STAFF EVALUATION OF PUBLIC COMMENTS IN RESPONSE TO BPA'S PROTOTYPE POWER SALES CONTRACTS AND RESIDENTIAL PURCHASE AND SALE AGREEMENT

Prepared by
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RESPONSE TO PUBLIC COMMENT

I. Chronology of Public Participation in the Contract Negotiation Process.

BPA has recognized that the public wished to be involved in the implementation of the Regional Act and could play an important role in the negotiation of the power sales contracts. On December 1, 1980, Bonneville Power Administration (BPA) initiated its public involvement under the Regional Act by mailing to 8,000 addressees in the region a summary of the Regional Act, a series of questions and answers relating to the Regional Act, a summary of the tasks which BPA planned to undertake for implementing the Regional Act, and an announcement of the availability of toll-free numbers for questions. The Administrator announced in that mailing that four technical meetings would be held in Portland in mid-December for interested parties (investor-owned utility customers; direct-service industrial customers; preference customers; Federal agency customers; and environmental and consumer organizations). The purpose of these meetings was to explain the Regional Act and the actions which BPA must undertake prior to adoption of an initial regional power plan by the Pacific Northwest Electric Power and Conservation Planning Council (Regional Council) established by the Regional Act.

On December 5, 1980, the Administrator sent letters to each customer group and to other interested individuals and groups telling them where and when the technical meetings would be held. Principal environmental and public interest groups, local government bodies, and Northwest Indian tribes were included in this mailing.

On December 31, 1980, the Administrator sent informational material regarding the upcoming negotiations to all customers and technical meeting attendees. The material included lists of the contract types as well as the task teams BPA proposed to negotiate the contracts.

On January 5, 1981, BPA issued a press release announcing a series of 26 town hall meetings to be held throughout the region from January 8 through 22. (An additional meeting was scheduled later when a particular community requested that one be held in that locality.) BPA placed advertisements concerning the meetings in regionwide newspapers in order to reach the maximum number of interested people. The meetings were designed to explain the major provisions of the Regional Act to the public and especially local government officials. They were conducted by BPA Area and District personnel. The Administrator stated that the town hall meetings were one way BPA would keep the public informed and involved during the policymaking process.

On January 12, 1981, BPA announced to its customers that an organizational meeting for contract negotiations pursuant to the Regional Act would be held on January 23 in Portland. On January 14, a direct invitation to attend the meeting was also extended to interested individuals through the press and mailings. On January 20, BPA issued a press release to further alert the public on the upcoming organizational session. This meeting preceded the start of actual negotiations. Its main purpose was to develop the organizational framework within which negotiations would be conducted and to

determine the mechanics of the development of the specific prototype contracts. BPA invited its customers to select representative teams to attend the meeting.

From January 23 to May 29, negotiations between BPA and its customers were conducted at BPA headquarters in Portland, Oregon. Early in January, BPA's Public Involvement office established a weekly meeting calendar. The calendar included conferences, seminars, and other meetings including contract negotiation sessions and was sent to the public on request. Similar information was contained in calendars maintained and distributed throughout the region by the Public Power Council, the Pacific Northwest Utilities Conference Committee, and the Direct-Service Industrial Customer office. The section of the calendar dealing specifically with the contract negotiation sessions was reproduced and posted every Monday in the BPA Headquarters lobby.

Issues regarding the power sales and residential exchange contracts were discussed and clarified in the negotiating sessions. Interested individuals were free to observe the negotiation sessions between BPA and participating parties, and to submit oral and written comments during and at the conclusion of individual negotiating sessions. Upon request, BPA each week furnished to the public copies of all documents distributed at the sessions.

On March 25, 1981, BPA published a notice in the Federal Register (46 FR 18331) titled "Notice of Public Participation in Negotiation of Initial Long-Term Power Sales and Certain Other Contracts." The notice outlined the approach BPA was taking to include the public in the contract negotiation process and restated the availability of the meeting calendar so that interested parties could attend the negotiation sessions. It also invited interested individuals to request weekly mailings of documents distributed at the negotiation sessions so that individuals unable to attend some or all of the negotiation sessions would still be able to participate. This invitation to participate in the sessions was also mailed directly to individuals and groups who had expressed an interest.

On April 8, 1981, in response to urging from fisheries and environmental groups for expanded public involvement, BPA announced its plans to hold two evening meetings (one west of the Cascades and one east of the Cascades) where the Acting Power Manager would receive advice and accept comments from interested people on contract issues identified by them. The letter directed to "Public Interest Groups and Individuals Particularly Interested in Bonneville's 1981 Contract Negotiation Process" requested their help in identifying items for the meeting agenda and their suggestions for the specific location.

On April 24, 1981, BPA mailed letters to over 3,000 public interest groups and individuals stating that it would hold two public meetings in May to receive advice and accept comments on items of concern that had been identified in response to the April 8 letter. These evening meetings, held in Seattle, Washington, and Boise, Idaho, were announced in the Federal Register (46 FR 23287). The invitation was also extended to BPA customers. Congressman Ron Wyden (D-Or.) and Acting Administrator Earl Gjelde issued a press release announcing the public meetings and the opportunity to submit written comments for contract items. An additional meeting, a special evening session with BPA's negotiating teams held in Portland, was later announced.

This additional opportunity to comment on matters to be dealt with in the contracts was publicized in newspaper advertisements in the vicinity of the meeting locations. Over 300 people attended these public meetings which were recorded and transcribed. BPA representation included the Acting Power Manager, the Power Management Chief of Staff, the Contract Negotiations Branch Chief, the Conservation Division Director, and the Fish and Wildlife Coordinator as well as Public Involvement, Environmental, Area office, and District staff. Five Division Directors in their role as principal negotiators and the majority of BPA's contract leaders were also present at the Portland session. Attendees were given a brief written explanation of the contracts as they registered. Forty-one people presented statements at the Seattle and Boise meetings, and 19 people commented at the special evening session held in Portland.

On June 8, 1981, BPA sent summaries of the testimony received at the three public meetings and the written comments received through May 29, 1981, to meeting attendees as well as others who had indicated an interest in the contract negotiation process. The transcripts of the meetings and the summaries were also given to the various negotiating parties.

The Administrator issued a press release on May 13, 1981, announcing the remainder of the schedule for the negotiations. On June 11, 1981, BPA again contacted by mail those interested in the contract process advising them concerning the availability of draft prototype power sales and residential exchange contract, together with a draft report on associated environmental considerations. The Federal Register Notice (46 FR 31238) sent with the letter announced a 30-day review-and-comment period ending July 13, 1981, and contained a summary of the significant elements of the draft contracts and of the major points of disagreement, as well as a notice of availability of a draft environmental report. The notice also advised interested parties of four public meetings scheduled in Seattle, Spokane, Portland, and Boise where they could comment orally on the draft contracts and environmental report. An additional public meeting was later scheduled and announced in Missoula, Montana. The meetings were publicized in newspaper advertisements in the localities, and were conducted by BPA Area and District personnel. The meetings were recorded and transcribed. The transcripts of the meetings and summaries of the testimony and written comments received through July 2, 1981, were given to the negotiating parties and those who had requested copies of all material distributed at the negotiating sessions.

As announced, written comments could be submitted through July 13, 1981. The comments which were received by July 13, 1981, from the public at large and from those who would be contract signators were read by a representative group of BPA, the Inter-Company Pool, the Public Power Council, the Direct Service Industries, and members of the public. BPA then began its formal in-house review and assessment of the comments submitted. The issues raised by the public comments and BPA's evaluation of these comments are explained below.

BPA's customer comments have also been read, analyzed, and considered. It is BPA's position that the contract itself is BPA's final response to the issues as they have evolved during the negotiations process. Therefore, BPA has decided not to respond in this evaluation to each and every issue raised by its customers. BPA feels that the eight months of negotiations have

provided the forum in which its customers could express their views on the issues. BPA has also responded directly to its customers in the negotiations process.

In order to respond fully to its customers, regarding those issues that remained unclear or unresolved at the end of the negotiations process, BPA set aside the week of August 3-7, at the Jantzen Beach Red Lion in Portland, Oregon to discuss and resolve those issues. This was an intensive week of meetings directed at issue resolution. BPA attendees included the Administrator, Deputy Administrator, members of General Counsel's staff, plus the BPA negotiating teams. The week culminated on Friday, August 7, in sessions between BPA and each customer class, at which time the BPA Administrator and Deputy Administrator reviewed the issues, reviewed the week's discussions and where possible stated the resolution of the issues as understood by BPA at the end of the negotiating process. The customers then responded, and a discussion of the issues followed. The week of the negotiations and the Friday review allowed all parties to have a clear understanding of the status of the issues on the final day of negotiations.

On Friday, August 28, 1981, BPA took final action on the proposed contracts by sending contract offers to eligible regional entities. Final utility power sales contract offers were sent to regional publicly owned and investor-owned utilities, final power sales contract offers were sent to direct-service industrial customers, and final residential exchange contract offers were sent to utilities which had requested residential exchange contracts.

II. Members of the Public that Submitted Comments in Response to BPA's Prototype Power Sales or Exchange Contracts.

Responses were received from members of the public, including individuals, special interest groups, legal organizations, and governmental entities not parties to the contracts. They include:

Organizations:

Citizens for a Solar Washington, 7/13/81;
Columbia River Intertribal Fish Commission, 7/10/81;
Fair Electric Rates Now (Attachment, Jim Lazar), 7/13/81;
Forelaws on Board, 5/18/81;
Idaho Consumer Affairs, Inc., 7/13/81;
League of Women Voters of Central Lane Co., 7/9/81;
League of Women Voters of Oregon, 7/10/81;
League of Women Voters of Salem, 7/10/81;
Oregon Environmental Council, 7/9/81;
Rose City Ratepayers Association, 6/81, (including U.S. GAO Attachment, submitted by Jeff Jeep for the record, 7/9/81);
Washington Environmental Council, 7/10/81.

Legal:

Evergreen Legal Services, 7/10/81;
Natural Resources Defense Council, Inc., 7/13/81;
Natural Resources Law Institute, Lewis and Clark Law School, 7/9/81;
Pacific Northwest Resources Clinic, University of Oregon Law School, 7/13/81;
Spokane Legal Services Center, 7/1/81.

State Agencies:

Oregon Department of Energy, 7/14/81;
Washington State Energy Office, 7/10/81;
Washington Utilities and Transportation Commission, 7/10/81.

Federal Agencies:

U.S. Environmental Protection Agency, 7/9/81;
U.S. Department of Commerce, National Marine Fisheries Service, 7/13/81.

Individuals:

Benita Helseth, 7/9/81;
Mrs. John R. Hennessy, 7/11/81;
George K. Llewellyn, Jr., 7/10/81;
Larry Alan Meyer, 7/7/81;
Marie Soverski, 7/10/81.

III. BPA Customers that Submitted Comments in Response to BPA's Federal Register Notice on the Prototype Power Sales or Exchange Contracts.

Representative Organizations:

Industrial Customers, 7/13/81;
Intercompany Pool, 7/10/81;
Public Generating Power Pool, 7/13/81;
Pacific Northwest Generating Company, 7/15/81;
Public Power Council, 7/13/81.

Preference Utilities:

Cowlitz County PUD, 7/13/81;
EWEB, 7/13/81;
Lincoln Electric Cooperative, 6/24/81;
Northern Lights, Inc., 6/30/81;
Seattle City Light, 7/10/81;
Snohomish PUD, 7/13/81;
Tanner Electric Cooperative, 7/10/81.
James A. Sewell and Associates, Consulting Engineers for Western Montana Electric Generating & Transmission, Coop., Inc., 7/13/81.

Federal Agencies:

U.S. Department of the Interior, Bureau of Indian Affairs, 7/7/81.

Investor-Owned Utilities:

Montana Power Company, 7/13/81.

Direct Service Industries:

Industrial Customers, 7/13/81;
Industrial Customers, 7/13/81;
Industrial Customers, 7/13/81;
Industrial Customers, 7/13/81.

IV. Prototype Power Sales Contracts or Exchange Contract: The Major Issues Identified and Addressed by the Public in Response to BPA's Federal Register Notice and BPA's Evaluation of Those Comments:

A. FISH AND WILDLIFE

1. Issue

Should language addressing BPA's and its customers' fish and wildlife responsibilities under the Regional Act and other laws be included in all power sales contracts and exchange contracts?

2. Comments

Public comments in summary form on this issue follow:

Idaho Consumer Affairs, Inc., 7/13/81.

Supports item F "Interpretation of fish and wildlife responsibilities." Suggests BPA adopt or give strong consideration to suggestions outlined by Idaho Conservation League in its May 14, 1981 testimony at Boise, Idaho (pg. 1).

Rose City Ratepayers Association, 7/13/81.

Supports language proposed by the National Marine Fisheries Service and comments of Terence Thatcher on behalf of National Wildlife Federation (and others) dated June 9, 1981 (pg. 3).

National Marine Fisheries Service, 7/13/81.

Cited March 4, 1981, letter describing problems fish and wildlife agencies had encountered with contract interpretations in the past (pg. 1).

Said BPA had declined to consider the requested NMFS language (pg. 1).

Stated that for 50 years there have been standard clauses to protect fisheries in power sales contract (pg. 2).

Claimed that historical trend not maintained for new contracts (pg. 2).

Recommended language not expected to be controversial (pg. 2).

Fish language proposed by BPA generally acceptable; NMFS wanted parties, not just BPA to affirm their obligations to fish and wildlife in order that BPA and parties cannot interpret contract to prevent or impair these obligations (pg. 4)

Total loads should incorporate fish and wildlife obligations (pg. 5).

Fish and wildlife requirements should be an operating constraint in determinations of assured capability; felt BPA was advocating maximum power

generation for DSI's to the detriment of operating constraints to enhance fish and wildlife (e.g. NMFS concerned about shifting FELCC and Advance Energy as they impact reservoir levels, river levels, and general operation of the Columbia River; in its discussion of the Environmental Report, while conceding the Regional Act section 4(h) addresses fish and wildlife programs limited to the Columbia River Basin, NMFS goes on to say that a standard fish and wildlife clause should be included in a power sales contract even if the Purchaser is located outside of the Columbia River Basin (pg. 9).

