

POWER SUBSCRIPTION STRATEGY
ADMINISTRATOR'S SUPPLEMENTAL
RECORD OF DECISION

Bonneville Power Administration
U.S. Department of Energy

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I. INTRODUCTION

On December 21, 1998, the Administrator of the Bonneville Power Administration (BPA) issued a Power Subscription Strategy and accompanying Record of Decision (ROD) which set the agency's Power Business Line on a course to establish power rates and offer power sale contracts in anticipation of the expiration of current contracts and rates on September 30, 2001. The Strategy and ROD were the culmination of many public processes that came together to form the framework to equitably distribute in the Pacific Northwest the electric power generated by the Federal Columbia River Power System.

The 1998 Subscription Strategy has served to guide BPA in accomplishing its goals. Since adoption of the Strategy, however, developments occurred which prompted BPA to seek, in some instances, additional comment from customers and constituents on these new issues. This document contains evaluations and decisions regarding these new issues and comments. These decisions refine the Subscription Strategy; they do not revisit the wisdom of it.

The Strategy contemplated further public processes to implement its goals. The 2002 Power Rate Case, ongoing since August 1999, is nearing completion. BPA and its customers have continued discussions on power products and power sales contract prototypes, and the Slice of System product has been further defined. BPA also undertook a comment process on the amount and allocation of power and financial benefits to provide the investor-owned utilities (IOU) on behalf of their small farm and residential consumers. Even as the decisions contained in this document are made, work continues on these contract issues.

In a December 2, 1999, letter, BPA sought comment from customers and constituents on some of these new issues, specifically, the length of the Subscription window for power sales contract offers, the actions required of new small utilities during this window to qualify for firm power service, and new developments with respect to General Transfer Agreements. Other issues arose independently, such as new large single loads (NLSL) under the Northwest Power Act, duration of the new power sales contracts, and a new contract clause regarding corporate citizenship.

BPA will use the evaluations and decisions contained in this document to further develop the contracts for offer to the customers. Subsequent decision documents will be prepared for the IOU agreements under the Residential Exchange Program and the settlement of Northwest Power Act section 5(c) rights. A new [Power Products Catalog](#) will soon be available on the agency's website.

II. SUBSCRIPTION WINDOW

Issue:

Is the “Subscription window” – that time period during which BPA intends to offer and sign new power sales contracts – reasonable?

Subscription Strategy:

The Strategy ROD estimated that BPA would begin to offer contracts “from February 1999 until 120 days after the ROD for the 1999 Power Rate Case is signed.” ROD at 7. BPA understood, however, that the 2002 Power Rate Case, as it finally was named, may have had a different schedule than predicted at that time. In the December 2, 1999, letter, based on the then-current schedule for the 2002 Power Rate Case, BPA predicted an April 2000 to September 30, 2000 “Subscription Window” and asked for any additional comments on that schedule.

Parties’ Comments:

Seven utilities and utility groups commented on the proposed schedule. The Public Power Council, #019, Emerald People’s Utility District, # 026, and the Springfield Utility Board, #47, urged timing to be 30 days after a final transmission rate became available. The Pacific Northwest Generating Cooperative, #050, and the Clearwater Power Company, #034, said the September 30, 2000, date appeared reasonable should the original 120 days after completing the power rate case still be valid. The IOUs, #043, urged BPA to tie the timing to both the power and transmission rate cases, and provide the 120-day period. The Public Generating Pool, #053, suggested the longest period of 120-days following the power rate case, 30 days after final (new) transmission rates or 180 days after contract negotiations were complete.

Evaluation and Decision:

Most of the comments reflect the utility customers’ desires to know both the power and transmission rates for the new rate period before deciding to sign a power sales contract. All reflected in one way or another approbation of at least 120 days after the power rate case concludes.

The BPA Power Business Line (PBL) is functionally separated from the BPA Transmission Business Line (TBL) and is a party to the ratemaking proceeding recently begun by the TBL to set new transmission rates and terms and conditions for open access. If and when the TBL revises its rates, the PBL, along with all of its customers, will purchase transmission at the rates set. The PBL therefore believes that knowing the transmission rates will have a very low impact on decisions to purchase power, and that the decisions to sign power sales contracts will be made on the basis of power product costs and available

products rather than on the combination of power and transmission costs. Further, as of this date, parties in the TBL rate case are attempting to reach a settlement agreement. If they do so, as appears likely, the TBL will have developed a final rate proposal well before the close of the Subscription window.

BPA believes it is reasonable to hold to the fundamental concept as earlier proposed (the 120-day period following the conclusion of the power rate case). Although the 2002 Power Rates Final Record of Decision has been delayed and is now scheduled for release in the second week of May 2000, BPA still expects to provide customers a 120-day "open for business" Subscription window beginning April 27, 2000. The window will close on September 30, 2000, regardless of the date of the Power Rates Final Record of Decision.

III. NEW LARGE SINGLE LOADS

Issue:

Should BPA change its current treatment regarding service to New Large Single Loads (NLSLs)?

Subscription Strategy:

BPA made no specific recommendation to change treatment of NLSLs and did not seek public comment on this issue.

Evaluation and Decision:

BPA recognizes that public agency customers may be asked to serve new or existing industrial load located within the customer's service territory that they have not previously served. To serve NLSLs, public agency customers may request to purchase additional power from BPA. BPA will not, however, now modify its Strategy ROD to change its current policy on serving NLSLs. Instead, BPA plans to conduct a separate public process after the Subscription window closes to establish a new NLSL policy that will address issues associated with the treatment of NLSLs during the term of the Subscription contracts.

During the Subscription window, the customers will be permitted to identify in their Subscription contracts specific loads as loads that may be a NLSL. For those customers where product choice is not dependent upon the outcome of the public process, BPA will allow the removal of the load from the contract or change the declarations as appropriate after BPA finalizes its NLSL Policy. For those customers where product choice is dependent upon the outcome of the public NLSL Policy process, BPA will allow the customer to remove the loads from their contract or take an off-ramp to a predetermined standardized product. This predetermination would be agreed upon during the negotiations of the Subscription contract.

IV. NEW SMALL UTILITIES

Issue 1:

Should BPA provide flexibility regarding the actions needing to be completed during the Subscription window by potential new, small public agency or cooperative utilities, including tribal utilities?

Subscription Strategy:

In the 1998 Strategy, BPA indicated that new public agency and new tribal utilities that formed and qualified for service by meeting BPA's Standards for Service would need to sign a final take-or-pay power sales contract within the Subscription window in order to receive power at the Priority Firm (PF) rate.

In December 1999, BPA proposed that new, small public agency or cooperative utilities, including Tribal utilities, would not need to take final steps within the Subscription window in order to receive power at the PF rate. Specifically, BPA proposed that within the Subscription window such utilities would need to: (1) be legally formed; (2) complete initial economic and other assessments; (3) be taking steps to become an operating utility; and (4) make a contingent power purchase commitment in order to receive power at the PF rate. BPA further proposed that such utilities would have additional time to sign a final, take-or-pay Subscription contract pending the outcome of their additional efforts, including the acquisition of distribution facilities.

Parties' Comments:

Various types of public and private utilities, utility associations, cities, Tribes and Tribal organizations commented on BPA's proposal. Avista, Enron Power Marketing, Portland General Electric, Idaho Power Company, PacifiCorp, and Puget Sound Energy (Avista, et al.) indicated that BPA should not discriminate in favor of new utilities simply because they are small and that only those utilities that actually own distribution facilities are eligible to be offered a requirements contract- contingent or otherwise. Avista, et al, 042. Others stated that the effect of BPA's proposal would preclude an existing utility from being able to effectively diversify its wholesale power supply because of the uncertainty about whether a new utility would reduce the future load of the existing utility. Benton REA, 030.

Other parties' commended BPA's proposal for its flexibility and for recognizing and attempting to accommodate the hurdles and timing considerations that must be dealt with when forming a new, small electric utilities. City of Portland, 016; PPC, 018/019; Yakama Nation, 037, ATNI, 040; CERT, 021; Spokane Tribe, 012; Shoshone-Bannock Tribe, 020; RedEarth, 011; Margaret Schaff, 039. The Yakama Nation stated that BPA should not impose any deadline regarding when

a new utility would need to acquire its distribution system because to do so would skew any negotiations in favor of the existing utility. Yakama Nation, 037.

A group of public agency utilities or their associations indicated that BPA has been too restrictive regarding the formation of new utilities qualifying for service at the PF rate. Generally, they indicated that BPA should set no time limits on when a utility otherwise qualified as a preference customer could purchase power at BPA's PF rate. Emerald PUD, 026; SUB, 047; OURCA, 049.

Evaluation and Decision:

BPA's proposal for new, small utilities provides that the entity can request service and commit to purchasing power from BPA via the terms of a contingent power sales contract before the entity is fully qualified for requirements service. Contrary to the assertion made by Avista, et al., that it is discriminatory to offer contingent contracts to small, new public utilities, [BPA's offer to such entities is consistent with BPA's statutory authority and direction to encourage the widest possible use of Federal power. See 16 U.S.C. 832a\(b\).](#) BPA's performance under the contingent contract, including the sale of requirements power, will not begin until the entity is a fully qualified public agency or cooperative utility with the demonstrated ability to take physical delivery of the power for distribution to its retail consumer load. To be fully qualified, the Administrator must find that an entity has satisfied BPA's Standards for Service. See Final Policy on Standards for Service, Administrator's Record of Decision, 64 Fed Reg 24382 (1999). The prospective new, small utility would be entering into a contingent contract that commits it to purchase a specified amount of federal power from BPA should it become a qualified public agency, cooperative or Tribal utility.

As provided in the Subscription Strategy, if the load to be served by the new, small utility was previously served by a preference customer purchasing requirements power from BPA, the preference customer losing such load would not have a take-or-pay obligation to BPA for such lost load. While the formation and operation of a new, small utility may impact the diversified power supply arrangements of the existing utility, as pointed out by Benton REA, any financial costs incurred by the existing utility could be a consideration in the negotiations between the existing utility and the new utility.

