



LEG 2012-0535

**Comments of the Sacramento Municipal Utility District on  
DOE/Western Defining the Future Workshops  
August 17, 2012**

The Sacramento Municipal Utility District (SMUD) submits these comments for the record in response to the Department of Energy (DOE)/Western Area Power Administration (Western) Defining the Future Workshops.

By way of background, SMUD is the sixth largest customer-owned utility in the U.S., providing electricity to the California capital region since 1946. We serve 1.4 million customers within a 900-square mile service territory. SMUD operates the Balancing Authority of Northern California Balancing Authority (BA), a 5,000 MW BA that spans most of Northern California and connects to clean energy in the Pacific Northwest. We are Western-Sierra Nevada Region's (Western-SNR) largest preference customer and, along with other Power Marketing Administrations' (PMA) customers, have successfully partnered with Western-SNR for decades, resulting in significant benefits both to SMUD and Western customers, as well as to the region.

**The DOE Must Understand the Past and Present Before It Defines the Future**

On March 16<sup>th</sup>, DOE Secretary Chu issued a memorandum (March 16<sup>th</sup> Memorandum) calling for the PMAs to take a leadership role in transforming the Nation's electric sector. The March 16<sup>th</sup> Memorandum sets forth broad policy objectives including the promotion of energy efficiency, demand response, and clean energy. It also endorses the prospect of Western's participation in an energy imbalance market (EIM) and directs the PMAs to create rate structures that incentivize the integration of variable resources, among other things. While SMUD supports, and is even actively advancing, many of the overall objectives in the March 16<sup>th</sup> Memorandum, SMUD does not agree with the perplexing approach taken by DOE.

Significantly, the March 16<sup>th</sup> Memorandum completely overlooks the historic mission and statutory constraints of the PMAs. Further, conspicuously absent from the March 16<sup>th</sup> Memorandum is any recognition of the long and successful history of collaboration between the PMAs and their customers that have resulted in creative, regional energy solutions and significant contributions towards environmental stewardship. Finally, the DOE fails to acknowledge the myriad of efforts being taken at the local and regional level to achieve the DOE's goals.

### *Western-SNR's Role is Statutorily and Operationally Limited*

Western's core mission is to provide power to preference customers at the lowest possible rates consistent with sound business principles. Secretary Chu's March 16<sup>th</sup> Memorandum, however, proposes to expand Western's reach to include activities which are clearly beyond Western's limited jurisdictional mandate and appears to be aimed at achieving broader national policy goals such as renewable energy development. Moreover, certain objectives like demand response, energy efficiency, and electric vehicles (EV) are retail functions which fall outside of the purview of Western.<sup>1</sup> While the above-stated goals may be laudable, the PMAs simply cannot lawfully be used as the vehicle to accomplish them. Instead, any proposal by the DOE to expand the scope of the PMAs' mission requires Congressional action.

In addition to the statutory limitations, the DOE must be mindful of the operational limitations imposed on the PMAs. Each Western marketing area has unique operational characteristics. For the Central Valley Project (CVP), project operations are largely dictated by decisions related to water releases (for flood control, water supply and environmental objectives, which are determined by the Bureau of Reclamation, not Western). Indeed, statutory requirements regarding CVP resources subordinate power to these higher uses. Accordingly, Western's ability to participate in many of the initiatives advanced by the March 16<sup>th</sup> Memorandum, and more particularly in an EIM, is questionable at best because Western simply lacks the ability to alter operations to increase the availability or value of ancillary services. Given the broader and statutorily mandated public uses of CVP generation projects, DOE is not in a position to make unilateral policy decisions that fundamentally alter the mission of Western without undermining the multipurpose nature of the CVP facilities managed by the Bureau of Reclamation.

