

6450-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment

Regarding Bonneville Power Administration's subscription power sales to customers and customer's sales of firm resources.

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of revised draft policy proposal.

SUMMARY: BPA is publishing a revised draft policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts under sections 5(b) and 9(c) of the Northwest Electric Power Planning and Conservation Act, (the Northwest Power Act), P.L. 96-501, and section 3(d) of the Act of August 31, 1964, (the Northwest Preference Act), P.L. 88-552. This revised draft policy would modify BPA's 1994 Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy. See Modifications to 1994 Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy.

DATES: Comments must be received by Tuesday, November 30, 1999.

ADDRESSES: Comments on the revised policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, may be sent to:

Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212; or faxed to

(503) 230-4019. Comments may be sent electronically to: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208-3621, telephone (503) 230-4328 or 1-800-622-4519.

Information can also be obtained from your BPA Account Executive or from:

- Mr. Allen Burns, Vice President, Power Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230-7640
- Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358-7409
- Mr. John Elizalde, Acting Manager, Western Power Business Area, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97232, telephone (503) 230-7597
- Mr. Steve Oliver, Manager, Bulk Power Business Area, 905 N.E. 11th, P.O. Box 3621, Portland OR 97208, telephone (503) 230-3295

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On December 21, 1998, BPA published its Power Subscription Strategy and accompanying Record of Decision for selling Federal power under new contracts with its publicly and cooperatively owned utility, investor-owned utility and direct service industrial customers. The Power Subscription Strategy stated overall policies for determining the amount of Federal power to be offered to Pacific Northwest public utility and investor-owned utility customers under section 5(b)(1) of the Northwest Power Act.

On May 6, 1999, BPA published a Federal Register Notice with a draft proposed policy for determining the net requirements of publicly and cooperatively owned utility and investor-owned utility customers. (64 Fed. Reg. 24376) BPA sought public comment on its proposed policies for determining utility customer net requirements under section 5(b)(1) of the Northwest Power Act. Adoption of a final policy is important to a successful implementation of BPA’s post-2001 power sales contracts under BPA’s Power Subscription Strategy.

BPA is issuing this revised draft policy proposal based upon comments and requests to provide additional comment on BPA’s draft policy. This policy would provide guidance on implementation of the Power Subscription Strategy under applicable statutes and describe how certain factual determinations will be made regarding the amount of Federal power publicly and cooperatively owned utilities, or investor-owned utilities may purchase from BPA under section 5(b)(1) of the Northwest Power Act. BPA’s determination of this amount, as described in this

revised policy, is affected by a customer's export of hydroelectric resources and non-hydroelectric resources out of the Pacific Northwest in accordance with section 9(c) of the Northwest Power and section 3(d) of the Northwest Preference Act. BPA will review a customer's export of power or output from resources under its 1994 Policy as modified herein.

I. Relevant Statutory Provisions

The Northwest Power Act provisions are:

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

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

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

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

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

loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus. 16 U.S.C. 839f(c) (emphasis supplied).

The Northwest Preference Act provision is:

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

II. Scope of the Proposed Policy

The Policy on Determining Net Requirements addresses the amount of Federal power that BPA is obligated to offer to customers requesting contracts to serve firm power loads under section 5(b)(1) of the Northwest Power Act. Purchasers eligible to request a contract under section 5(b)(1) include public body, cooperative, or investor-owned utilities in the region.¹ BPA has a corresponding statutory duty when determining the net requirements of a requesting purchaser to apply the provisions of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. Such provisions direct the Administrator to determine whether an export or proposed export of a requesting purchaser's non-hydroelectric or hydroelectric resource would result in an increase in the firm energy requirements of any of BPA's customers. Findings by BPA that the export of such resources are likely to increase BPA's firm obligations, and that the resource could have been conserved, or otherwise retained to serve regional loads, will result in a reduction

¹ The policy also addresses any sales of Federal power BPA makes under section 5(b) in settlement of a customer's right to service under the residential exchange program created under section 5(c) of the Northwest Power Act. While recognizing that this is a settlement, it does not affect the application of, or change, the policy regarding the net requirements of any customer.

(decrement)² of the amount of Federal power and energy available for purchase under section 5(b)(1) equal to the amount of power and energy, and for the duration, of the export.

