

Process for Addressing Northwest Power Act Section 5(b) and Section 9(c) Issues under Subscription

BPA will initiate a process to design a contract mechanism for making contract offers consistent with the policy direction of the Power Subscription Strategy and sections 5(b) and section 9(c) of the Northwest Power Act. The process must provide interpretive guidance on application of the Strategy and statutes and describe how the factual determinations applying such guidance will be made.

Background

Subscription Issues

BPA has developed a Power Subscription Strategy for selling power to its public utility, investor-owned utility and direct service industrial customers. This strategy addresses a number of policy questions regarding the types of contracts that BPA intends to offer its customers. The Subscription Strategy left open the question of the contract mechanism that would be used in offering power to investor-owned utilities in settlement of their rights to service under the residential exchange program created under section 5(c) of the Northwest Power Act.

The Subscription Strategy also identified policies for determining the amount of power that would be offered to public utilities under section 5(b) of the Northwest Power Act. Identifying the contractual mechanism for implementing these policy decisions addresses the same questions necessary to develop the contract mechanism for offering power to the investor-owned utilities under the Subscription Strategy.

A final question raised but not answered by the Subscription Strategy is the impact of the sale of a customer's non-Federal resource on the amount of power that BPA will offer the customer. Section 9(c) of the Northwest Power Act requires BPA to make certain factual determinations regarding the export of Northwest resources by its customers when determining the amount of power BPA can offer a utility under section 5(b) of the Northwest Power Act.

The purpose of this paper is to frame the questions necessary to determine the amounts of power that will be offered under Subscription contracts, how those amounts could change over time, identify proposed principles for resolving these questions, and suggest a process for developing the interpretations of statute and factual determinations necessary to resolve these issues. BPA believes this process must answer questions producing the following results:

1. What amount of power will BPA make an initial contract offer to sell under the Power Subscription Strategy
2. How are changes to the amount of power initially offered under a Subscription contract made during the term of the contract?

3. How will BPA determine if a customer has exported a resource from the Region requiring BPA under section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference act to limit the requirements power sold to such customer?
4. What processes will be used to provide interpretive guidance and make factual determinations needed to answer the above questions?

Statutory Guidance

The statutory basis for BPA addressing the above questions is found in section 5(b)(1) of the Northwest Power Act, section 9(c) of the Northwest Power Act, and section 3(d) of the Regional Preference Act. Section 5(b)(1) provides the basis for BPA offering contracts under the Subscription process to public utilities and investor-owned utilities. It provides:

(b)(1). Whenever requested, the Administrator shall offer to sell 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—

(b)(1)(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 power load in the region, and

(b)(1)(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.

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 paragraphs 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.

Section 9(c), which requires the Administrator to consider certain facts regarding customer export of resources in making determinations of a customer's power requirements under section 5, provides:

(c)... The Administrator shall, in making any determination, under any contract executed pursuant to section 5 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 the hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of the Regional Preference Act, any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy

requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as a replacement for any amount of energy so excluded only energy that would otherwise be surplus.

Section 3(d) of the Regional Preference Act of 1964, which had earlier addressed the export of hydroelectric generated energy from the region, provides:

- (d) The Secretary, in making any determination of the electric power 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.

These provisions and others in BPA's statutes provide the basis for the contracts that BPA will offer under the Subscription Strategy.

What Changes in the Marketplace Since Passage of the Northwest Power Act in 1980 Must Be Addressed

Use of the Market As a Resource

When BPA first offered contracts in 1981 under the Northwest Power Act, a relatively small group of customers owned non-Federal resources, which were used to serve a portion of their retail consumer load. The operation of most of these resources was managed on a single utility basis through the Pacific Northwest Coordination Agreement. Most utilities in the region planned on developing or requesting BPA to develop enough resources to meet all their loads in the worst-case water conditions on the hydroelectric system. The ownership of the output of all resources and which loads those resources were dedicated to serve was generally known by the utilities and BPA. Most transactions in the wholesale marketplace either were made for short periods to displace the output of generation with a higher variable cost or sold all or the portion of the output of a resource for a period of years such that the resource was dedicated to serve the loads of a regional utility other than the owner's own loads.

Starting relatively soon after passage of the Northwest Power Act, some customers began to rely on purchasing power from the wholesale market for relatively short periods to serve their firm loads. The investor-owned utilities requested contracts with BPA, which gave a right to purchase less BPA power than their net requirement that BPA had calculated under section 5(b)(1) of the Northwest Power Act. This type of purchasing basis under the 1981 contracts was called contracted computed requirements service.

These customers had used the market as a resource under their BPA power sales contract. Initially some customers made five-year purchases in lieu of developing generating resources to serve their loads. Other customers used new resources they had developed that they didn't wish to explicitly specify under their power sales contract as a resource serving their load under section 5(b)(1)(B). Over time customers used purchases of shorter and shorter duration to serve their firm regional loads as their confidence in the wholesale marketplace increased.

In 1996, BPA offered a number of contract amendments to its public utility customers allowing them to reduce their purchases from BPA and serve a portion of their load from the wholesale marketplace. Some of those contract amendments specified the resource used by the customer to serve their regional loads but many did not. How to treat use of the market as a resource by BPA's customers is an issue that must be addressed in developing the Subscription contracts.