### *Western May Only Incur Costs that Further Its Primary Mission*

The Secretary confirmed in a May 30<sup>th</sup> blog posting entitled "America's Competitiveness Depends on a 21<sup>st</sup> Century Grid" (May 30<sup>th</sup> Blog) that PMAs will continue to provide electricity at cost based rates "equal to the cost of generation and transmission." While we appreciate the DOE's statements supporting continuation of cost-based rates, it is equally important to recognize that the PMAs do not have unfettered authority with respect to how to define those costs. Any expenditure that would increase Western's costs must be in furtherance of its statutory mission to

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<sup>1</sup> Western customers already have economic incentives, state policy directives, and local policies and preferences that promote energy efficiency. For that reason, we do not envision a necessary or positive role that Western can play in promotion of electric vehicles. Instead, as noted above, such action would run counter to Western's legal mandates and result in unwarranted cost-shifts to Western customers.

provide its preference customers low cost power and provide its customers with commensurate direct benefits. Further, as a practical matter, increasing the cost of CVP power – which is currently close to market – threatens not only the communities served by CVP power, including agricultural, residential and business, but also the significant environmental restoration efforts funded in large part by CVP power customers.

*The PMA Customers and Western Have Successfully Collaborated on Regional Transmission/Capital Improvements*

The March 16<sup>th</sup> Memorandum and subsequent communications make broad sweeping and unsubstantiated statements about the PMAs “aging infrastructure” and the risks of relying on “outdated and inflexible infrastructure.” While SMUD is certainly not an expert in the nuances of the other Western regions, we are intimately familiar with the infrastructure of Western-SNR. Here, the facts clearly tell a different story. Specifically, PMA customers and Western have a long, successful history of collaboration with respect to regional transmission and capital improvement projects. In particular, Western-SNR has provided significant system improvements and substantial benefits to the region.<sup>2</sup> In response to continued reductions in Federal appropriations for Western in the 1990s, SMUD, along with other CVP customers, formed a partnership that established funding mechanisms for both capital and operation and maintenance (O&M) projects for Western-SNR and the Bureau of Reclamation. SMUD is the largest single power funder for capital projects, O&M, and environmental restoration.

Capital improvement program projects funded by CVP customers include the Tracy Double Breaker Double Bus, the SCADA Replacement and the Shasta-Keswick Reconductoring. Through this fiscal year, the capital improvement program has provided over \$117 million in customer funds to Western for capital projects. In the last five years, two significant transmission projects have been completed -- the Folsom Loop (October 2009) and Sacramento Voltage Support (May 2011) projects. The Folsom Loop project created a new interconnection point between SMUD and Western-SNR to increase reliability on both transmission systems and provided an additional outlet for the Bureau of Reclamation’s Folsom/Nimbus hydroelectric generation plant. The Sacramento Voltage Support project involved Western’s construction of a new

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<sup>2</sup> As an illustration of aging infrastructure Western needed to replace, DOE representatives at the July 26, 2012, Sacramento/Folsom, California workshop’s listening session cited an alleged problem with Western’s failure to replace wood poles that had far exceeded their useful lives. This concern, at least with respect to Western-SNR, is simply inaccurate. Western SNR has replaced nearly all of these wood poles with metal poles and the few wood poles remaining are only a few years old.

double circuit, 230 kV transmission line. This project provided two additional interconnections between Western-SNR and SMUD, thereby increasing reliability to the Sacramento Valley area and deliverability of generation within the Western-SNR footprint.

Customer-funded O&M projects include the Shasta Powerplant Substation Reliability Improvement (2009); the Trinity River Division Digital Governors (2011), and the Spring Creek Powerplant Unit 2 Generator and Rewind (2011). Through this fiscal year, over \$10 million in customer funds have been used for O&M projects. Moreover, SMUD partnered with Western and other parties to construct the California Oregon Transmission Project to access low-cost and clean energy from the Northwest.

Finally, since the inception of Central Valley Project Investment Act (CVPIA) in 1992, approximately \$1.5 billion has been spent or obligated to be spent for CVPIA activities. SMUD alone has contributed approximately \$116 under CVPIA's arrangement. In addition to funding programs under CVPIA, water and power customers also fund environmental activities through CVP water and power rates. In the last 40 years, close to \$1 billion has been spent on various environmental efforts. Thus, we are more than perplexed that these significant efforts have not been recognized.

