Bonneville Power Administration
Regional Dialogue Principals Management Group

December 16, 2005

BPA Headquarters, Room 122, Portland, Oregon
9 a.m. to 4 p.m.
Approximate Attendance: 65

Opening Remarks

Mark Gendron (BPA) welcomed participants and asked for introductions. This meeting is to provide a status report on the progress of the Regional Dialogue since the last principals meeting, with a focus on the bulleted topics on the agenda, he said. While we have had only three principals meetings, the technical committee has met numerous times, Gendron said. "This is a dialogue," and we are very interested in hearing from the principals, he added. We want your comments and feedback, and your help to move this process forward, Gendron stated.

We have made significant progress since the last principals management committee meeting, particularly on the issues of service to new publics, renewable resources, IOU benefits, and Slice, he continued. But there are significant issues where work remains, Gendron acknowledged. We are taking an "interest-based" approach to the discussions, he said, listing 10 interests participants have agreed upon.

Gendron said he would indicate BPA's "leanings" on the issues, but emphasized that there had been no decisions yet. We want to conclude the Regional Dialogue with a package of agreements, he stated, adding that "this is a snapshot in time," and the pieces will be part of an entire package.

Progress Since Oct. 20

Gendron outlined "broad agreement" on service to public utilities, which would involve establishing a "high water mark" (HWM) for each customer. He listed several provisions, including giving customers the opportunity to apply their HWM to the product of their choice. Partial service customers would have a one-time right to opt out of the grouping of load-following customers, and conservation achievements for load following customers between 2002 and the start of the contract would be taken into account so there would be no decrement for a load-following utility that is pursuing conservation, Gendron explained. We are relatively comfortable with the idea that load-following customers would not be subject to Tier 2 pricing until the total load-following group's load exceeds the total of their individual HWMs, he said.

With regard to the agency's leaning on the public exchange, Gendron said for customers to receive a HWM, they would have to voluntarily settle their right to the residential

exchange. The concept of melding resources with the FBS "is contrary to the new paradigm" of tiered rates and allocation, Gendron said. Some customers may not settle, and we are still developing ways to deal with that, he said, adding that BPA is open to various settlement approaches. Failure to resolve the residential exchange issue puts tiered rates and allocation at risk, Gendron said.

A process is going on to resolve the issue of transfer service, and it is moving along at a good pace, he continued. With regard to service to the DSIs, we are looking at extending the 2007-2011 benefits into new contracts, with a $59 million cap for smelters and 17 MW of service for Port Townsend Paper Co., Gendron said.

We are thinking we would take the same fundamental approach to conservation as we have today, he said. BPA would pursue all cost-effective conservation associated with its Tier 1 load, according to Gendron. We also addressed cost separation and the tiered rate methodology, he said. Development of the tiered rate methodology is a very important issue for customers, Gendron said. They want to know about the tiered rate methodology before contracts are signed, and while it is a difficult issue, we are looking for ways to accommodate that, he said.

As for determining the size of the FBS resource, we would set forth specific resources in the new contracts that would be used to determine the initial HWMs, according to Gendron. Identifying a specific source of information to periodically adjust the FBS capability is also needed, he said.

Power deliveries under the new contracts would begin in October 2011 and end in September 2027, Gendron said. We are looking at ways to maximize the period of power delivery under the contracts, he explained. The template for the Regional Dialogue contracts would be the Subscription contracts, Gendron said.

We have not discussed the following, but may need to at some point, he acknowledged: non-Slice products, such as block and load following; Tier 2 products; the low-density discount; irrigation rate mitigation; and new large single loads. The agency intends to provide both a low-density discount and irrigation rate mitigation, Gendron stated.

New Publics

At this time, our leaning with regard to new publics is to designate a specific HWM for new publics in the range of 250-300 aMW, he continued. There would be a limit of 50 MW for new publics during each rate period, and requests would be pro-rated if they exceed the limit, Gendron explained. New utility loads would be phased in, he said: loads between 10 and 35 aMW would be phased in at 33 percent per year, and loads over 35 aMW would come on at 20 percent of their need per year.

Gendron also indicated that new publics would not be treated better than existing publics. If existing publics are above their HWMs, a pro-rata calculation would be used to determine how much of a new public's load would be above its HWM, he explained.

Our public customers suggested the FBS might be augmented for the purpose only of serving new publics, and "we have some interest in that," Gendron said. A participant at the meeting suggested new publics could be asked to seek other resources as a pre-condition of service from the FBS.

Participants asked if conservation and renewable resources would be part of the package for new publics. One participant suggested the Council's power plan should be the guide, and BPA could facilitate bilateral contracts between existing customers and new publics to provide a resource in the form of conservation. Gendron said BPA is mulling over the idea and has contract durability and stewardship interests that would weigh in that direction.

The provisions for new publics do not seem fair, a participant stated. If new publics are no better off than existing customers, the converse should be true, he said. He indicated it would take 17 years for a large new Montana public utility to be phased in under the proposal described. Another participant suggested that the agreement be more positive in stating that new resource acquisitions would be consistent with the Council's plan.

What about a new public's right to exchange? a participant asked. New publics have the right to exchange, which would give them an alternative to getting an HWM, Gendron responded. Currently, the expectation is that there would be no value in the exchange, another participant pointed out. We should not overlook the issue of how to treat the exchange if a new public is carved out of an IOU service territory, a third participant said.

Renewables

Gendron outlined ways BPA intends to continue is renewables role, including providing resource integration services and funding for research and development (R&D) in Tier 1. He said the possibility has also been raised of BPA being "an anchor tenant" in new renewables projects and giving rate credits for power customers to develop renewables.

It's important for BPA to provide integration services on a long-term basis, a participant said. BPA will need to look at its system to determine what is available, she said. BPA could spend its renewables budget on being an anchor tenant, supporting R&D, and/or making investments for Tier 2 resources and "wrapping up good sites" for renewables while they are still available, she suggested.

Providing integration services for the long term is important, another participant reiterated. The short term doesn't work for utilities, only for merchant plants, he said. Another participant said BPA would have to look carefully to determine the capacity available for integrating resources and to consider the cost implications. BPA should look at renewables other than wind and get away from putting "all our renewables eggs in the wind basket," another participant said. Other resources don't require the type of integration services wind does, he added.

IOU Exchange

To be successful, the Regional Dialogue package requires getting to a reasonable conclusion on the IOU residential exchange benefits, Gendron said. We are encouraged by the discussions of settlement, he said.

This is the most challenging topic in the Regional Dialogue, a participant said. Despite years of litigation and customer meetings, there is no solution, he said. BPA offered three options in its concept paper, he said: the current arrangement, a fixed payment, or the traditional average-system cost calculation, with a 7(b)(2) rate test. John Saven (Northwest Requirements Utilities) offered a different mechanism that has merit, he stated. He described major issues associated with the IOU exchange benefits, including the publics' contention that the appropriate comparison between their rates and IOU rates is at the retail, not wholesale, level.

Two elements are key to a resolution, he said: the mechanism [for determining the benefits] and their value. Any proposal has to be politically sustainable, and the paradigm of comparing retail instead of wholesale rates is not sustainable, he contended. A fixed payment over 20 years could also lead to political problems – "it would either be too much or too little, depending on your point of view," he explained. If IOU investments cause IOU and public rates "to get too out of whack" over 20 years, that's not sustainable either, he said.

