

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

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

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

Response to Comments Regarding Post-2005 Resource Pool Allocation Procedures

I. Comments and Responses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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