



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

November 7, 2006

Mr. Steve Wright
Administrator and CEO,
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

re: BPA's regional power allocation proposal

Dear Mr. Wright:

The Yakama Nation is pleased to submit the comments transmitted herewith regarding the captioned subject. As you can surely appreciate, the outcome of Bonneville's power allocation process carries significant implications for both Treaty trust fish and wildlife resources and our new power utility, Yakama Power. The outcome of the process may well determine whether Yakama Power can meet its goal of serving the entire Yakama Reservation at competitive rates.

We take note that the published deadline for submission of comments was October 31. You may recall that members of the Yakama Tribal Council were meeting with you and staff on that date regarding some of the issues raised in our comments. Preparations for that meeting and an interest in aligning final comments with the results of our discussion caused us to delay submission past the posted deadline. We trust you will consider these extenuating circumstances in accepting our comments into the official record.

On behalf of the Yakama Nation, I thank you for the opportunity to comment on BPA's regional power allocation proposal. Please direct any questions you may have to Philip Rigdon, Deputy Director of the Department of Natural Resources, or Paul Ward, Manager of the Fisheries Resource Management Program at 509/865-5121.

Sincerely,

Lavina Washines, Chair
Yakama Tribal Council

Yakama Nation Comments on BPA Regional Dialogue

November 6, 2006

Summary

The Yakama Nation appreciated the opportunity to meet with BPA on October 31st to discuss the BPA power allocation and its effects on Yakama Power. The Yakama Nation is providing comments on BPA's Long-Term Regional Dialogue. Unfortunately, as a result of preparation for that meeting and division of efforts between staff, there was a misunderstanding as to who was to file these comments. As a result of that confusion the comments did not get delivered to BPA at that meeting as contemplated. We have just realized that they did not get delivered. Accordingly, we are filing our comments and requesting that BPA give them due consideration. It appears that there is sufficient time for BPA to consider the comments prior to issuing its Record of Decision.

The Regional Dialogue proposal would set policies on how BPA will allocate power for the next 20 years, establish a structure to determine which entities will be responsible for developing new resources, and determine how costs will be allocated. These comments focus on the concerns for the Yakama Nation's utility, Yakama Power. The Yakama Nation has also joined the Nez Perce, Umatilla, and Warm Springs tribes in comments regarding our concerns about fish and wildlife. We have summarized our concerns here and provide more details and recommendations below.

First, the draft proposal would block expansion of Yakama Power. The Yakama Nation established Yakama Power and signed a power sales contract with BPA in 2000 based on the assurance that it would be eligible for up to 42 megawatts of low-cost PF power from BPA. Our goal was to bring low-cost public power to all of the residents of the Yakama Reservation that are not currently served by this power. BPA policies forced the Yakama Nation to pursue a phased approach to our utility. Now BPA is fundamentally changing the rules that it has operated by since 1937. The result would be an increase in power costs of almost \$16 million for Yakama Power, compared to the melded-cost provisions in our current contract with BPA. We relied on BPA's assurance in the formation of our utility and we believe that BPA has a Federal legal mandate to promote tribal utility development. Federal law provides sufficient authority and discretion to provide low-cost (Tier 1) power for the full development of Yakama Power.

Second, BPA's policy restricts tribal sovereignty. The Yakama Nation signed the Treaty of 1855 with the United States that established the Yakama Indian Reservation for the exclusive use of the Confederated Tribes and Bands of the Yakama Nation. BPA's policies require the Yakama Nation to secure the approval of other governments and/or private corporations for public service activities on our reservation. The proposed transfer service provisions also infringe on tribal sovereignty.

Third, the problems above will limit the development of other tribal utilities. The development of the Columbia River has brought many benefits for the region. But is has

also caused great damage to the fish and wildlife that are critically important to tribal economies, culture, and religion. The formation of tribal utilities with access to BPA's low-cost power is one way to bring some benefits to tribal communities.

