

gallons per day (mgd) (15 mg/30 days) of potable water from Downingtown Municipal Authority (DMUA) to the applicant's distribution system via a proposed interconnection. DMUA has adequate capacity to meet the applicant's needs within their existing 2.5 mgd water allocation from the East Branch Brandywine Creek, as supported by releases from Marsh Creek Reservoir. The project 0.5 mgd water transfer represents an alternative to and is proposed in lieu of the use of water supply from the applicant's previously approved Cornog Quarry project (approved under DRBC Docket No. D-98-11 CP on April 3, 2002). The proposed docket will consolidate all the applicant's sources in the UGS Northern Division distribution system, including those previously approved under Dockets Nos. D-98-11 CP and D-2002-5 CP, including the use of Kay Wells B and C on other than a seasonal basis. As a condition for approval of this docket, Dockets Nos. D-98-11 CP and D-2002-5 CP will be rescinded. The project will serve portions of East Brandywine, West Brandywine and Caln Townships, all located in Chester County, Pennsylvania.

5. *East Rockhill Township D-2004-5 CP.* An application for approval of a ground water withdrawal project to supply up to 5.47 mg/30 days of water for supplemental irrigation of the applicant's proposed golf course from new Wells Nos. PW-1, PW-2 and PW-3 located in the Brunswick and Lockatong Formations, and to limit the existing withdrawal from all wells to 5.47 mg/30 days. The project is located in the Tohickon-Three Mile Run Watershed in East Rockhill Township, Bucks County located in the Southeastern Pennsylvania Ground Water Protected Area.

The Commission's 1:30 p.m. business meeting on March 3 also will include: adoption of the Minutes of the January 21, 2004 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; and a report by the Commission's general counsel.

Draft dockets scheduled for public hearing on March 3, 2004 are posted on the Commission's Web site, <http://www.drbc.net>, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609-883-9500 ext. 221 with any docket-related questions.

Individuals in need of an accommodation as provided for in the

Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Written comment on the Proposed Resolution to Establish an Experimental Augmented Conservation Release Program for the New York City Delaware Basin Reservoirs for the Period from May 1, 2004 through May 31, 2007 will be accepted through March 19, 2004. Comment may be submitted by e-mail to: [FisheriesDocket@drbc.state.nj.us](mailto:FisheriesDocket@drbc.state.nj.us) or by U.S. Mail to: Fisheries Docket, Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628-0360. Please do not send comments for the record directly to staff members or commissioners.

Dated: February 17, 2004.

**Pamela M. Bush,**

*Commission Secretary.*

[FR Doc. 04-3792 Filed 2-20-04; 8:45 am]

**BILLING CODE 6360-01-P**

## DEPARTMENT OF ENERGY

### Office of Science; Fusion Energy Sciences Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, March 29, 2004, 9 a.m. to 6 p.m.; Tuesday, March 30, 2004, 9 a.m. to 12 noon.

**ADDRESSES:** The Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878, USA.

**FOR FURTHER INFORMATION CONTACT:** Albert L. Opdenaker, Office of Fusion Energy Sciences, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-1290; telephone: 301-903-4927.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Meeting:* The purpose of this meeting is to complete work on the charges dealing with Workforce Development, the review of Inertial Fusion Energy program, and the Committee of Visitors' review of the theory and computations program. A

preliminary report from the Panel dealing with the process for setting program priorities is also scheduled.

#### *Tentative Agenda:*

Monday, March 29, 2004.

- Office of Science Perspective;
- Office of Fusion Energy Sciences

Perspective;

- Final report from the Workforce Development Panel;
- Final report from the Committee of Visitors—Theory and Computations Program;
- Final report from the Inertial Fusion

Energy Review Panel;

- Public comments.

Tuesday, March 30, 2004.

- Preliminary report from the Panel Dealing with the Process for Setting Program Priorities;
- ITER Project Status.