#### *Western-SNR Actively Participates in Regional Planning and Coordination*

The March 16<sup>th</sup> Memorandum and subsequent communications reveal a lack of understanding on the part of the DOE with respect to activities that Western currently takes with respect to regional planning and coordination. SMUD and Western-SNR already collaborate closely on planning efforts including voltage support analysis and reconfiguration of transmission facilities to enhance reliable operations. Western-SNR coordinates efficiently with SMUD and other interconnected utilities to develop a 10-year plan to maintain a reliable transmission system. Western has a safe harbor Open Access Transmission Tariff and conducts its transmission planning processes in accordance with the Federal Energy Regulatory Commission's (FERC) Order 890 and the FERC's nine planning principles. Additionally, Western is currently engaged in extensive FERC Order 1000 compliance efforts through WestConnect to establish regional and inter-regional transmission planning and cost allocation processes. WestConnect is conducting outreach meetings with its neighboring regions, Columbia Grid, the California Independent System Operator Corporation, and the Northern Tier Transmission Group to discuss interregional issues.

In addition, Western-SNR is already participating in the California Transmission Planning Group (CTPG) and the Sierra Subregional Planning Group (SSPG) of WestConnect. Western-SNR has been an active participant in the Sacramento Area Transmission Planning Group locally, within SSPG regionally, and on an interregional basis within the expansive WestConnect region. Additional Western efforts to plan beyond its boundaries would be duplicative and inefficient.

*Western Has a Long History of Reliable Operation But Should Not Assume a Leadership Role in Industry Compliance Efforts*

The DOE pre-read materials suggest that Western should take a leadership role in compliance activities ranging from efforts to respond to the recommendations in the FERC/NERC report on the Southwest Outage to minimizing cyber-security vulnerabilities. Western does not have the expertise, funding, or legal authority to “lead” industry efforts in the reliability areas suggested. First, the call of the PMAs to lead ignores the fact that Congress has delegated leadership responsibility to NERC, with FERC oversight. Second, the PMA system represents only 8% of the nation’s transmission system. As such, it has a role as a stakeholder to be engaged in the reliability process, but its role is not to drive changes.

Although we disagree that Western should play a leadership role in industry compliance efforts, SMUD supports Western’s continued efforts to maintain operational excellence. Again, however, it should be noted that Western currently engages in many of the activities proposed by the DOE.

For example, Secretary Chu’s May 30<sup>th</sup> Blog post notes that the PMAs should investigate investments such as the adoption of synchrophasors and the exchange of real time data with neighbors for real time situational awareness. The fact is, however, Western-SNR already accomplishes this objective through its participation in the Western Interconnection Synchrophasor Project (WISP). WISP improves situational awareness of grid conditions by increasing a grid operators’ visibility of system conditions in near real-time, allows for the earlier detection of grid stability problems and facilitates sharing of information with neighboring BAs.

Also with respect to the exchange of data, Western (as well as SMUD) is a signatory to the recent WECC Universal Data Sharing Agreement to enable greater exchange of reliability data between signatories within the Western Interconnection. To further enhance reliability compliance, Western has begun implementation of a Western-wide NERC Reliability Compliance program with improved automation of data.

Additionally, Western continues to play a key role in collaborating with its customers and with neighboring systems to further improve reliable operations.

Western-SNR's coordination with Bonneville Power Administration on relay replacements at Olinda and with its neighboring TOPs on the breaker upgrades at Tracy (which have also been funded through Western-SNR's customer funding program) demonstrate successful collaboration both within its BA and with its neighboring TOPs and BAs to enhance the reliability of the interconnected power system. Moreover, Western coordinates operation with other BAs through various reserve sharing groups including the Northwest Power Pool.

*Western Is Proactively Engaged in Meeting the Challenges Posed by a Changing Resource Mix*

Western is engaged in collaborative efforts with Regional Reliability Organizations, regulators and others to address the operational needs of variable energy resources. These joint initiatives include: Intra-hour Scheduling, the development and implementation of a Dynamic Scheduling System, ACE Diversity Exchange, the development and implementation of an Intra-hour Transaction Accelerator Platform, Balancing Area Reliability Based Controls, and the investigation of an EIM. Moreover, Western has been an active participant in the Northwest Power Pool's Market Assessment and Coordination Committee, which is evaluating a set of options ranging from enhanced bilateral sub-hourly markets to a centralized EIM, with the goal of recommending the most cost-effective strategy to meet the region's operational needs for integrating variable energy resources. At the same time, Western is also participating in the current Public Utilities Commission EIM discussions (as well as the previous WECC efforts) to evaluate an EIM.