Fourth, BPA proposal eliminates any incentive for Yakama Power to implement energy-efficiency program through 2010. One of the reasons we formed the utility was to provide these programs to help lower electricity costs for residents of the Reservation. Pacific Power, the current utility, has ignored the reservation and most of our residential and commercial buildings have not been weatherized.

Fifth, the BPA proposal provides no certainty for fish and wildlife restoration in the Columbia Basin. BPA claims that the proposal is an improvement over the status quo. The CRITFC comments document that the status quo for fish and wildlife is not adequate and the proposal could continue the problems that have eliminated or cut fish and wildlife efforts in the past.

As currently structured, the Yakama Nation must oppose BPA's proposal. We have provided recommendations in this document and the joint comments submitted by CRITFC that could address our concerns. We look forward to working with you to develop a regional consensus that would allow a revised proposal to go forward on a timely basis.

Background Regarding the Yakama Nation

The Yakama Nation established a reservation with the Treaty of 1855, by which it ceded an area almost 1/5 the size of Washington State to the United States government in exchange for certain guarantees. Policies such as the Dawes Allotment Act and subsequent related acts have chipped away at the established reservation boundaries. The Yakama Nation now occupies 1.1 million acres in central Washington State, while continuing to enjoy certain privileges in the ceded area, usual and accustomed places, and a zone of influence.

The Yakama Nation faces numerous challenges to its sovereign authority over water, mineral, and zoning rights, environmental regulation, and development planning. The Yakama Nation is establishing its own environmental policies over the mixed ownership of lands in the valuable and culturally sensitive farmlands of the Yakima River valley. The Yakama Reservation is home to one of the largest Indian-run irrigation projects in the country. The Yakama forest is one of the most important Indian forests in the Nation. The Yakama Nation additionally retains treaty rights for traditional activities such as hunting, fishing, and gathering outside of reservation boundaries, frequently leading to conflicts with federal, state, and local governments, as well as individual non-Indians.

These challenges and conflicts would seem quite foreign to the pre-Treaty Yakama Nation. Prior to the 1800's, the Yakama People based their social order and cultural norms on their relationship with the land. This relationship was developed by adapting hunting, fishing, and gathering activities to natural cycles. Yakama leaders made sure

that these relationships were accounted for by including special provisions for them in the Treaty of 1855.

Construction of the federal dams by the United States Army Corps of Engineers and Bureau of Reclamation has caused a significant reduction in the number of salmon and steelhead returning to Yakama fishing sites. When the Yakama Nation and other tribes managed these salmon runs prior to the 18th Century the salmon runs in the Columbia were estimated to total 16 million fish returning to the mouth of the Columbia River every year. Today, the returns of naturally spawning salmon are under 500,000 fish.

Even if we compare the current harvest to our harvest in 1855 when the Treaty was signed, the losses are devastating. The tribal fishery is currently less than 10 percent of the number of fish our tribe caught in 1855. It is important to note that by 1855, smallpox and other diseases introduced by the non-tribal community had decimated the tribal populations and reduced the fishing effort. The Federal dams also inundated important tribal communities, fishing stations, and burial and cultural sites.

The combination of the loss of salmon and the loss of the important areas near the river has had a devastating effect on the Yakama Nation. For a detailed description of the losses to tribal people from the federal dams please see the report entitled: *Tribal Circumstances and Impacts of the Lower Snake River Dams Projects*.

The Corps Tribal Circumstances Study shows that the percentage of families living below the poverty level on the Yakama Reservation is 42 percent—four times higher than the average for non-tribal families in the State of Washington. The winter unemployment rate is over 70 percent on the Reservation. The per capita income on our Reservation is \$5,700 per year. This is less than half the average for non-tribal communities. The Corps study also shows that the death rate on the Yakama Reservation is about twice the average of non-tribal communities.

Given these circumstances, the Yakama Nation decided to seek ways to receive at least some benefit from the dams that have caused so much damage to our tribal culture and economy. Formation of a tribal utility is the only way we could secure access to the low-cost power from these dams.

For more discussion of Tribe's interests, the Treaty, BPA's obligations, and the effects of the proposal on Treaty resources, please see the comments filed by the Columbia River Inter-Tribal Fish Commission beginning on page five.

