6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

2004 Power Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of the Final 2004 Power Marketing Plan.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing administration of DOE, announces its 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (Sierra Nevada Region). On December 31, 2004, all of the Sierra Nevada Region's long-term firm Central Valley Project (CVP) power sales contracts will expire. This notice responds to the comments received on the Proposed 2004 Power Marketing Plan (Proposed Plan) and sets forth the final Marketing Plan. The Marketing Plan specifies the terms and conditions under which Western will market power from the CVP and the Washoe Project beginning January 1, 2005. This Marketing Plan supersedes all previous marketing plans for these projects.

Western plans to amend existing customers' power sales contracts to provide them with the right to purchase a percentage of the Sierra Nevada Region's power resources beginning January 1, 2005. After Western more fully develops products and services, it will offer new contracts for the sale of power under the Marketing Plan. Western will request entities who meet the criteria defined in the Marketing Plan, and who wish to apply for a new allocation of power from Western, to submit formal

applications. Application procedures will be set forth in the Call for 2005 Resource Pool Applications in a separate Federal Register notice.

DATE: The Marketing Plan will become effective [insert 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Power Marketing Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630, telephone (916) 353-4416.

SUPPLEMENTAL INFORMATION:

AUTHORITIES

The Marketing Plan for marketing power after 2004 by the Sierra Nevada Region is being established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101-7352); the Reclamation Act of June 17, 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. 485(c)); and other acts specifically applicable to the projects involved.

DEVELOPMENT OF THE 2004 POWER MARKETING PLAN

Western began developing the Marketing Plan with a series of three informal public information meetings. These meetings helped Western identify pertinent issues and possible marketing options, including types of products and services, and eligibility and allocation criteria. During that process, Western evaluated several options for marketing power after existing contracts expire.

Western began the Administrative Procedure Act process with its Notice of

Proposed Plan in the Federal Register (62 FR 8710, February 26, 1997). Western held a public information forum on April 8, 1997, to present the Proposed Plan and answer questions. On April 24, 1997, Western held a public comment forum to accept verbal comments on the Proposed Plan. In addition, Western accepted written comments from the public through May 27, 1997. Western considered the comments received in developing the Marketing Plan.

In a separate public process, Western explored the impact of electric utility industry restructuring on Western's power allocation policies. A Notice of Inquiry for this process was published in the Federal Register (63 FR 66166, December 1, 1998). Western held a public comment forum on January 6, 1999, and accepted written comments through January 15, 1999. The results of this process will be published in a separate Federal Register notice.

Western opened an additional comment period focused solely on the size of project-specific resource pools because several Native American tribes commented on the size of these pools. The Notice of Public Process on Resource Pool Size was published in the Federal Register (64 FR 4646, January 29, 1999). Western held informational meetings on its resource pool size proposals and the requirements for receiving an allocation of power in Phoenix, Arizona, on February 3, 1999; Albuquerque, New Mexico, on February 5, 1999; and Folsom, California, on February 9, 1999. Western accepted written comments from the public through March 1, 1999. Western also considered the comments related to the Sierra Nevada Region's resource pool received during this comment period in developing the Marketing Plan.

Western will market the Sierra Nevada Region's power resources consistent with the Power Marketing Initiative under the Energy Planning and Management Program (EPAMP) (60 FR 54151, October 20, 1995). Western will initially offer 96 percent of the Sierra Nevada Region's power resources to existing customers and allocate, under a separate process, the remaining resources using the criteria in the Marketing Plan. Under a separate process, Western will reduce all customers' allocation percentages by up to 2 percent and establish a 2015 Resource Pool. The Marketing Plan provides a balance between existing and new customers, including Native American tribes, while meeting Western's contractual obligations that continue beyond 2004. If unexpected circumstances cause early termination of existing electric service contracts, Western may market its power resources under the Marketing Plan before January 1, 2005.

BACKGROUND

CVP power facilities include 11 powerplants with a maximum operating capability of about 2,044 megawatts (MW), and an estimated average annual generation of 4.6 million megawatthours (MWh). Western markets and transmits the power available from the CVP.

Western owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral section of the Pacific Northwest-Pacific Southwest Intertie (Pacific Intertie)), 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line, and 44 circuit miles of 69-kV and below transmission line. Western also has part ownership in the 342-mile California-Oregon Transmission Project. Many of Western's existing customers have no direct access to Western's transmission lines and receive service over transmission lines owned by other utilities.

The Washoe Project, Stampede Powerplant, has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh. Sierra Pacific Power Company owns and operates the only transmission system available for access to Stampede Powerplant.

The following table lists estimates of CVP power resources and adjustments. This table is for informational purposes only, and does not imply that the power resources and adjustments shown will be the actual amounts available or adjustments applied.

Estimated CVP Power Resources and Adjustments	
Power Resources/Adjustment	Range/Value
Annual energy generation	2,400,000 - 8,600,000 MWh
Monthly energy generation	100,000 - 1,100,000 MWh
Monthly capacity	1,100 - 1,900 MW
Annual project use	670,000 - 1,670,000 MWh
Monthly project use	10,000 - 180,000 MWh
Monthly project use (on peak)	30 - 230 MW
Monthly maintenance	0 - 300 MW
Reserves - hydro	minimum 5% of monthly capacity
CVP transmission and transformation losses from the generator bus to a 230-kV load bus	1.8% (currently)

LEGAL ANALYSISRegulatory 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 final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving services applicable to public property.

Environmental Compliance

In compliance with National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq.), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500-1508), and DOE NEPA implementing regulations (10 CFR part 1021), 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 2004 Power Marketing Program EIS (2004 EIS), and the Record of Decision was published in the Federal Register (62 FR 22934, April 28, 1997). The Marketing Plan falls within the range of alternatives considered in the 2004 EIS. This NEPA review identified and analyzed environmental effects related to the Marketing Plan.

Marketable CVP and Washoe Project electrical capacity and energy is influenced by available reservoir storage and water releases controlled by the U.S. Department of the Interior, Bureau of Reclamation (Reclamation). Pursuant to the CVP Improvement Act of 1992 (Pub. L. 102-575, Title 34) (CVPIA), Reclamation prepared a programmatic EIS (PEIS) addressing improvements to fish and wildlife habitat stipulated therein, and potential changes in CVP operations and water allocations to meet those obligations. Actions based on the PEIS may result in modifications to CVP facilities and operations that would affect the timing and quantity of electric power generated by the CVP. Such changes may, in turn, affect electric power products and services to be marketed by

Western. The Marketing Plan is designed to accommodate these changes. Western is a cooperating agency in Reclamation's PEIS.

Review Under the 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 the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to services and involves matters of procedure.

RESPONSES TO COMMENTS RECEIVED ON THE NOTICE OF PROPOSED PLAN (62 FR 8710, February 26, 1997)

During the public consultation and comment period, Western received 26 letters commenting on the Proposed Plan. In addition, 12 customer and interested party representatives commented during the April 8 and April 24, 1997, public forums. Western reviewed and considered all comments received by the end of the public consultation and comment period, May 27, 1997, in preparing the Marketing Plan.

The following is a summary of the comments received during the consultation and comment period, and Western's responses to those comments. Comments are grouped by subject and paraphrased for brevity. Specific comments are used for clarification where necessary.

I. Public Participation and Process Implementation

Comment: Commentors supported the process Western used in developing the Marketing Plan. One comment expressed concern about the lack of opportunity for public participation.

Response: Western provided opportunities for public participation in preparing the Marketing Plan, 2004 EIS, and EPAMP, as described in this notice.

Comment: Some commentors said that since the contracts do not expire until 2004, Western should delay the Marketing Plan process. This delay would allow time to resolve uncertainty about the future of the industry, and allow other interests time to make arrangements to share power revenues with environmental and clean power goals. Other comments supported developing the Marketing Plan on the proposed schedule to provide customers with lead time for planning purposes.

Response: Because electric utility industry restructuring is already underway, delaying decisions may foreclose options for Western and its customers. To be an active participant in the newly restructured industry, Western needs to identify and work with its future customers to develop specific products to meet their needs. For many of Western's customers, Federal hydropower is a critical component of their resource mix, and knowledge of CVP resource availability is crucial to planning strategies for dealing with utility restructuring. It is important that the Marketing Plan is not delayed because it takes time to develop contracts and arrange for transmission service. Western recognizes the need for flexibility in the changing utility industry and will offer Custom Products, such as firming power and ancillary services, to meet customers' needs. The Marketing Plan will not impact existing arrangements concerning funding of environmental restoration or advancement of clean power goals. These items are discussed more thoroughly in our responses to other comments.

II. Environmental Issues

Comment: Commentors stated that there are unresolved environmental issues associated with the operation of CVP dams, and that environmental protection mechanisms are insufficient or outdated. A commentor stated that if a contract extension decision is part of the Marketing Plan, new environmental protection mechanisms must be developed. Western was urged to create a trust fund(s) in which a portion of Western's existing power revenues would be set aside to mitigate environmental damage associated with operation of the Federal dams and to support the development of energy efficiency and renewable energy. Also, questions were raised as to whether Western has complied with NEPA in developing the Marketing Plan.

Response: Western completed the 2004 EIS in accordance with NEPA, the Council on Environmental Quality NEPA implementing regulations, and DOE's NEPA implementing regulations. The 2004 EIS examined the environmental impacts and identified no significant impacts to the human environment from marketing power from the CVP and Washoe Project. The Marketing Plan falls within the parameters analyzed in the 2004 EIS. The operation of CVP dams is dictated by other authorized project purposes such as flood control, navigation, water supply, and fish and wildlife. Environmental issues associated with the operation of CVP dams are being addressed by the CVPIA PEIS, including direct and indirect impacts on all fish, wildlife, and habitat restoration actions and the potential renewal of existing CVP water contracts. Western is a cooperating agency in Reclamation's PEIS process.

CVP power customers contribute significant revenue to the Restoration Fund, established under the CVPIA, which is designed to mitigate environmental consequences of the operation of Federal dams. Western supports renewable energy through its Policy for the Purchase of Non-Hydropower Renewable Resources (61 FR 43051, August 20, 1996). In accordance with the Energy Policy Act of 1992, Western encourages energy efficiency by requiring all firm power customers to prepare and keep current integrated resource plans.

