

ability to pay ISO charges based on the "net" settlements feature appear desirable. Western is concerned with the frequent number of amendments to the ISO Tariff. Numerous commentors raised concerns about the number of ISO Tariff amendments during the public comment period. If Western were able to develop a contractual agreement with the ISO which does not specifically reference the ISO Tariff, and if the contractual agreement contained terms and conditions which would not change during the life of the contract, Western would be interested in pursuing such an arrangement. Such an arrangement would recognize the unique legislated purposes and characteristics of the CVP and would maintain an appropriate balance and separation between a State-controlled and Federal entity. A contract-based MSS option structured under these principles, if offered by the ISO, will be considered. The impact of the ISO's MD02 activities will need to be addressed also. If the ISO cannot accommodate such principles, the MSS option will not be considered further.

The control area option meets all of the decision-making criteria outlined by Western. However, operation as a sub-control area within the SMUD control area also appears to meet these criteria. The direct-connected customers would avoid ISO charges for delivery of Federal power and would pay Western or the host control area for ancillary services associated with such delivery. There are two different approaches for sub-control area operations that could provide benefits for Western and the host control area. The first is called integrated operations and would allow Western to operate within the host control area and provide its share of regulation and reserves associated with the combined load of Western and the host control area. Accounting mechanisms would be put in place to account for services rendered. Essentially, this would resemble integrated operation with the host control area. The second arrangement is called segregated operations and would allow Western to provide reserves and regulation associated with its direct-connected customers and firm exports and regulate hourly to a net scheduled interchange quantity with the host control area. This operation resembles interconnected control area operation, but Western would not be accountable to the WECC and NERC.

The SMUD has expressed interest in establishing a sub-control area under a contractual agreement that would contain terms and conditions established for the duration of the

contract. Because of the seasonal nature of the CVP generation resource, a contractual approach to either integrated or segregated operation may contain benefits for Project Use loads, Preference customers, and Western. Western will pursue this further with SMUD.

#### **Other Issues Raised During the Public Process**

The ISO and a number of other commentors raised the following three additional issues during the public process. The commentors were specifically concerned about the alternative for a new control area and raised the following three issues: (1) Adverse implications to grid reliability and operations, (2) increased complexity of operating the COI, and (3) inconsistency of Western's proposal with existing Federal policy and proposed direction.

Commentors were concerned that the creation of a new control area was inconsistent with existing Federal policy, which would result in additional complexity and could cause the electrical transmission grid to be operated less reliably. Since the proposed decision does not contemplate formation of a new control area at this time, these issues need not be addressed as part of this **Federal Register** notice.

Western's position is that in the event the control area alternative is ever selected, as part of the WECC/NERC control area certification process, many of the operating issues (grid reliability and increased complexity of operations) raised by the commentors would be identified, analyzed, and mitigated, if appropriate, as part of the control area certification process. These issues would normally be handled as a matter of meeting specific technical performance criteria rather than policy.

#### **Conclusion**

##### *Western's Proposed Action*

Based upon the analysis done with respect to the decision-making factors outlined by Western in the June 24, 2003, **Federal Register** notice and further explained at the July 9, 2003, Public Information Forum, Western proposes to proceed with its effort to establish a contract-based sub-control area within either the ISO or SMUD control area. Western is not proposing to form a new control area at this time. The complexity and uncertainty of implementing a new marketing plan as well as creating a new control area has caused Western to conclude it is not prudent to try accomplishing both tasks simultaneously. To reduce business risk

and uncertainty while establishing a new post-2004 operational configuration upon the termination of existing contracts, Western is proposing to operate its Federal transmission facilities within an existing control area. Western will initiate discussions with the ISO and SMUD to implement a contract-based sub-control area. This option is practical and preserves Western's ability to respond flexibly to ongoing changes in the electric utility industry.

#### **Other Considerations**

##### *Consistency With Federal Law*

Western will evaluate how Federal law will affect each alternative. Western is governed by numerous Federal laws such as the Federal Reclamation Law. The Federal Reclamation Law requires Federal power be sold to Preference customers. Western implements such sales through a Federal marketing plan under the Administrative Procedure Act. The sale of Federal power must not impair the primary purposes of the CVP. The marketing plans have the full force and effect of law. The alternatives must be consistent with Western's obligations under Federal law including Western's Marketing Plan. For instance, if Western were to become a PTO, it is conceivable that situations could arise where Western would be unable to deliver Federal Preference Power to Federal customers even where adequate Federal transmission capability was available to serve the Federal customer. While the ISO Tariff provides a waiver for Federal entities, if a provision of the Tariff conflicts with Federal law, Western must still work out the specific details on a case-by-case basis whenever such conflicts arise.

#### **Regulatory Procedure Requirements**

##### *Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving services applicable to public property.

##### *Environmental Compliance*

Under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality NEPA implementing regulations (40