

Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy

Record of Decision

NON-FEDERAL PARTICIPATION
CAPACITY OWNERSHIP CONTRACTS AND SECTION 9(c) POLICY

RECORD OF DECISION

BONNEVILLE POWER ADMINISTRATION

U.S. DEPARTMENT OF ENERGY

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NON-FEDERAL PARTICIPATION
CAPACITY OWNERSHIP
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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	S-1
 1.0 NON-FEDERAL PARTICIPATION - CAPACITY OWNERSHIP CONTRACTS	 1
1.1 Background on Capacity Ownership.....	1
1.2 Key Features of Capacity Ownership Contracts.....	2
1.2.1 Term	2
1.2.2 Management and Operation.....	2
1.2.3 Annual Operation & Maintenance, Capitalized Replacements.....	2
1.2.4 Remedial Actions	2
1.2.5 Scheduling and Operation.....	3
1.2.6 Upgrades.....	3
1.2.7 Wheeling To and From AC Intertie for Initial RTC	3
1.2.8 Wheeling To and From AC Intertie for Upgrade Share	3
1.2.9 Third Party Wheeling	3
1.2.10 Price and Payment for Capacity Ownership	4
1.2.11 Protected Areas	4
1.2.12 Sale or Reassignment	4
1.2.13 Points of Interconnection	4
1.2.14 Losses	4
1.2.15 Existing Intertie Agreements	4
1.2.16 Prudent Utility Practice	5
1.2.17 Owners Committee	5
1.2.18 Audit Rights.....	5
1.2.19 Arbitration	5
 2.0 NON-FEDERAL PARTICIPATION, NORTHWEST POWER ACT SECTION 9(c) POLICY	 7
2.1 Background	7
2.2 Prior Northwest Power Act Section 9(c) Case-by-Case Determinations.....	8
2.2.1 LTIAF Assured Delivery (Exhibit B).....	8
2.2.2 October 1983 - BPA/Montana Power Company	9
2.2.3 BPA/Tacoma Public Utilities (SCBID Hydroelectric Resource).....	9

2.3	Legal Analysis of Section 9(c).....	10
2.4	Northwest Power Act Section 9(c) Policy Background.....	11
2.4.1	Section 9(c) Policy Background.....	11
2.4.2	The Policy	11
2.5	Issues Raised by Customers and BPA's Response	13
2.5.1	Issue: Does Section 9(c) allow a decrement only if a resource is dedicated to serve firm load?	13
2.5.2	Issue: Should BPA adopt a case-by-case approach to system sales?.....	16
2.5.3	Issue: Will BPA reconsider its prior case-by-case determination?	18
2.5.4	Issue: Does BPA's NFP Section 9(c) Policy include restrictions not found in the statute?	19
2.5.5	Issue: Miscellaneous issues raised by prospective New Owners.	20
2.5.5.1	PacifiCorp.....	20
2.5.5.2	Pacific Northwest Generating Cooperative	20
2.5.5.3	Pacific Northwest Generating Cooperative	21
2.5.5.4	Tacoma Public Utilities.....	21
2.6	BPA's Non-Federal Participation, Northwest Power Act, Section 9(c) Policy	21
3.0	ENVIRONMENTAL ANALYSIS.....	22
3.1	NFP Section 9(c) Policy.....	22
3.2	Capacity Ownership Contract Issues	22
3.3	Avoidance of Environmental Harm.....	23
4.0	THE PROPOSED CAPACITY OWNERSHIP CONTRACTS AND NFP SECTION 9(c) POLICY MEET NEED AND PURPOSES.....	24
 APPENDICES		
A	Non-Federal Participation Section 9(c) Study	
B	Interpretation of Section 9(c)	
C	BPA's Non-Federal Participation, Northwest Power Act, Section 9(c) Policy	

SUMMARY

On March 25, 1994, the BPA Administrator's Record of Decision (ROD) on Non-Federal Participation Capacity Ownership was signed. Such ROD documented the decision to proceed with 725 MW of Capacity Ownership in the PNW-PSW AC Intertie for non-Federal parties, and specifically discussed (1) the background of the PNW-PSW AC Intertie and BPA's access policies and proposals; (2) the general features of the Capacity Ownership proposal and its supporting NFP EIS analysis; (3) PNW-PSW AC Intertie capacity allocations between BPA and non-Federal parties; and (4) BPA's Protected Area provisions and how they would be applied to Capacity Ownership. The Capacity Ownership decision followed extensive review and analysis by BPA, and expressions of interest by utilities and members of Congress to give full consideration to non-Federal participation in the financing and use of the Third AC Intertie expansion.

As specified in Section 1.3.3.2 of the Non-Federal Participation Capacity Ownership ROD, BPA would address the final Capacity Ownership contract terms and the Northwest Power Act Section 9(c) Policy, and how it relates to BPA's Capacity Ownership offering, in a separate ROD. Accordingly, such items are discussed herein.

1.0 NON-FEDERAL PARTICIPATION - CAPACITY OWNERSHIP CONTRACTS

1.1 Background on Capacity Ownership

Shortly after a new AC Intertie was authorized by Congress in July 1984, PNW utilities expressed interest in participating in it in some manner. On June 22, 1987, BPA received a letter from the Chairman of the US House of Representatives Committee on Energy and Commerce requesting BPA to study non-Federal utility participation in the Third AC Intertie, and urging BPA to offer some type of non-Federal participation.

BPA released its study of non-Federal participation in the Third AC Intertie in March 1988. The study described options for non-Federal participation and examined their consequences in light of various criteria, but made no recommendation whether to offer non-Federal participation or what type of non-Federal participation might be offered.

In December 1988, BPA released a proposal for non-Federal participation (1988 Proposal) wherein BPA would offer up to 725 MW of its share of the Third AC Intertie for use by PNW non-Federal scheduling utilities for scheduling rights on the PNW AC Intertie only through the year 2016. BPA also proposed to retain physical ownership of the facilities and decision making authority over the operation, maintenance, planning, and construction of the facilities. The 1988 proposal contemplated that non-Federal participants would make lump sum payments for construction and related costs upon execution of the participation contracts, rather than through annual payments over the term of the agreement.

Throughout 1989, BPA worked with PNW scheduling utilities interested in participating in the Third AC Intertie to develop a participation proposal that would meet their needs. As a result, BPA modified the portion of its 1988 Proposal relating to the pricing methodology (the 1989 Proposal).

In early 1990, interested utilities objected to the limited term proposed for scheduling rights. Instead, they expressed significant interest in scheduling rights for the life of the facilities. As a result of further review and analysis, BPA revised its 1989 Proposal to become what is now known and referred to herein as Capacity Ownership. Capacity Ownership is BPA's offer for life-of-facilities non-Federal capacity rights in BPA's share of the PNW AC Intertie capacity to be made to qualified PNW non-Federal scheduling utilities (referred to herein as New Owners).

1.2 Key Features of Capacity Ownership Agreements

1.2.1 Term

Capacity Ownership Agreements will each be effective upon the execution of the Agreement by BPA and the New Owner. (Puget Sound Power and Light and PNGC Agreements will be effective following their approval by the Federal Energy Regulatory Commission and the Rural Electrification Administration, respectively.) Each Agreement shall remain in effect so long as any of the facilities of the PNW AC Intertie are in existence and operable, unless terminated earlier by written agreement or pursuant to the terms of the Agreement.

1.2.2 Management and Operation

Pursuant to its Intertie Agreements with Portland General Electric Company and PacifiCorp, BPA is the operator of the PNW AC Intertie. BPA's duties relative to the PNW AC Intertie include, without limitation, (1) determining the operational transfer capability (OTC); (2) addressing emergency and maintenance outages; and (3) giving and receiving switching orders. BPA shall determine and revise as necessary, with notice to New Owners, the rated transfer capability (RTC) of the PNW AC Intertie. If during the term of the Agreement the RTC becomes less than 3450 MW, or if during the term of the Agreement there is an imminent likelihood that the RTC will become less than 3450 MW, BPA will reinforce the Federal Columbia River Transmission System to maintain the 3450 MW RTC. BPA will provide New Owners notice of maintenance outages in accordance with accepted standards for such conditions on the PNW AC Intertie.

1.2.3 Annual Operation & Maintenance, Capitalized Replacements

The New Owners will pay 21 percent of BPA's annual costs associated with operating and maintaining BPA's PNW AC Intertie, including the direct, indirect and overhead costs of annual operation and maintenance, general plant, replacement and reinforcement projects, contracts and rates, power scheduling and end of term and other costs (see Non-Federal Capacity Ownership Rate Proposal, Administrator's Final Record of Decision, March 1994, Section 3.5).

1.2.4 Remedial Actions

BPA shall notify New Owners of BPA's plan for remedial actions to support the PNW AC Intertie RTC, which includes, but is not limited to, generator dropping required to support the RTC of BPA's share of the PNW-PSW AC Intertie. BPA and each New Owner are each responsible for or will make arrangements for their pro rata shares of generator dropping or other remedial actions required to maintain such RTC.

1.2.5 Scheduling and Operation

Each of the New Owners will submit schedules to the Joint Intertie Scheduling Office. BPA will be the operator, and will operate the PNW AC Intertie consistent with the Northwest Intertie Agreements and Prudent Utility Practice.

1.2.6 Upgrades

BPA will develop any plans for upgrades consistent with its PNW-PSW AC Intertie Agreements with PacifiCorp and PGE, and in consultation with the New Owners. New Owners will have the option to participate in PNW-PSW AC Intertie capacity increases resulting from upgrades provided they pay capital and related costs and the annual costs associated with the upgrade (see Non-Federal Capacity Ownership Rate Proposal ROD dated March 25, 1994).

1.2.7 Wheeling To and From AC Intertie for Initial RTC

BPA will make available to New Owners network wheeling between the PNW-PSW AC Intertie and the New Owner's system in an amount equal to each New Owner's share of RTC, exclusive of upgrades. Such network wheeling will be provided for a period of up to 20 years, and is the same quality and on terms and conditions consistent with that being offered to other BPA customers similarly situated. At the end of the initial term, BPA will offer to extend wheeling of the same quality as, and on terms and conditions consistent with, that being offered at that time to other BPA customers similarly situated.

1.2.8 Wheeling To and From AC Intertie for Upgrade Share

To the extent that BPA has capacity in excess of its needs and obligations at the time upgraded capacity is being offered, BPA will make available, through existing or new contracts to each New Owner, network wheeling between the PNW-PSW AC Intertie and the New Owner's system in an amount equal to each New Owner's share of any amount of RTC in excess of New Owner's share of RTC prior to the upgrade. Such network wheeling would be of the same quality as, and on terms and conditions consistent with, that being offered to other BPA customers similarly situated.

1.2.9 Third Party Wheeling

New Owners will have the choice of one of two options with regard to third party wheeling. Under option 1, a New Owner would forego the right to use its OTC to transmit power for third parties and would allow any of its unused capacity to revert to BPA. In such case, BPA would pay the New Owner a pro rata share of all of the wheeling revenues that BPA receives (exclusive of revenues received for firm wheeling) from providing short-term transmission to other utilities on the PNW-PSW AC Intertie. New Owner's who select option 1 will retain any rights they might have to access BPA PNW-PSW AC Intertie capacity under BPA's LTIAP or its successor.

Under option 2, a New Owner may use its OTC to transmit power for third parties. Neither BPA nor the New Owner is required to make its unused OTC available to the other party. New Owners who select this alternative must waive access to BPA PNW-PSW AC Intertie capacity under BPA's LTIAP or its successor.

1.2.10 Price and Payment for Capacity Ownership

See Non-Federal Capacity Ownership Rate Proposal ROD dated March 25, 1994.

1.2.11 Protected Areas

New Owners will not use RTC for transmission of power from new hydroelectric projects which are constructed in Columbia River Basin Protected Areas after designation thereof by BPA in the LTIAP or its successor, unless the New Owner is required by regulatory authority to purchase the output of such project or unless BPA receives sufficient demonstration that a particular project would provide benefits to existing or planned BPA fish and wildlife investments or the Pacific Northwest Electric Power and Conservation Planning Council's Fish and Wildlife Program as described in BPA's LTIAP.

1.2.12 Sale or Reassignment

The New Owner's Capacity Ownership Agreement or any interest therein shall not be transferred, sold, alienated or assigned by New Owner without BPA's prior and express written consent, such consent not to be unreasonably withheld; except that BPA consents to security assignment or other like financing arrangements and certain transfers to other New Owners and PNW non-Federal scheduling utilities.

1.2.13 Points of Interconnection

New Owners will be able to schedule power at either Malin or Captain Jack substations consistent with BPA's rights under its PNW-PSW AC Intertie Agreements with PacifiCorp and PGE.

1.2.14 Losses

Average losses on net schedules on the PNW AC Intertie will be calculated according to the loss factors contained in the Agreement.

1.2.15 Existing Intertie Agreements

BPA will use its best efforts to maintain New Owners' rights under their Capacity Ownership Agreements by making no modification to BPA's PNW AC Intertie Agreements with PacifiCorp and PGE, and by not entering into any other agreement with respect to the ownership, operation, maintenance, or management of the PNW AC

Intertie, or by making any modification to such other agreements, that would have a substantial negative impact on New Owners' without their prior written consent. New Owners consent to BPA's modification of the PNW AC Intertie Agreements with PacifiCorp and PGE, and such other agreements entered into by BPA, with respect to the ownership, operation, maintenance, or management of the PNW AC Intertie to the extent that such modification is to enable BPA to fulfill its Capacity Ownership contract obligations.

1.2.16 Prudent Utility Practice

Operations, maintenance, management, reinforcements, and upgrades of PNW-PSW AC Intertie facilities shall be consistent with Prudent Utility Practice.

1.2.17 Owner's Committee

An Owner's Committee will be established to review matters relative to the operation, management, and maintenance of the PNW AC Intertie. An Operating Plan that establishes New Owners annual cost payments will be developed by BPA annually and presented to an Owner's Committee for review. If New Owners disagree with the costs in BPA's proposal, New Owners may take individual cost items in the Operating Plan to arbitration.

1.2.18 Audit Rights

The Owner's Committee will have the right to perform audits of BPA's books, records, and documents that directly pertain to (1) determination of or billing or refund for the Capacity Ownership price; and (2) determination of any charges billed to New Owner for Annual Charges, Upgrade Charges, or End of Term Charges.

1.2.19 Arbitration

The Capacity Ownership Agreement provides for two types of arbitration: binding arbitration and nonbinding arbitration. The binding arbitration provision permits the New Owners to submit to binding baseball arbitration factual issues regarding most, but not all, costs contained in the Operating Plan. If the New Owners prevail in this arbitration, the sole remedy is to reduce the amount of annual costs paid by the New Owners by the difference between the cost of the New Owners' proposed alternative and the alternative proposed by BPA.

The nonbinding arbitration provision permits either BPA or the New Owners to submit to baseball arbitration disputes that cannot be arbitrated pursuant to the binding arbitration provision and any other dispute arising under the Agreement, with limited exceptions. After the arbitrators render a decision pursuant to this provision, BPA's Administrator has 90 days to accept or reject the decision. If the Administrator accepts the decision, it

becomes binding on the parties. If the Administrator elects to reject the decision, he or she must do on the basis of criteria listed in the Agreement.

2.0 NON-FEDERAL PARTICIPATION, NORTHWEST POWER ACT

SECTION 9(c) POLICY

2.1 Background

In 1968, the PNW-PSW AC Intertie began operation. Among other purposes, the PNW-PSW AC Intertie was constructed to provide additional markets for BPA surplus firm and nonfirm power. In addition, to the extent that there was transmission capacity in excess of Federal needs, Congress intended that utilities in the PNW and the PSW to take advantage of the seasonal diversity that exists between these regions by facilitating interregional exchanges.

In May 1988, BPA finalized its Long-Term Intertie Access Policy (LTIAP), which established various operating conditions under which both Federal and non-Federal utilities would have access to the Intertie.

BPA's Non-Federal Participation policy goal was to ensure that potential New Owners had an equitable opportunity to acquire a share of transmission capacity in the Intertie, that is as close to full "ownership" as possible.

In order to become a New Owner, a PNW utility was first required to complete a contract for the sale or exchange of a regional resource with a PSW utility. The purpose of this was to ensure that the Capacity Ownership share would be used by the New Owner.

Whenever there is an export of a regional resource, BPA is required under Public Law 96-501, the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Section 9(c), to make a determination of whether the export of the exporting entity's resource will result in an increase in the electric power requirements of any of its customers in the PNW and whether the resource could be conserved or otherwise retained in the PNW for service to load in the PNW.

If BPA's determination results in a finding that the proposed export of a resource would result in an increase in BPA's electric power requirements of any of its customers under BPA's requirements power sales contracts, and the resource could have been conserved or otherwise retained to serve regional loads through reasonable measures, then BPA is required to exclude from its firm power load obligation under the exporting utility's power sales contract, the amount of power and energy of the export sale and for the duration of such sale.

If, on the other hand, BPA finds that the export of the PNW resource would not result in any increase in the electric power requirements of BPA for that customer or any other customer, and BPA finds that the energy could not be conserved or otherwise retained for

service to regional load by reasonable measures, then BPA will not decrease its obligation to the exporting utility under its power sales contract. A determination is essentially a factual evaluation of regional loads and resources available on a planning basis and BPA's firm power load obligations and resources, and how the resource(s) proposed for export fit into the resource mix available to customers and BPA.

In implementing Northwest Power Act, Section 9(c), BPA must reasonably evaluate the risk of BPA becoming obligated to acquire additional resources which it would otherwise not plan to acquire to serve increased load obligations as a result of the New Owner's ability to make an export. For this Section 9(c) Policy on Non-Federal Participation (NFP Section 9(c) Policy), BPA will apply its prior case-by-case interpretations on Section 9(c) of the Northwest Power Act. It is not BPA's proposal to change these prior policies and interpretations under this NFP Section 9(c) Policy.

Rather, it is BPA's intent in this section 2.0 to address, for the initial exports by New Owners, any Section 9(c) issues raised by the export by New Owners of up to 725 MW of regional resources, which is currently the maximum amount of PNW-PSW AC Intertie capacity available under Non-Federal Participation. (See Appendix A, Non-Federal Participation Section 9(c) Study.) As a result of the determinations made under this NFP Section 9(c) Policy, other BPA customers, public interest groups, the public and each New Owner will know how BPA will apply its NFP Section 9(c) Policy determinations under Public Law 96-501, the Northwest Power Act, to those resources the New Owners initially intend to export.

BPA will also apply its NFP Section 9(c) Policy to subsequent 9(c) related determinations whenever PNW resources are exported whether by New Owners or by third parties over a New Owner's PNW-PSW Intertie share.

2.2 Prior Northwest Power Act Section 9(c) Case-by-Case Determinations

2.2.1 LTIAF Assured Delivery (Exhibit B)

LTIAF section 4(a)(4)(A) and (B) "Waiver of Service Obligation" requires a PNW utility exporting under an Assured Delivery contract to agree as a condition of its Assured Delivery contract to reduce BPA's firm load obligation to the utility engaged in the export, for a specified period, and in an energy amount equal to the amount of energy for which the Assured Delivery contract is provided. (The reduction of BPA's obligation to serve firm load when an export of a regional hydro resource is made, begins with the Operating Year the export deliveries start, while an export of a thermal resource is based on a notice from BPA that BPA is in load-resource balance and the exported resource is needed to meet firm power requirements load in the PNW.)

2.2.2 October 1983 - BPA/Montana Power Company

In response to a letter inquiry from legal counsel for the Montana Power Company, the customer asked, if in interpreting Northwest Power Act Section 9(c), BPA would reduce a customer's firm energy requirements by the amount of firm energy generated at a customer's hydroelectric project and exported outside the region, even when that resource is not listed in a customer's firm resources exhibit. BPA's Office of General Counsel responded that such exported hydroelectric power would be excluded (decremented) from BPA's firm power load in determining BPA's obligation to a customer under its requirements contract and excluded from the customer's firm energy requirements under Sections 1(f) and 3(d) of the Act of August 31, 1964, (The Northwest Preference Act) because the hydroelectric power could either be conserved or kept available for use against the customer's loads in the region.

Montana Power Company then asked if energy from utility's thermal resources also not included in a customer's firm resource exhibit would be similarly excluded (decremented) if the resource were exported. BPA's Office of General Counsel responded that exported power from thermal projects which were currently listed in a customer's firm resources exhibit as available to serve the customer's regional firm power loads, similarly would be excluded from BPA's firm load obligation to the customer.

