

2008 Proposal for Modifications
to BPA's Policy on Determining Net Requirements
Under Sections 5(b) and 9(c) of the Northwest Power Act



TABLE OF CONTENTS

Introduction.....	1
Application and Scope	2
High Water Marks Under the Regional Dialogue Policy	3
Proposed Modifications to the Policy	3
Proposal 1: Customer Removal of Above-RHWM Resources.....	5
Proposal 2: Customer Removal of Existing Resources.	8
Proposal 3: Elimination of the Renewable Resources Exception.....	9
Proposal 4: Review of the Clarifications to the May 2000 Policy.....	10
Proposal 5: Review of the Declaration Parameters.....	10
Conclusion	11
Attachment A	

Introduction

After extensive public processes for review and comment in 1998 and 1999, BPA adopted a Policy on Determining Net Requirements of Pacific Northwest Utility Customers under Sections 5(b)(1) and 9(c) of the Northwest Power Act, May 23, 2000 (hereafter: May 2000 Policy). The May 2000 Policy provides BPA's interpretation of section 5(b)(1) and section 9(c) of the Pacific Northwest Electric Power and Conservation Planning Act, 18 U.S.C. §839 et seq. (Northwest Power Act) for its requirements load service and surplus power sales contracts; provides guidance on implementation of BPA's current Power Subscription contracts; and describes how certain factual determinations will be made regarding the amount of Federal power public and cooperative utilities, or investor owned utilities may purchase from BPA under section 5(b) as requirements load service. The May 2000 Policy also provides BPA's interpretation of section 9(c) of the Act and section 3(d) of the Act of August 31, 1964, 16 U.S.C. 837 et seq., as amended (the Pacific Northwest Preference Act); and describes BPA's review of its utility customers' exports of their non-Federal resources under section 9(c) of the Northwest Power Act and section 3(d) of the Pacific Northwest Regional Preference Act. The May 2000 Policy guides BPA's determination of whether BPA can supply firm power or not when a customer has exported its non-Federal hydroelectric, thermal or other resources outside the Pacific Northwest, and what constitutes an export of non-Federal power or resources out of the Region. BPA also reaffirmed its Non-Federal Participation Capacity Ownership Contracts and 9(c) Policy of July 1994 and the BPA determinations made under section 9(c) with only minor modifications noted in section IV of the May 2000 Policy.

After publication of the May 2000 Policy, BPA's preference customers, direct service industries and investor-owned utilities filed legal challenges the May 2000 Policy in the U. S. Court of Appeals for the Ninth Circuit which were settled by BPA's issuance of certain clarifications of the May 2000 Policy. See *Goldendale Aluminum Co. et al v. United States Department of Energy*, case nos. 00-70717; 00-70719; 00-70743; 00-70778. In March 2003, all parties, with the exception of Grant PUD, executed a settlement agreement and motion to dismiss. BPA adopted the clarifications on March 7,

2003, making them part of the May 2000 Policy. The clarifications are denominated as “Clarifications Issued on BPA’s Policy for Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act, dated May 23, 2000” (hereafter: Clarifications).

In July 2007, BPA released its Long-Term Regional Dialogue Final Policy (RD Policy) and associated Record of Decision. The RD Policy proposed specific, limited changes to BPA’s May 2000 Policy, which would be applicable to the RD Contracts. The RD Contracts now being developed are proposed to be the successor contracts to the customers’ current Subscription contracts. However, there are certain differences between the terms of the current Subscription contracts and the proposed RD Contracts which require BPA to propose modifications to its May 2000 Policy. The May 2000 Policy and Clarifications will continue to apply as BPA policy to BPA determinations required for the proposed Regional Dialogue post-2011 power sales contracts (RD Contracts) with certain specific changes. BPA may consider other changes to the May 2000 Policy and Clarifications as appropriate, in the event that the proposed contracts change in the future. Accordingly, BPA is conducting a limited-scope review of its May 2000 Policy and Clarifications for the purpose of supporting the implementation of the RD Policy.

Application and Scope

Prior to October 1, 2011, the current May 2000 Policy and Clarifications apply. Regional utility customers eligible to purchase power from BPA under section 5(b) of the Northwest Power Act after that date under the new RD Contracts or other contracts will be subject to the May 2000 Policy and Clarifications as revised. The changes to the May 2000 Policy and Clarifications that BPA adopts will be set forth in a final decision document and revised Policy and will apply prospectively, starting October 1, 2011.

Section II.B.8 of the RD Policy describes the limited changes to the 2000 Policy and Clarifications that BPA has identified as necessary for the implementation of the RD Policy. BPA’s proposed changes to the May 2000 Policy and Clarifications are limited to the changes stated in the RD Policy and are described in Section III, below. By this

notice, BPA is not conducting a general review of the May 2000 Policy and Clarifications.

High Water Marks Under the Regional Dialogue Policy

As described in BPA's RD Policy, the cornerstone for that policy is to limit BPA's sales of firm power at the lowest cost-based Priority Firm (PF) rate to public preference customers to meet their regional firm requirements loads to approximately the firm capability of the existing Federal system. To that end, BPA expects to offer and execute new long-term contracts, as well as establish a long-term Tiered Rate Methodology (TRM) by December 1, 2008. Through the contracts and TRM BPA will determine a Contract High Water Mark (CHWM) for each public utility customer, based on the utility's FY 2010 retail load and the capability of certain designated Federal resources. Under the TRM, the CHWM defines a public utility's eligibility to buy an amount of power at the lowest of BPA's PF tiered rates. Prior to each rate period a customer's CHWM will be adjusted for changes in the capability of the planned Federal system (known under the TRM as Tier 1 System Firm Critical Output) resulting in a Rate Period HWM (RHWM).

To serve its Above-RHWM Load, a customer must be either provide power from non-Federal resources or purchase power from BPA at PF rates reflecting BPA's marginal cost of acquiring the additional power, or through a combination of both.

Proposed Modifications to the Policy

The May 2000 Policy and Clarifications is a policy of general application regarding BPA's power sales and customers' purchases of Federal power under BPA authorizing statutes. The May 2000 Policy and Clarifications have applied to pre-Subscription contracts and surplus power sales contracts held by BPA customers, as well as Subscription contracts. Notwithstanding any language in the May 2000 Policy and Clarifications that might suggest that they are limited in application to BPA's Subscription contracts, the May 2000 Policy and Clarifications will continue to apply to BPA's power sales contracts with regional customers after expiration of the Subscription contracts.

The proposed changes to the current May 2000 Policy and Clarifications are:

1. Modification of the policy on a customer's removal of its non-Federal resources used for its regional consumer firm load, to accommodate: (1) the addition and application of new resources used by a customer to serve such load above its RHWL and to distinguish those new resources from the customer's non-Federal resources that are currently dedicated and used to serve its regional consumer firm load under its Subscription contract.
2. Accommodation of new RD Contract notice provisions for the customers' application of non-Federal resources to serve load above its RHWL, and duration of the application, during the contract period;
3. Modification of a customer's right to remove its existing resources, currently dedicated to serve its regional firm consumer load, in the event of loss of load.
4. Elimination of the current 200 MW renewable resource exception for additions of non-Federal renewable resources;
5. Certain modifications to incorporate into the May 2000 Policy and Clarifications terms used in the RD Policy and the TRM; and
6. Certain changes to remove irrelevant references to Subscription contracts and to align use of the Declaration Parameters with the RD Policy.

The proposed modifications to the May 2000 Policy and Clarifications for the implementation of customers' RD power sales contracts and other post-2011 power sales contracts are further described below. The specific revisions to the May 2000 Policy and Clarifications are shown in Attachment A, the red-lined version of BPA's proposed Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act (First revision. Issued October __, 2008, effective October 1, 2011) (Revised Policy).

Proposal 1: Customer Removal of Above-RHWM Resources.

“Above-RHWM Resources”¹ means those Specified Resources and amounts listed in section 2 of Exhibit A of a customer’s RD Contract and any Unspecified Resource amounts listed in section 3 of Exhibit A of a customer’s RD Contract that were dedicated to serve the customer’s firm regional retail load after September 30, 2006.

In light of the TRM’s new rate design for tiered rates based on RHWMs, BPA will change its policy to, in most cases, allow (1) a customer to add non-Federal resources to serve Above-RHWM Load during the term of the contract, consistent with the notice and commitment terms of the contract and (2) the removal of Above-RHWM Resources by a customer to accommodate a reduction in the customer’s Above-RHWM Load. Additionally, the Revised Policy will distinguish the Above-RHWM Resources from the customer’s non-Federal resources that were dedicated to serve load prior to October 1, 2006, denominated as “Existing Resources,” defined in Proposal 2, below.

The RD Contracts will provide that a customer may dedicate or become contractually obligated to apply non-Federal resources or power purchase amounts to serve some or all of its planned Above-RHWM Load, subject to any required notice to BPA. However, in any rate period year, planned load that is forecast to be above a customer’s RHWM may not occur or RHWMs may be increased under the TRM due to changes in the Tier 1 System Firm Critical Output, resulting in a reduced need for the customer to serve Above-RHWM Load with non-Federal resources. In most cases, as further described below, customers may elect to remove their Above-RHWM Resources or have BPA remarket their Tier 2 rate purchase obligations up to the amount of the reduction in above-HWM load. Any Above-RHWM Resource so removed by the customer must be made available to serve its Above-RHWM Load in the next fiscal year.

If a customer elects to have BPA provide firm power service at a Tier 2 rate for any portion of its Above-RHWM Load, such Federal service is not a customer non-Federal “resource” for the purposes of resource removal permitted under the May 2000

¹ Above-HWM Resources are the same resources identified by the term “New Resources” in the RD Contracts. A different term is used here because “New Resources” is already a defined term used in the Clarifications to the May 2000 Policy.

Policy and Clarifications. The following describes basic resource removal options by power product. A customer's RD Contract may contain more specific provisions that address these options.

