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NEAR TERM INTERTIE ACCESS POLICY

ADMINISTRATOR'S RECORD OF DECISION

BONNEVILLE POWER ADMINISTRATION
U.S. DEPARTMENT OF ENERGY
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I. Introduction

The Bonneville Power Administration (BPA) adopted the Near Term Intertie Access Policy to be in effect for 6 months, in order to enhance BPA's Power Marketing Program and to provide certainty with respect to firm and nonfirm transactions that may occur on the Federally-owned portions of the Pacific Intertie. Specifically, BPA Policy accomplishes several important purposes. First, BPA's Policy assures that BPA has use of its portion of the Pacific Intertie as necessary for BPA's Power Marketing Program. Second, BPA must consider the financial impacts of Pacific Intertie usage on BPA's ability to recover adequate revenues. In this regard, BPA's Policy enhances BPA's ability to recover revenue that otherwise would be lost if BPA failed to manage prudently its portion of the Pacific Intertie. Third, BPA's Policy responds to the recent influx of requests for more space on the Pacific Intertie than there is available capacity. BPA's Policy fosters increased certainty in power sales between BPA, Pacific Northwest utilities, and Southwest utilities.

BPA has actively sought public comments on its efforts to develop an Intertie Access Policy since July 22, 1983. The record developed on this issue consists of comments on Bonneville Power Administration (BPA's) Notice of Intent to Develop Intertie Policy published on July 22, 1983 (48 FR 33515); comments on a Discussion Paper of policy issues published on February 16, 1984 (49 FR 5990); the transcripts of three public comment forums held on July 24 and 25, and August 3, 1984, on a proposed Near Term Intertie Access Policy; written notes of BPA personnel of a July 24, 1984, meeting with technical operators of the Intertie; written comments received by the close of the comment period on this proposal, August 13, 1984, and a reasonable time thereafter; and additional correspondence on the topic of extraregional access. The public comment forums were attended by 124 persons, representing BPA customers, interest groups and other government agencies. BPA also received 55 written comments totaling 398 pages from the above interests as well as comments from individuals on the proposed Near Term Intertie Access Policy. (See Appendix A for abbreviations used in this document and Appendix B for a listing of those persons attending the public comment forums and those making written comments.)

This document presents the Bonneville Power Administration (BPA) evaluation of the record of the proposed Near Term Intertie Access Policy and the Administrator's decisions on the issues identified within the record. The record on which this Record of Decision is based consists of the comments received on BPA's proposed policy issued on July 13, 1984, and published in the FEDERAL REGISTER on July 30, 1984 (49 FR 30098); the comments made at the public comment forums; any previous comments specifically incorporated by reference by the commenters; and related documents. The Record of Decision is divided into four major sections: (1) Introduction, addressing the purpose of the Policy, the process used to develop the Policy, and BPA's legal authorities to implement the Policy; (2) Preliminary Issues, describing the context of the Policy within BPA's other actions and responsibilities and the pervasive concepts embodied within the Policy; (3) Conditions for Access, describing the overall standards the Policy applies to determine whether access to the Intertie will be provided for a particular resource or

arrangement; and (4) Firm Contracts and Formula Allocation Methods, discussing the specific operative elements of the policy that are necessary to allocate access to the Intertie. Within each section, the appropriate comments are grouped by topic into issues. The issues are divided into three sections: (1) a summary of comments that describes BPA's initial proposal on the issue and briefly summarizes the comments on the issue; (2) an evaluation of the comments that discusses the various arguments on the issue and BPA's evaluation of those arguments; and (3) the decision that explains the Administrator's decision on the issue as reflected in the Policy as adopted.

A. Process

The development of BPA's Intertie Access Policy has been an extensive process. It commenced on July 22, 1983, with publication in the FEDERAL REGISTER of a Notice of Intent to Develop Intertie Policy (48 FR 33515). This notice was provided consistent with BPA's "Major Power Marketing Policy Procedures." (46 FR 26368) In response to that Notice, BPA met with numerous organizations and interest groups to identify, discuss, and seek advice on the issues that must be resolved by an access policy. BPA received 55 comments in response to the July 22 Notice. These comments and advice generated a Discussion Paper that was published in the FEDERAL REGISTER on February 16, 1984, with a request for comments from the public (49 FR 5990). This Discussion Paper described possible BPA policies for use of the Intertie by BPA and others within existing contractual obligations. BPA received 76 written comments in response to the Discussion Paper and held informal meetings with customer and public interest groups.

