

6450-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment

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

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of draft policy proposal.

**SUMMARY**

BPA is publishing a draft policy proposal for addressing certain issues 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, regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts.

BPA is initiating development of a policy that will provide policy guidance on implementation of the Power Subscription Strategy under applicable statutes and describe how certain factual determinations needed for BPA subscription power sales contracts will be made.

DATES: Public meeting dates: May 27, 1999, and June 2, 1999. Close of comment date: June 11, 1999.

ADDRESSES: If you are interested in commenting on the policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, you have several options.

1. You can send written comments to Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212, or you can fax comments to (503) 230-4019. If you wish to send your

comments electronically, email comments to: [comment@bpa.gov](mailto:comment@bpa.gov). Comments must be received by close of business Friday, June 11, 1999.

2. You also can attend one or both of the two public comment meetings. One meeting will be held on Thursday, May 27, 1999, in Spokane, Washington, at Cavanaugh's Inn at the Park, 303 W. North River Drive. Another meeting will be held in Portland, Oregon, on Wednesday, June 2, 1999, at the Sheraton Portland Airport Hotel, at 8235 N.E. Airport Way. Both meetings will begin at 10:00 a.m. Comments also will be collected on BPA's Standards for Service proposal. If any additional meetings are scheduled, the information will be posted on the web site listed below.

<http://www.bpa.gov/Power/subscription>

**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:

Ms. Ruth Bennett, Acting 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, 700 N.E. Multnomah, Suite 400, Portland, OR 97232, telephone (503) 230-7597

## **SUPPLEMENTARY INFORMATION**

On December 21, 1998, BPA published its Power Subscription Strategy and Record of Decision for selling Federal power under new contracts with its public utility, investor-owned utility and direct service industrial customers. The Power Subscription Strategy stated overall policies for

determining the amount of power that would be offered to Pacific Northwest public utilities and investor-owned utilities under section 5(b)(1) of the Northwest Power Act.

This Federal Register Notice presents BPA's draft proposal for implementing the Power Subscription Strategy under its post-2001 power sales contracts. The proposal recommends contract mechanisms for determining the amount of electric power BPA will offer to public and investor-owned utilities. It also proposes contract mechanisms for determining the amount of electric power BPA will offer investor-owned utilities, based on a firm power requirement load, in settlement of their rights to service under the residential exchange program created under section 5(c) of the Northwest Power Act. Based on section 3(d) of the Northwest Preference Act and 9(c) of the Northwest Power Act, the proposal recommends principles for determining the effect a customer's sale of its non-Federal firm resources may have on the amount of Federal power that BPA will offer to the customer under its BPA power sales contract.

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. 389f(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).

### **Net requirements**

The term “net requirement” means the amount of Federal power that a public utility, cooperative or investor-owned utility is entitled to purchase from BPA to serve its regional consumers' loads. The definition is based on section 5(b)(1) of the Northwest Power Act of 1980 under which BPA offers to sell firm power in excess of a customer's own firm resources. In calculating net requirements obligation to any customer, Congress directed BPA to consider exports of the customer's non-Federal resources outside the Pacific Northwest. These considerations are based on section 9(c) of the Northwest Power Act as well as section 3(d) of the Northwest Preference Act.

The method of calculating net requirements is an important issue because it determines the amount of Federal power an eligible customer can receive for its firm consumer loads in the region. Section 5(b)(1) of the Northwest Power Act says that a BPA customer is entitled to purchase an amount of cost-based Federal power needed to meet its net requirement. A customer's net requirement is equal to the difference between its regional consumer firm loads and the amount of its non-Federal generation and firm power purchase contracts that the customer uses to serve those loads.

BPA first implemented the net requirements mandate of the Northwest Power Act through mechanisms in its 1981 contracts including the Firm Resource Exhibit (FRE), the Assured Capability Exhibit and other contract provisions. A FRE is a list of firm resources to be used by the customer in serving its regional load. A firm resource is one that can contribute a specific amount of electricity for operational and power planning purposes to serve a customer's loads. All of the current power sales contracts negotiated in 1981 will terminate by October 1, 2001 and must be replaced. The wholesale electricity market has undergone major changes since 1981. As a result, this is only the second time, since the Northwest Power Act became law that BPA has addressed the issue of how net requirements should be determined for its utility customers.