**Public Participation:** The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301-903-8584 (fax) or [albert.opdenaker@science.doe.gov](mailto:albert.opdenaker@science.doe.gov) (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

**Minutes:** We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on February 18, 2004.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04-3818 Filed 2-20-04; 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 final 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. On December 2, 2003, Western published its proposed decision to implement a contract-based sub-control area and stated it would approach the California Independent System Operator (ISO) and the Sacramento Municipal Utility District (SMUD) to collect data and initiate discussions. Western's final decision is to proceed to implement a contract-based sub-control area.

**DATES:** This final decision on an operational alternative for post-2004 operations shall become effective 30 days after publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Tom Carter, Power Operations Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630-4710, (916) 353-4427, or by e-mail at [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 laws, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

##### **Introduction**

On December 31, 2004, a number of existing transmission contracts between Western and the Pacific Gas and Electric Company (PG&E) expire. When these contracts expire, Western will become responsible for arranging and meeting most of its own supplemental power and transmission needs. This new responsibility will require Western to adopt and implement a preferred post-2004 operational configuration, as well as to select a preferred control area operator to host Western's operations. Under existing contracts, PG&E provides Western with the ISO interface services.

The preferred post-2004 operational configuration must ensure Western will be able to implement its 2004 Power Marketing Plan and allow it to fulfill its statutory obligations to the Bureau of Reclamation (Reclamation) as well as meet its contractual obligations to its Preference Power customers. The final decision to implement sub-control area operations is based on the alternative meeting all five of the evaluation criteria; *i.e.*, flexibility, certainty, durability, operational transparency, and cost-effectiveness, presented in the June 24, 2003, **Federal Register** and finalized in the December 2, 2003, **Federal Register**.

##### **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 Consulting, Inc., presented results from its comparative economic benefits study performed on behalf of Reclamation and Western, which compared the net benefits of each alternative.

Western held a Public Comment Forum in Folsom, California, on July 30, 2003, during which representatives from 12 entities commented on the proposed alternatives, the decision-making factors, and the comparative economic benefits study. The comment period closed on August 8, 2003. Western received written comments from twenty-six (26) different entities. Western considered these comments and published its proposed decision in the December 2, 2003, **Federal Register** (68 FR 67417) on a post-2004 operational alternative.

##### **Summary of Western's Proposed Decision**

###### *Summary of Comments on Western's Proposed Decision*

After Western published its proposed decision on December 2, 2003, twenty-three (23) different entities submitted written comments. These letters may be viewed at: <http://www.wapa.gov/sn/initiatives/post2004/opScenarios/Comments01-02-04/>. Sixteen (16) comments indicated general support for Western's contract-based sub-control area approach. Four (4) comments recommended Western forego

discussions with the ISO or SMUD and proceed directly to the formation of a Federal control area. Many comments recognized the need for Western to avoid the no action alternative and move as expeditiously as possible to select and initiate steps to implement a post-2004 operational solution. Fourteen (14) comments recommended Western proceed simultaneously on a parallel track with control area formation activities as a contingency in the event negotiations to form a contract-based sub-control area with the ISO or SMUD are not successful. Ten (10) comments recommended Western consider forming a customer support committee to assist Western in analyzing the differences between the ISO's and SMUD's contract-based sub-control area proposals and to ensure that customer needs are adequately considered.

In addition to providing comments on Western's proposed action, many comments also repeated the same issues and concerns raised earlier during the public process, which closed on August 8, 2003. These previous comments may be viewed at: <http://www.wapa.gov/sn/initiatives/post2004/opScenarios/Comments08-08-03/>. The ISO communicated its appreciation at seeing a contract-based sub-control area option with the ISO as one of the preferred approaches to meeting Western's objectives. The ISO indicated, however, it continues to have the same operational concerns it previously expressed about the formation of a Federal control area should Western choose to become a sub-control area with SMUD. In addition to operational issues, the ISO continued to express reservations about cost shift issues. Finally, the ISO expressed reservations related to the selection of an approach (contract-based sub-control area agreement with SMUD), which in its judgment did not follow Western's public process. The ISO requested Western consider a separate public process to evaluate a contract-based sub-control area arrangement with SMUD. PG&E expressed three general concerns related to the environmental documentation for the proposed action, clarification of the proposed action to either acquire existing facilities or construct new facilities at specific interconnection points, and concern about the relative lack of specific details related to the proposed action of implementing a contract-based sub-control area.