The modification establishes specific conditions or requirements with respect to new, small utilities that must be satisfied in order for such utilities to be assured of receiving power at the lowest cost-based PF rate. New, small utility customers will be required to sign a contingent take-or-pay Subscription contract within the Subscription window that will provide that performance under such contract will only begin when BPA and the utility agree that the utility is eligible to receive service (i.e., has met BPA's Standards for Service). Before BPA will sign a contingent contract a new, small utility must be legally formed in compliance with applicable state or Tribal laws that authorize it to purchase and sell power to

serve retail electric consumers. In addition, the new utility must have completed certain analytical and procedural requirements. These requirements are: 1) form an authorized Board of Directors/Governing Body if one does not already exist, 2) designate an Acting Manager, 3) identify utility goals and objectives, 4) describe intended area within the BPA service territory which the utility intends to serve, 5) develop retail load data, 6) prepare a detailed economic feasibility study, and 7) develop a public involvement plan.

The contingent contract will be limited to a term of ten years (ending no later than September 30, 2011) and BPA will have the right to terminate the contingent contract after September 30, 2005, if the utility is not actually taking power from BPA by that date. Furthermore, deliveries under the contract will commence no later than one year after it is agreed that the utility is eligible to receive service.

BPA understands that the timing of aspects of the Subscription process, particularly when a final prototype contingent contract will be available, makes it difficult for a new, small utility to sign a contingent contract as the means to receive a portion of the amount of average megawatts (aMWs) planned for new, small utilities. BPA is, therefore, willing to accept a Letter of Intent prior to the signing of a contingent take-or-pay contract if the prospective new utility has completed the analytical and procedural requirements enumerated above. Such Letter of Intent will only be valid through July 31, 2000. All Letters of Intent or executed contingent contracts will be treated on a first come, first served basis and will only be accepted after the Subscription window opens.

Issue 2:

Should BPA set an average megawatt limit for the new, small utilities for which it is proposing to be flexible?

Subscription Strategy:

BPA proposed that the flexibility for new, small preference utilities be limited to a total of 75 aMWs for all such utilities. There was no set cap on the size of any one single new, small utility that is eligible to purchase from the 75 aMW.

Parties' Comments

While supporting the concept of some limit on the amount of power available for new, small utilities under contingent contracts, some parties indicated that the 75 aMWs limit should be raised to 150 aMW or some other level above 75 aMWs. City of Portland, 016; Yakama Nation, 037; ATNI, 040; CERT, 021; Spokane Tribe, 012; Sho-Bannock Tribe, 020; RedEarth, 011; Margaret Schaff, 039. Some parties indicated that the 75 aMW limit was inconsistent with BPA initial Power Rate Proposal regarding loads of new public entities and annexations or the limit appeared arbitrary. City of Portland, 016; Yakama Nation, 037.

The IOUs basically indicated that setting a limit of 75 aMWs did not justify BPA's proposal to provide flexibility for new, small utilities. Avista et al., 042. Certain public utility parties stated that any cap or limit was inappropriate and inconsistent with BPA's organic statutes. PPC, 018/019; OURCA, 049, Emerald, 026; SUB, 047. NRU indicated support for a limit such as the 75 average megawatt limit proposed by BPA. NRU, 048.

Evaluation and Decision:

BPA proposed that 75 aMWs of power will be made available for the purpose of signing contingent contract with new, small public utilities. This is consistent both with BPA's Subscription Strategy goal of avoiding rate increases and with the need for BPA power rates to recover the cost of the federal power BPA is committed to provide. Without a limit BPA could neither forecast the load nor plan its cost for service to such customers. It is, therefore, reasonable for BPA to set a limit on the amount of load and the associated cost for service to new, small utilities.

Some comments suggested that BPA increase the amount of the limit. BPA appreciates the interest by some parties to make available more PF-02 priced power to serve more new, small utility load. However, BPA is mindful that the current limit of 75 aMw was set after taking into consideration BPA's load forecast used to develop BPA's proposed PF-02 rate. To increase the limit here could result in impacts to BPA's ongoing power rate proceeding under section 7(i) of the Northwest Power Act. BPA believes it is unreasonable to create unintended impacts to BPA's rate setting through this modification. While not increasing the limit, BPA is clarifying its policy such that only new utilities with a forecast total retail load of 75 aMWs or less are eligible to make use of this contingency contract option. This is to help assure that a new large utility cannot reduce the availability of the program to smaller utilities.

New utilities who, because of their size or because they desire to sign a contingent contract after the 75 aMW limit has been reached, do not qualify for this approach's flexibility will have to meet all of BPA's standards for service before signing a Subscription contract. This would mean, for example, that such utility would have to own the distribution facilities before signing a Subscription contract. See Final Policy on Standards for Service, Administrator's Record of Decision, 64 Fed. Reg. 24382 (1999).

V. Increase in Residential Exchange Settlement Benefits and Allocation of Residential Exchange Settlement Benefits Among Pacific Northwest Investor-Owned Utilities

A. Introduction

BPA's December 1998 Subscription Strategy proposes settlements of the Residential Exchange Program with regional IOUs. The proposed settlements were based on benefits equivalent to power sales at the Residential Load (RL-02) rate or the PF Exchange Subscription rate: 1800 aMW for the FY2002-2006 period, and 2200 aMW for the FY2007-2011 period. Issues related to rates for power sales under the proposed settlements, as well as the forecast market price of power, are under consideration in BPA's 2002 wholesale power rate case, BPA Docket No. WP-02. The Draft Record of Decision on issues related to BPA's power rate case was released on April 10, 2000. BPA expects to issue a Final ROD for the rate case on May 8, 2000.

On November 17, 1999, BPA sent a letter to all interested parties requesting comments on two specific issues: (1) whether the amount of the proposed IOU settlement should be increased by 100 aMW from 1800 aMW to 1900 aMW for the FY2002-2006 period, and (2) the manner in which the settlement amount should be allocated among the individual IOUs.

B. Section 5(c) of the Northwest Power Act

Section 5(c) of the Northwest Power Act established the Residential Exchange Program. 16 U.S.C. 839c(c). Under the Residential Exchange Program, a Pacific Northwest electric utility may offer to sell power to BPA at the utility's average system cost (ASC). 16 U.S.C. 839c(c)(1). BPA purchases such power and, in exchange, sells the same amount of power to the utility at BPA's PF Exchange rate. *Id.* The amount of the power exchanged equals the utility's qualifying residential and small farm load. *Id.* BPA's past practice did not require actual power sales. Instead, BPA provided monetary benefits to the utility based on the difference between the utility's ASC and the applicable PF Exchange rate multiplied by the utility's residential and small farm load. These monetary benefits must be passed through directly to the utility's residential and small farm consumers. 16 U.S.C. 839c(c)(3). While Residential Exchange Program benefits have previously been monetary, the Northwest Power Act also provides for the sale of actual power to exchanging utilities in specific circumstances. Pursuant to section 5(c)(5) of the Northwest Power Act, in lieu of purchasing any amount of electric power offered by an exchanging utility, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to the utility as part of an exchange sale. 16 U.S.C. 839c(c)(5). However, the cost of the acquisition must be less than the cost of purchasing the electric power offered by the utility. *Id.* In these circumstances, BPA acquires power from other sources and sells actual power to the exchanging utility.

The Residential Exchange Program has traditionally been implemented through Residential Purchase and Sale Agreements (RPSAs), which were executed in 1981. Between 1981 and the present, all of the RPSAs have been settled except for one, which is in “deemer” status. (Deemer status is where a utility sets its ASC equal to BPA’s PF Exchange rate and does not receive positive benefits but accrues a negative balance that must be worked off before resuming the receipt of positive benefits.) Regional utilities are eligible to participate in the Residential Exchange Program again beginning July 1, 2001, except for those utilities that have previously executed settlement agreements for terms extending beyond July 1, 2001.

C. BPA’s Power Subscription Strategy

During the spring and summer of 1998, BPA conducted extensive public meetings with all interested parties regarding the development of a “Power Subscription Strategy.” At the conclusion of these lengthy discussions, on September 18, 1998, BPA released a “Power Subscription Strategy Proposal” for public review. During the comment period BPA received nearly 200 responses to the proposal comprising nearly 600 pages of comments. After review and analysis of these comments, BPA published its final “Power Subscription Strategy” on December 21, 1998. See “Power Subscription Strategy” and “Power Subscription Strategy, Administrator’s Record of Decision.” The purpose of the Subscription Strategy is to enable the people of the Pacific Northwest to share the benefits of the Federal Columbia River Power System after 2001 while retaining those benefits within the region for future generations.

The Subscription Strategy also addresses how those who receive the benefits of the region’s low-cost Federal power should share a corresponding measure of the risks. The Subscription Strategy seeks to implement the subscription concept created by the Comprehensive Review in 1996 through contracts for the sale of power and the distribution of Federal power benefits in the deregulated wholesale electricity market. The success of the Subscription process is fundamental to BPA’s overall business purpose to provide public benefits to the Northwest through commercially successful businesses.

The Subscription Strategy is premised on BPA’s partnership with the people of the Pacific Northwest. BPA is dedicated to reflecting their values, to providing them benefits and to expanding and spreading the value of the Columbia River throughout the region. In this respect, the Strategy has four goals:

- (1) Spread the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region;
- (2) Avoid rate increases through a creative and businesslike response to markets and additional aggressive cost reductions;

- (3) Allow BPA to fulfill its fish and wildlife obligations while assuring a high probability of U.S. Treasury payment; and
- (4) Provide market incentives for the development of conservation and renewables as part of a broader BPA leadership role in the regional effort to capture the value of these and other emerging technologies.

One element the 1998 Subscription Strategy proposed was a settlement of the Residential Exchange Program for regional IOUs for the post-2001 period. The Subscription Strategy proposed that IOUs may agree to a settlement of the Residential Exchange Program in which they would be able to receive benefits equivalent to a purchase of a specified amount of power under Subscription for their residential and small farm consumers at a rate expected to be approximately equivalent to the PF Preference rate. Under the proposed settlement, residential and small farm loads of the IOUs would be assured access to the equivalent of 1,800 aMW of Federal power for the FY2002-2006 period and 2,200 aMW of Federal power for the FY2007-2011 period.

BPA will set the physical and financial components of the Subscription amount, by year, in the negotiated Subscription settlement contracts. Any cash payment will reflect the difference between the market price of power forecast in the rate case and the rate used to make such Subscription sales. The actual power deliveries for these loads will be in equal hourly amounts over the period.

The 1998 Subscription Strategy proposed that BPA offer five-year and 10-year Subscription settlement contracts for the IOUs. Under both contracts, according to the Subscription Strategy, BPA will offer and guarantee 1,800 aMW of power and/or financial benefits for the FY2002-2006 period. At least 1,000 aMW will be met with actual BPA power deliveries. The remainder may be provided through either a financial arrangement or additional power deliveries, depending on which approach is most cost-effective for BPA. The IOUs' settlement of rights to request Residential Exchange Program benefits under section 5(c) of the Northwest Power Act will be in effect until the end of the contract term.