### **The context: Net requirements in a changing market**

In 1992 Congress passed the National Energy Policy Act deregulating the wholesale power side of the electric industry. BPA sells Federal power at wholesale under contracts with eligible customers. Deregulation has changed the playing field of the wholesale electricity marketplace causing BPA and other utilities to change the way they do business. These changes have forced BPA to re-assess how it implements sections 5(b) and 9(c) of the Northwest Power Act and 3(d) of the Northwest Preference Act. The following provides a general overview of the context of these changes and how they may affect BPA's determinations of a customer's net requirements.

#### *The market as a firm resource*

In 1981 relatively few BPA customers owned generating resources that were used to serve a portion of their load. The operation of most of these resources was managed by the region through the Pacific Northwest Coordination Agreement as if all of the region's Federal and non-Federal generating resources were operated by a single utility. The region's utilities knew who owned what resources and what loads they served. Increasingly, BPA's utility customers are relying less on generation and more

on market power purchases to serve their firm consumer loads. Others have developed new generation resources which they have chosen not to apply to their consumer load and do not specify in their Firm Resource Exhibit in their current BPA power sales contract. Most investor-owned utilities have not taken their consumer load service from BPA and have not made power purchases under the 1981 contracts. 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. These examples mean that BPA, working with customers and other regional constituents, needs to re-assess how a customer's use of the marketplace should be factored into BPA's calculation of net requirements.

#### *Separation of utilities' transmission and power sales business lines*

The purpose of passage of the Energy Policy Act of 1992 was deregulation of the wholesale electricity market. Federal Energy Regulatory Commission orders 888 and 889 accelerated this process. Among the requirements of FERC order 889 is that utilities functionally separate their transmission and power marketing business lines so that a utility's power marketing business has access to no more information about its transmission system than any other participant in the market. The intent of functional separation is to encourage full competition in the wholesale electricity market by providing all marketers equal access to the means of delivery. BPA has chosen to voluntarily comply with the FERC orders. One of the ways BPA identified a customer's export of its non-Federal resources when determining a customer's power requirements under its 1981 contracts was by examining transmission schedules of non-Federal utilities to other utilities outside the Northwest. Under FERC order 889, BPA's Power Business Line no longer has access to this information.

### *Retail load loss for BPA customers*

Changes are occurring in the retail electricity industry as well as in the wholesale market. In most states each utility has a service area in which it is the exclusive supplier of electric service to retail consumers. BPA sells its power to these utilities on a wholesale basis and they resell the electricity to their retail consumers. Under retail electric market deregulation, a utility may continue to operate its distribution system but other marketers may compete to supply electricity to residential, commercial and industrial consumers. The substitution of electric power suppliers raises a risk of retail load loss for some BPA customers. As more states deregulate their retail electricity markets, the effect of retail load loss on a customer's net requirements in the region becomes increasingly important. One concern is how the loss of industrial and commercial load by a BPA customer will change BPA's obligation to provide net requirement load service. The Northwest Power Act does not distinguish between the various types of consumer loads when calculating BPA's net requirements. Loss of load service by the utility to another provider may affect the total amount of power a customer could continue to buy from BPA.

### *Effects of sales of generating resources and other assets on net requirements*

As a result of deregulation, some utilities have sold or are likely to sell generating resources on the market which have historically been dedicated and used to serve Northwest retail consumer load. The buyers of these resources will likely sell their output for the highest price they can receive, either inside or outside of the region.

By law, BPA is required to make factual determinations regarding the sale of certain resources and its effect on BPA's service obligations to all customers and BPA's cost-based rates. Section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act require that BPA reduce the amount of power a utility receives under its BPA contracts based on findings regarding its exports



out of the region. Complying with this legal mandate in a competitive market is much more complex now than when the wholesale market was regulated and there were comparatively few customers with non-Federal generating resources.