The March 16<sup>th</sup> Memorandum applauds Western's purported decision "to assume that the EIM will go forward and that it will be a market participant." It goes on to explain that although Western may incur costs during the initial transition to an EIM, "ultimately the move should reduce the overall costs for [Western's] customers."

First, it should not be assumed that Western can lawfully participate in an EIM. In fact, Western itself, in an April 5, 2012 report<sup>3</sup>, conducted its own internal review of its possible EIM participation and noted that it has yet to study whether it possesses such authority.<sup>4</sup> At least as important are three other observations Western made in that report. First, by Western's own reckoning, the physical and statutory constraints on its power supply operations means that it will have little or no power to

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<sup>3</sup> "Report on the WECC Energy Imbalance Market Implementation Cost Analysis, Western Area Power Administration (April 5, 2012) "(Western EIM Report).

<sup>4</sup> Id. at 5 ("The EIM Team assumed there were no statutory restrictions on Western participating in the EIM because it complies with the Energy Policy Act of 2005. However, the EIM Team did not have time to examine the possibility of such restrictions.")

sell in an EIM.<sup>5</sup> Western itself was emphatic on this point, observing that "violation of environmental constraints is prohibited by law, and Western therefore cannot participate in the EIM if there is the *possibility* of such a violation."<sup>6</sup> Second, Western's client agencies, the Army Corps of Engineers and the Bureau of Reclamation, must, but have not agreed to participate in an EIM and, in fact, have previously expressed concern about such participation.<sup>7</sup> Third, and related, is Western's observation that, as a result, its role in EIM markets would only be to facilitate participation by its customers with excess capacity.<sup>8</sup> Also as to this latter point, Western indicated that its actions would be influenced by the desire of its customers.<sup>9</sup> Given the general consensus at the Sacramento/Folsom listening session, it is clear that Western's customers have no interest in Western taking a lead role in development of EIM markets.<sup>10</sup> Tellingly,

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<sup>5</sup> As noted in the Western EIM Report, "it is likely only a limited amount of capacity on many of the Federal projects would be available for offer into the EIM." Western EIM Report at 2. The April 5 Report goes on to add that "Western will very likely schedule its Federal hydro generation capacity on a Self-dispatched basis as needed to fulfill Western's contractual and statutory commitments" and that there are only likely to be "certain times" when "there may be *minor amounts of generation capacity* in excess of such commitments." Report at 6. Even then, sale into the EIM would not be a given. Western would have to decide whether to "sell such capacity on a bilateral basis" or "make it available for deployment by the Market Operator into the EIM," a decision that would necessarily be made in a way that would "avoid adverse rate impacts to Western's statutory customers." *Id.* at 6 (emphasis added)

<sup>6</sup> *Id.* at 6 (emphasis added).

<sup>7</sup> Western put the problem this way in its April 5, 2012 Report:

The Army Corps of Engineers (Corps) and Bureau of Reclamation (BOR) must agree to the participation of the Federal hydro resources in the EIM before Western could become a Market Participant. The EIM Team assumed such agreement would be forthcoming, but this is considered to be a high risk assumption insofar as the EIM Team was unable to coordinate its analysis with the generating agencies given the time constraint, and as the agencies have in the past expressed concern regarding potentially increased mechanical wear on certain hydro unit components (primarily, the wicket gates) arising from an increased frequency of unit dispatch variations.

*Id.* at 4.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> "The EIM Team assumed that Western's statutory customers will fully support its participation in the EIM. Like the preceding assumption, this is not an assured outcome given the relatively few customers that have expressed support for Western's participation in the EIM." Western EIM Report at 5. As Western added at page 14 of its report, it could not participate in an EIM over preference customer objections without a "high probability" that its "relationships with customers would be jeopardized."

<sup>10</sup> Western's April 5, 2012 Report on the WECC Energy Imbalance Market Implementation Cost Analysis notes in connection with proposed development of a region-wide EIM, that Western envisioned only limited participation in the EIM by capacity on Federal projects, with any benefit to the new market being realized by smaller entities within the Western balancing authority having excess generating capacity.

