

# **ADMINISTRATOR'S RECORD OF DECISION**

## **Templates (New Power Sales Contracts) and Amendatory Agreement No. 7**

Bonneville Power Administration  
Marketing, Conservation and  
Production Group  
Contract Support Services  
May 13, 1996

# ADMINISTRATOR'S RECORD OF DECISION

## Templates (New Power Sales Contracts) and Amendatory Agreement No. 7

### Table of Contents

	<b>Page</b>
Introduction .....	1
Background .....	1
Procedural History of New Contracts .....	3
Procedural History of Contract Amendments .....	5
Load Commitment Options .....	6
Explanation of AA7 -- Options 1 and 2 .....	9
Explanation of New Contracts -- Option 3 .....	11
Key Issues and Concerns .....	14
Environmental Analysis .....	17
Public Availability .....	20
Conclusion .....	20
 ATTACHMENT A:     Analysis of Public Comment on Templates (New Power Sales Contracts) and Amendatory Agreement No. 7	
ATTACHMENT B:     Tentative Agreements, Power Sales Contract Negotiations, April 13, 1995	

# **ADMINISTRATOR'S RECORD OF DECISION**

## **Templates (New Power Sales Contracts) and Amendatory Agreement No. 7**

### **INTRODUCTION**

---

The Bonneville Power Administration (BPA) has decided to offer its public utility customers choices about their business relationships with BPA over the next 5 years. One choice being offered is for the public utility customers, and potentially other types of customers, to negotiate a new tailored contract for firm load requirements service based on contract templates that have been negotiated through a public process and comment period. Requirements service is the firm power products that a BPA customer has a right to purchase from BPA for the customer's general firm power load requirements and its new large single loads. Contracts based on the templates will be available at least through August 1, 1996.

The other key choice BPA is offering is an opportunity to amend their 1981 or 1984 Power Sales Contracts (Utility PSC). With Amendatory Agreement No. 7 (AA7), BPA is offering terms that will address certain changes in the electric power marketplace and in the needs of BPA customers. This amendment is offered in the context of the market-driven approach selected in BPA's Business Plan process. This amendment is planned to be the final step in a sequence of offers to public utility customers intended to strengthen BPA's competitive position in the electric power market and to strengthen its business relationships with its customers.

### **BACKGROUND**

---

This decision to offer to negotiate and offer a new requirements contract or an amendment to the existing firm power requirements contract is consistent with BPA's Business Plan, the Business Plan Environmental Impact Statement (BP EIS) (DOE/EIS-0183, June 1995) and the Business Plan Record of Decision (ROD) (August 15, 1995). In that ROD, BPA explored six alternative plans of action described in its BP EIS. The six alternatives were: status quo (no action), BPA influence, market-driven, maximize financial returns, minimal BPA, and short-term marketing. The BPA Administrator selected the market-driven alternative. Although the status quo and the BPA influence alternatives were the environmentally preferred alternatives, the differences in total environmental impacts among alternatives were relatively small. Other business aspects, including loads and rates, showed greater variation among the alternatives. The market-driven alternative strikes a balance between commercial objectives and environmental concerns. It also helps BPA to ensure the financial strength necessary to maintain an adequate level of support for public service benefits delivered by such programs as energy conservation and fish and wildlife enhancement.

The BP EIS and Business Plan ROD were also intended to guide BPA in a series of related decisions on specific issues and actions. The decision to offer to a customer a new requirements contract based on the templates or a contract amendment is one subsequent action under the Business Plan, and is the subject of this tiered ROD. Tiering subsequent RODs to the Business Plan ROD helps delineate BPA decisions clearly and provides a logical framework for connecting broad programmatic decisions to more specific segment and contract actions. Before taking specific action, BPA affirmatively stated that it would review the BP EIS to ensure that a particular action was adequately covered within the scope of the BP EIS and, if appropriate, issue a tiered ROD. This ROD, summarizes and incorporates information from the Business Plan ROD and BP EIS, and is the result of such a review. It describes specific

information on BPA's decision to offer contracts based on the principles embodied in the templates and an amendment that allows diversification; and it summarizes the environmental impacts associated with this decision, as described in the BP EIS.

### **New Competitiveness in the Electric Industry**

As a Federal power marketing administration, BPA markets electric power produced from 30 Federal dams and 1 nuclear plant (Washington Nuclear Plant 2) to public and private utilities, direct-service industries (DSIs), and Federal agencies throughout the Pacific Northwest (PNW). The electric utility industry which BPA is a part of is becoming increasingly competitive and dynamic. Four factors are substantially affecting BPA's ability to compete: market change, increased nonpower obligations, deterioration of BPA's cost/price advantage, and decreased capacity for hydroelectric power production. The emergence of competition has led to significantly lower prices for wholesale electric power. At the same time, BPA's costs for providing major public benefits (including fish and wildlife enhancement and support of energy efficiency) have increased significantly. A series of dry years and changes in hydro system operations have also affected BPA's ability to produce power and generate revenues.

A current west coast power surplus, decline in costs of competing generating resources, low market prices, and difficulty in siting and developing new generating facilities continue to lead electric utilities and other parties to emphasize shorter-term commitments to buy and sell. In addition, the recent wholesale market deregulation has fostered the emergence of marketers and brokers who operate in the shorter-term markets, connecting buyers to the cheapest of available resources across the entire interconnected western systems.

BPA must always balance its costs with its revenue generating ability. The availability of power at competitive prices from other suppliers now precludes BPA from meeting costs simply by raising rates to its customers. There is a BPA firm power rate level above which a rate increase would no longer increase BPA's revenue (due to a price-induced reduction in demand). This rate level is referred to as BPA's maximum sustainable revenue. Allowing BPA's rates to exceed this level would not be consistent with sound business principles. It would reduce BPA's total revenue and its ability to repay its U.S. Treasury debt and to fund public benefits.

### **PROCEDURAL HISTORY OF NEW CONTRACTS**

---

BPA's current requirements power sales contracts were negotiated during market circumstances that differ greatly from today's competitive environment. In 1981, and for a few customers in 1984, BPA and its Federal and public agency, cooperative, investor-owned utility, and DSI customers signed new 20-year requirements service or direct service contracts that are scheduled to terminate by their terms on June 30, 2001. In the early 1980's, BPA's electric power rates were far below those of alternative sources. In 1981, BPA and its regional customers believed they were facing a significant power supply deficit in the PNW and that the Federal base system resources would be rigidly allocated.

Because DSI contract provisions required that they notify BPA of a desire for a follow-on contract in 1993, and because BPA knew that the DSIs needed as much information as possible to make their decision, BPA began the contract process in February 1991. BPA realized that a variety of interests were involved, and that difficult issues would require resolution, given the changes in the power industry. BPA also believed that, to be competitive, it would have to be able to create customized contracts to meet the needs of each BPA customer.

From the outset, BPA has worked to involve all interested parties. Although contract negotiations on the templates were primarily with customers, BPA also welcomed active participation from customer and constituent groups, representatives from the Northwest Power Planning Council (NWPPC), State energy offices, State public utility commissions and many others. BPA's goal throughout the process was to ensure meaningful participation in the proposed new power sales contracts addressed in this ROD.

BPA approached the contract renegotiation process initially using "interest-based bargaining," rather than the more common, adversarial "positional bargaining" model. "Interest-based bargaining" first defines the parties' fundamental needs or interests rather than proposing the resolution or positions; then identifies multiple settlement options, how to evaluate alternatives, and how to revise decisions. Phase I was to set the direction and establish the participants' preferred alternative; Phase II was to be negotiation of specific contract terms and their offering in new contracts.

Beginning on May 13, 1992, participants in a series of large meetings with BPA, its customers, and customer and constituent groups began the task of identifying fundamental needs, and identifying and starting to discuss issues. BPA suspended the contract renegotiation process in August 1993, so that BPA could first complete its Competitiveness Project and Marketing Plan that would help set the future business direction for BPA.

In September 1994, BPA restarted the contract renegotiation process, focused on reaching agreement on a basic contractual framework that would result in contract templates from which bilateral contracts will be negotiated. These group negotiations with BPA's customers and with customer and constituent groups in Portland, Oregon, continued through March 1995. The negotiations focused on BPA's unbundling of its products and services, with much discussion of the "tiered rates" impact on the power sales contracts. These negotiations produced a series of tentative agreements to serve as a template framework; these are documented in a April 13, 1995, report, entitled "Tentative Agreements" and attached as Attachment B. Many of these tentative agreements have since been modified by later events or negotiations.

Additional input for the templates came from a BPA paper on "Northwest Power Act Section 7(b) Requirements Service" (Requirements Paper), discussed with customers participating in the negotiating process. At the conclusion of the negotiation, some of the participants said they did not agree with the Requirements Paper, nor did they agree with the conclusions of the tentative agreements. Beginning in March 1995, BPA contracts staff worked on contract templates based on the Requirements Paper, the tentative agreements, and on the feedback of customers since that time through their BPA Account Executives. On July 13, 1995, BPA sent out for public comment a draft of a full requirements template; a partial requirements template; a declared resources requirements template; a residential purchase and sale template; and a draft DSI block sale template.

The DSI template formed part of the basis for the DSI requirements (Block Sale) contracts executed in October of 1995. Under those contracts BPA has achieved a commitment of 1,803 average megawatts of DSI load. A separate ROD on the DSI requirements Block Sale contracts is available from BPA's Public Involvement Office (see section titled "Public Availability" near the end of this ROD). BPA intends to use the requirements templates as a basis for bilateral negotiations on requirements service between BPA and utility customers to develop individual tailored contracts that will better address the needs of BPA and its utility customers in the context of current market circumstances.

BPA's decision to offer new contracts will mainly affect BPA's public utility customers, but any customer that currently has a requirements power sales contract with BPA may be affected by

the content of these templates if it chooses to negotiate a new requirements contract rather than keep its existing one. These customers include the preference customers, DSIs, investor-owned utilities (IOUs) and Federal agencies, as described below:

- **Preference Customers** -- Public utility districts, municipalities, and cooperatives to which, by law, BPA must give preference for power available from the Federal base system resources. These customers include utilities without power generation that rely on BPA for all or nearly all of their wholesale power needs, and those with generation that meet some of their load with non-Federal resources.
- **DSIs** -- Large industries that purchase power directly from BPA. BPA expects that many of these customers will purchase power under different BPA offers, but those who did not execute a requirements Block Sale contract may choose to negotiate a requirements contract based on the templates.
- **IOUs** -- Privately-owned utilities serving the general public in the region. Although BPA does not anticipate it, IOUs may negotiate contracts based on the templates. Any IOU's power purchase from BPA under the existing or new power sales contract would be at BPA's New Resource Firm Power rate.
- **Federal Agencies** -- Those Federal agencies which presently or in the future may purchase power directly from BPA or through a utility. Examples of current direct customers include Fairchild Air Force Base and the U.S. Department of Energy (Richland Operations Office).

### **Statutory Guidelines Concerning Customer Contract Service**

These contracts or contract amendments are offered in accordance with the Bonneville Project Act of 1937, Public Law 75-329, as amended, and the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501 (the "Northwest Power Act"). Section 5(b)(1) of the Northwest Power Act directs the BPA Administrator whenever requested to offer long-term power sales contracts for the sale of electric power to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 and to each requesting IOU to meet the regional firm power load of each such entity. Under section 5(b)(3) of the Northwest Power Act, the BPA Administrator also has broad discretion to offer new power sales contracts to existing or new Federal agencies. Under section 5(d) of the Northwest Power Act, the Administrator may offer to provide firm power service to existing DSI customers.

### **PROCEDURAL HISTORY OF CONTRACT AMENDMENTS**

Since the fall of 1995, BPA has been working on proposed amendments to some of the terms of its existing utility power sales contract. These amendments were written for those metered requirements and computed requirements customers that wanted some additional non-Federal resource diversification under the terms of the existing utility power sales contract and not under a new template-type contract. AA5, AA6, and AA8 were offered to all utilities and provided terms for those customers who did not want to diversify their power supply. Those amendments are covered under a separate Record of Decision. AA7 is addressed in this ROD.

Amendatory Agreement No. 5 (AA5) was developed to provide a simple amendment that provided customers with 5 years of rate certainty in return for a 5-year commitment.

Based on additional input BPA then offered Amendatory Agreement No. 6 (AA6) which modified AA5. AA6 added the opportunity to diversify if BPA does not meet a price test and

provided a choice of remedies if BPA does not meet its 5-year rate guarantee. AA6 also removed the specific language in the amendment which required BPA to backstop the customer's conservation efforts.

BPA then began to develop AA7 specifically for diversifiers. Before that agreement could be offered, BPA received requests to offer a different amendment. BPA then offered Amendatory Agreement No. 8 (AA8), to address additional concerns of nondiversifying customers, clarifying the BPA price test and rate guarantee. Customers had to sign or notify BPA of their intent to sign AA5, AA6, or AA8 by the end of March 1996.

Consistent with section 20(b) of the Utility PSC, AA7 is now available to metered requirements, actual computed requirements and planned computed requirements customers whether or not they choose to diversify. Customers that previously signed AA5, AA6, or AA8 may choose to replace any of those amendments with AA7, consistent with the Most Favored Nations clause in their contract. BPA expects that most who chose the previous amendments will keep them since those amendments were designed specifically for customers who want to keep 100 percent of their BPA service. Those who signed the earlier amendments also get the benefit of a price ceiling for their new BPA rates, an offer that is not included in AA7.

## **LOAD COMMITMENT OPTIONS**

---

BPA continues to strive to meet both its needs for revenue certainty and the customers' desire for market access. Current contracts do not expire until 2001, so one option BPA considered was maintaining the existing contracts with no diversification. The approach of not allowing diversification was not aligned with the objectives of BPA's Business Plan. The current public agency contract provides various notice periods for changes in the non-Federal resources applied to serve their loads. Customers may reduce loads through several approaches including reductions when BPA has a resource deficit; when the customer adds a renewable resource; and when the customer demonstrates part of its load is interruptible. Rather than create customer enmity and contract disputes over the next 5 years surrounding the rights to reduce their loads, BPA has decided to work with its customers to reach mutually agreeable solutions.

