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DEPARTMENT OF ENERGY

Western Area Power Administration

Power Allocation Issues

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Inquiry

SUMMARY: The Western Area Power Administration (Western) has completed its inquiry regarding the impact of electric utility industry restructuring on Western's power allocation policies. This Federal Register (FR) notice contains Western's responses to comments on the issues raised by the inquiry. Contemporaneously, Western is publishing the final 2004 Power Marketing Plan for the Sierra Nevada Customer Service Region (SNR) and the final Salt Lake City Area Integrated Projects (SLCA/IP) Marketing Criteria.

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SUPPLEMENTARY INFORMATION:

Authorities

This public process is being conducted pursuant to the Department of Energy (DOE) Organization Act (42 U.S.C. 7101, et seq.); the Reclamation Act of 1902 (43 U.S.C. 371, et seq.), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

Background

Western is a Federal power marketing administration (PMA), charged with the responsibility of marketing electricity generated by power plants operated by the Bureau of Reclamation (Reclamation), the Corps of Engineers, and the International Boundary and Water Commission. Created in 1977, Western markets on a wholesale basis and transmits Federal hydroelectric power throughout 1.3 million square miles to more than 600 customers, including rural electric cooperatives, municipal utilities, public utility districts, Federal and State agencies, irrigation districts, and Native American tribes. Western's power customers, in turn, provide service to millions of consumers in 15 western States.

Western markets power on a project-specific basis. A marketing plan for each project is developed through a public process, with opportunity for comment on a marketing proposal before publication of the final marketing plan in the Federal Register. Reclamation law governs how Western markets electricity, including the requirement that Western offer power first to certain nonprofit entities such as rural electric cooperatives and municipalities.

On December 1, 1998, Western published in the Federal Register a Notice of Inquiry to explore the impact of electric utility industry restructuring on Western's power allocation policies (63 FR 66166). A forum was held in Denver on January 6, 1999, to receive public comment on this matter, and written comments were accepted from the public until the end of the 45-day consultation and comment period. In this Federal Register notice, Western is addressing comments received during the electric utility industry restructuring inquiry.

Western received a number of comments on the size of project-specific resource pools in response to our Notice of Inquiry. Because of these comments and expressions of interest in an allocation of Federal power from several Indian tribes, Western decided to open an additional 30-day comment period focused solely on the issue of the size of project-specific resource pools. Informational meetings on Western's resource pool size proposals and the requirements for receiving an allocation of power were held in Phoenix, Arizona, Albuquerque, New Mexico and Folsom, California. Resource pool size comments are being addressed in the 2004 marketing plans for the Central Valley, Washoe, and Salt Lake City Area Integrated Projects.

As some comments and responses use certain project names interchangeably, some definition is needed in order to avoid confusion. Western's 2004 Power Marketing Plan for the Sierra Nevada Customer Service Region governs marketing from the Central Valley Project (CVP) and the Washoe Project. Western's Salt Lake City Area Integrated Projects Marketing Criteria cover power marketing from the Colorado River Storage Project (CRSP), the Collbran Project, and the Rio Grande Project.

Summary of Western's Response to the Notice of Inquiry

In response to changes in the utility industry, Western's power allocation policies have been altered in a responsible and proactive manner. More flexibility has been added to Western's power sales contracts, and Western has made significant changes to our marketing policies that emphasize customer choice and diminish Western's future need for appropriations to purchase power. Western's contracts will accommodate, rather than impede, environmentally beneficial changes in operations at large Federal dams in the west. Widespread benefit will be achieved through power allocations to Native American tribes without the need for formation of tribal utilities. Contractual provisions will continue to prohibit inappropriate resale of Western's power and assure that consumers receive the benefits of cost-based Federal hydroelectricity. Although no additional changes to Western's power marketing policies will be adopted at this time, Western likely will evaluate the impact of electric utility industry restructuring on a periodic basis to assure that our policies continue to be responsive to public needs.

Legal Analysis

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.) requires Federal agencies to perform a regulatory flexibility analysis if a 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 policy inquiry rather than a rulemaking, and the subject of the inquiry involves policies applicable to public property.

Environmental Compliance

DOE National Environmental Policy Act (NEPA) regulations categorically exclude marketing plans from NEPA documentation unless they involve new generation, new transmission, or a change in operations. Therefore, Western will not conduct further evaluation under NEPA as part of this power allocation issues notice of inquiry. Considerable environmental evaluation has already occurred under the Energy Planning and Management Program (EPAMP) and during project-specific marketing plan development.

Review Under Paperwork Reduction Act

As no collection of information will take place as a result of this Federal Register notice, no review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.) is necessary.

Review 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 Federal Register notice is exempt from congressional notification requirements under 5 U.S.C. 801 because it is a policy inquiry rather than a rulemaking, and the subject of the inquiry involves procedures and policies applicable to public property.

Federalism Assessment

This Federal Register notice will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Orders 12612 and 13083, it is determined that this notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

RESPONSE TO COMMENTS ON NOTICE OF INQUIRY

Western has received extensive public comment on the impact of electric utility industry restructuring on Western's power allocation policies. These comments relate to six questions that were posed during the public process, which address the impact of State retail competition statutes on how we sell electricity. Public comments, and Western's responses to those comments, are set forth below and organized under each of the six questions.

Question:

1. Should Western's power allocations system, including the term of firm power contract renewals, be modified to take into account changes in electricity markets that have occurred, and are expected to occur in the future, due to the enactment of California Assembly Bill 1890 and other State retail competition statutes? If so, please explain what modifications would be desirable. If not, please explain why the present system should be preserved.

A. Goals of Restructuring

Comment: The intended goal of electric utility restructuring is to promote competition, so as to lower power costs to the consumer. That goal is already being met by Western's existing power allocation system. Loss of the resource will increase costs to and punish the retail consumer, a result that is contrary to the intended results of retail competition.

Response: Lower power cost to consumers is the ultimate goal of utility restructuring. Western's power allocations promote yardstick competition in the electricity industry and result in lower power costs to the consumers served by Western's customers.

B. Federalism

Comments: Western should give a great deal of deference to federalism. Many of the suggested changes in Western's Notice of Inquiry would insert Western into State policy determinations. To date, the United States Congress has been extremely careful in respecting State jurisdiction in matters as extensive and complex as those within the power industry. Western should not tread where Congress has chosen not to go.

We appreciate your efforts to assure that the Federal power program's policies are contemporaneous with the needs of customers and the changes in the industry. However, we do not believe that the six issues posed in this inquiry will strengthen the program or increase the value of the Federal power resources. We believe these issues should be addressed at the State level.

Response: Issues of retail service, retail rates and consumer choice in power supply have been addressed at the State and local levels in the past. As Congress has not identified what Federal purpose would be served by modification of this historic responsibility, Western believes these issues are better addressed at the State level. The Clinton Administration's electric utility restructuring bill encourages States to take the lead on these issues.

Comment: Why should the Federal policy on power allocations be changed due to State legislative action? State interests should not supersede Federal interests.

Response: As a matter of policy and practicality, Western views the establishment of Federal policy through mirroring of State legislative or regulatory action as problematic.

Comment: Western should not interfere with the federalism that has served our nation well in accommodating the different needs of each region.

Response: Accommodating regional needs is important to Western. As a PMA, our mission is very much regional in nature. Western markets power on a project-specific basis, which allows the crafting of marketing plans that are responsive to regional needs.

Comment: We understand that the Clinton Administration supports State implementation of electric utility restructuring, and we are concerned that Western not impose requirements beyond those required by California law.

Response: Western has no desire to impose requirements beyond those required by California law.

C. Policy Diversity

Comments: Retail access has not been uniformly implemented among the States in Western's service territory. Retail access and utility restructuring are being addressed to varying degrees on varying timetables. Restructuring is an evolutionary process and substantial discretion is left to each State to determine how best to serve their interests.

Because of the wide variety of approaches being considered or implemented by the various States in which Western currently has responsibility for marketing Federal resources, it will be impossible for Western to have a uniform or equitable approach in each jurisdiction, even setting aside the issue of Federal/State relationships.

The States should mold their restructuring plans around Western rather than Western trying to mold their allocation system around each State.

Response: Western agrees that adopting a policy that mirrors evolving State action would be difficult.

Comment: No modification should take place in Western's power allocations to satisfy the needs created by California's electric deregulation.

Response: Western does not intend to force California standards on customers elsewhere in our service territory.

Comment: Western should not set national standards for all of its projects. The regional nature of Western's projects should be recognized.

Response: Western will continue to market power on a project-specific basis, in a manner that is sensitive to regional needs.

D. Yardstick Competition or Distortion of Markets?

Comments: Western's current allocation system should be changed because competitive wholesale and retail electricity markets make the inherent market distortions caused by PMA power even greater. It is patently unfair for the Federal Government to subsidize a few select players in a competitive market, to be picking winners and losers among electricity suppliers.

Western's power allocation system should be modified to take into account industry changes. Under the current scheme, the Federal Government is essentially stacking the deck against private, taxpaying utilities and other power generators in favor of subsidized customers who provide low cost power to a select few. Because the wholesale market today is already competitive, such a stacking of the deck is incongruous with the nation's goals as set forth in the Energy Policy Act of 1992.

Response: Marketing of Federal hydropower to nonprofit public bodies first is in accordance with law. Although many changes have taken place in the utility industry in recent years, the policy of not allowing profit to be made on Federal power resources constructed with taxpayer dollars remains relevant today.

All successful competitors in the electricity marketplace have certain competitive advantages, including investor-owned utilities. Some investor-owned utilities (IOUs) have such attributes as size, access to capital, economies of scale, greater customer density, use of investment tax credits, access to tax-exempt bonds for purposes such as financing pollution control equipment, and favorable tax treatment of depreciation. Some jurisdictions allow recovery of stranded costs on favorable terms for IOUs.

Comments: One of the original intents of the Federal power program was and still is to provide a yardstick to measure competition and provide a counterbalance to private sector interests. At this time of restructuring and volatile wholesale prices, abandoning that yardstick will leave consumer-owned electric utilities and their consumers no means of assessing the conditions of the marketplace.

Equity and a level playing field for all types of utilities clearly points to a prompt renewal of CVP and CRSP contracts under the 2004 marketing plans at high percentage levels.

Western's allocation policies have helped promote "yardstick" competition among utility suppliers. Existing allocation policies have in large part supported the continued ability of our small municipal utility systems to provide competitively priced power to all our consumers, not just a few of the larger consumers as we believe will be the inevitable result if industry restructuring is mandated at the Federal or State level.

A recommitment to the original purposes of the Federal power program will better serve the country and Western's customers. The need for a yardstick to measure competition is more important than ever. There has yet to be a demonstration that industry restructuring will benefit all consumers. Developments in industry restructuring to date have only benefited a narrow class of customers-large industrial and commercial loads. Small communities and rural areas--Western's customer base--may be distinctly disadvantaged by some of the industry changes that have been proposed.

Response: Western's power allocation policies preserve stability and competitive balance in the utility business. As small communities and rural areas are served by a significant portion of our customer base, Western is cautious about changing its policies to the possible detriment of consumers in less populated areas.

E. Policy Basis

Comments: Western would be grossly premature in making changes to address nonexistent or moving targets in restructuring. In addition, the form of the present California market is undergoing rapid and unpredictable changes. To modify the present 2004 marketing plan would be a futile exercise.

Modifying Western's power allocation system based on possible developments in State legislatures is conjectural and represents a bad model for policy development. There is no reason to change Western's power allocation system because of development in the States. State actions do not compromise Western's role in the electric utility industry, and in fact may make Western's role more important.

Western should not take into account changes it expects to occur because of State statutes allowing retail competition. Some States will not adopt statutes and the statutes that are adopted will not be the same. Speculation on what the future may hold is not a sound business practice.

Any initiative which results in Western reducing power allocations on the speculative assumption that industry restructuring will be mandated in our State or that it will be good for all consumers in our State simply exacerbates the seriousness of the resource stability issue that small municipal utilities are vitally concerned about.

Response: The scope and pace of changes in the utility industry cannot be predicted with certainty. Adopting significant additional policy changes today, when the policy debate is fluid and the outcome is far from certain, is imprudent.

Comment: Changing Western's power allocation policies as suggested by the question will impede competition and not promote it. The current merger mania is being fueled by the debate on industry restructuring. Investor-owned utilities realize that maximizing profits in restructured markets is dependent on their ability to increase market share. Any action by Western that detrimentally impacts the ability of small municipal and rural-based systems to survive and continue to offer first-rate service at a competitive price will lead to increased concentration of electric supply in the hands of a few, larger companies. This does not foster competition, it discourages it. Confirmation of existing policies and extension of resources will promote and preserve competition in electric supply markets.

<u>Response</u>: Yardstick competition has added value to the electricity marketplace. Competition is not served if Western adopts policies that undermine the diversity of the industry by accelerating the consolidation of power supply.

<u>Comment</u>: Notwithstanding our belief that Federal law would need to be changed, we do not believe the policy changes suggested by these questions are prudent on their face. In general, these policies would add both instability to and disrupt what is already much uncertainty related to the future of power supply resources in a time of deregulation.

<u>Response</u>: Adding instability and disruption to power supply resources is not sound policy.

<u>Comment</u>: Policy decisions on Western's power should not be made in a vacuum. Western's policies should be examined in light of other Federal actions which affect the electric utility industry.

<u>Response</u>: Many public power entities do not purchase power from Western, so

changes in Western's allocation policies have a limited impact nationally.

Comment: The customers who purchase power from the Southeastern Power Administration are concerned that DOE would modify the policies governing the Federal power program to accommodate nascent changes in retail utility markets in a handful of States. We are unaware of any evidence that the Federal power program has impeded implementation of retail competition.

Response: Western believes that the sale of cost-based hydropower to not-for-profit utilities aids competition in the industry. Far from undermining competition, diversity of participation stimulates and strengthens the marketplace.

Comment: The world has changed since the adoption of the Energy Planning and Management Program in 1995. Modest changes to the rules would meet the need to address retail wheeling.

Response: Western believes that the changes to its past marketing and allocation policies, as set forth in the 2004 marketing plans for the CVP, Washoe, and SLCA/IP, are responsive to changes in the utility industry.

Comments: Western's Notice of Inquiry has the appearance of searching for a rationale or justification for changing policy.

We were disappointed to receive the inquiry from Western, as it seems to be just another attack on public power cloaked in the shroud of industry restructuring. The questions overlook the fact that public power and the historical distribution of Western power have fostered more competition than will likely occur from restructuring.

Response: Western agrees that public power and the marketing of power by Western have promoted competition in the past, to the benefit of consumers.

Comments: Western should change its allocation policies, as the original purpose for preference allocations has changed, and the West has been electrified. Restructuring demands changes to the existing allocation scheme.

The PMAs and Tennessee Valley Authority were originally established during the Great Depression to speed the delivery of electricity to farms and rural areas and to service municipal utilities. Only 11 percent of rural citizens were receiving the benefits of electric service at that time. Virtually no competition existed among utilities. At that time, IOUs were unable to finance rural electrification because of the lack of available capital at affordable rates.

Cost-based PMA power was reserved first for preference entities, with subsidies seen as a tools for promoting economic development. Economic circumstances in many of these areas have improved dramatically and the original reasons for creating such subsidized sales of power no longer exist. Rural America is no longer without electricity, nor is rural America any poorer than urban America.

Congress established the current allocation system based on the diversity in electric markets, the cost of owning, operating and maintaining electric facilities, and the need for the region to access affordable electric energy. The basis for that decision is as valid today as when the lights first came on. Electric utility restructuring will provide little benefit to remote, sparsely populated, and economically depressed rural areas. The lack of economic activity, which initially served as a vital deterrent to conventional electric utility development, is more pervasive today than it was when rural areas were first evaluated as potential markets for electric energy.

Response: Although electrification of rural America has been largely accomplished, it is not universal. For example, Western has received comments during this public process that thousands of residents on the Navajo Reservation in northern Arizona do not have electrical service.

As is the case with every utility in the United States, consumers in Western's service territory vary in their prosperity. Many of Western's customers serve areas that are economically depressed. Allocations of Western power are important to economic development in those regions.

Comment: Western and the other PMAs are in need of an overhaul. America's needs are different today than they were at the time historic Reclamation laws were enacted. While the burdens of Federal preference allocations continue to be shared by all, the benefits appear to flow only to a few. At a time when both government and industry are trying to do more with less, it is difficult to find the public interest in a program where the electricity bills of one select group of citizens are subsidized to the exclusion of others. At a time when energy conservation has never been more important, it is difficult to find the public interest in a scheme where the United States sells electricity at below market rates, thereby encouraging inefficient use, waste and unnecessary adverse impacts to our country's natural resources. And at a time in which the Congress has mandated wholesale competition of electricity and functional unbundling of generation and transmission, it is difficult to find the public interest in a program that depends on vertical integration to support its continuation.

Response: As a regional PMA, the economic benefit of the power sold by Western is enjoyed by entities in the region. This is not a unique situation. The economic benefit of other Federal programs is often also regional in scope, whether the investment is in military bases, mass transit, national parks, or locks and dams that promote commerce on the Nation's rivers.

Western is doing more with less. Our staffing levels have been cut 25 percent over the last several years in order to assure that our power rates remain stable and our goods and services remain marketable. Moreover, Western's rates are not subsidized. Western markets cost-based hydroelectric resources, which are relatively inflation resistant as compared to non-hydro generation due to the absence of fuel costs. In addition, Western has no responsibility to meet load growth with relatively expensive additional power. Western's hydropower resources are reasonably priced due to these factors, and not because of subsidies.

Western is proud of its record, and the record of its customers, in conservation and renewable resources. According to the annual reports from customers pursuant to Western's Integrated Resource Planning (IRP) regulations, Western's customers avoided in 1998 the equivalent of over 555 megawatts (MW) of supply side resource acquisition due to investment in demand-side management. Also in 1998, over 1140 MW of renewable resources were acquired by customers.

The Federal power program does not depend on continuation of vertical integration. For those customers that embrace separation of functions, Western will market its power to the function responsible for service to retail consumers. Yardstick competition will continue to play an important role in enhancing competition in the marketplace, with the goal of lowering rates to all consumers.

Comment: We are concerned that any significant changes to Western's 2004 marketing plan may increase uncertainty at a critical time and lead to increasing government bureaucracy. Changes to Western's existing power allocation system would likely decrease allocations to existing customers and cause power rates to consumers served by Western's customers to rise. Higher electric rates are contrary to the goals of retail competition.

Response: Western is committed to carrying out its mission in a businesslike and cost conscious manner. Creation of a government bureaucracy which adds no value to our programs is inappropriate and puts upward pressure on Western's rates.

F. Western's Role

Comments: Western has already demonstrated and continues to work to adapt both its organization and the renewals it is making on contracts for Federal power, recognizing changes in the industry while at the same time preserving and respecting its Federally mandated mission.

Western's marketing policies are keeping pace with industry restructuring. The extensive public process utilized by Western to develop marketing policy has served its purpose very well.

We feel that the present 2004 CVP marketing plan is the logical evolution of several predecessor marketing plans. With each stage of the evolution, the Western system has gained the flexibility which was sorely needed.

