



Department of Energy  
Washington, DC 20585

December 17, 1998

MEMORANDUM TO: Mary Anne Sullivan  
FROM: Larry Oliver  
SUBJECT: Definition for Demand Side Management Services

In consultation with the Director of the Federal Energy Management Program (FEMP), DOE lawyers at the Golden Field Office and FEMP utility and ESPC experts at NREL, it was determined that Demand Side Management (DSM) is a concept that is no longer current. A more inclusive concept that is more consistent with section 152(f) of EPACT is "Utilities Incentives." In that regard FEMP proposes that the following definition be used:

Utility incentives are any financial incentives, goods, or services offered by the utility that achieve energy or water goals or utility and related cost savings at Federal building and facilities, including, but not limited to, rebates or incentives, advanced financing of project costs, design and implementation of utility related projects, energy management services, facilities alterations, installation of technologies and energy savings devices, water conservation devices, and renewables by the utilities, and operation and maintenance of utility, water, energy efficiency and demand management projects.

Not all types of utility incentives are included under DSM services. For instance, some homeowners may want energy efficiency equipment or products installed because of efficiencies important to the owners, as opposed to the utilities to reduce demand. Government agencies will not be able to enjoy a utility incentive unless there is a measured performance that achieves energy, water, utility cost and related cost savings at Federal buildings or facilities.

For comparison purposes, listed below are examples of other definitions of DSM services.

1. Definition found in several Security and Exchange Commission Rulemakings:

[A] broad range of activities relating to the business of energy management and demand-side management, including the following: Energy audits, facility design and process enhancements, construction, maintenance and installation of, and training client personnel to operate, energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs, development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment, and general advice on programs. [Upon additional consideration, the commission has concluded that “energy conservation services” may not be broad enough to cover the types of activities intended to be exempted under this category. The term “energy management services” more accurately reflects the scope of the exempted activity.] (brackets added).

These rulemaking involve the exemption of acquisition by registered public-utility holding companies of securities of nonutility companies engaged in energy-related and gas-related activities under the Public Utility Holding company Act of 1935.

2. Executive Order 12902 dated March 10, 1994, Energy Efficiency and Water Conservation at Federal facilities.

Sec. 104. The term “demand side management” refers to utility-sponsored programs that increase energy efficiency and water conservation or the management of demand. The term includes load management techniques.

At our December 14 meeting an issue was raised regarding employee training or “conservation seminars” as being possible areas for “fraud, waste and abuse”. Our office, along with attorneys from the Golden Field Office, FEMP and the NREL contractors had substantial discussions today and yesterday to identify what the concern is. For instance, we don’t know if the concern is whether a certain percentage of a “Utility Incentive” program will involve training as it may, or whether the concern is that DOE employees will attend training seminars and the cost of the training will be treated as costs under “Public Utility Services Contracts.” The only written explanation of the concerns is provided in an updated memorandum written by GC-61:

The E.E. program will not benefit if it uses a broad definition of demand side management services that clearly should be considered “public utility services” such as utility conservation seminars, which nonetheless may be viewed as demand side management services. (emphasis added).

If the concern is “utility conservation seminars” or other employee training, we do not believe that this could happen unless there is deliberate fraud. The way the process works is that a utility offers a financial incentive to its customers. Federal agencies are encouraged to participate in the financial incentive offered on the same basis as other customers of the utility. The relevant provision of section 152(f) provides as follows:

“(c) UTILITY INCENTIVE PROGRAMS. – (1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities. ...

This provision is essentially composed of five elements. There must be a utility incentive program that: (1) provides utility service applicable to Federal buildings or facilities and (2) is available to other customers of the utility, and (3) increases energy efficiency or (4) increases water conservation, or (5) reduces the demand for gas, water or electricity. Use of the conjunctive “and” between elements 1 and 2 means that these elements must always be present in conjunction with elements 3, 4, and 5, singularly, in combination, or in the aggregate, before a Federal agency may participate in the utility incentive program. A conservation seminar, “or other training vehicle,” standing alone, will not qualify as a utility incentive.

Services provided at a “utility seminar” or other training vehicle would not qualify as public utility services under Section 152(f) of EPACT. Those concerns are not appropriate for section 152(f) contracts.

Finally, we are concerned about substantive changes in the application and scope of section 152(f) to cover only DSM services. The application of incentives under section 152(f) is clearly not limited to DSM services. Federal agencies may also negotiate with utilities “to design cost-effective conservation incentive programs to address the unique needs of facilities utilized by such agency.”