III. Products and Services

A. Base Resource

<u>Comment:</u> Several commentors requested that Western reconsider its proposal to market power on an as-available basis. Suggestions were made that the Base Resource be further developed, including evaluation of purchasing energy, especially in dry years, to provide some minimum level of firm power and maximize use of the transmission assets available to Western, including the Pacific Intertie. Comments included requests for more information on firm availability, pricing, timing of commitment to purchase the Base Resource, and reliability of the Base Resource.

<u>Response:</u> CVP generation is expected to vary hourly, daily, monthly, and annually, based on hydrological conditions and other constraints that govern CVP operations; therefore, Western cannot accurately predict future availability. However, Western is willing to purchase energy to maintain some firm level of service to all

customers. The amount of firming and the use of Western's transmission resources will be further developed by Western through a collaborative process with customers prior to product commitment by a customer. Because Western's rates will be determined through a separate public process, product pricing is outside the scope of the Marketing Plan. However, the costs associated with the hydropower system may be discussed during the collaborative process.

Comment: A commentor stated that the Base Resource concept will require a new and much closer working relationship with Reclamation, Federal water users, and other stakeholders.

Response: Western will continue to develop close working relationships with Reclamation, Federal water users, and other stakeholders.

Comment: One commentor asked if Western will include reserves or other ancillary services in the Base Resource.

Response: The Base Resource may be used in a manner the customer deems most beneficial, within operational constraints. Operating reserves and other ancillary services will be consistent with industry standards or may be provided with the Base Resource or the Custom Product on an as-requested basis. Provision of ancillary services, including reserves, will be developed with customer input.

B. Custom Product

Comment: Commentors suggested that Western develop some "standardized" Custom Products to allow customers to select a more firm service, similar to what is currently marketed. A commentor stated that negotiating with customers individually for firming the Base Resource would be more difficult, less transparent, and would increase risk. One commentor questioned whether the design of Custom Products would potentially cause cost-shifting among customers.

Response: Western designed the Marketing Plan to provide maximum flexibility to its customers. Development of "standardized" Custom Products for a customer or group of customers is not precluded by the Marketing Plan. The Marketing Plan was designed with this possibility in mind. Prior to product commitments, using a collaborative process, Western will develop Custom Products that most closely match customer needs. Using this collaborative approach will help ensure that information about Custom Product options will be available to everyone to minimize the risk of inequities. Also, by considering the needs of all similarly situated customers, due to economies of scale, Western may obtain better prices in the electric utility market when making firming purchases or obtaining other related services. Because all customers will equitably share in the cost of the Base Resource and each customer will pay only for the Custom Products which it specifically requests, any potential for cost-shifting is minimal.

Comment: A commentor suggested that Western needs to consider potential ramping rates if a customer chooses to schedule power deliveries.

Response: Under the Marketing Plan, all customers will be required to schedule power deliveries. Information on ramping rates applicable to the hydropower system will be made available prior to beginning service.

Comment: One commentor stated that preference customers should be allowed to help provide the products and services needed to firm the Base Resource for other customers wanting a firm Custom Product.

Response: The Marketing Plan does not preclude Western or customers from purchasing products and services from any supplier.

C. Exchange Program

Comment: Commentors supported and recommended further development of the concept of the Western-managed exchange program.

Response: Western will complete development of the exchange program through a collaborative process with customers.

D. Energy Banking Arrangements

Comment: A commentor said Western should begin planning now for termination of existing banking arrangements with Pacific Gas & Electric Company (PG&E) under Contract 14-06-200-2948A. If the existing account is "cashed out," the benefits should be shared with all customers. Commentors suggested that Western pursue energy banking and firming arrangements beyond 2004, even though it may be difficult.

Response: Since existing banking arrangements will expire on December 31, 2004, they are outside the scope of the Marketing Plan. Western is willing to explore banking arrangements and other options during further development of the exchange program and Custom Products.

IV. Proposed Resource Percentages/Pools

A. Allocation Methodology

Comment: A commentor requested that Western accommodate the seasonal nature of agricultural loads.

Response: The Base Resource depends on the generation pattern of the CVP, which is similar to the pattern of agricultural loads. If the Base Resource does not accommodate the seasonal nature of agricultural loads, Western will work with customers to develop Custom Products that will meet the customers' needs to the extent possible.

Comment: One commentor stated the Marketing Plan should not affect its contractual rights through 2004 to increase its contract rate of delivery (CRD) up to 50 MW.

Response: The Marketing Plan does not affect current contractual rights. If necessary, Western will accommodate these CRD increases and will effectuate related CRD decreases as provided for in certain existing contracts.

Comment: A suggestion was made that both energy and capacity should be used to determine customer resource extensions instead of the proposed CRD methodology. A comment further suggested that not using energy penalized customers with higher load factors for maintaining good load shapes. If rates are to be based on a split between capacity and energy, then the allocation should be based on capacity and energy.

Response: Existing customers' current allocations are based on capacity. Western believes that it is equitable to base the existing customers' resource allocation percentages on existing capacity commitments because, under existing contracts, Western's capacity obligation is fixed but the energy obligation is not. Many customer CVP energy purchases are based on economics, not on their load shape or energy entitlement. Unlike the current allocation methodology, the resources available under the Marketing Plan are based on generation rather than load. Basing the right to purchase generation output, which is limited by the capacity of the plants, on a CRD does not penalize customers with high load factors, rather it gives them no greater consideration. Allocating the power resources based on a rate design is not appropriate because the rate design for power sold under the Marketing Plan has not been determined and may be different from today's rate design.

B. Allocation Amounts

Comment: Western was requested to increase the 2005 Resource Pool percentage. Another comment requested withholding application of the Power Marketing Initiative, particularly during the period from 2005 through 2014 (when the Sacramento Municipal Utility District (SMUD) settlement is in effect).

Response: Comments received did not provide rationale for changing the resource pool percentages. However, Western considered many factors in determining the magnitude of the resource pools. Those factors included: (1) the loads of preference entities that applied for but did not receive power under the 1994 Power Marketing Plan; (2) impacts of restructuring and open transmission access; (3) the potential for new loads, including those of Native American tribes; and, (4) existing customer loads with limited Federal power compared to their needs. After careful consideration, Western determined that the combined resource pools in 2005 and 2015, totaling up to 6 percent of the Base Resource, would be equitable for potential new customers as well as existing customers. Withholding application of the Power Marketing Initiative (establishment of the resource pools) would potentially eliminate the ability of Western to serve new customers that may benefit from a Federal power allocation.

Comment: Some commentors stated that Western should maximize the global value of its Base Resource by minimizing both reductions and increases in the allocations that Western's current customers receive.

Response: The Marketing Plan provides for minimal increases or reductions in the pro rata amount of the power resources available to existing customers. However, due to the expiration of Contract 14-06-200-2948A with PG&E, and the associated firming arrangements, the Sierra Nevada Region may not be able to market power at the same level as in the past. Under the Marketing Plan allocation method, each allottee will receive a percentage of actual generation. The amount of power associated with an allocation percentage will vary, based on hydrological conditions and other constraints that govern CVP operations. The Marketing Plan attempts to mitigate reductions in availability or usability of the power resources for meeting customers' loads by offering the Custom Product, which could include a level of firming purchases.

Comment: A comment requested that allocation amounts reflect a customer's CRD as opposed to actual load.

Response: Western has decided that an existing customer's allocation percentage will be based on the customer's extension CRD. Western will adjust the existing customer's percentage if its actual load is less than the extension CRD. This criteria was adopted because Western does not believe it is sound business practice to allocate power based on a historical CRD that has never been fully used.

Comment: Commentors requested that temporary allocation increases remain with the current recipients.

Response: Contracts implementing the temporary reallocations provide that the original CRD be returned to the original customer.

Comment: One commentor suggested that the minimum load requirement for the resource pools be 500 kW instead of 1 MW.

Response: To avoid precluding smaller entities from receiving allocations from the resource pools, Western has modified the Marketing Plan to allow requests to serve loads that are less than 1 MW, but at least 500 kW, if they can be aggregated so Western can schedule and deliver to a minimum load of 1 MW.

Comment: A commentor objected to Western's approach regarding SMUD's rights under the 1983 Settlement Agreement in the Proposed Plan. The commentor urged Western to reach an accommodation with SMUD that would provide for SMUD's resource extension to be made on the same basis as all other existing customers, and questioned the logical basis for the fraction 360/1,152. Public participation and joinder in regard to the SMUD settlement were also questioned. Further, it was recommended that if SMUD does not voluntarily agree to a reasonable accommodation, Western should recoup the over-allocation during the second 10-year period. Another commentor supported Western's approach.

Response: Contract DE-MS65-83WP59070 (Settlement Agreement) between Western and SMUD, dated April 15, 1983, provides that SMUD has a right to purchase 360/1,152 of all power allocated or sold by Western on or after January 1, 2005, through December 31, 2014. This Settlement Agreement was reached to resolve a lawsuit, United States of America vs. Sacramento Municipal Utility District, Civil No. S-75-277, United States District Court for the Eastern District of California. The Marketing Plan is designed to mitigate the impacts of the Settlement Agreement on other customers by offering an Optional Purchase, which is equal to the additional amount of power allocated to SMUD. Western will adjust SMUD’s percentage of the available resources after 2014 to put it on the same basis as other existing customers. The adjustment will include the amount that would have been contributed to the 2005 Resource Pool by SMUD in absence of the Settlement Agreement. Western does not agree that SMUD will receive an over-allocation for the first 10 years under the Marketing Plan because SMUD’s percentage allocation is specified in the Settlement Agreement. Therefore, SMUD should not be penalized during the second 10 years of the Marketing Plan. The fraction 360/1,152 referenced in the Settlement Agreement represents SMUD’s CRD of 360 MW and Western’s maximum simultaneous load level of 1,152 MW at the time of the settlement.

Allowing public participation in litigation would severely undermine Western's ability to protect the Government's interest. Western is not required to join every preference customer or every potential preference customer in a lawsuit in which Western is a party. Upon proper motion, the court determines when and if joinder of a person is needed for just adjudication.

C. Allocations Due to Special Circumstances

Comment: Commentors requested that CVP power continue to be available at cost to long-term customers. If these customers do not receive a power allocation under the Marketing Plan, the economic consequences would be significant.

Response: Western will offer the greater portion of the CVP resources to existing customers. The economic analyses done for the 2004 EIS showed that the greatest socioeconomic benefits would be expected to occur if Western’s existing customers continued to receive power from Western.

