

NEAR TERM INTERTIE ACCESS POLICY
ADMINISTRATOR'S RECORD OF DECISION

BONNEVILLE POWER ADMINISTRATION
U.S. DEPARTMENT OF ENERGY
MAY 1985

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NEAR TERM INTERTIE ACCESS POLICY
RECORD OF DECISION

I. Introduction

Bonneville Power Administration (BPA) is adopting its Near Term Intertie Access Policy (Near Term IAP), effective from June 1, 1985, to September 30, 1986. This Policy is similar to the Interim Intertie Access Policy (Interim IAP) which it supersedes and which has been in effect since September 7, 1984. The adoption of the Near Term IAP is a final action of the BPA Administrator taken pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act).

Most of the 37 comments which BPA received on the Near Term IAP incorporated by reference and, in many cases, specifically attached comments which the commenters had previously submitted in response to the Interim IAP. This was appropriate given the similarity between the Interim IAP and the Near Term IAP. BPA's publication of its Revised Near Term IAP (January 1985, pp. 2-4, Discussion) identified only four proposed technical and operating changes to the policy.

In considering the decision to adopt the Near Term IAP, BPA paid particular attention to the comments from California entities regarding experience under the Interim IAP. The reports of California utilities on Intertie usage have also been researched carefully. In general, although California comments claimed that the Interim IAP resulted in dramatic price increases for PNW power, the data provided by the CPUC showed instead that the only significant change was that BPA average prices reached a par with other non-Federal sellers. The California data actually showed that the price change for non-Federal sellers for the last 4 months of 1983 and 1984 was within the range of increase which would have been expected based on a comparison of California average alternative costs for those two periods.

BPA believes that purported decreased Intertie use under the Interim IAP was probably caused by encroaching minimum generation periods in the SW and conditions other than the prices of PNW economy energy. BPA also noted that although California entities accused the IAP of producing unaffordably high prices, the same respondents denounced the concept of economic override.

After serious consideration of all comments received, BPA has decided to adopt the Near Term IAP. The recent decision by the U.S. Ninth Circuit Court of Appeals in the Department of Water and Power of the City of Los Angeles v. Bonneville Power Administration, No. 84-7618, Slip Op. (9th Cir., April 24, 1985); confirmed BPA's authority to allocate the use of the Intertie.

In this Record of Decision (ROD), BPA describes comments on many issues which were raised and disposed of in the ROD on the Interim IAP. BPA stands on its decisions in the Interim IAP ROD with respect to these issues. Therefore, this ROD will frequently incorporate by reference those previous decisions. Evaluations and decisions which are original to this ROD will focus on the four areas of change listed in the January 1985 Discussion, and on new issues where any were raised.

II. Authority for Action

A. Procedural Requirements

Summary of Comments

SCE continues to object to the purported haste in which, and the procedures by which, BPA implemented the IAP. SCE feels that BPA failed to provide a public hearing procedure under sections 6(c)(1) and 7(i) of the Pacific Northwest Power Act. LADWP asserted that the information presented by BPA in its notice of the proposed Near Term IAP was insufficient to justify the implementation of the policy. (Kendall, SCE, p. 3; Nichols, LADWP, Encl. p. 4.)

Evaluation of Comments

BPA's justification for this policy is contained in this ROD. BPA believes the data and the reasoning to be more than sufficient. The IAP development process should not be seen as a "contested case" in which BPA must prove the legitimacy of its policy decision on the basis of substantial evidence in the record. (See section 9(e)(2) of the Pacific Northwest Power Act.)

BPA has responded to the assertion about formal 7(i) hearings in the Interim IAP ROD (pp. 11-15). With respect to the assertion that section 6(c) of the Pacific Northwest Power Act requires a formal hearing, BPA interprets that section to apply only to BPA resource acquisitions and other actions related to major issues. The IAP is not a resource acquisition.

Decision

Appropriate procedures, including an extensive and thorough public involvement effort, have been followed in the development of this policy.

B. Statement Regarding Authority

Summary of Comments

LADWP, SCE, and PG&E feel that the proposed Near Term IAP is a restrictive policy which is inappropriate, procedurally defective, and violates principles of due process of law. The CPUC asserts that the policy is inconsistent with BPA's statutory obligation. CPUC also states that BPA should recognize that its failure to collect sufficient revenues is principally a function of its refusal so far to base rates charged its extraregional customers on the costs to provide them service. Puget states that BPA has no authority to use its IAP to protect its Power Marketing Program or power operations. (Nichols, LADWP, Encl. p. 3; Kendall, SCE, p. 3; Gardiner, PG&E, p. 2; Fairchild, CPUC, p. 2; Bailey, Puget, p. 1.)

Evaluation of Comments

Many of those who commented on both the Interim and the Near Term IAP questioned BPA's legal authority to adopt any Policy. Because BPA had not previously adopted an Intertie Policy, BPA elected in the Interim IAP ROD to respond to questions regarding its authority. BPA's Interim IAP ROD therefore responded at length to those assertions of lack of authority (Interim IAP ROD, pp. 6-11, 45-53).

Since BPA's adoption of the Interim IAP, a number of those who commented have challenged BPA's action before the Ninth Circuit Court of Appeals and the Federal Energy Regulatory Commission (FERC), alleging either a lack of authority or arguing that the policy constitutes a rate. BPA has filed numerous responsive pleadings and briefs defending the authority on which the policy is based and arguing that the policy is not a rate. As mentioned previously, the U.S. Ninth Circuit Court of Appeals recently upheld BPA's promulgation of Intertie policy. (Department of Water and Power of the City of Los Angeles v. Bonneville Power Administration, No. 84-7618, Slip Op. (9th Cir., April 24, 1985), hereinafter referred to as LADWP v. BPA.)

Many of those who challenged the Interim IAP have also indicated informally that they will challenge this Near Term IAP. Therefore, with the exceptions of the issues discussed in sections II.C.-II.G. below, BPA has elected not to address the legal issues presented by its policy in this ROD but to preserve those arguments for the appropriate judicial or administrative forum.

BPA's ROD for this Near Term IAP incorporates by reference those statements of authority contained in the Interim IAP ROD. BPA's position is further set forth in the responsive pleadings and briefs that it has filed with the Ninth Circuit Court of Appeals and FERC. BPA's position in this regard remains unchanged in the Near Term IAP.

C. Role of Other Entities Regarding Intertie Access Policy Development

Summary of Comments

The PNUCC commented that the Pacific Northwest Electric Power and Conservation Planning Council (Regional Council) lacks authority to require that BPA's IAP be consistent with the Regional Council's Energy Plan or Fish and Wildlife Program. (Snowden, PNUCC, p. 2.)

Evaluation of Comments

BPA agrees with the PNUCC and has generally stated its position relative to the role of the Regional Council in the EA that BPA prepared in connection with the Near Term IAP (EA, p. 11). The Regional Council's role is to guide BPA in taking certain actions under sections 4 and 6 of the Pacific Northwest Power Act. These actions do not include BPA transmission activities. On the other hand, BPA recognizes the Regional Council's interest in Intertie policy issues and is aware that the Regional Council is developing recommendations for a Long Term Intertie Policy in revising its Plan.

Decision

BPA will cooperate in this endeavor by commenting on Regional Council proposals for Intertie use and urges others interested in Intertie Policy to act similarly. In addition, BPA will advise the Regional Council on the results of its investigations into interregional power exchanges, as referred to in section 6(1)(2) of the Pacific Northwest Power Act, so that the Regional Council may take such investigations into account in formulating its Plan.

D. Authority to Condition Access on Fish and Wildlife Provisions

Summary of Comments

The PNUCC feels that the fish and wildlife provisions of the proposed policy are inappropriate and unlawful because they are not authorized by the applicable statutes and that nothing in the Pacific Northwest Power Act sanctions or otherwise indicates Congress' intent that Intertie access be withheld on the basis of the conditions set forth in the proposed policy, or that Intertie access may be withheld on that basis for non-Federal, but not Federal, projects. (Snowden, PNUCC, p. 3.)

PP&L states that the Administrator has no authority to condition access to the Intertie upon the consistency of the actions of an applying utility with the fish and wildlife program. (Hammerquist, PP&L, p. 2.)

ICA feels that BPA must not transmit power from any of its own resources or from any other generating source that has adversely affected fish and wildlife, or has caused BPA to have to expend funds to mitigate or enhance these fish and wildlife resources, particularly if such sales, to be transmitted by BPA, are in conflict with the Regional Council's Fish and Wildlife Plan presently in effect, or for which proposals for amendment are now being considered by the Regional Council. (Miles, ICA, p. 2.)

PGE feels that in the proposed policy BPA intends to condition Intertie access on adherence to the Fish and Wildlife Program adopted by the Regional Council. While PGE has no disagreement with the Program, it does not believe BPA should place itself in the role of enforcer of the Program, with Intertie access as a means for compliance. (Dyer, PGE, p. 3.)

Grant PUD states that noticeably absent from the Pacific Northwest Power Act's list of criteria for limiting access to the transmission system is any requirement of compliance or consistency with the fish and wildlife programs of either BPA or the Regional Council created by the Pacific Northwest Power Act. Conditioning Intertie access on these additional considerations would directly contravene two important policies of the statute--the policy of promoting local independent development of resources and the policy of permitting continued operation of projects with existing Federal licenses. Grant PUD also states that BPA has no authority to deny transmission access to any project operating in compliance with an FERC license and that it is not clear that BPA possesses any authority to enforce the terms of a FERC license by granting or withholding rights or privileges on

the basis of compliance. Grant PUD feels that the proposed policy is so broadly stated and carries such severe penalties as to have an in terram effect disproportionate to any benefits for fish and wildlife likely to result from its implementation and, therefore, paragraphs II.C.3.c. and II.C.7.e. and f. should be deleted. (Myers, Grant PUD, pp. 1-3.)

The WWP believes that the Administrator should not have the unilateral authority to determine if a resource has an adverse impact on fish and wildlife and deny the resource Intertie access on that basis. They feel that such concerns should be addressed in State and Federal licensing procedures. (Prekeges, WWP, p. 1.)

WADOF feels that BPA is usurping the responsibilities of State and Federal fish and wildlife agencies by allowing the Administrator to determine whether an impact is substantial or what is appropriate mitigation for an impact. These responsibilities reside with the fish and wildlife agencies and tribes, not BPA. (Wilkerson, WADOF, p. 3.)

The Mid-Columbia PUDs feel that if BPA plans as a matter of policy to give fish and wildlife issues special treatment over all other Administrator obligations under applicable law, rules, and regulations, they strongly object. They believe their point is simple, that sections II.C.3.a. and b. and II.C.4.d. provide adequate recognition of all environmentally related obligations of and limitations on the Administrator. (Wright, Mid-Columbia PUDs, p. 2.)

Puget and IPC feel that BPA has no authority to deny Intertie access based on its perception of fish and wildlife impacts of generating resources. In addition, IPC believes that the release of water from Brownlee cannot and will not be considered by BPA as adversely affecting the Administrator's efforts on behalf of fish and wildlife for the purpose of Intertie access for Assured Deliveries. (Bailey, Puget, p. 1.; Barclay, IPC, Encl. pp. 1-2.)

The ICP doesn't expect to see the Fish and Wildlife Provisions triggered during the term of the Policy, but as a precedent it is unacceptable. (Schultz, ICP, pp. 4-5.)

The CRITFC asserted that BPA has a trust responsibility to assist tribal governments in the protection and management of their natural resources. (Wapato, CRITFC, p. 1.)

Evaluation of Comments and Decision

No new issues were raised by these comments. BPA adopts its positions as stated in the Interim IAP ROD (pp. 63-82). See also the discussion at II.B.

E. Is IAP Anticompetitive?

Summary of Comments

The CPUC, LADWP, and SCE accuse the Near Term IAP of eliminating price competition among NW suppliers. LADWP and SCE find BPA's statement that the

IAP has not totally eliminated competition to be an acknowledgement that competition indeed has been reduced. SCL wants further explanation on how BPA's estimate, for scheduling purposes, of potential Intertie usage by California utilities with capacity/exchange contracts introduces competition among PNW suppliers. (Fairchild, CPUC, p. 2; Nichols, LADWP, Encl. p. 6; Kendall, SCE, pp. 1-2; Garman, SCL, p. 1.)

SCE regards the Near Term IAP as a classic cartel device that has altered an established course of business for the purpose of unilaterally raising NW and BPA prices. PG&E calls for the retention of some "competitive restraints" on NW pricing, while LADWP finds that "price gouging" has indeed occurred. (Kendall, SCE, p. 1; Gardiner, PG&E, p. 2; Nichols, LADWP, Encl. p. 8.)

Evaluation of Comments

In general, many of the California entities allege that the Interim IAP is per se anticompetitive. They assert, among other things, that the IAP has eliminated competition. Some allege that allocating Intertie capacity on a pro rata basis is a classic cartel device. This is a puzzling comment given the following statement by the CPUC which proposes a pro rata allocation among PSW parties:

In recognition of the need for many California consumers to share in the benefits of federally generated power and in consideration of the benefits received by interconnection with the existing Interties, the [California] Parties [which own or will own an interest in the southern portion of the Intertie] agree, in times when the availability of nonfirm energy marketed by Bonneville Power Administration is less than the available transfer capability in the Interties, that said Participants will limit their use of their Project and Intertie Capacity for such energy so as not to exceed a pro rata share of such energy. (CPUC, The Marketing of the Surplus Northwest Power to California, 1/30/85, p. 9; hereinafter referred to as Marketing NW Power.)

The criticisms of the California commenters would have some credibility were the NW-SW market free and open in the absence of the IAP. As the CPUC statement above indicates, this is not the case. In fact, as LADWP openly states:

Los Angeles believes that the Federal legislation and BPA's statements translate into a free and open policy for access to the northern end of the Intertie to all entities without interference from BPA for that capacity above BPA's contractual requirements. This contrasts quite differently with access to the southern end of the Intertie where we could not advocate or support a free and open Intertie policy (Nichols, LADWP, App. A, p. 3)

As these statements indicate, the California commenters criticize BPA's IAP but do not acknowledge how the markets in California actually function. In its letter, SCE complains about instances of SCE being unable to make Intertie purchases due to NW prices, but fails to mention that other California entities who might have been willing to pay NW prices do not have access to use SCE's unused Intertie capacity. This unwillingness of SCE and other California Intertie owners to offer other utilities access when there is unused capacity on their share of the Intertie is particularly significant in light of minimum generation levels of some California systems which limit these systems' ability to accept PNW economy energy. (See section III.C.)

BPA has addressed the effect of the Interim IAP on competition in the California markets for electric power. (See Interim IAP ROD, pp. 41-44 and 38-39.) BPA incorporates its previous discussion by reference into this record. BPA has stated that the general structure of the IAP is warranted, based upon the restricted market conditions at the southern end of the Intertie and the need to generate sufficient revenues to repay the Federal Treasury (Interim IAP ROD, p. 40). None of the commenters challenged this discussion of the expected effects of the Interim IAP on the market. (Interim IAP ROD, Section II.G., pp. 31-44.)

Competition has not been eliminated by the Interim IAP. Competition exists and, in some ways, has been enhanced under the IAP. By providing for new Assured Delivery sales, the IAP creates a market for firm energy that did not exist prior to the policy. Additionally, the California market itself remains competitive since there is a choice of suppliers for the California utilities. PNW utilities must compete not only with one another but against other suppliers in California and the Inland SW. As evidenced by comments from the California utilities themselves as well as from information from the CEC and FERC Form 1 and other documents, the California utilities have a range of choices in their energy and capacity purchases.