History of Yakama Power

At the annual General Council Meeting in 1998, the tribal membership approved Resolution GC-04-98. This was followed by a Tribal Council Resolution T-024-00. In combination these resolutions describe the intention of the Yakama Nation to form a utility to serve customers within the exterior boundaries of the Yakama Reservation.

The Yakama Nation Tribal Council established the following goals for the utility:

- Improve tribal sovereignty,
- Protect against potentially negative effects from utility deregulation,
- Decrease electricity costs,
- Promote tribal employment and economic development,
- Increase public benefits provided through the utility,
- Protect fish and wildlife, and
- Maintain and improve the reliability of electric service to all customers in the service territory.

The Yakama Nation completed a Feasibility Study in 2000 and concluded that formation of a tribal utility would achieve the goals established by the Tribal Council. The feasibility study was based on the assumption that the tribal utility would have access to BPA's low-cost melded power.

The Yakama Nation found that many customers on the Yakama Reservation are paying rates that are higher than they would pay under a tribal utility. A tribal utility also offers the potential for employment, economic development, and new resource development opportunities. A tribal utility would enhance other benefits for residents of the Yakama Reservation.

A Yakama Nation Utility would have a load of about 42 average megawatts and 15,000 customers. The total electric utility revenues collected on the Yakama Reservation are over \$20 million per year and would, if collected by a tribal utility, be an important stimulus to the local economy. Pacific Power currently serves the most of the Reservation; virtually all of the revenues collected leave the Reservation.

The Nation negotiated a full-requirements power sales contract with BPA for up to 42 average megawatts and began efforts to start the utility. These efforts were based on the contract with BPA and the Yakama Nation relied on BPA assurances about access to low-cost power to serve up to 42 megawatts at PF rates.

Phased development: After the contract was signed, BPA decided that it would not approve Yakama's annexation of the Pacific Power distribution system. BPA insisted that Yakama could only serve Yakama tribal facilities in the initial phase of development. BPA took the position that Yakama would have to secure an agreement with Pacific Power to purchase other parts of the system. These policy decisions severely limited the initial scope of the utility and removed any negotiating leverage with Pacific Power.

In July 2006, Yakama Power began taking power from BPA to serve tribal facilities, including the tribal headquarters, casino, and forest products operation. The current load is approximately four average megawatts.

Future plans: The Yakama Nation continues to plan for expansion of Yakama Power so that all of the residents of the Reservation will be served by low-cost public power. These plans can only be realized if Yakama Power has access to low-cost power.

Federal policy to support tribal energy development

The Indian Energy Resources Act of 1992: directs DOE to “assist Indian tribes in pursuing energy self sufficiency and promote the development of a vertically integrated energy industry on Indian reservations.” This effort is to be carried out “in a manner that is consistent with Federal trust and the Government-to-government relationships between Indian tribes and the Federal government.” There has been no implementation of the 1992 law in the Northwest prior to the 2000 BPA program to promote new tribal utilities.

BPA Program to Promote Tribal Utilities: In 1999 BPA initiated a program to promote the creation of new tribal utilities. BPA account executives provided technical assistance, and BPA provided flexibility to assist the Yakama Nation in the feasibility study, creation of Yakama Power, and negotiation of the power sales contract. Sonya Tetnowski and Fred Rettman of BPA were very helpful in working with the Yakama Nation.

Executive Order November 2000

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit

the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Energy Policy Act of 2005: Title V is entitled the Indian Tribal Energy Development and Self-determination Act of 2005.

Section 502 of Title V of the Energy Policy Act of 2005 directs the Department of energy to create an Office of Indian Energy Policy and Programs. The duties of the office are to:

- Promote Indian tribal energy development, efficiency and use;
- Reduce or stabilize energy costs;
- Enhance and strengthen Indian tribal energy and economic infrastructure related to natural resource development and electrification, and
- Bring electric power and service to Indian land...