Comment: A few commentors stated that Federal hydroelectric power should be used to benefit the public. They suggested that Western give priority to those who meet certain additional criteria, including, demonstrating environmental responsibility in mitigating any damages associated with Federal dams; developing and/or integrating solar and other renewable energy and energy efficiency into their resource mix; supporting educational institutions; and not requiring supplemental purchases.

Response: Western markets power in a manner that will encourage the most widespread use at the lowest possible rates consistent with sound business principles. Within broad statutory guidelines and operational constraints of the CVP, Western has wide discretion as to whom and under what terms it will contract for the sale of Federal power, as long as preference is accorded to statutorily defined public bodies. Western cannot measure the value of the public benefits provided by an entity when allocating its power and, therefore, will not base an allocation on an entity's mission. Although not specifically addressed in the Marketing Plan, Western supports programs for the public good.

Western supports renewable energy through its Policy for the Purchase of Non-Hydropower Renewable Resources, and encourages energy efficiency by requiring all firm power customers to prepare and keep current integrated resource plans. Further, CVP power customers contribute significant revenue to the Restoration Fund, established under the CVPIA, which is designed to mitigate environmental consequences of the operation of Federal dams.

Comment: A comment suggested that priority be given to entities with longstanding requests.

Response: Previous requests were considered in determining the size of the resource pool. Western receives numerous requests for power and does not believe a previous request should be given a higher priority over requests by qualified entities that have not applied previously.

Comment: A commentor suggested Western give higher priority to entities that can readily accept an allocation.

Response: The Marketing Plan includes eligibility criteria requiring that all applicants requesting power must be ready, willing, and able to receive and use or distribute Federal power.

Comment: Western was requested to extend the spirit and concept of the National Defense Authorization (NDA) Act. Several comments requested that the definition of extension CRD be modified so that NDA Act power used for economic development is not excluded. By doing so, entities receiving allocations of NDA Act power for economic development purposes would be eligible for resource extensions under the Marketing Plan. One comment stated that the definition of extension CRD violates the provisions of the NDA Act because the legislation requires that NDA Act power be reserved for allocation for a 10-year period (commencing November 30, 1993). This commentor contends that the legislation provides for allocations made during this 10-year period to extend past December 31, 2004. Commentors requested that NDA Act power extend through the completion of economic development. Another commentor requested that Western not extend the provisions of the NDA Act past

December 31, 2004.

Response: The Proposed Plan is consistent with the NDA Act. However, Western has reconsidered its position regarding allocations for NDA Act customers. Western has decided to extend the spirit and concepts of the NDA Act to those existing customers receiving NDA Act power for economic development purposes, provided those customers continue to meet the eligibility requirements for an allocation under the Marketing Plan. The Marketing Plan has been modified to reflect this change.

V. General Criteria and Contract Principles

Comment: A commentor suggested that, under take-or-pay provisions, the resale (remarketing) prohibition should be eliminated. Other commentors stated that, in the competitive environment, Western will not be able to enforce the resale prohibition, and customers will receive an unfair advantage with the ability to “profiteer” in regional electricity markets.

Response: Western is not convinced that the prohibition on reselling Federal power should be eliminated due to the take-or-pay provisions. Customers’ loads are expected to be sufficient to use all available Western power most of the time. Western realizes that, at times, due to the variability of CVP generation, some customers may not be able to use their full power allocation. Therefore, Western will establish and manage an exchange program. Any Western power that cannot be used on a real-time basis must be offered to Western or to other preference customers under this program.

Comment: A comment suggested Western consider marketing a portion of CVP capacity to the California Power Exchange or other marketers.

Response: Western markets power first to preference entities under Reclamation laws. However, if Western is unable to market all of its power to preference entities, it may be sold to others.

Comment: Many commentors supported the 20-year contract term, citing the additional value of a long-term contract which allows customers who purchase Federal power greater stability in planning for future resources than would exist with a shorter contract term.

Other comments objected to a 20-year contract term citing reasons for a shorter contract term. One commentor suggested contract terms of no more than 5 years or auctioning contracts to qualified bidders.

Response: The 20-year contract term provides greater resource certainty for Western customers in a restructured industry, and greater certainty of revenues for project repayment by Western. Shorter contract terms degrade the marketability of the resource and create an administrative burden. An EIS, which included a significant amount of analysis as well as a public involvement process, was conducted on the provisions of EPAMP, including a 20-year term. The EPAMP EIS found that longer contract terms were positive for the environment, as customers were more likely to invest in renewable resources if they had a stable foundation of Federal hydropower. Short-term contracts could lead customers to develop resources that are cheaper in the short term but more environmentally adverse. Future load requirements are not a significant consideration as Western is a partial requirements provider and is generally not responsible for meeting customer load growth.

Contract extensions would not preclude any Congressional or administrative actions because contracts or rate changes could be included as part of a sale or restructuring package. The Marketing Plan does not impact or preclude future operational changes at Federal dams because Western will market only the available power generation. Because Western is required to market power at cost-based rates, auctioning contracts is not practical. Power must be sold to preference entities first and not just to the highest bidder. Western has included the 20-year contract term in the Marketing Plan.

VI. First Preference

Comment: A comment supported using 20-year average historical generation to calculate the maximum entitlement of first preference customers (MEFPC), rather than a 5-year average. Other commentors stated using 20-year average historical generation to calculate the MEFPC is inappropriate because it does not account for generation lost due to fishery restoration operations and other environmental factors, would unfairly penalize other preference customers, and would exceed statutory requirements. A commentor stated that first preference customers should not be immune to the vagaries of generation. Some comments requested a floor MEFPC be established, based on generation prior to CVPIA operations. Using all historic generation before fishery restoration was also suggested.

Response: The New Melones Project provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191-1192) and the Trinity River Division (TRD) Act (69 Stat. 719) (Acts) specify that first preference customers are entitled to up to 25 percent of the power generated as a result of the construction of the New Melones Project and the Trinity River Division (first preference projects). Under its discretionary authority, Western determines how the entitlements are to be calculated. Western believes the most recent 20-year average historical generation is consistent with the Acts because it accounts for generation resulting from the first preference projects under a variety of hydrological conditions, and takes into consideration impacts of changing operations such as those contemplated under the CVPIA. The Acts do not guarantee a minimum amount of power to the counties of origin; therefore, Western does not believe a floor MEFPC is appropriate.

Comment: A commentor requested more information on the calculations used to determine the MEFPC.

Response: The Marketing Plan specifies the data to be used and how the MEFPC will be calculated.

Comment: A commentor questioned why the MEFPC will only be adjusted if, upon recalculation, it is 10 percent above or below the currently effective MEFPC.

Response: To eliminate minor or short-term fluctuations, Western has decided to adjust only for a 10 percent or greater difference in the MEFPC.

Comment: Comments were received both in favor of and in opposition to the first preference customers' full requirements option at the Base Resource rate, without the take-or-pay provision. One commentor stated that all customers should be treated economically the same.

Response: The full requirements option will be supplied from the same power resources as the Base Resource; therefore, it is reasonable to apply the Base Resource rate. It is not appropriate to apply the take-or-pay provision to the full requirements option because the first preference customers will not have a fixed percentage amount under this option. Western will continue to offer the full requirements option to the first preference customers.

Comment: A commentor said he assumed that the load factor referred to in the full requirements option is intended to apply only to those first preference customers who cannot measure their demand.

Response: In the future it may be necessary to determine a maximum capacity from the MEFPC. This calculation will require use of a load factor for each first preference customer. However, it will not be necessary to provide a load factor in the contracts, and the Marketing Plan now reflects this clarification.

Comment: Some commentors who opposed the full requirements option stated that it is beyond Western's statutory requirements and is unfair to the other customers. It was suggested that a daily entitlement be established based on actual generation. First preference customers should be provided with the Base Resource and should pay the cost of creating a Custom Product in the same manner as all other customers.

Response: The Acts specify that first preference customers are entitled to receive up to 25 percent of the additional power generated as a result of construction of the first preference projects. Western has discretion in how it fulfills the requirements of the Acts. When Congress authorized construction of the first preference projects, it balanced the concerns of the counties of origin and the benefits the first preference projects would have to the entire CVP. Western believes that Congress attempted to provide a fair remedy to all parties involved. It is within the spirit of the Acts to make the maximum amount of the MEFPC available to the first preference customers to the extent it can be used to meet their loads. Power deliveries under this option would be nearly identical to what they are today. Western believes this arrangement will have minimal impact on the other customers; therefore, we will continue to offer the full requirements option.

Comment: Comments requested that first preference customers who choose the percentage option be allowed to participate in the exchange program, using some or all of their MEFPC.

Response: Under the percentage option, first preference customers would be allowed to participate in the exchange program to the same extent as the other customers.

Comment: A commentor suggested that the Marketing Plan should provide for first preference customers to receive 25 percent of the energy generated from the TRD, exactly as the legislation provides, at the cost to produce that energy.

Western was requested to provide additional options that would allow first preference customers to schedule up to 25 percent of the energy produced as a result of the first preference projects, at prices that reflect the cost to produce first preference project energy. Options should provide for first preference customers to call upon historic generation that they did not use during times when 25 percent of first preference project energy is less than their load. If first preference customers are not allowed to call upon historic generation that they did not use, Western should allow them to trade or bank some of the 25 percent of what is produced by the first preference projects in the future.

Other comments recommended that the Marketing Plan should reflect past legal resolution of issues regarding use and pricing of first preference power.

Response: The Acts do not provide for Western to furnish more power than can actually be used by the first preference customers within the counties of origin. First preference customers are not entitled to historic generation they were unable to use. Also, the Acts do not provide for energy banking arrangements. With respect to providing the energy at the cost to generate power at the first preference projects, both Acts state,

> . . . contracts for the sale and delivery of the additional electric energy available from the Central Valley Project power system as a result of the construction of the plants . . .

In Trinity County Public Utilities District vs. Harrington (781 F.2d 163 (9th Cir. 1986)), the court held that since the first preference projects are operationally and financially integrated with the CVP, the first preference customers should pay rates based on the operating costs of the CVP system.

Comment: It was requested that a menu of services be offered to the first preference customers, coupled with certain first preference rights, like the sale of energy at first preference project cost.

Response: First preference customers are offered two options–the full requirements option and the percentage option. Under the percentage option, first preference customers may choose to customize their allocation with the Custom Product and participate in the exchange program. See Western's response above concerning rates for first preference customers.