2.2.3 BPA/Tacoma Public Utilities (SCBID Hydroelectric Resource)

In a March 19, 1984, letter from BPA to Tacoma Public Utilities regarding the export by Tacoma Public Utilities of its South Columbia Basin Irrigation District (SCBID) hydroelectric resource, BPA determined that Tacoma Public Utilities' SCBID resource was conservable and could be kept available to meet Tacoma Public Utilities' energy loads in the Pacific Northwest. Tacoma Public Utilities concluded an export sale contract of its SCBID hydro resource with the Western Area Power Administration (California) and BPA reduced Tacoma's firm power load requirements on BPA in the amount of the export sale.

BPA said the following in its letter to Tacoma Public Utilities:

"* * * While BPA agrees with the City of Tacoma * * * that [S]ections 5(b) and 9(d) of the [Northwest Power Act] allow a utility the flexibility to determine whether resources will be used to serve a utility's firm load, these sections do not permit a BPA customer to circumvent BPA's obligations under [P.L. 88-552] the Regional Preference Act for the reasons described below.

"Section 3(d) of the Regional Preference Act restricts BPA's ability to sell firm power to a utility to replace hydroelectric energy generated in the Pacific Northwest and disposed of outside the region which a utility could have kept available for its own needs in the region. Section 3(d) allows BPA to sell as

replacement for such energy only surplus energy subject to cut-off on 60 days' notice.

"BPA has determined that Tacoma could have kept for its own use the hydroelectric energy generated from Tacoma's share of the projects on the South Columbia Basin Irrigation District (SCBID) canals. * * *

"A customer's ability to determine which resources would be used to serve its firm load pursuant to [S]ection 5(b) of the [Northwest Power Act] is limited by the requirements of [S]ection 3(d) of the Regional Preference Act as incorporated in [S]ection 9(c) of the [Northwest Power Act]. Section 9(c) directs BPA, in making any determination of the amount of firm power BPA would sell Tacoma under its power sales contract, to exclude from a customer's entitlement to purchase firm power (1) hydroelectric generated energy excluded from a utility's firm power requirements pursuant to [S]ection 3(d) of the Regional Preference Act and (2) electric energy from other resources a utility determines will be used to serve its firm load pursuant to [S]ection 5(b) which is sold by the utility outside the region and which increases a utility's firm energy requirements as a result of such sale. * * *

"BPA's obligations under [S]ection 3(d) of the Regional Preference Act and [S]ection 9(c) of the [Northwest Power Act] to exclude from a customer's entitlement to purchase firm power hydroelectric energy sold outside the Pacific Northwest are triggered irrespective of whether a sale of hydroelectric generated energy outside the region increases a utility's firm energy requirements on BPA as a result of the sale. Sales by BPA of firm [requirements] power to replace hydroelectric generated energy sold outside the Pacific Northwest are precluded even if a utility had not elected to use such hydroelectric generated energy to serve its own firm loads under Section 5(b)(1) of the Northwest Power Act."

The policy principles and interpretation applied in these earlier requests by customers for determinations on the consequence of a proposed hydro or thermal resource export upon BPA's firm power load obligation to the customer (electric power requirements) under Section 9(c) of the Northwest Power Act and the customer's energy requirements under Section 1(f) of the Northwest Preference Act, will be applied when considering current and future NFP related 9(c) determinations.

2.3 Legal Analysis of Section 9(c)

BPA's legal analysis of Section 9(c) is found in Appendix B.

2.4 Northwest Power Act Section 9(c) Policy Background

2.4.1 Section 9(c) Policy Background

The NFP Section 9(c) Policy is intended to facilitate BPA's determinations regarding the export by New Owners of the following: (1) newly developed regional resources which have never been dedicated in any firm resources exhibit; and (2) existing regional resources (which are not hydro) which are not in any BPA customers' firm resources exhibit and which have been offered for sale to BPA and the region but have not been acquired by any PNW entity. The NFP Section 9(c) Policy applies previously defined policy on the export of regional resources which are currently dedicated to serving firm loads in any utility's firm resources exhibit and is not intended to encourage export, particularly when BPA and some of BPA's utility customers are in load/resource balance or deficit.

In order to be responsive to the New Owners' need for a NFP Section 9(c) Policy determination, BPA intends the application of this NFP Section 9(c) Policy determination (based on BPA's supporting factual analysis) to be limited initially to those exports proposed by New Owners who have obtained or may obtain a share of the Intertie. These initial Section 9(c) determinations need to be made so that New Owners will know whether the proposed export will result in BPA decrementing their firm power load requirements under their Section 5(b) utility power sales contract.

2.4.2 The Policy

The following are the major components of BPA's NFP Section 9(c) Policy and determinations regarding Capacity Owners proposed exports:

- (a) BPA's Office of Energy Resources completed a study regarding the probability of any increase in BPA's firm load obligations of the exporter or any other customers' energy obligations as a result of an export by a New Owner of up to 725 MW of Pacific Northwest resources. BPA's analysis used the following information: BPA's White book data; customer load/resource information; customer resource stacks, and the least-cost plans of those utilities who have stated in the past that they are not planning to place load on BPA;
- (b) Under its initial NFP proposal, New Owners will be able to export up to a maximum of 725 MW of regional resources over their transmission capacity;
- (c) The NFP Section 9(c) Policy will be consistent with BPA's prior policy and interpretations under Northwest Power Act Section 9(c) and Northwest Preference Act 3(d) as noted in letter response determinations, e.g., letter to Tacoma Public Utilities (SCBID);

- (d) BPA will apply its NFP Section 9(c) Policy to the specific resources of New Owners based on the information provided which describes specific resources and categories of resources for export;
- (e) Under BPA's NFP Section 9(c) Policy, newly developed thermal resources not in any firm resources exhibit may be exported by a New Owner without any decrement of a New Owner's Section 5(b) utility power sales contract (limited by the 725 MW);
- (f) Exports of regional hydro resources, and thermal resources in firm resources exhibits, will result in a decrement of the New Owner's Section 5(b) utility power sales contract especially if firm power is being exported;
- (g) Seasonal exchanges between the PNW and PSW which result in no net energy export out of region or loss to the region on an annual basis will not result in a decrement of BPA's firm power load obligation under a New Owner's power sales contract. Seasonal exchanges generally return an equal or greater amount of energy when needed during the Operating Year. There should be no need for the utility to place additional load on BPA and for BPA to acquire replacement energy resources. An increase in annual energy purchases by the exchanging utility should not be needed in the PNW to support an exchange;
- (h) System sales may result in a reduction in BPA's firm load obligation to the exporting customer under its requirements contract with BPA because the export is not limited to specific resources and such sales could involve the export of available hydro resources, thermal resources dedicated to serve regional load in a firm resources exhibit, or indirect sales of Federal requirements power and energy inconsistent with the provisions of the customer's power sales contract Exhibit A, General Contract Provisions; Section 9(c) of the Northwest Power Act; and Sections 2, and 3(d) of the Regional Preference Act. However, if the system sale consists of identifiable resources which would be allowed as exports without a decrement if they were exported as "stand alone" resources and the customer's obligation to deliver power or energy out of region is limited to such resources, or such delivery is terminable in favor of the customer's PNW loads and exercised prior to increasing the customer's firm requirements purchase from BPA, then BPA will make a case-by-case determination of whether a system sale will result in a decrement of the New Owner's Section 5(b) power sales contract;
- (i) BPA will consider whether the export obligation of the New Owner includes the right to terminate delivery of energy and power in favor of PNW loads in its export sale. If the utility would discontinue its export sale of a resource, on notice from BPA that the resource will be needed by a certain date to serve load in the PNW; then depending upon specific contract terms, BPA will make a case-by-case determination of whether to decrement the customer's firm power requirements load obligation; and
- (j) A New Owner may decide to offer a resource not dedicated to PNW load to BPA and other PNW generating utilities at the New Owner's cost including a reasonable rate of

return. If the resource is not a hydro resource and is not purchased after being offered in the region, it may be exported without a decrement of the New Owner's Section 5(b) utility power sales contract.

2.5 Issues Raised by Customers and BPA's Response

On April 2, 1993, BPA mailed out its proposed NFP Section 9(c) Policy to the 11 Non-Federal Participation Memorandum of Understanding signers, who would potentially be allocated a share of Intertie and who would need to know the effect of BPA's NFP Section 9(c) Policy on their proposed export sales. The NFP Section 9(c) Policy only addressed those exports of New Owners who export regional resources over their share of the Intertie. BPA also sent its proposed NFP Section 9(c) Policy to 800 interested parties, including other BPA customers, public interest groups and members of the general public who had previously shown an interest in Non-Federal Participation. BPA's comment period closed on April 30, 1993. The Official Record includes six letters received during the public comment period on the proposed NFP Section 9(c) Policy. These comments are part of the Official Record.

BPA sent out a letter on July 22, 1993, to the Non-Federal Participation interested parties and a letter on July 30, 1993, to the six remaining prospective New Owners summarizing the comments and reporting on BPA's next steps. BPA explained that it would not be able to make final Section 9(c) determinations on proposed exports until after the Non-Federal Participation Environmental Impact Statement had been approved by BPA and the Department of the Energy and the Non-Federal Capacity Ownership Record of Decision had been signed.

BPA reviewed the comments received, identified the concerns expressed, and gives its response in this section 2.5. For each specific subject area the issue is stated, the comments are summarized, and BPA's analysis and the decision made in response to the comments are presented.

BPA received comments from Emerald People's Utility District; Eugene Water & Electric Board; PacifiCorp (PacifiCorp sought and received a brief extension of the comment period); Pacific Northwest Generating Cooperative; Snohomish County Public Utility District No. 1; Tacoma Public Utilities; and Washington Water Power Company.

2.5.1 Issue - Does Section 9(c) Allow a Decrement Only if a Resource is Dedicated to Serve Firm Load?

Customer Comments

Emerald People's Utility District - Sections 9(c) and 9(d) of the Northwest Power Act require BPA to make specific findings relative to the proposed export before it can decrement requirements services and avoid furnishing transmission for the export. Applying a blatant policy approach to decrement requirements service is inconsistent with

the Northwest Power Act. The specific findings are as follows: (1) For hydro apply the Regional Preference Act; and (2) For nonhydro the resource must have been dedicated to the firm load of the customer and the energy must have been sold outside the region, that customer's firm requirements or the firm requirements of other customers are increased, and through reasonable measures, the energy could not have been conserved or otherwise retained for service to Northwest loads. If any of the applicable (hydro versus nonhydro) findings are not met, BPA service should not be decremented and 9(d) should be examined to determine if BPA must supply transmission services.

Eugene Water & Electric Board - Eugene Water & Electric Board's position regarding the Office of Energy Resources Study supporting the proposed NFP Section 9(c) Policy is that Section 9(c) was intended to allow a utility served by BPA to make a determination concerning whether the utility would take a nonhydro resource to load or sell the output of the resource in whole or in part to another utility in the region or outside of the region. Eugene Water & Electric Board's position is that the first question in deciding whether the utility will face a decrement depends by law on the utility's decision whether to dedicate the resource to load and not on any BPA analysis. The NFP Section 9(c) Policy document says, "New Owners will be able to export up to a maximum of 725 MW of regional resources." There is no limit imposed by Section 9(c) as to the amount of resources that may be exported. This is reinforced by Section 9(d). BPA has no right or basis to determine that a nonhydro resource cannot be exported because BPA believes that the resource sometime in the future might be used to serve regional loads. Eugene Water & Electric Board objects to BPA saying that newly developed thermal resources will generally be allowed to be exported by a New Owner without any decrement of their section 5(b) utility power sales contract. Eugene Water & Electric Board thinks that export of regional nonhydro resources never dedicated to firm load is allowed under Section 9(c) without a decrement. Eugene Water & Electric Board states that BPA in its proposed NFP Section 9(c) Policy is treating as policy matters issues that were resolved by Congress and argues that the policy fails to recognize that if a utility has not taken a nonhydro resource to load, Section 9(c) does not allow BPA to decrement the utility if the resource is sold outside the region.

Eugene Water & Electric Board agrees that BPA has some discretion and agrees that BPA can allow the sale of a resource without decrement that has been used to meet regional loads if BPA determines that such a sale will not increase its obligations to meet regional loads. Furthermore, before it imposes a decrement BPA is required to make a policy determination that the output sold could not have been through reasonable measures conserved or retained for service to regional loads.

Pacific Northwest Generating Cooperative - Most troubling is the idea that resources which had never been committed to Northwest load could be decremented by BPA. Dedication of a resource to firm load is an integral and explicit part of Section 9(c) and BPA's proposed and future Section 9(c) policies should recognize this.

Snohomish County Public Utility District No. 1 - Restrictions of non-Federal hydropower are governed by the Northwest Preference Act. Restriction on export of non-Federal thermal pursuant to Section 9(c) apply only to resources which have been dedicated to serve firm load in the region. Section 9(c) only permits restrictions on exports of non-Federal thermal when power has been dedicated to serve firm load; power is sold outside the region; as a result of the sale BPA's obligation to serve firm load is increased and the thermal power saved could be conserved for sale in the Northwest. If implemented as proposed the language would inject unpredictability into the use of Third AC capacity by Non-Federal Participation participants, raise serious questions about investing in the Third AC Intertie and provoke time wasting litigation which is likely to delay implementation of Non-Federal Participation.

BPA Analysis and Decision

Some of the BPA customers who commented are concerned about BPA taking a policy approach to decrementing requirements service. BPA agrees that the statute is the basis for the BPA Administrator to make a Section 9(c) determination whenever a Pacific Northwest utility with a BPA utility power sales contract makes an export of a Pacific Northwest resource. However, BPA as a Federal power marketing agency has a right to take a case-by-case approach or develop policies that provide more detail on how it intends to carry out its statutory responsibilities. As a result, BPA has chosen to develop a NFP Section 9(c) Policy.

BPA agrees with its customers that its Section 3(d) and Section 9(c) determinations must include the following elements: (1) whether the Pacific Northwest resource being exported is a hydro or thermal resource, (2) whether the resource has been dedicated to serve regional requirements load, (3) whether the load of the exporting customer or that of any other Pacific Northwest customer would increase as a result of the export, and (4) whether the energy could have been conserved or otherwise retained for service to Northwest loads.

However, the BPA Section 9(c) determination is neither simple nor automatic. First, there is no circumstance in which BPA can prevent an export of a Pacific Northwest resource. The only question is whether BPA has a legal basis to decrement the New Owner's utility power sales contract. Second, it is a little more complicated than simply saying the resource is thermal and is not in a firm resources exhibit and therefore can be exported without decrement. Although BPA cannot prevent an export, BPA can decrement an exporting customer's BPA utility power sales contract, if the export increases the requirements load of BPA or another Pacific Northwest utility customer of BPA, either now or in the future. BPA must take into account the load/resource situation in the Pacific Northwest at the time of the export and in the foreseeable future. If BPA or the region is experiencing a major deficit, this may well impact BPA's determination whether to decrement. BPA must also look at the cumulative impact of separate exports of regional resources although this concern was addressed in Non-Federal Participation because the initial Capacity Ownership allocation was 725 MW. There is a reasonableness

factor of how far into the future BPA should look. If the export will result in an increase in load in the Pacific Northwest, then BPA must determine whether the resource could have been conserved or retained in the region to serve requirements load.

BPA agrees that there is no 725 MW limit in Section 9(c) and there is no limit imposed by Section 9(c) on the amount of resources that may be exported from the Pacific Northwest. However, in order to sign a Capacity Ownership Agreement with New Owners, BPA has a variety of legal and process steps it must comply with in a relatively short time period. BPA must comply with the National Environmental Policy Act of 1970 (Public Law 91-190), with its statutes and with its public involvement process steps. With limited time, BPA chose to develop a Non-Federal Participation policy approach specific to the Northwest Power Act, Section 9(c), rather than a broad-based 9(c) policy which would have addressed all exports from the Pacific Northwest. The 725 MW sets the parameters for BPA's analysis of the impact on the region (environmental, power supply, transmission capacity, etc.) for the initial exports under Non-Federal Participation.

For the purposes of the BPA Office of Energy Resources' analysis of the initial Non-Federal Participation exports, BPA examined the following: (1) the impact on BPA and the region of a maximum of 725 MW of Pacific Northwest resources being exported (this was the amount of Intertie transmission capacity that was initially offered by BPA); (2) the factual basis of each transaction including the type of resource being exported; (3) whether it had been in a firm resources exhibit; (4) the type of transaction (power sale, exchange, etc.); and (5) the duration of the transaction. BPA concluded that in all but one case involving the export of regional hydro energy that the Non-Federal Participation exports could occur without a decrement of the New Owners' utility power sales contracts with BPA.

2.5.2 Issue - Should BPA Adopt a Case-by-case Approach to System Sales?

Customer Comments

Emerald People's Utility District - If a system sale is restricted to the sale of only resources that would individually not require a decrement pursuant to Section 9(c) then such sale should not result in a power sales contract decrement.

PacifiCorp - BPA should not decrement the Section 5(b) power sales contract for system sales if the selling utility can support the sale with surplus firm energy from thermal generating units not included in its firm resources exhibit. If a BPA customer possesses only regional generation resources as listed in its firm resources exhibit and makes a system sale, BPA's conclusions about system sales are correct as to the effect of that system sale. PacifiCorp should be able to market to other utilities a system sale equal to its surplus regional and extra regional thermal resources without jeopardizing PacifiCorp's entitlement to BPA power to meet Northwest regional loads. Participants agree that such marketing cannot constitute the export of hydro resources, conservable thermal resources in a firm resources exhibit or the indirect sale of Federal power and energy. PacifiCorp

could market power either as a sale from designated generating units or as a system sale. In both cases the amount of energy sold and the impact, or absence of impact, on BPA would be identical. However, a system sale permits PacifiCorp to offer greater operational flexibility to the purchaser and allows PacifiCorp to use the pricing permitted for its resource pools as filed with the Federal Energy Regulatory Commission. PacifiCorp assigns a pool of generation resources to a sale designated as a system sale for Federal Energy Regulatory Commission pricing purposes. If PacifiCorp makes a system sale having adequate surplus nonhydro resources, it should still be able to use a pool including non surplus or Pacific Northwest hydro resources to determine the price of the system sale. In order to carry out the purposes of BPA's NFP Section 9(c) Policy in the event of a system power sale, the selling utility should be required to demonstrate that it has available surplus firm energy from thermal generating units not included in its firm resources exhibit in an amount at least equal to the amount of energy to be exported. To the extent of such surplus the sale of power cannot affect BPA's power supply obligations. However if the utility cannot make the above showing, BPA would be correct in concluding that the export involves hydro resources, conservable thermal resources in a firm resources exhibit, or the indirect sale of Federal power and energy.

Snohomish Public Utility District No. 1 - Snohomish Public Utility District No. 1 feels that BPA's proposed policy on system sales is too draconian. Snohomish Public Utility District No. 1 states that proper application of Section 9(c) to system sales requires a practical rule which takes into account the diversity of system sales. Snohomish Public Utility District No. 1 recommends that BPA make case-by-case determinations on system sales. The customer should be required to submit an operating plan which supports the sale. To the extent the operating plan shows that firm power from hydro resources or thermal resources dedicated to serving firm regional load will be supporting the system sale, BPA should decrease its firm deliveries by an amount equal to the firm power from such resources used to support the system sale.

BPA Analysis and Decision

BPA's policy goal as it addresses proposed system sales is to decrement only those exports which include PNW hydro resources, thermal resources in firm resources exhibits, and prohibited resales of Federal power. BPA agrees with its customers that if the resources included in a system sale are ones that would otherwise qualify for export without a BPA decrement, if they were exported on a resource specific basis, then BPA should not decrement the sale simply because it is a system sale, so long as the resources are clearly identified and meet all of the other statutory and policy criteria for export without a decrement. BPA agrees with Snohomish Public Utility District No. 1 that the New Owner who wants to make an export using a system sale should be required to submit an operating plan and the New Owner would have the burden to show that the export did not contain power and energy from hydro resources, thermal resources in a firm resources exhibit or involved prohibited resale of Federal power. If there were, BPA would decrement the exporting utility.