California utilities have long standing relationships to import power from public and private utilities and marketing entities in the Inland SW, which includes Utah, Nevada, Arizona, New Mexico, Colorado, Mexico, and parts of Wyoming and east Texas. California utilities own portions of SW generating resources and also purchase capacity, firm energy, and economy energy. In 1983 California utilities purchased 2,117 MW of capacity, 12,300 GWh of firm energy and 7,074 GWh of economy energy from the Inland SW ("Final Draft Energy Report" Appendices Vol. II CEC April 1985, pg. 4.2-28). During the period while the Near Term IAP is to be in effect, California purchases from the Inland SW will remain high, thereby ensuring competition with potential NW imports in the California market.

PNW utilities' need to compete against the prices set by other suppliers located in California and the Inland SW is noted by SCE: "This reduction [in SCE's PNW-PSW Intertie utilization] was made because PNW prices were not competitive with SCE's alternative sources of economy energy, which were located outside the PNW." (Kendall, SCE, p. 2.) In other words, a limitation on prices that BPA and PNW utilities could charge was the price offered by other competitors located outside the PNW.

The IAP does not set the prices charged by PNW utilities. In fact, as discussed in III.B. below, the selling prices of non-Federal sellers did not change significantly under the IAP. In some instances during the Interim IAP, buyers and sellers were unable to agree on price leaving Intertie capacity unused because other cheaper alternative sources of power were available to California buyers. This is no more dramatically illustrated than the instance cited by the CPUC where PP&L was forced by competition to reduce its asking price from 34.2 mills/kWh to 27.9 mills/kWh because it could not sell power at the higher prices. (Marketing NW Power, p. 20.) At the same time, PGE's asking price was 25 mills/kWh according to the CPUC. Id. This example illustrates price flexibility and competition, not unused capacity on the Intertie. As observed by the CEC:

Although California utilities lose some control over electricity production costs by relying on out-of-state sources, they are able to choose the least-cost among those sources, leading to lower costs for California consumers.

Because sellers in the Northwest and Southwest compete with each other and with in-state resources, prices must remain competitive or imports will be displaced. (CEC, Biennial Report V, Issue Paper on Out-of-State Imports, 3/28/85, p. 20.)

Competition also occurs among PNW utilities and is increased as a result of the allocation process. When developing Intertie schedules, BPA must estimate the activity under the capacity energy exchange agreements with California parties. BPA's estimate of available Intertie capacity therefore is often larger than actual Intertie usage. This assures that PNW sellers will have to compete with one another to ensure that they will have sufficient sales even in a market when PNW allocations exceed PSW demand.

An additional source of competition is PGE's ownership of 700 MW of Intertie capacity which is not subject to BPA's IAP. (See discussion under section III.D.)

F. Has the IAP Established a De Facto Floor Price?

Summary of Comments

The CEC charges that in addition to setting a floor for prices, preliminary data indicates that the average price paid for NW nonfirm power by California parties was dramatically increased over previous years sales. CEC feels the fact that no nonfirm sales have been made below BPA's Standard Nonfirm rate to be convincing evidence that the policy has in fact resulted in price-fixing. (Imbrecht, CEC, pp. 2-3.)

Evaluation of Comments

The Interim IAP did not create a de facto floor price of 18.5 mills/kWh as charged by some commenters. The comments did not distinguish the Interim

IAP from the operation of the Exportable Agreement, which was in effect long before the policy. Section II.D.2.6.(1) of the Interim IAP stated that the Exportable Agreement is an existing BPA contractual obligation and its allocation procedure has not been changed by the policy. The Ninth Circuit has upheld the legality of the Exportable Agreement (LADWP v. BPA).

The Exportable Agreement provides for allocation of Intertie access, during specified times, for PNW parties willing to sell energy at BPA's rate for such energy. The Exportable Agreement would not be an exception to the nonfirm rate rule that the 11.0 mills/kWh rate would be used, but only if BPA could gain more revenue by doing so. This has not yet occurred during the term of the Interim IAP. The fact that the Exportable Agreement price has been 18.5 mills/kWh during the Interim IAP is not due to anticompetitive practices. Instead, 18.5 mills/kWh was a "zero-benefit" point for PNW sellers in that BPA and other PNW parties could not gain enough additional sales by lowering their price to realize a net increase in revenues. This has been due to the relationship between the fixed BPA rate levels applicable under the Exportable Agreement and the decremental cost levels in the PSW.

Decision

BPA's IAP clearly does not establish a de facto floor price for energy sold to California.

G. NEPA

Issue #1: Lack of Appropriate Prior Analysis

Summary of Comments

LADWP and SCE state that BPA totally disregarded NEPA regulations requiring the development of an Environmental Assessment and an Environmental Impact Statement prior to--not in conjunction with or as justification for--implementation of the IAP. (Nichols, LADWP, Encl. p. 4; Kendall, SCE, p. 3.)

Evaluation of Comments

When BPA proposed a multistep IAP development and environmental analysis process, most comments from environmental organizations supported that strategy (Interim IAP ROD, p. 22). Then, as now, objections to BPA's multistep approach have come primarily from California parties--in this case, LADWP and SCE, whose interests in BPA's Near Term IAP are primarily economic.

Implementation of the Interim IAP was immediately necessary to enable businesslike marketing of Federal surplus power with appropriate cost recovery. The implementation of the Interim IAP in September 1984 provided valuable operational experience aiding the policy development and EA of the Near Term IAP. Implementing the Interim IAP in September provided the benefit of having a trial allocation procedure in place during the fall and winter

months when streamflow river conditions most often result in Conditions 2 and 3 (Interim IAP ROD, p. 23).

The Near Term IAP provides Intertie access to existing resources only. It is, therefore, not expected to significantly affect resource planning or development. BPA is now developing a Long Term IAP to replace the Near Term IAP after September 1986. The Long Term IAP will govern the access of existing and potential future resources to the Intertie. BPA has begun to prepare an EIS on the Long Term IAP, which will examine the Long Term IAP's possible effect on resource planning and development, and other issues not raised under the Near Term IAP.

Issue #2: Lack of Positive Analysis

Summary of Comments

Both NOAA and LADWP feel that the EA should directly evaluate the impact of resources operated for Intertie sales, rather than assume that there are no adverse impacts since there have been no "complaints." They feel that it would be irresponsible to wait for complaints, and that doing so would be contrary to the spirit of environmental laws. LADWP stated that BPA has provided no firm data on actual operations under the policy. (Evans, NOAA, p. 2; Nichols, LADWP, Encl. p. 4.)

The WADOF asks that the Near Term IAP be clear and easily understandable and its implementation create no unassessed or unmitigated environmental impacts. (Wilkerson, WADOF, p. 2.)

Evaluation of Comments

Contrary to the assertions of LADWP and NOAA, BPA did not rely on the absence of complaints about the Interim IAP to conclude that the Near Term IAP would have no significant environmental impacts. The EA for the Near Term IAP was based on analysis of the actual effects of the Interim IAP and of the potential effects of the Near Term IAP. BPA believes its environmental analysis of the Near Term IAP was thorough and rigorous. Environmental analysis on the basis of experience under the Interim IAP and projections regarding the Near Term IAP indicate no significant environmental impacts from the proposed Near Term IAP. (See EA and FONSI on the Near Term IAP.)

Decision

BPA's policy development and environmental assessment process has been an appropriate and useful tool to allow a meaningful analysis of the Near Term IAP. BPA has concluded that the Near Term IAP will not cause significant environmental effects.

III. Experience Under the Interim IAP

A. Reclassification of Energy as Firm or Nonfirm

Summary of Comments

The CEC asserts that energy traditionally sold as nonfirm was reclassified and sold as firm at higher prices under the Interim IAP but without status as a firm energy sale qualifying for Assured Delivery. LADWP believes that the IAP has enabled BPA to survey the market and choose the highest price from its various rates that the market will bear. (Imbrecht, CEC, p. 2; Nichols, LADWP, Encl. p. 6.)

Evaluation of Comments

There has been no "reclassification" of nonfirm energy as firm energy under the Interim IAP in order to extract a higher price. BPA has used the same method for decades to classify energy as firm energy or as nonfirm or "secondary" energy based on critical water planning criteria. California commenters have used the term "nonfirm energy" in a manner that confuses nonfirm energy with sales of energy under terms providing for nonfirm delivery. BPA surplus firm energy, whether it is purchased for a long or short term, is distinguishable on planning and operational bases from nonfirm energy produced in excess of the firm capability of BPA's resources. In setting its rates pursuant to section 7(i) of the Pacific Northwest Power Act, BPA has allocated costs such that rates for surplus firm power are higher than rates for nonfirm or secondary energy. However, BPA has been compelled to sell surplus firm power at lower, nonfirm rates, and under reduced Assured Delivery conditions because the supply of surplus firm power is larger than the current market.

The comments asserted that BPA "surveyed" the market to choose the highest possible prices that the market would bear. This is entirely at odds with the facts. California utilities have not agreed to share information on their operating costs data with BPA or other PNW utilities. This requires PNW sellers to make blind offers in an attempt to determine the size of the PSW market at a given price level. When BPA offers surplus firm energy at the rates specified in its firm rate schedules, it is not "surveying" the market to see what price it will bear.

Decision

BPA Intertie sales have been appropriately classed as sales of firm or nonfirm energy based on clear planning and operational criteria. The sales have been priced consistent with approved rate schedules.

B. Changes in Relative Intertie Prices

Summary of Comments

PG&E states that it would find a share-the-savings approach far less oppressive than the pricing policy under the Interim IAP and proposed Near Term IAP. PG&E feels that California consumers already have been hit with rate increases to pay for increased expenses of purchased power from the PNW. (Gardiner, PG&E, pp. 3, 6.)

The CEC feels that the IAP has already had a substantial negative impact on California and has resulted in a major shift in planning with regard to future purchases of NW nonfirm power. If the IAP is upheld by the courts, it will have given BPA the ability, unilaterally, to remove most of the benefits California could receive from a new Intertie by increasing future surplus energy rates to the point where it is only marginally preferable for California utilities to buy BPA surplus energy. The CEC feels that BPA has provided no assurance that the IAP will not be used in the future to "gouge" California ratepayers. (Imbrecht, CEC, p. 1.)

Evaluation of Comments

Most California entities charge that the Interim IAP has resulted in drastic price increases. Certain sales and price data were provided in the CPUC staff paper entitled "The Marketing of Surplus Northwest Power to California" (January 30, 1985). BPA price data is limited to BPA transactions since we do not have records of the transaction prices of other PNW utilities. However, the CPUC paper contained figures on prices paid by PSW utilities to other "principal non-Federal" suppliers which can be used for comparison of the last 4 months of 1983 and 1984.

The data supplied in the CPUC paper shows that the weighted average price changes for non-BPA power from 1983 to 1984 under the Interim IAP were not dramatic. (See Table 1.) This does not support the assertions of price fixing and cartelization. The comments by CEC state that preliminary data indicates that ". . . the average price paid for NW nonfirm power by California parties was dramatically increased . . ." over the previous year. The comment goes on to recite prices paid by SCE, PG&E, and LADWP in 1983 and 1984, which clearly are based on BPA rates, rather than NW averages. (Imbrecht, CEC, p. 2.) This can be seen by reviewing the CPUC data in Table 1 on BPA and other NW prices. In addition, the CEC comment misleadingly characterized the comparison as being a comparison of prices for "nonfirm power." The data in Table 1 contain figures comparable to those cited by CEC, but are described as being average prices paid for all Intertie sales, including sales of surplus firm, particularly for BPA in the last quarter of 1984.

According to the CPUC data, average non-BPA prices went from 23.3 mills/kWh in 1983 to 26.02 mills/kWh in 1984. This price increase over a year's time can be explained by taking into account BPA's rate increase in November 1983, the raising of the applicable rate under the Exportable Agreement to BPA's nonfirm rate, and by examining the different load-resource

conditions in the SW in the last 4 months of 1983 compared to 1984. The 1983 period was marked by high northern California hydro availability, resulting in decreased PSW operating costs. In contrast, the 1984 period was marked by high SW temperatures and loads which result in higher incremental operating costs. The supply of nonfirm power in the NW also changed, with no nonfirm energy available for export during the latter part of 1984.

The CPUC data also shows that the price of BC Hydro power paralleled that of non-BPA PNW sellers in 1983 and of BPA power in 1984. This indicates that BC Hydro prices follow the market, with or without the IAP, and argues against the California utilities' assertions that they have been economically damaged by the policy provisions on extraregional access. (See also section IX below.)

The single most significant change was in the amount and price of BPA power. Gaining greater Federal revenue to enable BPA to repay the Treasury was indeed a goal of the policy. The CPUC data indicated that the BPA average price went from 14.6 mills/kWh in the relevant period of 1983 to 26.0 mills/kWh in 1984. This is consistent with BPA records of sales of Federal surplus firm power for the 1984 period. In 1983, BPA's sales were largely under its nonfirm rate schedules since California utilities refused to purchase under the surplus firm rates. This forced BPA to sell firm power at less than its cost. The 1984 average price is based on sales made at the surplus firm rates during the Interim IAP. The CPUC data indicates that PSW utilities apparently bought less BPA power in 1983 when it was less expensive than they did in 1984.

Prior to adoption of the Interim IAP, BPA was unable to sell its surplus firm power at prices reflecting the costs of making such power available due in part to the energy purchasing strategies and Intertie access policies practiced by the owners of the southern portion of the Intertie. (See BPA Discussion Paper, 2/15/84, pp. 8-10.) The resulting disparity in the average price received by BPA for energy sold to California utilities in 1983 compared to that received by other PNW utilities and BC Hydro is reflected in figures compiled by the CPUC. From September to December 1983, BPA sold 2,620 GWh of energy to California at an average price of 14.6 mills/kWh. During the same period, BC Hydro sold 1,997 GWh to California at an average price of 23.2 mills/kWh and NW utilities sold 2,924 GWh, also at 23.2 mills/kWh.

The change in BPA's prices noted by the California commenters can be explained by examining the types of energy available in the NW market. 1983 was a year of abundant hydropower in the NW and there were ample amounts of nonfirm energy available for California sales. The summer and fall of 1984, however, was sufficiently dry that the only energy available for sale to California was surplus firm. Surplus firm energy is a more valuable commodity than is nonfirm energy, and therefore commands a higher price. As seen in Table 2, the NW sold only surplus firm energy from September 1984 until January 1985 when the Exportable Agreement was triggered.

The price disparity between BPA and other sellers is also seen in FERC Form 1 data for California utilities (see Table 3). In 1983, BPA sold

6,853 GWh of economy energy to PG&E at an average of 11.6 mills/kWh, and sold 6,965 GWh to SCE at an average of 9.0 mills/kWh. During the same year, PG&E's prices from other NW suppliers averaged 29.6 mills/kWh, while SCE's purchases averaged 22.7 mills/kWh, the price quoted by the CPUC for the latter part of 1984.

In 1983, PG&E purchased energy from the Inland SW at an average cost of 25.2 mills/kWh (source: PG&E's 1983 FERC Form 1). SCE's Reasonableness of Operations Report indicates that from January 1 to November 30, 1983, the average price for Inland SW imports was 24.1 mills/kWh (page III-127). This was slightly higher than the prices paid to NW suppliers and BC Hydro during the last 4 months of 1983, and at least 10 mills/kWh greater than the price paid for BPA energy during that period.