According to the 1998 Subscription Strategy, under the 10-year contract, in addition to the benefits provided during the first five years, BPA would offer and guarantee 2,200 aMW of power or financial benefits for the FY2007-2011 period. BPA intends for this 2,200 aMW to be comprised solely of power deliveries. The IOUs' settlement of rights to request Residential Exchange Program benefits under section 5(c) will be in effect until the end of the 10-year term of the contract. In the event of reduction of Federal system capability and/or the recall of power to serve its public preference customers during the terms of the five-year and 10-year contracts, BPA will either provide monetary compensation or purchase power to guarantee power deliveries.

In summary, residential and small farm loads of the IOUs may receive benefits from the Federal system through one of two ways. An IOU may participate in the

established Residential Exchange Program or it may participate in a settlement of the Residential Exchange Program through Subscription. If an IOU chooses to request Residential Exchange Program benefits under section 5(c), then the Subscription settlement amount for all the IOUs would be reduced by the amount that would have gone to the exchanging utility.

Issues related to rates for power sales under the proposed settlements, as well as the forecast market price of power, are under consideration in BPA's 2002 wholesale power rate case, BPA Docket No. WP-02. The Draft Record of Decision on issues related to BPA's power rate case was released on April 10, 2000. BPA expects to issue a Final ROD for the rate case on May 8, 2000.

D. Ensuring Benefits to Residential and Small Farm Consumers

BPA has an obligation to ensure that the benefits of the Residential Exchange Program settlements are provided to the intended recipients – the residential and small farm consumers of regional IOUs. For this reason, the Subscription contracts with IOUs will include a provision permitting BPA to review the manner in which these benefits are provided to the intended beneficiaries.

Also, the Subscription Strategy states that Subscription settlement benefits (both the physical and financial components) will be transferable, under the same general terms and conditions as the Subscription purchase by the original IOU, to an eligible entity that serves the residential and small farm load. BPA intends that a provision for assignment in the Subscription contracts will provide the IOUs and state regulatory agencies with sufficient flexibility to accomplish this goal.

The consumer bills of participating IOUs will designate "Benefits of the Federal Columbia River Power System Provided by the Bonneville Power Administration" to describe the amount of benefits their consumers receive. Recent negotiations have proposed revising this language to "Federal Columbia River Benefits supplied by BPA."

E. Increasing the Settlement Amount from 1800 aMW to 1900 aMW for the FY2002-2006 Period

Issue:

Whether BPA should increase the amount of power available to the IOUs under the Subscription Strategy for settlement of the Residential Exchange Program from 1800 aMW to 1900 aMW (both power and financial) for the FY 2002-2006 period as long as BPA's goal not to increase the average PF rate over present levels can be met; the increase does not require BPA to reduce its Treasury Payment Probability; the increase does not require a change in proposed sales to the Direct Service Industries (DSIs); and, there is no impact from the increase on BPA's ability to meet its fish and wildlife commitments.

Subscription Strategy:

BPA's intent in the Subscription Strategy was to spread the benefits of the FCRPS as broadly as possible, with special attention given to the residential and rural customers of the region. The Subscription Strategy enabled the benefits of the FCRPS to flow throughout the region, whether currently served by publicly owned or privately owned utilities.

The Subscription Strategy provided that residential and small farm loads of the IOUs, through settlement of the Residential Exchange Program, would be provided access to the equivalent of 1800 aMW of Federal power for the FY 2002-2006 period. At least 1000 aMW of the 1800 aMW would be served with actual BPA power deliveries. The remainder would be provided through either a financial arrangement or additional power deliveries depending on which approach was most cost-effective for BPA.

Parties' Comments:

The Washington Utilities and Transportation Commission (WUTC), Avista Corp. (Avista), Seattle City Light (Seattle), the Washington Department of Community, Trade and Economic Development (WDCTED), the Portland City Commission, and Jim DiPeso, support increasing the settlement amount for the IOUs' Subscription settlements of the Residential Exchange Program from 1800 aMW to 1900 aMW for the FY2002-2006 period. See WUTC, IOU-004; Avista, IOU-005; Seattle, IOU-006; WDCTED, IOU-007; Portland City Commission, IOU-010; DiPeso, IOU-003. WUTC argues that the increase is a wise policy decision and it helps ensure that interest in the system and preserving the system as a valuable benefit in the Northwest will be shared as broadly among the region's voters as possible. WUTC, IOU-004. Avista and WDCTED argue that BPA must adopt the increase in the settlement amount in order to work toward the goal of BPA's Subscription Strategy to "spread the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region." Avista, IOU-005, WDCTED, IOU-007. Seattle argues that the increase and overall settlement represents a reasonable settlement of the traditional Residential Exchange Program. Seattle, IOU-006. Seattle also argues that the settlement staves off contentious issues surrounding the traditional Residential Exchange Program as well as provides a fair allocation of power to the IOUs. *Id.* The Portland City Commission believes that this increase will help ensure an appropriate sharing of benefits of Federal power among the residential ratepayers in the Northwest. Portland City Commission, IOU-010.

Avista, Portland General Electric (PGE), Idaho Power Company (IPC), Montana Power Company (MPC), and PacifiCorp (collectively the "IOUs") also support BPA's proposal to increase the Federal benefits to the residential and small farm

consumers of IOUs for the FY2002-2006 period by 100 aMW. See IOUs, IOU-011. However, the IOUs argue that BPA's proposal fails to provide an equitable level of benefits to the residential and small farm customers of IOUs. *Id.* They contend that BPA should further increase the benefits to provide value for IOU residential customers proportionate to their load share. *Id.*

Puget Sound Energy (Puget) argues that BPA's proposal to increase the Federal benefits to the residential and small farm customers of IOUs for FY2002-2006 by 100 aMW still fails to provide an equitable level of benefits to the residential and small farm customers of IOUs. Puget, IOU-013. Further, Puget argues that the total level (1800 aMW plus 100 aMW) falls short of satisfying BPA's statutory obligations or producing a fair settlement of the Residential Exchange Program or producing a fair end result. *Id.* Puget argues that even with the increase, Puget's residential customers would receive for the FY2002-2006 period about \$50 million per year less than they did prior to the 1996 BPA rate case. *Id.* Puget further contends that BPA's proposed 2002 preference rate would result in a \$150 million reduction in charges to its preference customers as compared with BPA's 1996 preference rate. *Id.* In summary, Puget argues that BPA is proposing a decrease in benefits for residential customers of IOUs while increasing benefits for BPA's preference customers. *Id.*

Nespelem Valley Electric Cooperative (Nespelem), Springfield Utility Board (SUB), and Inland Power and Light Company (Inland) argue that BPA should not increase the IOU Subscription settlement of the Residential Exchange Program amount by 100 aMW. Nespelem, IOU-002; SUB, IOU-047; Inland, IOU-009. Nespelem contends that rural public customers are offsetting the higher costs of urban IOUs and thus it is not fair to public power. Nespelem, IOU-002. SUB notes that its comments are included in its direct testimony in BPA's current rate case. SUB, IOU-047. SUB's direct testimony contends that the IOUs have no right to purchase Federal base system (FBS) power and sales to IOUs erode SUB's rights to purchase lowest cost base Priority Firm power. Nelson, WP-02-E-SP-01 at 2. Tillamook People's Utility District (Tillamook) and OURCA argue that BPA should not commit to allocating an additional 100 aMW of benefits to the IOUs unless BPA can assure that all preference and priority rights of the public preference customers are secure. Tillamook, IOU-008, Cable Huston, IOU-014. Tillamook and OURCA are concerned that the proposed settlement of the Residential Exchange Program with the IOUs may increase the rate charged to the public preference customers. Tillamook, IOU-008; Cable Houston, IOU-014. Tillamook is further concerned that the increase of 100 aMW may increase the probability that the proposed CRAC or other risk mitigation tools will trigger. Tillamook, IOU-008. Tillamook, OURCA, and Inland argue that public preference customers should not be forced to pay a higher rate than if BPA was not providing power or benefits to the IOUs. Tillamook, IOU-008; Cable Houston, IOU-014; Inland, IOU-009. Tillamook argues that the public preference and priority rights may be maintained if BPA purchases the additional 100 aMW of

benefits in the market and requires the IOUs to bear the full cost of this augmentation. Tillamook, IOU-008.

The IOUs and Puget are concerned that the conditions on which the increase would be based disproportionately burden the residential customers with BPA's other priorities (such as fish and wildlife, sales to the DSIs, and preserving the spread between the market rate of energy and the PF rate for public agencies and cooperatives). IOUs, IOU-011, Puget, IOU-013. Mr. DiPeso argues that BPA should not condition the proposed increase to the IOUs on the level of sales to the DSIs. DiPeso, IOU-003. He contends that because BPA has no legal obligation to sell power to the DSIs, it is unfair for the DSIs to be placed ahead of residential and small farm consumers of IOUs in BPA's allocation of power. *Id.*

The Portland City Commission does not agree with all of the conditions of the proposed increase to the IOU Subscription settlement of the Residential Exchange Program. Portland City Commission, IOU-010. The Portland City Commission argues that it is reasonable that there should be no increase in the PF rate, no decrease in Treasury Payment Probability, and no reduction in BPA's ability to meet its Fish and wildlife commitment. *Id.* However, the Portland City Commission argues that there is no connection between sales to IOUs for their residential consumers and sales to DSIs. *Id.* The Portland City Commission contends that BPA should retain the flexibility to reduce service to the DSIs from levels in the Initial Proposal if necessary to increase the service to IOUs to 1900 aMW and meet other obligations. *Id.* The Portland City Commission claims the settlement of the Residential Exchange Program for the IOUs should not be contingent on any given level of service to the DSIs. *Id.*

Evaluation and Decision:

The four Northwest state utility commissions (Commissions), in a letter dated July 23, 1999, requested that BPA increase the amount of the settlement from 1800 aMW to 1900 aMW for the FY 2002-2006 period. This request was made in order for the Commissions to arrive at a joint recommendation for allocating the settlement benefits among the IOUs for both the FY2002-2006 and FY2007-2011 periods. Many parties support this increase for many reasons, including: (1) the increase is a wise policy decision and it helps to ensure that the regional interest in the system and preserving the system as a valuable benefit in the Northwest will be shared as broadly as possible among the region's voters; (2) the increase is appropriate in order for BPA to achieve the stated Subscription Strategy goal to "spread the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region," see Subscription Strategy at 5; (3) the increase creates a fair and reasonable settlement to the Residential Exchange Program for the IOUs; (4) the increase to the settlement staves off contentious issues surrounding the traditional Residential Exchange Program as well as provides a fair allocation of power to the IOUs; and (5) the increase will help ensure an

appropriate sharing of benefits of Federal power among the residential ratepayers in the Northwest. See WUTC, IOU-004; Avista Corp, IOU-005; Seattle, IOU-006; WDCTED, IOU-007; Portland City Commission, IOU-010; DiPeso, IOU-003. Others parties support the increase but would like an additional increase. IOUs, IOU-011, Puget, IOU-013.