Western itself was aware of this long before the listening sessions were scheduled. As it stated in its April 5, 2012 Report:

A majority of large, interconnected BAs within WECC would need to participate in the EIM to allow it to be implemented on a broad scale. *This is not an assured outcome in light of the low number of utilities that have expressed interest in participating in the EIM.* In addition, the Northwest Power Pool has undertaken an effort to study and possibly adopt an alternative to the EIM, the outcome of which could significantly reduce the number of potential participants in the market.<sup>11</sup>

Questions about Western's legal authority and the prudence of it taking a lead role in development in EIM markets aside, however, SMUD remains skeptical of the claimed benefits of an EIM given the scope and complexity of attempting to impose this economic model in the Western U.S. We further believe that Western-SNR's participation in an EIM market will likely result in unreasonable costs shifts to Western-SNR customers to the extent that it seeks to integrate remote variable energy resources. Specifically, California's RPS law requires utilities to procure most of their renewable resources from in-state renewable generation. Accordingly, Western's participation in a costly and unproven market model for the purpose of integrating remote renewable generation simply forces Western customers to incur additional costs to integrate renewable resources that they do not need and cannot use. This prospect is especially troubling given that California already has among the highest power rates in the nation.

*Many of the DOE's Goals Are More Effectively Addressed Locally*

SMUD has been at the forefront of accomplishing the very objectives advanced by the DOE's March 16<sup>th</sup> Memorandum. SMUD's mission to serve customers with reliable, low-cost power in an environmentally responsible manner drives our decision-making. And we are doing all of this within the unique and challenging California regulatory framework, including a 33% renewable portfolio standard by 2020 that requires at least 75% of the renewable generation mix to come from within the State. That approach along with local costs and benefit considerations has resulted in accomplishments to date that include:

- An electricity supply portfolio comprised of over 24% of renewable resources, which we expect to increase to 37% by 2020.
- The construction of 230MW of wind facilities.

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<sup>11</sup> Id. at 5 (emphasis added).

- Operation of one of the nation's largest and most comprehensive utility-sponsored PV programs with over 60 MW of PV located on 1,100 sites within our service territory. We expect this to increase to 100 MW by the end of 2013.
- Active investigation of energy storage options, including a 400 MW pumped hydropower storage project.
- Installation of over 600,000 smart meters as part of our ambitious smart grid program, which will provide significant demand response capabilities.
- Movement toward our long-term carbon reduction goal of 10 percent of 1990 levels by 2050.

Additionally, California utilities, including Western customers, are leaders in energy efficiency and demand response. Some recent accomplishments include:

- A residential demand response program of 108 MW currently in place through air conditioning load shedding with an additional 56 MW for commercial demand response.
- Installation of more than 600,000 smart meters that allow SMUD to further engage customers in energy efficiency and dynamic demand response programs and increase its MW reduction capabilities.
- A robust residential and commercial energy efficiency retrofit program. In the past five years, SMUD has invested \$161.5 million in customer retrofit projects which has reduced consumption by 136 MW.
- The launch of one of the country's first electric transportation programs in 1989. We are now among the utility leaders having supported all major automakers with demonstration efforts spanning electric battery, plug-in hybrids, and fuel cell electric.
- Ongoing support of numerous EV Federal government programs including recent ARRA grant demonstrations, and DARPA and DOT research consortiums.
- Establishment of a separate EV rate and a pilot program to determine quantifiable benefits of off-peak charging.

All of these achievements were the products of local decision-making and were designed to meet community needs and values. Thus, we find the top-down approach outlined in the March 16<sup>th</sup> Memorandum both unnecessary and overreaching.

## **The DOE Process Has Been Fatally Flawed From the Outset**

### *The DOE's Shifting Justification for the Need to Take Action Calls Into Question the Credibility of the Process*

Since the Secretary issued the March 16<sup>th</sup> Memorandum, the stated justification for the need to take swift action has ranged from such things as improving public health to ensuring America's continued global competitiveness. Significantly, though, the DOE has failed to explain in any detail exactly how any of these broad ideals relate to the narrow mission of the PMAs. Instead, the DOE makes broad unsubstantiated statements as if merely putting words onto paper transform them into fact.

