

October 21, 2026

Submitted via post-2028@bpa.gov

**Re: Northwest Requirements Utilities Comments on Issues 1-3 from the October 14, 2026
5(b)9(c) Policy Workshop**

Northwest Requirements Utilities (NRU) appreciates the opportunity to provide interim feedback on the three policy issues BPA identified at its October 14, 2026 workshop. NRU represents approximately 60 consumer-owned utilities that purchase most or all of their power supply from BPA. Because our members depend on BPA to meet their net requirements, they have a direct interest in ensuring that BPA's statutory obligation under section 5(b)(1) of the Northwest Power Act is measured accurately, and that one customer's resource decisions do not unfairly shift costs or supply obligations onto other customers.

NRU supports revising the 5(b)9(c) Policy to address all three issues. Our position on each rests on a single principle: an increase in a customer's rights to, or the capability of, a resource that serves regional load should be dedicated to that customer's load, whether the increase comes through a transfer, a recall, a physical upgrade, a FERC relicensing, or some other mechanism. The current Policy already gives customers more Federal power when a resource's capability or a customer's rights decrease, and the revised Policy should treat increases the same way.

The Policy Should Treat Increases and Decreases Symmetrically

Section 5(b)(1) obligates BPA to serve a customer's firm load only "to the extent that such firm power load exceeds" the capability of the customer's 5(b)(1)(A) resources and the 5(b)(1)(B) resources the customer has determined will serve its load. Those resources "shall be treated as continuing to be so used" unless discontinued with the Administrator's consent or because of obsolescence, retirement, loss of resource, or loss of contract rights. 16 U.S.C. 839c(b)(1). BPA has consistently read this language to mean that once a resource is applied to load, the statute deems it applied until one of the enumerated events occurs. 2000 ROD at 24–26.

The 2009 Policy implements the downward side of this rule in detail. Section III.B.1(c) treats a "complete and/or partial reduction of the capability of a resource" resulting from agency orders or requested operations, and a "complete loss of the Federal or State license" as a loss of resource. The 2000 ROD confirms that a permanent partial reduction in capability "could be replaced by Federal power" (2000 ROD at 64, 66) and that BPA will "allow customers to increase their BPA purchases if they lose a resource due to a FERC relicensing order" (id. at 43). The

Declaration Parameters likewise expect declared capability to track “change of conditions reasonably affecting resource capability” and provide that declared resource amounts “may increase” over the commitment term. 2009 Policy, App. C ¶¶ 2, 7.

However, the 2009 Policy does not say what happens when capability or rights go up. That gap invites a one-way ratchet; if decreases flow through to BPA as additional net requirements while increases can be withheld from load and sold elsewhere, BPA’s obligations grow over time while the regional resources that could — and should — offset them are otherwise diverted. The cost of that asymmetry falls on BPA’s other customers, especially requirements customers like NRU’s members, through higher augmentation needs and increased pressure on the Tier 1 system.

Case-by-case section 9(c) review is not an adequate substitute. Section 9(c) addresses only exports, and the Section 9(c) Policy’s categorical treatment of non-hydroelectric resources is limited to thermal resources “currently dedicated” in a firm resource exhibit. 2009 Policy § IV.B, Section 6(b)(2). An undedicated increment of a non-hydro resource could fall outside that category entirely. Requiring dedication up front gives BPA and customers certainty and avoids after-the-fact disputes over whether an increment could have been retained for regional load.

NRU’s approach is also consistent with the 2003 Clarifications, which BPA has indicated it will not revise because they are part of a litigation settlement. 2009 Policy at 3. Increased amounts would be added to Exhibit A of the customer’s contract, consistent with Clarification 1. Where a customer has dedicated only part of a resource under Clarification 7, NRU proposes that the increase be dedicated pro rata, as discussed under Issue 2. NRU does not ask BPA to change the treatment of temporary over-generation and secondary energy under Clarifications 4, 13, and 14, which are not increases in firm capability.

Issue 1: Transfer and Recall of 5(b)(1)(A) Resource Rights

NRU supports explicit Policy language and strongly believes the resource should follow the rights. When a dedicated resource moves from one customer to another, the receiving customer must dedicate it; when the rights return to the original owner, the owner must dedicate them again. Either way, BPA’s total net requirements obligation should not increase merely because rights changed hands.

This approach codifies positions BPA has already taken. The 2000 ROD states that if a customer sells the output of its resource “to another BPA customer for service to its load then that customer must dedicate it as a purchase contract resource.” 2000 ROD at 42. Clarification 6(b) provides that when a customer sells a resource or its output to a purchaser with a 5(b) contract, “the 5(b) 9(c) Policy obligations transfer to the third party.” On recall, BPA has explained that when an owner has “a right to take back the power, then BPA would look at the owner/operator’s use of the resource in determining its electric power requirement.” 2000 ROD at 114–15; see also 1994 NFP 9(c) ROD at B-14 (withdrawal of a resource sold to another customer can increase

BPA's obligation to that customer). The workshop slides describe the same treatment, and explicitly stating in the Policy text avoids leaving these concepts scattered across multiple RODs and a settlement document.