III. Policy on Determining Net Requirements

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

1. BPA will determine the amount of Federal power for sale under section 5(b)(1) in the manner described below. In making this determination BPA will reduce the amount of Federal power a customer may purchase in accordance with section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

(a) BPA will offer an amount of Federal power for sale to a purchaser under section 5(b)(1) based upon such customer's actual retail firm power loads in the region. To establish the purchaser's actual retail firm power loads in the region, BPA may use either the actual measured load of the customer, or the customer's own actual load forecast if BPA determines such forecast is reasonable. (Any actual or forecast loads of the customer shall exclude any wholesale loads served by the customer. Wholesale loads means power sales made by the customer using its own resources to serve its own wholesale customers who are purchasing to resell the power at wholesale or retail.)

(b) For purposes of determining the amount of Federal power BPA will offer to existing customers in the post-2001 period, BPA will require an existing customer to continue to use all generating and contractual resources included in the Firm

² The 1994 Section 9(c) Policy BPA published uses the term "decrement" to mean a decrease or reduction in BPA's obligations to sell power to a customer under its section 5 power sales contract with BPA. When used in this Policy and modification of that Policy the terms "decrement," "decrease," "reduce" or "reduction" have the same meaning.

Resource Exhibit (FRE) of such customer's current 1981 or 1996 power sales contracts for the 1998-1999 operating year. BPA will not, however, require customers to continue the use of resources identified in their 1998-99 FREs for any one of the following reasons: (1) the customer's contractual resource(s) expires prior to October 1, 2001; (2) the customer's generating resource(s) is determined by BPA to be lost due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); or (3) the customer's contractual resource(s) is determined to be lost in accordance with section III.B.2 (loss of contractual resources). In addition, customers who were given express written consent by the Administrator to permanently remove a resource from use in serving regional firm power loads are not required to return such resources to use.

(c) BPA's requirement that the customer continue using the customer's resources listed in its FRE for the 1998-1999 operating year is based upon a decision made in BPA's Power Subscription Strategy. The decision was to establish a baseline for determining the customer's resources expected to continue serving regional firm power loads in the post-2001 period. In addition, BPA will require that all Federal surplus firm power contracts or excess Federal power contracts with terms which extend further than one year beyond 2001 be applied as firm resources used to serve the customer's retail firm power load in the region.

(d) Customers may elect to use additional generating resources or contractual resources for their consumer load service under their section 5(b)(1) contract. Under the contract customers can also agree to contractually commit power purchases from

the market to serve any remaining amounts of their retail firm power load in the region which is not served by (1) generating resources or contractual resources that a customer must use to serve load under section III.A.2, above; and (2) additional generating resources or contractual resources that a customer elects to use under this section. Customers may elect to apply short term power purchases from the market to their loads in amounts agreed to under the terms of a BPA 5(b)(1) contract. Customers using market purchases to serve their loads will be required to use such market purchases for the entire 5 year rate period for which BPA establishes rates of general application. All additional generating resources or contractual resources shall be used for the term of the contract except for resources added pursuant to section III.C (renewable resources).

- (e) BPA will apply the Declaration Parameters included in the Power Products Catalog under Actual Partial Service for the Subscription Strategy to establish the amount of power available from the customer's generating and contractual resources under the Subscription contract. Because the Declaration Parameters are subject to revision, BPA will use the Declaration Parameters in effect at the time of BPA's contract offer to determine the amount of Federal power offered. The customer may declare a reduction in the amount of power that would otherwise be available from its own generating and contractual resources by the amount of power the customer uses from such resources to serve its wholesale loads, defined above; which were served prior to December 5, 1980, and which continue to be served by such resources.

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

B. Statutory Discontinuance For A Customer's Generating and Contractual Resource

1. A customer's non-Federal generating resource is considered no longer used to serve regional retail firm power load under a section 5(b)(1) contract if the resource's use is permanently discontinued due to obsolescence, retirement, or loss.
 - (a) Obsolescence must result from the inability to continue to operate a resource due to lack of available replacement parts or sources of fuel supply regardless of price.
 - (b) Retirement must result from a demonstration by the customer that the cost of replacements, improvements, or additions to continue to operate the resource, combined with the resource's variable operating costs, exceed the reasonable economic return over the remaining life of the resource. The reasonable economic return will be determined by requiring the customer to measure the cost to the customer of replacing its operating resource with market purchases plus the cost to shut down the plant against the cost of operating the resource.
 - (c) Loss of a resource must result from factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy including complete destruction of the resource, complete loss of the Federal or State license to own or operate the resource, or complete and/or partial reduction of the capability of a resource to the extent of the loss resulting from orders of a State or Federal agency affecting the operation of the resource.