Columbia River Intertribal Fish Commission, 7/10/81.

For decades BPA and other Federal water managers have subordinated fish and wildlife considerations to power production (pg. 1).

BPA is now required to treat fish and wildlife as a co-equal power in the management and operation of hydro projects in the region (pg. 2).

Put forward fish and wildlife clause (see pp. 1 and 2).

Felt inclusion of clause is important because: 1) In the past BPA customers have maintained that their long term power sales contracts have precluded them from implementing fishery measures; 2) execution of power sales contract and exchange contracts is first major BPA action under Regional Act and is a precedent; 3) as a result, what BPA does with fish and wildlife language is first indicator of the commitment of BPA to incorporate tribal and fish and wildlife agency participation on a co-equal basis (pg. 2)

Wanted statement in power sales contract and exchange contracts stating that nothing in contracts may prevent or impair the implementation of measures for protection, mitigation and enhancement of fish and wildlife resources (pg. 2).

Discussed tribal fishing and water rights under treaty and under Federal law, based on a variety of court decisions at every level -- main points were: 1) Columbia River tribes have substantial treaty rights notwithstanding the passage of the Regional Act, 2) all agencies of the Federal government, including BPA, have a guardian trustee relationship with the tribes, judged by the most exacting fiduciary standards to uphold and protect the Columbia River tribes' treaty rights, and 3) the Environmental Report failed to address the Columbia River Tribes treaty rights and failed to discuss how the sales and exchange contract affects these rights (pg. 6).

BPA must respond to comments and recommendations made by fishery interests . . . BPA's decisions to modify or not to adopt fish and wildlife provisions should be based on written findings included in the record. BPA should also invite continued participation by fishery interests and the public during the 1-year period following the initial contract offerings (pg. 8).

Evergreen Legal Services, 7/10/81.

Concerned about alleviating adverse "downstream effects" of Seattle City Light's Ross Project. Implementation of Regional Act should increase, not decrease ability of power facility operators to protect and enhance fisheries habitat. Concerned that Seattle City Light may be freed to use its hydropower

facilities to the detriment of fish habitat; fisheries must have co-equal status with power values throughout the regional grid (pg. 5).

Want a provision in utility and DSI power sales contracts which will cause load interruptions to protect salmon and steelhead habitat (pg. 6).

Washington Environmental Council, 7/10/81.

Regional Act provides that fish and wildlife resources would be given "co-equal" status with other participants of Federal Columbia River Power System (pg. 2).

Stated that BPA is not meeting fish and wildlife directive of Regional Act; discussed section 6, 12(b)(3), 14, 16, 17(d), DSI contract sections 7(c)(2), section 8 and section 13(c) as they relate to fish and wildlife. The basic theme was that the impacts of these sections should include a consideration of their effect on fish and wildlife (pg. 4).

Natural Resources Law Institute, 7/9/81.

Because BPA is offering 20 year power sales contracts to its customers before the Council can offer its regional plan, there is concern on the part of Pacific Northwest fishery interests that the opportunity to effectuate one of the fundamental purposes of the Regional Act, the protection and restoration of the Columbia Basin's anadromous fish runs, may be foreclosed (pg. 1).

A coalition of Federal, State, and tribal fishery agencies in the region have requested that BPA preserve the options available to the Regional Council by adopting contract language that would recognize that the contracts cannot prevent or impair the statutory obligations to protect, mitigate and enhance fish and wildlife under the Regional Act. BPA has thus far resisted such provisions. (pg. 1 of text).

BPA is transformed by Regional Act from an agency with a single purpose to one with multiple purpose functions (pg. 2).

NMFS wrote BPA on March 4, 1981 appraising BPA of its concern of impacts of long-term power sales contract on fish and wildlife (pg. 3).

BPA rejected original NMFS proposed language asserting fish and wildlife and power objectives of the Regional Act will be best satisfied by planning for sufficient resources (pg. 3).

Fish and wildlife agencies: 1) told BPA the Regional Act meant significant changes in treatment of fish and wildlife in power system decision making, 2) should be involved in the development and implementation of policies and criteria for resource acquisition, and 3) stated that the Regional Act requires BPA to consult with fish and wildlife agencies (pg. 4).

Under the Regional Act, BPA is required to 1) employ its authority to protect, mitigate, and enhance fish and wildlife; 2) ensure that fish and wildlife receive equitable treatment in the management of the federal hydroelectric system; 3) safeguard the integrity of the Regional Council's

fish and wildlife program to the maximum extent practicable and 4) consult with and coordinate its actions with the Region's fish and wildlife agencies (pg. 7).

First, BPA must therefore do more than simply promise not to obstruct utility actions required by the FERC (pg. 7).

Second, by guaranteeing to replace all firm power losses attributable to fish and wildlife, BPA seems to be placing itself in a position of incurring substantial revenue "losses" every time the system is operated in the interest of fish and wildlife. This creates two problems - 1) it creates a disincentive to operate the system in the interests of fish and wildlife; and 2) it may create a greater burden than the agency is required to assume, because the Regional Act requires only than BPA bear fish and wildlife costs imposed upon non-Federal project operators which are not attributable to the development and operation of the non-Federal projects (pg. 7).

As an alternative to requiring BPA to assume the burden of indemnifying all firm power losses, the agency could define the pool of hydroelectric resources available for allocation in the power supply contracts being automatically reduced where necessary to fulfill fish and wildlife obligations. If this were to occur, BPA would be unlikely to incur the burden of replacing any firm power losses that would perhaps encourage BPA to support costly new facilities, since by definition a purchaser's contractual rights would be constrained by fish and wildlife operations (pg. 7).

Fair Electric Rates Now, 7/13/81.

Wanted BPA to adopt "one utility concept" for protection of fish and wildlife (pg. 2).

Cited House Commerce Committee Report (pg. 49) which states fish and wildlife should be co-equal partner with other uses in the management and operation of hydro projects of this region; FERN supported NMFS fishery language and supported NMFS and National Wildlife Federation position on fish and wildlife (pg. 6).

Pacific Northwest Resources Clinic, Law Center, University of Oregon, 7/13/81.

BPA must exercise its responsibilities consistent with the purposes of this Regional Act and other applicable laws to adequately protect, mitigate, and enhance fish and wildlife . . . in a manner that provides equitable treatment for such fish and wildlife with other purposes for which the Federal system and facilities are managed and operated (pg. 26).

Council's fish and wildlife plan once developed should be implemented by BPA (pg. 27).

Discussion of NMFS letter and contract language (pg. 27).

Proposed fish and wildlife provisions planned for power sales contract not wholly acceptable to fishery interests or purchasers. Purchaser's fish language may be read to increase their responsibilities beyond those required by the Regional Act. Fishery interests are concerned about whether the power

sales contract itself or merely BPA's "interpretation" of the contract was to be controlled by the terms of the proposed language (pp. 27-28).

Language presented (pg. 28) which this organization feels is acceptable to all parties.

BPA is legally obligated to consider fish and wildlife values in all its actions (pg. 30).

Even if in the long term BPA can achieve sufficient resources to meet its power and fish and wildlife responsibilities in the short term, it should retain the flexibility in the contracts to do what is necessary to achieve the Regional Act's purposes. Therefore fish and wildlife should be included in BPA's power acquisition/power planning decision (pg. 30).

In section 18(c) of power sales contract establishing power, power scheduling principles should include fish and wildlife protection, enhancement, and mitigation as a principle to be utilized in addition to power needs (pg. 31).

Columbia River Citizens Compact, 7/8/81.

Wanted strong fishery protection language to be included in power sales contract. Find the present fisheries protection clause in the contract to be too weak, vague, and improperly placed (pg. 1).

Wanted NMFS clause to be included in all power sales contract and exchange contracts (pg. 1).

Hydroelectric reserve capacity should be made available for fish protection (pg. 1).

Noted that less than 50 percent of the historic spawning and rearing waters exist today due to dam construction. Therefore wanted energy conservation and renewable resources so Columbia River Basin won't be further destroyed because new dams might otherwise have to be built (pg. 2).

Fisheries and tribes should be given equitable treatment under power sales contract and Exchange Contract (pg. 2).

Wanted contracts to reflect BPA's obligation to protect the legal treaty fishing rights of Indian tribes in the Columbia Basin (pg. 2).

No resource option agreement until BPA shows how it will comply with fish and wildlife protection language in the Regional Act (pg. 2).

3. Evaluation

Much of the public comment was in response to an earlier stage of the negotiating process where the National Marine Fishery Service (NMFS) stated its opinion that BPA and its customers were being unresponsive to its fish and wildlife language. Subsequently, an ad hoc fisheries committee consisting of a group of representatives from NMFS, fisheries interests, utilities, and DSI's met to discuss specific contract provisions, and contract language has

been drafted and agreed upon by representatives of the fish and wildlife agencies, fisheries' interests, Indian tribes, BPA, and most of BPA's customers. As a result, language addressing fish and wildlife concerns is in the contract.

Customer concern about fish and wildlife language being included in the power sales contract related to two issues. First, BPA customers were concerned that measures taken to assure the protection, mitigation, and enhancement of fish runs would reduce the amount of power and energy they would otherwise be entitled to under their contracts. Second, BPA's customers were concerned that their autonomy might be eroded by BPA undertaking actions which in their view went beyond the authority granted to BPA in the Regional Act.

The fisheries' interests, on the other hand, felt the Regional Act had made the "protection, mitigation, and enhancement" of fish a co-equal partner to BPA's principal charge, the sale of power and energy at wholesale rates and, where required, transmission of that power and energy.

In response to these concerns BPA has written into the contracts language which assures that possible future reductions in the capabilities of existing resources because of fish and wildlife measures not only cannot be blocked on grounds of power sales contracts, but in fact are built into the method of determining resource capability. Any capability that is lost can and under sections 6(a)(2)(B), 8(a), and 4(e)(3)(D)(ii) must be taken into account and replaced with the acquisition of substitute capability. As a result no BPA customer has a contractual basis for arguing that the capability of particular Federal generating units cannot be reduced, if implementation of fish and wildlife measures require a reduction. BPA's contracts also contain provisions to deal with an absolute shortage of capability, on both an operating and planning basis.

A second concern to both BPA's customers and the fishery interests is that a BPA customer which owns a hydroelectric generating facility previously could not reduce the capability of its generating resources (and thus increase its demands on BPA) without incurring one of a variety of cost or rate penalties. The fisheries' interests have felt this situation has made it more difficult to gain acceptance for fisheries measures that would reduce the generating capabilities of these non-Federal dams. In response to this concern the contract negotiation sessions produced a change in BPA policy, incorporated in section 15(d) of the utilities power sales contracts, which allows a BPA customer to change easily and without contract limitation the "assured capability" of its resources to carry out the fish and wildlife obligations. BPA will be obligated by contract to make available increased electric power and energy to offset any reduction in the capability of a BPA customer's own resources if that reduction is attributable to fish and wildlife obligations.

B. CONSERVATION

1. Issues

Should the power sales contracts include a provision requiring BPA customers to implement BPA's conservation programs, or their own equivalent programs, as a condition of BPA service?

What should the power sales contracts require of BPA and its customers with respect to conservation?

2. Comments

Public comments in summary form on these issues follow:

Natural Resources Defense Council, Inc., 7/13/81.

The Regional Act's goal is to encourage conservation and efficiency in the use of electric power (pg. 1 of text).

BPA has refused to insert any substantial conservation incentives in its contracts (pg. 2)

BPA's melded rate structure encourages its customers to consume electricity and thus sends an improper price signal. The very low rates discourage investment in conservation and renewable energy measures (pp. 4 & 5).

BPA's current conservation program aims to capture barely one-fifth of the potental it officially acknowledges to be within its reach (pg. 5).

The revenue requirement for BPA rates for FY year 1982 contains no allocation for billing credits, which BPA is obligated to award customers who invest independently in conservation measures (pg. 5).

BPA could best fulfill its statutory obligation, operate in a businesslike manner, and effect substantial tax payer relief by displacing billing credits with contractual conservation obligations wherever possible (pg. 6).

BPA should require that utilities and DSI's participate in NW Power Planning Council conservation programs implemented by BPA, or encourage customers to undertake alternative programs that will achieve equal or greater surveys. BPA should offer to pay these programs' net costs to diffuse opposition (pg. 6).

BPA should require that utilities pay BPA's avoided cost to small power producers (pg. 7).

The Regional Act does not prevent BPA from requiring conservation efforts as a contractual condition of service (pp. 7 & 8).

BPA should set up an allocation plan which promises rewards to conserving utilities energy during time of shortage. This would encourage cost-effective conservation (pg. 13).

BPA has not set up such an allocation plan in the current utilities' power sales contract. Allocations during a period of insufficiency are tied to actual loads, which rewards nonconserving utilities by awarding to them more inexpensive federal energy than their less wasteful counterparts (pg. 14).

The Administrator is required by 6(e)(1) of the Regional Act to make use of his authorities to the maximum extent practicable under the Regional Act to

acquire conservation measures, and under 6(e)(2) of the Regional Act the Administrator shall make maximum practicable use of customers and local entities in carrying out conservation (pg. 25). Because of this language, the BPA Administrator must implement practicable, cost-effective conservation measures unless he lacks specific authority to do so (pg. 25).

Idaho Consumer Affairs, Inc., 7/13/81.

Would rather see WPPSS 4 and 5 money spent on conservation and renewables (pg. 2).

Noted that two million solar heaters costing $5,000 each could be purchased for the $10 billion WPPSS 4 and 5 will cost, and would save more energy for the region than the WPPSS plants will produce during their plant life. Another example of what could be done with conservation is that 10 million older electric homes could be insulated at a cost of $1,000 each for what it costs for WPPSS 4 and 5 (pg. 2).

BPA must consider conservation options first before obligating ratepayers of the region to excessive cost of WPPSS 4 and 5 (pg. 2).

Wanted BPA and the Council to give conservation the same consideration that BPA is giving to procuring generating facilities, particularly WPPSS 4 and 5 (pg. 2).