### *Western's Response to Comments on its Proposed Decision*

As part of preparing this document, Western reviewed and considered all comments it received as part of this process in making its final decision. Western concurs with the comments that an accelerated approach is needed in its discussions with the ISO and SMUD. Because of the impending termination of existing contracts, Western concurs that a contingency plan is desirable if discussions with the ISO and SMUD to form a contract-based sub-control area are not successful.

Because of the pre-decisional nature of its discussions with the ISO and SMUD, Western considers these deliberations privileged and confidential. As such, Western does not believe it is appropriate to include third parties while the negotiations are actively under way. Western, however, welcomes any advice, assistance, and support that stakeholders may be willing to furnish as part of implementing the final decision. Once Western completes its negotiations, it anticipates sharing non-business sensitive information concerning its deliberations with interested stakeholders.

Western's process has been open and allowed stakeholders to participate in the identification and consideration of other alternatives. As such, whenever new approaches are presented, Western has the discretion to consider them to ensure that its decision-making process encompasses the full range of possible choices. Although Western may not have initially contemplated forming a contract-based sub-control area arrangement with SMUD, once this implementation approach was proposed by stakeholders, Western has the discretion to consider it as an alternative as part of its decision-making process. In fact, Western included the approach of executing a contract-based sub-control area agreement with SMUD as a means to accomplish its proposed decision in the December 2, 2003, **Federal Register** and sought comments on the different ways to implement this alternative. As negotiations proceed with the ISO and SMUD, Western anticipates collecting sufficient data to make an informed judgment as to the merits of each host control area operator's proposal.

Comments about cost-shift issues provided by the ISO are outside the scope of this process and will be considered by Western in its Rate Process for implementation of its post-2004 Operational Alternative and the 2004 Power Marketing Plan.

Western finalized an environmental assessment on January 21, 2004, on its proposed action and determined that it qualifies for a categorical exclusion. As discussions with the ISO and SMUD proceed, the relative merits of these different ways to implement Western's final decision and the actions Western may need to undertake with respect to its transmission boundaries will emerge. Western will implement only those actions which are prudent, are consistent with the factors used in evaluating the post-2004 operational alternatives, allow it to fully implement its 2004 Power Marketing Plan, and ensure it meets its statutory obligations to Reclamation and contractual obligations to the Preference Power customers.

### **Decision-Making Criteria**

Finalized criteria used by Western to reach its proposed decision were published in the December 2, 2003, **Federal Register**. Western defined the five criteria it would use to evaluate alternatives in the June 24, 2003, **Federal Register**. The criteria are flexibility, certainty, durability, operating transparency, and cost-effectiveness.

### **Evaluation of Approaches**

#### *ISO Sub-Control Area Approach*

To implement the sub-control area alternative through a contract with the ISO, Western would execute a non-tariff-based agreement, with specific terms and conditions acknowledging the Federal statutory obligations under which Reclamation and Western operate the water and hydropower generation and transmission facilities of the Central Valley Project (CVP). Since the CVP is primarily an irrigation project, Project Use energy requirements have first priority for the hydropower generated from the facilities. Hydropower generation in excess of Project Use energy requirements is available for sale to CVP Preference Power customers. Reclamation and Western would continue to retain responsibility and operational control over their respective facilities. Western would retain operational control over switching operations and the maintenance and replacement of its transmission facilities, while Reclamation would continue to retain responsibility and operational control over its hydropower generation facilities, as well as any ongoing maintenance and replacement, since responsibility and operational control over the water and power operations of the CVP cannot be impaired.