The IOUs and Puget argue that while they support the additional 100 aMW in the settlement amount, BPA's proposal fails to provide an equitable level of benefits to the residential and small farm customers of IOUs because it would provide only 23-24 percent of Federal power benefits for 60 percent of the region's households. IOUs, IOU-011; Puget, IOU-013. They contend that BPA should further increase the benefits to provide value for IOU residential customers proportionate to their load share. *Id.* Further, Puget argues that the total level (1800 aMW plus 100 aMW) falls short of satisfying BPA's statutory obligations or producing a fair settlement of the Residential Exchange or producing a fair end result. *Id.* Puget argues that even with the increase, Puget's residential customers would receive for the FY2002-2006 period about \$50 million per year less than they did prior to the 1996 BPA rate case. *Id.* Puget further contends that BPA's proposed 2002 preference rate would result in a \$150 million reduction in charges to its preference customers as compared with BPA's 1996 preference rate. *Id.* In summary, Puget argues that BPA is proposing a decrease in benefits for residential customers of IOUs while increasing benefits for BPA's preference customers. *Id.*

First, the issue of whether the Subscription settlement benefits to IOUs should be greater than those proposed in the Subscription Strategy (plus 100 aMW) is outside the scope of this public comment process. As noted in BPA's November 17, 1999, letter, BPA requested comments on *only* two issues: (1) whether the amount of the settlement should be increased by 100 aMW from 1800 aMW to 1900 aMW for the FY2002-2006 period, and (2) how the settlement amounts should be allocated among the individual IOUs. This process is not intended to address the larger issue of the sufficiency of the overall settlement benefits. The issue of the overall amount of benefits was addressed in the Subscription Strategy. See Subscription Strategy at 9. Nevertheless, while BPA is not deciding this issue in this comment process, BPA will respond briefly to the IOUs' arguments.

The IOUs' arguments must be viewed in the context of the statutory framework that provides benefits to all of BPA's customers. The primary law establishing these obligations is the Northwest Power Act. The implementation of the directives of the Northwest Power Act results in benefits of the Federal power system that flow to BPA's customers and, where applicable, to subsequent consumers of those customers. One of the most fundamental requirements of the Northwest Power Act is that public bodies and cooperatives have preference and priority to the purchase of Federal power to meet their net requirements. 16 U.S.C. 832(a), 16 U.S.C. 839c(a). This power is used to serve all requirements

loads of such preference customers, including residential, commercial, and industrial loads. Preference customers also pay the PF Preference rate for their power purchases. BPA's rate directives establish the manner in which BPA must allocate costs in establishing the PF rate, which applies to BPA's preference customers and utilities participating in the Residential Exchange Program. 16 U.S.C. 839e(b)(1). BPA's preference customers, under law, are entitled to significant benefits from the Federal system. IOUs also have significant benefits under law. Like BPA's preference customers, IOUs may place their net requirements load on BPA. 16 U.S.C. 839c(b)(1). Unlike BPA's preference customers, however, the rate directives for IOUs' requirements power are governed by section 7(f) of the Northwest Power Act, not section 7(b).

The IOUs may receive additional benefits from the Northwest Power Act. The primary manner in which IOUs receive these benefits is through the Residential Exchange Program. 16 U.S.C. 839c(c). Under the Residential Exchange Program, BPA "purchases" power from each participating utility at that utility's ASC. The Administrator then offers, in exchange, to "sell" an equivalent amount of electric power to the utility at BPA's Priority Firm Exchange (PF Exchange) power rate. The amount of power purchased and sold is the qualifying residential and small farm load of each utility participating in the Residential Exchange Program. The Northwest Power Act requires that the net benefits of the Residential Exchange Program be passed on directly to the residential and small farm customers of the participating utilities. Under the normal implementation of the Residential Exchange Program, no actual power is transferred either to or from BPA. The "exchange" has been referred to as a "paper" transaction, where BPA provides the participating utility cash payments that represent the difference between the power "purchased" by BPA and the less expensive power "sold" to the participating utility.

Under the Residential Exchange Program, exchanging utilities, including the IOUs, pay the PF Exchange rate for power purchased from BPA. This rate, however, may not be the same level as the PF Preference rate. The Northwest Power Act established what is called the section 7(b)(2) rate test. This test is designed to protect preference customers from certain costs incurred under the Northwest Power Act, including Residential Exchange costs. If the section 7(b)(2) rate test does not trigger, the PF Preference rate and the PF Exchange rate are equal. If the section 7(b)(2) rate test triggers, however, the PF Exchange rate is subject to a surcharge and is higher than the PF Preference rate. The lower the PF Exchange rate, the higher the exchange benefits. The higher the PF Exchange rate, the lower the exchange benefits. Where, as in the current rate case, the section 7(b)(2) rate test triggers, there is an increase in the PF Exchange rate and a reduction in Residential Exchange benefits. This is the way that the Northwest Power Act works. In years when the 7(b)(2) rate test did not trigger, as has occurred periodically over the last 15 years, the IOUs received greater benefits. In years when the 7(b)(2) rate test triggered, the IOUs received lesser benefits. In summary, while different customer classes may receive

greater or lesser benefits of the Federal system in any particular rate period, this is a result of the implementation of the power sale and rate directives of the Northwest Power Act. While some customer classes may receive greater benefits than other customer classes, BPA cannot unilaterally change the law.

Puget argues that the total level (1800 aMW plus 100 aMW) of settlement benefits falls short of satisfying BPA's statutory obligations or producing a fair settlement of the Residential Exchange or producing a fair end result. Puget, IOU-013. BPA disagrees. First, BPA has statutory obligations with regard to the Residential Exchange Program. 16 U.S.C. 839c(c). As noted previously, BPA is properly developing rates in its current rate case and proposes to properly implement the Residential Exchange Program. In certain circumstances, however, implementation of the Northwest Power Act's power sale and rate directives will result in providing a limited amount of benefits to exchanging utilities in any particular rate period. With regard to the proposed Residential Exchange settlements, Puget has not cited any statutory obligations that BPA must follow in developing the proposed settlements. BPA has broad discretion to enter into settlements. 16 U.S.C. 832a(f); 16 U.S.C. 839f(a). See *Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 442-43 (9th Cir. 1989).

Puget argues that even with the increase, BPA is proposing a decrease in benefits for residential customers of IOUs while increasing benefits for BPA's preference customers. Puget, IOU-013. Again, as explained above, the benefits provided to BPA's customer classes are based on the directives of the Northwest Power Act. BPA believes that it is properly implementing these directives. These directives, however, do not require that the benefits provided to each customer class will be equal. Benefits to each customer class will vary with the conditions that affect the implementation of BPA's statutory directives. Also, the Northwest Power Act does not specify any particular level of Residential Exchange benefits for exchanging utilities. Congress recognized that there were factors that could reduce or eliminate Residential Exchange benefits.

BPA also believes that the amount of power and monetary payments available in the Subscription settlement proposal is an appropriate level for settlement of the Residential Exchange Program. BPA, its customers, and other interested parties in the region worked approximately two years in developing BPA's Subscription Strategy. From the inception of discussions regarding Subscription sales to IOUs, such sales involved the settlement of rights to the Residential Exchange Program. BPA increased the proposed settlement amount from 1500 aMW to 1800 aMW in the final Subscription Strategy. In addition, BPA is currently considering the addition of another 100 aMW. Furthermore, BPA proposed its Subscription Strategy with a number of goals, including the goal of spreading the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region. See Subscription Strategy at 3-4. BPA believes that its Subscription Strategy achieves this goal. BPA's goal of spreading the benefits of the Federal Columbia

River Power System as broadly as possible, with special attention given to the residential and rural customers of the region, is implemented in the Subscription Strategy by BPA's proposed settlements of the Residential Exchange Program with regional IOUs. BPA's rate case has proposed rates that would implement the traditional Residential Exchange Program and the proposed settlements. BPA's forecasted Residential Exchange benefits to the IOUs comprise approximately \$37 million per year during the rate period, although there are circumstances that could increase these benefits. In providing special attention to residential and small farm customers of the IOUs and giving them an additional option in access to Federal benefits, BPA forecasted exchange settlement benefits to the IOUs that comprise approximately \$140 million per year during the rate period. To suggest that BPA is not providing a fair settlement to the Residential Exchange Program for the IOUs is incorrect. In addition, it is important to recall that BPA is not requiring any regional IOU to execute the proposed settlement agreements. Any IOU may continue with the traditional implementation of the Residential Exchange Program.

Nespelem Valley Electric Cooperative (Nespelem), Inland Power and Light Company (Inland), and Springfield Utility Board (SUB), argue that BPA should not increase the amount of the IOU Subscription settlement of the Residential Exchange Program by 100 aMW. Nespelem, IOU-002; Inland, IOU-009; SUB, IOU-047. Nespelem contends that the proposed 1800 aMW of settlement benefits was already too generous and that rural public customers are paying money to offset the higher costs of urban IOUs and thus it is not fair to public power. Nespelem, IOU-002. BPA notes that under the Northwest Power Act, the cost of the Residential Exchange Program has often been used in the development of the PF Preference rate. The Northwest Power Act provides that the rate for general requirements sales to preference customers and for sales to exchanging utilities (subject to the 7(b)(2) rate test) "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) [the Residential Exchange Program] and then from other sources." 16 U.S.C. 839e(b)(1). The Residential Exchange Program was intended, in part, to provide benefits to IOUs because such utilities incurred higher costs when their access to firm power sales from BPA was limited. For these reasons, the Residential Exchange Program and the proposed settlements of that program are fair to preference customers.

