NATIONAL WILDLIFE FEDERATION

NATURAL RESOURCE CLINIC
FLEMING LAW BUILDING
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Re: Post-1989 Power Marketing Criteria

I want to thank each of you for taking the time to meet with David Marcus and me on February 22 in your Loveland-Ft. Collins office. I found the meeting to be very useful. It helped clear up a number of factual questions we had about the proposed power marketing criteria and gave us a better understanding of your views. I hope the meeting was equally beneficial to you.

In response to our criticism of the conservation and renewable energy ["CRE"] program proposed in the marketing criteria, you expressed at least two concerns. First, you say that allocating federal power on the basis of an applicant's past and proposed conservation and renewable energy efforts, as we propose, would require that standards be established by which to measure an applicant's performance in these areas and, thus, by which to determine which among many applicants should receive a federal allotment. The determination of such standards would require public input. It is, of course, true that such standards would have to be established. The task in our view, however, is not overly burdensome. It has already been successfully undertaken by the Sacramento Area office of Western, which allocated 30 Mw of the capacity made available by the Santa Clara Settlement among applications for more than that amount. Since you plan on publishing another draft of the proposed post-1989 power marketing criteria on or about April 1, 1984, public input on proposed standards could easily be solicited at that time.

If Western undertook to allocate power based, in part, on past and proposed conservation and renewable energy efforts, it would, of course increase somewhat the administrative burdens of

making the allocations. We do not believe, however, that this would pose an inordinate burden on Western, since the criteria as proposed now require only a simple mathematical calculation to determine allocations. Ninety to ninety-five percent of the available capacity and energy for the Salt Lake City Area ["SLCA"] (and 88 percent to the Loveland-Ft. Collins Area ["LFCA"]) will be alloted to present allottees in proportion to their present allotments. The remaining 5-10% available capacity and energy for SLCA (and 12% for LFCA) will be allotted to new applicants based upon their average energy consumption in a recent three year period. In sum, we think there is ample time remaining before allocations have to be made for Western to obtain public input on and modify its conservation and renewable energy program and to make allocations based upon applicants' past and proposed conservation and renewable energy efforts.

Another concern you expressed was with the Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs, published in the Federal Register on November 13, 1981, 46 Fed. Reg. 56140, and made effective December 31, 1981. Those Guidelines provide that an allottee may satisfy Western's conservation and renewable energy requirements by establishing a CRE program within one year after an allocation contract is signed. The CRE program will be acceptable even if the allottee proposes to do nothing more than comply with other existing state and federal laws. The Guidelines state that Western will review and may modify the guidelines and that this review and possible modification would occur at intervals of not less than three years. 46 Fed. Reg. at 56143.

The problem you saw was that in order to follow our suggestion of allocating power based, in part, on past and proposed conservation and renewable efforts, Western would have to modify these Guidelines and that this modification could not be made effective until December 31, 1984, three years after the effective date of the Guidelines. Pursuant to the terms of existing contracts, however, most of which terminate at the end of September 1989 (for SLCA) and at the end of the 1989 summer billing season (for LFCA), you stated that Western must provide at least five years advance notice if it intends to reduce any of the contractors' allocations. Western therefore believes it must decide on allocations by September 1984 for SLCA and by the end of the 1984 summer billing season, which is also September, for LFCA in order to comply with its contractual obligations. Since the CRE Guidelines cannot be changed until the end of 1984, the proposed allocations, according to Western, must be made under the existing Guidelines.

In our view, there are several ways to address this problem that would permit Western to make allocations for post-1989 under new CRE guidelines. First, it appears that the contractual obligation to notify allottees of possible reductions in allocations can be satisfied by simply sending to all present allottees a notice that the application of new CRE guidelines, which are being proposed, may result in a reduction of their allotments.

Another alternative is simply to extend the terms of all existing contracts to allow sufficient time for a change in the CRE guidelines. We note that your tentative schedule, as discussed at our meeting, itself fails to provide for complete reallocation by September 1984, so presumably you have already examined ways to address the five-year notice provision and its effects, if reallocation is not completed by September 1984. Finally, since at least some of the available capacity and energy will be reserved for new customers, this portion need not be allocated by September 1984. At the very least, the amount set aside for new customers could be allocated uner new CRE guidelines.

We believe that Western, at a very minimum, should allocate power to new customers based upon past and proposed conservation and renewable energy efforts. Except for a few instances in which allottees of federal power are not subject to federal and state laws requiring some sort of conservation and renewable energy efforts, Western's CRE program adds nothing to already existing federal and state requirements. Arguably, it is a waste of paper and time to administer it. Western's stated intentions to increase energy production from renewable resources, improve efficiency and energy utilization and reduce energy consumption are admirable. The problem is, the present CRE program does very little to accomplish these objectives.

Western is proposing in its criteria to market generation capacity based upon a 90% probability and to market energy based upon average hydrological conditions and, thus, to market more capacity and energy than will likely be available from its projects during the ten year terms of the proposed contracts. Under this proposal, Western will almost surely have to purchase capacity and energy to meet its contract obligations. In our comments on the proposed criteria, we objected to this procedure because it appeared that passed-through costs would be rolled in with Western's regular billings to produce a composite rate, which would lead to an economic incentive to Western's customers to consume more power. Our understanding from the discussion at our meeting is that while passed-through costs are presently rolled into regular billings, under the post-1989 criteria, this will not be the case. Passed-through costs will be passed on directly to customers, who will be notified of prices in advance of their decisions to accept or reject purchased power, thus providing correct price signals. This change should be made clear in the new draft of the proposed criteria.