The Administrator considered the comments on the Discussion Paper in the context of BPA's own efforts to resolve basic access priority issues given the current Pacific Northwest power surplus of firm and nonfirm power. The Administrator concluded that a multi-staged policy development was appropriate. This Near Term Intertie Access Policy is the first stage of that policy development.

The Administrator's decision was based on his recognition that there are both long term and short term Intertie access issues. This Near Term Intertie Access Policy is adopted for 6 months and is intended to focus attention on the allocation of scarce Intertie space among competing users of the Intertie. The current power glut in the Pacific Northwest has caused Intertie access conflicts regarding the amount and quality of Intertie service. These conflicts, and practices by Intertie owners in the Southwest, have depressed prices in the Pacific Northwest for the power utilitizing the Intertie. These depressed prices have resulted in BPA revenue shortfalls which have handicapped BPA's ability to recover the costs associated with Federal investment in the Federal Columbia River Power System (FCRPS). BPA and others believe that these problems require immediate solution.

The initial Near Term Intertie Access Policy is in effect for approximately 6 months. During this 6-month period environmental analyses of the Policy will be conducted and operational experience with the Policy will be gained. Further opportunities for public comment on proposed revisions to the initial Policy also will be provided. Based on these comments, the results of the environmental analyses and the operating experience, the Near

Term Policy may be revised at the end of the 6-month period. The revised Policy then will be adopted for the remaining approximately 18 months. The Near Term Policy will be followed by a Long Term Intertie Access Policy.

The Long Term Intertie Access Policy is necessary because separate questions are raised regarding the interrelationship of Intertie access priorities to long term firm power transactions, to new Intertie facilities development, and to new resource development. These longer term questions require consideration of different issues and involve different potential impacts. These issues militate for additional features of an access policy and require additional policy development. The Near Term Intertie Access Policy by comparison, will resolve immediate, more discrete access issues that result from the present power surplus.

BPA expects to publish an initial draft of the Long Term Intertie Access Policy during the Fall of 1984. Concurrent with that publication, BPA will commence scoping an environmental analysis of the Long Term Policy. BPA anticipates that, because of possible implications for future resource development, the Long Term Intertie Access Policy may require an environmental impact statement. The environmental statement could take as long as 2 years to complete.

Issue #1: Summary of Comments

Los Angeles Department of Water and Power (LADWP) alleged that BPA had failed to comply with the Administrative Procedures Act. (Cotton, LADWP, comments dated 8/13/84, pp. 1-2.) Both Southern California Edison (SCE) and the Western Area Power Administration (Western or WAPA) felt BPA was acting hastily to adopt the Near Term Intertie Access Policy for the initial 6 months, and requested further opportunity to comment. (Myers, SCE, letter dated 8/14/84, p. 1; Coleman, WAPA, letter dated 8/13/84 p. 5.) Pacific Gas and Electric Company (PG&E) inquired as to the evaluation BPA would make of the comments made on the Policy. (Fiske, PG&E, TR 383.)

Evaluation of Comments

LADWP maintains that the procedure utilized to formulate this Policy does not comply with the Administrative Procedures Act, particularily section 556. BPA notes that section 9(e)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) specifically provides that in reviewing final actions of the Administrator ". . . Nothing . . . shall be construed to require a hearing pursuant to section 554, 556, or 557 of title 5 of the United States Code." (16 U.S.C. §839f(e)(2).)

SCE objects to the adoption of the Policy after a 30-day comment period, three public comment forums, and an informal meeting with the Intertie operators, charging that BPA is acting in haste. (Myers, SCE, letter dated 8/13/84, pp. 1-2.) Western asserts that because of the importance of the Policy and the likelihood that substantial changes will occur from the draft to the Policy as adopted, BPA should provide an additional 30-day comment period. (Coleman, WAPA, letter, dated 8/13/84, p. 5.) BPA believes that it has provided more than adequate due process in the formulation of its Policy.

The Policy is an action subject to BPA "Procedures For Public Participation In Major Regional Power Marketing Policy Formulation." (46 FR 26368.) These procedures, as adopted on May 12, 1981, require BPA, when promulgating a major power marketing policy, to provide notice and comment opportunities before adoption of a policy. In keeping with these procedures BPA has conducted over a year long public involvement process to allow interested persons to comment first on the concept of an Intertie Policy, next on specific issues, and now on a draft Policy.

