



5(b)9(c) Policy Workshop #1

Oct. 14, 2026



Welcome and opening remarks

Rob Burr

Customer Account Executive

Agenda

Time	Topic	Presenters
1:00 p.m.	Welcome and Opening Remarks	Rob Burr
1:15 p.m.	5(b)9(c) Policy Refresh • What is the 5(b)/9(c) Policy? • Statutory Background • Updated Policy and Potential Changes	Rob Burr Mary Bodine Lindsay Bleifuss
3:00 p.m.	Next Steps, Workshop Calendar and Feedback	

Note: Times are approximate. Workshop may also include a 5-10 min. break

Process for Revising the 5(b)9(c) Policy

- The process BPA is proposing to follow for the 5(b)9(c) Policy aligns with the best practices outlined in the draft 2026 Public Involvement Policy.
- This is consistent with the process BPA conducted for the Provider of Choice Policy.
- If there are concerns with this approach, please let staff know.

What is the 5(b)9(c) Policy?

Rob Burr - Customer Account Executive

What is the 5(b)9(c) Policy?

- **The 5(b)9(c) Policy and ROD** is a longstanding policy containing BPA's interpretation of sections 5(b)(1) and 9(c) of the Pacific Northwest Electric Power and Conservation Planning Act, 18 U.S.C. §839 et seq. (Northwest Power Act).
- **Scope of Net Requirements Determinations:** It includes BPA's policy on determining net requirements - the amount of power a public body, cooperative, and investor-owned utilities (IOU)s may purchase as net requirements load service under section 5(b)(1).
- **Power Export and Replacement Resources:** In making the net requirements determination, section 9(c) of the Northwest Power Act and 3(d) of the Regional Preference Act apply. Under Section 9(c) and Section 3(d), the policy clarifies what qualifies as an export of non-Federal power/resources out of the region and guides whether BPA can sell power to replace exported customer resources, reaffirming its 1994 Non-Federal Participation Section 9(c) Policy.

What is the 5(b)9(c) Policy?

- **Adoption of the May 2000 Policy:** Following extensive public review, BPA issued its May 23, 2000 Policy and ROD to establish guidelines for its Subscription power sales contracts and clarify statutory requirements under the Northwest Power Act and Regional Preference Act.
- **Legal Challenges and Settlement:** Preference customers, direct service industrial customers (DSIs), and IOUs challenged the 2000 policy in the Ninth Circuit (*Goldendale Aluminum Co. et al. v. US DOE*), leading to a March 2003 settlement and motion to dismiss by nearly all parties.

What is the 5(b)9(c) Policy?