### *Operating Scenario To Evaluate the ISO Sub-Control Area Approach*

Under the contract-based ISO sub-control area approach, Western would establish a physically defined contiguous system. Western contemplates using a segregated approach when implementing its proposed sub-control area. Under a segregated sub-control area operation, Western would provide reserves and regulation associated with its direct-connected customers and firm exports. In addition, Western would regulate hourly to a net scheduled interchange quantity with a host control area. As a sub-control area operator, Western would manage the net power flows through its interconnection points with the ISO, the Bonneville Power Administration, the proposed Turlock Irrigation District control area, and SMUD under reliability criteria and guidelines issued by the Western Electricity Coordinating Council (WECC) and the North American Electric Reliability Council (NERC). Western would be responsible for scheduling energy deliveries to Project Use loads, First Preference customers, and other customers within its sub-control area boundaries and in other control areas. In addition, Western would match its generation and load, provide reserves, provide frequency support for the WECC interconnection under NERC and WECC criteria, and submit generation schedules developed in coordination with Reclamation to the host control area.

Western would self-provide imbalance energy and ancillary services and may participate in the ISO markets whenever generation or reserves in excess of its needs are available. Although off-system customers would not be included in the initial phase of sub-control area development, Western intends to dynamically schedule off-system customers with the ISO after it gains sufficient experience as a sub-control area operator and the ability of Reclamation's generation to dynamically follow loads is ascertained.

Western's customers directly connected to Western's system would not be subject to use of the ISO grid for Federal power deliveries. However, off-system Project Use loads and Preference customers would incur all of the ISO transmission and related charges associated with the Federal power deliveries. Western would market transmission service on its system to its customers on an open access and non-discriminatory basis.

From an operational perspective, Western would have a 24-hour

Merchant Desk to purchase energy required for Western's Variable Resource and Full Load Service customers and would act as the Scheduling Coordinator (SC) for Reclamation's generation and Project Use loads, as well as for interested customers. The 24-hour staffing of the Merchant Desk is required by the ISO for Western to maintain its SC status, as well as to implement its 2004 Power Marketing Plan. Western would also maintain a 24-hour Switching Desk to perform switching for outages of system elements (such as transmission lines and breakers) for maintenance, repair, or replacement or to assist the interconnected systems in restoring the system following a disturbance. Since Western would schedule the use of its transmission system and those elements of the California Oregon Intertie (COI) it owns or is responsible for under contract, Western would also maintain a 24-hour Transmission Scheduling Desk. To provide regulation for the sub-control area, Western would need to maintain a 24-hour Automatic Generation Control Desk.

Western anticipates the ISO would continue to remain the single path operator for the three-line COI system. Scheduling activities and maintenance outages would be coordinated closely with the ISO.

From an organizational perspective, Western would continue to need a power accounting, billing, and settlements function to account for services purchased and sold, reconcile billings from the ISO and others to the accounting records, and issue invoices to Western's customers and the ISO. Staff would be required to verify the accuracy and integrity of the accounting records and issue invoices to Western's customers and the ISO. Depending on the nature and complexity of the future financial settlements, this function could require additional staffing above current levels.

#### Evaluation of the Flexibility Criteria Under the ISO Sub-Control Area Approach

Under the contract-based ISO sub-control area approach, Western would establish transmission boundaries. Western contemplates implementing a segregated sub-control area operation. Under a segregated sub-control area operation, Western would provide reserves and regulation associated with its direct-connected customers and firm exports. In addition, Western would regulate hourly to a net scheduled interchange quantity with a host control area. This operational configuration will allow Western the maximum flexibility

to remain intact and become responsible for its own internal operations and to retain the capability of joining a Regional Transmission Organization (RTO) in the future as a separate and distinct entity.

Western contemplates a 12-month termination window in its contract-based sub-control area agreement. When, and if, Western chooses to join an RTO, it could do so as a stand-alone entity with only minimal disruptions to its operation. Because this option preserves Western's ability to join an RTO of its own choice in the future, Western concludes the sub-control area approach meets the flexibility criteria.

