



6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program--Eastern Division – 2021 Power Marketing Initiative

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Final 2021 Power Marketing Initiative.

SUMMARY: Western Area Power Administration (Western), Upper Great Plains Region, a Federal power marketing agency of the Department of Energy (DOE), announces the 2021 Power Marketing Initiative (2021 PMI). The 2021 PMI provides the basis for marketing the long-term firm hydroelectric resources of the Pick-Sloan Missouri Basin Program--Eastern Division (P-SMBP--ED) beyond December 31, 2020, when Western's Firm Electric Service (FES) contracts associated with the current Marketing Plan expire. The 2021 PMI extends the current Marketing Plan, with amendments to key marketing plan principles. Western's proposed 2021 PMI was published in the Federal Register on March 4, 2011. Responses to public comments are included in this notice. This Federal Register is published to announce Western's decisions for the 2021 PMI.

DATES: The 2021 PMI will become effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Information regarding the 2021 PMI, including comments, letters, and other supporting documents made or retained by Western for the purpose of developing this Final 2021 PMI, are available for public inspection and copying at the Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101-1266.

FOR FURTHER INFORMATION CONTACT: John A. Pankratz, Public Utilities Specialist,

Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101-1266, telephone (406) 255-2932, e-mail pankratz@wapa.gov.

SUPPLEMENTARY INFORMATION:

Current Marketing Plan Background

The 1985 P-SMBP--ED Marketing Plan (1985 Plan) was published in the Federal Register (45 FR 71860, October 30, 1980) and provided the marketing plan principles used to market P-SMBP--ED firm hydropower resources. The FES contracts associated with the 1985 Plan were initially set to expire December 31, 2000. Subpart C of the Energy Planning and Management Program (EPAMP) final rule, also published in the Federal Register (60 FR 54151, October 20, 1995), extended and amended the 1985 Plan. EPAMP extended the FES contracts associated with the 1985 Plan through December 31, 2020, and established the Post-2000, Post-2005, and Post-2010 Power Marketing Initiatives. The current Marketing Plan is inclusive of the 1985 Plan as extended and amended by EPAMP and the Post-2000, Post-2005, and Post-2010 Power Marketing Initiatives.

2021 PMI

Western initiated 2021 PMI discussions with P-SMBP--ED firm power customers in November 2010 by hosting meetings throughout the Upper Great Plains Region. In addition, Western hosted Native American-focused meetings throughout the Upper Great Plains Region to initiate government-to-government consultation with tribal firm power customers. The meetings provided customers the opportunity to review current Marketing Plan principles and provide informal input to Western for consideration in the 2021 PMI proposal. Key Marketing Plan principles discussed with firm power customers included: Contract Term, Resource Pools, Marketable Resource, Marketing Area, Load Factor Limit and Withdrawal Provisions, and

Marketing Future Resources.

Western requested informal input from firm power customers for consideration in the 2021 PMI proposal. Customer input for the 2021 PMI supported Western extending the current Marketing Plan with amendments to the Contract Term and Resource Pools principles.

Western published its proposed 2021 PMI in the Federal Register (76 FR 12104, March 4, 2011) and initiated a 60-day public comment period. Public information and comment forums on the proposed 2021 PMI were held on April 13, 14, and 20, 2011. Western received 5 oral comments during the public comment forums and 51 comment letters during the public comment period, which closed on May 4, 2011. Western received a comment on May 4, 2011, requesting additional time to supplement comments on the proposed 2021 PMI. Western published a notice in the Federal Register (76 FR 47180, August 4, 2011) that re-opened the written comment period for the proposed 2021 PMI through September 6, 2011. Western received 5 new comment letters during the re-opened comment period. In total, Western received 5 oral comments and 56 comment letters from March 4, 2011, through September 6, 2011. Responses to public comments are included in this notice. After consideration of public comments, Western has decided to finalize the proposed 2021 PMI as published in the Federal Register (76 FR 12104, March 4, 2011).

Response to Comments Regarding the Proposed 2021 PMI

The public comments below regarding the proposed 2021 PMI are paraphrased for brevity when not affecting the meaning of the statement(s).

2021 PMI General Comment:

Comment: The majority of comments Western received strongly supported the proposed 2021 PMI principles.