Rose City Ratepayers Association, 6/81.

Power sales contract should be used by BPA as a tool to implement the priorities in the Regional Act (pg. 3).

BPA should stop worrying about acting in an "overbearing manner" towards its customers (pg. 3).

The Regional Act repeatedly states BPA shall pursue conservation as a priority energy resource (pg. 3).

BPA has a legal obligation to implement a new law with a new set of priorities (pg. 4).

Supported NRDC proposal that BPA require as a condition of receiving BPA power, that utilities participate in BPA's regional conservation program or a program of their own that would accomplish the same results (pg. 4).

Increased rates caused by overbuilding will encourage conservation, but as more money is paid for excess resources, less is available for the necessary conservation measures (pg. 5).

Columbia River Inter-Tribal Fish Commission, 7/10/81.

Supported the inclusion of effective energy conservation and renewable resource language in BPA's long-term contracts (pg. 6).

Utility should demonstrate "good faith" participation in BPA or Regional Power Council conservation program as condition precedent to continued power sales (pg. 7).

Marie Soverski, 7/10/81.

Wanted BPA to require its customers to implement the use of conservation in exchange for guaranteed power (pg. 1).

BPA has new obligations under the Regional Act (pg. 2).

Conservation measures are cheaper than new generation and the ratepayer would be spared if the DSI's and the utilities in the region had to undertake conservation measures (pg. 2).

Washington Evironmental Council, 7/10/81.

The Regional Act provided for the development of conservation resources to slow regional electrical load growth (pg. 1).

The League of Women Voters of Oregon, 7/10/81.

Regional Act requires that power sales contract should be structured to require measurable conservation program by BPA's customers (pg. 1).

Conservation should be a part of the power sales contract and not separate "conservation contracts" dealing with pilot projects and public relations efforts (pg. 1).

The Regional Council should review the power sales contracts for implementation of conservation measures (pg. 1).

U.S. GAO to Congressman Mike Lowry, 6/8/81, (document submitted to BPA for record by Jeff Jeep, Rose City Ratepayers).

U.S. GAO, at the request of Congressman Mike Lowry, agreed to: 1) examine BPA's assessment of electricity conservation potentials in the Pacific Northwest; 2) analyze BPA's criteria for determining cost-effective conservation efforts; and 3) consider the pace of BPA's conservation efforts to determine whether the program should be accelerated (pg. 1).

GAO concluded that BPA has made a "good-faith" first effort to implement the conservation provisions of the Regional Act (pg. 1).

BPA's revised budget submission includes $400 million to be invested in conservation over the next five years which are designed to save 300 megawatts. This first year target of 300 MW is moderately ambitious. It approximates 30 percent of the total energy savings (980 MW) which BPA officials estimate their programs can save by 1990 (pg. 1).

GAO believes, and BPA agrees, that much more can be done in future years to fully capitalize on the region's conservation potential (pg. 2).

BPA is developing cost-effectiveness criteria for the purpose of planning resource acquisitions, including conservation programs (pg. 3).

GAO believes that BPA, in conjunction with volunteering utilities, should undertake some demonstration projects to test the conservation potentials of various innovative rate structures (pg. 5).

BPA needs to complete work on criteria for: 1) evaluating the cost-effectiveness of conservation projects; and 2) granting billing credits to customers who have successfully implemented their own conservation programs (pg. 5).

BPA must quickly establish its acquisition criteria and have it in place, so it will be in a position to quickly determine whether or not to determine a conservation resource (pg. 6).

BPA told GAO they would have a cost-effectiveness methodology finalized by the fall of 1981 and a billing credit policy by January 1982 (pg. 6).

Copy of U.S. GAO letter to Secretary James B. Edwards, 5/8/81 (document submitted to BPA for record by Jeff Jeep, Rose City Ratepayers).

The Regional Act increased BPA's bonding authority for self-financing by $1.25 billion and reserved this amount for conservation and renewable resource development. Conservation is a first priority for BPA (pg. 5).

Although currently being revised, BPA's initial assessments show the region could secure about 400 megawatts from conservation by 1985 (pg. 5).

The Regional Act provides for the inclusion of model conservation standards in the electric power plan to be developed by the Regional Council (pg. 5).

The Regional Act also authorizes the imposition of surcharges on rates to customers not implementing appropriate conservation measures (pg. 5).

BPA's conservation division developed a proposed fiscal year 1981 conservation program for implementation over the next five years which includes nine efforts, estimated to cost $422.5 million.

GAO noted that conservation activities for the commercial sector appear modest. There are no efforts aimed at the industrial sector, which uses 50 percent of the electricity in the Pacific Northwest. BPA is undertaking an industrial end use study, scheduled to be completed in October 1981, of Northwest Industries which should provide a basis for designing industrial conservation program efforts (pg. 6).

BPA should develop a system for monitering the rate of progress by customers in implementing conservation efforts (pg. 7).

BPA should conduct demonstration projects using alternative rate structures to encourage conservation (pg. 7).

Benita Helseth, 7/9/81.

Stated that BPA's assertions about the adequacy of current financial incentives to insure conservation have not been proved we suggested a strong demonstration by BPA of support for a total conservation program in the contract negotiations (pg. 1).

Wanted BPA to use all legal tools to lead and influence utilities in the direction of conservation and long-term non-wasteful use of energy. These tools include: 1) BPA's right to define duration of power sales contract; 2) alternative rate forms; 3) criteria governing energy allocations; 4) standards for service requirements for compliance; and 5) provision for BPA financial assistance for conservation. Urged that these kinds of incentives be used as preconditions for future service (pp. 1 & 2).

Oregon Environmental Council, 7/9/81.

BPA is required to include participation in conservation programs as a condition of service in the contracts (pg. 3).

Because BPA's melded rates are a disincentive to conserve, a healthy dose of disincentive in the form of a condition of service is needed (pg. 3).

The League of Women Voters of Central Lane County, 7/9/81.

BPA should require measurable conservation efforts as a condition of the contract.

Conservation should be dealt with in power sales contract and not in separate conservation contracts (pg. 1).

U.S. Environmental Protection Agency, Region 4, Seattle, WA., 7/9/81.

Conservation, from an environmental protection stance, is by far the preferable energy resource available today (pg. 1)

Major concern is that amount of conservation actually realized will fall far short of the full potential that has been identified (pg. 1)

Most effective way to guarantee regionwide implementation of cost-effective conservation is to condition the sale of power to wholesale customers based on their participation in BPA's conservation program or its equivalent. We do not believe that conditioning the contracts in such a manner would be "overbearing" nor would it unreasonably interfere with a utility's responsibilities. A successful conservation program would allow more flexibility in the operation of a utility's generating resources (pg. 2)

Spokane Legal Services Center, 7/1/81.

BPA contracts do not, except for one small exception, address themselves to the concept of conservation (pg. 1).

BPA is treading line of acting inconsistently with its statutory responsibilities under the Regional Act (pg. 1).

If proposed contracts are offered without addressing conservation, and BPA should impose conservation requirements on parties that sign, grounds exist for enjoining anyone from signing these contracts (pg. 1).

Must have mandatory conservation requirements in these contracts (pg. 1). Fair Electric Rates Now, 7/13/81.

Legislative history and Regional Act itself indicate that a strong commitment to conservation is one of the central, nondiscretionary mandates of the Regional Act (pg. 1).

BPA should embrace the one utility concept for conservation, as well as for purposes of energy conservation (pg. 2).

Supported NRDC position that participation in conservation should be a condition precedent to getting service for BPA (pg. 4).

Suggested a clause on conservation (pp. 4 and 5).

Pacific Northwest Resources Center, Law Center, University of Oregon, 7/13/81.

Conservation ranks as statutorily mandated first choice resource for meeting the region's energy needs. Conservation in this region represents the cheapest and quickest means to head off energy shortages (pg. 2).

Development of power sales contract's at this time makes it easier, rather than harder, to achieve energy savings as demonstrated by NRDC study. (pp. 2 and 3).

Main points are: (1) continued power sales should be conditioned on a utility's good faith participation in the BPA-Regional Council conservation program or an equivalent program; (2) power entitlements during power restrictions should be based on implementation of effective conservation; (3) preference customer entitlements in excess of power received from BPA in the year preceding period of insufficiency should be keyed to conservation performance of the customers; and (4) provision should be in each power sales contract stating, that BPA, in acquiring power, must first acquire conservation, and that under the Regional Plan BPA must acquire all cost-effective conservation resources necessary and available (pp. 3 and 4).

Legally there is nothing in the Regional Act to prevent Administrator from including the conservation provisions proposed (pg. 7).

Citizens for a Solar Washington, 7/13/81.

Draft prototype contracts do not contain sufficient specific provisions which require utilities and other power customers to implement the conservation programs required by the Regional Act (pg. 1).

Wanted language in section 5 of the utility power sales contract whereby the Purchaser would agree to develop conservation measures in accordance with the Regional Conservation and Electric Power Plan adopted by the Regional Council. Felt the language that the Purchasers "acknowledge" need for Conservation and "agree . . . to cooperate" does not bind either party (pg. 3).

Oregon Department of Energy, 7/14/81.

The Regional Council must rank priority of conservation and the potential cost-effective basis of each class of resources under the Regional Act (pg. 2).

Regional Council must develop model conservation standards and recommend surcharges based upon the failure to follow the standards (p. 2).

It is essential, since the negotiating process is ending while Regional Council is just beginning its work, that contracts contain language that would either authorize reopening of contracts upon completion of Regional Council's Plan or require all provisions in contrast to be read consistent with Council plan (p. 3)

Development of conservation resources depend to a large measure on the utilities in the region. The utilities do not have to conform their resource acquisition (including conservation) to Regional Council's plan. But utilities should file development plans with the Regional Council and BPA and if they are consistent or different the plans should indicate how (pg. 3).

There is ample legal authority and precedent for BPA to demand compliance with conservation measures (pg. 7).

Mrs. John R. Hennessy, 7/11/81.

Conservation should be an integral part of any contract (pg. 1).

Forelaws on Board, 5/18/81.

All power sold under these contracts should be based upon incentives for conservation . . . by individual customers. This can be implemented through allocation of energy during shortages, rate structures and mandatory conditions in exchange for providing energy (pg. 4).

3. Evaluation

BPA's staff feels that conservation language should appear in the power sales contracts. The issue has concerned what BPA and its customers are required to do so as to be in conformance with the conservation priority and mandates of the Regional Act.

The Regional Act, repeatedly and unambiguously, requires BPA to acquire all conservation resources that are cost-effective and to continue its efforts in acquisition of conservation. The Regional Act also requires the Regional Council to include conservation in its plan, including the plan's load and resource forecast, and to adopt model conservation standards that are designed to be effectively enforced through surcharges on BPA power for BPA customers in non-complying jurisdictions. Nothing in the contracts will permit any utility to block BPA's or the Regional Council's conservation efforts. The Regional Act specifically recognizes that BPA may make direct arrangements with consumers through local entities other than utilities, and, if necessary, without any local intermediaries of any kind.

The Regional Act also contains several incentives for utilities who exercise their responsibilities in ways designed to help achieve and implement conservation. These incentives include billing credits for all independent conservation efforts, including voluntarily adopted retail rate structures that encourage conservation (section 6(h)(5)) which BPA is required to assist, under section 9(j)(2), for requesting customers. Surcharges to induce compliance with model conservation standards adopted by the Regional Council and to be included in its plan are another substantial incentive. Most important, however, is the ability of any utility to assure itself of the power supply and power resource financing benefits for conservation offered by the Regional Act. The power sales contract depends ultimately on the utility providing the means to meet its own load growth (see section 5(e)), and since meeting that load growth with resources which require any direct or indirect BPA financial assistance either purchase or billing credits, requires that the resources themselves meet the statutory criteria of section 4(e)(1) and (2), including as applicable, consistency with the Regional Council's plan. This is the "carrot and stick" approach of the Regional Act to BPA customers, as distinct from the direct approach taken for BPA and Regional Council conservation responsibilities; both the "carrots" and the "sticks" are strong inducements.

However the Regional Act does not require the utility itself to engage in conservation. If the utility fails to do so, it will suffer the economic and load consequences, including potential surcharges of 50 percent on its BPA purchase of power and the inability to assure itself of meeting its loads during any period of insufficient power supply (insufficiency). Under the Regional Act, the utility may exercise its options under local control and to explain to its ratepayers and relevant governmental bodies why it chose to exercise such control in the manner it did.

BPA's principal contractual concern on this point is that no utility is able -- by its exercise of local control or otherwise--to frustrate either BPA's or the Regional Council's efforts to assure that conservation is achieved in the utility's service territory. Section 6(e)(2) of the Regional Act permits BPA to act directly through other local entities, and a utility cannot prevent the Regional Council's model conservation standards from applying in the utility's service territory as long as the utility is a BPA customer. It may be noted that utilities are not generally resisting conservation efforts; many of BPA's customers are already among the Nation's leading promoters of it. In negotiations utilities did object to BPA authority to make section 5 power sales obligations contingent upon particular affirmative conservation actions to be taken by the utility itself. The utilities have argued that this would undermine local control and their ability to respond to the incentives of the Regional Act described above in a manner that recognizes their own responsibilities, innovativeness, and ability to understand the mechanisms of the Regional Act and the regional planning process. BPA staff believes the provisions of the Regional Act effectively compel conservation by utilities that become BPA customers; BPA understands that the Regional Act does not directly require such action by utilities. BPA staff finds no basis in the Regional Act and no intent in the legislative history to support the proposition that BPA can make its section 5 power sales obligations contingent upon a customer taking action which the Regional Act itself does not require the customer to take. BPA will address

the imposition of surcharges upon adoption of a methodology by the Regional Council.

C. NATIONAL ENVIRONMENTAL POLICY ACT

1. Issue

Is BPA in compliance with the National Environmental Policy Act of 1969 by offering power sales contracts before producing and circulating an Environmental Impact Statment?

2. Comments

Public comments in summary form on this issue follow:

Natural Resources Defense Council, 7/13/81.