2.5.3 Issue - Will BPA Reconsider its Prior Case-by-Case Determination?

Customer Comments

Tacoma Public Utilities - BPA's statement that its proposed NFP Section 9(c) Policy will be consistent with its prior case-by-case approach to Section 9(c) determinations appears to be a BPA interest. Has BPA adequately considered if its interest in consistency with prior determination might be offset by other considerations (e.g., Since 1984, BPA and others have become more aware of benefits for interregional power transactions and benefits they can produce)? Tacoma Public Utilities' sale to the Western Area Power Administration is designed to capture some of these benefits. Tacoma Public Utilities encourages BPA to include facilitation of efficient power supply markets as a major interest to be promoted under the NFP Section 9(c) Policy. Tacoma Public Utilities previously expressed its concern that BPA's prior case-by-case determination affecting Tacoma Public Utilities went beyond the intent of the Northwest Power Act. Tacoma Public Utilities said that at the time (1984) BPA made its determination, BPA was facing downward pricing pressures because of its significant power surpluses and therefore BPA's Section 9(c) determination may have been influenced by its other interests at the time. Since these market forces have changed with the depletion of the regional power surplus, then BPA should no longer have the incentives to protect its "market power" by limiting Pacific Northwest utilities access to Pacific Southwest markets and since BPA now seems to concede the export of certain thermal resources can be consistent with Section 9(c) then BPA should be willing to revisit its prior determinations regarding the export of resources that produce energy only during periods that are not needed to serve regional firm loads. BPA should recognize the net overall benefits from the export of renewable nonpolluting resources especially when the export of these resources does not increase the firm energy requirements of BPA or its customers. Tacoma Public Utilities requests that BPA recognize Tacoma Public Utilities' SCBID hydro resources along with other exclusively spring and summer producing projects built on irrigation canals as not the type of hydroelectric resources envisioned in Section 9(c).

BPA Analysis and Decision

BPA stands by its 1984, Section 9(c) case-by-case determination that Tacoma Public Utilities' export of the SCBID hydro energy to Western Area Power Administration could have been conserved to serve requirements load in the Pacific Northwest. The only change between the former Tacoma Public Utilities transaction and their current export under NFP is that the transmission is now partially an Assured Delivery transaction under BPA's LTIAP and partially an export utilizing Tacoma Public Utilities' Non-Federal Participation share of Intertie transmission capacity. BPA's 1984 determination is still valid today because the law it is premised on has not changed since 1984. It is BPA's interpretation under Section 3(d) of the Regional Preference Act that exports of Pacific Northwest hydro are conservable and any export of such hydro will result in a decrement of the exporting utility's power sales contract. As a result, Tacoma Public Utilities will

have to continue to provide a "phantom resource" in its firm resources exhibit for its export sale or BPA would have to decrement its requirements power sale to Tacoma Public Utilities in the amount of the export to WAPA.

Customer Comments

Washington Water Power Company - Washington Water Power Company noted that in discussing its prior case-by-case determinations that BPA did not discuss the Washington Water Power Company joint venture. Washington Water Power Company referenced Contract No. DE-MS79-92BP92871, a joint venture with BPA and Northern California Power Agency and asked whether BPA has carried this case-by-case determination over into its new NFP Section 9(c) Policy. Washington Water Power Company would appreciate consideration of the Northern California Power Agency agreements in connection with the proposed NFP Section 9(c) Policy.

BPA Analysis and Decision

No, BPA has not carried this determination into its NFP Section 9(c) Policy. Washington Water Power Company has not acquired a share of Intertie under Non-Federal Participation and BPA is not developing a general Northwest Power Act, Section 9(c) policy. As noted in its NFP Section 9(c) Policy development, BPA is not modifying its prior case-by-case Section 9(c) determinations.

2.5.4 Issue - Does BPA's NFP Section 9(c) Policy Include Restrictions Not Found in the Statute?

Customer Comments

Eugene Water & Electric Board - Including recall terms in an export to avoid a decrement is an unwarranted policy restriction on the customer's legal rights if the export is not hydro and the customer has not taken the resource to load. BPA does not have a right under the Northwest Power Act to require the offer of a resource to BPA at cost plus a reasonable rate of return to avoid a decrement of requirements service.

Further, Eugene Water & Electric Board is concerned that BPA's proposed NFP Section 9(c) Policy may place additional restrictions in the way of completing Non-Federal Participation transactions which do not exist in the statute (Northwest Power Act, Sections 9(c) and 9(d)). The NFP Section 9(c) Policy document says that "New Owners will be able to export up to a maximum of 725 MW of regional resources." There is no limit imposed by Section 9(c) as to the amount of resources that may be exported. This is reinforced by Section 9(d). BPA has no right or basis to determine that a nonhydro resource cannot be exported because BPA believes that the resource sometime in the future might be used to serve regional loads.

Emerald People's Utility District - Emerald People's Utility District believes BPA's policy is improperly directed at and stated in terms of 725 MW of Non-Federal Participation. There is no need to define the policy that way. The NFP Section 9(c) Policy should do nothing to validate the level of Non-Federal Participation. BPA can and should validate how Section 9(c) operates regardless of the amount of Non-Federal Participation.

BPA Analysis and Decision

Eugene Water & Electric Board is concerned about BPA including a criterion in its NFP Section 9(c) Policy which would allow an exporting New Owner to voluntarily recall a resource when needed in the Pacific Northwest in order to avoid a decrement of the exporting utility's power sales contract at the time the resource is exported. Emerald People's Utility District argues that BPA has no right to impose such a condition under Section 9(c). However, BPA included in the LTIAP, which withstood court challenge, a provision that when a Pacific Northwest hydro resource was exported BPA could decrement the exporting utility's utility power sales contract at once and if the resource being exported was a thermal resource the decrement would occur upon notice from BPA. The concept BPA is trying to address in its NFP Section 9(c) Policy is allowing a New Owner to export a thermal resource until such time as it is needed in the Pacific Northwest, without an initial decrement, so long as the resource is recallable. This should make the transaction more valuable to the Pacific Southwest buyer, which should allow the exporting utility to get a higher rate and make the transaction more salable to the regional consumers of the exporting utility.

2.5.5 Issue - Miscellaneous Issues Raised by the Prospective New Owners.

2.5.5.1 Customer Comment - PacifiCorp - The proposed policy's Section 10 language should read: "the New Owner's cost, *including* a reasonable rate of return."

BPA's proposed NFP Section 9(c) Policy should be equally applicable to sales of more than 725 MW of Non-Federal Participation Intertie if BPA chooses to offer more than the initial 725 MW.

BPA Analysis and Decision

BPA will make the "including" change in the NFP Section 9(c) Policy.

BPA's NFP Section 9(c) Policy would be applied to more than 725 MW if more Non-Federal Participation shares of transmission capacity are offered in the future.

2.5.5.2 Customer Comment - Pacific Northwest Generating Cooperative - Pacific Northwest Generating Cooperative does not think the proposed NFP Section 9(c) Policy should apply to third-party wheeling which New Owners may opt to do.

BPA Analysis and Decision

The proposed NFP Section 9(c) Policy does allow third-party wheeling, so long as the New Owner chooses that option in the Capacity Ownership Agreement negotiation. However, a New Owner will be required to inform BPA when a third party is exporting over the New Owner's share of PNW AC Intertie so that BPA can make its required statutory determination under Section 9(c) and so the right entity's power sales contract is decremented if that is the result of BPA's 9(c) determination.

2.5.5.3 Customer Comment - Pacific Northwest Generating Cooperative - This policy leaves open the issue of how new resources exported by New Owners will be treated under Section 9(c).

BPA Analysis and Decision

Initially, the 725 MW is fully subscribed. However, BPA will apply its NFP Section 9(c) Policy criteria to future exports over the life of the facilities.

2.5.5.4 Customer Comment - Tacoma Public Utilities - Tacoma Public Utilities suggests that the NFP Section 9(c) Policy be revised so that it is applied to a New Owner's net contractual use of Intertie Capacity Ownership, so that BPA would only decrement the amount of net export of a New Owner that is both exporting and importing over its share.

BPA Analysis and Decision

BPA chose not to adopt this suggestion. BPA looks at the south to north and north to south transmission paths as separate transactions. There will not always be both south to north and north to south transactions going on at the same time, so it would be hard to compute the net difference. In addition, the rated transmission capacity of the south to north path is about one third less than the north to south path. Finally, a New Owner's Intertie share is not based on a net transaction amount.

2.6 BPA's Non-Federal Participation, Northwest Power Act, Section 9(c) Policy

See Appendix C.

3.0 ENVIRONMENTAL ANALYSIS

The Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, CEQ 1505.2, sets forth points which must be covered in a ROD for actions requiring an environmental impact statement. Such RODs must state what the decision is, identify all alternatives considered by the agency specifying which were considered to be environmentally preferable, discuss all relevant decision factors including economic and technical considerations, agency statutory missions and balancing of national policy considerations, and discuss practicable means which may be available to avoid or minimize environmental harm from the alternative selected.

Such requirements are met by the March 25, 1994, BPA Administrator's ROD on Non-Federal Participation Capacity Ownership relative to the decision to offer Capacity Ownership. Such information is incorporated herein by this reference. This Section 3.0 will supplement the discussion in the March 25, 1994, ROD to address and clarify certain issues specific to the Capacity Ownership contracts and the NFP Section 9(c) Policy.

3.1 NFP Section 9(c) Policy

The Capacity Ownership alternative analyzed in the NFP EIS also incorporates BPA determinations under Sections 3(d) of the Northwest Preference Act and 9(c) of the PNW Power Act regarding BPA's firm load obligations to the utility if the utility exports its resources. It addresses a utility's ability to request future increases in requirements service in view of resource exports outside the region. Such determinations and BPA's proposed NFP Section 9(c) Policy were found to have no significant environmental effects for the proposed exports by New Owners over their Capacity Ownership shares in that planned BPA resource acquisitions would be unchanged.

The Capacity Ownership alternative analysis reviewed a broad group of BPA and non-BPA resource development scenarios that provided environmental information for 9(c) decisions even beyond the scope of the NFP Section 9(c) Policy. BPA will also apply its NFP Section 9(c) Policy to help it make future 9(c) related determinations whenever PNW resources are exported whether by New Owners or by third parties over a New Owner's PNW-PSW Intertie share.

3.2 Capacity Ownership Contract Issues

Additionally, the Capacity Ownership alternative addresses environmental impacts with respect to operation of existing resources and transmission lines for network as well as PNW-PSW AC Intertie transactions. There is an inherent assumption in the Capacity Ownership alternative that power resources to be marketed using the PNW-PSW Intertie have a transmission path to the PNW-PSW Intertie. As described in sections 1.2.7 and 1.2.8 of this ROD, BPA intends to offer network agreements, to the extent capacity is

available, to match a New Owner's Capacity Ownership share. Such network agreements may be executed at the time the Capacity Ownership Agreements are executed if no new resources or transmission facilities are required. The NFP EIS could not provide environmental information on the site-specific impacts of new resources or lines to provide for network wheeling. Such site-specific environmental impacts must be addressed separately in future NEPA processes if proposals evolve for network wheeling for new resources, or which require new transmission facilities. However, the NFP EIS does provide BPA the environmental information needed to sign a Capacity Ownership Agreement even if information on a new resource to be wheeled in order to use the Capacity Ownership still needs to be collected.

3.3 Avoidance of Environmental Harm

The Capacity Ownership contracts and NFP Section 9(c) Policy are not expected to result in significant environmental impact requiring avoidance or mitigation actions for the same reasons given in section 1.4.3 of the March 25, 1994, Non-Federal Participation Capacity Ownership ROD.

4.0 THE PROPOSED CAPACITY OWNERSHIP CONTRACTS AND NFP SECTION 9(C) POLICY MEET NEED AND PURPOSES

The NFP EIS statement of need was that BPA and other PNW entities need interregional transfers with the PSW region using the PNW-PSW Intertie. Proposed actions must meet this need and serve the stated purposes to the best degree possible. In the NFP EIS, BPA identified the following purposes:

- Provide fair PNW - PSW Intertie access to non-Federal Parties;
- Support BPA's obligation to assure recovery of costs of the Federal Columbia River power and transmission systems;
- Support acceptable environmental quality; and
- Benefit overall economic and operational efficiency of the PNW and PSW systems connected by the PNW - PSW Intertie.

I have determined that the proposed Capacity Ownership Agreements and NFP Section 9(c) Policy are responsive to the stated purposes in the following ways:

- Consistent with requests from US House of Representatives Committee on Energy and Commerce to offer a type of non-Federal participation in the Third AC Project;
- Provide the mechanism for non-Federal parties to obtain capacity rights in the PNW - PSW Intertie;
- Meet the primary needs of parties expressing interest in participation by providing a long-term contractual right to schedule power with overall rights similar to those of existing PNW - PSW Intertie owners;
- Provide New Owners the ability to exclusive use of their capacity share without regulation by BPA except in the areas of (1) Protected Areas; (2) third-party wheeling; and (3) PNW resource exports;
- Provide New Owners flexibility and opportunity to exercise future rights to (1) increases in PNW - PSW Intertie capacity; (2) sell or assign its capacity rights; and (3) receive operation, maintenance, and scheduling services;
- Incorporate rates that (1) recover the costs associated with the transmission of non-Federal power, including the amortization of the Federal investment in the Federal Columbia River Power System over a reasonable period of years; (2) are designed to be as low as possible, consistent with sound business principles, to encourage the widest possible use of electric power while having regard to recovering the costs of transmitting such power; and (3) provide funds to be used to either reduce new transmission borrowing or returned to Treasury by repaying BPA's outstanding transmission bonds, thus reducing repayment requirements;

- Provide consistency between prior case-by-case 9(c) determinations and BPA's NFP Section 9(c) Policy;
- Apply NFP Section 9(c) Policy to initial and future Capacity Ownership related exports;
- Allow the export of thermal resources (not in a firm resources exhibit) without a decrement; and
- Allow the decrement of export of regional hydro resources because BPA funds such resources conservable to serve PNW loads.

I have reviewed and hereby approve this decision to offer the Capacity Ownership Agreements and adopt the NFP Section 9(c) Policy and the Interpretation of Subsection 9(c), issued in Portland, Oregon, July 13 1994.

/s/ John S. Robertson

Deputy Administrator
John S. Robertson

APPENDIX A

NON-FEDERAL PARTICIPATION SECTION 9(c) STUDY

NON-FEDERAL PARTICIPATION SECTION 9(c) STUDY

Introduction

Whenever a regional utility exports a Pacific Northwest resource, the Bonneville Power Administration (BPA) is required by the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Section 9(c), to determine whether the export will cause an increase in BPA's firm load obligations or those of its customers, and if so, whether the resource could be conserved or otherwise retained using reasonable measures, to serve Pacific Northwest load. If BPA finds that its firm load obligation to that customer or any other would increase as a result of the export, and that the resource could have been conserved or retained for regional load, BPA is required to reduce its firm load obligation to the exporting utility under its power sale contract in an amount equal to the energy being exported for the duration of the export.

BPA proposes to provide Pacific Northwest utilities the opportunity to acquire an allocation share of PNW-PSW Intertie up to a total of 725 megawatts of intertie transmission capacity. BPA is studying this proposal in its ongoing Non-Federal Participation EIS. Because parties interested in acquiring Intertie transmission capacity have requested more than 725 megawatts of capacity, BPA has adopted allocation methodologies that will be studied in the EIS. Prior to the completion of the EIS, BPA will use the preferred allocation methodology to make tentative allocations for the purpose of BPA's negotiations with potential New Owners. The allocation methodologies, including the preferred methodology, place a number of requirements on the parties seeking an allocation. Among these is the requirement that each party provide BPA with a copy of an executed sale or exchange agreement with a Pacific Southwest utility or with countersigned principles for such an agreement by 16 March 1993. If the party submits countersigned principles, it must submit the executed contract to BPA prior to the close of public comment on the draft EIS.

Once the utility proposes to export a Pacific Northwest resource BPA then has a statutory duty under the Northwest Power Act to determine whether the export of the New Owner's resource would result in an increase in the electric power requirements of BPA or of any of its customers under Northwest Power Act Section 5(b) power sales contracts and whether the resource could be conserved or otherwise retained to serve regional load in the Pacific Northwest.

This study provides a factual basis for determining whether the potential export of 725 megawatts of power from Pacific Northwest resources which potential New Owners propose to export, is likely to result in any increase in the short-run or long-run electric power requirements of BPA or any of its customers, and if so, whether a resource that may be exported could be conserved, or otherwise retained to serve regional loads by reasonable means.

This study relies on existing BPA planning studies currently supporting the development of BPA's 1992 Loads and Resources Study, the 1992 Resource Program; current information on the resources planned for export provided by potential New Owners of PNW-PSW Intertie, and studies and conclusions contained in currently available integrated resource plans of those utilities who are not currently placing any firm load obligation on BPA and are not planning to place firm load on BPA.

On the basis of the following analysis of the assembled studies and information described above, BPA may conclude that the potential export of up to 725 megawatts of Pacific Northwest resources, other than hydroelectric facilities or system sales, described by potential New Owners as proposed or potential transactions with Pacific Southwest utilities, would not be expected to increase BPA's firm load obligation to any customer over the 20-year planning horizon of BPA's 1992 Resource Program as a result of exports proposed under the Non-Federal Participation 9(c) Policy. Furthermore, that based on the above conclusion BPA need make no factual finding of whether the resources, other than hydroelectric facilities or system sales, identified by potential New Owners as proposed or potential transactions with Pacific Southwest utilities, would be conservable or could otherwise be retained for serving regional loads in the Pacific Northwest.

Resources Planned for Export by New Owners

BPA has requested and received specific information on proposed and potential transactions with Pacific Southwest utilities from regional utilities who have signed the Memorandum Of Understanding (MOU) in 1991 indicating interest in allocation shares of the PNW-PSW Intertie (Table 1). The information provided by these utilities, summarized in Table 1, describes the specific resources, or non-specific system sales, that may be exported; whether they are existing or planned resources; whether they are included in the utility's Power Sales Contract Firm Resource Exhibit (FRE) and various other information pertinent to understanding the current and prospective role for the resource in the Pacific Northwest electric power system.

Of the specific resources, other than hydroelectric facilities, identified by potential New Owners for proposed or potential transactions with Pacific Southwest utilities, none are likely to increase BPA's firm load obligations for any customer as a result of its export.

Table 1. Proposed or Potential Transactions by New Intertie Capacity Owners.

Name	Resource Type	Capacity (MW)	In FRE? [1]	Exist. or Planned	Type of Trans.
Clark	Cogen/CCCT	75	No	Under Const.	Sale
Emerald	Cogen/CCCT	130	No	Under Const.	Sale
Snohomish	Cogen/Wood	43	No	Planned	Sale
Mason Co.	#1 Cogen/Wood	14	No	Planned	Sale
	#2 Cogen/CCCT	49	No	Planned	Sale
Gray's Harbor	Cogen/Gas or Wood	10 to 80	No	Planned	Sale or Exch.
PacifiCorp	System Power	75 to 150	No	Existing	Sale
Seattle	#1 System(Hydro)	60	Yes	Existing	Exchange
	#2 System(Hydro)	100	Yes	Existing	Capacity Sale
Tacoma	System(Hydro)	74	No	Existing	Sale
PNGC	Coal-Steam	51	No	Existing	Sale (25 years)
EWEB	Cogen/Wood	50	No	Existing	Sale (5 years)
	Steam Plant		No	Existing	Sale (5 years)
Puget	System Power	300	No	Existing	Exchange

[1] Resource included in Firm Resource Exhibit.

Source: Bonneville Power Administration, Office of Power Sales. 1993. Summary of Third AC Intertie MOU signatory utility responses to BPA letter of December 17, 1992 from Sydney Berwager requesting information regarding planned use of Third AC Intertie capacity allocation.

The resource exports identified by potential New Owners include hydroelectric facilities and non-specific system sales for which the policy requires equivalent reductions in energy deliveries by BPA. Other specific resources identified by potential New Owners include existing resources that BPA has already determined were not cost effective, and that are not likely to be found cost effective by BPA and other regional utilities, and therefore not likely to be dedicated to serving regional firm loads; or planned resources similar in character to the large number of cogeneration and gas-fired thermal resources that have been offered to BPA through Billing Credits, Competitive Acquisition, Resource Contingency Program and unsolicited proposals.