Secretary Chu's response to the concerns raised by more than 160 Congressional members proves the point. In his July 9<sup>th</sup> letter to Congresswoman Matsui, the Secretary makes a random reference to the June 29, 2012 *derecho* freak storm as if there existed some causal linkage between the PMAs and the Mid-Atlantic and East Coast blackouts. In reality, there are no PMA assets in the area affected by the storm and the outage was caused primarily by damage to distribution lines. Clearly, PMAs have no role at the distribution level and any notion that the DOE's plans for the PMAs will insulate the Nation from blackouts caused by extreme weather events is pure folly.

In a similar vein, Secretary Chu in his May 30<sup>th</sup> Blog post implies that implementation of his plan to transform the PMAs would have served to prevent the 2011 Southwest Outage. The assertions are without factual support since the objectives outlined in the Secretary's March 16<sup>th</sup> Memorandum are unrelated to the causal factors detailed in the NERC/FERC report on the outage. The NERC/FERC report attributed the outages to faulty operational planning and lack of real-time situational awareness. It recommends better data sharing and communication between BAs and improved real-time tools. Western utilities, BAs, Western, and NERC/WECC, as noted earlier, are already addressing these things in earnest. Distracting from the real issues and offering false solutions does nothing to advance these important efforts.

The DOE's penchant to play fast and loose with the facts in order to conjure up a set of dire consequences that will result from DOE inaction leaves the impression that it will say anything to achieve its objectives. Such tactics only serve to

undermine the credibility of the process. SMUD therefore urges the DOE to reconsider its approach so that all parties involved can engage in a constructive dialogue that focuses more on the facts and less on rhetoric.

*The Ill-Defined Nature of the DOE Proposal and the Lack of a Transparent Process Make it Challenging to Provide Meaningful Input*

From the date that the Secretary issued the March 16<sup>th</sup> Memorandum, the DOE process has been consistent in its utter lack of transparency as to what the DOE really intends to do with the PMAs going forward. Incredibly, the Secretary issued the March 16<sup>th</sup> Memorandum with absolutely no consultation with, or consideration of, Western's preference customers. Moreover, the March 16<sup>th</sup> Memorandum vaguely sets forth broad foundational goals for the PMAs and simply notes that subsequent memoranda will follow with more specific direction. This "specific direction" has yet to materialize.

Only after significant pushback from customers and Congress did the DOE shift gears and, in an action that has every appearance as an afterthought, cobble together a series of workshops to be held in late-July, early-August. Secretary Chu announced the workshops in an obscure May 30<sup>th</sup> Blog posting and noted that the DOE would not proceed with changes to the operations of the PMAs without garnering valuable public input. However, the DOE issued pre-read materials only one week before the first workshop. Moreover, these materials lack a cohesive and clear vision and thus have failed to shed any additional light on the DOE's ultimate plans for the PMAs and served only to raise more questions than answers.

Although the DOE's workshops improved over the course of time (SMUD attended both the Rapid City, South Dakota and the Sacramento/Folsom, California workshops), they still remained largely a one-way information gathering exercise rather than a meaningful dialogue. Therefore, by all accounts, the workshops simply left Western's customers guessing at DOE's intent. Additionally, because the DOE refused to provide for teleconference capability at any of the workshops, those that were unable to attend the workshops remain largely in the dark.

The DOE also stated that it would issue a Federal Register Notice setting forth proposed recommendations after reviewing the written comments submitted in response to the pre-read materials and workshops. The DOE, however, refused to specify the deadline that it would establish for filing comments and suggested that the comment period could be as little as two weeks. Since the Federal Register Notice will be the first time that the customers learn of the DOE's plans with any specificity, the DOE should ensure that the comment process is both substantive and transparent. In order to do so, DOE must first ensure that the comment period is at least 60 days to

allow for meaningful input. Additionally, any final recommendations that DOE staff makes to Secretary Chu should be made public.