This disparity in price occurred because the Intertie practices of the southern owners permitted them to purchase from PNW utilities at prices which undercut BPA's offered surplus firm prices until BPA was forced to sell firm power below cost, under its nonfirm rate schedules and at market clearing prices, in order to make substantial sales. (See Interim IAP ROD, pp. 39-41.) This produced economic waste and contributed to an underrecovery of BPA's costs.

One of the objectives of the Interim IAP was to enable BPA to gain assured access to a portion of the Intertie in order to market its power at prices more closely reflecting the cost of making such energy available. Between September and December of 1984, BPA had little nonfirm energy available for sale above the firm surplus energy in its system. However, firm power was available, due to the power surplus in the NW. The IAP helped BPA market its firm power at prices more closely reflecting those which its other competitors have historically received and more closely reflecting the cost of making such energy available. The CPUC and FERC Form 1 figures reflect this effect. (See Tables 1 and 3.)

Decision

The Interim IAP has not resulted in significant changes in non-Federal prices. Non-Federal average prices were essentially the same under the Interim IAP as they were the year before. BPA average prices were far below other sellers prior to the policy, but now are comparable. This is consistent with BPA's Power Marketing Program.

C. Changes in Relative Intertie Usage

Summary of Comments

A number of California entities question BPA's summary of experience under the Interim IAP. LADWP challenges BPA's statement that effects of implementation on Intertie loading cannot be directly evaluated because of lack of knowledge of what the market would have been without the policy. CEC believes that there must be price fixing if no sales of nonfirm energy between California and the PNW have been made below BPA's standard rate while the policy has been in effect. (Nichols, LADWP, Encl. p. 6; Imbrecht, CEC, p. 2.)

LADWP charges that "competition" only exists because BPA's attempt to allocate net scheduling capacity does not work perfectly; if it did, the policy would be totally anticompetitive. SCE states that utilization of its portion of the Intertie reached very low levels in the week of March 4, 1985. (Nichols, LADWP, Encl. pp. 6-7; Kendall, SCE, p. 2.)

Evaluation of Comments

California comments claim decreased Intertie use and blame it on the policy and on unreasonably high PNW prices. As discussed in III.B. above, the prevailing prices under the Interim IAP during the last 4 months of 1984 were not significantly different from 1983 prices, except for BPA. BPA's examination of Intertie usage under the Interim IAP and the findings in the CEC's own reports reveal that the major influence on Intertie use may be factors pertaining to SW loads and resources, such as minimum generation levels.

A minimum generation level is the lowest level at which a generator can be run and still be available to serve load. Many of California's larger oil and gas generators were originally designed as baseload units, not to follow changes in load, and cannot be cost-effectively backed down at night if they must be available for generation the following day. During low-load periods known as "minimum load conditions," the minimum generation level requirements of a utility may prevent the utility from accepting any purchases of additional energy, even if it is inexpensively priced. As California utilities continue to bring on line new base load thermal plants such as San Onofre and Diablo Canyon, the minimum generation level problems will increase.

The CEC staff report entitled "Integrated Supply and Demand" (September 1984) concludes that operating constraints and competition from very low cost baseload generation limit the ability of the California system to accept Northwest energy. The price of NW energy does not seem to be an important factor in whether it is accepted during minimum load conditions in California. The report attributes the decline in nonfirm imports from the Northwest between 1982 and 1983 to California system constraints. Significantly, there was increased availability of Northwest nonfirm in 1983 when NW imports decreased and the "applicable rate" under the Exportable Agreement was still the spill rate (9 mills/kWh from January until November, 11 mills/kWh in November and December). The CEC expects increased displacement of potential NW imports in the future:

During periods of low load, such as at night, [these] low-cost baseload sources displace imports from the Northwest. The addition of three more nuclear units by 1985 will exacerbate the conflicts between low-cost generation and imported energy. Unless surplus energy delivered during minimum loads is priced below the variable costs of these units [from about 5 mills/kWh for installed hydroelectric units and about 10 mills/kWh for San Onofre 2 nuclear unit], utilities will have little cause to back them off in order to take imports into the system. The resulting situation for California

is that opportunities for imports from the Northwest are at the same time constrained by unavoidable high-cost oil and gas generation needed for peaking requirements, and very low-cost baseload generation. (p. 4-46).

The CEC report issued February 1985 entitled "Minimum Oil and Gas Generation Levels in California Utilities" (hereafter referred to as Minimum Generation Level paper) reports that the increasing use of cogenerators with take or pay contracts also significantly exacerbates California's minimum generation problems.

During 1983, PG&E experienced approximately 2,900 hours (33 percent) of minimum load conditions while SCE experienced 1,800 hours (21 percent) of minimum load conditions, resulting in SCE's rejecting 1,450 GWh of economy energy. (Minimum Generation Level Paper, p. 9.) SCE testimony before the CEC in 1984 established that even with system adjustments, SCE will still reject 1,000 to 3,000 GWh of economy energy annually (Minimum Generation Level Paper, p. 14). The Minimum Generation Level Paper also cites testimony by William Marcus, estimating that 15 percent of the projected gross PNW-PSW Intertie benefits to California would be lost due to minimum-load limitations (p. 15). This indicates that California power system limitations had a significant role in decreased use of the Intertie during light-load periods under the Interim IAP as well.

The comments received, as well as BPA's Intertie use data (see Table 2), demonstrate that a simple comparison of usage under the policy to past usage is not appropriate. BPA has prepared monthly averages of Intertie loading under the Interim IAP with comparisons to 1983 (Table 2, Item 6). A review of the line loadings month by month reveals no trend of changing usage. It is true, as pointed out by some California utilities, that some portion of the last 4 months of 1983 were marked by abundant hydro conditions in northern California which limited north to south scheduling. It is also true that the late summer and early fall of 1984 was marked by both high temperatures and loads in California. Nonetheless, overall Intertie usage was high under the Interim IAP and showed no sign of a change in loading due to lack of sales under the policy.

SCE gave figures on underutilization of its share of Intertie capacity for March 1985. The stated reason for disuse was that PNW prices were not competitive with SCE's alternative sources of economy energy, which were located outside the PNW. However, March 1985 was a month in which BPA did not have available nonfirm energy. In fact, all NW offers, including BC Hydro, were often not sufficient to fill the Intertie. (See Table 2, Item 9, Condition 3 hours in March 1985.) This would indicate that low loading of SCE's capacity was due to lack of supply from any PNW source, not over-pricing. SCE's example is also inconsistent with the comment that increased BPA prices are to blame for California retail rate hikes. SCE itself pointed out that California purchasers are able to make desired economy energy purchases from other suppliers. SCE in particular makes major economy energy purchases from the Inland SW. In 1983, SCE purchased over 5,200 GWh. This is expected to increase to over 8,500 GWh by 1989 ("Integrated Supply and Demand," September 1984, CEC, p. 4-138.)

Decision

There has been no trend towards decreased Intertie usage due to the policy. The California economy energy market is much more powerfully affected by the increasing periods of minimum generation conditions than by the IAP.

D. Indirect Sales of BC Hydro Power

Summary of Comments

Both SCE and LADWP find that the Near Term IAP's restriction on extraregional access to the Intertie has resulted in NW utilities acting as energy brokers, purchasing BC Hydro power and selling it at a profit to California. (Kendall, SCE, p. 2; Nichols, LADWP, Encl. pp. 7-8.)

Evaluation of Comments

When BPA proposed to adopt the Interim IAP, California entities criticized the IAP on environmental grounds, suggesting that NW utilities would operate thermal power for export when more environmentally benign hydro power is available from BC Hydro or other utilities. BPA responded by noting that BPA expected secondary markets to develop among BC Hydro and NW utilities to displace operation of NW thermal resources. This would not increase the amount of overall PNW surplus available for export. (Interim IAP ROD, section II.C, pp. 24-25.) This market has in fact developed. (See EA on Near Term IAP at 4.3.2.2., pp. 44-45.) However, BPA's policy is not to provide access to its share of the Intertie for arbitrage of BC Hydro power.

The IAP does permit a NW utility to buy power from BPA or from other NW utilities to increase its Exhibit B surplus level and its access to Assured Delivery sales over the Intertie while decreasing the Exhibit B surplus of another PNW party. This permits utilities without substantial surpluses to obtain power for export should they choose to do so and may aid in the overall reduction of PNW surplus. (See Interim IAP ROD, section I.B.5., on marketing of regional surplus.) However, NW utilities are not permitted under the Near Term IAP to include purchases of extraregional power for resale to California utilities if this would increase the surplus to be allocated access to the Intertie such that it interfered with marketing of BPA power or decreased the access which BPA and PNW utilities would otherwise have had.

Decision

Contrary to comments received, the Near Term IAP does not provide use of BPA Intertie capacity for arbitrage of extraregional power. Purchase of extraregional power to shut down PNW resources is not prohibited.

IV. Intertie Access in Support of BPA's Power Marketing Program

Summary of Comments

ICA feels that in order for BPA to repay its present obligations to the U.S. Treasury, BPA must reserve enough of its transmission line capacity on its AC and DC lines to be able to market its own firm surplus and nonfirm power to the SW before allowing access to its lines for sales to the SW by other utilities, except utilities who have a partial ownership right to these lines or who have signed an exportable agreement with BPA. Both the PGP and EWEB feel that the Near Term IAP would provide an appropriate means to implement nonfirm rates that are structured using a share-the-savings rate method, especially in light of the Initial Decision from the FERC proceeding on the 1981 and 1982 BPA nonfirm rates. (Miles, ICA, p. 1; Garman, PGP, p. 3; Kunkel, EWEB, p. 2.)

The CPUC argues that BPA's statutory obligation could be successfully carried out by setting rates on the basis of costs actually incurred and by once again providing access to the Intertie for all bilateral transactions entered into between PNW sellers and California buyers. CPUC also states that the IAP is necessarily inconsistent with BPA's statutory obligation and that BPA should recognize that its failure to collect sufficient revenues is principally a function of its refusal so far to base rates charged its extraregional customers on the costs of providing them service. SMUD appreciates BPA's concern with meeting its repayment obligations to the U.S. Treasury, but believes that this concern should be satisfied in the BPA rate proceedings and not through the IAP. PG&E continues to maintain that rates for power sold by PNW utilities to PSW utilities should be cost-based. (Fairchild, CPUC, p. 2; O'Banion, SMUD, p. 1; Gardiner, PG&E, p. 6.)

CPUC and SMUD again stated that BPA should support its Power Marketing Program by setting rates on the basis of costs actually incurred, instead of by the terms of Intertie access policy. Many California comments stated that BPA should pursue a rate action while other California parties have challenged the IAP before FERC and the Court of Appeals asserting that it is a rate action.

There were general comments from PNW entities that the policy appears to adequately support BPA's Power Marketing Program.

Evaluation of Comments

No new issues were raised regarding the use of the Near Term IAP to support BPA's Power Marketing Program (Interim IAP ROD, pp. 45-56). BPA does set rates in support of the Power Marketing Program. The Near Term IAP performs the separate function of providing use of Federally owned transmission facilities for the marketing of Federal power. The Ninth Circuit has held that the IAP is not inconsistent with BPA authorities and obligations. (LADWP v. BPA.)

Decision

The basic structure of the Near Term IAP is consistent with and provides appropriate support for BPA's Power Marketing Program. The success of BPA rates in fairly allocating and recovering costs will continue to be addressed in the 7(i) and 7(k) processes.

Summary of Comments

The ANRW feels that BPA was not acting in the best interests of BPA or the region by transferring Colstrip 4 and Valley 2 to existing Pacific Northwest regional resources, but agrees it would be rational to include these resources before other operational resources (Colstrip 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100).

The ORWG supports BPA's position of including Colstrip 4 and Valley 2 as Existing Pacific Northwest Resources. (Handwritten: ORWG, 7/23)

SCJ feels the definition for "Existing Pacific Northwest Resources" should be expanded to include resources that were under construction with the intent to be used to carry a utility's load prior to 9/1/84. (Handwritten: SCJ, 8/2/84)

Evaluation of Comments

The proposed reclassification dates of Valley 2 (June 1982) and Colstrip 4 (April 1982) are later than the effective date of the Interim IAP (September 1, 1984) as described in section 11.1.1. Construction of these projects started long before BPA considered implementing the IAP. As of September 1, 1984, they were under construction and dedicated to serve NW loads.

Decision

Colstrip 4 and Valley 2 will be considered as "Existing Pacific Northwest Resources" under the Near Term IAP. These resources were already under construction to serve NW loads as of September 1, 1984. Any resulting surplus is considered in determining the Exhibit B Average Firm Supply for the owning utilities.

B. Special Provisions for Fish and Wildlife

Issue and Classification of Policy

Summary of Comments

PCE agrees that "Under the proposed policy, BPA would recognize interim access on a case-by-case basis to the fish and wildlife program established by the Northwest Power Planning Council." WAPOR states that the Near Term IAP should state that any resource program should not include any non-eligible units. To the Region's fish and wildlife resource, "the proposed policy's fish and wildlife provisions seek to be a complex way of stating the same thing that the message BPA is attempting to convey regarding fish and wildlife."

V. Conditions for Intertie Access

A. Existing PNW Resources

Summary of Comments

The AWPPW feels that BPA was not acting in the best interests of BPA or the region by grandfathering Colstrip 4 and Valmy 2 as Existing Pacific Northwest regional resources, but agree it would be rational to include these resources before other extraregional resources. (Bryson, AWPPW, p. 2.)

The OPUC supports BPA's position of including Colstrip 4 and Valmy 2 as Existing Pacific Northwest Resources. (Maudlin, OPUC, p. 2.)

SCL feels the definition for "Existing Pacific Northwest Resource" should be expanded to include resources that were under construction with the intent to be used to carry a utility's load prior to 9/7/84. (Garman, SCL, p. 2.)

Evaluation of Comments

The probable energization dates of Valmy 2 (June 1985) and Colstrip 4 (April 1986) are later than the effective date of the Interim IAP, September 7, 1984, as described in section II.A.7. Construction of these projects started long before BPA considered implementing the IAP. As of September 7, 1984, they were under construction and dedicated to serve NW loads.

Decision

Colstrip 4 and Valmy 2 will be considered as "Existing Pacific Northwest Resources" under the Near Term IAP. These resources were already under construction to serve NW loads as of September 7, 1984. Any resulting surplus is considered in determining the Exhibit B Average Firm Surplus for the owning utilities.

B. Special Provisions for Fish and Wildlife

Issue #1: Clarification of Policy

Summary of Comments

PGE states that "[u]nder the proposed policy, BPA would condition Intertie access on adherence to the Fish and Wildlife Program adopted by the Northwest Power Planning Council." WADOF states that the Near Term IAP should state that any resource granted access "should not incur any unacceptable impacts . . . to the Region's fish and wildlife resources," that the proposed policy's fish and wildlife provisions seem to be a complex way of stating this, but that "the message BPA is attempting to convey regarding fish and

wildlife is still unclear." This contrasts with the comments of OPUC, which stated "it was good to see a well-defined process for identifying and evaluating resources which may be operating in a way which harms fish and wildlife." (Dyer, PGE, p. 3; Wilkerson, WADOF, pp. 2-3; Maudlin, OPUC, p. 2.)