Existing hydroelectric facilities and system sales proposed for export by regional utilities are specifically distinguished in the proposed Non-Federal Participation 9(c) policy because BPA has either previously made a determination or is applying existing policies. Under the proposed policy these resources, if exported by a regional utility, require an equivalent reduction in energy deliveries from BPA to the exporting utility. As discussed in the proposed policy, the effects on

present and future Federal system firm load of exporting these resources to Pacific Southwest utilities is directly offset by a present or future reduction in firm load obligation of BPA to the exporting utility under its power sales contract and will not increase BPA's net firm load obligation.

Pacific Northwest Generating Cooperative (PNGC) is proposing to export its share of the Boardman coal-fired steam plant (Boardman). This resource is not presently included in a Pacific Northwest utility's Firm Resource Exhibit of its BPA power sales contract. Recently, PNGC proposed a long-term sale of this resource to BPA through BPA's Competitive Acquisition Program. After a careful review of Boardman's system costs, BPA concluded that it was not a cost-effective resource choice for BPA. Appendix 3-A includes a copy of BPA's official notification to PNGC that its proposal was not "selected into the Negotiation Group." Although BPA did not make a formal determination that Boardman was neither reasonably conservable nor retainable for serving regional load, the factors influencing BPA's decision against acquiring Boardman on cost-effectiveness grounds are still valid. Therefore BPA does not consider PNGC's share of Boardman as a cost-effective resource for serving BPA's firm load obligations now or in the foreseeable future.

The remaining proposed or potential resource exports identified by MOU signatories include new thermal resources such as cogeneration facilities or small gas-fired combustion turbines. All but 50 megawatts of these resources are either newly planned or under construction. None of these cogeneration or gas-fired resources are currently in a utility's FRE and provide Federal system firm power resources that BPA would have to replace if exported to the Pacific Southwest. One of the cogeneration facilities proposed has already been offered to BPA as an unsolicited proposal and was rejected by BPA because of environmental considerations.

Both the Northwest Power Planning Council's 1991 Power Plan and BPA's 1992 Resource Program assumed regional supply limits on new gas-fired combustion turbine generation of about 1,500 average megawatts through 2010 due to the uncertainty surrounding future gas prices and availability of supply (Chapter 8, Volume II - 1991 Northwest Power Plan). The market response to BPA requests for proposals for new resources suggests a higher market potential and lower cost. Since the Council's 1991 Plan was published BPA has been offered approximately 10,000 average megawatts of cogeneration and gas-fired generation through Billing Credits, Competitive Acquisition, Unsolicited Proposals and the Resource Contingency Program. The level of market response to BPA's requests for proposals exceeded BPA's expectations (Appendix 3-B shows

BPA's press releases describing the amounts of resources offered to BPA through Billing Credits, Competitive Acquisition and the Resource Contingency Program).

The current amount of cogeneration and gas-fired resources proposed for export to Pacific Southwest utilities is not expected to reduce the supply of similar thermal resources, at comparable prices, available to BPA for firm power service to Pacific Northwest customers.

The Potential for Increased Load Obligations on BPA from Computed Requirements Customers

Computed requirements customers that have expressed interest in becoming New Owners of PNW-PSW intertie are not likely to increase BPA's firm load obligation if they export up to 725 megawatts of Pacific Northwest resources, excluding hydroelectric facilities and system sales.

Some actual and planned computed requirements customers are either proposing exports of Pacific Northwest hydroelectric facilities or system sales that under BPA's existing policies and prior determinations, BPA has required an equivalent reduction in the exporting utility's firm load obligation under its Section 5(b) power sales contract. For the other resources proposed for export none of them are planned to serve Federal system or regional firm loads. Since BPA already has planned resource acquisitions equal to its anticipated future Federal system firm load deficits, without the dedication of the proposed exports to the exporting utility's system firm loads, the exports are unlikely to result in increased load obligation for BPA as a result of their being unavailable to BPA.

Pacific Power & Light Company (Pacific) and Puget Sound Power & Light Company (Puget) are the only current BPA contracted computed requirements customers requesting an allocation of intertie. At present none of the contracted computed requirements customers have provided notices under their power sales contract, as required, to place new firm load on BPA. These customers are required to provide BPA generally seven years notice in order to place new firm load on BPA. Integrated resource plans of these utilities do not reveal any plans to place firm load on BPA during the foreseeable future.

Pacific reported its second Resource and Market Planning Program (RAMPP-2) in May of 1992. Their report describes Pacific's 1992 integrated resource planning process and its preferred "Action Plan." In Chapter 3 of the report Pacific describes the "portfolio" of resource alternatives available to serve its customer's electricity needs under a range of possible load growth futures. Although, Pacific identifies "power contracts" as part of its portfolio of resource alternatives, firm power

purchases from BPA are not included among the alternatives. Even under high load growth scenarios analyzed by Pacific and reported in Chapter 4 of the report, Pacific does not look to BPA as a wholesale supplier of firm power. Instead Pacific increases its reliance on cogeneration and gas-fired combined-cycle combustion turbines (PacifiCorp. 1992. Resource and Market Planning Program: RAMPP-2. Portland, Oregon).

Puget published its third integrated resource plan in December of 1991. Table 4 contained in Appendix E of their report lists the "Supply-Side Resource Alternatives" that Puget considered as potential supply alternatives. Puget does not regard wholesale firm power purchases from BPA as a cost-effective resource alternative. In Appendix A of the report that describes the status and accomplishments from plan years 1990-91 Puget concludes that: "Although identified as an issue for 1993, NR Rate Predictability may not be achieved as BPA is not required to address all of the [rates] issues on its list and has not done so in the past. Thus, Puget has kept its NR purchase to a minimum." As with Pacific, the scenario analyses reported in Chapter 6 of their report do not include firm power purchases from BPA under any of the possible load growth futures analyzed (Puget Sound Power & Light Company. 1991. 1992-1993 Integrated Resource Plan. Bellevue, Washington). Puget in its latest submission of an FRE to BPA eliminated the small amount of BPA purchase power, 50 megawatts, it had previously planned on.

Portland General Electric Company (PGE) completed its most recent integrated resource plan in November of 1992. PGE, like other investor-owned utilities in the region, does not consider BPA a viable power supply alternative. In Appendix 6-7 of their 1992 Integrated Resource Plan they describe firm power purchase opportunities, including pricing and availability. Under the section entitled "BPA Purchase" they indicate that they "are not inclined to plan on a purchase from BPA" because of: (1) BPA's seven year notice requirement and uncertainty surrounding the terms and conditions of a long-term firm power purchase from BPA; and (2) concern over the "predictability and stability" of BPA's New Resource (NR) Rate (Portland General Electric Company. 1992. 1992 Integrated Resource Plan. Portland, Oregon).

Since the completion of their 1992 Integrated Resource Plan the Trojan nuclear generating plant (Trojan) has been permanently closed by Portland General Electric (PGE). Although their plan originally scheduled Trojan's retirement in 1996, escalating costs of maintaining Trojan led PGE to close the plant ahead of schedule. The shut-down of Trojan means that the Federal system loses 214 average megawatts of energy that will have to come from other sources. PGE is not requesting an allocation of PNW-PSW intertie and BPA has planned sufficient reserves to cover

the loss of the Federal system's share of Trojan. BPA's plans for covering the loss of the Federal System's share of Trojan are described in Chapter 5 of the 1992 Resource Program entitled "Implementation Plans."

Other investor-owned utilities in the region likewise do not include BPA long-term firm power purchases in their integrated resource plans. Power purchases that are identified are planned to come from sources such as cogeneration, PURPA hydroelectric facilities and thermal plants, and power purchases from utilities outside the Pacific Northwest (Pacific Northwest Utilities Conference Committee. 1990. The Energy Picture in 2001: The Utilities' View. Portland, Oregon).

Since the mid 1980s BPA has assumed in its integrated resource planning that contracted computed requirements customers were unlikely to place new firm load requirements on BPA (Chapter III: Bonneville Power Administration. 1987. 1987 Resource Strategy. Portland, Oregon). This continues to be the operative assumption in BPA's integrated resource planning today and is reflected in BPA's current assessment of loads and resources (The 1992 Pacific Northwest Loads and Resources Study) and BPA's most recent integrated resource plan (The 1992 Resource Program).

BPA's Existing Loads and Resource Picture (Whitebook)

The 1992 Pacific Northwest Loads and Resources Study (Whitebook), December 1992, forecasts Federal system firm energy deficits throughout the 20 year forecast under medium, medium-high and high load forecasts. Although loads continue to grow throughout the 1990s two factors are expected to reduce the size of the projected future Federal system deficits. The forecast of DSI loads projects a decline of 100 average megawatts by 1999 and 300 average megawatts by 2013. In 1996 the WNP-1 exchange contract obligation expires returning 340 average megawatts (440 megawatts) of firm energy to the Federal system.

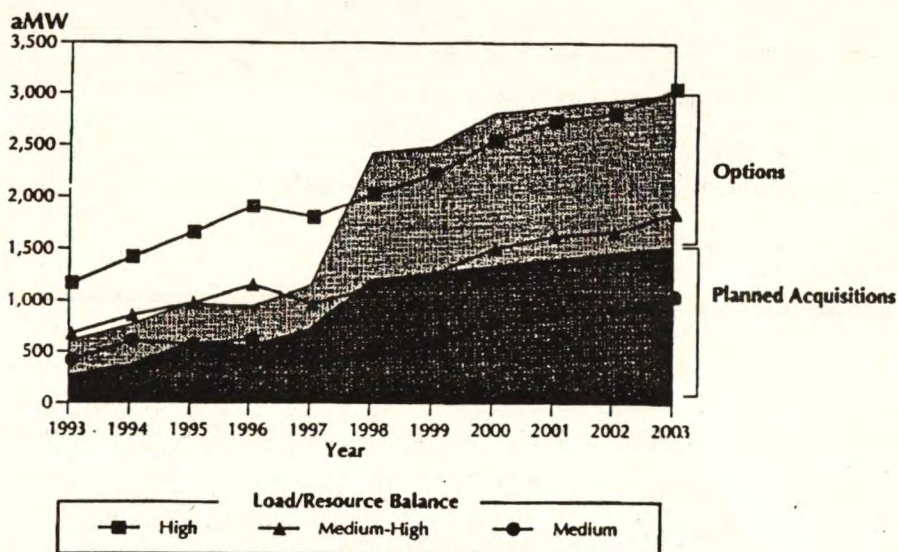
The forecast of Federal system deficits reflects the amount of existing not planned resources assigned to serve Federal system loads. These resources include Federal system hydroelectric facilities and power purchased from non-Federally owned resources. Federal system hydroelectric facilities and non-Federally owned BPA resources and contracts are summarized in Tables 4 and 5 of the 1992 Pacific Northwest Loads and Resources Study (See Tables 4 and 5 in Appendix 3-C). Resources identified by potential New Owners as proposed or potential transactions are not among the non-Federally owned BPA resources that are available to serve Federal system firm loads.

As a result, the size of Federal system firm deficits forecasted by BPA, and for which BPA has planned new resource acquisitions, is not expected to be influenced by any of the proposed or potential resource exports identified by potential New Owners. Regardless of whether potential New Owners exported up to 725 average megawatts of resources they have identified, BPA will still be able to acquire, at comparable prices, either the same resources or similar resources in the same amount as it currently anticipates in order to serve its forecasted firm energy deficits.

BPA's Planned Resource Acquisitions and Resource Options (1992 Resource Program)

The 1992 Resource Program, BPA's integrated resource plan, describes the specific resource actions BPA intends to take over the course of the next 10 years to serve Federal system firm loads. BPA's current resource plan includes acquisition plans for conservation and generation sufficient to meet the most likely range of resource need, that is, up to medium-high load growth. Also, the plan includes resource options that would enable BPA to cover future deficits assuming high load growth. The figure below provides a comparison of BPA planned resources (acquisitions and contingencies) and Federal system resource needs under medium, medium-high and high load growth scenarios.

Figure 1. BPA Planned Resources vs. Federal System Resource Needs



Source: 1992 Resource Program. 1992. Bonneville Power Administration, Portland, Oregon.

BPA's options include contractual options associated with surplus sales contracts that allow BPA to buy firm energy during winter months and/or exchange summer capacity for winter firm energy; and preconstruction options that allow BPA to shorten the lead time necessary to bring generating resources on-line. The amount of existing contractual options depends on the existence of surplus sales contracts. They provide opportunities for converting surplus power sales to capacity/energy exchanges and allow BPA to purchase "supplemental energy" and "optional energy" as well. BPA has 540 average megawatts of existing contractual options available through 2001. The amount of contractual options declines to 350 average megawatts by 2008 and then declines to 54 average megawatts by 2010 as surplus contracts reach the end of their contract term. Federal system resource options are described in detail in Section V of the 1992 Pacific Northwest Loads and Resources Study (See Table 9 included in Appendix 3-C).

The 1992 Resource Program includes a total of 1,450 average megawatts of existing, acquired or planned options that provide an additional insurance for meeting Federal system firm loads in the event of high load growth in the region or unexpected loss of an existing Federal system firm resource. Of that total, 400 average megawatts come from existing surplus sales contracts described above and 800 average megawatts of new options from the Resource Contingency Program. BPA is currently negotiating with developers for the acquisition of new resource options under the Resource Contingency Program. Another 250 average megawatts of additional options are planned from sources which are yet to be specified. BPA has not specified the sources for these resources in order to "maintain a competitive environment" and "explore the full menu of sources of potential generation, and allow BPA to assess the operational flexibility of proposed acquisitions within the Federal system" (See Chapter 5, Generating Resources Strategy: Bonneville Power Administration. 1992. 1992 Resource Program. Portland, Oregon).

BPA's planned resource acquisitions and options will provide sufficient Federal system resources and reserves to meet future Federal system loads regardless of whether potential New Owners of PNW-PSW intertie export up to 725 megawatts of existing and planned resources they have identified as proposed or potential transactions.

APPENDIX 3-A

Letter from Bonneville Power Administration to the Pacific Northwest Generating Cooperative that their PNGC Boardman Power Resource Proposal was not selected into the Negotiation Group for BPA's Competitive Acquisition program.



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

December 6, 1991

In reply refer to: RMGC

Mr. Joe Nadal
Pacific Northwest Generating Cooperative
500 Multnomah, Suite 1480
Portland, OR 97232-2044

Dear Mr. Nadal:

Thank you for participation in the Bonneville Power Administration's (Bonneville's) Request for Proposals (RFP) for the Competitive Acquisition of Firm Electric Energy. As stated in Section I. of the RFP's Program Description, this RFP is a pilot program for the Agency to assess the benefits and costs of using a competitive process for developing cost-effective new energy supplies. Your willingness to prepare a proposal and participate in the process has helped to insure that this RFP has met that goal.

The response to the RFP was overwhelming--proposals for more than 5,000 aMW were bid for a proposed Supply Block of 300 aMW. Bonneville used the criteria set out in the RFP to evaluate each Resource Proposal in detail (see Enclosure 1). The evaluation criteria, including system cost, non-price environmental factors, and viability, were described in Section IX. of the Program Description and in Amendment 001 to the RFP, dated March 19, 1991. Because this is a competitive process, your Resource Proposal was evaluated solely upon the information submitted by your company and your response to our Supplemental Information Request. Our detailed evaluation has been completed and, based on our evaluation of these materials, your PNGC Boardman Power Resource Proposal has not been selected into the Negotiation Group.

The decision not to place your Resource Proposal in the Negotiation Group is based upon Bonneville's adjusted system cost evaluation of your project. The adjusted system cost is your levelized bid price modified by adjustments for capacity value, displaceability, environmental costs, commercial operation date and contract term, location, additional interconnection costs, seasonality of firm energy deliveries, nonfirm energy values, intertie connection costs, fuel price and dry hole risk. (Additional information on these adjustments can be found in the RFP, pp. 14-16, 18 and in Amendments 001 and 002 to the RFP, dated March 19, and May 15, 1991, respectively.)

While all of these factors may not relate to your proposal, those adjustments which did apply resulted in an adjusted system cost for your proposal in excess of 3.8 cents/kWh levelized 1990 dollars or 7.6 cents/kWh nominal levelized dollars. All Resource Proposals accepted into Bonneville's Negotiation Group have adjusted system costs below this threshold.

We have not included more specific details regarding our evaluation in this letter because of the confidential nature of your company's cost information which was used to calculate the adjusted system cost. Bonneville, however, will make its staff available to representatives of your company for a debriefing on all aspects of the evaluation of your Resource Proposal, by telephone, or in person at our headquarters building in Portland, at your option. We believe that this opportunity will provide your company with useful information, not only on the application of the evaluation criteria to your proposal, but also on the resource characteristics in which Bonneville is interested, and on how to structure a proposal in the future which will meet Bonneville's resource needs.

The decision not to select your proposal for the Negotiation Group is a final decision. As explained in Section II.K. of the RFP's Program Description, your company may appeal this decision by requesting a review by Bonneville. This appeal, which is explained in Enclosure 2 to this letter, must be received by Bonneville by 4:00 p.m. Pacific Standard Time on Monday, January 6, 1992. If you request a debriefing, however, the date for the appeal will be extended to ten days after the date of the debriefing.

We recommend that you send your request for a debriefing or for review by registered mail, courier service, or its equivalent, or hand deliver to:

U.S. Mail

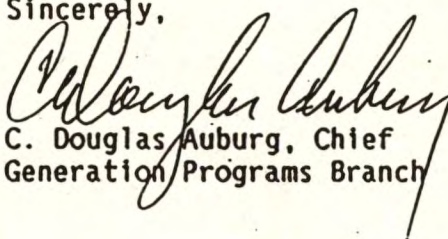
Bonneville Power Administration
Energy Resources Solicitation Desk
- RMG
P.O. Box 3621
Portland, OR 97208-3621

Courier Service or Hand Delivery

Bonneville Power Administration
Energy Resources Solicitation Desk
- RMG
905 NE 11th Avenue
Portland, OR 97232

Further information regarding this letter may be directed to Helen A. Goodwin (503) 230-3129.

Sincerely,



C. Douglas Auburg, Chief
Generation Programs Branch

Enclosure

APPENDIX 3-B

BPA press releases describing the amounts of resources offered to BPA through Billing Credits, Competitive Acquisition and the Resource Contingency Program.



Bonneville Power Administration

FOR IMMEDIATE RELEASE
Monday, October 29, 1990

PORTLAND, Ore. -- Response to the Bonneville Power Administration's first use of a new program to develop sources of energy has been, in the words of one agency official, "encouraging."

BPA had sought 50 megawatts of new projects when it called for bids under its new billing credits program July 9. Instead it got 130.

By the Oct. 10 closing date, BPA had received 85 proposals from 45 Northwest utilities.

"It was a good mix," Paul Norman said. Norman is BPA's Planning Branch chief. "We had a wide variety of proposals from nearly every locale in the region, from large utilities near Seattle and Portland to some of the smallest in Idaho and Montana."

BPA may decide to increase the program budget and fund more than 50 mw worth of proposals.

"Northwest energy use is growing," Norman said. "We know we will eventually need this energy. Why not capture it now?"

"Almost all the proposals appear to be eligible. None duplicate BPA's existing conservation programs. Some move into new areas of energy savings we might not have been able to develop."

Billing credits is a first for BPA. The program is open only to Northwest utilities who buy noninterruptible power from BPA.

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A-14

Utilities develop projects that cut their need for power from BPA. BPA then deducts part of the cost from the utility's power bill or pays the utility cash. The amount depends on the amount of power saved and the difference between what BPA would have had to pay to buy the power outright and BPA's wholesale power rate.

"Utilities have shown they are willing to work with us, take the risk and design projects suitable for their systems and their customers," Norman said.

Proposals include:

-- 68 projects to save 31 mw of energy through conservation. Projects range from weatherizing mobile homes to installing high-tech electrical equipment that would cut power losses up to 70 percent.

-- 4 projects for 53 mw through cogeneration. Cogen captures waste heat from an industrial process -- such as drying lumber -- and uses it to turn turbines and produce electricity.

-- 13 projects to generate 46 mw from small hydroelectric dams or methane gas produced by landfills.

BPA plans to complete an evaluation of the proposals and begin negotiating contracts by December. Contracts will be awarded in 1991. All projects would go through an environmental review.

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WP-ALM-7256P



Bonneville Power Administration

FOR IMMEDIATE RELEASE
Monday, June 24, 1991

PORTLAND, Ore. -- A new Bonneville Power Administration program to acquire generating and conservation resources has resulted in a flood of proposed projects.

When the solicitation period for its new competitive bidding program ended on June 18, the Bonneville Power Administration had received proposals for 103 such projects. The proposals total more than 5300 megawatts on average each year (amw).