We are interested in working on this and in settling the litigation, he stated. When we put a new proposal on the table, we don't want to go through the litigation again if we can avoid it, he said. The fallback is the traditional residential exchange, with all of its complexity, he concluded.

Timing is critical here, another participant said. We need an end date to come to an agreement or we won't get to one, he said. Can we come to a conclusion before the end of January? he asked. I'd urge all of you in the public and private communities to look at the options to see if you can support any of them – if not, decide what is the next best position, he advised. I hope public power "can get to critical mass" on this – I appreciate the extension of time we have – by the end of January, we have to come to a conclusion, he stated.

If we try to resolve both the post-2011 exchange issue and the current settlement litigation controversy, it becomes more difficult, another participant commented. We ought to attempt to resolve the post-2011 question first; it would then be more possible to settle the litigation, he said. The court will decide *something*, and by inaction, we will be letting the court make the decision for us, he pointed out. Now we have the opportunity "to seize our fate," rather than letting others decide for us, he stated.

I am not pessimistic, another participant stated. We wanted a delay in the Regional Dialogue process because we all thought we could make progress on this – we thought we could use the time usefully, she added. We have to be aware of the relationship

between this topic and others in the Regional Dialogue – it is a piece of a larger puzzle, and it bears on many other issues, she said. One of the options is being litigated, and the oral arguments in the litigation were very interesting, she said. There's a lot of activity going on around this issue, she said, acknowledging that things could go either way.

I don't think we'll find "an absolute perfect solution," a participant stated. If we get a court ruling, it will give us a roadmap, he said. We may not like it, but we need to find a solution, he added.

Slice

A great deal of progress has been made recently on the future of Slice, Gendron said. He said both sides are trying "to tune-up" Alternative 2, which would allow for an amount of Slice that is similar to the current amount. BPA is considering some limitations on the use of Slice, he said. Participants said they were surprised BPA would still have such an alternative such as option 1 under consideration. It remains alive because of the litigation, and the Administrator is not willing to remove it from the mix, Gendron responded.

Resource Removal

The trickiest issue for non-load-following customers is resource removal, according to Paul Norman (BPA). In the concept paper, we proposed the HWM, which would be fixed except for a periodic net requirements calculation, he explained. A customer could only receive its net requirements, Norman said.

Resource removal is a tough issue, he continued. The PPC proposal did not put a limit on resource removal – a customer could remove as much as needed to bring its Tier 1 purchase up to its HWM, Norman said. The BPA concept paper said there could be no resource removal, but the BPA workgroup came up with 5 percent of total retail load, he said.

This is "a transitional issue" and will likely go away in time, Norman said. But there could be utilities with a large persistent load loss, he acknowledged. We don't see a lot of utilities that would have this problem, Norman said. The Centralia owners think BPA should agree to let them remove their Centralia MWs for purposes of the net requirements calculation, he pointed out. But this won't be a problem for resources developed in the future, only for pre-existing resources, Norman said, adding that BPA has allowed resource removal in the past under its 9(b)5(c) policy, and it is allowed in current contracts.

He offered a matrix laying out how limited and unlimited resource removal would fare up against the list of Regional Dialogue interests and explained them as follows:

- Simplicity: unlimited resource removal is probably better.

- Durability: with unlimited removal, there is concern a utility would appear to be making a windfall by displacing resources with federal power and selling them.
- Legality: some exposure with unlimited removal.
- Lowest Tier 1 rates: unlimited resource removal could create higher rates by as much as a couple of mills.
- Regional support: unlimited removal has more support.
- Salability in Washington, D.C.: mixed for both.
- Certainty of obligations: unlimited removal is a little better.
- Promote infrastructure development: not much difference.
- Seen as equitable: if utilities get big windfalls from a right to unlimited resource removal, support could break down.
- Stewardship: unlimited removal would maximize the incentive to conserve, but could concentrate benefits on fewer customers.

This is a very tough issue, and these are the interests that have caused us "not to just say yes" to unlimited resource removal, Norman stated. Our minds are not made up on this; we have moved toward a 5 percent removal right, he noted.

A participant said there is some perception at BPA that there are utilities that "have more BPA power than they should." He explained the resource situation for his utility, pointing out the utility would have a deficit based on PNCA planning, if the region has a year drier than 1937. He said there could be inequities with HWMs based on a utility's 2002 contract adjusted for net requirements. The debate should not be about resource removal, it should be about the amount of power we get, he said.

He pointed out that under the BPA proposal, generating resources "are off the books," but conservation "is on the books" – there should not be a penalty for conservation. The mechanic in the BPA proposal does not work yet, he said. We need to find a mechanism to get equal value for both types of resources; a 5 percent removal right alone is not it, he said. Everyone except BPA agreed to a resource removal right of 5 percent plus conservation, he stated.

It is important to keep the incentive for doing conservation, another participant stated. The proposal to allow for a 5 percent removal right plus conservation, verifiable through the RTF process, had the support of every interest – agencies, utilities, Tribes, Northwest Power and Conservation Council, and public interest groups, he said. Others don't share the concerns BPA has, he pointed out. "BPA is the only holdout," and that is not a good negotiating stance, he stated. When all of the other parties can agree, it should carry some weight with BPA, he added.

We had a piece of Centralia, which was about 10 percent of our load, another participant said. We start out with an HWM that includes "the Centralia hole" and then are asked to add to that, he said. We want to be able to continue to do conservation, and the BPA approach undermines conservation – BPA should reconsider, he stated.

There is a bit of an overstatement about the consensus around that removal right proposal, another participant commented. Our interest is to put together a package that is fair to everyone, he said. We have tried not to pit our interests against those of others – we don't want to undercut generators, he added. I don't know if adding the conservation resource to the removal right is the way to fix this – it's in BPA's interest to resolve this in a way that is fair to all, he said.

The right incentives really matter for conservation, another participant said. The gap is growing between what is going on in California and in the Northwest, he observed. Some customers are willing to do more conservation, and "it can't be the right incentive" to have customers go for generation over conservation, he stated. There could be an incentive to overdeclare conservation, he acknowledged, so there would need to be strong independent verification.

There is a fair discussion to be had about who pays for the conservation – it's a fair debate, another participant said. We have a large augmentation contract with BPA – BPA pays half the costs and gets all of the conservation, he explained. We have work to do on this issue, he added.

The proposal for the 5 percent plus conservation is interesting, but I don't see how you find equity for load-following customers with that, a participant commented. We need to come up with a mechanism that is more comparable for load-following customers, another agreed. There are ways to address it, he said.

This idea was put forward as a way to solve the resource removal issue not as "a panacea" for load-following customers, another participant injected. If this idea "took legs," it would have to be amended to give load-following customers the same treatment, he said.

Going back to the list of interests, there is an interaction between contract durability and the interaction with market prices, another participant offered. What we are trying to do is establish a construct that can survive 20 years without major shifts in costs and benefits, he said. The concern about a potential windfall is driven by the forward market-price curve, but who knows where the prices will really be, he added. A resource removal right protects BPA – we can't assume that market prices will always exceed the BPA rate, he said. The solution has to address all of the future possibilities, he stated.

But a utility is not required to remove resources, another participant pointed out.