Section 2605 of the Act directs BPA and other Federal power marketing agencies to encourage Indian tribal energy development. The section also directs that “each Administrator shall consider the unique relationship that exists between the United States and Indian tribes.”

The section also directs the Department of Energy to complete a report by 2007 on the use by Indian tribes of Federal power allocations of the power marketing administrations.

Section 506 of the Act also requires consultation with Indian tribes:

In carrying out this Act and the Amendments made by this Act, the Secretary of Energy and the Secretary [of Interior] shall as appropriate and to the maximum extent practicable, involve and consult with Indian tribes in a manner this is consistent with the Federal trust and the government-to-government relationships between the Indian tribes and the United States.

Based on this review of Federal laws and policies, we believe that there is a long history of BPA and the Federal government promoting tribal energy and utility development. We believe there is sufficient authority and discretion for BPA to modify its proposal to address the unique concerns of the Yakama Nation and other tribes in the Pacific Northwest.

Concerns with BPA Proposal

Power Allocation: The proposal would block any expansion of Yakama Power. Yakama Power’s allocation of cost-based power would be set at 2010 levels, when the new utility’s load is expected to be about seven megawatts. Full service to the Reservation would require about 42 megawatts. Under the proposal, power beyond the 2010 allocation would be at a much more expensive rate than the existing service from Pacific Power.

The figure below shows the cost differences for two alternatives. Yakama Power would like to purchase the 42 megawatts to serve the reservation at Tier 1 (currently about \$25 per megawatt-hour). The total wholesale power costs would be about \$9 million. Under the BPA proposal, Yakama Power would qualify for only 7 megawatts at the low-cost rate (our estimate of the load in 2010); the rest of the power would come from Tier 2 (currently \$76 per megawatt-hour). The BPA proposal would cost \$15.6 million more per year for power. This additional cost would make it impossible to expand the utility without significantly increasing electricity rates.

	Yakama Power	BPA Proposal	Difference
Tier 1 (MWs)	42	7	
Tier 2 (MWs)		35	
Total Costs	\$ 9,198,000	\$ 24,834,775	\$ 15,636,775

Annexed Loads: BPA’s policy restricts tribal sovereignty. As described above, the Yakama Nation signed the Treaty of 1855 with the United States that established the Yakama Indian Reservation for the exclusive use of the Confederated Tribes and Bands of the Yakama Nation. BPA’s policies require the Yakama Nation to secure the approval of other governments and/or private corporations for public service activities on our reservation. This policy created significant problems in the initial development of Yakama Power and continues to restrict the expansion of our tribal utility to serve our Reservation. BPA must change its policy to recognize tribal sovereignty.

Transfer Service for Annexed Loads: Transfer service is critical to Yakama Power and any new tribal utility; without it, costs would be much higher. BPA’s policy states that it would arrange and pay for transfer service for annexed loads “upon written confirmation from the gaining and losing utility that they both agree on the annexation.” The policy also states that “Without written confirmation, BPA would start providing transfer service for an annexed load only after final action by a court or state regulatory authority, or when a state agency clearly assigns the right to serve the annexed load.” Again, this policy undermines tribal sovereignty. Tribal utilities would have to agree to any costs or concessions from a private corporation or wait until a state agency acts before it could serve the residents of its treaty-guaranteed reservation.

New Tribal Utilities: The proposal reserves a limited amount of power for new utilities. The limits would constrain the growth of any new utility that is larger than 10 megawatts. At this time, the Umatilla, Warm Springs, Tulalip, and Macaw tribes are considering forming utilities. They would face the same problems that Yakama Power has with the proposal; if their load was larger than 10 megawatts, they would have to buy the more expensive (Tier 2) power for some period under the BPA proposal. There are other problems related to transmission and annexing loads that could make it more difficult to form new tribal utilities.

Energy-efficiency programs: One of the reasons the Yakama Nation formed the utility was to provide these programs to help lower electricity costs for residents of the Reservation. Pacific Power, the current utility, has not provided these programs on the

reservation and most of our residential and commercial buildings have not been weatherized.

