Western Area Power Administration

Final Power Allocations of the Post-2000 Resource Pool—Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final power allocations.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, hereby announces its Post-2000 Resource Pool Power Allocations to fulfill the requirements of Subpart C–Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR Part 905. The Post-2000 Resource Pool Allocations are Western's implementation of Subpart C–Power Marketing Initiative of the Energy Planning and Management Program Final Rule for the Pick-Sloan Missouri Basin Program, Eastern Division. Western's proposed allocations were initially published in the Federal Register August 30, 1996, and a clarification and response to comments was published in the Federal Register December 3, 1996. The formal comment period on the proposed allocations ended on January 6, 1997, and a discussion of comments received pertaining to the proposed allocations is included in this notice. After consideration of all of the comments, Western has decided to finalize the proposed allocations to new utility and nonutility customers as announced on August 30, 1996, and to finalize the proposed allocations to Native American tribes based on the levelized methodology adjusted to address the relatively small indirect benefits provided to the Rosebud Sioux Tribe by Rosebud Electric Cooperative.

DATES: The Post 2000 Resource Pool Final Power Allocations, as based on the Pick-Sloan Missouri Basin Program—Eastern Division marketable resource at this time, will become effective April 10, 1997, and will remain in effect until December 31, 2020. Electric service contracts for the sale of power allocated in this notice will be effective when signed by both the customer and Western. Allottees will have six months to execute a contract with Western after the initial offer of a draft contract, unless otherwise agreed in writing by Western. Contracts entered into under the Post-2000 Resource Pool Allocation Procedures shall provide for Western to furnish the benefits of firm electric service effective from January 1, 2001, through December 31, 2020.

ADDRESSES: Information regarding the Post-2000 Resource Pool Allocations, including comments, letters, and other supporting documents made or kept by Western for the purpose of developing the final allocations, are available for public inspection and copying at the Upper Great Plains Customer Service Regional Office, Western Area Power Administration, located at 2900 4th Avenue North, Billings, Montana 59101.

SUPPLEMENTARY INFORMATION: Western published a notice of proposed allocations in the Federal Register on August 30, 1996, at 61 FR 45957 to implement Subpart C–Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR part 905. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. Western's final procedures were published in the Federal Register at 61 FR 41142 on August 7, 1996. Those procedures, in conjunction with the Pick-Sloan Missouri Basin Program—Eastern Division, Final Post-1985 Marketing Plan (Post-1985 Marketing Plan) (45 FR 71860, corrected at 45 FR 77509) established the framework for allocating power from the resource pool established for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP–ED).

Western held public information and comment forums on September 18, 19, and 20, 1996, to accept oral and written comments on the proposed allocations. On October 8, 1996, Western published in the Federal Register, at 61 FR 52788, a Notice of Time Extension for the Proposed Allocation which extended the formal comment period for written comments from October 7 to October 21, 1996. On December 3, 1996, Western published in the Federal Register, at 61 FR 64080, a Notice of Clarification, Response to Comments and Request for Additional Comments regarding the levelized method of calculating proposed allocations for new Native American customers and proposed an alternative method. Western held a public information and comment forum on December 17, 1996, to accept oral and written comments regarding the methodology used to calculate the proposed allocations for new Native American customers. The comment period for this Federal Register notice ended January 6, 1997.

The August 30, 1996, Federal Register notice proposed a levelized methodology for determining Native American allocations (Method One). Under Method One Western levelized total Federal hydropower benefits to be received by each tribe. The proposed allocations under Method One (the direct benefit to each tribe) were determined by taking the total Federal hydropower benefit (63.323 percent in the summer and 56.869 percent in the winter) to be received by each tribe less the amount of indirect benefit each tribe receives through its current power supplier(s). As a result of comments received during the comment period for 61 FR 45957, Western published an alternative second method (Method Two) in the Federal Register on December 3, 1996, to calculate the proposed tribal allocations (direct benefit). Under Method Two the tribal allocations were determined by prorating the total amount of the resource pool available to the tribes based on each tribe's estimated load. This Federal Register notice also republished Method One and requested comments in support of one of the two methods.

Western has decided to finalize the proposed allocations to new utility and nonutility customers as announced August 30, 1996, and to finalize the proposed allocations to Native American tribes based on Method One adjusted to address the relatively small indirect benefits provided to the Rosebud Sioux Tribe by Rosebud Electric Cooperative. Final allocations were determined in the same manner as Method One except the portion of indirect benefits received by the Rosebud Sioux Tribe from the Rosebud Electric Cooperative were taken out of the calculation of Rosebud Sioux Tribe's indirect benefits. This was done in response to several comments that the Rosebud Electric Cooperative supplies an insignificant portion of the Rosebud Sioux Tribe's electrical requirements. Under Method One, as adjusted, Western levelized total Federal hydropower benefits received by each tribe. The proposed allocations under adjusted Method One (the direct benefit to each tribe) were determined by taking the total Federal hydropower benefit (61.6065 percent in the summer and 55.3396 percent in the winter) to be

received by each tribe less the amount of indirect benefit each tribe receives through its current power supplier(s).

The Post-2000 Resource Pool Allocations set forth in this Federal Register notice identify the utility and nonutility customers and Native American tribes to which Western intends to allocate power to implement Subpart C of the Power Marketing Initiative of the Energy Planning and Management Program Final Rule in the P–SMBP–ED.