Functional Separation of BPA into a Power Business and a Transmission Business

In 1992, Congress passed the Energy Policy Act providing, among other things, the obligation for investor-owned utilities to offer wholesale transmission services and requiring "transmitting utilities" including BPA to provide wholesale transmission upon an order of the Federal Energy Regulatory Commission (FERC). Passage of this act ultimately led FERC to issue orders 888 and 889. Order 888 requires investor-owned utilities to develop and offer proforma tariffs for the provision of wholesale transmission. Order 889 requires such utilities to functionally separate such that the merchant functions of the utilities have access to no more information about a utility's transmission system than any other participant in the market. Such orders allowed investor-owned utilities to deny transmission access to utilities that did not provide "reciprocal" transmission access to that provided by investor-owned utilities under orders 888 and 889. BPA has chosen to voluntarily comply with orders 888 and 889. BPA has functionally separated its power and transmission businesses.

Functional separation presents a particular challenge to the implementation of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. BPA has historically administered these statutes by examining the transmission schedules of non-Federal utilities to utilities outside the Pacific Northwest. BPA's power business, which needs this information to determine the amounts of power it can sell to its customers, is not allowed access to transmission schedules under Order 889. How the BPA power business determines whether a non-Federal resource has been exported is an issue that must be addressed.

Impacts of Deregulation on BPA's Customers

Historically, utility service has been provided by utilities that either generated their own electricity or purchased it on the wholesale market and delivered that electricity to their consumers. While each state has different laws on the retail sale of electricity, the

practical effect in most states led to each utility having a service area where it was the exclusive provider of the distribution service moving the electricity to consumers and the electric supply service of selling the actual electricity to consumers. BPA sold its power to these customers on a wholesale basis and these customers used the electricity to supply their consumers in the Pacific Northwest.

Deregulation of the wholesale electric utility industry has led states to consider different models for the retail provision of distribution and electric supply service to consumers. Most models proposed for deregulation of the retail supply of electricity leave the utility as the exclusive supplier of distribution service but propose different mechanisms for allowing other entities to compete in the supply of electric supply service to consumers.

These models for electric supply raise an issue under section 5(b)(1) of the Northwest Power Act regarding the amount of electricity needed by BPA's customer to supply its needs. BPA's Subscription Strategy proposed a number of policy mechanisms for addressing retail load loss by BPA's customers and its impact on the amount of power sold to those customers. These issues primarily focused on allocating the risk of financial loss between our customer and the risk to the U.S. Treasury.

Another impact that must be addressed is the loss of retail load on our ability to sell electricity to investor-owned utilities. BPA's authorization to sell power under section 5(b)(1) directs BPA to look at the difference between a utility's retail loads in the Pacific Northwest and the resources it has historically used and those it dedicates to serve its consumer loads. The statute doesn't distinguish between residential, commercial, and industrial loads. BPA has proposed under the Subscription Strategy to provide sales of power under the RL rate schedule as a means to provide service to residential and small farm loads of investor-owned utilities. If State retail access statutes result in a loss of service to residential, commercial, or industrial loads of an investor-owned utility, such retail load loss could eliminate BPA's ability to sell power under section 5(b)(1) to that investor-owned utility. How BPA treats the loss by a utility of the electric supply obligation to industrial and commercial loads on its ability to purchase BPA power is an issue that must be addressed.

Impact of the Sale of Resources and Other Assets by BPA's Customers on BPA's Sales under the Subscription Strategy

Another change brought about by deregulation of the utility industry are decisions by individual utilities to change the aspects of the utility business in which they wish to participate. These strategic decisions by BPA customers have led to sales and proposals to sell the existing generation resources that have historically been used to serve their retail load in the region. These resources will most likely be purchased by participants in the wholesale marketplace seeking to sell the resource either inside or outside the Pacific Northwest for the highest price they can receive. BPA has a concern that its sales of Federal power to investor-owned utilities not be used as a vehicle for the region to lose the benefits of low cost non-Federal resources currently used to serve retail load in the region. BPA's statutes direct BPA to make factual determinations regarding the sale of

those resources and their impact on the cost-based rates offered by BPA to loads in the Pacific Northwest. How BPA accounts for those resources sold by its customers in determining the amount of power sold is an issue that must be addressed

In addition to sales of resources, some of BPA's customers have made decisions to sell both their distribution and electric supply business in different parts of the region. These sales reduce the amount of regional load served by these utilities impacting the amount of power BPA can sell. In some instances, new public power entities are forming and proposing to take over either or both the distribution and electric supply service formerly provided by investor-owned utilities. How BPA accounts for changes in the amount of load served by its customers is an issue that must be addressed.

Key Principles for Section 5(b) Offers and Section 9(c) Determinations

Developing a contract construct implementing the Subscription Strategy, meeting BPA's statutory directives and addressing the issues raised by deregulation of the utility industry seems confusing and complicated. The potential for unintended and unforeseen consequences is high. The paper identifies proposed principles for answering the 4 questions necessary to make contract offers. BPA will also propose a process for obtaining input from the region on these principles and identifying where decisions will ultimately be made answering these questions. While straight forward answers to results oriented questions and a simpler process may be desired, addressing these issues is one of the requirements for the Pacific Northwest to maintain BPA's cost-based rates and regional preference to the benefits provided by BPA.