The BPA staff believes there is a long-term liability with resource removal – that is a real interest and concern, another participant stated. I would suggest there be "a sidebar" discussion of this, he said. Maybe you can have an independent determination on the problem Seattle and others have, he added. This is a pitch for coming up with something you can settle on, he said. For the IOUs, conservation just makes sense, and our interest is that you resolve this, he stated. "The boat only floats if it floats for public power," he added.

We feel strongly about continuing conservation, another participant said. The issue is not presented well in BPA's concept paper and should get additional attention – what is in the paper won't achieve what you want, he cautioned. We'd like to help you bring closure to this issue, he said.

Cost Control

Kim Leathley (BPA) recapped the history of the cost control issue. We've heard for several years that cost control is a huge issue, she said. BPA shares that interest with customers – "it's good public policy for you to have a meaningful way to make input on BPA's cost decisions," and we understand the importance of giving customers confidence about signing 20-year contracts, Leathley said. We would like to create a forum where trust and confidence are increased between BPA and its customers and stakeholders, she stated. You have different ways of approaching problems and different ideas, and we want to hear them, Leathley said.

BPA's proposal on cost control has three elements, she went on: continue to support the customer collaborative and other processes; create a cost-management group formed and led by customers – BPA would support it from the executive to the staff level; and offer a contractual off-ramp tied to cost management. The proposal is not business as usual, Leathley said. It would create a formal entity with "a tremendous amount of influence" in commenting on program levels and objectives, she said.

When we put out the concept paper, we believed this group would be very persuasive at BPA, and the Administrator would think hard before going in a different direction than this forum recommended, Leathley said. But when we discussed this proposal, people around the room thought it was necessary, but not sufficient, she stated. Customers wanted a mechanism to engage the Administrator further, such as a contested decision process if he decided to do something other than the forum recommendation, Leathley explained. At the meeting yesterday, we talked about what BPA's worries are and what concerns are underlying these talks, she said.

Our basic worries fall into four categories, Leathley continued: clarity and control; what constitutes efficiency; what is meaningful; and whether we are really building trust. With regard to the first, there continues to be a lack of clarity about costs – what are we talking about here? BPA's key concern is that the Administrator is statutorily responsible to the Executive Branch to carry out the agency's mission, she stated. At the end of the day, no one shares that accountability with the Administrator, Leathley said. With regard to efficiency, we want a process that does not interrupt our carrying out programs – we want to focus on the biggest problems, so the process doesn't break under its own weight, she said. We don't want to supplant the Administrator's decisions with the court, Leathley stated. We are also trying to reduce our internal costs, she added.

As for meaningful, we worry about our ability to set standards for a third party to use in ultimately making the decision, Leathley said, adding that BPA is concerned about building arbitration into its cost decisions. And we want a forum that is not divisive and

litigious, one that would really build trust, she said. We worry about arbitration becoming "the de facto process," she said.

This is important for customers because allocation looks to us like we are giving up "an expanding supply at a moderate price for a static supply at a low cost," a participant said. We will be signing contracts without knowing the cost, so this issue is very important, he said. We don't want to see new costs come in "to fill the void" that is left when the supply no longer grows, he said. BPA has done good work, but we are still at the formative stage on this, he indicated. What we are looking for "is clear in the abstract, but difficult in the details," he said. What we need to know, if we sign on for a take-or-pay contract for 20 years, is that we have an institutionalized way to engage BPA on costs that affect the rate level, he stated.

People will be even more interested in costs in the future because of tiered rates, he continued. We are looking for a more regularized process, and we want to have "a next step" that occurs if we don't agree with BPA's decision, he said. We need the incentive the next step would give us to keep working on a compromise, he added.

Geoff Carr (NRU) went over a handout that described a proposed Cost Management Group (CMG) that would work with BPA on costs. He explained the purpose of the CMG, emphasizing that "this is not a BPA entity – customers have to take this on." The description calls on BPA to commit to provide information on costs, meet with the CMG and its support staff, and to coordinate and make available program managers and other experts necessary for the CMG to explore particular cost issues.

As for the CMG structure, it would be made up of 16 members, eight of whom would be public utility representatives, Carr said. I tried to keep public power predominant in the CMG, but we want a broad spectrum of representation, he elaborated. The handout included procedures for electing a chair, frequency of meetings, and term of members. In addition, Carr explained the procedures for administrative decisions, including how members would be selected, what constitutes a quorum, how motions would be made, and how consensus would be defined.

The current process for people to influence the Administrator is informal, but many spend considerable time on it, a participant said. We thought it may be better to have a group with more status that would stand above the informal process and provide a way to focus utilities on talking and coming to agreement, he said. You would have to have agreement so that when the CMG talks, it represents everyone, he stated. CMG members will have to negotiate with each other – this is a way to put pressure on interests in the region to work out their differences in a transparent forum, he said. Once a consensus is reached, it would be hard for the Administrator to ignore, he stated, adding that the process would focus everyone on compromise and finding creative solutions.

There have been several cost review efforts, and I have been impressed with that process – it came to a positive result, another participant said. "I'm not sure what's broken here," he added. What I am seeing with this CMG proposal is a formidable new institution,

which is rather exclusive, he said. I think we are already getting good at cost control – after all, what have we been doing for the past few years, he stated. I want to engage the Administrator, too, but at the end of the day, this is the Administrator's responsibility, he pointed out. What persuaded you of the need to change a structure that many thought was working rather well? he asked.

There are shortcomings in the current process – it's episodic, and the involvement depends on the level of rates, a participant responded. This is an attempt to get ahead of the decision-making process and influence it in a constructive way, he said. With a standing institution, you have people who develop expertise, and you don't have to spend a lot of time educating new people, he added. Part of the trade here has to be a certain amount of control – we would be giving up our ability to leave the system, and we pay the bills, he stated. It is a different business arrangement than we have had in the past and it needs a different mechanism for cost control, he said. Our leverage on BPA in the past was to remove load, but this contract would be "come and stay," he stated.

The Sovereign Nations do not have a seat at the table, a participant said. I worry about the time and effort it could take – we need to ensure this is an efficient process, he said. If it is large and involved, we'd have to figure out how the tribes would fund their participation, he added.

Signing on for 20 years is a factor, but so are the Tier 1 and Tier 2 cost distinctions – that is a new aspect of these contracts, another participant said. What is the expectation that we could ensure the CMG is around in three, five, or ten years? she asked. If the process were not contractually obligated, would we have something that eventually falls by the wayside? she asked.

I have mixed feelings about this approach and the issue we are trying to resolve, another participant said. There is a more fundamental issue here, and its accountability – if things go awry, the agency wouldn't be accountable, he said. I'm not sure this proposal solves the trust issue, he added. I don't know if I want to spend a lot of time and energy monitoring every cost – this group could operate and still it would not stop the Administrator from doing what he wants to do, he stated. I see that there has been a lot of work done here, but this does not solve the fundamental issue, he reiterated.

If this body wields substantial influence over costs, you could not keep the states out – all states would want to participate, a meeting participant commented.

The current Administrator "has knuckled under on costs," but that could change, another participant said. This proposal sets up a meaningful body so if there is a change of Administrators, we retain some control, he said.

I'd echo the caution about the scope and decision-making structure, a participant stated. But there are benefits to a regular process, she said, adding that people will become more knowledgeable about costs.