Comment: One commentor stated that the percentage option could not be used by first preference customers to gain greater benefits than would be available under the full requirements option, even though they are entitled to greater benefits. The commentor suggested that, other than a few differences, the percentage option makes first preference customers almost equal to other customers.

Response: The principal benefit granted to first preference customers under the Acts is the first right to purchase a portion of the additional generation made available to the CVP as a result of the construction of the first preference projects, for use in the counties of origin. Under the percentage option, the first preference customers' allocations will be determined similarly to the other customers. However, first preference customers' allocation percentages will be based on their actual loads, not on a CRD. First preference customers will not be subject to adjustments in their allocation percentages for the resource pools. Additionally, first preference customers will have the opportunity to adjust their allocation percentages, with a 7-month notice to and approval by Western, up to their share of the MEFPC. Western believes that both the percentage option and the full requirements option provide the benefits required under the Acts.

Comment: One commentor stated that 12 months of load data is not reflective of actual usage, and requested that Western modify the factors used in the calculation to determine a first preference customer's percentage.

Response: Western has modified the Marketing Plan to provide for the maximum demand during the previous 4 years to be used in determining an allocation percentage under the percentage option.

Comment: A few commentors stated that Western is required under both Acts to provide transmission services to first preference customers. Additionally, Western was requested to commit to provide transmission service with the basic service at the basic rate to the first preference customers. One commentor suggested that first preference customers should be exempt from Section V.G.

Response: The TRD Act authorizes Western to provide electric transmission facilities as may be necessary to furnish energy to Trinity County. Western owns transmission facilities in Trinity County. Should additional facilities be required, appropriations or customer advancement of funds would be necessary before such facilities could be constructed. There is no similar clause in the New Melones Project provisions of the Flood Control Act of 1962 with respect to Calaveras and Tuolumne Counties. Western will assist in providing transmission service to the first preference customers. Although Western is willing to assist, all customers are ultimately responsible to provide for the delivery of Federal power to their loads. Accordingly, Section V.G, requiring customers to obtain their own third-party transmission service, is applicable to all customers.

Western has voluntarily filed an Open Access Tariff consistent with FERC Order No. 888. Transmission costs will be identified separately from power costs, and all transmission users will bear an equitable share of those costs.

Comment: Comments were received both in favor of and in opposition to the provisions of the Proposed Plan relating to the first preference customers. Those in favor of the provisions stated they are appropriate and encouraging. Those in opposition stated the provisions exceed Western's requirements under the Acts and provide the first preference customers with better products than those offered to the other customers. Some first preference customers indicated dissatisfaction with the benefits they are currently receiving under their respective Acts in comparison to the sacrifices they made to allow construction of the first preference projects.

Response: To compensate the counties of origin for their sacrifices, both Acts require Western to provide the counties of origin with the amount of energy they can use, up to 25 percent of the additional energy generated by the CVP as a result of the construction of the respective first preference projects. Under its discretionary authority, Western determines the manner in which this energy is made available to first preference customers. Western believes it is appropriate to continue to provide these customers with the opportunity to choose between the two options in the Marketing Plan. This will allow those customers to decide how to make the best use of the benefits they are entitled to receive. Whether either of the options results in a "better" product than that received by other customers would depend on many factors outside of Western's control, such as future energy prices, and is secondary to meeting the spirit and intent of the Acts.

Comment: A comment requested that Western provide a summary supporting the Marketing Plan's compliance with the TRD Act.

Response: Section 4 of the TRD Act of 1955 states,

> Contracts for the sale and delivery of the additional electric energy available from the Central Valley Project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws: Provided, That a first preference, to the extent of 25 per centum of such additional energy, shall be given, under Reclamation law, to preference customers in Trinity County, California, for use in that county, who are ready, able, and willing within 12 months after notice of availability by the Secretary, to enter into contracts for the energy: Provided further, That Trinity County preference customers may exercise their option on the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less than 18 months prior to said date.

In accordance with the TRD Act, Section VI of the Marketing Plan provides that Western will calculate and make available to preference customers/entities in Trinity County, to the extent they can use it within that county, 25 percent of the additional energy made available to the CVP as a result of the construction of the TRD. These first preference customers have the right to this power before it is made available to other preference customers. Both options provide that the power be made available to these first preference customers to meet their needs, and the amount of power can be increased until it reaches the limit set forth in the TRD Act. A first preference entity may exercise its rights to use a portion of the MEFPC by providing written notice to Western at least 18 months prior to the anniversary date of the first preference project located in its county.

Comment: A commentor supported dividing the MEFPC from the New Melones Project between Calaveras and Tuolumne Counties. That commentor requested a provision be added to the Marketing Plan, allowing the counties of Calaveras and Tuolumne to combine their allocations for the purpose of joint load management.

Response: Western is willing to consider combining allocations for the New Melones' counties of origin if it is requested by the affected parties. Such an arrangement is an operational procedure and does not need to be specified in the Marketing Plan.

Comment: A comment suggested that Western should share the revenue received from sales of unused first preference power with the first preference customers.

Response: Under applicable legislation, there is no basis to share revenues with the first preference customers.

Comment: Some first preference customers stated that they are assuming that they will not be charged for scheduling services. Western was requested to clarify the phrase “scheduling arrangements” (Proposed Plan Section V.C).

Response: The phrase “scheduling arrangement” as used in Section V.C of the Proposed Plan was included because Western anticipates that power deliveries will no longer be determined after the fact, which is allowed under Contract 14-06-200-2948A. Schedules will be agreed upon prior to delivery. Scheduling is required under both options for the first preference customers, as well as for all other customers. Under the restructured electric utility industry in California, Western or the customer’s scheduling agent will be required to provide schedules for all power deliveries within the California Independent System Operator (ISO) control area. The first preference customers may perform their own scheduling or contract with Western or a third party to perform scheduling services. If Western is requested to perform scheduling services, the cost will be borne by each customer requesting such service. This cost will be identified separately from the Base Resource rate.

Comment: Commentors requested that Western clarify the phrase “power requirements” (Proposed Plan Section VI.D.1).

Response: The reference to “power requirements” as used in Section VI.D.1 of the Proposed Plan means the capacity and energy necessary to serve a first preference customer’s load from that first preference customer’s share of the MEFPC. The statement concerning power requirements has been clarified in the Marketing Plan.

Comment: A commentor requested that Western clarify the statement in Section VI.B of the Proposed Plan that Western may purchase power on behalf of the first preference customers to compensate for any power loss due to recalculation of the MEFPC.

Response: This provision has been clarified in the Marketing Plan.

Comment: Comments were received stating that priority should be given to first preference entities that are wholly located within the counties of origin. Also, if a contract extension is granted to a first preference customer or a new contract is executed with a first preference entity that is not entirely located within a county of origin, it should be for power withdrawable to serve first preference customers/entities that are wholly located within that county of origin. A comment also requested the definition of a first preference customer/entity include the following language,

> one which serves and provides a direct and measurable benefit to the residents of the counties of Trinity, Calaveras, and Tuolumne.

Response: The definition of a first preference customer/entity must be consistent with the Acts and Reclamation law. Both Acts provide for electric service to be made available to entities who qualify for preference under Reclamation law and are located in their respective counties. Therefore, entities located in Tuolumne, Calaveras, or Trinity Counties who are preference entities qualify for first preference rights. The Marketing Plan is consistent with the Acts.

Comment: A commentor said he assumed that Section VI.E of the Proposed Plan is applicable only to new first preference customers.

Response: Section VI.E of the Proposed Plan, regarding applications for first preference power, applies only to first preference entities. First preference entities are entities who are qualified to use, but are not currently using, preference power within a county of origin. They are qualified to be first preference customers but are not yet customers.

Comment: One commentor suggested that first preference customers had been inappropriately exempted from Section V.B, allocation percentage adjustment clause, as referenced in Section VI.J of the Proposed Plan.

Response: Western has determined that Section V.B will be applicable to the first preference customers, and the Marketing Plan has been so modified.

VII. Transmission

Comment: One commentor stated that Western's transmission obligations under separate transmission contracts must be honored. Another commentor asked how Western plans to deal with the DOE Labs' 100 MW entitlement on the California-Oregon Transmission Project and their capacity entitlement on the Tracy Tie Line.

Response: The Marketing Plan does not modify Western's existing contractual transmission rights or obligations, including DOE's entitlements.

Comment: A commentor expressed concern that the unbundling of transmission service from power services would have an adverse impact on Western's customers, and Western should not require customers to go through a separate process to obtain transmission. It was suggested that Western make a "delivered" product available, or otherwise use transmission assets to firm the Base Resource, particularly in dry years. It was further suggested that, if customers use the transmission systems of others for delivery of CVP power, they should still be responsible for a portion of Western's transmission system costs.

Response: Western is not a FERC jurisdictional utility, but has agreed to comply with the spirit and intent of FERC Order No. 888, to the extent it does not conflict with Western's legislative mandates. If it is feasible in the restructured electric utility industry, Western is willing to evaluate bundled services, including use of its transmission access to the Northwest, during further development of the Base Resource, Optional Purchase, and Custom Products. All customers who use Western's transmission system will share cost responsibility for the transmission system.

Comment: One commentor stated that Western's current Pacific Intertie transmission service level does not fully reflect Western's ownership of its portion of the Pacific Intertie.

Response: Western's current level of Pacific Intertie transmission is outside the scope of the Marketing Plan.

Comment: One commentor stated that Western needs to consider its products' impacts on other customers, particularly Western's direct-connect customers who rely on Western's transmission system.

Response: Western considered the potential impacts of its products on all customers, including direct-connect customers. It is Western's intent to offer products which are useful and beneficial to all customers.

Comment: One commentor objected to Western's proposal to assess transmission losses to customers that are directly connected to Western's transmission system.

Response: Under the Marketing Plan, power will be available as a system sale, not from specific points of generation. It is necessary to account for the power that is lost between generation and load. Therefore, all power deliveries using the CVP transmission system will be subject to loss assessments.

Comment: One commentor requested Western assume a position of advocacy on its customers' behalf in regard to access and pricing of third-party transmission. Western was urged to reserve sufficient capacity on its transmission system to accommodate its customers' requirements for wheeling of both CVP and purchased firming power. Western was encouraged to explore ways in which its customers will have a superior entitlement to schedule capacity on Western's transmission system, while avoiding the problem of double-billing for transactions utilizing both the Federal and non-Federal systems.