"This is good news for ratepayers because this level of competition should bring lower prices," Doug Auburg, BPA's generation programs chief, said. "I believe it shows that a lot of people are interested in doing business with us."

Competitive bidding is a new program at BPA. It was created to help meet the Northwest's future energy needs by encouraging the development of cost-effective, environmentally-sound conservation and generating resources to meet the growing needs of BPA's customers.

Originally, BPA had planned to purchase 100 amw of new resources through the program. In March it increased that total to 300 amw.

The proposals included 41 conservation projects, totaling about 116 amw, and 62 generating projects, totaling about 5,200 amw. The ideas range from energy savings measures for homes and commercial businesses to wind farms and combustion turbines for generating electricity.

Bidders submitting projects for consideration included utilities and private energy developers.

"Our initial review has been very encouraging," says Auburg. "The proposals are high quality -- the information appears to be complete and thoughtfully presented."

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A-16

BPA has already begun to evaluate the proposals. Due to the program's competitive nature, however, no information about specific bidders or projects can be released until evaluations are concluded. A list of sponsors with whom BPA will negotiate will be announced in December.

The actual number of megawatts purchased will depend on how much power BPA needs at that time, the price and quality of proposals received, and how many megawatts BPA secures through its other programs.

Projects BPA buys under the bid program must begin saving or producing energy on or before Dec. 31, 1997.

Attached is a summary of the types of proposals received.

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WP-ALM-8591P

PROPOSAL SUMMARY

Competitive Acquisition Program

BPA has received 103 resource proposals from 54 sponsors (15 conservation sponsors and 39 generation sponsors).

NUMBER OF PROPOSALS

41	Conservation projects for	116 amw
62	Generating projects for	<u>5209</u> amw
TOTAL ALL PROJECTS		5325 amw

NUMBER OF PROPOSALS

Conservation Resources

6	Multisector	27 amw
30	Residential	72 amw
1	Commercial	3 amw
3	Industrial	14 amw
1	Customer System Efficiency Improvements.....	<u>.2</u> amw
CONSERVATION TOTAL		116 amw

NUMBER OF PROPOSALS

Generation Resources

5	Combustion Turbines (gas and oil fired)	858 amw
15	Combined Cycle Combustion Turbines (gas and oil fired)	2546 amw
4	Wind	69 amw
5	Hydro	235 amw
5	Geothermal	105 amw
1	Biomass	9 amw
2	Coal	119 amw
23	Cogeneration	1248 amw
2	Utility System Sales	<u>20</u> amw
GENERATION TOTAL		5209 amw



Bonneville Power Administration

FOR IMMEDIATE RELEASE
Tuesday, May 19, 1992

PORTLAND, Ore. -- "The Northwest will have an ample supply of new sources of electric energy, if the response to our options program is any indication."

So said Sue Hickey, BPA's assistant administrator for energy resources.

In March, the Bonneville Power Administration asked for proposals for options on about 800 megawatts of firm -- or noninterruptible -- energy.

By the May 8 deadline, BPA had received 10 times the request -- or about 7,850 mw -- through proposals for 64 separate projects.

"This is great news," Hickey said. "It looks like we will have a solid set of proposals to evaluate."

Proposals include 35 cogeneration projects for 3,748 mw. About half of the cogeneration would rely on waste heat from industrial processes to produce energy.

Another 13 projects would offer 2,674 mw from natural-gas fired combustion turbines.

Nine proposals offered 446 mw generated by coal plants. Four proposals were for 94 mw from wind or geothermal projects.

Proposals will be evaluated to narrow down the contenders to a short list in late June. BPA then will begin discussions with the sponsors and announce a final choice of projects in December.

Those chosen would begin designing, siting, applying for permits and preparing environmental reviews immediately. The preliminary work must be completed no later than Dec. 31, 1995.

Once the preliminary work is done, sponsors would hold the projects until BPA needs the energy.

"Think of it as energy insurance," Dennis Oster, options program team leader, said. "We'll call on options if demand grows faster than expected or if BPA doesn't get the megawatts it wants from its preferred source of energy -- conservation."

A-19 -more-

Option projects also could be used if the Northwest loses a large generating facility, or sees major changes in the hydrosystem operation to accommodate salmon.

Each project must be ready to deliver energy on three years' notice.

Oster said the program could be the first of its kind in the nation.

"We're clearly plowing new ground here," he said. "We've fielded questions about our program from several utilities across the nation. Many of them may give energy options a try if our program works."

He said the large response was not a surprise.

BPA had seen a similar flood of proposals in response to a 50-mw billing credits solicitation offered to utilities in 1990 and a 300-mw competitive bid program opened to utilities and independent power producers in 1991.

All three programs are part of a resource program BPA issued July 1990. BPA's resource program presents the agency's plan for acquiring energy to meet future demand for electric power from its customers. The program is updated every other year.

BPA markets power to 153 utilities and industries in the Northwest.

No information about specific bidders or proposals for the energy options program will be released until the evaluations are concluded.

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WP-ALM-0644P

RESOURCE CONTINGENCY PROGRAM
FACT SHEET

BPA received 64 proposals from 47 sponsors.

Proposals fall into the following categories:

<u>Type of Proposal</u>	<u>Number</u>	<u>Megawatts</u>
Cogeneration	35	3,748
Combustion turbines	13	2,674
Coal plants	9	446
Wind farms	3	65
Geothermal	1	29
System sale	1	unspecified
Other	<u>2</u>	<u>880</u>
 TOTAL	 64	 7,842

Several of the proposed projects were submitted in BPA's competitive acquisition program in 1991. They were resubmitted for consideration in BPA's options program.

Projects are located throughout the Pacific Northwest, Pacific Southwest, the Midwest and British Columbia.

#

WP-ALM-0644P

APPENDIX 3-C

Federal system hydroelectric projects; non-Federally owned BPA resources and contracts; and existing Federal system contractual options (Table 4, Table 5 and Table 9: Bonneville Power Administration. 1992. 1992 Pacific Northwest Loads and Resources Study. Portland, Oregon).

Table 4

Federal System Hydroelectric Projects
September 30, 1992

Project	Initial Year of Service	Number of Units	Nameplate Rating (MW)	Instantaneous Generating Capacity ¹ (peak MW)	Firm Energy (aMW)
U.S. BUREAU OF RECLAMATION HYDROELECTRIC PROJECTS					
Grand Coulee	1941	30	6,450.0	6,684	1,865
Hungry Horse	1952	4	392.0	428	107
Palisades	1957	4	142.2	164	61
Anderson Ranch	1950	2	27.0	30	11
Minidoka	1909	7	13.4	16	9
Roza	1958	1	11.3	13	4
Black Canyon	1925	2	8.0	10	7
Chandler	1956	2	12.0	13	7
TOTAL BUREAU OF RECLAMATION PROJECTS		52	7,055.9	7,358	2,071
U.S. ARMY CORPS OF ENGINEERS HYDROELECTRIC PROJECTS					
Chief Joseph	1955	27	2,069.0	2,614	1,114
John Day	1968	16	2,160.0	2,484	872
The Dalles	1957	22	1,780.0	2,074	697
Bonneville	1938	18	1,050.0	1,186	537
McNary	1953	14	980.0	1,127	630
Lower Granite	1975	6	810.0	932	188
Lower Monumental	1969	6	810.0	930	191
Little Goose	1970	6	810.0	932	185
Ice Harbor	1961	6	603.0	693	187
Libby	1975	5	525.0	600	197
Dworshak	1974	3	400.0	460	144
Lookout Point	1954	3	120.0	138	24
Detroit	1953	2	100.0	115	34
Green Peter	1967	2	80.0	92	22
Lost Creek	1975	2	49.0	56	23
Albeni Falls	1955	3	42.6	49	26
Hills Creek	1962	2	30.0	35	14
Cougar	1964	2	25.0	29	12
Foster	1968	2	20.0	23	10
Big Cliff	1954	1	18.0	21	11
Dexter	1955	1	15.0	17	8
TOTAL CORPS OF ENGINEERS PROJECTS		149	12,496.6	14,607	5,126
TOTAL BUREAU OF RECLAMATION AND CORPS OF ENGINEERS PROJECTS		201	19,552.5	21,965	7,197

¹Maximum generation under optimum conditions. Does not reflect reduction to the peaking capacity of the hydro system due to the drafting of reservoirs and other project constraints.

Table 5

Non-Federally Owned BPA Resources and Contracts

Project	Type	Operator	Date in Service	OY 1993-94 Capacity (peak MW)	OY 1993-94 Firm Energy (aMW)
Existing Non-Federally Owned BPA Resources					
Trojan (30%)	Nuclear	PGE	1976	331	214
WNP-2	Nuclear	WPPSS	1984	1,100 ¹	705 ¹
Boardman	Coal	PGE	1992 ²	50	29
Packwood Lake	Hydro	WPPSS	1964	30	6
Idaho Falls	Hydro	City of Idaho Falls	1982	18	18
Cowlitz Falls	Hydro	Lewis County PUD	1994	0 ³	10 ³
TOTAL NON-FEDERALLY OWNED BPA RESOURCES				1,529	982
Firm Contracts					
Canadian Entitlement				186	62
Restoration, Columbia River Treaty w/Canada				0	-26
Southwest Capacity/Energy Exchange				0	9
Montana Power Capacity/Energy Exchange				0	29
PP&L (Wyoming) Import for Southern Idaho Load				189	94
Basin Electric Cooperative Purchase				120	105
Powerex (TransAlta) Purchase				125	100
WNP-3 Exchange Settlement Agreements				0	113
TOTAL BPA FIRM CONTRACTED RESOURCES				620	486

¹Efficiency improvements will increase WNP-2 maximum capacity to 1,155 megawatts and maximum capability to 751 average megawatts when completed in OY 1996. WNP-2 expected energy output prior to the efficiency improvements was 715 aMW; however, in OY 1993-94, an extended maintenance schedule reduced WNP-2 generation to 705 aMW.

²Seasonally acquired by BPA from PNGC for September through April, OY 1992-93 through 1994-95.

³Acquired by BPA on January 28, 1991 and will become operational April 1, 1994. Full energy capability is 22 average megawatts and maximum capacity is 70 megawatts starting OY 1994-95.

to the United States. The Federal system share is 115 average megawatts. This energy, however, is not as valuable as a firm resource because non-treaty storage has a lower refill priority than primary storage reservoirs. Therefore, BPA intends to use the non-treaty storage as a resource option to increase flexibility in operating the hydro

system. Since this energy may not be available every year, it is not included as a firm resource in this loads and resources study. However, it may be included as a firm resource in future studies. Non-treaty storage is included in Table 9, line 6.

Table 9

**Existing Federal System Contractual Options
Energy In Average Megawatts**

OPERATING YEAR ¹	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
1. Termination of PSW Surplus Power Sales	212	212	212	237	237	237	237	237	237	237
2. Exchange Energy From PSW	69	69	68	71	74	73	71	70	69	68
3. Supplemental Energy From PSW	35	36	37	38	39	41	42	43	44	46
4. Optional Energy From PSW	71	71	71	71	71	0	0	0	0	0
5. Termination of PNW Surplus Power Sale	0	0	0	0	0	75	75	75	0	0
6. Non-Treaty Storage	115	115	115	115	115	115	115	115	115	0
TOTAL CONTRACTUAL OPTIONS	502	503	503	532	536	541	540	540	465	351

OPERATING YEAR	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1. Termination of PSW Surplus Power Sales	237	237	237	237	223	187	29	0	0	0
2. Exchange Energy From PSW	67	66	64	64	62	53	25	0	0	0
3. Supplemental Energy From PSW	47	48	49	49	49	46	0	0	0	0
4. Optional Energy From PSW	0	0	0	0	0	0	0	0	0	0
5. Termination of PNW Surplus Power Sale	0	0	0	0	0	0	0	0	0	0
6. Non-Treaty Storage	0	0	0	0	0	0	0	0	0	0
TOTAL CONTRACTUAL OPTIONS	351	351	350	350	334	286	54	0	0	0

¹Operating Year (OY) is the 12-month period August 1 through July 31. For example, OY 1993-94 is August 1, 1993 through July 31, 1994.

APPENDIX B

INTERPRETATION OF NORTHWEST POWER ACT SUBSECTION 9(c)

Interpretation of Northwest Power Act Subsection 9(c) Regarding Firm Energy Requirements and Customers' Exports of Resources Out of the Region

I. Introduction

BPA has an obligation to serve the net loads of its Pacific Northwest customers. At times some of these customers may export power out of the region. In this event, BPA is required by subsection 9(c) of the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (the Northwest Power Act) to make certain determinations regarding the effect of such exports on its contractual obligations to provide service to its customers. This interpretation addresses BPA's obligations to its customers to serve their firm energy requirements and how those obligations may change based on a customer's decision to export resources out of the region. Section II addresses BPA's statutory and contractual obligations to serve firm load requirements. Section III discusses the requirements of Northwest Power Act subsection 9(c), its application, and the considerations leading to the 9(c) factual determination.

II. BPA's Statutory and Contractual Obligations to Serve

A. BPA's obligation to serve Pacific Northwest customers' firm power loads

BPA's obligation to serve the electric power load of its various customer classes is defined by statute. Initially BPA's authorization was to sell electric power under contracts negotiated and entered into with its customers pursuant to subsection 5(a) of the Bonneville Project Act, 16 U.S.C. 832d(a). In 1980, Congress passed the Northwest Power Act, which further specifically defined BPA's service obligations. These obligations are expressed in subsection 5 of that Act. Subsection 5(b) addresses obligations to Northwest public agency, investor-owned utility and federal agency customers. Subsection 5(c) defines residential exchange obligations with utility customers. Subsection 5(d) sets out obligations to provide service to direct service industrial customers under initial contracts. Subsection 5(f) defines any federal power in excess of BPA's obligations under subsections 5(b), (c), and (d), as surplus power that is to be sold in accordance with applicable statutory provisions.

Consistent with those provisions and others, BPA entered into contracts with its utility, federal agency, and direct service industrial customers to provide electric power service for their firm power requirements loads in the Pacific Northwest region. For direct service industrial customers, BPA's obligation under subsection 5(d) is to provide an amount of power equivalent to that which the customer was entitled under contracts dated January or April 1975. 16 U.S.C. 839c(d)(1). Generally, BPA's obligation as to this class of customer is a fixed amount of electric power defined under these contracts as contract demand.

For BPA's preference agency and investor-owned utility customers, BPA is to provide electric power to meet their firm power requirements loads in the region less the amount of firm power from the customer's own resources that they dedicate to serve their utility's regional load. 16 U.S.C. 839c(b)(1). BPA serves a utility's load net of the resources if any, dedicated by the utility to serve loads. Under its 1981 requirements power sales contract, a utility makes modifications to its actual firm power load by the addition or deletion of resources. These additions or deletions are based upon specified notice periods. Utility customers use contract exhibits to show their request for purchases and their dedicated resources on a seven year planning basis. BPA adjusts its need to acquire resources to meet these loads based upon the information submitted by its customers. Because BPA provides firm power requirements service to customers on different purchasing bases, some customers request no or minimal power purchases and others have all of their firm loads and increases in loads (load growth) served by BPA. Also, a customer may choose to add or not add a new resource to its Firm Resource Exhibit and Assured Capability Exhibit.¹

Subsection 5(c) provides for an exchange of power between BPA and Northwest utilities for residential loads. BPA serves "exchange loads" with preference agency and investor owned utility customers participating in subsection 5(c) contracts. Although these "exchange" contracts may operate as actual power deliveries, the program has been administered as an economic "subsidy" program with dollars paid to the exchanging utility for its eligible loads, rather than as an actual power delivery. *See, Pacific Power and Light Co. et. al v. BPA*, 795 F.2d 810, 812 (1986)(While these agreements are called residential energy exchange agreements, there is not, in fact, any exchange of energy at all, but merely an accounting transaction in which BPA credits a subsidy to investor-owned utilities based upon each utility's average system cost.) Generally, BPA does not deliver federal power under this program to its customers.

B. BPA's contractual determinations under subsection 5 regarding its firm power load obligations

Under its contracts and statutes BPA makes annual and multiyear determinations of its obligations to its Northwest customers. These determinations are important to BPA's resource planning and its annual operation of the Columbia River Power system. In some circumstances, such as an insufficiency of firm resources, these determinations may affect the amount of power BPA is obligated to provide its customers.

One annual determination is BPA's total annual power sales contract obligation to customers. BPA's subsection 5(b) and (d) obligations are the basis for this determination and affect certain operational and planning determinations BPA makes during an operating year. BPA makes a determination of the planned changes in its electric power firm requirements load obligations for its federal agency and public agency or investor owned utility customers for the upcoming year. BPA also makes a determination of the operating levels its DSI customers

¹ For federal agency loads, BPA also serves these loads net of any resources or power purchases from other sources available to the federal agency.

have requested during the year. This information goes into BPA's planning for operation of federal generation and power purchases during the year.

Annually BPA also makes a multiyear planning determination of its firm and peak load obligations and available resources and purchases. Utility customers may increase or decrease their firm power loads (peak or energy) by giving notice to BPA. Under their contracts the customers provide seven years' planning information of their estimated load requirements and resources to serve firm loads. BPA uses this information in its multiyear (10 and 20 year projections) loads and resources planning. DSI loads are planned, based on industry information and any anticipated changes in loads, and then are included in BPA's long-term planning.

Based in part on these determinations, BPA plans its long-term resource acquisitions of various resources in order to be assured of having adequate firm power available to meet its contractual obligations. BPA cannot build, own, or construct its own resources but may acquire the capability of resources made available to it. 16 U.S.C. 839a(1). Any acquisition must be consistent with provisions of subsections 6(a)(1) and (2) of the Northwest Power Act. 16 U.S.C. 839d(a)(1)&(2).

BPA makes two other determinations under section 5 of the Northwest Power Act that are affected by any subsection 9(c) determinations. First, under subsection 5(b)(5) the Administrator must determine whether or not BPA can be assured of acquiring sufficient resources to meet its public agency firm requirements loads on a planning basis. If the Administrator determines that BPA may not be able to acquire sufficient resources in the future to meet its loads, then consistent with this provision and subsection 5(b)(6), BPA may declare an "insufficiency" for a specified period and restrict BPA's contractual obligations to meet its customers' section 5(b) firm power load requirements for that period. 16 U.S.C. 839c(b)(5)&(6). Second, BPA annually determines the extent to which BPA may have electric power in excess of its firm power requirements load obligations on both an annual operating year and a multiyear planning basis. Under subsection 5(f) of the Northwest Power Act, BPA may sell such excess electric power, if any is available, as surplus power to BPA customers either within or outside of the Pacific Northwest region, consistent with the requirements of BPA statutes. 16 U.S.C. 839c(f).

III. Subsection 9(c) of the Northwest Power Act

A. General overview of subsection 9(c) terms

Subsection 9(c) provides in pertinent part:

The Administrator shall in making any determination, under any contract executed pursuant to subsection 5, of the electric power requirements of any Pacific Northwest customer, which is a nonfederal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to subsection 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 added).

The Northwest Power Act redefined BPA's obligation to provide electric power service to its customers for their firm electric power requirements load.

1. BPA's net electric power requirements obligations

Under subsection 5(b)(1), BPA would be obligated to serve a customer's load net of the firm resources the customer decides to "dedicate" to serve such loads. BPA meets these firm loads by using existing resources or by acquiring additional resources consistent with section 6 of that Act. Customers would determine what resources they will apply to serve their own loads, if any, and BPA would supply the difference. BPA is not obligated to serve that portion of its customers' loads served by the customers' own resources.

A utility customer with its own resource may (1) dedicate it to serve its firm power load in the region; (2) sell the power to another Pacific Northwest utility for service to that utility's regional load; (3) use the resource on its own system to serve its out of region loads; (4) sell the power to BPA if BPA is purchasing resources that will serve regional load; or (5) sell the power to another entity for delivery to loads out of region.

2. Application of "region" to resources covered by subsection 9(c)

In all cases, a utility customer's resource choices are affected by the definition of "region" as applied to the interpretation of subsection 9(c). The Northwest Power Act defines the region and those loads served by BPA or a customer that are within the region as regional loads. Subsection 3(14) states:

Pacific Northwest, "region", or "regional" means-

(A) the area consisting of the States of Oregon, Washington, Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on the

effective date of this Act which has a distribution system from which it serves both within and without such region. 16 U.S.C. 839a(14).