Non-Load Following products. As described in the RD Policy, the RD Block product, Block with Shaping product or Block with Slice product contracts will provide that a customer may for each Fiscal Year elect to remove its Above-RHWM Resource amounts or to have BPA remarket its Tier 2 rate purchase obligation to the extent that those combined amounts exceed the customer's above-RHWM load, as determined by the customer's Initial Net Requirements calculation. The details of notice to BPA of the described customer elections are set out in the RD Contracts.

Load Following product. Consistent with the RD Policy, the RD Load Following contracts will effectively provide for annual removal of Above-RHWM Resources. A customer may elect to remove its Above-RHWM Resources or have BPA remarket its Tier 2 rate purchase obligations to the extent that those combined amounts exceed the rate case forecast of the customer's above-HWM load. This election will occur by notice to BPA prior to each rate period as provided for in the customer's RD Load Following contract. Additionally, BPA will establish rate mechanisms consistent with the TRM that reflect the revenue received by remarketing for load changes within a rate period.

For all customers using Above-RHWM Resources (any product). Customers will also be able to add and temporarily remove their Above-RHWM Resources subject to required notices and purchase obligation periods under their RD Contracts and consistent with the Tier 2 rate design developed in the TRM 7(i) proceeding.

Customers with an RD Contract other than a CHWM Contract. BPA expects that all of its eligible customers will sign a CHWM Contract. If necessary, resource addition and removal provisions for any preference customers that do not sign a CHWM Contract will be addressed in those customers' contracts. The proposed revisions to the May 2000 Policy and Clarifications do not address the temporary resource removal rights for load loss under such contracts. Those customers' resource removal rights for temporary loss of loads may range from no right to remove resources

to some resource-removal rights no greater than those rights provided to customers that signed CHWM Contracts.

The following proposed changes to the May 2000 Policy and Clarifications are shown in the red-lined Revised Policy attached as Attachment A:

1. The Introduction section will be modified to include full descriptions of power sales, tiered rates, and products under the Regional Dialogue Policy including needed terminology and context for effecting the proposed changes to the May 2000 Policy and Clarifications.
2. Section III.A.1(b), and related sections III.D.1(a) and (d), will be modified to classify customer resources considered for net requirements determinations as either Above-RHWM Resources or Existing Resources, as defined below.
3. Section III.C will be revised, consistent with Issue 3, below, to allow the addition of Specified resources or Unspecified resources dedicated to serve a customer's above-RHWM load, exclusive of its existing dedicated resources. Such resource additions will be subject to the customer's resource commitments set out in Exhibit A of its RD Contract in accordance with the notice and purchase obligation requirements stated in the RD Contracts and in the TRM.
4. Section III.D.2 will be modified to distinguish BPA's treatment of Above-RHWM Resources from Existing Resources and to allow removal of Above-RHWM Resources for Block, Block with Shaping, and Slice with Block customers. Additional modifications will specify that:
 - a. Any Above-RHWM Resource removed for a contract year must be made available for use to serve load in the next contract year if the customer's annual planned load forecast, as approved by BPA shows an increase in load.
 - b. Resource amounts must be removed in the declared shape of the resource being removed.

Proposal 2: Customer Removal of Existing Resources.

“Existing Resource” means a specified resource listed in section 2 of Exhibit A of a customer’s RD Contract that such customer was obligated by contract or statute to use to serve its total retail load prior to October 1, 2006.

Under the May 2000 Policy and Clarifications and Subscription contracts, customers were permitted to remove their Existing Resources up to the amount of their firm consumer load loss, including non-materializing load, to mitigate their take-or-pay obligation. However, annual removal of Existing Resources imposes risks on BPA which must be addressed differently for the RD Contract than for the Subscription contract. BPA proposes to change the basis for notice and removal of Existing Resources to allow removal only in the second year of a rate period instead of annually and only to the extent of load lost for the second year. Existing Resources may not be removed for the first year of a Rate Period. BPA would thus continue a limited resource removal right for customers for their Existing Resources, as modified to coordinate with the tiered rates structure of the TRM. Although limited, this provision allows for customer requests for flexibility in their use of non-Federal resources, even though the tiered rate design has an inherent mitigation effect for the effects of load loss. This limited Existing Resource removal right will only be apply to customers who are purchasing the Block, Block with Shaping, or the Block with Slice products from BPA and will not apply to the Load Following product.

For the second and any subsequent years of a rate period, if a customer’s net requirement for the second year of a rate period falls below the Block amount purchased in the first year of the rate period, the customer may remove Existing Resource amounts to maintain the amount of Federal power that it is obligated to purchase from BPA at Tier 1 rates in the first year. This provision only applies if the customer’s planned firm consumer load forecast shows a reduction in the customer’s net requirements load below its RHWL, such that there is no Above-RHWL Load. Any resource removed by a customer for the Fiscal Year must be made available for use to serve load in the next Fiscal Year. Existing Resource amounts must be removed in the declared shape of the resource being removed. This resource removal will not affect the shape of the Block

being purchased from BPA since the shape of the Block purchase is set in the contract and does not change with variations in the customer's load.

The following proposed changes to the May 2000 Policy and Clarifications are shown in the red-lined Revised Policy attached as Attachment A:

1. Section III.A.1(d)(ii) will be modified to reflect the term of the rate period instead of specifying a five-year rate period as currently stated.
2. Section III.D.2 will be modified to distinguish treatment of Existing Resources from Above-RHWM Resources and to allow limited removal of Existing Resources as described above for Block, Block with Shaping, and Slice with Block customers.
 - a. Any Existing Resource removed for a Fiscal Year must be made available for use to serve load in the next Fiscal Year.
 - b. Resource amounts must be removed in the declared shape of the resource being removed.

Proposal 3: Elimination of the Renewable Resources Exception.

Section III.C of the May 2000 Policy and Clarifications provide for certain exceptions to the policy for the addition and removal of renewable resources to serve a customer's regional firm retail power load. BPA is proposing to delete this provision.

The provision was intended as an incentive for the development of renewable resources in the region. Because of the enactment of national and state incentives and requirements applicable to BPA customers for the use of renewable resource-generated power, this exception to the May 2000 Policy and Clarifications is no longer needed.

The following proposed changes to the May 2000 Policy and Clarifications are shown in the red-lined revised policy attached as Attachment A:

1. Section III.A.1(d)(i) will be revised, consistent with Proposal 1, above, to remove all references to the exemption for renewable resources from the requirement of serving a customer's load for the life of a dedicated resource.
2. Section III.C will be revised, consistent with Proposal 1, above, to no longer address the use of renewable resources to serve regional load.

3. Section III.D.1(d) will be revised, consistent with Proposal 1, above, to remove reference to adjusting customer load for the removal of renewable resources.

Proposal 4: Review of the Clarifications to the May 2000 Policy.

The Clarifications to the May 2000 Policy will remain in effect and are not being modified or replaced by the preceding proposed changes. BPA proposes to attach the Clarifications document to the May 2000 Policy document as an appendix to Attachment A. This change is proposed in response to public comment that it would be helpful to have the Clarifications document combined with the policy document that it is clarifying.

The Clarifications arose as part of a legal settlement as described in the Introduction section, above. BPA is not proposing any new language that would affect the settlement and BPA is not taking comment on the Clarifications. Were BPA to make any changes through this review, BPA would make such changes subject to the agreement of those parties who signed the settlement agreement that such modifications are consistent with and not in violation of that settlement agreement.

The following proposed changes to the May 2000 Policy and Clarifications are shown in the red-lined revised policy attached as Attachment A:

The Introduction section will include language that describes the Clarifications document as part of the May 2000 Policy and note that it is attached as an appendix to Attachment A.

Proposal 5: Review of the Declaration Parameters.

The existing Declaration Parameters referenced in section III.A.1(e) of the May 2000 Policy will not be changed. That section states that to establish the amount of power that is available from customers' non-Federal resources BPA will apply the Declaration Parameters from the Power Products Catalog in effect at the time BPA makes Subscription power sales contract offers. The Declaration Parameters in the Products Catalog will continue to be applicable to the Regional Dialogue contacts. However, some portions of the catalog are out of date due to (1) references to the Subscription contracts, (2) use of specific years (i.e., declaring PNCA resources with OY2001 PNCA

numbers), and (3) new policy decisions (i.e., the removal of the new renewable resources exception under the RD Policy). Also, through negotiations with its preference customers and other interested parties, BPA has developed additional generation shapes that those customers may use when declaring Above-RHWM Resources. These alternatives and out-of-date parameters are addressed in and through the terms of the RD Contracts.

Additionally, it is proposed that the exception for new renewable resources be eliminated from the May 2000 Policy and Clarifications as described in Proposal 3, above. This will make the corresponding paragraph in the Declaration Parameters irrelevant and no further correction is needed. Except for these few provisions, the Declaration Parameters in the Products Catalog are still applicable.

The following proposed changes to the May 2000 Policy and Clarifications are shown in the red-lined Revised Policy attached as Attachment A:

The Declaration Parameters will be attached to the Revised Policy as a reference for convenience, but they will not become a part of that policy. As noted in the May 2000 Policy, the Declaration Parameters are not part of the May 2000 Policy and may be subject to revision.

Conclusion

The proposed changes to the May 2000 Policy and Clarifications herein are limited to the changes identified above and in section II.B.8 of the RD Policy, together with necessary enabling language. Following receipt and review of public comment and any revisions developed in response, BPA will issue its Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers under Section 5(b)(1) and 9(c) of the Northwest Power Act (First revision. Issued October __, 2008, effective October 1, 2011) and associated Record of Decision as a final action that will revise the existing May 2000 Policy and Clarifications for the implementation of the RD Policy.