I. Amount of Power under the Initial Contract Offer

What amount of power will BPA make an initial contract offer to sell under the Power Subscription Strategy? This question addresses how BPA will contractually limit its initial offer of power under the Power Subscription Strategy. The Power Subscription Strategy specified that customers must continue to serve their load with non-Federal generation and long-term power purchase contracts that extend beyond 2001 that are currently serving load. Determining the amount of power included in the initial contract offer focuses on four primary questions: (1) How is the amount of retail load in the region served by the customer determined; (2) What are the customer resources that must be dedicated to serve load under the initial Subscription offer; (3) How is the peak and energy capability of those resources determined; and (4) How does BPA account for any reductions in requirements sales resulting from determinations under section 9(c) and section 3(d)?

Discussion of the Principle, Statutory Language, and the Issues and Alternatives Considered

Determination of Regional Retail Loads

I.A. BPA will base its initial offers on actual loads or reasonable and verifiable estimates of the customer’s retail load in the Region based on the utility’s projected business plan at the time of the offer.

This principle on serving regional retail loads was derived from the following statutory language in section 5(b)(1) of the Northwest Power Act:

...electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the Region

The proposed principle recognizes the statutory language that BPA must offer power to serve a customer’s regional load under the Northwest Power Act. BPA has proposed a fixed block product and a SLICE product where the amount of power offered must be based on reasonable and verifiable estimates of the customer’s load. The Power Products Catalog of the Subscription Strategy had proposed a principle where fixed block products and SLICE offers had to be based on the customer’s existing load without consideration of load growth. These products were based on an annual estimate of loads done once at the start of the contract and had assumed there would be no increase in the amount of the purchase over the term of the agreement. The customer agreed under these products to provide non-Federal resources to serve their load growth.

That proposed principle did not explicitly address institutional changes in a deregulated market causing large reductions of in the customer’s load. The longer the term of the contract based upon a forecast, the more likely such changes would occur. Changes in load would have been reasonably certain to occur for investor-owned utilities allowing retail access to their industrial loads. A lesser but similar concern would be raised for public utilities purchasing a SLICE product.

The proposed principle addresses the concern by limiting the initial forecast used to establish the original purchase. In this paper BPA proposes a principle on changes to amounts of power during the term of the agreement that would allow BPA to annually review the changes in load as part of the basis for purchasing requirements power. That principle will allow BPA to address the potential for both retail load loss by the utility or the sale of utility resources that result in a reduction of net requirements purchases.

Determination of Customer Resources Currently Serving Their Load

I.B. BPA will require all current generation and long-term power purchase contracts included in the Firm Resource Exhibit for the 1998-1999 Operating Year or included in the Resource Exhibit or its equivalent for 1998-1999 Contract Year in 1996 BPA requirements power contracts to be continued to be applied to serve that load under a Subscription contract. BPA will also require all current long-term surplus power purchase contracts or Excess Federal Power purchase contracts that extend beyond 2001 to be applied to serve load under a Subscription contract.

I.C. In determining whether a contract purchase by a customer was a “long term power purchase contract that extends beyond 2001”, BPA will consider any

purchase contract that terminates after September 30, 2001 to be a long term power purchase contract required to be used to serve load.

I.D. BPA will offer customers service without a PF Surcharge for loads served by “generation resources and long term power purchase contracts that extend beyond 2001” that are lost due to statutory reasons described in section 5(b)(1) on the dates such resources are lost and BPA forecasts such loss at the start of the rate period.

These three principles address how BPA will identify generation and long term power purchase contracts that extend beyond 2001. These principles on continuing use of customer resources is based on the language in section 5(b)(1):

(b)(1)(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 power load in the region, and

(b)(1)(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.

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 paragraphs 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.

These proposed principles define which resources are included in the phrase “currently being served either by customers’ generating resources or long-term power purchase contracts that continue beyond 2001.” BPA’s current 1981 contracts have used the Firm Resource Exhibit as a mechanism for customer’s to identify whether a resource was serving the customer’s load. The 1996 contracts offered as replacements of the 1981 contracts identified customer resources used to serve load in a Resource Exhibit.

BPA considered whether the customer’s use of the market as a resource should also be considered. While many customer’s using the market as a resource would likely have faced a loss of contract right for short-term contract purchases, a number of customers have been serving load in the region with resources that they have not included in the Firm Resource Exhibits of their current power sales contract. They have actually been using their own non-Federal generation to serve their load instead of the market. BPA’s proposal is to address the use of those resources in serving regional load in its application of section 9(c) of the Northwest Power Act.

The proposed principles clarify which contracts are meant to be included in the term “long-term power purchase contracts that continue beyond 2001”. These principles clarify that all contracts that extend beyond 2001 are included in the resources that must be used to serve regional loads under the Subscription contract. These contracts include presubscription contracts and other long-term surplus power contracts to purchase

surplus Federal power from BPA. It also acknowledges there are a number of these contracts customers know will expire prior to the end of the rate period. The proposed principle allows the customer to purchase requirements service from BPA without the PF Surcharge as long as the cost of such service has been identified and included in BPA's rate case. Resources or contracts that are lost after the rate case has ended will face a PF Surcharge covering any additional costs BPA faces to serve the load.

