

AEPSC states that a copy of the filing was served upon Kentucky Mountain Power, L.L.C. and the Kentucky Public Service Commission.

*Comment Date:* December 9, 2003.

#### 12. Southwest Power Pool, Inc.

[Docket Nos. ER04–202–000]

Take notice that on November 18, 2003, Southwest Power Pool, Inc. (SPP) tendered for filing a Notice of Cancellation of Service Agreement No. 890 between SPP and Kansas Municipal Energy Agency.

SPP states that it has served a copy of this filing to Kansas Municipal Energy Agency.

*Comment Date:* December 9, 2003.

#### 13. Kentucky Utilities Company

[Docket No. ER04–203–000]

Take notice that on November 18, 2003, Kentucky Utilities Company (KU) pursuant to section 205 of the Federal Power Act, 16 U.S.C. 24 (2000) and § 35.11 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.11 (2003), filed an Amendment to the Contract for Electric Service by and between Kentucky Utilities Company and the City of Providence; KU requested waiver of the Commission's regulations to permit it to establish an effective date of November 18, 2003 for the Amendment.

*Comment Date:* December 9, 2003.

#### 14. Xcel Energy Inc. and NRG Energy, Inc. and Its Public Utility Subsidiaries

[Docket No. ES03–59–002]

Take notice that on November 18, 2003, NRG Energy, Inc. (NRG) filed with the Federal Energy Regulatory Commission (Commission) an amendment to the Section 204 authority granted to NRG in this proceeding. The filing requests that the Commission authorize NRG to issue up to \$2.715 billion in debt as part of its proposed refinancing package, which would represent an increase of \$500 million over the \$2.215 billion the Commission approved in its October 22, 2003 Letter Order. See NRG Energy, Inc., 105 FERC ¶ 62,037 (2003).

*Comment Date:* December 9, 2003.

#### 15. Inland Power & Light Company

[Docket No. ES04–5–000]

Take notice that on November 14, 2003, the Inland Power & Light Company (Inland) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to: (1) Issue long-term debt in an amount not to exceed \$20 million; and (2) enter into a \$10 million unsecured line-of-credit. Inland states

that borrowings would be pursuant to agreements with the National Rural Cooperative Financing Corporation.

Inland also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

*Comment Date:* December 11, 2003.

#### 16. Kandiyohi Power Cooperative

[Docket No. ES04–6–000]

Take notice that on November 14, 2003, the Kandiyohi Power Cooperative (Kandiyohi) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to make long-term borrowings in an amount up to \$2.5 million with the National Rural Cooperative Finance Corporation.

Kandiyohi also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

*Comment Date:* December 5, 2003.

#### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Linda L. Mistry,**

*Acting Secretary.*

[FR Doc. E3–00416 Filed 12–01–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### Post-2005 Resource Pool, Pick-Sloan Missouri Basin Program—Eastern Division

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of final procedures.

**SUMMARY:** The Western Area Power Administration (Western), Upper Great Plains Customer Service Region, a Federal power marketing agency of the Department of Energy (DOE), hereby announces its Post-2005 Resource Pool Allocation Procedures. The Energy Planning and Management Program (Program) provides for project-specific resource pools and power allocations from these pools to new preference customers and/or other appropriate purposes as determined by Western. Western, under the Program, is finalizing procedures to administer a Federal power resource pool increment of up to 1 percent (approximately 20 megawatts) of the long-term marketable resource of the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) that will become available January 1, 2006. Western proposed procedures in the **Federal Register** on March 4, 2003, and responses to public comments received pertaining to the proposed procedures are included in this notice. Western will publish a notice of proposed allocations in the **Federal Register** after the effective date of this notice.

**DATES:** The Post-2005 Resource Pool Allocation Procedures will become effective January 2, 2004.

**ADDRESSES:** Information regarding the Post-2005 Resource Pool Allocation Procedures, including comments, letters, and other supporting documents made or kept by Western for the purpose of developing the final procedures, are available for public inspection and copying at the Upper Great Plains Customer Service Region, Western Area Power Administration, located at 2900 4th Avenue North, P.O. Box 35800, Billings, MT 59107–5800. Public comments are available for viewing at <http://www.wapa.gov/ugp/contracts/post2005/comments.htm>.