Attachment A

2008 Proposal

**Revised Policy on Determining Net Requirements of Pacific Northwest Utility
Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act
(First revision. Issued October __, 2008; effective October 1, 2011)**

TABLE OF CONTENTS

INTRODUCTION	1
I. Relevant Statutory Provisions.....	5
II. Scope of the Policy	6
III. Policy on Determining Net Requirements	7
A. Determination of the Amount of Federal Power For Sale Under Section 5(b)(1)	7
B. Statutory Discontinuance for a Customer’s Generating and Contractual Resource.....	9
C. Addition and Removal of Above-RHWM Resources with Notice.....	10
D. Changes in the Amount of Federal Power Purchased During the Term of a Contract.....	11
IV. Scope of the Section 9(c) Policy	14
A. Modification to BPA’s Non-Federal Participation Section 9(c) Policy....	14
B. Section 9(c) Policy	14
C. Scope of the Section 9(c) Policy.....	18
Appendix A - 2003 Clarifications	
Appendix B - Definitions	
Appendix C - Declaration Parameters	

[Proposed] Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act (First revision. Issued October , 2008; effective October 1, 2011)

INTRODUCTION

Background:

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

After publication of the May 2000 Policy, several BPA preference customers, direct service industries (DSIs) and investor-owned utilities (IOUs) filed legal challenges against the policy in the U. S. Court of Appeals for the Ninth Circuit. See *Goldendale Aluminum Co. et al v. United States Department of Energy*, case nos. 00-70717; 00-70719; 00-70743; 00-70778. In

March 2003, all parties, with the exception of Grant PUD, executed a settlement agreement and motion to dismiss. BPA adopted the clarifications on March 7, 2003, making them part of the May 2000 Policy. The clarifications are denominated as “Clarifications Issued on BPA’s Policy for Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act, dated May 23, 2000” (hereafter: Clarifications). Together, the May 2000 Policy and Clarifications comprise BPA’s extant policy on its application of sections 5(b)(1) and 9(c) of the Northwest Power Act, effective through September 30, 2011. The Clarifications are incorporated herein as Appendix A.

The Regional Dialogue Policy and Tiered Rates:

~~On December 21, 1998 July 2007,~~ BPA published its ~~Power Subscription Strategy~~Long-Term Regional Dialogue Policy (Regional Dialogue Policy) and accompanying Record of Decision for selling Federal power under new contracts ~~with to its publicly and cooperatively owned utility regional preference customers, federal agencies, investor owned utility IOUs and direct service industrial customers DSIs.~~ The ~~Power Subscription Strategy~~Regional Dialogue Policy states ~~BPA’s overall policy~~ies direction for ~~determining the amount of marketing~~ Federal power to its customers~~be offered to in the Pacific Northwest public utility and investor owned utility customers under section 5(b)(1) of the Northwest Power Act~~after October 1, 2011.

Under the Regional Dialogue Policy, BPA is offering 20-year Regional Dialogue power sales contracts under a tiered rate structure (RD Contracts) to its preference and Federal agency customers. These contracts are the successor contracts to the Power Subscription contracts and provide core products for load service similar to what had been offered previously – the full-service Load Following product and partial-service Block and Slice-with-Block products.

Accompanying the new contracts will be tiered rates, which BPA is establishing through a Tiered Rate Methodology (TRM). The TRM is a two-tiered rate design applicable to firm requirements power service for customers that sign RD Contracts. The TRM¹ differentiates between the costs of service associated with a defined set of existing Federal resources and the costs associated with additional Federal resources needed to serve any remaining portion of customers’ net requirement. The cost of the power from these Federal resources will be allocated and recovered through Tier 1 and Tier 2 rates, respectively. Each customer will receive

a Contract High Water Mark (CHWM), measured in aMW that defines the customer's eligibility to buy an amount of power priced at Tier 1 rates. Prior to each rate period, a customer's CHWM will be adjusted to account for changes in the planned Tier 1 System Resources capability, resulting in a Rate Period High Water Mark (RHWM). A customer's power purchases in excess of its RHWM will be priced at Tier 2 rates. To meet its Above-RHWM Load service obligation, a customer may purchase Federal power from BPA at a Tier 2 rate, procure non-Federal power, or both. Independent of the RHWM, purchases of Federal power by a customer is limited by the customer's net requirement - that amount of a customer's planned regional firm retail load that BPA is obligated to serve under statute.

The foregoing brief summary of BPA's TRM is intended to provide terms and concepts that are unique to the Regional Dialogue Policy and RD Contracts and that are used in this Revised Policy. The use of any such terms or concepts in this Revised Policy is not intended to modify or amend the TRM or RD Contract terms. The TRM describes a rate structure and does not determine a customer's net requirement, which is the subject of this Revised Policy.

For the purposes of implementing the Regional Dialogue Policy and TRM, it is necessary under this Revised Policy to address the treatment of customers' non-Federal resources previously dedicated to serve load under Subscription and pre-Subscription contracts separately from those non-Federal resources subsequently acquired to serve Above-RHWM Load under the TRM. Accordingly, the following definitions for customers' non-Federal resources will apply for this Revised Policy:

1. "Above-RHWM Resources"² means those Specified Resources listed in section 2 and any Unspecified Resource amounts listed in section 3 of Exhibit A of a customer's RD Contract that were dedicated to serve the customer's firm regional retail load after September 30, 2006.

¹ This document uses defined terms consistent with those used in the TRM and RD Contracts. Accordingly, a list of those defined terms is attached hereto as Appendix B.

² Above-HWM Resources are the same resources identified by the term "New Resources" in the RD Contracts. A different term is used here because "New Resources" is already a defined term used in the Clarifications to the May 2000 Policy.

2. “Existing Resource” means a Specified Resource listed in section 2 of Exhibit A of a customer’s RD Contract that such customer was obligated by contract or statute to use to serve its Total Retail Load prior to October 1, 2006.

The Revised Policy:

~~On October 12, 2008~~ ~~May 6, 1999~~, BPA published a ~~Federal Register public n~~Notice (~~64 FR 24376~~) with a ~~draft~~ proposed Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act ~~policy for determining the net requirements of publicly and cooperatively owned utility and investor-owned utility customers~~(Revised Policy). The proposed Revised Policy is the result of a limited-scope review of the May 2000 Policy and Clarifications, and reflects specific provisions described in section II.B.8 of the Regional Dialogue Policy that are BPA sought public comment on its proposed policies for determining utility customer net requirements under section 5(b)(1) of the Northwest Power Act. Adoption of a final policy is important to a successful implementation of BPA’s post 2001 power sales contracts under BPA’s Power Subscription Strategythe RD Contracts.

~~On October 28, 1999, BPA published a Federal Register Notice (64 FR 58099) with a revised draft policy proposal based upon comments received on the earlier proposal and requested additional comment on this revised draft policy. BPA sought and has received public comment on its proposed Revised Policy.~~ After having reviewed and considered ~~the public additional~~comment, the Administrator has decided to adopt this final ~~policy~~Revised Policy. Review and analysis of public comment will be published in the Administrator’s Record of Decision (~~ROD~~) that is related to this final ~~policy~~Revised Policy.

This final ~~policy~~Revised Policy provides guidance on implementation of the ~~Power Subscription Strategy~~Regional Dialogue Policy under applicable statutes and describes how certain factual determinations will be made regarding the amount of Federal power ~~that~~ publicly- and cooperatively-owned utilities, or investor-owned utilities may purchase from BPA under section 5(b)(1) of the Northwest Power Act. BPA’s determination of this amount, as described in this policy, ~~is~~will continue to be affected by a customer’s export of hydroelectric resources and non-hydroelectric resources out of the Pacific Northwest in accordance with section 9(c) of the

Northwest Power Act and section 3(d) of the Northwest Preference Act. BPA will continue to review a customer's export of power or output from resources under BPA's Section 9(c) Policy as set forth in Section IV.B of this Revised Policy, consistent with the Clarifications.

Notwithstanding any language in the May 2000 Policy and Clarifications that might be construed to suggest they are limited in application to BPA's Subscription contracts, the May 2000 Policy and Clarifications will continue to apply to BPA's power sales contracts with regional customers after expiration of the Subscription contracts.

The National Environmental Policy Act:

BPA is in the process of assessing the potential environmental effects that could result from implementation of the proposed Revised Policy, consistent with the National Environmental Policy Act (NEPA). The NEPA analysis will determine whether the Revised Policy would fall within the scope of the Market-Driven Alternative that was evaluated in BPA's Business Plan Final Environmental Impact Statement, DOE/EIS-0183, June 1995 (Business Plan EIS) and adopted in the August 1995 Business Plan ROD. If so, BPA is likely to tier its decision under NEPA to the Business Plan EIS and ROD. BPA will complete its NEPA process and issue its NEPA ROD concerning the policy at the time that BPA issues its Final Record of Decision for the Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act.

~~**Environmental Compliance: This final policy is consistent with BPA's Business Plan Final Environmental Impact Statement (DOE/EIS-0183, June 1995), the Business Plan Record of Decision (ROD), signed August 15, 1995, and the subsequent tiered Power Subscription Strategy ROD, signed December 21, 1998.**~~

I. Relevant Statutory Provisions

The Northwest Power Act provisions are:

5(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds –

(A). The capability of such entity's firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

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

5(b)(1) In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights. 16 U.S.C. 839c(b)(1)

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

The Northwest Preference Act provision is:

3(d) The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility’s own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy. 16 U.S.C. 837b(d).

II. Scope of the Policy

The Policy on Determining Net Requirements as described in section III addresses the amount of Federal power that BPA is obligated to offer to customers requesting contracts to serve firm power loads under section 5(b)(1) of the Northwest Power Act. Purchasers eligible to request a contract under section 5(b)(1) include public body, cooperative, or investor-owned utilities in the region.³ BPA has a corresponding statutory duty when determining the net requirements of a

³ The policy also addresses any sales of Federal power BPA makes under section 5(b) in settlement of a customer’s right to service under the residential exchange program created under

requesting purchaser to apply the provisions of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is contained in section IV. Such provisions direct the Administrator to determine whether an export or proposed export of a requesting purchaser's non-hydroelectric or hydroelectric resource(s) would result in an increase in the firm energy requirements of any of BPA's customers. Findings by BPA that the export of such resources are likely to increase BPA's firm obligations, and that the resource could have been conserved, or otherwise retained to serve regional loads, will result in a reduction (decrement)⁴ of the amount of Federal power and energy available for purchase under section 5(b)(1) equal to the amount of power and energy, and for the duration, of the export. Determinations under the policy will be made by BPA based on demonstrations made by the customer and other available information.