Determination of Resource Capability

I.E. BPA will follow the Declaration Parameters included in the Power Products Catalog under Actual Partial Service in establishing the resource capabilities of the identified customer resources under the Subscription contract. Once determined, those capabilities are fixed in accordance with the terms of such parameters for the term of the contract.

The proposed principle relies on the statutory language of section 5(b)(1):

- (b)(1)(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 power load in the region, and
- (b)(1)(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.

The proposed principle endorses the approach suggested in the Power Products Catalog for Actual Partial Product for determining the resource capabilities of the customer's resources. BPA considered whether there might be a simpler method for determining resource capability, but decided that there were enough unique customer perspectives on estimating resource capability that the proposed standards would best meet the needs of a deregulating power environment.

Application of Section 9(c) and Section 3(d) Determinations to Initial Contract Offers

I.F. In determining the amount of a customer's net requirements, the customer's energy requirements must be reduced by the amount of any electric peaking capacity and electric energy that BPA determines was exported from the region, that increased BPA's obligation to provide power to other regional loads, and that could have been conserved or otherwise retained for service to regional loads.

The proposed principle is based on the following statutory language from section 9(c) of the Northwest Power Act:

- (c)... The Administrator shall, in making any determination, under any contract executed pursuant to section 5 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 the hydroelectric generated energy excluded

from such requirements pursuant to section 3(d) of the Regional Preference Act, any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as a replacement for any amount of energy so excluded only energy that would otherwise be surplus.

The proposed principle states that BPA will implement the language in section 9(c) where BPA makes a determination that a customer has exported power from a resource, BPA's net load requirements have increased as a result of such disposition, and the power could be conserved or otherwise retained for service to regional loads by reasonable means. BPA has existing determinations resulting in reductions of requirements purchases that would be implemented under this principle. BPA would also make additional determinations, which may reduce a customer's power requirements under its Subscription contract.

II. Changes to the Amount of Power during the Term of the Contract

How are changes to the amount of power initially offered under a Subscription contract made during the term of the contract? This question addresses reductions in net requirements that must be made due to institutional changes on a customer's system changing the amount of load served by that customer or reductions in net requirements due to a section 9(c) determination or a section 3(d) determination being made during the term of the contract. It also addresses the mechanism for making additional sales to public utilities and applying the PF Surcharge or Targeted Adjustment Surcharge or IOUs making additional power purchases at the NR rate.

The questions regarding changes to the amount of power sold during the term of a contract revolve around the transition from the 1981 contract model to the Regional Review model. Under the 1981 contract BPA obligated itself to serve the entire regional load after some notice period. Under the Regional Review a BPA goal was to only acquire new resources to serve load increases beyond Subscription amounts under a bilateral contract where the requesting customer takes all the financial risk.

Discussion of the Principle, Statutory Language, and the Issues and Alternatives Considered

Changes in Initial Purchase Amounts Due to Changes in Retail Loads

II.A. BPA will require on at least an annual basis that the customer report specified events causing a reduction of its load. If such reductions for fixed block

and SLICE purchasers reduce a customer's maximum requirements purchase below its current purchase from BPA, BPA will implement a mitigation measure for retail load loss of the Power Subscription Strategy specified in the contracts of public utility customers. BPA will provide the remarketing product option to investor-owned utilities.

The proposed principle is based on the same statutory language as the principle for estimating retail loads for the initial offer. This principle requires an annual look at the loads and resources upon which the original estimate was based. If changes on the customer's system have resulted in reductions of retail load served by that customer, BPA will reduce its requirements power sale to no more than a customer's maximum requirements purchase and implement the mitigation measure established by contract with the customer.

The proposed principle addresses the issue of the loss of retail load by an investor-owned utility through the use of the remarketing product mitigation measure specified in section IV.H.2. of the Subscription Strategy. This provision provides a financial benefit to the residential loads of investor-owned utilities that can no longer purchase requirements power due to retail load losses. BPA considered other alternatives such as a conditioned consent to the removal of customer resources from dedication to serving regional load under their Subscription contract. Under such an alternative BPA would allow a customer to remove a resource from serving its load equal to the reduction in requirements service caused by the retail load loss. BPA is interested in comments and other alternatives to address this issue.

Application of Section 9(c) and Section 3(d) Determinations during the Term of a Contract

II.B. BPA will reduce a customer's net power requirements by the amount of any exports of hydroelectric or thermal resources where BPA determines such resources could have been conserved to meet firm energy requirements of customers of BPA.

The proposed principle is based on the same statutory language as the reductions applied to the initial contract offers for these exports. These reductions are based on the timing of an export made by a customer and can come at any time. For example, a customer could end a contractual sale to another customer where such customer had dedicated the purchase to serve its firm loads. The customer losing the resource could request additional service from BPA on six months notice at the PF Surcharge rate. If the customer owning the resource had then exported the resource after it was withdrawn, then it would face a section 9(c) determination and would potentially see its net requirement for purchasing from BPA reduced. BPA's policy on hydroelectric resources under section 3(d) is that such resources can always be operated or applied against regional load.