Response: Western appreciates the support received for the 2021 PMI proposal published in the Federal Register (76 FR 12104, March 4, 2011).

Amended Marketing Plan Principles and Comments:

Proposed Contract Term: A 30-year contract term would be used for FES contracts. The FES contract term would begin January 1, 2021, and expire December 31, 2050.

Comment: Western received many comments supporting the proposed 30-year contract term. Commenters stated that a 30-year contract term would provide more resource certainty for customers than the current 20-year contract term and help Western and customers plan for short-term and long-term needs, rate structure, and financial stability. Western also received many comments requesting Western to consider a 40-year contract term to provide greater resource certainty to customers and further support customers' long-term power supply. Commenters also stated that Western has built-in flexibility and tools in place to address future conditions or changes and a 40-year contract term seems reasonable. Western also received comments that a 40-year contract term would provide assurance that customers contributing funds to Pick-Sloan investments would receive the benefits of those contributions and commitments.

Response: Western proposed a 30-year contract term and, based on comments, also considered a 40-year contract term for the 2021 PMI. Many customers supported the proposed 30-year contract term because it provides customers greater resource certainty and cost control when compared to the current 20-year contract term. Western will use a 30-year contract term for all P-SMBP--ED FES contracts for several reasons. Western believes a 30-year contract term strikes a balance between customers' need for stability in resource planning and cost control and Western's need for flexibility.

Western also recognizes and appreciates the unique customer funding relationship in support

of the Federal power program.

Proposed Resource Pools: The 2021 PMI would provide for resource pools of up to 1 percent of the marketable resource under contract at the time for eligible new preference entities at the beginning of the contract term (January 1, 2021) and again every 10 years (January 1, 2031, and January 1, 2041).

Comment: Western received many comments supporting the proposed resource pools. Commenters stated that limiting the resource pools to up to 1 percent every 10 years helps provide for better utilization of resources with existing preference customers. Commenters also supported the structure and timing of the resource pools. Western received a comment stating that providing a resource pool every 10 years, as compared to EPAMP's three resource pools that were each 5 years apart, is a better use of Western's time and resources. Another comment received by Western stated that limiting resource pools to new entities might be too restrictive.

Response: Western appreciates the support for the proposed resource pools of up to 1 percent every 10 years, beginning January 1, 2021. The resource pools allow Western to market allocations of firm power to eligible new preference entities in such a manner as to promote the most widespread use, in accordance with Federal Reclamation Law.

Comment: Western received a comment stating that all Indian Tribes should be exempt from allocation reductions due to resource pools, as any reduction in allocations would impede badly-needed economic development on reservations.

Response: Western acknowledges this customer's concern over the impacts that a firm power allocation reduction would have on tribal firm power customers. All firm power customers are impacted by firm power reductions. Western will continue to provide consistent treatment to all firm power customers, including tribal firm power customers, and establish 2021 PMI resource

pools by pro rata withdrawals on 2 years' notice, from then existing firm power customers, in accordance with EPAMP, 10 CFR 905.32 (d).

Extended Marketing Plan Principles and Comments:

Proposed Marketable Resource: Based on adverse condition modeling to determine future marketable resource capability and median annual energy forecasting to determine future annual energy, the proposed 2021 PMI supports extending the existing contract rates of delivery commitments, with associated energy, to existing long-term firm power customers reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041.

Comment: Western received many comments specifically supporting the proposed marketable resource principle as it would extend similar contract rates of delivery to current customers.

Response: Western appreciates the support received for extending existing contract rates of delivery commitments, with associated energy, to existing long-term firm power customers reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041.

Comment: Western received a comment suggesting that newer or updated data should be used for marketable resource modeling.

Response: Western used the latest available data to model the 2021 PMI marketable resource.

Comment: Western received a comment expressing concern about the current drought debt repayment and its impact on Western's rates. The commenter stated it is critical that the 2021 PMI better address the risk involved in drought conditions and the resulting replacement purchased power generated debt.

Response: Drought debt repayment and rates are a function of Western's rate setting policies and are outside the scope of this 2021 PMI process.

Western considered risk in terms of the 2021 PMI marketable capability through adverse condition modeling. Basing marketable capability on an adverse condition mitigates risk due to the variable and unpredictable nature of hydropower resources.