*For the DOE Public Input Process to Be Effective the DOE Must Not Only Listen to Public Input But Also Respond to It*

Many attendees at the workshops expressed concerns that this process has been predetermined and the DOE's workshops and comments gathering efforts are simply an afterthought to make it appear that the public was effectively involved. We hope this is not the case. Indeed, Secretary Chu's May 30th Blog stated that, of utmost importance, it would be seeking input from stakeholders and customers:

*Most importantly, however, changes made to the unique operations of each PMA will proceed only after garnering the invaluable input from stakeholders and customers who rely directly and indirectly on the four PMAs, including Members of Congress, who have a deep appreciation for the importance of the PMA system. And today's announcement focuses primarily on WAPA, a similarly robust and collaborative process will be undertaken in succession for each PMA. Our focus on WAPA will likely continue through the end of 2012. (Emphasis added.)*

As noted previously, SMUD attended DOE/Western workshops in both Rapid City, South Dakota and Sacramento/Folsom, California. Moreover, it has participated in numerous meetings and discussions regarding the other regional meetings as well. Based on these interactions and direct observations, it would be impossible to conclude that there was anything more than minimal support, if not outright opposition, for actions outlined in Secretary Chu's March 16<sup>th</sup> Memorandum. Indeed, a common theme was that the changes being proposed were best described as "solutions in search of problems."

Moreover, DOE has also heard from a significant number of Congressional representatives (over 160) echoing many of the same concerns. If, therefore, the Secretary and DOE staff are sincere in their pledge to receive input from those most affected by the proposed actions towards the PMAs, as well as from Members of Congress, DOE can only conclude that the vast majority of Western customers and stakeholders, and a large bi-partisan delegation from Congress, view the actions proposed by the Secretary as both unnecessary and outside of the scope of DOE's statutory authority over the PMAs. Indeed, as explained herein, the PMAs and their customers are well aware of the challenges of the 21<sup>st</sup> century grid and are meeting them head on and in a way most suited to their specific regions. Moreover, the years of partnership with Western and its customers and proactive environmental stewardship

have yielded, and will continue to yield, significant local and regional benefits. This partnership and investment was done in reliance on a long history of carefully defined statutory and contractual relationships that cannot simply be changed by DOE fiat. Congress, not DOE, has the role and responsibility to address fundamental changes to the PMA structure. This role has been reiterated to DOE through the workshops as well. Therefore, it is our sincere hope that the DOE takes these views to heart and instead seeks a facilitative approach, rather than a top-down directive.

### **There was Broad Consensus That in Western-SNR, Section 1222 of the Energy Policy Act Has Little Practical Value, Even Assuming It Is Broadly Construed To Remain in Effect After 2015**

#### *DOE's Assertion That it Can Accept Private Funds Under Section 1222 After 2015 is Dubious*

One of the purposes of the workshops DOE has held in connection with Secretary Chu's initiative was to explore why Section 1222 of the Energy Policy Act has not been utilized to date and whether there were suggestions to make it effective. SMUD and other participants in the Sacramento/Folsom, California workshop had read the statute and the pre-read materials provided by DOE and were surprised to see this topic given any significant time under the workshop schedule. The reason was simple: funding for transmission projects, we understood, could only be provided by third parties through September 2015 and only up to \$100 million. This, we concluded, rendered efforts to explore how to better utilize Section 1222 as coming too little, too late.

Undoubtedly, the biggest surprise to participants in the Section 1222 workshop was DOE's revelation that it construed the 2015 date in the statute as placing a limit on private funds through that date, after which there would be *no* limit on the acceptance of private funds for transmission projects qualifying under Section 1222 (essentially projects that would meet a need for additional transmission capacity). This, in SMUD's view, is a strained interpretation of Section 1222 at odds with legislative intent.<sup>12</sup> And interestingly, SMUD learned that DOE's interpretation was not revealed at the workshop in Phoenix, Arizona making it likely that the Phoenix attendees believe

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<sup>12</sup> It seems illogical that the DOE would release a Federal Register Notice (75 FR 32,940) requesting project proposals through September 30, 2015, "or until DOE accepts \$100,000,000 in contributed funds under section 1222, whichever comes sooner," if the DOE all along had maintained that the statute did not sunset in 2015 and it could accept an unlimited amount of funding after 2015.

Section 1222 expires in 2015 just as those did in attendance in Sacramento/Folsom, California.

*Even if Technically Applicable After 2015, Section 1222 Has Little Practical Import in Western SNR*

It bears emphasis that, while SMUD does not agree with this interpretation, several points of consensus were reached during the workshop about the relative unimportance of Section 1222 -- even under DOE's interpretation. Key among these was the universal agreement among Western's customers and other industry participants that in the Western-SNR, Section 1222 is of no practical import at all. Rather, all agreed that the Transmission Infrastructure Program (TIP) and other vehicles already provided the mechanism for construction of third party transmission and that the requirements of Section 1222 made it an impractical and inferior alternative to TIP.