Response: Access to and pricing of third-party transmission is outside the scope of the Marketing Plan. Western will provide transmission services as appropriate in conjunction with its power sales in a manner consistent with FERC Orders and legislated mandates. Use of Western's transmission resources will be determined as the products and services to be provided by Western are further developed.

VIII. Pricing and Rates

Comment: Commentors expressed concerns that, in order to commit to a long-term Marketing Plan, a clear idea of prices and availability of power is needed. They stated that the bulk power market is often trading below Western's current price range, and uncertainties such as the Restoration Fund make it even more unattractive to choose Western.

Response: Western will sell the Base Resource at a cost-based rate, and the Custom Product at a pass-through cost. The ratemaking process is separate from the Marketing Plan; however, as in all Administrative Procedure Act processes, public participation will be encouraged. Costs and availability will be more clearly identified by the time commitments are required for the Base Resource.

Western has no control over Restoration Fund costs; however, Western is striving to minimize Western components of power costs and customize products in an attempt to provide the best possible service at the lowest possible rates consistent with sound business principles. Western expects its prices to be at or below the bulk market by the time the Marketing Plan goes into effect.

Comment: Although the take-or-pay method was commented upon favorably, some commentors stated take-or-pay contracts require details on prices and products, and are unrealistic unless they are for short terms. A comment was received favoring cost-of-service ratemaking with a take-or-pay provision for "must-run power."

Response: The take-or-pay approach is expected to provide adequate revenues to ensure project repayment. The Base Resource will be sold at a cost-based rate that will be developed in a public process in which customers and interested parties may participate. Other products will be sold on a pass-through-cost basis. By the time product commitments are required, individual customer need and pricing and availability information will be more clearly defined.

Comment: A commentor requested that Western negotiate for firming resources on behalf of its entire customer base so that certain customers will not be competing in the bulk power market against Western.

Response: The Marketing Plan reflects the option for Western to negotiate for firming as part of the Custom Product on behalf of its entire customer base, a group of customers, or individual customers, if requested by those customers.

Comment: Western should postpone a decision on Washoe Project cost recovery until more definitive information can be provided.

Response: Western believes all necessary information concerning the marketing of Washoe Project power is available and has been considered. Western sees no benefit in delaying the decision to market Washoe Project power with the CVP resource.

IX. Industry Restructuring

Comment: A commentor stated that restructuring has changed the rules of the game to the point that Western's proposals are inconsistent with public interests. Another commentor encouraged Western to retain flexibility to accommodate changes in the industry.

Response: Western believes it is in the public interest to provide some resource certainty to its customers and to protect the Federal investment in project facilities. The Marketing Plan is designed to be flexible enough to respond to changes in CVP operations and the industry, and to provide the greatest value to customers and the Federal Government.

Comment: A commentor asked if joining the California ISO will pose any problems for Western.

Response: Whether Western will join the California ISO is a separate decision from development of the Marketing Plan. The Marketing Plan does not preclude

Western's participation in the California ISO.

Comment: A commentor suggested that Western should recognize the new competitive market and help its preference customers wherever possible with competition transition charge problems.

Response: Western designed the Marketing Plan to be flexible to respond to changes in the industry and provide the greatest value to its customers. Products and services available under the Marketing Plan can be customized to meet individual customer's needs in the new competitive market.

Competition transition charges are outside the scope of the Marketing Plan.

RESPONSES TO COMMENTS RECEIVED ON THE NOTICE OF PUBLIC PROCESS ON RESOURCE POOL SIZE (64 FR 4646, January 29, 1999)

During the public consultation and comment period, Western received five letters commenting on the Sierra Nevada Region's resource pool size. No comments were received during the February 9, 1999, public meeting in Folsom, California. Western reviewed and considered all comments received by the end of the public consultation and comment period, March 1, 1999, in preparation of the Marketing Plan.

The following is a summary of the comments received during the consultation and comment period, and Western's responses to those comments.

Comment: Some comments stated that the proposed sizes of the resource pools were adequate to meet the needs of new customers, including the fair share needs of eligible Native American tribes.

Response: Western considered the needs of new customers, including Native American tribes, when determining the sizes of the resource pools during development of the Marketing Plan. Western concurs with this comment.

Comment: A commentor stated that a larger allocation percentage, such as 30 percent, would be necessary for certain Native American tribes in Southern California. That commentor also suggested that an allocation be set aside for them and dedicated to tribal economic development.

Response: Southern California is outside the primary marketing area of the Sierra Nevada Region. The Desert Southwest Customer Service Region of Western serves Southern California and will develop its marketing program prior to the expiration of its current electric service contracts.

Comment: As Western's Marketing Plan becomes more definitive, it would be beneficial for PG&E to review the Marketing Plan in advance to assure consistency with any possible post-Contract 14-06-200-2948A (integration contract with PG&E) contractual relationship.

Response: Under the Administrative Procedure Act, Western cannot discuss the final Marketing Plan with any entities prior to publication.

Comment: In determining the level of benefits to Native Americans, Western should take into account the benefits currently received through rural electric cooperatives serving the reservations. Western should attempt to fairly distribute the benefits of low-cost Federal hydropower, ensuring equity among all eligible tribes and existing customers.

Response: The allocation and eligibility criteria in the Marketing Plan were developed to ensure the benefits of Federal power were equitably distributed among new customers, including eligible Native American tribes, and existing customers.

Comment: Power could be provided to a utility to serve a tribe; however, the tribe would actually hold the allocation. By way of a bill crediting system, the Federal power benefits could be passed on to the tribe through a credit on its utility bill.

Response: Western intends to allocate power directly to any eligible Native American tribes that apply for power. The Sierra Nevada Region will work with tribes to receive power under the California direct access rules or other applicable arrangements, which may include bill crediting.

Comment: If a Native American tribe establishes a utility and seeks an allocation from the resource pool, that tribal utility should be treated as a utility applicant and subject to the same qualifications and provisions to which all Federal power customers are subject.

Response: Native American tribal utility applicants will be treated similarly to other utility applicants.

SUMMARY OF REVISIONS TO THE PROPOSED PLAN

Western revised the Marketing Plan as a result of the comments received during the comment period and public forums. Additionally, some changes have been made to more clearly define the intent, but do not change the original proposal. The major revisions are summarized as follows.

The definitions of administrator, curtailable power, diversity power, load factor, long-term, NDA Act power, peaking, power marketing initiative, unbundled, and withdrawable have been deleted. These definitions were deleted because they are not necessary terms in the final Marketing Plan. The definition of customer was deleted and will be used as a generic term to refer to new allottees and/or existing customers.

A definition for the Optional Purchase was added to assist in understanding that product. These modifications appear in Section I, and are used throughout the Marketing Plan.

In the formulas in Section IV.A.1 and IV.A.2, Western will base an existing customer's allocation percentage on its extension CRD as of December 31, 2003, rather than December 31, 2001. Western will adjust an existing customer's percentage on December 31, 2003, if its maximum monthly peak load for the previous 3 years is less than its extension CRD, rather than basing the existing customer's extension CRD on 104 percent of its load during the previous 4 years. This modification also appears in Appendix A.

Extension CRD was modified to include NDA Act power used for economic development. This modification appears in Section I and Appendix A.

Western has decided not to market unused first preference power on a withdrawable basis. Unused first preference power will be included as part of the Base Resource and available to all other customers. Sections I and III were modified. Section V.F of the Proposed Plan has been deleted.

The commitment date has been changed to December 31, 2000, for the Base Resource and Optional Purchase, and to December 31, 2002, for the Custom Product. Additionally, Western may extend the commitment dates for the Base Resource, Optional Purchase, and Custom Product if Western determines it is in the best interest of Western and the customers. This modification appears in Sections III and V.

Unused power resources may be marketed outside the primary marketing area. This modification appears in Section III.

Existing customers must commit to the Optional Purchase for a 10-year period, from January 1, 2005, through December 31, 2014, rather than an annual or greater period. This modification appears in Section III.

The Call for Resource Pool Applications will be published in a separate Federal Register notice. This modification appears in Section IV.B.2.e.

Existing customers may apply for a resource pool allocation if their extension CRD is not more than 15 percent of their peak load in the calendar year prior to the Call for Applications, rather than calendar year 1996. This modification appears in Section IV.B.2.g.

Requests to serve new loads that are less than 1 MW, but at least 500 kW, will be allowed if they can be aggregated so Western can schedule and deliver to a minimum load of 1 MW. This modification appears in Section IV.B.2.h.

Western will base a resource pool allocation on an applicant's peak demand during the calendar year prior to publication of the Call for Applications. The amount used to determine a resource pool allottee's allocation percentage will not be rounded up to the nearest 100 kW. This modification appears in Section IV.B.3.b.

Eligible Native American entities will receive greater consideration for an allocation of up to 65 percent of their peak load in the calendar year prior to the Call for Applications. This modification appears in Section IV.B.3.e.

First preference customers will be subject to Section V.B, which clarifies that allocation percentages provided for in the Marketing Plan and the electric service contracts shall be subject to adjustment. This modification appears in Sections V.B and VI.K.

Contracts will include a clause specifying criteria that customers must meet on an ongoing basis to be eligible to continue receiving electric service from Western. This modification appears in Section V.F.

Although Western may assist, each customer will be responsible for obtaining its own delivery arrangements to its load. This modification appears in Section V.G.

Western may reduce or rescind a customer's allocation percentage, upon 90-days notice, if Western determines that the customer is not using the power to serve its own loads or the allocation amount is consistently greater than the customer's maximum peak load. This modification appears in Section V.K.

Contracts may include a clause providing for alternative funding arrangements, including net billing, bill crediting, reimbursable financing, and advance payment. This modification appears in Section V.N.

The initial recalculation of the MEFPC pertaining to this Marketing Plan will be completed by June 1, 2004. This modification appears in Section VI.A.

The commitment date for first preference customers to commit to the percentage option has been changed to December 31, 2002. This modification appears in Section VI.D.

Under the full requirements option, if there is more than one first preference customer in a county of origin, or a first preference entity in that county makes a request for power, Western reserves the right to establish a maximum amount of power available to each first preference customer from the MEFPC. This modification appears in Section VI.D.1.

For first preference customers, Western will use the maximum demand during the previous 4 years, rather than the last 12 months, in determining an allocation percentage under the percentage option. This modification appears in Section VI.D.2.