BPA has failed to comply with NEPA (pg. 22).

BPA believes that because offering of power sales contracts is a nondiscretionary action directed by Congress, the decision to offer contracts is not subject to the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA (pg. 27).

BPA concedes it has a continuing obligation to exercise its authority in accordance with the recurring procedural provisions of NEPA (pg. 27).

Because there are discretionary provisions with adverse environmental implications, BPA must prepare an EIS (pg. 28).

Legal rationale for NRDC opinion (pp. 28-30).

BPA's Environmental Report is not adequate because it fails to adequately discuss alternatives (pg. 31).

National Marine Fisheries Service, 7/13/81.

Environmental Report is wholly inadequate (pg. 1).

Does not provide sufficient technical data for a Federal agency to consider when it makes decisions which may have a significant effect on the human environment. Fails to comply with NEPA (pg. 1).

Cites in-house DOE memoranda recommending BPA place the preparation of an EIS on a "fast track schedule" (pg. 1).

BPA in violation of NEPA if it offers power sales contracts without EIS (pg. 2).

The draft Environmental Report is a perplexing document. The Report leaves the reader almost completely uninformed about the operational impacts or consequences of proposed contract terms and conditions on the power system; how these would differ from current operational modes; what the positive and

negative environmental impacts would be; what alternative terms and conditions are available; and finally, why BPA supports its current proposal (pg. 8).

NMFS recommends that steps should be taken to better satisfy the alternative evaluation requirements of NEPA, and respond to all significant public comments in accordance with the APA (pg. 8).

Columbia River Inter-Tribal Fish Commission, 7/10/81.

BPA's issuance of long term contracts must fully comply with NEPA requirements (pg. 8).

The Commission questioned BPA's decision not to prepare an EIS. Agree that BPA issuance of contracts is nondiscretionary act mandated by Congress through the Regional Act, but the context of the contracts - decisions with serious impacts to the region - certainly is a decision that includes considerable BPA discretion (pg. 9).

Believed an EIS should have been prepared in lieu of the Environmental Report (pg. 9).

Questioned whether this document fulfills other NEPA requirements, particularly with respect to its discussion of alternatives to the recommended action (pg. 9).

Washington Environmental Council, 7/10/81.

BPA argues that the Regional Act requires BPA to ignore statutory duties to meet a statutory deadline. BPA asserts deadline is more determinative than its environmental duties (pg. 2).

Feels phrase "consistent with applicable environmental law" requires BPA to comply with NEPA (pp. 2 and 3).

Natural Resources Law Institute, Lewis and Clark Law School, (Issue 14, July 81, Anadromous Fish Law Memo), 7/9/81.

It is true the decision to offer the contracts was made by Congress in the Regional Act. The act of offering the contracts is indeed a nondiscretionary action exempt from NEPA analysis. However, BPA retains considerable discretion over the terms and conditions included in these contracts (pg. 5).

The many alternative forms the contracts may take - together with their probable environmental impacts - should be considered and explored by BPA through compliance with NEPA (pg. 5).

BPA's significant discretion in drafting the power supply contracts coupled with the potential long range implications of the contracts, makes the contents of the contracts (as opposed to the decision to issue them) precisely the kind of Federal action that an EIS is designed to deal with (pg. 5).

Memo is critical of the Environmental Report for not doing what an environmental impact statement does (pg. 6).

Fair Electric Rates Now, 7/13/81.

FERN is in complete agreement with the position taken by NRDC and others that BPA is obligated to prepare an Environmental Impact Statement that reaches far beyond the scope of BPA's Draft Environmental Report (pg. 2).

Pacific Northwest Resources Clinic, 7/13/81.

Because BPA must choose the precise terms and conditions of power sales contracts and because of implementation of BPA power sales contracts is a major Federal action, BPA's actions in executing the contracts require an EIS (pg. 59).

The fact that the actual requirement to offer contracts is nondiscretionary does not alter that obligation (pg. 60).

Critical of Environmental Report because written in a way that it is only understandable to those who already comprehend the complexities of the issues involved. The Environmental Report makes no effort to quantify impacts, predict probabilities of impacts, or describe them in detail . . . this is why an EIS is necessary (pg. 62).

Forelaws on Board, 5/18/81.

EIS should be prepared on all contracts in order to better understand their impacts upon the environment as well as facilitate any specific language mitigating adverse impacts (pg. 3).

Language should be included in all contracts allowing for an adequate time period for an EIS to take place as well as completing any changes brought from such an assessment to be provided for in a process of negotiation of contract language (pg. 3).

3. Evaluation

Public comments generally assert that in the process of negotiation and offer of initial contracts under section 5(g) of the Regional Act, BPA has failed to comply with the National Environmental Policy Act requirements for an EIS. The comments assert that BPA has discretion and takes discretionary action over what provisions it will include in the contracts, that BPA should consider alternative forms for the contract, that the contracts are long range, and that the offer must be consistent with applicable environmental law. For these reasons BPA should prepare an EIS, and allow the contracts to be amended for changes recommended in an EIS.

BPA recognizes and has sought throughout this process to comply with the requirements of the Regional Act and NEPA to the fullest extent possible. BPA has prepared the Environmental Report on the contracts for the purpose of compliance with the non-EIS procedures of NEPA. In consideration of the directives of 5(g) of the Regional Act, BPA finds that the procedures of 102(2)(C) of NEPA for an EIS should not and do not apply to the process of negotiation and offer of the initial contracts under the Regional Act.

Congress has allowed only 9 months to negotiate and offer initial long-term contracts. It has been generally found that to finalize site-specific individual EIS's, including preparation of draft, circulation, review and comment, rewriting, and final filing takes a year or more. Programmatic EIS's take considerably longer since they concern more complex issues and analysis. (See remarks by the Council on Environmental Quality at 46 F.R. 18037, March 23, 1981.) No one can question that many of the provisions of the Regional Act which must find reflection and implementation through provisions in the section 5(g) contracts are themselves complex. The contractual provisions are correspondingly complex, as necessarily are the analyses of issues and alternatives. Therefore, the EIS which would be required by the contracts would be similar to a programmatic EIS and take considerably longer than 9 months to complete due to the very nature of its analyses. If an EIS of relatively simple scope takes an average of 12 months to complete, it would be an impossibility to produce an EIS on far more complex issues within 9 months.

Moreover, the congressionally directed process of negotiation and offer does not permit even 9 months to prepare an EIS in this instance. BPA was admonished in the legislative history of the Regional Act that it was not to negotiate on a take-it-or-leave-it basis. BPA and the participants in negotiations developed issues and draft langauge for 4 months prior to the assembly of June 5, 1981, draft prototype contracts. Public review of the drafts consumed another month or more. Coincident with and subsequent to public review further negotiations were conducted. Decisionmaking and particularization of the contracts were reserved to the month of August. An EIS could not be prepared on the contracts before the proposed terms of the contracts had solidified from negotiation (CEQ regulations 40 C.F.R. 1508.23). If an EIS were to be useful it would have to be completed prior to decisionmaking and finalization in August. Therefore, BPA had between 30 and 60 days to complete an EIS, a clearly insufficient time for an EIS with complex issues and analyses.

Furthermore, BPA should take seriously as a statutory deadline the Regional Act section 5(g) language to negotiate and offer contracts within 9 months of the date of enactment. We agree that a statutory deadline by itself may not create a NEPA exemption, but a 9-month deadline together with the requirement that a major part of the 9 months is for negotiation of contract terms does create the basis for a NEPA exemption. These points had been considered prior to the passage of the Regional Act, and Congress was no doubt aware of the time it takes to negotiate contracts and prepare an EIS when it imposed a 9-month deadline. It would be impossible to prepare an EIS within the time allowed. The statutory directives in this instance are clearly in conflict, and where such a conflict exists, courts have held that NEPA yields.

There has been considerable public misunderstanding of the nature and type of process within which BPA was acting to develop contracts, and with the purpose of the Environmental Report. As the process has unfolded, BPA hopes that its responses to comments will clarify this process for the public. As for the Environmental Report, BPA has produced the report as part of its compliance with the non-EIS procedures of NEPA. The purpose of the report was to provide written description of possible environmental consequences of proposed contract terms and alternative terms. As stated above, time was

simply insufficient to produce detailed analyses of potential environmental consequences.

D. TERM OF UTILITY POWER SALES CONTRACT/CONFORMANCE WITH COUNCIL PLAN

1. Issues

Should BPA offer power sales contracts with less than 20-year terms?

Does offering power sales contracts with 20-year terms render the Regional Council's plan less effective, since the Regional Council will not have its plan ready for 2 years?

Should there be language in the contracts stating BPA and its customers will conform to the Regional Council's plan?

2. Comments

Public comments in summary form on these issues follow:

Idaho Consumers Affairs, Inc., 7/13/81.

Object to the 20-year term BPA has proposed for power sales contracts. It is noted that BPA believes 3-1/2 years is sufficient time for notice of restriction; 10 years notice to rerate the peak and energy capability of any resource owned by another utility not a Federal installation; any resource may be removed or added for any operating year pursuant to contracts in existence on the date of enactment of the Regional Act which need notice periods of less than 10 years. Felt that with modern technology available to BPA a 5-year notice by an IOU should be sufficient, and at the very most 10 years (pg. 1).

Rose City Ratepayers Association, 6/81.

Wanted power sales contracts of 10 years' duration. Felt that long-term power supply contracts provide a disincentive for customers to implement cost-effective conservation and renewable resource development (pg. 2).

Oregon Environmental Council, 7/9/81.

BPA still insists "long-term" contracts must be for 20-year terms, largely because of custom and usage in the power industry (pg. 2).

Regional Act is a break with the past. Now BPA has to follow resource acquisition priorities (pg. 2).

BPA says a 20-year term offers the longest possible planning period. This is part of the problem. Shorter contracts would allow for flexibility and responsiveness (pg. 2).

Our regional energy picture can change drastically in 20 years. BPA should retain flexibility to adjust to environmental, social, or economic conditions (pg. 3).

In the absence of a long-term energy supply a BPA customer will develop more cost-effective conservation and renewable resources.

Fair Electric Rates Now, 7/13/81.

Both length and timing of BPA offering 20-year power sales contracts by September 5, 1981, is inappropriate (pg. 3).

Northwest is in a period of dramatic changes. Twenty-year contracts offer planning certainty on part of regional customers only if the situation remains stable as it was from 1940 - 1970 (pg. 3).

Few would have predicted 10 years ago that our energy choices would appear as they do today. It would be a serious mistake to lock the region into a set of commitments and assumptions for the next 20 years before the direction and priorities of our energy future has been established (pg. 3).

Suggested language in General Contract Provisions to give Regional Council plan priority on certain issues (pg. 3).

Pacific Northwest Resources Clinic, 7/13/81.

Agree with Forelaws on Board's criticism of BPA's position that "long-term" means 20 years (pg. 9).

Because Bonneville Project Act sets an upper limit of 20 years on long-term contracts does not mean that each contract must be 20 years long. Quite the contrary is true (pg. 9).

BPA's assertion that 20-year contracts facilitate the orderly planning of the region's power system is nothing short of outrageous. The 20-year contracts will make the orderly planning for the region's energy future, and particularly the efforts of the Regional Council, almost impossible . . . (pg. 9).

Due to term of contract, wanted a general reopener clause, permitting BPA to unilaterally reopen the contract if it is determined to be an impediment to the Regional Council's plan (pg. 58).

Reopening would only be done if no other remedy existed to insure implementation of the plan (pg. 58).

Citizens for a Solar Washington, 7/13/81.

Object to the execution of 20-year firm power sales contracts in the absence of input and consultation with the Regional Council (pg. 1)..

Historical 20-year time frame no longer is appropriate. New concepts and considerations of the Regional Act (renewable resources, conservation, etc.) . . . might make a 10-year planning period more reasonable (pg. 2).

BPA contracts should not be longer than 7-10 years in order to be responsive to Regional Council's plan. The development of prudent long-term planning is a responsibility vested in the Regional Council. Thus it would be

improper for BPA to issue inflexible 20-year contracts at this point in time (pg. 2).

Oregon Department of Energy, 7/14/81.

We suggest that only short term contracts be pursued (cover letter).

BPA's race to long-term power sales contracts is in conflict with the central planning process once BPA has signed long-term contracts with its customers the necessary flexibility required for an orderly planning process will be lost (pg. 1).

The Regional Act requires BPA to obtain and follow the advice of the Regional Council BPA gains little and many planning options are foreclosed if BPA demands commitment to long-term power sales contract at this point (pg. 1).

Suggested BPA instead pursue short-term contracts conditioned on availability of a long-term contract later in accordance with the advice of the Regional Council (pg. 1).

Mrs. John R. Hennessey, 7/11/81.

Quotes newspaper accounts as saying 20-year contract length is not a requirement of Regional Act (pg. 1).

Long-term contracts should not be entered into before Regional Council completes its Plan (pg. 1).

Forelaws on Board, 5/18/81.

Congress did not intend to mandate 20-year contracts. All Congress did was reference an optional time period in the Bonneville Project Act. (pg. 1).

Arguments against 20-year contracts:

Twenty-year contracts are made to fit conventional resources and forecasting periods. This weakens potential for using 5 to 10-year contracts that would encourage conservation, and use of renewable and cogeneration resources as well as more efficient manufacturing processes for DSIs (pg. 2).

Twenty-year contracts are 20 years removed from adequate public review (pg. 2).

These contracts presently formulated are principally created by the same vested interests which have controlled energy decision making in the past. Regional Council's input to date is minimal. Any errors made in formulating these contracts will be with us for 20 years.

These 20-year contracts use conventional forecasting methodology - such as critical water and one-in-twenty reliability criteria without considering the impact of conservation and renewable energy programs. This precludes the use of other planning methodology (pg. 2).

Twenty-year contracts make it difficult for Congress to correct unforeseen flaws in the current Regional Act (pg. 2).

3. Evaluation

The public comments generally concern the effect of 20-year contracts on long range planning and load forecasts. The comments assert that a shorter contract term of 5 or 10 years would give more flexibility and permit BPA to be responsive to the Regional Council.