Renewable Resource Principle

II.C. BPA will reduce a customer’s net power requirements by any dedication of a renewable resource owned by the customer or purchased under contract where the customer specifies the dedication of such resource for a contract period. Only the first 200 aMW of resources that meet the standards for renewable resources under BPA’s conservation and renewable resources discount may be dedicated under this principle.

The proposed principle on renewable resources is based on the following statutory language allowing the Administrator to consent to resources changes under a requirements contract:

(b)(1)(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.

This proposed principle allows customers to dedicate a new renewable resource to serve their load. BPA has consistently interpreted the language of section 5(b)(1) as allowing the Administrator to determine by contract the customer’s right to dedicate additional resources to serve their load. BPA’s Subscription Strategy requires customers to take risks on non-Federal resource placement commensurate with the risk they take for BPA on covering future costs of Federal resources. BPA is requiring customers to specify the amount of resources they dedicate to their loads for the term of the contract they sign. BPA is willing to sign a Subscription contract for terms ranging from 1 to 20 years. This principle provides an exception to the requirement that resources be known and dedicated at the start of the contract for the entire term of a contract by providing the Administrator’s consent to adding renewable resources during the term of a contract and removing such resources at a point prior to the end of the contract. BPA has placed two conditions on its consent: (1) Qualified renewable resource dedications are limited to the first 200 aMW of renewable resources that customers request to dedicate during any year; and (2) Only resources that would qualify for BPA’s conservation and renewable resource discount are eligible.

Increases in Requirements Purchases Due to Permanent Discontinuance of Non-Federal Resources for Statutory Reasons

II.D. BPA will provide service under the PF Surcharge rate or the NR rate for loads served by “generation resources and long term power purchase contracts that extend beyond 2001” where such resources or contracts are lost due to retirement, obsolescence, loss of the resource, or loss of contract right (for contract resources only).

II.E. “Generation resources and long term power purchase contracts that extend beyond 2001” are considered lost due to permanent discontinuance for loss of resource or loss of contract right resulting from factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. “Generation resources and long term power purchase contracts that extend

beyond 2001” are considered lost due to permanent discontinuance for obsolescence or retirement where the customer has consulted with Bonneville and Bonneville has agreed in writing to such discontinuance.

The proposed principles on increases in requirements service due to lost resources or lost contracts are based on the following statutory language:

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 paragraphs 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.

The proposed principles provide no consent by the Administrator for additional purchases of requirements power. Only if the customer has lost a resource or contract for the reasons specified by statute will BPA provide replacement power for their resource as requirements power. If a customer wished to purchase additional power from BPA for other reasons, BPA would be able to broker purchases of replacement power from the market under its surplus power rates.

The proposed alternative principles maintain BPA’s existing contract standards regarding lost resources. These principles have worked for 20 years and allow BPA to consider all the facts in determining when it is required to replace a customer’s lost resource with Federal resources.

BPA considered developing a “market test” to determine whether a customer had lost a resource meeting the statutory standard in all situations where a resource stopped operating. The market test assumed a customer would sell a resource in the deregulated market before shutting it down for loss of resource, retirement, or obsolescence.

Notice Required to Receive Additional Requirements Service for Lost Resources or Annexed Loads

II.F. BPA will assume the market will provide resources to serve increased loads. Service for new “annexed loads” will be provided under the Targeted Adjustment Charge or NR Rate. Service for lost “generation resources and long term power purchase contracts that extend beyond 2001” will be provided at the PF Surcharge or NR Rate upon the customer’s notification that such an event has occurred. Service to replace “qualified renewable resources” at the end of the declared contract period will be provided at the PF rate. BPA shall provide service for annexed loads, lost resources, and replacements of “qualified renewable resources” six months following the determination that such event has occurred or as mutually agreed.

The proposed principle regarding additional service for annexed loads is based on this language of section 5(b)(1):

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—

The proposed principle regarding additional service for lost resources is based on this language in section 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 paragraphs 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.

The proposed principles provide that BPA will provide service to annexed loads or lost resources for all customers. BPA considered making changes in service only at the annual review of load changes for determining any reductions in requirements purchase, but decided that a rolling notice period better served the sporadic nature of these events. BPA assumed six months would give BPA and the customer sufficient time to determine the facts surrounding the annexed load or lost resource and allow BPA to get prepared to provide service. It would also give BPA time to purchase any additional resources necessary to serve the load even if it was difficult to purchase in the market.

III. How Will BPA Determine if a Customer Has Exported a Resource From the Region Requiring BPA to Limit the Requirements Power Sold to Such Customer?

Section 9(c) requires BPA to make several factual determinations when customers export non-Federal resources outside the region. Section 3(d) requires BPA to limit its sale of requirements power to any customer by the amount of hydroelectric power it exports from the region. These determinations are particularly difficult in a deregulated environment where sales are often made to marketers at the generator busbar, schedules of transmission are not available to the BPA power business making the determination, and merchant activity by all customers is confidential, commercial information not readily available for factual determinations.