Comment: Western received a comment stating that Western must recognize the Pick-Sloan's severe and disproportionate impact in the taking of Indian land along the Missouri River and comply with the Executive Order (EO) on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629, February 16, 1994, correct citation EO 12898), by increasing Western's allocations to the Tribes along the Missouri River.

Response: Western's 2021 PMI action does not cause any population group to suffer a disproportionate share of adverse human health or environmental impacts. Western's 2021 PMI is the decision-making process of how to market long-term firm hydroelectric resources beyond 2020. The 2021 PMI action proposed and adopted by Western maintains allocations of the finite hydropower resources at existing allocation levels (reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041) for all firm power customers, including tribal firm power customers along the Missouri River.

Western follows DOE's strategy for EO 12898, available upon request (see **FOR FURTHER INFORMATION CONTACT** section), when developing policies and programs that substantially affect human health or the environment, so that no population group will suffer a disproportionate share of adverse environmental impacts.

Comment: Western received a comment stating that P-SMBP--ED customers have contributed funds directly to Western and other Federal power program agencies for component replacement of hydropower generation units and related equipment. As such, Western should adjust hydropower resources, due to generation increases from refurbished Federal hydropower

generation units, under the terms and conditions of the 2021 PMI.

Response: If additional resources become available to Western, as stated in the proposed 2021 PMI, Western will use those resources in accordance with the EPAMP, 10 CFR 905.32 (e).

Proposed 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.

Comment: Western received many comments supporting the proposed marketing area.

Response: Western appreciates the support for continuing the current P-SMBP--ED marketing area.

Proposed Load Factor Limit and Withdrawal Provisions:

Load Factor Limit: Western would market firm power at its customers' monthly system load factor for as long as possible. Western would reserve the right to limit monthly load factors to 70 percent if necessary during the 2021 PMI contract term. A 3-year notice would be given prior to requiring such limitation.

Project Use Withdrawal Provision: Western would reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project use requirements, by giving a minimum of 5 years' written notice in advance of such action.

Hydrology and River Operations Withdrawal Provision: Western, at its discretion and sole determination, would reserve 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 would only take place after a public process by Western.

Comment: Western received comments supporting the project use withdrawal provision.

Response: Western appreciates the support for continuing the project use withdrawal provision established in the 1985 Marketing Plan (45 FRN 71860, October 30, 1980).

Comment: Western received many comments supporting the proposed hydrology and river operations withdrawal provision.

Response: Western appreciates the support for continuing the hydrology and river operations withdrawal provision as established in the EPAMP (60 FRN 54151, October 20, 1995).

Proposed Marketing Future Resources: Additional power resources may become available for various reasons. Any additional available resources would be used in accordance with EPAMP as specified in 10 CFR 905.32 (e).

Comment: Western received many comments regarding marketing future resources. Commenters suggested Western consider offering additional available resources to existing customers who contributed to resource pools before making the offer to new customers or use the additional resources to support existing contract rates of deliveries to existing preference customers. Western also received comments supporting the proposed marketing future resources principle as currently stated in EPAMP. Western received a comment stating that if any additional power resources become available, those resources should be used to offset any possible reduction to the customers' contract rates of delivery due to resource pools or other withdrawal provisions.

Response: EPAMP provides Western flexibility in dealing with additional resources if they become available. If additional resources become available, Western will review the available marketable resources and Western's commitments at that time. Based on the outcome of the review, Western will use additional resources in accordance with EPAMP, 10 CFR 905.32 (e).

Additional 2021 PMI Comments:

Comment: Western received a comment seeking verification that Western's 2021 PMI is not proposing material changes to the firm peaking power service.

Response: Western did not propose any changes to the firm peaking power in the 2021 PMI.

Comment: Western received a comment from an existing preference customer requesting an increase to their allocation to at least 100 kilowatts (kW), which is the minimum amount of power allocated to new preference customers.

