

**Revised Policy on Determining Net Requirements of Pacific Northwest Utility  
Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act  
(First revision. Issued [March 19, 2009](#); effective October 1, 2011)**

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## INTRODUCTION

### *Background*

On May 23, 2000, after extensive public review and comment, BPA issued its Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act (hereafter: May 2000 Policy) and its associated Record of Decision ([ROD](#)). The May 2000 Policy ~~and ROD contains~~ [provides](#) BPA's interpretation of sections ~~5(b)(1) and section 9(c)~~ of the Pacific Northwest Electric Power and Conservation Planning Act, 18 U.S.C. §839 *et seq.* (Northwest Power Act) for its [net](#) requirements load service and surplus power sales contracts. ~~The Policy and ROD~~ [provides](#) guidance on implementation of BPA's ~~current Power-Subscription~~ [power sales](#) contracts; and describes how certain [statutory](#) factual determinations will be made regarding the amount of Federal power public and cooperative utilities, ~~and/or~~ investor-owned utilities ([IOUs](#)) may purchase from BPA under section 5(b)(1) as [net](#) requirements load service. The May 2000 Policy also provides BPA's interpretation of ~~section 9(c) of the Act and~~ section ~~3(d)~~ of the Act of August 31, 1964, 16 U.S.C. 837 *et seq.*, as amended (the [Regional Pacific Northwest](#) Preference Act); and describes BPA's review of its utility customers' [sales, as](#) exports of their non-Federal [power or](#) resources under section 9(c) of the Northwest Power Act and section 3(d) of the [Pacific Northwest](#) Regional Preference Act.<sup>1</sup> The May 2000 Policy guides BPA's [statutory](#) determination of whether [or not](#) BPA can ~~supply-sell~~ firm power [as replacement for non-Federal power sold by a customer](#) ~~or not~~ when a customer has exported its non-Federal hydroelectric, thermal, or other resources outside the Pacific Northwest. ~~It also addresses, and~~ what constitutes an export of non-Federal power or resources out of the Region. BPA also [incorporated and](#) reaffirmed its Non-Federal Participation Capacity Ownership Contracts and [Section 9\(c\)](#) Policy of July 1994 and the BPA determinations made under section ~~9(c)~~ with only minor modifications, [as](#) noted in section ~~IV~~ of the May 2000 Policy.

After publication of the May 2000 Policy, several BPA preference customers, direct-service industrial [customers](#) (DSIs), and ~~investor-owned utilities (IOUs)~~ filed legal challenges against the policy in the U.S. Court of Appeals for the Ninth Circuit. See *Goldendale Aluminum Co. et al. v. United States Department of Energy*, case nos. 00-70717, 00-70719, 00-70743, [and](#) 00-70778. In ~~March~~ 2003, all parties, with the exception of Grant PUD, executed a settlement agreement and motion to dismiss. BPA adopted the clarifications on March 7, 2003, making them part of the May 2000 Policy. The clarifications are denominated as "Clarifications Issued on BPA's Policy for Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act, dated May 23, 2000" (hereafter: Clarifications). Together, the May 2000 Policy and Clarifications [constitute](#) ~~emprise~~ BPA's ~~existing~~ [policy](#) on its application of sections 5(b)(1) and 9(c) of the Northwest Power

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<sup>1</sup> [The May 2000 Policy incorporates BPA's legal interpretation of sections 5\(b\), 5\(f\), 9\(c\), and 9\(d\) of the Northwest Power Act and sections 1\(f\) and 3\(d\) of the Regional Preference Act from BPA's 1994 3<sup>rd</sup> AC Participation Record of Decision.](#)

Act, effective through September 30, 2011. The Clarifications are incorporated herein as Appendix A.

*The Regional Dialogue Policy and Tiered Rates:*

In July 2007, BPA published its Long-Term Regional Dialogue Policy (RRegional Dialogue Policy) and accompanying Record of Decision for selling Federal power under new contracts to its regional preference customers, Federal agencies, IOUs, and DSIs. ~~The RRegional Dialogue Policy states BPA's overall policy direction for marketing Federal power to its preference, Federal agency, IOU, and DSI customers in the Pacific Northwest after October 1, 2011.~~

Under the RRegional Dialogue Policy, BPA ~~has is offering~~ 20-year Regional Dialogue power sales contracts ~~under a tiered rate structure (Contract High Water Mark [CHWM]RD cContracts)~~ to market core products for net requirements load service similar to what BPA was offered under the current Subscription contracts previously. ~~The Load Following product and Block and Slice with Block products are available under a tiered rate structure to BPA's preference and Federal agency customers. These contracts are the successor contracts to the current Power Subscription power sales contracts and provide core products for load service similar to what had been offered previously—the full service Load Following product and partial service Block and Slice with Block products.~~

~~Accompanying the new contracts will be tiered rates, which BPA is establishing tiered rates~~ through a Tiered Rate Methodology (TRM). The TRM is a two-tiered rate design applicable to ~~firm requirements power service~~ net requirement load service for customers that sign ~~CHWMRD cContracts~~. The TRM<sup>2</sup> differentiates between the costs of service associated with a defined set of existing Federal resources and the costs associated with additional Federal resources needed to serve any remaining portion of a customer's<sup>2</sup> net requirement load. ~~Pursuant to Through the TRM, The cost of the power from these Federal resources will be allocated and recovered through Tier 1 and Tier 2 rates, respectively. Each a~~ customer will receive a Contract High Water Mark ~~(CHWM),~~ measured in average megawatts (MW), that defines the customer's eligibility to buy an amount of firm power priced at Tier 1 rates. ~~Prior to each rate period, a~~ customer's CHWM will be adjusted to account for changes in the planned Tier 1 System Resources capability for each rate period, resulting in a Rate Period HWM High Water Mark (RHWM). A customer's BPA power purchases in excess of its RHWM will be priced at Tier 2 rates. ~~To meet its~~ For its load a ~~Above BPA's the -RHWM (Above RHWM Load) Load-service obligation (Above-RHWM Load),~~ a customer may purchase Federal power from BPA at a Tier 2 rates, procure supply its own non-Federal power, or both. Independent of the RHWM, a customer's purchases of Federal power by a customer is limited by the customer's net requirement. ~~— This is the~~ at amount of a customer's planned regional firm retail load that BPA is obligated to serve under statute.

The foregoing brief summary of BPA's TRM is intended to provide terms and concepts that are unique to the RRegional Dialogue Policy and RD cContracts and that are used in this Revised 5(b)9(c) Policy. The use of any such terms or concepts in this Revised 5(b)9(c) Policy is not intended to modify or amend consistent with the TRM and/or RD cContract terms (see

<sup>2</sup> This document uses defined terms consistent with those used in the TRM and RD Contracts. Accordingly, a list of those defined terms is attached hereto as Appendix B.