In formulating the policy itself, BPA provided a full 1-month comment period. Comments from interested persons received after the final date identified for receipt of comments also were considered. In the 1-month comment period, BPA held three public comment forums. The recorded meetings generated 327 pages of transcribed comments. The transcripts reflect that the Policy was dealt with on a line-by-line, issue-by-issue basis. BPA offered at the outset to hold additional meetings within the comment period ". . . if specific issues and problems . . ." were identified. (Jones, BPA, TR 6-7.) One of the three meetings was held for just such a purpose. (Jones, BPA, TR 212.) Throughout this process SCE, Western, LADWP, and PG&E, as well as 120 other interested utilities and public interest groups, have participated and made comments.

BPA has carefully considered and evaluated the comments received, and written a Record of Decision based on transcripts of the three public comment forums and the comments received in response to the July 13, 1984, draft Policy. Significant Policy revisions have been made based on these comments. BPA has stated that additional opportunities for public comment will be afforded and that the Policy will not be amended without adequate procedures. (Jones, BPA, TR 305; Michie, BPA, TR 44-45; McLennan, BPA, TR 47.)

Decision

BPA adopts this Near Term Intertie Access Policy for an initial period of 6 months. BPA believes that it has provided more than sufficient opportunity for public comment on this policy.

Issue #2: Summary of Comments

Washington Water Power (WWP) commented that 6 months is not an adequate period in which to gain operating experience under the Near Term Intertie Access Policy. WWP asks for an initial adoption period of 1 year. (Bryan, WPP, letter dated 8/9/84, p. 2.)

Evaluation of Comments

WWP recommends a 1-year initial adoption period in order to gain operational experience under the Policy during the range of operating conditions experienced over an entire year. This recommendation has merit from an operational perspective. However, as stated in the general discussion above, BPA has chosen a 6-month initial adoption period for two reasons. The first reason is that 6 months is the period required to conduct the necessary environmental analyses on a proposed Near Term Policy to be in effect for approximately 18 months. The second reason is to gain operating experience.

If the environmental analysis finds that the Policy should be altered after the 6 months to avoid environmental effects, revisions in the Policy could occur at that time.

Decision

BPA is implementing the Near Term Intertie Access Policy for 6 months. After conducting necessary environmental analyses, gaining operational experience and inviting additional public comment, the Policy may be revised to reflect any of these concerns. BPA expects to adopt the revised Policy for approximately 18 months.

Issue #3: Summary of Comments

The Public Generating Pool (PGP) urged that any revisions to the Policy during the effective period of the Policy be made only after adequate opportunity has been given for public comment. The PGP also urged that the Near Term Intertie Access Policy remain in effect until the Long Term Policy is adopted. (Garman, PGP, letter dated 8/9/84, p. 2.)

Evaluation of Comments

The PGP's first comment reflects an apparent concern that policy revisions might be made subject to public notice only, without providing opportunity for public comment. As stated above, during the initial 6-month period, BPA will provide additional opportunity for public comment on proposed Policy revisions. These comments will be considered before a revised Policy is adopted for the remaining 18 months. In addition, should BPA determine during the remaining 18 months that the Policy requires a substantial revision, BPA will provide opportunity for public comment on the proposed revision.

The PGP's second suggestion is that the Near Term Policy remain in effect until the Long Term Policy is adopted. BPA has considered this approach, but has determined to reexamine the Near Term Policy in 6 months. BPA will adopt a final Near Term Policy for about 18 months. As stated, BPA believes the development of the Long Term Intertie Access Policy and the necessary environmental analyses and documentation may require approximately 2 years. BPA does not believe that development of the Long Term Policy will take longer than 2 years; but, should that occur, BPA would consider extending the effective term of the Near Term Intertie Access Policy.

Decision

Consistent with its "Procedures for Public Participation in Major Regional Power Policy Formulation" and other applicable law, BPA will provide opportunity for public review and comment on any substantial revisions to the Near Term Intertie Access Policy.

B. Authority

1. Introduction

Several commenters suggested that Congress mandated open access to the Intertie, and precluded an allocation mechanism. (Myers, SCE, letter dated 8/13/84, p. 9; Niggli, SDG&E, letter dated 8/13/84, p. 2; Gardiner, PG&E, letter dated 8/10/84, p. 3; Cotton, LADWP, letter dated 8/13/84, p. 3.) SCE and PG&E assert that BPA does not have the legal authority to restrict Canadian energy from Intertie access. (Myers, SCE, letter dated 8/13/84, p. 9; Gardiner, PG&E, letter dated 8/10/84, p. 10.) The Direct Service Industries (DSI) assert, to the contrary, that the Administrator has no authority to allow access to the Federal Intertie until BPA's surplus is sold. (Wilcox, DSI, letter dated 8/13/84.)