A first preference customer's request for an increase in its allocation percentage under the percentage option must be accompanied by justification for the increase. This modification appears in Section VI.D.2.c.

First preference customers will be subject to Section V.L, which states that any power not under contract may be allocated at any time, at Western's sole discretion, or sold as deemed appropriate by Western. This modification appears in Section VI.K.

Western will provide bundled or unbundled transmission services with its power sales, consistent with FERC Orders, legislated mandates, or California ISO Agreements. This modification appears in Section VII.

Appendix A was updated to reflect new customers and changes in CRD.

2004 POWER MARKETING PLAN

This Marketing Plan addresses: (1) the power to be marketed after December 31, 2004, which is the termination date for all Central Valley Project (CVP) electric service contracts; (2) the general terms and conditions under which the power will be marketed; (3) the resources available to existing customers; and (4) the criteria to determine who will receive allocations from the resource pools.

The Western Area Power Administration (Western) will continue a collaborative process in implementing the terms set forth in this Marketing Plan.

Within broad statutory guidelines and operational constraints of the CVP and the Washoe Project, Western has wide discretion as to whom and under what terms it will contract for the sale of Federal power, as long as preference is accorded to statutorily defined public bodies. Western markets power in a manner that will encourage the most widespread use at the lowest possible rates consistent with sound business principles. All products and services provided under this Marketing Plan will be subject to operational requirements and constraints of the CVP and Washoe Project, transmission availability, purchase power limitations, and Federal authorities.

I. Acronyms and Definitions

As used herein, the following acronyms and terms, whether singular or plural, shall have the following meanings:

<u>Allocation</u>: An offer from Western to sell Federal power for a certain period of time, that will convert to a right to purchase after execution of a contract.

<u>Allocation Criteria</u>: Conditions applied to all applicants who receive an allocation.

<u>Allottee</u>: An entity receiving an allocation percentage under this Marketing Plan.

<u>Ancillary Services</u>: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with good utility practice. Ancillary services are generally described in Federal Energy Regulatory Commission (FERC) Order No. 888 (Docket Nos. RM95-8-000 and RM94-7-001), issued April 24, 1996.

<u>Base Resource</u>: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004, determined by Western to be available for marketing, after meeting the requirements of project use and first preference customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

<u>Capacity</u>: The electrical capability of a generator, transformer, transmission circuit

or other equipment.

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.

Contract Principles: Provisions of the electric service contracts, including Western's General Power Contract Provisions.

Contract Rate of Delivery (CRD): The maximum amount of capacity made available to a customer for a period specified under a contract.

Custom Product: A combination of products and services, excluding provisions for load growth, which may be made available by Western per customer request, using the customer's Base Resource and supplemental purchases made by Western.

Eligibility Criteria: Conditions that must be met to qualify for an allocation.

Energy: Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in kilowatthours or megawatthours.

Existing Customer: A preference customer with a contract to purchase firm power, offered under a previous allocation process or marketing plan, that extends through December 31, 2004.

Extension CRD: An existing customer's CRD exclusive of diversity and curtailable power, and peaking/excess capacity, as it may be adjusted in accordance with this Marketing Plan.

Firm: A type of product and/or service that is available to a customer at the times it is required.

First Preference Customer/Entity: A preference customer and/or a preference entity (an entity qualified to use, but not using preference power) within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones project provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191-1192).

General Power Contract Provisions (GPCP): Standard terms and conditions which are included in Western's electric service contracts.

Integrated Resource Plan (IRP): A process and framework within which the costs and benefits of both demand and supply-side resources are evaluated to develop the least total cost mix of utility resource options.

Kilowatt (kW): A unit measuring the rate of production of electricity; one kilowatt equals one thousand watts.

Marketing Plan: Western's final 2004 Power Marketing Plan for the Sierra Nevada Region.

Megawatt (MW): A unit measuring the rate of production of electricity; one megawatt equals one million watts.

National Defense Authorization Act (NDA Act): Section 2929 of the National Defense Authorization Act, Pub. L. 103-160, 107 Stat. 1547, 1935 (1993), which provides that, for a 10-year period (starting in 1993), the CVP electric power allocations to military installations in the State of California, which have been closed or approved for closure, shall be reserved for sale through long-term contracts to preference entities which agree to use such power to promote economic development at the military installations closed or approved for closure.

Optional Purchase: An additional increment of power purchased by the Sierra

Nevada Region at the request of an eligible existing customer on a pass-through-cost basis. Such power will be made available as a replacement for the Base Resource that is unavailable to that existing customer due to the Sacramento Municipal Utility District's (SMUD) percentage right of 360/1,152 of the Base Resource provided for under the SMUD Settlement Agreement. The Optional Purchase will terminate on December 31, 2014.

Power: Capacity and energy.

Preference: The requirements of Reclamation law which provide that preference in the sale of Federal power be given to certain entities, such as municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, Section 9(c), 43 U.S.C. 485h(c)).

Primary Marketing Area: The area which generally encompasses northern and central California extending from the Cascade Range to the Tehachapi Mountains, and west-central Nevada.

Project Use: Power as defined by Reclamation law and/or used to operate CVP and Washoe Project facilities.

Reclamation Law: Refers to a series of Federal laws with a lineage dating back to the turn of the century. Viewed as a whole, those laws create the framework under which Western markets power.

Sierra Nevada Region: The Sierra Nevada Customer Service Region of the Western Area Power Administration.

Washoe Project: A Federal water project located in the Lahontan Basin in west-central Nevada and east-central California.

Western: Western Area Power Administration, United States Department of Energy, a Federal power marketing administration responsible for marketing and transmitting of Federal power pursuant to Reclamation law and the DOE Organization Act (42 U.S.C. 7101-7352).

II. Base Resource

The Base Resource, as defined in Section I, will include CVP and Washoe Project generation supported by certain power purchases. CVP generation (energy and capacity) will vary hourly, daily, monthly, and annually, because it is subject to hydrological conditions and other constraints that may govern CVP operations. CVP generation must be adjusted for project use, maintenance, reserves, transformation losses, and certain ancillary services before CVP generation is available for marketing. The power resources will be further adjusted for transmission losses to the point of delivery. The power resources may also be adjusted for first preference customers, when first preference customers' needs increase, up to the maximum entitlement of first preference customers.

Western will market part of the 3.65 MW and estimated annual energy generation of 10,000 MWh available from the Washoe Project as part of the Base Resource. The U.S. Department of the Interior, Fish and Wildlife Service Lahontan National Fish Hatchery and Marble Bluff Fish Facility are project use loads of the Washoe Project and have first call on those power resources. The generation available after serving the Fish and Wildlife Service needs will be marketed with the CVP power resources.

The Washoe Project is subject to the same variability and constraints as the CVP.

Western will also include any power available from existing power purchase contracts with terms extending beyond 2004 in the Base Resource. Currently, Western has a contract with Enron Power Marketing, Inc., that has a final termination date of December 31, 2014.

The adjustments and variables discussed above will influence the amount of Base Resource available to customers. During some critically dry months, purchases may be required to meet project use and obligations to first preference customers, and only a minimal amount of Base Resource will be available during such months. The usability of the Base Resource for meeting customers' loads will be directly related to the amount of firming provided by Western and a customer's ability to integrate this power resource into its power resource mix.

III. Products and Services

Western will market its Base Resource alone or in combination with the Optional Purchase and/or Custom Product, which could include purchasing some level of firming power on behalf of all customers, a group of customers, or individual customers. All costs incurred by Western in providing additional services to customers will be paid by those customers using the services. The degree to which Western continues to purchase power will depend on customer requests and Federal authorities. After the effective date of this Marketing Plan, Western will determine, in a collaborative process with the customers, the best use of Western's power and transmission resources to provide the Base Resource, Optional Purchase, and Custom Products.

Each allottee will be allocated a percentage of the Base Resource. All customers will be required to commit to the Base Resource no later than December 31, 2000.

Upon request, Western will provide a qualified existing customer with the Optional Purchase. Commitments to the Optional Purchase must be made by December 31, 2000. Existing customers requesting the Optional Purchase must commit to the Optional Purchase at the time a commitment is made for the Base Resource, through December 31, 2014.

Upon request, Western may develop a Custom Product for any customer. A Custom Product may include ancillary services, reserves, etc., or may include Western purchasing additional resources, including firming power, to provide some of these services. Commitments to purchase a Custom Product must be made by December 31, 2002, for a period of no less than 5 years of service, beginning January 1, 2005. Thereafter, the Custom Product will be offered for periods as agreed to by Western.

Western may extend the commitment dates for the Base Resource, Optional Purchase, and Custom Product if Western determines it is in the best interest of Western and the customers.

Any unused power resources may be marketed under terms and conditions and for periods of time as determined by Western, and may be marketed outside the primary marketing area.

Western will establish and manage an exchange program to allow all customers to fully and efficiently use their power allocations. The exchange program will be further developed by Western through a collaborative process with all customers. Specific criteria for the exchange program will be included in electric service contracts.

Any power under contract that cannot be used on a real-time basis, due to a customer's load profile, must be offered under this exchange program to Western or other preference customers.

IV. Resource Available to Existing Customers and Resource Pool Allocations

Western will allocate a portion of the Base Resource to existing customers and set aside a portion for new allocations. Effective January 1, 2015, Western will reduce all customers' allocation percentages by up to 2 percent to establish a 2015 Resource Pool. Initially, an existing customer, except first preference customers and the Sacramento Municipal Utility District (SMUD), will be allocated 96 percent of its pro rata share of the Base Resource based on the ratio of the existing customer's extension CRD to the total existing customers' extension CRD. First preference customers are subject to specific legislation and are addressed in Section VI. SMUD will have a specific allocation through 2014 based on a prior settlement agreement.

Effective January 1, 2015, Western will recalculate the percentages for all existing customers, including SMUD and customers receiving an allocation from the 2005 Resource Pool. Western will derive each customer's new percentage based on the change in SMUD's percentage described later in this section and the reduction for the 2015 Resource Pool. The new percentages will be applicable from 2015 through 2024.

