CVP Power Contractor's forecast will be for August 1 through July 31 of the subject Assessment Year. If the CVP Power Contractor does not submit a forecast of monthly capacity and energy purchases, Western will use the CVP Power Contractor's prior year's (August 1 through July 31) actual capacity and energy amounts delivered or scheduled, with adjustments Western may deem appropriate, as the projected Power sales used for the subject Assessment Year.

The annual Power Restoration Payment Obligation for the subject Assessment Year to be prorated to capacity will be divided by Western's projected capacity sales to determine the capacity multiplier. The same process will be repeated using the annual Power Restoration Payment Obligation prorated to energy divided by Western's projected energy sales to determine the energy multiplier. During each Assessment Month of the subject Assessment Year, these capacity and energy multipliers will be applied to each CVP Power Contractor's actual capacity and energy amounts delivered by or scheduled with Western to determine the CVP Power Contractor's Restoration Payment, unless the alternative method for assessing the Power Restoration Payment Obligation is used. For each Billing Month of the subject Assessment Year, each CVP Power Contractor will be billed for its individual monthly Restoration Payment.

Alternative Method for Assessing the Power Restoration Payment Obligation

As an alternative method to the assessment method described above and if requested by the CVP Power Contractor, Western will determine the CVP Power Contractor's monthly Restoration Payments as equal monthly payment amounts, as adjusted, for the subject Assessment Year. The monthly Restoration Payment amounts will be based on the CVP Power Contractor's forecasted or prior year's actual capacity and energy amounts delivered by or scheduled with Western.

Under this alternative method, for each Assessment Year, Western will prorate the annual Power Restoration Payment Obligation based on the CVP Power Contractor's forecasted or prior year's monthly capacity and energy purchases from Western. Western will determine the CVP Power Contractor's monthly Restoration Payment amount by multiplying the CVP Power Contractor's total forecasted or prior year's capacity purchases by the capacity multiplier determined by Western, and repeating the calculation for energy using the energy multiplier. Western will sum the resulting capacity and energy calculations and then divide by 12 to determine the monthly Restoration Payment amount. For each Billing Month of the subject Assessment Year, the CVP Power Contractor will be billed for its individual monthly Restoration Payment.

CVP Power Contractors who prefer this alternative method for assessing the annual Power Restoration Payment Obligation must notify Western in writing prior to August 1, 1998. Once the CVP Power Contractor elects this alternative method, the method will remain in effect unless otherwise mutually agreed by Western and the CVP Power Contractor.

Collection of CVP Power Contractors' Restoration Fund Bills

Each CVP Power Contractor will receive a Restoration Fund Bill on or about the twenty-fifth (25th), but no later than the last day of the month for each month designating the amount payable. The Restoration Fund billing cycle, for each Assessment Year, will begin at least 30 days after August 1, or the date written notification of the annual Power Restoration Payment Obligation is received from Reclamation, whichever occurs later.

If the Restoration Fund billing is suspended for a time, Western's Sierra Nevada Region will notify all CVP Power Contractors as soon as possible. Suspension of billing may occur to avoid overpayment on the annual Power Restoration Payment Obligation.

Payment Due Date

All CVP Power Contractors' Restoration Payments are due and payable by CVP Power Contractors before the close of business on the twentieth (20th) calendar day after the date of the issuance of each Restoration Fund Bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday.

Late Payment Charges Assessed to Delinquent Restoration Payments

Restoration Fund Bills not paid in full by the CVP Power Contractor(s) by the due date as specified above will be assessed a late payment charge of five hundredths percent (0.05%) of the principal amount unpaid for each day payment is delinquent, to be added until the amount due is paid in full. Payments received will be first applied to the charges for the late payment assessed on the principal and then to the payment of the principal.

Deposit of CVP Power Contractors' Restoration Payments into the Restoration Fund

On or about the twenty-first (21st) calendar day of the month following each

Billing Month, Western will transfer all of the Restoration Payments received from CVP Power Contractors, including late payment charges, to Reclamation for deposit into the Restoration Fund.