During the next 5 years, BPA's potential public agency and cooperative market is estimated to be about 5,260 average megawatts. The BPA Administrator decided that BPA can maximize both the amount of load and its revenue, and achieve increased customer satisfaction over the next 5 years, by offering to amend the Utility PSCs of BPA's requirements service customers or negotiate new requirements service contracts. Between the option to negotiate a new contract and the amendments, BPA believes that it has created the tools needed to establish a workable business relationship with its customers between now and 2001. Previously, BPA set a deadline, the end of March 1996, for its customers to work out a solution that would meet a class load and revenue test of 4,670 average megawatts and \$1.018 billion in revenues per year for 5 years. In reviewing the commitments received, BPA found it was about 1,000 average megawatts short of its goal. At this point, BPA dropped the class load and revenue test as an explicit condition to a customer getting the 5-year rate certainty and stranded cost protection, and moved to a new approach with the four major options that are the subject of this ROD:

- **Option 1** -- A public agency utility commits to place 100 percent of its load on BPA, net any resources dedicated in its Firm Resources Exhibit, as of February 15, 1995\*, by

---

\* February 15, 1995, reflects those submissions of Firm Resources Exhibit changes by customers as of January 31, 1995, based on the terms of section 12(b) of the Utility PSC. BPA was not required by

either keeping a previously signed AA5, AA6, or AA8 or signing up for a 100 percent commitment using AA7. In exchange, the customer gets 5 years of rate certainty and a stranded cost shield.

- **Option 2** -- A public agency customer may add non-Federal resources to serve part of its firm load (diversify) under AA7. This will include the 5-year stranded cost shield and 5-year rate certainty in exchange for making a 90 percent load commitment. The customer would agree not to take any additional requirements load off of BPA. BPA's base assumption is the diversification will be 10 percent, delivered in equal hourly amounts during the 5 years, without granting additional displacement amounts. The customer may negotiate a different package--choosing types of displacement rights, the timing of the diversification, and the shape of the diversification under AA7--as long as BPA's financial or revenues analysis indicates that BPA is as well off economically with the negotiated package as if the customer had continued to purchase Priority Firm Power for 90 percent of its current BPA-served load. The customer will purchase its requirements service at whatever initial and final price comes out of the BPA 1996 rate case.
- **Option 3** -- The customer may negotiate a new contract based on the contract templates. The customer may diversify its resources for firm load service, but whatever the amount of non-Federal resources, BPA's analysis must indicate that BPA is receiving an equivalent amount of revenue to what BPA would have received if the customer was placing 85 percent of its load on BPA at the 1996 Priority Firm Power (PF-96) rate under its existing power sales contract. Customers that agree to change existing contractual rights which impose economic cost on BPA may thus receive more than 15 percent diversification. Additional features of the new contract could include prices based on market index with a markup; a negotiated exit fee in return for an ability to take all or a portion of its actual firm load off of BPA; a fully take-or-pay purchase with no relief from retail load swings. These contracts would include language on stranded investment and retail wheeling, and would also provide 5-year rate certainty on the price of the customer's BPA purchases.
- **Option 4** -- Under this option a customer simply stays with its existing utility power sales contract and retains all of its existing contract rights. It gets no 5-year rate certainty and no stranded cost shield. This option does not require utility action.

These options are expected to produce revenues from this customer class that approximate those of the earlier class load test.

### **Response to BPA's Four Options to Closing Out the Load Commitment Exercise with the Public Agencies**

While developing these four options BPA informally gathered comment. The responses were as follows:

- **Public Power Council (PPC) Response** -- Encouraged BPA to take a different approach with different customers. Proposed that BPA allow up to 30 percent diversification.

---

the terms of section 12(b) to approve additions of firm resources after that date. Based on continuing customer requests for market access, BPA began looking for ways to provide the diversification desired by its customers. BPA began to allow resources to be added by customers as part of their desire for diversification by proposing to give waivers of notice required under section 12(b). BPA offered waivers through July 1, 1995, to those customers requesting additional firm resources at that time and considers these waivers as a first step.



Proposed that BPA allow customers to pay 70 percent of the PF margin instead of 85 percent.

- **Pacific Northwest Generating Cooperative (PNGC) Response** -- Stated that the BPA proposal did not allow enough diversification for small utilities. Said that diversification is a life or death issue for some utilities. Proposed allowing 30 percent diversification but with a 25 average megawatt cap per utility which meets PNGC's needs, but does not address the diversification needs of BPA's 10 largest public utility customers.
- **Public Generating Pool Response** -- No comment separate from PPC's.
- **Western Montana Generation and Transmission Cooperative, Inc. Response** -- Can probably work with BPA's four options. However members may want to move from metered to computed requirements status under Option 2, which raises an issue of taking additional load off of BPA through displacement.
- **Those Who Signed up Early for 100 Percent Load Commitment** -- Stated BPA should not give a better deal to those who sign later deals.
- **Northwest Requirements Utilities** -- Can probably work with these four BPA options.

The four options that this ROD offers customers have been adjusted from earlier drafts to respond to the comments received. These adjustments include giving customers the option to substitute diversification for displacement and allowing customers more flexibility in how they shape the diversification they choose.

## **EXPLANATION OF AA7 -- OPTIONS 1 AND 2**

---

AA7 will be offered to all utility customers, giving them the choice of diversifying their power supply without executing a new power sales contract. AA7 extends the term of the existing utility power sales contract by 3 months to give the customer a full 5-year right to purchase requirements power and other products from BPA. Customers who sign this amendment and are currently actual computed requirements or planned computed requirements customers will have three choices related to transmission service for the Federal power they purchase from BPA. The basic choice would have transmission service provided under the power sales contract at the NTP-96 (Network Integration Transmission Rate for 1981 Contracts) rate. The other two choices would have customers choosing either the new comparable network transmission service agreement or the new comparable point-to-point transmission service agreement. If these customers choose either of these two optional transmission service agreements, then their existing power sales contract will be amended to remove any and all references to transmission services, terms or conditions. Metered requirements customers who sign this amendment and choose to diversify will have the same three choices.

The customer under AA7 agrees to place all of its actual firm load on BPA less those firm resources it has dedicated to serve its firm load consistent with the terms of its requirements contract. Such resources may include the following: Columbia Storage Power Exchange (CSPE\*), resources acquired as qualifying facilities under PURPA\*\*, and firm resources listed

---

\* The Columbia Storage Power Exchange is a nonprofit organization formed by five public utility districts, three municipalities, and three private utilities to purchase the Canadian share (by virtue of the Columbia River Treaty) of downstream power generated at U.S. hydroelectric plants and resulting from storage dams built upstream in Canada. The Treaty with Canada for joint development of the Columbia River for flood control and increased hydroelectric power generation became effective on September 16, 1964. Under the Treaty, Canada was required to build three large storage dams on the upper reaches of the Columbia River in Canada: Duncan Dam, Keenleyside Dam, and Mica

in its Firm Resources Exhibit as of February 15, 1995. BPA and the customer may also agree on the addition of firm resources for diversification of the utility's service to load. The customer may add firm resources not to exceed the annual numbers established in the amendment as replacement of BPA service for each year over the next 5 years. The customer would continue to submit annual revisions of its Firm Resources Exhibit, showing the assured capability of such resources in its Exhibit J consistent with the provisions of its utility power sales contract. BPA will resell the Federal power made available by such reductions in its section 5(b) and 5(d) obligations to other customers as excess Federal power either inside or outside the PNW for up to 7 years.

In return for BPA's agreement that the customer may add firm resources to serve parts of its load, the customer also agrees that it will not add any other firm resources to serve its firm load under section 12 for the remaining 5 years of the contract. The customer also agrees that it will give BPA 2 years' notice before requesting reestablishment of requirements service for such parts of its loads, with an accompanying purchase commitment of 3 years at rates which cover the full incremental cost of providing this service.

Through AA7, BPA also agrees not to raise its final 1996 rates for 5 years for requirements purchases that the customer initially commits to. Any requirements service that the customer subsequently reestablishes will be subject to the most recent rate schedule as updated during the contract term. If BPA raises rates in contravention of the amendment, then the amendment will provide for billing adjustment backed up by binding arbitration on this specific factual determination under the General Contract Provisions, section 32, Exhibit B to the 1981 utility power sales contract.

The customer also agrees under this amendment to acquire cost-effective conservation which had not been a condition of the Utility PSC. The customer will receive a conservation incentive for its conservation achievement. Under this provision the customer may be credited with up to twice its conservation savings, and may place that amount of load service equal to twice its conservation savings on BPA as requirements service prior to September 30, 2001, without the 2-year notice.

This amendment states that BPA will not seek stranded cost recovery during the term of this contract and the customer and BPA agree to preserve their respective rights, if any, to pursue stranded costs post-2001.

## **EXPLANATION OF NEW CONTRACTS -- OPTION 3**

---

Any new utility power sales contracts, negotiated based on the prototype templates, will establish the new basic requirements service contractual relationship between BPA and those customers who execute a new contract. BPA intends to offer template-based new contracts for 5 years

---

Dam. The United States was allowed to build Libby Dam in Montana. The storage provided by these dams permits production of additional firm power at downstream U.S. plants. This additional power is shared equally by Canada and the United States. Canada has sold its share of this power to the CSPE for 30-year periods, coinciding with the scheduled completion dates of each of the three Canadian dams.

- \* The Public Utility Regulatory Policy Act of 1978 (PURPA) encourages consumer generation as a qualifying facility which may be offered to the serving utility. The serving utility is not required to buy the generation if the cost of the purchase is above the utility's avoided cost. The 1981 utility power sales contract in section 12(b)(4) provides for the addition of PURPA qualifying facilities as firm resource to serve the utility's firm load on notice to BPA.

because of the review of BPA's role in the Regional Forum\*. BPA may later offer requirements contracts for terms up to 20 years. The new power sales contracts will contain terms and conditions for Federal power products and services necessary to serve firm load and will establish the new contractual requirements relationship. BPA is offering a spectrum of business relationships from the simplest full requirements relationship that provides the customer's complete wholesale power service, to more complicated partial requirements relationships that allow customers to receive power from non-BPA sources and to operate resources.

### **Key Issues and Responses to Comments on the Templates**

Draft templates were developed through the process described earlier in this ROD and were put out for public comment on July 13, 1995. Commenters on the draft templates included individual public utilities (such as Hood River Electric Cooperative and Flathead Electric Cooperative, Inc.); private utilities (such as PacifiCorp); customer groups (such as Western Public Agencies Group and the Public Power Council); constituent groups (such as the Northwest Conservation Act Coalition); and the NWPPC.

The majority of commenters focused on those templates most relevant to their individual future business relationship with BPA. Many of the commenters noted that the templates were significantly simplified and improved over the early, unofficial drafts they had seen. Primary concerns included transition costs (stranded investment/exit fees), conservation issues, and flexibility within the templates. In all, comments from 25 interested parties were received on the templates. Comments, detailed responses, and a complete list of commenters are provided in Attachment A.

### **Templates (Prototype Requirements Contracts)**

Contracts that are negotiated under Option 3 will be tailored based on the following templates which were developed as a result of comment received on the July 13, 1995, draft templates.

- **Template A** -- The first relationship, the simplest one, is a basic full requirements customer that has chosen to operate under a single contract for both power and transmission (of its BPA purchases). This customer may only have resources used to serve its load that are less than 3 megawatts in size. But the customer may have third-party resources of any size in its service area (belonging to its consumers or other third parties such as independent power producers).

This basic contract provides a complete package of BPA products and services to meet the customer's needs for power and associated transmission, beyond any power it receives from its existing resources. If the customer acquired any resources during the term of a Template A-type contract, the customer must move to (and remain in) a contractual relationship with separate power and transmission contracts.

- **Template B** -- The second contract service relationship is available to full requirements customers who have existing resources that are 3 megawatts or

---

\* The Regional Forum is a group with representatives of the States in the PNW and other key energy-related stakeholders, formed to examine the role of BPA and other regional entities in the electric energy future of the PNW.

more in size and who want to retain the simplicity of having a single contract for both power and transmission services. This option is not available to customers who acquire new resources after the effective date of the agreement. With respect to renewals of existing non-Federal contract power purchases, the customer will need to move to Template C if BPA's Transmission Business Line requires the customer to execute a new transmission agreement in order to continue deliveries of that non-Federal power under a new power sales contract. This relationship provides a package of BPA products and services to meet the customer's needs for power and associated transmission, beyond any power it receives from its existing resources.

A full requirements customer using this Template B may have an existing formula power transmission, integration of resources transmission, or use-of-facilities transmission agreement. The customer is required to obtain a separate transmission agreement only if the customer acquires another resource (including any contract purchase) after signing this agreement.

- **Template C** -- The third relationship is a new full requirements relationship developed in response to public comment received. Any full requirements customer may choose this option, regardless of whether the customer currently has any resources of its own. Any full requirements customer that acquires a non-Federal resource after the effective date of the new contract and wants to remain a full requirements customer is also required to move to this purchase relationship. The principal difference between this relationship and the other two full requirements relationships (Templates A and B) is that under Template C the customer must have separate contracts for its power and transmission services. The customer is required to sign a system operating agreement as a precondition in order to receive requirements power service from BPA. The BPA power product purchase obligation for the customer is the same under this purchase relationship as under Template A or B.
- **Template D** -- The fourth relationship is a partial requirements relationship much like the actual computed requirements terms and conditions under the 1981 utility power sales contract. The utility is required to declare the amount of firm power that it will provide from its own resources to serve its regional firm load on every hour. (The amounts may vary by hour; the contract spells out how the customer informs BPA of the amount of service that the customer will be providing to its load during each hour.) This relationship is commonly termed the "declared resource" contract relationship. To meet its power needs beyond the amount of resources it declares, this customer is required to buy a package of products including firm power, load regulation, full load shaping, and reactive power from BPA. Purchases of reserve products, to support the customer's resources, will also be required. Because transmission services are provided under the system operating agreement and other applicable transmission contracts, they are not considered power products BPA is required to provide under this agreement.
- **Template E** -- The fifth relationship is a partial requirements relationship in which the customer declares how much power it wants to buy from BPA on a planned

given hour. Customers with this relationship must be within BPA's control area or served by transfer (i.e., BPA delivers Federal power to another control area for the customer and is responsible for securing load regulation services for the customer). This relationship is termed a "declared purchase" contract relationship. Partial requirements customers must schedule the power output of their resources and are responsible for backing up the performance of their resources. Customers will have a wide range of power product choices, but must purchase BPA load regulation as a condition of this service. Transmission services are provided under a separate system operating agreement and other applicable transmission contracts.