SUB objects to the sale of power to the IOUs as part of a settlement without such sales being in compliance with statutory requirements and notes that its comments are included in its direct testimony in BPA's current rate case. SUB, IOU-047. First, SUB's arguments are beyond the scope of this public comment process. As noted in BPA's November 17, 1999, letter, BPA requested comments on *only* two issues: (1) whether the amount of the settlement should

be increased by 100 aMW from 1800 aMW to 1900 aMW for the FY 2002-2006 period, and (2) how the settlement amounts should be allocated among the individual IOUs. This process is not intended to address the issue of the nature of the power sales under the proposed settlements. Nevertheless, while BPA is not deciding this issue in this comment process, BPA will respond briefly to SUB's arguments. BPA is authorized to make sales to IOUs under a number of statutory provisions. BPA may sell requirements power to the IOUs under section 5(b) of the Northwest Power Act. 16 U.S.C. 839c(b). BPA may sell in lieu power to the IOUs under section 5(c)(5) of the Act. 16 U.S.C. 839c(c)(5). BPA may also sell power to the IOUs pursuant to section 5(f) of the Act. 16 U.S.C. 839c(f). BPA determined that it is appropriate to offer requirements power to the IOUs, because the IOUs have a right to such power purchases, and such power sales were an appropriate part of the consideration for the establishment of the proposed Residential Exchange settlements. In addition, in the Subscription Strategy, BPA concluded that net requirements power sales could be a component of a settlement of the Residential Exchange Program with the IOUs. See Subscription Strategy at 8, 16. BPA believes that the proposed settlement sales are consistent with statutory requirements. In SUB's direct rate case testimony, SUB contends that the IOUs have no right to purchase FBS power and sales to IOUs erode SUB's rights to purchase lowest cost based Priority Firm power. See Nelson, WP-02-E-SP-01, at 2. As this issue was raised in BPA's rate case, BPA defers to its rate case resolution of this issue. In any event, however, SUB appears to misread section 7(b)(1) of the Northwest Power Act. Section 7(b)(1) provides:

The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements 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 U.S.C. 839e(b)(1). BPA is expressly complying with this provision. The FBS is a single resource pool and is not divided into separately priced portions that serve any particular customer class. BPA has the authority to replace reductions in the capability of the FBS resources. 16 U.S.C. 839a(10). BPA also has authority to purchase power to meet its forecasted contractual obligations to its customers. 16 U.S.C. 839d. The amount of BPA's proposed augmentation purchases is well below the amount of the reductions in the capability of the FBS that BPA is authorized to replace. BPA's purchases, as FBS replacements, increase the size of the FBS. However, BPA's rates for preference customers

and Federal agency customers are still recovering the costs only of that portion of the FBS resources needed to supply such loads. Remaining FBS resources are allocated in accordance with the rate directives. The Northwest Power Act expressly recognizes that the FBS may exceed the requirements of its preference customers. For example, section 7(f) of the Northwest Power Act notes that “all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of *Federal base system resources*, purchases of power under section 5(c) of this Act and additional resources which, in the determination of the Administrator, are applicable to such sales.” 16 U.S.C. 839e(f) (emphasis added). It is therefore clear that section 7(b)(1) does not prohibit purchases to replace reductions in the capability of the FBS. Once the FBS was determined, BPA properly allocated to the PF Preference rate “the costs of that portion of the Federal base system resources needed to supply such loads.” 16 U.S.C. 839e(b)(1). An increase of 100 aMW for the IOU settlements will not erode preference customers’ rights to purchase Federal power to meet their net requirements at the PF Preference rate but rather reflects BPA’s compliance with the rate directives of the Northwest Power Act.

Tillamook People’s Utility District (Tillamook) and OURCA argue that BPA should not commit to allocating an additional 100 aMW of benefits to the IOUs unless BPA can assure that all preference and priority rights of the public preference customers are secure. Tillamook, IOU-008; Cable Houston, IOU-014. BPA has proposed to meet all preference customer net requirements loads placed upon BPA at the PF Preference rate. BPA believes that the 100 aMW increase in IOU settlement benefits will not affect the preference and priority rights of BPA’s preference customers. BPA’s preference customers will continue to have preference and priority to BPA power and BPA’s net requirements firm power sales will be at the PF Preference rate.

Tillamook and OURCA are concerned that the proposed settlement of the Residential Exchange Program with the IOUs may increase the rate charged to the public preference customers. Tillamook, IOU-008; Cable Houston, IOU-014. Tillamook is further concerned that the increase of 100 aMW may increase the probability that the proposed CRAC or other risk mitigation tools will trigger. Tillamook, IOU-008. Tillamook, OURCA, and Inland argue that public preference customers should not be forced to pay a higher rate than if BPA was not providing power or benefits to the IOUs. Tillamook, IOU-008; Cable Houston, IOU-014; Inland, IOU-009. Tillamook argues that public preference and priority rights may be maintained if BPA purchases the additional 100 aMW of benefits in the market and requires the IOUs to bear the full cost of this augmentation. Tillamook, IOU-008. The foregoing issues are rate development issues. The current public process on whether to increase the IOU settlement amount will not decide how BPA will allocate costs for ratemaking purposes. This can only be decided in a section 7(i) hearing. 16 U.S.C. 839e(i). In BPA’s Federal Register notice for its 2002 wholesale power rate case, BPA noted that it would accept

comment *in the rate case* regarding the manner in which a 100 aMW increase in the IOU settlement amount would affect BPA's rates for power sales to its customers. See 2002 Proposed Wholesale Power Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment, 64 Fed. Reg. 44318 (1999). In any event, in BPA's rate case, in response to the suggestion that BPA should increase the proposed settlement amount from 1,800 aMW to 1,900 aMW, BPA noted that BPA would consider adding the additional 100 aMW as long as BPA's goal of not increasing the average PF Preference rate over present levels could be met, no change in Treasury Payment Probability is required, no change in the DSI rate proposal is required, and there is no impact on BPA's ability to meet its fish and wildlife commitments. These conditions provide significant protection to BPA's preference customers. To the extent that the increase could be achieved consistent with the above-noted conditions, it would be appropriate to reflect 1,900 aMW, not 1,800 aMW, as the IOUs' proposed settlement benefits in BPA's rate case in order to ensure that BPA's rates are established in a manner that would recover BPA's costs. In other words, if BPA included only 1,800 aMW for ratemaking purposes, but actually provided 1,900 aMW, BPA would incur costs during the rate period that were not incorporated in BPA's rates.

With regard to the suggestion that BPA should purchase power and require the IOUs to bear the full cost of the additional 100 aMW, again, this is clearly a ratemaking issue. In any event, this proposed treatment would be inappropriate because BPA has proposed an appropriate method of allocating the costs of the proposed IOU settlements in BPA's rate case. Simply because the amount is increased by 100 aMW does not mean that these costs should be treated differently. In BPA's rate case, the Rate Analysis Model equitably allocates the Residential Exchange Program settlement cost, a cost not otherwise allocated under section 7 of the Northwest Power Act, of the cash payment associated with the 800 aMW portion of the proposed settlement between the PF Preference class and the RL class. See Doubleday, *et al.*, WP-02-E-BPA-18, at 17-18. The effect of this adjustment is to equate the two rates. *Id.* This initial allocation of costs is consistent with the Subscription Strategy's expectation that PF Preference class customers and Residential Load (RL-02 rate) customers would pay similar rates for similar products. *Id.* This is appropriate because this allocation results in a rate level for the settlement sales that supports the proposed value of the settlement of the Residential Exchange Program with regional IOUs. See Doubleday, *et al.*, WP-02-E-BPA-44, at 13. This allocation also helps to promote the wide and diversified use and distribution of Federal power. *Id.*

As noted previously, BPA proposed to agree to increase the IOU settlement amount by 100 aMW to meet the Commission's request as long as: BPA's goal not to increase the average PF rate over present levels can be met; the increase does not require BPA to reduce its Treasury Payment Probability; the increase does not require a change in proposed sales to the DSIs; and, there is no impact

from the increase on BPA's ability to meet its fish and wildlife commitments. The IOUs and the Portland City Commission argue that the conditions BPA placed on the proposed 100 aMW increase disproportionately burden residential customers with BPA's other priorities and that BPA should not condition the proposed increase to the IOUs on the level of sales to the DSIs. IOUs, IOU-011; City of Portland, IOU-010. BPA respects the IOUs' and the City of Portland's concerns regarding these conditions. BPA believes, however, that the proposed 100 aMW increase in settlement benefits must be viewed in light of other stakeholders' interests in benefits from the Federal system. With regard to BPA's sales to the DSIs, BPA believes that the DSIs' interests are relevant for a number of reasons: (1) the DSIs have been customers of BPA for more than 60 years, (2) they have played a significant role in the development and health of the Northwest economy, and (3) sales to the DSIs can sustain critical jobs in the Northwest without significant impacts to other BPA customers' rates. Thus, the consideration of future sales to the DSIs is reasonable. Furthermore, one of BPA's Subscription goals is to spread "the benefits of the Federal Columbia River Power System as broadly as possible ..." In BPA's Draft ROD in the current BPA rate case, BPA concluded that its draft rate proposal would satisfy the foregoing conditions. Consequently, BPA's draft rate proposal also found it appropriate to reflect an additional 100 aMW in the Residential Exchange settlement benefits offered to BPA's regional IOU customers.

BPA respects certain parties' positions that the IOU settlement amount should not be increased and, conversely, BPA respects certain parties' positions that the settlement amount should be increased even more than proposed. After review of the comments, however, BPA finds the arguments for increasing the IOU settlement amount by 100 aMW to be compelling. These reasons include the following: (1) the increase is a wise policy decision and it helps to ensure that the regional interest in the system and preserving the system as a valuable benefit in the Northwest will be shared as broadly as possible among the region's voters; (2) the increase is appropriate in order for BPA to achieve the stated Subscription Strategy goal to "spread the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region," see Subscription Strategy at 5; (3) the increase creates a fair and reasonable settlement to the Residential Exchange Program for the IOUs; (4) the increase to the settlement staves off contentious issues surrounding the traditional Residential Exchange Program as well as provides a fair allocation of power to the IOUs; and (5) the increase will help ensure an appropriate sharing of benefits of Federal power among the residential ratepayers in the Northwest. These arguments are reflected, in part, in the comments of the WUTC, WUTC, IOU-004; the joint comments of Avista, PGE, IPC, MPC, and PacifiCorp, IOUs, IOU-011; Avista, IOU-005; Puget, IOU-013; WDCTED, IOU-007; Seattle, IOU-006; Portland City Commission, IOU-010; and Jim DiPeso, IOU-003. In addition, as is noted in BPA's Draft Record of Decision for the wholesale power rate case, the conditions surrounding the proposed increase to the proposed Subscription settlement of the Residential Exchange for

the IOUs are expected to be met. Therefore, BPA will increase the amount of total benefits for the proposed settlements of the Residential Exchange Program with regional IOUs from 1800 aMW to 1900 aMW. However, BPA has not yet offered or executed any of the proposed IOU Subscription settlements. These proposed settlements will be negotiated with the interested IOUs, and then there will be a 30-day public comment period for all interested parties to advise BPA regarding the propriety of the proposed settlements. This later forum will be where parties can direct their comments regarding whether BPA should enter into the proposed settlement agreements, whether the proposed settlements are reasonable, or any other issue within the scope of the proposed settlements. Issues outside the scope of the settlements will not be addressed in this process, e.g., issues regarding rates that apply to the settlements, which can only be established in a section 7(i) hearing. After reviewing the parties' comments, the Administrator will determine whether it is appropriate to enter into the proposed settlement agreements.