III. Policy on Determining Net Requirements

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

1. BPA will determine the amount of Federal power for sale under section 5(b)(1) in the manner described below. In making this determination BPA will reduce the amount of Federal power a customer may purchase in accordance with section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.
 - (a) BPA will offer an amount of Federal power for sale to a customer under section 5(b)(1) based upon such customer's actual retail firm power loads in the region. To establish the customer's actual retail firm power loads in the region, BPA shall use either the actual measured load of the customer, or the customer's own actual load forecast. However, if BPA finds the customer's forecast unreasonable, or the customer has not produced such a forecast, BPA will substitute its own forecast. (Any actual or forecast loads of the customer shall exclude any wholesale loads served by the customer. "Wholesale loads" means power sales made by the customer using its own resources to serve its own wholesale customers who are purchasing to resell the power at wholesale or retail.)
 - (b) For purposes of determining the amount of Federal power BPA will offer to existing customers in the post-~~2001~~ FY 2011 period, BPA will require an existing customer to continue to use all of its Existing Resources, generating and contractual resources included in the Firm Resource Exhibit (FRE) of such customer's current

section 5(c) of the Northwest Power Act. While recognizing that this is a settlement, it does not affect the application of, or change, the policy regarding the net requirements of any customer.

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

~~1981 or 1996 power sales contracts for the 1998-1999 operating year.~~⁵ BPA will not, however, require customers to continue the use of those resources dedicated to serve load prior to October 1, 2006 identified in their 1998-99 FREs under any one of the following conditions: (1) the customer's contractual resource(s) expires prior to October 1, 2010; (2) the customer's generating resource(s) is determined by BPA to be lost due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); or (3) the customer's contractual resource(s) is determined to be lost in accordance with section III.B.2 (loss of contractual resources). In addition, customers who were given express written consent by the Administrator to permanently remove a resource from use in serving regional firm power loads are not required to return such resources to use.

~~² BPA's requirement that the customer continue using the customer's resources listed in its FRE for the 1998-1999 operating year is based upon a decision made in BPA's Power Subscription Strategy. The decision was to establish a baseline for determining the customer's resources expected to continue serving regional firm power loads in the post-2001 period.~~

- (c) BPA will require that all Federal surplus firm power contracts or excess Federal power contracts with terms which specify that such power be used to serve the customer's retail firm power load in the region be so applied.
- (d) Under a section 5(b)(1) contract customers may elect to dedicate other generating resources or contractual resources, in addition to generating resources or contractual resources customers must use to serve load under section III.A.1.(b), to serve their consumer load. Customers can also agree to contractually commit power purchases from the market (market purchases), to serve any remaining amounts of their retail firm power load in the region which is not served by (1) generating resources or contractual resources that a customer must use to serve load under section III.A.1.(b); and (2) additional generating resources or contractual resources that a customer elects to use under this section. Application of additional generating resources, contractual resources, or market purchases by a customer under a section 5(b)(1) contract shall be as follows:
 - (i) All additional generating resources or contractual resources shall be used for their remaining useful life except for (1) the customer's generating or contractual resources applied added to serve Above-RHWM Load pursuant to section III.C (renewable resources Above-HWM Resources), (2) the customer's generating resources determined by BPA to be lost during the term of the contract due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources), (3) the customer's contractual resources determined by BPA to be lost during the term of the contract in accordance with section III.B.2 (loss of contractual resources), or (4) the customer's generating or contractual resources where BPA has provided express written consent to permanently remove the resource. The remaining useful life of new contractual resources shall not be less than the term of the customer's section 5(b)(1) contract.

(ii) Market purchases used to serve retail firm power load in the region shall be used for the entire ~~5-year~~ rate period for which BPA establishes rates of general application, except as provided in section III.D.2.

(iii) Consistent with the customer's section 5(b)(1) contract and the customer's product selection, a customer who elects to use market purchases to serve load that does not match the customer's existing resources and delivery of Federal power from time to time shall make such market purchases to serve that portion of load that does not match such customer's existing resources and delivery of Federal power under all such circumstances.

(e) BPA will apply the Declaration Parameters included in the Power Products Catalog and related contract provisions to establish the amount of power available from the customer's generating and contractual resources under the Subscription customer's 5(b)(1) contract. Because the Declaration Parameters are subject to revision, BPA will use the Declaration Parameters in effect at the time of BPA's contract offer to determine the amount of Federal power offered. The customer may declare a reduction in the amount of power that would otherwise be available from its own generating and contractual resources by the amount of power the customer uses from such resources to serve its wholesale loads, defined above, which were served prior to December 5, 1980, and which continue to be served by such resources. - The Declaration Parameters in effect at the time of the most current revision of this Revised Policy are attached hereto as Appendix C. This appendix is included for reference use only. The Declaration Parameters are not a part of the Revised Policy.

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

B. Statutory Discontinuance ~~f~~For ~~a~~A Customer's Generating and Contractual

Resource

1. A customer's non-Federal generating resource is considered no longer used to serve regional retail firm power load under a section 5(b)(1) contract if the resource's use is permanently discontinued due to obsolescence, retirement, or loss.

(a) Obsolescence is a permanent discontinuance of a generating resource resulting from the inability to continue to operate such resource at the end of its useful life due to lack of available replacement parts, deterioration of the physical facility, or lack of sources of fuel supply.

(b) Retirement is a permanent discontinuance of a generating resource for which the customer can demonstrate that the cost of replacements, improvements, or additions necessary to continue to operate the resource, combined with the resource's variable operating costs, exceed the reasonable economic return over the remaining life of the resource. The customer will demonstrate the reasonable economic return of the resource by comparing the costs to the customer of replacing the resource with market purchases plus the cost to permanently shut down the resource to the cost of continuing to operate the resource.

(c) Loss of a resource is a permanent discontinuance caused by factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. Such factors include, but are not limited to, complete destruction of the resource, complete loss of the Federal or State license to own or operate the resource, or complete and/or partial reduction of the capability of a resource to the extent of the loss resulting from requested operations or orders of a cognizant State or Federal agency directly or indirectly affecting the operation of the resource and changing its planned capability.

2. A customer's contractual resource is considered no longer used to serve regional firm power load if the customer experiences a permanent loss of contract rights. Loss of contract rights must result from expiration of the term of the contract, after any extensions of the contract unilaterally available to the customer, or from factors beyond the reasonable control of the customer and which the best effort of the customer are unable to remedy. The Administrator may grant consent to a customer's permanent discontinuance of a contract resource upon expiration of such contract notwithstanding a customer's right to renew or extend such contract if the customer demonstrates that substantial and material changes in the terms of a successor contract, such as price, will deny the basic benefit of the bargain to the customer which effectively results in the loss of existing contract rights.

C. Addition and Removal of Above-RHWM Resources with Notice

~~1. Use of New Renewable Resources to Serve Retail Firm Power Loads~~

1. A customer may elect to ~~use add Above-RHWM Resources new renewable resource~~ to serve its regional retail firm power load ~~in excess of its RHWM for a specified period which is less than the term of its section 5(b)(1) contract~~; provided, however, that ~~(1) the customer provides the requisite notice specified in its 5(b)(1) contract, and (2) the power from the resource is delivered in the shape that the customer has agreed to in its 5(b)(1) contract. The customer is responsible for obtaining any needed shaping services for the resource output, which may be provided by a third party or BPA.~~

2. ~~A customer may elect to temporarily remove Above-RHWM Resources from serving its regional retail firm power load in excess of its RHWM; provided, however, that the customer provides the requisite notice and complies with the related terms specified in its 5(b)(1) contract.~~

~~such new renewable resource is part of the first 200 aMW of all new renewable resources requested by all BPA customers under this section to serve regional retail firm power load each year or, once that 200 aMW limit has been reached, a new renewable resource that BPA~~

~~has agreed in writing can be so used without regard to the 200 aMW limit. A customer may choose to elect to use a new renewable resource at the time of contract execution and during an annual review of such customer's net load requirements under its section 5(b)(1) contract.~~
~~2. Only new renewable resources that meet the standards established to qualify for BPA's conservation and renewable resource discount may be used under this section.~~
~~2.3. Application of a new Above-RHWM Resource ~~ew renewable resource~~ under section III.C.1 shall reduce the customer's net requirements load. The use of an Above-RHWM Resource that is not applied to load under the customer's 5(b)(1) contract is still subject to the requirements of section 9(c) of this policy.~~

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

1. Under a section 5(b)(1) contract BPA will require a customer to submit annual reports that track and forecast the customer's retail firm power loads in the region, except for customers who purchase the full service product and for whom BPA meters their total retail load. The purpose for the annual report is to provide information that shows any increase or reduction in the amount of the customer's retail firm power loads in the region from the amount served when the contract was executed. Based on such load information, or BPA's forecast of the customer's load if BPA finds the customer's load forecast is unreasonable, BPA shall make an annual determination of the net firm requirement load of the customer under a section 5(b)(1) contract as follows.⁶ First, BPA will account for:
 - a) the generating and contractual resources a customer is required to use to serve firm power load in the region under section III.A.1.(b) (~~1998-99 FFE firm resources~~Existing Resources);
 - b) additional resources a customer has elected to use under section III.A.1.(d) (additional generating and contractual dedicated resources); and
 - c) power purchases from the market that a customer has contractually committed to purchase in their 5(b)(1) contract, consistent with section III.A.1.(d) (market purchases).⁷

Second, BPA will make adjustments for:

- d) changes in a customer's ~~new renewable resources~~Above-RHWM Resources used to serve retail firm power load in the region, as provided for in section III.C.1 (~~renewable resources~~);

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

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

- e) changes in the customer resources serving its load pursuant to III.A.1.(b) and III.A.1.(d) based on BPA's determination of a statutory discontinuance under section III.B.
- f) any reductions in the amount of power a customer may purchase under a section 5(b)(1) contract due to the annual export review under section III.D.3; and,
- g) changes in the customer's hydroelectric resource capability declarations due to changes in coordinated planning allowed under section III.A.1(e).