Part of the reason for this Regional Dialogue is to secure the federal resource for the region, a participant stated. Some support off-ramps for customers, but I don't see that as part of the package, he said. Cost control is a way to balance things – customers have a strong interest in BPA's costs, he added. BPA power is half of our utility's costs, and we have retail customers who are on the verge of going out of business, he stated. We may not have the right mechanism yet, but our interest is clear, he said. If we can't control costs, we have to ask what the relationship is that we are getting into, he said.

A big uncertainty in costs is fish and wildlife, a participant stated. Those issues are being addressed in another forum, he said. There has to be a way to circle back around to incorporate them, he said.

If you don't have an Administrator who controls costs, "fire him" – don't create a committee that oversees spending, a participant urged. We don't have a say in the Administrator's decisions, another participant responded. Utilities have boards of directors or city councils – people have input, he stated. But we don't have input with the Administrator – that's a fundamental difference, he said.

Dispute Resolution

Dispute resolution is an issue of control versus influence, Randy Roach (BPA) said. The question in play here is the line between effective influence and control, he said. Roach said BPA recognized that customers wanted a share of the value of the system and to take care of the incremental resource costs themselves. We have been "mightily influenced" by your voices and your desire to have freedom in covering those incremental costs, he said. What we need to talk about is effective cost management – BPA cannot cede responsibility, it simply cannot, Roach stated.

He went on to summarize a presentation he made on dispute resolution at a Regional Dialogue technical meeting. In a nutshell, before we agree on dispute resolution, we ought to agree on what we're talking about in the way of disputes. You don't agree about dispute resolution until you know what you're talking about, and "we are still at such a conceptual level," Roach said. He explained a construct for dispute resolution and made several points about the pros and cons of arbitration. If we are going to use third parties, we have to have people who are experienced and who know the system, Roach said. You don't want the system caught up in constant third-party arbitration, he added.

We had a good and productive meeting on dispute resolution, but there is a huge amount of work left to be done, Roach stated. And when all is said and done, will that give you control? I don't think so, he stated.

I think of dispute resolution as contract enforcement, another participant responded. As customers, we are looking for a way to be sure "the deal" is enforced in a businesslike way from both directions, he said. We want a third party that will be objective, and we need decisions to be made promptly – four years in the Ninth Circuit isn't prompt, he

added. He talked about the distinction between "policy" and "fact", and indicated there are concerns about how to determine which are which and how they should be addressed.

We aren't at "a high level of sophistication" yet in this process, and we need more details, he said. I will keep pushing for more definition and distinction so we can have a realistic expectation of where to go for what dispute, he stated. Another participant said creating "a culture of cost consciousness" is an important aspect of the discussion. If decisions are subject to a higher authority, it would help embed such a culture, and that would be a good thing, she said.

I share the objective with regard to culture change, another participant said. But I think the CMG proposal is really rigid, he said. We should reflect on what we have already developed and try to hold on to what has worked – don't break with it, he urged. We should not be anticipating how to deal with intractable disputes, but working on how to avoid them, he said. "You are overjudicializing it" with the CMG proposal, he indicated.

Next Steps

We've come to a tentative agreement within the agency that more time would be helpful, Gendron said. We had intended to move to a policy proposal in mid-December, but we think it's worth considering continuing with the discussions, he said. We could close things out in mid-February and move the policy proposal forward to March, Gendron suggested. And we may need to get the principals back together on the issue of cost control, he added.

What will this look like when you "get there"? a participant asked. We said this phase of the Dialogue is to try to get to as much alignment as possible, but we may not be there on all issues, Gendron responded.

A participant asked about how the Regional Dialogue results would "interface" with fish costs. Right now the timing on that seems to be okay, Norman said, noting that preparation of a new Biological Opinion and decisions out of the court are tracking with the Regional Dialogue schedule.

Gendron wrapped up, saying a small group would continue to address cost control, and the principals would meet again in mid-February. He asked Marilyn Showalter of PPC to lead the cost-control work, and she agreed to do so. The principals decided on February 22, 2006 as a potential date for their next meeting.

Progress can be made with the smaller group meetings, but we need to make sure the principals' group is coming along on the agreements, a participant summed up.

Meeting adjourned at 3:45 p.m.

Montana Public Power Incorporated
P.O. Box 1704
Helena, MT 59624

December 7, 2005

Helen Goodwin
Bonneville Power Administration

Dear Helen:

This is a response to the proposal presented by Scott Wilson of BPA regarding new publics at the Regional Dialogue meeting on November 8, 2005.

The proposal, in brief, recommends a structure of phasing in and limiting large new public loads.

In general Montana Public Power (MPP) can see the need for some form of phasing, in order to insure that BPA or other agencies have time to respond to new load needs. However we think the proposal goes much further than is required in that direction. First, either the proposed period between increments for a new public (3 years), should be reduced, or the size of the increment (20% for loads over 35 aMW) should be significantly larger. The balancing necessitated by the emergence of a new public is their right to be treated like all the other publics and the fact that their presence now requires the acquisition of new resource, which can legitimately take time. The current proposal has a bonafide new public waiting several years (perhaps even 15) until it is treated in the same way as other publics. This is an unfair burden to place on new publics.

Second, because there is clearly going to be a mechanism for dealing with shortages (either a decrement mechanism or augmentation), there does not seem to be any legitimate reason to have either the "Rate Case Limit" of 50 aMW, or the "Contract Period Limit" of 300 aMW. Both of these limits create a situation where a new public could explicitly be treated differently than existing customers.

Again the two most important principles to be met are the standard that 1), new publics should be treated in the same way as old publics and 2), there must be reasonable time for BPA and/or other users of the resource to accommodate the emergence of a new public.

Please feel free to share this with your colleagues at BPA and other Regional Dialogue participants.

Sincerely,

Mike Kadas
Mayor, Missoula Montana
Chair, Montana Public Power

Title of document: **Resource Removal: Pros and Cons Relative to Interests**
Author / Submitter (Organization): **Paul Norman (BPA)**
Date document created or **revised**: **December 16, 2005**
For meeting on (date): **December 16, 2005**

Resource Removal: Pros and Cons Relative to Interests

BPA Perspective, 12/16/2005

Issue: If a customer's Net Requirement is below its High Water Mark AND the customer currently has their own resources, to what extent should the customer be able to "remove" their own resources in order to bring their net requirements up to their HWM?

Proposals

PPC: Unlimited resource removal
Workgroup: 15% of retail load. Conservation achieved since 2002
BPA Concept Paper: None
BPA Workgroup proposal: 5% of retail load

Context:

- This is probably a temporary transitional issue, because most customers net requirements will exceed HWMs by 2012 or shortly thereafter
- But one or more utilities could have a major and persistent load loss
- BPA forecasts show only three utilities with net requirements that fall below their HWM by more than 5 aMW in 2012 under BPA's 5% removal proposal.
- Centralia owners believe BPA should agree to let them remove their Centralia MWs for purposes of net requirements calculation
- Should not be an issue for resources developed in the future.
- BPA has allowed resource removal in the past – 5b9c Policy and current contracts.