- **Template F** -- The sixth relationship is similar to Template E, except that the customer either operates its own control area and does not, therefore, purchase load regulation from BPA or is located in another utility's control area and is purchasing control area services from that controlling utility. This is the most independent of requirements power purchase contract relationships. Transmission services are provided under a separate system operating agreement and other applicable transmission contracts. Any customer in BPA's control area would have to move out of BPA's control area as a precondition in order to qualify for Template F.

As BPA moves forward to implement its Option 3 approach to load commitment BPA's Account Executives and customers will attempt to negotiate new bilateral power sales contracts based on the above prototype contracts. BPA may not offer all forms of templates for these new contracts and may as well reduce the number and complexity of the terms and conditions in the templates. New bilateral power sales contracts are only planned to be for the 5-year period concluding September 30, 2001.

There may also be new contracts that do not fall neatly within the normal parameters of the prototype templates. They could involve contracts which combine terms and conditions of service that are clearly within requirements service and other terms that are priced under various surplus marketing rates. For such proposed contracts, BPA would either supplement this ROD to address their terms or issue a new ROD.

## **KEY ISSUES AND CONCERNS**

---

Many issues and concerns have received significant discussion during BPA's work to develop options for its customers. Some of these issues are addressed in this ROD and others are addressed in Attachment A. Five key issues are discussed below: retail wheeling, conservation, price, stranded cost, and interruptibility.

### **Retail Wheeling**

As the electric power market continues to evolve retail wheeling holds significant risk of unsettling the balance BPA has worked to offer of load commitment and price certainty. To address this issue, new utility power sales contracts between BPA and the public utility customer will address as appropriate, a level of risk sharing between BPA and its utility customers which may be raised by State-ordered retail wheeling should such legislation become effective in the PNW in the foreseeable future. The amendments do not propose any new terms regarding this

issue. Under existing or new contracts the customer, not BPA, has the risk if voluntary retail wheeling occurs.

### **Conservation**

Throughout the negotiation of the templates and the amendments, conservation has been an important and controversial issue. Historically, the NWPPC, BPA, private utilities, public agency and cooperative customers and a variety of public interest groups have worked to identify and acquire the right mix of developable low-cost resources to reduce the regional consumption of electricity, given alternative costs and load/resource balance conditions.

Today there are many ideas (and disagreements) about how to address energy conservation in a rapidly changing electric power industry. BPA addressed conservation in the Competitiveness Project, including a reinvention of the regional conservation effort that BPA and its customers have been funding since 1981. The vast amounts of surplus power currently available (some at prices below the PF-96 rate in BPA's December 1995 Supplemental Rate Proposal) add an important dimension to this issue. In response to customer requests, BPA aimed to move away from incentive-based, centralized conservation programs to an approach that supports utilities in establishing and implementing their own customized, locally controlled and funded conservation programs.

Under this new approach, BPA will retain its statutory obligation to purchase cost-effective conservation when acquiring new resources. However, BPA anticipates that the conservation accomplishments of its customers, combined with the agency's continuing conservation efforts, will achieve conservation savings sufficient to meet BPA's conservation goals. Essentially, BPA is seeking to unbundle demand-side management from the power products, charging separately for any future programs and services offered to customers, and leaving the targeting, funding, and attainment of energy efficiency to these customers. BPA's commitment to achieving, through conservation reinvention, its share of the NWPPC's conservation goal was documented in BPA's Business Plan ROD.

### **Price**

A key element of BPA's offer to its customers under Option 1, 2 or 3 is BPA's 5-year rate guarantee. Under the terms of the Utility PSC and consistent with its statutes, BPA has the right to change the rates it charges customers, as necessary, to assure full recovery of the costs of providing service to its customers. Given the recent relative volatility of electricity prices, customers are seeking to ensure price stability. BPA plans to offer price stability for the requirements service that the customers commit to. BPA's proposed amendments and any new contracts would address this mutual goal of price stability and firm load certainty through 2001 for a customer's requirements purchases. Loads that the customer chooses not to commit to BPA will have no BPA rate guarantee.

### **Stranded Cost**

Options 1, 2 and 3 all address stranded cost recovery. Stranded costs are costs that BPA has incurred to serve customers, but that BPA might not, for various reasons, be able to recover fully during a particular period of time. Under the terms of the Utility PSCs, customers agreed to place their firm power load, less their firm resources (if any) dedicated to serve their load, on

BPA and to pay for BPA products and services at rates established according to the procedures set forth in the Northwest Power Act. BPA, in turn, was required to obtain the resources to provide these services and to recover the incurred costs. More recently, sharp declines in the cost of natural gas, coupled with moves to deregulate the electric utility industry, have caused the market value of BPA's products to fall. BPA has reacted by taking steps to reduce its costs substantially and market its products so as to derive maximum revenue, given the nature of the current market. BPA's goal is to use cost management and competitive marketing to recover (by September 30, 2001) a sufficient portion of those costs incurred for service through that date to be competitive in post-2001 markets. Post 2001, under Amendatory Agreement Nos. 5, 6 and 7 and under the templates, BPA and the customer agree to preserve their rights to pursue their stranded cost recovery remedies.

On April 24, 1996, the Federal Energy Regulatory Commission (FERC) issued its final rule on stranded cost recovery and open access entitled *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities* (Order 888). With regard to stranded costs, FERC states that Order 888 addresses stranded costs recovered by transmitting utilities (including BPA) that are subject to FERC-ordered transmission access under section 211. However, FERC immediately goes on to state, "It [the Rule] does not address stranded cost recovery by BPA under the Northwest Power Act." Earlier in the same discussion, FERC had stated:

"Transmission required of BPA under section 211 would have to be consistent with the requirements imposed on BPA under its organic statutes, the Northwest Power Act, and the Federal Columbia River Transmission System Act."

This comports with the requirement of the Energy Policy Act of 1992 that FERC must assure that BPA's rates for FERC-ordered access shall be governed only by otherwise applicable provisions of law, and not sections 210, 211, 212 or 213 of the Federal Power Act, except that the rates shall not be unjust, unreasonable, unduly discriminatory or preferential. (16 U.S.C. 824k(i)(1)(B)(ii)) The stranded cost language in the amendments is intended to ensure that the amendments not act to, or be construed to, foreclose any right or obligation BPA has under the Northwest Power Act to recover stranded costs after 2001, including costs incurred prior to 2001.

### **Interruptibility**

In reviewing customer rights under their existing contracts the issue of interruptibility has been reviewed to determine what criteria beyond the definition of "Actual Firm Load" under the Utility PSC are appropriate for interruptible loads. This is an important issue because it affects whether a utility customer must buy BPA requirements power under its power sales contract for such loads, whether BPA has the obligation to plan and provide firm load service for the load, and whether the load could be served with nonfirm power from the market.

The issues are framed by the definitions of "Actual Firm Peak Load" and "Actual Firm Energy Load" in the 1981 utility power sales contract; the definitions of "Estimated Loads" are also relevant, as are a discussion of the "firm load vs. interruptibility issue" contained in BPA's Federal Register notice and Environmental ROD accompanying the 1982 utility power sales settlement agreement; and the errors and ambiguities amendment to the Utility PSC.

BPA's position is that requirements service under its Utility PSC includes firm power service to certain loads even though such loads are interruptible by the customer. The following types of loads which are interruptible are served as Actual Firm Load based on the definition of firm loads, which includes loads which the utility has the contract right to interrupt for: (1) backing

up its firm resources; (2) promoting the economic operation of its system or firm resources; and (3) implementing any load management schemes in support of a utility's distribution system. Such consumer loads are firm loads of a utility even though the utility has the right to interrupt in support of or for economic dispatch of its generating resources or its distribution and transmission system. BPA has planned firm resources and services for these loads and will continue to serve them as part of the firm load of its utility customer. Some other types of consumer load for which the utility has any right to interrupt are excluded from firm service. Loads which can support interruption and are interruptible for, system conditions or operations other than and unrelated to those interruptions similar to those above, would be loads which may be excluded from firm power service.

## **ENVIRONMENTAL ANALYSIS**

---

Consistent with the Business Plan ROD, the BPA Administrator reviewed the BP EIS to determine whether offering the proposed contract templates and the amendment for requirements customers was adequately covered within the scope of the BP EIS. The BP EIS was intended to support a number of decisions, including contract terms BPA would offer to customers. Nineteen key policy issues were addressed in the BP EIS, including bundling or unbundling of BPA power products and services, determination of BPA firm loads, and BPA conservation. The BP EIS alternatives analyzed a range of options for each of these issues. The market-driven alternative included marketing competitively-priced unbundled products and services, offering rebundled firm power service packages to PNW utility customers, continuing to offer cost-based firm requirements power products that meet Northwest Power Act obligations, undertaking conservation reinvention, and stabilizing firm requirements service at current levels (Table 2.4-1). The products and services offered in the contracts templates and the amendment are consistent with BPA's market-driven approach. Moreover, the flexible contract terms lessen incentives for BPA's customers to significantly reduce their BPA loads. (Section 2.3) If customers choose to diversify or access displacement rights, BPA will resell the extra Federal power either inside or outside the PNW. The availability charge for displacement will help offset the economic impact to BPA.

### **Environmental Impacts**

The BP EIS showed that environmental impacts are determined by the responses to BPA's marketing actions, rather than by the actions themselves. These market responses include resource development, resource operation, transmission development and operation, and consumer behavior. These market responses are discussed in detail in section 4.2 of the BP EIS. Typical environmental impacts of the market responses are discussed in section 4.3.

The primary source of environmental impacts is resource development and operation. The customers' decisions on whether to buy power from BPA to serve their firm loads, or to buy from non-BPA suppliers effects resource development and operation. The decision to offer contract templates and the amendment helps BPA retain firm loads. Therefore, it will reduce opportunities for independent power producers, marketers, brokers, and other utilities to develop new resources--most likely combined-cycle combustion turbines. BPA customers choosing to diversify will be accessing the short-term opportunity market. Therefore, there will not be an incentive for new resource development.

BPA would not rely on long-term acquisition of the output of new generating resources to meet any increases in BPA loads. Under the market-driven approach, BPA would likely rely on



market purchases because of the power surplus in the west coast market. Customers choosing to diversify would also be accessing the short-term market. Conservation targets would continue to be met through BPA direct conservation acquisition and independent conservation programs carried out by customers under conservation reinvention.

Resource operation is not likely to change. Consistent with its market-driven approach, BPA will be active in the competitive market, bundling and unbundling power products and services (section 4.2.1.1), offering flexible surplus contracts (section 4.2.2.2), and expanding the scope of BPA sales (section 4.2.1.3). If customers diversify and remove load from BPA, BPA will remarket the extra Federal power. Little or no change is expected in transmission development and operation.

Power comparable to BPA's power is currently available from alternate suppliers at competitive prices. If BPA were to try to recover costs by holding customers to their existing contracts and raising rates, BPA would run the risk of losing customers over time and reducing revenues. BPA must generate enough revenue to pay all of its costs. If costs exceed revenues, BPA may not be able to meet its financial obligations to repay the U.S. Treasury or its public service obligations. However, the increased revenues BPA anticipates by offering flexible contracts--including these templates and amendments--will help keep BPA rates low.

### **Marketing Impacts**

To the extent BPA is successful in applying a market-driven approach to its business activities, customers will be less likely in the long term to reduce their power purchases from BPA. BPA is making a systematic effort to meet customer needs and improve business relationships. Offering contract templates and the amendment as part of this effort will help BPA retain firm load. More firm load placement reduces the uncertainty surrounding BPA's operations and reduces BPA's resource development risks. If BPA's unbundled products and services are priced competitively, there should not be as much price incentive in the future for customers to turn to non-BPA suppliers. However, the range of business relationships BPA is offering its customers recognizes that some of BPA's customers currently wish to diversify. Moreover, the amendments and new contracts will help assure price stability for customers. By providing a mechanism for those customers to remove some load, BPA hopes to strengthen its overall relationship with that customer. Application of the availability charge if customers displace load will help offset the economic impact to BPA.

The market-driven alternative includes flexible contract arrangement to respond to the increasingly competitive and deregulated electric power market. Contract templates and the amendment offer competitive products and services and allow customers to make choices about business relationships with BPA from a spectrum of choices, based on their own criteria. Responding to customer concerns and strengthening business relationships now will enhance BPA's competitiveness when its utility contracts expire in 2001.

### **Public Service Benefits**

Consistent with the market-driven approach, offering customers a choice in their business relationship with BPA (through contract templates and amendments) allows BPA to be a more active participant in the competitive power market. BPA can use its success in the market to ensure the financial strength necessary to better produce the public benefits that BPA affords the region.

## **Mitigation**

In offering customers contract templates and the amendments, BPA understands that conditions that permit the agency to function successfully may change over time. Therefore, BPA could implement the preparatory mitigation measures (response strategies) contained in the market-driven alternative to respond to change and to allow the agency to balance costs and revenues. Such mitigation enhances BPA's ability to continue to adapt to changing market conditions and improves BPA's long-term attractiveness as a power supplier.

These response strategies--which include means to decrease spending, increase revenues, and transfer costs--could be implemented if BPA's costs and revenues do not balance. BPA has already decided (in the Business Plan ROD) to apply as many mitigation response strategies as necessary whenever BPA's costs and revenues do not balance. Preservation of BPA's rights regarding recovery of stranded costs is also a potentially important means for insuring BPA's financial obligations will be met. These mitigation strategies, or equivalents, will be implemented to enable BPA to best meet its financial, public service and environmental obligations, while remaining competitive in the wholesale electric power market.

## **PUBLIC AVAILABILITY**

Copies of the Business Plan, BP EIS, the Business Plan ROD, the DSI Block Sale ROD, and the AA5 and AA6 RODs (with the AA8 Memorandum; AA8 is the final version of the nondiversifiers' amendment), as well as additional copies of this Templates/Diversifying Utilities ROD, are available from BPA's Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212. Copies of these documents may also be obtained by using BPA's nationwide toll-free document request line, 1-800-622-4520.

## **CONCLUSION**

To maintain BPA revenues and improve our public utility customers' satisfaction with their BPA business relationship throughout the next 5 years I have decided to offer choices that will provide these customers 5 years of rate certainty and limited access to the opportunities and risks of diversifying their power supply by participating in the competitive PNW electric power market. In exchange for this rate certainty and market access I am requiring that customers provide BPA revenue certainty by making load commitments through September 30, 2001, when both template-based contracts and amended existing contracts would end. These commitments will provide 5 years of predictable public utility revenue by eliminating almost all load loss that BPA would have experienced from rights to remove load under existing contracts. In addition I believe that this decision is responsive to current customer needs for durable, mutually beneficial business relationships that will also improve BPA's competitiveness and desirability as a business partner in 2001 when the contracts expire.