The term, or length, of the proposed power sales and exchange contracts has been the subject of considerable public concern.

Section 5(g)(1) of the Regional Act specifies that BPA must offer "initial long-term" power sales contracts to Federal agency customers, direct-service industrial customers, public body customers, cooperative customers, and investor-owned utility customers. Section 5(g)(1) also specifies that long-term contracts will be offered to electric utility customers to effect the residential purchase and sale referred to in section 5(c) of the Regional Act. Section 5(a) of the Bonneville Project Act provides that contracts shall not exceed "in the aggregate twenty years."

Since passage of the Bonneville Project Act in 1937, the phrase "long-term" has meant the maximum cited in the Bonneville Project Act (i.e., 20 years). With more than 40 years' experience in the implementation and interpretation of the various statutes and orders pertaining to BPA and the region regarding contractual power marketing, when applied to utility power sales contracts long term has continuously and consistently meant a 20-year period to BPA, utilities, and industries. Twenty-year contracts allow the longest possible planning period for the region consistent with the express intent of Congress, as stated in the purposes of the Regional Act, to facilitate the orderly planning of the region's power system. A duration of less than 20 years, whether 5 and 10-year periods suggested by some public commentary, would not afford the necessary planning certainty that accompanies a longer term contract period.

Futhermore, by offering long-term 20-year contracts, BPA is following clear legislative history as presented in the Commerce Report (House Report 96-976, Part 1, p. 61), which states that "initial long-term 20-year contracts are to be offered by BPA" to the DSIs in accordance with section 5(g) of the Act. Similar language regarding all 5(g) contracts is found in the same House Report (pg. 63) where the Committee notes: "Section 5(g)(1) specifies that the Administrator must simultaneously offer appropriate customers the initial long-term 20-year contracts . . ." (emphasis added). The Senate Energy Committee report (Senate Report 96-272, p. 33) states that section 9(c), the section of the Senate bill that corresponded to section 5(g)(1), "requires the Administrator to offer long term (20-year) contracts . . . ."

This 20-year time frame is considered standard and reasonable utility practice, and allows for stability in resource planning and long-term resource decisions. A shortened planning horizon contributes to uncertainties about the future availability of power; this uncertainty in turn can affect resource development by causing overbuilding of generating resources within the region

(Schneider 1980a, NEPP 1978, Ernst & Ernst 1976b). Purchasers need to be assured of a long-term resource supply in order to make informed decisions on major plant investment and capital expenditures. It is important to remember that the 20-year contracts establish only the relationship between the parties, and that a party is not precluded from independent resource development.

A great deal of concern has been expressed by the public concerning the coordination of respective timetables for the contracts offered and the adoption of the Regional Council's plan. In cooperation with the Regional Council, BPA and its customers have agreed on language to include in the power sales contract by which the parties to the contract agree to negotiate amendments to the power sales contract, as necessary, to permit the plan adopted by the Regional Council pursuant to the Regional Act, including but not limited to provisions pertaining to conservation, renewable resources, and fish and wildlife, to be effective in the manner and for the purposes set forth in sections 4 and 6 of the Regional Act. Inclusion of the above paraphrased language has answered the concerns of the public and of the Regional Council over implementation of the plan and any possible frustration or difficulty with the terms of the power sales contract. This language strikes the proper balance between BPA's obligations to consider the fish and wildlife program and the resource acquisition plan developed by the Council, while meeting its obligations to supply power to the customers under its power sales contract.

E. NEW LARGE SINGLE LOAD

1. Issue

Under the new large single load (NLSL) provision of the Regional Act, section 3(13), should a facility's incremental load growth of less than 10 average megawatts per 12-month period since September 1, 1979, but in excess of 10 average megawatts since September 1, 1979, be a new large single load for the purposes of the Regional Act?

If a consumer with a load greater than 10 average megawatts had contracted for, or committed to service by a particular utility prior to September 1, 1979, and then the utility's service area is taken over by another utility, should the load be considered a NLSL and billed at the 7(f) rate?

2. Comments

Public comments in summary form on these issues follow:

Natural Resources Defense Council, Inc., 7/13/81.

Critical of BPA for choosing permissive variant. BPA is supporting variant that most encourages wasteful consumption increases, an action that is neither economically justified, nor required by the Regional Act's legislative history (pg. 21).

The permissive interpretation encourages load creep by allowing more industrial loads to qualify for BPA's melded rates (pg. 21).

If DSI loads are able to creep, there will be 25 non-DSI loads, and 21 DSI loads able to creep in the region, which means the region could have to accommodate 460 MW per year in new industrial loads qualifying for service at cheap melded rates (pg. 21).

BPA interpretation gives distorted incentives to increase consumption in an era of tight and increasingly expensive electricity supplies (pg. 22).

Given ambiguity about the precise definition of a NLSL, the more reasonable interpretation is that a load not contracted for prior to September 1, 1979, becomes a NLSL whenever it increases a utility's power requirements by more than ten average MW of power for a full year (pg. 22).

Rose City Ratepayers Association, 6/81.

BPA adoption of "permissive approach" is not good enough (pg. 7).

BPA should document its "oral analysis" which (in part) led BPA to adopt the permissive approach (pg. 7).

Congress (we assume) did not intend to provide benefits to industry served by preference customers at the expense of private utility residential customers (pg. 7).

Evergreen Legal Services, Native American Division, 7/10/81.

Spatially dispersed loads, such as pipeline pumping stations, may escape NLSL treatment under Section 8 (pg. 3).

Because BPA appears to use consumption data rather than planning data, a utility could plan for a load greater than 10 MWs and have the load never reach that consumption level. This could disrupt local and regional planning (pp. 3 and 4).

Washington Environmental Council, 7/10/81.

Regional Act contemplates power requirements of a NLSL be considered. BPA's Section 8 of the utility power sales contract calculates load based on actual consumption. This ignores the planning requirements of BPA to meet forecasted energy and peak (capacity) loads. BPA will alter the operation of the Federal system to meet planned energy and peak requirements (pg. 4).

Oregon Environmental Council, 7/9/81.

Favors restrictive approach. Fear load creep will encourage drawdown of Federal Base System Resources, and eventually cause construction of new and more costly power plants (pg. 4).

Because keystone of the Regional Act is conservation, the definition of NLSL should be construed narrowly (pg. 5).

Fair Electric Rates Now, 7/10/81.

Strongly supports the restrictive definition of a NLSL. Agrees with NRDC position (pg. 11).

Any increase of 10 average MW at facilities operated by a single consumer should qualify as a NLSL, whether or not the increase occurs at a single location (pg. 11).

Wants specific provisions in this section that would exclude DSI purchases from utilities for the purpose of expanding production output (pg. 11).

Pacific Northwest Resources Clinic, 7/13/81.

Restrictive approach more properly reflects the purpose of the Regional Act (pg. 47).

Had Congress intended to permit load creep of the sort BPA contemplates, it would have taked about load increases, not any loads causing power requirement increases (pg. 48).

Legislative reports should be resolved in favor of the restrictive interpretation (pg. 49).

To permit significant new loads to appear in the region would thwart the objectives of Congress in developing 7(f) in the first place (pg. 50).

Want BPA to make the determination of a facility in consultation with the purchaser and the public. BPA cannot delegate even partial legal responsibility for this determination (pg. 50).

BPA should set out its criteria for determining whether something is a facility through rulemaking (pg. 51).

Criteria should include whether the load serves a single nonmanufacturing purpose (pg. 51).

Forelaws on Board, 5/18/81.

Do not agree with ICP position, taken by private utilities on 4/29/81, that NLSLs would be represented by existing large loads served by private utilities being taken over by newly formed public utilities as preference customers. If this was to be adhered to, it would destroy the incentive for private utility ratepayers to take over the management of the private utility system by forming public utility districts (pg. 4).

3. Evaluation

Two issues were of paramount concern in the public comments on the New Large Single Load (NLSL) section (section 8) of the utility power sales contract.

The first issue deals with the two interpretations developed during the course of negotiations of section 3(13)(A) and (B) of the Regional Act dealing with the determination of when a load becomes a NLSL.

The first, or "restrictive" interpretation, states that a load becomes a NLSL when the increase in load associated with a facility exceeds by 10 or more average megawatts the load which was contracted for, or committed to as of September 1, 1979. Once the increase in load is classified as a NLSL all future increases shall be charged at the New Resource Firm Power Rate. Monitoring of the load would begin on September 1, 1979, and would continue until the load exceeded 10 average megawatts and became a NLSL.

The second interpretation, called the "permissive" approach, would allow service of any increase in the load above that contracted for, or committed to on September 1, 1979, of a preference customer at the lower Priority Firm Power Rate, so long as the increase in load at a consumer's facility did not reach or exceed 10 average megawatts in any consecutive 12-month period, as measured against the preceding 12-month period. The permissive interpretation would allow a consumer of a preference purchaser to bring on loads of up to 9.9 average megawatts in consecutive 12-month periods at the priority Firm Power Rate. A consumer could do this year after year, so long as the increase in load did not reach 10 average megawatts in a 12-month period. Once the load increase exceeds 10 average megawatts in 12 months, the load would be billed at the New Resource Firm Power Rate.

Much of the public comment has been in support of the restrictive approach for the following reasons. Many individuals and groups do not want to see new industry attracted to the Pacific Northwest. They believe the "permissive" approach might attract such industry. Many believe new or increased industrial loads should pay only the New Resource Firm Power Rate. They believe this is in keeping with the intent of Congress and the mandates of the Regional Act. There is concern that the "permissive" approach may increase access for industrial loads to power from the Federal Base System Resources, which in turn could force BPA to acquire new and more expensive resources to replace reductions in capability of Federal Base System Resources and/or acquire additional resources to serve loads which are required to be served by Federal Base System Resources. This would have the effect of raising the Priority Firm Power Rate, as well as increasing the costs of the residential exchange to the investor-owned utilities, and until 1985, to the direct-service industries.

BPA in the early stages of the negotiation process advocated the "restrictive" interpretation. However, after closely examining the language of section 3(13) of the Regional Act, reading the legislative history on section 3(13), and talking with those who had been involved in drafting the Regional Act, it became apparent that the language of section 3(13) was never intended to support such a narrow interpretation of load growth, and as a result BPA dropped its advocacy of this interpretation early on in the negotiation process.

This position is based on the fact that section 3(13) of the Regional Act addresses increases in load associated with a consumer's facility which will impose an increase in the power requirements on such customer (the utility serving the consumer) of 10 average megawatts (energy measure) in any

consecutive 12-month period. The contractual language has slightly adapted this concept to address the increase in load at a consumer's facility. Nowhere in the Regional Act, or the legislative history, does it state that once increases in load at a consumer's facility over any time duration (as measured from September 1, 1979) cumulatively reach 10 average megawatts, that that is all the load growth such facility is allowed.

What section 3(13) does state is that an increase in load associated with a consumer's facility is not a NLSL, unless such increase will reach 10 average megawatts in a 12-month period as measured against the preceding 12-month period.

The major negative aspect of the permissive approach, increased access for industrial loads to power from the Federal Base System Resource, which could force BPA to acquire new and more expensive resources to replace reductions in capability of Federal Base System Resources is partially negated by a contractual limitation that once a consumer's facility is classified a NLSL all subsequent increases in load, of whatever size, shall be considered NLSLs. Another impact of the permissive approach is that it allows the cost of resources used to serve such loads to be included in the average system cost of resources acquired by BPA under the residential exchange contracts.

The second NLSL issue commented on involves a consumer's load (over 10 average megawatts) which has been contracted for, or committed to by a utility prior to September 1, 1979, and subsequently the utility's service area is taken over by a different or newly formed utility. The issue is whether that consumer's load should be treated as a "contracted for" load, or whether it is a new load to "such customer." If the new utility is a preference customer, the issue is whether the customer can or will buy power from BPA (to serve the load) at the Priority Firm Power Rate or at the New Resource Firm Power Rate. If the new utility is an investor-owned utility, the issue is whether the resource used to serve the load can or cannot be included in its average system cost of resources for the residential exchange.

Such a load should be treated as a NLSL because it is being served by a new purchaser. The principal reason is to prevent the diminution of the Federal Base System by large industrial loads. The facilities most likely to be impacted by this decision are facilities that were receiving power from investor-owned utilities and therefore were not eligible for power from Federal Base System Resources. If the consumer's facilities had continued receiving service from an investor-owned utility, it would not have received power at the Priority Firm Power rate, because under the Regional Act, investor-owned utilities that wish to serve new large industrial loads with BPA power may do so only with power purchased from BPA at the New Resources Firm Power rate.

In addition, the section 3(13)(B) of the Regional Act references to "such purchaser" refers to the contractual relationship that existed on September 1, 1979, between a specific purchaser and a specific consumer. Therefore, once a consumer begins to receive service from a different purchaser, under a different contract, the contractual relationship with the new purchaser is no longer "grandfathered."

F. FEDERAL BASE SYSTEM

1. Issues

With what specificity should the Federal Base System Resources be described?

What should BPA's replacement policy be for the Federal Base System Resources?

2. Comments

Public commments in summary form on these issues follow:

Rose City Rate Payers Association, 6/81

The average MW output calculated for WNP 1, 2, 3 and Trojan are totally unrealistic. In 1980 nuclear plants in the United States had a 54 percent average capacity factor (pg. 6).

The difference between BPA's assumptions (71-75 percent plant factor) and a 55 percent capacity factor is almost 700 MWs, or twice the anticipated results of BPA's 5-year conservation program (pg. 6).

If BPA's assumptions are unrealistic, the result will be the need for BPA to purchase resources to replace the actual reduced output of the above mentioned projects (pg. 6).

Washington Environmental Council, 7/10/81

Federal Base System Resources should be a defined term and "calculated from" should be deleted so that all federal resources are utilized to determine that capability (pg. 3).

Resources acquired to replace reductions in the firm capability of hydroelectric and thermal resources are consistent with the resource acquisition priorities of the Regional Act and the Regional Power Council's plan when available (pg. 3).