Adjustment to the Power Restoration Payment Obligation

There are two types of adjustments that can be made relative to each Assessment Year's annual Power Restoration Payment Obligation, a Midyear Adjustment determined by Reclamation and Load Adjustments determined by Western. Reclamation will notify Western, in writing, of the Midyear Adjustment. Upon receiving Reclamation's written notification, Western will notify each CVP Power Contractor of the Midyear Adjustment to the annual Power Restoration Payment Obligation and any adjustments to capacity and energy multipliers for the remaining months of the subject Assessment Year. Any adjustments made will be based on Western's Power sales to all CVP Power Contractors for the entire Assessment Year.

The Midyear Adjustment is determined by Reclamation and occurs on or about April 1, of the subject Assessment Year, following Reclamation's annual determination of available CVP water supply for the year. This adjustment applies to the annual Power Restoration Payment Obligation and is based on hydrological conditions and Reclamation's most recently available forecast of CVP water deliveries to the CVP water contractors applicable to the subject Assessment Year. Upon receiving Reclamation's notification, Western may adjust the capacity and energy multipliers as appropriate to coincide with the adjusted annual Power Restoration Payment Obligation.

During the Midyear Adjustment period, Western will also review the Restoration Payments from the CVP Power Contractors received thus far for the subject

Assessment Year. If the actual payment amounts are 25 percent greater or less than projected, Western may adjust the capacity and energy multipliers for the remaining months of the subject Assessment Year. Beginning May 1, and continuing throughout the remaining months of the subject Assessment Year, the adjusted multipliers will be applied to each CVP Power Contractor's actual capacity and energy amounts delivered by or scheduled with Western.

For the alternative method for assessing the Power Restoration Payment Obligation, Load Adjustment(s), determined by Western, will be evaluated quarterly during the subject Assessment Year for each CVP Power Contractor. Western will compare the CVP Power Contractor's forecasted or prior year's capacity and energy amounts to the actual capacity and energy amounts delivered by or scheduled with Western during the subject Assessment Year. If, in Western's judgment, the difference would significantly impact other CVP Power Contractors, Western will adjust the CVP Power Contractor's forecasted or prior year's capacity and energy amounts to align with actual load data. This adjustment will result in a change to the CVP Power Contractor's monthly Restoration Payment amount. Western will notify the CVP Power Contractor(s) of any Load Adjustment(s) and the resulting change(s) to the monthly Restoration Payment amount prior to any adjustments.

To the extent practicable, Western will also make Load Adjustment(s) during the last quarter of the subject Assessment Year to ensure that the CVP Power Contractor's total annual Restoration Payment amount is equal to the amount the CVP Power Contractor would have paid if billing would have been based on actual capacity and energy amounts delivered by or scheduled with Western. Any balances remaining on

the CVP Power Contractor's Restoration Fund Bill(s) must be paid in full by the thirtieth (30th) of September for each Assessment Year.

All other deviations, in the amounts collected or assessed relative to the annual Power Restoration Payment Obligation, will be rolled into the following Assessment Year. The rolled over amount will be added or subtracted from the Power Restoration Payment Obligation amount to be assessed in that year.

Review Process

Western will review the procedures for the assessment and collection of the Restoration Payments from CVP Power Contractors every 5 years, or if one of the following occurs: (1) if there is a significant change to or suspension of the legislation; (2) if a material issue arises; or (3) if an apparent inequity in the procedures is discovered.

Availability of Information

All brochures, studies, comments, letters, memoranda, or other documents made or kept by Western for developing the proposed procedures, are and will be made available for inspection and copying at the Sierra Nevada Regional Office, located at 114 Parkshore Drive, Folsom, California.

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 proposed rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western and, therefore, is not a rule within the purview of the Act.

Environmental Compliance

Western will conduct an environmental evaluation and develop the appropriate level of environmental documentation pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508); and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Review Under Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.), Western has received approval from the Office of Management and Budget for the collection of customer information in this rule, under control number 1910-0100.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Dated:

Michael S. Hacskaylo
Acting Administrator