Discussion of the Principle, Statutory Language, and the Issues and Alternatives Considered

Identification of Exported Resources that Increase the Firm Energy Requirements of the Administrator

III.A. BPA will treat any resource existing on the date the Subscription Strategy was published that has been used to serve regional firm load at some time during its life as exported from the region in a manner that increases the firm energy

requirements of the Administrator unless the customer can demonstrate that the resource fits within the definition of a “market resource” as described in section III. D. 2. of Appendix B of BPA’s NFP Section 9(c) Policy, that the resource is currently serving regional load under the customer’s or another customer’s Subscription contract, or that the resource is subject to a prior section 9(c) determination that its export did not increase the firm energy requirements of the Administrator.

This proposed principle is based on the following statutory language from section 9(c):

(c)... The Administrator shall, in making any determination, under any contract executed pursuant to section 5 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 the hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of the Regional Preference Act, any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased.

The proposed principle III.A. addresses the difficulty of determining whether any resource has actually been exported in a deregulated environment. The proposed principle states a rebuttable presumption that all power from resources that have served regional load and is sold on the market shall be treated as exported by the seller and shall be deemed to increase the Administrator’s firm energy requirements under Subscription contracts. If the customer can demonstrate their resource was developed solely for sale in the market, that they are being used by a DSI or a utility to serve retail load in the region, or that a prior determination determined they could be exported at that time, then the resource will not be treated as increasing the Administrator’s firm energy requirements.

This principle treats all sales of power in the wholesale market as an export. To implement this principle, the customer will determine how much of its commercial information it wishes to share with BPA in making the factual determinations required by BPA’s statutes. BPA considered whether it should continue the practice of the 1994 Non-Federal Participation Section 9(c) Policy of examining a customer’s transmission schedules to points outside the Pacific Northwest. This alternative was rejected due to functional separation limitations on the flow of information from transmission functions to power sales functions.

Treatment of Previously Exported Resources

III.B. Existing resources that have been used to serve regional load, exported prior to the publishing of the Subscription Strategy, and that are subject to a prior section 9(c) determination shall not be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements for the term of the export.

III.C. Existing resources that have been used to serve regional load and exported prior to the publishing of the Subscription Strategy, and that are not subject to a prior section 9(c) determination shall be considered as meeting the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts.

III.D. Existing resources that have been used to serve regional load, exported prior to the publishing of the Subscription Strategy, and that are subject to a section 9(c) determination shall be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts upon expiration of the export contract unless they meet the “market resource test”.

The proposed principles on treatment of previously exported resources is based on the following language from section 9(c):

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.

Proposed principle III.B., III.C., and III.D. address the treatment of existing resources that have been exported. Proposed principle III.B. provides that regional resources that have had section 9(c) determinations shall not be considered as increasing the Administrator’s obligation under Subscription contracts. Proposed principle III.C. provides that resource that were previously exported but did not have a section 9(c) determination made must now meet the factual determinations required by the statute. BPA specifically noted in its 1994 Section 9(c) policy that it had not made any determinations for the exports of investor-owned utilities because these utilities were not placing any load upon BPA under their section 5 contracts. Proposed principle III.D would consider existing resources as returning to serve the loads of the Region upon the expiration of the export contract. The principle includes an exception if the customer can demonstrate the resource was never used to serve regional loads and was never intended for that purpose.

Presumption Regarding the Use of New Resources in a Deregulated Environment

III.E. All new generating resources developed by utilities after the date of Subscription will be treated as meeting the “market resource test” unless they are dedicated to serve load under a Subscription contract. In such event they will be treated in the same manner as non-Federal resources dedicated to regional load under Subscription contracts.

Proposed principle III.E. assumes that new generating resources will developed in the future to serve the deregulated market unless a customer specifically chooses to dedicate the resource to serve its own loads. This principle proposes to change the definition of “market resources” under the Section 9(c) Policy to create a presumption that new

resources are developed for sale in the deregulated market and not for service to retail load of a particular utility.

Customer Export of Generation Resources and Long Term Power Purchase Currently Serving Regional Load

III.F. Any export of “generation resources and long term power purchase contracts that extend beyond 2001” that are included in any customer’s Firm Resource Exhibit for the 1998-1999 Operating Year other than the owners own Subscription contract shall be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts.

III.G. Any export of “generation resources and long term power purchase contracts that extend beyond 2001” that are currently being used to serve regional load but are not included in the customer’s Firm Resource Exhibit for the 1998-1999 Operating Year shall be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts.

These principles are based on the following statutory language from section 9(c):

(c)... The Administrator shall, in making any determination, under any contract executed pursuant to section 5 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 the hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of the Regional Preference Act, any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased.

Proposed principles III.F. and III.G. divide all resources currently used to serve load into two classes: (1) those resources that are currently in Firm Resource Exhibits; and (2) those resources that are currently used to serve load, but are not included in Firm Resource Exhibits. BPA has proposed that it will only require resources currently specified in the Firm Resource Exhibits to be dedicated to serve regional load under its Subscription contracts. Resources that are currently used to serve regional load but are not included in Firm Resource Exhibits will result in increases in the firm energy requirements of the Administrator. The customer will be required to demonstrate that the resource has either been sold to a regional utility to serve consumer load in the Region or could not have been conserved or otherwise retained to serve regional loads under proposed principle III.H. Proposed principle III.G. also recognizes that the Administrator would face an increase in its energy requirements if the owner of a resource terminated a contract purchase used by another utility to serve their retail load. The customer would also be required to demonstrate that the resource has either been sold to a regional utility

to serve consumer load in the Region or could not have been conserved or otherwise retained to serve regional loads under proposed principle III.H.