The determination of the firm capability of the Federal Base System Resources should be made contingent on the Regional Council's and subject to any alteration of planning assumptions, such as critical water year, which the Regional Council may deem appropriate (pg. 3).

Fair Electric Rates Now, 7/10/81

Section 5(b) of the Regional Act requires BPA to include an inventory of firm capability resources that will be considered a Federal Base System Resource (pg. 9).

FERN does not find language in the legislative history to support BPA's contention that all resources available under long term contract on December 5, 1980 qualify as an FBSR (pg. 9).

The Regional Act requires BPA to provide an amount of power equal to the Firm Capability of FBS resources listed in the contracts. If there is a short-fall, BPA must makeup the shortfall. It is disconcerting to find that BPA has vastly overrated the amount of reliable power available to it (pg. 9).

Capacity factors for WNP 1, 2, 3 and Trojan are unrealistic (75% capacity factor). Hanford is even less reliable, since Hanford is to be decommissioned in 1983. It does not qualify as a long term contract under section 3(12) of the Transmission Act, which specifies such contracts must be for a period of (5) years (pp. 9,10).

We do not understand how the peak/energy exchange contracts can be considered a firm resource (pg. 10).

BPA has chosen to play fast and loose with its definition of Federal base system resources. Under the Regional Act, BPA must find replacement resources to meet an Federal base system resources short fall. These replacement resources do not have to be cost effective, if BPA determines they are needed to meet BPA's 5(b)(6)(B) obligations. Section 7(c) of the contract as written could provide a loophole for BPA to acquire major new resources that are not cost effective. If the PPC revision of section 7(c)(3) of the Utility power sales contract was accepted BPA could be freed to acquire WPPSS Nos. 4 & 5 to make up for an FBSR shortfall (pg. 10).

BPA should reserve the right to rerate plants on two years notice to avoid long term commitments (pg. 10).

Pacific Northwest Resources Clinic, 7/13/81

BPA's definition of the Federal base system is crudely overinflated (pg. 54).

Federal base system should not include Hanford (pg. 54).

Federal base system should not include the Pacific Northwest Pacific Southwest exchange agreement (pg. 54).

Legislative history states the Federal base system was assumed to include only the "total federal hydro and net billed thermal (resources) expected to be available for sale under the program." (S. Rep. 96-272 at 62) (pg. 54).

BPA has boosted capacity of resources included (pg. 55).

BPA's rationale for so inflating the Federal base system is not altogether clear. Since BPA has not explained its determination in the Environmental Report it owes the Region an explanation (pg. 55).

Public Power Council proposal to permit one-third of preference customers to veto BPA's determination of what resources should be used to replace Federal base system resources is totally unacceptable. BPA cannot give away the power of acquiring resources on a cost effective basis pursuant to the Regional Act (pg. 55).

3. Evaluation

Bonneville's definition of Federal Base System Resources has been critized by the public for overrating the plant capacity factors of WNP Nos. 1, 2, 3 and Trojan, and for including Hanford and the Southwest-Northwest Exchange contracts in the definition of Federal base system. The general criticism is that BPA has grossly inflated the size of the Federal base system. This is of concern because the Regional Act mandates that BPA replace Federal base system resources and critics fear BPA is building a rationale to replace lost Federal base system resources with noncost-effective resources, particularly WPPSS Nos. 4 and 5.

BPA originally proposed that a quantitative definition of the Federal base system be included in the contracts. The quantitative amount is based on currently accepted planning assumptions used by the Pacific Northwest Utilities Conference Committee for resource planning. Stating the quantitative amount would provide planning certainty for the Region's utilities.

The Senate report on pg. 22 explains that the category of contractual resources includes "the net-billed thermal plants, other specific generating resources and electric power the Administrator is entitled to receive from the utilities within and outside the region in exchange for services or other consideration." Bonneville has interpreted "other specific generating resources" to be Hanford and the wind turbines at Goodnoe Hills. Bonneville had acquired the output of the new production reactor at Hanford under contracts which were executed in the mid-60's. The current contract, which allocates the costs of operating the new production reactor, is based on Bonneville's acquisition of the output of Hanford under the original contracts.

In response to public comment challenging the validity of the planning assumptions used to establish plant capacity factors, it is appropriate not to fix the quantitative amount of the Federal Base System for 20 years. Bonneville should identify the contractual resources as of the effective date of the Regional Act and the installed capability of these resources.

We have not yet determined to what extent these resources would be replaced or where Bonneville would obtain replacement resources. Bonneville has included a provision in the Equitable Adjustment of Rates section of the General Contract Provisions which requires the resource acquisition agreement to specify whether a resource may be used as a replacement for Federal Base System resources and limits the extent to which Bonneville will purchase replacement resources for delays in the completion of WNP Nos. 1, 2, 3.

V. Residential Purchase and Sale Agreement (exchange): The Major Issues Identified and Addressed by the Public in its Response to BPA's Federal Register Notice of its and BPA's Evaluation of Those Comments

A. CONSERVATION

1. Issues:

Should the Residential Purchase and Sale Agreement include a provision requiring BPA customers to implement BPA's conservation programs, or their own equivalent programs as a condition of BPA service?

What should the Residential Purchase and Sale Agreement require of BPA and its customers with respect to conversation?

2. Comments:

Public comments in summary form on these issues follow:

Fair Electric Rates Now, July 10, 1981.

Conservation language should be included in the exchange agreement because it would reduce load on BPA (p. 7).

Natural Resources Defense Council, July 13, 1981.

The exchange agreement discourages cost-effective conservation; load growth which could have been displaced with conservation measures should not be allowed to be exchanged under the exchange agreement (pp. 16-18).

Pacific Northwest Resources Clinic, July 15, 1981.

Increased residential loads above what could have been anticipated with reasonable implementation of conservation programs should not qualify for the exchange and load exchanged should diminish over time (p. 5-6).

Natural Resources Defense Council, May 18, 1981.

If implemented without conservation provisions, the exchange arrangement could create a strong disincentive for vigorous utility efforts to reduce residential loads (p. 3).

Oregon Department of Energy, July 14, 1981.

Resource development plans should be filed with BPA by each utility who executes an exchange agreement (p. 3).

3. Evaluation

Section 5(c) of the Regional Act states that BPA "shall" exchange the amount of residential load which a utility offers to BPA to be exchanged. BPA is required to exchange any amount of residential load (up to the limits in the Regional Act which are applicable before July 1, 1985) which a utility

wishes to exchange. The utility determines the amount to be exchanged - not BPA.

Thus, the exchange arrangement is mandated by the Regional Act to provide residential rate parity in the region for residential consumers' wholesale power costs. BPA does not have discretion to not enter into the arrangement, nor does it have discretion as to the amount of residential load covered by the exchange. Those decisions were made by Congress, with the exact level of load served to be decided by utility participation in the exchange.

Refer to the evaluation section of the utility power sales contract on conservation for BPA's response on the conservation issues.

B. TERMINATION

1. Issue

Should the exchange contract include termination provisions allowing a utility to terminate the arrangement other than the termination provision stated in the Regional Act?

2. Comments

Public comments in summary form on this issue follow:

Idaho Public Utilities Commission, 5/7/81; Washington Utilities Transportation Commission, July 10, 1981, H1; Fair Electric Rates Now, July 10, 1981, p. 7.

A termination provision in addition to the section 5(c)(4) (rate trigger) is essential to the contract. Congress never intended that a utility should pay Bonneville the difference between its average system cost and Bonneville's firm power rate in the exchange agreement. This would result in a "negative" benefit to the utility; something which Congress did not intend.

3. Evaluation

BPA's position is that the viability of the contracts requires that they be for a long term. Since termination on terms other than that expressed under section 5(c)(4) of the Regional Act was not considered by Congress, some mechanism had to be developed to assure that the contemplated residential exchange would take place. Absent a mechanism for minimizing the possibility of net negative results for utilities and public utility commission representatives expressed doubts that the contracts would be signed. The result would be a failure to achieve one of the major objectives of the Regional Act--to make the benefits of the Federal Base System available to the residential and small farm customers of the investor-owned utilities.

As a result, BPA has agreed to allow a participating utility to "deem" its average system cost to be equal to BPA's firm power rate anytime during the life of the contract. This allows the utility to suspend the effects of the exchange arrangement when it would result in detriment while still preserving the "long-term" contract requirement of the Regional Act. Having "opted out" of the exchange, the utility may resume full participation in the exchange only after it has foregone economic benefits equal to the cost it would have

paid had the utility's average system cost not been deemed equal to BPA's Firm Power Rate. This compromise has been embraced by all BPA customer groups.

C. FARM DEFINITION

1. Issue

Is BPA's definition of "farm" reasonable?

2. Comments

Public comments in summary form on this issue follow:

Oregon Department of Agriculture, June 29, 1981.

The definition of farm should be amended to clearly delineate between minor farm commodity processing and major, finished farm commodity processing. Alternative language suggested (p. 1).

Washington Utilities' and Transportation Commission, July 10, 1981.

The BPA definition of farm, as written, is the best way to accomplish the purposes embodied in the Regional Act and should not be changed (p. 1).

3. Evaluation

The Regional Act specifically includes the usual electrical loads of farms (with the 400hp limitation on irrigation loads) in its definition of residential load. The legislative history indicates that the focus of Congressional concern was land use, as opposed to size, ownership, or any other issue. Therefore, a farm should be defined as a parcel of land owned or leased by one or more persons, including partnerships and corporations, which is used primarily for agriculture. Agriculture is defined to include the raising and incidential primary processing of crops, pasturage, or livestock. Usual farm use has been defined to include incidental primary processing ordinarily associated with agriculture. Such incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment.

Such a definition avoids including the irrigation loads of golf courses and swimming pools, for example, while also avoiding such technical definitions as those used for tax purposes based on the dollar value of products sold, type of ownership, or acreage.

D. RATES

1. Issue:

Is Bonneville carrying out the overall intent of Congress under the proposed exchange agreement with regard to its rate provisions in the contract?

2. Comments:

Public comments in summary form on this issue follow:

U.S. Environmental Protection Agency, July 9, 1981.

The exchange contract obscures "rate signals" for costs of developing new resources for providing rate relief to a very large portion of the region's ratepayers (p. 1).

R. N. Terrall, May 4, 1981.

Rates should not unfairly impinge upon the competitive structure of business; all contracts should include rate escalation clauses; BPA has an obligation to return a fair portion of its revenue to the U.S. Treasury as a partial repayment of tax dollars used (p. 1).

3. Evaluation

The exchange contracts will result in a wider discrepancy between the incremental cost of electrical power and the retail rates charged residential and small farm consumers served by participating utilities in the region. In this sense the contracts will result in increased divergence between the price signal received by consumers served by utilities and the cost of new resources. However, section 5(c) of the Regional Act requires BPA to offer to sell power on an exchange basis and defines the parameters under which the exchange must take place. Section 5(c)(3) requires that the cost benefits of the exchange be passed directly through to the participating utility's residential customers.

It is anticipated that the provisions of the Regional Act will foster an improved balance of electricity rates throughout the region. The exchange provisions of the Regional Act will reduce the current discrepancy which tends to exist between rates to residential and small farm consumers served by preference customers versus those served by investor-owned utilities.

BPA's new power sales contracts provide for rate increases as necessary in order to meet cost increases. The contracts do require BPA to provide advance notice of its intent to adjust rates. Notice must be given no less than 9 months nor more than 12 months prior to the date on which the proposed adjustment would take effect.

BPA operates on a self-financing basis. Its rates are designed to recover revenue sufficient to meet all operation and maintenance expenses and to amortize within a reasonable period and pay interest upon Federal investment.

E. MISCELLANEOUS PROVISIONS

1. Issue:

Whether miscellaneous provisions in the exchange agreement are reasonable and effectuate the intent of the Regional Act?

2. Comments:

U.S. GAO, June 8, 1981.

Access to utility records is required to verify the costs being exchanged (Enclosure III, p. 5).

Fair Electric Rates Now, July 10, 1981.

Notice for an in lieu purchase by Bonneville should be 5 years; 10 years is too long a notice period (p. 7).

Forelaws on Board, February 23, 1981.

Private utilities have testified at exchange negotiating sessions that generating resources in Wyoming and Montana, currently serving and projected to serve Pacific Northwest energy needs, may be diverted to Utah and Nevada in order to meet energy demand caused by military and industrial development which would promote excessive thermal plan construction in the Pacific Northwest (p. 3).

3. Evaluation

BPA agrees that access to utility records is required to verify the costs of resources being exchanged and has written into the contract provisions giving BPA the right to review and investigate the records of the utility regarding costs of resources to be exchanged.

The notice provision regarding in lieu purchases has been changed from 10 years to 7 years. This is the same notice period the utility must give BPA under its power sales contract to reduce demand on BPA. This was a negotiated change with the utilities and precludes a utility from being "surplused" by BPA because of an in lieu arrangement.

BPA has no knowledge of or reason to believe that utilities will divert energy to Utah and Nevada to serve military and industrial loads. The exchange agreement is not a power supply arrangement, but rather a rate arrangement and puts no constraints on a utility's resource operations.

VI. Direct Service Industry Power Sales Contract: Members of the Public that Submitted Comments in Response to BPA's Prototype

Responses were received from members of the public, including individuals, special interest groups, legal, and governmental entities not parties to the contracts. They include:

Organizations:

Columbia River Inter-Tribal Fish Commission, 7/10/81;
Fair Electric Rates Now (Attachment, Jim Lazar), 7/13/81;
Idaho Consumer Affairs, Inc., 7/13/81;
League of Women Voters of Salem, 7/10/81;
Oregon Environmental Council, 7/9/81;
Rose City Ratepayers Association, (U.S. GAO Attachment, Jeff Jeep, 7/9/81) 7/13/81;
Washington Environmental Council, 7/10/81.

Legal:

Evergreen Legal Services, 7/10/81;
Natural Resources Defense Council, Inc., 3/19/81, 5/18/81, and 7/13/81;
Natural Resources Law Institute, Lewis and Clark Law School, (Attachment, Anadromous Fish Law Memo) 7/9/81;
Pacific Northwest Resources Clinic, University of Oregon Law School, 6/9/81 and 7/13/81.