#### Evaluation of the Certainty Criteria Under the ISO Sub-Control Area Approach

Under the contract-based ISO sub-control area approach, neither Western nor the direct-connected customers would be assessed ISO charges except for those services purchased from the ISO. Western, however, would charge the direct-connected customers for capacity, energy, transmission, and ancillary services with rates determined through a public process. Western's off-system Project Use loads and Preference customers would be subject to the ISO charges for transmission and delivery of Federal power and ancillary services. Western intends to dynamically schedule off-system loads after it has sufficient experience operating as a sub-control area. Consequently, non-direct connected customers may be able to avoid some of the imbalance energy and reserve charges of the ISO shortly after the sub-control area is established and operational.

Costs associated with the sub-control area approach for direct connected Project Use and Preference Power customers are expected to be reasonably predictable and include charges for labor and equipment to operate, maintain, and replace the CVP transmission facilities of Western and the costs allocated to hydropower generation facilities owned and operated by Reclamation. These costs have historically been included in the CVP power rates established by Western. The CVP rates are cost based and established at the lowest possible rates consistent with sound business principles. Additional costs associated with operating a sub-control area include purchased power costs. Such costs are necessary to balance sub-control area operations during the fall and winter months when insufficient generation is available to meet Project Use and First Preference loads. Power purchased for these purposes is

expected to be purchased in the forward markets as blocks, rather than purchased on the spot market, to reduce price volatility and ensure stable rates. With the ongoing development of generation optimization tools, Western expects the timing and quantity of purchased power amounts to be predictable within reasonable certainty after the existing resource integration contract with PG&E expires. Western concludes that for its sub-control area participants, the contract-based sub-control area approach with the ISO meets the certainty criteria.

The ISO is in the midst of implementing new operating guidance for its market redesign initiative (MD02). This new initiative would implement the concept of locational marginal pricing to deal with transmission congestion. If MD02 is implemented in its current format, during congestion periods the ISO would re-dispatch all generation based on economic factors. Under this approach, the CVP Preference customers and Project Use loads remaining in the ISO control area could potentially end up paying a different price than the cost-of-service rates associated with the delivery of Federal hydropower resources. Non-Federal entities on the ISO-controlled system could potentially end up receiving deliveries based on Federal cost-of-service rates. This potential inconsistency with Reclamation law may require Western to consider alternative mitigation measures.

#### Evaluation of the Durability Criteria Under the ISO Sub-Control Area Approach

Under the contract-based ISO sub-control area, Western would continue to be responsible for responding to industry-wide changes to its business and operating practices promulgated by NERC and WECC. Since a contract-based sub-control area would be subject to mutual amendment and not unilateral revision as under a tariff, this approach would meet the durability criteria.

#### Evaluation of the Operating Transparency Criteria Under the ISO Sub-Control Area Approach

As a sub-control area operator with the ISO, Western would operate under NERC and WECC operating criteria and guidelines. These criteria and guidelines require Western to operate its system so that it does not negatively affect the operation of the host control area as well as adjacent control areas. Western concludes the sub-control area approach with the ISO meets the operating transparency criteria.

### Evaluation of the Cost-Effectiveness Criteria Under the ISO Sub-Control Area Approach

As discussions progress with the ISO and SMUD, Western anticipates collecting sufficient cost data to make an informed judgment as to which option makes the best business case. Western anticipates comparing and contrasting each option to determine which best allows Western to fulfill its statutory and contractual obligations in a manner which is economic, financially prudent, and best meets the needs of its customers. If neither contractual approach appears to be economically and financially prudent, Western would not seek to implement them.

A contract-based sub-control area agreement provides the long-range

business stability needed by Western, Reclamation, and its customers to engage in long-range planning and enter into long-term business arrangements. This business stability is not readily available in many of the other alternatives considered by Western.

### Summary Analysis of the ISO Sub-Control Area Approach

Implementing the contract-based ISO sub-control area approach would allow the Federal transmission system to operate as one physically distinct unit. Project Use loads and customers directly connected to Western's system would not be assessed the ISO charges for transmission and related services but would incur similar charges from Western. Off-system Project Use loads and Preference customers would,

however, incur the ISO transmission and related charges. These charges represent a significant increase in costs to off-system Project Use loads and Preference customers.