Other utilities have decided to sell portions of their electricity supply and distribution businesses in certain parts of the region. In certain instances, new public power entities are forming and proposing to take over the business formerly provided by investor-owned utilities. Section 5(b)(1) directs BPA to sell power to meet the firm power loads of a utility customer in the Pacific Northwest. BPA must address how changes will be made to the amounts of power BPA sells a customer when that customer no longer serves a particular regional load or serves new loads.

### **Proposed Principles**

BPA is offering the following draft proposal as an approach to determining firm power net requirements obligations. It is intended to answer the following general questions:

1. In negotiating a new post-2001 power sales subscription contract, how should BPA determine a customer's net requirement based on the customer's use of firm resources and its consumer loads?
2. How will changes in a customer's net requirement be made during the term of its subscription contract?
3. How will BPA determine, as required by section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act, the effect of a customer's export of its resources on BPA's net requirements obligation to supply power to the customer?
4. How should BPA implement its policy on the factual determinations for treatment of customer's firm resources under its statutes?

## **I. Initial Determination of Net Requirements**

In the remainder of this notice, proposed principles are in regular type with explanatory material in italic.

*This section describes how BPA will contractually limit and define its obligation to provide power to a customer under the Power Subscription Strategy. It is based on language in the Northwest Power Act that requires BPA to offer power to serve a customer's regional consumer load. Some products meet a utility's full load minute by minute, while other products provide power services based on the difference between a customer's own resources used for load and their BPA purchases. Two products offer service on a planned or forecasted load, a fixed block product and a SLICE product. For these products, the amount of Federal power offered must be based on reasonable and verifiable estimate of the customer's regional consumer load. BPA's Power Products Catalog of the Power Subscription Strategy proposed a principle in which the fixed block products and the SLICE products are based on the customer's existing regional consumer load without consideration of changes for load growth. These products use an annual estimate of consumer loads, which is done once, at the start of the contract. They assume the customer and not BPA will serve any load growth. Thus, there would be no increase in the amount of the purchase over the term of the agreement. Under these products, the customer agrees to provide non-Federal resources to serve its load growth.*

A) BPA's initial offer will be based on the utility's actual loads or a reasonable and verifiable estimate of the utility's retail load in the region identified in its projected business plan at the time of the offer.

*This principle is based on section 5(b)(1) of the Northwest Power Act. BPA is to offer power to serve a customer's firm consumer load in the region. In a deregulated market, the longer the term of the contract, the greater the likelihood that changes will occur in a customer's regional consumer load. This principle seeks to address this concern by limiting the application of the forecast used to initially determine a customer's net requirements to one*

*year. Principle II.A. below requires a mechanism for a BPA annual review of a customer's net requirements load.*

- B) Except as provided in I.D. below, BPA will require that the utility continue to apply all current generation and long-term power purchase contracts to serve that customer's regional consumer load under a subscription contract. These resources are included in the Firm Resource Exhibit of a BPA customer's current 1981 or 1996 power sales contracts for the 1998-1999 operating year. BPA also will require all current long-term surplus power purchase contracts or excess Federal Power purchase contracts that extend beyond 2001 to be applied to serve a customer's regional consumer load under a subscription contract.
- C) BPA will consider any purchase contract that terminates after September 30, 2001, to be a long-term power purchase contract that extends beyond 2001.
- D) BPA will offer the customer power products and services at the Priority Firm (PF) rate and without a PF surcharge for consumer loads that are no longer served by generation resources and long term power purchase contracts due to resource retirement, obsolescence, or other loss of resource, or loss of contract right. Purchases of Federal surplus power and Excess Federal power that extend beyond 2001 are treated as long term power purchase contracts. Post-2001 PF power sales for resource replacement shall commence on the dates such resources are lost, provided that BPA has been notified in writing of the resource loss in time to permit the agency to include the additional load in the BPA rate process and that the generating resource or contract meets the standards described in II.E below.