We believe that this satisfies our objection, based on economic grounds, to Western's marketing of non-federal energy and capacity. We reiterate, however, that we do not believe that Western has the legal authority to market non-federal energy and capacity in the way it proposes. Since allocation of capacity on a 90% probability, and the "option with purchases" option for marketing energy represent substantial departures from Western's prior practices (the 1978 criteria marketed capacity on a second worst case year basis and did not provide for options with purchases), we strongly urge Western to reconsider these changes.

With respect to the maximum levels of capacity being offered under the proposed criteria, we were able to clear up some questions. For SLCA, we understand the capacity figure proposed to be marketed includes capacity expected from the uprates at Glen Canyon. The figure was intended to include, however, only that capacity from the uprates that could be produced with a water flow of 31,500 cfs, the current limitation established by the Bureau of Reclamation. Apparently, however, the capacity figure includes the maximum figure for the uprated generators, which could only be produced with a flow of 33,100 cfs. The total capacity figure should be reduced accordingly. This would result in a 36 Mw reduction.

For LFCA, we understood from our conversation with you that the proposed capacity to be marketed, in all months but May, is 100 Mw less than the maximum available capacity available if adverse hydrological conditions are <u>not</u> considered. The 100 Mw represents the largest single generating unit on the system (Mt. Elbert 1 or 2). This is consistent with the figures shown on p. 4 of App. A of the criteria. However, it is not consistent with the actual proposed reservation of LFCA resources in App. A, p. 6. For example, according to p. 6 of App. A, in the month of October LFCA would market 600,300 kw. According to p. 4 of App. A, however, the maximum available capacity in that month, without allowance for adverse hydrologic conditions or generator outages, is only 588,100 kw. In any case, the capacity level proposed to be marketed, is considerably higher than the level which would result using the SLCA's methodology, which reduces maximum available capacity for <u>both</u> adverse hydrological conditions <u>and</u> largest single generation hazard. Other things being equal, the LFCA methodology results in a much greater risk that non-Federal capacity will be needed to support contract commitments than the SLCA methodology.

While we made an effort to convince you that there are reasonable alternatives Western should consider in deciding how to market power (for example, <u>not</u> marketing all the capacity that is available and <u>not</u> permitting customers to control the daily peaking of dam flows to the extent they do now), I am not sure that we made much headway. We would like to repeat, however, our view that the way in which federal power is marketed has a substantial impact on the environment. The size of flows, the timing and number of daily and monthly peaks and the rate at which peaks are reached have substantial downstream impacts. While some constraints on river flows are established by the Bureau of Reclamation pursuant to the laws governing various projects, within these confines, releases are dictated by contracts to sell power. These contracts are directly within Western's control.

Western has the authority and the obligation to consider how changes in the way it markets power might result in different impacts on the environment. While we focused our attention on downstream impacts, which are the most obvious ones, we note, as we did in our comments on the proposed criteria, that there are

other environmental and economic impacts resulting from the manner in which Western markets federal hydropower.

We understand that Western has not yet made a decision on what "level of documentation" is required by NEPA on the proposed marketing criteria and that it does not know when such a decision will be made. As we stated earlier, both in our letters to Mr. Gabiola and Mr. Ungerman of October 4, 1983, and our comments on the proposed criteria of November 15, 1983, we believe that NEPA clearly requires that an EIS be prepared on the proposed criteria. The further Western delays in making a decision on this critical issue, the more delay there is in beginning and completing an adequate EIS. Indeed, it would appear that if Western intends to stick with its schedule of making determinations on allocations by November of this year at the latest, it cannot possibly comply with the NEPA requirements. We strongly urge you, then, to consider extending the terms of present contracts for a sufficient time to prepare an EIS. In our view, this would be preferable to a court imposed injunction requiring a similar result.

With respect to our criticism of Western's proposal to integrate projects and blend power rates, we understand from our discussions that while the blending of rates in the Salt Lake City area of CRSP, Colbran, Provo River and Rio Grande will significantly reduce the Colbran and Rio Grande project rates, the blending of rates for the Pick-Sloan Western Division projects and the Frying Pan-Arkansas project will not lower the rates charged to Frying Pan-Arkansas customers. As I stated at the meeting, we do not fully understand this last result. Someone in our Washington office will be in touch with the LFCA to try to clarify this point.

Again, I want to express our appreciation to you for taking the time to meet with us, to answer our questions and to engage in an open and productive dialogue. I also thank you, in advance, for providing us with the additional information which we requested at the meeting. (A list of these items is attached.)

Yours truly,

/S/

Frances M. Green
Counsel

FMG:mh

Attachment

Requested from Western

1. Basis for CRSP capacity, particularly Glen Canyon

2. Explanation of why LFCA does not reduce capacity for hydrological conditions in calculating marketable capacity (except in May)

3. Diamond Fork data as available

4. Public handouts from 1983 Public Information hearings

5. Summary data on applications
   (a) number of applications
   (b) total Mw, gwh (summer and winter)
   (c) amounts from subcategories, e.g.
      (i) existing customers
      (ii) new preference
      (iii) new non-preference (e.g. UP&L)
      (iv) etc.