

transmission lines and related facilities as may be necessary in order to make the power and energy generated at said projects available in wholesale quantities for sale on fair and reasonable terms and conditions to facilities owned by the Federal government, public bodies, cooperatives, and privately owned companies. All moneys received from such sales shall be deposited in the Treasury of the United States as miscellaneous receipts.

Development of the IS Transmission Rate by Western is consistent with the obligation to transmit and dispose of power and energy while encouraging widespread use of the Federal facilities consistent with sound business practices. The integration of the Federal facilities with the non-Federal facilities enables the marketing of Western's resource as well as encouraging the widespread use of the Federal transmission facilities in the Missouri River Basin. As stated above, this philosophy is repaying the Federal investment through the rate schedules as they are recovering the appropriate costs of producing and transmitting that resource. This practice is also a sound business principle given the current FERC philosophy which encourages widespread use of transmission resources.

Section 5 of the Flood Control Act of 1944 also permits Western to construct or acquire transmission lines that are necessary to deliver the Federal resource. In order to deliver that resource, including sales of surplus generation sold on a non-firm basis, and meet Western's contractual obligations, it is necessary to use the IS for reliability reasons. This has been confirmed in the Initial Decision in *Missouri Basin Municipal Power Agency*, 82 FERC ¶ 63,015 (1998).

Comment: Several comments received stated that Western is violating the Anti-Deficiency Act and various fiscal obligations by participating in the IS.

Response: The Anti-Deficiency Act, 31 U.S.C. 1341(a)(1), states that an officer of the Federal Government may not involve the Government in a contract or obligation requiring the payment of money prior to an appropriation unless authorized by law. Western has the responsibility to meet all of its contractual obligations that have been incurred pursuant to Reclamation Law. Western is annually appropriated money to perform its mission, including meeting the obligations it has incurred pursuant to its contracting authority. Western does utilize the IS to meet these contractual obligations, and hence money has been appropriated to carry out the functions as described under the DOE

Organization Act. In addition, Western's contracts contain General Power Contract Provisions which specifically state that any activity provided for under those contracts are "contingent on appropriations."

Comment: Other comments received stated that Federal law prohibits "payments to third parties."

Response: To the contrary, 16 U.S.C. 833(i) and 825(s) do not state that third party payments are unlawful. They do not address third party payments at all. They do contain language indicating Congress' intention that all money which the United States receives from sales of power generated at Fort Peck Project and the Projects under control of the War Department (now the Corps operated facilities) are to be deposited in Treasury. Western is not violating this statute as a result of operating the IS. Western will deposit money it receives for debts due the United States for sales of its resource into the Treasury in the same manner it has in the past. However, money received on behalf of Basin Electric and Heartland will not be received as a result of debts owed to the United States, but will be received for debts owed Basin Electric and Heartland. Therefore, money received on their behalf is not required to be deposited into the Treasury.

Western has in the past deposited and will continue to deposit all money to which the United States is entitled into the Treasury in accordance with the above statutes. Western has administered the JTS for over 30 years. This administration included the receipt of revenue from outside sources and then redistributing that revenue to other members of the JTS, Basin Electric, Heartland, and MBMPA. Western has also approved the JTS rate prior to implementation.

Western is obligated under existing contracts to administer the transmission facilities of Basin Electric and Heartland. These obligations have arisen based upon the initial signing of the MBSG Agreement which was signed by Reclamation in 1962 and the initial bilateral agreements between Basin Electric and Reclamation which created the JTS. The role Western is playing in the IS is analogous to the role it played in administering the JTS, and Western is contractually obligated to perform those functions.

Comment: UGPR should continue its rights and obligations detailed in the bilateral contracts. In addition it should allow all existing loads to stay on the JTS and receive those benefits.

Response: UGPR agrees and Western, Basin Electric, and Heartland will continue the obligations and benefits

among themselves as detailed in the bilateral agreements.

Comment: UGPR should continue to participate in the planning of an Independent System Operator (ISO).

Response: UGPR agrees and has several representatives on the MAPP committees involved with the planning and development of the MAPP ISO. As the proposal is being developed, Western will provide input and data to study the impact on the region and Western. Western will continue its involvement.

Ancillary Services Discussion

Six ancillary services will be offered to IS Transmission Customers; two of which are required to be purchased by IS Transmission Customers. These two are (1) Scheduling, System Control, and Dispatch Service and (2) Reactive Supply and Voltage Control Service from Generation Sources Service. The remaining four ancillary services—Regulation and Frequency Response Service, Energy Imbalance Service, Spinning Reserve Service, and Supplemental Reserve Service will also be offered.

Sales of Regulation and Frequency Response Service, Energy Imbalance Service, Spinning Reserve Service, and Supplemental Reserve Service may be limited since Western has allocated its power resources to preference entities under long-term commitments. If Western is unable to provide these services from its own resources, an offer will be made to purchase the services and pass through these costs to the customer, including an administrative charge.

Scheduling, System Control, and Dispatch Service: Western's annual revenue requirement for Scheduling, System Control, and Dispatch Service is determined by multiplying the portion of the Watertown Operations Office net plant and communications facilities net plant associated with Scheduling, System Control, and Dispatch Service by the transmission fixed charge rate. The formula rate for Scheduling, System Control, and Dispatch Service is the revenue requirement for this service divided by the annual number of daily schedules, or, using 1997 data, \$1,684,495 ÷ 36,571 daily schedules. Using 1997 data, this methodology for determining the rate for Scheduling, System Control, and Dispatch Service has produced a rate of \$46.06/schedule/day. This rate and rate design is only recovering Western's revenue requirement.

Reactive Supply and Voltage Control from Generation Sources Service: Western's annual cost of providing