F. Allocation of Residential Exchange Settlement Benefits Among Pacific Northwest Investor-Owned Utilities

Issue:

Whether the amount of power available to the IOUs under Subscription for settlement of the Residential Exchange Program should be allocated among the individual IOUs as follows:

	Amount of Settlement (aMW) FY2002-2006	Amount of Settlement (aMW) FY2007-2011
Avista Corp. (1)	90	149
Idaho Power Company (1)	120	225
Montana Power Company	24	28
PacifiCorp (Total)	476	590
<i>PacifiCorp (UP&L)</i>	140	140
<i>PacifiCorp (PP&L – WA) (1)</i>	83	109
<i>PacifiCorp (UP&L – OR) (1)</i>	253	341
Portland General Electric	490	560
Puget Sound Energy	700	648
Total	1900	2200

(1) The allocation of benefits among the states served by these multi-state utilities will be based on the forecasts of the respective state residential and small farm loads at the time the IOU signs its settlement agreement.

Subscription Strategy:

With regard to the allocation of settlement benefits among the IOUs, the 1998 Subscription Strategy states that “BPA will request comments from interested parties regarding the amounts of subscription power and benefits that should be provided to individual IOUs. The Pacific Northwest State utility commissions (Commissions) have indicated that they will collaborate on a recommendation on this topic, which BPA would welcome. BPA will then determine the appropriate amounts.” See Subscription Strategy at 9. BPA solicited the Commissions’ views on the proposed allocation of settlement benefits and received a proposal from the Commissions. BPA adopted that proposal as BPA’s proposal for purposes of seeking public comment, as described in greater detail below.

Parties’ Comments:

The WUTC, Avista, Seattle, WDCTED, and the Portland City Commission support BPA’s proposed allocation. WUTC, IOU-004; Avista Corp., IOU-005; Seattle, IOU-006; WDCTED, IOU-007; Portland City Commission, IOU-010. Avista, PGE, IPC, MPC, and PacifiCorp (the “IOUs”) also support BPA’s proposed allocation and support the involvement of the Commissions in the determination the allocation of settlement benefits among the individual IOUs. IOUs, IOU-011. The IOUs argue it is appropriate for BPA to weigh heavily the Commissions’ joint recommendation concerning the allocation of benefits. *Id.* Seattle views the Commissions as being the best arbiters of the settlement among the IOUs. Seattle, IOU-006. WDCTED contends that the proposed allocation establishes access to a level of benefits that recognizes changed market conditions while at the same time addresses the needs and issues important to each of the four states. WDCTED, IOU-007. Avista supports BPA’s proposed allocation but notes that if the settlement amounts were allocated based upon pro rata residential exchange load in the FY2002-FY 2006 and FY2007-FY2011 periods, the settlement amounts to Avista’s customers would be 174 aMW and 202 aMW, respectively, as compared with the Commissions’ recommendation of 90 aMW and 149 aMW. Avista, IOU-005.

Puget argues that the allocation of settlement benefits among the individual IOUs should be based on each IOU’s average system cost (ASC). Puget, IOU-013. Puget reasons that this approach is more equitable because Puget experienced very high load growth when replacement resource costs were high and therefore Puget has a relatively high ASC. *Id.* Puget argues that a fundamental concept of the Northwest Power Act was to allocate benefits of Federal power to the customers of those utilities experiencing increased costs as they acquire expensive new resources to meet load growth in the region. *Id.* Puget argues that this manner of allocation benefits should continue through the FY 2011 period. *Id.*

The WUTC recommends changing the sentence “If an IOU chooses to request Residential Exchange Program benefits under section 5(c), then the Subscription settlement amount for all the IOUs would be reduced by the amount that would have gone to the exchanging utility,” to “If an IOU chooses to request Residential Exchange Program benefits under section 5(c), then the total IOU Subscription settlement amount ~~for all the IOUs~~ would be reduced by the amount *originally allocated that would have gone* to the exchanging utility, *with the settlement amounts allocated to the other utilities remaining unchanged.*” WUTC, IOU-004.

The WUTC also recommends that BPA clarify that the Residential Exchange settlement amounts in total and for individual IOUs will not be affected by BPA’s 5(b) net requirements policy. WUTC, IOU-004. Further, WUTC contends that changes in non-residential (commercial or industrial) loads of IOUs should not affect the allocations. *Id.*

Evaluation and Decision:

BPA solicited the Commissions’ views on the proposed allocation of settlement benefits. This was appropriate because the Commissions have traditionally been responsible for establishing retail electric rates for residential consumers of the regional IOUs, including the credit applied to those rates to reflect benefits of the Residential Exchange Program as determined by BPA. The Commissions also have a statutory responsibility to the residential consumers of the IOUs in their particular state jurisdiction. Furthermore, because of these responsibilities, a joint recommendation by the Commissions would likely reflect a fair allocation of benefits among the residential consumers of the Northwest states and would enhance the likelihood of BPA delivering the benefits in a way that will work for each state and its consumers.

The Commissions collaborated and submitted a joint recommendation on the proposed allocation of the settlement benefits. They noted that their recommendation reflects many different considerations, including the amount of residential and small farm load eligible for the Residential Exchange Program, the historical provision of Residential Exchange benefits, the Residential Exchange benefits received in the last five-year period ending June 30, 2001, rate impacts on qualifying customers, and the individual needs and objectives of each state. BPA reviewed the Commissions’ recommendation and determined that this proposal was a reasonable approach upon which to take public comment. The specific allocations proposed by the Commissions are noted in the table above.

Virtually all commenters supported the allocation recommended by the Commissions and proposed by BPA. See WUTC, IOU-004; Avista, IOU-005; Seattle, IOU-006; WDCTED, IOU-007; Portland City Commission, IOU-010; and Avista, PGE, IPC, MPC, and PacifiCorp, IOUs, IOU-011. The reasons for such support include: (1) it is appropriate for BPA to weigh heavily the Commissions’

joint recommendation concerning the allocation of benefits, (2) the Commissions are the best arbiters of the settlement among the IOUs, and (3) the proposed allocation establishes access to a level of benefits that recognizes changed market conditions while at the same time addresses the needs and issues important to each of the four states. It is worthy of note that BPA's allocation has received support from diverse customer and interest groups: publicly owned utilities, IOUs, state commissions, state agencies, and a city commission.

Puget argues that the allocation of settlement benefits among the individual IOUs should be based on each IOU's ASC. Puget, IOU-013. Puget argues that its ASC is relatively high due to purchasing high cost replacement resources. *Id.* Puget also argues that because of its high costs, Puget's allocation should not be decreased in the second five-year settlement period. *Id.* BPA recognizes Puget's proposal as one of many ways in which an allocation of benefits among the IOUs might be determined. Puget's proposal, however, focuses on a single element: utilities' ASCs. The Commissions' recommendation and BPA's proposal, however, rely on many different considerations, including the amount of residential and small farm load eligible for the Residential Exchange Program, the historical provision of Residential Exchange benefits, the Exchange benefits received in the last five-year period ending June 30, 2001, rate impacts on qualifying customers, and the individual needs and objectives of each state. BPA believes this is a more comprehensive basis on which to base an allocation. In addition, Puget's suggestion to rely on utilities' ASCs is troublesome. Residential Exchange Termination Agreements have been negotiated with all but one of the previously active exchanging utilities. Previously, an exchanging utility's ASC forecast was typically based on the costs included in its last approved ASC Report signed by the Administrator. Such costs were then adjusted to account for inflation, power purchases, and resource additions, and were then applied to forecasted loads for future periods to calculate the forecasted ASC. Because of the Residential Exchange Termination Agreements noted above, BPA no longer receives cost and load data from utilities through ASC filings as was previously required and provided under the RPSAs. BPA therefore does not have information for precise determinations of ASCs available. For example, the test years of the most recent ASC filings for Avista and IPC are 1983 and 1984, respectively. With such old data, BPA would be wary of basing an allocation solely upon ASCs.

In addition, if BPA were to adopt Puget's proposed methodology, only a few IOUs would be allocated the large majority of the total settlement amount. This conflicts with BPA's stated Subscription Strategy goal to "spread the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region." Further, the Commissions noted that their joint recommendation was based on many considerations, including historical Residential Exchange Program benefits, which would reflect those IOUs with higher ASCs. Finally, Puget acknowledges that BPA's allocation proposal allocates 7/19ths of the proposed benefits to

Puget's residential consumers for the FY2002-2006 period, which is a substantial portion of the total benefits. The Commission's recommendation and BPA's proposal to slightly reduce Puget's benefits in the FY2007-2011 period is based on the same consideration of the many factors identified by the Commissions in their proposal, and still retains substantial benefits for Puget during that period.

The WUTC recommends changing the sentence "If an IOU chooses to request Residential Exchange Program benefits under section 5(c), then the Subscription settlement amount for all the IOUs would be reduced by the amount that would have gone to the exchanging utility," to "If an IOU chooses to request Residential Exchange Program benefits under section 5(c), then the *total IOU* Subscription settlement amount would be reduced by the amount *originally allocated* to the exchanging utility, *with the settlement amounts allocated to the other utilities remaining unchanged.*" WUTC, IOU-004. The WUTC has articulated with greater clarity BPA's original intent regarding the noted language. BPA agrees with the WUTC's suggested revision.