Western's marketing plans already have provisions to adapt Western to the new marketplace. For example, the CVP 2004 marketing plan offers unbundled services and allows customers to choose what they need. The marketing plan is optimized for who Western is and the role they play in the marketplace.

Western is already responding to industry changes as a wholesale power supplier.

By separating its transmission function from its power marketing function, posting its surplus transmission on an open access same time information system site, and participating on the California Independent System Operator (ISO) governing board, Western has demonstrated its forward looking approach.

Electricity restructuring is an evolutionary process that will take many years to complete, and the eventual outcome is uncertain. Western has taken into account industry restructuring changes in its proposed marketing plans, which would sell a significantly different resource from what is marketed today.

Western's power allocation system should be retained in order to preserve consistency between the past and the future.

Response: Continuation of past policies without taking into account changes in the utility industry is unwise. Western agrees there is risk in predicting the future actions of Congress, State legislatures, and regulators. However, there is also risk in not adjusting business practices until there is absolute certainty.

Western has taken significant steps to respond to industry changes. Even though Western is not under the jurisdiction of FERC for this purpose, functional separation of its merchant and reliability functions has proceeded. Western is actively involved in the formation of independent system operators, and has taken on the roles of security coordination in the Rocky Mountain subregion of the Western Systems Coordinating Council and schedule coordination in northern California. Open access transmission rates and rates for ancillary services have been developed. Western has also pursued efficiencies in its operations and cut its staffing level and associated costs in order to assure that our rates are stable and our power remains marketable. Western is committed to being businesslike and responding to the changes in the utility industry in a responsible and proactive manner.

In recent years, Western has added more flexibility to its power marketing policies and power sales contracts than has existed in the past. Contracts recently signed for the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects contain withdrawal opportunities at 5 and 10 years to meet the needs of potential new customers and other purposes as determined by Western. Western also reserved the contractual ability to adjust power commitments in response to changes in operations and hydrology. In addition, Western has the full flexibility to adjust its power rates under the terms of the contracts. Resource pools of up to 6 percent of the marketable resource were set aside to meet the needs of new customers, including Indian tribes. These changes demonstrate Western's commitment to adjusting its marketing policies as changes take place in the utility industry.

Western has also made significant additional changes in the way power is marketed in its most recent marketing plans. Under the 2004 Power Marketing Plan for the SNR, Western will no longer market a resource that anticipates significant purchasing of power to meet contractual commitments. Instead, Western plans to market the hydroelectric resource as a base resource, which can be enhanced by custom products (such as firming power and ancillary services) at the election of the customer. Similarly, the marketing plan for the SLCA/IP will allow the customer to choose whether Western should purchase firming power. These changes promote customer choice and will significantly impact Western's future need for purchase power appropriations.

<u>Comments</u>: Western appears to be pursuing a course of promoting retail wheeling

indirectly even though its sister Federal agency, the Federal Energy Regulatory Commission, has been prohibited by Congress from pursuing this course directly in §212(h) of the Federal Power Act.

The questions posed by Western appear to be predicated on assumptions that it has a broad regulatory and legislative authority and that the impacts of its decisions will be limited. Neither predicate is accurate. Western's authority is not one of a regulator, but of a marketer with limited authority.

Do not lose sight of Western's limited statutory role. Investor-owned utilities and marketers would undoubtedly oppose a shift in mission from a wholesale supplier to a retail utility.

Industry changes do not justify a more "activist" role for the PMAs. A more active role runs counter to the belief that exists in the Pacific Northwest, where the four governors engaged in a comprehensive regional review of the future role of the Bonneville Power Administration (BPA). The regional review rejected the notion of a more activist BPA, and made several recommendations to limit the role of BPA, including a preclusion of direct retail sales beyond existing direct service customers.

Expanding Western's role to include direct retail sales, rate regulatory review of consumer-owned utilities and load profile analysis is unnecessary and inconsistent with the desired reduction in the role of the PMAs in a competitive marketplace.

Affirmative answers to the six questions would launch Western into activities that vastly exceed its statutory authority. In the past, Congress has been clear when it directs an expansion of Western's role beyond that of a wholesale supplier (such as the IRP) requirement for Western customers. Congress has not directed Western to take on the role suggested in the Notice of Inquiry. While BPA has statutory responsibilities that are greater than Western's, BPA cannot undertake many of the activities contemplated by the Notice. Moreover, the Public Power Council would oppose BPA attempting to engage in such activities.

We believe Western's function is for the benefit of the region it serves. Restructuring along the lines of this Notice of Inquiry could lead Western to operate outside its boundaries to the detriment of existing customers and perhaps even create a situation where Federal agency competes with Federal agency. Western's current responsibilities for supplying power take into account a number of State and regional issues dealing with power, but also extend beyond power delivery to other resource issues such as water management and impacts on the environment.

Response: Western is persuaded by these comments, and will not change its general role in the manner suggested by the Allocation Issues Inquiry. Although Western has broad statutory authority, there is no compelling policy rationale for Western to become more activist in its role. The goal of the Clinton Administration, which is to have a smaller government that works better and costs less, would be undercut if Western adopts the wide ranging new responsibilities suggested by the Inquiry.

Comment: Western should not build resources.

Response: Western has no plans to construct new power resources.

Comments: Federal power is marketed in accordance with Reclamation law. Consequently, the allocation and rate-setting policies of Western are not identical to the practices of other electric utilities. Federal Reclamation projects were developed not as a means for the generation of electricity, but as a means of generating revenues to repay Federal investment in these projects, including irrigation assistance.

Multipurpose Federal project operation is unique as compared to other resources that have more flexibility in a competitive power market to meet individual loads.

Response: Western has less flexibility than other participants in the competitive marketplace due to the multipurpose nature of the resources we market. Western agrees that our role is to market power in such a manner as to repay Federal investment.

Comment: As an agency of the Federal Government, Western is not subject to deregulation rules promulgated by the FERC. Nor is Western subject to the jurisdiction of State legislatures or public utility commissions.

Response: Although the Clinton Administration's restructuring bill would make Western's transmission rates subject to FERC review as a matter of law, Western is not a public utility and therefore is not presently subject to FERC jurisdiction under §205 and §206 of the Federal Power Act. However, as a transmitting utility, Western is subject to §§211-213 of the Federal Power Act. Western is not subject to the jurisdiction of State legislatures or public utility commissions.

G. Customer Support, Leadership and Reliance

Comment: The Natural Resources Defense Council (NRDC) applauds the good stewardship example that has been set by northern California customers of the Central Valley Project. In our judgment, that record justifies both renewal of these customers' contracts and your insistence that other customers meet the same high standard in return for contract extensions.

In an increasingly competitive and environmentally constrained industry, access to inexpensive power supplies should be limited to distribution companies that make convincing commitments to use electricity efficiently and to expand inventories of relatively benign production. This is precisely what we have seen from the Sacramento Municipal Utility District (SMUD), City of Redding Electric Department, Silicon Valley Power, City of Palo Alto Department of Utilities, and the Northern California Power Agency. These institutions have made three overriding commitments: (1) through 2001 at least, they will devote at least 3 percent of retail electric revenues to long-term investments in energy efficiency, renewable energy, and low-income energy services; (2) after 2001, they will at least match California investor-owned utilities' investments in these categories as a fraction of retail sales; and (3) they will annually underwrite and publish independent experts' reviews of all such investments. Those commitments place these northern California institutions in the forefront of public power nationally and amply justify a contract extension.

Response: Western appreciates the support of the SNR 2004 marketing plan by NRDC.

Comment: Central Valley Project customers have paid for substantial environmental restoration on the CVP. Moreover, the consumer-owned municipal utilities served by the CVP have paid more than $20 million to repair and upgrade the Federally owned power generating facilities (including the funding of the Shasta temperature control device, the Shasta rewind project, and CVP maintenance) to ensure their continued reliability and value without the need for Federal appropriations. The availability of this resource has been vital to the implementation of many cutting edge environmental improvements that currently benefit the citizens of California.

Response: Western agrees that CVP customers have paid for substantial environmental restoration and improvement in northern California. The 2004 marketing plan provides stability in the collection of mitigation funds for the benefit of environmental resources in California's Central Valley.

Comments: The CVP allocation is essential to SMUD's ability to continue providing reliable, affordable electricity to its consumers. It also makes possible SMUD's leadership role in energy efficiency and renewable resource programs. The assurance of CVP allocations has also been critical to the implementation of many cutting edge environmental improvements that benefit citizens of my congressional district.

Along with other Northern California Power Agency (NCPA) customers, we have made significant commitments to renewable resources that would not have been feasible without the CVP contracts. Loss of these contracts would make further commitments unlikely as well as jeopardize the stability of existing commitments.

Response: Western's power customers in northern California are leaders in the development of energy efficiency and renewable resources. Western agrees that renewable resource commitments might be adversely impacted if CVP contracts with existing customers did not continue.

Comments: Current CRSP power customers have contributed substantially to environmental protection programs and providing revenues for the Glen Canyon Monitoring and Research Center (GCMRC). Approximately 8-10 percent of CRSP rates fund environmental programs, such as the Upper Basin Recovery Implementation Plan and the GCMRC. This significant contribution, as well as customer commitments to integrated resource plans, demonstrates the commitment of CRSP firm power customers to environmental mitigation.

We could support the extension of SLCA/IP resources to existing customers if they were to support such ideas as renewable and energy efficiency investments, embracing green marketing to interested retail customers, supporting codification of funding commitments for mitigating the environmental impacts associated with the operation of Federal hydroelectric facilities, and agreeing to provisions that ensure that contract extension language will not impede dam reoperation.

Response: Western agrees that a significant portion of CRSP power revenues are used for environmental mitigation, monitoring, and research, all of which benefit the environment. Over $160 million in environmental costs, including purchased power required by experimental flows, have been funded by CRSP power customers through 1998. Now that operations at Glen Canyon Dam have been permanently changed to benefit downstream natural resources, the cost to replace the lost electrical power caused by this change is estimated to be in excess of $44 million annually, and could approach double that amount. In addition to the cost associated with lost electric power, there is a long-term monitoring and research program funded by power revenues which is anticipated to cost about $7,600,000 annually.

Capital funding of Upper Colorado River Basin endangered fish recovery is expected to cost about $17 million. Research funding for these same fish species is expected to cost $6 million per year. These costs are funded by CRSP power contractors. Moreover, additional purchase power expenses resulting from operational changes at Flaming Gorge Dam to benefit these fish are expected to total about $15 million over the next 5 years.

Purchasers of CRSP power have also had a positive record in energy efficiency and renewables. In 1998, CRSP customers realized over 138,000 megawatthours (MWh) in energy savings due to demand-side management investment. In excess of 692,000 MWh were generated from renewable resources in 1998 due to the investments of CRSP customers.

In addition, contract language has been developed to assure that dam reoperation will not be impeded by the extension of SLCA/IP resources. Firm power contracts will flexibly accommodate changes in operations, pursuant to the principles set forth in the EPAMP, 10 CFR part 905.

CRSP customers have supported environmental goals in the upper Colorado River Basin through significant direct funding and have paid, through higher power rates, for the loss of revenues attributable to environmentally beneficial changes in dam operations. In addition, their support of energy efficiency and renewable resources has been significant.

<u>Comment</u>: Existing customers have done IRP, now the Federal government should recognize the quid pro quo.

<u>Response</u>: Western agrees that existing customers have achieved environmental and economic benefits through preparation and implementation of integrated resource plans as well as historic conservation and renewable energy activities.

<u>Comment</u>: Federal power allocations are the cornerstone of many consumer-owned electric systems. Many entities have acquired their entire complement of resources assuming the long-term availability of the core hydropower resource. Customers have planned their resource portfolios around their Western allocations. Some customers

have made significant investments in transmission to deliver Western's power.

Response: Western agrees that economic dislocation would occur if resource commitments to existing customers were substantially withdrawn. Western and its customers have constructed high-voltage transmission to deliver power to existing customers, which could not be used for delivery of Federal power if allocation patterns were significantly changed.

Comment: Each resource from which Western allocates power should be analyzed separately with due consideration given to original participants. The history of purchases and the past level of commitment by existing customers need to be recognized.

Response: Through its project-specific marketing plans, Western analyzes how power should best be sold to meet regional needs. The past level of commitment is being recognized through the extension of a major portion of the resource to existing customers.

Comment: Western's historical power users have an equitable, if not a legal, interest in the hydroelectric systems providing the capacity and energy that Western markets. Just as the Bureau of Reclamation's water customers earn an equitable interest in the water rights held by Reclamation by paying for the irrigation systems, Western's historical customers have developed an equitable right to rely on the supply of power for which they have paid. Before the DOE attempts to reallocate the benefits of the Federal power system according to any of the new policies discussed in the Notice of Inquiry, it ought to reallocate system costs to reflect the contribution of current power users.

Response: Western's existing customers have no right to purchase power from

Western in the absence of a contract. While equity is a consideration in the marketing of power by Western, customers have no equitable or legal right to purchase power beyond the term of existing power sales arrangements. There is no need to reallocate system costs, as the new policies suggested in the Notice of Inquiry are not being generally adopted by Western.

Comment: CRSP hydropower is a clean, renewable resource in which we invested when coal-fired generation was less expensive, but CRSP participation was needed.

Response: Western recognizes that many customers committed to the Federal power program at a time when other alternatives were less expensive. This historic support is appreciated.

Comments: Western's preference customers meet or exceed the goals of California's deregulation law and Federal proposals, which address reliability issues, independent system operator formation, market power issues, environmental mitigation, and open access. Peer review by NRDC of our public goods and environmental investments has demonstrated the progressive nature of public power in northern California.

Consumer-owned utilities have provided competition and impetus for open transmission access, and continue to be leaders in renewable and efficiency accomplishments in the utility industry. It would be inappropriate to threaten these worthy achievements by making adverse changes to their Western power supply, and thus upset the competitive balance that now exists between municipal utilities and other energy providers.

Our power authority continues to be a leader in environmentally friendly power generation, with a nationally recognized wind power project, a photovoltaic demonstration project and one of the nation's cleanest coal-fired power plants.

Response: Western agrees that many of its customers have been leaders in the deregulation of the electric power industry and have demonstrated their concern for the environment through action despite the increasingly competitive nature of the electricity marketplace.

Comments: The CVP has been a model to emulate in the utilization of the public's natural resources for the public good. The partnership between the United States and local entities has been mutually beneficial and should be continued. Continued access to the CVP power resources is essential to achieving the goals of electric industry restructuring--low electric rates for consumers.

Our water district and customers have worked in partnership with Western to promote economic and environmental interests. Any changes to the proposed 2004 marketing plan will only increase government costs and bureaucracy.

Response: Partnerships with customers have been invaluable to the success of the Federal power program.

H. Small Customer/Rural Impact

Comments: Under the State restructuring statutes adopted to date, there has been no indication that small customers have benefitted other than by legislatively mandated rate reductions required in the legislation itself, rather than as a consequence of restructuring itself. To the contrary, indications are that retail residential and small business customers are not being pursued by energy marketers.

Experience with deregulation in other industries has shown that smaller communities and rural areas generally do not share in the benefits of deregulation and are often harmed through the loss of service providers. This has clearly been the case with the airlines, trucking, railroad, and long-haul bus services. Telecommunications is another area where urban consumers have enjoyed the benefits of new technology before rural areas. Because of their population densities, a restructured electric industry may present smaller communities and rural areas with the same types of defection by service providers and/or absence of competitive benefits.

Every indication to date is that State restructuring has not achieved the anticipated benefits. It has instead led to mergers of large utilities, the sale of generating assets based on a belief that only large utilities can successfully compete in the marketplace, and a lack of interest by new energy suppliers in serving retail residential and small business markets.

Response: Part of Western's mission is to provide the economic benefits of cost-based Federal hydropower to rural America. Western declines to change its policies in a manner that has significant adverse impacts on public power customers.

I. FERC Licenses

Comment: FERC recently renewed the hydroelectric licenses in the Feather River Canyon held by investor-owned utilities without any competitive process. As a matter of fairness and equity, we would hope the customer-owned systems are treated in the same fashion. Renewals of the CVP contracts as proposed will help maintain the balance between investor and customer owned utilities in the region.

Response: The renewal of a FERC license appears to be comparable to the situation facing Western's existing customers at the end of their contracts for the purchase of power from Western. The extension of FERC licenses lacks the flexibilities contained in

Western's 2004 marketing plans, such as the reservation of power for new customers.

Comment: We think it very important to note that the investor-owned utilities were granted virtually perpetual FERC licenses in 1986 through the poorly named "Ratepayer Protection Act." The theory was that the savings were being passed on to the ratepayers. In 1998, Pacific Gas & Electric Company (PG&E) announced plans to sell off these plants for close to $2 billion. PG&E is asking to be allowed to keep massive benefits that were supposed to be passed on to ratepayers. At the same time, CVP and CRSP customers are being challenged on our use of Western power, when we are passing on the benefits to our member-owners in a nonprofit fashion.

Response: Hydropower is a very capital-intensive resource that has no fuel costs, so it tends to be an economical and desirable resource in a utility's resource mix. FERC-licensed hydropower is a low cost resource, but its value is not always apparent as it is blended with other power resources of the licensee rather than being marketed on a stand-alone basis.

J. Term of Contract

Comment: A 20-year contract term is appropriate. Twenty year contracts have already been offered from the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects. Regional equity calls for contract renewal for the remaining Federal hydropower projects. Twenty years is shorter than the 30-year contract term for the Boulder Canyon Project.

Response: In addition to the precedent cited in public comments, contracts for the sale of Central Valley Project power have variable terms, with the longest contract approaching 40 years in length.

Precedent exists within Western that supports 20-year contract terms. Regional equity is served by offering 20-year resource extensions to existing customers of the CVP and SLCA/IP.

Comment: The Southeastern Power Administration recently entered into 20-year power contracts. FERC licenses for hydropower generation have historically been granted for 30-50 years, a much longer time period than what Western is proposing here. We note that the Bonneville Power Administration has recently proposed a 20-year term for its post 2001 contracts.

Response: Precedent exists outside of Western for 20-year or longer power commitments, both for the Southeastern Power Administration and FERC licensees. The term of contract for Bonneville Power Administration power varies depending on the type of service a customer selects.

Comment: Contract terms under EPAMP, and as described in the December 1 Federal Register notice, are sufficiently flexible to justify a 20-year contract term. Western has already shown the flexibility necessary to accommodate changes in the industry while preserving its traditional mission. A 20-year contract term, with some flexibility for Western and its customers, would provide an adequate and stable environment for power marketing.

Response: Western's power sales contracts under the proposed 2004 marketing plans offer more flexibility to Western and its customers than in the past.

Comments: Twenty-year contracts represent a meaningful planning horizon and support the customer preparation of substantive integrated resource plans. Shortening the contract term would undermine our members' ability to do necessary resource planning, including further development of renewable resources. Western's Environmental Impact Statement (EIS) on EPAMP demonstrated that longer term contracts have a positive impact on the environment.

