

qualified applicant to execute their respective firm power contract. Firm power not under contract will be used in accordance with the Program.”

Comment: Western received a comment that did not support the up to 1 percent withdrawal.

Response: Western will withdraw up to 1 percent as determined in Subpart C, Power Marketing Initiative, 10 CFR 905.32(e)(1).

Comment: Western received a comment supporting increasing allocations awarded to the Lower Brule Sioux and Flandreau Santee Sioux tribes in the Post-2000 Resource Pool Allocation Process due to omissions in applications for power.

Response: If Western were to entertain requests for increases or adjustments to allocations, all customers would need to be afforded the opportunity to submit new applications. It is likely Western would receive significant modification requests. These would be extremely difficult to substantiate and likely not be supportable with the limited amount of power available from this resource pool. Therefore, Western will not support additional allocations for the Lower Brule Sioux and Flandreau Santee Sioux tribes.

Comment: Western received one comment that existing statutory obligations were not followed and that Western violated its trust responsibilities and refused to consider securing additional power for the Lower Brule Sioux and Flandreau Santee Sioux tribes.

Response: Under its statutory obligations, Western will allocate power to new customers that meet preference status. Western has discretion as defined by Reclamation Law to determine the eligibility of Indian tribes and other entities entitled to preference in allocating Federal power.

Comment: Western received one comment that suggests Western has no intention to follow criteria established in the sale of Federal hydropower.

Response: Within its statutory guidelines, Western has wide discretion as to whom and on what terms it will contract for the sale of Federal power. Power must be sold to preference entities in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. Western will market this resource pool consistent with Reclamation Law and the procedures outlined in this **Federal Register** notice.

Comment: Western received one comment that suggested it is unlawful to adjust allocation guidelines for discrimination purposes. The statement

“Native American tribes are not subject to this requirement” is discriminatory.

Response: Western will make Federal power available to preference entities that are public bodies and nonprofit entities entitled to priority in the purchase of Federal power under Reclamation Law. The Program changed Western’s policy such that the Program allowed Western to allocate to Native American tribes. Western’s change in policy is in keeping with the spirit of DOE’s Indian policy and recognizes the special and unique relationship between the United States and the tribal governments.

Comment: Western received a comment that to maximize the political benefits they would like to see as many new retail customers as possible.

Response: It is not Western’s intent to try to gain political benefits with this resource pool. It is Western’s policy to promote widespread use of its hydropower resources. Western will market hydroelectric power on a wholesale basis to preference entities who qualify under the Post-2005 Resource Pool Allocation Process.

Final Post-2005 Resource Pool Allocation Procedures

I. Amount of Pool Resources

Western will allocate up to 1 percent (approximately 20 megawatts) of the P-SMBP—ED long-term firm hydroelectric resource available as of January 1, 2006, as firm power to eligible new preference customers. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western electric service contract.

II. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures.

A. All qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. All qualified applicants must be located within the currently established P-SMBP—ED marketing area.

C. All 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.

D. Qualified utility and non-utility applicants must be able to use the firm

power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants that desire to purchase power from Western for resale to consumers, including cooperatives, municipalities, public utility districts, and public power districts must have met utility status by January 1, 2003. Utility status means the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Qualified Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of firm power under the Post-2005 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercising its discretion under Reclamation Law.

B. An allottee will have the right to purchase such firm power only upon executing an electric service contract between Western and the allottee, and satisfying all conditions in that contract.

C. Firm power allocated under these procedures will be available only to new preference customers in the existing P-SMBP—ED 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.

D. Allocations made to Native American tribes will be based on the actual load experienced in calendar year 2002. Western has the right to use estimated load values for calendar year 2002 should actual load data not be available. Western will adjust inconsistent estimates during the allocation process.

E. Allocations made to qualified utility and non-utility applicants will be based on actual loads in calendar year 2002. Western will apply the Post-1985 Marketing Plan and the Program criteria to these loads. Western will carry forward key principles and criteria established in the Post-2000 Resource Pool, except as modified here.