2. Removal of Above-RHWM Resources: As further described below, a customer may remove Above-RHWM Resources from serving their regional firm load in most cases of a reduction in its Above-RHWM load. As an alternative or in combination, a customer may elect to remarket their purchase obligations, if any, for Tier 2-priced purchase obligations in accordance with their 5(b)(1) contract. The total of any Above-RHWM Resources removed and Tier 2-priced purchase obligations remarketed will be an amount such that the customer's contracted purchase amounts at both Tier 1 and Tier 2 rates equal the greater of the customer's net requirement or RHWM.

Under the Subscription contracts, resource removal in the event of load loss was only available to customers with planned purchase amounts under the Block and Block with Slice products. For contracts under the TRM, Load Following customers may remove Above-RHWM Resources on a rate period-to-rate period basis in the event that load loss is projected during a rate case. No other remarketing of purchase obligations at Tier 2 rates or removal of Above-RHWM Resources is available for Load Following customers. For Block and Block with Slice customers, ~~If~~ if BPA's annual determination of a customer's net ~~firm~~ requirement load ~~results in a finding indicates~~ that the amount of Federal power a customer can purchase is less than the contracted amount of power to be purchased for the next contract year, then the customer ~~shall first may~~ remove from use for its regional firm load, for a period of one year, ~~any market purchases~~ Above-RHWM Resources that the customer has ~~agreed committed~~ to use to serve its Above-RHWM load under its 5(b)(1) BPA contract. Such resource removal shall be in the same shape in which ~~in~~ the customer has agreed to provide the resource in its 5(b)(1) contract. an amount and shape equal to the difference between the amount of Federal power a customer can purchase for the next year and the amount and shape of Federal power a customer has contracted to purchase for the next contract year.

a) —

Any Above-RHWM Resource that is removed for the contract year must be made available in the next contract year to serve any planned Above-RHWM Load increases.

Removal of Existing Resources: Removal of Existing Resources is only available to Block or Block and Slice customers; and then only in limited circumstances. If BPA's annual determination of a customer's net requirement load for the second or subsequent years of a rate period, ~~If the amount of Federal power a customer can purchase~~ after the removal of ~~theits market purchases~~ purchase obligation at Tier 2 rates and Above-RHWM Resources, ~~is~~

~~still less than the annual net requirement amount of power the customer has contracted to purchase for the next contract year calculated for the first year of the rate case, then BPA will implement the mitigation measure for load loss specified in the customer's section 5(b)(1) contract and reduce the amount of Federal power a customer is obligated to purchase. Alternatively, BPA will consent to the customer's limited removal of Existing Resources a generating resource or contractual resource from use for its regional firm retail load. Such removal shall be for a period of only one year, in the amount that is the lesser of: (1) the remaining amount that the customer's RHWM exceeds its Preliminary Net Requirement, or (2) the difference between the customer's Preliminary Net Requirement for the first Fiscal Year and Preliminary Net Requirement for the applicable subsequent Fiscal Year of the Rate Period. The portion of a customer's generating resource or contractual resource Existing Resources removed shall be in the same shape in which the customer has agreed to provide the resource in its 5(b)(1) contract shall be equal to the difference between the amount and shape of Federal power a customer can purchase and the amount and shape of Federal power the customer has contracted to purchase for the next contract year. Any Existing Resource removed for the contract year must be reapplied in the next contract year.~~

Any customer resources, other than market purchases, which are removed from use in serving the customer's regional firm load ~~service~~ under this section, are subject to BPA's determinations made under sections 9(c) of the Northwest Power Act and 3(d) of the Northwest Preference Act. If the customer's use of that resource results in a reduction or decrease in BPA's obligation to provide power pursuant to ~~under~~ section III.D.3, then BPA will recalculate the amount of power a customer may purchase for the upcoming year as provided under this section (III.D.2). In such cases, a customer's potential resource removal rights will be reduced in the same amount as the reduction to BPA's obligation to provide power.

3. On an annual basis as provided under a section 5(b)(1) contract BPA will review the export of power from a customer's regional non-Federal generating and contractual resources and, if required, will reduce the amount of Federal power a customer may purchase in accordance with section IV of this policy. BPA shall reduce the amount of power a customer may purchase for the longer of the remainder of the year or the duration of the export during the period between annual reviews based on a determination by BPA in accordance with section IV.
4. BPA shall make available additional amounts of power to a customer under a section 5(b)(1) contract to serve the customer's regional loads which were formerly available by a customer's generating resources or contractual resources but are no longer required to be used to serve the customer's retail firm power loads in the region, in accordance with section III.B (statutory discontinuance). Such service shall be on 6 months notice that such an event has occurred or as mutually agreed.

IV. Scope of the Section 9(c) Policy

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

BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is set forth in section B. BPA's 1994 NFP, as modified, is retitled: BPA's Section 9(c) Policy.

BPA reaffirms the application of its 1994 section 9(c) policy and legal interpretation published in July of 1994. The context for some of the determinations made in the 1994 NFP policy was, in part, prior exports and new exports of firm power from customer resources out of the region by participation in the new, Third AC Intertie. The interpretation has been of general application since 1994 to customer exports. BPA is now modifying the policy to address certain issues which were not previously addressed. Prior determinations made under the 1994 NFP Policy remain in effect for the duration of the export sale.

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

B. Section 9(c) Policy

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

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

Section 2. Finding Required

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

- a) BPA shall analyze whether the customer's exports would result in an increase in the electric power requirements of any of its customers in the region. BPA shall do this by examining its load/resource forecasting and planning documents to determine the impact the exports will have on BPA's and its customers' ability to

meet Pacific Northwest load presently and in the future. BPA shall also analyze the information available from other sources including least-cost plans and load/resource information of Pacific Northwest utilities which do not currently place any load on BPA.

- b) BPA shall review the specific resources being exported on an annual basis unless the customer requests review for a longer period to determine if the resources being exported are hydroelectric resources and if not, whether they are conservable. BPA shall review categories of resources eligible for export for a period selected by BPA. If the resources are not hydroelectric resources and BPA determines the resource is not conservable (see section 6.(b) for a description of those resources BPA has determined are conservable), BPA shall determine if such exports will result in an increase in the firm energy requirements of its customers and if so, determine whether the resource could be otherwise retained for service to regional loads by using reasonable means. If BPA finds in its analysis that the fully allocated nominal cost of the resource a customer is proposing to export exceeds the fully allocated nominal cost of the region's marginal resource, BPA will conclude that such resource can be exported without having to decrement the customer's section 5(b) utility power sales contract.

Section 3. Scope of Section 9(c) Policy

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

Section 4. Data on Specific Resources

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

- a) name of the resource to be exported;
- b) location of the resource;
- c) type of resource;
- d) whether the resource is currently in any Pacific Northwest utility's firm resource exhibit;
- e) whether the resource is planned or existing;
- f) type of transaction or sale, and if it is a seasonal exchange, the terms of the exchange, and

- g) the cost of the resource (including reasonable rate of return) included in the customer's retail rates and a forecast of such costs for each year of the proposed export.

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

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

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

Section 6. Categories of Resources

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

Section 7. System Sales

BPA shall utilize a case-by-case approach to system sales. BPA shall require the exporting utility to submit an operating plan for the duration of the export, identifying these specific resources or categories of resources supporting the system sale. If the export is a system sale made up solely of a customer's resources that individually would not result in a decrement if each resource were exported standing alone, then BPA would not decrement a customer's firm power purchase under section 5(b) for such a system sale. BPA shall decrement the customer's section 5(b) utility power sales contract in the amount and to the

extent the system sale involves the export of the planned capability of hydroelectric resources to support a power sale (whether or not in a firm resource exhibit); the planned capability of a non-hydroelectric resource that is in a firm resource exhibit, or if not, that could otherwise be retained to serve regional load; or any portion of the sale that is a prohibited resale of Federal power.

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

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

Section 8. Seasonal Exchange

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

Section 9. Resource Offer

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

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

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

Section 11. BPA Notification

BPA shall notify in writing any customer which has exported a resource or proposes to export a resource of the outcome of BPA's Section 9(c) determination. The BPA

notification shall be made within 30 working days from the date BPA receives the information specified in Section 4 about a specific resource.

C. Scope of the Section 9(c) Policy

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

~~Subscription 9(e) Study~~

~~BPA will perform a Subscription 9(e) Study. The study will provide part of the factual basis for determining whether an export of a resource during the period from October 1, 2001, through September 30, 2006, is likely to result in an increase in the firm energy requirements of BPA customers, and if so, whether the resource could be otherwise retained to serve regional loads.~~

Appendix A - 2003 Clarifications

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

The Bonneville Power Administration (BPA) issued a "Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Section 5(b)(1) and 9(c) of the Northwest Power Act" and Administrator's Record of Decision (the 5(b) 9(c) Policy) in May of 2000. The 5(b) 9(c) Policy addresses numerous issues regarding the amount of Federal power a customer would be eligible to purchase under section 5(b)(1) of the Northwest Electric Power Planning and Conservation Act, P.L. 96-501, (Northwest Power Act) as firm requirements power for the customer's firm power loads in the Pacific Northwest.

The 5(b) 9(c) Policy also addresses issues regarding BPA's 1994 policy and statutory interpretation of section 9(c) and 3(d), retaining the policy in part and modifying it in part. The 5(b) 9(c) Policy covers circumstances when reductions (decrements) in the amounts of Federal power that a customer could buy would, or would not, occur due to the customer's disposition or sale outside of the Pacific Northwest region of nonfederal power from its resources.