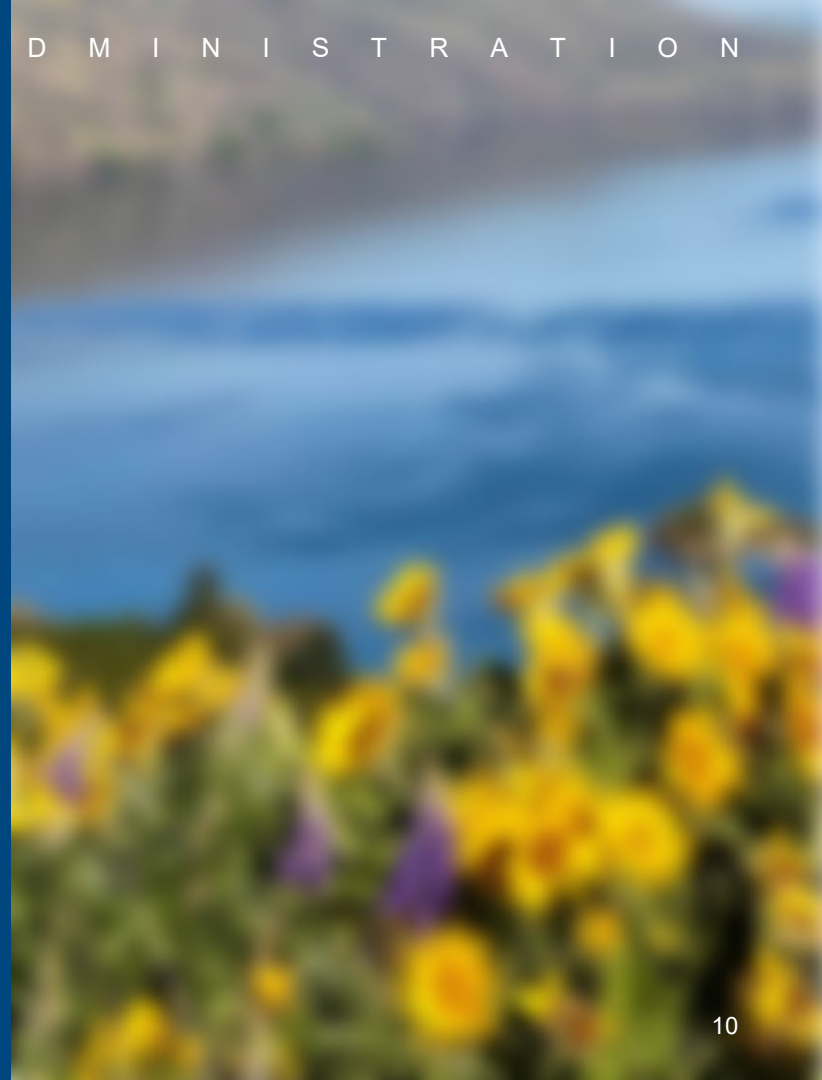
- **Policy Modification** via Clarifications: On March 7, 2003, BPA formally adopted resulting legal "Clarifications" into the May 2000 Policy, establishing the joint framework governing Sections 5(b)(1) and 9(c) through September 30, 2011.
- **2009 Revision:** In 2009 BPA revised the Policy to align with the Long-Term Regional Dialogue Policy and to clarify implementation issues related to the Tiered Rate Methodology (TRM).

What is the 5(b)9(c) Policy?

- The full name of the 5(b)9(c) Policy is; *“Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act (First revision. Issued March 19, 2009; effective October 1, 2011)”*.
 - The current 5(b)9(c) Policy is available at <https://www.bpa.gov/-/media/Aep/power/regional-dialogue/2009-03-25-5b9c-final-revised-policy.pdf>.

Statutory Background

Mary Bodine Watts - OGC



Application of Customer Resources

- Section 5(b)(1) calls out two categories of non-federal resources that a customer is required to apply to load.
- BPA must meet the customer's "firm power load . . . to the extent that such firm power load exceeds:
 - (5)(b)(1)(A): "the capability of such entity's peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and
 - (5)(b)(1)(B): "such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region." (Example: A customer resource contracted for the period by the customer for the period of the contract).

Removal of Customer Resources

- Section 5(b)(1)(A) and (B) requires that customer resources continue to be used to serve firm load unless they are permanently removed through one of the following:
 - (1) Administrator's consent,
 - (2) Discontinued because of obsolescence, retirement, loss of resource,
 - (3) Loss of contract right.

Section 9(c) of the Northwest Power Act

- Section 9(c) addresses how a customer purchase from BPA will be decremented in the event a customer's resource is disposed outside the region.
 - “The Administrator shall, in making **any determination**, under any contract executed pursuant to section 839c of this title, of the **electric power requirements** of any Pacific Northwest customer, which is a non-Federal entity having its own generation, **exclude**, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), **any amount of energy** included in the resources of such customer **for service to firm loads in the region if** (1) such amount was **disposed** of by such customer **outside the region**, and (2) **as a result** of such disposition, the **firm energy requirements of such customer or other customers of the Administrator are increased**. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads.” 16 U.S.C. f(c).
 - The Administrator may only sell surplus power as replacement.

Section 3(d) The Northwest Preference Act

- Section 3(d) of the 1964 Regional Preference Act addresses how a customer purchase from BPA will be decremented in the event of hydroelectric energy disposed outside of the Pacific Northwest:
 - “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).
 - The Administrator may only sell surplus power as replacement.