The proposed 20-year contract term for contract renewals is appropriate. Our town has planned its resource portfolio around the CVP allocation, and shortening the contract term would undermine our ability to perform quality planning, including further development of renewable resources. Certainty of the CVP resource has become even more crucial as we make the transition into the restructured industry.

Response: The EPAMP EIS predicted environmental benefits from longer term contracts, as customer investments in renewable resources and energy efficiency are more likely to occur when a stable foundation of Western hydropower exists. Integrated resource planning is enhanced when contracts provide a meaningful planning horizon. Many customers have planned their resource mix around Western's allocations.

Comment: Not one of the hosts of compromises and consensuses made during the development of the industry's restructuring in California included a change in Western's allocation process, nor did they include the possibility of Western's contracts being short term. With the expectation of long-term contracts, as promised in the EPAMP process, many public power utilities participated in and supported the restructuring effort.

Response: Western has no reason to doubt this statement.

Comment: Western may want to consider shorter terms for future contracts, or off ramps at set periods of time, where the option exists for portions of the contract to be open for renegotiation.

Response: Shorter term contracts would increase the amount of Western, customer, and public time and resources spent on marketing plan development. Given the recent history of lengthy public processes in the development of Western's marketing plans, the better policy direction is to decrease the time spent on marketing plans.

Western has built flexibility into its contracts already by allowing for resource adjustments in response to changes in power operations, hydrology, and project use development, which is typically water pumping load. Power can be withdrawn to meet the needs of potential new customers for most of Western's projects. Rates can be adjusted without limitation. Given this flexibility, Western sees no need to enter into contracts with a shorter term.

Comment: The contract term should be shortened to reflect the new marketplace. New entrants to the electricity market and the increased ability and desire of customers to choose their own supplier--or be their own supplier--means Western should be prepared to keep its options open and allow its customers to do the same. Long-term supply contracts prevent Western from responding to changing conditions. Offering contracts with varying terms may offer the best deal for Western and its customers.

Response: Western's customers have the flexibility to terminate purchases from Western when a rate adjustment takes place. This preserves customer flexibility. Western has withdrawn power from existing customers to meet the needs of new customers, and has reserved the right to withdraw additional power for new customers and other purposes even after its power sales contracts become effective. In addition, Western's power sales contracts already expire on different dates, depending on the project from which Western is marketing power. CVP and SLCA\IP contracts expire in the year 2004, while Parker-Davis Project contracts expire in 2008, Boulder Canyon

Project contracts expire in 2017, Pick-Sloan Missouri Basin Program-Eastern Division contracts expire in the year 2020 and Loveland Area Projects contracts expire in the year 2024.

Comments: The current allocation system should be changed. The development of competitive wholesale and retail electricity markets as a result of electric restructuring increases the inherent market distortions caused by low-cost hydroelectric power provided by the PMAs. We believe that no PMA firm power contract should be longer than 5 years.

Since today's electricity market is in flux and is being restructured, it makes no sense for the Federal Government, or even any business, to sign 20-year contracts. The uncertain size and nature of future electric loads have led the private sector to accept contracts lasting no more than 5 years. Even if its contracts have withdrawal opportunities and rate flexibility, Western should not tie up its resources for any period longer than that done by the private sector. Protecting the status quo is unresponsive to the new electricity industry and the Federal taxpayer.

Response: Western notes that at least one power marketer has identified a competitive advantage in longer term contracts, and has run advertising promising peace of mind with a decade of locked-in, long-term energy prices. As is the case in the competitive marketplace, our customers can choose to enter into long-term arrangements (albeit without any guarantee of price from Western) or acquire power from others under either long-term or short-term arrangements. Far from protecting the status quo, Western is building flexibility into its contracts and marketing policies.

Comments: Lengthy Western contracts would ignore the very inequities posed by taxpayer subsidies to select electricity users. Those subsidies to Western, which are substantial according to the General Accounting Office and the Congressional Budget Office, distort the market, discourage efficiency, and waste taxpayer dollars. To extend power sales contracts for 20 years would compromise the ability of Congress and the administration to reform Western's operations and/or to spin Western assets off to non-Federal interests.

We urge you to consider changes in the electric utility industry as marketing plans are developed. Congress is actively considering legislation that would restructure the industry. Competition in this industry is vibrant and expanding. To date, 18 States have approved plans for retail competition, and every State is considering these issues. In this environment, Western and the other PMAs should not enter into long-term contracts that would deprive both Congress and the States of the flexibility to shape the emerging competitive electricity market.

Response: Western's rates are not subsidized. Current interest rates are charged on new investment, and recovery of costs that are not used in the production of power (such as salinity control and irrigation assistance) is required in Western's rates. Western's rates are reasonable because hydroelectric generation has no fuel costs. As the generation marketed by Western has been in service for many years, much of the original investment has been repaid. Moreover, Western does not have the responsibility to meet load growth through acquisition of more expensive additional resources.

Congress certainly has the ability to consider changes to Western's business practices or privatization. However, Western needs to carry out its mission and market power in accordance with existing law. Waiting for Congress to enact legislation deregulating the electric utility industry, let alone dealing with the future of the PMAs, is imprudent. There is no way to accurately predict whether and when any changes might take place.

Comment: Operation, maintenance, and repayment of Reclamation projects are critical items. Recognizing that power revenues are a significant source of revenue, it is imperative that the power contracts have a term of sufficient length to assure orderly repayment and support appropriate operation and maintenance decisions. An adequate time period is required to implement decisions and recover the costs associated with major maintenance work that incurs significant cost. Otherwise the work is vulnerable without commitments for funding and assurance to the power contractor that they will recover their investment during the contract period.

Response: Western agrees that shorter term contracts jeopardize customer financing of project operation and maintenance. Without customer financing, requests for appropriations will likely increase.

Comment: The Energy Planning and Management Program established 20 years as a floor.

Response: EPAMP established 20-year power sales contracts as a precedent, not a floor.

Comment: Twenty years is too long for tribes to be condemned to wait.

Response: Tribes are not being asked to wait. They can start receiving the benefits of cost-based hydroelectric power in 2000 from the Pick-Sloan Missouri Basin Program-Eastern Division and in 2004 from the Loveland Area Projects, the Salt Lake City Area

Integrated Projects, and the Central Valley and Washoe Projects. Additional resource pool increments will be available for allocation to new customers 5 and 10 years into the 20-year contract terms for the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects, and 10 years into the 20-year contract term for the Central Valley and Washoe Projects.

Comment: Adjusting the length of power contracts in an effort to affect retail markets may have unintended consequences. Shorter power contract terms, which increase the frequency by which customers can compare Western's cost-based products with market alternatives, may result in marketing volatility that threatens its ability to meet Treasury obligations if near or above-market Western rates encourage customer flight.

Response: Western agrees that marketing volatility and risk of nonrepayment to the Treasury increases with shorter term contracts.

Comment: Long-term resource and rate stability is important not only to our customers, but also to our ability to meet the environmentally important integrated resource planning requirements of Western.

Response: The EPAMP EIS found that long-term contracts are beneficial to the environment. Short-term contracts cause customers to focus on the uncertainty surrounding the Western resource, rather than looking to implementation of cost-effective energy efficiency and demand-side management to meet future needs. Short-term contracts could be a disincentive to the implementation of environmentally beneficial project improvements in support of the Clinton Administration's climate control action plan. Twenty-year contracts balance the environmental benefits associated with long-term resource certainty against the need for flexibility to respond to changing circumstances over time.

K. Legal Issues

Comment: Until such time as Congress enacts Federal retail competition legislation, Western should not change its existing policies. The Clinton Administration has not proposed to change Western's existing mission in its electric utility industry restructuring bill.

Response: Western's core mission remains unchanged in the absence of legislation from Congress.

Comment: Western's Energy Planning and Management Program has already received congressional scrutiny. Some members of Congress opposed the contract extension portion of Western's program and unsuccessfully attempted to have it legislatively curtailed or erased. Therefore, there is no barrier to the extension of resource commitments to existing customers in accordance with EPAMP.

Response: The Energy Policy Act of 1992 contains no congressional barrier to the extension of resource commitments to existing customers.

Comment: Western's allocation policies are far too important to be substantially altered--as this Federal Register notice strongly suggests--without congressional action. Indeed, much of the policy might not be able to be changed without congressional action.

Response: No policy changes will be made that are not allowed by existing law.

Comment: Western has no authority to compete at the retail level.

Response: Western has broad legal authority to sell Federal power pursuant to statutory and case law. No Federal law prohibits Western from selling directly to nonutilities.

Comment: As the Second Circuit Court of Appeals has held, Congress believed that all interests can best be served by giving the local entities the right to decide on the ultimate retail distribution of the preference power sold to them. This belief was founded in the so-called “yardstick competition” principle, which assumes that if municipal entities are supplied with cheap hydropower, their lower competitive rates will force the private utilities to reduce their rates, with resulting benefits for all. It is not for FERC or the courts to second guess that basic determination.

Response: The cited Second Circuit case interprets the Niagara Project Power Act, which gives preference to public bodies and nonprofit cooperatives within economic transmission distance of certain hydroelectric facilities in the State of New York. In that litigation, the court limited the statutory definition of “public body” to publicly-owned entities capable of selling and distributing power directly to consumers.

Western’s marketing authority is broader than that defined by the Niagara Project Power Act. Reclamation law allows Western to market to municipal utilities, rural electric cooperatives, public corporations and agencies, nonprofit organizations, Federal agencies, State agencies, and Native American tribes.

Comment: The legal problems associated with a change from the existing power allocation system are numerous. If changes are attempted, legal challenges lasting for years will be triggered. As the EPAMP and 2004 marketing plan processes have already been ongoing for years, there is a need to adopt a lawful marketing plan and allocations expeditiously.

Response: Western’s marketing plans will be lawful.

Comment: Under the Trinity River Division Act of 1955, Congress intended to provide the Trinity Public Utilities District a perpetual right to certain Western energy. The draft 2004 CVP marketing plan contains provisions toward that end, and should be approved.

Response: The Trinity River Division Act of 1955 provides certain rights to preference customers in California's Trinity County. The 2004 marketing plan for the Central Valley and Washoe Projects will carry out the requirements of this law.

Comment: Congress has not been receptive to fundamental changes to the PMAs. For example, Congress recently reaffirmed its ban on studying the sale of the power marketing administrations.

Response: While some members of Congress have proposed the sale of the PMAs or significant changes to their missions, many others support the continuation of the PMAs and their existing programs.

Comment: The enactment of California AB 1890 did not, and was specifically not meant to, disrupt the long-term contractual relationship that California entities have for hydropower. The CVP marketing plan was developed at the same time as the California public utility commission restructuring plans which were incorporated into AB 1890. In fact, provisions of AB 1890 specifically provide for the delivery of preference power purchased from the Federal PMAs. Retail competition is just the most recent in a long line of changes to the increasingly competitive electric industry. The present power allocation system has been very effective in keeping pace with those changes.

Response: As a Federal entity, Western is not bound by the provisions of AB 1890. Western agrees that AB 1890 did not intend to impact Western's preexisting power sales contracts for the Central Valley Project.

Comment: California municipal utilities already fully comply with the requirements of AB 1890 and have even voluntarily agreed to independent verification of their programs. Western should not superimpose additional conditions on California public power utilities that were not intended when AB 1890 was enacted.

Response: Western agrees that many public power utilities are voluntarily complying with AB 1890. Adding conditions not intended by the California State Legislature would not be consistent with the policy of the Clinton Administration.

L. Existing Contracts

Comment: Western should honor existing obligations and contracts. Western should assure that the distribution of costs and benefits remains equitable and does not inadvertently harm existing contract holders. For example, distribution of costs based upon some criteria contained in existing contracts but not applicable to new participants may require amendments to those contracts, to avoid an inequitable distribution of costs.

Response: Western has every intention of honoring existing obligations and contracts. Western also intends to assure that the equitable distribution of costs and benefits will continue.

Comment: A basic element of the State of California's restructuring legislation, AB 1890, was that existing contractual relationships, such as CVP power contracts, would not be impacted.

Response: Western agrees that AB 1890 did not intend to impact Western's preexisting power sales contracts for the Central Valley Project.

M. Need to Complete Process Quickly

Comments: The 2004 marketing plans should be approved in a timely manner. Western has already invested considerable time and effort in lengthy public processes and environmental evaluations for the Energy Planning and Management Program and the project-specific marketing efforts for the Salt Lake City Area Integrated Projects, the Central Valley Project, and the Washoe Project. There is no compelling reason to undertake another lengthy process prior to approval of the plans.

Our tribal utility would greatly benefit from an extension of Western's resources as quickly as possible.

Western needs to approve the marketing plans quickly, as it takes time to negotiate contracts and acquire replacement resources. The contractual process for Pick-Sloan Missouri Basin Program-Eastern Division power started in 1995, and is still incomplete.

CVP customers are eager to sign power contracts, as they need to know the status of future resources to make choices on issues such as stranded costs, adoption of customer choice, and planning for replacement power.

Marketing plans should not be held up while the restructuring evolution takes place across the several States served by CRSP and CVP power. Five years' notice is necessary to allow resource plan adjustments if significant changes are planned.

Swift approval of the 2004 marketing plans and renewal of the contracts will ensure that the "win-win" relationship between Western and its customers will continue. Western's customers need sufficient advance notice of power allocations to allow for electric resource planning.

We support the approval of the 2004 marketing plan as a document reflecting significant compromise and feel that DOE should recognize the long public process conducted in its development.

Reopening the public process seems not only duplicative but places in question the credibility of such processes and perhaps even Western itself. It is essential that public processes be respected rather than manipulated. Any further review would be redundant and waste the taxpayer's money.

We are extremely disappointed that Western must regress to this unnecessary process, as we believe Western adequately addressed restructuring in preparing its 2004 power marketing plan. The CVP 2004 marketing plan is significantly different from the current plan and is fully adaptable to the newly restructured utility industry.

If Western would spend as much time developing new resources or resource improvement as it does on public processes, maybe they would have something to market without withdrawing from existing, long-served preference customers.

<u>Response</u>: Western agrees that the time has come to finish pending marketing plans for the Central Valley, Washoe, and Salt Lake City Area Integrated Projects.

<u>Comments</u>: The delay in approval of Western's 2004 marketing plan is resulting in negative impacts to the relationship that Reclamation and Western have worked to achieve and maintain with the public power industry. Western and Reclamation entered into funding arrangements with the long-term firm power customers in order to reduce the level of appropriations needed from Congress. Delay of marketing plan approval may cause customers to withdraw from funding long-term projects. Power customers would also be unwilling to fund long-term capital improvement projects if they cannot be assured that they will receive the benefits of the improvements. This would negatively impact repayment and the overall power marketing function.

The contract uncertainty created by lack of approval of the CVP marketing plan is manifesting itself in customer reluctance to fund improvements with payback periods beyond the current contract term. The result is lost economic opportunities and lost opportunities to reduce greenhouse gas emissions.

Response: Western does not want to jeopardize customer funding of long-term projects beneficial to the operation of power generation.

N. Ability to Compete

Comments: Hidden in this question is the thought that Western should dabble in retail markets and participate in a bidding war. Western is not a big enough player to be effective in the retail market. Since Western has little, if any, energy to sell in the open market to other than preference entities, there should be no change in Western's power allocation approach.

The majority of CRSP wholesale customers are small, rural and often Indian communities with marginal economic situations that will add nothing to enhance regional competition.

Response: Western's ability to impact the marketplace is limited due to our relatively narrow mission and the size of our resources as compared to the size of the electricity marketplace. Western has no intent to enter the retail marketplace in a substantial manner.

O. Repayment

Comments: CRSP power customers are repaying their debt ahead of schedule under long-term contracts that were negotiated at a time when CRSP power was higher than other sources. A shorter contract term increases the risk that the Federal investment will not be repaid on time.

Power revenues repay Federal debt for CRSP hydropower facilities, pay for the CRSP power program's annual operation, interest and replacement costs, and assist in the repayment of 95 percent of the project's irrigation costs.

CVP power sales have repaid over 70 percent of the Federal debt allocated to power so far, and will completely repay the power debt in the upcoming contract term, allowing Western to commence repayment of Federal debt allocated to irrigation which may otherwise not be repaid. Clearly the public interest is best served by renewing this partnership, not disturbing it.

Long-term contracts offer stability and value to both Western and its customers. Preference customers have repaid Federal debt ahead of schedule, furnished irrigation assistance, adopted and promoted environmental programs, and provided up-front funding of O&M expense.

Response: Western agrees that debt for both the Central Valley Project and the Salt Lake City Area Integrated Projects is being repaid ahead of schedule. Shorter term contracts increase Western's exposure to the volatility of the marketplace and may increase the risk of nonrepayment to the Treasury.

Comments: Given current uncertainties in the electricity marketplace, and the tremendous financial exposure to the taxpayers that unrepaid investment represents, it is responsible and beneficial for the United States to secure the repayment of investment with a long-term extension of Western's firm electric service contracts. The existing power allocation system works well, and has proven to provide a reliable revenue stream that assures repayment of multipurpose water projects, including irrigation aid. Do not jeopardize the repayment guarantee under existing contracts.

Western should not pursue a role that would create economic risk for the Federal Government (such as becoming a competitive generating agency) or would position the Federal Government to compete at retail against publicly and privately-owned utilities and other market participants.

The Federal Government also benefits from long-term, 20-year contracts by assuring revenues for project repayment with well-established customers without exposure to the volatility of the evolving marketplace.

Response: Western agrees that long-term contracts mitigate the market volatility that would otherwise exist.

There is no repayment guarantee under existing power sales contracts, as customers have the right to opt out whenever a rate adjustment occurs. However, few customers have exercised this contractual right, due in part to Western's control of costs and commitment to rate stability. Although power revenues associated with hydroelectric resources vary depending on water availability, power sales contract certainty has contributed to relatively steady repayment to the Treasury.

Western believes there are advantages to marketing power to well-established customers with a positive record for payment of bills in a timely manner. Some new participants in the deregulated industry have defaulted on their obligations. In addition, Western believes that retail customers are more likely to switch power suppliers than wholesale customers, which would cause fluctuations in the revenue stream that is used to repay the multipurpose projects from which Western markets power.

P. Tribal Issues

Comment: Tribes are eligible preference customers. Most tribes are interested in receiving an allocation of power from Western. A useable allocation of Western power makes the difference in accomplishing economic development.

Response: Western agrees that tribes are eligible preference entities.

Comment: Western has a trust responsibility to the Indian tribes within its service territory. This is a different and greater responsibility than Western has to its current customers. In destroying traditional tribal economies, the Federal Government accepted a responsibility to assist and allow tribes to create new economies that are equal to the standards of living of other Americans.

Response: Western supports the DOE's Indian policy, which stresses the need for a government-to-government, trust-based relationship. The key theme throughout the Department's policy is consultation with tribal governments so that tribal rights and concerns are considered prior to action being taken. Western has met with Indian tribes and tribal representatives throughout the Energy Planning and Management Program's public process. Western also has met informally on a number of occasions with tribes since completion of EPAMP, both in the Missouri River Basin and in New Mexico and Arizona. In February of 1999, Western held informational meetings in Phoenix, Arizona, Albuquerque, New Mexico, and Folsom, California, to engage in dialogue with Native Americans on Western's power marketing programs. A 30-day comment period also took place in February to receive additional public input on the size of project-specific resource pools necessary to meet the fair share needs of new customers, including Native Americans. An informal meeting in Albuquerque in May of 1999 allowed additional consultation between Western and the Council of Energy Resource Tribes. Western believes that its consultation with tribes has been meaningful and substantive, and will continue at a high level in the future.