*Principles I. B., C. and D. are based on sections 5(b)(1)(A) and 5(b)(1)(B) of the Northwest Power Act. The Subscription Strategy stated that a customer must continue to serve its loads currently served by a customer's generating resources or long-term power purchase contracts that continue beyond 2001. Principle I.B. clarifies that the resources a customer is required to apply to load is limited to those resources included in the customer's current Firm Resource Exhibit for the 1998-1999 operating year. These principles state that*

*all power purchase contracts with termination dates beyond 2001 are included in the customer's firm resources. Under the subscription contract, the customer must use these resources to serve its regional consumer loads. These long-term power purchase contracts that continue beyond 2001 include presubscription contracts and other long-term contracts to purchase Federal power from BPA. The principles also acknowledge that there are a number of these power purchase contracts which customers know will expire prior to the end of the BPA rate period.*

*The proposed principle allows the customer to purchase net requirements load service from BPA at the PF rate and without the PF surcharge as long as BPA is informed of the expiration dates of the contracts and the cost of such service has been identified and included in BPA's rate case. The customer must consult with BPA and obtain BPA's agreement in writing to receive requirements load service from BPA for a generating resource the customer believes should be permanently discontinued due to obsolescence or retirement. Resources or contracts that are lost after BPA submits its final rate case to the Federal Energy Regulatory Commission will incur a PF surcharge to cover any additional power costs BPA faces to serve the additional load.*

*BPA considered whether the customer's use of the market as a resource should also be considered. Many customers who use the market as a resource would likely face a loss of contract right for their short-term contract purchases. Additionally, some customers have been serving their consumer load in the region with generation resources not included in their Firm Resource Exhibits of their current power sales contract. Instead of the market, they are using their own non-Federal generation to serve their load. The proposed principles address a customer's use of those resources in serving its regional load based on section 9(c) of the Northwest Power Act. 16 USC 839(f)c.*

E) In determining a customer's net requirements load, BPA will follow the Declaration Parameters included in the Power Products Catalog under Actual Partial Service in establishing the capabilities of the customer's firm resources under the Subscription contract.

*Principle I.E. follows the approach established in BPA's Power Products Catalog for Actual Partial Products for determining the capabilities of the customer's resources to be applied to its loads. BPA considered whether there might be a simpler method for determining customer resource capability. However, there are enough unique customer perspectives on estimating resource capability that this approach appears to best meet the needs of resource determination in a deregulated market.*

F) BPA will determine what, if any, amount of thermal and/or hydroelectric peaking capacity and electric energy a customer has exported from the region that could be conserved or otherwise retained for service to regional loads. The customer's net requirements must be reduced to the extent that BPA determines the exported energy increased BPA's obligation to any customer to provide power to meet regional loads.

*Principle I.F. is based on section 9(c) of the Northwest Power Act. This principle states that BPA will implement section 9(c) by determining whether a customer has exported power from a thermal resource, whether BPA's net load requirements have increased as a result and whether the power could be conserved or otherwise retained for service to any regional loads by reasonable means. The proposed principle states that BPA will implement section 3(d) of the Regional Preference Act by determining whether a customer has exported power from a hydroelectric resource and whether the hydro resource could be conserved or kept available. In its 1994 9(c) policy, BPA adopted a policy stating that a customer's hydroelectric resources could always be applied to load in the region. This principle also continues BPA's past determinations for specific resources that resulted in reductions in net requirements of customers.*

## **II. Changes in Net Requirements During Term of the Contract**

*This section addresses reductions in BPA's net firm load requirements obligation due to changes on or sale of a customer's system which will change the amount of regional firm consumer load served by that customer or that reduce its net requirements. The principles are based on sections 5(b)(1) and 9(c) of the Northwest Power Act and 3(d) of the Regional Preference Act. The following principles propose a contract mechanism for making additional sales of power to utilities and the circumstances under which BPA would apply the PF Surcharge, Targeted Adjustment Surcharge to such purchases by public agency customers, or the NR rate for purchases by investor-owned utilities (IOUs). The actual rates that apply to any increased amounts of power sold for net requirements loads will be established in the BPA rate case.*