From an infrastructure standpoint, the sub-control area alternative would still require the development and implementation of all of the systems described previously in the December 2, 2003, **Federal Register** in the section entitled, "Implementing the post-2004 Power Marketing Plan." Western intends to fill the vacant positions from within its organization to the maximum extent possible to minimize the need for new staff and to continue transforming its organization to meet the needs of its new Marketing Plan.

The relative ratings for the ISO Sub-Control Area are as follows:

### ISO SUB-CONTROL AREA EVALUATION SUMMARY

Evaluation factors	Meets	Almost meets	Does not meet
Flexibility .....	XX	.....	.....
Certainty .....	XX	.....	.....
Durability .....	XX	.....	.....
Operating Transparency .....	XX	.....	.....
Cost-effectiveness .....	XX	.....	.....

### SMUD Sub-Control Area Approach

A contract-based sub-control area with SMUD is similar in concept to the ISO sub-control area approach, except the signatory would be SMUD instead of the ISO. Western would execute an agreement with specific terms and conditions acknowledging the Federal statutory obligations under which Reclamation and Western operate the water and hydropower generation and transmission facilities of the CVP. Reclamation and Western would continue to retain responsibility and operational control over their respective facilities. Western would retain operational control over switching operations and the maintenance and replacement of its transmission facilities, while Reclamation would continue to retain responsibility and operational control over its hydropower generation facilities, as well as any ongoing maintenance and replacement since responsibility and operational control over the water and power operations of the CVP cannot be impaired.

### Operating Scenario To Evaluate the SMUD Sub-Control Area Approach

Western anticipates the operating scenario under this approach would be similar in scope to the one described earlier for the ISO. Under this approach,

the ISO would remain the single path operator for the three-line COI system. Scheduling and maintenance outages would be closely coordinated with the ISO and SMUD.

### Evaluation of the Flexibility Criteria Under the SMUD Sub-Control Area Approach

Western contemplates implementing a segregated sub-control area operation. Implementing this sub-control area operation will allow Western maximum flexibility to remain intact and become responsible for its internal operations and to retain the capability of joining an RTO in the future as a separate and distinct entity.

In forming its contract-based SMUD sub-control area, Western would undertake the same steps identified earlier under the ISO contractual approach. Western contemplates a 12-month termination window in its contract-based sub-control agreement. When, and if, Western chooses to join an RTO, it could do so as a stand-alone entity, with only minimal disruptions to its operations. Because this option preserves Western's ability to join an RTO of its own choice in the future, Western concludes the SMUD sub-control approach meets the flexibility criteria.

### Evaluation of the Certainty Criteria Under the SMUD Sub-Control Area Approach

Under the contract-based SMUD sub-control area approach, Western would be subject to control area operator charges from SMUD as set forth in the contract. Western would charge the direct-connected customers for capacity, energy, transmission, and ancillary services with rates determined through a public process. Costs associated with SMUD's administration of the control area, as well as any services provided to Western, will also be assessed. Western's off-system Project Use loads and Preference customers would continue to be assessed charges by the ISO for transmission and delivery of Federal power and ancillary services. Western intends to implement dynamic scheduling after it has sufficient experience operating as a sub-control area. Consequently, non-direct connected customers may be able to avoid some of the ISO's imbalance energy and reserve charges shortly after the sub-control area is established and operational.

Costs associated with the SMUD sub-control area approach for direct-connected Project Use and Preference Power customers are expected to be fairly predictable and include charges for labor and equipment to operate,

maintain, and replace the CVP transmission facilities of Western and the costs allocated to hydropower generation facilities owned and operated by Reclamation. These costs have historically been included in CVP power rates established by Western. CVP rates are cost based and established at the lowest possible rates consistent with sound business principles. Additional costs associated with operating a SMUD sub-control area are purchased power costs necessary to balance the sub-control area during the fall and winter months when insufficient generation is available to meet Project Use and First Preference loads. Power purchased for these purposes is expected to be purchased in the forward markets as blocks, rather than purchased on the spot market, to reduce price volatility and ensure stable rates.