Response to Customer Comments Regarding Post-2000 Resource Pool Allocations

I. General Comments

Comment: Western received requests for extension of the comment period for the August 30, 1996, Federal Register notice.

Response: 61 FR 52788 published October 8, 1996, extended the deadline for submittal of comments until October 21, 1996. Also, 61 FR 64080 published December 3, 1996, clarified, responded to comments, and requested additional comments regarding the levelized method of calculating proposed allocations for new Native American customers and proposed an alternative method. Comments were accepted regarding this notice until January 6, 1997.

Comment: Western received requests to reconsider the application of Horsecreek Irrigation Cooperative. Horsecreek Irrigation Cooperative does not directly or indirectly receive electrical power from McKenzie Electric Cooperative, Inc. Horsecreek Irrigation Cooperative was formed solely for the purpose of obtaining Western power and does not yet receive any power whatsoever from McKenzie Electric Cooperative, Inc. Horsecreek Irrigation Cooperative is not active and will not be active unless and until Western power is available.

Response: Because Horsecreek Irrigation Cooperative is inactive, Western has declared them ineligible based on the Post-2000 Resource Pool Allocation Procedures General Eligibility Criteria sections III.A, III.E and III.I.

Comment: Western inappropriately evaluated Horsecreek Irrigation Cooperatives's meeting of the 100 kW eligibility criteria. The use of the eligibility criteria that the allocations be based on loads experienced in the 1994 summer season and the 1994–95 winter season does not reflect the actual growing seasons, is misguided, and favors other users over agricultural users, who were the primary users for which Pick-Sloan power was intended to benefit.

Response: The Post-1985 Marketing Plan established the criterion of a minimum allocation to determine eligibility for power allocations. The Post-1985 Marketing Plan minimum allocation criteria was modified as set forth in the Final Procedures. The final allocations of power for new utility and nonutility customers were calculated using Post-1985 Marketing Plan criteria. Under the Post-1985 Marketing Plan criteria, the summer allocations are 24.84413 percent of total summer load and the winter allocations are 35.98853 percent of total winter load. The final allocation procedures as published at 61 FR 41142 stipulated these percentages would be applied to the 1994 summer and 1994–95 winter season loads for utility and nonutility customers. Based on information Horsecreek Irrigation Cooperative supplied in their Applicant Profile Data and our calculation of that data, Western again determined Horsecreek Irrigation Cooperative ineligible under the General Eligibility Criteria sections III.A, III.E and III.I.

Comment: The contract with Western for the existing allocation is contracted with the utility. Tribes choosing to form a separate utility cannot access the allocation already contracted. There is a need for discussion of this subject for an equitable resolution. In absence of a resolution, Western is making it extremely difficult for tribes to form utilities and in some cases, beneficial to the effected utilities that currently provide service.

Response: The intent of the Program was to provide the benefits of Federal hydropower allocations directly to individual tribes. Western does not believe these allocations have created additional burdens for Native American tribes in forming a separate utility. Those tribes with smaller allocations under either method may find it more costly to form a separate utility simply because of the cost associated with supplemental power due to the loss of their indirect benefits.

Comment: Several applicants requested that their applications be given reconsideration. Applicants stated that their rates were not adjusted when the allotment was received by the supplier for power and therefore have not received benefits, directly or indirectly, of Western power.

Response: Western reviewed all applications that were requested to be reconsidered. That review did not find previous applicants declared ineligible to be eligible. Whether or not rates were adjusted for any applicant currently receiving benefit, directly or indirectly, from a current P-SMBP-ED firm power allocation is outside of the scope of this process.

Comment: One commenter stated that Minot State University's application was not considered because they are currently receiving benefits directly or indirectly and requested an explanation.

Response: Our General Eligibility Criteria in the Post-2000 Resource Pool Allocation Procedures states, ''Qualified utility and nonutility applicants must not be currently receiving benefits, directly or indirectly, from a current P-SMBP-ED firm power allocation. Qualified Native American applicants are not subject to this requirement.'' We have determined that if an entity such as Minot State University is administered by a State which is receiving benefits, then they are also receiving the benefits of Federal power and are therefore, ineligible.

Comment: Western received several comments questioning whether Western will review the application and change their decision if a city/municipality should achieve utility status by the deadline stated in the Federal Register.

Response: It was the responsibility of the city/municipality to provide necessary documentation for Western to determine if the city/municipality met the General Eligibility Criteria. Based upon the information submitted during the application period in their applicant profile data, Western has determined that those entities would not be able to achieve utility status in the given time frame.

Comment: If Western should decide to make additional allocations available in the years 2006 and 2011, a Federal Register notice should be published two years in advance to allow interested cities a chance to obtain utility status. Another commenter requested Western provide applicants ample opportunity prior to the years 2006 and 2011 to develop their own electrical utility.

Response: If additional allocations are made, they shall be made in accordance with the Program. Specifically, 10 CFR 905.35(c) requires entities that desire to purchase power from Western for resale to consumers obtain utility status 3 years prior to the subsequent resource pool. Notice of these requirements were published in a final rule November 20, 1995. The implementation of the Program does not prevent an entity from obtaining utility status at any given time. These allocations and procedures do not in any way affect Western's obligations or flexibility in regards to future resource pools as stipulated in the Program.