*These principles focus on the transition from the 1981 contract model to the Power Subscription Strategy model. Under the 1981 contract, BPA obligated itself to serve the entire regional load of a utility based upon notice periods and availability of power for acquisitions. A BPA goal under the Power Subscription Strategy is only to acquire new resources to serve a customer's net requirements load increase beyond its initial subscription amount based on a bilateral agreement in which the requesting customer takes all the financial risk. (Note: The initial subscription amount includes load growth for a customer purchasing that right.) BPA will still have to meet all of its total regional load obligations to all customers. Accounting for reductions in loads is part of meeting BPA's total regional firm load obligations.*

A) BPA will require, at least annually, that a customer report specified events causing a reduction in its consumer load. For fixed block and SLICE purchasers, if the reductions cause a customer's net requirements to fall below the amount of power being purchased from BPA, the agency will implement the mitigation measure for retail load loss specified in the customer's contract. For investor-owned utilities, BPA will provide the remarketing product option.

*Principle II.A. is based on section 5(b)(1) of the Northwest Power Act which limits BPA's net requirement obligation to a utility's firm consumer load in the region. This principle addresses the issue of the loss of retail consumer load by a utility and the use of the remarketing product mitigation measure specified in section IV.H.2. of the Subscription Strategy. This remarketing provision provides a financial benefit to residential loads for IOUs that no longer can purchase requirements power due to the utility's retail load losses. BPA considered other alternatives such as a conditioned consent to the removal of customer resources dedicated to serving regional load under their subscription contract. Under such an alternative, BPA would allow a customer to reduce the amount of resources serving its load equal to the reduction in requirements service caused by the retail load loss. BPA is interested in comments on this alternative and other alternatives to address this issue.*

- B) BPA will reduce a customer's net requirements by the amount of any exports of hydroelectric or thermal resources if BPA determines such resources could have been conserved or otherwise retained to meet regional firm power requirements of any BPA customer. On an annual basis, BPA will determine whether a customer's export of thermal or hydroelectric resources could have been conserved or otherwise retained to serve any regional loads.

*Principle II.B. is based on existing BPA policy for export sales of hydroelectric resources and thermal resources applied to regional load. See 1994 Non-Federal Participation Capacity Ownership, and Section 9(c) Policy. Reductions in BPA power requirements obligations due to a customer's export of power from its resources can come at any time. For example, a customer could end a contractual sale to another customer, where such other customer had dedicated the power purchase to serve its firm loads. By giving six months' notice, the customer losing the power purchase could request additional service from BPA at the PF Surcharge rate. If the customer owning the resource has sold power from its resource on the market after it was withdrawn, then it would face a section 9(c) determination and would potentially be subject to a reduction in its net requirements. In this example, the*

*withdrawal of the power could cause BPA's obligation to the second customer to increase. BPA's policy on hydroelectric resources under section 3(d) of the Regional Preference Act is hydroelectric resources can always be operated or applied against regional load by reasonable means. BPA's policy on thermal resources applied by a customer to its regional consumer load is that such resources can be conserved or retained for service to regional load. BPA is proposing changes in its policy on export of thermal resources under this Federal Register Notice.*

- C) Within the following limits, BPA will reduce a customer's take-or-pay obligation by an amount equal to the customer's dedication for a specified contract period of new renewable resources developed by that customer. Alternatively, a customer may develop new non-hydro renewable resources and export these outside the region without reducing its net requirement. This right to reduce BPA purchases shall apply only to the first 200 average megawatts of all new renewable resources developed by all BPA customers within the region. The new renewable resources must meet the standards for BPA's conservation and renewable resources discount, and be dedicated to serving the customer's load.