Demonstration That a Resource Could Not Be Conserved or Otherwise Retained to Serve Regional Load

III.H. BPA shall determine that any thermal generating resources considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts could not be conserved or otherwise retained for service to load in the region through reasonable measures if the resource was either (1) offered for sale in the region to BPA and all of its regional customers for a period of at least one year through a public process at cost plus a reasonable rate of return and there were no purchasers; (2) permanently auctioned through a public process providing notice to BPA and all BPA’s regional customers; or (3) the Administrator determines that the market price for power makes it unreasonable to conserve the resource for use in the Region.

The proposed principle is base on the following language from section 9(c):

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.

Proposed principle III.H. requires resources that are determined to increase the Administrator’s obligation to serve load in the region to meet one of three different tests in determining whether the resource could be conserved or otherwise retained to serve regional load. Unless one of such tests is met, the amount of capacity and energy exported would be treated as a resource serving that customer’s firm load in the region and reduce their net requirements purchase.

The first test provides that a customer may offer a resource for sale in the Region for a period of at least one-year at cost and a reasonable rate of return. If they make such offer and BPA or a party in the region does not offer to purchase the resource, the Administrator would determine that the resource could not be conserved or otherwise retained to serve regional load.

The second test provides an alternate mechanism where a customer may auction the resource to the highest bidder as long as BPA and all its regional customers are notified of the sale. If the resource is auctioned and the customer can demonstrate that all regional parties had an opportunity to participate, the Administrator would determine that the resource could not be conserved or otherwise retained to serve regional load.

The third test allows the Administrator to determine that a resource could not be conserved or retained to serve regional load based on current market prices in the region. If the Administrator makes that determination, the customer would be allowed to sell the

resource without a reduction in BPA's obligation to provide power under its Subscription contract.

BPA considered a possible alternative to the second test that would limit the use of auctions to paying the stranded costs of a utility. Under that test BPA would have reduced a utility's net requirements if the proceeds of the auction and export of a resource resulted in benefits above the cost and reasonable rate of return for the resource that were not paid to the consumers of a utility. The purpose of such a limitation would be preservation of the benefits of low cost resources for regional loads.

Identification of Hydroelectric Energy Exported From the Region

III.I. Any regional hydroelectric resources that are exported by a customer shall reduce the amount of power sold under a customer's requirements contract unless such resource was already considered as serving that customer's load in calculating the customer's net requirements under such contract.

The proposed principle is based on the following language from section 3(d) of the Regional Preference Act:

- (d) The Secretary, in making any determination of the electric power 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.

Proposed principle III.I. requires the reduction of a customer's net requirements under Subscription contracts under section 3(d) of the Regional Preference Act if the customer exports any hydroelectric power from the region. If the resource was already considered dedicated to serve a customer's firm load in calculating its net requirements, BPA will not further reduce a customer's net requirements if the resource is exported and replaced by the customer through a purchase from the wholesale market.

IV. Process for Developing a Contract Construct for Subscription Contracts

What processes will be used to provide interpretive guidance and make factual determinations needed to answer the above questions? BPA can provide interpretive guidance and make factual determinations needed to address the above questions either through development of formal policies, issuance of interpretative rules, or contract offers. The process used to decide any statutory question must be cognizant of starting the 90-day statute of limitations under the Northwest Power Act and the need to preserve and document factual decisions for future purchases of requirements power in an administratively efficient manner.

BPA has drafted this paper to present a set of principles for developing a contract construct for Subscription contracts. BPA plans to issue a Federal Register Notice shortly proposing the development of a power marketing policy on the offer of section 5(b) power sales contracts under the Subscription Strategy. This Federal Register Notice would start an official 30-day comment period leading to the development of a policy on contract offers. BPA's plans to use the principles under III. as a proposal to revise its 1994 Section 9(c) Policy to apply to all BPA customers under the current deregulated environment. BPA's contract offers would need to incorporate the results of that revised policy in its contract offers.

Proposed Principles

I. Amount of Power under the Initial Contract Offer

I.A. BPA will base its initial offers on actual loads or reasonable and verifiable estimates of the customer's retail load in the Region based on the utility's projected business plan at the time of the offer.

I.B. BPA will require all current generation and long-term power purchase contracts included in the Firm Resource Exhibit for the 1998-1999 Operating Year or included in the Resource Exhibit or its equivalent for 1998-1999 Contract Year in 1996 BPA requirements power contracts to be continued to be applied to serve that load under a Subscription contract. BPA will also require all current long-term surplus power purchase contracts or Excess Federal Power purchase contracts that extend beyond 2001 to be applied to serve load under a Subscription contract.

I.C. In determining whether a contract purchase by a customer was a "long term power purchase contract that extends beyond 2001", BPA will consider any purchase contract that terminates after September 30, 2001 to be a long term power purchase contract required to be used to serve load.

I.D. BPA will offer customers service without a PF Surcharge for loads served by "generation resources and long term power purchase contracts that extend beyond 2001" that are lost due to statutory reasons described in section 5(b)(1) on the dates such resources are lost and BPA forecasts such loss at the start of the rate period.

