



**[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 revision to power marketing policy.

**SUMMARY:** Southeastern Power Administration (Southeastern or SEPA) announces revision to the power marketing policy for the Kerr-Philpott System of Projects (Kerr-Philpott System).

The Kerr-Philpott System power marketing policy was published on July 29, 1985, and is reflected in contracts for the sale of system power, which are maintained in Southeastern's headquarters office. Pursuant to the Procedure for Public Participation in the Formulation of Marketing Policy, published in the *Federal Register* of July 6, 1978, Southeastern published on November 15, 2019, a notice of intent to revise the power marketing policy to include provisions regarding renewable energy certificates (RECs) from the Kerr-Philpott System. The proposed revision to the Kerr-Philpott System Power Marketing Policy was published in the *Federal Register* on June 19, 2020. A virtual web based public information and comment forum was held on August 18, 2020, with written comments due on or before September 2, 2020.

**DATES:** The power marketing policy revision will become effective upon publication of this notice in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Douglas Spencer, Engineer, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635, (706) 213-3855, Email: [douglas.spencer@sepa.doe.gov](mailto:douglas.spencer@sepa.doe.gov).

**SUPPLEMENTARY INFORMATION:**

**Background:** 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 U. S. Army Corps of Engineers. Furthermore, Southeastern must transmit and dispose of power and energy in such a manner as to encourage the most widespread use at the lowest possible rates to consumers consistent with sound business principles. Rate schedules are developed with regard to the recovery of the cost of producing and transmitting such electric energy.

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 the Kerr and Philpott Projects are located within the regional footprint served by the regional transmission organization PJM Interconnection, L.L.C. (PJM), as are the Virginia-based Preference Customers with power allocations. Southeastern owns no transmission assets and relies on PJM transmission resources to dispose of power and energy from the projects. As such, Southeastern joined PJM in 2005.

As the projects are located within the PJM region and potentially satisfy Renewable Portfolio Standards in a number of states, Southeastern has subscribed to the Generation Attribute Tracking System (GATS) of PJM Environmental Information Services, Inc. The GATS provides an unbundled, certificates-based tracking system that reports certain operating

attributes of electricity generators selling energy through the PJM Market Settlement System. The attributes are unbundled from the megawatt-hour of energy produced and recorded onto a certificate. As indicated in Section (2) of the GATS TERMS OF USE, dated January 22, 2020, 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.

Under the following revision of the 1985 power marketing policy, Southeastern will distribute the GATS-created certificates to current Preference Customers with allocations of power from the Kerr-Philpott System.

### **Public Notice and Comment**

Southeastern published a proposed revision in the *Federal Register*, 85 FR 37092, dated June 19, 2020. Southeastern held a web-based information and comment forum, on August 18, 2020. The forum was held virtually due to travel restrictions related to the COVID-19 pandemic. Southeastern received comments from Blue Ridge Power Agency, Tennessee Valley Public Power Association, and Southeastern Federal Power Customers, Inc.

### **Public Comments**

Written and oral comments are summarized below. Southeastern’s responses follow each comment.

*Comment 1:* Tennessee Valley Public Power Association requested “that prior to SEPA setting any policies, procedures or administrative controls regarding the ownership or use of Renewable Energy Credits associated with additional hydro generation as a result of Section 212 funding, that SEPA consult with and incorporate comments from the Preference Customers that authorized the Section 212 funding.”

*Response 1:* TVPPA has referenced “Section 212 funding”. “Section 212 funding” refers to section 212 of the Water Resources Development Act of 2000, Pub. L. 106-541, which amended section 216 of the Water Resources Development Act of 1996 (codified at 33 U.S.C. 2321a). The provision allows the Secretary of the Army to accept and use funds for use in hydroelectric power project uprating provided by preference customers through contracts related to the marketing of power. Therefore, funds provided by certain preference customers may increase energy at the John H. Kerr and Philpott projects. Southeastern has considered comments of customers participating in the Section 212 customer funding program. Any increase in energy due to the Section 212 program will be distributed in accordance with this published revision of the Kerr-Philpott power marketing policy.