I am offering customers four options to accomplish my decision:

**Option 1.** Customers may commit to BPA service for 100 percent of their current load on BPA during the next 5 years and receive 5-year rate guarantee and stranded cost shield for all of their BPA load. Many customers have already chosen this option under previous amendments but this option is also available in AA7, the amendment analyzed in this ROD.

**Option 2.** Customers may execute an AA7 that BPA analysis shows produces revenue equivalent to a commitment of 90 percent of their current BPA load. The customers' BPA load commitments will receive the 5-year rate guarantee and stranded cost shield.

**Option 3.** Customers may execute a new power sales contract that BPA analysis shows produces revenue equivalent to a commitment under their existing contract of 85 percent of their current BPA load. The customers' BPA load commitments will receive the 5-year rate guarantee and stranded cost shield. These contracts will be based on the templates that have been developed through extensive public input.

**Option 4.** Customers may maintain their existing power sales contract without amendment, receiving no 5-year rate guarantee and no stranded cost shield.

This decision is a final action under Section 9(e)(1)(B) of the Northwest Power Act regarding the sale of power to this class of customer under section 5(b)(1) of the Northwest Power Act when executed by me. I believe this decision to be fully consistent with BPA's market-driven approach for participation in the electric power market, since it will maintain net revenues and enhance the business relationships required for BPA's long-term competitive success. Additionally, this decision will preserve the financial strength BPA must have in order to deliver the public benefits, such as fish and wildlife mitigation and energy conservation, for which it is responsible. The decision represents a reasonable balance between the environmental effects associated with continuing to provide power to BPA's customers, as addressed in the BP EIS, and the benefits this service enables.

Issued in Portland, Oregon, on May 13, 1996.

/s/ Randall W. Hardy  
Administrator and  
Chief Executive Officer

bcc:

Adm. Chron. File – A-7

Official File – KEC (EQ-14 – Business Plan EIS – 1996)

KPierce:ljc:3962

Original Electronic File:

W\Kecn\ECN96\EQ-14\BPEIS\CTDROD.doc

This Electronic File:

W\KEC\EISs – EQ-14\Business Plan\All Finalized BP RODs\  
Templates (New PSCs) ROD 5-13-96.doc

# ATTACHMENT A TO ADMINISTRATOR'S RECORD OF DECISION

## Analysis of Public Comment on Templates (New Power Sales Contracts) and Amendatory Agreement No. 7

The Bonneville Power Administration (BPA) announced upcoming availability of several draft contract templates at a June 22, 1995, public meeting on templates, and in the July edition of the *BPA Journal*. Templates were made available for public comment from July 13 through August 11, 1995, and were distributed directly to interested parties through BPA's customer and constituent Account Executives, as well as to interested parties on request. The templates released included the following types: full requirements, partial requirements, partial requirements with declared resources, residential purchase and sale agreements (RPSA) and direct-service industrial (DSI) block sales. Some commenters addressed all of the templates; others focused on those templates most relevant to their future business relationship with BPA. In all, comments from over two dozen interested parties were received on the templates. This ROD attachment addresses the specific comments on the requirements templates, leaving comment on the RPSA and DSI block sale to other final RODs. A list of the commenters on the utility requirements contract templates is provided below:

- **Individual Public Utilities** -- Benton County Public Utility District No. 1 (Benton); Flathead Electric Cooperative, Inc. (Flathead); Hood River Electric Cooperative (Hood River); McMinnville Water and Light (McMinnville); Pacific County Public Utility District No. 2 (Pacific); Pend Oreille Public Utility District No. 1 (Pend Oreille); Salem Electric (Salem); City of Seattle, City Light Department (SCL); Springfield Utility Board (SUB); Umatilla Electric Cooperative Association (Umatilla); Wasco Electric Cooperative, Inc. (Wasco); and Wells Rural Electric Company (Wells).
- **Comments Offered via BPA District Offices** -- Sales and Customer Service Centers located in Vancouver and Spokane, Washington.
- **Private Utilities** -- PacifiCorp; Portland General Electric Company; and Puget Sound Power & Light Company (comments focused on RPSA and DSI block sale).
- **Customer Groups** -- Western Public Agencies Group (WPAG); Western Montana Generation & Transmission Cooperative, Inc. (MTG&T); Idaho Cooperative Utilities Association (ICUA); Public Power Council (PPC); Pacific Northwest Generating Cooperative (PNGC); and Public Generating Pool (PGP).
- **Constituent Group** -- Northwest Conservation Act Coalition (NCAC).
- **The Northwest Power Planning Council (NWPPC).**

## KEY ISSUES AND RESPONSE TO PUBLIC COMMENTS

---

The templates are meant to provide a flexible platform as a starting point for bilateral negotiations with BPA's customers wishing to enter into new contractual arrangements. Some comments described specific commenter needs; although these comments may not be addressed explicitly as a template revision, they will be considered along with other utility-specific

concerns when customers begin bilateral negotiations with BPA. Negotiations will focus on meeting the needs of each individual utility and creating a mutually advantageous business relationship. Listed below are 18 major issue themes identified in public comments, followed by an explanation of the issue, comments received, and BPA's response:

1. What is meant by "requirements service"?
2. Should BPA address stranded cost issues in the new utility power sales contracts?
3. Will BPA retain the existing conservation language in the templates?
4. Will BPA allow early termination of the contract after the transition period for any reason?
5. Will BPA modify the requirement of a 7-year return to requirements service with a 3-year commitment?
6. Will BPA modify the existing compromise dispute resolution language?
7. Will BPA reduce its rights to change BPA policies or contract exhibits unilaterally?
8. Is BPA willing to revisit certain issues, such as pooling of requirements power or allowing a "Most Favored Nations" provision in the contracts?
9. Will BPA allow more operational flexibility within the templates?
10. Is more simplification needed in the partial requirements template?
11. What are the guidelines for the transition from full to partial requirements contracts?
12. Should the templates have a provision that would allow for the future application of tiered rates in the contracts?
13. What would the impact be on the templates if retail wheeling became a reality in the region?
14. To which products and services or rates does public preference apply?
15. What are the criteria allowing BPA to take unused Federal facilities out of service?
16. What are the terms and conditions of ancillary services?
17. How should BPA address transmission-related issues in these contracts?
18. Will BPA include a performance obligation provision?

## **1. What is meant by "requirements service"?**

---

### **Comments**

ICUA was concerned that BPA too narrowly defined requirements service, and noted that they did not agree with all of the provisions of the BPA paper on "Northwest Power Act Section 7(b) Requirements Service." On resale of requirements power, ICUA believes that changes in statutory law will likely take place and that the contract should be able to be amended to reflect changes in the law regarding sale and resale of Federal power. The PGP stated that the 1981 contracts contain definitions (of the Federal system, requirements service, and the priority

afforded Pacific Northwest (PNW) customers) that are acceptable to PGP and that should be incorporated in the templates.

### **BPA Analysis and Decision**

What BPA means by “requirements power” is the firm power products (electricity and services) that a BPA customer has a right to purchase from BPA for its general load requirements and its new large single loads and that BPA makes available to serve the customer’s firm regional consumer load under section 5(b)(1) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) and any power purchase agreement implementing BPA obligations under that provision. A right to purchase requirements power is different from the right to purchase nonfirm power, or firm nonrequirements (surplus or excess) power under section 5(f). BPA supplies firm requirements power to serve the customer’s firm load net of the customer’s dedicated firm resources on a continuous basis, including any load growth. BPA believes that the templates are consistent with its current obligations under the Northwest Power Act and that the templates are flexible enough to provide power service which is adaptable to changes in the market and Federal law. The templates cannot write into law that which has not been enacted or is not applicable to BPA service but nothing in the templates prevents their amendment or modification in the event of future changes in applicable law, if they occur.

## **2. Should BPA address stranded recovery costs in the new contracts?**

---

### **Comments**

Because this is such a seminal issue for customers many comments were received. BPA has summarized individual comments below on this issue.

*Benton* -- For draft templates, delete the stranded investment provisions and insert a statement explicitly insulating customers from stranded investment liability.

*Hood River* -- Considered the present language detailing stranded investments unacceptable.

*McMinnville* -- Stranded investment language is unacceptable, particularly the liability for hazardous waste cleanup.

*Salem* -- If a utility commits to purchase a certain percentage of its load from BPA, then that utility should be exempt from any other purchases beyond that level.

*SCL* -- BPA’s revenues from selling the power resulting from the customer’s lowered subscription as well as wheeling revenues should be subtracted from the stranded investment charge.

*SUB* -- Stranded investment should be deleted in its entirety. SUB suggests that BPA adopt similar language on stranded investment as in section 5 of the draft DSI block sale contract.

*Wasco* -- Concern that there is a disconnect in the contract between a 2-year or 5-year contract and a 5-year commitment for stranded investment.

*Umatilla* -- References to exit fees and BPA stranded investment are unacceptable. Umatilla will consider exit fees only if BPA agrees to keep its charges as low or lower than optional suppliers and BPA’s guarantee is for the same duration as exit fees.

*WPAG* -- Based on representation made by BPA, WPAG utilities consider the language on stranded investment set out in the draft utility templates withdrawn, subject to further discussions between BPA and its customers on this topic. WPAG is concerned about difference in stranded investment treatment between the utility contract templates and the DSI block sale contract. All

customer groups should be subject to stranded investment or none should be. Result of dissimilar treatment would be no consensus on stranded investment between customer groups and eliminate likelihood of utility customers signing new power sales contracts. Wants a procedural mechanism in the contracts for a utility to acquire Federal facilities.

*ICUA* -- Do not favor exit fees in the new contracts and will resist them by sticking with their existing contracts. BPA should take alternative actions, such as seeking a statutory cap on fish costs, reduce conservation and other operational costs even further. Want a definition of stranded investment. Believes BPA can make up its investment in both generation and transmission from other regional or extraregional sales. Wants BPA to show specifically what investment BPA has that will be stranded if regional customers place a portion of their load elsewhere.

*PGP* -- Inclusion in the final contracts of exit fee provisions will make it difficult for many utilities to sign the new contracts. BPA's competitors are not insisting on exit fee provisions in their contracts. BPA's insistence on exit fees is counterproductive to BPA's long-term goals.

*PNGC* -- Stranded investment provision in template has to go in its entirety.

*PPC* -- Requirements templates contain stranded investment language that is patently unacceptable to public agencies. PPC understands that the import of BPA's letter dated July 21, 1995, was to strike the offensive language from the power sales contract. BPA should ensure that such language is removed.

*MTG&T* -- If BPA is truly competitive, stranded investment language is not necessary. The stranded investment language is totally unacceptable. We understand the inclusion of such language was a mistake and will be removed from future versions.

*NCAC* -- BPA should look at the following alternatives: (a) postpone the offer of contracts until after there is a clear indication of Federal Energy Regulatory Commission (FERC) intent, (b) leave placeholders in the contracts, (c) have reopeners in those contracts that are likely to be affected by FERC actions. Those areas have to do with stranded costs. Propose that renewable resource development be exempt from exit fees or stranded cost recovery options. BPA must plan for a variety of market scenarios and not be so inflexible in its thinking. BPA must have a credible and flexible stranded cost recovery mechanism. Currently, BPA only has a 5-year inflexible load commitment idea--it has locked itself into 5-year rates with no means of covering even the normal risks of drought, much less other unforeseeable events, except by "stiffing" the U.S. Treasury. NCAC wants a stranded cost recovery mechanism after 2001. NCAC urges FERC to allow any affected person to be able to petition FERC for a determination on whether BPA proposes to allocate stranded costs and stranded benefits equitably to its customers. FERC should be on guard to ensure that BPA does not allocate these costs unfairly to the least elastic customer or taxpayer.

### **BPA Analysis and Decision**

BPA would prefer not to be caused to impose stranded recovery costs on any of its customers. This goal can be achieved primarily if there is a positive outcome to the BPA/customer dialogue defining an adequate load commitment (load certainty) and an adequate revenue stream for the 5-year period that begins when the new utility power sales contracts become operationally effective (October 1, 1996). BPA sees the time between October 1, 1996, and September 30, 2001, as the critical transition period as the electric industry across the country and in the PNW moves from a regulated to a market-driven electric utility industry.

BPA must manage this transition period to remain financially viable and retain a reasonable probability of making its payments to the U.S. Treasury. The entry of "energy brokers" and



independent power producers selling low-cost power in the PNW has created a much more competitive environment for all PNW utilities, including BPA. As this market becomes deregulated, utilities and direct service industries will be able to choose from a variety of alternate power suppliers after their existing BPA power sales contracts terminate.

BPA's responsibilities to its customers and the public are driven by statutory directives and public policy concerns beyond those of any retail utility or broker. BPA must not only adhere to legally mandated public processes such as the National Environmental Policy Act (NEPA), public involvement, and publicly developed rates, but must also fulfill its responsibilities for programs such as regional conservation; the residential exchange program (which has cost regional ratepayers \$2.5 billion dollars since 1981); fish and wildlife costs, which have grown from \$20 million in 1981 to \$400 million today, and which would go higher if not capped; and Washington Public Power Supply System (Supply System) debt, which is \$7.1 billion and will not be paid off until 2016. Nevertheless, BPA is committed to remain competitive in order to meet this competition for loads of its utility and industrial customers that are receiving offers from brokers and other utilities.

During the BPA's extended Portland, Oregon, contract negotiations (September 1994 - March 1995), stranded cost recovery issues were discussed. Customers and constituent groups were widely polarized on how those issues should be addressed and resolved. NCAC and some utilities held a position that no utility or industrial customer should be able to leave BPA's system until it made adequate provisions to reimburse PNW ratepayers for the dollars spent on their behalf over the years on the Supply System nuclear plants; for "regionally funded" conservation measures (conservation paid for by PNW ratepayers through BPA and *not* fully paid for by the recipients) and for regional fish and wildlife costs. Those customers who wanted to reduce load on BPA in the near future opposed any cost recovery and viewed such recovery as disabling them from any advantage of the current market.

