



[6450-01-P]

## **DEPARTMENT OF ENERGY**

### **Southeastern Power Administration**

#### **Revision to Power Marketing Policy Kerr-Philpott System of Projects**

**AGENCY:** Southeastern Power Administration, DOE.

**ACTION:** Notice of proposed revision to power marketing policy.

**SUMMARY:** Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy, published in the *Federal Register* of July 6, 1978, Southeastern Power Administration (Southeastern or SEPA) published on November 15, 2019, a notice of intent to revise its power marketing policy to include provisions regarding renewable energy certificates (RECs) from its Kerr-Philpott System of Projects (Kerr-Philpott System). The current power marketing policy was published on July 29, 1985, for the Kerr-Philpott System and is reflected in contracts for the sale of system power, which are maintained in Southeastern's headquarters office. The following is the proposed revision to the Kerr-Philpott System Power Marketing Policy to include a procedure for distribution of RECs to Preference Customers. Southeastern solicits written comments in formulating the final marketing policy revision.

**DATES:** A public information and comment forum will be held in Boydton, Virginia, at 1:00 p.m. on August 18, 2020. Persons desiring to attend the forum should notify Southeastern by August 10, 2020, so that a list of forum participants can be prepared. Persons desiring to speak at the forum should specify this in their notification to Southeastern; others may speak if time permits. Written comments are due September 2, 2020, fifteen (15) days after the scheduled comment forum.

**ADDRESSES:** Five copies of written comments should be submitted to: Herbert R. Nadler, Acting Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635-6711, and e-mailed to *Comments@sepa.doe.gov*. The public information and comment forum for the revision of the Kerr-Philpott System power marketing policy to include provisions for renewable energy certificates will be at the U. S. Army Corps of Engineers, J. H. Kerr Reservoir Visitor Assistance Center, 1930 Mays Chapel Road, Boydton, Virginia 23917, Phone: (434) 738-6143. If travel restrictions occur due to the COVID-19 pandemic on August 18, 2020, the comment forum will be held as a webinar on the same date and time. Please register your intent to attend, including name, address, phone number, and e-mail address, with Southeastern’s Legal Assistant at *judith.worley@sepa.doe.gov*, to receive updates on the meeting status of the comment forum. Registered attendees will be contacted on August 11, 2020, regarding meeting updates and call-in information, if held by webinar.

**FOR FURTHER INFORMATION CONTACT:** Leon Jourolmon IV, General Counsel, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635, (706) 213-3800, *leon.jourolmon@sepa.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

Background: Pursuant to its Procedure for “Public Participation in Formulation of Marketing Policy” published in the *Federal Register* on July 6, 1978, 43 FR 29186, Southeastern published a “Notice of Issuance of Final Power Marketing Policy, Kerr-Philpott System of Projects” in the *Federal Register* on July 29, 1985, 50 FR 30751. The policy establishes the marketing area for system power and addresses the utilization of area utility systems for essential purposes. The policy also addresses wholesale rates, resale rates, and conservation measures, but

does not address renewable energy certificates. Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the Department of the Army. Furthermore, Southeastern must transmit and dispose of such power and energy in such manner as to encourage the most widespread use at the lowest possible rates to consumers consistent with sound business principles. Rate schedules shall be drawn to recover all costs associated with producing and transmitting the power in accordance with repayment criteria

All documents introduced at the public information and comment forum, and all comments, questions and answers will be available for inspection and copying in accordance with the Freedom of Information Act (5 U.S.C. 552).

### **Public Notice and Comment**

On November 15, 2019, Southeastern published in the *Federal Register*, 84 FR 62519, a “Notice of Intention to begin a public process” to revise its marketing policy by including provisions regarding renewable energy certificates from its Kerr-Philpott System. The notice requested that written comments and proposals be submitted on or before January 14, 2020. All comments received are summarized and answered in the following section.

### **Staff Review of Comments**

Written comments were received from one source, Southeastern Federal Power Customers, Inc. (SeFPC), and are summarized below. Southeastern’s response follows each comment.

#### ***Comment 1: Precedential Effect***

At the outset, the SeFPC recognizes that SEPA is only revising the marketing policy for the Kerr-Philpott system of projects. However, the precedent set by these revisions may apply to

other marketing areas which requires due care to ensure that the approach adopted by SEPA can be adopted and modified as appropriate for other marketing areas. Moreover, SEPA should explain that the development of a REC policy and allocation of RECs to existing customers does not change the Administrator's prior determinations on power allocations within the marketing area.