*Principle II.C. is based on the regional interest to encourage the development of renewable resources and follows statutory language in section 5 (b)(1)(B) of the Northwest Power Act that allows the Administrator to consent to resources changes under a requirements contract. This principle would allow customers to dedicate a new renewable resource to serve their retail consumer load. BPA has consistently interpreted section 5(b)(1) as allowing the Administrator to specify by contract the customer's dedication of additional resources to serve its load. BPA's Subscription Strategy requires customers to take the risks on their non-Federal resource placement commensurate with BPA's risks in covering future costs of Federal resources.*

*BPA requires customers to specify the amount of firm resources they dedicate to serve their retail consumer loads for the term of their contract. BPA is willing to sign a*



*Subscription contract for terms ranging from 1 to 20 years. This renewable resource principle provides an exception to the policy that a customer's firm resources must be known and dedicated at the start of the BPA contract and for the entire term of a contract. The exception provides for the Administrator's consent to the addition of new renewable resources during the term of the contract and allowing removal of such renewable resources at a point prior to the end of the contract. BPA has placed two conditions on this exception:*

*(1) qualified renewable resource dedications are limited to the first 200 average megawatts of renewable resources that customers request to dedicate during any year; and (2) only resources that would qualify for BPA's conservation and renewable resources discount are eligible.*

- D) BPA will provide net firm requirements service under the PF Surcharge rate or the New Resource Firm Power (NR) rate for a customer's regional loads not included in the rate case and which are served by the customer's dedicated generation resources and its long term power purchase contracts that extend beyond 2001, if such dedicated resources are lost for specified reasons described in principle II.E. during the rate period.
- E) Generation resources and long term power purchase contracts extending beyond 2001 are considered lost if they are permanently discontinued during the rate period due to retirement, obsolescence, loss of the resource, or loss of a contract right. 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. BPA will consider such resources lost due to permanent discontinuance because of obsolescence or retirement only if the customer has consulted with BPA and BPA has agreed in writing to such discontinuance.

*Principles II. D. and E. continue BPA's existing contract standards regarding a customer's loss of firm resources. These principles have worked for 20 years and allow BPA to consider all the facts in determining when BPA must replace a customer's lost resource with Federal resources.*

*BPA will provide replacement firm power service for the regional consumer load served by the resource as net requirements power only if the customer has lost a resource or lost a contract for the reasons specified above. For example, expiration of a customer's non-Federal power purchase contract is considered a loss of a contract beyond the reasonable control of a customer, and which the best efforts of the customer are unable to remedy. If a customer requests additional power purchases from BPA for its regional firm load served by its resources for any other reasons, BPA would make such purchases of replacement power from the market under separate contracts and its section 7(f) surplus power rates.*

- F) BPA will assume the market will provide resources to the customer to serve any increased consumer loads. BPA load service for new annexed loads resulting from open access or actual annexations or mergers will be provided under the Targeted Adjustment Charge or the NR rate. Additional service for lost generation resources and lost long term power purchase contracts extending beyond 2001 will be provided at the PF Surcharge or NR Rate, upon the customer's request for service and notification to BPA that such an event has occurred. Service to replace the above qualified renewable resources at the end of their dedicated contract period will be provided at the PF rate. BPA will provide firm power service for annexed loads, lost resources, and replacements of qualified renewable resources six months following determination that such event has occurred or as mutually agreed.

*Principle II.F. states that BPA will provide firm power requirements service to annexed loads or for lost resources for all customers. However, the rate arranged for such service may include an adjustment for costs BPA incurs to provide the additional service. BPA considered making changes to its net requirements service only at its annual review of load or customer resource changes when determining any reductions in the customer's net requirements purchase. However, BPA decided that a rolling notice period for annexation or loss of resource would better serve the sporadic nature of these events. BPA has assumed that six months would be the minimum time needed to determine the facts surrounding the*

*annexed load or loss of resource and allow BPA to prepare to provide service. It would also give BPA time to purchase any additional resources necessary to serve the load. Principle II.F. would give BPA the discretion to provide service on shorter notice if it is able to do so.*

### **III. How BPA Will Determine if a Customer Has Exported a Resource From the Region Requiring a Reduction in the Customer's Net Requirements**

*Section 9(c) of the Northwest Power Act requires BPA to make several factual determinations when customers sell or dispose of power from their resources on the market for export outside the region. Section 3(d) of the Northwest Preference Act requires BPA to reduce its sale of requirements power to any customer that sells or disposes of hydroelectric power outside the region which cannot be conserved or kept available for use. These determinations are particularly difficult in a deregulated market where sales are often made to marketers at the generator busbar, and where schedules of transmission are not available to BPA's Power Business Line. Adding to the difficulty is the fact that merchant activity by all customers is confidential so that commercial information is not readily available for factual determinations.*