BPA's goal is to continue to serve its customers load by offering attractive products and services, simple contracts, and attractive rates, so that imposing stranded cost recovery fees will not be necessary. BPA must maintain its financial health and vitality during the transition period--a concept all regional ratepayers can understand. To this end BPA has cut its internal costs and negotiated a new requirements "block" power sales contract with its largest DSI customers. These industrial customers, although few in number, account for a high percentage of BPA's firm power sales and revenues. BPA executed those contracts *only* because it was given a mutually acceptable load commitment. That commitment also made stranded investment or exit fee provisions unnecessary in those contracts because of the level of load commitment and necessary terms provided a reasonable degree of certainty to BPA of its cost recovery. At the time the templates went out for public comment, BPA discussed the following options:

- **Option A** -- A utility could retain its existing power sales contract and continue to have its business relationship with BPA governed by the terms and conditions of that contract. In return for no change in the status quo, BPA states that this customer would have no exposure to stranded cost recovery until the termination of their existing power sales contract. Both parties would preserve their rights to address post-2001 stranded cost recovery issues.
- **Option B** -- A utility could amend its existing power sales contract (which may be effective as early as August 1, 1996), or sign a new power sales contract with BPA which would be operationally effective on October 1, 1996. If a customer agrees to place either its entire load on BPA or its actual firm load, net its resources, if any, as approved by

BPA in its Firm Resources Exhibit as of February 15, 1995, then such customer will receive both 5-year rate certainty and a 5-year stranded cost recovery shield from BPA. If a utility wishes to diversify by adding non-Federal resources and reducing its load on BPA, i.e., diversify its power supply and it agrees to a load commitment level that is mutually satisfactory for the initial 5 years of that contract, and the class revenue/load target is met, then no additional stranded cost recovery language would be needed. Both parties would preserve their rights to address post-2001 stranded cost recovery issues.

- **Option C** -- Other utilities may wish to execute a new utility power sales contract with a firm load commitment during the 5 years of the remaining contract's term, the transition period, until September 30, 2001. If it agrees to a load commitment level that is mutually satisfactory for those 5 years, and the class revenue/load target is met, then no additional stranded cost recovery language may be needed. (Some customers want express language saying they are not exposed to stranded costs for 5 years, and some do not.) Both parties would also preserve their rights to address post-2001 stranded cost recovery issues.

The proposed amendments discussed in this ROD and the potential offer of new contracts based on the templates address the stranded cost issues over the next 5 years although in a somewhat different manner than those options BPA discussed earlier with its customers.

### **3. Will BPA retain the existing conservation language in the templates?**

---

#### **Comments**

Earlier discussions generated a number of opinions on how BPA should proceed with conservation. Comments also spanned a wide range, from accolades that BPA is on course to assertions that BPA should either say more or less about conservation in the templates. Salem, NCAC, and SCL felt that the language was too weak.

Initially, the NWPPC supported the BPA "backstop" provision (that is: when a utility did not meet its conservation goal, BPA could step in and act to ensure that the goal is met, and charge any costs to the customer). However, recently the NWPPC said such backstop language was not needed in the amendments or templates and is no longer included (see Analysis and Discussion below).

Umatilla, Wells, Benton, ICUA and McMinnville all expressed concern about the language, especially the backstop provision, noting that it makes BPA less competitive. NCAC noted that they felt BPA was not providing enough encouragement for the development of renewable resources.

#### **BPA Analysis and Decision**

The conservation language included in the draft template resulted from discussion, as BPA examined its conservation expenditures in the context of the BPA Competitiveness Project. During the development of the BPA Business Plan, BPA worked with a committee of key regional interests to develop principles that would guide conservation reinvention. These principles were used as the foundation for BPA's discussions of conservation during the Lloyd Center negotiations.

BPA's primary objective is to ensure that cost-effective conservation is obtained and that the cost of conservation is unbundled from the cost of power products, leaving targeting, funding, and

attainment of conservation to BPA customers. To meet these goals, the language in the draft templates required that utilities develop a conservation plan. Customers that meet their targets would be rewarded with the right to increase their BPA purchases upon a shorter notice period than otherwise applicable for placing additional requirements load service upon BPA. The shorter notice requirement could be for up to two times the amount of load reduction due to their conservation achievements and permit purchase of additional requirements power up to the amount of their firm load from BPA without having to wait 2 years to return to requirements service.

Conservation provisions in the draft templates appeared to achieve a responsive balance, given the comments received. BPA wishes to encourage the acquisition of cost-effective conservation and believes that giving customers more planning and implementation control will increase their ability to make cost-effective conservation investments. BPA also recognizes customer concern that including conservation provisions in the contract makes BPA less competitive. The contract language in the draft ensures that planning happens on a local level. BPA will offer the proposed conservation reward and, in response to an NCAC comment, will add template language allowing full requirements customers to bank their conservation achievements for future use if they convert to a full with resources or partial requirements contract.

In March 1996, the NWPPC and NCAC agreed to allow BPA to drop the backstop provision from the templates and the amendments to the utility power sales contract. They indicated that much of the regional conservation at a time of surplus supply and low-priced power would come from entities other than regional utilities. As a result, BPA has dropped the “backstop provision” from the contract language in the diversifiers’ amendment to the Utility PSC, and in the new templates.

BPA is responding to NCAC’s concern over lack of sufficient encouragement for the development of renewable resources by adding template language that provides a reward for acquiring new nonhydro renewable resources. This reward is identical to that for successful achievement of conservation, except that the right to return to requirements service is equal to the eligible renewables acquired, rather than doubled (the factor of two applied to conservation achievements).

#### **4. Will BPA allow early termination of the contract after the transition period for any reason?**

---

##### **Comments**

The original templates were designed to be effective up to 20 years. Now BPA is offering the new contracts for only 5 years and is expecting in return a 5-year load commitment from customers. The initial templates circulated for comment allowed a customer to place no load on BPA after an initial purchase period, but allowed no way for the customer to terminate the contract. ICUA, SCL, PNGC, WPAG, PPC and Benton all called on BPA to include an early termination right in the contract. Some commenters noted that BPA included a right to early termination in the DSI block sale template.

##### **BPA Analysis and Decision**

The proposal of a termination right for the 5 year contracts does not meet the purpose that a template contract provide the load placement certainty which is a central purpose of offering the choice of amendments or a new short term contract. BPA’s purpose is to design an interim step

for the transition to greater market access and a customer's ability to terminate the contract within the transition period would defeat that purpose. Early termination is an issue which may be addressed in a longer term contract and was an issue addressed in the 1981 contracts. Further issues of cost exposure and recovery would have to be addressed if the short-term agreements contained such a provision. The contracts from the templates will only be offered initially for 5 years, until after the Regional Forum is over and through the term of existing 1981 utility power sales contracts, and as a result there will be no early termination offered for these contracts.

## **5. Will BPA modify the requirement of a 7-year return to requirements service with a 3-year commitment?**

---

### **Comments**

PNGC, PPC and SUB questioned whether the requirement of 7 years' notice makes sense in a competitive environment; ICUA and Benton questioned the reasons for choosing 7 years as the standard.

### **BPA Analysis and Decision**

BPA's 7-year notice period for return to requirements service, with a minimum 3-year commitment to purchase in the draft template was agreed upon as a principle for new contracts during the Lloyd Center negotiations. It was granted to BPA in return for the customer's ability to reduce BPA load with as little as 8 months' notice before the effective date for any new rates. The ability to reduce load on such short notice, regardless of BPA's load/resource balance, was a major concession from BPA. BPA could have certainty for its costs and resource planning and customers would have to consider their long-term costs before leaving BPA. BPA has since modified this requirement. While BPA will be remarketing freed-up power for up to 7 years, BPA believes it needs only a 2-year notice in order to guarantee a return to requirements service, as long as customers agree that such reestablished service will not get the PF rate available to the loads which stayed with BPA, but will pay at least the full incremental cost associated with providing that service, as set through a 7(i) process.

BPA plans to keep a return provision because, as NCAC noted, it provides some of the needed protection to those customers that choose to stay with BPA. BPA believes the provision is necessary and helpful in the competitive power market. Customers that stay with BPA have the right to power at cost. Customers that choose not to take BPA power will have chosen to substitute market supply for that right to BPA power at cost. The 2-year notice period will give customers the right to return but allow BPA the opportunity to establish a separate requirements rate that ensures the returning customer pays the actual cost of their return and that their return doesn't economically harm customers that had chosen to leave their load on BPA.

BPA may offer alternative service to the utilities during the 2-year notice period, such as a sale of surplus firm power or excess Federal power, but will provide that power at market prices. When market prices are at or below BPA's requirements rates, the notice requirement does not harm those customers that have remained committed to BPA. BPA may carefully consider waiver of the notice requirements on a case-by-case basis. When the market price exceeds requirements rates, BPA would lose revenue if forced to sell that power at cost-based rates. Customers that seek to return to requirements service under this scenario would essentially be asking BPA's customers to subsidize their return at below-market rates.

## **6. Will BPA modify the existing dispute resolution language in the templates?**

---

### **Comments**

The only comment on this issue during the July - August 1995 public comment period was from Umatilla: the utility wants an agreed-upon method to resolve disputes.

### **BPA Analysis and Decision**

Binding arbitration as a method for dispute resolution was an issue addressed by many customers and customer groups (particularly WPAG and the DSIs) during the Lloyd Center negotiation. Existing utility power sales contracts contain a provision on arbitration which limits arbitration to factual disputes (see General Contract Provisions, section 32). Apart from factual disputes, a customer and BPA must either reach a mutually agreeable conclusion by other means of dispute resolution, or litigate the dispute in Federal court. Depending upon the nature of the dispute customers disputes with BPA have been taken before the United State Court of Federal Claims or before the United States Court of Appeals for the Ninth Circuit. Customers argue that such litigation is lengthy and expensive, and not the common approach of business partners and thus represents an unattractive alternative for customers.

Customers asked BPA to develop other, adequate dispute resolution provisions for the new utility power sales contracts. They assert almost always some form of mediation or arbitration would provide speedy resolution. The mechanism would also foster a more positive ongoing business relationship.

BPA agrees in principle with this business concept, and proposed language for the templates which would obligate BPA to submit disputes to binding arbitration “to the maximum extent permissible under existing laws.” Some aspects of dispute resolution do create difficulties for BPA. BPA would like the parties to avail themselves of alternative dispute resolution mechanism other than just binding arbitration. BPA is concerned about the legal issues which may subject a “binding” arbitration to legal challenge after the conclusion of the arbitration such as the issue of whether as a Federal power marketing agency BPA has the authority to enter into binding arbitration on issues of governmental liability under contract. BPA must comply with Federal law, and submission of issue of law to third party binding arbitration (i.e., final decision by a non-Article III court) may not be clearly authorized. Historically, Federal executive branch agencies have not submitted disputes over contractual obligations creating liabilities of the government to binding arbitration before a third party unless there is specific statutory authorization.

BPA is interested in moving as close as possible towards the customers interest in having binding arbitration and has tried to accommodate their desires on this issue. BPA would include provisions permitting a greater ability to submit disputed issues to nonbinding arbitration, and would seek clarification of its authority regarding binding arbitration either through the legislation proposed on Federal corporate status for BPA or in separate stand-alone legislation.

## **7. Will BPA reduce its right to change BPA policies or contract exhibits unilaterally?**

---

### **Comments**

Benton PUD, ICUA, MTG&T, and the PPC said they were still concerned about the tone of the templates, specifically the frequent references to unilateral discretion BPA wants to exercise in the revision of exhibits, policies that could become moving targets, billing practices and removing equipment and facilities from points of delivery. Benton suggested that BPA could allay concerns by establishing policies for dealing with customers in advance of taking action. WPAG felt that incorporation of BPA policies into the templates should be eliminated. Both PPC and MTG&T felt that BPA's ability to change technical specifications or other policies without customer approval or concurrence is not acceptable.

### **BPA Analysis and Decision**

From the beginning, BPA has tried to frame the contract templates to be both shorter and simpler than the current contract, by keeping the body of the contracts as short as possible, but also keeping that detail subject to more frequent revision in the exhibits.

For instance, BPA policies and BPA procedural manuals were incorporated by reference rather than repeated word for word. Customers thought that BPA had incorporated too many policies by reference, however, and they worried that BPA would make unilateral policy changes that would affect the contract. The customers were also worried about BPA unilaterally changing their exhibits.

BPA plans to work with its customers through their Account Executive in most instances when a contract change is needed, whether that change is mutual or unilateral. In response to the customer concern, BPA removed many of the incorporating references, and tried to make as many of its exhibits as possible subject to revision by mutual agreement. For example, BPA dropped reference to a billing policy or billing exhibit, a new large single load determinations manual, and the BPA Customer Service Policy. There remain some exhibits that BPA needs to be able to change on its own, for reasons that are unique to BPA's statutory obligations. For instance, all customers understand that BPA's rates change periodically following a public 7(i) rate case. Also, certain exhibits such as those having to do with new large single load-related issues reflect determinations made by the BPA Administrator that are required by statute and are not "mutually decided" determinations.

Another comment (primarily from WPAG) is that in some cases the customers would rather have the detail in their contract (even though it makes it longer and more complex) than have outside documents incorporated by reference, and take the chance that BPA might make unilateral changes. BPA will ensure that it will, at the least, confer with the customer, and wherever possible will make revisions to exhibits by mutual agreement.

## **8. Is BPA willing to revisit certain issues, such as pooling of requirements power or allowing a "Most Favored Nations" provision in the contracts?**

---

### **Comments**

SUB and PNGC urged BPA to include in the templates a pooling option for firm power requirements load service that permits public agency utilities an ability to operate through a

pooling organization. They felt they should also be allowed to pool the scheduling and delivery of their requirements purchases, so that they might achieve greater operational and administrative efficiencies. Umatilla asked for a definition of the parameters and costs of pooling developed by the parties. MTG&T wants BPA to allow it to pool individual utility loads and resources, and notes that this right is not permitted by these templates. On another issue, WPAG and PNGC both noted the absence of “Most Favored Nations,” and WPAG called for a contractual provision that requires BPA to offer to all customers in a class any service or product offered to any member of that class.