*Response 1:* Southeastern's proposal addresses only changes to the Kerr-Philpott System marketing policy. Revisions to other marketing policies would involve a similar public process to allow comments from interested parties. The revision would not change the Administrator's prior determinations regarding power allocations within the marketing area. Southeastern recognizes that policy decisions within the Kerr-Philpott System may be taken into account in Southeastern's development of subsequent proposals. Southeastern believes that many of the principles used may be used in other systems; however, as Renewable Energy Certificates are defined on a state-by-state basis with a variety of generation requirements and reporting systems, a uniform policy is not possible.

***Comment 2: Eligible Customers***

The RECs which will be made available under this new policy should be offered to all eligible customers. Here, we suggest that SEPA clarify that eligible recipients of RECs are limited to existing power customers with an allocation in that specific marketing area.

*Response 2:* The Renewable Energy Certificates for the Kerr-Philpott System would be distributed to Kerr-Philpott preference customers based upon the amount of energy sold to each customer during a quarterly period.

***Comment 3: Flexibility and Optionality***

The REC policy adopted by SEPA must incorporate flexibility to allow for customers to utilize RECs to the maximum benefit for each customer. As a starting premise, SEPA should offer RECs to each available customer to determine how to utilize the RECs for optimum benefit. If a customer declines to take possession of its REC entitlement, SEPA should offer to sell the RECs on behalf of that customer and credit the customer's bill accordingly. Additionally, SeFPC suggests SEPA offer individual customers the option to transfer RECs to wholesale power providers that meet the definition of a preference customer but are not the counterparty to the power supply contract with SEPA.

*Response 3:* The proposal would allow for flexibility while limiting the transactional costs for Southeastern. Customers would be able to accept RECs directly or designate third-parties to receive the REC distributions. Southeastern does not propose to sell any RECs at this time. Southeastern reserves the right to distribute RECs that have been declined at a later date.

***Comment 4: Relationship to Laws and Regulations***

SEPA must ensure the revised Kerr-Philpott System power marketing policy adheres to current SEPA regulations and contracts, as well as current state, federal, and local laws. Such a practice will support consistency and clarity within SEPA's marketing areas. Additionally, SeFPC suggests SEPA work with individual customers to ensure that RECs sourced from a particular balancing/marketing area will be eligible to qualify under state programs.

*Response 4:* Southeastern will adhere to all applicable statutes, regulations, and contracts. Southeastern will assist Kerr-Philpott System customers in gaining value from REC distributions through state renewable energy programs by providing data for the registration of the generating resources with state programs where applicable.

***Comment 5: Term***

The REC policy and availability of RECs should track the term of the power supply agreements in place with a power customer. In particular, RECs should be available for the duration of the agreement and subject to recall by SEPA only in the event that the power customer ceases to buy capacity and energy from SEPA.

*Response 5:* The proposal is for a distribution to preference customers based upon energy sales during the prior quarter.

***Comment 6: Billing and Costs***

Because SEPA will incur no direct expense in allocating available RECs, the policy should clarify that RECs are provided at no cost to requesting customers. To the extent that a customer declines to take possession of a REC and relies on SEPA to sell the REC, a separate line item should be included on that customer's bill setting forth the benefit received and the costs directly attributable to sale of RECs for that particular customer.

*Response 6:* The administrative costs to maintain the PJM-GATS membership and fees for creation and distribution of the certificates would be allocated over the entire Kerr-Philpott System. Southeastern would not establish any rate schedules for RECs. Southeastern would not sell any RECs.

***Comment 7: Further Review and Comment***

The recommendations set forth above provide a general framework for SEPA to consider in drafting the policy. As the policy is prepared in a more detailed format, the SeFPC reserves the right to provide additional comments and clarifications to the points raised above.

*Response 7:* Southeastern will accept comments from interested parties including SeFPC and its members until 15 days after the announced Public Information and Comment Forum. Written comments must be submitted on or before September 2, 2020.