The WUTC recommends that the settlement allocation amounts should not be affected by BPA's Section 5(b)/9(c) Policy. BPA's Section 5(b)/9(c) Policy was published on March 16, 2000. See Section 5(b)/9(c) Policy, 65 Fed. Reg. 52, 14259-65 (2000). The WUTC argues that the Residential Exchange settlement allocations should not be affected by the policy because they are settlements of BPA's obligations under section 5(c) of the Northwest Power Act that would otherwise be met by exchanges, not by net requirements sales. WUTC, IOU-004. The WUTC suggests that BPA clarify that the Residential Exchange settlement amounts in total and for individual IOUs will not be affected by changes in non-residential customer loads. *Id.* The WUTC has raised some important points, but these points raise a number of different issues. First, the total amount of settlement benefits provided to the IOUs will not be reduced by the Section 5(b)/9(c) Policy. However, the policy may affect the form of the benefits provided to any particular IOU. For example, if an IOU simply takes monetary benefits under the proposed settlements, such benefits are not affected by BPA's Section 5(b)/9(c) Policy. If, however, all or a portion of an IOU's benefits are comprised of net requirements sales under section 5(b) of the Northwest Power Act at the RL rate, such requirements sales are subject to BPA's Section 5(b)/9(c) Policy. While the WUTC notes that absent the settlement there would have been exchanges and not net requirements sales, one type of power product available under the proposed settlements is a net requirements product. Sales of this product are subject to BPA's policy. However, even in the event that BPA's policy reduced an IOU's net requirements purchases, such former purchases could be converted into cash benefits and the IOU's benefits would remain whole. In addition, if the power sales to an IOU that comprised the power portion of the settlement were in lieu sales under section 5(c) of the Northwest Power Act at the PF Exchange Subscription rate, such sales would not be subject to section 5(b) calculations of net requirements. 16 U.S.C. 839c(c)(6).

BPA’s allocation proposal (based on the Commissions’ recommendation) is a reasonable approach to distribute the benefits of the IOU Subscription settlements of the Residential Exchange Program. The allocation supports the stated Subscription Strategy goal to “spread the benefits of the Federal Columbia River Power System as broadly as possible, with special attention given to the residential and rural customers of the region.” These allocation amounts will be incorporated into the proposed settlement contracts with the individual IOUs that choose to settle the Residential Exchange Program. However, BPA has not yet offered or executed any of the proposed IOU Subscription settlements. These proposed settlements will be negotiated with the interested IOUs, and then there will be a 30-day public comment period for all interested parties to advise BPA regarding the propriety of the proposed settlements. This later forum will be where parties can direct their comments regarding whether BPA should enter into the proposed settlement agreements, whether the proposed settlements are reasonable, or any other issue within the scope of the proposed settlements. Issue outside the scope of the settlements will be addressed in this process, e.g., issues regarding rates that apply to the settlements, which can only be established in a section 7(i) hearing. After reviewing the parties’ comments, the Administrator will determine whether it is appropriate to enter into the proposed settlement agreements.

These following allocation amounts will be incorporated into the proposed settlement contracts with the individual IOUs that choose to settle the Residential Exchange Program:

	Amount of Settlement (aMW) FY2002-2006	Amount of Settlement (aMW) FY2007-2011
Avista Corp. (1)	90	149
Idaho Power Company (1)	120	225
Montana Power Company	24	28
PacifiCorp (Total)	476	590
<i>PacifiCorp (UP&L)</i>	140	140
<i>PacifiCorp (PP&L – WA) (1)</i>	83	109
<i>PacifiCorp (UP&L – OR) (1)</i>	253	341
Portland General Electric	490	560
Puget Sound Energy	700	648
Total	1900	2200

(1) The allocation of benefits among the states served by these multi-state utilities will be based on the forecasts of the respective state residential and small farm loads at the time the IOU signs its settlement agreement.

In order to clarify the meaning of the Subscription Strategy, the sentence that currently reads “If an IOU chooses to request Residential Exchange Program benefits under section 5(c), then the Subscription settlement amount for all the IOUs would be reduced by the amount that would have gone to the exchanging utility,” will be changed to read “If an IOU chooses to request Residential Exchange Program benefits under section 5(c), then the total IOU Subscription settlement amount would be reduced by the amount originally allocated to the exchanging utility, with the settlement amounts allocated to the other utilities remaining unchanged.”

VI. SLICE OF SYSTEM

Issue:

Should the Slice of System product be limited in quantity?

Subscription Strategy:

The 1998 Strategy presented the Slice of System product in a very early stage of development. Much work has been accomplished since then to refine the product.

Evaluation and Decision:

The Slice product is a new and innovative way of carrying out BPA’s longstanding mission of selling power from the Federal Columbia River Power System at cost to Pacific Northwest customers. As with any innovation, there were initially significant questions about Slice. For the past three years, BPA has been examining the costs, benefits, and risks of this new approach to selling federal power. We have conducted this examination through a public process, which has extended over nearly three years, a process which has been open to all interested parties. We have concluded that a limited amount of Slice sales is a reasonable addition to the overall mix of power products that BPA should offer in Subscription.

BPA believes that the Slice product most likely has neutral-to-positive impacts on the rates of BPA’s other power customers, on BPA’s ability to cover future cost uncertainties, on BPA’s ability to meet fish recovery obligations, and on BPA’s assurance of making Treasury payments.

Since the Slice product is a significantly different product for BPA, BPA intends to limit the amount of Slice product sales to between 1150 and 2000 aMW, a relatively small fraction of BPA’s total power sales. Thus, if any unanticipated problems with the Slice product arise, their impact will be limited. A final amount, within this range, will be decided in June 2000 and will be reflected in the Slice contracts that BPA will execute with customers before October 1, 2000.

VII. GENERAL TRANSFER AGREEMENTS

Issue:

Should PBL revise the Subscription Strategy to cover the costs associated with existing General Transfer Agreements for delivery of Federal power until the earlier of the term of the Subscription contract signed by the customer, or the formation of a Regional Transmission Organization?

Subscription Strategy:

In the Subscription Strategy, BPA stated that PBL would cover the costs associated with existing GTA s for delivery of Federal power through 2006. BPA's proposal is to cover these costs for existing customers until either the earlier of the term of the Subscription contracts or the formation of a Regional Transmission Organization.

Parties Comments:

The PPC stated that it "supports BPA's proposed payment of the general transfer agreement (GTA) costs associated with the transfer of federal power to existing BPA customers." PPC, 019, at 5. In joint comments filed by Avista, Enron, PGE, Idaho Power, Montana Power, Pacificorp, and Puget, these parties stated "we support the amendment," noting that "PBL should as a matter of policy continue to pay the GTA costs for federal power deliveries," but that "BPA should not, however, determine how the PBL will treat the GTA costs for rate design purposes beyond the current rate period ending in 2006." Avista et al., 042, at 3. Parkland Light and Water Company stated that it "strongly supports this change in the Subscription Strategy" Parkland, 032. Emerald PUD expressed support for "the on-going payment of all General Transfer Agreement costs for all preference customers." Emerald PUD, 026.

Clearwater Power Company stated that it supports BPA's general approach of allocating GTA costs to PBL, but added that PBL should agree "to continue to absorb these GTA costs for the entire 5-year rate period beginning October 1, 2001 in the event that an RTO is formed that does not adequately address the issue of pancaking." Clearwater, 034. Similarly, PNGC voiced its support, but stated "[i]n the event an RTO is formed but does not adequately address the issue of pancaking, PBL should continue this treatment for the full Subscription period." PNGC, 050.

PGP has stated that "BPA should extend/replace the GTAs as they expire, but any extensions and replacements should only last for the 2002-06 transition period." PGP, Comments on GTAs, Jan. 2000. PGP notes that "arranging for transfer service is a contract option for BPA, not a statutory requirement" and,

“[i]n the face of increasing competition, BPA should eliminate optional activities.” PGP notes that BPA’s customers “do not all benefit from GTA service” and therefore should not all be required to pay for such service. *Id.* at 2.

NRU stated that the Subscription Strategy approach to GTAs was “a compromise that should not be lightly altered.” NRU, 048, at 3. “If a change is necessary because BPA’s Power Business Line is concerned about a commitment of up to 20 years in duration through a new power sales contract, [NRU] would be willing to support a limit of 10 years.” *Id.*

BPA received virtually identical comments from many of the Tribes commenting on this proposal. Affiliated Tribes of Northwest Indians, 040; Spokane Tribe of Indians, 041; Shoshone –Bannock Tribes, 020; Cow Creek Band of Umpqua Tribe of Indians, 010. These parties noted that they have submitted “strong comments in the BPA power rate case supporting GTA service for new customers, putting them on par with your proposal for existing customers.” *Id.* They further noted their concern with BPA’s rate case proposal “for small new utilities qualifying for the PF rate” and their proposal “to increase the 75 MW limit” described in the PBL rate case for service to newly formed public utilities. *Id.* A comment letter from Margaret Schaff, “an interested individual that is familiar with issues of tribal utilities,” as well as Red Earth Energy, is in accord. Schaf, 039; Red Earth Energy, 011. The Yakama Nation addressed the perceived inequities caused by “pancaking charges” and states that the rationale giving rise to GTAs originally should be extended to rectify this inequity as it would apply to newly formed tribal utilities.” Yakama Nation, 037.

Evaluation and Decision:

The vast majority of comments appear supportive of BPA’s proposal. Subsequent to issuance of BPA’s Subscription Strategy ROD, many developments have occurred with respect to the formation of an RTO. While an RTO is still in very preliminary and formative stages, BPA believes it is appropriate at this juncture to account for the contingency that an RTO of some sort will be established.

In the Subscription Strategy, BPA stated it would continue existing GTA service through 2006 or the term of a customer’s subscription contract. As many parties point out, the primary concern that is addressed by the GTA’s is “pancaked” transmission service and “pancaked” rates. The term “pancaked” generally refers to separate and distinct transmission rates paid by a customer to wheel power across transmission systems owned by different transmission providers. If an RTO is formed, it may provide a more uniform rate for transmission service that addresses and resolves the issue of “pancaked” transmission rates.

Accordingly, BPA believes it is reasonable to clarify that BPA will continue existing GTA service until either the earlier of 2011 or the formation of an RTO.