Evaluation of Comments

These comments demonstrate that some confusion remains regarding the fish and wildlife provisions of the policy. BPA specifically intends section II.C.3.c. to apply only in the case of adverse impacts on fish and wildlife that increase the need for, or impair the effectiveness of, expenditures or other actions by BPA to protect, mitigate, and enhance fish and wildlife. BPA believes the distinction is clear between an impact that falls within section II.C.3.c. and other fish and wildlife impacts. To fall within section II.C.3.c., there must be a connection between the affected fish or wildlife resources and BPA's expenditures or other actions. For example, a hydroelectric resource exacting excessive mortalities on migrating juvenile salmon would fall within section II.C.3.c. if the juveniles were produced in whole or in part by a BPA-funded habitat improvement project. Similarly, a hydroelectric resource would fall within section II.C.3.c. if the mortalities it caused among migrating salmon or steelhead threatened a fish stock or run which BPA has attempted to or is attempting to rebuild. The same would be true if such a resource exacted excessive mortalities on juvenile salmon produced by a hatchery operated to mitigate FCRPS hydroelectric facilities, because this reduces the effectiveness of BPA fish and wildlife expenditures.

A resource would not fall within section II.C.3.c. if the affected fish or wildlife were unconnected with BPA's expenditures and other protection, mitigation, and enhancement actions. For example, the connection to BPA's activities on behalf of fish and wildlife might be more difficult to demonstrate in the case of a hydroelectric resource which exacted excessive mortalities on migrating juvenile salmon on a stream impacted only by non-Federal hydroelectric projects.

The distinction is also clear between the condition in section II.C.3.c. and the measures in the Regional Council's Fish and Wildlife Program. Section II.C.3.c. turns on the effect of a resource on BPA's expenditures and other actions for fish and wildlife protection, mitigation, and enhancement, not on whether a resource is in compliance with applicable measures in the Fish and Wildlife Program. Under section II.C.7.d. of the proposed policy, a Fish and Wildlife Program measure may have been incorporated into a relevant project license, but BPA denial of Intertie access will be based on noncompliance with the license and the affects on BPA's expenditures and rates actions, not with the Program noncompliance.

In response to the comment of WADOF, impacts to the region's fish and wildlife resources are addressed in the EA and FONSI on the Near Term IAP.

Decision

The policy neither (a) conditions access on a determination that a resource has no adverse impacts on fish and wildlife; nor (b) conditions

Intertie access on adherence to the Fish and Wildlife Program adopted by the Regional Council. Instead, the policy provides for the denial of access for a resource which impairs the effectiveness of or increases the need for BPA expenditures for fish and wildlife protection, mitigation, and enhancement under the Pacific Northwest Power Act. "BPA does not believe requiring consistency with the Regional Council's Fish and Wildlife Program for non-Federal resources as a condition of Intertie access would provide additional benefits without creating unacceptable uncertainty and ambiguity." (Interim IAP ROD, p. 74.) "BPA also believes it is reasonable to defer to FERC and other Federal and state agencies with jurisdiction over resource operations that adversely impact fish and wildlife." (Interim IAP ROD, p. 69.)

Issue #2: Procedures

Summary of Comments

Several commenters object to the presumption contained in section II.C.7.a. of the proposed policy. ICP states that section II.C.7.a. "presumes we have stopped beating our wives unless the Administrator determines otherwise" and that "the arrogance of the provision . . . is an affront to the utilities of the region" Mr. V. David Hocraffer states that the policy should establish a presumption "that compliance by an applicant with the applicable laws and regulations would provide adequate protection for fish and wildlife and the environment." The applicant for Intertie access would have to make a prima facie showing of such compliance, after which an interested third party could challenge the presumption. Mr. Hocraffer believes that the proposed Near Term IAP imposes an excessive burden on third parties to identify noncompliance with the fish and wildlife provisions, resulting in the opportunity for noncompliance to go unnoticed. He believes that BPA has a responsibility to "at least require that sufficient factual data be provided to support the initial determination by the Administrator that fish and wildlife . . . is being adequately protected." (Schultz, ICP, p. 5; Hocraffer, p. 2.)

The CRITFC states a related concern:

The policy has allocated the burden of monitoring the Intertie operations for possible fish and wildlife impacts, to tribes and state and Federal fish and wildlife agencies. Without the assistance of the BPA, it will be very difficult for us to meaningfully evaluate changes in river operations engendered by the near term policy, or probable impacts that may result from long term Intertie policies and commitments. (Wapato, CRITFC, p. 1.)

CRITFC goes on to state that it would like to work with BPA to develop "some mechanism for monitoring the fisheries implications of" the policy. IPC also asserts that a procedure is necessary. IPC complains that the fish and wildlife provisions lack clarity, and requests identification of the BPA expenditures and actions referred to by the fish and wildlife provision of the

proposed policy. IPC recommends a process under which BPA would analyze each of BPA's proposed expenditures and actions to determine whether they could be affected by the operation of a generating resource in the region, and then take comment from the affected owners or operators. After that, BPA would decide the issue of Intertie access. IPC requests that BPA advise it of any BPA fish and wildlife efforts that are "arguably affected by the operation of" IPC's generating resources. (Wapato, CRITFC, p. 1; Barclay, IPC, Encl. 1, pp. 1-5.)

Evaluation of Comments

BPA believes that it ordinarily may be assumed that compliance with applicable laws and regulations will provide adequate protection for fish and wildlife, though compliance will not necessarily protect BPA's investments. To date, fish and wildlife agencies have not identified any existing resources subject to regulation which are not currently in compliance. The IAP must anticipate the exceptional case and allow for a challenge of that presumption where access to the Intertie permits operation arguably out of compliance or which adversely affects the Administrator's efforts on behalf of fish and wildlife.

The ICP comment about presumed guilt misunderstands the presumption. The Policy assumes resource operations to be "innocent unless proven guilty."

At the center of the proposed policy is BPA's concern about protecting BPA's substantial and growing investment in the protection, mitigation, and enhancement of fish and wildlife. Even a generating resource which complies with all applicable laws and regulations may increase the need for or impair the effectiveness of BPA's efforts to protect, mitigate, and enhance fish and wildlife.

No resource has been identified which would fall within section II.C.3.c., and it is not practicable to attempt to anticipate the circumstances under which each resource might at some time adversely affect the Administrator's efforts on behalf of fish and wildlife. State and Federal fish and wildlife agencies are in the best position to identify actual adverse effects on fish and wildlife caused by operation of electric power projects, while BPA itself is in the best position to relate those effects to BPA's expenditures and other actions to protect, mitigate, and enhance fish and wildlife.

Decision

The Interim IAP ROD stated that:

If any challenge is raised considering the effects of the operation of an energy resource on BPA fish and wildlife efforts, in appropriate cases BPA will provide resource owners and operators, interested persons and the public with an opportunity to be heard regarding that effect. The challenge shall be made in writing. The determination shall be put in writing. BPA will

develop more detailed procedures through notice and comment during the pendency of the Near Term Policy. (Interim IAP ROD, pp. 78-79.)

Prior to denial of access or negotiation of alternative mitigation for a resource, the operation of which has fallen or BPA determines will fall within sections II.C.3.c. or II.C.7. of the policy, BPA will specify the BPA expenditures or other actions which have been or will be affected by operation of such resource.

Issue #3: Relationship to FERC Regulations

Summary of Comments

PNUCC and PP&L assert that the proposed fish and wildlife provisions would conflict with FERC regulations, that FERC regulations adequately cover fish and wildlife matters, and that BPA has the opportunity to protect its fish and wildlife investments by participating in FERC proceedings. For these reasons, PNUCC and PP&L assert that BPA should drop section II.C.3.c. from the proposed policy. (Snowden, PNUCC, p. 2; Hammerquist, PP&L, p. 2.)

Evaluation of Comments

BPA addressed these arguments in the Interim IAP ROD, which stated:

BPA's proposed Policy provisions give appropriate deference to FERC. They provide that when a resource is not being operated in compliance with applicable law, it will be denied access if it also is adversely affecting the Administrator's efforts on behalf of fish and wildlife.

BPA is not regulating, but is simply effecting public policy decisions about how to rationally allocate a limited amount of space on the Intertie, over which BPA maintains substantial control. BPA does not intend to supplant FERC's role.

BPA does not concede that it has any duty to provide Intertie access to any resource operating in compliance with its FERC license. Even as FERC's regulatory role over resource operations is preserved by the Pacific Northwest Power Act, BPA's role as proprietor of the Intertie is exclusive and not delegable to FERC.

BPA is not willing to defer to FERC respecting which resources will be provided Intertie access, or which resources in their operation may adversely affect the Administrator's efforts on behalf of fish and wildlife.

PNUCC argues that if BPA finds that the operation of any non-Federal projects harms its own fish and wildlife protection efforts, BPA should petition FERC for relief BPA realizes that this avenue exists, and may from time-to-time take advantage of it, particularly in a case where operation of a resource invariably causes or would cause an adverse effect of the Administrator's efforts on behalf of fish and wildlife. However, BPA believes that it has an affirmative duty to utilize its own authorities in a manner that will achieve the purposes of the Pacific Northwest Power Act--in this case, protecting, mitigating, and enhancing fish and wildlife--while acting in a sound, businesslike manner. (Interim IAP ROD, pp. 66-67.)

Decision

BPA believes it is appropriate to protect BPA's significant investment in protecting, mitigating, and enhancing fish and wildlife. BPA also believes it is reasonable to defer to FERC in the manner and to the extent described above. In this way, BPA's role as proprietor of the Intertie will not encroach upon other agencies' jurisdiction over resource operations that impact fish and wildlife. BPA may, however, elect to participate in other agency proceedings, such as those before FERC, to protect BPA's investment in fish and wildlife protection, mitigation, and enhancement. (See Interim IAP ROD, pp. 69-70.)

Issue #4: Conditions for Denial of Access When Seeking Relief from FERC

Summary of Comments

In addition to arguing that BPA should seek relief from FERC rather than to deny access to a resource found to fall within the terms of section II.C.3.c of the proposed policy, PNUCC states that it would "expect BPA not to refuse Intertie access during the period it is seeking FERC relief, unless it reasonably believes there is the threat of irreversible damage to fish and wildlife resources which would result from granting access." (Snowden, PNUCC, p. 2.)

Evaluation of Comments

As stated above, BPA retains the prerogative to seek relief from FERC. In cases where BPA does this, PNUCC would have BPA continue to provide Intertie access for the resource at issue unless there is a threat of irreversible fish and wildlife damage. This assertion misreads BPA's intent in establishing section II.C.3.c. of the proposed policy. BPA's primary purpose is to protect its substantial investment in the protection, mitigation, and enhancement of fish and wildlife, not to supplant FERC's role in protecting, mitigating, and enhancing fish and wildlife. BPA believes that the opportunity for altering operations to reduce adverse impacts, and the

opportunity to undertake offsite mitigation not inconsistent with the Fish and Wildlife Program, provide sufficient alternatives in instances where denial of access would otherwise exact high costs on a utility.

Decision

If BPA does seek relief from FERC in instances where the operation of a generating resource increases the need for or impairs the effectiveness of BPA expenditures on other fish and wildlife actions, utilities should expect BPA to protect its investments by denying Intertie access for such resources.

Issue #5: Appropriateness of Special Provisions

Summary of Comments

The Mid-Columbia PUD's object to the fish and wildlife provisions of the proposed policy on the grounds that they give BPA's fish and wildlife responsibilities special treatment over other obligations of the Administrator under applicable laws, rules, and regulations, and that section II.C.3.a. and b. and II.C.4.b. "provide adequate recognition of all environmentally related obligations of and limitations on the Administrator." (Wright, Mid-Columbia PUD's, p. 2.)

Evaluation of Comments

As stated in the Interim IAP ROD, BPA has determined that the fish and wildlife provisions in the proposed policy are reasonable and appropriate. BPA's investment in the protection, mitigation, and enhancement of fish and wildlife in the Columbia River Basin is large and growing. (Interim IAP ROD, p. 69.) Capital facilities costing over \$500 million are in place or under construction to mitigate adverse effects of Federal hydroelectric development on Columbia River Basin fish and wildlife. BPA is repaying to the U.S. Treasury the power share of this investment, with interest. In addition, BPA annually reimburses the U.S. Treasury for associated operation and maintenance costs incurred by the Corps of Engineers, Bureau of Reclamation, and U.S. Fish and Wildlife Service. BPA is also incurring a loss of revenue to permit implementation of the Water Budget and the spill passage program as called for by the Columbia River Basin Fish and Wildlife Program and to otherwise accommodate the life cycle of anadromous fish. Recent estimates place the amount of foregone revenues because of the Water Budget under 1985 water conditions between \$54 million and \$74 million. The 1985 Spill Passage Plan is estimated to cost \$49 million in lost revenues.

Sections II.C.3.a. and II.C.3.b. state in relevant part that BPA will provide Intertie access providing that doing so will not substantially interfere with the operating limitations of the Federal system and will not conflict with the legal obligations of the Administrator. Section II.C.4.d. provides that operating limitations include "the limitations that result from the Administrator's coordination with other utilities and Federal agencies regarding resource and river operations." Including a special fish and wildlife provision does not elevate fish and wildlife issues above other

obligations of the Administrator. Instead, it clarifies the IAP to reduce or avoid confusion in its application.

Decision

BPA has determined that it is reasonable and appropriate to include in the policy special provisions addressing the protection, mitigation, and enhancement of fish and wildlife. Rather than elevate fish and wildlife considerations over other considerations, the provisions clarify how BPA will balance its fish and wildlife responsibilities with its other responsibilities.

Issue #6: Applicability Outside the Columbia River Basin

Summary of Comments

WADOF states that the language of the proposed policy appears to apply only to projects within the Columbia River Basin and asserts that it should also apply to projects proposed for development outside the basin. (Wilkerson, WADOF, p. 3.)

Evaluation of Comments

BPA's fish and wildlife program is focused on the Columbia River Basin. However, access under the policy will be available only to "existing Pacific Northwest resources," defined in section II.A.7. to exclude electric power generating resources that are not operational on the date the Interim IAP was issued. Thus, "projects proposed for development," whether within or without the basin, will not receive access under the Near Term IAP.

Decision

Under the Near Term IAP, Intertie access will not be available to any resources which are not included in the definition of existing PNW resources, regardless of where the resource is located.

Issue #7: Applicability to Resources Not Sold on the Intertie

Summary of Comments

WADOF asks "how will BPA determine if the energy being transported is energy from qualifying projects? . . . We suggest it may be possible to blend in nonqualifying projects' energy without recognition or penalty." In addition, ICP states that section II.C.3.c. "seems to assume that a project will not kill fish if its output is not allowed on the Intertie" (Wilkerson, WADOF, p. 3; Schultz, ICP, p. 5.)

Evaluation of Comments

The Interim IAP ROD addressed this issue. (Interim IAP ROD, pp. 31-33, 84-85). As stated there, BPA shares the concerns of WADOF and the commenters on the Interim IAP.

Decision

As stated in the Interim IAP ROD:

BPA has added a remedies section to the Policy, indicating a selection of remedies BPA may employ. BPA will require a utility that makes use of the Intertie to provide such information on the resources operating and those used to serve load during given periods as may be requested by BPA. BPA may require this information before or after Intertie schedules are made. The information provided will be made available to the public, unless clearly identified as proprietary with appropriate explanation. Reports of actual or planned operation will include all the utility's resources, not just those scheduled for Intertie sales. This information could be used to identify amounts of power that should be deleted from a utility's Intertie schedule. (Interim IAP ROD, p. 33.)