2. A customer's contractual resource is considered no longer used to serve regional firm power load if the customer experiences a permanent loss of contract right. Loss of contract right must result from expiration of the term of the contract, after any extensions of the contract term unilaterally available to the customer, or factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. Loss of contract right does not include the following: (a) a customer's failure to exercise a right to renew a contract; (b) a customer's failure to exercise a right of first refusal on termination of the contract; (c) a change in price under the contract; and (d) any other action or inaction by a customer which results in the contract being unavailable to the customer.

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

1. A customer may elect to use a new renewable resource to serve its regional retail firm power load for a specified period which is less than the term of its section 5(b)(1) contract; provided, however, that such new renewable resource is part of the first 200 aMW of all new renewable resources requested by all BPA customers under this section to serve regional retail firm power load each year. Customers may choose to elect to use new renewable resources at the time of contract execution and during an annual review of their net load requirements under their section 5(b)(1) contract.
2. Only new renewable resources that meet the standards established to qualify for BPA's conservation and renewable resource discount may be used under this section.

3. Application of a new renewable resource under section III.C.1 shall reduce the customer's net requirements load.

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

1. Under section 5(b)(1) contracts, BPA will require a customer to submit annual reports that track and forecast the customer's retail firm power loads in the region. The purpose for the annual report is to provide information that shows any increase or reduction in the amount of the customer's retail firm power loads in the region from the amount served when the contract was executed. Based on such load information BPA shall make an annual determination of the net firm requirement load of the customer under a section 5(b)(1) contract as follows.³ First, BPA will account for:
 - a) the generating and contractual resources a customer is required to use to serve firm power load in the region under section III.A.1.(b) (FRE firm resources);
 - b) additional resources a customer has elected to use under section III.A.1.(d) (additional generating and contractual resources); and
 - c) power purchases from the market that a customer has contractually committed to purchase in amounts specified in their 5(b)(1) contract, consistent with section III.A.1.(d) (market purchases).

Second, BPA will make adjustments for:

- d) changes in a customer's new renewable resources used to serve retail firm power load in the region under section III.C.1 (renewable resources);

³ Such reports may be in addition to other load or resource information the customer is required to provide BPA on its loads or resources for contract administration and planning purposes. Such determinations may be in addition to other determinations of net firm power requirements loads made more frequently under the terms of the customer's contract.

- e) changes in the customer resources serving its load pursuant to III.A.1.(b) and III.A.1.(d) due to BPA's determination of a statutory discontinuance of the customer's generating resource(s) or contract resource(s) under section III.B (statutory discontinuance); and,
 - f) any reductions in the amount of power a customer may purchase under a section 5(b)(1) contract due to the annual review under section III.D.3.
2. If BPA's annual determination of a customer's net firm requirement load results in a finding that the amount of Federal power a customer can purchase is less than the contracted amount of power to be purchased for the next contract year, then the customer shall first remove from use for its regional firm load, for a period of one year, any market purchases the customer has agreed to use under its BPA contract. Such removal shall be in an amount and shape equal to the difference between the amount of Federal power a customer can purchase for the next year and the amount and shape of Federal power a customer has contracted to purchase for the next contract year.

If the amount of Federal power a customer can purchase after the removal of the market purchases is still less than the amount of power the customer has contracted to purchase for the next contract year, then BPA will implement the mitigation measure for load loss specified in the customer's section 5(b)(1) contract and reduce the amount of Federal power a customer is obligated to purchase. Alternatively, BPA may consent to the customer's removal of a generating resource or contractual resource from use for its regional firm load, for a period of one year. The portion of a customer's generating resource or contractual resource removed shall be equal to the difference between the amount and shape of Federal power a customer can purchase and the amount and shape of Federal power the

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

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

IV. Scope of the Section 9(c) Policy

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

BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is set out below. Deletions, changes and additions are included in an interlined version which is available from BPA on request or at BPA's Web site at <http://www.bpa.gov/Power/subscription>.

BPA's 1994 NFP, as modified, will be retitled: BPA's Section 9(c) Policy.