However, given uncertainties and concerns expressed with respect to the nature of the RTO, the GTAs would terminate upon formation of an RTO only if the RTO meets the following criteria: (1) the RTO is operational; (2) the transmission facilities under the control and tariff of the RTO include the Federal Columbia River Transmission System, and all of the non-Federal transmission facilities necessary to deliver BPA's power to the customer, and (3) the RTO offers access at rates that are not pancaked. BPA believes these criteria should help alleviate some of the concerns raised by NRU, PNGC and PGP.

Lastly, numerous tribes have raised the issue of the availability of service to 75 aMW of new preference customer load. This issue was not part of BPA's revised subscription strategy proposal respecting GTAs. However, after consideration of these comments, BPA will make service under GTAs or open access tariffs available to new preference customers up to a limit of 75 average megawatts total increase.

BPA will continue to provide existing GTA service to customers for delivery of federal power through 2011 or the term of the customer's subscription contracts, unless a RTO forms that meet the following criteria: (1) the RTO is operational; (2) the transmission facilities under the control and tariff of the RTO include the Federal Columbia River Transmission System, and all of the non-Federal transmission facilities necessary to deliver BPA's power to the customer, and (3) the RTO offers access at rates that are not pancaked. PBL does not intend to compensate GTA customers for any cost shifts which may result from the formation of an RTO. Costs related to providing GTA service and allocated to PBL will be specifically described in BPA's final rate proposal in the WP-02 proceeding.

VIII. CONTRACT ELEMENTS

A. Contract Duration

Issue:

Should BPA place a ten-year limit on the maximum duration of power sales contracts?

Subscription Strategy:

BPA made no specific recommendation to change the assumption of power sales contracts having a statutory maximum allowable duration of twenty years.

Parties' Comments:

BPA received significant, unsolicited petitions on this subject. Three Northwest Governors, Governor Gary Locke of Washington (Administrator's Office Log

(AOL #2000-0113), Governor Marc Racicot of Montana (AOL #2000-0139), and Governor John Kitzhaber of Oregon (AOL #2000-0071) sent letters to the Administrator on this subject. Governors Racicot and Kitzhaber both expressed their concern that BPA power contracts of longer than five years duration may complicate efforts to alter (Columbia) river governance and/or create changes in administration of the Federal Columbia River Power System. Governor Locke expressed his belief that longer-term contracts would be beneficial to the region by demonstrating to the rest of the country the region's commitment to pay the full cost of federal power, including the environmental obligations. Governor Kempthorne sent a letter to Governor Kitzhaber in which Kempthorne expressed his reluctance to ask the Administrator to limit contract lengths to five years. AOL #2000-0165.

Four letters on this subject were received from U.S. Congressmen and Senators. Letters from Representative Jennifer Dunn (AOL #2000-0153) and Senator Ron Wyden (AOL #2000-0120) urged BPA to limit new power sales contracts duration to five years. Representative Dunn stated a belief that limiting new contracts to five years would not present future financial harm, citing BPA's strong financial position and predictions of continued below-market priced power. Senator Wyden argued that contracts of longer than five years could make electricity market restructuring more difficult, and urged that contracts not contain provisions that would make restructuring legislation more difficult. A joint letter from Senators Slade Gorton and Patty Murray argued that the speculative nature of restructuring and governance issues do not warrant the potential financial risk and that limiting the term of power sales contracts would only serve to further polarize the region on these issues. AOL #2000-0119. Senator Gordon Smith stated his belief that federal legislation would be the appropriate vehicle to address any issues regarding an orderly transition to a new system. AOL #2000-0164.

In addition, BPA received letters from the Pierce County Cooperative Power Association (SS-001), the Columbia Basin Electric Cooperative, Inc. (SS-002), and the City of Hermiston (SS-003), all urging at least ten-year contracts be offered. Earlier unsolicited comments included Avista, et. al (S018), Puget Power (S009), PGE (S007) Stoel Rives et. al (043), Murphy et. al (S006 and S009), and Mr. Eachus (045), all recommending contract terms not to exceed five years. Wells Electric (007), the PPC (018) the NRU (048) noted that contracts longer than five years should have an off-ramp (Wells), that BPA should limit the DSI block sales to five years (PPC) and that BPA should be clear about the term of contracts it wants (NRU).

Evaluation and Decision:

While BPA understands there are some concerns about the potential for power sales contracts impacting restructuring options, BPA also believes this concern must be balanced against BPA's need to create financial stability and to meet

BPA's commitments. It is the agency's assessment that the potential for these contracts having an impact on future restructuring efforts is modest. For example, the BPA title within the Administration's current electricity restructuring draft bill is almost entirely focused on transmission. The length of power sales contracts would have little or no impact on this particular legislation.

However, BPA recognizes the concerns raised by some members of the Northwest congressional delegation and certain governors of states in the Pacific Northwest. After considering the concerns raised by these parties, BPA will modify its current decision to offer contracts for up to twenty years. BPA will offer contracts to its preference and IOU customers with terms up to ten years. DSI contracts will be for a five-year term.

For public agency customers signing a Subscription contract, the contract will "lock in" the terms of the BPA Appropriations Refinance clause through September 30, 2011. The provision will preserve BPA's existing ratesetting discretion to allocate costs and design rates, including assuring cost recovery, but constrain the amount that BPA can recover through rates on the refinanced investments.

This modification to establish a ten year term limit on Subscription contracts with utility customers is consistent with the Fish and Wildlife Funding Principles agreed to within the Administration and endorsed by Vice President Gore. BPA expects that it will result in power sales contracts of staggered duration that will provide a more certain and stable funding source for BPA's fish and wildlife and Treasury payment obligations. This approach helps provide financial stability for BPA.

Another reason for the ten-year contract term is that BPA is concluding that 1900 aMW of benefits be included in contracts offered provided to regional IOUs for settlement of the Residential Exchange Program for FY 2002-2006 and 2200 aMW for FY 2007-2011. This level of benefits is consistent with a recommendation of the four Pacific Northwest State public utility commissions. The commissions urged that the 2200 aMW post-2006 level be a firm commitment, which it is. BPA will modify its post-2006 public agency prototype contracts to assure that if BPA's costs rise due to additional benefits to other customers, contract signatories are not insulated from those costs. This \$140 million annual commitment to IOU residential and rural customers during the initial five-year period more than doubles the benefits IOUs are receiving under current contracts.

BPA believes that contracts of staggered duration will balance the needs of BPA and its customers while still allowing policy changes upon which the region may agree during the period of the contracts.

B. Take-or-Pay

Issue:

Should BPA retain the take-or-pay nature of Subscription power sales contracts?

Subscription Strategy:

BPA made no specific recommendation to change the take-or-pay nature of Subscription power sales contracts.

Evaluation and Decision:

BPA's contracts continue to be take-or-pay under most circumstances although the approach to accomplish this and specific mitigation approaches have changed. As in the original strategy BPA continues to offer Full Service customers targeted retail access benefits. BPA has now decided to take on the risk of retail access load loss under state or Federally mandated retail access for all such customer's load and to offer this benefit to Dedicated Resource Partial customers. Consistent with the 1998 Subscription Strategy to encourage staggered purchases during Subscription, BPA also offers mandated retail access protection for amounts a customer commits to purchase at three-year rates to Simple Partial, Complex Partial and Block customers. BPA does not take on the risk of voluntary retail access under any of the business relationships.

With the exceptions noted above, the contracts are generally take-or pay. BPA's prototype contracts include a provision that requires the customer to cover BPA's financial losses if the customer loses load and BPA receives less from remarketing the power that would have been otherwise purchased by the customer under the customer's contracted BPA rates. This take-or-pay provision thus ensures that BPA's revenues will be maintained in the event that market prices move below BPA's rates.

C. Good Corporate Citizenship Clause

Issue:

Should BPA require a Good Corporate Citizenship Clause provision in contracts for the sale of power to all BPA customers?

Subscription Strategy:

BPA made no specific recommendation to include such a provision in contracts for the sale of power to its customers.

Evaluation and Decision:

The United Steelworkers of America requested BPA to include a Good Corporate Citizenship (GCC) clause as part of BPA's Subscription power sales contracts. BPA has reviewed and analyzed this request and decided not to include a GCC clause in Subscription contracts with utilities. However, BPA may include some type of GCC clause in power sales contracts with DSI customers. On April 21, BPA began a public process to determine whether to include such a provision in DSI contracts and, if so, the wording of such a clause.

D. Contract Right to Terminate if Rates Remanded and Changed

Issue:

If, as a result of a Federal Energy Regulatory Commission remand or court ruling, BPA subsequently establishes a rate for a customer that is higher than the rate proposed in the Final Rates Record of Decision, should customers be allowed to terminate the Subscription contract?

Subscription Strategy:

BPA made no specific recommendation to include such a provision in contracts for the sale of power to its customers.

Evaluation and Decision:

Customers commented that they will be basing their purchase decisions for the initial period covered by the contract on the rates proposed in BPA Final Rates Record of Decision. They felt that if BPA finds it necessary to change upward the specific rates that applied to the service supplied under the Subscription contract after the contract is signed, they should have the right to revisit the contract.

It is reasonable to allow the customers (including DSIs) to terminate the contract if the price is ultimately higher for a particular customer than was proposed in the Final Rates Record of Decision.

A termination provision has been added to the Subscription contract to address this issue. The provision will allow a specific customer to terminate within a limited period of time only if, as a response to the FERC remand or court ruling, BPA establishes a rate that is higher for that specific customer than was established in the May 2000 Rates Final Record of Decision. Under that circumstance, the customer will have a limited period of time within which to terminate its contract.

IX. ENVIRONMENTAL COMPLIANCE

The evaluations and decisions contained in this document are consistent with the environmental analysis conducted for the 1998 Power Subscription Strategy, as documented in the National Environmental Policy Act, Administrator's Record of Decision, Power Subscription Strategy, December 21, 1998 (NEPA ROD). The NEPA ROD is a direct application of BPA's earlier decision to adopt a Market-Driven approach for participation in the increasingly competitive electric power market and is consistent with BPA's Business Plan, the Business Plan Environmental Impact Statement (DOE/EIS-0183, June 1995) and the Business Plan ROD (August 15, 1995).

X. CONCLUSION

I have reviewed and evaluated the comments received by BPA on the foregoing issues received after the adoption of the December 1998 Power Subscription Strategy. These evaluations and decisions will be used in upcoming contract processes prior to the offer of Subscription contracts. These evaluations and decisions are consistent with the environmental analysis conducted for the 1998 Subscription Strategy.

Issued in Portland, Oregon, on April 26, 2000.

/s/ J. A. Johansen
Administrator and Chief Executive Officer