Comment: Western must help tribes to become ready, willing, and able. Western should help tribes to negotiate to obtain electric utility status.

Response: Western plans to allocate power to tribes and assist the tribes in obtaining delivery of the benefits of their allocations. As tribes need not form utilities to receive an allocation of power, Western is neutral on whether tribes should form utilities to meet electricity needs on the reservation. Technical and financial assistance to a tribe in support of utility formation may be available from the DOE or some other agency of the United States Government.

Comments: Access to electric service is a major issue for tribes and the people living within reservation boundaries. Some reservation residents have no electric service, while others have service that is high priced and of lower reliability than service off the reservation.

Western's power allocation system should be modified to take into account all regulatory changes, including those which allow Indian tribes and others open access to transmission and, therefore, greater access to Western's power and the power of others.

Response: Open transmission access at the wholesale level should make it easier for Western's allocations of power to be delivered to customers. Western is committed to working with the tribes and interested third parties to assure that Native Americans receive the benefit of allocations from Western.

Comment: Tribes are in the process of establishing vehicles for making utility choices. These vehicles will sometimes be utilities, and should be given full recognition by Western in its policy making and power allocations. Even if tribes do not form utilities, Western should allocate power directly to Indian tribal governmental loads such as government buildings, tribally owned economic activities, and public tribal housing and schools.

Response: Western intends to allocate power to eligible tribes whether they form utilities or not.

Comment: We believe that the historic marketing plans of Western are too lengthy, expensive and, therefore, too preclusive for small entities such as tribes.

Response: Under the Administrative Procedure Act, Western seeks public involvement and input on its marketing plans. Western agrees that its recent public processes have been lengthy. However, we believe it important that our processes allow for the involvement of small entities such as Native American tribes.

Comments: We believe the current power allocation program would greatly assist our five tribes in attaining an allocation of CRSP power and having certainty of that power as a resource in the future once an allocation is attained.

The current program with the specific language provided in the final EPAMP regulations, which provides for preference to small Indian communities, is more than adequate to assure our Indian communities can attain some of this power efficiently. Our tribes believe the contract extension policy is a sound business practice because once we receive an allocation, we should be able to plan on receiving it for many years to come. This would allow small Indian communities to receive a tremendous economic benefit.

Response: Western agrees that a potentially large economic benefit can be derived from an allocation of Federal hydropower, especially over the term of a 20-year firm-power contract. However, other costs associated with the delivery of Western's power could have a considerable impact on the size of any benefit, such as the cost of transmission service, supplemental power supply, and ancillary services.

Comment: The present power allocation system should be modified substantially to recognize the needs of the Indian tribes and its agencies the same as that accorded the States, municipalities, irrigation or power districts, and Federal entities.

Response: The 2004 marketing plans provide the same or better treatment for tribes as compared to other customers.

Comment: The history of energy development and use in general and Federal hydroelectric development in specific is a history of injustice and abuse of power on the part of the Federal Government. Many of the Federal dams were built from Indian lands and the resultant economic and social benefits from those projects were denied to Indian tribes. In many cases, tribes were inadequately compensated for the loss of whole communities, valuable farmland and cultural/religious/spiritual resources.

Response: Just compensation for the taking of lands to construct Federal dams is not an issue that is appropriately addressed through an allocation of power by Western.

Comment: The tribes request that Western, in performance of its trust responsibility, provide tribes with technical assistance to ensure the tribes receive the maximum economic benefits of low-cost Federally generated hydropower through management agreements with distribution utilities.

Response: To the extent that a tribe does not form a utility, Western intends to assist the tribes in obtaining the economic benefit of allocations through bill crediting or some other appropriate mechanism involving the distribution utility. Western is committed to providing an appropriate level of technical assistance to tribes.

Comment: Policy and practice have discouraged tribes from developing the institutional, management, and technical capabilities as well as the physical infrastructure and financing to access the power.

Response: Western's allocation of power to tribes, without a requirement for utility status, should enable the tribes to access the benefits of Federal hydropower more easily. Historic assistance to the Navajo Nation by Western has resulted in tribal access to photovoltaic power in northern Arizona.

Comment: It could be argued that the Indian tribes' unused water, such as the Navajo Agricultural Products Industry which is 20 years behind schedule, is being utilized to generate Federal power over and over while it travels down river. While other entities have enjoyed the benefits derived from Federal power, Indian tribes and their agencies have yet to see equal benefits.

Response: Rights to the water that passes through turbines at Federal hydroelectric facilities are vested in different entities and/or are reserved for certain in-stream purposes. Possession of water rights does not mean a right to hydroelectric power generated by that water also exists.

Comment: A tribal utility could provide tribal government with the opportunity and means to use tribal borrowing and bonding status to improve utility infrastructure, improving the quality of life on very poor reservations. If done in conjunction with systemwide planning, tribal infrastructure development could very well reduce physical constraints in the transmission systems that would benefit everyone.

Response: Many of Western's customers have found utility formation to be beneficial.

Comment: We request that Western abide by the preference customer status provided to the tribes as described in the Energy Policy Act of 1992. The tribes would request the "right of first refusal" be provided to tribes and would remain in effect until the tribes receive their fair share of unobligated Western power.

Response: Western is unaware of any provision in the Energy Policy Act of 1992 that confers preference status on tribes. Western's treatment of tribes as preference entities is due to our interpretation of Reclamation law, taking into account DOE's Indian policy and the government-to-government relationship that exists between the Department of Energy/Western and tribes. Western believes that it can successfully meet the fair share needs of Native Americans without adopting a "right of first refusal" policy.

Comments: Issues of transmission and distribution must be addressed to allow tribes to access power. It has been Western's past history to build transmission to serve its customers. The new regulatory structure provides the opportunity to wheel power over existing systems. Tribes know they must negotiate with current service providers for access to distribution facilities and services. These negotiations can create win-win situations that are acceptable and even favorable to both parties. The degree by which Western's policies reward cooperation over conflict should be the standard by which its policies are judged.

Our greatest issue is communication and understanding. Tribes could be assisted to know how best to access the parties and individuals within the industry to make power allocations and utility operations workable.

Response: Western believes that cooperation, communication, and understanding are far preferable to conflict in achieving policy goals.

Q. Water Supply

Comments: Any changes in Western's allocations that are based on electricity industry restructuring should impact only distribution utilities and not water supply agencies.

Nothing in the California restructuring plan warrants fundamental departure from the 2004 marketing plan, especially with regard to service for end-use irrigation pumping loads.

Program purposes and the statutory intent underlying Pick-Sloan and the Flood Control Act have not changed and commitments must continue to be honored, particularly in view of the fact that actual irrigation development was substantially less than what was promised.

Western should continue to provide low-cost power to irrigation, and should not enter retail markets.

Response: Western intends to abide by Reclamation law requirements, including the requirement that hydroelectric power be reserved first for project-use loads. As there is no convincing rationale to do otherwise, policies regarding reductions in commitments of power to existing customers will be uniform. To the extent irrigators receive allocations of power from Western that are not project use in nature, they will not be exempt from equitable contribution by existing customers to project-specific resource pools.

R. Need for Power

Comments: Long-term reliability is critical to farmers who raise crops. The benefits derived from our power contract with Western have a direct impact on the local economy and produce far-reaching benefits, such as groundwater improvement, efficient water exchanges, and a vibrant local agricultural economy.

The State of New Mexico is sparsely populated and relatively poor. Western's CRSP power means a lot to us. There are a substantial number of customers who have contributed to the repayment of Federally-owned generation facilities for over 30 years. If those customers had built generation plants in the '60s rather than purchased the output of Federal facilities built for the primary purpose of irrigation, flood control and recreation, these generation facilities would now be paid for and competitively priced.

Resource uncertainty is especially critical in rural areas which have limited access to resource opportunities. To deny utilities with low customer density access to Federal power would be devastating to rural consumers and small businesses who are already paying much higher rates for distribution and transmission services than urban customers.

Share the benefits of cost-based hydropower with the taxpayers by extending contracts with the Air Force.

Significant reductions in or the loss of the CRSP resource would necessitate acquiring alternative power supply at dates later than prudent from a long-term planning standpoint. The cost of replacement power would be passed on directly to the retail consumer.

Western's allocation of CRSP power to our electrical district is integral to the long-term groundwater management plan in Arizona, including the goal of reducing groundwater pumping within the State as documented in our integrated resource plan. CRSP power is also key in maintaining the viability of the Central Arizona Project for future generations. The long-term bonding and financing of our canal system is also based on the continued economics of preference power.

Continued access to the CVP resource is necessary to ensure affordable future improvements. It would be inappropriate to threaten these worthy achievements by making adverse changes to customers' CVP power supply, and upset the competitive balance that now exists between municipal utilities and other energy providers.

Western's power allocation is very important to our rural electric cooperative in Wyoming, as we have a consumer density of 2.2 consumers per mile of line. Our neighboring investor-owned utility has a density of 26 consumers per mile of line. For each cooperative customer, more than 11 times the facilities are required. Because of rural nature of the area we serve, we are already at a price disadvantage in a competitive marketplace.

Most entities, including the investor owned utilities, continue to serve their customer base reliably, efficiently, and at lower rates than previously existed. As California emerges from the imposition of transition costs after 2002, rates will further decline and customers will likely be less inclined to switch providers. Western's customers must have an assurance of long term, 20-year contracts to remain in this competitive mix.

Regarding the effect on the University of California, Davis of AB 1890 and the deregulation of the electric power market in California, no clear conclusions can be drawn. The UC Davis campus has joined with the other University of California campuses, and the California State University system, to contract for purchase on the open market for our power requirements not met by Western. This is a short 4-year contract with an independent power marketer. While this contract is expected to save the campus money compared to the cost of power purchased directly through the California Power Exchange, it is more expensive than Western's hydropower, and the term of the contract is short. Adoption of the proposed 2004 marketing plan will benefit us by protecting our cornerstone of Western power, while at the same time, for our remaining power needs, allowing the pursuit of future benefits that may come available through deregulation of the California electric power market.

Both the Black and Hispanic Chambers of Commerce for the City of Sacramento urge the expeditious approval of the CVP 2004 marketing plan. Access to low cost, clean, renewable public power is an essential prerequisite for continued economic development and growth of communities in northern California.

With regard to the Ames Research Center, National Aeronautics and Space Administration, our allocation needs to be maintained in order to minimize the cost of operating two national wind tunnel complexes. There is an urgent need for our wind tunnel data, as it enables aircraft manufacturers to design transports that can fly with greater energy efficiency. Estimates of fuel savings as a result of our research are in the hundreds of millions of dollars per year. In addition, our research enables American aircraft manufacturers to maintain a trade surplus of $15 billion per year.

<u>Response</u>: These representative comments from existing customers demonstrate the widespread need for Western's power.

<u>Comment</u>: Extending Western contracts would further the discrepancy between the preference clause's intent of advancing "municipal purposes" and the distribution of

Western power to some of the nation's wealthiest communities. As you know, Western does no means testing for the distribution of its low cost and subsidized electricity, nor does it provide any preference to public schools or other public purposes. Power marketing administrations, if they are to continue to exist, need to focus on end users and offer true public benefits only to those in need.

Response: As is the case with any utility, some customers purchasing electricity are more affluent than others. The same is true for the customers served by a PMA. However, the great majority of Western's customers are in genuine need of Western's resources, as evidenced by the comments previously set forth. Western already allocates power to universities and a variety of State and Federal loads. Western's intent to sell power from project-specific resource pools to Native American tribes is clear evidence of our intent to assure that the benefits of Western's cost-based hydroelectric resources are available to economically disadvantaged entities.

Comment: Today, preference power is being used in ways that Congress did not originally intend. For example, power generated from facilities owned by the American public is being allocated to provide below market electric service to wealthy communities such as Vail, Colorado, and Palm Springs, California. Other customers, such as the Salt River Project, have formed a for-profit marketing entity whose mission is to compete against private, taxpaying, and often highly regulated energy companies.

Response: Western does not market power to Palm Springs. The ski resort of Vail is served by Holy Cross Energy, which also has within its service territory many rural consumers and small communities that do not enjoy economic benefits from ski resorts. Both the Department of Energy and the Department of the Interior have formally issued opinions finding no violation of law or contract in the efforts by the Salt River Project to compete in the rapidly changing utility industry, as the Salt River Project is not reselling Federal power.

Comment: Rather than going to customers based upon their geographic location, allocations from the Federal power facilities should be based on means testing. Only those who truly cannot afford to pay market rates should be the beneficiaries of continued preference allocations. This class of citizens obviously includes more than just rural western or southern America. Federal preference power should be targeted only to State and Federal buildings and facilities where the taxpayer is paying the energy bill. We cannot legitimately continue to act as a Nation to provide wealthy ranchers and owners of posh ski resorts with preference power to the exclusion of poor families located in Toledo, Hartford, or St. Paul.

Response: Congress has by statute authorized Western to sell firm power in its 15-State service territory. The other Federal PMAs also market power in the territory adjacent to their power and transmission resources. Well over half of the country is within the marketing areas of the PMAs.

According to the latest estimates of the United States Census Bureau on national income and poverty, the poverty rate in the western States is 14.6 percent. Both the Northeast States (12.6 percent poverty level) and the Midwest States (10.4 percent poverty level) enjoy higher prosperity. Also of interest is the Census Bureau's conclusion, based on 1997 data, that 12.6 percent of residences inside metropolitan areas are in poverty, while 15.9 percent of residences outside of metropolitan areas are below the poverty line. This information suggests that the greater need for cost-based

Federal power exists in the western United States and in rural areas.

Even if Western had the legal flexibility to sell power to needy entities throughout the Nation, the cost of delivering the power would erode any cost savings. Acquiring rights over intervening transmission systems would be a significant expense. Losses in energy due to resistance in the transmission line conductors would also diminish the economic benefit.

Western already markets its power to many State and Federal facilities that meet existing allocation criteria. Allocating more power to these entities could give them disproportionate benefits and cause power resource dislocations for existing customers.

S. Supplemental Suppliers

Comment: The impacts of any change in policy would fall primarily on supplemental suppliers. Western should move cautiously when the impact of its decisions may be to undermine or damage contractual relationships between its preference customers and their supplemental power suppliers.

Response: Western agrees that the impacts of its policies on supplemental suppliers must be taken into account before decisions are made.

T. Dam Operations

Comments: There are a number of aquatic environmental issues associated with the operation of the Federal hydroelectric facilities that produce SLCA/IP power. The Aspinall unit on the Gunnison River and the Flaming Gorge unit on the Green River dramatically affect downstream flow conditions and habitat for fish species. We believe the Endangered Species Act requires Western to evaluate the effects of contract extension on conservation and recovery of listed species. If Western believes that, either as a policy or legal matter, the extension of SLCA/IP contracts could limit the Bureau of Reclamation's discretion in operating facilities like Aspinall and Flaming Gorge, Western must prepare a site-specific assessment of the environmental impacts of contract extension.

We are aware that Western contends that DOE regulations categorically exclude marketing plans from NEPA documentation unless they involve new generation, new transmission, or a change in operations. However, we believe the regulations are illegal if their effect is to excuse Western from assessing the impact of contract extensions that circumscribe the ability of the Bureau to reoperate a project.

We have concerns, legal and otherwise, regarding the relationship between contract extensions and programs to recover endangered fish and otherwise protect the aquatic environment.

Response: Under EPAMP, the extension of resources to existing customers is based on the marketable resource determined to be available at the time future resource extensions begin. If the Bureau of Reclamation reoperates power generation facilities such as Flaming Gorge and Aspinall before September 30, 2004, that change in operations will be reflected in the power commitments to existing customers. In addition, Western's contracts allow for changes in our contractual commitments attributable to changes in operations after 2004. Given this flexibility, there is no need for site-specific assessments of the impacts of contract extensions. The extension of firm power commitments does not limit the ability of the Bureau of Reclamation to reoperate power generation facilities.

U. Integrated Resource Planning

Comments: If retail competition expands, key resource acquisition decisions will shift away from today's utilities and toward private generation markets and retail customers. In this environment, the role of EPAMP's IRP requirement is unclear. We have heard from a number of Western's customers that they are not interested in pursuing IRP given the competitive changes in the industry. We are concerned that EPAMP no longer represents responsible environmental stewardship in a changing utility industry.

We oppose contract extensions for SLCA/IP power until EPAMP regulations are made consistent with the evolving industry structure.

The State of South Dakota encourages Western to amend EPAMP's IRP regulations to allow the most flexible requirements possible.

IRP no longer makes sense in a retail environment.

Response: Western's integrated resource planning regulations are outside the scope of this notice of inquiry, which deals only with power allocation issues. Western intends to start a public process to consider revision of our IRP criteria later in 1999.

V. Preference

Comment: Preference should be examined carefully in a full NEPA review considering both the economic and environmental impacts on preference and nonpreference customers. Western should mitigate for any serious effects and proper mitigation may include eliminating or drastically altering preference.

Response: Preference in the sale of Western's power is mandated by law. As Western does not have the authority to eliminate or drastically alter preference, a full NEPA review of the issue would not be fruitful.

Comment: As electric restructuring moves forward and the paradigms governing electric distribution and financial risk are changed, we must consider how the existing Federal system is managed. Equally important is how we distribute the benefits of the Federal system. In the upcoming year the Congress will be reviewing some of the fundamental issues that are raised in allocating Federal power. What were the characteristics of the group originally intended to be benefitted by defining them as preference customers? Why did one group of Americans receive the benefits while others did not? Do the criteria remain the same today? Are we still benefitting fundamentally the same people? Since the Federal allocation system was designed to benefit a particular group, do we need to respond to changes in the larger electric utility industry to make sure the same beneficiaries are reached? Do the changes in the electric utility industry that have occurred since the Federal system was originally established eliminate the need for the historic distribution/allocation scheme? And finally, if there is going to be a change, how can we best protect the legitimate needs of existing PMA customers?

Response: Western lacks the legislative authority to make fundamental changes to preference in the sale of our hydroelectric resources. However, allocations are not limited strictly to municipal utilities and rural electric cooperatives. Western has allocated power and/or transmission rights to such diverse public loads as wildlife refuges, universities, and a mass transit system. Native American tribes are also treated as preference entities without the need for utility status. These allocations to nontraditional customers were made while still meeting the needs of existing customers, and contribute to the widespread use of Western's resources.

W. Rates

Comment: Western's ratesetting must be cost-based. Western lacks authority to introduce new rate components or to reinterpret 60 years of statutory construction. Western also lacks authority to charge rates based on a newly conceived formulation intended to effectuate a redistribution of its electricity among electric consumers.

Response: While ratesetting is outside the scope of the power allocation issues inquiry, Western agrees that our firm power rates must be cost-based.