[Appendix B](#)). The TRM describes a rate structure and does not determine [BPA's obligation to supply](#) a customer's net requirement [load](#), which is the subject of this Revised [5\(b\)9\(c\)](#) Policy.

For the purposes of implementing the [RRegional Dialogue](#) Policy and TRM, it is necessary under this Revised [5\(b\)9\(c\)](#) Policy to address the [difference in](#) treatment of [a customer's](#) non-Federal resources previously dedicated to serve load under [its](#) Subscription ~~and~~ [or](#) pre-Subscription contracts ~~separately~~ from ~~those~~ non-Federal resources [that a customers](#) subsequently acquired to serve [load above its Above-RHWM for a rate period.](#) ~~Load under the TRM.~~ Accordingly, the following definitions for customers' non-Federal resources will apply ~~for as of the effective date of~~ this Revised [5\(b\)9\(c\)](#) Policy:

1. "Above-RHWM Resources"<sup>3</sup> means those Specified Resources listed in section 2 of [Exhibit A of a customer's RDCHWM contract](#) and any Unspecified Resource amounts listed in section 3 of Exhibit A of a customer's RD ~~c~~Contract that were dedicated to serve the customer's firm regional retail load after September 30, 2006.
2. "Existing Resource" means a Specified Resource listed in section 2 of Exhibit A of a customer's ~~RD-CHWM c~~Contract that such customer was obligated by contract or statute to use to serve its Total Retail Load prior to October 1, 2006.

*The Revised [5\(b\)9\(c\)](#) Policy:*

On October 12, 2008, BPA published ~~public notice with~~ a proposed Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act (Revised [5\(b\)9\(c\)](#) Policy). The proposed Revised [5\(b\)9\(c\)](#) Policy [was](#) the result of a limited-scope review of the May 2000 Policy and Clarifications; ~~it~~ [and](#) reflects [changes to](#) specific provisions [as](#) described in section II.B.8 of the [RRegional Dialogue](#) Policy that are important to implementation of the RD ~~c~~Contracts.

BPA ~~sought and has~~ received public comment on its proposed Revised [5\(b\)9\(c\)](#) Policy ~~and~~ ~~after~~ having reviewed and considered public comment, the Administrator has decided to adopt this final Revised [5\(b\)9\(c\)](#) Policy. Review and analysis of public comment ~~is being~~ ~~will be~~ published in the Administrator's Record of Decision that ~~accompanies~~ ~~is related to~~ this final Revised [5\(b\)9\(c\)](#) Policy.

This ~~final~~ Revised [5\(b\)9\(c\)](#) Policy [will become effective on October 1, 2011 when service under the Regional Dialogue contracts commences.](#) It provides guidance on implementation of the [RRegional Dialogue](#) Policy under applicable statutes and describes how certain [statutory](#) factual determinations will be made regarding the amount of Federal power that publicly- and cooperatively -owned utilities ~~and/or IOU~~ ~~investor-owned utilities~~ may purchase from BPA under section 5(b)(1) of the Northwest Power Act. BPA's determination of ~~this~~ ~~its net requirement load obligation amount~~, as described in this ~~P~~policy, will ~~continue to~~ be affected by a customer's export of hydroelectric resources and non-hydroelectric resources ~~out of the Pacific Northwest~~ in accordance with [BPA's policies and](#) section 9(c) of the Northwest Power Act and section 3(d) of the [Regional Northwest](#) Preference Act. BPA will ~~continue to~~ review a customer's export of power or

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<sup>3</sup> Above-~~R~~HWM Resources are the same resources identified by the term "New Resources" in the RD ~~c~~Contracts. A different term is used here because "New Resources" is already a defined term used in the Clarifications to the May 2000 Policy.

output from resources under BPA's Section 9(c) Policy as set forth in Section IV.B of this Revised 5(b)9(c) Policy, consistent with the Clarifications.

*Applying the Clarifications to the Revised 5(b)9(c) Policy*

Notwithstanding any language in the May 2000 Policy and Clarifications that ~~might be construed to suggest that~~ they are limited in application to BPA's Subscription contracts, the May 2000 Policy ~~(as revised)~~ and Clarifications will ~~continue to~~ apply to BPA's CHWM contracts and other subsequent power sales contracts with regional customers after expiration of the Subscription contracts. The Clarifications, in some instances, use language that is unique to the Subscription contracts. Since the Clarifications are part of a litigation settlement, BPA is not revising the Clarifications document as part of developing the Revised 5(b)9(c) Policy. The language of the Clarifications will be interpreted to permit its application under this Revised 5(b)9(c) Policy, which uses terms unique to the RD Policy and TRM and that are embodied in the CHWM contract. Accordingly, for the purpose of applying the Clarifications to the Revised 5(b)9(c) Policy, the following terms from the Clarifications will be read as follows:

1. "New Resources" will be read as defined in section 10(d) of the Clarifications. This is unchanged from its use under the Subscription contracts. However, alternative uses of the same defined term under the RD Policy and CHWM contracts should be noted. In the CHWM contracts, the defined term "New Resources," and the term "New non-Federal Resources" in section II.B.7 of the RD Policy, have a unique meaning different from that used in the Clarifications and refer to customer non-Federal resources added after September 30, 2006.
2. "[S]ection 2(a) of Exhibit C" and variations of the same will be read as "section 2 of Exhibit A" to refer in the latter case to the Specified Resources section of the firm resources exhibit in the customer's CHWM contract or the corresponding section of the firm resources exhibit in other 5(b)(1) contracts.
3. "[S]ection 2(b) of Exhibit C" and variations of the same will be read as "section 3 of Exhibit A" to refer in the latter case to the Unspecified Resources section of the firm resources exhibit in the customer's CHWM contract or the corresponding section of the firm resources exhibit in other 5(b)(1) contracts.
4. For section 11(c), "Critical Slice Amount" will be read as "Slice Output Energy," and "Initial Critical Slice Amount" will be read as "2012 Critical Slice Amount."
5. "Net Requirements Exhibit" will be read to refer to Exhibit A of a customer's CHWM contract or the corresponding firm resources exhibit in other 5(b)(1) contracts.