REGIONAL DIALOGUE "INTEREST"	UNLIMITED RESOURCE REMOVAL	LIMITED RESOURCE REMOVAL
Complexity/Simplicity	**Better:** Net requirements determinations become less important, so are likely to be less contentious and complex.	**Worse:** Net requirements determinations become very important, and are more likely to get very complex.
Durability/Stability/ Contract Enforceability	**Worse** on Durability: Appearance of windfalls accruing to a few utilities could fan opposition to long-term contracts and cost-based rates.	**Better** on Durability
Legality	**Worse:** No precedent for resource removal to support HWMs that were knowingly based on outdated net requirements estimates. Gives a legal lever to those who may oppose contracts.	**Better**
Lowest Tier 1 Costs/Rates	**Probably Worse**: Tier 1 rate could be up to 2 mills lower if value of surplus is spread to all Tier 1 sales.	**Probably Better,** though not if market prices exceed BPA Rate
Customer/Regional Support	**Better:** Has more support.	**Worse:** Has less support.
Salability in D.C.	**Mixed**: Regional support means DC support. But windfall appearance could hurt DC salability.	**Mixed**
Certainty of Obligations For All Parties	**A little better**: No difference in certainty of need to develop new resources. But more certainty for customers about access to surplus HWM.	**A little worse**
Promote infrastructure development	**No difference:** Because certainty about customers' need to add resources is the same,	**No difference**

	and new resources added by customers won't decrement their Tier 1 rights.	
The region see decisions as equitable	**Mixed:** Most parties support unlimited resource removal now. But this could break down if windfalls emerge.	**Mixed.**
Consistency with BPA Stewardship Obligations • **Conservation** • **Broad access**	**Better**: Maximizes customer incentive to conserve **Worse:** May concentrate benefits on a few customers	**Worse** **Better**

Title of document: **Draft Long Term Cost Control**
Author/Submitter (Organization): **Kim Leathley (BPA)**
Date document created or **revised: December 16, 2005**
For meeting on (date): **December 16, 2005**

Long-Term Cost Control

Proposals:

- **Alternative A: no formal avenue for contested costs, off ramp instead**
  Customers and our stakeholders will form one Cost Management Group (CMG). As a matter of policy, BPA will provide information and seek input on cost policies and decisions that affect rates. While there is no formal avenue to contest disputed costs, BPA would provide customers the right to remove some percentage of load (e.g., 15%) if power rate exceeds a specified rate level.

- **Alternative B: contested costs go to non-binding arbitration**
  In the case of contested costs, those costs would be subject to non-binding arbitration prior to such costs being included in BPA rates.

- **Alternative C: contested costs go to "mini-trial"**
  In the case of contested costs, those costs would be subject to an administrative hearing (mini-trial) before the Administrator prior to such costs being included in BPA rates.

- **Alternative D: contested costs go to a rate case**
  In the case of contested costs, those costs would be subject to inclusion in the 7(i) rate proceeding.

- **Alternative E*: contested costs go to a formal forum with the Administrator but presided over by one or more individuals (third-party)**
  In the case of contested costs, those costs would be subject to this forum.

  ***This alternative came about through the discussion on discussion on 12/15/05 and has not been fully developed**

Title of document: **Tiered Rates, Certainty and Dispute Resolution**
Author / Submitter (Organization): **Randy Roach (BPA)**
Date document created or **revised**: **December 14, 2005**
For meeting on (date): **December 15, 2005**

TIERED RATES, CERTAINTY AND DISPUTE RESOLUTION

One of the Regional Dialogue meetings ended with a request that BPA's speaker write up in summary form what had been presented at that meeting concerning BPA's Tiered Rates construct, areas where greater certainty might be afforded than would be possible if the matters at play were "rate implementation" matters, and preferred dispute resolution approaches to elements of the construct. This document does that, reflects further thinking, and also discusses other issues of relevance to the subject.

BPA's Basic Service Obligation & The Need for A Rational Economic Allocation

Prior to passage of the Northwest Power Act, BPA was simply the marketing agent for the power output of the Federal dams in the Pacific Northwest. The Northwest Power Act was passed in order to avoid the need for an administrative allocation of that power, and ensuing litigation, when it appeared that demand would far outstrip the low-cost supply from the dams. The Act expanded BPA's load-serving responsibility substantially by placing a duty to serve on BPA, and gave BPA the means to meet that load service obligation by acquiring resources, including conservation. The Act does not permit BPA to "allocate" power, except in the extreme circumstance of a power insufficiency. Rather, BPA is obligated when requested to serve the loads of its utility customers not served by the utility's own resources used to meet its load.

BPA's open-ended supply obligation and current pricing structure create significant risks of cost increases and price hikes for BPA's power. BPA's Concept Paper addresses these risks, and proposes a much more certain and predictable construct, not by trying to change BPA's statutory power supply responsibilities, but by focusing on a more rational pricing structure. The pricing structure would lessen utilities' dependence on BPA, and encourage regional actions that ensure adequate, efficient and reliable power service.

Central to BPA's construct is a future rate determination by the Administrator that costs of the existing Federal Base System (FBS) resources will be allocated for recovery solely through the rates for power from the existing FBS (Tier 1), and a determination of who is eligible to purchase at those rates; other power supply costs (such as those of incremental resources) would be allocated to the revenue requirement that would be recovered through the rates for power sold in excess of the Tier 1 amount. Stated differently, BPA would limit its sales of firm power at its lowest cost-based rates to approximately the firm capability of the existing Federal system, and determine eligibility for that power based on specified criteria; it would provide additional load service to a customer at a higher rate that reflects the marginal cost of purchasing power to meet loads not eligible to be served at the lowest cost-based rates.

All power sales by BPA are to be at rates established pursuant to section 7 of the Northwest Power Act. Section 7 provides detailed substantive and procedural guidelines and requirements. These apply to the initial establishment of rates, as well as to the periodic review and, if necessary, revision of them to assure recovery of BPA's costs and repayment to the U.S. Treasury. While BPA believes it can establish, and obtain approval of, a Tiered Rates Methodology for twenty years, concern exists that key elements of the construct be secured in a fashion that is durable and predictable (*i.e.*, long-term), and thus subject to change only when necessary, based on pre-specified criteria. Regional parties have been involved in discussions regarding the appropriate processes for determination and enforcement of those criteria.

CRITERIA FOR CONSIDERING APPROPRIATE DISPUTE RESOLUTION

While the discussions are still very preliminary, BPA representatives have shared BPA's thinking that numerous considerations should be taken into account in determining how disputes should be resolved, and that no single type of process necessarily fits all disputes. Disputes should be identified for resolution in a particular process only when the implications and consequences of that approach are thoroughly thought out, both for issue areas individually and as part of the entire structure of issues that could be at play. In addition, we should also first focus on efficient and effective processes for customer, constituent and stakeholder input into decisionmaking, so that there is less need for and focus on alternative forms of dispute resolution.

Based on Department of Justice and other literature, some of the major, generic considerations that should be taken into account are as follows:

- Important policy judgments necessary to interpret and administer Federal statutes and regulations must be retained by the Administrator as an executive official, and not turned over to a third party for final resolution.
- Arbitration, mini-trials, and determination by a hearing officer are examples of alternative dispute resolution (ADR). ~~(hereafter all referred to as ADR)~~ can be most useful in disputes which are highly fact specific, and in which the decision is likely to be single issue and quantitative.
- ADR may also be attractive when the dispute is highly factual or technical and the parties can pick a decision maker with mutually accepted expertise, thus obviating the need to educate him or her and to reduce technical arguments.
- Arbitration is also useful when finality is a desired result and there is little concern over the risks or costs of remedies impacting other parties (for example, resolving a small dollar figure dispute that has been ongoing for a long period), or where the parties need a decision made for them by a third party, but wish to avoid the cost and delay of a trial.
- ADR should be seriously questioned when
    - A definitive or authoritative resolution of the matter is required for precedential value, and a binding third-party determination is not likely to be accepted by all interested parties generally as an authoritative precedent;

- The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and a binding third-party determination would not likely serve to develop a recommended policy for the agency;
- Maintaining established policies is of special importance, so that variations among individual decisions are not increased, and a binding third-party determination would not likely reach consistent results among individual decisions;
- The matter significantly affects persons or organizations who are not parties to the proceeding; or
- A full public record of the proceeding is important, and a binding arbitration proceeding cannot provide such a record.