2. The Administrator's Power Marketing Program

Issue #1: Evaluation of Comments

Many commenters questioned BPA's conditioning of Intertie access on compliance with its own Power Marketing Program. Some of these comments concern BPA authority. These and other Power Marketing Program issues are discussed in the section of the Record of Decision discussing Conditions for Access.

3. Allocation of Intertie Capacity

Issue #2: Evaluation of Comments

During Condition 2, BPA proposed to allocate available Intertie capacity for surplus power transactions on the basis of each seller's pro rata share of the total available supply. SCE argued, without statutory citation, that Congress mandated that competitive market forces create Intertie allocation for Pacific Northwest sellers. (Myers, SCE, letter dated 8/13/84, pp. 9-10.) Similar assertions were made by San Diego Gas and Electric (SDG&E) and PG&E. (Niggli, SDG&E, letter dated 8/13/84, p. 2; Gardiner, PG&E, letter dated 8/10/84, p. 3.)

References in the legislative history of the Regional Preference Act to the benefits accruing to Pacific Northwest utilities from the construction of the Intertie primarily involved the benefits accruing through lower BPA power sales rates as a result of the increased revenues generated from sales of BPA surplus in the Southwest market. (Hearings on H.R. 11201 Before the House and Senate Appropriation Committees, 88th Cong., 2d Sess. 9 (1964) (Dept. of Interior Rep., at p. 34) (hereinafter Dept. of Interior Rept.). The Department of Interior Report, however, also recognized BPA's intention to allocate some Intertie capacity to Northwest generating utilities on the basis of their respective shares of the regional nonfirm surplus. (Id. at 27.) Also, in its bid to construct a portion of the southern portion of the Intertie, the California Power Pool stated that it would purchase Pacific Northwest surplus energy not on a competitive basis, but rather on an equitable pro rata basis from participating Pacific Northwest sellers.

(Supplement to Pacific Northwest Intertie Proposal of California Utility Companies, May 9, 1964.) In contrast to the above understandings, Congress showed relatively little concern about competition issues and was satisfied that diverse ownership of the Intertie, and the requirement that owners make available to others any capacity they did not need, would provide equitable access to all generators and avoid any monopolization of the lines. (Dept. of Interior Rep. at p. 20.)

The legislative history description of BPA's pro rata allocation plan was not incorporated into the words of the statute. Rather, with respect to sales of Pacific Northwest surplus power, Congress enacted section 6 of the Regional Preference Act to provide BPA the authority to operate Federal Intertie capacity as a vehicle for sale of BPA surplus power to the Southwest. It left to BPA the decisions on how to manage the remaining Intertie capacity. On the basis of the expectations set out in the legislative history, BPA implemented a pro rata sharing approach to Intertie capacity in 1969 when it offered and executed the Exportable Agreement (BPA Contract No. 14-03-73155). The contract is a long-standing interpretation of BPA's statutory authority to allocate Intertie capacity on a pro rata basis.

PG&E's references to statements in the legislative history of the Northwest Power Act concerning the continuing freedom of Pacific Northwest utilities to develop their own resources and to dispose of their own power are not relevant to the issue at hand. (Gardiner, PG&E, letter dated 3/16/84, pp. 3-4.) Those statements relate to the interrelationship of the Northwest Conservation and Electric Power Plan to independent utility resource development, to the ability of non-Federal entities to sell their resources outside the Pacific Northwest in a manner less restricted by regional preference principles than those that apply to BPA, and to the utilities' continuing discretion to choose the manner in which they intend to meet their load obligations, that is, with or without BPA power or its resource acquisition programs. These statements do not affect in any way BPA's authority with respect to the management of the Federal Intertie.

SCE argues that section 6 of the Regional Preference Act "compels the Federal government to make excess Federal transmission capacity available as a common carrier to transmit federal power for others." (Myers, SCE, letter dated 8/13/84, p. 12.) To the contrary, that section does not use the term "common carrier", which is a term of art in the field of utility regulation. It uses the term "carrier." (16 U.S.C. §837e.) There is nothing in the legislative history to suggest that Congress, by use of that term, intended anything other than that excess capacity be made available to "carry" non-Federal energy. The Regional Preference Act does not prohibit BPA from equitably allocating Intertie capacity among users. BPA has implemented an allocation mechanism for Intertie access for 15 years under the Exportable Agreement. As stated above, the Interior Department reported to Congress BPA's intention to institute a pro rata allocation mechanism. Congress did not reject this approach. In the absence of any mandated method of providing Intertie access, Congress must be found to have granted the Administrator the discretion normally granted to Federal agencies in the management and disposal of Federal property. (See discussion, infra, Power Marketing Program.)