Comment: Any allocations of power to the tribes need to recognize and

acknowledge that tribes were denied access to power in all previous allocations. Another questioned how individual tribal member land owners whose land is in trust, as is the tribes, would be able to benefit from the Western allocation program, if the initial motivation for including tribes in the Western allocation process was due to impacts to Indian lands as a result of hydroelectric development on the Missouri. Two commenters stated they would like to remind Western that allocations of power in no way abrogates any outstanding treaty obligations owed to their tribe nor does it impact the tribe's water rights but is merely the result of tribes achieving ''Preference Power Customer'' status. Another commented that the fair share of the total resource pool allocated to the tribes was determined by Western to reflect a portion of the reservation electrical needs by the year 2000 and to reflect the fact that the tribes had been denied access to Western power in previous allocations.

Response: Western has continued to take steps towards assisting Native Americans in meeting their needs for cost-based hydropower. Western has always considered tribes to be preference entities, but has not historically allocated power to Native Americans in the absence of utility status, eligible irrigation load, or special legislation enacted by Congress. In the past, the benefits of hydropower have been realized by Native Americans through allocations to cooperatives that serve tribal load. The Program changed Western's policy regarding Native Americans and utility status. Therefore, allocations will now be made directly to the tribes. Western agrees that these allocations do not impact tribal water rights or treaty obligations.

Comment: Western received several comments that Western did not follow the Final Power Allocation Procedures of the Post-2000 Resource Pool as published in the Federal Register on August 7, 1996. Specifically, the August 7, 1996, Final Procedures, Section III, Paragraph I states, ''The minimum allocation shall be 100 kilowatts (kW).'' The Flandreau Santee Sioux Tribe had a proposed winter season allocation of only 20 kW under Method One. This allocation is lower than the minimum allocation in the Final Power Allocation Procedures .

Response: The Final Procedures incorporate the Post-1985 Marketing Plan criterion of a minimum allocation in establishing these allocations. The Post-1985 Marketing Plan established the criterion that eligibility for power allocations was based on an annual basis and not a seasonal basis. It was never the intent of the Post-1985 Marketing Plan or the Post-2000 allocation process to infer that all seasonal allocations would be a minimum of 100 kW. An applicant meets this criterion as long as one season's proposed allocation meets the minimum allocation of 100 kW. Therefore, in this case, it is possible to receive a winter allocation under the 100 kW minimum as long as the summer season is 100 kW or larger. It should be noted that Western disqualified several utility and nonutility applicants on the basis that both their winter and summer season proposed allocations would be below the 100 kW minimum.

Comment: One commenter expressed concern that Western decided to allocate the remainder to the tribes and actually increase the tribes'' share of the resource pool from 75 percent to about 80 percent. They asked that Western look at the rules that were established and see if a greater percentage of people could benefit from low cost hydropower by changing some of the rules. Also, they stated that a small part of the 25 percent of the resource pool originally designated for the new utility and nonutility customers was transferred to the Native American customers. Again they requested Western review this procedure with regard to allocating that small part to either new customers who have not yet formed a ''public power agency'' or to entities that are preference customers.

Response: Western was obligated to apply the Post-2000 Resource Pool Allocation Procedures to all applicants. This process is designed to allocate the 4 percent as set forth by the Program. Two future 1 percent resource pools were also identified as part of the Program and allocations from these future resource pools will be dealt with in future public processes.

Comment: If the ''preference power'' method of calculations is used, the tribes should be compensated $10,000 each and Mni Sose $100,000 to cover the entire cost for their 3-year effort.

Response: This comment is outside of this process. Western does not have authority to compensate an entity for efforts in this process.

Comment: The Federal government, Department of Energy, Bureau of Reclamation, Army Corps of Engineers, Department of Interior, the Bureau of Indian Affairs, and Western, should collaborate to assure that tribes be allowed to develop and operate their own power utilities. Language should be amended to give tribes the ability to form utilities as opposed to keeping the oppressive policies ongoing.

Response: The implementation of the Program does not prevent an entity from obtaining utility status.

Comment: One commenter protested the allocations process and demanded compensation for the use of water river rights for the Oglalas, other Sioux tribes, and Missouri River tribes.

Response: This comment is outside of this process. Western does not have authority to compensate an entity for the use of water rights.

Comment: Three commenters requested Western recalculate the proposed allocations for the Native American tribes using only the criteria in the final allocation procedures (the estimated loads).

Response: Western used the Post-2000 Resource Pool Allocation Procedures criteria including the estimated loads in the tribal applications in determining the final allocations for qualified Native American tribes.

Comment: Allocations were arranged in such a way as to discourage a tribe from starting its own utility because the amount allocated was so small.

Response: Allocations were based on the 4 percent resource pool which was derived from the Program. Western's final procedures were published in the Federal Register at 61 FR 41142. Those procedures, in conjunction with the Post-1985 Marketing Plan, established the framework for allocating power from the resource pool, are final, and cannot be changed in this process.

Comment: Western needs to increase the size of the resource pool. One option would be to revamp current facilities to increase generation and reserve surplus for tribes. Another commented that by offering up a resource pool which is woefully inadequate to address the needs of the tribes Western has forced the tribes to fight with each other. Another commented that the tribes now have to place the interest of their own tribes in the forefront and decide which of the two alternatives is best for their tribe. This may lead to possible dissension among the tribes which may be the goal Western is attempting to achieve. Additionally, two commenters stated that the fair share determined by Western does not reflect the argument made by the tribes that the size of the resource pool and the tribal allocation should have been substantially greater.