Comments: The real implication of this first question is that Western should sell its resources in a short-term fashion to the highest bidder.

We support legislation that mandates a bidding system in which preference power is allocated to the highest bidder, or one in which the high bid sets the contract price for such power. Under such a scheme, the preference customer would be given a right of first refusal to purchase the power at high bid, thus preserving traditional preference. This approach has the advantage of eliminating the inequities now incumbent in Federal power allocations, prevents further under recovery of PMA costs, and maximizes revenue to the Treasury.

Western should adopt a tiered, marginal cost rate structure to reflect appropriate market rates and eliminate the subsidy inherent in the existing system. Offering low rates encourages Western's customers to use electricity wastefully and forces other consumers to develop excessively expensive supply resources to meet electricity needs.

We congratulate Western on recognizing the need to consider the impact of electric utility industry restructuring on the way Western allocates power. A level playing field among all electric suppliers is mandatory in an open access retail electric marketplace. All competitors should have the opportunity to bid for low-cost power allocations. A bid system would lessen the anti-competitive impact of PMA power.

Response: Pursuant to law, Western sets its firm-power rates to recover costs. FERC's review of Western's rates is based upon whether the rates are the lowest possible consistent with sound business principles.

Western has no leeway to adopt a generic bid-based method for marketing firm power, even if a preference customer has the ability to buy the power by matching the high bid. If Congress mandates the sale of power at market-based rates, Western has the flexibility to comply pursuant to the rate adjustment provisions in its firm-power contracts.

PMA power is not anti-competitive in its impact. Western markets cost-based hydroelectric resources, which are relatively inflation resistant as compared to non-hydro generation due to the absence of fuel costs. In addition, Western has no responsibility to meet load growth with relatively expensive additional power. Western's hydropower resources are reasonably priced due to these factors, and promote yardstick competition.

Western's customers do not waste electricity. Pursuant to Western's integrated resource planning regulations, customers have established an impressive record of investment in energy efficiency, demand-side management, and renewable resources.

Comment: Even under existing statutes, Western should re-prioritize its allocation of preference power to better reflect competitive market principles. Specifically, Western should adopt a system under which Federal electricity is auctioned to bidders in the same way as is Federal coal, oil, and natural gas. Revenues so garnered could be used for worthy purposes in Western's service territory.

Response: Bidding for Western's firm power to generate revenues in excess of those needed for project repayment is not allowed under Federal law.

Comment: Western has a cost problem due to the increasingly competitive regional power market and the social costs (e.g., environmental costs and irrigation assistance) that have been mandated for inclusion in CRSP rates. Western has a finite window within which it can contract into the future to protect its congressionally mandated repayment mission. Western is ill-equipped because of its role as a Government sales agent and its congressionally mandated responsibilities to compete in future markets.

Response: Western will continue to make every effort to assure that CRSP power remains marketable.

Comment: Is it fair for neighbors to pay different rates for their electricity because of their race?

Response: Western's wholesale rates are the same for all long-term firm customers. Many different factors influence retail rate levels, including the cost of other power, transmission cost, and distribution expense.

Comment: Western should move to unbundle its firm power rate to accelerate Western's movement into an open access environment.

Response: Western has developed rates to implement its open access tariff.

X. Delivery Changes

Comment: Western currently requires concurrence from all affected parties before the

State of South Dakota is allowed to redistribute power from one State load to another. This policy places veto power in the hands of supplemental power and transmission suppliers with the effect that the State's use of Western power and other power available under open transmission access principles is constrained. The present policy should be replaced. Western should be willing to move allocations upon proof of a legitimate load and adequate billing mechanisms. IRP stabilization arguments that benefit supplemental suppliers should be rejected in the face of the State's interest in wholesale open access consistent with FERC's actions.

Response: Western's requirement of concurrence by the transmission provider and supplemental power supplier is a contractual and policy issue that does not conflict with FERC Order No. 888, which preserves existing contracts. Western has experienced instances where allocations were made, but the allottee was unable to take delivery because existing power supply contracts did not allow additional power suppliers. Requiring concurrence avoids this situation, and recognizes that transmission arrangements also need to be amended when power deliveries change. It also avoids conflict with mandated franchise service territories, as South Dakota has not yet mandated open access for end users. Concurrence has been a policy requirement for over two decades, and has yet to have been unreasonably withheld. IRP stabilization arguments, based on the premise that load stability promotes better resource planning, are secondary to the contractual considerations.

Question:

2. To the extent a utility with an allocation of preference power loses load due to retail competition, should it receive the same allocation as it received previously or should its

allocation be reduced proportionately?

A. Disincentive to Retail Wheeling

Comment: Adoption of this policy would discourage retail wheeling, as the risk would be a disincentive for a utility to open up its load to competition.

Response: Utilities might see the potential loss of an allocation as a disincentive to adopting retail wheeling.

B. Administrative Issues

Comments: A real time, load based allocation process is complex from both a policy and an administrative basis. There is no guarantee that the change would lead to an improved outcome.

Administration of this policy would be time-consuming and costly. As retail customers make choices and come and go, Western would be required to address daily, weekly, or even monthly load fluctuations for the many preference customers who currently receive hydroelectric resources from Western.

What if a retail customer has a business downturn and their power usage is reduced by half? How would Western reallocate the power from this reduced usage? Would Western reallocate the power if the retail customer's business returns to normal at some later date? It seems that Western is opening up a can of worms that could have unintended consequences.

Western cannot possibly know whether the lost load is due to a temporary problem on the part of the wholesale customer, a problem resulting from demographic trends or economic cycles, or whether it is a permanent loss due to restructuring of the utility industry. At the very least, Western should not attempt a reallocation from existing users to new customers without developing a record of the factors underlying such a move and offering existing contractors the opportunity to review and comment on the record.

Response: Western believes that the administrative complexities of adopting such a policy are significant. The policy benefits of monitoring load losses and gains, if any, are minor as compared to the cost and administrative burden associated with a change in policy as suggested by this issue.

C. Increase in Allocation

Comments: The utility should receive the same allocation. As a preference utility does not receive an increase in its allocation if its electric load increases, why should there be a loss of allocation if load declines? If Western does not strive to achieve a sound and balanced basis for adjustment of allocations, it appears that the purpose of the suggested change in policy is to find ways to reduce allocations to preference customers using State restructuring legislation as an excuse.

Western is a sales agent, not a utility. Western did not increase our allocation when our load outgrew the original commitment of Federal power, so we were forced to acquire supplemental power elsewhere.

If energy is freed up as a result of a preference power entity allowing retail access in its traditional service territory, then this power can be made available on a temporary basis to other preference entities as withdrawable power. Since the entity offering retail access will remain as the default energy provider, and would be required to serve customers returning to its system, a permanent reduction of an allocation may not be prudent.

Response: Western has a finite resource to market. Unless power is withdrawn from a customer pursuant to the terms of a firm power contract, Western does not have additional electricity to market on a firm basis. Western agrees that there are many administrative complexities associated with reducing, restoring, and reallocating power in the manner suggested by this issue.

D. Local Decision Making

Comment: The local utility is best positioned to distribute Western's power among the remaining customers.

Response: Public power utilities are well positioned to distribute power among consumers. Western's firm-power contracts address this responsibility. The most recent provision of Western's general power contract provisions states: "The contractor agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner."

E. Policy

Comment: Federal power is only a fraction of the total resource needs of Western's customers. Even if significant load is lost, the Federal power allocation will still be needed to serve remaining load.

Response: With only minor exceptions, Western agrees that its power only meets a portion of the load of its customers.

Comments: Allowing preference customers to retain the same allocation of preference power would be anti-competitive.

When a utility with a preference allocation loses load due to retail competition, that preference customer's allocation should be reduced proportionately and indefinitely.

It is unclear what Western plans to do with any power withdrawn under this proposed policy. If the power is to be redistributed among preference entities that have experienced gains in load, this only serves to increase the competitiveness of those utilities which are already competitive and further weaken those without as competitive a resource mix or higher unit costs.

Response: Western normally serves only a portion of a customer's load. As the marginal resource necessary to meet the rest of a customer's load is typically higher in cost, it is more appropriate to reduce the non-Western resource when load is lost due to retail competition.

Comments: Current policy requires that unused allocations revert back to Western for sale to other preference entities, therefore preventing the resale of power. Western has built in adequate safeguards that limit use of an allocation to the retail load that we serve, and Western has retained the requirement that Federal power not be sold for resale.

Western's 2004 marketing plan for the CVP addresses recall of any allocation beyond a customer's demand.

Response: Western agrees with these comments. Currently applicable language in Western's firm power sales contracts prohibits the sale for resale of Western's power.

Comment: Customers who choose to leave a utility that has a power allocation from

Western also have elected to leave their “share” of Western power to the customers who do not leave.

Response: Western agrees that this may be the result, depending on applicable contractual language.

Comments: Western should only withdraw power if the customer load exceeds the Western allocation. If a contractor loses so much load that it cannot use all the Western power it has under contract, it will advise Western and reduce its obligation. Otherwise, it will pay for a resource it cannot use.

Customers are prohibited from resale of Western power pursuant to contract. As a result, there is no ability for a customer to use Western power in excess of its load. Allocations of power in excess of a customer’s load must be returned to Western for reallocation, pursuant to the applicable project-specific marketing plan.

Response: Western’s 2004 marketing plans and contracts will not allow for the resale of hydroelectric power if a customer loses load and their Western allocation exceeds the remaining load.

Comment: Should preference distribution customers split away from a generation and transmission cooperative, and form new aggregations, Western should follow the preference distribution customers upon whose load profiles the allocations were originally given.

Response: When an existing customer merges with another customer, or members of a customer want to leave a parent entity such as a generation and transmission cooperative, disposition of allocations must take place in accordance with applicable marketing plans and contractual provisions. Each situation must be addressed on a case-by-case basis. New contracts executed under the Sierra Nevada Region and Salt Lake City Area Integrated Projects 2004 marketing plans will give the Administrator the discretion to adjust a customer's power allocation in the event the customer merges with another organizational entity, acquires or "spins off" another utility, joins or withdraws from a membership-based organization, or adds members from a membership organization.

Comments: Why would Western want to punish a small customer who has no market clout by reducing its allocation of preference power because a larger retail customer, by its own choice, decided to receive its power and energy from someone else?

Reducing the Western allocation would be like trying to put out a fire by throwing gasoline on it. Our cooperative is a perfect example of what happens when you lose load. We lost load due to the bankruptcy of our largest user, a mining company. We had to raise rates by 32 percent early this year to compensate for the loss of fixed cost and revenue. Can you imagine what would happen to the remaining consumers if Western notified us that because we lost 60 percent of our load, we should lose 60 percent of our allocation? Western's allocation is the one stable foundation we have left.

Retail competition has not benefitted residential customers in States that have opted for retail access. Those customers who leave the system are typically larger customers who have the expertise and business sophistication to negotiate and bear the risks of arranging for power supply service from alternate suppliers. If a small municipal customer loses a commercial or industrial load and also loses a share of its Federal allocation, it will be a double whammy to residential customers who stay on the system.

Power marketers are interested in achieving market share, and later reducing competition to maximize profits. A change in Western's policy could accelerate this process by penalizing cooperatives that lose load. If large industrial customers with good load factor are removed from a local cooperative's customer base, the impact will be devastating enough without Western's policy adding more momentum to a process that seriously damages remaining customers.

Loss of any portion of the Western allocation would unfairly penalize existing customers and decrease our competitive position in the marketplace. Such a policy would also eliminate the very important "yardstick" vehicle which consumers can use in determining their power supplier in a competitive marketplace.

Reducing our allocation if some retail customers choose other suppliers could cause a cascading effect and serious economic consequences to our community and burden remaining customers.

To reduce allocations because of retail competition losses could initiate a "death spiral" for the affected utility and penalize remaining customers, mostly residential, rural, and small business in nature.

<u>Response</u>: Western agrees that no policy purpose is served by withdrawing allocations from customers that have recently lost load due to retail competition.

F. Public Power and Competition

<u>Comments</u>: Although this question is academic at present, when it becomes reality preference power allocations should be reduced proportionately. The larger issue is what to do with large public power entities that are entering competitive markets and winning new load, while at the same time being subsidized by taxpayers through

preference allocations and favorable tax treatment. Western customers like Salt River Project who are competing for and winning new load should have their allocations stripped or, at the very least, offset on a megawatt-for-megawatt basis.

The more important question is why a utility that receives preference power should be allowed to compete for retail load in the first place. Western has some of the lowest power costs in the nation. Preference utilities receive other Federal preferences, either through tax-exempt municipal financing, low interest loan programs, and clemency from income taxes. The more likely scenario is that these preference utilities will be adding customers, not losing them.

Response: The Department of Energy has reviewed allegations that the Salt River Project inappropriately used Western hydropower to enhance its competitive position in seeking new customers. DOE found that those allegations had no merit, and that the Salt River Project was acting in accordance with the law. The Department of the Interior recently issued a similar finding. Under these circumstances, Western sees no reason to diminish its hydropower allocations to the Salt River Project.

As Western's customers cannot resell Western's power, they have no competitive advantage from a Federal hydropower allocation in the utility marketplace.

G. Reason for Load Decline

Comments: There is little substantive difference between consumers who move out of the area or close down a business, and those who decide to use a different energy supplier. We see no rational basis to penalize loss of load due to retail competition but not loss of load for any other reason.

If a utility receiving preference power from Western loses load due to retail competition, or any other reason, the resulting allocation amount should be reduced accordingly. To do otherwise would change the allocation process to introduce artificial, and probably arbitrary, factors necessary to compensate for lost load, rendering the process inconsistent. In States that have adopted retail access, preference customers have the option to opt in or not participate. Thus, load loss is due to the choice of Western's customers. Judgment by Western's customers, like any other business enterprise, results in the stakeholders being rewarded either positively or negatively.

This approach is contrary to the manner in which electric utilities acquire and maintain commitments for resources that are an essential portion of the stability of wholesale power supply.

The alteration of allocations to accommodate fluctuations in retail load would diminish the certainty of a power supply source which many preference customers have incorporated into their forecasting for power supply.

What if a customer has undertaken a program to encourage conservation at the same time competition has come to its service territory? Will Western penalize its customer because load has been reduced due to conservation?

Response: Western's historic allocations to customers have been principally based on the load of applicants. Those loads are dynamic over time, as some consumers leave and others move to a utility's service territory. However, these are not the only factors that influence electricity usage. Adoption of conservation and energy efficiency measures, changes of service territories between utility providers, weather, improvements in industrial processing, fuel switching due to price or availability, construction of cogeneration, and improvements in distribution system losses all can impact a utility's load. Tracing a change in load to a particular cause, such as the impact of implementation of retail wheeling, might present some difficulties. Western certainly does not want to punish utilities that have implemented conservation and energy efficiencies.

Western has not monitored load growth and adjusted its allocations in the past. As loads have grown for certain customers over time, Western's allocations became a smaller portion of those customers' resource mixes. Other customers have not experienced load growth, or the pace of growth has been slower. Western's allocations have not been adjusted in response to load changes for a variety of reasons. First, resource planning for Western's customers would be disrupted. Second, continually adjusting firm power contracts is not a standard practice in the utility industry. Third, if load decreases, Western's customers adjust their resource mix in a manner that results in the lowest cost to the ultimate consumer. As other resources are typically more expensive than Western power, consumers are best served if other resources are cut first as opposed to Western's hydropower. Fourth, Western does not want to increase its budget to monitor load changes, as there is no clear policy benefit that would warrant the additional cost, which would put upward pressure on our rates.

Adoption of this policy would fundamentally change the nature of the service Western currently provides under firm-power contracts. Continuous adjustments to the quantities of power sold by Western would convert a very valuable class of service, firm power, to a more contingent resource.

Western does have the ability, when existing contracts expire, to consider the percentage of our power that existing customers receive. An example is the 2004 marketing plan for the Central Valley and Washoe Projects, which has proposed to increase allocations to existing customers who enjoy a relatively small allocation of Western power as a percentage of load.

H. Stability

<u>Comment</u>: The threat of reductions in allocations would make it difficult for Western's customers to offer stable products and services to their consumers on other than a short-term basis. This lack of resource and administrative stability would be a significant competitive disadvantage for CRSP customers.

<u>Response</u>: Western agrees with this comment.

I. Tribal Issues

<u>Comments</u>: If a utility with an allocation of preference power loses load due to retail competition, its allocation should be reduced proportionately. The resulting savings should go back into the pool for reallocation to Indian tribes who have historically enjoyed the least benefit from national resources.

Our tribes request that any Western power that becomes available through the power allocation system restructuring process be directed to address the inequity of the system to provide tribes with a fair share of available power. The tribes request a "right of first refusal" option be incorporated into the restructuring system.

<u>Response</u>: For the reasons outlined earlier, Western will not reduce allocations to customers, whether Native American or not, who lose load specifically due to retail competition. Therefore, there is no power available for this reason to allocate to tribes.

J. Unintended Consequences

Comment: If a utility were to be stripped of its allocation in proportion to its loss of load resulting from voluntarily allowing its customer-owners retail access, that utility would be tempted to cut deals to retain the large customers that competitors would pursue. This would tend to distribute the benefits of preference power away from small customers. Energy efficiency programs might also suffer if a utility were tempted to focus instead on acquiring new load.

Response: Western agrees that a utility might take steps in response to a change in policy that adversely impacts energy efficiency investment and small customers.

K. Western's Role

Comment: This question mischaracterizes Western's function. Western's power allocation decisions have not been made on load growth or loss analyses. Western is not a utility, it is a marketing agent with a finite and declining resource to market. It is in no position to accommodate load growth and in even less position to monitor load loss.

Response: Western agrees that its role is to market power to repay the U.S. Treasury for investments financed by taxpayers. Adopting the policy suggested by the question would blur Western's focus on its primary mission.

Comment: If Western's decisions with respect to power allocations will have the effect of making it more difficult for municipal governments to attract new business, the purpose of the municipal preference will be entirely thwarted.

Response: Western has no desire to impede the economic development efforts of municipal governments.

Question:

3. Should Western allocate power directly to electricity end-users that are preference entities such as publicly-owned schools in States or localities that permit retail access? If so, how much power should be allocated for this purpose? Alternatively, should Western continue to allocate power primarily to its traditional customers such as municipal and cooperative utilities and Federal and State agencies?

A. Administrative Issues

Comments: Making Western a retail provider would change Western's business structure. Western would have to organize its workforce to deal with hundreds or thousands of customers, with significant start up and ongoing costs to Western and its customers.

Allocating power to thousands of end users, as opposed to the current 600 customers Western serves, is not economically warranted or practical, and would result in a paperwork nightmare for Western.

Response: The benefit of a Federal power marketing administration gearing up to play a major role in the retail marketplace is unclear. The cost of adding staff to carry out this role would be considerable.

Comments: While direct retail sales by Western may appear to spread the benefits of Western power more broadly, most retail customers are poorly equipped to handle the vagaries of fluctuating hydropower production or sharp reductions in available power due to changes in operations of CRSP facilities required by law. Retail service involves much more than a simple allocation of power and energy. Load following and other intricate ancillary problems of electric service become involved.