VI. Assured Delivery

A. BPA Criteria for Granting Assured Delivery

Summary of Comments

ICP believes it is appropriate to favor transactions which reduce the region's firm surplus, but the two which have to do with selling price (i.e., II.D.1.d.(2) and (5)) are improper. (Schultz, ICP, p. 4.)

PP&L endorses priority disposition of the region's firm surplus over nonfirm surplus, but it does not endorse a higher priority to be granted the sale of firm surplus with call-back provisions over the sale of firm surplus without such provisions. PP&L also states that the Assured Delivery standards which BPA intends to use in its analysis of a proposed firm contract should be fully stated rather than being open-ended and finds some of the evaluation factors to be ambiguous and wonders if BPA will use a weighting scheme in applying the factors. (Hammerquist, PP&L, pp. 1, 3.)

TANC favors reasonable flexibility in the area of Assured Delivery. They also feel that the criteria for Assured Delivery should also be further defined since it appears that other, unspecified criteria could be utilized by BPA. (Pugh, TANC, Encl. p. 1.)

SCL feels that a paragraph needs to be inserted that defines scheduling provisions in general terms and asks that BPA clarify what is meant in section II.C.1 where BPA indicates that "arrangements shall be made regarding operation of the resource during times when Intertie deliveries cannot be made [to the purchaser]." PGP asked that BPA define how schedules for delivery will be established when the available Intertie capacity is exceeded. (Garman, SCL, pp. 2-3; Garman, PGP, p. 2.)

Mr. Hocraffer believes that all sales at firm prices must be tied to the condition that if Federal investment repayment increases are mandated during the term of access contracts, then a proportional upward adjustment of the contract prices would be made. Also, certain restrictions on Intertie access discussed in II.C.3.a.(2) and II.C.3.b.(1) and (2) are not clear as to what extent an increase in repayment obligation is considered a substantial interference or conflict of the nature referred to in those subsections. (Hocraffer, p. 1.)

Evaluation of Comments

TANC, SMUD, and PP&L requested more defined criteria and standards by which BPA will evaluate requests for Assured Delivery. BPA does not believe that more specific standards are appropriate. The criteria and the evaluation factors BPA intends to use are adequately set out in sections II.C. and II.D. of the Near Term IAP.

The conditions for access specified in section II.C.3. impose specific standards, including the avoidance of substantial interference with the

Administrator's Power Marketing Program, and the operating limitations of the Federal system, and lack of conflict with the Administrator's existing contractual obligations or other legal obligations of the Administrator. (See Interim IAP ROD for discussions of the Administrator's Power Marketing Program (section III.A.) and of the Fish and Wildlife Responsibilities (section III.D.).)

Section II.D.1.d. of the Near Term IAP establishes evaluation factors that will be applied after a request for Assured Delivery has met the conditions in section II.C. These factors are considerations rather than absolute standards. BPA believes that any request for Assured Delivery must be evaluated on a case-by-case basis, using the clearly specified conditions for access listed in section II.C., and the evaluation factors in section II.D. BPA applies these considerations equitably to all requesters.

TANC and SMUD urge the granting of short term Assured Delivery contracts under the IAP to provide BPA with implementation experience. BPA is doing this and has granted an Assured Delivery contract to Tacoma for a sale to WAPA under the Interim IAP.

BPA believes that the policy adequately describes the parameters for scheduling under the Near Term IAP. BPA does not agree with SCL that there is a need for a more detailed written description of scheduling practices. These are operating matters. BPA has held technical meetings with power scheduling personnel from utilities and has responded to informal inquiries to provide more detailed information on scheduling practices under the Interim IAP.

PP&L's comment that a higher priority should not be granted to firm sales with call-back provisions than to sales without such a provision is a response to a draft paper on the Intertie by the Regional Council staff, in which such a priority scheme was proposed. The Near Term IAP does not have such a provision, although the issue may be raised in the Long Term IAP. BPA would first perform considerable economic analyses on the cost of such a provision, both to the PNW, in the form of reduced selling prices, and to BPA, in the form of higher residential exchange costs, before such a provision would be included in the draft Long Term IAP.

The ICP favors those criteria for Assured Delivery which pertain to reducing the region's surplus (II.D.1.d.(1)), but objects to including criteria that have to do with asking price. The ICP maintains that if a contract is truly firm, replacement of the firm energy portion with nonfirm energy is merely a price reduction and has no effect on other parties' nonfirm allocations. However, the purpose of the criterion was to preserve the advantage of Assured Delivery for those sellers who contracted for firm sales. The ICP suggestion would result in an unwarranted advantage to one seller compared to others which are marketing the very same economy energy product.

As discussed above, the criteria in section II.D.1.d. are evaluation factors, not absolute indicators. As discussed in section IV.B.1. of the Interim IAP ROD, BPA intends to apply these evaluation factors to ensure that contracts receiving Assured Delivery are not merely advance arrangements to

sell nonfirm power. For this purpose, it is appropriate to evaluate the extent to which the selling price is subject to daily fluctuations and the extent to which the buyer has the right to displace purchases under the contract with nonfirm energy.

BPA agrees with SCL's comment that section II.D.1.h. is unclear, and BPA has added clarifying language. The intent of the section is that if there is a catastrophic reduction in Intertie capacity resulting in BPA firm deliveries and other utilities' Assured Deliveries exceeding available Intertie capacity, the NW and SW parties affected will establish delivery schedules. Such a reduction in Intertie capacity could be due, for example, to an outage on one of the Intertie lines. It is standard operating procedure that if such a reduction were to occur, the California buyers who have the right to receive the power, not BPA, would be the parties to allocate the reduced deliveries. BPA therefore does not agree with PGP's comment that the Near Term IAP should describe how BPA will establish schedules under section II.D.1.h.

Decision

BPA will retain the criteria and evaluation factors for granting assured access, but will clarify language in section II.D.1.h.

B. Exhibit B as an Upper Limit

Summary of Comments

PGE agrees with the concept of limiting Assured Delivery to an amount no greater than the utility's Average Firm Surplus, as contained in Exhibit B. But if BPA is going to recompute a utility's Average Firm Surplus submittals, then the methodology BPA intends to use should be included in the policy. PGE feels that an additional ceiling should be placed on the total Assured Delivery granted to all scheduling utilities. (Dyer, PGE, pp. 2-3.)

OPUC agrees with BPA that the issue of granting firm Intertie access to an amount greater than the utility's annual Average Firm Surplus is a problem and deserves substantial consideration. It also feels that new firm sales which exceed the utility's annual Average Firm Surplus should not be granted firm Intertie access. They encourage BPA and other parties to study the issue of granting firm Intertie access to an amount greater than the utility's annual Average Firm Surplus so that a policy can be implemented which is in the best interest of all PNW constituents. (Maudlin, OPUC, p. 2.)

The ICP feels that it is improper to limit any utility's assured access to an amount of energy determined by BPA to be that system's firm surplus, especially by a unilateral and undefined process. Furthermore, it is unreasonable to limit hourly Assured Delivery to an average energy quantity. (Schultz, ICP, pp. 3-4.)

PNUCC feels that a technical problem exists in limiting hourly deliveries to the annual averages shown in Exhibit B. If a NW utility was

making a firm sale from a thermal plant or a shaped sale, it could never hope to achieve its annual average if limited to that average on an hourly basis. Averaging zero output with full capacity and then limiting hourly output to that average in Exhibit B is simply unworkable. In the case of the shaped sale, such hourly limits are also unworkable. (Snowden, PNUCC, p. 2.)

PGP feels that with respect to deliveries over the Intertie which exceed the Average Firm Surplus, it suggests that delivery be permitted by requiring utilities to designate the seasonality or diurnal character of the surplus. (Garman, PGP, p. 1.)

The PNGC suggests that for sales made from specific resources where there is a substantial minimum purchase commitment by a SW party, the selling utility should be allowed Assured Delivery rights up to the capability of the resource in all months until the minimum purchase obligation is satisfied. PNGC finds a technical flaw in limiting Assured Delivery rights on any hour to a utility's annual Average Firm Surplus, particularly if a sale is being made from a specific resource. While not a significant problem in those months where BPA allows a delivery rate up to 1.8 times a utility's Average Firm Surplus, in all other months this could severely limit the amount of energy a utility is able to sell on a firm basis. (Nadal, PNGC, p. 2.)

PG&E claims that limiting Assured Delivery to firm energy levels would cripple PG&E's and other PSW utilities' ability to obtain the benefits of capacity, as well as energy, over the Intertie. (Gardiner, PG&E, p. 4.)

Tacoma notes shortcomings in the policy's ability to truly provide "assured" access for firm contract sales. These shortcomings stem from the allocations arrived at in Exhibit B. Tacoma recommends one or more of the following revisions be made to footnote 2 of Exhibit B to better reflect seasonality of firm surplus: (1) allow a 1.8 multiplier for any period of five consecutive months between June and December; (2) allow utilities to increase firm surplus in a given year by purchasing surplus firm from BPA or a PNW utility; and/or (3) where an existing contractual sales obligation must be fulfilled, allow for waiver of Exhibit B limits if the contractual obligation does not exceed 1.8 times the firm surplus amount for a portion of the operating year. (Thompson, Tacoma, pp. 1-2.)

Evaluation of Comments

All comments except those of the ICP generally recognized the principle that Assured Delivery should be limited in some way to the utility's firm surplus. Most criticisms concern flexibility for shaping of firm energy deliveries into heavy load hours or seasons. The Tacoma and PNGC alternatives would give Assured Delivery for the hourly delivery levels desired for certain specific transactions of those parties. BPA's position in the Interim IAP was to use the Exhibit B upper limit for the dual purpose of maintaining parity among customers based on their relative surpluses and to preserve a reasonable amount of the Intertie for nonfirm sales. The shaping of firm energy sales would, of course, remove that capacity from the nonfirm allocation process.

Decision

Exhibit B Average Firm Surplus levels will continue to be hourly upper limits for Assured Delivery. For all qualifying contracts of a Scheduling Utility, annual Assured Delivery access may not exceed the lesser of total take or pay energy under such contracts or the utility's total energy surplus.

C. Exhibit B - Details of Average Firm Surplus

Summary of Comments

PGP, PGE, SCL, PP&L, and IPC ask that BPA explain how BPA determined the amount of each utility's firm surplus as shown in Exhibit B and that the data contained in Exhibit B be explained more fully. (Garman, PGP, p. 1; Dyer, PGE, p. 3; Garman, SCL, p. 2; Hammerquist, PP&L, p. 2; Barclay, IPC, Encl. p. 7.)

The IPC feels that the information they submitted to BPA on Exhibit I does not conform with the information shown in Exhibit B. (Barclay, IPC, Encl. p. 7.)

SCL states that in calculating the Average Firm Surplus, a utility's firm wheeling rights for the Intertie under other contracts should be taken into account and subtracted from the Average Firm Surplus to determine the upper limit of assured access. (Garman, SCL, p. 2.)

Puget feels that the changes made to Exhibit B in the proposed Near Term IAP did not allay their concern that the methodology used to determine Exhibit B values is flawed. (Bailey, Puget, p. 1.)

The IPC objects to BPA's method of determining Assured Delivery for firm contracts by determining a utility's annual Average Firm Surplus based on critical water since the IPC plans on median water conditions. (Barclay, IPC, Encl. p. 4.)

Douglas specifically asks that BPA delete the energy listed under 1985-86 and 1986-87 operating years for them since they are not allowed to export energy outside of their service area. (Einarson, Douglas, p. 1.)

Evaluation of Comments

BPA intends to provide complete information on the technical development of Exhibit B amounts, both formally and informally, in response to requests. To answer some of the basic questions raised in the comments, BPA has available a staff paper describing the development of Exhibit B amounts. Exhibit B now contains a description of the general sources of the information.

The most serious challenge to BPA's method of determining Exhibit B amounts came from the Idaho Power Company, who argued that they be allowed to calculate their firm surplus based on median water resource planning criteria. BPA's intent under the Interim IAP was that Exhibit B amounts would

be upper limits for Assured Delivery in order to provide equitable access for all PNW utilities and to provide reasonable access for secondary energy. If the Exhibit B amounts for utilities were not calculated on the same planning basis, this equitable balance would be upset. Moreover, uniform use for all utilities of median water planning as a basis would be inconsistent with utility obligations under the Coordination Agreement to have sufficient resources available to serve firm loads under critical water.

Decision

BPA expects the Exhibit to be dynamic with utility surpluses subject to change from time to time. If appropriate, Exhibit B levels will be recalculated to reflect technical corrections to the firm energy capability of resources or firm loads based on updated information. Exhibit B now contains information as to the general sources of the information. Since Idaho Power Company is the only PNW utility using the median water planning criteria, BPA has determined its Exhibit B surplus using critical water assumptions so that all Exhibit B amounts are developed on a comparable basis.

D. Assured Delivery for Capacity and Exchange Contracts

Summary of Comments

PG&E states that the proposed criteria for Assured Delivery have a major flaw in that the criteria appear to exclude capacity transactions. BPA should not foreclose the benefits of capacity exchanges and sales merely to protect its control of the nonfirm energy market. Both TANC and PG&E believe that firm capacity exchanges would be mutually beneficial to the PNW and California and should receive Assured Delivery under the Near Term IAP. (Gardiner, PG&E, p. 4; Pugh, TANC, Encl. p. 1; Gardiner, PG&E, p. 4.)

SCL agrees that seasonal exchange agreements should receive Assured Delivery, but also stipulated that nonfirm energy should not be moved under this or any other Assured Delivery arrangement. Two respondents, Grant and ICA, suggest specific terms that should be included in any capacity/energy exchange arrangements. PP&L believes that the disposition of the region's energy, not its capacity, is the purpose of the Near Term IAP. Capacity exchanges should not necessarily be discouraged, however, if the energy is returned within the day or week. (Garman, SCL, p. 2; McMahan, Grant, p. 1; Miles, ICA, p. 2; Hammerquist, PP&L, p. 3.)

Evaluation of Comments

In the Interim IAP, BPA recognized the importance of access for both firm and nonfirm energy by providing Assured Delivery for firm sales, but limiting the capacity devoted to firm sales by means of the Average Firm Surplus levels contained in Exhibit B. In this way, Intertie access was retained for the sales of nonfirm energy which form a significant part of BPA's Power Marketing Program and which are an important historic use of the Intertie. Under present conditions of surplus, the firm and nonfirm energy from already existing PNW resources is great enough to fill the Intertie

during most periods. This is demonstrated by the relatively small number of hours during which Condition 3 was in effect under the Interim IAP. (See Table 2.) BPA expects this surplus to continue through the term of the Near Term IAP.

BPA's criterion for Assured Delivery in Section II.D.1.c.(2) is that the contract must be a sale of firm power, not merely an advance arrangement to sell nonfirm energy. This will preserve Assured Delivery for BPA and PNW utilities selling firm surplus. All utilities selling power on a nonfirm basis should be granted access on the same footing, i.e., under formula allocations. Assured Delivery should not be used to give one nonfirm seller an advantage over others.