Response: The 4 percent resource pool was derived from the Program, and therefore the size of the pool is outside this process. This process is designed to allocate the 4 percent resource pool as set forth by the Program. It was the intent of Western to provide benefits

from the resource pool to all eligible entities. Two future 1 percent resource pools were also identified as part of the Program and allocations from these future resource pools will be dealt with in future public processes.

Comment: Outside purchases are needed to supplement the proposed Post-2000 allocation and accommodate a larger allocation to the tribes. Such purchases would not be a detriment to any existing customer of Western. Pick-Sloan purchases are relatively small in contrast to other Western areas.

Response: This comment is outside of this public process. The Final Allocation Procedures and Final Allocations are a direct result of the Program. The Program does not provide for the acquisition of additional outside resources to supplement the 4 percent resource pool.

Comment: Using the power suppliers' existing hydro allocations to provide allocations to tribes implies that the tribes may have rights to part of the power suppliers current allocation. Another commented that using the power suppliers' existing hydro allocation to provide allocations to the tribes implies that the Flandreau Santee Sioux may have rights to part of the City of Flandreau's current allocation. This is a major concern to the City of Flandreau since the tribe was not receiving any power when the City of Flandreau received their allocation in 1977.

Response: The intent of the Program was to provide benefits of Federal hydropower allocations directly to qualified Native American tribes. This is represented in the final allocations. The use of existing hydro allocations in the calculation method does not imply that the tribes have rights to any part of these allocations. Further, it does not change the contractual commitments between Western and the existing customers. Contractual commitments between Western and the existing customers are outside of this public process.

Comments: The proposed allocations for the Native American tribes are based on their estimated population, both on and off the reservations, with the Ponca Tribe of Nebraska having no land base. The commenter believes the allocations should be based on the estimated electrical load on the reservations. The proposed allocation from the estimated loads based on population projections, result in allocations larger than some tribes can utilize. Two commenters stated that the proposed allocations from the estimated loads result in allocations larger than some tribes can currently utilize. Another commented that allocations are more favorable to tribes without service from an existing Western customer and less favorable to tribes with service from an existing Western customer. Another commented that the amount of the Crow Tribe allocation derived from Method Two, plus the tribe's power supplier's existing allocation, may be larger than the entire load of the Crow Tribe. Finally, one commented that Method Two would provide the Crow Creek Tribe more than 100 percent of their load.

Response: Western does not agree with these comments and our analysis does not support this conclusion. Allocations for Native American tribes were based on estimated loads for the year 2000. In the absence of reliable load data for Native American tribes, population data was used in an effort to estimate Native Americans loads in the year 2000. In this notice, Western has levelized the total Federal hydropower benefits (61.6065 percent in the summer and 55.3396 percent in the winter) to be received by each tribe.

Comment: It should be clearly defined in the contracts that the allocations go to the tribes themselves or beneficiaries of the tribes.

Response: Contracts for the Post-2000 Resource Pool allocations will be between Western and the allottee.

Comment: One commenter asked if the original low cost power issued to the tribes will still be low cost after all the transmission costs are considered. Another commented that there should be no transmission costs associated with distribution of power to tribes in the Missouri River Basin.

Response: Western will assist the allottee in obtaining third-party transmission arrangements for delivery of firm power. To the extent that utilities are involved in these arrangements, Western will work with those entities. However, as stated in the Final Procedures, it is the ultimate responsibility of the allottee to obtain its own delivery arrangements and to pay the associated costs.

Comment: Western should have allowed tribal input in developing the allocation process.

Response: Tribal input, as well as input from other entities, has been solicited in conjunction with the public process comment period that was initiated January 29, 1996, and concluded January 6, 1997. During that time frame seven informational forums and seven comment forums were held and ongoing opportunities to provide written comments were allowed at each step of the process.

Comment: Two comments stated that the tribes should directly receive the entire allocation to service the tribal load.

Response: The intent of the Program was to provide the benefits of Federal hydropower allocations directly to individual tribes. The entire allocations contained in this notice will be made directly to the tribes. Any indirect benefits recognized in the calculation method were utilized only to levelize total benefits across the Region at the time of allocation with no intent to create any commitment whatsoever, to transfer these benefits to the tribes. Any indirect benefits received by the tribes are contractual commitments between Western and the existing customers and are outside of this public process.

Comment: The allocation as proposed (under Method One) penalizes the Crow Tribe as a recipient of Federal power and subjects the Crow Tribe to anti-Indian policies by an existing power supplier.

Response: It is not the intent of the Program to penalize any recipient of Federal power. Under any method of direct allocation, which does not result in full requirements being met by P–SMBP–ED, the tribe will be subject to existing power supplier policies to the extent they desire the existing power supplier to continue to supply the tribe's remaining power needs.

Comment: Revenues from Western could be more helpful to tribes by providing set-aside monies, grants, and startup monies. This is the prime time for a tribe to initially plan for utility status, if it wants to.

Response: This comment is outside of this process. Western does not have the authority to provide revenues to the tribes for set-aside monies, grants or startup monies through this allocation process.

Comment: Was the motivation for the provisions in the 1992 Energy Policy Act to include Indian tribes in Western's allocation planning? Did tribes or representatives from tribes provide testimony, initially under the Energy Policy Act to include benefit provisions to tribal governments?

Response: These comments are outside of this process.