Adoption of this policy would be an administrative nightmare. Direct retail sales would be less efficient, as retail allottees would be required to seek additional power resources, combine those resources, and schedule them in the most economical manner. Transmission, distribution, metering, reserves, energy imbalance, and other services would have to be obtained to deliver electricity. Most end-use consumers are not sophisticated enough to provide for such services themselves. Alternatively, they would need the services of a scheduling agent or an existing utility to provide these services, with an increase in cost to the end-use consumer.

If Western were to serve an end user directly (such as a school), what would Western do with the power generated at night when a school cannot use it? How would Western meet the school's air conditioning load in September during drought years? Such a proposal would likely lead to increased profits for those wanting to absorb the excesses, and make up for the deficiencies, by dismantling public power.

Response: Western agrees that allocation of power to end users presents a number of complex problems.

Comment: If Western were to single out its utility customers for allocation reductions that would be transferred to end use preference entities in States that allow retail access, Western would incur increased administrative costs and need to raise rates while reducing the benefits of preference power to existing customers.

Response: Western agrees that one impact of allocating power to public schools directly could be an increase in costs to existing customers.

Comment: No new contracts should be written at less than a 100 kilowatt allocation.

Response: Minimum allocation amounts are often appropriate, but are best determined in project-specific marketing plans.

Comments: Changing allocation policies also raises the question of assuring equity among States. How will Western compare different States' programs for retail electric competition? Allocating Federal power to customers based on State laws will result in unequal access to such resources. Some States have now created quasi-public schools by allocating tax moneys to charter schools and private schools. Some States have proposed adoption of school voucher programs to allow students to use tax dollars to go to the school of their choice. The definition of a public school is becoming less clear every year. Every educational institution from home schooling to correspondence classes that can show Federal or State tax support will want to apply for an allotment of Western power.

Response: Western agrees that it could be difficult to compare the different approaches to retail wheeling among the States within our service territory and incorporate them into a cohesive overall policy. Western also agrees that the definition of a public school is not straightforward.

B. Allocation Priorities

Comment: End-use customers, although previously excluded because of a lack of access, should be treated at least on a basis comparable to traditional Western customers. An enhanced priority should be considered for these customers, since any economic benefits would accrue to all segments of the public.

Response: Western has allocated power to large Federal and State installations in the past, as they are public bodies. The economic benefits derived by these installations are to the benefit of the public. These installations typically take delivery at transmission voltage and operate their own system for distributing power to load. This approach avoids the complications of delivering Federal power to numerous smaller end users and the associated administrative burden.

Comments: Western should make its allocations based on the nature of the end use customer served, and should not be made simply to the cooperative or municipal utility. To the extent that Western's power is not priced at market rates but instead continues to be subsidized, we believe that allocations should only be made to public facilities that are supported by taxpayer moneys, such as military bases, State universities, hospitals, and prisons.

Providing power directly to end users such as public schools and other Government entities is far more consistent with the spirit and intent of the preference clause than providing allocations to wholesale customers who use preference power to engage in their own competitive efforts.

Response: Western already allocates power to military bases, State universities, hospitals, and prisons. Exclusively serving these entities would dislocate existing power supply for cooperatives and municipal utilities.

Comment: Allocations of Pick-Sloan preference power should not be distributed to retail competition loads but rather to its current contract customers who are not receiving their full allocation from Western. Our current allocation would have been larger during the original allocation if not for the fact that formation of our municipal utility was delayed by years of litigation by the IOU that served our city.

Response: This comment was raised by a customer of the Pick-Sloan Missouri Basin Program-Eastern Division. As power from the Pick-Sloan has already been allocated and in most cases placed under contract through the year 2020, Western has no immediate ability to respond positively to this comment. A resource pool increment of up to 20 MW will be available from the Eastern Division of Pick-Sloan in the year 2005. How this power will be distributed will be determined on a project-specific basis in a future allocation process.

Comment: Western should consider widening the eligibility for Western power to include retail cooperatives.

Response: Western will consider any application for Federal power in accordance with Reclamation law and project-specific allocation criteria.

C. Dilution of Benefits

Comments: Changing Western from a wholesale provider to a retail provider raises the very real risk of diluting this resource to the point where it is of no value to the end-user.

Current policies spread the benefits to end users. Broader distribution of Federal resources would further dilute the benefits of hydropower. The CRSP annually meets less than 4 percent of the total load in the marketing area. The CRSP is increasingly an insignificant market factor from a commercial or competitive standpoint. Any broader distribution or allocation would simply further dilute the resource.

Response: Western agrees that this is a concern. However, part of Western's responsibility is to distribute power on widespread basis. Western needs to consider the needs of new preference entities, as well as the continuing reliance of existing customers on the Western resource.

D. Duplication of Resources

Comments: We do not believe that it would be appropriate for Western to jump into the retail sales business when selling power to preference customers at the wholesale level is a very efficient and effective way for Western to carry out its legislative requirements. Western should not compete with its customers, who already provide benefits of cost-based Federal hydropower to end users.

If Western were to expand its role into the retail end of the industry, the result would be an inefficient duplication of distribution, rate making, billing, and ancillary services that would most likely more than offset any benefit to Western or the end user of the power.

Response: Western agrees that it is more efficient to continue to distribute the benefits of Federal power through its customers. Western has no desire to duplicate services already provided by its customers.

E. Favoritism

Comment: Adoption of this policy would penalize consumers served by public power distributing utilities in States that choose not to engage in competition, while favoring schools and localities in States that permit competition.

Response: Penalizing consumers served by Western’s customers, based solely on their State of residence, is not equitable.

Comment: There should be no favoritism among preference entities.

Response: Western makes every effort to assure that its power is allocated in an equitable manner.

F. Legal

Comment: Allocating power to end use loads is far beyond the intent of the preference laws. Western is a wholesaler of power.

<u>Response</u>: There is nothing in Reclamation law that prohibits Western from allocating power at wholesale to nonutilities, such as Federal and State agencies. Congress has recognized this on many occasions. For example, in authorizing the California-Oregon Transmission project, Congress recognized that Western markets to loads such as the Department of Energy laboratories in California. Hearings have also been held regarding Western's marketing policies. In June of 1994, the Deputy Secretary of Energy testified before the House Subcommittee on Oversight and Investigations, Committee on Natural Resources, on a variety of marketing issues, including the status of Native American tribes as preference customers.

<u>Comment</u>: Western cannot market to publicly owned schools, as they are not preference entities. In its post-89 marketing criteria for the CRSP, Western interpreted section 9(c) of the Reclamation Project Act of 1939 as requiring any new preference entities to have utility responsibility.

<u>Response</u>: The Post-1989 General Power Marketing Criteria for the SLCA/IP were published in the <u>Federal Register</u> on February 7, 1986 at 51 FR 4866. At page 4870 of that notice, Western stated that power would be allocated to a State or Federal agency with an ultimate consumer type load, to utilities, and to existing contractors that did not otherwise qualify for an allocation. Under these project-specific criteria, Western allocated power to a number of nonutilities, including the University of Utah. However, these criteria represent policy specific to SLCA/IP power, which is narrower than the parameters of preference law generally. Criteria for marketing to new customers after 2004 will be broader than those existing in the 1989-2004 time frame, in order to assure

that Native American tribes are eligible to receive allocations, regardless whether utility status exists.

Comment: Western is prohibited by law to sell power to nonutility customers while there are preference utilities who are willing to purchase the power. Western's sales are subject to a statutory preference requiring it to sell power to municipal utilities and cooperatives.

Response: Reclamation law requires Western to offer to sell power first to preference customers. Among preference customers, Western has discretion to whom it sells. Pursuant to law, Western has allocated power to State and Federal entities, which are not utilities.

Comment: The concept of allocating preference power to entities such as schools has been firmly rejected as conflicting with the promotion of yardstick competition required by Federal preference acts. The Second Circuit Court of Appeals has ruled that yardstick competition would exist if publicly-owned utilities competed against privately-owned utilities in selling of power to ultimate consumers. If the "public body" used the preference power itself, the privately-owned utilities would not face any pressure to reduce the prices they charge other customers. If preference power were made available to all government bodies, whether or not they distributed that power to consumers, every town and local library would be entitled to claim a direct share. Hydropower would be spread so thin that any competitive effect it might have had would be lost. Metropolitan Transportation Authority v. FERC. 796 F.2d 584, 592 (2d Cir. 1986).

Response: This case is based on the Niagara Project Power Act, and a FERC license issued to the Power Authority of the State of New York, pursuant to that act. Neither the Act, which contains a narrow definition of preference entity as compared to Reclamation law, nor the terms of the FERC license are applicable to Western.

Comment: Regardless of electric utility industry restructuring, Reclamation has the legal responsibility to deliver irrigation pumping power to existing irrigation pump units prior to any other use.

Response: Western markets Federal power which is surplus to the needs of the project, and may not execute contracts which impair the efficiency of the project.

Comment: This issue raises significant questions of the legal authority of the PMAs to participate in retail electric markets. Reclamation law does not authorize such a result, and the Federal Power Act has provided for local jurisdiction over retail markets.

Response: Western agrees that decisions regarding retail markets are local in nature, and that the Federal Power Act only gives FERC regulatory authority over wholesale transactions by public utilities in interstate commerce.

G. Need for Power

Comment: In order to promote a competitive open power market, Western must explore alternatives to its traditional power allocation criteria and select customers. Such alternatives should include Indian communities such as Shiprock, Kayenta, Chinle, Tuba City, Window Rock, and Ramah on the Navajo Reservation. Allocations of Federal power to these communities may enable them to attract and establish economic development within their areas. Currently, unemployment among Indian communities is the highest in the Nation.

Response: While Western intends to market power to tribes without requiring utility formation, Western does not market electricity to municipalities unless they have utility status.

H. Partnership

Comments: It is unlikely that end use customers would band together, as existing customers have, to fund and finance deferred maintenance and efficiency improvements such as the new runners at Shasta or to lobby for the Shasta Temperature Control Device. Either appropriations for maintenance would need to be increased, or environmental and economic opportunities would be squandered. Energy expenses are a large and important fraction of a Western distribution customer's budget, but only account for a small portion of a typical end user's budget. Pragmatically, this means that Western is much more able to influence and gain attention from distribution customers than from end use customers.

Allocation of power in this manner will undermine existing environmental commitments, as hydroelectric power would not be available for integration with other renewable resources.

Response: Western agrees that end users are much less likely to have the resources to integrate Federal hydropower with renewable resource development. Customer financing of project maintenance and improvements is also much more achievable with a smaller number of entities, such as has been the case with Western's existing customers.

I. Policy

Comments: Allocation of power directly to end users such as schools would require them to administer a new resource contract and convert their prior utility relationship to multiple electric contract management. For schools with loads under about 4 MW (all but college campuses) the administrative costs would overwhelm the bill reduction. Schools in existing preference customer territory would suffer higher rates as resources were taken away from their existing utilities to be allocated to schools outside of their utilities.

Our school district is a customer of a Utah municipal utility that receives an allocation of CRSP power. The CRSP allocation is an integral part of the resource portfolio of our consumer-owned utility and is essential to its ability to continue providing reliable, affordable electricity to our citizens and businesses. It is of paramount importance to our community and local economy that the marketing proposal be approved as quickly as possible to provide certainty to our utility and to the consumers it serves.

Expanding direct access to Western's resources by an ever-widening list of end users at the consumer level will become discriminatory, litigious, unmanageable, and bad policy.

Response: Western agrees with these comments. Administrative costs would likely offset the bill reduction for small school loads. Schools that receive the benefits of Western hydropower would be adversely impacted if the communities they serve did not continue to have access to Federal electricity.

Comment: Western's current marketing approach benefits publicly owned schools in those communities receiving Western allocations. In addition, both the University of California at Davis and the Radiation Laboratory at the University of California at Berkeley receive allocations. Further allocations to publicly owned schools would be unnecessary.

Response: Western agrees that many schools and universities already receive the benefits of power allocations from Western.

Comment: It is unclear what national policy objective would be served by the change in policy suggested by this question. Assuming Western has a policy objective in mind, it would be helpful if Western would articulate it and seek comment on the goal. It is also unclear how present practice does not serve a policy of widespread use of Western's hydropower.

Response: The question was posed to see if further extension of widespread use to retail loads was feasible and practicable. Western believes that widespread use is being achieved under its present allocation practices.

Comment: Adoption of this policy would favor school districts in high power cost States at the expense of school districts in low power cost States which have done a good job throughout the years in holding rates down and see no need to restructure their electric utility industry.

Response: Western agrees that this might be the result of a change in policy.

Comment: Western should consider giving allocation priority or credits to customers that undertake aggressive energy conservation and/or demand-side management efforts.

Response: Pursuant to the Energy Planning and Management Program, Western has reserved the right to allocate power from project-specific resource pools for this purpose. However, decisions on how to allocate power from resource pools will be made on a project-specific basis.

Comment: Western should continue to allocate power to its traditional customers so they can continue to serve end users and ensure that the benefits of Federal power are broadly and efficiently distributed. Public schools get their pro rata share of preference power through municipal utilities and cooperatives. Western was created to conduct wholesale sales of Federal hydropower, with certain limited exceptions for direct Federal loads. Western is not a retail distributor and there is no reason to change its role. Western should focus on what it does best and not enter the retail market.

Response: Western's expertise is as a wholesaler of power.

Comments: Participation by the Federal government in the business of producing electricity is no longer warranted. The conditions under which the Federal government entered the electricity business due to widespread areas of the country being in need of electrification no longer exist.

Should the Federal government remain in the electricity business under current law, the question becomes how best to allocate the electricity produced at government-owned dams. Western should not be a retail marketer of electricity to end-use customers. However, today's economic and competitive realities also are against continued power allocations to cooperatives and other traditional preference customers other than for historic purposes.

The National Rural Electric Cooperative Association's (NRECA) own website proclaims cooperatives to be "the electric utility industry's most powerful, strongest and fastest growing markets with a growth rate that is nearly three times that of investor-owned utilities." NRECA further states that cooperatives "are affecting retention, expansion and growth by offering incentive rates to large consumers of electricity."

Rural electric cooperatives have moved away from their purpose of serving sparsely populated rural areas. Cooperatives can offer lower incentive rates to large consumers in significant part because of allocations of low-priced Western hydroelectric power which is not available to their for-profit competitors. Continued subsidization of cooperatives by such means is obviously no longer required and only will help drive private utilities and marketers from the marketplace through subsidization of Western hydropower.

Response: Only Congress can decide to remove the PMAs from the electricity business.

Comment: The priority should be in developing criteria that assure preference allocations only go to those actually deserving.

Response: Developing an allocation system based solely on who is deserving would be difficult, as virtually every customer and potential customer that has commented during this process has argued that their need is greater than others.

Comment: How would Western handle States partially covered by the marketing plan wherein some retail preference entities would receive preference power and others would not because they were outside the marketing area?

Response: Western only markets power within its established marketing area. If the suggested policy were adopted, only those retail loads within the marketing area would receive an allocation.

Comment: Western should continue to allocate power to its traditional preference entity utilities. There is no indication whatsoever in the emerging retail markets, however slowly they are emerging, that these nonprofit utilities will not continue to give their customers the benefits of this resource.

Response: Western expects that nonprofit utility customers will continue to pass through the benefits of cost-based hydroelectric power to consumers. Preference customers were formed by its member-owners for just this purpose. Moreover, Western's contracts require that the economic benefits of allocations be distributed to consumers.

Comments: During the collaborative process that led to restructuring and customer choice legislation in Montana, all investor-owned utilities were hostile to the PMAs migrating from a wholesale role to one of a retail supplier.

Allocation of power to retail loads such as public schools would set up friction with other power suppliers. The Federal Government should not compete with other retail power suppliers.

Western is a marketer of a finite amount of wholesale power and should not enter the retail market. This reality is underlined by the uncertainties of hydroelectric generation. Allocations directly to retail customers would disrupt local and regional utility markets.

Response: Past efforts by Western to deliver hydropower to Federal agencies, such as Department of Defense installations, have met with resistance from existing power suppliers. Based on the comments received in this public process, there is little public support for Western taking on the role of a competitor for retail load.

Comment: It would be virtually impossible for Western to selectively serve individual schools throughout California and would be a disaster for many existing smaller preference power entities. We believe that schools within territory served by investor-owned utilities have already received rate decreases and further decreases will occur when stranded costs have been recovered.

Response: Western agrees that the State of California has mandated rate decreases to IOU-served electric consumers in the State, and that school districts have been among those paying decreased rates. California consumers served by IOUs are expected to receive additional rate relief once stranded costs have been recouped.

Comment: As the power supply function of the dams from which Western markets power is secondary to the water supply function, market pricing and direct access for retail customers cannot be applied to the Federal power program.

Response: Western's mission is not the same as that of a retail power marketer or other competitor in serving retail load.

Comments: If end-users are preference entities, why has Western not contracted with them directly in the past? If Western does decide to serve end users, an extension of the existing load-based allocation methodology should be used. The entity losing the load should be allowed to recover a wheeling charge for transmitting the Western power over its low-voltage distribution system.

Our water agency uses Western power to provide water supply to our customers. We are an end user of electricity and as such believe that Western should continue to make allocations to us and others who are similarly situated.

Direct sales to end users, such as schools, would be inconsistent with the longstanding practice of marketing Federal power only to public and cooperative wholesale distribution utility customers and Federal and State government installations.

Response: Western has served certain end users in the past, such as irrigation districts and Federal and State installations. However, Western sells power to all of its customers at wholesale and typically delivers power to our customers' distribution systems. If a utility loses load due to an allocation by Western, it is appropriate for that utility to charge a wheeling fee for transmission of Western power utilizing its system to the load receiving the allocation.

Comment: Western's current nonprofit preference customers are better suited to integrate the variability of the hydro resource into a resource portfolio to serve end users. Western has already achieved the goal of widespread use, as embodied in Reclamation law, by marketing to a very diverse set of nonprofit entities.

Response: Marketing to a diverse group of customers serves Western's policy goal of achieving widespread use.

Comment: There is a high degree of diversity existing in the nature and operating characteristics of the rural electric systems owned by the customers we serve. Local choice and decision making are important in recognizing that diversity.

Response: Western agrees that its power is already marketed to a wide variety of customers in a broad geographic area. Widespread use is being achieved without the need for Western to serve retail load directly.

Comment: The proposed withdrawal of 6 percent of existing CVP customers' current allocations to provide a resource pool for new customers achieves the proper balance of not overburdening the existing customers, who have planned their utility around the CVP resource, while also providing a meaningful pool for reallocation. This is especially true for CVP customers, whose Western allocation will be changing from the firm energy supply to receiving only a pro rata share of the CVP base resource. In our members' cases, they will be losing not only the 6 percent of their capacity, but are also losing about 50 percent of the energy that is currently being supplied by Western.

Response: Under the 2004 marketing plans, Western is scaling back its role as a provider of power and not increasing it. Western's SNR is offering a hydro-based resource unsupplemented by purchase power, with firming purchases being made by the customer or by Western only at the customer's request. While some purchasing of power will continue for the SLCA/IP, the level of purchases is expected to be lower and driven by customer choice.