Updated Policy and proposed changes

**Lindsay Bleifuss –
Customer Account
Executive**

The 2027 Revised 5(b)9(c) Policy

- BPA needs to again update the 5(b)9(c) Policy to:
 - (1) align with the new Provider of Choice (POC) contracts, and
 - (2) address issues identified during development of the Contract High Water Mark (CHWM) Implementation Policy or identified through this public process.
- BPA will adopt an iterative redline approach to update the “The 2009 Revised 5(b)9(c) Policy.”

The 2027 Revised 5(b)9(c) Policy

- The Revised Policy will include:
 - **Policy introduction:** For the 2027 Revised 5(b)9(c) Policy
 - **Changes and updates to align terminology and definitions** for Provider of Choice (POC) and Public Rate Design Methodology (PRDM).

The 2027 Revised 5(b) 9(c) Policy

- **Policy Language:** BPA is considering whether to propose language in the 2027 Revised 5(b)9(c) Policy to address three different policy issues that are not addressed in the 2009 Revised 5(b)9(c) Policy.
- **Policy Updates:** BPA has identified three potential issues that could result in a change to the Policy. One issue clarifies existing policy intent while the other two issues introduce new content.
 - BPA is looking for feedback on those issues.

The 2027 Revised 5(b)9(c) Policy- Issue 1

- **Issue 1:** The transfer and recall of resource rights of a 5(b)1(A) resource:
 - Should BPA revise the policy to explicitly state how the transfer and recall of resource rights of a 5(b)1(A) resource would be applied.
 - The current Policy acknowledges that if 5(b)(1)(A) resource rights are transferred to a customer to serve its load, then the resource will be dedicated in the purchasing customer's contract.
 - If the resource is recalled to the original owner to serve its load, then the resource should be dedicated by the original owner.

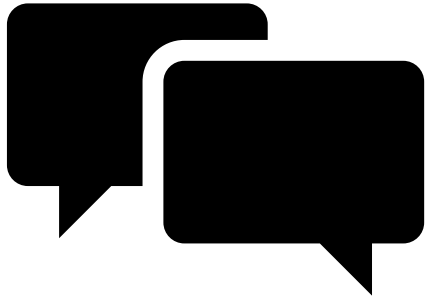
The 2027 Revised 5(b)9(c) Policy - Issue 2

- **Issue 2:** How should BPA address in the Revised Policy how to treat an increase in output or capability resulting from improvements or upgrades to a resource?
 - The current policy does not address whether a customer should be required to dedicate any output resulting from improvements that increase the resource's output or capability.
 - The current policy does address that the customer can request resource removal from the Administrator for resource loss of resource (either full or partial loss).

The 2027 Revised 5(b)9(c) Policy- Issue 3

- **Issue 3:** How should BPA address in the Revised Policy how to treat an increase in a customer's right to a resource through FERC relicensing?
 - If a customer's rights to a 5(b)(1) resource increases as a result of a FERC relicense, should BPA include language to address how to account for the increased portion?
 - If a customer's rights were reduced, the policy does address that the customer can request resource removal from the Administrator as loss of rights.

The 2027 Revised 5(b)9(c) Policy- Other Issues?



Are there any other areas of the Policy that BPA needs to consider that have not been presented or discussed at today's workshop?

Next steps

Next Steps

- At the upcoming 5(b)9(c) policy public workshops on ***November 2** and ***November 17** BPA staff will share:
 - Redlines to the revised 5(b)9(c) Policy
 - Draft Policy Language for Issues 1-3.
- BPA will release workshop materials and redlined policy language for review at least three business days prior to the ***Nov 2** and ***Nov 17, 2026** workshops.

*Workshop Dates may be subject to change.

The 2027 Revised 5(b)9(c) Policy- Current Schedule

Date	Activity
14-Oct-26	Workshop 1
2-Nov-26	Workshop 2
17-Nov-26	Workshop 3
4-Jan-27	Publish draft policy for comment (minimum 10 business-day comment period)
19-Jan-27	Deadline to have comment period close.
31-Mar-27	Publish final policy and ROD

* Please note – provisional schedule may be subject to changes.

Interim public feedback

- Feedback on issues discussed today by COB
Wednesday, Oct. 21, 2026
- Send feedback to Provider of Choice post-2028@bpa.gov

Thank you!