Comment: Did tribes use the negative impacts to Indian lands from hydroelectric development on the Missouri River as justification to include tribes as beneficiaries of Western allocations?

Response: This comment is outside of this process.

Comment: If Western would refer the individual land owner back to the tribe, would Western be predisposed to assist and advocate for individual land owners, directly impacted by

hydroelectric development activities, in respect to energy allocations, either through low or no cost energy benefits after the year 2001?

Response: Western intends to provide benefits directly to Native American tribes beginning in 2001 and will work with the tribes to assure receipt of those benefits.

Comment: There is not a clear enough definition as to who a qualified allocation beneficiary can be outside of a reservation boundary.

Response: Off-reservation use of Native American tribe allocations under certain circumstances as determined by Western was allowed for in 60 FR 54151. The circumstances under which off-reservation use of a Native American tribe allocation will be allowed will be determined by Western on a case-by-case basis during the contract negotiation process.

Comment: The allocation should be made to the tribe and to the utility.

Response: The intent of the Program was to provide the benefits of Federal hydropower allocations directly to individual tribes. This principal is consistent with how Western treats existing customers. Western does not feel that the goal of the Program would be served by jointly allocating Native American allocations to utilities and tribes.

Comment: The very concept of the allocation/credit has caused concern among the cooperative membership and an increase to a nonjustifiable higher level will enhance divisiveness and ill feelings.

Response: This situation does exist among some of Western's long term firm power customers who have a different blend of low-cost hydropower and supplemental power. This comment is outside of this process.

Comment: As new preference customers, Native Americans should receive the benefit of the same principles Western has applied in previous marketing plans.

Response: Western's final procedures were published in the Federal Register at 61 FR 41142. Those procedures, in conjunction with the Post-1985 Marketing Plan, established the framework for allocating power from the resource pool. The current process has incorporated principles from prior marketing plans as well as establishing that the new customers will be bound by similar general contract principles as existing customers.

Comment: To revisit the Native American allocation methodology at this late date is counterproductive to expeditious implementation of this program.

Response: This comment was directed at the December 3, 1996, Federal Register notice, which proposed an alternate second method to calculate the proposed tribal allocations. Based upon input received during the public process, Western felt it appropriate to propose an alternate Native American allocation methodology and to extend the comment period to determine power allocations to assure the intent of the Program is satisfied.

Comment: It is important that Western directly involve the Sisseton-Wahpeton Sioux Tribe, and the other Missouri River basin tribes in all future resource planning and allocations. Mni Sose Intertribal Water Rights Coalition, Inc. will also continue to be an active representative of these tribes. Also, one commenter stated that comments submitted pursuant to this notice should not be considered the final comments of their Tribe/Nation. The Crow Tribe Public Utility Commission will continue to review and report on the various aspects of Energy, Electrical Power and ancillary services. Another commented that Western, along with the rest of the Federal Government, has an enduring and continuing trust responsibility for the tribes in the Missouri River Basin.

Response: Western supports the Department of Energy's American Indian policy which stresses the need for a government-to-government, trust-based relationship. Western intends to continue its practice of consultation with tribal governments so that tribal rights and concerns are considered prior to any actions being taken that effect the tribes.

Comment: The delivery of Federal hydropower to the tribes should be made in such a way that the benefit of the allocation is realized by the end user.

Response: Contracts for power of the Post-2000 Resource Pool will be between Western and the allottee.

Comment: One commenter expressed the desire for Western to come to the Standing Rock Reservation to present the contracts in negotiating with Standing Rock Sioux Tribe to honor the government-to-government relationship, because it is taken very seriously at Standing Rock Reservation.

Response: Entering into contractual arrangements with the various entities is the next step of this process. However, this will not begin until the final allocation process has been completed.

Comment: The allocation should be made in the form of energy and not a credit.

Response: Western agrees that allocations in the form of energy is one viable method of delivering the benefits of Federal hydropower to Native American tribes. However, flexibility must be retained in the delivery of such benefits in order to fit a diverse group of Native American tribes and power suppliers. The method for delivering the benefits of Federal hydropower to the tribes will be determined during the contract negotiation process.

B. Methodology Comments

- Western departed from the Mni Sose Intertribal Water Rights Coalition, Inc. method of allocation without consultation with the tribes and created inequities.
- Western ignored the allocation formula which the tribes agreed upon and poured considerable resources into preparing.
- Two commenters mentioned the plan put forth by Mni Sose Intertribal Water Rights Coalition, Inc. must be acknowledged and used.
- The proposed allocation to the Pine Ridge Tribe is 40 percent greater than what Mni Sose Intertribal Water Rights Coalition, Inc. estimated as their current requirements.
- Current use figures were often unavailable because the five companies that currently serve the Lake Traverse Reservation were not totally cooperative in providing data.
- The allocation process is sorely lacking in consideration of the tribe's needs and wants and the Yankton Sioux Tribe is not going to indicate a preference for either allocation method.
- The differences between the proposed methods of allocation may be perceived to instigate confrontations among or between various tribes, but the ultimate concern of the Native American tribes/Nations is to improve and expand electric goods and services available to improve living conditions and address conditions on many ''Indian Reservations'' within and throughout the native life sustaining regions of the Upper Missouri River region and beyond.
- Several commented that Section 3, Paragraph D of the General Allocation Criteria, states, ''Allocations made to Native American Tribes will be based on estimated load developed by the Native American tribes. Inconsistent estimates will be adjusted by Western during the allocation process.'' Under Method One, ''Proposed Allocations'' were not only based on the estimated load developed by the Native Americans, they were adjusted by the estimated current service the Native Americans were already receiving from their power suppliers. The so called ''levelizing'' of benefits was not part of

the General Allocation Criteria in the Final Procedures. Also, under this method, the Flandreau Tribe will lose 4 percent or 53 kW in the year 2000. After 2000 the tribe will have a net loss of 33 kW.