Comment: BPA's pending subscription proposal for post-2001 power sales contemplates sales to regional IOUs with targeted delivery to residential and small farm customers. This proposal differs substantially from the direct sales suggested Western. First, BPA has an express statutory responsibility under the Northwest Power Act to deliver benefits to residential and small farm customers of Northwest IOUs. Second, BPA would make the sale to the distribution utility serving those customers--not to the end user. Third, the sales would only take place after the full contract requests of preference customers were satisfied. The Public Power Council would oppose direct sales to end users by PMAs as contemplated in Western's Notice.

Response: Western understands that customers of other power marketing administrations are concerned about the precedent that would be set by an expansion of Western's role in the utility industry.

J. Preference

Comment: If Western keeps preference, even after NEPA review, it should distribute power to eligible preference entities. One of the major problems with preference is its arbitrary nature. A school on one side of a line may get preference power, while a school on the other side does not. Western should market its power to those willing to pay market rates for power.

Response: The boundary between two utilities is no more arbitrary than any other boundary, such as that separating a higher tax jurisdiction from a lower one. A consumer of electricity on one side of the street may have lower rates than a consumer on the other side of the street for many reasons other than access to PMA power. Such factors as the price of other sources of power, the cost of transmission, customer density, access to capital, and strength of management can all bear directly on the cost of power.

K. Rates

Comment: As an alternative, the economic benefits associated with a modified bid process should be used to directly subsidize government agency end-users.

Response: Western has no authority to adopt this comment in the absence of legislation.

L. Risk

Comment: Direct allocation to retail customers would likely inject more risk into Western's power marketing program.

Response: Western agrees. In addition to the exposure to market volatility and the risk of not obtaining customer funding for project maintenance and improvements, marketing of power to retail customers would raise the likelihood of delinquent payment of bills. This risk is considerably lower when Western markets power to a smaller number of established customers with a history of prompt payment.

M. Source of Power

Comments: While our irrigation district does not oppose additional end users receiving allocations from the resource pool, such allocations should not come at the expense of existing long-term CVP preference power customers.

Power allocated to retail consumers should be derived from utilities presently serving those consumers.

Many end users are already served by Western, such as irrigation districts, Federal and State agencies, prisons, universities, and military installations. If a resource pool is to be formed for allocations of power to new end-use customers, such allocations should not be at the expense of existing end-use customers.

Response: Western believes equity is best served by forming resource pools through withdrawal of power from existing customers on a pro rata basis. These resource pools will be made available to new customers, including Native American tribes, on a project-specific basis.

Question:

4. In a retail choice environment, what additional steps, if any, should Western take to ensure that the full economic benefits of preference power are passed through to end-users served by the distribution utility that receives a power allocation from Western?

A. Administrative Issues

Comment: Please do not add additional reporting and oversight requirements, which will lead to the creation of an additional and unnecessary layer of bureaucracy and expense.

Response: Western is striving to be as businesslike as possible in its activities. Unless an important benefit results, Western has no desire to add bureaucracy and associated expense to our agency.

B. Experience and Staffing

Comments: Western should not attempt to engage in ratesetting or rate review by comparing rates among utilities. Such comparisons would be enormously time consuming and could easily overwhelm Western's staff.

We do not believe Western has the expertise or the staffing to evaluate and compare one preference customer's retail rate structure against another's to determine whether either appropriately conveys the "full economic benefit" of preference power to all or even selected classes of end users.

Response: Western agrees that active monitoring of each customer's efforts to pass through the benefits of its hydroelectric power would not be time well spent. Contractual provisions already require customers to provide the benefits of firm power to consumers. If misuse of Western's electricity occurs, a breach of contract remedy already exists to address the situation.

C. Legal

Comment: An affirmative answer to this question would interfere with States' rights and violate the Tenth Amendment of the United States Constitution.

Response: The Tenth Amendment to the Constitution provides that the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people. Article 4, § 3 of the Constitution provides that Congress shall have the power to dispose of and make all needful rules and regulations respecting property belonging to the United States. The sale of power is the sale of government property, and Western has the ability to place conditions on the sale of its power. Since Article 4 of the Constitution delegates to the United States the power to sell government property, it does not violate the Tenth Amendment.

Comment: Western's statutory mandate is to market power and energy "in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers." Congress clearly contemplated that the focus of Western's marketing efforts should be on low consumer cost, and not restructuring incentives or disincentives.

Response: Western's policy is to market power in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. This policy has its origin in the Flood Control Act of 1944, which became law many years before legislative consideration of restructuring of the utility industry began. However, applicable law does not preclude consideration of the impact of restructuring on Western's policies.

D. Policy

Comments: Current policies spread the benefits to end users. Existing customers are nonprofit, and already have every incentive to pass the economic benefits of Western's power on to ratepayers. Western should not assume the role of traffic cop. Western's goals and the goals of existing customers are the same--pass the economic benefits of preference power on to end users. Existing contracts restrict the use of Western power appropriately, so there is no need to expand the provisions of those contracts.

Western's power cannot be resold pursuant to contract, and Western's customers are already nonprofit by definition. There is nowhere for economic benefits to go but to the end use customers.

Our municipal utility is governed by representatives of its customers. These customers appreciate the value of the economic benefit of preference power and ensure that such value stays within the municipal utility's service territory borders.

Why should the Department of Energy micro-manage local decisions, when in the past there has been an excellent history of passing the full economic benefits on to end users?

Western, by contract, already requires its contractors to pass on the benefits of CRSP power to consumers. Since these are nonprofit entities, it is hard to imagine how they would not do so. Indeed, the concept of mandating the pass-through benefits originated at a time when private for-profit entities contracted for some of this resource because there were insufficient preference entities to do so. In that situation, those economic benefits could have been passed on to shareholders. That is not now the case.

<u>Response</u>: Western agrees there is no need for additional steps to assure that the economic benefits of preference power are passed through to the end user.

<u>Comments</u>: If a preference entity offers direct access, the amount of preference power available to that entity should be capped at the entity's native load. The purpose of this is to ensure that preference power is not retailed or exchanged for profit.

Preference power should only serve native load. Otherwise, utilities may abuse the system.

With extended contracts, Western power recipients seeking new customers would increase their unfair advantage. At a minimum, Western must be far more diligent in ensuring that its preference power participants do not use the low-cost Federal electricity to obtain an advantage in the competitive marketplace.

Response: Typically, Western only serves a portion of its customers' needs. Safeguards against the inappropriate use of Federal hydropower already exist, as Western's contracts forbid the sale for resale of Federal power and require that the economic benefits of Western's power be distributed to consumers. How a customer markets non-Western power is not appropriately a concern for Western.

Comment: Not all public power utilities have the option to opt in or out of competition for retail load. Salt River Project was required by State law to make retail competition available to 20 percent of its load at the end of 1998.

Response: Legislation on this point varies from State to State.

Comments: In a deregulated electric industry, the organizational structure of the distribution utility should not be a determinative factor in disposing of Federal preference power. The distribution utility should be treated simply as a poles and wires entity with no ability to manipulate the supply side of electric service. It seems unfair that existing utilities holding preference power allocations could use their Federal preference power to attract new customers in ways that do not provide benefits to their existing service territory or their current base of retail customers. One potential way to handle this issue is to vest the contractual right to preference power in the wires or distribution portion of the existing preference utility. In effect, this would lock the preference power allocation into the preexisting service territory and the current retail customer base even in a retail competition environment.

The government subsidies inherent in sales of preference power can distort the operations of markets and give unfair competitive advantages to certain recipients of this low cost power. Some preference customers are seeking to enter competitive markets, and they should not be able to use such subsidized power to gain an unfair competitive advantage.

Response: Western's customers are unable to resell their Federal preference power, as existing contractual provisions prevent sale for resale of Federal power. Given this existing safeguard, Western sees no need to vest the allocation in the distribution portion of a customer's system.

Comments: Our city charter already requires that retail rates must be cost-based and approved at an open, public hearing where public comment is solicited. Aware citizens are the best safeguard against inappropriate distribution of the benefits of Western power.

Western's requirements under the Energy Planning and Management Program assure that the economic benefits of preference power are passed through to end users and that end users have the opportunity to know how this arrangement benefits them. The requirements for IRP involve a public process, which provides additional assurance for end users to understand the benefits of the preference allocation process. The information provided in a distribution utility's IRP filed with Western satisfies the question on the ultimate beneficiary of a preference power allocation.

Response: Western agrees that information provided to the public during local rate setting and integrated resource planning efforts strongly supports the policy of assuring that the economic benefits of Western's power are appropriately distributed.

Comment: Western should condition its allocations by requiring municipal utilities to offer cheaper electricity in poorer parts of their service territory.

Response: Most of Western's customers do not serve wealthy areas. However, Western is sensitive to the issue of need for reasonably priced power. Western is devoting considerable effort to delivering the benefits of its power to Native American tribes in need of lower priced electricity.

Utilities already have programs to assist consumers who cannot readily pay their utility bills, such as lifeline rates and assistance programs for low-income consumers. The Federal Government already addresses this issue through funding of the Low Income Home Energy Assistance Program. Conditioning of Western's allocations by requiring customers to offer less expensive electricity in poorer areas appears to duplicate programs that already exist that serve the same function.

Comment: State law prohibits discriminatory rate treatment by assigning the lowest cost resource to some consumers, but not to others.

Response: Western does not want to implement policy that conflicts with State law.

Comments: Preference distribution utilities should be permitted to use Federal power as is most economically useful in benefitting all their customers. However, the status quo allocations to current preference utilities should be reconsidered to fairly distribute the use of Federal power.

Market conditions should be allowed to establish the sensitive equilibrium between power cost and value. The establishment of more rules would slow adoption of open access power market principles.

No additional steps need be taken. The customer assumes responsibility for its own destiny when deregulation occurs. Neither the regulator nor the distribution utility have an obligation to protect the financial integrity of the customer.

Response: The use of Federal hydropower should not be as unfettered as suggested in these comments. Sale for resale of Federal power is prohibited under Western policy as reflected in power sales contracts. Allowing sale for resale would distort the intent underlying Western's allocations. Allowing the resale of Western's power at a profit would be totally inappropriate, as it would allow for private gain on a taxpayer financed and publicly owned resource.

Comment: If Western is concerned about additional assurance, ask each distribution utility to verify the amount of electric power and energy supplied at retail within its area and require that this amount is equal to or greater than that delivered by Western to the distribution utility.

Response: Western already has the right under existing contracts to ask its customers to demonstrate whether the benefits of cost-based hydroelectric power are being passed through to consumers and whether resale is occurring.

Comment: In a retail choice environment, Western must take additional steps to ensure that the full economic benefit of preference power is passed on to end users. The considerable tax subsidy Western receives, price subsidy Western conveys, and environmental costs Western exacts on the Sacramento and Colorado Rivers means Western is granting excess economic benefits at the expense of taxpayers, other electricity users and the Sacramento and Colorado Rivers. Western must seize the opportunity and correct its costly practices. Western must pursue river flows and dam operations--or removal--to protect the environment and restore the well being of those species threatened or endangered by the dams. Western must also offer tiered, market-based rates to eliminate the unfairness and inefficiency in the current system.

Response: As previously noted, Western's rates are not subsidized. Western markets cost-based hydroelectric resources, which are relatively inflation resistant as compared to non-hydro generation due to the absence of fuel costs. In addition, Western has no responsibility to meet load growth with relatively expensive additional power. Western's hydropower resources are reasonably priced due to these factors, and promote yardstick competition.

The generating agencies, such as the Bureau of Reclamation and the Corps of Engineers, have the responsibility to pursue changes in river flows and dam operations and to consider dam removal. Western has anticipated the possible reoperation of dams which impact threatened and endangered species by reserving the right to adjust our marketable resources in response to changes in hydroelectric operations. In addition, Western's customers have funded millions of dollars in environmental mitigation and study expenses.

Western does not have the legal ability to depart from cost-based rates in the manner suggested.

Comment: For our distribution cooperative, in years where we have a positive margin, that margin is allocated to the member-owners and placed in the member's capital credit account. The Board of Directors annually reviews that account and the financial condition of the cooperative to determine the appropriate amount of capital that should be returned to the membership.

Response: This comment demonstrates how the economic benefits of a locally-owned public power cooperative are returned to consumers rather than flowing to other beneficiaries.

Comment: The Sierra Nevada Region analyzes each preference customer's rates on an ongoing basis and continually stresses the requirement that rates be held as low as possible. In addition, Western requires an annual update of each entity's integrated resource plan and provides valuable feedback on resource utilization and optimization. The SNR also conducts several customer meetings annually, where such topics as customer rate setting are discussed.

Response: This comment is accurate. Western's CRSP Customer Service Center also provides similar services except that more individual customer meetings are held, as opposed to several meetings each year with all customers.

Comment: Western's notice does not explain what is meant by "full economic benefits of preference power." Is it Western's goal to ensure that the difference between the rate that Western charges and the costs of replacement power remains with the end users served by the utility? If that is the case, we generally agree that it is appropriate that the full economic benefits of preference power should be reserved for Western's customers' native load.

Response: This comment accurately reflects Western's goal.

Comment: Western should require all successful bidders for preference power to pass on to qualified end users (based on income or their nature as public institutions) the savings, if any, associated with the purchase of Western power as compared to other power supply sources.

Response: Western agrees that the benefits of the hydroelectric resources we market should flow to the consumer. This occurs almost by definition, as Western's firm power customers are nonprofit and have no shareholders.

Comment: Those customers who qualify as end use preference entities should at a minimum be guaranteed a "most favored" customer economic treatment.

Response: As no rationale has been advanced in support of this comment, Western will not adopt it.

Comment: Once vertical dis-aggregation occurs, Western must have procedures in place to ensure that end users--not distribution cooperatives or municipals--receive these allocations.

Response: Distribution cooperatives and municipal utilities are preference entities eligible to purchase power from Western. Should the form of these customers change, in response to industry deregulation or for other reasons, Western will be able to address issues of who should receive the allocation at that time. In the meantime, cooperatives and municipal utilities are required by contract to distribute the benefit of Western's power to consumers.

Comment: Western's mission is not one of being a consumer advocate.

Response: Western is concerned that consumers receive the benefit of our allocations.

Question:

5. Should a distribution utility be permitted to transmit the economic benefits of preference power exclusively to industrial and/or commercial end-users? Conversely,

should a distribution utility be required to pass on the benefits of preference power exclusively to a certain class of customers such as residential or small business?

A. Administrative/Staffing Experience

Comments: Western does not have the staffing or historic expertise to do retail rate design. Rate design issues are complex, controversial and disruptive and are best addressed locally and not by the Federal Government. Western should not change its role from that of a wholesaler of power.

Adding onerous restrictions and compliance requirements does nothing to promote Western's mission and adds additional costs to the rates.

The resources that we purchase from our generation and transmission cooperative consist of Western power and as well as other sources of power supply. The rate we are charged is a blend. Distribution of the benefits of Western hydropower exclusively to a particular class of consumers would be complicated by this existing billing practice.

Response: Western has no broad expertise in the diverse retail rate design laws and policies within our 15-State service territory, as our role is one of a wholesaler of power. Even if Western wanted to monitor retail rate design, there is no guarantee that Congress would provide the funding necessary to carry out Western's new role.

B. Discrimination

Comments: A distribution utility should not be permitted, or required, to transmit the economic benefits of preference power exclusively to industrial and/or commercial end users. The intent underlying preference power was for the benefits to flow equally to all the customers served by the entity receiving the allocation. Rural communities will not survive in an atmosphere of fragmentation.

Allocations of Federal power exclusively to a particular customer class would conflict with nondiscriminatory rate making principles used by consumer-owned utilities.

Western should not start a class war. Teddy Roosevelt would sit upright in his grave if he thought public resources would be devoted to big business. No volume discounts should be provided to large corporations.

There does not seem to be any policy basis for discriminating between residential, small business, and commercial end users, so long as the allocation serves the historic purposes of preference law.

Western's policy prohibits discrimination among classes. Western's existing customers have adhered to the longstanding policy of no discrimination.

Response: Western has no definite policy on retail rate design. Nor does Western require that the benefits of an allocation of Federal power be provided to one class of consumers at the expense of others. Retail rate design is typically done at the local level, in accordance with a cost of service study or other State or local policy goal. Western sees no need to dictate matters that are best determined at the local level.

C. Legal

Comment: Adoption of the policy suggested by this question interferes with States rights and violates the Tenth Amendment.

Response: For the same reasons set forth in response to a similar comment on the fourth Notice of Inquiry question, no violation of the Tenth Amendment would take place.

Comment: Western's authorizing statutes grant it no power to review the rates of its customers or to identify some consumers as being more or less deserving of the benefits of Western's power.

Response: Applicable policy requires that power be sold at "the lowest possible rates to consumers" without direction to favor one customer class over another. As Western does not believe it to be good policy for a Federal agency to get involved in local decision making on rate design issues, there is no need to address the question of whether Western possesses the legal authority to do so.

Comment: The Second Circuit Court of Appeals has faced the argument that preference power should be furnished to municipal utilities for resale to only domestic and rural consumers, not to industrial or commercial consumers. The Court ruled that if "Congress had wanted to restrict resale to domestic and rural consumers it could easily have done so simply by stating that the power was to be made available to public bodies 'for resale only' to such consumers." The Court also held that Congress "believed that all interests could best be served by giving the local entities the right to decide on the ultimate retail distribution of the preference power sold to them." Port Authority of the State of New York v. FERC, 743 F. 2d 93, 104-05 (2d Cir. 1984).

Response: This case is based on the Niagara Project Power Act, and a FERC license issued to the Power Authority of the State of New York, pursuant to that act. Neither the Act, which contains a narrow definition of preference entity as compared to Reclamation Law, nor the terms of the FERC license are applicable to Western.

Comment: DOE cannot legally impose such restrictions on the end user's consumption of power delivered by a preference customer. Congress has already spoken to this issue, and determined that decisions about how power should be allocated within a preference customer's community are local in nature.

Response: While Western has broad authority to determine the conditions under which power will be sold, Western agrees that the decision is appropriately local in nature.

D. Local Control

Comments: Local rates are set in an open public process. Local government already addresses the issue of equity between small and large customers by its very structure. These institutions have a relatively small electorate, easy and direct access to their representatives and periodic elections. The effect of this democratic structure is that residents tend to have a much larger say in the decision-making process of their local utility than a customer of an IOU. If an issue arose about rates or cost allocations, residents would have to be convinced of the merits of a particular resolution to the issue. This is a more considered and responsive way to address the implications of the open market.

One of the benefits of public power is local control. Our utility is a relatively new public power entity and our customers have a keen memory of how badly they were treated when decisions about their services were made remotely. If Western ever elected to get involved in this level of detail, the customers our board serves would be disadvantaged. Most of those customers could not afford the time and expense to travel to Sacramento, much less Denver or Washington, D.C., to voice their concerns.

Distribution utilities that receive preference power are governed by either elected boards or councils. Rates are currently set pursuant to cost-of-service studies, and customer classes are assigned costs on this basis. If a distribution utility were to change their rate design method, open, public rate hearings must be held as part of the rate approval process.