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

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

accounted for, in setting BPA's net firm load obligations under those contracts. Additionally, the 1994 NFP Policy would be modified to update the technical provisions to accommodate recent changes. Therefore, the 1994 NFP Policy would be modified as follows:

B. Section 9(c) Policy

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

As required by the Northwest Power Act, BPA shall make its Section 9(c) determinations for the exports of its customers.

Section 2. Finding Required

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

- a) BPA shall analyze whether the customer's exports would result in an increase in the electric power requirements of any of its customers in the region. BPA shall do this by examining its load/resource forecasting and planning documents to determine the impact the exports will have on BPA's and its customers' ability to meet Pacific Northwest load presently and in the future. BPA shall also analyze the information available from other sources including least-cost plans and load/resource information of Pacific Northwest utilities which do not currently place any load on BPA.
- b) BPA shall review the specific resources and categories of resources being exported to determine if such exports will result in an increase in the firm energy requirements of its customers and if so, determine whether the resource could be conserved or otherwise retained for service to regional loads by using reasonable means. To do this BPA shall compare the resource a customer is proposing to export with those resources which BPA finds in its analysis can be exported

without having to decrement the customer's Section 5(b) utility power sales contract.

Section 3. Scope of Section 9(c) Policy

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

Section 4. Data on Specific Resources

BPA shall base its Section 9(c) determination on specific information BPA has obtained from the customer on the resources it intends to export. This includes, but is not limited to, the following information:

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

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

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

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

Section 6. Categories of Resources

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

Section 7. System Sales

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

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

Section 8. Seasonal Exchange

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

Section 9. Recall

Any customer that does not want its Northwest Power Act, Section 5(b) power sales contract decremented by BPA may agree to include terms for the recall of its export sale upon notice from BPA that the energy from such customer's resource is needed to meet BPA or other customers firm power load in the Pacific Northwest.

Section 10. Resource Offer

This Section 9(c) Policy gives a customer an option to offer a resource to BPA or to all other Pacific Northwest customers. If offered for sale to BPA, the resource shall be treated as an unsolicited proposal. If BPA proposes to acquire the resource, and if it is greater than 50 aMW or offered for longer than 5 years, it will be subject to the Northwest Power Act Section 6(c) process, which can take more than 12 months. If neither BPA, nor any Pacific Northwest customer, purchases the offered resource (offered at the customer's cost including a reasonable rate of return), the resource may then be exported without a decrement of the customer's Northwest Power Act Section 5(b) power sales contract.

Section 11. Consumer-Owned and Independent Power Producer-Owned Resources

If a customer contracts to purchase and then export any consumer-owned resource or any resource developed by an independent power producer, BPA shall decrement the customer's Section 5(b) power sales contract if the resource being exported is a hydroelectric

resource or if the resource is dedicated to any Pacific Northwest utility load in any utility's firm resource exhibit.

Section 12. BPA Notification

BPA shall notify in writing any customer which has exported a resource or proposes to export a resource of the outcome of BPA's Section 9(c) determination. The BPA notification shall be made within 30 working days from the date the customer notifies BPA that it will be exporting a regional resource or BPA receives the information it requests about a specific resource.

C. Scope of the Section 9(c) Policy

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

D. Subscription 9(c) Study

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

V. Section-by-Section Review of Changes in Revised Draft Policy from the Original Draft Proposal issued April 26, 1999

This section provides section-by-section review of the changes in the revised draft policy from the initial draft policy proposal published in the Federal Register on May 6, 1999. The revised draft policy is reorganized as follows: new section III replaces former sections I and II; and new section IV replaces former section III.A, III.B, III.C, III.D, III.E, and III.F. An interlined version showing the proposed changes is available at BPA's Web site at <http://www.bpa.gov/Power/subscription>.

III. Policy on Determining Net Requirements

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

New section III.A includes the provisions included in the former section I. New section III.A.1.(a) is intended to clarify the customer loads BPA will use as the basis of the initial contract offer described in former section I.A.

New section III.A.1.(b) is intended to clarify the resources a customer is required to continue to use to serve load described in former sections I.B, I.C, and I.D. The revised draft policy contains no references to the rate at which BPA would sell power to the customer. Such rate will be established in BPA rate cases. New section III.A.1(b).

eliminates the requirement for the customer to notify BPA in writing of lost resources or lost contracts prior to execution of a customer's Subscription contract.