**SUPPLEMENTARY INFORMATION:** On October 20, 1995, Western published the Final Program Rule (Final Rule) that became effective on November 20, 1995. As described in 10 CFR 905, subpart C of the Final Rule provides for project-specific resource pools and power allocations from these pools to eligible new customers and/or for other

appropriate purposes as determined by Western. Under the Final Rule, resource pool increments shall be established by pro rata withdrawals, on 2 years' notice, from then-existing customers. Specifically, 10 CFR 905.32 (b) provides:

At two 5-year intervals after the effective date of the extension to existing customers, Western shall create a project-specific resource pool increment of up to \* \* \* 1 percent of the long-term marketable resource under contract at the time. The size of the additional resource pool increment shall be determined by Western based on consideration of the actual fair-share needs of eligible new customers and other appropriate purposes.

Western held public information and comment forums on April 8–10, 2003, to accept oral and written comments on the proposed procedures and call for applications. The formal comment period ended June 2, 2003. The Post-2005 Resource Pool Allocation Procedures in this **Federal Register** notice explain in detail how Western intends to implement Subpart C-Power Marketing Initiative of the Energy Planning and Management Program Final Rule in the P-SMBP—ED.

### Response to Comments Regarding Post-2005 Resource Pool Allocation Procedures

#### I. Comments and Responses

*Comment:* Western received many comments supporting the general eligibility and allocation criteria, indicating that Western properly scoped the best use of the resource pool, and that allocations should be made to new preference entities and new Native American tribes.

*Response:* Western appreciates the response with respect to the proposed general eligibility and allocation criteria, proposed use of the resource pool, and intent to make allocations available to new preference entities and new Native American tribes.

*Comment:* Western received many comments that it should not allocate power for other appropriate purposes. Western also received a comment that any renewable resource program should be supported by Western's customers and that Western should not mandate a specific program for other appropriate purposes. One comment was specifically against allocating power to support renewable energy resources. Western received a comment that the preference entities purchasing Pick-Sloan power are in the best position to determine the best use of Pick-Sloan power in combination with their supplemental power supplier. Western received one comment that the

consumer-owned electric utilities are best able to determine the needs and economics of developing renewable energy resources.

*Response:* Western believes renewable resources can best be supported by allowing existing customers to retain the power that may be available after allocating to new customers. This will allow all preference entities across the marketing area to leverage this power and use existing allocations to support renewable resources. Several customers are already demonstrating support of renewable resources through their investments in various wind projects across the P-SMBP—ED.

*Comment:* Western received many comments that all new customers should be subject to the same contractual provisions as existing Western customers. Specifically, all contracts should contain the provision which prohibits the resale of Federal power. Western also received comments that all new customers should be subject to future withdrawal provisions in the same manner as existing customers.

*Response:* Western agrees with this comment. All contracts with new customers will contain Western's existing general contract principles and will be subject to future resource pool withdrawals.

*Comment:* Western received many comments suggesting that power allocations should not be used for developing "cash registers" to generate profits, which may or may not flow back to retail customers in the region.

*Response:* Western agrees with this comment. It is contrary to Western's policy and undermines Reclamation Law to allow a customer to resell power at a profit to third parties.

*Comment:* Western received many comments that the same procedures should be followed that were used in the Post-2000 Resource Pool for new Native American tribes.

*Response:* Western agrees with this comment. Western intends to follow the framework of Post-2000 Resource Pool procedures for new Native American tribes as further clarified in this **Federal Register** notice.

*Comment:* Western received many comments that the resource pool should not be used for existing beneficiaries, directly or indirectly. Western also received many comments that all Federal power benefits should be considered when determining new allocations.

*Response:* The Proposed Post-2005 Allocation Procedures published in the **Federal Register** at 68 FR 10233 provide, in part, that "Qualified applicants must not be currently

receiving benefits, directly or indirectly, from a current P-SMBP—ED firm power allocation." Western agrees with this comment that all Federal benefits received by an entity in the Upper Great Plains Region (UGPR) should be considered when making new allocations. The intent of the new resource pool was to allocate to new customers who are not currently receiving the benefit of Federal power unless otherwise provided for in the general eligibility criteria listed below. In the past, other regions of Western have allowed preference entities to receive power from more than one project when marketing areas overlap. Given the new customer load that exists in portions of the UGPR service territory, and consistent with the intent of the Program, the UGPR is not willing to establish this practice. An existing customer will not be eligible to receive power from a resource pool unless Western provides otherwise on a project-specific basis. In these final procedures, Western will change the general eligibility criteria to state: "Qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P-SMBP—ED allocation or other firm Federal power commitment. Qualified Native American applicants, who did not receive an allocation from the Post-2000 Resource Pool, are not subject to this requirement."

*Comment:* Western received comment that allocations should be used for end users. Western also received one comment suggesting that full requirements should be offered to new preference entities, if available.