In the context of BPA's currently proposed construct, certain more specific considerations are particularly important:

First, BPA must ensure that it maintains the ability to fully recover its costs and repay Treasury; it must also retain the ability to demonstrate that over time its rates and cost allocations are consistent with statute.

Second, there will be many instances where a determination is common to all Tier 1 or Tier 2 customers, or impacts all or many of them in some fashion. In the past, BPA's practice of melding all costs had the effect of dampening the effects of many BPA actions. That will no longer be the case since Tier 1 will essentially be a zero sum game. For example, resource removal, net requirements determinations, and FBS capability determinations are decisions that will potentially affect all customers but have different impacts and consequences for each customer eligible to purchase at Tier 1.

Third, determinations regarding system and operational characteristics are highly technical, often changing, and judgmental. These are not the kind of decisions lawyers should be making or arguing. The fact that in America we can argue over anything does not mean that we should.

Fourth, process should not be allowed to unduly delay efficient, economical and reliable operation of the system. Process paralysis should be avoided.

Fifth, BPA, customers and constituents should not be forced to repeatedly expend significant resources in arbitrations and other proceedings. Some mechanism should be developed to achieve a consensus on the type of process to be pursued, and when it should be pursued.

Sixth, the consequences of a decision must be such that BPA continues to fully recover costs (*i.e.*, the taxpayer must continue to be fully protected), and there is no inequitable shifting of costs to customers not party to the dispute resolution process.

Seventh, BPA must ensure that implementation of its stewardship obligations (*e.g.*, fish and wildlife, Tribal Trust; Treaty) is not frustrated or compromised by ~~the~~ processes for resolving disputes ~~should not present additional risks for BPA's stewardship obligations (*e.g.*, fish and wildlife, Tribal Trust; Treaty)~~.

Eighth, timely decisionmaking needs to be preserved, particularly in the areas of emergencies, operating decisions, and cost recovery.
Ninth, the need for dispute resolution by third parties is stronger where BPA is acting in its business interest (e.g., say it wants to be the preferred supplier for a Tier 2 product), rather than in the public interest.

One size dispute resolution does not fit all disputes. The criteria and considerations above should be flexibly applied to that the dispute resolution process is fitted to the particular issue. Also, the criteria and considerations listed above should not only be considered and applied at or around the time the parties are deciding what should be said in the 20-year contracts and the Tiered Rates Methodology regarding dispute resolution, but should also be considered when unanticipated disputes arise and a decision needs to be make regarding how they should be resolved.

CERTAINTY, DISPUTE RESOLUTION & BPA'S CURRENT CONSTRUCT

Apart from the very construct of tiered rates itself, there are a number of elements to the construct that, if changed, could cause the overall construct to fail and, with it, the predictability and certainty that parties are seeking. Each of these is identified below, with an indication of how greater certainty might be achieved.

The overall construct: First, in order to address the concern that BPA can and, in certain situations, must change its rates, BPA could in the rate itself state that the overall construct of tiered rates will not be abandoned or changed for a period of twenty years, that each customer's contract would include a guarantee against identified changes, and that the contract would provide for a binding process to ensure that the guarantee was enforceable. The protection would be subject to very narrow qualifications that notwithstanding the contractual guarantee, the identified changes could be made if and to the extent (a) BPA were effectively required by court order to make them, or (b) the Administrator determined he could not timely and reasonably recover BPA's costs without the change. Criteria should be specified for actions that the Administrator should or must pursue before resorting to a change in the tiered rates construct, or an element of it, to ensure cost recovery; however, these criteria or disputes over them should not be allowed to frustrate the Administrator's responsibility to recovery costs and timely repay the U.S. Treasury.

The contract should clarify that it is the parties' intent to structure a durable commercial relationship based on existing statutory requirements, and to provide customers as much protection against change in those requirements as possible. However, BPA would not warrant or represent that ~~T~~the contract ~~would not address the situation of~~ is immune from subsequently enacted legislation; rather, the legal effect of subsequently enacted legislation would be for the courts to ultimately decide.

Given the rates nature of the construct, any BPA proposed change to it of any sort would have to be done through a rate case. Therefore, BPA's contract could provide that the hearing officer would be empowered to make a determination as to whether any proposed change was a contractually prohibited change, and that the determination would be binding on the Administrator except where the Administrator determined, after a mini-trial directly to the Administrator within the rate case, that the change was necessary because the Administrator could not reasonably recover BPA's costs or comply with court order without the change. This qualification is grounded in the requirement of Northwest Power Act section 7(a) that the Administrator periodically review and, if necessary, revise rates to assure recovery of BPA's costs and repayment of the U.S. Treasury over a reasonable number of years. The agency should not lock itself into any pricing scheme that precludes full and timely cost recovery.

Eligibility and allocation: BPA's ratesetting directives identify rate pools, generally specifying which customers may be allocated which costs. Section 7(e) of the Act affords the Administrator latitude in the design of the rate or rates to recover the costs from the class or a subclass of it. Hence, under BPA's current construct, Tier 1 rates would be available for customers with a high water mark (HWM) and, within that, their net requirements. Tier 2 would be available for net requirements in excess of a customer's HWM. BPA could in the rate itself state what each customer's HWM is and that it would be included in the customer's contract and not subject to change except in identified ways. It could also refer to net requirements, as determined in a separate process. These eligibility features and the design of the rate methodology around these features—HWM and net requirements—would be subject to the qualifications, and process for determining whether BPA is changing them, as identified above with respect to the overall construct. In other words, the hearing officer could be empowered to make a determination as to whether any proposed change was a contractually prohibited change, and that the determination would be binding on the Administrator except where the Administrator determined, after a mini-trial directly to the Administrator within the rate case, that the change was necessary because the Administrator could not reasonably recover BPA's costs or comply with court order without the change.

Apart from those kind of fundamental changes to the very construct of HWM and net requirements as eligibility and cost allocation determinants, however, HWM and net requirements are subject to many possible year-to-year variations.

Subsequent Net Requirement Determination

As indicated above, that initial net requirements and initial construct of relying on net requirements as an eligibility factor would be contractually locked in, subject to change for two specified circumstances. The focus here is on subsequent changes in a customer's net requirements. Customers have asked for an open and transparent process for BPA determinations of net requirements. Net requirements defines BPA's service obligation and is based on statutory requirements. A method similar but not necessarily identical to that contained in the current contracts could be utilized to make a periodic net requirement determination. Under that or probably any other assumption, the net requirement determination involve at least the following elements:

1) A utility's current retail load and its forecasted load.

2) Non-federal resource declarations – This includes the annual and monthly energy amounts and any changes to non-federal resource amounts (plus or minus).

3) Consumer-owned resources – This includes the listing of consumer owned utilities, changes to such information, and consequences of the listing and changes.