BPA proposal eliminates any incentive for Yakama Power to implement energy-efficiency program through 2010. Under the proposal, Yakama Power will not implement BPA energy-efficiency programs until its allocation from BPA (high water mark) is set.

Under the status quo, with melded rates, if Yakama Power implements conservation it reduce its net requirements and BPA would deduct those savings from the utility's right to purchase BPA power. Yakama Power currently has an economic incentive to do the conservation; we would lose the Conservation and Renewable Resource Discount if we don't. Also, the conservation costs Yakama Power less than the power we loose from BPA, and under the status quo, there is no penalty of higher cost power down the road. For example, Yakama Power can run a conservation program that costs \$10-\$20 per megawatt-hour (MWh) and reduce its access to \$25 per MWh BPA preference power; in the future, we could purchase more preference power at approximately \$25 under the melded rate. We know that the melded rate will go up if BPA adds resources, but the annual increase is likely to be small.

BPA's proposal to create a two-tiered rate changes the decision about whether Yakama Power should implement conservation programs. For the purpose of defining future rights to the low-cost rate (Tier 1), a utility that runs a BPA funded conservation program through 2010 losses access to 50 percent of the savings at the \$25 per MWh Tier 1 price and will have to replace it with \$76 MWh Tier 2 power (at BPA current rates). This is a significant disincentive for Yakama Power since we are striving to build our Tier 1 allocation as large as possible.

As an example, we have analyzed the economics Yakama Power. Assuming we have a load of 5 average megawatt load in 2006 and we are deciding whether to do one megawatt of conservation in 2007-10 to cover our load growth in that period. We have assumed that BPA's Tier 1 rate in 2012 is \$30 per MWh, and that the conservation costs Yakama Power \$1 million (about \$100,000 per year or \$13/MWh). We have also analyzed Yakama Power's cost in 2015 with another 1 MW of load growth between 2010 and 2015 under three alternatives:

Alternative One—Do conservation: The net requirement in 2012 is 5 megawatts, so High Water Mark is 5.5 megawatts (with BPA proposal). In this case Yakama Power's power supply costs in 2012 will equal $(5 \times 8760 \times \$30) + \$100,000 = \$1.414$ million. In 2015: Power supply costs are $(5.5 \times 8760 \times \$30) + \$100,000 + (0.5 \times 8760 \times \$76) = \$1.878$ million.

Alternative Two—Don't do conservation: The net requirement in 2010 would be 6 megawatts, so the High Water Mark is 6 megawatts. In 2015, the power supply costs are $(6 \times 8760 \times \$30) + (1 \times 8760 \times \$76) = \$2.242$ million

Alternative Three—Defer Conservation. If Yakama Power does not implement the conservation before 2010 in order to maximize our high water mark; it could implement conservation programs to meet load growth after the high water mark had been set. In this alternative the 2015 power supply costs would be $(6 \times 8760 \times \$30) + \$100,000 = \$1.676$ million. The annual net savings from maximizing the high water mark and doing conservation after 2010 to serve additional load growth in 2015 would be \$201,000—an 11 percent savings compared to the first alternative. This alternative provides the greatest benefit to Yakama Power under the BPA proposal.

BPA could address this problem with the “100 percent solution”. BPA should allow utilities to implement BPA energy-efficiency programs through 2010 without losing any of their BPA allocation. This approach would maximize utility incentives for conservation. The only disadvantage is that utilities that do not participate in the BPA programs would not receive benefits but would pay part of the higher costs of augmenting the Tier 1 power to maintain the full allocation for utilities that did implement the energy-efficiency program. These programs lower the cost of energy for the region because the energy saved costs half as much as building new resources. Since every utility has the opportunity to run the BPA programs, it makes sense to provide an incentive to fully implement these programs, even if it penalizes those that do not implement conservation programs.