*The National Environmental Policy Act:*

~~BPA is in the process of assessing the potential environmental effects that could result from implementation of the proposed Revised Policy, consistent with the National Environmental Policy Act (NEPA). The NEPA analysis will determine whether the Revised Policy would fall within the scope of the Market Driven Alternative that was evaluated in BPA's Business Plan Final Environmental Impact Statement, DOE/EIS 0183, June 1995 (Business Plan EIS) and adopted in the August 1995 Business Plan ROD. If so, BPA is likely to tier its decision under NEPA to the Business Plan EIS and ROD. BPA will complete its NEPA process and issue its~~

~~NEPA ROD concerning the policy at the time that BPA issues its Final Record of Decision for the Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act.~~

## **I. Relevant Statutory Provisions**

The Northwest Power Act provisions are:

**5(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 [16 U.S.C. 832 et seq.] 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 December 5, 1980, to serve its firm load in the region, and

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

**5(b)(1)** 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. 16 U.S.C. 839c(b)(1).

**9(c)** Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 23, 1964 (16 U.S.C 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term “surplus energy” shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term “surplus peaking capacity” shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837d and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. The Administrator shall, in making any determination, under any contract executed pursuant to section 839c of this title, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could

not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

16 U.S.C. 839f(c) (emphasis supplied).

The Northwest Preference Act provision is:

**3(d)** The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility's own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy.

16 U.S.C. 837b(d).

## **II. Scope of the Policy**

The Policy on Determining Net Requirements as described in section III addresses the amount of Federal power that BPA is obligated to offer to customers requesting contracts to serve firm power loads under section 5(b)(1) of the Northwest Power Act. Purchasers eligible to request a contract under section 5(b)(1) include public body, cooperative, and investor-owned utilities in the region [that have met BPA's standards for service under section 5\(b\)\(4\)](#). BPA has a corresponding statutory duty when determining the net requirements of a requesting purchaser to apply the provisions of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is contained in section IV. Such provisions direct the Administrator to determine whether an export or proposed export of a requesting purchaser's non-hydroelectric or hydroelectric resource(s) would result in an increase in the firm energy requirements of any of BPA's customers. Findings by BPA that the export of such resources is likely to increase BPA's firm obligations, and that the resource could have been conserved or otherwise retained to serve regional loads, will result in a reduction (decrement)<sup>4</sup> of the amount of Federal power and energy available for purchase under section 5(b)(1) equal to the amount of power and energy, and for the duration, of the export. Determinations under this policy will be made by BPA based on demonstrations made by the customer and other available information.

## **III. Policy on Determining Net Requirements**

### **A. Determination of the Amount of Federal Power For Sale Under Section 5(b)(1)**

1. BPA will determine the amount of Federal power for sale under section 5(b)(1) in the manner described below. In making this determination BPA will reduce the amount of

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<sup>4</sup> The 1994 Section 9(c) Policy BPA published uses the term "decrement" to mean a decrease or reduction in BPA's obligations to sell power to a customer under its section 5(b)(1) power sales contract with BPA. The same term was incorporated by reference in the May 2000 Policy and Clarifications. When used in this Revised 5(b)(9)(c) Policy, the terms "decrement," "decrease," "reduce," or "reduction" have the same meaning.

Federal power a customer may purchase in accordance with section 9(c) of the Northwest Power Act and section 3(d) of the [Regional Northwest](#) Preference Act.

- (a) BPA will offer an amount of Federal power for sale to a customer under section 5(b)(1) based upon such customer's actual retail firm power loads in the region. To establish the customer's actual retail firm power loads in the region, BPA shall use either the actual measured load of the customer or the customer's own actual load forecast. However, if BPA finds the customer's forecast unreasonable, or the customer has not produced such a forecast, BPA will substitute its own forecast. (Any actual or forecast loads of the customer shall exclude any wholesale loads served by the customer. "Wholesale [L](#)oads" means power sales made by the customer using its own resources to serve its own wholesale customers who are purchasing to resell the power at wholesale or retail.)
- (b) For purposes of determining the amount of Federal power BPA will offer to existing customers in the post-FY 2011 period, BPA will require an existing customer to continue to use all of its Existing Resources. [Existing Resources include those non-Federal resources required to be applied to a customer's consumer load under section 5\(b\)\(1\)\(A\) and those non-Federal resources subsequently dedicated prior to October 1, 2007, to serve a customer's consumer load under section 5\(b\)\(1\)\(B\).](#) BPA will not, however, require customers to continue the use of ~~those resources dedicated to serve load prior to October 1, 2006,~~[Existing Resources](#) under any one of the following conditions: (1) the customer's contractual resource(s) expires prior to October 1, 2011; (2) the customer's generating resource(s) is determined by BPA to be lost due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); or (3) the customer's contractual resource(s) is determined to be lost in accordance with section III.B.2 (loss of contractual resources). In addition, customers who were given express written consent by the Administrator to permanently remove a resource from use in serving regional firm power loads are not required to return such resources to use.
- (c) BPA will require that all Federal surplus firm power contracts or excess Federal power contracts with terms that specify that such power be used to serve the customer's retail firm power load in the region be so applied.
- (d) Under a section 5(b)(1) contract, customers may elect to dedicate other generating resources or contractual resources [to serve their consumer load \(~~;~~Above-RHWM Resources under a CHWM contract\)](#) -in addition to generating resources or contractual resources customers must use to serve load under section III.A.1.(b);~~to serve their consumer load.~~ Customers can also agree to contractually commit power purchases from the market (market purchases) [\(including Unspecified Resources under the Clarifications\)](#)<sup>5</sup> to serve any remaining amounts of their retail firm power load in the region that are not served by (1) generating resources or contractual resources that a customer must use to serve load under section

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<sup>5</sup> [Unspecified Resources and market purchases are functionally equivalent and interchangeable terms, as explained in BPA's Long-Term Regional Dialogue Contract Policy ROD \(Oct. 31, 2008\), at 13-19.](#)

III.A.1.(b); and (2) additional generating resources or contractual resources that a customer elects to use under this section. Resources used for load by a customer under this section must be added to the Firm Resource Exhibit of the customer's contract, e.g. Exhibit A of the CHWM contract. Application of additional generating resources, contractual resources, or market purchases by a customer under a section 5(b)(1) contract shall be as follows:

- (i) All additional generating resources or contractual resources shall be used for load for their remaining useful life of the resource, or the term of the contract, including renewals or extensions, unless except for (1) ~~the customer's generating or contractual resources applied to serve Above-RHWM Load pursuant to section III.C (Above-HWM Resources);~~ (2) the customer's generating resources determined by BPA to be lost during the term of the contract due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); (23) the customer's contractual resources are determined by BPA to be lost during the term of the contract in accordance with section III.B.2 (loss of contractual resources); or (34) ~~the customer's generating or contractual resources where~~ BPA has provided express written consent to permanently remove the resource.
- (ii) Market purchases used to serve retail firm power load in the region shall be used for the entire rate period for which BPA establishes rates of general application, except as provided in section III.D.2.
- (iii) Consistent with the applicable terms on resources in the customer's section 5(b)(1) contract and the customer's product selection, a customer ~~that who~~ elects to use market purchases to serve it retail load that does not match the customer's ~~existing-then-current~~ resources and its delivery of Federal power from time to time shall make such market purchases to serve that portion of load that does not match such customer's ~~existing-then-current~~ resources and delivery of Federal power under all such circumstances.
- (e) BPA will apply the Declaration Parameters included in the Power Products Catalog, as it may be revised, and related contract provisions to establish the amount of power available from the customer's generating and contractual resources under the customer's 5(b)(1) contract. Because the Declaration Parameters are subject to revision, BPA will use the Declaration Parameters in effect at the time of each of BPA's ~~contract offer~~ annual net requirement load determinations to determine the amount of Federal power offered. The customer may declare a reduction in the amount of power that would otherwise be available from its own generating and contractual resources by the amount of power the customer uses from such resources to serve its Wwholesale Lloads, defined above, ~~that which~~ were served prior to December 5, 1980, and ~~that which~~ continue to be served by such resources. The Declaration Parameters in effect at the time of the most current revision of this Revised 5(b)9(c) Policy are attached hereto as Appendix C. This appendix is included for reference use only. The Declaration Parameters are not made a part of the Revised 5(b)9(c) Policy.

2. In addition to subsections III.A.1.(a) through (e), BPA shall reduce the amount of Federal power offered to a customer under section 5(b)(1) when such reductions are consistent with the application of BPA's Section 9(c) Policy, as modified, and resultant findings made under section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

**B. Statutory Permanent Discontinuance for a Customer's Generating and Contractual Resource**

1. A customer's non-Federal generating resource is considered no longer used to serve regional retail firm power load under a section 5(b)(1) contract if the resource's use is permanently discontinued due to obsolescence, retirement, or loss.
  - (a) Obsolescence is a permanent discontinuance of a generating resource resulting from the inability to continue to operate such resource at the end of its useful life due to lack of available replacement parts, deterioration of the physical facility, or lack of sources of fuel supply.
  - (b) Retirement is a permanent discontinuance of a generating resource for which the customer can demonstrate that the costs of replacements, improvements, or additions necessary to continue to operate the resource, combined with the resource's variable operating costs, exceed the reasonable economic return over the remaining life of the resource. The customer will demonstrate the reasonable economic return of the resource by comparing (1) the costs to the customer of replacing the resource with market purchases plus the cost to permanently shut down the resource to (2) the cost of continuing to operate the resource.
  - (c) Loss of a resource is a permanent discontinuance caused by factors beyond the reasonable control of the customer and that which the best efforts of the customer are unable to remedy. Such factors include, but are not limited to, complete destruction of the resource, complete loss of the Federal or State license to own or operate the resource, or complete and/or partial reduction of the capability of a resource to the extent of the loss resulting from requested operations or orders of a cognizant State or Federal agency directly or indirectly affecting the operation of the resource and changing its planned capability.
2. A customer's contractual resource is considered no longer used to serve regional firm power load if the customer experiences a permanent loss of contract rights. Loss of contract rights must result from expiration of the term of the contract, after any extensions of the contract unilaterally available to the customer, or from factors beyond the reasonable control of the customer and that the best efforts of the customer are unable to remedy. The Administrator may grant consent to a customer's permanent discontinuance of a contract resource upon expiration of such contract, notwithstanding a customer's right to renew or extend such contract if the customer demonstrates that substantial and material changes in the terms of a successor contract, such as price, will deny the basic benefit of the bargain to the customer, which effectively results in the loss of existing contract rights.

**C. Addition and Removal of ~~Above-RHWM~~ Non-Federal Resources ~~with Notice~~ During Contract Term**

1. A customer may elect to add a non-Federal rResource (Above-RHWM Resources under a CHWM contract) to serve its regional retail firm power load as provided in its 5(b)(1) contract. ~~Under a CHWM contract, in excess of its RHWM, provided, however, that~~ (1) the customer must provides the requisite notice to BPA specified in its ~~CHWM 5(b)(1)~~ contract and (2) the power from the resource ~~is must be~~ delivered in the shape that the customer has agreed to in its ~~5(b)(1)~~ contract. The customer ~~is shall~~ responsible for obtaining any needed shaping services for the resource ~~output~~, which may be self supplied or provided by either a third party or BPA.
2. A customer may elect to temporarily remove a non-Federal rResource ~~Above-RHWM Resources~~ from serving its regional retail firm power load, ~~in excess of its RHWM, due to a loss of load,~~ provided, ~~however,~~ that the customer ~~provides the requisite notice and returns the resource to load service consistent with its contract and~~ complies with the other related terms specified in its 5(b)(1) contract. Under a CHWM contract, such removal shall be for such periods and durations as provided in the customer's contract, consistent with sections D.2 and D.3, below.
3. Application of a customer's non-Federal rResource (Above-RHWM Resource under a CHWM contract) under section III.C.1 shall reduce ~~the customer's BPA's~~ net requirements load obligation. The disposition and use of a customer's non-Federal rResource (~~an~~ Above-RHWM Resource under a CHWM contract) that is ~~not applied~~ temporarily removed from serving to load under the customer's 5(b)(1) contract is ~~still~~ subject to the requirements of section 9(c) of the Northwest Power Act and section IV: of this Policy.

**D. Changes in the Amount of Federal Power Purchased During the Term of a Contract**

1. Under a section 5(b)(1) contract, including CHWM contracts, BPA will require a customer to submit annual reports that track and forecast the customer's retail firm power loads in the region, except for customers ~~that who~~ purchase their full net requirement service product from BPA and for which ~~them~~ BPA meters their total retail load. The purpose for the annual report is to provide information that allows BPA to perform an annual net requirement load calculation and shows any increase or reduction in the amount of the customer's retail firm power loads in the region from the amount served when the contract was executed. Based on such load information, or BPA's forecast of the customer's load if BPA finds the customer's load forecast is unreasonable, BPA shall make an annual determination of the net firm requirement load of the customer under a section 5(b)(1) contract as follows.<sup>6</sup> First, BPA will account for and subtract from the customer's retail load:

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<sup>6</sup> Such reports may be in addition to other load or resource information the customer is required to provide BPA on its loads or resources for contract administration and planning purposes. Such determinations may be in addition to other determinations of net firm power requirements loads made more frequently under the terms of the customer's contract.