State Agencies:

Oregon Department of Energy, 7/14/81;
Washington State Energy Office, 7/10/81;
Washington Utilities and Transportation Commission, 7/10/81.

Federal Agencies:

U.S. Department of Commerce, National Marine Fisheries Service, 7/13/81.

Individuals:

William B. Culham, 5/6/81;
John C. Neely, Jr., 4/30/81.

VII. Direct Service Industry Power Sales Contract: The Major Issues Identified and Addressed by the Public and BPA's Evaluation of those Comments

A. FISH AND WILDLIFE LANGUAGE

1. Issue:

Should language addressing BPA's and its customers' fish and wildlife responsibilities under the Regional Act and other laws be included in all Power Sales Contracts and exchange contracts?

2. Comments:

Public comments in summary form on this issue follow:

Columbia River Inter-Tribal Fish Commission, 7/13/81.

Shifting FELCC and use of Advance Energy to serve the DSI First Quartile may conflict with anadromous fish migrations (p. 4).

Fair Electric Rates Now, 7/14/81.

Contract provisions requiring prudent conservation of energy in excess of critical planning amounts for First Quartile service should specify that such conservation is subordinate to fish and wildlife obligations (p. 16).

The contract section dealing with fish and wildlife obligations should specify that such obligations take precedence over First Quartile service (p. 17).

The Second Quartile should be restrictable for fish and wildlife obligations (p. 16).

Washington Environmental Council, 7/10/81.

Section 7(c)(2) of the DSI draft should specify that resource acquisitions to serve the DSI First Quartile with shifted FELCC should not conflict with fish and wildlife obligations (p. 5).

The provision of section 7 of the DSI draft requiring Bonneville efforts to avoid reductions in generating capability should clarify that it cannot be used to avoid fish and wildlife obligations (p. 5).

The provision of section 7 of the DSI draft requiring Bonneville to acquire resources before imposing a Second Quartile restriction should be made contingent on fish and wildlife obligations (p. 5).

Operations to serve the First Quartile should be limited by fish and wildlife obligations. There should be a limit on the amount of Advance Energy that can be made available in order to protect fish. Bonneville commitments requiring return of Advance Energy should include fish and wildlife, especially for fish flows (p. 5).

The Fish and Wildlife section should refer to sections 2 and 10 of the Regional Act (p. 6).

The Firm Obligations definition should provide that reserves for firm power customers not be detrimental to fish and wildlife, and should be made subject to environmental review (p. 6).

Evergreen Legal Services, 7/10/81.

The improved power quality of the First Quartile could sacrifice fish and wildlife values (p. 5).

Provisions for restriction for salmon and steelhead should be added (p. 5).

Natural Resources Law Institute, Lewis and Clark Law School, (Attachment, Anadromous Fish Law Memo), 7/9/81.

Enhanced service to the First Quartile may preclude Bonneville compliance with its fish and wildlife obligations (p. 5).

The Mid-Term Contract Review, Second Quartile restrictions, and FELCC shift provisions in the DSI draft allow deeper reservoir drafts to the detriment of fish (p. 8).

Pacific Northwest Resources Clinic, University of Oregon Law School, 7/13/81.

First Quartile service should be conditioned on meeting fish and wildlife obligations (p. 31).

Conservation of energy in excess of critical planning amounts for First Quartile service should be conditioned on meeting fish and wildlife obligations (p. 33).

Shifing FELCC to serve First Quartile will have adverse impacts on fish and wildlife and should be conditioned on meeting fish and wildlife obligations and the concurrence of Federal and state fish and wildlife agencies and consistency with the Regional Plan (p. 31-32).

U.S. Department of Commerce, National Marine Fisheries Service, 7/13/81.

The section 7 provision of the DSI draft requiring Bonneville best efforts to avoid any reduction in resource generating capability appears to potentially conflict with operating a resource to comply with fish and wildlife obligations (p. 6).

DSI draft provisions calling for an FELCC shift for First Quartile service are improper because there is no limitation on Bonneville's discretion to shift, because it is unclear how such a shift would impact Corps of Engineers and Bureau of Reclamation reservoir operation, including for nonpower uses, and because shifting FELCC to serve First Quartile in a dry year can conflict with fish and wildlife needs. NMFS suggests incorporating fish flows in FELCC rule curves (pp. 6-7).

William B. Culham, 5/6/81.

3. Evaluation

BPA's service to the DSIs will fulfill BPA's obligations to protect, mitigate, and enhance fish and wildlife, while assuring the Region an adequate, efficient, economical, and reliable power supply. Those obligations are reaffirmed in section 11 of the DSI contract.

Furthermore, in the General Environmental Provision in the General Contract Provisions applicable to all Power Sales Contracts, the parties agree to "comply fully with all applicable Federal, State, and local environmental laws." Service to the First and Second Quartiles is subject to these provisions, by law, and as reaffirmed in the contract.

Current planning considers spills required for fish flows in critical rule curves. The hydro-system is available for multiple uses, and, although shifting FELCC and Advance Energy will draw down reservoirs faster than if those actions did not occur, fish and wildlife are considered in those actions.

The Corps of Engineers has participated actively in determining the method of serving the First Quartile. The method that has been chosen, as stated in the August 14 letter referred to in the contract, is more acceptable to the Corps than a full-year shift or 6-month shift of FELCC because of the reduced impact on reservoirs. Furthermore, the agreement with the Corps and the Bureau of Reclamation for drafting reservoirs to provide Advance Energy is premised on the fact that such drafts do not have a majcr adverse impact on nonpower uses. Thus, concern for fish and wildlife has had a significant impact on BPA plans to operate to serve the First Quartile.

The Second Quartile has not been restrictable for fish and wildlife obligations in the past. There is Congressional direction that the DSIs should receive an equivalent amount of power to the amount they received under their IF agreements. If the Second Quartile, being a BPA firm load, is restrictable for fish and wildlife obligations, then all firm loads, including utility loads, should also be restrictable for fish and wildlife obligations.

Sections 2 and 10 of the Regional Act do not speak as directly to BPA's fish and wildlife obligations as does section 4, and therefore, those sections were not mentioned in section 11 of the DSI contract.

B. CONSERVATION

1. Issue

What should the DSI power sales contracts require with respect to conservation?

Should the DSI contract contain specific conservation incentives for the DSI's?

2. Comments

Public comments in summary form on these issues follow:

Columbia River Inter-Tribal Fish Commission, 7/10/81.

Initial DSI contracts should be for a 10-year term with extensions based on individual customer energy consumption reduction (p. 8).

Consumption reduction target should be placed in the DSI contracts for each plant.

Tiered rates should be established for the DSIs (p. 9).

Fair Electric Rates Now, (Attachment, Jim Lazar), 7/13/81.

As the contracts are written, everybody in the Region except the DSIs is expected to conserve (p. 15).

If the DSIs were to conserve, very large amounts of electricity could be saved for costs much lower than the cost of equivalent generating resources (p. 15).

Technological Allowances as drafted in the DSI contract tend to discourage conservation. Such allowances should be granted on a temporary basis. As drafted, such allowances permit load creep. There should be a limit on the total size of the Technological Allowance pool (pp. 15-16).

Bonneville should purchase voluntary curtailment of the 3rd and 4th Quartiles at its fully avoided cost (p. 16).

DSI input into conservation programs, as provided for in section 7 of the DSI draft, should be limited (p. 17).

If a DSI curtails to implement conservation for which it has paid, it should be forgiven the demand charge for the curtailment (p. 17).

Initial DSI contracts should be for a 10-year term with extensions of 1 year for every 1 percent improvement in plant efficiency over 10 percent (p. 15).

League of Women Voters of Salem, 7/10/81.

DSI contract terms should be limited to between 5 and 10 years, and there should be mandatory conservation provisions(p. 1).

Oregon Environmental Council, 7/9/81.

Why are the DSIs being given 20-year contracts without being required to implement conservation measures during that term (p. 4)?

Rose City Ratepayers Association (U.S. GAO Attachment, Jeff Jeep, 7/9/81), 7/13/81.

GAO suggests that BPA should include provisions in DSI contracts to establish reasonable time tables for implementation of all cost-effective conservation and to insure industry compliance with any conservation policies or standards established by the Regional Council (p. 5, 6/8/81 letter).

GAO urges that conservation opportunities in the industrial sector be identified and programs be aggressively launched as soon as possible, with monitoring DSI efforts to determine the necessity for surcharges and to help design new programs (p. 7, 4/8/81 letter).

Natural Resources Defense Council, Inc., 3/19/81, 5/18/81, 7/13/81.

Aluminum companies can cut electricity consumption by 20 percent through conservation, and they account for 90 percent of the DSI load. DSI contracts could encourage conservation by having a shorter term with extensions keyed to conservation, plant efficiency targets, and tiered rates (pp. 10-12, 5/8/81; p. 5, 3/19/81).

For First and Second Quartile restrictions, the least efficient DSIs should be restricted first and have service restored last (p. 15, 7/13/81).

Granting Technological Allowances should be conditioned on specific reductions in energy consumption and best available retrofit techniques (p. 19, 7/13/81).

DSI contract terms should be 10 years with extensions for energy saved and banked due to implementing conservation (p 19, 7/13/81).

Pacific Northwest Resources Clinic, University of Oregon Law Schoool, 6/9/81 and 7/13/81.

BPA should insert such conservation incentives in the DSI contract as a 10-year contract term with extensions conditioned on conservation, consumption reduction targets for each plant, tiered rates, granting Technological Allowances keyed to conservation, and structure restriction rights to reward conservation and discourage waste (pp. 4-5, 6/9/81; pp. 4-5, 7/13/81).

The DSI draft makes Technological Allowances nondiscretionary, although the previous contract and the legislative history provide that they should be discretionary. The new provisions tend to discourage conservation (pp. 44-45, 7/13/81).

Oregon Department of Energy, 7/14/81.

The DSIs should be required to implement conservation (p. 10).

William B. Culham, 5/6/81.

Emphasis on conservation in the DSI contracts is counter-productive (p. 1).

3. Evaluation:

BPA should provide incentives for voluntary DSI conservation, rather than attempt to mandate programs that might prove unworkable or even counterproductive. There are sufficient incentives for DSI conservation in the limit on amount of power available to the DSIs, the higher DSI rates along with the threat of a surcharge, financial assistance, and the mechanism of billing credits to achieve workable DSI conservation.

Under section 5(d) of the Regional Act, each DSI must be offered a contract entitling it to the amount of power to which it is entitled under its present contractual arrangements with BPA. In essence, this sets a limit on the BPA power available to each DSI--a situation no utility or utility customer faces. In addition, the DSI rates go up sharply under the Regional Act. Depending upon the cost of the section 5(c)(2) exchange, DSI rates in the first year of the Regional Act may increase as much as 240 percent (or as little as 150 percent); this increase follows an increase of more than 100 percent in December 1979, for a 400 to 600 percent increase over the past 2 years. As noted in the House Commerce Committee report, this combination of a contractually limited power supply and very much higher rates is itself a potent incentive to improve efficiency, and one not faced by other Northwest consumers.

Over the past few years, partly in anticipation of new limited-supply contracts with higher rates, the DSIs have invested heavily in process improvements; hundreds of millions of dollars of such improvements have been installed. In addition, following passage of the Regional Act, one DSI has announced an $800 million modernization program for its facilities, and another has indicated its tentative interest in qualifying for billing credits in return for reducing what would otherwise be its contractual entitlement to power (hence reducing BPA's need to acquire additional resources).

This follows the clear understanding and intent of the Regional Act. Each DSI is entitled to a certain amount of power; it may improve its efficiency in order to make more product with that power, and perhaps use sales of the increased production to help pay for the investment that makes the improved efficiency possible. Alternatively, the DSI may improve its efficiency and simultaneously agree to reduce its entitlement to power, in which event it will be eligible for billing credits or other financial assistance from BPA under the Regional Act. BPA will not, however, provide any financial assistance under the Regional Act for DSI efficiency improvements which do not reduce DSI power demands on BPA, nor will BPA provide financial assistance to DSI's for reductions in power demands unaccompanied by efficiency improvements (e.g., BPA will not pay for partial or complete plant shutdowns).

No specific provisions are provided in the DSI contracts on these points because the statute is quite clear, and because no issue can arise unless and until a DSI seeks financial assistance from BPA. Any such assistance would be provided, if at all, in a separate contract, not in the power sales contract, and would require a specific agreement by the DSI to reduce its contractual power entitlement in order to qualify for assistance.

C. IMPROVED DSI POWER QUALITY

1. Issue:

Is improved power quality for the DSI First Quartile required by the Regional Act or in contravention of it?

Are there unfavorable consequences to the Region as a result of improved DSI power quality?

Should First and Second Quartile restriction rights be greater than they are in the contract draft?

2. Comments:

Public comments in summary form on these issues follow:

Fair Electric Rates Now (Attachment, Jim Lazar), 7/13/81.

The DSI draft allows the DSIs higher First Quartile power quality than is mandated by the Regional Act. The legislative history indicates that Bonneville should have more flexibility in imposing restrictions, not less (pp. 13-14).

The DSIs are paying rates for interruptible power but getting a firm contract. The DSIs should be charged a higher rate for First Quartile power (p. 13).

The limitation on the 25 percent Forced Outage and Stability Reserve should be eliminated (p. 16).

Delete the 180-day limitation for restriction due to forced outage of an operating resource during a Contract Year (p. 17).

DSIs should not have access to preference customer power for service above Contract Demand levels (p. 1).

Bonneville should only obligate itself to use best efforts to acquire resources for offering follow-on contracts (p. 17).

Fair Electric Rates Now, (Attachment, Jim Lazar) 7/13/81.

Conservation of energy in excess of critical planning amounts for First Quartile service should be subordinate to the requirement of the Regional Plan (p. 16).

Idaho Consumer Affairs, Inc., 7/13/81.