A) Subject to certain showings, the output of any customer's thermal generating resource existing on the date the subscription strategy was published and that has been used to serve regional firm load at some time during its life will be treated as exported from the region in a manner that increases the firm energy requirements of the Administrator. The customer's net requirement will be reduced unless the customer can demonstrate one or more of the following:

1. 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;
2. The resource is under a current post-2001 contract committed to serving a BPA customer's regional load; or

3. The resource is subject to a prior BPA written section 9(c) determination that the resource could not be conserved or otherwise retained to serve regional load.
4. The Administrator determines a thermal resource could not be conserved or otherwise retained to serve regional load by reasonable means under principle III.B.

B) The policy BPA proposes for determining when a thermal resource could not be conserved or otherwise retained to serve regional load is met when:

- i) There were no purchasers after the resource was 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. In the case of a resource offered for a fixed term, the output of such thermal resource shall not be deducted from the owner's or purchaser's maximum firm requirements for the term of the offer or the term of the export, whichever is less.
- ii) The resource is permanently auctioned through a public process and was not purchased by a regional purchaser. In the case of a resource permanently auctioned, the output of such thermal resource shall not be deducted from the owner's net requirements.
- iii) The Administrator determines that the market price for power makes it unreasonable to retain that resource to serve regional load.

*Principle III.A. addresses the difficulty in a deregulated wholesale market of determining whether power from a customer's resource has been exported in a manner that increases the Administrator's firm energy requirements. The proposed principle states a rebuttable presumption that all power from a customer resource which has been used to serve regional loads and which is sold on the market shall be treated as power exported by the seller. Such a sale shall be deemed to increase the Administrator's firm power requirements under the customer's or another customer's BPA power sales contracts. Power sold from the resource will not be treated as an export if the customer can demonstrate the resource was: Not used*

*for load and developed solely for sale in the market, or that the power from the resource is being used by a Direct Service Industry (DSI) or another BPA utility customer to serve retail load in the region;, or that a prior BPA determination under Section 9(c) allowed the resources to be exported.*

*If a customer demonstrates that the resource has been sold to a DSI or another utility in the region, the purchasing utility must demonstrate that power from the resource is dedicated by contract with BPA and is being used to serve its retail load in the region.*

*To implement this principle, the customer must provide that commercial information it wishes to share with BPA on its power sales, so BPA can make the required factual determinations. BPA considered whether it should continue the practice stated in 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 limitations on the flow of information from transmission functions to power sales functions arising from functional separation under FERC orders 888 and 889.*

*Principle III.B.4 addresses a customer's sale of resources, which are determined to increase the Administrator's power requirements obligations to serve load in the region. Such a sale must meet one of three tests in order for BPA to determine that the resource could not be conserved or otherwise retained to serve regional load. Unless at least one test is met, the amount of power, capacity and energy sold and deemed exported would be treated as a resource that could be used or retained to serve firm load in the region and whose sale will result in BPA's obligations increasing. Thus, BPA would reduce its section 5 electric power requirements contract obligations to that customer by the amount of the power sold from the resource.*

*The first test provides that a customer may offer power from a resource for sale in the region to BPA and its eligible customers for a period of at least one-year at cost and a*

*reasonable rate of return. If BPA or a BPA customer in the region does not offer to purchase the resource, then the Administrator would determine that the output of the resource could not be conserved or otherwise retained to serve regional load for a period equal to the duration of the offer of the resource or the term of the export whichever is less.*

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

*BPA considered a possible alternative to the second test that would limit the use of auctions based on an economic standard of paying the stranded costs of a utility. Under that test, BPA would reduce its net requirements obligation to the utility if the proceeds of the auction and export of a resource resulted in net positive benefits above the cost and reasonable rate of return for the resource, and if such benefits were not paid to the consumers of a utility. The purpose of such a limitation is to preserve the benefits of low cost resources for regional loads.*

*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 conditions and prices in the region for a specified period. If the Administrator makes that determination, then a customer would be allowed to sell a resource during the period without a reduction in BPA's obligation to provide power under its Subscription contract.*

- C) All new thermal generating resources developed by BPA customer utilities after the December 21, 1998, publication date of the Federal Power Subscription Strategy will be treated as meeting the "market resource test," unless power from the resource is dedicated by a BPA

customer under its BPA contracts to serve consumer load. In such event, the thermal generating resource will be treated in the same manner as existing non-Federal resources dedicated by customers to regional load under Subscription contracts.

