

complete a thorough analysis of conservation measures and conservation resources implemented pursuant to this Act during the five-year period beginning on the date the Council is established under this Act to determine if such measures or resources:

(A) have resulted or are likely to result in costs to consumers in the region greater than the costs of additional generating resources or additional fuel which the Council determines would be necessary in the absence of such measures or resources;

(B) have not been or are likely not to be generally equitable to all consumers in the region; or

(C) have impaired or are likely to impair the ability of the Administrator to carry out his obligations under this Act and other laws, consistent with sound business practices.

(2) The Administrator may determine that section 3(4)(D) shall not apply to any proposed conservation measure or resource if the Administrator finds after receipt of such analysis from the Council that such measure or resource would have any result or effect described in subparagraph (A), (B) or (C) of paragraph (1).

SALE OF POWER

16 USC 839c.

SEC. 5. (a) All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

16 USC 832c,
832d.

16 USC 832f.

(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the Region to the extent that such firm power load exceeds—

(A) the capability of such entity's firm peaking and energy resources used in the year prior to the enactment of this Act to serve its firm load in the region, and

(B) such other resources as such entity determines, pursuant to contracts under this Act, will be used to serve its firm load in the region.

In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.

(2) Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937.

(3) In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

(4) Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on the effective date of this Act or as subsequently revised.

(5) The Administrator shall include in contracts executed in accordance with this subsection provisions that enable the Administrator to restrict his contractual obligations to meet the loads referred to in this subsection in the future if the Administrator determines, after a

Section 4(h)(3)(A): This subparagraph requires all Federal agencies with responsibilities for hydroelectric facilities on the Columbia River system to do two things. First, such agencies must exercise their responsibilities (in coordination with one another, and consistently with the purposes of this and other laws) to protect, mitigate and enhance fish and wildlife in a manner providing equitable treatment for such fish and wildlife relative to the other purposes for which the Columbia River system and facilities are managed and operated under other provisions of law.

Second, such agencies are required to take into account to the fullest extent practicable the program adopted under this subsection when they exercise their responsibilities. This provision does not change the existing statutory authority of other Federal agencies such as the Corps of Engineers or FERC. It does require them, in the interest of coordination, to recognize BPA's obligations under this and other laws and to take into account, at each relevant stage of their own decision-making (pursuant to existing processes), the decisions embodied as measures in the Council's fish and wildlife program. If such agencies reject the implementation of any measure contained in the program, they should indicate in writing the basis for that decision so that all parties will have a basis for understanding the decision.

Subparagraph 4(h)(3)(A) also requires the Administrator to reimburse non-Federal projects for monetary costs of power losses to the extent program measures not attributable to those projects themselves are imposed upon the projects as a result of the consideration given the program by other agencies (e.g., FERC).

Section 4(h)(4) requires reports to Congress by the council and the Administrator on the fish and wildlife program.

Section 4(h)(5) provides a means of ensuring that the program contemplated in this subsection is developed in timely fashion, even should the Council itself be delayed in formation or proven unable to function.

Section 4(i) requires the Administrator and Council to consult with BPA customers and to recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible for power supply.

Section 4(j) requires the Council and the Administrator to encourage the cooperation and participation of appropriate Federal, State, local and Tribal entities in the preparation, adoption and implementation of the regional plan.

Section 5—Sale of power

Section 5(a) makes clear that all power sales under this bill are subject at all times to the Bonneville Project Act, particularly sections 4 and 5 of that Act. This provision therefore retains the preference and priority accorded public bodies and cooperatives in BPA power sales. Related preference protecting provisions include sections 5(b), 7(b) and 10(c).

Section 5(b)(1) requires BPA to offer to sell to each requesting utility the power needed by the utility to meet its firm load within the region in excess of the utility's own firm resources, and specifies the method of determining the utility's own firm resources. This section also clarifies that firm energy and firm peaking resources of a utility may differ and that the firm energy associated

with the firm peaking component of a resource is the firm energy produced in the peaking use of that resource.

Section 5(b)(2) reaffirms the provisions of the Bonneville Project Act that BPA must be able to reduce its obligations to investor-owned utilities upon five years notice. The Committee does expect, however, that BPA can and should be able to provide a long notice period to these utilities to the extent practicable to facilities orderly planning by these utilities.

Section 5(b)(3) authorizes BPA to sell power to Federal agencies in the region. Although Federal agencies are not preference customers, some have long depended on BPA for power, and it is intended that BPA continue to serve these agencies.

Section 5(b)(4) requires that BPA sales under this subsection be made, as they are today, only to entities meeting BPA's standards for service. This ensures that BPA will not be required to serve technologically unprepared or unsuitable customers.

Section 5(b)(5) continues the requirement of the Bonneville Project Act that BPA include in its contracts with utilities provisions permitting BPA to restrict its contract obligations to meet such customer's full requirements during any period of insufficiency. The subsection requires a reasonable period of experience under this Act prior to BPA's giving notice of a period of insufficiency, and also a reasonable notice period before any restriction becomes effective for preference customers and Federal agency customers. This subsection deals with restriction of contract obligations on a planning basis for future periods, not actual power deliveries during an operating shortage, since actual operating curtailments for utilities are imposed by State and local governments, not BPA.

Section 5(b)(6) specifies that the total contractual entitlements of preference customers and Federal agencies during any period of insufficiency shall not be less than the total firm capability of the Federal base system resources. This is to protect preference. In order to aid planning by such customers, the subsection requires that the contract formula for allocating entitlements during any such period shall be on a uniform basis, and shall disregard resources of such customers other than those dedicated to their firm loads prior to the effective date of this Act. The subsection also makes clear that the actual contract entitlement of any such customer shall not exceed that customer's actual net requirements during any period of insufficiency.