NRU recommends that the revised language address the following:

- **Scope.** The rule should cover any resource that is or was dedicated by any customer, including Existing Resources and dedicated 5(b)(1)(B) resources, not only 5(b)(1)(A) resources. Limiting policy language to 5(b)(1)(A) would invite arguments that other dedicated resources can be shuffled out of load service through transfers.
- **Transfers.** When rights are transferred to another customer with a 5(b)(1) contract for service to its regional load, the acquiring customer must dedicate the amount acquired. The transferring customer's dedicated amount should be reduced only by the amount the acquiring customer actually dedicates. A transfer to an entity without a 5(b)(1) contract, or for use outside the region, is neither a loss of resource nor a loss of contract rights and remains subject to section 9(c), consistent with Clarification 6(a) and the 2000 ROD's conclusion that the sale of a resource "is in no way a loss of the resource" (2000 ROD at 66).
- **Recalls and returns.** When rights are recalled, terminated, or expire and return to the original owner (or any other customer), that customer must dedicate the returned amount, effective when the former holder's use ends, so that the former holder's loss of contract rights under section III.B.2 does not increase BPA's total obligation.
- **Statutory status and contract classification.** The resource should keep its 5(b)(1)(A) or (B) status, and its classification under the Provider of Choice (POC) contract, in the hands of each holder. A transfer or recall should not convert a resource that must remain in load service into one that can be removed or treated as a New Resource. See POC Contract § 2, defs. 34, 68. The same principle should apply when a customer acquires additional rights in a resource it has already dedicated, as discussed under Issue 2.
- **Notice.** Customers on both sides of a transfer or recall should notify BPA in time for the change to be reflected in BPA's next net requirements determination.

Issue 2: Increases in Output or Capability From Improvements or Upgrades

NRU's position that firm capability added to a dedicated resource through improvements, upgrades, uprates, equipment replacement, or additional units at the same project should be dedicated in the same proportion as the customer's existing dedication of that resource.

Section 5(b)(1)(A) refers to the "capability of such entity's firm peaking and energy resources," and both subparagraphs refer to resources, not to fixed megawatt amounts. The 2009 Policy already measures capability through the Declaration Parameters as conditions change and reduces dedicated amounts when capability is permanently reduced. Revised Policy §§ III.A.1(e), III.B.1(c). Counting changes in capability in one direction but not the other is inconsistent with the statute and with the Policy's own structure.

For a partly dedicated resource, a pro rata approach keeps the dedicated portion a consistent share of that resource. If a customer has dedicated 40 percent of its share of a resource and that share's firm capability increases by 10 MW, 4 MW of the increase would be dedicated. This is consistent with Clarification 7, and prevents a customer from assigning an entire increase to the undedicated portion. And it should go without saying that, where the customer's whole interest is dedicated, as is generally the case for 5(b)(1)(A) resources, the whole increase would be dedicated.

In anticipation of the objection, NRU does not expect dedication to discourage investment in upgrades. Dedicated output still serves the customer's own retail load and displaces purchases the customer would otherwise make from BPA at Tier 2 Rates or from the market, so the customer keeps the economic value of the upgrade. Dedication only prevents the customer from selling the increment while BPA serves load that the regional resource could have served.

BPA also asked at the workshop whether an increase that must be dedicated should be treated as a "new" resource under the POC Contract. It should not. An increase should take the contract classification of the resource it increases, so that an increment to an Existing Resource remains part of that Existing Resource. The POC Contract leaves this question to the Policy, directing that Dedicated Resource amounts for each Specified Resource be determined "per the updated 5(b)/9(c) Policy." POC Contract, Exh. A § 2 (drafter's note).

BPA has already provided several justifications for this position. First, the New Resource provisions of the POC Contract are primarily structured around resources a customer elects to add to serve its Above-CHWM load, with the elections, notice periods, and rate treatment that come with that choice. For example, see POC Contract § 2, def. 80 (Preliminary Net Requirement is determined "prior to accounting for any New Resources a customer may elect to serve its Above-CHWM Load"); § 3.5.1 (customer "may elect to add" Specified Resources by July 31 of a Forecast Year); § 8.1(2) (Tier 2 Rates apply to amounts that "remain after applying" New Resources); § 10.1 (New Resource amounts are removed first when Above-CHWM Load declines). Put another way, an increment the Policy requires the customer to dedicate is not a choice the customer gets to make, and it should not carry the consequences of a voluntary decision. Second, reclassifying an increment would split a single resource, operated under a single set of agreements, into "existing" and "new" pieces. The POC Contract does not contemplate that result: Exhibit A assigns each Specified Resource a single statutory status, a single resource status (Existing or New), and a single percentage of the resource used to serve load. POC Contract, Exh. A § 2(1)(B). Third, reclassification would break the symmetry described above. When an Existing Resource's capability declines, BPA reduces the Exhibit A amounts for that resource without reclassifying what remains. See POC Contract § 3.5.6; Exh. A § 9. It follows logically that an increase should be handled the same way.