Long-Term Conservation: Energy-efficiency programs provide benefits for consumers and to fish and wildlife. BPA has not made any commitment to energy-efficiency funding beyond 2011. Therefore, it is not clear how BPA plans to meet its responsibilities under the Council Power Plan and the Northwest Power Act. BPA has provided no analysis that shows it will achieve the conservation goals

The BPA’s proposal does not require that utilities implement their share of the regional conservation targets. BPA also does not require that utilities that decide to meet their own load growth will give first priority to energy-efficiency. Without these requirements, it is not clear how BPA can assure that the targets will be achieved. Clearly, access to BPA’s low-cost power is a significant benefit for any utility. BPA should require that these utilities implement all cost effective conservation and secure savings that meet or exceed the Power Plan targets as a condition of receiving the low-cost BPA power.

Renewable Resources: These resources also provide benefits for consumers and to fish and wildlife. The Yakama Nation is exploring the feasibility of developing renewable resources on our Reservation. We are concerned that BPA has not detailed an aggressive program to secure these resources.

Legal and Policy Concerns

In the section below, we raise concerns about whether BPA’s tiered-rate proposal is consistent with the Northwest Power Act. We also support the fish and wildlife and other

issues discussed in the CRITFC comments. We reserve the right to expand on these issues in subsequent proceedings.

Objective 7 of the BPA proposal is to avoid new legislation (see BPA proposal, page 4). However, the proposal raises a number of questions about how BPA can implement the proposal without violating various provisions of the Northwest Power Act (Public Law 96-501, 94 Stat 2697). The Tribes have conducted a preliminary analysis of the Act and its legislative history which raised a number of issues. We reserve the right to expand on this analysis and raise other issues in subsequent proceedings.

A key part of the BPA proposal would implement tiered rates. Since 1937, BPA has served public utilities with melded rates. As energy needs increased, BPA added additional dams, a nuclear plant, and a few smaller resources; the costs for the existing and new resources are melded together into a single rate.

The Northwest Power Act directed BPA to serve Northwest utilities:

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 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 [subject to restrictions in subsections A and B] (section 5(b)(1); 16 USC 839c(b)(1))

Congress mandated that these power sales will be at rates established in Section 7 of the Act:

The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements¹ of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 5(c). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 5(c) and then from other resources. 16 USC 839e(b)(1)

...

Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portion of Federal base system resources, purchase of power under section 5(c) of this Act and additional resources, which, in the determination of the Administrator, are applicable to such rates. 16 USC 839e(g)

¹ The term "general requirements" as used in this section means the public body, cooperative, or Federal agency customer's electric power purchased from the Administrator under section (5)(b) of this Act, exclusive of any new large single loads. See 16 USC 839e(b)(4)

The Senate Energy and Natural Resources Committee report on S. 885, the legislation that would eventually become the Northwest Power Act², includes an appendix to explain how this provision was to work.

Section 7 (b) through (h).—The description and methodology for developing the revenues to be recovered through rates under this section 7 are covered in Appendix B except as noted below. The specific configuration or form of the rates shall be adopted by the Administrator under subsection 7 (a).

At the request of the Committee, the Administrator has prepared an analysis of the rate provisions of the introduced legislation with certain amendments proposed to the Committee, and it is included as Appendix B. This analysis was widely circulated in the region and as become an important part of the common understanding about how the costs of resources would be distributed as a result of the legislation. The Committee takes notice of these understandings and the importance they played in the development of regional expectations for all classes of customers. (Committee Report Number 96-272, page 31)

In Appendix B, BPA provided analysis that compared the wholesale power rates to various BPA regional customers under the proposed legislation:

Under the proposed legislation there are three basic rates for power sold by BPA but not particular rate form has been assumed. One rate (Regional Rate) is calculated on the cost of the Federal Base System resources and, as needed, IOU exchange power, and future resource additions and will apply to all preference customers and Federal agency loads, exclusive of new large industrial loads, and to investor owned utilities (IOU's), residential and small irrigation loads up to the first 400 horsepower for any farm. A second rate (New Resources Rate) is applicable to all other utility sales and will be based on cost of resources acquired by BPA under the proposed legislation, and any FBS resources not required by Regional Rate Customers. Finally, after June 1985 the rate applicable to BPA direct service industrial customers (DSI's) will be based on the retail rates applicable to industry served by BPA preference customers. (Committee Report, page 56)

Section 7(b) of the House of Representatives version of the Northwest Power Act was identical to the version adopted by the Senate; however, the House placed the rate test language in a separate section 7(b)(2).