Section 5(c) permits power exchanges between BPA and Pacific Northwest utilities for the benefit of residential and small farm consumers. The cost benefits of such exchanges are required to be passed through directly to the residential and small farm consumers themselves. Exchange agreements may be terminated by the utility under specified circumstances, and upon reasonable terms and conditions agreed in advance, but during any period of insufficiency a utility's entitlement under this section shall not be less than the amount of power BPA acquires from or on behalf of such utility under this section. The rate BPA pays for power so acquired shall be based on an "average system cost" methodology BPA develop in consultation with the Council, BPA customers and appropriate State regulatory bodies; the methodology is subject to review by FERC under this section and section 9(g). Paragraph (7) specifies certain costs that must be excluded from the amounts BPA pays

porting this legislation. The requirement that actions be consistent with the plan is vital to the plan's effectiveness. However, the Committee does not intend that the procedures available to check on such consistency should be used by the Council or any interested person in such a way as to frustrate the overall purpose of the plan or the BPA in meeting its obligations. To avoid such a possibility, the Committee expects the hearing officer to carry out his duties expeditiously and fairly. Although an adequate record is needed, delay is not.

Any final determination by the Administrator is judicially reviewable pursuant to section 9(e).

Section 4(k) reaffirms the bill's intent to encourage broad participation in the planning process. By soliciting opinions from its customers, the Administrator and the Council will have access to additional valuable information. This section also affirms the bill's intent not to abridge authorities of State and localities, electric utilities and other non-Federal entities. Similarly, section 4(l) provides a mechanism to open the planning process to regional governmental bodies' ideas and initiatives, including Indian tribes.

Section 4(m) requires that by October 1, 1986, the Council conduct and complete an analysis of conservation measures implemented and renewable resources acquired under the Act since enactment for the purpose of making certain determinations set forth in this section. Once the BPA receives the Council's analysis (which shall be available to the public), the Administrator may determine that section 3(4)(D) shall no longer apply any particular conservation measure or resource if he finds any result or effect described in the referenced section. Like other BPA determinations, this one is also subject to judicial review.

Section 5. Sale of power

Section 5(a) makes clear that all power sales, including exchange sales, under this bill are subject at all times to the preference provisions of the Bonneville Project Act, as discussed earlier in this report. These provisions retain and assure preference and priority in BPA power sales to public bodies and cooperatives. This provision works together with a number of other provisions contained in this bill (section 5(b)), which provides that sales to preference customers cannot be restricted to less than the full amount of power from Federal base system resources; section 5(b)(2) which states that the five-year pullback provisions of the Project Act will apply to all investor owned utility contracts; section 7(c)(1)(A) tying the rate for preference customers to the costs of Federal base system resources; and the rate ceiling in section 7(b).

Section 5(b)(1) requires the Administrator to offer to sell to each preference agency and to each investor-owned utility the firm power it needs to meet its firm power load within the region to the extent that it cannot meet its load with its own resources. Those resources must be the resources used in the year prior to enactment of this bill and such other resources that will be used to serve its firm load in the region.

Section 5(b)(2) is a reaffirmation of the five-year pullback provision of the Bonneville Project Act.

Section 5(b)(3) authorizes the Administrator to sell electric power to Federal agencies in the region. Although Federal agencies are

of the Administrator and the Council. Any activities funding provided by this authority are not intended to be substitutes for the usual State and Federal fisheries programs.

SECTION 5

The preamble to section 5 is one of several savings provisions which appear in the bill to preserve the "preference clause" of the Bonneville Project Act. The Committee is aware of no inconsistency between the provisions and intent of this Act and the existing preference clause of the Bonneville Project Act. The Committee is aware of no consistency between the provisions and extent of this Act and the existing preference clause of the Bonneville Project Act. This Act and the "preference clause are expected to operate in a mutually compatible manner.

Section 5 (a).—This section governs power sales to public bodies and cooperatives entitled to preference and priority under the Bonneville Project Act, and to investor-owned utilities. The term "public body and cooperative entitled to preference and priority" under that act is used here to avoid any change in determining the entities entitled to preference and priority under the Bonneville Project Act.

The Committee decided against requiring a single comprehensive definition by statute or regulation of "firm power load" and "firm resources" because the complexity of the terms would make such a definition extremely lengthy and unnecessarily inflexible. The Committee does, however, intend that for the purposes of this act there should be consistency in the application of these terms in contracts so that the Administrator's customers will be equitably treated.

The section sets forth the manner in which the firm resources of individual customers is to be determined. For purposes of that determination, the term "firm power load" is intended to mean the power the customer is obligated to make continuously available to its purchasers (subject to the effect of any *force majeure* or uncontrollable events clauses), and the term "firm resources" is intended to mean the electric power suitable for providing service to firm power loads. These terms are used commonly by and among the Administrator and his customers and have been included and defined in the Administrator's contracts, and are intended to be incorporated in new contract's offered under this act.

Consistent with the provisions of this act, restrictions on sales imposed in the event of a planning insufficiency are to be equitably distributed throughout the region. A determination to restrict sales shall not be made until the provisions of the act are given an opportunity to function in the manner contemplated. The Committee recognizes that various classes and categories of customers have different rights to power. For example, preference customers have certain rights to the Federal base system resources, and all utilities have certain rights to what they contribute to the regional system through exchange sales under section 5 (b) (2) and sales of resources to the Administrator pursuant to section 6. The Committee intends that utilities be able to plan dependably for their power supply and, recognizing the differing rights of various classes and categories of customers, that the criteria applicable to such customers be consistently applied throughout the region. It is expected that the Administrator will give customers rea-