New section III.A.1.(d) is intended to clarify that customers may elect to use additional resources to serve their regional firm power loads in addition to the customer resources required to be used under section III.A.1.(b). Under new section III.A.1.(d) customers can contractually commit to purchase power from the market to serve any consumer load not served by customer resources or purchases from BPA. New section III.A.1.(d) also specifies requirements for the period of use of resources under a section 5(b) contract.

New section III.A.1.(e) is intended to clarify which Declaration Parameters BPA will use to establish the capability of customer resources described in former section I.E. New section III.A.1.(e) also includes a right for a customer to reduce the capability of the resources that are used to serve any wholesale loads that the customer served on December 5, 1980, and continues to serve, from the customer's resources.

New section III.A.2 is intended to clarify the reduction in Federal power purchases due to the export of non-Federal resources described in former section I.F.

B. Statutory Discontinuance for A Customer's Generating and Contractual Resource

New section III.B replaces former sections II.D and II.E. New section III.B is intended to clarify the application of BPA's existing standards to lost generation and contractual resources and loss of contract rights. The initial draft inadvertently omitted application of the description of a loss of contract right from section II.E. Section III.B was moved in the policy to reflect the determination of resources that are permanently

discontinued from use to serve the customer's regional firm load between 1998 and the time of contract offer.

New section III.B.1 establishes a physical test of when a resource is obsolescent under the statute and an economic test to be applied when a resource may be retired in its use to serve firm load in the region. New section III.B.1 is also intended to clarify the conditions under which a customer resource is lost, including the partial loss of a resource due to orders of a State or Federal agency.

New section III.B.2 is intended to clarify a customer's loss of a contract right.

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

New section III.C replaces former section II.C. New section III.C is intended to clarify that a customer may elect to use a new renewable resource in its initial contract and during the term of the contract.

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

New section III.D replaces former sections II.A, II.B, and II.F. New section III.D.1 describes the annual review of the customer's loads under a section 5(b)(1) contract and is intended to clarify that any changes in the amount of power purchased under a section 5(b)(1) contract will be based on forecasts of the expected load changes for the next contract year and how such changes, and other annual changes, in the customer's load and resources will be used to determine a customer's annual net firm requirement load amount under a section 5(b) contract.

New section III.D.2 describes how BPA will compare the amount of Federal power a customer can purchase against the contracted amount of power for the next contract year.

Section III.D.2 describes how BPA will implement mitigation measures under its section 5(b) contracts when a customer's right to purchase is less than its contracted amount and provides BPA's consent to a customer's election not to use its non-Federal resource to serve its retail firm power load in the region for the next contract year. Resources that a customer elects not to use to serve its retail firm power load are subject to a BPA determination under BPA's Section 9(c) Policy.

New section III.D.3 is intended to clarify how BPA will annually review the export of energy from a customer's non-Federal resources.

New section III.D.4 describes when customers may purchase additional amounts of Federal power they did not contract to purchase in their initial contract.

IV. Scope of the Section 9(c) Policy

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

Section IV.A modifies BPA's 1994 Non-Federal Participation Section 9(c) Policy and renames it BPA's Section 9(c) Policy.

Section IV.B Scope of the Section 9(c) Policy

Section IV.B describes the application of the Section 9(c) Policy. The Section 9(c) Policy will be applied to all purchases under a section 5(b) contract for service after October 1, 2001. The findings and interpretations of the Policy shall be applied to all customer exports of power from non-Federal resources or sales of resources occurring after publication of the policy. Customers that have exported power from resources or sold resources prior to publication of the policy may face a reduction of the amount of Federal power they can purchase at the time they request a contract for service after September 30, 2001, based on a case by case factual determination.

Section IV.C Subscription 9(c) Study

Section IV.C describes a factual study that BPA will provide with its final policy stating a basis for determining what exports of resources during the period from October 1, 2001 until September 30, 2006, may [or may not] result in an increase in the firm energy requirements of BPA's customers. The Subscription 9(c) Study will be based on the principles stated in the Section 9(c) Policy regarding resources that can be conserved to serve a regional load and the resources that may otherwise be retained to serve regional load.

Responsible Official: Mr. Sydney Berwager, Subscription Policy Manager is the official responsible for the development of the revised draft policy proposal for addressing issues under section 5(b) of the Northwest Power Act regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, and the Section 9(c) Policy which modifies the 1994 NFP.

Issued in Portland, Oregon, on October 19, 1999.

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