Since Western is not accountable to local voters, Western should not strive to intervene in local decision making. Given a choice, I cannot imagine that our residents or business owners would prefer to have rates established by a Federal agency.

Response: Western agrees that retail rate design is appropriately a local decision.

Comment: Western should not become a Federal public utilities commission. Federal regulations simply cannot embrace the wide variety of local conditions that exist in Western's service territory. Why should DOE micro-manage local decisions, when in the past there has been an excellent history of passing the full economic benefits on to end users? Absent a clear showing of abuse, Western should not involve itself in these uniquely local issues.

Response: It is not good policy for a Federal power wholesaler to make decisions on retail rate design.

E. Policy

Comment: Western is in no position to allocate benefits or force a distribution utility to allocate benefits among customer classes. Each distribution utility has a varied mix of customer classes and economic situations. Each of them has different statutory mandates as creatures of the States in which they were created. Western is ill-equipped to compile and absorb the nuances of State law in 15 States concerning local government and electric cooperative mandates. To the extent that adoption of any change in Western policy would interfere with State and local mandates, Western does not have the authority to do so and should not seek it.

Response: The design of retail rates is appropriately determined at the local level. The diversity and complexity of State and local standards and policy on this issue would make the establishment of a cohesive Federal policy difficult.

Comments: Western should ensure that the full economic benefits of preference power are passed to residential and small business. In a competitive market, these two classes of customers will not have the expertise to locate and arrange for delivery of least cost power.

Preference should remain as originally designated, for the primary use of residential and small business consumers.

The benefits of Federal power should be passed on to residences and small businesses by the distribution utility. Traditionally, distribution utilities have melded their low-cost Federal power with other sources and most times, through rate structures, the big power users received most of the benefits.

The economic benefits of preference power should be enjoyed by all customer classes equally based on the cost to provide service to the customer.

The distribution utility should not slight or reward any class of customers. Preference power benefits should be shared and shared alike throughout the customer classes.

Rate structures vary from cooperative to cooperative, and reflect what is appropriate for that cooperative and that community. A centralized, one-size-fits-all approach from Western, however well intentioned, is a poor substitute for a deliberative democratic approach exercised by locally elected officials.

Response: Rate design is appropriately a local choice.

Comment: An underlying concern appears to be that Federal power creates a competitive advantage for its consumer-owned recipients. However, many of Western's customers, due to their size or location, pose no competitive threat to other market participants.

Response: Western agrees.

Comment: Western should only require distribution utilities to show the economic benefit of preference power as well as other sources of power in their retail rate making criteria.

Response: Western's contracts contain language dealing with the distribution of the benefits of Western's power. Under current standard language in Western's contracts, the customer "agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner. The Contractor further agrees that it will identify the costs of firm electric power or energy supplied under the contract and power from other sources to its consumers upon request. The Contractor will demonstrate compliance with the requirements of this provision to Western upon request."

Comment: The purpose of the preference law is to provide power for public purposes and to help provide economic development for under served populations. Each preference customer should be required to show Western how it is carrying out the historic preference power mission in order to be eligible for an allocation.

Response: As our customers are already carrying out the purposes of preference law, Western sees no reason to adopt a litmus test for its customers as a condition for receipt of an allocation. If a customer is not acting in accordance with law or contractual provisions, Western has the remedy to address the situation.

Comment: Federal intervention is not necessary because of market pressure to prevent "cost shifting" among customer classes.

Response: Competition in the marketplace could well influence rate design decisions made by local utilities.

Comment: The Energy Policy Act clearly set forth a Federal intent to functionally separate generation from distribution. As a result, cooperative or municipal systems should no longer be the recipients of Federal preference allocations or involved in determining how Federal benefits from power sales are allocated to the end use customer.

Response: The Energy Policy Act opened up the regulated transmission grid to wholesale access, but did not mandate functional separation or modify preference law. Some unregulated entities (such as Western) have proceeded with separation of merchant and reliability functions because it serves their policy goals. However, public power utilities are not subject to any requirement to separate their functions unless Congress amends existing law.

Even if public power utilities were to separate functions, as a matter of law or local policy choice, there is no reason why this would impact continued purchase of power from Western. The negotiation of contracts and administration of the sale of power would be the responsibility of employees within the customer's function responsible for sales to retail consumers.

Comments: Preference should be altered precisely because it creates a nonsensical distinction among different groups of Americans. The decision to confer preference benefits on one class of customers rather than another is arbitrary and inappropriate for a government agency. Western should no longer stand against more than 200 years of economic research clearly demonstrating that the public is best served by free markets.

We support the extension of CVP resources to existing customers notwithstanding our general skepticism about electricity prices that fail to internalize key economic and environmental costs. In electricity markets, decades of empirical evidence indicate that price signals are not the only nor necessarily the most effective way to elicit long-term societal benefits.

Response: Selling power generated from public assets to consumer-owned public entities is neither arbitrary nor nonsensical. The statement about 200 years of economic research is unsupported by any specific citations, so Western cannot evaluate the merit of any such research. Western agrees that societal benefits may not be addressed appropriately by the marketplace.

F. Western's Role

Comments: Western's involvement in designating retail customer recipients could give it regulatory authority that is not warranted. The basic purpose of retail access is to allow decisions to be made at the local and consumer level, not to create a Federal template.

AB 1890 recognized that retail rate making for nonprofit utilities is best left to the local governing body that answers to its own citizens. This is not the time nor is there reason to replace the efficiency and responsiveness of local control with the inefficient command and control of the Federal Government.

Response : The better policy is to retain retail rate design at the local level, where State and local issues can be best addressed.

<u>Question:</u>

6. Should a distribution utility be required to offer retail access to its distribution customers as a condition of receiving a preference power allocation in the future?

A. California Law

<u>Comments</u>: Such a policy would be inconsistent with AB 1890 that establishes industry deregulation in the State of California. AB 1890 allows the retail access decision to be made at the local level. Northern California customers are complying with this State law.

California restructuring legislation encouraged consumer-owned utilities to offer retail access, but left the decision up to the local governing body that is elected by those very same consumers. Intervention by the Federal Government on this matter would undermine the democratic process.

AB 1890 adequately addresses retail access in California and the Federal Government should not attempt to usurp the retail competition already in place. We strongly oppose Western's intervention into our municipal utility's prerogatives under California State law.

<u>Response</u>: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

B. Direct/Indirect

Comment: Imposing such a condition attempts to accomplish indirectly what cannot be achieved directly under existing law. Congress has not forced retail choice on States directly.

Response: The Clinton Administration has proposed legislation to deal with this situation that preserves State and unregulated utility choice. Western will not require retail competition indirectly as a condition of its power sales contracts.

Comment: As a matter of State law, some preference customers will not be able to impose a retail competition plan in order to obtain an allocation.

Response : Western recognizes that some of its customers cannot legally adopt retail access as a matter of State law. Attempting to require such a policy as a condition of Western's power sales contracts would place some customers in an untenable position.

C. Equity

Comment: A retail access mandate for customers now seeking a contract extension is discriminatory, because it violates the precedent set in the Pick-Sloan renewals and would apply currently only to customers of the Colorado River Storage Project and the Central Valley Project.

Response: Western often implements new policies in a staged manner, as its marketing plans and contracts are effective for different time periods.

D. Legal

Comment: This restriction would be a violation of existing Federal law and is beyond the reach of Western absent congressional authorization. It would also interfere with decision making by both State and local policy makers. For example, Montana law allows cooperatives the option to decide whether to “opt in.” Adoption of this policy by Western would undermine the policy choice made by the State of Montana.

Response: While Western has broad authority to determine the conditions under which power will be sold, Western agrees that the decision to embrace retail wheeling has historically been local in nature. Western’s policies should neither force retail wheeling in States that have rejected it nor impede the adoption of retail wheeling in jurisdictions that have embraced it.

Comments: Do not set up a conflict between Federal law and California law. This would be the epitome of big brotherism. An affirmative answer to this question would interfere with States’ rights and violate the Tenth Amendment to the United States Constitution.

In some instances, any attempt to force a Federal retail access template on Western customers would be unconstitutional as a violation of the Tenth Amendment to the United States Constitution. In particular, Western cannot interfere with the governmental mission of its customers as defined in State laws and constitutions.

Response: For the same reasons set forth in response to a similar comment on the fourth Notice of Inquiry question, no violation of the Tenth Amendment would take place.

Comment: Such a requirement would be inconsistent with the intent of California’s AB 1890 and with the current Administration policy of flexible mandate.

Response: Western agrees with this comment.

Comment: Imposition of such a requirement would constitute a “taking” of property that would result in a liability for compensation by the Federal Government.

Response: There is no entitlement to Federal power in the absence of a contract. Since the sale of power is a sale of government property, no taking will occur.

Comment: The Energy Policy Act of 1992 makes it clear that the U.S. Congress did not intend for retail issues to be dealt with at the Federal level. The FERC was denied jurisdiction over transmission access at the retail level in favor of State jurisdiction. There has been no significant indication that the Congress has changed its mind. Moreover, legislation drafted by the DOE and introduced in the 105th Congress would continue the State's dominant role in retail access considerations. Western does not now have, and probably will not get, authority to attempt to leverage retail access.

Congress has given local entities "the right to decide on the ultimate retail distribution of the preference power sold to them."

Response: FERC has limited jurisdiction to order retail wheeling under the Energy Policy Act of 1992. The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

E. Local Control

Comment: Let communities decide whether, when, and how they will manage direct access. Our municipal utility is planning to open up direct access because it is good for the community. Each community faces a similar choice, and they will act in the best interests of those they serve.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

F. Policy

Comment: There is no logical nexus between Federal power allocations and retail access. The Congress has not determined that retail access is a sine qua non of electric utility industry restructuring.

Response: Congress has not established such a nexus.

Comment: Federal intervention in local access matters as a condition of receiving a power allocation would not be beneficial. Federal intrusion into decision making aspects of retail access determinations smacks of Federal social central planning, which Western and DOE should not promote. Intervention by the Federal Government on this matter, especially on a piecemeal basis through a marketing plan of a limited Federal resource, would be totally inappropriate.

Response: A comprehensive approach to this issue is preferable to a piecemeal approach.

Comment: The elected governing body of a distribution utility receiving an allocation from Western may decide that it is in the best interests of its customers to not offer retail access until some time in the future, or not at all. The newly formed markets for power are still immature and it may be some time before truly competitive markets are accessible to all customers. In our case, the decision will be made in an open, public forum where retail customers can voice their opinion to an elected city council. If the city council decides that it is in the best interests of a city's customers for it to remain a full service public power utility, the customers of this utility should not be penalized by not being eligible for future power allocations.

Response: The decision to open up markets to retail competition is best made locally. Western's policies should neither force retail wheeling in States that have rejected it nor impede the adoption of retail wheeling in jurisdictions that have embraced it.

Comment: Adoption of this policy would have unintended consequences, such as migration of power out of States that decline to adopt retail access. Preference customers in States that do not permit retail access could lose their preference power, even if those customers are using their allocations to service the types of end users that the Notice indicates should be receiving the full economic benefit of preference power.

Response: Western agrees that the effect of the policy suggested by the question could cause power to migrate to customers in States that have adopted retail access.

Comment: Whether retail access is good or bad remains to be seen. We believe that in the final analysis it will depend on the size and location of the end user. Western's power allocations should neither help nor hurt retail access. The draft 2004 CVP marketing plan provides enough flexibility for the benefits of CVP power to be realized, regardless how retail wheeling evolves. We urge Western to rise above those who seek to destroy public power, or who seek to restructure the electric industry so that profits can be made off the public's resources.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

Comment: The impact of adoption of this proposed change in policy would impact supplemental suppliers much more than Western or Western's preference customers.

Response: Western needs to be aware of the impact of its policies on supplemental suppliers.

Comments: There are many legitimate reasons why retail competition might not be adopted by a State, including a concern that losers are likely to be residential, low income, senior citizens and other small users. Market power concerns and availability of reliable power supply also may cause a State to reject retail competition. These legitimate concerns should not be held hostage by a threat of losing a Federal power allocation.

There is no evidence that small customers have benefitted from retail wheeling. We don't understand why Western would want to force retail access where it is not allowed to the potential detriment of our small customers.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

Comments: Mandating retail access by preference customers now seeking a contract extension is inconsistent with the restructuring policy of the Clinton Administration, which advocates a flexible mandate for States and nonregulated utilities. Western should not force retail wheeling in States that have rejected it.

This should only be done by an act of Congress which would mandate retail access. What logic would there be to force retail access if neither the State nor Federal law requires such action?

Response: Western agrees that the question suggests an approach that goes further than the Clinton Administration's policy.

Comment: Regulation by independent commission or elected body has been a widely accepted substitute for regulation by market forces in the electricity business for nearly 100 years. Although there are experiments being conducted in a very limited number of States and locales concerning the reintroduction of the market as a form of regulation, the wisdom of this approach is far from proven.

Response: Although open access to high voltage transmission and competition in the sale of wholesale power are prevalent, Western agrees that many States have not extended these policies to retail load.

Comment: It is the stated policy of the Clinton Administration that customers should be allowed to benefit from the ability to choose their own electricity supplier, but also permit States and unregulated utilities to opt out of the competition mandate if they find that consumers would be better served by an alternative policy. Western should engage in the same balancing act. Customers that operate in States where there is no barrier under State law to retail competition should be required to open up their systems to retail competition as a condition of receiving future allocations. End users of preference power should see their rates remain the same or go down as a result of competition.

Response: Adoption of this comment would not be akin to engaging in the same balancing act as the stated policy of the Clinton Administration. The Administration's policy allows States and unregulated utilities the freedom to choose, while this comment asks Western to deny that right to unregulated utilities within States that adopt retail wheeling for regulated utilities. It is more appropriate for the individual States, and not

Western, to consider whether public power utilities should lose their historic right to make decisions locally.

Comments: Distribution utilities serving Indian reservations should be required to offer retail access to it customers within the reservation as a condition of receiving a preference power allocation in the future. Western must not allow the tribes to become landlocked or to be held hostage by others who may have adverse interests to those of a tribe.

A distribution utility should be required to offer retail access to its distribution customers as a condition of receiving a preference power allocation in the future. We believe this requirement will encourage open access for retail distribution customers the same as the transmission and generation customers under the FERC rule. The Navajo Agricultural Products Industry has tried unsuccessfully to have its distribution utility wheel other power to its sprinkler irrigation equipment and a proposed food processing plant. The argument used to discourage open access is that the State of New Mexico legislature has not enacted an open access law similar to AB 1890.

Response: Western plans to allocate power to tribes from project-specific resource pools. If the tribe already is or plans to become a utility, transmission will be available under wholesale transmission access principles. Should the tribe choose not to form a utility, Western is committed to providing the benefits of Federal hydropower to the tribes through other means. This could include retail wheeling where the distribution utility offers this service, or alternatives such as bill crediting when retail access is unavailable. Western has adequate flexibility to deliver the benefits of Federal hydropower to tribes without mandating retail access as a contractual condition for existing customers. In addition, adoption of this policy would be incomplete in its scope in States that have not adopted retail wheeling, as it would provide no benefits to tribes served by entities that are not Western customers.

Comment: Wherever a utility receiving preference power seeks to sell retail power to new customers in service territories and communities presently being served by other utilities, that utility should be required to offer retail access to its distribution customers.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

Comment: The opening of retail access for preference customers is far more complex than suggested by this question. The reasons why no municipalities have joined the California ISO are (1) existing tax exemptions on already existing bonds could be jeopardized, and (2) municipalities would receive little or no credit for turning over to the ISO transmission assets that are not directly connected to their load centers, such as the municipal interest in the California-Oregon transmission system. A municipal utility joining the California ISO could be risking great damage to their system. This is not an outcome to be furthered by Western as the price for an allocation of preference power.

Response: The complexities of this issue must be taken into account.

Comment: Western should attempt to maintain comparability with regulated utilities in the area.

Response: This is a role more properly exercised by the States.

Comment: We believe that customers with distribution systems should be encouraged to share their facilities with other customers whenever it is mutually beneficial.

Response: Western agrees.

Comment: All distribution entities, including cooperative and municipal utilities, must be required to offer retail access, whether they receive an allocation of preference power or not. We must begin to view the industry not in a way that asks which entity gets what preference, but rather in terms that power supply has been mandated to be a competitive enterprise while distribution ought to remain a regulated monopoly.

Response: Western has no ability to accomplish this suggestion. Only Congress or State legislatures have the power to adopt a broad policy of widespread applicability.

Comment: If Western only made allocations to distribution utilities that offer retail access, it would speed the adoption of retail access and free up some allocations from distribution utilities who chose to forego their Western allocations rather than provide retail access. However, making Western allocation renewal conditional on distribution utilities' offers of retail access would only offer a level playing field if FERC hydro license holders nationwide were also stripped of their licenses if they did not offer direct access by 2005.

Response: Western understands this issue of equity in implementing retail access.

Comment: This question suggests that Western allocations ought to be held as ransom for retail access. Our utility began offering retail access to all customers in January of 1998. Our access is not restricted by competitive transmission charges or similar charges imposed virtually every time retail access has been offered or contemplated by IOUs. To date, not one of our customers has switched suppliers. Our customers are small and sparsely distributed. Those seeking to gain by providing retail access and attacking public power know they cannot profit by providing our customers a better deal than we provide.

Response: Western believes this comment demonstrates that small rural consumers may not benefit from adoption of retail access.

G. States

Comment: The issue of retail access has always been one for the States to decide. If the decision of the State is to be overridden, the entity that must do so is Congress, not Western.

Response: Western agrees that it should not act inconsistently with the decision making of States.

Comment: A vast majority of the States located within Western's marketing area have not yet elected to proceed with restructuring. Congress has adopted no legislation encouraging, much less mandating, restructuring of the utility business. The only Federal activity to date has been by FERC, an independent regulatory agency whose authority to order restructuring of the wholesale electric energy market is currently under legal challenge.

Response: Western agrees.

Comment: Requiring a retail access mandate assumes retail access is good for all consumers. This is not true, as 23 State Public Utility Commissions wrote to Congress recently urging retail access not be mandated because they believe retail rates in their States would increase significantly as a result. What about States like Idaho/Oregon that already have low rates and want to keep it that way by rejecting retail wheeling?

Response: States that already enjoy low cost power may be cautious about adopting retail access laws that might place upward pressure on local power rates.

H. Western's Role

Comment: The Public Power Council opposes any effort to expand the authority of the PMAs and encroach on the local decision-making authority of PMA customers. In the

Northwest, the local autonomy of consumer-owned utilities is appropriately respected. BPA does not regulate customer rates or rate design. Similarly, BPA does not micro-manage the conservation activities of its customers--activities that are required by contract. We are particularly concerned that the Notice contemplates tying contract allocations to implementation of retail competition. This proposal runs counter to the "flexible mandate" endorsed by the Clinton Administration that respects the local autonomy of consumer-owned utilities.

Response: Western agrees that the local autonomy of consumer-owned utilities must be respected.

Dated: June 10, 1999

Michael S. Hacskaylo
Administrator