## **Proposed Revision to the Power Marketing Policy**

*Kerr-Philpott System:* The Kerr-Philpott System consists of two projects, the John H. Kerr Project (Kerr) and the Philpott Project (Philpott). The power from the projects is currently marketed to Preference Customers located in the service areas of Dominion Energy, Duke Energy Progress, American Municipal Power and American Electric Power. Both projects are located within the current PJM Interconnection, L.L.C. (PJM) footprint. Southeastern owns no transmission assets and is reliant on PJM transmission resources to deliver power and energy from the projects. As such, Southeastern became a PJM market participant member in 2005.

Southeastern proposes to revise the Power Marketing Policy for the Kerr-Philpott System to include the following additional provisions for RECs associated with hydroelectric generation:

*Renewable Energy Certificates:* The Generation Attribute Tracking System (GATS) of PJM Environmental Information Services, Inc. (PJM-EIS) creates and tracks certificates reporting generation attributes, by generating unit, for each megawatt-hour (MWh) of energy produced by registered generators. PJM-EIS is a wholly-owned subsidiary of PJM Connex, L.L.C., itself a subsidiary of PJM. Both the Kerr and Philpott projects are registered generators within GATS. The RECs potentially satisfy Renewable Portfolio Standards, state policies, and other regulatory or voluntary clean energy standards in a number of states. Southeastern has subscribed to GATS and has an account in which RECs are collected and tracked for each MWh of energy produced from Kerr and Philpott. Within GATS, certificates can be transferred to other GATS subscribers or to a third-party tracking system.

As defined by the PJM-GATS Terms, “Certificates” refers to a GATS electronic record of generation data representing all of the Attributes from one MWh of electricity generation from a Generating Unit registered with the GATS tracking system. The GATS will create exactly one

Certificate per MWh of generation. These certificates may be used by electricity suppliers and other energy market participants to comply with relevant state policies and regulatory programs and to support voluntary “green” electricity markets.

Southeastern proposes distribution of the GATS-created REC to Preference Customers with allocations of power from the Kerr-Philpott System.

*REC Distribution:* Southeastern shall maintain an account with GATS and collect RECs from the generation at the Kerr and Philpott projects. Southeastern will verify the total amount of RECs each month. Preference Customers with an allocation of power from the Kerr-Philpott System are eligible to receive RECs by transfer from Southeastern’s GATS account to their GATS account or that of their agent. GATS (or a successor application) will be the transfer mechanism for all RECs related to the Kerr-Philpott System. Any further transfer, sale, use, or trade transaction would be the sole responsibility of a Preference Customer. Southeastern will summarize RECs by month for calendar year, quarterly distribution to customers through GATS. Southeastern will determine a total number of RECs to transfer to each customer based on the customer’s monthly invoices during the same three-month period. RECs will be project-specific based on the customer’s applicable contractual arrangements. Thus, customers receiving energy from Philpott will receive equivalent RECs from Philpott, and customers receiving energy from Kerr will receive equivalent RECs from Kerr.

All RECs distributed by Southeastern shall be transferred within thirty days of the end of the calendar year quarter (quarterly distribution month). Each customer must submit to Southeastern, by the tenth day of a quarterly distribution month, the name, contact information, and identification number of the GATS account to which the RECs are to be transferred initially and for any quarterly distribution month in which the account for transfer changes. The account

may be held by a third party. If the customer fails to designate an account by the tenth day of the quarterly distribution month, those RECs shall not be distributed until the following quarter.

Any RECs that were not transferred because a transfer account was not provided to Southeastern will be forfeited if they become non-transferable in the GATS Terms of Use procedures, policies, or definitions of Reporting and Trading Periods, or any subsequent rules and procedures for transfers as established.

The initial transfer process in GATS will be accomplished by the thirtieth day after the end of the first completed calendar year quarter subsequent to publication of the final policy revision. Any balance of RECs that exist in Southeastern's GATS account, other than the first quarter after policy revision publication, may also be transferred to Preference Customers according to the customer's invoiced energy at the time of the REC creation.

*Rates:* No rates shall be established by Southeastern for RECs transferred to Preference Customers. Any cost to Southeastern, such as the GATS subscription, will be incorporated into marketing costs and included in recovery through the energy and capacity rates of the Kerr-Philpott System.

### **Signing Authority**

This document of the Department of Energy was signed on June 11, 2020, by Herbert R. Nadler, Acting Administrator, Southeastern Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an

official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on June 12, 2020.

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Treena V. Garrett  
Federal Register Liaison Officer,  
U.S. Department of Energy

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