After publication of the 5(b) 9(c) Policy, several preference utility customers, direct service industries, and investor owned utility customers filed challenges to the 5(b) 9(c) Policy in the United States Court of Appeals for the Ninth Circuit, in *Goldendale Aluminum Co., et al v. United States Department of Energy, et al*, nos. 00-70717; 00-70719; 00-70743; 00-70778. The petitioners, interveners and BPA jointly moved for a stay and referral of the case to the Circuit Mediator granted on December 29, 2000. Settlement discussions focused on specific "clarifications" of the 5(b) 9(c) Policy. Preference customer petitioners and petitioner-interveners identified specific issues and submitted them to BPA.

BPA then conducted discussions first with the preference customer petitioners and interveners over several months that produced a proposal for settlement. BPA then discussed specific issues identified by the investor-owned utility petitioners in several meetings. BPA then held discussions with the direct service industry attorneys. Finally, BPA met with the mediator and the parties on the proposed settlement. The parties have executed a settlement agreement and made a joint motion for dismissal of the consolidated actions in cases nos. 00-70717; 00-70719; 00-70743; 00-70778 filed in the United States Court of Appeals for the Ninth Circuit, or do not oppose the dismissal of the litigation. The following are the clarifications to BPA's 5(b) 9(c) Policy and Record of Decision resulting from this litigation settlement process.

Clarifications Regarding Section 5(b) 9(c) Policy.

1. For purposes of section 5(b)(1), a resource is only declared as dedicated to serving the customer's load under section 5(b) of the Northwest Power Act when it is named as so used in section 2(a) of Exhibit C of the BPA Power Sales Agreement.

A customer only declares a resource, whether it is a generating resource or a firm power purchase, as serving load when it is shown as dedicated to serve the customer's load in Exhibit C, section 2(a) of the customer's BPA Power Sales Agreement. Any specific resources that the

customer does not include in this Exhibit are not "declared or dedicated" to serve the customer's regional load under section 5(b) of the Northwest Power Act.

2. A customer can use all or a portion of a resource as an unspecified resource (no identification beyond amount) to serve the customer's load under section 2(b) of Exhibit C of the customer's BPA Power Sales Agreement, and such use does not constitute a declaration of a specific resource under section 2(a) of Exhibit C of such BPA Power Sales Agreement or under 5(b) of the Northwest Power Act.

A customer may use all or a portion of a resource as an unspecified resource, stated in a whole megawatt and megawatt-hour numbers. However, the portion of the resource used as an unspecified resource cannot be otherwise dedicated or declared under section 2(a) of the customer's BPA Power Sales Agreement to serve a portion of its consumer load.

3. A customer can use an undeclared resource to serve its load with no long-term consequences to its 5(b) entitlements. Only resources specifically named as committed to load in section 2(a) of Exhibit C of the customer's BPA Power Sales Agreement will be expected to be committed to load in subscription and follow-on contracts.

The use of undeclared resources to serve the customer's firm load is not a declaration under section 5(b)(1) of the Northwest Power Act. A customer may or may not apply such resource to its load under the next contract.

4. A customer can sell the unplanned output, which cannot be output included in section 2(a) of Exhibit C of its resources declared under section 2(a) of Exhibit C, anywhere for any price without a 9(c) decrement.

From time to time, generating resources are able to produce power in excess of planned amounts that the customer has declared under section 2(a) due to water conditions that exceed the planning criteria, increased heat rate due to temperature, or other conditions. Such temporary over-generation is not part of the firm power that a customer declares under its section 2(a) resource dedication as being applied to load. Such temporarily available power is not conservable by the fact that the customer has dedicated firm power from the resource to meet consumer load. Such over-generation available on a temporary basis is not subject to section 9(c) determinations and may be sold in or out of the region without consideration of a reduction in BPA's obligations.

5. A customer can sell the planned firm output of a regional resource to any regional utility, joint operating agency (JOE), or direct service industry (DSI) for use in the region for any price for any term without a 9(c) decrement. Such sales must be made to a utility, JOE, or DSI with a planned or actual load deficit in the region for the period of the sale. An unspecified resource amount listed in section 2(b) of Exhibit C constitutes a planned deficit.

Any firm power from a resource, other than a declared resource under section 2(a) of Exhibit C, sold by one BPA regional utility customer to another BPA regional customer for use in a

regional load may be sold at any price – the cost plus a reasonable rate of return does not apply – and without a decrement.

6. Customers are responsible for the use of resources or portions [parts] of resources [output] or contract resources that they own as follows:

6(a). If a customer sells a resource or its output to a third party that does not have a 5(b) power purchase from BPA, the selling customer remains responsible for the in-region use of that power in order to avoid a 9(c) decrement to its BPA entitlement. A customer may include a contract provision requiring in-region use of the power in the sales contract with the third party that does not have a 5(b) power purchase from BPA. However, the selling customer remains responsible for the in-region use of the power.

6(b). If a customer sells a resource or its output to a third party that does have a 5(b) power purchase from BPA, the 5(b) 9(c) Policy obligations transfer to the third party, and in such case the selling customer is no longer responsible for the use of the power by the purchaser under the 5(b) 9(c) Policy.

Because the third party purchaser has a section 5(b)(1) power sales contract with BPA including obligations to report its exports, BPA and the seller will rely upon the BPA customer to use the resource purchased for its regional load.

7. A customer may declare as dedicated to its load service under section 5(b)(1) of the Northwest Power Act, a part of a resource by naming that part in section 2(a) of Exhibit C, without causing the remainder of the resource to be dedicated to serving load under section 5(b) of the Northwest Power Act.

8. Customers may resell purchases of less than 12 months running from the date of commencement of delivery of power to termination of delivery, without 5(b) or 9(c) decrements, provided that the customer has not accepted any section 5(b) or 9(c) obligations as part of its purchase.

9. The customer may sell a resource that has been used as an unspecified resource under section 2(b) of Exhibit C, consistent with the 5(b) 9(c) Policy. The fact that the unspecified resource has been used to serve load is not pertinent to the 5(b) 9(c) Policy application.

BPA will not treat a resource that is used to meet an unspecified resource obligation under its 5(b) 9(c) Policy as if it were a declared resource under section 2 of Exhibit C to the power sales contract, or under section IV. B. 6(b) of the 5(b) 9(c) Policy. Resources used to meet a portion of, or all of a customer's obligations for "unspecified resource" or its market purchase commitment, may be sold consistent with the terms of these clarifications, and BPA's 5(b) 9(c) Policy.

10. New Resources, as defined in 10(d) below may be sold in the following manner and remain consistent with the 5(b) 9(c) Policy:

10(a). Sales for the balance of the month and the prompt month may be made without restrictions regarding price, purchaser or location where power sold is used.

Power from New Resources sold on a short-term basis for the month and the prompt month will not be considered as subject to reductions in BPA's obligations if they are sold for export out of the region.

10(b). Sales of power from New Resources made for beyond the prompt month up to 1 year (generally, 61 – 365 days) may be made without section 9(c) restrictions provided that 50% of such sales are for in-region use in each month. The customer will provide BPA with a tally of sales to check for the 50% limit and such check will be performed no more frequently than monthly. The selling customer will maintain records of these sales and upon a BPA request, will provide copies with the price and other proprietary information redacted. Such requests will be made no more frequently than once each month, and the selling utility will provide BPA with information necessary to reasonably determine compliance with this section 10(b).

10(c). Sales made for delivery periods of 366 days or longer and sales of portions of a year with the delivery period in future years may be made via a 'must take auction' that will be open to BPA customers with regional retail loads. Power sold will be for in-region use, with the minimum bid limited to cost plus a reasonable rate of return, or alternatively power sales may be made bilaterally with one or more parties, all of whom will make in-region use of the power.

10(d). "New Resources" are those generating resources, or the contractual right to the output of such resources, that were not in commercial operation as of the date of the 5(b) 9(c) Policy, May 23, 2000, that is the subject of this settlement. New Resources do not include those resources customers have developed solely for export and that are not for use in anticipation of service to the customer's present or future firm loads. Such resources that are developed solely for export, may qualify as a "market resource," in accordance with the meaning of such term under BPA's section 9(c) policy and ROD. If so qualified, the market resource is not subject to subsection 10 (a)-(c) above, and may be exported without a reduction in the customer's BPA firm power requirements obligation.

10(e). If the limitations in 10(b) and 10(c) above result in no sales for in-region use of the New Resources, the power may be sold for use outside the Pacific Northwest. If the outside purchaser was making the purchase at a price less than that offered by or to in-region users, then the New Resource must be offered in the region to BPA and BPA customers at such lower price before the out of region sale is made.

10(f). The customer has the responsibility for demonstrating that the resource is a New Resource by providing to BPA the pertinent information and data such as date of commercial operation, size, location, etc.

11. A customer has demonstrated that a power sale is for use in the region under the following circumstances:

11(a). The sale is to a Northwest Power Act section 5(b) customer of BPA with unspecified resource amounts declared in section 2(b) of Exhibit C.

11(b). The sale is to a Northwest Power Act section 5(b) customer of BPA as displacement of a resource or contract resource declared in either section 2(a) or section 2(b) of Exhibit C. The use of the displaced resource is subject to the 5(b) 9(c) Policy. The displacement of a resource that is declared in section 2(a) of Exhibit C does not represent a removal or replacement of that resource from service to load.

11(c). The sale is to a Northwest Power Act section 5(b) customer of BPA with a slice/block contract when the delivery of Critical Slice Amounts is forecast to be or is actually less than the Initial Critical Slice Amount.

11(d). The power sale is to a Northwest Power Act section 5(b) customer of BPA when it replaces a resource or contract resource declared in section 2(a) of Exhibit C that to have been lost in accordance with the 5(b) 9(c) Policy.

11(e). The sale is to a Northwest Power Act section 5(b) customer of BPA to supplement a resource or contract resource up to the amounts declared in section 2(a) of Exhibit C when such resource or contract resource does not produce, or is forecast not to produce, power in accordance with its declared amounts.