- a) the amounts of generating and contractual resources a customer is required to use to serve firm power load in the region under section III.A.1.(b) (Existing Resources);
- b) amounts of additional resources a customer has elected to use under section III.A.1.(d) (additional generating and contractual dedicated resources); and
- c) amounts of power purchases from the market that a customer has contractually committed to purchase in its 5(b)(1) contract, consistent with section III.A.1.(d) (market purchases).<sup>7</sup>

Second, BPA will make adjustments for:

- d) changes in a customer's Above-RHWM Resources used to serve retail firm power load in the region, as provided for in section III.C.1;
- e) changes in the customer's own resources serving its load pursuant to III.A.1.(b) and III.A.1.(d), based on BPA's determination of a statutory discontinuance under section III.B;
- f) any reductions in the amount of power a customer may purchase under a section 5(b)(1) contract due to the annual export review under section III.D.43; and
- g) changes in the customer's hydroelectric resource capability declarations due to changes in coordinated planning allowed under section III.A.1(e).

## 2. Temporary Removal of Above-RHWM Resources Under a CHWM Contract:

~~As further described below~~In some cases, a customer may face a loss or reduction in the annual amount of its retail load. Such a year-to-year reduction in a customer's Above-RHWM Load could result in the customer having purchase obligations in excess of its net requirement or Above-RHWM Resources, absent a mitigation tool, that could reduce a customer's purchase of Federal power at the Tier 1 rate. Under the CHWM Contracts, a customers that purchase the Load Following, Block, or Slice with Block products may choose to temporarily remove Above-RHWM Resources from serving their regional firm load, or elect to have BPA remarket Tier 2 priced purchase obligations at Tier 2 rates, or both, in most cases of a forecast reduction in its their AaAbove-RHWM Lload. As an alternative or in combination, a customer may elect to remarket their purchase obligations, if any, for Tier 2 priced purchase obligations in accordance with their 5(b)(1) contract. The total of any Above-RHWM Resources removed and Tier 2 priced purchase obligations remarketed will be an amount such that the customer's contracted purchase amounts at both Tier 1 and Tier 2 rates equal the greater of the customer's net requirement or RHWM.

~~Under the Subscription contracts, resource removal in the event of load loss was only available to customers with planned purchase amounts under the Block and Block with Slice products. For contracts under the TRM, Load Following customers may remove Above-RHWM Resources on a rate period to rate period basis in the event that load loss is~~

<sup>7</sup> See also sections 2 and 9 of the Clarifications regarding the contractual commitment of unspecified resources.

~~projected during a rate case. No other remarketing of purchase obligations at Tier 2 rates or removal of Above-RHWM Resources is available for Load Following customers.~~

**a) Block and Slice with Block CHWM Contracts**

~~Under the CHWM cContract, For Block and Block with Slice customers shall have a resource removal right as follows. If BPA's annual net requirement load determination finds that of a customer's Preliminary Net Requirement load indicates that the amount of Federal power a customer can purchase is less than the its contracted amount of BPA power to be purchased for the next contract year, In this case, then the customer may elect to remove Above-RHWM Resources from use for its regional firm load; for a period of one year, have BPA remarket its Tier 2-prieced purchase obligations at Tier 2 rates or a combination of both. The reduction(s) may continue for that year until (a) the total of the resources removed and BPA purchase obligations remarketed equals the amount that the customer's -purchase obligations at Tier 2 rate plus its RHWM exceeds its Preliminary Net Requirement, or (b) until all Above-RHWM Resources have been removed and all the customer's purchase obligations at Tier 2 rates have been remarketed by BPA. Above RHWM Resources that the customer has committed to use to serve its Above RHWM load under its 5(b)(1) contract.~~

**b) Load Following CHWM Contracts**

~~Under the CHWM cContract, Load Following customers shall have a resource removal right as follows. If BPA's RHWM Process load forecast may find indicate that of a customer's net requirement for a Fiscal Year of a Rate Period during the RHWM Process is less than its contracted amount of BPA power to be purchased in that for a Fiscal Year in the related Rate Period. In this case, then the customer may elect to remove Above-RHWM Resources from use for its regional firm load; for that Fiscal Year; or exercise contractual mitigation measures to reduce its BPA purchase obligations at Tier 2 rates. The reduction(s) may continue until (a) the total of the non-Federal resources removed and reduction of the customer's BPA purchase obligations equals the amount that the customer's Tier 2 Rate purchase obligations plus its Above-RHWM Resources exceeds its Above-RHWM Load, or (b) until all Above-RHWM Resources have been removed and no BPA purchase obligations at Tier 2 rates remain.~~

~~Such Above-RHWM Rresource removals shall be such that in the same annual shape of the resource shall be maintained, in which the customer has agreed to provide the resource as required in by the customer's 5(b)(1)CHWM- contract.~~

Any Above-RHWM Resource that is removed for the ~~contract Fiscal Y~~ year must be made available in the next ~~contract Fiscal Y~~ year to serve any increases in the customer's planned AaAbove-RHWM LHoad increases.

**3. Temporary Removal of Existing Resources Under a CHWM Contract**

**a) Block and Slice with Block CHWM Contracts**

~~Removal of Existing Resources;~~ Removal of Existing Resources is only available to only Block or Block withand Slice customers,; and then only in limited

circumstances. If BPA's annual determination of such a customer's net requirement ~~load~~ for the second or subsequent years of a Rate Period, after the ~~removal~~ remarketing of all of its BPA purchase obligation(s) at Tier 2 rates and removal of its Above-RHWM Resources, is less than the annual net requirement BPA calculated for the first year of the Rate Period, then BPA will consent to the customer's limited removal of Existing Resources from use for its regional firm retail load as follows. Such removal shall be for a period of only one year, and only in ~~the an~~ amount that is the lesser of: (1) the remaining amount that the customer's RHWM exceeds its Preliminary Net Requirement, or (2) the difference between the customer's Preliminary Net Requirement for the first Fiscal Year and Preliminary Net Requirement for the applicable subsequent Fiscal Year of the Rate Period. That portion of Existing Resources ~~removed~~ shall be removed in the same shape in which the customer has agreed in its CHWM contract to provide the resource ~~in its~~ 5(b)(1) CHWM contract. Amounts of a Any Existing Resource removed for the ~~contract~~ Fiscal Year must be reapplied in the next ~~contract~~ Fiscal Year.