• Several commenters expressed concern that the average current Western service to the Rosebud Sioux Reservation, as published in the Federal Register, is not correct. Ninety-nine percent of the Rosebud Sioux Tribe's load is served by LaCreek-Electric Cooperative, Inc. and Cherry-Todd Electric Cooperative, Inc., both members of Rushmore Electric Power Cooperative. The small portion of Rosebud Electric Power Cooperative's service with a higher allocation should be ignored for this calculation in order to make the balance correct in how much the tribe should get. Take Rosebud Electric Cooperative out of the formula and the allocation would be fair and correct.

• It is important to the members of Hot Springs Rural Electric Association, Inc. that the precedent set in the P–SMBP–ED be a fair and equitable allocation of the Resource Pool. In the near future, Western will begin to allocate the Resource Pool in the Pick Sloan Missouri Basin, Western Division, and we anticipate similar action in the Colorado River Storage Project.

• The amount of allocation derived from the use of Method One more clearly represents a fair allocation to the Crow Tribe.

• Several commenters strongly encourage Western to apply the levelized method (Method One) of calculating proposed allocations to Native American customers. The support is based on the principle of applying equity among tribal members. These comments suggest that Method Two is not consistent with the principle of equity. Method Two offers greater benefits to some at the expense of others. Unless existing Federal bulk power supply available through current power suppliers is taken into account as part of the final allocations, variations in the amount of Federal power available among tribal interests will vary and lead to further retail rate disparities.

To increase the allocation to Method Two levels does not make sense.

• We support ''Method One'' as fair and equitable to all Native Americans and current electric utility providers. Neither they nor its member systems serve the region defined in the Federal Register notice but think its important to comment. They anticipate similar action in the Colorado River Storage Project and it is very important to them and its member systems that the precedent set in the P–SMBP–ED be fair and equitable. Also, they submitted recommendations because expenses for the Pick-Sloan Missouri Basin Program are shared over both divisions. The alternative method does not equitably distribute the benefits of the resource pool or take into account benefits for Native Americans already received through the current electric utility.

• If Western utilizes ''Method Two'', the Turtle Mountain band of Chippewa Indians would suffer a 27 percent reduction. Tribes which are currently receiving much higher benefits, will receive the much higher allocation which will result in a greater disparity among the tribes.

• Method One is considered inequitable for the reason that tribes receiving Western power through the existing rural electrical cooperatives are more likely to fall in the category of the Crow Creek Sioux Indian Reservation and are not likely to benefit from the current contractual arrangements between the rural electrical cooperatives and Western.

• We request Western use Method Two in calculating the proposed allocations for new Native American customers. The comment suggested that Method Two not only follows the criteria in the final procedures, it also appears to treat all tribes on a more equitable and fair basis.

• Several commenters recommended Method Two for new Native American customers. The ''second'' method presented by Western more adequately addresses the tribal needs and demands for electrical energy to improve and expand allocations to meet conditions as discussed and developed during coordinated meetings among tribes and Western. Method Two also more fairly distributes the Native American tribes' share of the resource pool among the tribes. Under Method One, some tribes would receive an allocation greatly in excess of their load requirements.

• Method One simply does not do what Western states it is intended to do. It is not a fair or equitable allocation to the tribes.

Response: Western used components of the Mni Sose Water Rights Coalition's allocation method in the development of the Final Allocation Procedures and the Final Allocations. As stated in the Post-2000 Resource Pool Allocation Procedures General Eligibility Criteria section III.D, ''Allocations made to Native American tribes will be based on estimated load developed by the Native American tribes. Inconsistent estimates will be adjusted by Western during the allocation process.'' Western accepted loads submitted by the tribes which were estimated by the Mni Sose Intertribal Water Rights Coalition, Inc. Western also accepted loads estimated using other methods developed by individual tribes. Western only adjusted tribal load estimates when an obvious error was made in the load calculation or when an unreasonable assumption was used in the estimation method.

Western provided an additional opportunity to address and clarify comments regarding the levelized method of calculating proposed allocations for new Native American customers and proposed an alternative method. On December 3, 1996, Western published in the Federal Register, at 61 FR 64080, a Notice of Clarification, Response to Comments and Request for Additional Comments. Western held a public information and comment forum on December 17, 1996, to accept oral and written comments regarding the methodology used to calculate the proposed allocations for new Native American customers. The comment period for this Federal Register notice ended January 6, 1997. The public process was a consultation period for both Native Americans and other interested entities, and the Mni Sose Intertribal Water Rights Coalition, Inc. was involved in that process.