Regional loads as referred to in section 9(c) of this Act are those loads within the Pacific Northwest served by a BPA customer.

BPA interprets this definition and subsection 9(c) as not requiring BPA to make a 9(c) determination for those resources a customer uses to serve its own out of region firm power loads. A utility's use of its own system resources to serve its own loads does not constitute an export out of region of the resource or a sale, exchange or other disposition of electric power to another entity out of the region under subsection 9(c) and (d) of the Northwest Power Act or subsection 3(d) of the Act of August 31st, 1964, P.L. 88-552, (the Northwest Preference Act). A utility's application of its own resources to meet its own system loads that it has a utility responsibility to serve, are matters for the utility's board and regulators to address.

However, sales, exchanges or other disposition of electric power by a customer to another entity outside the region is covered under subsection 9(c). If customers choose to export their resources rather than dedicate them to serve their own firm loads, or let BPA acquire them for service to its customers' regional firm loads, then subsection 9(c) specifies how BPA is to treat such exports for its firm load requirements determinations. Subsection 9(c) requires BPA to make a determination of the result an export of an entity's resource will have on BPA's firm load service obligation to the exporting utility and its obligations to serve regional firm load of other BPA customers. BPA then incorporates all 9(c) determinations when it makes its annual and multiyear determinations of that customer load as discussed above.

3. Subsection 9(c) is not a prohibition on customer resources exports, but exports are reviewed under subsection 9(c)

Importantly, subsection 9(c) does not prohibit a customers' export of any power from its resources out of the Pacific Northwest region. Subsection 9(c) does not limit the number or type of export transactions that a customer may make of its resources. A customer may export any of its resources by a sale, exchange, or other disposition out of the region, even if those resources are "dedicated" to serve its own loads or the loads of other customers in the region under subsection 5(b)(1) contracts. Subsection 9(c) only requires BPA to exclude an amount of energy from BPA's firm electric requirements obligations when the customer's export sale, exchange or other disposition of electric power out of the region meets certain statutory considerations.

The Administrator excludes any amount of power that is included in a customer's resources dedicated to serve any firm loads in the region if three statutory considerations are met. First, an amount of power is disposed of outside the region by the customer. Second, as a result of disposing of a resource out of region, the firm energy requirements of that customer or any other BPA customer are increased. Third, the Administrator may not exclude that amount of power if the Administrator determines further that the power "could not be conserved or otherwise retained for service to regional loads." Thus, the determination required by

subsection 9(c) of the Administrator is that (1) an amount of power from the customer's resources available to serve regional load was exported by the customer out of region; (2) that customer's firm energy requirements or the requirements of any other BPA customer may be increased as a result of the export; and (3) that such amount of energy could not by reasonable means be either conserved or otherwise retained for service to regional load.

4. The type of resource exported is also considered

In addition, the Administrator must consider the type of resource producing the energy to be exported; i.e., the Administrator must consider whether the power is produced from a hydroelectric resource or from another source. Subsection 9(c) refers to subsection 3(d) of the Northwest Preference Act. 16 U.S.C. 837c(d). This 1964 provision is applicable to a customer's hydroelectric resources. Subsection 9(c) states:

The Administrator shall . . . exclude, in addition to hydroelectric generated energy excluded from such requirements of any Pacific Northwest customer pursuant to subsection 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

Subsection 3(d) of the Northwest Preference Act states:

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 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.

Thus, a customer that is a utility has its hydroelectric generation evaluated under subsection 3(d). Utility customers' other resources and resources of nonutility customers will be evaluated under subsection 9(c) and would include all other resources, e.g., thermal generation, renewable resources and any hydroelectric resources of a nonutility customer.

If an amount of energy is excluded from the Administrator's obligations to the exporting customer, the Administrator is then authorized to sell to the customer as replacement for the exported energy only Federal power that would otherwise be surplus. 16 U.S.C. 839f(c).²

² Subsection 9(c) defines surplus energy and surplus peaking capacity:

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.

B. Subsection 9(c) does not apply to BPA's determinations of electric power requirements under section 5 contracts for certain types of firm power requirements service

All contracts executed pursuant to section 5 have determinations of "electric power requirements," including BPA's power sales contracts with preference agencies, investor-owned utilities and federal agencies under subsection 5(b). Subsection 9(c) does not apply to certain BPA obligations to provide service to certain purchasing classes of customers. For example, subsection 5(b) contracts with federal agencies are excluded by the language in Subsection 9(c) which states, "of any Pacific Northwest customer, which is a non-Federal entity having its own generation. "BPA's federal agency customers in the Pacific Northwest are thereby excluded.

This same phrase excludes another group of BPA customers: those customers that have no electric power generation of their own. Under current contracts, utility customers that do not have resources and who are purchasing on a metered, or full, requirements basis, have all of their firm power service provided by BPA. Their small resources, if any, are exchanged with BPA and not sold or disposed of on the open market. Since such customers do not have power from resources to sell for export, no export occurs. BPA's determinations of their electric power requirements are not affected by the application of subsection 9(c).

Sales to direct service industrial customers under subsection 5(d) are not included for several reasons. First, BPA sells power to those customers for direct consumption only and not for resale of that federal power. Resale of DSI power out of region is not permitted under the terms of the present contract and would be inconsistent with the statutory use identified for such a sale (direct consumption). Second, the initial subsection 5(d)(1) contracts with the direct service industries have a limitation on the amount of power BPA may provide to these customers. The amount of power BPA may sell under these contracts is based on "an amount equivalent to that which the customer is entitled dated January or April of 1975 for the sale of 'industrial firm power'." 16 U.S.C. 389c(d)(1). Third, direct service industries do not participate on the wholesale power export market as sellers of firm power.

Because BPA's obligation to provide firm power cannot exceed a specified amount and because there is no right of a direct service industrial customer to "export" any federal power sold to it, BPA's determination of its electric power requirements for service to these customers is not affected by any export. If the terms and conditions of BPA's firm power

The language of subsection 9(c) of the Northwest Power Act and Northwest Preference Act subsection 3(d) both contain the limitation that BPA can only sell to the exporting utility power that would otherwise be surplus power if BPA has determined that the export meets the conditions for excluding an amount of power from BPA's firm obligations. BPA reads this provision of subsection 9(c) and Northwest Preference Act subsection 3(d) regarding the replacement of exported power by surplus energy and capacity as having the same meaning.

service to the direct service industries were to change substantially under later contracts, BPA would have to reevaluate the application of this statutory interpretation to its redefined obligations to such customers.

BPA's utility customers with generating resources on their systems are the customers whose firm power load requirements may be affected by BPA's subsection 9(c) determinations. These customers include BPA's partial requirements public agency customers and investor owned utility customers. Such customers have dedicated a portion of their own resources to serve their regional load. BPA's present and future electric power requirements obligation to serve these customers' firm power load is determined by their resources dedicated to serve their own firm load and other Pacific Northwest customers' firm loads.

C. Subsection 9(c) applies to any resources of a customer that are available for service to regional load

Subsection 9(c) applies to BPA's determination of electric power requirements for those customers with their own resources. Primarily these customers are retail utilities, either investor-owned or public agency utilities that have developed resources and participate in the wholesale export power market. Some or all of these customer's resources may be designated to serve part or all of their firm power requirements load in the region under their power sales contracts. Designation of resources to serve regional firm power requirements load affects BPA's firm load obligation because BPA serves all customers' loads net of their dedicated resources.

The relationship between BPA's obligation to serve its customers' firm loads and the availability of customer resources to serve firm load, is set forth in subsection 5(b)(1):

Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative . . . and to each requesting investor owned utility electric power to meet the firm power load of such . . . 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 . . . 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 subsections 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 or loss of resource or loss of contract rights. 16 U.S.C. 839c(b)(1).

This provision contains several directions regarding the resources a utility can apply to its firm power load in the region. First, the subsection differentiates between the peaking and energy

resources that may be applied to the load. Second, two classes of resources are identified for service to regional loads: resources used in the year prior to the Northwest Power Act to serve a utility's firm load, and other resources that the utility designates to serve its load under its contract with BPA. 16 U.S.C. 839c(b)(1)(A) & (B).

The Northwest Power Act defines "resource" as "electric power, including the actual or planned capability of generating facilities, or actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer or from a conservation measure." 16 U.S.C. 839a(19). A customer's resources may be hydroelectric or thermal generation (coal, nuclear, gas turbine, etc.), renewable, or others. A customer wishing to serve its firm load under section 5 can dedicate future planned resources as well as existing customer resources.

Additionally, BPA has interpreted subsection 5(b)(1)(A)&(B) utility resources to include a firm power purchase contract with another entity. The last sentence of subsection 5(b)(1) refers to contractual rights to purchase power as a resource that may be lost for service to load. It is reasonable that such resources may be applied by a customer to serve its firm power load as a dedicated resource.

When a customer dedicates a resource to serve a portion of its loads, BPA does not have the obligation to provide or plan for service for that portion of the load. Once a customer dedicates a resource, it remains dedicated to serve the load unless a specifically identified event occurs. 16 U.S.C. 839c(b)(1). Note that an export out of region of a resource by a customer is not an event that discontinues the dedication of the customer's resource to serve its firm load.

D. The Administrator's determination under subsection 9(c) is a factual determination

The Administrator's 9(c) determination may affect the contract obligations of BPA to provide firm power requirements service to certain customers participating in the extraregional firm power market. The determination is whether a particular extraregional sale, exchange, or disposition of an amount of power from a customer resource, available for service to firm load in the region, will result in an increase in the Administrator's firm energy requirements for that customer or any other regional customer. It is a factual determination. If the determination is negative, then BPA will not exclude an amount of power equal to the export from its firm power requirements for the exporting customer. If the finding is positive, then the additional facts of whether the power could have been retained or conserved for service to regional loads by reasonable means, must also be determined. The Administrator's determination must also distinguish between a hydroelectric generating resource under subsection 3(d) of the Northwest Preference Act and other resources.

A customer's electric power requirements under its section 5 contract with BPA establishes BPA's obligation to provide firm power to serve the customer's load net of its resources. BPA must determine what the effect upon its load obligations and other loads served by its

customers will be, given the loss of an amount of power available to serve load in region due to an export of that power out of region. Currently, BPA's contracts permit a customer to place additional firm power loads on 7 years' notice or upon the occurrence of certain specific events, like loss of a dedicated resource. BPA's load obligation to serve its electric power requirements is not static and can change upon the choice of the customer to request additional firm service from BPA. BPA's evaluation of any proposed changes in its obligations is based on its information on loads and resources, anticipated changes in economic conditions and other facts as discussed below. In making its factual determinations BPA applies the following meaning regarding the conditions expressed in subsection 9(c).

1. Disposition of an amount of energy outside the region by a customer

The first step in a 9(c) factual determination is whether a customer has exported an amount of energy from its resources out of region.³ Subsection 9(c) states its first condition as follows: "if 1) such amount was disposed of by such customer outside the region, . . ." 16 U.S.C. 839f(c). The terms "outside the region" as previously discussed have a specific meaning in that the term "region" is defined by the Northwest Power Act. For the reasons stated above, BPA does not evaluate its customer's service to its own extraregional loads as an export. For transaction between Northwest customers and other nonregional entities, BPA has considered any contracts which include terms for delivery of power at the points of interconnection of BPA's Intertie with California (COB), Nevada (NOB), British Columbia (Blaine), and eastern Montana, as points of delivery for export.

The terms "disposed of" means the transference of ownership, use or title to the power from the regional customer to an extraregional entity. The specific mechanisms may include sales, assignments, exchanges, or other contractual arrangements. However, not all forms of dispositions necessarily result in a disposition of power outside the region. Specifically certain types of exchanges, like seasonal exchanges, may not result in a disposition outside of the region because the power is returned to the Northwest. Those exchanges which result in no

³ As part of its past practice in implementing subsection 9(c), BPA has on a case-by-case basis requested information from a customer on a proposed export sale or exchange transaction with an extraregional entity. When a customer requests use of BPA's Intertie transmission system to facilitate the delivery of power sold to extraregional entities, identifying the details of the export becomes part of a negotiation for the provision of that service. In these circumstances BPA can readily obtain information on the export proposed by a customer.

However, transactions that occur over transmission facilities not operated by BPA do occur, primarily for regional investor-owned utilities. BPA has generally not made any subsection 9(c) determination regarding these exports for two reasons. First, both Portland General Electric Co. and PacifiCorp are owners of the transmission and do not request the use of federal transmission to complete their transactions. Second, neither of these utilities have placed any firm power load upon BPA under their requirements power sales contracts. In effect, there is no electric power requirements served by BPA for these utilities against which BPA would reduce the amount of its power service equal to their exports (assuming the conditions of subsection 9(c) so required). If these customers choose to place firm requirements loads on BPA, then BPA would have to make a determination regarding their exports, just as it does for its customers that do place firm power loads on BPA.

net power loss in any operating year, i.e., the extraregional entity will return at least as much power to the Northwest customer as was earlier delivered to it, will not be considered as dispositions which result in a net export of power out of the region. These exchange types of dispositions are further discussed in the attached policy. Non-Federal Participation Capacity Ownership Contract and Section 9(c) Policy, Record of Decision, at 11.

BPA interprets the terms "by such customer" to mean any customer, participating in the extraregional firm power market, that has resources that it either owns or purchases the output thereof from others. "Customer" is a term defined by the statute as "anyone who contracts for the purchase of power from the Administrator pursuant to this Act." 16 U.S.C. 839a(7). Customer would also include any subsidiary, any agent, assignee, delegatee, broker or other entity which is disposing of power or resources for a customer on the wholesale market whether or not such agent, assignee, delegatee, broker, or entity is a customer of Bonneville.

Also, "customer" would include any other entity that the customer owns, controls, in whole or in part or is controlled by the customer, and any entity that is controlled by those controlling the customer, or of which the customer is a member. Thus, any generation subsidiary, or any agent acting for the customer in providing power or selling power, is included within the ambit of this provision. If the customer is a member of any state joint operating agency (JOA) or other association providing resources to its members, and the customer belongs as a member with the right to receive power from projects of that entity, then the resource or portion thereof available to the customer will be considered part of the customer's resources to the extent of its participation. If a customer is not a member of a JOA or other association, but uses the JOA or association to accomplish an export of resources, the export will be attributed to the customer with the JOA or association acting as agent for the customer for the purpose of exporting the resource.

BPA's determination under this part of the 9(c) test is to establish factually that an export of nonfederal power took place by or on behalf of a customer in a specified amount and for a specified duration. To facilitate this finding, BPA requires any customer making an export inform BPA of the general terms and conditions of the proposed transactions prior to concluding final contracts with an out-of-region entity. Only by being informed of proposed export transaction can BPA have the factual basis necessary to make the determinations required by this subsection.

BPA interprets the terms "such amount" in this phrase as a reference to the antecedent terms "any amount of energy included in the resources of such customer for service to firm loads in the region in the preceding phrase." To define "such amount," BPA must define both portions of this preceding phrase. BPA reads "amount of energy," to mean the amount of power exported and potentially excluded from its electric power requirements. BPA interprets these two terms to refer to and mean the same thing, that is, an amount of power that is subject to the stated conditions and which, if the conditions are met, is to be excluded from BPA's firm load obligation.

BPA believes that both peaking energy and electric energy are included in the terms "any amount of energy" and "such energy". The Northwest Power Act defines electric power as "electric peaking capacity, or electric energy, or both." 16 U.S.C. 839a(9). BPA's contractual obligations under section 5 include supplying both electric peaking energy (capacity) and electric energy for its customers' firm load requirements. Further, a customer may designate peaking and energy resources under subsection 5(b)(1) in differing amounts for service to its firm loads. For these reasons the above phrases apply to firm power and not just firm energy in BPA's determinations under subsection 9(c). Additionally, this interpretation coordinates these terms with subsection 5(b)(1) that uses the term "electric power" to meet firm power loads of customers in defining the Administrator's obligation under its contracts. Both electric peaking capacity and electric energy are needed in order to provide continuous service to a customer's firm power loads.

Thus, BPA reads the term "energy" to be used in its generic sense of electric power when used in this subsection and to mean both electric peaking capacity and electric energy for purposes of a 9(c) determination. BPA recognizes that a customer may differentiate between the peaking capacity it dedicates to its firm loads from the firm energy portion of its resources dedicated to firm load under subsection 5(b). This interpretation is not intended to prevent that differentiation nor to require that uniform amounts of energy and capacity from the same resource be dedicated to firm load service by the customer.

Support for this interpretation is found in the legislative history of both subsection 5(b) and subsection 9(c). For example, the Senate Energy Committee report in discussing subsection 5(b) states:

This subsection sets forth the manner in which firm resources of individual customers are to be determined. For purposes of that determination, the term "firm power load" is intended to mean the power a customer is obligated to make continuously available to its purchasers . . . , and the term firm resources is intended to mean the electric power suitable for providing service to firm power loads. S. Rep. No. 272, 96th Cong., 1st Sess. (1979), p. 26.

The same report states regarding subsection 9(c):

In addition, the Administrator's obligations to meet a customer's firm power load requirements will be limited if that customer disposes of a portion of its own resources outside the region and thereby increases its or another customer's firm power purchases from the Administrator. S. Rep. No. 272, 96th Cong., 1st Sess. (1979), p. 34.

This basic precept of BPA service to a customer's firm load in the region and its description of firm resources which could be applied to firm load service in the region or exported, remained unchanged in the Act.

The House Interior Committee's report does not differ. It states:

Subsection 5(b)(1) requires BPA to offer to sell to each requesting utility the power needed . . . 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 subsection 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. H. Rep. No. 976, 96th Cong., 2d Sess., Part II (1980), pp. 46-47.

Thus firm resources may be specified by their individual components, firm energy and firm peaking energy (capacity) by the customer in identifying the firm resources which it will apply to its firm load. This explanation confirms that the firm peaking capacity of a resource is the firm peaking energy component of that resource.

2. Power which is included in the resources of a customer for service to firm loads in the region

Next, BPA must determine those customer resources from which an exclusion may be made. BPA reads the terms "included in the resources of such customer for service to firm loads in the region" together with the next to the last sentence of 9(c). That sentence states, "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." In subsection 9(c), Congress addressed power from a customer's resources that is available for service to the customer's own regional firm load and the firm load of other customers in these provisions. The terms "firm loads in the region" and "to regional loads" are broader than just the dedication of a customer's resources to its own loads. A customer's resources that had been sold to another regional customer for service to its regional loads would also be included. Thus, any resource that a customer dedicates under subsection 5(b)(1) for service to its loads, and any resource of a customer that was sold to another customer and dedicated for service to that customer's firm load in the region, is covered by this subsection.

Put another way, BPA reads subsection 9(c) as asking not only whether the exporting customer had dedicated the power from its resource to serve its own load, but also whether power from a resource was available through purchase or other disposition to any other regional customer for dedication to that other customer's loads. This broader reading is consistent with the test stated in subsection 9(c) of whether the export of power from a resource would "result in an increase in BPA's firm obligation of that customer or any other customer." It is also consistent with the test of subsection 9(d), 16 U.S.C. 839f(d), of whether the export would increase the amount of firm power the Administrator is obligated to provide to any customer.

When a customer withdraws a firm resource it previously sold to another customer, and the resource was dedicated to that other customer's firm load, the customer's export of its resource could result in an increase in BPA's firm load obligation to that other customer. The loss of a resource, or of contract rights, gives rise under subsection 5(b)(1) to an increase in BPA's obligation to "pick-up" that portion of firm load served by the lost resource. Only if the customer losing the firm resource had another firm resource that was otherwise uncommitted and available to serve the same firm load, would the withdrawal of the resource not automatically result in an increase in BPA's firm obligation to the losing customer under subsection 5(b)(1).

However, not all resources developed by customers fall into the ambit of subsection 9(c). If a customer develops a resource solely for export and not in anticipation of service to present or future firm load, then the export of power from such a "market" resource would not be within subsection 9(c). Any power from the resource would not be included in resources for service to any customer's firm loads in the region.

In order to consider a resource within this category, BPA must have a finding from the regulatory body having jurisdiction over the customer that the resource was not developed for service to load but only for export. If there is no regulatory body having jurisdiction over the customer, BPA must have a demonstration from the customer that (1) the resource has not been used to serve any firm load of any customer in the region at any time; (2) the resource is not anticipated to be used to serve the customer's planned or forecasted firm power load increases, and such loads will be met by other resources, exclusive of firm power purchases from BPA; and (3) the customer is properly authorized under law to invest in, construct, develop, and sell or otherwise dispose of power from a resource which will not be used for service to its firm load. Because resources within this category are excluded from review, the above demonstration is necessary to avoid a result that BPA's load obligation would be increased due to such resources being exported and unavailable for service to Northwest firm load.

