

DEPARTMENT OF ENERGY
DELEGATION ORDER NO. 00-037.00
TO THE DEPUTY SECRETARY; THE ADMINISTRATORS OF THE
SOUTHEASTERN, SOUTHWESTERN, AND WESTERN AREA POWER
ADMINISTRATIONS; AND THE FEDERAL ENERGY REGULATORY COMMISSION

1. DELEGATION. Under the authority vested in me as Secretary of Energy and pursuant to sections 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act (Public Law 95-91, 42 U.S.C. 7151-7152 and 42 U.S.C. 7251-7254), regarding approval of power marketing administration power and transmission rates:
 - 1.1 There is hereby delegated to the respective Administrators of the Southeastern, Southwestern, and Western Area Power Administrations on a nonexclusive basis the authority to develop power and transmission rates for their respective power marketing administrations (PMA). A rate developed by an Administrator shall not become effective on a final basis unless and until such rate is confirmed and approved by the Federal Energy Regulatory Commission (Commission) acting under Paragraph 1.3 below. In submitting a rate, the Administrator shall certify that the rate is consistent with applicable law and that it is the lowest possible rate to customers consistent with sound business principles.
 - 1.2 There is hereby delegated to the Deputy Secretary of Energy on a nonexclusive basis the authority to confirm, approve, and place into effect on an interim basis power and transmission rates for the Southeastern, Southwestern, and Western Area Power Administrations for such periods as the Deputy Secretary may provide. This authority may not be redelegated.
 - 1.3 There is hereby delegated to the Commission on an exclusive basis the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove, rates developed by each Administrator under Paragraph 1.1. The Commission review will be limited to: (a) whether the rates are the lowest possible to customers consistent with sound business principles, (b) whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and (c) the assumptions and projections used in developing the rate components that are subject to Commission review. The Commission may require the Administrator to provide any information relevant to the Commission's confirmation and review function.

The Commission shall not review policy judgments and interpretations of laws and regulations made by the non-PMA power generating agencies (i.e., the Bureau of Reclamation, the Corps of Engineers, and the International Boundary

and Water Commission). The Commission shall reject decisions of the PMA Administrators only if the Commission finds them to be arbitrary, capricious, or in violation of the law. Provided, That the Commission may reject decisions that are not in accord with (a) the standards set forth in RA6120.2, or any revisions or modifications to such standards, adopted pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.) and the Department of Energy Organization Act (section 501, 42 U.S.C. 7191), and (b) the standards set forth in any interagency agreement between the Administrator and the power generating agency that is applicable. Should the Commission reject such decisions, the PMA Administrator will have 30 days in which to seek rehearing. This authority may not be redelegated.

- 1.4 In the event a rate developed by an Administrator is disapproved by the Commission, the Administrator shall, within 120 days or such additional time periods as the Commission may provide, submit to the Commission a substitute rate for action by the Commission under Paragraph 1.3 hereof.

A rate confirmed, approved, and placed in effect by the Deputy Secretary on an interim basis that is disapproved by the Commission shall remain in effect, as provided by the Deputy Secretary, until a substitute rate is confirmed and approved on a final basis by the Commission, unless the original interim rate has been superseded by a subsequent rate placed in effect on an interim basis. Provided, that if the Administrator does not file a substitute rate within 120 days or such greater time as the Commission may provide, and if the rate has been disapproved because the Commission determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the Commission, and revenues collected in excess of those generated by such rate during the interim period will be refunded with interest to the extent determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is lower than the rate in effect on an interim basis, any overpayment shall be refunded with interest as determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is higher than the rate in effect on an interim basis, such rate, if no subsequent and higher rate has been put into effect by the Deputy Secretary, shall become effective on a subsequent date set by the Commission. If at any time it is determined by the Commission that the administrative cost of a refund would exceed the amount to be refunded, no refund will be required.

- 1.5 Notwithstanding any other provisions of this delegation Order, there is hereby delegated to each Administrator the authority to develop and place into effect on a final basis rates for short-term sales of capacity, energy, or transmission service. Short-term sales are those sales that last no longer than one year.

- 1.6 For the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration:
- A. All rates placed into effect on a final basis pursuant to any authority delegated prior to this Order shall remain in full force and effect.
 - B. Rates filed on or before the effective date of this Order, and for which the Commission has issued any substantive Orders will be governed by the terms of Amendment Number 3 to Delegation Order No. 0204-108 until placed in effect by the Commission on a final basis.
 - C. Rates filed under previous delegation Orders for which the Commission has not issued any substantive Orders on or before the effective date of this Order will be governed by the terms of this delegation Order.

2. LIMITATION.


- 2.1 In exercising the authority delegated in this Order, a delegate shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or delegate(s).
- 2.2 Nothing in this Order shall preclude the Secretary from exercising any of the authority delegated by this Order.
- 2.3 Delegation Order 0204-108, Amendment Number 3 does not apply to rates filed after the effective date of this Order.
- 2.4 Any amendments to this Order shall be in consultation with the Department of Energy General Counsel.

3. AUTHORITY TO REDELEGATE.

- 3.1 Except as expressly prohibited by law, regulation, or this Order, the Administrators of the Southeastern, Southwestern, and Western Area Power Administrations may delegate this authority further, in whole or in part.
- 3.2 Copies of redelegations and any subsequent redelegations shall be provided to the Office of Management and Operations Support, which manages the Secretarial Delegations of Authority system.

4. DURATION AND EFFECTIVE DATE.

- 4.1 All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are ratified and remain in force as if taken under this Order, unless or until rescinded, amended or superseded.
- 4.2 This Order is effective December 6, 2001.



Spencer Abraham
Secretary of Energy