The ISO is in the midst of implementing new operating guidance under MD02. This new initiative would implement the concept of locational marginal pricing to deal with transmission congestion. If MD02 is implemented in its current format, during congestion periods the ISO would re-dispatch all generation based on economic factors. Under this approach, the CVP Preference customers and Project Use loads remaining in the ISO control area could potentially end up paying a different price than the cost-of-service rates associated with the delivery of Federal hydropower resources. Non-Federal entities on the ISO-controlled system could potentially

end up receiving deliveries based on Federal cost-of-service rates. This potential inconsistency with Reclamation law may require Western to consider alternative mitigation measures. Western concludes that for its sub-control area participants, the contract-based sub-control area approach with SMUD meets the certainty criteria.

#### Evaluation of the Durability Criteria Under the SMUD Sub-Control Area Approach

Under the contract-based SMUD sub-control area approach, Western would need to respond to industry-wide changes in NERC- and WECC-issued operating protocols and business practices. Under a contract-based approach, any changes would have to be mutually agreed to and could not be unilaterally imposed by either party. Western concludes the SMUD sub-control area approach meets the durability criteria.

#### Evaluation of Operating Transparency Criteria Under the SMUD Sub-Control Area Approach

As a SMUD sub-control area operator, Western would operate under applicable NERC and WECC operating criteria and guidelines. Since the criteria require Western to operate its system so it does not negatively impact the host control area and its adjacent neighbors, by definition, Western concludes the SMUD sub-control area approach meets the operating transparency criteria.

#### Evaluation of the Cost-Effectiveness Criteria Under the SMUD Sub-Control Area Approach

As discussions progress with the ISO and SMUD, Western anticipates sufficient cost data will become available to make an informed business decision as to the economic and financial impacts of each option. Western anticipates comparing and contrasting each option to determine which best allows Western to fulfill its statutory and contractual obligations in a manner which is economic, financially prudent, and best meets the needs of its customers. If neither contract-based approach appears to be economically and financially prudent, Western would not seek to implement them.

A contract-based sub-control area agreement provides the long-range business stability needed by Western, Reclamation, and its customers to engage in long-range planning and enter into long-term business arrangements. This business stability is not readily available in many of the other alternatives considered by Western.

#### Summary Analysis of the SMUD Sub-Control Area Approach

Implementing the SMUD sub-control area approach would allow the Federal transmission system to be operated as a physically distinct unit. Western's summary is the same as that shown under the contract-based ISO sub-control area option. The ratings for the sub-control area approach with SMUD are as follows:

#### SMUD SUB-CONTROL AREA EVALUATION SUMMARY

Evaluation factors	Meets	Almost meets	Does not meet
Flexibility .....	XX	.....	.....
Certainty .....	XX	.....	.....
Durability .....	XX	.....	.....
Operating transparency .....	XX	.....	.....
Cost-effectiveness .....	XX	.....	.....

#### Conclusion

##### *Western's Final Decision*

On December 31, 2004, a number of existing transmission contracts with PG&E expire. Western will then become responsible for arranging and meeting most of its own supplemental power and transmission needs. This new responsibility will require Western to select and implement a post-2004 operational configuration and select a preferred control area operator to host Western's operations. Under existing contracts, PG&E provides Western with

interface services with the ISO. The preferred post-2004 operational configuration must ensure Western will be able to implement its 2004 Power Marketing Plan and allow it to fulfill its statutory obligations to Reclamation as well as meet its contractual obligations to its Preference Power customers. The final decision to implement sub-control area operations is based on the alternative meeting all five of the evaluation criteria; *i.e.*, flexibility, certainty, durability, operational transparency, and cost-effectiveness, presented in the June 24, 2003, **Federal**

**Register** and finalized in the December 2, 2003, **Federal Register**.

Western will proceed with its effort to establish a contract-based sub-control area. Western does not intend to form a new control area at this time. However, if Western is unable to negotiate a mutually acceptable agreement to implement a contract-based sub-control operation before the expiration of existing contracts, Western will initiate all reasonably prudent steps to ensure Western fulfills its statutory responsibilities and meets the requirements of its customers.