### **BPA Analysis and Decision**

During negotiations the issue of pooling requirements power was extensively reviewed by the parties, both BPA’s policy and past statutory interpretations were discussed. In regard to requirements load service, BPA does not find that pooling is consistent with the directives of the Bonneville Project Act to make all arrangements for the sale of power to its customers (public utilities and cooperatives) and to have sole responsibility for the marketing of the Federal power available to it. Nor is “pooling” (a group sale to more than one customer through some other entity than BPA) consistent with the directives of section 5(b)(1) of the Northwest Power Act. That subsection requires BPA to sell only that electric power to a qualified customer which is needed to meet That customer’s firm power loads in the region and only to the extent such loads are in excess of that customer’s dedicated resources. BPA must retain the individual sale relationship with the particular customer in order to neither over or under provide requirements firm power to that customer. Sales to a “pooling” entity would break that relationship and lead to potential violations of that provision. When considered together the directives of the two Acts indicate that as to requirements service for consumer load, Congress intended BPA to do sales directly with its individual customers and not through some umbrella group or entity. In a decision that is consistent with 53 years of BPA legal interpretation and policy application, BPA reaffirmed that it would not allow pooling of requirements power in its new power sales contracts during the Lloyd Center negotiations and continues to take the position. BPA has been addressing the issues raised by the pooling of Federal requirements power since customers and umbrella groups, e.g., PNGC, first voiced this idea in the 1981 utility power sales contract negotiations.

In the recent Lloyd Center negotiations, BPA made several efforts to accommodate those customers interested in pooling. BPA discussed the possibility of pooling surplus firm power. BPA also agreed to allow certain partial requirements customers (those not purchasing full load shaping from BPA) to lay off amounts of requirements power for which they have a take-or-pay obligation but which they cannot use for operational reasons; they must, however, take the power back into their system and use it before the end of the purchase period. BPA also agreed to act as the agent to sell such requirements power and is examining what costs would be passed on to the customer.

There are strong policy and legal reasons why BPA historically has not agreed to allow customer groups to pool Federal requirements power for their members. First, BPA is Congress’ choice as the “pooling” entity for Federal power in the PNW. Second, when BPA was established in 1937, the Public Utilities Holding Company Act had been passed (1935), reflecting a strong aversion to the monopoly of electric power by holding companies throughout the United States. The Bonneville Project Act of 1937 was written to prohibit any entity other than a Federal power marketing administration from purchasing blocks of Federal hydropower and then deciding who would be allowed to purchase such power and at what price. Requirements service, as defined

here, has historically been a very valuable and low-cost commodity. If an entity in the region were to purchase a block of Federal requirements power and resell it, BPA would not be able to comply with its statutory mandates other than those mentioned above including the Regional Preference Act (Public Law 88-552), or Section 9(c) of the Northwest Power Act governing the sale of power which is “surplus” to BPA’s requirements service and those resources a customer may sell as an export of regional hydropower and thermal resources verses their individual resources dedicated to serve their own regional load.

In addition, it is important to BPA to maintain a relationship with each of its customers. BPA is neutral as to whether any customer joins any customer group, but BPA does want to maintain a business relationship with each of its customers. This relationship would be eroded if another entity stepped between BPA and its customer and took over fundamental aspects of the BPA/customer relationship.

Regarding whether BPA would retain the provisions of its existing utility power sales contract on offering a change or modification to all customers which may be applicable to more than one customer of a class of purchasers (called the Most Favored Nations provision) BPA does not find such a contract term consistent with its new business direction or competitive marketing as set out in the Business Plan. BPA does not plan to include one in its new power sales contracts. As part of its restructuring, BPA intends to move into a more commercial business relationship with its customers. BPA is aware that some smaller customers are concerned that they will be disadvantaged in comparison with larger, perhaps more sophisticated, or wealthier customers in negotiations with BPA. BPA is addressing this potential disparity through its new sales approach: each customer has its own Account Executive with whom that customer will negotiate a new contractual relationship with BPA. BPA plans to use tailored contracts and a broad range of products and services to meet the requirements needs of each individual customer. Each bilateral negotiation will have its own give and take, and is intended to result in the best business relationship between BPA and the specific customer. Consequently, BPA does not plan to include in its contracts a “Most Favored Nations” provision that might allow a customer to “demand” special contractual provisions after a long and complex negotiation is completed. For example, WPAG asked for the right for all customers in a given class to ask for and receive the right to purchase a certain product or service at a certain price. It is BPA’s intent when it offers a new product or service that it will be on a “first come, first served” basis, that the supply of it may be quite finite, and that all who qualify for it will be served until that commodity at that price is exhausted.

## **9. Will BPA allow more operational flexibility within the templates?**

### **Comments**

A number of customers addressed specific issues on flexibility in the templates. Those specific comments and BPA’s analysis and decision for each are discussed following the general discussion paragraph below.

### **BPA Analysis and Decision**

Lloyd Center negotiations included discussion of operational flexibilities within partial requirements relationships. The template is based on the overall principle of unbundling BPA services, and a take-or-pay concept of requiring that those customers using a product pay for that product. Throughout the negotiation process, BPA has tried to be clear that it will work with a customer to provide a prudent operational scheme for its system needs. When a customer wants



additional flexibility, BPA will work to provide it if it can without harming its own system. However, BPA will also consider the cost and value of the additional services in the billing factors applied to that customer and will consider the impact on all other similarly-situated customers.

#### **Templates as the Starting Point**

**Comment** -- PGP, ICUA and Pend Oreille noted in their comments that the provisions in the partial template should act only as a starting point for the negotiated contracts to meet each customer's business needs.

**BPA Analysis and Decision** --For some customers the templates may only be a starting point while for others the terms and conditions in the templates may be a final fit. BPA is willing to work with the customers to tailor a set of term and conditions for a business relationship that fits them well. Each individual customer's needs are better addressed in bilateral negotiations than at the global level of the templates.

#### **Take-or-Pay Provisions**

**Comment** -- SUB, PPC, and Benton questioned whether take-or-pay obligations still make sense without tiered rates. PNGC and WPAG noted that those arrangements are not supposed to incur wheeling charges, except in limited circumstances, and called for template language to affirm that.

**BPA Analysis and Decision** -- The short answer to the first question is "yes." BPA still believes that take-or-pay obligations make sense. There has been some confusion surrounding take-or-pay obligations, but for full requirements customers that purchase full load shaping from BPA, they are relieved of the take-or-pay obligations because the load shaping they pay for relieves the variations in the services delivered as a take-or-pay requirement. Take-or-pay obligations make sense for customers that *do not* purchase load shaping, or only purchase a portion of their load from BPA, since they are essentially buying a block of BPA power. BPA offers several mitigation options for a customer's take-or-pay risk. One of those options is a provision for storage and exchange arrangements.

#### **Purchase Date**

**Comment** -- Several commenters asked for more than 30 days after an initial rate proposal to decide how much load to place on BPA. Benton asked for the right to revise its subscriptions based on final rates.

**BPA Analysis and Decision** -- BPA increased the time a customer has to respond to BPA's initial rate proposal by moving the Commitment Date for a customer to identify its purchases to February 14, or by 30 days after the initial rate proposal. Now that templates are for contracts for 5 years and BPA expects most customers to sign up for rate guarantee over that period, this issue is no longer active. Customers must commit the load they place on BPA for the next 5 years or live under their existing contracts.

#### **Declared Resource Flexibilities**

**Comment** -- Seattle expressed interest in a template that provided similar flexibility for a customer not purchasing BPA load regulation; SUB asked whether it would be possible to purchase less than full load shaping in that type of template.

**BPA Analysis and Decision** -- Based on customer comments on early draft templates, BPA offered a declared resource template that allows customers to declare how much load their dedicated resources will serve and leaves BPA to serve the customers' net remaining load. The current version of the declared resource template requires that a customer purchase load shaping from BPA and that the customer be in BPA's automatic

generation control area. BPA offered the declared purchase template to provide a less complicated way to convert from full to partial requirements. The services requested are available with the declared purchase partial requirements where, as noted earlier, BPA will work with customers to tailor a relationship in bilateral negotiations to meet their needs.

**Generation and Purchase Power Support (GAPPS) (Formerly Called Generation Guarantee)**

**Comment** -- A couple of commenters noted that BPA was reserving the right to approve BPA's generation and purchase support product if those arrangements were with entities other than BPA, and asked BPA to reconsider.

**BPA Analysis and Decision** -- In looking at the issue, BPA decided that the simplification offered by the generation and purchase support product was lost with a third-party arrangement, and so has decided not to offer that option. Customers that want third-party type arrangements can do so through use of a partial requirements template.

## **10. Is more simplification needed in the partial requirements template?**

---

### **Comments**

BPA received some general comments that noted that there are areas in the templates that should still be simplified. Several commenters noted that including unnecessary complexity reduces BPA's attractiveness as a supplier.

### **BPA Analysis and Decision**

Simplicity has been one of BPA's key goals since beginning the negotiation process. When BPA and individual customers begin bilateral negotiations, they will need to consider the complexity of the business relationship. The basic full requirements relationship establishes the simplest relationship, with the lowest administrative costs. Somewhat more complex is the full requirements with resources relationship, then the declared resource relationship (which offers the least complicated partial requirements business relationship). BPA has worked to provide a spectrum of business relationships that will allow customers to balance their desires for simplicity and market access. BPA continues to look for areas to simplify, and will work with customers during the bilateral negotiations to make additional adjustments and simplifications when possible.

## **11. What are the guidelines for the transition from full to partial requirements service?**

---

### **Comments**

SUB noted that section 1 does not detail the transition from full to partial requirements contract status and asked what moves a customer into partial status. They felt that the transition should be automatic and at the customer's (not BPA's) discretion. Pacific felt that the steps a utility would follow to change purchase classes were unclear and asked for more detail. WPAG and PPC also asked for more detail on shifting between contracts under the different templates. WPAG proposed that templates should permit a change in business relationship as a matter of right at the time of subscription or upon 90 days' notice prior to the start of any business year, so

long as the change does not alter any contract obligations the customer has previously made to BPA.

### **BPA Analysis and Comment**

This issue is not currently relevant because as a result of the Regional Forum the new power sales contracts will only be offered for a 5-year term and the customer will establish its contractual relationship, including its purchasing basis, with BPA at the outset.

After the Regional Forum, BPA may consult with its customers about longer-term contracts and may decide to offer follow-on contracts for a term longer than 5 years. If this occurs at the beginning of any purchase period, a customer would have the right to change its status from that of a full requirements to a partial requirements customer, consistent with the terms of their existing contract with BPA or possibly based on terms in the new contract. With such a change, its full requirements contract would terminate. A customer would have to be able to operate as a partial requirements customer, including the ability to schedule power or resource output on a daily basis. The right to change one's purchase status occurs only at the beginning of a purchase period.

## **12. Should the templates have a provision that would allow for the future application of tiered rates in the contracts?**

---

### **Comments**

NCAC noted in their comment that, if market prices swing up again during the potential 20-year term of these contracts, tiered rates might make sense again.

### **BPA Analysis and Decision**

Many of the tentative agreements from the Lloyd Center up to the half-way mark of the negotiations were developed in the context of tiered rates, under which BPA would divide its system into two power pricing tiers: one based on the embedded cost of the BPA system, and one on the market price for new resources. With the drop in market prices, BPA decided not to propose tiered rates as part of its 7(I) proceeding. BPA does not find that tiered rates are currently responsive to market realities. However, BPA believes that tiered rates are a possibility for the future depending on future changes in the electricity market and if the need arose to send specific price signals under different circumstances. Tiered rates could be implemented within future contracts based on the requirements templates.

## **13. What would the impact be on the templates if retail wheeling became a reality in the region?**

---

### **Comments**

MTG&T and PNGC noted that the section on retail wheeling and BPA's rationale for such actions needed additional clarification.

### **BPA Analysis and Decision**

Draft template language originally included two risk mitigation options for those take-or-pay customers that experience an unexpected load loss for reasons other than retail wheeling: (1) asking BPA to remarket the power and (2) asking BPA to reduce their required purchase. BPA

believes that retail wheeling risks are significantly different from other sources of load loss because the consumer load does not disappear, but simply migrates to another supplier and BPA's load shaping charge does not include the cost of either mandatory or voluntary retail wheeling. Since the price of BPA's load shaping product does not include this revenue loss from retail wheeling all of BPA's public agency customers face that market risk through higher BPA rates.

In February 1996, in discussion with the Executive Committee of PPC, BPA's senior management received a very strong message that it is premature to address the issues raised by "retail wheeling" in amendments to the existing power sales contract, until the State legislatures or regulatory bodies in the PNW take steps to make mandatory retail wheeling a reality. BPA agrees that there are many unresolved issues surrounding "retail wheeling". BPA's proposed new contract offers will include language making it clear that any voluntary action of a utility to allow its consumers to change suppliers will not relieve the customer of its obligations to BPA and will not be covered by the load shaping product. New contracts will also establish the share of State-mandated retail wheeling that the customer will bear. AA7 is silent on retail wheeling, relying on the underlying rights of the existing Utility PSC.

## **14. To which products or rates does public preference apply?**

---

### **Comments**

Benton, SUB, and ICUA noted their belief that public agency customers have preference rights to all Federal base system products and services. PPC agreed with this comment, and expressed concern that BPA appeared to be overly limiting its description of requirements service. Benton called for contract language that says a customer waives no statutory rights it has and that no action or lack of action shall be construed to abrogate, modify, limit, or waive any rights under the law, including rights to preference and priority. The PGP noted opposition to any attempt to change or modify PGP's members' statutory right to service from BPA. NCAC felt that allowing DSIs to purchase under the same templates as public agency customers seems to be a violation of public preference and suggested that, for clarity, DSI contracts should remain separate contracts.

### **BPA Analysis and Decision**

Customers commented that preference and priority should apply to all BPA products and services, as well as to price. BPA's position is that qualified public bodies and cooperatives are given a first priority in the sale of Federal power which BPA makes available for marketing. This preference and priority applies to requirements power and other types of Federal power, but not to all services, and products, nor to any particular price. BPA offered section 5(d) requirements "block sale" contracts to some DSIs which are consistent with BPA's projections of its existing and future obligations to preference customers and direct service industries. These contracts were based in part on the requirements templates for the block sale.

## **15. What are the criteria allowing BPA to take unused Federal facilities out of service?**

---

### **Comments**

MTG&T, WPAG, SUB, PPC, Benton, and several other commenters all asked that BPA establish terms and conditions for sale of BPA facilities in the templates. Salem, Wasco, and Flathead all expressed concerns about template language that requires a customer to pay for environmental cleanup costs when facilities are removed from its points of delivery exhibit. *Salem* -- Removal of facilities section is unreasonable. Salem does not plan to assume BPA disposition or cleanup costs.

