



Department of Energy
Western Area Power Administration
Office of General Counsel
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MAY 20 2014

Mr. Carl Monroe, Executive Vice President
& Chief Operating Officer
Southwest Power Pool
201 Worthen Drive
Little Rock, AR 72223-4936

Dear Mr. Monroe:

You and I have discussed the unique opportunity and challenges that must be resolved as the Western Area Power Administration's Upper Great Plains Region (Western-UGP) continues to work with Southwest Power Pool (SPP) staff and the various SPP stakeholders to effectuate the changes necessary to permit a Federal Power Marketing Agency to join SPP. This is truly an unprecedented event and we appreciate the support and open mindedness of both SPP staff and the various stakeholders as we continue to work our way through this process.

The purpose of this letter is to summarize the legislative background behind the Federal Service Exemption (FSE) and explain the statutory underpinnings of Western-UGP's rationale for requesting the FSE as a prerequisite to its membership in SPP. As you know, Western-UGP has strived to articulate the reasons for the FSE to many of the various SPP stakeholders. To the extent Western-UGP has not reached everyone, perhaps this letter and detailed explanation of the rationale will help.

Western-UGP has unique statutory and regulatory obligations and requirements that must be addressed prior to it joining a transmission organization that are particularly borne out in Western-UGP's request for the FSE. Through the FSE, Western-UGP has requested an exemption from market charges related to congestion and marginal losses, as well as an exemption from Schedule 11 regional cost expansion allocations. It is important to note that Western-UGP has only requested the FSE for delivery of Federal generation to its statutory loads. Western has not requested the FSE for purchases from, or sales into, the SPP Integrated Marketplace.

These Federal generation and load terms have been explicitly defined in the current proposed SPP tariff modifications. The generation term FSE applies to "Federal Power-Western-UGP" and only includes power and energy generated at reservoir projects under the control of the Department of the Army or the Bureau of Reclamation, within the marketing area of Western-UGP. The use of this generation is only for purposes of fulfilling Western-UGP's statutory load deliveries for the sale of power and energy, along with a bilateral agreement between Western-UGP and a sister Federal Power Marketing Administration, Southwestern Power Administration. The load term that FSE applies to is "Statutory Load Obligation" and is defined as Western-UGP's obligation under Federal law to deliver the power and energy from those hydroelectric

projects operated by the Department of the Army and the Bureau of Reclamation to loads served pursuant to Federal statute.

The overarching basis for the FSE requirement stems from Section 1232 of the Energy Policy Act of 2005¹ (EPAAct 05). To complement its original power marketing mission, Western-UGP has been authorized by Congress to participate in a transmission organization pursuant to EPAAct 05. This statute gives Western-UGP statutory authority to transfer control and use of all or a portion of its transmission system to a transmission organization provided several conditions are met. Since a Federal agency may only act consistent with the authority granted to it by Congress, Western-UGP has developed the FSE to enable it to comply with these statutory requirements.

While Western has a multitude of statutes and policies that impact its participation within SPP, several are key for understanding the FSE. For purposes of this letter and the FSE, I will specifically focus on two legislative requirements of section 1232 of EPAAct 05 and several of our organic statutes below. First, pursuant to section 1232(c) of EPAAct 05, Western-UGP must explicitly act consistent with existing statutory authority, obligations, and limitations, as well as existing contracts. Second, section 1232(d) of EPAAct 05 precludes the Federal Energy Regulatory Commission from having any new jurisdiction over the electric generation assets, electric capacity, or energy marketed by Western-UGP as well as the power sales activities in which Western engages. EPAAct 05 also incorporates a general requirement for consistency with existing statutes that thereby incorporates compliance with Western's organic statutes, generally called Reclamation Law. Western carries out those responsibilities through its marketing plans and rates promulgated pursuant to the regulations implementing those laws.

In addition to EPAAct 05, section 302 of the Department of Energy Organization Act of 1977² (DOE Act) is important to note because it created Western and transferred the authority to perform power marketing functions of the Bureau of Reclamation to Western. The DOE Act transferred the authority to market power from the Department of the Army to Western as well. Of the authority transferred through the DOE Act, two specific statutory references are critical in understanding Western's obligations and limitations as it constructs transmission facilities and markets Federal power. These are section 9(c) of the Reclamation Project Act of 1939³ and section 5 of the Flood Control Act of 1944.⁴

These two statutes are the primary basis for the following fundamental requirements Western must abide by: 1) Preference in power sales shall be given to public agencies, cooperatives, municipalities, and other non-profit entities; 2) Power disposal shall be for the benefit of domestic and rural consumers; 3) Power shall be sold at the lowest possible rates consistent with sound business principles; 4) Power disposal shall encourage widespread use and prevent monopolization; and 5) construction of transmission lines and related facilities is only authorized to the extent they are necessary to make the power generated at the Federal projects available for sale.

¹ 16 U.S.C. § 16431.

² 42 U.S.C. § 7152.

³ 43 U.S.C. § 485h(c).

⁴ 16 U.S.C. § 825(s).

Pursuant to these statutory principles, Western constructed sufficient transmission facilities or purchased transmission capacity within Western-UGP to enable it to enter into long-term contractual commitments for the delivery of its finite Federal generation to its statutory load customers. Western-UGP has no authority to meet its customers load growth, and as such its Statutory Load Obligations will not grow. Any supplemental power needed by Western's customers must be procured by them and does not qualify for the FSE. Since Western-UGP has sufficient transmission facilities to deliver its Statutory Load Obligations, it has no need for an increase in regional transmission capacity to assist in meeting future delivery needs and cannot agree to subject itself to those additional charges.

Western has interpreted its statutory requirements within the SPP construct as requiring an exemption from market charges related to congestion and marginal losses, as well as an exemption from Schedule 11 regional cost expansion allocations for delivery of its Federal Power-Western UGP to its Statutory Load Obligations as those terms are defined in the proposed SPP tariff revisions. Implementation of the FSE will be accomplished through the exemptions from those charges for delivery of Federal Power-Western UGP to its Statutory Load Obligations. The FSE will not apply to purchases from, or sales into, the SPP Integrated Marketplace.

The effect of the FSE is to carve Western-UGP's long term contractual delivery of Federal Power-Western-UGP to its Statutory Loads Obligations out of the SPP marketplace as it is delivered under its long-term contracts. The rationale behind the FSE is based upon the statutory underpinnings discussed above and is derived from Western's implementation of EPAct 05 requirements. Implementation of the FSE enables Western-UGP to join a transmission organization and remain consistent with its statutory and contractual obligations.

Feel free to contact me if I can be of any further help explaining the FSE.

Sincerely,



Ronald J. Klinefelter
Assistant General Counsel

cc:

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