*Response:* Western plans to make allocations from the up to 1 percent resource pool to qualified applicants based upon the Post-1985 Marketing Plan Criteria and the Program Criteria, which do not allow for Western to allocate to customers for full requirements.

*Comment:* Western received comments that anything unallocated should go back to the existing customers following the contract provisions on a pro rata share.

*Response:* Western agrees with this comment. If power is reserved for new customers but not allocated, or resources are offered but not placed under contract, this power will be offered on a pro rata basis to customers that contributed to the resource pool by applying the extension formula in the contract. In these final procedures, Western will clarify the general allocation criteria to state: "The resource pool will be dissolved subsequent to the closing date of the last

qualified applicant to execute their respective firm power contract. Firm power not under contract will be used in accordance with the Program.”

*Comment:* Western received a comment that did not support the up to 1 percent withdrawal.

*Response:* Western will withdraw up to 1 percent as determined in Subpart C, Power Marketing Initiative, 10 CFR 905.32(e)(1).

*Comment:* Western received a comment supporting increasing allocations awarded to the Lower Brule Sioux and Flandreau Santee Sioux tribes in the Post-2000 Resource Pool Allocation Process due to omissions in applications for power.

*Response:* If Western were to entertain requests for increases or adjustments to allocations, all customers would need to be afforded the opportunity to submit new applications. It is likely Western would receive significant modification requests. These would be extremely difficult to substantiate and likely not be supportable with the limited amount of power available from this resource pool. Therefore, Western will not support additional allocations for the Lower Brule Sioux and Flandreau Santee Sioux tribes.

*Comment:* Western received one comment that existing statutory obligations were not followed and that Western violated its trust responsibilities and refused to consider securing additional power for the Lower Brule Sioux and Flandreau Santee Sioux tribes.

*Response:* Under its statutory obligations, Western will allocate power to new customers that meet preference status. Western has discretion as defined by Reclamation Law to determine the eligibility of Indian tribes and other entities entitled to preference in allocating Federal power.

*Comment:* Western received one comment that suggests Western has no intention to follow criteria established in the sale of Federal hydropower.

*Response:* Within its statutory guidelines, Western has wide discretion as to whom and on what terms it will contract for the sale of Federal power. Power must be sold to preference entities in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. Western will market this resource pool consistent with Reclamation Law and the procedures outlined in this **Federal Register** notice.

*Comment:* Western received one comment that suggested it is unlawful to adjust allocation guidelines for discrimination purposes. The statement

“Native American tribes are not subject to this requirement” is discriminatory.

*Response:* Western will make Federal power available to preference entities that are public bodies and nonprofit entities entitled to priority in the purchase of Federal power under Reclamation Law. The Program changed Western’s policy such that the Program allowed Western to allocate to Native American tribes. Western’s change in policy is in keeping with the spirit of DOE’s Indian policy and recognizes the special and unique relationship between the United States and the tribal governments.

*Comment:* Western received a comment that to maximize the political benefits they would like to see as many new retail customers as possible.

*Response:* It is not Western’s intent to try to gain political benefits with this resource pool. It is Western’s policy to promote widespread use of its hydropower resources. Western will market hydroelectric power on a wholesale basis to preference entities who qualify under the Post-2005 Resource Pool Allocation Process.

### **Final Post-2005 Resource Pool Allocation Procedures**

#### *I. Amount of Pool Resources*

Western will allocate up to 1 percent (approximately 20 megawatts) of the P-SMBP—ED long-term firm hydroelectric resource available as of January 1, 2006, as firm power to eligible new preference customers. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western electric service contract.

#### *II. General Eligibility Criteria*

Western will apply the following general eligibility criteria to applicants seeking an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures.

A. All qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. All qualified applicants must be located within the currently established P-SMBP—ED marketing area.

C. All qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P-SMBP—ED allocation or other firm Federal power commitment. Qualified Native American applicants, who did not receive an allocation from the Post-2000 Resource Pool, are not subject to this requirement.

D. Qualified utility and non-utility applicants must be able to use the firm

power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants that desire to purchase power from Western for resale to consumers, including cooperatives, municipalities, public utility districts, and public power districts must have met utility status by January 1, 2003. Utility status means the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

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

#### *III. General Allocation Criteria*

Western will apply the following general allocation criteria to applicants seeking an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercising its discretion under Reclamation Law.

B. An allottee will have the right to purchase such firm power only upon executing an electric service contract between Western and the allottee, and satisfying all conditions in that contract.