The House Interior Committee Report section by section analysis for section 7(a) states:

² The relevant language in the Senate bill was virtually identical to the final language incorporated into the Act.

- A. The lowest rates will be reserved for the normal loads (“general requirements”) of preference utilities and for the power sold to utilities under the section 5(c) exchange provisions for service to their residential and small farm loads.
- B. A higher rate will apply to the load growth of the region’s investor-owned utilities and for the power needed by preference utilities to meet any “new large single loads” [loads in excess of 10 megawatts] that they may have. (House Interior Committee Report Number 96-976, part II, page 36)

This melding of power was controversial and was opposed by some members of Congress. For example, the Interior Committee Report included dissenting views by Congressmen Jim Weaver, Peter Kostenmeyer, Bruce Vento, Edward Markey, and George Miller. The dissenting view included a section entitled: Price Melding that states:

The third part of the trinity-like centerpiece of S. 885 is the wholesale price melding that is required of BPA. First, BPA is obligated to serve the utilities; second, it must acquire new resources to do so; and third, it must average the cost of the new very expensive thermal power with its existing extraordinarily cheap hydropower...

The price meld would work in the following way. New 60-100 mill/kwh thermal power would be added to BPA’s 3 mill/kwh hydropower in order to serve an increased regional load. Yet one utility in the region might have no load growth, thus putting no additional demand on BPA and contributing not at all to the need for the plant. It will, however, have to pay for it as BPA’s rates rise to accommodate it. Another utility, looking ahead ten years to determine how much new power it needs and where it is going to acquire it, would, under S. 885, be presented with a dilemma. Say it needed ten (10) more megawatts in 1991 than in 1990. The additional power necessary to meet its load growth (and others throughout the region) might raise BPA’s rate from maybe 15 mills/kwh in 1990 to 18 mills/kwh in 1991 (the result of the meld of, say, and 80 mill marginal cost resource with BPA’s existing pool). Very little could compete in a utility manager’s eye with 18 mill power in 1991, and thus, he or she would be “forced” to buy what seems to be 18 mill power from BPA. But the region would actually be paying 80 mills. For this reason, all the alternative resources that cost between 18 and 80 mills would be foregone by the utility manager even though they are the most cost-effective investments for the region. (The obvious answer to this dilemma is the institution of a two-tier pricing scheme; an amendment to do just that was defeated in the Interior Committee on a 21-21 tie vote). (emphasis added, House Interior Committee Report, page 87.)

Therefore, based on the language of the Act, the relevant committee reports, and the Appendix prepared by BPA, it appears that Congress intended that preference customers would be served by the regional rate described in section 7(b)(1) which would meld the

cost of the Federal Base System resources and, as needed, IOU exchange power, and future resource additions. This rate would apply to all preference customers and Federal agency loads, exclusive of new large industrial loads, and to investor-owned utilities' residential and small irrigation loads. The new resources rate in section 7(g) would apply to all other utility sales and be based on cost of resources acquired by BPA under the proposed legislation, and any Federal Base System resources not required by regional rate customers. It also appears that Congress considered a tiered-rate provision, but the proposal failed in the House Interior Committee. This raises significant questions about how BPA can implement this proposal without new legislation.

Recommendations

1. Provide low-cost Tier 1 power to serve up to 42 megawatts of load on the Yakama Reservation.
2. Revise BPA's policy to recognize tribal sovereignty.
3. Revise BPA's transfer service provisions to recognize tribal sovereignty.
4. Implement the Federal laws and policies and trust responsibilities to encourage the formation of tribal utilities.
5. Change the proposal to allow utilities that implement BPA conservation programs to keep their BPA power allocations.
6. Strengthen BPA's long-term conservation and renewable resource programs to ensure that important resources are fully developed.
7. Provide certainty to rebuild fish and wildlife to meet obligations under Federal law and treaties.