*Assuming Section 1222 Remains in Effect After 2015, it is Essential That it be Applied, as Written, to Protect Existing Western Preference Customers and that no Artificial Conditions be Placed on its Use - More Specifically, the Costs of Projects Constructed Under Section 1222 Must be Funded by Third Party Contributions and May Not be Allocated to Entities That do not Use the Facilities*

There was also consensus with DOE's view that, even where Section 1222 applies, none of the costs of third party transmission constructed under Section 1222 authority could be recovered from Western's customer unless they were willing users of the facilities. This was consistent with DOE's pre-read materials.<sup>13</sup> In this regard, DOE was emphatic, and SMUD agrees, that FERC's definition of beneficiary under Order No. 1000 -- which allows the allocation of costs to entities that are not customers of the transmission provider so long as they "benefit" from the new transmission facility -- is completely inapplicable under Section 1222.

SMUD also was part of the consensus view that at least one of the impediments to use of Section 1222 was DOE's interjection of a non-statutory criterion into evaluation of project applications, namely whether the project would facilitate the transmission of renewable resources. The statute is unambiguous that it is not necessary to qualify for consideration under Section 1222 for a transmission project to facilitate the transmission of renewable resources.<sup>14</sup> By making transmission of

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<sup>13</sup> The pre-read materials acknowledge that Section 1222 creates a process that allows a PMA to accept third party funding so that transmission infrastructure can be built "at no cost to PMA ratepayers or to federal taxpayers."

<sup>14</sup> DOE's prior notices soliciting statements of interest in transmission projects under Section 1222 (for both Western and Southwestern Power Administrations) indicate that, in addition to

renewables a threshold criterion for whether a Section 1222 application would even be evaluated, DOE has effectively precluded entities that meet the statutory criteria but do not propose to transmit renewable resources from applying under this section.

Further, there was a consensus view that any projects authorized under Section 1222 should be subject to a hold harmless standard. More specifically, no project under Section 1222 should either be given priority over projects needed to satisfy the requirements of Western's preference customers or result in added costs to serve preference load. This is consistent with DOE's own stated view that the costs of Section 1222 projects should be borne entirely by the users of the facility and that if preference customers do not subscribe to use of any new transmission capacity constructed under Section 1222 they should not bear any of the costs.

Finally, and to ensure compliance with the hold harmless standard, there was general consensus that the users responsible for the costs of Section 1222 projects should be defined at the outset and, absent agreement from later-arriving users to share those costs, initial users would bear full cost responsibility for the project.

### **The DOE Should Abandon Its Top-Down Approach and Work Collaboratively with the PMAs and the Customers**

As noted above, Secretary Chu's March 16<sup>th</sup> Memorandum announced broad unwarranted top-down initiatives without establishing a record of need or taking time to understand the past and current actions by the PMAs and their customers to further many of the policy goals articulated in the Secretary's memo. The Department of Energy's handling of this process is puzzling in that it completely disregards the longstanding collaboration between the PMAs and their customers.

SMUD urges the DOE to rethink its existing strategy and engage in a transparent process to better understand the current operations of the different Western regions and the contributions that Western and its customers are already making to achieve the objectives outlined in the March 16<sup>th</sup> Memorandum. Only after that inquiry should DOE begin contemplating what more Western can do within its jurisdictional framework. DOE must work with PMA customers as partners to determine any gaps

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the statutory criteria under Section 1222, it would evaluate projects based on whether they facilitated the delivery of power generated by renewable resources. It is possible that inclusion of this latter non-statutory criterion in its solicitation of interest may have limited the number of parties interested in developing projects under Section 1222. And in any event, the "renewable" non-statutory criterion could be considered an unlawful limitation of the implementing statute.

between what customers and Western are already doing and the DOE's desired objectives. Before any changes to the PMAs are undertaken, a substantiated and clear identification of problems must be made and the solutions need to be developed together with regional stakeholders to ensure that the significant economic and environmental value to consumers that currently exists is not eroded in the process.