A sale of power by a Northwest utility from a resource that is not otherwise committed to its load, to supplement or make up power stated in 2(a) of Exhibit C of a purchaser and used for the purchaser's load, is a use of the power in the region.

11(f). The sale is to a DSI with a facility operating in the Pacific Northwest for service to that operating facility.

The portion of DSI loads not directly served by BPA are regional loads for the purpose of section 9(c) and 3(d) in determining use in the region when a power sale is made by a Pacific Northwest utility to a DSI.

11(g). The sale is to a Northwest Power Act section 5(b) customer of BPA for service to an operating NLSL. If the purchasing entity has a resource or contract resource declared for service to that NLSL then the sales of that resource or contract resource is subject to the 5(b) 9(c) Policy.

A Pacific Northwest utility may sell power to another Pacific Northwest utility for an operating NLSL. BPA will consider the sale an in-region use for purposes of section 9(c) and 3(d), provided that the load is operating and the power sold exceeds the other resource(s) identified for the NLSL by the purchaser, if any, but does not exceed the load; and provided that the purchase is not displacing any resources specifically identified for service to the NLSL.

11(h). The sale is to a Northwest Power Act section 5(b) customer of BPA for other transactions that are described prior to their deliveries and can be demonstrated to serve loads in the region.

11(i). The sale is to a Northwest Power Act section 5(b) customer of BPA as a substitute for a 5(b) resource declared under that customer's 5(b) contract, which the purchaser no longer owns, and is to provide the declared amount for such resource for the purchaser's load service obligation.

11(j). The sale is to a Northwest Power Act section 5(b) customer of BPA to serve the retail load of such customer in excess of planned levels.

11(k). The sale is to a BPA customer utility that has entered into an agreement with BPA to reduce its load requirements on BPA.

An alternate purchase of nonfederal power from another regional utility by a BPA customer to reduce its load under a specific load reduction agreement with BPA, that meets such load reductions, is power used in regional load.

12. BPA will not impose a 9(c) decrement on the selling customer if the selling customer retains the contractual right to terminate immediately the sale to a regional utility, DSI or JOE without a Northwest Power Act section 5(b) contract with BPA, if the selling customer discovers, or when BPA determines that the purchaser is not making in-region use of the power to serve load, and such right of termination is promptly exercised upon such discovery or determination.

13. Does the 5(b) 9(c) Policy apply to the export of any secondary firm energy? If so, under what circumstances would a utility's net requirement be decremented for exporting secondary firm energy?

Response: The 5(b) 9(c) Policy does not apply to sales of secondary energy. Secondary energy is unplanned over-generation from hydroelectric resources due to water conditions above critical water planning, thermal plant over-generation running at higher capacity due to ambient air conditions for limited time durations, or generation held until the month of delivery or prompt month to meet unanticipated loads. It is not firm purchased power. These conditions occur temporarily on a utility system, are variable as to the time of occurrence, and are dependent upon factors beyond those normally planned for continuous operation of the resource. A reduction in BPA's firm obligations to a customer would not result from sales of such temporary over-generation as opposed to planned generation available on a continuous firm basis during a year.

The 5(b) 9(c) Policy applies to all exports of firm power by a BPA customer. A customer must identify its planned resources to be used to serve its regional firm load annually under the contract. These planned resources (except for resources that are held to meet unanticipated load) include seasonal purchases on a multi-year basis; power purchase contracts with delivery periods greater than one year; customer-owned generation; and purchase power contracts with delivery periods less than one year, and obligate the customer to serve regional load with the power. Sales of any planned firm power from these resources in excess of the customer's forecasted regional firm load would be subject to the 5(b) 9(c) Policy. If a customer exported such planned firm power without a BPA determination that such power could not otherwise be retained to serve regional loads, a customer faces a decrement of its net requirements purchase. BPA could request information regarding any exports not reported by a customer. If BPA determines the

power has been exported and could have been retained to serve the customer's or another BPA customer's regional loads, then BPA would reduce the exporting customer's net requirement by adding an amount of power equal to the resource exported into the customer's Net requirements Exhibit and modify the customer's federal power purchase from BPA.

14. Does the 5(b) 9(c) Policy apply to any exports of non-firm energy?

Response: As discussed above, the 5(b) 9(c) Policy does not apply to the class of energy which is available only temporarily from over-generation of a customer's non-Federal resources and which is sometimes called non-firm or secondary energy.

15. Does the requirement of an offer at cost plus a reasonable rate of return apply only to exports of firm energy and not to exports of non-firm energy?

Response: Yes. The cost plus a reasonable rate of return standard for offers applies to planned firm power sold by a customer to other BPA customers in the region for their regional loads or to BPA and only applies to offers of firm power, and not to offers of non-firm energy by a customer.

16. Clarify the language in the 5(b) 9(c) Policy which appears to be inconsistent with the decision BPA made regarding the Residential Purchase and Sale Agreements ROD.

Response: The 5(b) 9(c) Policy and ROD was issued on May 23, 2000. On page 12 of the Attachment that includes the section 9(c) Policy, BPA stated that BPA would address the effect of exports of resources on section 5(c) contracts on a case-by-case basis. BPA's Record of Decision on Residential Purchase and Sale Agreements (RPSA) issued in October 4, 2000, addressed the application of the section 9(c) policy to deliveries of power under a section 5(c) contract. On page 74, BPA determined that section 5(c)(6) of the Northwest Power Act precluded any reductions in exchange sales due to the operation of section 9(c). BPA's policy decision under the RPSA ROD eliminates the need to address section 9(c) under section 5(c) contracts on a case-by-case basis.

17. Confirm the treatment of specific resources identified to support an export sale (a system sale).

Response: Section 7 of the 5(b) 9(c) Policy requires customers to provide an operating plan identifying the firm resources that support a firm power system sale. BPA will review those firm power resources identified by the seller as planned to support the export sale and determine whether they are sufficient to support the sale. If they are sufficient, they will be deemed to be the resources supplying the power for the sale. BPA will then assume for purposes of review that the export sale is of those planned resources, and will apply the provisions of the policy and section 9(c) and 3(d) to those specific resource(s) the customer has stated is supplying power on a planned basis for the export in the amount of the system sale. The actual resources of the customer operating in any hour may differ from those resources identified by the customer as supporting the export sale on a planning basis. Such hourly operations shall not invalidate the initial designation as reviewed by BPA.

18. Clarify that purchases under the Northwest Power Act's section 5(c) residential exchange settlement are not subject to decrement under section 9(c).

Response: BPA offered two types of power purchase contracts to utilities as an offer to settle BPA's residential exchange program obligations, a purchase under section 5(b) and a purchase under section 5(c). Sales made pursuant to contracts offered under section 5(b) based on a customer's net requirements are subject to decrement under section 9(c). See, pages 131-132 of the Residential Exchange Program Settlement Agreement ROD (Settlement ROD), and pages 18-19 of the 5(b) 9(c) Policy ROD. Sales made as a negotiated "in lieu" purchase under section 5(c) are not subject to decrement under section 9(c). See, pages 18-19 of the 5(b) 9(c) Policy ROD; page 74 of the RPSA Settlement ROD; and pages 140-150 of the Settlement ROD.

19. BPA should clarify that if there were past mistakes in the utility's Firm Resource Exhibit (FRE), which are continued in the FRE under new contracts, the 5(b) 9(c) Policy will not preclude making corrections.

Response: The 5(b) 9(c) Policy does not make any factual determinations, and the 5(b) 9(c) Policy allows making corrections in contractual determinations when warranted.

20. BPA should clarify that the 5(b) 9(c) Policy will permit the "automatic" removal of Qualifying Facility contracts, *i.e.*, purchases of PURPA resources, which were not independently made by the utility when such contracts are terminated.

Response: Pages 51-74 of the 5(b) 9(c) Policy describe when a statutory discontinuance of a resource has occurred. These factual events can include loss of a contract right.

21. Clarify that a customer's resources that are sited outside the region, and used to serve consumer's loads outside the region, are not subject to the Policy. Resources so located outside the region and used outside the region do not require any section 9(c) analysis of "exports" under the Policy and cannot cause a reduction in a utility's net requirement for its regional loads.

Response: A customer's resources, generation or power purchase contracts, or any portion thereof, which have not been dedicated to serve any portion of a customer's regional firm power load under section 5(b)(1), and which are used solely for service to loads outside the Pacific Northwest Region as defined by section 3(14) of the Northwest Power Act, will not result in a reduction or decrement to a customer's net requirement due to such use.

22. BPA should clarify that any power exported by a customer in an amount equal to any retail load under direct retail access will not result in a reduction to the utility's net requirement because the application of section 9(c) to power exported due to a reduction in load by direct retail access load loss will reduce power benefits for residential and small farm consumers under the residential and small farm exchange settlement.

Response: BPA included provisions in the 5(b) 9(c) Policy addressing the concerns over the loss of loads due to retail access. Section D.2 of the 5(b) 9(c) Policy allows a customer to remove a

generating or contractual resource from use to serve its regional load if load loss would otherwise result in a reduction of the utility's net requirements. Any export from the resource that has been removed is subject to the 5(b) 9(c) Policy. If the power is exported and could have been retained to serve a customer's regional consumer loads, BPA would reduce its 5(b)(1) obligation.

23. Would BPA "double count" exports under section 9(c) of the Northwest Power Act if for example, a utility sold its share of an existing generating project to a marketer and that sale were considered an export? Would the sale result in a reduction of both the utility's Net Requirement and its power allocation under its 5(b)(1) contract? Currently the utility's net requirement calculation without decrements for export is 1564 average megawatts. The utility's share of the existing resources it sold was 264 average megawatts. A reduction in net requirement equal to the existing resource sold would leave 1300 average megawatts. Would the power allocation for the utility's residential settlement of 258 average megawatts also be reduced by the 264 average megawatts or not?