4) Decrements to net requirements under section 9(c) of the Northwest Power Act.

5) Non-federal resource changes under contract and any pursuant to section 5(b)(1) of the Northwest Power Act (*e.g.*, consent of Administrator, obsolescence, retirement, loss of resource, or loss of contract rights).

Each of these areas involve substantial policy and factual determinations that warrant more discussion and exploration before any particular mode of dispute resolution should be specified. The contracts need to clearly identify the particular processes for resolving each, but now in a manner that ensures transparency and inclusion of all interested, affected customers since Tier 1 is affected and will be a zero sum game. While BPA believes ~~T~~he process for determining individual utility load and resource changes should continue for the most part to be an administrative determination by BPA, it is open to review of the whole area to determine factual determinations that might well be referred to a third-party neutral for resolution in an open and transparent setting. It is important that disputes be resolved in a way that the same results or approach can then be applied to all customers. It might not work if separate dispute resolution processes resulted in many varying ways to determine net requirements.

Subsequent High Water Mark (HWM) Changes

As indicated above, it is anticipated that the rate will refer to each customer's contract for an initial value that establishes the HWM. As indicated above, that HWM and initial construct would be contractually locked in, subject to change for two specified circumstances. Using this assumption, the contract is also likely to have the following provisions for changing the HWM that would necessitate a process to resolve disputes:

1) Factual circumstances that permit the HWM to be either increased or decreased (e.g., based on changes in the "size" of the FBS).

2) Based on such factual circumstances, a method for calculating the amount of any increase or decrease for the HWM.

3) A simple and readily calculable method for determining when the HWM has been exceeded.

As with net requirements determinations, the contracts need to clearly lay out the process for resolving each in a manner that ensures transparency and inclusion of all interested, affected customers since Tier 1 will be a zero sum game. As with other matters, the criteria and considerations for dispute resolution alternatives need to be applied to determine how these matters should be resolved, and by whom.

Cost migration: The level of BPA's costs, and their segregation between Tier 1 and Tier 2 is most important to some customers. BPA's construct depends on the allocation of identified costs to Tier 1 and other identified costs to Tier 2. This is fundamental to tiering, and to providing the certainty and predictability customers seek. The general identification of cost categories, and their association with Tier 1 or Tier 2, are rate case matters. Notwithstanding that, the rate could provide that the cost categories and their association would not change—*i.e.*, there would be no allocation of Tier 2 costs to Tier 1 for recovery, or vice versa—except in the same circumstances (court order or cost recovery), and subject to the same process, as identified above for the overall construct.

Even with that, however, there will be many issues that arise as to whether a cost fits within this or that category. Joint costs, such as overhead and labor, are a good example. Efforts to allocate them, such as through direction of effort studies or labor ratios or whatever, should be subject to ordinary rate case procedures and subject to no special ADR processes.

Tier 1 Resource Size: Under the current concept, customers with HWM will be eligible to purchase at the Tier 1 rate that portion of their net requirements equal to or below their HWM. The amount of power available at the Tier 1 rate, and the customers' yearly HWM, will be constrained to the output of the Federal Base System Resources. This conceptual construct should be afforded the same contractual lock, and follow-on process, as is identified above with regard to the overall construct.

Beyond that, however, resource determinations are subject to considerable year-to-year variations due to a number of factors, including water and fish and wildlife measures. Resource determination will likely include the following elements:

1) Specific Resource Output/Capability – many sources of information, standards and determinations will be involved.

2) Adjustments to Resource Output/Capabilities – many sources of information, standards and determinations will be involved.

3) Federal Operating Decisions – sources of information and process for establishing what constitutes a Federal operating decision, their impacts on the availability of FBS power, both prospective and during the year, need to be established.

4) Resource Additions and Removals – sources of information and process for establishing circumstances when an FBS resource can be permanently removed, and when a resource can be added for Tier 1 purposes, and in what amounts, need to be established.

5) Issues concerning the integration or separation of Tier 2 and Tier 1 resources need to be identified.

Each of these areas involve substantial policy and factual determinations that need to be identified before agreement can be reached concerning the appropriate resolution process applicable to each.

Unanticipated Resource Costs: BPA currently, and under the construct under discussion, establishes its power rates to recover costs of the service provided. The Bonneville Refinancing Act protection against provision of additional returns of or on old capital investments must be included in the contracts, and would provide customers substantial protection against imposition of an unrelated "tax" that would deprive them of the economic certainty that BPA seeks to provide under its construct.

Implementation of the Rate Methodology A topic that was discussed at some length was what happens when the Administrator proposes a change to the rate methodology or some element of it. A more likely event that was identified but not thoroughly discussed is what will occur when the Administrator proposes to take an action, such as proposing to adopt a rate, which one or more customers believe is contrary to the rate methodology. In such a case, there is no proposed change to the methodology, but rather a difference in interpretation regarding what the methodology permits or requires.

The most likely circumstance in which such an event would occur would be in a rate proceeding, and could occur at any stage of the proceeding from initial proposal to final decision. In such a case, it would be the desire of the customers that an objective, neutral third party be employed to resolve the matter. The rate case hearing officer could serve in this role, but BPA does not believe that final resolution of the matter should rest with the hearing officer. Implementation of the methodology is a matter affecting all customers, and that should be done in an open administrative process, subject to appeal by any party. While some have suggested that it would not be acceptable for the Administrator to be the final decision-maker regarding his/her compliance with the rate methodology since this would place one of the "contending parties" in

the role of judge, BPA disagrees with that characterization. The Administrator in this context is not in the position of an ordinary party to "gain" by another's "loss." Rather, he is acting in his statutory role of being an administrator of the laws, and is doing so on behalf of all parties. That being said, however, it could be possible to specify that if some substantial majority of customers and constituents opted for a nonbinding determination of the matter by a third party, the Administrator would follow that process.