Deliveries of capacity without the concurrent sale of firm energy and capacity exchanges do not result in the decrease of a firm energy surplus. Deliveries of capacity without energy may create a nonfirm energy market for the replacement obligation, but this market will only bring about the sale of nonfirm energy during light load hours or offpeak seasons. The utility supplying the capacity does not realize a net decrease in its average energy surplus though it may move the surplus to a different period. The advantage of diversity exchanges lies in the deferral of capital expenditure for new resources. The PNW will need no new resources until the late 1990's. Exchange capacity or energy will have low values in the PNW until dissipation of PNW surpluses in the late 1990's. Likewise, diversity capacity or capacity/energy contracts do not reduce the supplier's firm energy surplus, they merely change its shape within an operating year. In the case of capacity exchanges, BPA's power marketing to its firm power customers in the PNW might be impacted by the return of capacity or energy.

Near term Intertie access priority for energy sales is prudent because sales of firm or nonfirm energy can benefit BPA's Power Marketing Program in a number of ways. A utility is more likely to receive a price closer to its fully allocated costs by selling firm energy than by selling capacity. BPA has received comments in a variety of forums urging that power sold to California be at fully allocated cost. Advantageous energy sales to California by PNW utilities will benefit these utilities' Average System Cost. This could in turn reduce costs to BPA if that utility has a Residential Exchange contract with BPA. Also, a reduction in the regional firm energy surplus held by other NW utilities might benefit BPA's PNW markets.

In formulating the Long Term IAP, BPA will again examine the issue of capacity sales and exchanges. Most of the current PNW-PSW capacity energy exchange contracts expire before 1990. Also, as new base load thermal plants come on line in the PSW, the structure of the California market may change such that economy energy may no longer enjoy as favorable a market as it has historically. While capacity exchanges are generally not particularly beneficial to the PNW with its long term surplus, seasonal exchanges with California may become desirable transactions as the PNW enters a period of load/resource balance in the mid-1990's.

Decision

Intertie access will be provided for sales of regional firm energy surplus while providing the remaining Intertie capacity for sales of nonfirm energy. New sales of capacity or capacity/energy exchanges will not be granted Assured Delivery under the Near Term IAP to the extent they exceed the PNW party's Exhibit B level. BPA will reevaluate the issue of capacity sales and exchanges when developing the Long Term IAP.

E. Need for Assured Access for Firm Transactions

Summary of Comments

SMUD does not feel comfortable contracting with suppliers in the NW or foregoing development of other resources when transmission access provisions are unknown. SMUD and TANC feel that BPA should offer short term firm transmission contracts consistent with the principles described in the IAP in order to gain further experience with the Near Term IAP. (O'Banion, SMUD, pp. 2-3; Pugh, TANC, p. 2.)

CEC believes that the uncertainty created by the IAP with regard to Canadian sales and other long term contracts puts California utilities at a severe disadvantage in integrating power purchase contracts into their long term resource plans. (Imbrecht, CEC, p. 3.)

OPUC states that any firm power sales contract which qualifies for firm Intertie access under the Near Term IAP should continue to have firm access for the duration of the power sales contract. They also recommend that firm access to the Intertie be guaranteed for the length of the firm sale as long as the firm sale is of a duration greater than 1 year as BPA has proposed. (Maudlin, OPUC, p. 2.)

PG&E believes that the limitations on the term of Assured Delivery would impose significant burdens on utilities desiring to contract soon for firm purchases or sales extending beyond September 30, 1986. Also, BPA should "grandfather" guaranteed firm access for the term of any contracts that meet the IAP's Assured Delivery criteria, so long as these contracts do not substantially impair BPA's possible implementation of a Long Term IAP. (Gardiner, PG&E, p. 5.)

The AWPPW has a serious concern that the orderly development of the IAP and the allocation of its quotas for "Assured Delivery" not be preempted by a settlement agreement of the WNP-3 litigation, based on priority Intertie access of the power given IOU's as redemption. (Bryson, AWPPW, p. 2.)

WWP feels that the stipulation that new Assured Delivery contracts cannot be in effect longer than the Near Term IAP makes it impossible for NW utilities to secure long term agreements with the SW in the interim. (Prekeges, WWP, p. 2.)

PP&L stresses the economic importance of long term firm sales commencing prior to the scheduled expiration date of the Near Term IAP. They

feel that failure to accommodate this concern will result in an irrecoverable loss of revenue to the region because the Near Term IAP effectively requires the region's firm surplus to be sold at nonfirm prices rather than at prices approaching fully distributed cost. (Hammerquist, PP&L, p. 2.)

Evaluation of Comments

The comments generally stress the desire for long term certainty for Intertie transactions. The OPUC and PP&L comments point out the need to make long term sales in order to make the most cost-effective disposition of surplus firm resources.

BPA shares the concern of both PNW and PSW parties regarding the need for provisions for long term transmission access on the Intertie. However, BPA cannot promulgate a policy for general application to long term arrangements in advance of the environmental analysis which is being undertaken in connection with the Long Term IAP. BPA will not make case by case decisions in favor of Intertie access for individual long term transactions in advance of a general policy, because of the need for equitable treatment of all parties.

Decision

The Near Term IAP will provide access for firm contracts through its effective period.

VII. Formula Allocations

A. General Methodology

Summary of Comments

The AWPPW compliments BPA for conforming to BPA's legal responsibilities in honoring the Exportable Agreement. (Bryson, AWPPW, p. 1.)

The PGP suggests that nonfirm access be provided to the signers of the Coordination Agreement and that such access be calculated by comparing resource capability under critical water planning with resource capability under median or expected waters. (Garman, PGP, p. 2.)

EWEB and PGP believe that BPA should continue to secure a portion of the Intertie for the movement of nonfirm energy because of the overriding impact that nonfirm sales had in justifying its construction. Additional firm access should only be provided when Intertie expansion takes place. The PGP also feels it is appropriate to grant nonfirm access priority in light of the Region's coordinated operations and critical water planning. (Kunkel, EWEB, p. 1; Garman, PGP, pp. 1-2.)

Evaluation of Comments

Most comments were in favor of a recognition of the status of nonfirm energy on the Intertie. Some comments suggested that further protection was needed to prevent nonfirm energy sales access from being diminished in favor of access for surplus firm sales. The IAP strikes a balance between firm and nonfirm energy by limiting hourly levels of Assured Delivery to the Exhibit B surpluses of scheduling utilities.

The PGP suggested that BPA should provide access to signers of the PNW Coordination Agreement and that nonfirm access be calculated by comparing resource capability under critical water conditions with that under median water conditions. Currently, nonfirm access is provided to all signers of the Exportable Agreement, which includes the Idaho Power Company, a nonsignatory of the Coordination Agreement. This comment appears to assume that the current declaration procedure results in inferior allocations for nonfirm and that nonfirm sellers should receive a level of access based on their secondary energy capabilities on a planning basis. However, BPA's experience has indicated that the declarations of PNW parties for the formula allocation process have been fair. The declarations include amounts of power that the scheduling utility could reasonably have supplied if called on to do so. BPA believes that declarations based on actually available nonfirm energy are more equitable than the granting of nonfirm access allocations based on each utility's relative ability to generate nonfirm energy.

Decision

The formula allocation process will be continued in the Near Term IAP in the same form as the Interim IAP. The present formula allocation process

recognizes the importance of Intertie access for nonfirm energy and provides a fair method for declarations of available energy by all PNW scheduling utilities.

B. BPA Guaranteed Sales

Summary of Comments

PP&L, WWP, and SMUD feel that BPA should apply the IAP principles to itself, as well as to NW utilities. WWP states that utility and BPA contracts should be subject to meeting the same qualifying conditions in section II.D for the sake of consistency and fairness. Puget and PGE state that BPA violated the IAP by allocating to itself additional Assured Delivery capacity in an amount equal to sales of BPA guaranteed nonfirm energy. This was done in spite of the fact that Assured Delivery capacity was supposed to be reserved for firm energy according to the IAP. (Hammerquist, PP&L, p. 1; Prekeges, WWP, p. 2; O'Banion, SMUD, p. 2; Bailey, Puget, p. 1; Dyer, PGE, p. 2.)

PGE requests that if there are certain features of the IAP which are more subject to change or are subject to change given certain marketing conditions, that the rules be set out in the revised IAP. PGP asks that some additional language be included which describes the "New contracts for which BPA claims Assured Delivery." (Dyer, PGE, p. 2; Garman, PGP, p. 2.)

Evaluation of Comments

The comments received asserted that BPA should receive Intertie access only in accordance with the IAP procedures which apply to wheeling customers. The sole instance described involved BPA's preemption of some Intertie capacity which would otherwise have been available for nonfirm wheeling of formula allocations in order to deliver BPA guaranteed nonfirm energy to a California buyer. There was no impact on Assured Delivery.

BPA's guaranteed nonfirm energy is nonfirm energy which is guaranteed to be available for a period of days. It is sold under the NF rate schedule at a higher price than nonguaranteed nonfirm energy. Once BPA has arranged for such a sale, it is a Federal obligation under the terms of BPA's rate schedules.

The comments raised concern about BPA's use of the Intertie during Condition 2 to ensure transmission of its guaranteed sales of nonfirm energy in amounts greater than its allocation. These concerns were directed to an implementation practice which the commenters felt had not been adequately described by BPA and which was beyond the principles described in the IAP. The Near Term IAP clearly expresses the right for BPA to reserve sufficient Intertie capacity to support its Power Marketing Program and contractual obligations (see Near Term IAP section III.C.3.). (See the recent Ninth Circuit ruling (LADWP v. BPA) upholding BPA's authority to accord first preference to transmission of Federal power.) The prearranged contractual obligation to maintain guaranteed nonfirm deliveries falls within this right.

In the application of the Interim IAP, BPA developed and advertised many specific implementation practices. The practice at issue had been discussed with interested parties as a possible mechanism for dealing with a rapidly changing resource condition on the Federal system. As an alternative, BPA could have continued to make large declarations with subsequent allocations large enough to continue the guaranteed nonfirm sales. The Federal system could easily have supported those declarations, and the impact on other NW parties' allocations would have been greater. The method chosen was judged to be the fairest available.

BPA does not expect to use this mechanism frequently. BPA will continue to implement the policy with consideration of the impacts of the procedure used on other parties. Discussions will also continue with both NW and SW parties on implementation practices.

Decision

BPA will use additional Intertie capacity, if necessary, to serve a Federal obligation, but will not pre-empt Assured Delivery which has already been approved for qualified wheeling customers.

VIII. Economic Override

Summary of Comments

PG&E feels that adoption of a price ceiling arrangement would provide protection against price-gouging and would address the legitimate needs of both regions by also promoting full use of the Intertie, and would alleviate some of the most pernicious impacts of the IAP's nonfirm market allocation mechanism. The economic override feature of the nonfirm market allocation mechanism provides no real protection for PSW purchasers and either should be removed or replaced with a mechanism to ensure that PSW utilities receive an equitable share of the net benefits. Instead of an economic override provision, the IAP should contain a provision for a value-based price ceiling. By requiring a prospective purchaser to show that an offer is uneconomic for all PSW utilities, BPA may be inviting these utilities to incur antitrust liability as a result of the exchange of sensitive cost information with at least a potential impact on competition. (Gardiner, PG&E, pp. 2, 5, and 6.)

In an effort to fully utilize all portions of the Intertie, Grant proposes that at the close of each normal work day, all unscheduled capacity should revert to BPA to be used by all parties in making "real time" sales. Parties wishing to use this capacity would notify BPA that they had a sale pending at least 1 hour prior to the scheduling hour. BPA would then allocate this unused capacity in the same proportion as prescheduled allocations. (McMahan, Grant, p. 2.)

LADWP recommends that BPA incorporate an economic override provision that would simply require a requesting utility to declare its most expensive alternate energy source which can be displaced. (Nichols, LADWP, Encl. p. 9.)

SCE disagrees with BPA's view that the economic override mechanism will protect the PSW from excessively high sales offers from the PNW. SCE believes that economic override is nothing more than a mechanism to provide additional price protection for nonfirm energy sold by PNW utilities. SCE objected to this provision when first proposed by BPA and objects to the inclusion of this mechanism in the Near Term IAP. (Kendall, SCE, p. 2.)

PG&E also feels that the Interim IAP's nonfirm market allocation mechanism did result in Intertie capacity going unused because a PNW seller would not offer available surplus energy at a price economic to the PSW. (Gardiner, PG&E, p. 3.)

TANC feels that specific mechanics and the rationale for the economic override appear to be inadequately defined. It felt that the burden of proof should not be placed on buyers, but rather should be based upon free market determinations. (Pugh, TANC, Encl. p. 1.)

LADWP feels that it is unreasonable for the California utility which seeks economic override to prove to BPA that the price quoted by an entity with an allocation is uneconomic for "any other Southwest Utilities." Also,

LADWP believes that the time required to establish schedules under this procedure renders the provision practically worthless. To the extent that the revised policy will interfere with natural market forces, LADWP recognizes the need for a workable economic override provision which would assure that economic transactions take place in a manner which would not interfere with the schedulers' and dispatchers' ability to operate effectively their respective systems. (Nichols, LADWP, Encl. p. 9.)

SMUD does not understand why the purchasing SW utility would also have to show that the offered price is not economic for any other SW utility. To the extent that the economic override provision allows at least some consideration of the purchaser's needs, SMUD supported the economic override. (O'Banion, SMUD, p. 2.)

Many PNW utilities believe that the Economic Override provision should be eliminated from the policy. (Einarson, Douglas, p. 1; Dyer, PGE, p. 3; Prekeges, WPP, p. 2; Hammerquist, PP&L, p. 3.)

ICP believes that the Economic Override provision as drafted by BPA, does not appear to be objectionable, but unless the California parties really believe it is necessary for their protection, it prefers to have it omitted from the Near Term IAP. The ICP suggests that a kW-year demand rate for firm Intertie wheeling would tend to be self-policing, because it would discourage a utility from renting a quantity of Intertie capacity in the speculation of selling more nonfirm energy than it could sell under the allocation procedure. ICA suggests that BPA charge a penalty, at least equal to its KWH/Wheeling charge, for any reserved transmission line capacity not used by the utility reserving the transmission line capacity. (Schultz, ICP, pp. 2 and 4; Miles, ICA, p. 2.)

SCL supports the override provision as written. (Garman, SCL, p. 3.)

Evaluation of Comments

No new issues were raised in the comments, but some new alternatives were proposed. One alternative was to impose a disincentive against failure to use an Intertie allocation by means of transmission charges based on the allocated amount. Another alternative was to adopt an Intertie price ceiling. Yet another was to reallocate unused capacity from the preschedule period for use in making "real time" sales.

California utilities generally repeated objections that the proposed provision was a poor substitute for the conditions which prevailed prior to the Interim IAP when PNW sellers had no assurance of Intertie capacity on which to bargain for sales. However, some PSW comments indicated a qualified interest in some mechanism to safeguard against capture of Intertie capacity by power which was too expensive for the buyers.

Most California comments completely reject the economic override concept. This poses a dilemma: California parties charge that the IAP protects allocations for unaffordable offers, but yet California utilities are unwilling to provide information as to the price levels which are affordable.

There was also objection to a requirement that the would-be purchaser demonstrate that other purchasers could not afford the offered PNW price. It is reasonable to recognize that a SW utility could not account for the economics of all other SW utilities.

A major subject of criticism from both PNW and PSW entities was the workability of economic override. It was pointed out that it would be impossible to process all necessary information in the short time frame in which nonfirm scheduling is carried out. It was considered unrealistic to require one utility to account for the price which could be afforded by other potential buyers. The comments regarding the workability of economic override were generally well-taken. It would be impracticable to create a mechanism which could be applied hourly in the short time frames of energy scheduling. The alternative proposed by Grant, for example, is not practicable for use in real time scheduling of energy transactions because of the re-allocation process it would involve.