A. Resource Available to Existing Customers

Existing customers, excluding SMUD, will have a right to purchase a percentage of the Base Resource based on the ratio of each existing customer's extension CRD to the total of all existing customers' extension CRD, excluding SMUD, under the terms of this Section. Current extension CRD are set forth in Appendix A. From 2005 through

2014, SMUD will have a right to purchase 360/1,152 of the Base Resource, as referenced in the Settlement Agreement with SMUD, Contract DE-MS65-83WP59070, dated April 15, 1983. All other existing customers have a right to purchase the Base Resource amount remaining after Western adjusts it to accommodate SMUD's rights and the 2005 Resource Pool. After 2014, Western will adjust SMUD's right to purchase the Base Resource to reflect the ratio of SMUD's extension CRD to the total of all existing customers' extension CRD. SMUD's right will also be adjusted by 4 percent (2005 Resource Pool adjustment) and up to an additional 2 percent to accommodate the 2015 Resource Pool.

Due to the diversity among existing customers' loads, including SMUD's load, existing customers' total extension CRD exceeds the 1,152 MW referenced in the SMUD Settlement Agreement. This Marketing Plan will result in SMUD receiving a proportionately greater share of the Base Resource than other existing customers if the total extension CRD remains at a level greater than 1,152 MW. Therefore, existing customers, excluding SMUD and first preference customers, have the right to request the Optional Purchase.

The following extension formulas are used to determine existing customers' purchase rights to the Base Resource. Application of these formulas also determines each existing customer's right to the Optional Purchase. No allocation percentage will be based on an extension CRD greater than an existing customer's load.

1. For the period 2005 through 2014, existing customers' purchase rights to the CVP resource are calculated as follows:

a. SMUD's purchase right = (360/1,152) X BR

b. Other existing customers' purchase rights = (A/B) X ABR

Where:

A = An individual existing customer's extension CRD. Western may adjust "A", if Western determines that, as of December 31, 2003, the extension CRD is greater than the existing customer's maximum monthly peak load for the previous 3 years or if the existing customer's extension CRD has been changed from the amount set forth in Appendix A of this Marketing Plan.

B = The sum of all values for "A", excluding SMUD.

BR = Base Resource.

ABR = Adjusted Base Resource = {BR - [(360/1,152) X BR]} X (100% - RP%). After 2014, the SMUD adjustment of [(360/1,152) X BR] will be deleted.

RP% = 2005 Resource Pool percentage.

2. Existing customers' rights to the Optional Purchase will be calculated as follows:

Individual existing customer's Optional Purchase = (A/B) X TOP

Where:

TOP = Total Optional Purchase = [(360/1,152) - (361/C)] X BR X (100% - RP%).

C = The sum of all existing customers' extension CRD, including SMUD.

B. Resource Pool Allocations

Western will reserve a portion of the power available after 2004 for allocation to eligible applicants.

1. Resource Pool Amount:

The 2005 Resource Pool consists of up to 4 percent of the power resources available after 2004. Western will also establish a 2015 Resource Pool. The 2015 Resource Pool will consist of up to 2 percent of the power resource available after 2014, plus a portion of the resource that becomes available from adjusting SMUD's percentage. That portion will be equal to what SMUD would have been required to contribute to the 2005 Resource Pool. SMUD will also be subject to the 2015 Resource Pool adjustment of up to 2 percent.

Western will, at its discretion, allocate a percentage of the 2005 Resource Pool to each applicant that meets the eligibility and allocation criteria. This allocation percentage will be multiplied by the 2005 Resource Pool percentage to determine the applicant's percentage of the Base Resource. Allocations from the 2015 Resource Pool will be determined through a separate public process conducted prior to 2015.

2. Eligibility Criteria:

Western will apply the following eligibility criteria to all applicants seeking a resource pool allocation under this Marketing Plan.

a. Applicants must meet the preference requirements of Reclamation law.

b. Applicants should be located within Sierra Nevada Region's primary marketing area. If the Sierra Nevada Region's power resources are not fully subscribed, Western may market its resource outside the primary marketing area.

c. Applicants that require power for their own use must be ready, willing, and able to receive and use Federal power. Federal power shall not be resold to others.

d. Applicants that provide retail electric service must be ready, willing, and able to receive and use the Federal power to provide electric service to their customers, not for resale to others.

e. Applicants must submit an application in response to the Call for Resource Pool Applications under a separate Federal Register notice.

f. Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 450b, as amended).

g. Existing customers may apply for a resource pool allocation if their extension CRD, set forth in Appendix A, is not more than 15 percent of their peak load in the calendar year prior to the Call for Applications, and not more than 10 MW.

h. Western will normally not allocate power to applicants with loads of less than 1 MW; however, allocations to applicants with loads which are at least 500 kW may be considered, provided the loads can be aggregated with other allottees' loads to schedule and deliver to a minimum load of 1 MW.

3. Allocation Criteria:

Western will apply the following allocation criteria to all applicants receiving a resource pool allocation under this Marketing Plan.

a. Allocations will be made in amounts as determined solely by Western in exercise of its discretion under Reclamation law and considered to be in the best interest of the U.S. Government.

b. Allocations will be based on the applicant's peak demand during the calendar year prior to the Call for Applications or the amount requested, whichever is less.

c. An allottee will have the right to purchase power from Western only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

d. All customers, including those receiving an allocation from the 2005 Resource

Pool, will be subject to the 2015 Resource Pool adjustment.

e. Eligible Native American entities will receive greater consideration for an allocation of up to 65 percent of their peak load in the calendar year prior to the Call for Applications.

V. General Criteria and Contract Principles

Western will initially offer existing customers a contract amendment for the right to purchase a percentage of the Base Resource after 2004. After allocations are final, resource pool allottees will be offered a contract to set forth their allocation percentage. In order to finalize the electric service arrangements, new contracts will be offered to new and existing customers subsequent to the date product commitments are required, as set forth in this Marketing Plan. The following criteria and contract principles will apply to all contracts executed under this Marketing Plan, except that certain criteria may not apply to first preference customers' contracts and 2015 Resource Pool allottees' contracts:

A. Electric service contracts and amendments shall be executed within 6 months of a contract offer, unless otherwise agreed to in writing by Western.

B. Allocation percentages provided for in this Marketing Plan and the electric service contracts shall be subject to adjustment.

C. All power supplied by Western will be delivered pursuant to a scheduling arrangement.

D. All power will be provided on a take-or-pay basis. All costs associated with the products and services provided, including costs associated with ancillary services, Optional Purchases, Custom Products, and transmission will be passed on to the customer(s) using the product or service.

E. Contract amendments and contracts shall require a written commitment to a percentage of the Base Resource and the Optional Purchase on or before December 31, 2000, and the Custom Product on or before December 31, 2002. Western may extend the final commitment dates for the Base Resource, Custom Product, and Optional Purchase.

F. Contracts will include a clause specifying criteria that customers must meet on a continuous basis to be eligible to receive electric service from Western.

G. Upon request, Western shall provide, or assist each new and existing customer in obtaining, transmission arrangements for delivery of power marketed under this Marketing Plan; nonetheless, each entity is ultimately responsible for obtaining its own delivery arrangements to its load. Transmission service over the CVP system will be provided in accordance with Section VII of this Marketing Plan.

H. Contracts shall provide for Western to furnish electric service effective January 1, 2005, through December 31, 2024.

I. Specific products and services may be provided for periods of time as agreed to in the electric service contract.

J. Contracts shall incorporate Western’s standard provisions for electric service contracts, integrated resource plans, and General Power Contract Provisions, as determined by Western.

K. Contracts will include a clause that allows Western to reduce or rescind a customer’s allocation percentage, upon 90-days notice, if Western determines that (1) the customer is not using this power to serve its own loads, except as otherwise specified in Section III; or (2) the allocation amounts are consistently greater than the customer's maximum peak load.

L. Any power not under contract may be allocated at any time, at Western's sole discretion, or sold as deemed appropriate by Western.

M. Contracts will include a clause providing for Western to adjust the customers' allocation percentage for the 2015 Resource Pool.

N. Contracts may include a clause providing for alternative funding arrangements, including net billing, bill crediting, reimbursable financing, and advance payment.

VI. First Preference Entitlement and Allocation

The Trinity River Division Act and the New Melones Project provisions of the Flood Control Act of 1962 (Acts) specify that contracts for the sale and delivery of the additional electric energy, available from the CVP power system as a result of the construction of the plants authorized by these Acts and their integration into the CVP system, shall be made in accordance with preferences expressed in Federal Reclamation laws. These Acts also provide that a first preference of up to 25 percent of the additional energy shall be given, under Reclamation law, to preference customers in the counties of origin (Trinity, Tuolumne, and Calaveras), for use in those counties, who are ready, willing, and able to enter into contracts for the energy.

To meet the requirements of the Acts, Western published the Final Withdrawal Procedures (51 FR 7702, March 5, 1986). This Marketing Plan supersedes the Final Withdrawal Procedures, or any successor procedures, as of January 1, 2005.

Western will calculate and allocate the maximum entitlements of first preference customers (MEFPC). The MEFPC is the maximum amount of energy available to first preference customers/entities, in accordance with the following:

A. The MEFPC will be calculated separately for the New Melones Project, Calaveras and Tuolumne Counties, and the Trinity River Division (TRD), Trinity County (first preference projects). To determine the 25 percent of additional energy made available to the CVP as a result of the construction of each of these projects, Western will use the average of the previous 20 years of historical annual generation. The TRD MEFPC includes generation from Trinity, Carr, and Spring Creek Powerplants and a portion of the Keswick Powerplant generation. The MEFPC will be recalculated every 5 years, with the initial recalculation pertaining to this Marketing Plan completed by June 1, 2004.

B. Upon recalculation, if the MEFPC from a first preference project is 10 percent above or below the currently effective MEFPC from that first preference project, the MEFPC will be adjusted to reflect that increase or decrease. Western will notify affected first preference customers at least 6 months before making an adjustment to the MEFPC. If recalculation reduces the MEFPC to an amount less than the load previously served, Western may, upon request and at its discretion, make purchases necessary to replace that amount of power no longer available. The costs for all such purchases made on behalf of a first preference customer will be passed on to that first preference customer.

C. An allocation made to a first preference customer/entity under this Marketing Plan will be based on the power requirements of that first preference customer/entity. The sum of allocations of first preference power, including losses, shall not exceed the

MEFPC from each first preference project, or a county of origin's share of the MEFPC, except as allowed under Section VI.G below.

D. Western will work with each first preference customer/entity to identify its power requirements and the best use of its first preference entitlement. Each first preference customer/entity may elect one of the product and service options set forth below. A commitment to one of these options must be made in writing no later than December 31, 2002. If a commitment is not made by December 31, 2002, the full requirements option will be deemed chosen.