Response: BPA would reduce its obligation to serve the utility by the amount of the megawatts of the export sale, but this would not result in a double counting of the 264 average megawatts exported. If the existing resource were included in the utility's Exhibit C as a dedicated resource in the amount of 264 average megawatts, then upon the sale BPA would notify the utility that it had the obligation to supply the same amount of megawatts as that sold outside the region and apply those megawatts to its load. Thus BPA's obligation to supply would not increase as a result of the sale since the utility would have to supply the 264 average megawatts.

If the existing resource is not a dedicated resource under Exhibit C and the 264 average megawatts are sold out of region, then section 9(c) applies, and BPA would have to determine if the resource could be conserved or otherwise retained by reasonable means for service to the utility's regional load, or BPA load, or other BPA customers' load that BPA was not serving. Assuming the determination concluded that the power could be retained for use in regional loads, then BPA would "decrement" its obligations to serve the utility for the duration of the export and in the amount of the export, 264 average megawatts. BPA would show the decrement by adding a nonfederal resource obligation to the utility's contract in section 2(b)(3) of Exhibit C in the amount of 264 average megawatts for the duration of the export. This would have the effect of reducing BPA's net requirement obligation to the utility by the amount of the export. It would not necessarily affect the 258 megawatts of Federal power purchased for load because the net requirement still exceeds the amount of the sale.

Only if the amount of load to be served was less than the total of the utility's dedicated resources, would the amount of both the nonfederal resource obligation included in section 2(b)(3) as a result of the 9(c) decrement and the 258 average megawatts of Federal power, result in an actual reduction of Federal power sold to the utility under its contract. The utility's current contracts also permit the removal, due to reductions in retail consumer loads, of the utility's nonfederal resources. Such removal of resources is for utility's resources other than specific section 2(b)(3) resource obligations added due to section 9(c) decrements. If the utility elects to use such removal rights for all its dedicated resources, such removal rights provide that only when the section 2(b)(3) resource obligations plus the Federal purchase exceed the total of the

utility's consumer loads would a reduction in BPA's power "allocation" sale result from a decrement for an export by the utility.

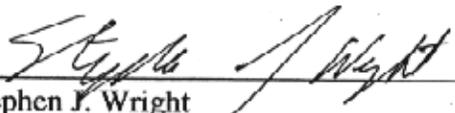
24. BPA anticipates this 5(b) 9(c) Policy will be effective for the duration of its 2001 subscription requirements contracts. However, BPA will review *de novo* its section 5(b) 9(c) Policy, including these clarifications, if there is a major change in BPA's or other statutes affecting its authority for marketing Federal power and this Policy, or if in the judgment of the Administrator, significant changes in the wholesale market require reconsideration of this Policy.

25. Please clarify that section B.6. (b) "Exports that will be decremented by BPA" does not constitute an exclusive, limited list of those regional resources that if exported, may result in a decrement to the customer firm federal power purchase.

The list in section B. 6. (b) is not an exclusive listing of customers' nonfederal resources that could result in a reduction in BPA's firm power obligations. Under the Policy other customer resources would be reviewed by BPA on a case-by- case basis for a determination of whether the resource is conservable, and if exported, whether the export requires or does not require BPA to reduce its firm power obligations to the customer.

These clarifications are adopted and will be applied under BPA's 5(b) 9(c) Policy following the filing of a settlement agreement and motions to dismiss the above referenced litigation. The 5(b) 9(c) Policy and these clarifications will be effective until BPA undertakes a review of this Policy by publishing a future notice.

Issued in Portland, Oregon, this 7th day of March 2003.



Stephen J. Wright
Administrator and CEO

APPENDIX B - Definitions

RD CONTRACT DEFINITIONS

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

“Dedicated Resource” means a Specified Resource or an Unspecified Resource Amount listed in Exhibit A that is required by statute to provide or obligates itself to provide under this Agreement for use to serve its Total Retail Load.

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

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

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

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

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

“Total Retail Load” means all retail electric power consumption, including electric system losses, within the customer’s electrical system excluding:

- (1) those loads BPA and the customer have agreed are nonfirm or interruptible loads,
- (2) transfer loads of other utilities served by the customer, and

(3) any loads not on the customer's electrical system or not within the customer's service territory, unless specifically agreed to by BPA.

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

TIERED RATE METHODOLOGY DEFINITIONS

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

Above-RHWM Load means the forecast annual Total Retail Load, less Existing Resources, NLSLs, and the customer's RHWM, as determined in the RHWM Process.

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

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

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

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

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

Rate Period High Water Mark (RHWM) means the amount, calculated by BPA in each RHWM Process pursuant to the formula in section 4.2.1 and expressed in average megawatts, that BPA establishes for each customer based on the customer's CHWM and the RHWM Tier 1 System Capability. The maximum planned amount of power a customer may purchase under Tier 1 Rates each Fiscal Year of the Rate Period is equal to the RHWM for Load Following customers and the lesser of RHWM or Annual Net Requirement

for Block and Slice/Block customers.

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

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

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

Tier 1 System Resources means the Federal System Hydro Generation Resources listed in Table 3.1; the Designated Non-Federally Owned Resources listed in Table 3.2; and the Designated BPA Contract Purchases listed in Table 3.3.

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

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

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

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

Appendix C - Declaration Parameters
BPA POWER PRODUCTS CATALOG

1. Customer resource portfolio amounts will be declared in HLH and LLH energy amounts and peaking amounts for each month of the term of commitment. Flat Block (equal amounts of HLH/LLH energy for each month) and Slice product purchasers shall declare TRL and resource energy amounts for each month of the term of the commitment.
2. These core products are available to serve net requirements under section 5(b)(1) of the Northwest Power Act. Therefore, the monthly HLH/LLH resource portfolio amounts to be declared will be the reasonably determined capabilities of the customer's firm peaking and energy resources as referred to in sections 5(b)(1)(A) and (B) of the Northwest Power Act. The declarations will be consistent with BPA's policy on determining net requirements. Customers will notify BPA when required by that policy of load or resource changes that may affect the determination of net requirement. Initial declarations of customer resource amounts (for at least the term of the commitment) will include monthly peak and HLH /LLH energy amounts. The declared amounts will be based on reasonable and prudent utility practices and will be consistent with resource data used by the customer historically for purposes of its BPA contracts and for other purposes. Customer declared amounts may take into account change of conditions reasonably affecting resource capability. Prudent utility practices for establishing firm hydro resource capabilities may include criteria other than critical period planning. Any new contract resources may be added prior to contract signing in either equal amounts of HLH/LLH energy for each month or shaped to the TRL.
3. Subject to the requirements of BPA's Section 5(b)/9(c) Policy, a customer may adjust the capability of certain declared resources annually. Section 5(b)(1)(A) and (B) coordinated hydro resource capabilities may be revised annually consistent with Pacific Northwest Coordination Agreement (PNCA) planning processes. The final PNCA hydro-regulations for future operating years may result in changes in the level or distribution of coordinated hydro resources. BPA and other PNCA parties will agree to a method for customers to reflect the results of the final hydro-regulations in their Subscription contract resource declarations and to reflect hydro-regulation changes in the customers' resource declarations for future years. This method will protect BPA from incurring additional costs because of economic choices by customers.

Prior to August 1 of each operating year (OY), a series of PNCA planning hydro-regulation studies are performed that compute monthly energy production from each of the hydro projects included in PNCA planning. The monthly energy production may differ from operating year to operating year depending on: (1) estimated firm loads of the PNCA members, (2) firm resources (hydro, thermal, and miscellaneous) included in PNCA planning, and (3) non-power constraints on the coordinated resources.

Customers' resource declarations, in Subscription contracts, will rely on the results of the final PNCA planning regulation for OY 2001 unless BPA and customers agree to rely on another regulation. If the final PNCA planning regulation for a subsequent OY results in a different level or monthly distribution of production from a customer's hydro projects, the

Revised April 2000



customer may reflect those differences in its declared resources in the manner agreed to between BPA and other PNCA parties. For a particular month, the customer may apply the monthly difference to declared HLH or LLH energy resources, or to a combination of both HLH and LLH resources. However, the customer may not decrease one diurnal capability while increasing the other diurnal capability of the same month. The HLH and LLH distribution of changes from the OY 2001 regulation will be subject to a review for compliance with the Section 5(b) Policy.

BPA may agree to a method for annually adjusting the capability of other hydro resources if such adjustments will be beneficial to BPA.

4. If the customer acquires new renewable resources for which it wishes to declare a firm capability, such capability may be added within the term of commitment if such resources meet the standards established to qualify for BPA's conservation and renewable resource discount, subject to the limits established in BPA's 5(b) 9(c) policy. The customer must give as much advance notice to BPA as is practical. Renewable resource firm capability would reflect the distribution among months of a year that is reasonable given its operating characteristics.
5. Declared resource portfolio amounts reflecting 5(b)(1)(A) or (B) generating resources and long term contracts that were declared prior to 2001 would be subject to the same principles as 1, 2 and 3 above.
6. For purposes of the standard core product, customer new resource amounts that are not related to resources referred to in subsections 3, 4, or 5 above would be required to be distributed across years, months, and monthly HLH and LLH periods either: (i) flat, in equal amounts for all such periods, or (ii) proportionally based on shape of the purchaser's system load.
7. Customer declared resource annual amounts may increase over the years of the commitment term.
8. In operations, the customer may provide its declared resource portfolio amounts from available power sources, consistent with prevailing electric utility interchange and transmission scheduling practices. For purposes of this product, the sources of such power are not limited to specific 5(b)(1)(A) or (B) generation resources owned by the customer or specific contracts.
9. For purposes of assuring consistency with BPA's policy on determining net requirements, the customer will also provide data for resources that are not being declared for purposes of entitlement to this or other core Subscription products. The peak and monthly HLH and LLH capabilities of such resources will also be based on reasonable and prudent utility practices and will be consistent with resource data used by the customer historically for purposes of its BPA contracts and for other purposes.

Revised April 2000