I.E. BPA will follow the Declaration Parameters included in the Power Products Catalog under Actual Partial Service in establishing the resource capabilities of the identified customer resources under the Subscription contract. Once determined, those capabilities are fixed in accordance with the terms of such parameters for the term of the contract.

I.F. In determining the amount of a customer's net requirements, the customer's energy requirements must be reduced by the amount of any electric peaking capacity and electric energy that BPA determines was exported from the region, that increased BPA's obligation to provide power to other regional loads, and that could have been conserved or otherwise retained for service to regional loads.

II. Changes to the Amount of Power during the Term of the Contract

II.A. BPA will require on at least an annual basis that the customer report specified events causing a reduction of its load. If such reductions for fixed block and SLICE purchasers reduce a customer's maximum requirements purchase below its current purchase from BPA, BPA will implement a mitigation measure for retail load loss of the Power Subscription Strategy specified in the contracts of

public utility customers. BPA will provide the remarketing product option to investor-owned utilities.

II.B. BPA will reduce a customer's net power requirements by the amount of any exports of hydroelectric or thermal resources where BPA determines such resources could have been conserved to meet firm energy requirements of customers of BPA.

II.C. BPA will reduce a customer's net power requirements by any dedication of a renewable resource owned by the customer or purchased under contract where the customer specifies the dedication of such resource for a contract period. Only the first 200 aMW of resources that meet the standards for renewable resources under BPA's conservation and renewable resources discount may be dedicated under this principle.

II.D. BPA will provide service under the PF Surcharge rate for loads served by "generation resources and long term power purchase contracts that extend beyond 2001" where such resources or contracts are lost due to retirement, obsolescence, loss of the resource, or loss of contract right (for contract resources only).

II.E. "Generation resources and long term power purchase contracts that extend beyond 2001" are considered lost due to permanent discontinuance for loss of resource or loss of contract right resulting from factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. "Generation resources and long term power purchase contracts that extend beyond 2001" are considered lost due to permanent discontinuance for obsolescence or retirement where the customer has consulted with Bonneville and Bonneville has agreed in writing to such discontinuance.

II.F. BPA will assume the market will provide resources to serve increased loads. Service for new "annexed loads" will be provided under the Targeted Adjustment Charge or NR Rate. Service for lost "generation resources and long term power purchase contracts that extend beyond 2001" will be provided at the PF Surcharge or NR Rate upon the customer's notification that such an event has occurred. Service to replace "qualified renewable resources" at the end of the declared contract period will be provided at the PF rate. BPA shall provide service for annexed loads, lost resources, and replacements of "qualified renewable resources" six months following the determination that such event has occurred or as mutually agreed.

III. How Will BPA Determine if a Customer Has Exported a Resource From the Region Requiring BPA to Limit the Requirements Power Sold to Such Customer?

III.A. BPA will treat any resource existing on the date the Subscription Strategy was published that has been used to serve regional firm load at some time during its life as exported from the region in a manner that increases the firm energy requirements of the Administrator unless the customer can demonstrate that the

resource fits within the definition of a “market resource” as described in section III. D. 2. of Appendix B of BPA’s NFP Section 9(c) Policy, that the resource is currently serving regional load under the customer’s or another customer’s Subscription contract, or that the resource is subject to a prior section 9(c) determination that its export did not increase the firm energy requirements of the Administrator.

III.B. Existing resources that have been used to serve regional load, exported prior to the publishing of the Subscription Strategy, and that are subject to a prior section 9(c) determination shall not be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements for the term of the export.

III.C. Existing resources that have been used to serve regional load and exported prior to the publishing of the Subscription Strategy, and that are not subject to a prior section 9(c) determination shall be considered as meeting the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts.

III.D. Existing resources that have been used to serve regional load, exported prior to the publishing of the Subscription Strategy, and that are subject to a section 9(c) determination shall be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts upon expiration of the export contract unless they meet the “market resource test”.

III.E. All new generating resources developed by utilities after the date of Subscription will be treated as meeting the “market resource test” unless they are dedicated to serve load under a Subscription contract. In such event they will be treated in the same manner as non-Federal resources dedicated to regional load under Subscription contracts.

III.F. Any export of “generation resources and long term power purchase contracts that extend beyond 2001” that are included in any customer’s Firm Resource Exhibit for the 1998-1999 Operating Year other than the owner’s Subscription contracts shall be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts.

III.G. Any export of “generation resources and long term power purchase contracts that extend beyond 2001” that are currently being used to serve regional load but are not included in the customer’s Firm Resource Exhibit for the 1998-1999 Operating Year shall be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts.

III.H. BPA shall determine that any thermal generating resources considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts could not be conserved or otherwise retained for service to load in the region through reasonable measures if the resource was either (1) offered for sale in the region to BPA and all of its regional

customers for a period of at least one year through a public process at cost plus a reasonable rate of return and there were no purchasers; (2) permanently auctioned through a public process providing notice to BPA and all its regional customers; or (3) the Administrator determines that the market price for power makes it unreasonable to conserve the resource for use in the Region.

III.I. Any regional hydroelectric resources that are exported by a customer shall reduce the amount of power sold under a customer's requirements contract unless such resource was already considered as serving that customer's load in calculating the customer's net requirements under such contract.