3. The Administrator's electric power load requirements are increased as a result of the disposition out of the region

The second condition for application of this provision is stated: "as a result of such disposition, the firm requirements of such customer or other customers are increased." After establishing that a disposition out of region has or will occur, BPA asks what the consequence of that action by a customer will be on BPA's firm power load obligations to all of its customers. BPA must look at both the effects upon the exporting customer's firm power load requirement and the effect upon the firm power requirements of its other regional customers.

Again, this determination is a factual one. BPA bases it upon its own information on BPA's current and planned firm load obligations; its resources; customer's rights to place additional load upon BPA under their firm requirements power sales contracts; its customer's own load and resource planning for those loads which BPA is not serving; and other information on available sources of power supply.

BPA reads the terms "firm requirements of such customer or other customers" to mean BPA's obligation to provide firm power to serve its customers' firm power loads, not requiring any hourly real time operational monitoring of such transactions. Rather, BPA reads this provision as calling for a determination of how its *planned* loads for the next several operating years may change. BPA's planning is based on various notice periods and resource addition assumptions applicable under subsection 5(b) contracts to changes in BPA's firm power load obligations. Currently, notice periods under BPA requirements contracts permit a customer to place an additional firm power load obligation upon BPA in 6 months to 7 years depending upon the specific circumstances involving a change requested by the customer. Considering such periods, BPA's subsection 9(c) determination would address likely changes that may result from an export in a time frame covering the next operating year out to 10 years, BPA's current loads and resources planning horizon.

BPA reviews information available to it and others regarding the load and resource balance of BPA customers in the region within the applicable period. BPA would analyze its own planning information as updated and that data available from sources like the public utility commissions of the states, information on planned resources of independent power producers, and least cost planning of utilities. Part of BPA's consideration would include the following facts and their likelihood of occurrence.

A customer could choose to increase its load requirement on BPA or develop or purchase another resource that was at the same cost or less than what BPA would charge for service. If there are sufficient nonfederal resources available when the load change would occur, and those resources are within a reasonable range of cost, then the disposition of an amount of power from a customer's resource out of region may not be likely to increase BPA's obligation to that customer or another due to availability of alternative, reasonable cost resources. In such cases, other factors may affect the likelihood that an export of a resource may result in an increase in BPA's firm power load obligation, but generally it would be small.

Conversely, if few nonfederal resources are available at a cost close to what BPA may charge for service to the customer's firm load, then the likelihood of BPA's firm power requirement obligation of that customer or another may become high. Transmission considerations may affect the choices a particular utility makes in whether BPA would serve its load or another supplier would. The export may then result in BPA having an increase in its firm load obligation. In addition, BPA would look to other information about the specific resource, such as whether the resource had been previously dedicated to serve the loads of another customer, but then was withdrawn by the owner and exported.

When a resource has been sold by the customer owner to another regional customer of BPA, and applied to that customer's load, BPA will consider that sale the loss of the second customer's contract right to a resource which would result in an increase in BPA's obligation to the second customer for two reasons. First, the resource was dedicated to serve a utility's firm power load in the region. Second, the loss of contract right to a resource that has been dedicated to firm load by a customer results in a discontinuation of service from that resource

under subsection 5(b)(1) such that BPA then has an obligation to serve the load formerly served by the resource.

Customer resources that are dedicated to serve a customer's load under subsection 5(b)(1) by the customer, if exported, will be considered to result in an increase in BPA's firm electric power obligation to that customer. Under subsection 5(b)(1) a customer's resource dedicated to serve its load remains dedicated unless one of the events enumerated occurs. Only if the Administrator has consented to the withdrawal of the resource from service to the customer's requirements load, can a customer then export the formerly dedicated resource. The other enumerated conditions for discontinuation of a dedicated resource do not make any power from the resource available to the customer for export, since those events describe the loss of the resource, generation or power. BPA has previously stated a policy and interpretation of subsection 9(c) that BPA would reduce its firm power load obligation to any customer that exported power from a resource that was dedicated to serve load in the region during the time of the export. *See* attached letter from H. Spigal, BPA to J. Walsh, Montana Power Company, dated October 21, 1983.

When BPA does its review of regional loads and resources, BPA will consider additional factors, such as, the amount of power proposed to be exported, the duration of the proposed export, whether the disposition is a sale or a seasonal exchange, whether there is a contractual right to terminate power deliveries to the out of region customer, or to terminate the transaction on notice, and other relevant terms, conditions or circumstances as BPA in its discretion decides must be considered. BPA's determination is not a guarantee that its firm power load obligation to an exporting customer or other customers will not increase, but is a reasonable projection based upon information readily available to BPA at the time it makes its determination, of whether an increase in BPA's firm power load obligation of the exporting customer or any other customer is not likely to occur as a result of the export.

The above discussion of information and probability is applicable to those nonutility hydroelectric resources and other thermal resources as discussed above. The standard differs from the standard applicable to utility customer's hydroelectric resources exported from the region. This latter standard is set forth in subsection 3(d) of the Northwest Preference Act and is discussed below.

4. BPA will not reduce its obligation if the power exported could neither be conserved nor retained for service to regional loads through reasonable measures

The second to the last sentence in subsection 9(c) states an exception to reducing a customer's firm power requirement even if the first two conditions are met. The Administrator must determine if the power exported could have been conserved or otherwise retained for service to regional loads by reasonable measures. If the answer is that the power exported could not have been conserved or retained, then the customer would not have its electric power requirement reduced by the export when BPA makes its other determinations. If the power could have been conserved or retained by reasonable measures, then BPA would reduce the

electric power requirements of the exporting customer by the amount and duration of the export.

For purposes of its determination under subsection 9(c), BPA reads the phrase "reasonable measures" to mean those actions, contracts, or other arrangements which a prudent utility would take to ensure reliable service and efficient use of its resources consistent with a one utility concept for operating Pacific Northwest utility systems. Extraordinary or highly unusual actions are not within the scope of this phrase. BPA would not anticipate that a customer must undertake such actions. Usual and customary actions or agreements to maximize efficient reliable use of regional resources to meet regional load includes making the resources available to other Northwest customers and application of generation to existing and future loads of a customer. The arrangements to accomplish this task are those which Northwest utilities have used. Thus, reasonable measures which would conserve or retain power from a resource for service to Northwest loads would include, but not be limited to (1) using the power for service to existing orphaned load of the customer; (2) using system storage or obtaining storage off system; (3) using the resource for economic displacement of the utility's other resources, or deferral of more expensive fuel purchases or power purchases; (4) offering to sell or exchange resource output to other regional customers for use in their load or for displacement of their less economical resources or fuel purchases; and (5) making seasonal exchange or storage arrangements with extraregional systems.

BPA interprets the term "conserve" to mean not to waste, to preserve from loss or keep. Conservation of electric power from a thermal generating plant may include measures or actions different from those appropriate for a hydroelectric generating plant. A utility system that has both types of resources may have available additional resource coordination actions that could conserve the power proposed to be exported. Such coordinated actions may not be available to utilities with only single resources or one type of resource. Similarly, the term "retain for service to regional loads" is interpreted to include a range of activities, some of which are mentioned above.

Some utilities may not have available to them the same range of actions that others do because of particular differences in their systems. All should be able to take the actions noted above. The appropriateness of any particular measure will depend in part upon the type of resource and in part the type of system that exports the power. These are reasons why BPA must be able to identify the specific resources supporting a particular transaction exporting power out of the region. It is also why a customer's system sales that fail to identify the resources used will be treated as exporting power that is either hydroelectric energy or power that may be capable of being retained for service to regional loads.

BPA interprets the phrase "otherwise retained for service to regional load" to mean more than that a customer only need look to how it may utilize a resource to serve its own loads. The use of the term "regional" as a descriptor of loads means that the utility has a responsibility to offer or make the resource available to other customers within the region before it seeks to export the power out of region. Without this step, power from regional resources that would otherwise either be dedicated to serve Northwest loads, or used to create additional system

efficiencies in serving regional loads, would be lost to the region. This interpretation is consistent with the definition of region in the Northwest Power Act. "Regional" is a defined term under subsection 3(14) of the Act, and BPA will apply that definition to the loads covered by this subsection when reviewing an exporting utility's request under this subsection. 16 U.S.C. 839a(14). Additionally, this interpretation is consistent with the language in preceding sentence of subsection 9(c) that directs BPA to consider not only increases in the firm power requirements of the exporting customer but also any increases in any other customer's firm power requirements in the region.

E. Consideration of utility hydroelectric resources under subsection 9(c) of the Northwest Power Act and subsection 3(d) of the Northwest Preference Act

As part of BPA's determination of its firm load obligations when a customer proposes to export electric power from a resource, BPA must first consider whether the power comes from the operation of a hydroelectric resource. Subsection 9(c) provides that the Administrator would exclude from a customer's electric power requirements, firm power exported from nonhydroelectric resources if certain conditions are met. These exclusions are in addition to hydroelectric generated energy excluded from such requirements pursuant to subsection 3(d) of the Northwest Preference Act. Subsection 3(d) applies to exports of hydroelectric resources by BPA utility customers. It provides in pertinent part:

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

BPA interprets this provision to apply to the Administrator's determinations of the energy requirements of a Pacific Northwest utility customer as defined in subsection 1(f) of the Northwest Preference Act. A utility's energy requirements include BPA's requirement obligation to provide firm power to the utility under its subsection 5(b)(1) contract with BPA. To the extent that BPA provides electric power to meet the utility customer's firm power requirements load, those "electric power requirements" under the Northwest Power Act subsection 9(c) are included in the definition of "energy requirements" under subsection 3(d) of the Northwest Preference Act.⁴ Thus, BPA's 5(b)(1) firm power load obligation to its

⁴ Subsection 1(f) of the Northwest Preference Act provides: "Energy Requirements of any Pacific Northwest customer "means the full requirements for electric energy of (1) any purchaser from the United States for direct consumption in the Pacific Northwest, and (2) any non-Federal utility in that region in excess of (i) the hydroelectric energy available for its own use from generating plants in the Pacific Northwest, and (ii) any additional energy available for use in the Pacific Northwest which, under a then existing contract, the utility (A) can obtain at no higher incremental cost than the rate charged by the United States, or (b) is required to accept."

utility customers would be reduced under subsection 9(c) if there is an export of hydroelectric energy that meets the conditions of subsection 3(d).

Second, the standard stated in subsection 3(d) differs from the standard expressed in subsection 9(c). Subsection 3(d) directs BPA to exclude amounts of hydroelectric energy disposed of outside the Pacific Northwest by the utility, if the energy could have been "conserved or otherwise kept available for the utility's own needs in the Pacific Northwest by reasonable measures." BPA applies the same meaning to the terms "reasonable measures", "conserve", and "otherwise kept available" under both subsections 3(d) and 9(c). "Conserve" means to save for use or keep from loss. "Otherwise kept available" means to retain the use of the energy on the utility's system for application to load. "Reasonable measures" include the types of actions noted above, including arrangements for or use of storage, economical displacement of other resource with higher operating costs than hydro, agreements with other systems for the exchange of hydropower that make the power available to the utility during peak load periods, etc.

However, this standard does not include a requirement that a utility offer to sell its hydroelectric energy to another Northwest customer in order to retain the energy for service to Northwest loads. This statutory requirement is in subsection 9(c) of the Northwest Power Act. BPA interprets these two provisions to be consistent with each other. Subsection 3(d) of the Northwest Preference Act addresses a subset of BPA customers and a subset of their resources, that is, utility customers and their hydroelectric resources. Conversely, subsection 9(c) of the Northwest Power Act addresses all other customers and all other resources. The subsection 9(c) reference to a utility's "generation" is not exclusive of hydroelectric energy of a utility customer and would include hydrogeneration of nonutility customers. If such hydroelectric power could be sold to other Northwest customers for service to their loads, then it would be energy that could have been retained for service to regional load by reasonable measures, e.g., a sale.

The above interpretation is consistent with BPA's prior interpretations of subsection 3(d) of the Northwest Preference Act. In March 1984 BPA responded to an inquiry from the City of Tacoma's Department of Public Utilities. Tacoma was concluding a 41 average MW export sale to the Western Area Power Administration (WAPA) Central Valley Project in California. Tacoma had purchased the project output from several irrigation districts owning five hydroelectric resources, including the South Columbia Basin Irrigation District (SCBID). In its letter BPA stated an interpretation of subsections 9(c) and 3(d). BPA said subsection 3(d) restricted BPA's ability to sell firm power to a utility to replace hydroelectric energy generated in the Pacific Northwest and disposed of outside the region. BPA determined that Tacoma's hydroelectric resources could always be run against its load and thus kept available for use to serve firm load.⁵ Although Tacoma has an ability to determine the resources it will

⁵ BPA's determination that Tacoma could have kept its hydroelectric resource available for service to its loads is based on an analysis not stated in the letter. Because hydroelectric resources have very low operating costs, they can always be run against existing load as either a displacement of existing resources with higher operating costs; as partial reduction of purchase power options available to the utility; as serving otherwise marginal or interruptible loads; or as a planned resources which would serve planned load to the extent of the

use to serve its firm load, its determination is limited by subsection 3(d). Because hydroelectric resources can be run against load, and because subsection 3(d) does not include the standard that BPA's requirements obligation must increase, BPA found that an export of hydroelectric power will reduce BPA's obligation to provide firm requirements power to the exporting customer under subsection 3(d). The reduction occurs, even if BPA's firm requirements obligation to that customer would not increase as a result of the export.

To the extent that BPA determines under subsections 9(c) and 3(d) that an export of a utility customer's hydroelectric resource requires a reduction in BPA's electric power requirements of the utility, BPA will reduce its obligations by the amount of the power exported by the utility and for the duration of the export when BPA makes its other section 5 determinations. In addition, BPA may only sell surplus power to the exporting utility as replacement consistent with the provision of subsection 3(d) of the Northwest Preference Act, and subsections 5(f) and 9(c) of the Northwest Power Act.

F. Interpretation of Northwest Power Act subsection 9(d) as relating to 9(c) determinations of the Administrator

Subsection 9(d) of the Northwest Power Act states in pertinent part:

No restrictions contained in subsection (c) shall limit or interfere with the sale exchange or other disposition of any power by any utility or group thereof from any existing or new non-Federal resource if such sale, exchange or disposition does not increase the amount of firm power the Administrator would be obligated to provide to any customer. 16 U.S.C. 839f(d).

BPA has previously interpreted this provision not to affect any determination regarding the export of hydroelectric power by a customer under subsection 3(d) of the Northwest Preference Act. This interpretation is stated in BPA's letter to the City of Tacoma regarding the export sale of SCBID to WAPA. BPA reads subsection 9(c) to be an affirmation of subsection 3(d) of the Northwest Preference Act and not a limitation upon its application to customers' hydroelectric resources that are exported.

Additionally, this provision states the same standard as subsection 9(c). That standard is whether a customer's export of power from resources, other than hydroelectric power covered under subsection 3(d), would result in an increase in BPA's electric power requirements of the exporting customer or any other customer. BPA reads the language, "if such sale, exchange, or disposition does not increase the amount of firm power the Administrator would be obligated to provide any customer" to mean the Administrator's electric power requirements do not increase for any customer as a result of the export. This is the same test as that contained in subsection 9(c) and BPA would use the same evaluation of an export as discussed above. Further, BPA's obligation to provide firm power to any

assured capability (firm output) of the resource. See attached letter from J. Jones, BPA, to P. Nolan, Tacoma Department of Public Utilities, dated March 19, 1984.

customer is the same obligation as referred to in subsection 9(c) which is established by BPA's firm power requirements under its section 5(b) contracts with its customers.

For the reasons stated previously, BPA does not interpret either subsection 9(c) nor 9(d) to focus only upon the potential increase in the exporting customer's requirements. If subsection 9(d) were so interpreted, then the express language of subsection 9(c) directing the Administrator to consider an increase in the firm energy requirements of other customers would become a nullity. Statutory provisions are to be read so as to give effect to all of their terms. Any interpretation should avoid conflict between provisions. These two provisions cannot be rationally interpreted such that subsection 9(c) requires a look at the effect of an export on the electric power requirements of other customers based on its plain language and subsection 9(d) as declaring a limitation on that consideration which would make it irrelevant to BPA's determination.

The better interpretation is that subsections 9(c) and (d) may be read so as not to create a conflict. Subsection 9(d)'s use of the term "any" as a descriptor for customer means BPA should look at the impact on all its customer obligations within the region to provide firm power for their requirements. Only if BPA's obligations to any one customer are increased would BPA be permitted to reduce its electric power requirements obligations. The focus of BPA's determination is whether any customer's obligation would increase regardless of whether or not that customer is the exporter of the power.

APP

October 21, 1983

James F. Walsh
Legal Department
Montana Power Company
40 East Broadway
Butte, Montana 59701

Dear Mr. Walsh:

In response to your letter of October 4, 1983, inquiring as to the existence of an opinion from our office concerning P.L. 88-552 and section 9(c) of P.L. 96-501, our office has not issued a final opinion on these sections. However, BPA has released several discussion papers regarding P.L. 88-552 and P.L. 96-501 that I have enclosed for your information.

Our office has recently been asked to look at several issues related to these sections. We have prepared a preliminary draft analysis for internal discussion. This latter analysis has not yet been made public.

BPA has been asked by a customer whether BPA would reduce a customer's firm energy requirements by the amount of firm energy generated at a customer's hydroelectric project, and exported outside the region, when that project is not listed in a customer's firm resource exhibit to its power sales contract. BPA answered that such exported energy would be excluded in determining a customer's firm energy requirements. BPA cited section 9(c) of P.L. 96-501, which incorporates the exclusion of hydroelectric energy from the energy requirements of Northwest customers provided for in section 3(d) of P.L. 88-552, as authority for this decision.

BPA was also asked whether thermal energy would be similarly excluded were it exported. BPA responded that exported energy from thermal projects currently listed in a customer's firm resource exhibit similarly would be excluded. BPA cited section 9(c) of P.L. 96-501 as authority for this decision. These views were given orally. To my knowledge these are the only recent BPA interpretations of the relationship between section 9(c) of P.L. 96-501 and P.L. 88-552.

I have assigned Mr. Preston Michie to this project. If you have any further questions on this matter, please feel free to call Mr. Michie at (503) 230-4207 or myself.

Sincerely,

Harvard P. Spigal
Acting General Counsel

DRAFT

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MAR 19 1984

Mr. Paul J. Nolan
Director of Public Utilities
City of Tacoma
Department of Public Utilities
P.O. Box 11007
Tacoma, WA 98411

Dear Mr. Nolan:

Thank you for the opportunity to allow the Bonneville Power Administration (BPA) to express its understanding of its obligations under the Pacific Northwest Regional Preference Act, P.L. 88-552 (Regional Preference Act). While BPA agrees with the City of Tacoma (Tacoma) that sections 5(b) and 9(d) of the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (Regional Act) allow a utility the flexibility to determine whether resources will be used to serve a utility's firm load, these sections do not permit a BPA customer to circumvent BPA's obligations under the Regional Preference Act for the reasons described below.

Section 3(d) of the Regional Preference Act restricts BPA's ability to sell firm power to a utility to replace hydroelectric energy generated in the Pacific Northwest and disposed of outside the region which a utility could have kept available for its own needs in the region. Section 3(d) allows BPA to sell as replacement for such energy only surplus energy subject to cut-off on 60 days' notice.

BPA has determined that Tacoma could have kept for its own use the hydroelectric energy generated from Tacoma's share of the projects on the South Columbia Basin Irrigation District (SCBID) canals. BPA believes that Tacoma could have kept for its own use an amount of firm power equal to the amount of increase in Tacoma's assured energy capability that would result from including Tacoma's SCBID entitlement as a firm resource under Tacoma's power sales contract.