BPA's experience under the Interim IAP indicated that Intertie usage was so high as to cast doubt on the need for an economic override of allocations. This was referred to in BPA's EA on the Near Term IAP. BPA also pointed out in the Discussion section of the draft Near Term IAP that BPA's implementation practices for allocations provide an additional incentive for competitive sales practices. Intertie allocations are distributed over a high estimate of available Intertie capacity, such that sellers will have to be responsive to the market in order to gain sales. However, the existence of a safeguarding provision such as economic override might be valuable in the future to preserve optimum usage.

Decision

BPA will not include a provision in the Near Term IAP for economic override. However, BPA will monitor Intertie activity during the term of the Near Term IAP. If it appears that an economic override provision would be appropriate in order to provide optimum use of the Intertie, consistent with BPA's duty to allocate Intertie capacity and with BPA's intent to achieve a balance of benefits, BPA will propose an amendment to the Near Term IAP to accommodate economic override. The comments received so far will be considered for such proposed amendment, if offered.

IX. Extraregional Access

Summary of Comments

PNUCC believed that the bulk of the benefit in the NW resulting from this IAP results from the limitations on extraregional access. They support rights afforded extraregional utilities under the Interim and Near Term IAP as being appropriate. (Snowden, PNUCC, p. 1.)

TANC members prefer BPA to adopt more flexible extraregional Intertie access provisions particularly in the Long Term IAP. TANC feels that BPA should begin to plan for those time periods when extraregional transactions will not conflict with PNW interests. (Pugh, TANC, Encl. p. 1.)

The AWPPW extends compliments to BPA for prioritizing regional non-Federal existing resources for Assured Delivery of surplus power ahead of extraregional sources. (Bryson, AWPPW, p. 1.)

ICA feels that all NW utilities must have access to BPA's transmission lines before BPA allows BC Hydro access to these lines. (Miles, ICA, p. 1.)

The ICA feels that power generated from extraregional resources dedicated to regional load and sold to the SW by IOU's should be transmitted to the SW over their own transmission lines or by interconnection with another IOU line, if possible, before BPA allows access to its lines for these sales to the SW. (Miles, ICA, p. 1.)

ICP believes that the IAP provisions on extraregional access are important to the success of the policy. (Schultz, ICP, p. 2.)

SCL supports the concepts of offering extraregional access in return for considerations under the Coordination Agreement. (Garman, SCL, p. 3.)

PG&E feels that BPA has been candid not only about the increased revenues it is extracting from California consumers but also about the profits it and other PNW utilities are getting from "pass-through" or "indirect" sales of Canadian energy. (Gardiner, PG&E, pp. 3-4.)

PG&E feels that the result of restricting extraregional access, merely in order to serve as a totally unneeded broker, most clearly illustrates the predatory intent of the IAP. (Gardiner, PG&E, p. 4.)

PP&L agrees that extraregional access should be granted only when demonstrated economic benefits will accrue to the NW region. Further, there must be a clear demonstration that such economic benefits occur in both the short term and long term. (Hammerquist, PP&L, p. 3.)

EWEB supports BPA's policy of extraregional access to the Intertie in return for consideration under the PNW Coordination Agreement, provided that net benefits to the NW are not reduced by such transactions and that BPA and other NW utilities maintain priority use on the northern portion of the

Intertie. EWEB feels that at no time should sales from extraregional utilities have a detrimental effect on BPA or other NW utilities. When extraregional sales are allowed, the extraregional utility must be required to pay all associated costs related to such transactions. (Kunkel, EWEB, p. 2.)

CEC feels that it is important to note that BC Hydro sales to California were dramatically reduced by the IAP. (Imbrecht, CEC, p. 3.)

Extraregional access should require quantitative proof that benefits of increased coordination will at least match loss of PNW revenues resulting from Intertie access traded for it. Conditions under Near Term IAP should be used as status quo in this calculation. (Schultz, ICP, p. 3.)

Evaluation of Comments

No issues were raised in these comments which were not treated in the Interim IAP ROD. (pp. 95-98.) The propriety of reserving Intertie use for Federal Power based on Federal investment, and for PNW power based on the responsibility of PNW utilities as ratepayers for the cost of BPA's transmission system, was explained in the Interim IAP ROD and was upheld in LADWP v. BPA.

BPA met with BC Hydro regarding the possibility of further Intertie Access for the 1985-1986 operating year. The discussions were recently discontinued due to lack of substantial agreement. The parties agreed to exchange data and study alternatives.

The recent Ninth Circuit decision upholds BPA's authority to provide access to Federally owned transmission facilities in a manner that accords access first for transmission of Federal power and then access for other power generated in the PNW. Once these preferences are met, BPA cannot deny access to the Intertie to other extraregional utilities within the U.S. BPA is permitted, but not required, to provide access for Canadian generated power.

BPA believes the Near Term IAP to be consistent with this priority scheme. BPA considered, but chose not to include, provisions that differentiated between extraregional U.S. utilities and extraregional non-U.S. utilities. BPA believes that access under both the Interim IAP and the proposed Near Term IAP is consistent with the Court's decision, and that language modifications are not required. If a policy issue concerning priority between extraregional U.S. utilities and Canadian utilities arises while the policy is in effect, the question will be resolved in accordance with the Ninth Circuit decision.

Decision

Intertie access will be provided for Canadian utilities and resources only to the extent that Intertie capacity is not needed for marketing of BPA surplus, the surplus from other PNW suppliers, or other U.S. resource surplus. BPA will consider further access for Canadian utilities if agreement can be reached regarding additional coordinated operations with the Federal Columbia River Power System. BPA is continuing to meet with BC Hydro on these matters.

X. Remedies and Enforcement/Verification

Summary of Comments

In the current wording of Section II.F: Remedies, BPA determines if a utility is in noncompliance with the policy and whether to apply a remedy. PGE believes that there should be some vehicle for airing a scheduling utility's side of the story, as well as a way to appeal remedies which the scheduling utility feels are excessive. (Dyer, PGE, p. 1.)

SCL feels it is improper for BPA to impose a prospective remedy for noncompliance with the policy. A utility should be given a chance to correct its action. If remedial action is necessary, it should be tied to access that a utility has to the Intertie. (Garman, SCL, p. 3.)

PP&L feels that the provisions of section II.C.6. to verify consistency with the policy must not require utilities to submit proprietary information to BPA. (Hammerquist, PP&L, p. 3.)

The PGP suggests that a monthly BPA report on Section II.D.2.: Formula Allocation Methods, would better equip BPA in its policy enforcement efforts and in developing its Long Term IAP. This would eliminate most of the reasons for remedies. EWEB urges BPA to develop a method of spot checking the declarations of utilities. A utility should be required to meet its entire declaration at all times. BPA should develop an enforceable disincentive that would discourage users of the Intertie from inflating declarations. EWEB also urges BPA to develop a methodology whereby strict regulation of transfers would occur to prevent the displacement of firm, resource-specific allocations by any nonfirm transactions. (Garman, PGP, p. 2; Kunkel, EWEB, p. 1.)

Evaluation of Comments

The comments ranged from criticizing the remedies and enforcement measures as being too strict to suggesting that they are not rigorous enough to be effective. BPA has instituted a spot check procedure for use when a declaration appears to be unrepresentative of known resource conditions. During the term of the Interim IAP, BPA has called utilities and requested a list of the energy resources used to support the declaration. As mentioned in the discussion on formula allocations, the declarations approved by BPA for access to BPA's capacity could reasonably have been supplied from available resources of the utility.

Decision

BPA's enforcement methods and remedies for noncompliance are sufficient and appropriate under the circumstances. BPA will provide a utility the opportunity to present its perspective prior to any final decision on an enforcement method or remedy. No formal procedure will be created. Prospective remedies may be called for if noncompliance has not been discovered until after it has occurred, particularly if the action had an adverse impact on BPA or other scheduling utilities who should be made whole.

BPA will insist that all necessary information be provided if requested under section II.C.6. of the policy. Utilities should plainly indicate information they determine to be proprietary which BPA should therefore not release to the public. BPA will protect such information to the full extent of the law.

Issue 4: Effect on Interim Expansion Requests

Summary of Comments

The IANC members believe that expansion of transmission capacity will support BPA's goals and objectives as outlined in the Interim IAP and that such transmission expansion will enhance economic and reliable electric service within both regions. PGE anticipates that the Interim IAP will expand intertie capacity, which would mean a long-term loss of PNM export sales and revenues as a result of curtailing short-term revenue increases. (Public IANC, p. 2; Gardner, RGE, p. 7.)

The CEC and CRUC feel that a more equitable distribution of benefits between California and the PNW must be achieved before any investments in California facilities in expanded transmission capacity can be justified. Further, they believe that under current circumstances it is very difficult for California parties to think that they will accrue the necessary benefits to justify California investments in transmission capacity solutions. (Imbrecht, CEC, p. 3; Faltich, CRUC, p. 2.)

Evaluation of Comments

The Interim IAP will not directly affect the timing of planned intertie expansions. None of the currently discussed projects for expanded intertie capacity, including the PG Terminal Expansion and California-Oregon Transmission Project, will be completed during the effective period of the Interim IAP (May 1985-September 1988). BPA plans to implement a long-term IAP to replace the Interim IAP after September 1988. The long-term IAP will be subject to the Environmental Impact Statement (EIS) which will consider the relationship among the IAP, surplus power sales, and intertie capacity.

BPA agrees with IANC that "transmission expansion will enhance economic and reliable electric service within both our regions". BPA does not share the views of the CEC, CRUC, and the OEC that the IAP eliminates the economic and financial benefits of planned intertie expansion. Economic analysis submitted by BPA before Congressional committees shows substantial benefits to both the PNW and PNM from planned intertie expansion. This analysis shows that the IAP will not diminish the benefits of intertie expansion proposals, and may actually enhance the benefits of intertie expansion by facilitating firm power contracts (Interim IAP, RPT, pp. 19-20).

Also, as discussed in section III.C, above, the increase in generation within the California utility systems must be seen as a potential factor in the cost-benefit analysis of increased intertie capacity. For instance, RGE and SCE apparently experienced minimum generation and load during 55 percent and 51 percent, respectively, of the hours of 1981. This is linked to the

XI. Other Issues

A. Intertie Expansion Plans

Issue #1: Effect on Intertie Expansion Proposals

Summary of Comments

The TANC members believe that expansion of transmission capacity will support BPA's goals and objectives as outlined in the Near Term IAP and that such transmission expansion will enhance economic and reliable electric service within both regions. PG&E echoed this by stating that failure to expand Intertie capacity would mean a long-term loss of PNW export sales and revenues as a result of pursuing short-term revenue increases. (Pugh, TANC, p. 2; Gardiner, PG&E, p. 7.)

The CEC and CPUC feel that a more equitable distribution of benefits between California and the NW must be achieved before any investments by California entities in expanded transmission capacity can be brought to fruition. They believe that under current circumstances, it is very difficult for California parties to think that they will acquire the necessary benefits to justify California investments in transmission capacity additions. (Imbrecht, CEC, p. 3; Fairchild, CPUC, p. 2.)

Evaluation of Comments

The Near Term IAP will not directly affect the viability of planned Intertie expansions. None of the currently discussed proposals to expand Intertie capacity, including the DC Terminal Expansion and California-Oregon Transmission Project, will be completed during the effective period of the Near Term IAP (May 1985-September 1986). BPA plans to implement a Long Term IAP to replace the Near Term IAP after September 1986. The Long Term IAP and its Environmental Impact Statement (EIS) will consider the relationship among the IAP, surplus power sales, and Intertie capacity.

BPA agrees with TANC that "transmission expansion will enhance economic and reliable electric service within both our regions." BPA does not share the views of the CPUC, PG&E, and the CEC that the IAP diminishes the economic and financial feasibility of planned Intertie expansions. Economic analysis submitted by BPA before Congressional committees shows substantial benefits to both the PNW and PSW from planned Intertie expansions. This analysis shows that the IAP will not diminish the feasibility of Intertie expansion proposals, and may actually enhance the benefits of Intertie expansion by facilitating firm power contracts (Interim IAP ROD, pp. 19-20).

Also, as discussed in section III.C. above, the increase in generation within the California utility systems must be seen as a potential factor in the cost-benefit analysis of increased import capability. For instance, PG&E and SCE apparently experienced minimum generation conditions during 33 percent and 21 percent, respectively, of the hours of 1983. This is linked to the

energization of additional large baseload units. Of course, BPA's 1984 Interim IAP played no part in the past decisions on nuclear plants in the SW, and therefore, cannot be blamed for the resulting decreased value of transmission expansion plans.

Issue #2: Ownership of Future Intertie Expansion Capacity

Summary of Comments

PGP and EWEB indicate that they support financing and ownership participation by PNW utilities in any future Intertie expansion. (Garman, PGP, p. 3; Kunkel, EWEB, p. 2.)

Evaluation of Comments

The decision to expand Intertie capacity and the financing and ownership of future Intertie capacity are outside the scope of the Near Term IAP. Any decisions about additional Intertie expansions and their ownership will involve separate environmental and public involvement processes. BPA notes the expressions of interest of EWEB and PGP and will keep them and other interested parties informed of transmission expansion proposals.

Decision

BPA believes that the Near Term IAP will not affect the viability of planned Intertie expansion proposals. Decisions about Intertie expansion projects and their ownership are outside the scope of the Near Term IAP.

B. Long Term IAP

Summary of Comments

WAPA urges the timely development of the Long Term IAP. (Coleman, WAPA, p. 1.)

The PGP strongly urges BPA to include in the Long Term IAP provisions that secure a portion of the Intertie for movement of nonfirm energy because of the overriding impact that nonfirm sales had in justifying its construction. Additional firm access should only be provided when Intertie expansion takes place. (Garman, PGP, pp. 1-2.)

Evaluation of Comments

BPA recognizes that WAPA and other NW and California entities look forward to the assurance of a Long Term IAP. As discussed in section I.A. of the Interim IAP ROD, the Near Term IAP will help provide some assured access for firm Intertie transactions while providing access for nonfirm sales during the necessary development of the Long Term IAP.

Decision

The Near Term IAP does not contain provisions which result in commitment on the Intertie beyond its term.

C. Cogeneration

Summary of Comments

The AWPPW complains that through the Near Term IAP, BPA has not done enough to encourage development of the cogeneration potential. (Bryson, AWPPW, p. 2.)

Evaluation of Comments

This issue was raised in the Interim IAP ROD (pp. 29-30). Commenters at that time admitted that they knew of no cogeneration potential within the expected term of the Near Term IAP.

Decision

Intertie access is not provided for new cogeneration under the Near Term IAP, but will be addressed as an issue for the Long Term IAP.

D. PGE Status as an Owner

Summary of Comments

PGE states its understanding to be that the IAP was developed to provide control over use of the Federally owned portions of the Intertie. As such, the policies included in the Near Term IAP apply only to the Federally controlled capacity of the Intertie. To clarify their position, PGE asked that future descriptions of "Assured Delivery for firm contracts" contained in section II.D. of the Near Term IAP should recognize PGE's ownership and contractual rights. (Dyer, PGE, p. 1.)

PGE feels that the IAP should be applied fairly and in a nondiscriminatory manner, and that even though they have the rights specified above, PGE expects access to Federally controlled capacity in the same manner as any other NW utility. (Dyer, PGE, p. 2.)

