

## Department of Energy

## § 905.17

(i) Minimum percentage or other minimum requirement for DSM and/or renewable energy, including any charges to be collected for and spent on DSM, renewable energy, efficiency or alternative energy-related research and development, low-income energy assistance, and any other applicable public benefits categories;

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

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

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

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

(g) *When to submit the minimum investment report.* The customer must submit the first minimum investment report to the appropriate Western Regional Manager within 1 year after Western approves the request to accept the minimum investment report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before May 1, 2000, including submitting annual progress reports or update letters, until submitting the first minimum investment report, to ensure there is no gap in complying with section 114 of EPAAct. Customers must submit, in writing, a minimum investment report every 5 years.

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

must also include a revised description of customer DSM and/or renewable energy activities if the description from the minimum investment report has changed or expired.

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

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

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

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

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

### **§ 905.17 What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?**

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

(1) The source of the EE/RE reporting requirement (number, title, date, and jurisdiction of law or regulation);

(2) The initial, annual, and other reporting requirement(s) of the report; and

(3) A summary outline of the EE/RE report's required data or components, including any requirements for documenting customer energy efficiency and renewable energy activities.

(b) *EE/RE report requirement.* The EE/RE report is based on a mandate by a

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State, Tribal, or Federal Government to implement energy efficiency and/or renewable energy activities within a specified timeframe, for which there is also an associated reporting requirement. The EE/RE report may include only electrical resource use and energy efficiency and/or renewable energy activities, or may additionally include other resource information, such as water and natural gas data. At a minimum, the EE/RE report must annually document energy efficiency and/or renewable energy activities undertaken by the end-use customer.

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

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

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

(2) Authority or requirement to complete the EE/RE report, including the source of the requirement (number, title, date, and jurisdiction of law); and

(3) A description of the customer's required energy efficiency and/or renewable energy activities, including:

(i) Level of investment or expenditure in energy efficiency and/or renewable energy, and quantifiable energy savings or use goals, if defined by the EE/RE reporting requirement;

(ii) Annual actual or estimated energy and/or capacity savings, if any, associated with energy efficiency and resulting from the EE/RE reporting requirement;

(iii) Actual or estimated energy and/or capacity, if any, associated with renewable energy and resulting from the EE/RE reporting requirement;

(iv) A description of the energy efficiency and/or renewable energy activities to be undertaken over the next 2

years as a result of the EE/RE reporting requirement.

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

(f) *When to submit the EE/RE report.* The customer must submit the first EE/RE report to the appropriate Western Regional Manager within 1 year after Western approves the request to accept the EE/RE report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before May 1, 2000, including submitting annual progress reports or update letters, until submitting the first EE/RE report to ensure there is no gap in complying with section 114 of EPAct. Customers must submit, in writing, an EE/RE report every 5 years.

(g) *Maintaining EE/RE reports.* (1) Every year on the anniversary of Western's approval of the first EE/RE report, customers choosing this option must submit an annual EE/RE letter to Western. The letter must contain summary information identifying customer annual energy and capacity savings associated with energy efficiency, if any, and annual customer energy and capacity associated with renewable energy, if any. The letter must also verify that the customer remains in compliance with the EE/RE reporting requirement. Additionally, the letter must include a revised description of customer DSM and/or renewable energy activities if the description from the EE/RE report has changed or expired. If this information is contained in an EE/RE report sent to another authority, the customer may submit that report instead of a separate letter.

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

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

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

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

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(2) Western will work with a customer no longer eligible to submit an EE/RE report to develop an appropriate schedule to submit a small customer plan or other plan or report required under this subpart.

### § 905.18 What are the criteria for Western's approval of submittals?

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

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

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

(b) *Review of resource choices.* Western will review resource choices using section 114 of EPAct and this subpart. Western will disapprove plans and reports if Western deems that they do not meet the reasonableness criteria in paragraph (a)(2) of this section or the provisions of section 114 of EPAct.

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

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

### § 905.19 How are plans and reports reviewed and approved?

Western will review all plans and reports submitted under this subpart and notify the submitting entity of the plan's or report's acceptability within 120 days after receiving it. If a plan or report submittal is insufficient, Western will provide a notice of deficiencies to the entity that submitted the plan

or report. Western, working together with the entity, will determine the time allowable for resubmitting the plan or report. However, the time allowed for resubmittal will not be greater than 9 months after the disapproval date, unless otherwise provided by applicable contract language.

### § 905.20 When are customers in non-compliance with the regulations in this subpart, and how does Western ensure compliance?

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

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

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

(d) *Penalty options.* (1) Beginning with the first full billing period following the notice specified in paragraph (c) of this section, Western will impose a surcharge of 10 percent of the monthly power charges until the deficiency specified in the notice is cured, or until 12 months pass. However, Western will not immediately impose a penalty if the customer or its MBA or IRP cooperative requests reconsideration by filing a written appeal under § 905.21.