A customer's ability to determine which resources would be used to serve its firm load pursuant to section 5(b) of the Regional Act is limited by the requirements of section 3(d) of the Regional Preference Act as incorporated in section 9(c) of the Regional Act. Section 9(c) directs BPA, in making any determination of the amount of firm power BPA would sell Tacoma under its power sales contract, to exclude from a customer's entitlement to purchase firm power (1) hydroelectric generated energy excluded from a utility's firm power requirements pursuant to section 3(d) of the Regional Preference Act and

(2) electric energy from other resources a utility determines will be used to serve its firm load pursuant to section 5(b) which is sold by the utility outside the region and which increases a utility's firm energy requirements as a result of such sale. While section 9(d) of the Regional Preference Act provides that the limitations in section 9(c) shall not limit or interfere with the sale of power outside the region from any existing or new non-Federal resource if such sale does not increase BPA's obligation to sell firm power to a utility, section 9(d) does not apply to hydroelectric generated energy specifically excluded from a utility's firm power requirements pursuant to section 3(d) of the Regional Preference Act.

BPA's obligations under section 3(d) of the Regional Preference Act and section 9(c) of the Regional Act to exclude from a customer's entitlement to purchase firm power hydroelectric energy sold outside the Pacific Northwest are triggered irrespective of whether a sale of hydroelectric generated energy outside the region increases a utility's firm energy requirements on BPA as a result of the sale. Sales by BPA of firm power to replace hydroelectric generated energy sold outside the Pacific Northwest are precluded even if a utility had not elected to use such hydroelectric generated energy to serve its own firm loads.

Tacoma's power sales contract with BPA provides that BPA will sell Tacoma the difference between Tacoma's firm power load and the assured capability of resources that Tacoma has determined will be used to serve its firm load. Section 42(a) of the General Contract Provisions (GCP's) of Tacoma's power sales contract incorporates by reference the provisions of sections 9(c) and 9(d) of the Regional Act and the provisions of the Regional Preference Act including section 3(d). Section 42(c) of the GCP's provides that BPA will perform all duties and obligations imposed on BPA by the provisions of the Regional Act and Regional Preference Act incorporated by reference in such section. BPA's understanding of its obligation under its power sales contract with Tacoma and other Pacific Northwest customers and applicable law is to reduce the amount of firm energy that Tacoma is entitled to purchase from BPA by the amount of increase in Tacoma's assured energy capability that would have resulted from including Tacoma's SCBID entitlement as a firm resource under its power sales contract. BPA would begin making such reduction concurrently with the commencement of deliveries of Tacoma's SCBID entitlement outside the Pacific Northwest.

BPA does not believe that Tacoma's sale of its SCBID entitlement outside the Pacific Northwest will affect BPA's obligation to meet Tacoma's firm peak loads. Tacoma's power sales contract with BPA includes provisions in the Scheduling Procedures Exhibit that would allow Tacoma to return during off-peak hours electric energy delivered during peak hours which exceeded BPA's obligation to deliver firm energy to Tacoma.

BPA appreciates the opportunity to explain BPA's understanding of its statutory and contractual obligations. If you have any additional questions regarding this matter, please contact Mr. Thomas H. Noguchi at (503) 230-3579.

Sincerely,

Original Signed by
JAMES L. JONES

Assistant Administrator for
Power and Resources Management

LKitchen:1o (WP-PKI-3621b)

cc:

S. R. Larson - APP

P. D. Michie - APP

M. R. Federovitch - DRK

G. A. Tupper - O

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J. W. McLennan - PG

S. H. Smith - PJI

T. M. Noguchi - PK

L. A. Dean - PS

S. R. Melton - PL

Official File - PKI

APPENDIX C

**BPA'S NON-FEDERAL PARTICIPATION, NORTHWEST POWER ACT,
SECTION 9(c) POLICY**

BPA's Non-Federal Participation, Northwest Power Act, Section 9(c) Policy

United States of America
Department of Energy
Bonneville Power Administration
Office of Power Sales
July 1994

**Bonneville's Non-Federal Participation,
Northwest Power Act, Section 9(c) Policy**

**for Exports of Up to 725 MW of Pacific Northwest Resources
over the
Pacific Northwest-Pacific Southwest AC Intertie**

TABLE OF CONTENTS

Section	Page
INTRODUCTION	1
1. Prior Northwest Power Act Section 9(c) Determinations	3
2. NFP Section 9(c) Policy Background	5
3. NFP Section 9(c) Policy	7

Appendix 1: List of New Owners

**Bonneville's Non-Federal Participation,
Northwest Power Act, Section 9(c) Policy**

**for Exports of up to 725 MW of Pacific Northwest Resources
over the
Pacific Northwest-Pacific Southwest AC Intertie**

Introduction

In 1968, the Pacific Northwest-Pacific Southwest AC Intertie (Intertie) began operation. Among other purposes, the Intertie was constructed to provide additional markets for Bonneville Power Administration (BPA) surplus firm and nonfirm power. In addition, to the extent that there was transmission capacity in excess of Federal needs, Congress intended that utilities in the Pacific Northwest and the Pacific Southwest take advantage of the seasonal diversity that exists between these regions by facilitating interregional exchanges.

Beginning in 1987, at the request of various parties, BPA began working to create increased opportunity for regional utilities to participate in the Intertie, while helping BPA defray some of the major Federal investment in the Third AC Intertie upgrade.

In May 1988, BPA finalized its Long-Term Intertie Access Policy (LTIAP), which established various operating conditions under which both Federal and non-Federal utilities would have access to the Intertie.

In 1993, BPA's Non-Federal Participation policy goal was to ensure that the 11 Pacific Northwest public and private utilities (potential "New Owners") that signed a Memorandum of Understanding with BPA in 1991 had an equitable opportunity to acquire a share of 725 megawatts (MW) of transmission capacity in the Intertie, a share as close to "full ownership" as possible, which is referred to as Capacity Ownership.

In order to become a New Owner, a Pacific Northwest utility was first required to complete a contract for the sale or exchange of a regional resource with a Pacific Southwest utility and then execute a Capacity Ownership Agreement with BPA for a share of Intertie. Whenever there is an

export of a regional resource, BPA has a statutory duty under Public Law 96-501, the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) Section 9(c) to determine whether the export of the New Owner's resource will result in an increase in the electric power requirements of BPA or of any of its customers and whether the resource could be conserved or otherwise retained to serve regional load in the Pacific Northwest.

If BPA finds that the export of a resource would result in an increase in the electric power requirements of any of its customers under BPA's Northwest Power Act, Section 5(b) utility power sales contracts, and the resource could have been conserved or otherwise retained to serve regional loads, BPA is required to reduce its firm load obligation to deliver power and energy under the exporting utility's power sales contract, effective on a date certain up to the amount of the export sale and for the duration of such sale.

If, on the other hand, BPA finds that the export of the Pacific Northwest resource would not result in any increase in the electric power requirements of BPA for that customer or any other customer, or BPA further finds that the energy could not be reasonably conserved or otherwise retained for service to regional load by reasonable measures, then BPA will not decrease its obligation to the exporting utility under its power sales contract.

In implementing Northwest Power Act, Section 9(c), BPA must reasonably balance the risk between BPA becoming obligated to acquire additional resources which it otherwise would not plan to serve additional load obligations, with the New Owner's ability to make an export. In this Non-Federal Participation, Northwest Power Act, Section 9(c) Policy (NFP Section 9(c) Policy), BPA will adhere to its prior case-by-case Section 9(c) determinations.

It is BPA's intent as part of its NFP Section 9(c) Policy determination to address at one time any Section 9(c) issues raised by the proposed initial exports by New Owners of up to 725 MW of regional resources, which is the maximum amount of Intertie transmission capacity available. BPA will use its analytical tools to review the specific resources and categories of resources being exported to determine if such exports will cause load on BPA or its customers to increase and to determine whether the resource could be conserved or retained using reasonable means.

As a result of the determinations made under the Northwest Power Act, Sections 9(c) and 9(d) and this NFP Section 9(c) Policy, the public and New Owners will know how BPA will apply its NFP Section 9(c) Policy determinations under the Northwest Power Act to those resources the New Owners initially intend to export. BPA's NFP Section 9(c) Policy will apply to the five

prospective New Owners which include: Eugene Water & Electric Board, Seattle City Light, Snohomish County Public Utility District No. 1, Tacoma Public Utilities, Puget Sound Power & Light Company, and the Pacific Northwest Generating Cooperative.

1. **Prior Northwest Power Act Section 9(c) Determinations**

a. **May 1988 - LTIAP Exhibit B, Intertie Capacity Available for Assured Delivery**

LTIAP section 4(a)(4)(A) and (B) "Waiver of Service Obligation" requires a Pacific Northwest utility exporting under an Assured Delivery contract to agree as a condition of its Assured Delivery contract to reduce BPA's firm load obligation to the utility engaged in the export, for a specified period, and in an energy amount equal to the amount of energy for which the Assured Delivery contract is provided. (The decrement for an export of a regional hydro resource begins immediately, while an export of a thermal resource is based on a notice from BPA that the exported resource is needed to meet requirements load in the Pacific Northwest.)

b. **October 1983 - BPA/Montana Power Company**

Montana Power Company asked, if in interpreting Northwest Power Act Section 5(c), BPA would reduce a customer's firm energy requirements by the amount of firm energy generated at a customer's hydroelectric project and exported outside the region, when that resource is **not** listed in a customer's firm resource exhibit. BPA response was that such energy would be excluded (decremented) from BPA's firm load obligation in determining a customer's firm energy requirements. (BPA referred to the language in Section 9(c) of the Northwest Power Act, which incorporates the exclusion of hydroelectric energy from the energy requirements of Pacific Northwest customers, and the language stated in Section 3(d) of Public Law 88-552, the Act of August 31, 1964 (Regional Preference Act), as authority for this policy.)

Montana Power Company then asked if energy from thermal resources would be similarly excluded (decremented) were it exported. Citing Section 9(c), BPA responded that exported energy from thermal projects listed in a customer's firm resource exhibit similarly would be excluded

c. **March 1984 - BPA/Tacoma Public Utilities (SCBID Hydroelectric Resource)**

In a March 19, 1984, letter from BPA to Tacoma Public Utilities over the export of Tacoma Public Utilities' South Columbia Basin Irrigation District (SCBID) hydroelectric resource, BPA found the SCBID resource was conservable and could be used to meet Tacoma Public Utilities' energy loads in the Pacific Northwest. Tacoma Public Utilities was able to export its SCBID hydro resource, but the utility's firm power requirements on BPA were reduced in the amount of the export sale, under Tacoma Public Utilities' 1981 power sales contract with BPA.

BPA said the following in its letter to Tacoma Public Utilities:

"* * * While BPA agrees with the City of Tacoma * * * that [S]ections 5(b) and 9(d) of the [Northwest Power Act] allow a utility the flexibility to determine whether resources will be used to serve a utility's firm load, these sections do not permit a BPA customer to circumvent BPA's obligations under the Regional Preference Act for the reasons described below.

"Section 3(d) of the Regional Preference Act restricts BPA's ability to sell firm power to a utility to replace hydroelectric energy generated in the Pacific Northwest and disposed of outside the region which a utility could have kept available for its own needs in the region. Section 3(d) allows BPA to sell as replacement for such energy only surplus energy subject to cut-off on 60 days' notice.

"BPA has determined that Tacoma could have kept for its own use the hydroelectric energy generated from Tacoma's share of the projects on the South Columbia Basin Irrigation District (SCBID) canals. * * *

"A customer's ability to determine which resources would be used to serve its firm load pursuant to [S]ection 5(b) of the [Northwest Power Act] is limited by the requirements of [S]ection 3(d) of the Regional Preference Act as incorporated in [S]ection 9(c) of the [Northwest Power Act]. Section 9(c) directs BPA, in making any determination of the amount of firm power BPA would sell Tacoma under its power sales contract, to exclude from a customer's entitlement to purchase firm power (1) hydroelectric generated energy excluded from a utility's firm power requirements pursuant to [S]ection 3(d) of the Regional Preference Act and (2) electric energy from other resources a utility determines will be used to

serve its firm load pursuant to [S]ection 5(b) which is sold by the utility outside the region and which increases a utility's firm energy requirements as a result of such sale. * * *

"BPA's obligations under [S]ection 9(d) of the Regional Preference Act and [S]ection 9(c) of the [Northwest Power Act] to exclude from a customer's entitlement to purchase firm power hydroelectric energy sold outside the Pacific Northwest are triggered irrespective of whether a sale of hydroelectric generated energy outside the region increases a utility's firm energy requirements on BPA as a result of the sale. Sales by BPA of firm power to replace hydroelectric generated energy sold outside the Pacific Northwest are precluded even if a utility had not elected to use such hydroelectric generated energy to serve its own firm loads."

2. **NFP Section 9(c) Policy Background**

This NFP Section 9(c) Policy is intended to facilitate the export by New Owners of the following: (1) newer regional resources which have never been dedicated in any firm resource exhibit; and (2) existing nonhydro regional resources which are not in any firm resource exhibit and which have been offered for sale to BPA and the region but have not been acquired. This NFP Section 9(c) Policy is **not** intended to encourage the export of regional resources which are currently dedicated to serving firm loads in any utility's firm resource exhibit, particularly when BPA and some of BPA's utility customers are in load/resource balance or deficit.

The following are the major components of the NFP Section 9(c) Policy:

- (a) BPA will complete its analysis regarding the probability of any increase in BPA's or its customers' energy obligations as a result of an export by a New Owner. BPA's analysis will review the following information: BPA's Whitebook data; customer load/resource information; customer resource stacks, and the least-cost plans of utilities who have stated in the past that they are not planning to place load on BPA;
- (b) New Owners will be able to export up to a maximum of 725 MW of regional resources under the initial Non-Federal Participation exports;

- (c) The NFP Section 9(c) Policy will be consistent with BPA's prior Northwest Power Act Section 9(c) determinations, e.g., letter to Tacoma City Light (SCBID);
- (d) BPA will apply its NFP Section 9(c) Policy to the specific exports of New Owners based on the information provided which describes specific resources and categories of resources for export;
- (e) Thermal resources not in any firm resource exhibit will be allowed to be exported by a New Owner without any decrement of their Section 5(b) utility power sales contract;
- (f) Exports of regional hydro resources and thermal resources in firm resource exhibits for power sales will result in a decrement of the New Owner's Section 5(b) utility power sales contract;
- (g) Seasonal exchanges between the Pacific Northwest and Pacific Southwest which result in no net energy loss to the region on an annual basis will not result in a decrement by BPA of a New Owner's power sales contract because there should be no need to acquire replacement energy resources or make additional energy purchases in the Pacific Northwest to support an exchange;
- (h) System sales will result in a reduction in BPA's firm load obligation to the exporting utility under its requirements contract with BPA if such sales involve the export of hydro resources, thermal resources in a firm resource exhibit, or the indirect resale of Federal power and energy (inconsistent with the utility power sales contract Exhibit A, General Contract Provisions; Section 9(c) of the Northwest Power Act; and Sections 2 and 3 of the Regional Preference Act). If a New Owner submits an operating plan for the term of the sale which identifies the resources used in the system sale, and they are thermal resources which are not in a firm resource exhibit, BPA may allow the system sale export without a decrement;
- (i) A New Owner that does not want BPA to decrement its export if BPA would otherwise do so will have the option to include recall terms in its export sale. The utility would discontinue its export sale on notice from BPA that the resource will be needed by a certain date to serve load in the Pacific Northwest; and

- (j) A New Owner may decide to offer its resource to BPA and other Pacific Northwest generating customers at the New Owner's cost including a reasonable rate of return. If the resource is not purchased it may be exported without a decrement of the New Owner's Section 5(b) utility power sales contract.

3. **NFP Section 9(c) Policy**

BPA's NFP Section 9(c) Policy is as follows:

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 New Owners using their share of Intertie for the life of the facilities.

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 New Owners' 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 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 which do not currently place any load on BPA.

(b) BPA shall review the specific resources and categories of resources being exported to determine if such exports will result in additional firm load obligations on BPA and if so, determine whether the resource could be conserved or otherwise retained for service to regional loads by using reasonable means. To do this BPA shall compare the resource a New Owner is proposing to export with those resources which BPA finds in its analysis can be exported without having to decrement the New Owners' Section 5(b) utility power sales contract.

Section 3. Scope of NFP Section 9(c) Policy

This NFP Section 9(c) Policy initially addresses the amount of anticipated exports (up to 725 MW) of Pacific Northwest resources by New Owners who obtain a share of the Intertie. If more non-Federal Intertie is made available in the future, the NFP Section 9(c) Policy shall also apply to such additional increment of Intertie. As noted in section 2, BPA shall make its Section 9(c) determinations based on a factual determination using information about the specific resource the New Owner intends to export. This policy does not automatically decrement New Owners for any resource when they wheel for others and in which the New Owner has no ownership or contractual interest. BPA shall analyze such third-party wheeling over a new Owner's share of Intertie on a case-by-case basis.

Section 4. Data on Specific Resources

BPA shall base its Section 9(c) determination on specific information BPA has obtained from New Owners on the resources they intend to 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; and
- (f) type of transaction or sale, and if it is a seasonal exchange, the terms of the exchange.

BPA will also consider any 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 does not propose to modify its existing determinations on Pacific Northwest utility exports and will apply its prior case-by-case interpretations of Section 9(c), and Section 3(d) of the Regional Preference Act without modification. Therefore, BPA incorporates by reference in this Policy these prior interpretations of Section 9(c).

Section 6. **Categories of Resources**

(a) **Exports That May Not be Decrement by BPA.** Under this NFP Section 9(c) Policy determination, BPA would determine that the export of certain resources are not likely to result in an increase in the electric power requirements of any of its customers under its Section 5(b) utility power sales contracts and thus may be exported without a reduction in BPA's firm load obligation under the New Owner's Section 5(b) utility power sales contract. Those resources which are of a similar type will be treated the same for purposes of this determination, e.g., all new cogeneration resources proposed for export shall be treated the same. Those resources which, based on BPA's present information, may not result in any increase in electric power requirements include the export of existing or planned cogeneration, renewable (nonhydro) or thermal resources exported by a New Owner, that are currently not dedicated in any Pacific Northwest utility's firm resource exhibit.

(b) **Exports That Will be Decrement 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 New Owner's Section 5(b) power sales contract:

(1) all Section 5(b)(1)(A) and 5(b)(1)(B) 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; and

(2) all Section 5(b)(1)(A) and 5(b)(1)(B) thermal resources that are currently dedicated by a utility in any 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 of resources that would not result in a decrement if standing alone, then BPA would not decrement such a system sale. BPA shall decrement the New Owner's Section 5(b) utility power sales contract if the system sale involves the export of hydro to support a power sale (whether or not in a firm resource exhibit); thermal that is in a firm resource exhibit; or any sale that is a prohibited resale of Federal power.

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

Section 8. Seasonal Exchange

Any seasonal exchange between a New Owner and a Pacific Southwest utility which results in no net regional energy deficit during any Operating Year, shall not result in a decrement by BPA of the New Owner's Section 5(b) utility power sales contract.

Section 9. Recall

Any New Owner that does not want its Northwest Power Act, Section 5(b) power sales contract decremented by BPA may agree to include terms for the recall of its export sale upon notice from BPA that the energy from such New Owner's resource is needed to meet requirements load in the Pacific Northwest.

Section 10. Resource Offer

This NFP Section 9(c) Policy gives a New Owner an option to offer a resource to BPA or to all other Pacific Northwest generating utilities. 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 a 50 aMW, it will be subject to the Northwest Power Act Section 6(c) process, which can take up to 12 months or more. If neither BPA nor any Pacific Northwest utility purchases the offered resource (offered at the New Owner's cost including a reasonable rate of return) the resource may then be exported without a decrement of the New Owner's Northwest Power Act Section 5(b) power sales contract.

Section 11. Consumer-Owned and Independent Power Producer-Owned Resources

If a New Owner contracts to purchase and then export any consumer-owned resource or any resource developed by an independent power producer, BPA shall decrement the New Owner's Section 5(b) power sales contract if the resource being exported is a hydroelectric resource or is dedicated to any Pacific Northwest utility load in any utility's firm resource exhibit.

Section 12. BPA Notification

From the date BPA's NFP Section 9(c) Policy determination is final, BPA shall notify in writing each New Owner with an allocated share of Intertie of the outcome of BPA's Section 9(c) determination. The BPA notification shall be made within 30 working days from the date the New Owner notifies BPA that it will be exporting a regional resource over its allocation share of Intertie.

Appendix 1

List of New Owners

The five Non-Federal Participation Participants include:

1. Pacific Northwest Generating Cooperative
2. Puget Sound Power & Light Company
3. Seattle City Light
4. Snohomish County Public Utility District No. 1
5. Tacoma Public Utilities

BONNEVILLE POWER ADMIN



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