PGE feels that their Contract No. DE-MS79-84BP91883 should be reflected in the examples contained in Exhibit A. (Dyer, PGE, p. 1.)

Evaluation of Comments

BPA believes the Intertie Access Policy is sufficiently clear that only that Intertie capacity which BPA controls will be allocated under the policy. "Intertie Capacity," as it is used in the policy and its exhibits, is defined to include only BPA-controlled capacity. BPA has acknowledged PGE's Intertie

ownership in the recent PGE/BPA settlement agreement, Contract No. DE-MS79-84BP91883. In section II.D.1.a, BPA also acknowledges PGE's and PP&L's Intertie priority rights under their respective Intertie Agreements with BPA. It is inappropriate to reflect PGE's ownership as an existing BPA contract in section II.D. of the Near Term IAP. That listing includes only transmission, power sales, and exchange commitments.

BPA believes it to be entirely appropriate to require PGE to fully utilize its own Intertie capacity before obtaining either Assured Delivery or a formula allocation on Federal capacity. Otherwise, other NW entities, including BPA, may be adversely affected through a decrease in Intertie capacity otherwise available to meet their needs. PGE has not adopted an access policy which assures NW utilities that unused PGE Intertie capacity will be made available to meet their needs. In addition, BPA believes that it was the intent of the Intertie owners, as exhibited in the Intertie Agreements executed in 1965 and 1966, that each owner utilize its own capacity prior to having any rights on the other's capacity.

Decision

BPA has inserted into section II.C.1. the requirement that any entity which has non-BPA transmission access to California markets must fully use its own capacity prior to receiving any access on BPA Intertie capacity.

E. Regional Preference

Summary of Comments

The OPUC states that one of the important policy guidelines BPA proposes to adopt in the Near Term IAP is maintaining preference for PNW utilities. (Maudlin, OPUC, p. 2.)

Puget feels that BPA in selling power must comply with the statutory requirements of the Regional Preference Act. (Bailey, Puget, p. 1.)

Evaluation of Comments

BPA agrees with the commenters. These issues are fully discussed in sections I.B. and II.A. of the ROD on the Interim IAP.

Decision

The Near Term IAP complies with the statutory requirements of the Regional Preference Act and BPA's implementation will be consistent with such requirements.

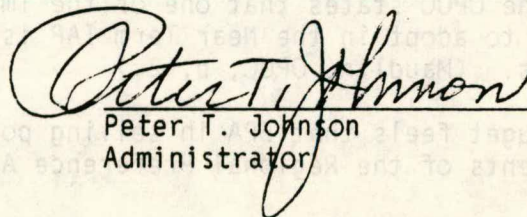
XII. Conclusion

BPA is implementing the IAP primarily to sell more of its available surplus energy at rates which recover the costs of production. In its ROD on the Interim IAP, BPA described the Administrator's Power Marketing Program and the need to assure the availability of sufficient Intertie capacity to successfully implement that program (ROD at pp. 45-59). In its brief in LADWP v. BPA, BPA included statements of Stephen A. Ailshie, BPA Assistant Administrator for Financial Management, John D. Carr, Assistant Director, BPA Division of Rates, and Shirley Melton, Director, BPA Division of Rates, declaring that the implementation of the IAP was necessary to support BPA's projected revenues and to recover costs. An effective IAP is a key factor in BPA's ability to repay the Federal Treasury on time while stabilizing rates for BPA power.

As discussed in the EA on the Near Term IAP, the need for an IAP continues and the success of its operation has been demonstrated (EA at pp. 6-8). BPA's 1985 rate case included surplus sales projections which assumed the existence of the IAP. BPA's ability to meet these projections and goals depends heavily upon the implementation of the Near Term IAP.

I have reviewed and hereby approve this Record of Decision as supporting my decision to adopt the Near Term Intertie Access Policy effective June 1, 1985.

Issued at Portland, Oregon, this 31st day of May, 1985.



Peter T. Johnson
Administrator

Table 1

Prices Paid to BPA for Energy in 1983 & 1984 1/

	<u>Last 4 Months</u>			
	<u>1983</u>		<u>1984</u>	
	Sales (GWh)	Avg. Price (mills/kWh)	Sales (GWh)	Avg. Price (mills/kWh)
PG&E	1046	17.1	2169	25.7
LADWP	483	11.3	469	27.0
Edison	991	13.9	1256	26.2
SDG&E	<u>100</u>	<u>12.8</u>	<u>134</u>	<u>25.9</u>
Total	2620	<u>14.6</u> 2/	4028	<u>26.0</u> 2/

Prices Paid for Energy from Non-Federal Sources

	<u>B.C. Hydro</u> <u>Sales from Last 4 Months</u>			
	<u>1983</u>		<u>1984</u>	
	Sales (GWh)	Avg. Price (mills/kWh)	Sales (GWh)	Avg. Price (mills/kWh)
PG&E	588	23.7	162	23.6
LADWP	740	22.2	340	26.0
Edison	616	24.0	192	23.3
SDG&E	<u>53</u>	<u>24.7</u>	<u>7</u>	<u>29.4</u>
Total	1997	<u>23.2</u> 2/	701	<u>24.7</u> 2/

Sales from other Principal Non-Federal

	<u>1983</u>		<u>1984</u>	
	Sales (GWh)	Avg. Price (mills/kWh)	Sales (GWh)	Avg. Price (mills/kWh)
PG&E	975	23.3	1560	27.6
LADWP	343	22.2	99	28.9
Edison	1194	24.1	1922	25.2
SDG&E	<u>412</u>	<u>21.8</u>	<u>445</u>	<u>25.4</u>
Total	2924	<u>23.2</u> 2/	4026	<u>26.2</u> 2/
Grand Total	4921	<u>23.3</u> 2/	4727	<u>26.0</u> 2/
<u>Grand Total with BPA</u>		<u>20.2</u> 2/		<u>26.0</u> 2/

1/ These tables were taken from a report by the California Public Utilities Commission entitled "The Marketing of Surplus Northwest Power to California," 1/30/85, pp. 19-20.

2/ These numbers were added by BPA to the CPUC tables.

Table 2

INTERTIE SALES AND USE SINCE SEPTEMBER 14, 1984
COMPARISON OF THIS YEAR TO LAST YEAR

	Sep 14-30 1984	Oct 1984	Nov 1984	Dec 1984	Jan 1985	Feb 1985	Mar 1985
(1) BPA Sales							
SP (MWh)	519,083	1,092,979	1,319,961	1,178,285	532,836	337,615	166,723
% Last Year	477.2	284.2	626.2	864.9	1,003.8	300.2	107.8
NF (MWh)	0	0	0	0	886,033	1,829,613	81,846
% Last Year	n/c 5/	- 5/	-	-	48.1	75.4	3.1
Total BPA (MWh)	519,083	1,092,979	1,319,961	1,178,285	1,418,869	2,167,228	248,569
% Last Year	330.3	284.2	116.1	94.3	74.9	85.4	9.0
(2) Other PNW Sales							
Bilateral (MWh)	906,500 1/	1,395,391	1,013,693	1,424,288	1,318,082	637,595	1,624,005
% Last Year	124.1	116.2	108.5	256.4	244.5	151.9	765.3
NF--Exportable (MWh)	0	0	0	0	153,764	224,580	0
% Last Year	-	-	n/c	n/c	124.8	392.8	n/c
Total (MWh)	906,500 1/	1,395,391	1,013,693	1,424,288	1,471,846	862,175	1,624,005
% Last Year	124.1	116.2	91.2	238.3	222.3	180.7	691.6
(3) Extraregional							
B.C. Hydro							
MWh This Year	170,000 1/	44,514	5,519	3,613	575	28,283	1,312,672
% Last Year	34.2	6.9	1.6	1.1	0.3	60.3	2/
W. Kootenay							
MWh This Year	3,950 1/	85	91	0	0	0	0
% Last Year	14.0	0.1	0.0	-	-	-	-
Extrareg. Participation							
% Total Sales Last Year	37.1	31.0	13.1	14.6	6.6	1.5	7.8
% Total Sales This Year	10.9	1.8	0.2	0.1	0.0	0.9	41.2
(4) Capacity Available (Monthly Average)							
A.C.--Average MW	2,505	2,751	2,757	2,780	2,614	2,793	2,700
A.C.--% Last Year	96.9	98.3	98.5	99.4	94.4	102.8	111.9
D.C.--Average MW 3/	1,388	881	675	1,277	1,595	1,819	1,915
D.C.--% Last Year	90.2	102.4	57.9	83.1	111.9	123.2	125.3

	Sep 14-30 1984	Oct 1984	Nov 1984	Dec 1984	Jan 1985	Feb 1985	Mar 1985
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(5) Net Schedule--Amount Utilized for Schedules (Monthly Average)

A.C.-Average MW	2,347	2,658	2,720	2,627	2,498	2,768	2,555
A.C.-% Last Year	108.6	113.9	114.0	151.2	115.3	104.7	110.2
D.C.-Average MW	1,177	753	519	801	1,285	1,636	1,599
D.C.-% Last Year	100.6	121.3	50.4	78.1	111.4	113.0	105.6

(6) Load Factor (% of Available Capacity Used)

A.C.-Last Year	83.6	83.3	85.3	62.1	78.2	97.3	96.1
A.C.-This Year	93.7	96.6	98.7	94.5	95.6	99.1	94.6
D.C.-Last Year	76.0	72.2	88.3	66.8	81.0	98.1	99.2
D.C.-This Year	84.8	85.5	76.9	62.7	80.6	89.9	83.5
Total-Last Year	79.8	77.8	86.8	64.5	79.6	97.7	97.7
Total-This Year	89.3	91.1	87.8	78.6	88.1	94.5	90.0

(7) Condition 1

Hours	0	0	0	0	326	521	0 4/
%		0	0	0	0	43.8	77.5

(8) Condition 2

Hours	160	654	720	744	418	148	145 4/
%		39.2	87.8	100	100	56.2	22.0

(9) Condition 3

Hours	248	91	0	0	0	3	599 4/
%		60.8	12.2	0	0	0	0.5

1/ Estimated.

2/ There were no sales last year during the month of March.

3/ Available DC capacity fluctuates among the months shown due to scheduled maintenance outages, construction outages, and a subsequent increase in rated capacity due to improvements.

4/ The total hours of use for each condition from September 14 through March 31 with their corresponding percentage is as follows:

	Hours	Percentage
Condition 1	847	17.7%
Condition 2	2989	62.6%
Condition 3	441	19.7%

5/ "n/c" indicates "no calculation" due to 0 in Last Year; "-" indicates 0 in both years.

Table 3

PG&E's 1983 Pacific Southwest Economy Energy Purchases 1/

<u>Supplier 2/</u>	<u>Average Cost (Mills/kWh)</u>	<u>Purchase (GWh)</u>
Inland SW	25.2	60
California	9.6	13,799
Canada	23.4	646
BPA	11.6	6,853
PNW 3/	29.6	2,210

1/ Source: PG&E 1983 FERC Form 1.

2/ Inland SW purchases include purchases from Nevada and Arizona. PNW includes purchases from Montana, Oregon, and Washington (excluding BPA and Canada).

3/ Includes 336 GWh of NW power purchased from SCE.

SCE's 1983 Economy Energy Purchases 1/

<u>Supplier</u>	<u>Average Cost (Mills/kWh)</u>	<u>Purchase (GWh)</u>
Inland SW	23.6	4,970
California	20.0	4,888
Canada	22.4	807
BPA	9.0	6,965
PNW	22.7	1,667

1/ Source: SCE 1983 FERC Form 1.

Appendix A

INDEX OF ABBREVIATIONS

AFS	Average Firm Surplus
aMW	Average Megawatt
AWPPW	Association of Western Pulp & Paper Workers
BPA	Bonneville Power Administration
CEC	California Energy Commission
CPUC	California Public Utilities Commission
CRITFC	Columbia River Inter-Tribal Fish Commission
Douglas	PUD #1 of Douglas County
DSIs	Direct Service Industries, Inc.
EA	Environmental Assessment
EIS	Environmental Impact Statement
EWEB	Eugene Water & Electric Board
FCRPS	Federal Columbia River Power System
Grant	PUD of Grant County
Grant PUD	PUD #2 of Grant County
GWh	Gigawatthour
IAP	Intertie Access Policy
ICA	Idaho Consumer Affairs
ICP	Intercompany Pool
IOU	Investor Owned Utility
IPC	Idaho Power Co.
Kootenay	West Kootenay Power & Light Co., Ltd.
kWh	Kilowatthour
LADWP	Los Angeles Department of Water and Power
Mid-Columbia PUDs	Mid-Columbia PUDs of Chelan Co., Grant Co., & Douglas Co.
MPC	Montana Power Company
MW	Megawatt
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NPPC	Northwest Power Planning Council
NW	Northwest
OPUC	Oregon Public Utility Commissioner
OY	Operating Year
PG&E	Pacific Gas & Electric Co.
PGE	Portland General Electric Co.
PGP	Public Generating Pool
PNGC	Pacific Northwest Generating Company
PNUCC	Pacific Northwest Utilities Conference Committee
PNW	Pacific Northwest
PP&L	Pacific Power & Light Co.
PSW	Pacific Southwest
Puget	Puget Sound Power & Light Co.
SCE	Southern California Edison
SCL	Seattle City Light
SMUD	Sacramento Municipal Utility District
SW	Southwest
Tacoma	Tacoma Department of Public Utilities
TANC	Transmission Agency of Northern California
WADOF	Washington Dept. of Fisheries
WAPA	Western Area Power Administration
WWP	The Washington Water Power Co.

Appendix B

LIST OF COMMENTERS

Bailey, R. G.	Puget Sound Power & Light Company
Barclay, D. E.	Idaho Power Company
Bryson, Farris	Association of Western Pulp & Paper Workers
Coleman, David G.	Western Area Power Administration
Dyer, Richard	Portland General Electric Company
Einarson, Gosta	PUD #1 of Douglas County
Evans, Dale	National Oceanic and Atmospheric Administration
Fairchild, Peter	California Public Utilities Commission
Gardiner, Stuart	Pacific Gas & Electric Company
Garman, G. R.	Public Generating Pool
Garman, G. R.	Seattle City Light
Hammerquist, F.	Pacific Power & Light Company
Hocraffer, V. David	Self
Imbrecht, Charles	California Energy Commission
Kendall, Robert	Southern California Edison
Kunkel, Garry	Eugene Water & Electric Board
Maudlin, Gene	Oregon Public Utility Commissioner
McMahan, John	PUD of Grant County
Miles, Harold C.	Idaho Consumer Affairs
Myers, Donald	Attorney for PUD of Grant County
Nadal, Joseph	Pacific Northwest Generating Company
Nichols, Norman	Los Angeles Department of Water and Power
O'Banion, John	Sacramento Municipal Utility District
Prekeges, Gregory	The Washington Water Power Company
Pugh, Archer	Transmission Agency of Northern California
Schultz, Merrill	Intercompany Pool
Siddall, R. G.	West Kootenay Power & Light Company, Ltd.
Snowden, Diana	Pacific Northwest Utilities Conference Committee
Thompson, James	Tacoma Department of Public Utilities
Wapato, S. Timothy	Columbia River Inter-Tribal Fish Commission
Wilcox, Brett	Direct Service Industries, Inc.
Wilkerson, William R.	Washington Dept. of Fisheries
Wright, Al	Mid-Columbia PUDs of Chelan Co., Grant Co., & Douglas Co.