Response: Western's P-SMBP--ED allocations have been based on the marketing criteria in effect when each allocation was granted. This preference customer started receiving Federal power and energy in 1969, prior to the establishment of the 100-kW minimum allocation criterion. Increasing the current contract rates of delivery (CROD) for one customer would require Western to reallocate its existing marketable resource among all existing P-SMBP--ED firm power customers. Western's proposed 2021 PMI did not include reallocation among existing customers, but rather proposed extending all customers' existing CROD with reductions, if needed, for new resource pools. With the exception of this customer's comment, all comments received on the proposed 2021 PMI marketable resource principle supported Western's proposal; therefore, Western does not support increasing this customer's allocation.

Comment: Western received a comment from a Native American Tribe requesting further government-to-government consultation on the 2021 PMI, information on other Western programs, and additional time to provide supplemental comments on the proposed 2021 PMI.

Response: Western met with this Native American Tribe on June 29, 2011, to continue ongoing government-to-government consultation on the 2021 PMI and provide information on other Western programs. Western also re-opened the comment period for the proposed 2021

PMI as published in the Federal Register (76 FR 47180, August 4, 2011). Re-opening the comment period provided additional time for ongoing government-to-government consultation and additional time for all entities to submit new and/or supplemental comments. Comments were accepted on this Federal Register notice until September 6, 2011.

Comment: Western received a comment requesting that Western explore alternatives to the tribal bill crediting program to enhance the economic benefit of the tribal power allocation.

Response: Alternative methods of delivery to provide the benefits of a Federal hydropower allocation to tribal firm power customers are outside the scope of the 2021 PMI process.

Comment: Western received a comment stating that Western needs to respect tribal sovereignty in the 2021 PMI. Western also received a request for Western's consultation policy for Tribal Nations.

Response: Western recognizes the special and unique relationship between the United States and the tribal governments. Western supports the DOE's American Indian Policy, available upon request (see **FOR FURTHER INFORMATION CONTACT** section), which stresses the need for a government-to-government, trust-based relationship.

Comment: Western received comments encouraging Western to conclude this 2021 PMI process and move forward to contracting in a timely and deliberate manner.

Response: Western agrees with this comment. Western intends to begin development of firm electric service contracts with customers after completion of this process.

Final 2021 PMI

Western will extend the current Marketing Plan with amendments to the Contract Term and Resource Pools principles. The Marketing Plan principles that are amended as well as the Marketing Plan principles that are extended are as follows:

Amended Marketing Plan Principles:

1. Contract Term: A 30-year contract term will be used for FES contracts. The FES contract term will begin January 1, 2021, and expire December 31, 2050.
2. Resource Pools: The 2021 PMI will provide for resource pools of up to 1 percent of the marketable resource under contract at the time for eligible new preference entities at the beginning of the contract term (January 1, 2021) and again every 10 years (January 1, 2031, and January 1, 2041).

Extended Marketing Plan Principles:

Extension of the current Marketing Plan includes all provisions and principles not specifically addressed in the preceding section (Amended Marketing Plan Principles). The following key principles of the current Marketing Plan were discussed with firm power customers during the informal customer input phase and the formal information forums of this process and are included below for reference purposes.

1. Marketable Resource: Based on adverse condition modeling to determine future marketable resource capability and median annual energy forecasting to determine future annual energy, the 2021 PMI supports extending the existing contract rates of delivery commitments, with associated energy, to existing long-term firm power customers reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041.
2. 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.

3. Load Factor Limit and Withdrawal Provisions:
 - a. Load Factor Limit: Western will market firm power at its customers' monthly system load factor for as long as possible. Western will reserve the right to limit monthly load factors to 70 percent if necessary during the 2021 PMI contract term. A 3-year notice will be given prior to requiring such limitation.
 - b. Project Use Withdrawal Provision: Western will reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project use requirements, by giving a minimum of 5 years' written notice in advance of such action.
 - c. Hydrology and River Operations Withdrawal Provision: Western, at its discretion and sole determination, shall reserve 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 would only take place after a public process by Western.
4. Marketing Future Resources: Additional power resources may become available for various reasons. Any additional available resources will be used in accordance with EPAMP as specified in 10 CFR 905.32 (e).

2021 PMI PROCEDURES REQUIREMENTS

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4347 (2007)); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500-1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from further NEPA review.

Determination Under Executive Order 12866

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

Dated: November 8, 2011

Timothy J. Meeks
Administrator

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