C. Firm power allocated under these procedures will be available only to new preference customers in the existing P-SMBP—ED marketing area. The marketing area of the P-SMBP—ED is Montana east of the Continental Divide, all of North Dakota and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and then northwesterly to the northern boundary of the state at the 96½° meridian.

D. Allocations made to Native American tribes will be based on the actual load experienced in calendar year 2002. Western has the right to use estimated load values for calendar year 2002 should actual load data not be available. Western will adjust inconsistent estimates during the allocation process.

E. Allocations made to qualified utility and non-utility applicants will be based on actual loads in calendar year 2002. Western will apply the Post-1985 Marketing Plan and the Program criteria to these loads. Western will carry forward key principles and criteria established in the Post-2000 Resource Pool, except as modified here.

F. Energy provided with firm power will be based upon the customer's monthly system load pattern.

G. Any electric service contract offered to a new customer will be executed by the customer within 6 months of a contract offer by Western, unless otherwise agreed to in writing by Western.

H. The resource pool will be dissolved subsequent to the closing date of the last qualified applicant to execute their respective firm power contract. Firm power not under contract will be used in accordance with the Program.

I. The minimum allocation will be 100 kilowatts (kW).

J. The maximum allocation for qualified utility and non-utility applicants will be 5,000 kW.

K. Contract rates of delivery will be subject to adjustment in the future as provided for in the Program.

L. If unanticipated obstacles arise to delivering hydropower benefits to Native American tribes, Western retains the right to provide the economic benefits of its resources directly to these tribes.

#### IV. General Contract Principles

Western will apply the following general contract principles to all applicants receiving an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures.

A. Western will reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project pumping requirements, by giving a minimum of 5 years' written notice in advance of such action.

B. Western, at its discretion and sole determination, reserves the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Any such adjustments will only take place after a public process by Western.

C. Each allottee is ultimately responsible for obtaining its own third-party delivery arrangements, if necessary. Western may assist allottees in obtaining third-party transmission arrangements for delivering firm power allocated under these procedures to new customers.

D. Contracts entered into under the Post-2005 Resource Pool Allocation Procedures provide for Western to furnish firm electric service effective from January 1, 2006, through December 31, 2020.

E. Contracts entered into as a result of these procedures will incorporate Western's standard provisions for power sales contracts, integrated resource

planning and the general power contract provisions.

F. Contracts entered into will include provisions for a reduction of up to 1 percent of the current contracted rate of delivery effective January 1, 2011, in accordance with the Program.

#### V. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 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 this action does not require a regulatory flexibility analysis since it is a rulemaking about rates or services for public property.

#### VI. Small Business Regulatory Enforcement Fairness Act

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

#### VII. Determination Under Executive Order 12866

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

Dated: November 17, 2003.

**Michael S. Hacsckaylo,**

*Administrator.*

[FR Doc. 03-29986 Filed 12-1-03; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### Operational Alternative for Post-2004 Operations

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of proposed decision.

**SUMMARY:** The Western Area Power Administration (Western), a Federal power marketing administration within the Department of Energy (DOE), markets Federal power from the Central Valley and Washoe projects through the

Sierra Nevada Region (SNR). Western published its Notice of Intent announcing the operational alternatives it was considering for post-2004 operations in the **Federal Register** on June 24, 2003. Western held public meetings in July 2003 and accepted comments through August 8, 2003. Western reviewed the comments and assessed the feasibility of implementing each alternative to reach its proposed decision. Western's proposed decision is to implement a contract-based sub-control area. Western will approach the California Independent System Operator (ISO) and the Sacramento Municipal Utility District (SMUD) to collect data and initiate discussions to develop a contract.

**DATES:** To ensure they are considered, written comments from entities interested in commenting on this Notice of Proposed Decision must be received no later than 4 p.m., January 2, 2004. Western will accept written comments received via regular mail through the U.S. Postal Service if they are postmarked at least 3 days before such date. Entities are encouraged to hand deliver, use certified mail, or e-mail to deliver comments.

**ADDRESSES:** Written comments should be sent to Tom Carter, Power Operations Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630-4710, or by e-mail to [tcarter@wapa.gov](mailto:tcarter@wapa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authorities

The selection of an alternative for post-2004 operations is made under the authorities contained in the Department of Energy Organization Act (42 U.S.C. 7101-7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

##### Public Process

Western published its Notice of Intent to consider certain post-2004 operational alternatives in the **Federal Register** (68 FR 37484) on June 24, 2003. The notice described each alternative and the factors Western would use in making a decision on which alternative to select. On July 9, 2003, Western held a Public Information Forum where each alternative was described, and the evaluation factors that would be used by Western when making its proposed decision were presented. Navigant