## Other Considerations

### Consistency With Federal Law

As Western proceeds with negotiations with the ISO and SMUD, it will evaluate how Federal law will affect the implementation of each potential contract. Western will evaluate each approach to ensure that Western can continue to meet and fulfill its statutory and contractual obligations. For example, Federal Reclamation law requires Federal power be sold to Preference customers. Western implements such sales through a Federal marketing plan developed under the Administrative Procedure Act. The final CVP marketing plan was published on June 25, 1999 (64 FR 34417). The sale of Federal power must not impair the CVP's primary purposes. The marketing plans have the full force and effect of law. Implementation of Western's operational decision must be consistent with Western's obligations under Federal law including Western's Marketing Plan. Consequently, any agreement that Western may execute with either the ISO or SMUD cannot impair Western's ability to deliver Federal power to Project Use loads and Federal Preference Power to Preference Power customers.

### Regulatory Procedure Requirements

#### Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined this action does not require a regulatory flexibility analysis since it is a rulemaking involving services applicable to public property.

#### Environmental Compliance

Under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR 1500–1508), and DOE NEPA implementing regulations (10 CFR 1021), Western completed an environmental impact statement (EIS) on its Energy Planning and Management Program. The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995).

Western also completed the 2004 Power Marketing Program EIS (2004 EIS). The Record of Decision was published in the **Federal Register** (62 FR 22934, April 28, 1997). The

Marketing Plan falls within the range of alternatives considered in the 2004 EIS. This NEPA review identified and analyzed environmental effects related to the Marketing Plan. Available reservoir storage and water releases controlled by Reclamation influences marketable CVP and Washoe project electrical capacity and energy. Reclamation completed a programmatic environmental impact statement (PEIS) under the CVP Improvement Act of 1992 (Pub. L. 102–575, Title 34) in October 1999. Actions based on the PEIS may result in modifications to CVP facilities and operations that would affect the timing and quantity of electric power generated by the CVP. Such changes may affect electric power products and services marketed by SNR. The Marketing Plan has the flexibility to accommodate these changes. Western was a cooperating agency in Reclamation's PEIS process. The proposed action was also evaluated under a categorical exclusion analysis finalized by Western on January 21, 2004.

#### Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. No clearance of this notice by the Office of Management and Budget is required.

#### Small Business Regulatory Enforcement Fairness Act

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

Dated: February 13, 2004.

Michael S. Hacsakaylo,  
Administrator.

[FR Doc. 04–3819 Filed 2–20–04; 8:45 am]

BILLING CODE 6450–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or

continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled “Application for Student Educational Employment Program.”

**DATES:** Comments must be submitted on or before April 23, 2004.

**ADDRESSES:** Interested parties are invited to submit written comments to Leneta G. Gregorie, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to “Application for Student Educational Employment Program.” Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838; email: [comments@fdic.gov](mailto:comments@fdic.gov).)

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Leneta G. Gregorie, Counsel, Legal Division, at (202) 898–3719.

**SUPPLEMENTARY INFORMATION:** Proposal to establish the following new collection of information:

*Title:* Application for Student Educational Employment Program.

*OMB Number:* New collection.

*Frequency of Response:* Occasional.

*Affected Public:* Students seeking employment with the FDIC under the Student Educational Employment Program.

*Estimated Number of Respondents:* 1,500.

*Estimated Time per Response:* 0.33 hour.

*Estimated Total Annual Burden:* 500 hours.

*General Description of Collection:* The collection will provide the FDIC with a means of gathering information from program applicants to determine whether they meet the government-wide criteria established by OPM for participation in the program, as well as the additional criteria established by the FDIC in its implementation of the program.

#### Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b)