The same is true whether the increase comes from a physical improvement or from the customer's acquisition of a larger share of a resource it has already dedicated, such as when participants in a jointly owned project exit and their shares are reallocated among the remaining participants. In both cases the existing interest and the increment are the same resource. The POC Contract distinguishes Existing Resources from New Resources by when the customer became obligated to use the resource: specifically, before October 1, 2023 for an Existing Resource and after September 30, 2023 for a New Resource. POC Contract § 2, defs. 34, 68. Those definitions, however, classify the "Specified Resource," which the contract defines as a Generating Resource, not megawatt increments of one. Id. § 2, def. 99. A customer that dedicated its interest in a resource before October 1, 2023 was obligated to use that Specified Resource before that date, and a later increase in its share does not create a second resource. For capability increases on an existing share, the obligation also arises by statute, since section 5(b)(1) treats the resource itself as continuing to be used. NRU asks BPA to state expressly in the revised Policy that classification is determined for the resource as a whole.

NRU recognizes BPA's interest in protecting other customers from costs incurred in reliance on a customer's Above-CHWM Load service elections. Keeping the underlying classification should not relieve a customer of its contractual responsibility for the costs of resources BPA acquired, or committed to acquire, before BPA receiving notice of the increase. Conveniently, the POC Contract already considers this possibility, and is clear on how it should be accounted for: a customer may reduce its Tier 2 Long-Term Rate election without a fee only if "BPA has not acquired power for the purposes of serving" that obligation. POC Contract, Exh. C § 2.3.2. Where BPA has made no such commitment, there is no cost to protect against, and thus no justification in contract or policy to reclassify the increment.

NRU also recommends that the revised Policy:

- apply only to increases in firm capability, measured under the Declaration Parameters and prudent utility practice, and not to changes in monthly or diurnal shape that do not increase annual firm capability (see 2000 ROD at 48;
- require the customer to notify BPA when an upgrade enters commercial operation, with the increase reflected in Exhibit A of the customer's contract and the next annual net requirements determination; and
- clarify that the reference to "improvements" in the retirement standard (2009 Policy § III.B.1(b)) does not imply that output produced by those improvements is outside the dedicated resource.

Issue 3: Increases in a Customer's Rights to a Resource Through FERC Relicensing

NRU maintains that any increase in a customer's rights to a resource resulting from a FERC relicensing, including a larger share of project output, license-required power sales, or a change in licensee, should be dedicated to the customer's load.

The 2009 Policy addresses only the downward case: a customer that loses all or part of its rights through relicensing can have its Exhibit A amounts for that resource reduced and receive more Federal power. 2009 Policy § III.B; 2000 ROD at 43. In one recent case, an NRU member's Exhibit A amounts were lowered after a relicensing through a routine administrative adjustment, without the need for a formal loss determination. Increases should be handled the same way, through an adjustment to the existing Exhibit A amounts for that resource. A relicensed project is the same physical resource that served regional load before relicensing, and a reallocation of its output should not let the increased portion leave load service when a decreased portion would have been replaced with Federal power.

Relicensing can produce increases in several forms, and the revised Policy should cover all of them:

- a larger ownership or output share for an existing licensee or participant;
- new or expanded power sale obligations required by the license that run to a BPA customer;
- a customer becoming the licensee of, or acquiring rights in, a project it did not previously hold, which is functionally a transfer of the type addressed under Issue 1; and
- capability increases from upgrades required or authorized by the new license, which fall under Issue 2.

The increased portion take the same 5(b)(1)(A) or (B) status and contract classification as the underlying resource, for the reasons discussed under Issue 2, and the pro rata approach should apply where the customer's existing interest is only partly dedicated. Because relicensing can move rights between customers, the Issue 1 transfer rule should also apply, so that a decrease for one holder and an increase for another net to zero in BPA's total obligation.

Conclusion

NRU supports BPA's effort to close these gaps and looks forward to reviewing draft language for Issues 1-3 before the November 2 and November 17 workshops. Should the opportunity present itself, we would welcome the chance to discuss these comments, or to provide recommended policy language to implement these revisions, with BPA staff beforehand.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Matthew A. Schroettig', with a stylized flourish at the end.

Matthew A. Schroettig
Vice President, Policy & Legal Affairs
Northwest Requirements Utilities