*SUB* -- Utilities should be allowed to purchase local BPA delivery facilities if it is cost-effective for BPA to sell the facilities. The contracts should contain a provision for valuing and transferring to its utility customer the transmission and delivery facilities located in a utility's service territory. This principle fits into the "one utility" service plan.

*Wasco* -- The language on removal of facilities when load is removed from BPA is ridiculous and should be struck from the contract. You would be penalizing a utility for doing what BPA is trying to do, which is to remain competitive. Do not feel BPA should be able to charge a customer for removal of hazardous waste.

### **BPA Analysis and Decision**

BPA's unbundling of some products and services has extended to potential charges for its low-voltage delivery facilities to customers that use them. Commenters noted that, with the delivery charge, it will make business sense for utilities to purchase BPA facilities at times. BPA will not include any language in contracts that creates an *obligation* to sell facilities, because there will be times when selling those facilities does not comport with BPA's other obligations and may not make business sense. However, when individual utilities make specific requests, BPA will look at them on a case-by-case basis. Contracts will also continue to include language that requires customers to pay for reasonable environmental cleanup costs for facilities that had been built to serve them but are removed from service. BPA recently announced that it will develop a policy to address the sale or lease of low-voltage facilities and the issue was also addressed in the recent rate settlement package.

## **16. What are the terms and conditions of ancillary services?**

---

### **Comments**

Commenters, including ICUA, PNGC, SUB, PPC, and Benton, expressed concern with BPA's right to charge for ancillary services, especially BPA's ability to add additional ancillary services throughout the course of the contract.

### **BPA Analysis and Decision**

The templates require those customers that use ancillary services (such as control area reserves) to pay for them. BPA believes that it needs the right to further unbundle its products during the term of the contract, including the act of adding ancillary services. BPA also recognizes that a customer needs to know what products it will purchase from BPA, without unexpected charges from new products created by BPA decisions. BPA plans to continue with the provision that protects customers financially by requiring that an initial rate proposal identify and price any

new ancillary service. Since customers make their product selection as long as 30 days after they see BPA's initial rate proposal, they will also be aware of the proposed changes in ancillary services (and the charge for them) and will have time to make their decision about load placement for any purchase period. If the customer does not have a right to change its product selections on a purchase date (due to its previous BPA product selections), BPA will not include new ancillary services in the services sold to the customer during that period. Because the new contracts will only be for 5 years, the importance of this issue has lessened since the comments were received. The section in the new contracts addressing BPA rate stability commitment will now address this concern.

## **17. How should BPA address transmission-related issues in these contracts?**

---

### **Comments**

MTG&T, SCL, PNGC, WPAG, SUB, PPC, and Benton all commented on how BPA should characterize transmission comparability in the templates. Some commenters called for additional language more like that of the Lloyd Center principles; others felt that BPA should not include any such language, because the resolution of transmission comparability is still unfolding.

### **BPA Analysis and Decision**

BPA continues to look at how best to address transmission comparability in its business relationships. The draft templates included an optional provision that affirmed BPA's commitment to comparable treatment of transmission based on language from the Lloyd Center negotiations. BPA decided not to address transmission issues raised by the FERC Notice of Proposed Rulemaking dated March 29, 1995 (Mega NOPR) in these utility power sales contracts. BPA feels that, because the Mega NOPR is only a proposed rulemaking, it is prudent to allow these transmission-related issues to develop in their own forum and not try to anticipate what may occur with transmission comparability in the future.

BPA further decided that the best way to ensure comparability in any other than the simplest templates was to break the transmission and power sales relationships into separate agreements. Based on the discussion above as to the type of requirements service a customer elects to take from BPA, BPA will remove all references to transmission from its partial requirements templates, but will leave the reference to transmission required to deliver Federal power to the customer's points of delivery in the full requirements template. Therefore, individual transmission agreements will not be required for Federal power purchased from BPA for full requirements customers. However, for partial requirements customers separate transmission agreements and tariffs will be required. The transmission agreement for partial requirements customers would apply to sales of Federal requirements power. As noted above, for simplicity, BPA does not plan at this time to require that full requirements customers have a separate transmission agreement, but will provide transmission of Federal power under BPA's standard arrangements for transmission. However, if in the future, the customer changes its purchasing status and acquires resources, BPA would offer the appropriate BPA transmission agreement in effect at that time.

## **18. Will BPA include a performance obligation provision?**

---

### **Comments**

WPAG and SUB asked that BPA include a provision that establishes remedies if BPA fails to deliver power in instances other than *force majeure*. WPAG noted that the DSI template established that ability.

### **BPA Analysis and Decision**

At this time, BPA does not believe it should offer a performance obligation provision in the templates. BPA stands by its record for reliability and operational performance. BPA does not want to adopt a standard that is not shared by other wholesale electric utility suppliers and that might invite disputes over a difference of opinion on what constitutes a *force majeure*. BPA will consider exceptions to this approach only when significant business interests are identified in bilateral negotiations. To BPA's knowledge, other utilities' commercial contracts do not have to guarantee performance whether a *force majeure* is involved or not. In fact, most States' tariffs explicitly protect utilities from damages for lack of ability to deliver power to their retail customers 100 percent of the time. There are also limitations under State tariffs for damages that result to industrial operations when power cannot be delivered and industrial and manufacturing processes are adversely affected. In a truly competitive environment, customers will have a far more effective remedy if their utility or wholesaler fails to perform. After the initial 5 years (ending September 30, 2001), a customer may select another supplier. This remedy is far preferable to one that would seem to create an endless debate about what event constitutes a *force majeure*.

**ATTACHMENT B TO  
ADMINISTRATOR'S RECORD OF DECISION**

**Analysis of Public Comment  
on Templates (New Power Sales Contracts)  
and Amendatory Agreement No. 7**

**Tentative Agreements  
Power Sales Contract Negotiations**  
April 13, 1995



**Tentative Agreements**  
**Power Sales Contract Negotiations**  
April 13, 1995

TABLE OF CONTENTS

<u>Page Numbers</u>	<u>Issue Description</u>
2	Notice Period Commitment Term for Requirements Power
3	Take or Pay Obligations, Mitigation Options, and Pooling
6	Operational Flexibility
7	Full Meal Deal
8	Conservation
9	Residential Exchange
12	Dispute Resolution
13	Transmission Comparability
14	Transmission Process
16	Transmission Costs

**Previous Sections Now Deleted:** Tier 1 Amounts and Disposition of Excess Tier 1 Power, Initial Utility Entitlements, Initial DSI Entitlements, Reserves for Tier 1 and Non-Tier 1 Businesses (Excluding Transmission),

**Notice Period/Commitment Term for Requirements Power**  
(Draft of March 21, 1994)

**Requirements Power**

*Notice to set purchase amounts:* Not later than 15 calendar days following the Initial Rate Proposal.

*Commitment Term:* 2 years, coincident with the Rate Period.

Exercise of a rate adjustment clause does not provide customers the right to change their purchase levels.

**Reductions in Requirements Power**

Following a reduction in Requirements Power purchase amounts for reasons other than loss of retail load, a customer must provide 7 years notice to restore any part of this reduction. Therefore, any reduction in Requirements Power purchase amounts for reasons other than loss of retail load is for a minimum of 7 years.

*Notice to restore Requirements Power purchase amounts:* Not later than 15 calendar days following an Initial Rate Proposal, in order to restore amounts beginning in the second year of the Rate Period that is 7 years out.

The commitment for a restoration of a Requirements Power purchase amount established 7 years in advance may not be modified for the first three years of deliveries in subsequent notices. The restoration amount is added to the Requirements Power purchased in the year preceding the increase.

*Note: This construct is intended to create a 2 year commitment term. A default methodology will be developed for the timing of nominations that will apply if the term of the Rate Period is different than 2 years.*

## **Take or Pay Obligations, Mitigation Options, and Pooling**

(Draft of March 21, 1995)

For partial requirements customers who do not purchase the shaping service or similar unbundled services from BPA, requirements service will be sold on a “take or pay” basis. Full requirements customers have full relief from take or pay obligations through the purchase of load shaping service. Partial requirements customers who purchase the load shaping service have an equivalent amount of relief from take or pay obligations as full requirements customers. The take-or-pay obligations are explained in detail in the “Requirements Service” paper.

### **Pooling**

1. BPA will offer the sale of unbundled products (which are not requirements power) to a pool.
2. Requirements products purchased by a customer will be used for service to its firm loads and will not be pooled with other customers’ purchases.

### **Resale**

Customers may not resell requirements power and services. Each customer is responsible for use of its requirements purchase to serve its actual loads within the two-year commitment period. The foregoing prohibition shall not preclude a customer from simultaneously purchasing requirements power and selling power from nonfederal generation, surplus or other purchases, and such transactions shall not be considered to be the resale of requirements power.

### **Storage/Exchange**

A partial requirements customer may purchase services from BPA or another entity to store or exchange its Requirements Power purchases for use against its requirements load later. Any customer (full or partial) may preschedule delivery of requirements power to other customers’ nonintertie points of delivery (PODs) in the Northwest subject to the availability of transmission capacity at such points at the time of preschedule, for the purpose of storage and exchange. Preschedules to such PODs will be treated as federal deliveries and will be delivered at no additional costs, unless the receiving customer would have paid additional transmission costs for direct delivery or BPA incurs additional costs under GTA for such delivery.

### **Crediting/Marketing**

1. If a partial requirements customer that is not purchasing BPA’s load shaping service suffers a cumulative or sudden unexpected major loss of load during the commitment period, which the customer expects to result in actual retail load (less decrements under 88-552 and 96-501) lower than its entire requirements nomination for the commitment period, the customer shall notify BPA that it will have excess power and may request that BPA remarket the excess.
2. Upon such a request, BPA will remarket any excess requirements power to mitigate the customer’s take or pay obligation. If the customer brings to BPA a purchaser that is prepared to purchase the excess power or any portion thereof, BPA will at its option sell the power to such purchaser or take the power for itself and credit the customer the price offered by such purchaser. Any such transaction will be subject to statutory preferences.
3. Revenues from this remarketing will be credited to the requesting customer’s account such that, in aggregate over each of a series of successive six year periods, BPA will

credit as an offset to the customer's power bill the lesser of (i) the sum of the take or pay price of the requirements purchases which were remarketed or (ii) the "Net Prices" obtained for the remarketing, after deducting any applicable BPA administrative, transmission (in excess of the transmission component of the take or pay price of the requirements product) or storage charges. The following methodologies will be used to achieve this objective.

- A. BPA will account by customer for the amount by which the Net Price of any remarketed requirements product differs from its take or pay price.
  - B. If the Net Price exceeds the take or pay price on any transaction (i.e. there is a "gain" on the transaction), after crediting the take or pay price against the power bill, BPA will also credit as an offset to the customer's power bill the gain, up to the amount of any cumulative net losses the customer incurred on remarketing transactions during the six year period and the account will be adjusted accordingly. The remaining gain, if any, will be retained by BPA and credited to the customer's remarketing account.
  - C. If the Net Price is less than the take or pay price (i.e. there is a "loss" on the transaction), in addition to crediting the customer's power bill by the amount of the Net Price, BPA will credit as an offset to the customer's power bill the amount of any accumulated gain in such customer's remarketing account for the six year period up to the amount of such loss and the account will be adjusted accordingly. The remaining loss, if any will be reflected in the customer's remarketing account.
  - D. At the end of each six year period, BPA will zero out each customer's remarketing account, and any remaining gains will be transferred to BPA reserves.
4. A customer (as BPA's agent) may prearrange to sell excess requirements power, if available, at a predetermined price.
- A. Such a prearrangement would be a sale of Federal power and remain subject to any applicable statutory provisions on the sale or resale of Federal power.
  - B. BPA or a preference customer, or if the prearrangement is for delivery of power outside the region any regional customer, may step in front of the prearrangement, but only as a first right of refusal at the time the prearrangement is arranged, under the terms and conditions of the prearrangement.
  - C. If BPA or a preference customer or a regional customer steps in front of the prearranged transaction, BPA will honor the terms and conditions of the transaction and credit the price of the prearranged sale, less any fee that would have been paid to the potential purchaser under the prearrangement of the customer.
  - D. If BPA does not step in front of the transaction, BPA will honor and implement the terms and conditions of the prearrangement if there is any loss of requirements load, and credit the price of any sale to the account of the customer.
  - E. The proceeds from such prearrangement will be used as provided in paragraph 3 above.
  - F. No more than two prearrangements may be made for a commitment period.
  - G. At least 35 days prior to the earliest possible date under the prearrangement when deliveries could commence, the customer will notify BPA and BPA will provide

the customer at least 7 days notice prior to the earliest possible date under the prearrangement when deliveries could commence before stepping in front of the deal. No prearrangement may exceed one year in duration or extend beyond the commitment period.

**Operational Flexibility**  
(Draft of January 3, 1995)

- I. Customers will submit nominations of daily amounts of HLH energy and LLH energy and monthly amounts of demand.
- II. Customers may make changes in daily nominations of LLH energy and HLH energy by plus or minus 10 percent for an entire month, within the total monthly nomination, two months prior to the month.
- III. Customers can preschedule LLH energy and HLH energy as follows:
  - A. No less than 50 percent of the daily average LLH energy for each hour of the LLH period.
  - B. Up to the Requirements Power demand nomination for any hour of the HLH period. No lower limit on prescheduling during HLH.
- IV. Relief from the take or pay obligation will be provided for underruns in takes from BPA of up to 5 percent of the prescheduled amount for any hour, but no more than 1 percent of the monthly nomination.
- V. The contract will provide for the right to deliver requirements power to any point of delivery on the network over available capacity with no additional transmission charge beyond the transmission component of the take or pay obligation.

**“Full Meal Deal” (FMD)**

- I. The contract will provide an option to purchase a full requirements package for an extended commitment period such as six years in exchange for fair consideration. Such consideration needs to meet the following tests to retain customer support:
  - A. Consideration must be justified based on economic benefits BPA will receive as a result of longer commitment.
  - B. FMD is not expected to have any adverse impact on other BPA customers.