*Principle III.C. 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 a customer’s retail load. The exception would be where a customer specifically chooses to dedicate part or all of the output of the resource to serve its own load or regional load of another customer as stated below. Otherwise, all such resources sold on the market would not increase the Administrator’s power requirements obligation to any customer under its BPA section 5 contracts.*

- D) Any customer’s sale on the market or export of the output of thermal resources that is included in any other BPA customer’s Firm Resource Exhibit for the 1998-1999 Operating Year (under a 1981 contract or a resource exhibit under a 1996 contract) shall be considered to meet the section 9(c) tests of increasing the Administrator’s electric power load requirements under the Subscription contracts. The output of such resources shall be deducted from the selling customer’s net requirements unless BPA determines the resource could not be conserved for service to load in the region under III.B. above.
- E) Any customer’s sale on the market or export of the output of thermal resources that are currently being used to serve that customer’s or another customer’s regional load but are not included in either customer’s Firm Resource Exhibit for the 1998-1999 Operating Year (under a 1981 contract or a resource exhibit under a 1996 contract) shall be considered to meet the section 9(c) test of increasing the Administrator’s electric power load requirements under the Subscription contracts. The power output of such resources shall be deducted from the customer’s net requirements unless BPA determines the resource could not be conserved for service to load in the region under III.B. above.

*Proposed principles III.D. and III.E. divide all customer firm resources currently used to serve load into two classes: (1) those resources that are currently in any BPA customer's Firm Resource Exhibits; and (2) those resources that are not included in Firm Resource Exhibits. BPA has proposed that it will require only resources currently specified in any of its customer's Firm Resource Exhibits to be dedicated by the customer to serve its regional load under its BPA contracts. Customer's resources that are currently used to serve regional load but which are not included in Firm Resource Exhibits, if sold on the market, will result in increases in BPA's firm power requirements obligations under section 5 contracts. The customer selling the output of the resource will be required to demonstrate that the resource has either been sold to a regional utility to serve that utility's consumer load in the region, or demonstrate how the resource could not have been conserved or otherwise retained to serve any BPA customer's regional loads.*

*Principle III.D. also recognizes that BPA would face an increase in its power requirements obligations if the owner of a resource terminated a contract purchase used by another utility to serve its regional retail load. The owner of the resource would be required to demonstrate that the resource has either been sold to another regional utility to serve its consumer load in the region or could not have been conserved or otherwise retained to serve any BPA customer's regional loads.*

F) Any regional hydroelectric resources exported by a customer shall reduce the customer's BPA power requirements under its BPA contracts, unless the resource is contractually committed to serving another customer's regional load or such resource was previously determined to be serving that customer's load and the customer replaces the resource by a market purchase or new generation.

*Principle III.F. requires the reduction of a customer's BPA power requirements obligation under its BPA contracts, if the customer exports any hydroelectric power from the region. If a customer demonstrates that the resource has been sold to a DSI or another*



*BPA customer utility in the region, then the purchaser must demonstrate that its purchase is dedicated to and is being used to serve retail load in the region. If in calculating the customer's net requirements, BPA determines the resource was already dedicated to serving the customer's firm load, BPA will treat the hydro resource as remaining dedicated and will not further reduce its net requirements obligation to the customer, nor will BPA replace the resource.*

Responsible Official: Mr. Steve Oliver, Manager, Bulk Power Marketing, is the official responsible for the development of the draft policy proposal for addressing issues under sections 5(b) and 9(c) of the Northwest Power Act regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts.

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