#### **b) Block, Slice with Block and Load Following CHWM Contracts**

To the extent that an Above-RHWM Resource that is eligible for removal from serving the customer's regional load is being used to fulfill a state or Federal renewable resource portfolio standard or similar legal obligation, the customer may remove in its place the same amount of an Existing Resource, in accordance with the requirements of its CHWM Contract.

#### **4. General Provisions for Temporary Removal or Permanent Discontinuance of Non-Federal Resources**

a) Any customer's resources, other than market purchases (Unspecified Resources), that are removed from use in serving the customer's regional firm load under this section are subject to a BPA's determinations made under section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act. If the customer's disposition or use of that resource results in a reduction or decrease in BPA's obligation to provide power pursuant to section III.D.43, then BPA will recalculate the amount of power the customer may purchase for the upcoming year as provided under this section (III.D.2 and III.D.3). In such cases, no resource removal rights may be used to reduce or avoid the section 9(c) decrement. a customer's potential resource removal rights will be reduced in the same amount as the reduction to BPA's obligation to provide power.

b) On an annual basis, as provided under a section 5(b)(1) contract, BPA will review the export of power from a customer's regional non-Federal generating and contractual resources and, if required, will reduce the amount of Federal power a customer may purchase in accordance with section IV of this policy. BPA shall reduce the amount of power a customer may purchase for the longer of the remainder of the year or the duration of the export ~~during the period between annual reviews based on a determination by BPA in accordance with section IV, whichever is~~ longer.

c) BPA shall make available additional amounts of power to a customer under a section 5(b)(1) contract to serve the customer's regional firm retail loads that ~~which~~

~~were was~~ formerly ~~served available~~ by a customer's generating resources or contractual resources ~~but that~~ are no longer required to be ~~so~~ used ~~to serve the customer's retail firm power loads in the region, based on consent of the Administrator to permanently discontinue use of the resource or~~ in accordance with section III.B (statutory ~~permanent~~ discontinuance). Such service shall be ~~on made available based on the notice required under the customer's 5(b)(1) contract, or 6 months' notice that such an event has occurred,~~ or as mutually agreed.

#### IV. ~~\_\_\_\_\_~~ ~~Scope of the~~ Section 9(c) Policy

##### A. ~~Modification to~~ BPA's Non-Federal Participation Section 9(c) Policy

BPA's ~~May 2000 Policy modification to its revised in part and affirmed in part~~ BPA's 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy). ~~is set forth in section IV.B below.~~ BPA's 1994 NFP, as modified, ~~is was~~ retitled: BPA's Section 9(c) Policy, ~~and is adopted in this Revised 5(b)9(c) Policy with minor clarifications, as set forth in section IV.B below.~~

BPA reaffirms the application of its 1994 ~~NFP section 9(e) P~~ policy and legal interpretation published in July of 1994 ~~as adopted by this Revised 5(b)9(c) Policy~~. The context for some of the determinations made in the 1994 NFP ~~P~~ policy was, in part, prior exports and new exports of firm power from customer resources ~~out of the region~~ by participation in the new, Third AC Intertie. The interpretation has been of general application since 1994 to customer exports ~~and continues to be applicable~~. ~~However,~~ BPA is now modifying the policy to ~~address clarify~~ certain issues ~~that which~~ were not previously addressed. Prior determinations made under the 1994 NFP Policy remain in effect for the duration of the export sales ~~currently subject to that policy~~.

In the 1994 NFP Policy, BPA did not address the export of firm power from IOU resources because the IOUs were not placing any firm power loads on BPA under their section 5(b)(1) power sales contracts with BPA. *See* footnote 3, page B-10, BPA's 1994 NFP Policy. Since the IOUs were not taking any power service from BPA, reductions in their service under those section 5(b)(1) contracts pursuant to a section 9(c) determination would not have affected their BPA service. ~~Presently, BPA is preparing new section 5(b)(1) power sales contracts for the post-2001 period to be offered to customers eligible to purchase Federal power. BPA anticipates that IOUs will take firm power service from BPA under new 5(b)(1) contracts. BPA will require that the export of firm power from resources of IOUs be accounted for, in setting BPA's net firm load obligations under those contracts. Additionally, †The 1994 NFP Policy is May 2000 Policy has been~~ modified to update the technical provisions, as discussed in section ~~IV.B below~~.

##### B. Section 9(c) Policy

###### Section 1. Northwest Power Act Section 9(c) Determinations

As required by the Northwest Power Act, BPA shall make its Section 9(c) determinations for the exports of its customers. Export for purposes of this policy means the sale of the firm power output of a generating or contractual resource in a manner that such output is not planned to be used solely to serve firm consumer load in the Region as the term "Region" is defined in section 3(14) of the Northwest Power Act.

## **Section 2. Finding Required**

In examining the export of Pacific Northwest resources, BPA shall make its finding based on the following requirements of Section 9(c):

- a) BPA shall analyze whether the customer's exports would result in an increase in the electric power requirements of any of its customers in the region. BPA shall do this by examining its load/resource forecasting and planning documents to determine the impact the exports will have on BPA's and its customers' ability to meet Pacific Northwest load presently and in the future. BPA shall also analyze the information available from other sources, including least-cost plans and load/resource information of Pacific Northwest utilities that do not currently place any load on BPA.
- b) BPA shall review the specific resources being exported on an annual basis, unless the customer requests review for a longer period, to determine if the resources being exported are hydroelectric resources, and if not, whether they are conservable. BPA shall review categories of resources eligible for export for a period selected by BPA. If the resources are not hydroelectric resources and BPA determines the resource is not conservable (see section 6(b) for a description of those resources BPA has determined are conservable), BPA shall determine if such exports will result in an increase in the firm energy requirements of its customers. If they will, BPA shall determine whether the resource could be otherwise retained for service to regional loads by using reasonable means. If BPA finds in its analysis that the fully allocated nominal cost of the resource a customer is proposing to export exceeds the fully allocated nominal cost of the region's marginal resource, BPA will conclude that such resource can be exported without having to decrement the customer's section 5(b) utility power sales contract. [If the resources are hydroelectric resources BPA shall make its determination in accordance with section 3\(d\) of the Regional Preference Act.](#)

## **Section 3. Scope of Section 9(c) Policy**

This Section 9(c) Policy addresses a customer's exports of power from Pacific Northwest resources out of the region. BPA shall make its section 9(c) determinations based on a factual determination using information about the specific resource the customer intends to export.