**Conservation Principles**

- A. BPA, its customers, and the Regional Council will honor both the requirements and spirit of the Act. All recognize, however, that BPA's precarious market situation requires that we explore alternatives to our traditional approaches to developing conservation resources.
- B. Customers will incorporate the agreements noted below into new power sales contracts. BPA will offer amendments to existing power sales contracts that incorporate these conservation provisions. These agreements will be implemented in BPA policies, which will be consistent with the power sales contract provisions. These BPA policies will be developed in a public involvement process.
- C. BPA will "backstop" the conservation performance of its customers, proportional to its customers' BPA purchases, as necessary to achieve the BPA conservation target and consistent with the BPA policies.
- D. BPA will fund market transformation activities that are identified through a full public process and only to the extent that the region's major public and private utilities participate.

**Proposed Contract Terms***(Not applicable to investor-owned utilities)*

- 1. Each BPA customer will plan for and implement the conservation that is cost-effective to it, and annually report and verify the results of their conservation activities. Customers will update their plans from time to time, but at least every five years.
- 2. The BPA policies will provide guidance for the development and implementation of customer conservation plans and reporting and verification of conservation activities. As requested by customers, BPA may provide customer specific guidance and technical assistance for development and implementation of their conservation plans.
- 3a. Notwithstanding any notice requirement set forth in this agreement, any customer which achieves conservation savings equal to or in excess of the conservation objectives set forth in its plan may, pursuant to section \_\_\_\_, nominate and obtain requirements service for any portion of such customer loads served with non-federal resources in an amount equal to twice the conservation achieved (expressed in MWhr) to the date of the nomination under the customer's conservation plans, consistent with paragraphs 1 and 2 above. These conservation "credits" will accrue in an "account" from which the customer may draw upon for such a nomination. Banked conservation Mwhrs may only be used once. Bonneville will continue work to develop favorable terms of service for requirements customers who implement their conservation consistent with paragraphs 1 and 2 above.



**In-Lieu**

1. In-lieu of purchasing all or a portion of the exchanging utility's average system cost (ASC) priced power, BPA may acquire an equivalent amount of electric power from other sources ("in-lieu purchase") if the cost of such acquisition is less than the cost of purchasing the utility's ASC power.
2. Any in-lieu notice shall identify a resource or resources ("in-lieu resource package") in the amount specified in the in-lieu notice, including the amount, duration, source, expected cost and availability of each such resource. The resource package shall be a firm resource in the amount of the in-lieu notice shaped to the utility's system load. However, up to 25% of the in-lieu resource energy may be a combination of: (1) nonfirm energy or spot market purchases used to displace firm in-lieu resources in an amount estimated to be available to BPA for such displacement and at a cost equal to the opportunity cost of such displacement, and (2) other spot market firm energy purchases; provided that the other spot market firm energy purchases under (2) may not constitute more than 10% of the total energy of the in-lieu package.  
The identified resources must be of types customarily relied upon by Pacific Northwest utilities to meet utility firm loads and, subject to the immediately preceding sentence, (a) be of types available to BPA at the time of the in-lieu notice, and (b) have identified costs which are obtainable at the time of the in-lieu notice. The expected cost of the in-lieu resource package shall include the cost of transmission, necessary reserves, and any appropriate risk premiums.  
The expected cost of the in-lieu resources may include such cost escalators and variability as are customarily accepted by Pacific Northwest utilities for resources of the types and acquired for the time periods specified in the in-lieu notice.  
The exchanging utility will have the right to require third party binding arbitration as to the following factual issues: (i) whether the in-lieu resource package specified in the in-lieu notice satisfies the above requirements; and (ii) the expected total cost of the in-lieu resource package. The arbitrator will afford BPA a reasonable opportunity to cure in-lieu notice deficiencies. The arbitrator's determination under (ii) shall specify the expected total cost in mills per kwh for each year of the in-lieu period. Such expected total costs by year shall be the cost of the in-lieu resource package if the utility elects to reduce its ASC down to the cost of the in-lieu resource. The in-lieu election shall be made within 60 days of the final arbitrator's determination.  
If BPA withdraws its in-lieu notice as a result of the arbitrator's determination, BPA shall not issue another in-lieu notice to that utility for that jurisdiction for a period of 6 months from date of the arbitrator's determination. If a new in-lieu notice is given within 24-months of the date of such withdrawal, the utility may elect and BPA shall agree to use the same arbitrator for any arbitration regarding the new in-lieu notice.
3. The first in-lieu transaction for any utility jurisdiction may commence October 1, 1997. The in-lieu notice must be provided on or before a mutually agreed date. Other in-lieu notices must be given thirty-one months before the commencement

- of the applicable in-lieu transaction. Each in-lieu notice may be in an amount up to 20% of the utility's total residential and small farm load in the applicable jurisdiction. However, upon receipt of a notice for an in-lieu transaction commencing prior to October 1, 2001, the utility may require BPA to limit the intended in-lieu transaction to an amount not less than 100 aMW.
4. Any subsequent in-lieu notice may specify an in-lieu transaction commencing not earlier than 24-months after the commencement of the prior in-lieu transaction. Upon giving notices for in-lieu purchases commencing in four consecutive 24-month periods, of 20% of the utility's total residential and small farm load in the jurisdiction, BPA may, concurrent with the fourth notice, give notice to in-lieu the utility's total remaining load commencing in the fifth consecutive 24-month period.
  5. BPA may terminate each in-lieu transaction on 7 years notice, which notice may not be given prior to the commencement of the in-lieu transaction that is being terminated. Any termination must be effective on the anniversary date of the commencement of the applicable in-lieu transaction.
  6. Upon receipt of a notice for an in-lieu purchase, the utility shall elect, within the later to occur of 120 calendar days after the in-lieu notice date or 60 calendar days after the date of final determination by the arbitrator, any combination of the following: (i) to reduce the amount of ASC power purchased by BPA by an amount up to the in-lieu resource package and (ii) reduce the cost of its ASC power down to the expected total cost of the in-lieu purchase for the remainder of the in-lieu amount. Any reductions pursuant to (i) shall be in increments of 10 aMW.  
To the extent the utility elects to reduce the cost of its ASC power down to the cost of the in-lieu purchase, the cost of the specified in-lieu resources will be as determined pursuant to section 2 above. To the extent the utility elects to reduce the amount of ASC power purchased by BPA, BPA would be allowed to manage its overall power supply risks -- i.e., BPA would not be required to purchase the in-lieu resource.
  7. A utility's purchase of 7(b) power in excess of the ASC power purchased by BPA will be afforded comparable terms, conditions and price to those afforded all BPA's other 7(b) customers. The price for 7(b) power shall be the Priority Firm Power Exchange Rate.
  8. The utility may terminate its election to reduce the cost of its ASC power down to the cost of the intended in-lieu purchase on 7 years notice, which notice may not be given prior to commencement of the in-lieu transaction. In the event of such termination, the in-lieu transaction shall terminate upon the expiration of such 7 years.
  9. Upon request, BPA will consult with the utility and provide it with BPA's good faith non-binding projections of notices (and the contents thereof) to be given to the utility under the Residential Purchase and Sale Agreement ("RPSA") contract.

#### Termination

A utility may elect to terminate the RPSA within 30 days of confirmation by FERC of new BPA rates (on an interim or final basis) in which the supplemental

rate charge provided for in section 7(b)(3) of the Northwest Power Act is applied and the Priority Firm Power Exchange Rate charged the utility exceeds the utility's Average System Cost (ASC). Termination would continue for the term of the RPSA.

Deemer

The new RPSA will modify the deemer provision as follows: (1) a utility will automatically be in "deemer" status for any jurisdiction whenever the deemer account for such jurisdiction has a debit balance; (2) when the utility is in deemer status it will receive no cash payments from BPA; (3) when there is no debit balance in its deemer account, the utility will automatically resume full participation in the exchange and will receive cash exchange payments from BPA. (No election to deem or rescind deemer status is required.) Debit balances accrue interest. Debit balances upon termination or at the end of the contract term will carry over to the next contract.

**Dispute Resolution**  
(Draft of January 5, 1995)

1. All disputes arising under the contract are subject to resolution through arbitration which is binding to the maximum extent permissible under then current law; provided, however, that no party will be bound on any issue as to which the other party cannot be bound.
  
2. Any determination that BPA makes as to its authority to be bound by an arbitrator's decision, or any interpretation of contract provisions, shall not be final with respect to any dispute arising under this contract until after an arbitrator has issued an award on the dispute; provided, however, that this limitation shall not apply to any interpretations of BPA's statutory authorities other than the authority to be bound by an arbitrator's decision.
  
3. In lieu of or prior to binding arbitration, the parties to the dispute may agree to any form of dispute resolution, including mediation or non-binding arbitration.

## **Framework for Implementing Transmission Comparability**

(Draft of January 18, 1995)

The provisions outlined here are intended to assure that access to BPA transmission is not an impediment to a fully functioning and competitive bulk power market in the region. The implementation of these provisions is intended by BPA and its customers to assure that BPA's ownership and operation of its transmission system will not provide it with anticompetitive market power. BPA will offer transmission services and prices for such services on a basis comparable to its own such uses of its system. BPA commits, and the provisions below do not relieve BPA of its commitment to subject itself to the same comparability standards as are applicable to other transmitting utilities under sections 211 and 212 of FPA except where prohibited by statute or regulation. If FERC comparability standards applicable to other transmitting utilities are substantially different from the provisions below, BPA may change its rates, terms, and conditions for transmission services to be consistent with such standards.

1. BPA terms, conditions and rates for its transmission service will not be used to unfairly influence or limit the ability of requesting utilities to acquire power from other sources.
2. BPA shall offer and provide terms, conditions and rates for uses of transmission that are comparable to those for BPA's own such uses of its transmission.
3. BPA shall clearly identify a separate transmission charge for each wholesale power sale that it offers or makes.
4. The transmission charge for each BPA power sale will specify the billing determinants and the rate for the transmission service.
5. If BPA prices certain third party transmission uses at the higher of embedded or incremental costs, BPA shall do the same for its own such uses.
6. Nothing in this document is intended to preclude BPA from taking into account contractually committed load in determining available transmission capacity pursuant to FERC standards.
7. BPA will offer transmission service for integrating customer network loads and customer designated network resources that are comparable to the terms, conditions and rates BPA applies to its own such use of its transmission system to serve requirements customers, including load growth.
8. BPA will offer service to allow its customers firm transmission of non-federal power from specified points of receipt to specified points of delivery. The rates, terms, and conditions for this service will be comparable to those for BPA's own such uses of its transmission system.
9. BPA will provide non-firm transmission service to its customers from specified points of receipt to specified points of delivery. Non-firm service is on a capacity available basis. Rates, terms, and conditions for such service will be comparable to those for BPA's own such nonfirm uses of its transmission system, except uses to avoid uncompensated spills from reservoirs if and to the extent consistent with FERC determinations under sections 211 and 212 of FPA.
10. Each BPA customer shall have the option to purchase these services. If a customer purchases one of these firm services then all the customer's firm BPA wheeling service shall be taken

under this tariff exclusive of services purchased under GTA's. A customer may choose to meet all of its firm needs under 8.

11. The transmission component of BPA's power rates for each customer will be based on and, to the extent practicable, equal to, the rates charged under 7 through 9 above.
12. BPA may charge incremented or lost opportunity costs for the services in 7 through 9 above, consistent with FERC pricing guidelines and comparability standards.
13. For any existing or proposed BPA power sale, BPA is willing to offer a wheeling service for a similarly situated non-federal power sale to the buyer at the same rates, terms, and conditions of the transmission component of the existing or proposed BPA power sale.
14. BPA's transmission obligations shall include transmission of industrial firm power and replacement power to each DSI up to its contract demand in the current Power Sales Contract and shall continue at such level under any replacement of the Power Sales Contract.
15. BPA will operate its transmission system as a separate business line.

## **Process--Applicable To Transmission Segments Other Than The Interties**

(Draft of January 19, 1995)

1. BPA's offer of comparable transmission service shall include generally applicable transmission service terms and conditions which have been developed in a rulemaking process pursuant to section 212(i)(2)(A) of the FPA prior to or concurrently with the development of BPA's transmission rates for that comparable transmission service in a section 7(i) proceeding. Any customer may challenge BPA's final decision on terms and conditions at FERC pursuant to section 212 concurrently with BPA's filing of its proposed transmission rates for comparable transmission service at FERC.

BPA will also offer other services which may not be fully comparable to BPA's use of its own system and which will be priced accordingly. Nothing in this document is intended to authorize or preclude a customer from requesting transmission services under rates or terms and conditions different from those then currently offered by BPA, and to have such request evaluated on its merits.

2. Concurrent with, or following, BPA's development of, the generally applicable transmission service terms and conditions for comparable transmission service in a section 212(i)(2)(A) hearing, BPA will
  - (a) develop generally applicable, comparable rates for FERC-ordered comparable transmission service under section 212 that meet the ratemaking standards of section 212(i)(1)(B)(ii);
  - (b) develop its transmission service rate(s) for comparable transmission service that are not subject to FPA section 212 to meet pre-EPA '92 standards applicable to BPA, construing those standards so that the rate(s) meet the standards applied in establishing and gaining FERC approval of the generally applicable, comparable rates for FERC ordered comparable transmission services under FPA section 212;
  - (c) establish and combine the EPA '92 rate and non-EPA '92 rate for the transmission service under (a) and (b) above in a single rate schedule, with language in the rate schedule that provides that if changes are made or necessitated in the EPA '92 rate on account of a final FERC order respecting the rate under FPA section 212(i)(1)(B)(ii), such changes shall also automatically apply to the non-EPA '92 rate prospectively from the date FERC issues its final order under FPA section 212(i)(1)(B)(ii);
  - (d) BPA will develop the comparable rates concurrently with development of other BPA power and transmission rates;
  - (e) BPA will file its rates for comparable transmission service at the same time to seek FERC approval; and

(f) BPA will include, or will not object to inclusion of, the generally applicable transmission service terms and conditions for comparable service in the record of the rate filing at FERC to enable FERC to determine whether the rates are not unjust, unreasonable, unduly discriminatory or preferential.

3. All parties agree that the automatic true-up of the non-EPA '92 rate to match the rates finally determined by FERC under FPA section 212(i)(1)(B)(ii) shall occur on a prospective basis only, with the consequence that there shall be no retroactive refunds due to changes occurring in the non-EPA '92 rate solely by virtue of the true-up.

### **Transmission Costs**

(Draft of January 26, 1995)

BPA agrees that the costs incurred by the Administrator and recoverable through BPA rates to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries will be functionalized to generation.