Opposes "interruptibility credit payments." DSIs should bear risk of failed resources. They are paying low rates yet getting high quality power. Bonneville should provide for restriction of DSI loads during Regional insufficiency. Acquisition of single cycle combustion turbine resources to serve DSI loads will be paid for by Regional ratepayers (p. 3).

Evergreen Legal Services, 7/10/81.

Use of shifted FELCC and Advance Energy to serve the First Quartile will decrease Bonneville's ability to meet load (p. 5).

Natural Resources Defense Council, Inc., 7/13/81.

DSI First Quartile power quality should not be improved. Such improved service contravenes the Regional Act. Bonneville reliance on Appendix B to the Senate Report is tenuous (pp. 23-24).

Pacific Northwest Resources Clinic, University of Oregon Law School, 7/13/81.

The DSI draft improves First Quartile power quality in contravention of the Regional Act (pp. 35-39).

First Quartile restriction rights should be 25 percent of Contract Demand, not Operating Demand (p. 39).

Shifting FELCC for First Quartile service increases chances of Regional curtailment (pp. 40-41).

The DSI draft obligating Bonneville to purchase gas turbine energy to serve the portion of the First Quartile served with shifted FELCC contravenes section 9(i)(1) of the Regional Act (pp. 41-42).

No Bonneville obligation to acquire resources before imposing a Second Quartile restriction existed in the previous contracts; such an obligation should not now be adopted (p. 43).

It is inappropriate not to restrict Second Quartile for lack of appropriated funds (p. 43).

Requiring Bonneville's best efforts to avoid reductions in generating capability could put it in the position of unnecessarily or improperly fighting legal battles on behalf of the DSIs (p. 44).

Oregon Department of Energy, 7/14/81.

Bonneville's plan to purchase resources to serve the First Quartile is not required by law (pp 9-10).

Washington State Energy Office, 7/10/81.

Service to the First Quartile with shifted FELCC imposes a risk of Regional shortage because DSI return obligations are not based on need. DSI First Quartile service with shifted FELCC should be tied to nonconditional recall rights (pp. 1-2).

Washington Utilities and Transportion Commission, 7/10/81.

Shifting FELCC for First Quartile service should be deleted because it could result in Regional curtailments (p. 2).

Service to Alumax is an uneconomical and unecological use of electricity and will require acquisition of expensive resources (pp. 1-5).

3. Evaluation

Section 5(d)(1)(B) of the Regional Act provides that each DSI shall receive "an amount of power equivalent to which such customer is entitled under its contract for . . . the sale of industrial firm power existing at the passage of the Regional Act." The contracts provide for a single class of power and divide service into four approximately equal "quartiles." BPA plans to develop and acquire firm resources to serve 75 percent of the DSI load as firm and serve the top quartile or additional 25 percent, ". . . as if it were firm." (S. Rep. 96-272, 96th Cong., 2d Sess. 59 (1979)). This is characterized in section 8(a)(1) of the BPA-DSI contract, "as a firm load for purposes of resource generation only."

BPA characterizes top quartile service as "quasi-firm," having undeniable firm characteristics and served by operating resources to provide a power quantity with firm characteristics, while not installing resources to meet it on an absolutely firm basis. The Regional Act provides a clear statutory basis for service in this manner. By section 5(d)(1)(A), sales to DSI's are "to provide a portion of the Administrator's reserves for firm power loads . . . ." The term "reserves," as defined by the Regional Act, means "the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers. . . ." Section 3(17). In other words, service to the top quartile cannot be restricted to provide service to nonfirm loads or to make sales of nonfirm energy.

Any suggested ambiguity from the section 5(d)(1)(A) reference to DSI sales as "[s]uch sales," (i.e., whether it refers to three quartiles of nondisputed firm or treats the top quartile as quasi-firm) is resolved by the Regional Act's legislative history. The Senate Energy Committee Report directs BPA to plan and develop "'firm' resources under critical streamflow conditions to carry 75 percent of the total DSI requirement," with the additional 25 percent, or "top quartile," to "be served with resources which are in excess of critical planning amounts but operated to meet the entire DSI load as if it were firm." S. Rep. No. 272, 96th Cong., 2d Sess. 59 (1979). In addition, the House Interior Committee Report states that:

> "Sales to existing DSI's are required to provide a portion of BPA's power system reserves . . . The DSI's will provide two types of energy reserves. Approximately 25 percent of the DSI load is to be treated as a firm load for purposes of resource operation and will provide an operating reserve which may be restricted by BPA at any time in order to protect the Administrator's firm loads within the region . . . An additional 25 percent of the DSI load will be treated as firm load for both planning and operating purposes and will provide a planning reserve to protect the Administrator's firm loads . . . ."

Senators Jackson and McClure, the past and present Chairmen of the Senate Committee on Energy and Natural Resources, have concurred that the House Interior Committee Report reflects the accurate position of the Senate on the "reserves" question. See 126 Cong. Rec. 14691 (daily ed. Nov. 19, 1980) (remarks of Senator Jackson) and Id. at 14698 (remarks of Senator McClure).

The DSIs play a vital part in the Regional power scheme. DSI revenues will pay the costs of the residential exchange through June 1985. After June 1985, DSI revenues will continue to be important. The DSIs alleviate the need for BPA to acquire additional expensive generating resources for reserves. Improved first quartile DSI power quality will generate additional revenues.

Both restrictions and operations were extensively debated among BPA customer groups before the final provisions were adopted. The provisions adopted are intended to provide the DSIs with the power quality required by law with minimum cost and minimum adverse impacts on other customer groups.

The "August 14 letter" operating plan, which serves as a safety net for first quartile operations, minimizes shift of FELCC from later Critical Period years for first quartile service, thus reducing reservoir drawdown over the Critical Period and adverse impacts on other systems. This plan would serve as the basis for first quartile operations throughout the contract term, and could only be replaced with a plan with equivalent risks and benefits to the DSIs and BPA. Furthermore, service with Advance Energy is maintained, which is returnable based on need in the same Contract Year, improving chance of refill.. The August 14 letter also provides for borrowing FELCC from later in the same Contract Year, with return provisions tied to need later in the same year, again improving chances of refill. These methods of serving the first quartile, shifting and borrowing FELCC and Advance Energy, along with pre-Critical Period surplus energy early in the Contract Year, are all limited to the date that the first reliable runoff forecast is available, presently January 10. After that date, the first quartile would be served with water in excess of critical planning amounts.

BPA has generally retained the same restriction rights it had in the previous contracts with the exceptions of improved first quartile power quality and additional second quartile restriction rights for failure of an operating resource. The DSI second quartile would provide a reserve for one-half of such an outage for seven years. Forced outage and stability reserves have been increased slightly. Availability credits are no longer provided for, which the House Interstate and Foreign Commerce Committee Report on S. 885 at page 62 noted had reduced BPA flexibility.

The BPA obligation to acquire resources to serve the DSI load is limited to acquiring resources for 75 percent of their load. BPA is obligated to purchase resources that are reasonably priced and legally available to serve the part of the first quartile served with shifted FELCC. This is because that shifted FELCC comes from the DSI third quartile of later Critical Period years, which is part of the DSI load for which BPA is obligated to acquire resources before making the subsequent third quartile restriction. Because BPA is obligated to treat the second quartile as part of its firm load for resource acquisition purposes, there is also an obligation to acquire legally

available, reasonably priced resources before imposing or continuing a second quartile restriction.

The "legally available" qualification means that such resources can only be acquired consistent with BPA's cost effectiveness obligations established in the Regional Act for long-term acquisition, and other provisions including environmental criteria. The term "reasonable cost" does not require BPA to acquire single cycle gas turbine energy, unless BPA determines that such energy is reasonably priced at the time of the acquisition.

VIII. Members of the Public That Submitted Comments in Response to the Alumax Contract Issue

L. P. Gray, 6/10/81
Harold A. Budd, 6/19/81
Mr. Robert Ten Eyck, 6/17/81
F. K. Starrett, 6/17/81
Mr. A. L. Draper, 6/9/81
Mr. Marshall Cornett, 6/9/81
Mr. Lewis "Tony" Barnhart, 7/15/81
Mr. Stephen R. Lindstrom, 6/16/81
Donald C. McElligott, 6/15/81
Mr. Norman H. Schroth, 6/11/81
Mike Thorne, 6/26/81
Donald D. Armstrong, 6/16/81
Mr. Alan C. Donnelly, 7/6/81
Ms. Doris S. Bounds, 6/15/81
Mr. Robert W. Reese, 6/10/81
Ms. Esther Fife, 6/19/81
Mr. Paul L. Wolf, 6/26/81
Ms. Christine F. Wolf, 6/26/81
Ms. Barbara Pratt, 6/26/81
Ms. Melinda Newman, 6/26/81
John and Margie Paulson, 7/2/81
Ms. Marjorie A. Powell, 6/17/81
Mr. Jim Boyer, 6/17/81
Mr. J. Ned Dempsey, 6/23/81
Ms. Pat Rogers, 6/29/81
Mr. Rod Fife, 6/29/81
Ms. Beverly Underwood, 6/27/81
Mr. Don C. Gray, 7/10/81
Mr. George L. Cook, 7/10/81
Mr. Patrick M. Mulqueeney, 7/17/81
Mr. Robert L. Davis, 7/17/81
Mr. Robert P. Cooper, 7/11/81
Mr. E. D. Williams, 7/28/81
Mr. Robert Rose, 7/31/81
Ms. Eva J. Swain, 8/11/81

CONTRACT OFFERING TO ALUMAX PACIFIC CORPORATION

1. Issues

Why should BPA offer a contract to serve the Alumax load?

Why should the load be served as early as July 1, 1987, which will occur in the face of forecasted deficits?

Why charge Alumax a rate for power which may be less than the cost of new resources needed to serve the load?

2. Comments

BPA has received a substantial number of comments regarding the contract offering to Alumax. Most of those submitting comments live in the general vicinity of the plant's intended site near Umatilla, Oregon. Without exception the comments have been very supportive of constructing Alumax. The principal comments in the correspondence may be summarized as follows:

-- Jobs created by both the construction and future operation of the Alumax plant will assist in alleviating high unemployment in the Umatilla area;

-- the type of production will help diversify the area's economy;

-- the Alumax plant will expand the local tax base, with resulting revenue increases to both local and state government;

-- communities have already planned the necessary local improvements needed to serve the increased population caused by siting of the plant; and

-- the plant's product, aluminum, is a useful and valuable commodity, the production of which is in the nation's best interest.

3. Evaluation

The comments from the public stressed the positive local impacts of the construction of the Alumax plant on their community. However, BPA's decision to serve the Alumax plant was based on different criteria, including an existing power sales contract with Alumax and clear direction from Congress in the Regional Act.

The Regional Act requires that within 9 months of its enactment, December 5, 1980, that BPA offer long-term power sales contracts to all of its existing DSI customers for the equivalent amount of power as that specified in their existing contracts. Alumax, as an assignee of Northwest Aluminum's contract, has had a power sales contract with BPA since 1966. Under the Regional Act BPA has no discretion regarding whether or not it will offer Alumax a contract. The only discretion the Regional Act gives BPA with respect to serving Alumax is that BPA specify in the contract the date BPA deems reasonable by which BPA will be able to acquire sufficient resources, on a planning basis, to meet Alumax's load.

Although Alumax requested full power delivery by 1985, BPA selected December 5, 1987, as the earliest date it will ensure delivery of industrial firm power to Alumax. The contract provides for commercial operation of the plant to begin as early as July 1, 1987, but BPA will retain restriction rights on the entire Alumax load until December 5, 1987. This 7-year time period coincides with BPA's New Large Single Load criteria for service to an equivalent sized industrial load should it have been served by one of BPA's utility customers. In addition, BPA set the term of Alumax's power sales contract for 20 years, not from the date of full industrial power delivery as Alumax wanted, but from July 1, 1981.

BPA has based its decision on when to serve Alumax on the following factors. The recently published 1981 Pacific Northwest Utilities Conference Committee regional forecast shows a firm energy deficit of only 600 average megawatts for 1989-90, compared with a deficit of 2,675 average megawatts for 1989-90 in the PNUCC's previous year's forecast. The Alumax load is included in the PNUCC load forecasts and has been ever since 1966. Assessments by BPA and by independent analysts indicate the probability of an additional 1,500 average megawatts or more being available to the region through conservation and consumer-installed renewables by 1990. Negotiations are underway now for the extension of the Hanford N-Reactor's 500 megawatts of firm energy beyond 1983, after which time it was scheduled to shut down. And BPA is almost certain to acquire some additional resources and conservation from its recently issued Request for Resources and Request for Information, and from its soon-to-be-issued Request for Proposals, from billing credits for conservation and consumer-installed renewables, from model conservation standards and the prospects of surcharges for noncompliance, from improved technology, from consumer responses to higher energy prices, and from BPA's new authority to acquire resources from outside the region, including from Canada. Because of the above factors, BPA believes it was reasonable to specify in the Alumax contract that service could start by December 5, 1987. The additional fact that most of these potential resources have a much shorter leadtime than conventional resources gives BPA reasonable assurance that 7 years is an appropriate and reasonable planning period within which BPA should be able to provide industrial power to Alumax.

The rate BPA will charge Alumax for power is the same as the rate charged all other DSI's. This rate is specified in section 7(c) of the Regional Act. BPA does not have discretion to charge Alumax, or any other DSI, a special rate not provided for by the Regional Act. Alumax is not presently receiving power from BPA. However, it has had a contract with BPA since 1966. In this sense, Alumax is not a new customer. To the extent that additional resources are acquired by BPA to meet the new Alumax load, as well as other new loads, the cost of those resources will be greater than the rate paid by Alumax pursuant to the Regional Act. However, new incremental loads to the region do not pay the actual cost of new incremental resources necessary to serve such loads. Even when a utility purchases power from BPA to serve a new large single load, the utility purchases power at a rate established pursuant to section 7(f) of the Regional Act. This rate may not be at the incremental cost of new resources, and may reflect the embedded costs of older, lower cost resources. Thus, the rate Alumax will pay for power is prescribed by the Regional Act, and the Regional Act does not provide wholesale power rate principles which require new loads to pay the cost of new resources acquired to serve such loads.

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