*Comment 2:* Blue Ridge Power Agency members expressed appreciation they will have the choice on how to use the RECs to provide benefits for their customers. They support Southeastern’s proposed policy to distribute RECs based on existing power allocations, and to separate out energy from each generator. They indicate enabling customers to take RECs from each project is the fairest way to proceed, and allowing each customer to designate whether the RECs are transferred to a third party or directly to the customer is important. They encourage Southeastern to work aggressively on state REC registrations for each generator.

*Response 2:* Southeastern acknowledges Blue Ridge Power Agency members’ comments regarding distribution of RECs in the Kerr-Philpott System. Southeastern continues to pursue state REC registrations for both the Kerr and Philpott projects.

*Comment 3:* Southeastern Federal Power Customers, Inc. (SeFPC), expressed general support for the revision and addressed three areas of concern which include: (1) The revision for the Kerr-Philpott System should be clear that it will not establish controlling precedent on

policies for the allocations for RECs that SEPA may adopt in the future for other marketing areas; (2) The revision should include language from the response to comments to the notice of intent to revise the power marketing policy that stated that the revision will not change the Administrator's prior determinations regarding power allocation within the marketing area; and (3) That SEPA should further clarify "SEPA reserves the right to distribute RECs that have been declined at a later date."

*Response 3:* Southeastern acknowledges SeFPC's comments regarding distribution of RECs to Kerr-Philpott Preference Customers. Southeastern added language to the Power Marketing Policy Revision to address SeFPC's concerns.

### **Summary of Changes to the Power Marketing Policy Revision**

Southeastern made further changes to the Power Marketing Policy Revision as a result of comments received during the comment period and public forum. Southeastern added language stating the revision will only apply to the Kerr-Philpott marketing area and Southeastern may revise other marketing policies through a public process at a later date. Southeastern added language to state the revision will not change the Administrator's prior decisions regarding the power allocations within the Kerr-Philpott marketing area. Southeastern clarified distributions may occur outside of the quarterly distributions when preference entities have failed to submit proper distribution information or when RECs collected prior to the implementation of the policy are distributed. Southeastern amended the language regarding the initial quarterly transfer to allow for the transfer to occur in 2020.

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

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

*Kerr-Philpott System:* The Kerr-Philpott System Power Marketing Policy inclusion of procedures to distribute RECs applies only to the Kerr-Philpott marketing area. At a later date, Southeastern may revise other marketing policies through a public process.

*Renewable Energy Certificates (RECs):* The 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 will proceed with state REC registrations of both the Kerr and Philpott projects. Southeastern has subscribed to GATS and has an account in which RECs are collected and tracked for each MWh of energy produced from the Kerr and Philpott projects. 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 will distribute the GATS-created RECs to Preference Customers with allocations of power from the Kerr-Philpott System. The Kerr-Philpott System procedures for

distributing renewable energy certificates will not change the Administrator's prior decisions regarding the power allocations within the Kerr-Philpott marketing area.

*RECs 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 should 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 may not be distributed until the following quarter. Any RECs that were not transferred because a transfer account was not provided to Southeastern may

be forfeited if they become non-transferrable in the GATS Terms of Use procedures, policies, or definitions of Reporting and Trading Periods, or any subsequent procedures for transfers as established.

The initial quarterly transfer process in GATS will be accomplished by the thirtieth day after the publication of the final policy revision. Any balance of RECs that exist in Southeastern's GATS account after the first quarterly transfer may also be transferred to Preference Customers according to the customer's invoiced energy at the time of the REC creation. Southeastern reserves the right to distribute RECs to a Preference Customer at a later date for RECs declined by failure to provide a GATS account for distribution and for RECs currently existing in Southeastern's GATS account as part of the initial implementation of the revised marketing policy in a manner consistent with the distribution method in the policy revision.

*Effect of Costs on 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.

*Environmental Impact:* Southeastern has reviewed the possible environmental impacts of the marketing policy revision under consideration and has concluded that, because the RECs policy would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, as amended, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

#### **Determination Under Executive Order 12866**



Southeastern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of the *Federal Register* notice by the Office of Management and Budget is required.

### **Signing Authority**

This document of the Department of Energy was signed on October 8, 2020, by Virgil G. Hobbs III, 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 October 14, 2020.

**Treena V. Garrett,**

*Federal Register Liaison Officer,*

*U.S. Department of Energy.*

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