Western recognizes the concern expressed by the Rosebud Sioux Tribe regarding the minor contribution of indirect benefits from the Rosebud Electric Cooperative in comparison to the other two co-suppliers and the inequitable effect it has on the Rosebud Sioux Tribe's proposed allocation under Method One. It was appropriate to adjust the calculation of Rosebud Sioux Tribe's indirect benefit by excluding the indirect benefits provided by Rosebud Electric Cooperative. The Rosebud Sioux Tribe and others raised this issue in both the information meetings and the formal comment forums in addition to sending in written comments. The adjustment to Method One was a data issue and not a change in the guidelines for making the allocations established through the public process. Western was not aware of this discrepancy until information was provided during the process. As a result of this information, Western has adjusted Method One as originally published to address this concern.

Western reviewed the commenter's concern that the Flandreau Tribe could possibly experience a net loss of hydropower benefits, as proposed, when considering their total power supply (supplemental power and direct benefits). All long term firm power customers of Western are subject to the

requirement that they will lose 4 percent of their allocation as provided by the Program regardless of what amount is allocated to the tribe.

We recognize the concern of the Crow Creek Sioux Tribe regarding the different rate designs of the cooperatives that serve the reservation and their effect on the ratepayers. Western has no control over these rate designs and this issue is outside of our allocation process. It should be noted that although Crow Creek Sioux Tribe's comment was directed at Method One, Method Two does not correct the rate design problem either.

Western received diverse comments regarding the proposed Method One and Method Two. The intent of the Program was to provide the benefits of Federal hydropower allocations directly to individual tribes in an equitable manner. After reviewing all comments, Western selected Method One, adjusted to address the relatively small indirect benefits provided to the Rosebud Sioux Tribe by Rosebud Electric Cooperative, to determine the size of the allocations based upon the need to meet an appropriate share of the load for qualified Native American tribes. Western used the Post-2000 Resource Pool Allocation Procedures criteria and exercised its discretion under Reclamation Law in shaping the Final Allocations in response to input during the public process in allocating this resource to eligible applicants. Method One, as adjusted, meets Western's Program requirements and the needs of Western's new customers, while being responsive to the comments received in this process. Western did not receive comments showing an overwhelming support for a change to Method Two. In particular, Mni Sose Intertribal Water Rights Coalition, Inc., did not indicate a preference for either Method One or Method Two.

III. Final Power Allocations

The following final power allocations are made in accordance with the Final Procedures published in the Federal Register at 61 FR 41142 on August 7, 1996. All of the allocations are subject to the execution of a contract in accordance with the procedures. Western announces that Native American tribes' share of the resource pool is 80.64 percent in the summer season and 78.33 percent in the winter season. The new utility and nonutility customers' share of the resource pool is 19.36 percent in the summer season and 21.67 percent in the winter season.

Allocations to Native American Tribes

The final allocations of power for new Native American customers and the data these allocations are based upon are as follows:

New native American customers	Estimated demand kilowatts	Average current western service		Post-2000 power allocation	
		Summer	Winter	Summer kilowatts	Winter kilowatts
Blackfeet Nation	18,600	32	27	5,507	5,271
Cheyenne River Sioux	13,500	33	29	3,862	3,556
Chippewa Cree-Rocky Boy	5,000	55	44	330	567
Crow Creek	4,100	50	47	476	342
Crow	12,500	55	44	826	1,417
Devils Lake Sioux	7,700	22	14	3,050	3,183
Flandreau Santee Sioux	2,355	55	56	156	0
Fort Belknap Indian Community	6,200	28	22	2,084	2,067
Fort Peck Tribes	15,300	34	31	4,224	3,724
Lower Brule Sioux	3,100	33	29	887	817
Lower Sioux	3,750	0	0	2,310	2,075
Northern Cheyenne	9,400	36	37	2,407	1,724
Oglala Sioux-Pine Ridge	29,600	28	24	9,948	9,277
Omaha Tribe of Nebraska	5,100	15	14	2,377	2,108
Ponca Tribe of Nebraska	2,100	8	6	1,126	1,036
Rosebud Sioux	21,300	33	29	6,093	5,610
Santee Sioux Tribe of Nebraska	1,100	10	8	568	521
Sisseton-Wahpeton Sioux	7,500	40	38	1,620	1,300
Standing Rock Sioux	12,900	30	29	4,077	3,398
Three Affiliated Tribes	8,000	30	25	2,529	2,427
Turtle Mountain Chippewa	18,000	35	18	4,789	6,721
Upper Sioux	1,250	42	39	245	204
White Earth Indian Reservation	3,500	6	7	1,946	1,692
Winnebago Tribe of Nebraska	3,100	10	8	1,600	1,468
Yankton Sioux	5,300	25	24	1,940	1,661

The final allocations for new Native American customers were calculated based upon the estimated demand figures set forth in the table above. Estimated demand figures were taken from the Native American tribal applications. Inconsistent demand estimates were adjusted by Western.

In order to appropriately distribute the benefits of Federal hydropower among the tribes, Western calculated the proposed power allocations in the table above in such a manner as to levelize total Federal hydropower benefits to each of the Native American tribes. This results in a total Federal hydropower benefit of 61.6065 percent in the summer season and 55.3396 percent in the winter season to each of the tribes. To levelize the total Federal hydropower benefits, the average current percentage of Western service that each of the tribes receives through their current power supplier(s) was utilized and is as shown in the table above. For the Blackfeet Nation, Western used the weighted average of the current percentage of Western service for the remaining tribes. The Blackfeet Nation is served by Glacier Electric Cooperative, which is a total requirements customer of Bonneville Power Administration, therefore the Blackfeet Nation does not receive Western service, but does receive the benefit of Federal hydropower. The

weighted average of the current percentage of Western service changed under the adjusted Method One because Rosebud Sioux Tribe's average current percentage of Western service changed. The final power allocation for each tribe was determined by multiplying the difference between the total Federal hydropower benefit provided to each tribe (61.6065 percent in the summer season and 55.3396 percent in the winter season) and each tribe's average current percentage of Western service by each tribe's estimated demand.