## **Section 4. Data on Specific Resources**

BPA shall base its section 9(c) determination on specific information BPA has obtained from the customer on the resources it [has or](#) intends to export. The customer shall provide this information when it notifies BPA that it intends to export a resource or when BPA requests information regarding a possible export. This includes, but is not limited to, the following information:

- a) name of the resource to be exported;
- b) location of the resource;
- c) type of resource;

- d) whether the resource is currently in any Pacific Northwest utility's firm resource exhibit;
- e) whether the resource is planned or existing;
- f) type of transaction or sale, and if it is a seasonal exchange, the terms of the exchange; and
- g) the cost of the resource (including reasonable rate of return) included in the customer's retail rates and a forecast of such costs for each year of the proposed export.

BPA will also consider any ~~past use~~prior history of the resource, including prior efforts to market it to BPA or other Pacific Northwest utilities.

### **Section 5. Prior Case-by-Case Section 9(c) Interpretations**

BPA ~~will is~~not modifying its existing determinations on Pacific Northwest utility exports, including its 1994 NFP Policy determinations, and will apply its prior case-by-case interpretations of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act to such decisions without modification. Therefore, BPA incorporates by reference in this Policy these prior interpretations of sections 9(c) and 3(d) and the determinations made thereunder for the duration of the export sale.

### **Section 6. Categories of Resources**

- a) **Exports That Will Not be Decrementd by BPA.** Under this Section 9(c) Policy determination, BPA will determine based on the finding in section 2 of this policy whether or not the export of certain resources will ~~not~~ result in an increase in the electric power requirements of any of its customers. If the export of a resource does not increase the firm energy requirements of BPA's customers or could not otherwise be retained for service to regional loads, the resource may be exported without a reduction in BPA's firm load obligation under the customer's section 5(b) utility power sales contract.
- b) **Exports That Will be Decrementd by BPA.** BPA has determined, based on its prior policy interpretations of Northwest Power Act section 9(c), that the following categories of resources are conservable, and if they are exported BPA shall decrement the customer's section 5(b) power sales contract:
  - 1) all Pacific Northwest hydroelectric resources owned or purchased by a Pacific Northwest utility, whether or not dedicated in any Pacific Northwest utility's firm resource exhibit which through reasonable measures can be conserved or otherwise kept available for the utility's own needs; and
  - 2) all section 5(b)(1)(A) and 5(b)(1)(B) thermal resources that are currently dedicated by a utility in any customer's firm resource exhibit.

### **Section 7. System Sales**

BPA shall utilize a case-by-case approach to system sales. BPA shall require the exporting utility to submit an operating plan for the duration of the export, identifying these specific resources or categories of resources supporting the system sale. If the export is a system sale made up solely of a customer's resources that if exported individually would not

result in a decrement ~~if each resource were exported standing alone~~, then BPA would not decrement a customer's firm power purchase under section 5(b) for such a system sale. BPA shall decrement the customer's section 5(b) utility power sales contract in the amount and to the extent the system sale involves the export of the planned capability of hydroelectric resources to support a power sale (whether or not in a firm resource exhibit); the planned capability of a non-hydroelectric resource that is in a firm resource exhibit, or if not, that could otherwise be retained to serve regional load; or any portion of the sale that is a prohibited resale of Federal power.

Any customer that was previously a Contracted Requirements customer of BPA and that is currently purchasing power and energy from BPA under its power sales contract shall have BPA's firm power obligation under its section 5(b)(1) contract reduced for the duration of the export sale in the amount and to the extent a system sale involves the resources described above ~~for the duration of the export sale~~. If the customer was not placing load on BPA under its section 5(b) utility power sales contract at the time of the export sale, then at such time as the customer requests to place a firm load obligation on BPA, BPA shall make an appropriate determination and may reduce its energy sales to such customer in the amount and to the extent the export sale involves the resources described above and for any remaining duration of the export sale.

If the exporting utility does not provide an operating plan identifying the resources supporting the system sale, BPA will treat the system sale as made up of resources that would result in a decrement of the customer's section 5(b) utility power sales contract.

#### **Section 8. Seasonal Exchange**

Any seasonal exchange between a customer and an out of region entity that results in no net regional energy deficit during any Operating-Fiscal Year shall not result in a decrement by BPA of the customer's section 5(b) utility power sales contract.

#### **Section 9. Resource Offer**

A customer may offer any non-hydroelectric resource to BPA or to all other Pacific Northwest customers. If neither BPA nor any Pacific Northwest customer purchases the offered resource (offered at the customer's cost, including a reasonable rate of return), the resource may then be exported without a decrement of the customer's Northwest Power Act section 5(b) power sales contract. If offered for sale to BPA, the resource shall be treated as an unsolicited proposal. If BPA proposes to acquire the resource, and if it is greater than 50 aMW or offered for longer than 5 years, it will be subject to the Northwest Power Act section 6(c) process, which can take more than 12 months. If the resources are hydroelectric resources BPA shall make its determination in accordance with section 3(d) of the Regional Preference Act.

#### **Section 10. Consumer-Owned and Independent Power Producer-Owned Resources**

If a customer contracts to purchase and then export any consumer-owned resource or any resource developed by an independent power producer, such resource shall be subject to this Policy as a generating or contract resource of the purchasing customer, as appropriate.

## **Section 11. BPA Notification**

BPA shall notify in writing any customer that has exported a resource or proposes to export a resource of the outcome of BPA's section 9(c) determination. The BPA notification shall be made within 30 working days from the date BPA receives the information specified in section 4 about a specific resource.

### **C. Scope of the Section 9(c) Policy**

BPA's Section 9(c) Policy addresses the effect of exports of resources by any public body, cooperative, or IOU purchasing power under a section 5(b) contract for service after October 1, 2001. The findings and interpretations of this Section 9(c) Policy shall be applied to all exports occurring after publication of this Section 9(c) Policy. Customers that have exported resources prior to publication of the Section 9(c) Policy may face a reduction in the amount of Federal power that BPA will offer at the time they request a contract under section 5(b)(1) for service after September 30, 2001. A reduction in BPA's obligation to provide firm power requirements to a customer under its section 5(b)(1) contract will be based on a case-by-case factual determination regarding the export of a resource by a BPA customer, and may be based on the regional load-resource balance at the time of the export and other factors. BPA shall address on a case-by-case basis the effect of exports of resources by a customer purchasing power under a contract pursuant to section 5(c), section 5(d)(1), or section 5(f) of the Northwest Power Act.

**APPENDIX A – 2003 Clarifications [\(March 7, 2003\)](#)**

Clarifications Issued on BPA’s Policy for Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act, dated May 23, 2000

## APPENDIX B - Definitions

### RD CONTRACT DEFINITIONS

“Contract Resource” means any source or amount of electric power that [a customer] acquires from an identified or unidentified electricity-producing unit or units by contract purchase, and for which the amount received by [the customer] does not depend on the actual production from an identified Generating Resource.