Further Thoughts

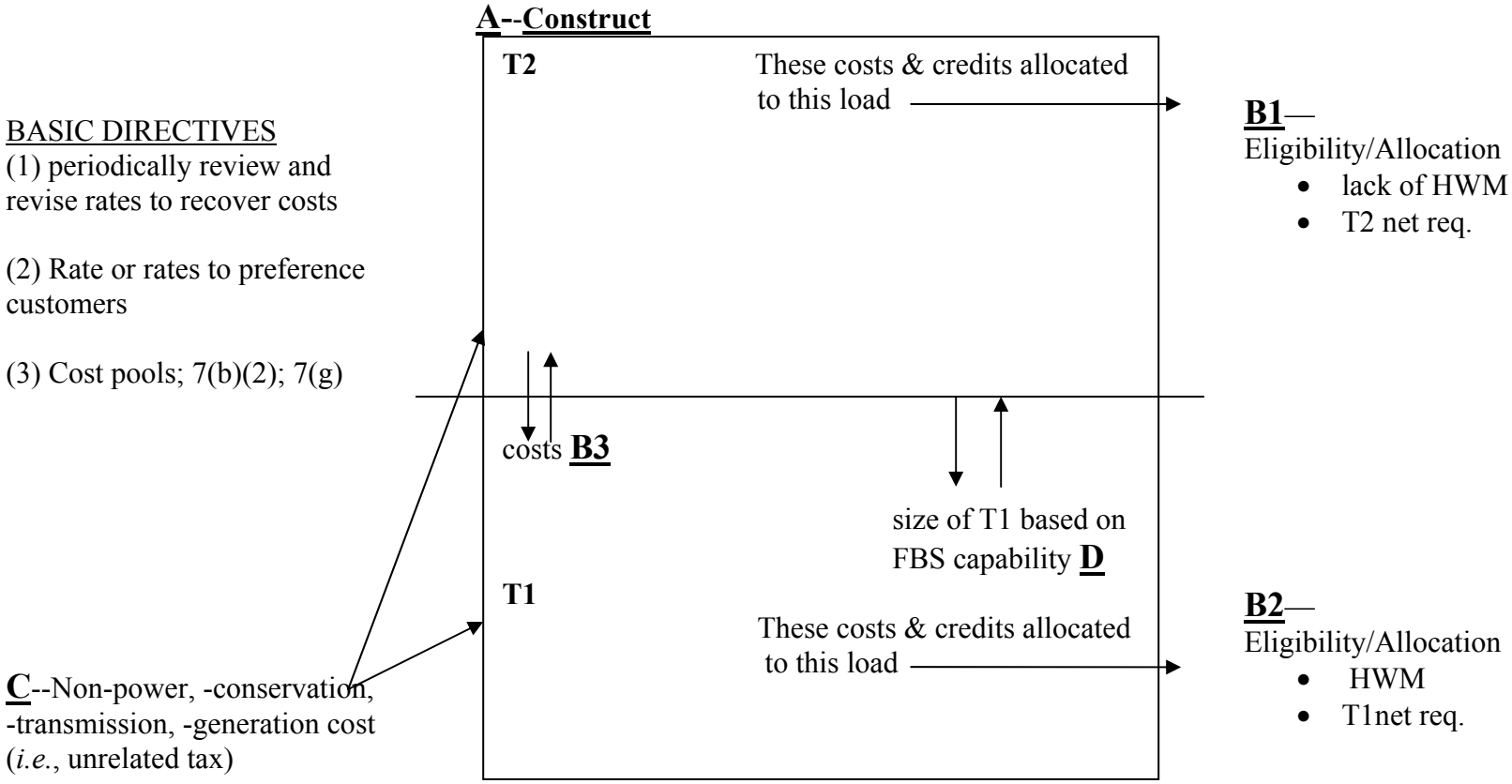
In light of all of the above, and in order to ensure that the criteria and considerations for determining appropriate dispute resolution are thoughtfully applied at the appropriate time, it is important for parties to focus on a number of areas:

1. Whether as an alternative to, a means of avoiding, or a precursor to dispute resolution, what processes of customer and constituent involvement in decisionmaking should considered?
2. What are factual determinations and what are policy determinations, or a mixture of both?
3. What is it that ends up in a rate methodology and what is referenced in the methodology for determination or identification elsewhere?
4. For those situations where some form of alternative dispute resolution is brought into play, what are the criteria or bases that should apply for that review?

Title of document: **Very Preliminary Dispute Resolution Draft—For Discussion Purposes Only**

Author /Submitter (Organization): **Randy Roach (BPA)**
Date document created or revised: **November 2, 2005** For meeting on (date): **December 16, 2005**

Draft—For Discussion Purposes Only



In rate provisions, state the following (very imprecise right now) and that they will be included in contracts (limitations, not determinations, are contractual):
This overall construct, and identified elements of the construct, will not be changed (need to precisely define a "change") except and solely to the extent

1) In the case of **A**, **B1**, **B2**, **B3** and **D**
   a) new legislation requires
   b) court orders (failure or refusal to change ruled unlawful)
2) Also, in the case of **A** and **B3**
   a) cost recovery requires: apply necessity test (specific factual determinations)—Admin. will base decision on HO determination & only override if after mini-trial tried directly to the Administrator (with aid of HO) Administrator determines the HO's determination was unreasonable (parties should also address who pays)
3) In the case of **C**, new legislation requires
4) In the case of **D**, [some majority vote?]

Note that the below concept must go hand in hand with the resolution of the issue of dispute resolution and the resolution of the question of what happens when there is a CMG consensus and what happens when there is not a CMG consensus and what happens when BPA does or does not agree with the CMG consensus.

1. Purpose

The Cost Management Group (CMG) is organized to afford customers and constituents a continuous and long-standing framework for reviewing activities relating to the costs and policies of the Bonneville Power Administration. The CMG(s) would:

- Provide input to BPA on cost levels, major policy decisions that drive future costs, and the capital program;
- Review the accomplishments of past program spending and the objectives for future program spending;
- Review financial performance of the Agency;
- Provide input to Corps, Bureau, Energy Northwest and other entities that manage costs in BPA's rates as well as BPA; and,
- Reach consensus with BPA on revenue requirements to be used in rate cases.

The CMG will use an open meeting process and provide all interested parties the opportunity to participate and provide comments.

BPA will not take an action that is contrary to its then current obligations under any treaty, trust responsibility, statute or contract as a result of a CMG consensus recommendation.

BPA will commit to providing information on costs except for specific items that are or may be business sensitive (e.g., specific customer information related to power purchases, trading floor revenues, etc.). BPA also commits to meeting with the CMG and CMG support staff as necessary to facilitate, review and support cost understanding and transparency, including policy issues. BPA will coordinate and make available program managers and subject matter experts as necessary to the CMG to better inform the group of particular cost issues.

2. Structure.

a. **Members**. The CMG will be comprised of 16 individual members reflecting the breadth and diversity of interests. Representatives will be self selected from within each of the respective groups. The groups are as follows:

i. 8 public utility representatives
ii. 2 investor owned utility representatives
iii. 1 Consumer Group Representative representing small customers
iv. 1 Industrial Customer Representative
v. 1 Tribal representative
vi. 1 Council representative and 1 State commission representative; or
2 State representatives, one of which is a State commission representative.
vii. 1 Public Interest Representative.

b. **Election of Chair**. Each year the CMG will elect a chair from among the public utility members; the chair will rotate among the public utility members.

c. **Meetings**. The CMG will meet as often as necessary and no less frequently than once every three months. The CMG meetings will be open to the public. Meetings will be noticed at least two weeks prior to the meeting date in order to facilitate public involvement.

d. **Technical Analysis**: The CMG would provide its own staffing and technical support in addition to requesting information and studies from BPA.

e. **Term**: Each CMG member will serve for a term of 2 years and may be re-appointed.

3. Procedures for Administrative Decisions.

a. **CMG Members**. The CMG members are self selected from within the groups of representation. Should a member no longer be able to participate, the group affiliation shall appoint a new member.

b. **Quorum.** A Quorum exists if nine (9) or more CMG members are present. A Quorum is necessary for any CMG formal action to be considered.

c. **Motions.** At any time a Quorum is present, any CMG member may propose a motion for consideration of the CMG. If the motion is seconded by any other CMG member, the motion shall be promptly considered as to whether consensus exists for the motion.

d. **Consensus.** Option 1**:** A motion will have the consensus of the CMG as long as no more than two CMG members oppose the motion. Option 2: Consensus requires affirmation by 75 percent or more of the total CMG members present that do not abstain on the motion. However, requests for studies and information requires support from either nine (9) or more CMG members or five (5) public utility CMG members.

e. **Amendments.** The CMG may approve, absent opposition from any member, changes to the Administrative Guidelines or CMG structure after providing a reasonable notice and comment period to all interested persons.