The final allocations to new Native American customers set forth in the table above are based on the P–SMBP–ED marketable resource available at this time. If the P–SMBP–ED marketable resource is adjusted in the future, the final allocations will be adjusted accordingly.

B. Allocation to Utility and Nonutility Customers

The final allocations of power for new utility and nonutility customers and the loads these allocations are based upon are as follows:

Utility and Nonutility Customers	1994 Summer season load kilowatts	1994–95 Winter season load kilowatts	Post-2000 power allocation	
			Summer kilowatts	Winter kilowatts
Village of Emerson, NE	1,454	1,146	361	412
City of Estherville, IA	11,040	7,820	2,743	2,814
City of Randolph, NE	1,861	1,386	462	499
City of Pocahontas, IA	3,980	3,144	989	1,131
City of Madison, NE	10,034	8,759	2,493	3,152
City of South Sioux City, NE [1]	24,977	21,846	5,000	5,000
City of Sergeant Bluff, IA	6,076	3,888	1,510	1,399
City of Wakefield, NE	4,717	3,667	1,172	1,320
City of Fairmont, MN	2,330	2,464	579	887
City of Marathon, IA	520	764	129	275
City of Stanton, ND	656	850	163	306

[1] 5,000 kW is the maximum allocation allowed under the Final Procedures.

The final allocations of power for new utility and nonutility customers were calculated using Post-1985 Marketing Plan criteria. Under the Post-1985 Marketing Plan criteria, the summer allocations are 24.84413 percent of total summer load and the winter allocations are 35.98853 percent of total winter load.

The final allocations to new utility and nonutility customers set forth in the table above are based on the P–SMBP–ED marketable resource available at this time. If the P–SMBP–ED marketable resource is adjusted in the future, the final allocations will be adjusted accordingly.

III. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act.

IV. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule, under control number 1910–1200.

V. Review Under the National Environmental Policy Act

Western requested input regarding the identification of any additional environmental issues both in the Federal Register at 61 FR 2817, January 29, 1996, and at the public meetings. No environmental comments were received or additional environmental issues identified. Therefore, Western has determined that the analysis in the Program Environmental Impact Statement is sufficient for this action and current DOE (10 CFR part 1021) regulations indicate that no further National Environmental Policy Act impact analysis documentation is required.

VI. Determination Under Executive Order 12866

DOE has determined this action does not meet the criteria of Executive Order 12866, 58 FR 51735 and is not a significant regulatory action. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

VII. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirement: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather that a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a), sections 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more or them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

VIII. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of the Small Business Regulatory Enforcement Fairness Act 1996. The Office of Management and Budget has determined that the final regulations do not constitute a ''major rule'' under the Act (5 USC 801, 804). DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

Issued at Golden, Colorado, February 28, 1997.

J.M. Shafer,

Administrator.

[FR Doc. 97–5996 Filed 3–10–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140256; FRL–5593–5]

Access to Confidential Business Information by Hampshire Research Associates, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Hampshire Research Associates, Inc. (HRA), of Alexander, Virginia, for access to information which has been submitted to EPA under section 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 7W–0244–NASA, contractor HRA, of 1600 Cameron St., Alexandria, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in generating a report that contains data aggregates and comparisons among chemicals and chemical groups collected from the Inventory Update Reports for 1986, 1990, and 1994.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 7W–0244–NASA, HRA will require access to CBI submitted to EPA under section 8 of TSCA to perform successfully the duties specified under the contract. HRA personnel will be given access to information submitted to EPA under section 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of January 19, 1993 (58 FR 4992; FRL–4182–8), under contract number 68–D2–0064, HRA was authorized for access to CBI submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under section 8 of TSCA that EPA may provide HRA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters. Before access to TSCA CBI is authorized at HRA, EPA will approve their security certification statement.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1997.

HRA personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: March 3, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–6017 Filed 3–10–97; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140255; FRL–5593–4]

Access to Confidential Business Information by PRC Environmental Management, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, PRC Environmental Management, Inc. (PRC), of Chicago, Illinois, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W4–0004, contractor PRC, of 200 East Randolph Drive, Chicago, IL, will assist the Office of Waste and Chemicals Management and Regional Offices RCRA Enforcement, Permitting and Assistance Programs in the implementation of RCRA/TSCA related initiatives. Major areas of support include permitting activities, Subtitle D solid waste, corrective actions and RCRA program planning.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W4–0004, PRC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. PRC personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide PRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at PRC's sites located at 200 East Randolph Drive, Suite 4700, Chicago, IL; One Union Square 600 University St., Suite 800, Seattle, WA; 1 Dallas Center, 350 North St. Paul St., Suite 2600, Dallas, TX; and 1099 18th St., Suite 1960, Denver, Co.

PRC will be authorized access to TSCA CBI at their facilities under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at PRC's sites, EPA will approve PRC's security certification statements, perform the required inspection of its facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, PRC will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until December 31, 1998.

PRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security