“Dedicated Resource” means a Specified Resource or an Unspecified Resource Amount listed in Exhibit A [\[of the CHWM contract\]](#) that [a customer] is required by statute to provide or obligates itself to provide under this Agreement for use to serve its Total Retail Load.

“Existing Resource” means a Specified Resource listed in section 2 of Exhibit A [\[of the CHWM contract\]](#) that [a customer] was obligated by contract or statute to use to serve [the customer]’s Total Retail Load prior to October 1, 2006.

“Fiscal Year” or “FY” means the period beginning each October 1 and ending the following September 30.

“Generating Resource” means any source or amount of electric power from an identified electricity-producing unit, and for which the amount of power received by ~~[at the customer]~~ [\[its\]](#) retail consumer is determined by the power produced from such identified electricity-producing unit. Such unit may be owned by [the customer] or [\[its\]](#) retail consumer in whole or in part, or all or any part of the output from such unit may be owned for a defined period by contract.

[“Preliminary Net Requirement” means BPA’s forecast of \[a customer\]’s Net Requirement for each Fiscal Year prior to the removal of any resources in accordance with \[section 10 of the CHWM contract\].](#)~~Preliminary Net Requirement~~

“Specified Resource” means a Generating Resource or Contract Resource that has a nameplate capability or maximum hourly purchase amount greater than 200 kilowatts, that [a customer] is required by statute or has agreed to use to serve its Total Retail Load. Each such resource is identified as a specific Generating Resource or as a specific Contract Resource with identified parties and is listed in sections 2 and 4 of Exhibit A [\[of the CHWM contract\]](#).

“Tiered Rate Methodology” or “TRM” means the long-term methodology established by BPA in a Northwest Power Act section 7(i) hearing as the Tiered Rate Methodology to implement the [\[Regional Dialogue\]](#) Policy (as defined in the TRM) construct of tiering BPA’s Priority Firm Power rates for serving load under CHWM Contracts.

“Total Retail Load” means all retail electric power consumption, including electric system losses, within [\[a customer\]](#)~~«Customer Name»~~’s electrical system excluding:

- (1) those loads BPA and [\[the customer\]](#)«Customer Name» have agreed are nonfirm or interruptible loads,
- (2) transfer loads of other utilities served by [\[the customer\]](#)«Customer Name», and
- (3) any loads not on [\[the customer\]](#)«Customer Name»'s electrical system or not within [\[the customer\]](#)«Customer Name»'s service territory, unless specifically agreed to by BPA.

“Unspecified Resource Amount” means an amount of firm energy, listed in sections 3 and 4 of Exhibit A [\[of the CHWM contract\]](#), that [\[a customer\]](#) has agreed to supply and use to serve its Total Retail Load. Such amount is not attributed to a Specified Resource.

#### TIERED RATE METHODOLOGY DEFINITIONS

**7(i) Process** means a public process conducted, [pursuant to section 7\(i\) of the Northwest Power Act or its successor](#), by BPA to establish rates for the sale of power and other products ~~pursuant to section 7(i) of the Northwest Power Act or its successor~~.

**Above-RHWM Load** means the forecast annual Total Retail Load, less Existing Resources, NLSLs, and the customer's RHWM, as determined in the RHWM Process. [For the Transition Period, Above-RHWM Load will be established as described in TRM section 4.3.2.2.](#)

**CHWM Contract** means the power sales contract between a customer and BPA that contains a Contract High Water Mark (CHWM), and under which the customer purchases power from BPA at rates established by BPA in accordance with the TRM.

**Contract High Water Mark (CHWM)** means the amount (expressed in average megawatts), computed for each customer in accordance with TRM section 4. For each customer with a CHWM Contract, the CHWM is used to calculate each customer's RHWM in the RHWM Process for each applicable Rate Period. The CHWM Contract specifies the CHWM for each customer.

**Fiscal Year (FY)** means the period beginning each October 1 and ending the following September 30.

**Forecast Net Requirement** means the forecast of each customer's Annual Net Requirement that BPA performs in each RHWM Process.

**Rate Period** means the period of time during which a specific set of rates established by BPA pursuant to this TRM is intended to remain in effect.

**Rate Period High Water Mark (RHWM)** means the amount, calculated by BPA in each RHWM Process pursuant to the formula in TRM section 4.2.1 and expressed in average megawatts, that BPA establishes for each customer based on the customer's CHWM and the

RHWM Tier 1 System Capability. The maximum planned amount of power a customer may purchase under Tier 1 Rates each Fiscal Year of the Rate Period is equal to the RHWM for Load Following customers and the lesser of RHWM or Annual Net Requirement for Block and Slice/Block customers.

**Tier 1 Rate** means any Priority Firm Power (PF) rate (e.g., Composite, Slice, and Non-Slice Customer Rates) that reflects Tier 1 Costs and Credits and applies to power purchased under a CHWM Contract to meet a customer's general requirements.

**Tier 1 System Firm Critical Output** means the Firm Critical Output of Tier 1 System Resources less Tier 1 System Obligations.

**Tier 1 System Obligations** means the amount of energy and capacity that BPA forecasts for the Designated BPA System Obligations over a specific time period.

**Tier 1 System Resources** means the Federal System Hydro Generation Resources listed in [TRM](#) Table 3.1; the Designated Non-Federally Owned Resources listed in [TRM](#) Table 3.2; and the Designated BPA Contract Purchases listed in [TRM](#) Table 3.3.

**Tier 2 Costs** are the expenses and revenue credits that BPA will identify on [TRM](#) Table -2 and allocate to the appropriate Tier 2 Cost Pool during the applicable 7(i) Process.

**Tier 2 Rate** means any Priority Firm Power (PF) rate that reflects Tier 2 Costs and applies to power purchased under a CHWM Contract to meet a customer's Above-RHWM Load.

**Total Retail Load (TRL)** means all retail electric power consumption, including electric system losses, within a customer's electrical system, excluding:

- those loads BPA and the customer have agreed are nonfirm or interruptible loads
- transfer loads of other utilities served by such customer
- any loads not on such customer's electrical system or not within such customer's service territory, unless specifically agreed to by BPA

[As used in the TRM, TRL is always BPA's forecast of the customer's TRL.](#)

**APPENDIX C – Declaration Parameters**  
(pp. 11-12 of the BPA Power Products Catalog, revised April 2000)