

**Summary of the BPA Refinancing Act  
(Refinancing Section of the Omnibus Consolidated Rescissions and  
Appropriations Act of 1996)  
16 U.S.C. 8381**

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**This paper does not provide legal advice or legal opinions of the Bonneville Power  
Administration.**

**1. GENERAL PURPOSE AND BACKGROUND**

Section 3201 (Bonneville Power Administration Refinancing, hereafter referred to as the Refinancing Act) provides for the refinancing of Bonneville Power Administration's outstanding repayment obligations on each capital investment funded by Federal appropriations and placed in service before October 1, 1996 (defined as an "old capital investment" by the Refinancing Act). The Refinancing Act is intended to resolve criticisms that the low interest rates on historic FCRPS appropriations constitute a taxpayer subsidy. In exchange for the refinancing of those appropriations at higher interest rates and the addition of \$100 million to the reconstituted principal obligations, the Refinancing Act requires Bonneville Power Administration to offer certain contract terms in all future and certain existing contracts for the sale of electric power, transmission, or related services. These contract terms are sometimes known as the "Contract Lock" provision in BPA contracts.

Eligible contracts include any contract between Bonneville Power Administration and any regional or extra regional customer for the sale of electric power, transmission, or related services: (a) that has been executed prior to September 30, 1996, and is in effect after September 30, 1996 (existing contracts); or (b) that is executed after September 30, 1996 (new contracts).

**2. BASIS OF CONTRACT LANGUAGE**

The language offered by Bonneville Power Administration is a verbatim repeat of the statutory language except where necessary to make the language embodied in a contract. This close adherence to the statutory language is used because the language was the product of extensive and detailed negotiations involving Bonneville Power Administration, customer representatives, the Department of Treasury (Treasury), and the Office of Management and Budget. Since the statutory language captures what the parties negotiated, and the language was crafted with a view to including it in contracts, changes in the language could be counterproductive.

**3. SUMMARY OF CONTRACT PROVISIONS**

**Section 3201(i)(1)/New Contract Subsection (a)** provides that when the Administrator establishes rates, the principal and interest on old capital investments shall be no greater than

established under the Refinancing Act and credit shall be given to all payments by the Administrator of principal and interest on the old capital investments.

**Section 3201(i)(2)/New Contract Subsection (b)** provides that apart from charges imposed to repay the reconstituted principal and interest on old capital investments, no other amounts may be charged for return to the Treasury as repayment for, or return on, an old capital investment. This language is intended to, cover charges while the property is owned by the United States.

**Section 3101(i)(3)/New Contract Subsection (c)** provides that the Judgment Fund shall be the sole source of payment in case these contract provisions are breached.

**Section 3201(i)(4)/New Contract Subsection (d)** preserves the Administrator's existing ratemaking authority to allocate costs and design rates. Under this authority, costs of unproductive, investments (e.g., terminated plants) and otherwise unrecoverable costs may be allocated for recovery to the resource pools that contain the productive old capital investments. The Administrator's authority, if any, under applicable law to recover stranded investment is likewise unaffected.

**New Contract Subsections (e) and (f)** reference the Refinancing Act as the source of definitions, and provide that references to the Refinancing Act are to the Act as enacted in April 1996.

#### **4. IMPLICATIONS**

**Duration of Contract Lock.** The Contract Lock is effective for the duration of the contract. Congress may pass future legislation that would change the terms of the Contract Lock for future contracts, but could not retroactively change the terms in an existing contract.

**Rate Setting.** Section 3201(i) preserves Bonneville Power Administration's existing cost allocation and rate design discretion. Bonneville Power Administration would be contractually precluded, however, from setting rates in a manner which produces a profit for the Treasury by way of additional return on old capital investments.