Under each option, the first preference customer will be responsible for transformation and transmission losses to the first preference customer delivery point. Transmission losses shall include losses for CVP transmission and third-party transmission.

1. Full Requirements: Western will provide the first preference customer with its full power requirements (capacity and energy) up to its right to the MEFPC at the Base Resource rate. If there is more than one first preference customer in a county of origin, or a first preference entity in that county makes a request for power, Western reserves the right to establish a maximum amount of power available to each first preference customer from the MEFPC. Payment under this option will be based on usage.

2. Percentage: Western will determine the allocation percentage in a manner similar to that of the other customers receiving a power allocation. The first preference customer's maximum demand during the previous 4 years will be used in determining an allocation percentage of the power resource under this option. Power will be provided on a take-or-pay basis under this option. The following will apply to each first

preference customer selecting this percentage option.

a. First preference customers will not be subject to adjustments for the resource pool or the SMUD settlement, and will not be eligible for the Optional Purchase. Under this option, first preference customers are eligible for the Custom Product as defined in Section III.

b. The allocation percentage made available to each first preference customer under this Marketing Plan will be applied to the power resources which have been adjusted for project use.

c. First preference customers will have the opportunity to have their allocation percentage adjusted, as agreed to by Western. Increases, up to a first preference customer's share of the MEFPC, will require a written notice 7 months in advance of the first day of the month in which the increase is requested to become effective. Justification for the increase must accompany the request.

E. A first preference entity may exercise its right to use a portion of the MEFPC by providing written notice to Western at least 18 months prior to the anniversary date of the first preference project located in its county. The anniversary date is the successive fifth year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the counties of origin. New applications for service to begin on January 1, 2005, under this Marketing Plan must be received 18 months prior to January 1, 2002 (i.e., July 1, 2000) for Trinity County and 18 months prior to April 5, 2002 (i.e., October 5, 2000) for Calaveras and Tuolumne Counties. Other anniversary years applicable to this Marketing Plan are 2007, 2012, 2017, and 2022.

F. If the request of a first preference customer/entity for power, including adjustment for losses, is greater than the remaining MEFPC from that county's first preference project, then Western will allocate the remaining MEFPC to the first preference customer/entity first making a request for a power allocation or a justified increase in its allocation percentage.

G. Power allocated to first preference customers/entities in Tuolumne and Calaveras Counties will be subject to the following additional conditions:

1. Tuolumne and Calaveras Counties shall each be entitled to one-half of the New Melones Project MEFPC.

2. If first preference customers in either Tuolumne County or Calaveras County are not using their county's full one-half share, and a first preference customer/entity in the other county requests power in an amount exceeding that county's one-half share, then Western will allocate the unused power, on a withdrawable basis, to the requesting first preference customer/entity. Such power may be withdrawn for use by a first preference customer/entity in the county not using its full one-half share upon 6-months written notice from Western.

H. Trinity Public Utilities District is currently the sole recipient of the TRD's first preference rights.

I. Transmission service will be provided in accordance with applicable laws and Section VII of this Marketing Plan.

J. For planning purposes, first preference customers may be required to provide forecasts and other information required by Western as set forth in the electric service contract.

K. The general criteria and contract principles set forth in Sections V.A through C, F through L, and N of this Marketing Plan will apply to first preference customers.

VII. Transmission Service

Western will provide bundled or unbundled transmission services as appropriate in conjunction with its power sales in a manner consistent with FERC Orders, legislated mandates, or California ISO Agreements, as appropriate. Western will determine the use of its transmission resources concurrently with further development of the products and services under this Marketing Plan. Specific terms and conditions for transmission will be provided for in future service agreements.

Dated:

Michael S. Hacskaylo
Administrator

APPENDIX A

This Appendix lists the existing customers' CRD amounts and extension percentages as of May 1, 1999. Final percentages will be available after December 31, 2003.

Existing Customers	CRD \1 (kW)	Extension CRD (CRD \1, 2 less excluded types of power) \3 (kW)	Percentage of Base Resource (2005-2014)
Air Force - Beale	21,575	21,575	1.42461%
Air Force - McClellan \4	12,000	12,000	0.79237%
Air Force - Onizuka \4	1,500	1,500	0.09905%
Air Force - Travis	12,651	12,651	0.83535%
Air Force - Travis/David Grant Medical Center \4	4,000	4,000	0.26412%
Air Force - Travis Wherry Housing	1,400	1,400	0.09244%
Alameda, City of \5	21,145	21,145	1.39622%
Arvin-Edison Water Storage District	30,000	30,000	1.98092%
Avenal, City of	622	622	0.04107%
Banta-Carbona Irrigation District	3,700	3,700	0.24431%
Bay Area Rapid Transit District	4,000	4,000	0.26412%
Biggs, City of	4,200	4,200	0.27733%
Broadview Water District	500	500	0.03302%
Byron-Bethany Irrigation District	2,200	2,200	0.14527%
Calaveras Public Power Agency	8,000	---	---
California State University, Sacramento - Nimbus	40	40	0.00264%
Cawelo Water District	500	500	0.03302%
Corrections - California State Prison-Sacramento	2,300	2,300	0.15187%
Corrections - Deuel Vocational Institute	1,700	1,700	0.11225%
Corrections - Northern California Youth Center	1,700	1,700	0.11225%
Corrections - Sierra Conservation Center	3,000	---	---
Corrections - Vacaville Medical Facility	1,800	1,800	0.11886%
Defense Logistics Agency - Sharpe Facility	4,000	4,000	0.26412%
Defense Logistics Agency - Tracy Facility	3,800	3,800	0.25092%
East Bay Municipal Utility District \5	1,965	1,965	0.12975%
East Contra Costa Irrigation District	2,500	2,500	0.16508%
Eastside Power Authority \5	2,961	2,961	0.19552%
Energy - Lawrence Berkeley National Laboratory	9,000	9,000	0.59428%
Energy - Lawrence Livermore National Laboratory	44,711	44,711	2.95229%
Energy - Lawrence Livermore, Site 300	2,000	2,000	0.13206%
Energy - Stanford Linear Accelerator Center	21,903	12,903	0.85199%
Glenn-Colusa Irrigation District	3,343	3,343	0.22074%
Gridley, City of	9,400	9,400	0.62069%
Healdsburg, City of \5	3,241	3,241	0.21401%
James Irrigation District \5	987	987	0.06517%
Kern-Tulare Water District \5	987	987	0.06517%
Lassen Municipal Utility District	3,000	3,000	0.19809%
Lodi, City of \5	13,236	13,236	0.87398%
Lompoc, City of \5	5,197	5,197	0.34316%

Existing Customers	CRD \1 (kW)	Extension CRD (CRD \1, 2 less excluded types of power) \3 (kW)	Percentage of Base Resource (2005-2014)
Lower Tule River Irrigation District \5	1,965	1,965	0.12975%
Merced Irrigation District \4	5,000	5,000	0.33015%
Modesto Irrigation District \5	10,805	10,805	0.71346%
NASA - Ames Research Center	80,000	80,000	5.28245%
NASA - Moffett Federal Airfield \4	5,009	5,009	0.33075%
Navy - Naval Weapons Station, Concord \4	2,898	2,898	0.19136%
Navy - Naval Radio Station, Dixon	915	915	0.06042%
Navy - Naval Air Station, Lemoore \4	23,000	23,000	1.51870%
Navy - Naval Communications Station, Stockton	3,700	3,700	0.24431%
Oakland Army Base	2,275	2,275	0.15022%
Oakland, Port of \4	1,000	1,000	0.06603%
Palo Alto, City of	175,000	175,000	11.55535%
Parks & Recreation, California Department of	100	100	0.00660%
Parks Reserve Forces Training Area	500	500	0.03302%
Patterson Water District	2,000	2,000	0.13206%
Pittsburg Power Company \4	5,000	5,000	0.33015%
Plumas-Sierra Rural Electric Cooperative	25,000	25,000	1.65076%
Provident Irrigation District	750	750	0.04952%
Rag Gulch Water District	500	500	0.03302%
Reclamation District 2035	1,600	1,600	0.10565%
Redding, City of	116,000	116,000	7.65955%
Roseville, City of	69,000	69,000	4.55611%
Sacramento Municipal Utility District \7	361,000	361,000	31.25000%
Sacramento Municipal Utility District	100,000	---	---
San Francisco, City and County of \4	2,600	2,600	0.17168%
San Juan Water District	1,000	1,000	0.06603%
San Luis Water District	6,650	6,650	0.43910%
Santa Clara Valley Water District \5	987	987	0.06517%
Shasta Lake, City of	11,450	11,450	0.75605%
Silicon Valley Power	216,532	136,532	9.01529%
Sonoma County Water Agency	1,500	1,500	0.09905%
Trinity Public Utilities District	17,000	---	---
Tuolumne Public Power Agency	7,000	---	---
Turlock Irrigation District \5	3,941	3,941	0.26023%
Ukiah, City of \5	8,773	8,773	0.57929%
University of California, Davis	14,682	14,682	0.96946%
West Side Irrigation District	2,000	2,000	0.13206%
West Stanislaus Irrigation District	5,200	5,200	0.34336%
Westlands Water District \5	21,441	21,441	1.41576%
2005 Resource Pool \6			2.75000%
	1,584,537	1,360,537	100.00000%

Notes:

\1 CRD temporarily laid off and temporarily allocated to other existing customers is reflected in this Appendix A, under both CRD and extension CRD, as being returned to the existing customer who received the original allocation.

\2 Western will reduce the extension CRD if Western determines that, as of December 31, 2003, the extension CRD is greater than the existing customer's load.

\3 Exclusions are diversity, curtailable, and first preference power; and peaking and excess capacity.

\4 These extension CRD could be adjusted as a result of the NDA Act procedures. Also, new NDA Act customers could be added through November 30, 2003.

\5 Westlands Water District has a right to 50 MW through December 31, 2004. Certain existing customers have been allocated a portion of the 50 MW, subject to withdrawal for use by Westlands Water District. Allocation percentages effective after December 31, 2004, will be adjusted to reflect changes made as a result of Westlands Water District's use and withdrawals, in accordance with Section IV.A.1.b.

\6 The 4 percent 2005 Resource Pool is adjusted for SMUD's non-participation due to the Settlement Agreement.

\7 31.25 percent reflects the 360/1,152 ratio in the SMUD Settlement Agreement. After December 31, 2014, SMUD's percentage will be based on its extension CRD.