4. Access to the Intertie for Canadian Power

Issue #3: Evaluation of Comments

BPA proposed to exclude transmission of power between Canadian utilities and Southwest entities when there were more requests from Pacific Northwest sellers than available Intertie capacity. BPA also sought comment on providing access for such transactions if Canadian utilities agreed to participate more fully in coordinated river operations. SCE and PG&E argue that BPA has no authority to preclude Canadian power from Intertie transmission during times when there is more Pacific Northwest demand for Intertie capacity than available capacity. (Myers, SCE, letter dated 8/13/84, pp. 11-12; Gardiner, PG&E, letter dated 8/10/84, p. 10.) Other commenters supported the concept of a regional priority to available Intertie capacity. (O'Banion, SMUD, letter dated 8/10/84, p. 3; Bredemeier, PGE, letter dated 8/13/84, p. 2; Boucher, PP&L, letter dated 8/13/84, p. 3; Pugh, NCPPA, letter dated 8/13/84, p. 2; Schultz, ICP, letter dated 8/10/84, p. 2; Jacquot, WPSC, letter dated 8/8/84, p. 2.)

BPA interprets its statutory authorities to allow it to refuse Intertie access to Canadian entities when the requests by Pacific Northwest utilities for use of the Intertie are greater in amount than the available Intertie capacity. Section 6 of the Regional Preference Act assures access only to Canadian Treaty power, that is, the power generated in the United States to which Canada became entitled as a result of the U.S. - Canadian Treaty and its cooperative planning and operation of the Columbia River system. (Treaty between Canada and the United States of America Relating to Cooperative Development of the Water Resources of the Columbia River Basin, Jan. 17, 1961, 15 U.S.T. 1555, T.I.A.S. No. 5638.) (See, Dept. of Interior Rept. at p. 40.) Transmission of Canadian Treaty power to California was a critical element in obtaining Congressional approval of the Intertie, as PG&E correctly points out. (Gardiner, PG&E, letter dated 8/10/84, p. 10.) However, Canadian Treaty power excludes power not governed by the sales contracts between the Columbia Storage Power Exchange (CSPE), the nonprofit Pacific Northwest corporation established to sell the Canadian entitlement power during the period when Canada did not need the power, and California utilities. Those contracts have since terminated. No Canadian Treaty power currently flows over the Intertie to California entities. This statutory priority does not extend to non-Treaty power.

The legislative history listing of benefits arising out of construction of the Intertie included only benefits to the Pacific Northwest and Pacific Southwest. (Dept. of Interior Rept. at p. 32.) Energy transactions listed as being the purpose of the Intertie were always described as being between the two Pacific regions of the United States. Even the sale of Canadian Treaty power took the form of sales between the Pacific Northwest and the Pacific Southwest. (Dept. of Interior Rept. at p. 33.) The legislative history specifically states that the Administrator "may" provide transmission for non-Treaty Canadian power. (H.R. Rep. No. 590, 88th Cong., 2d Sess. 9 (1964).) The subsequent statement that non-Treaty power should be treated equally with Pacific Northwest power, if it is provided Intertie access, is a mere reassertion that non-Treaty power, as other non-Federal power, does not have the priority given to Federal or Canadian Treaty power. The legislative

history of section 6 of the subsequently enacted Federal Columbia River Transmission System Act refers only to use of BPA's transmission facilities for the distribution of electric power "in and from the Pacific Northwest." (H.R. Rep. No. 1030, 93rd Cong., 2d Sess. 9 (1974).)

5. BPA's Obligation to Reserve Sufficient Intertie Capacity to Sell All of Its Available Surplus Prior to Providing Capacity to Non-Federal Entities

Issue #4: Summary of Comments

The DSIs argue that BPA must reserve sufficient Intertie capacity to market its available surplus before providing access to non-Federal entities. (Wilcox, DSI, letter dated 8/13/84.)

Evaluation of Comments

The DSIs legal conclusion that BPA is obligated to utilize its Intertie facilities to force sales of its own surplus goes too far. While BPA believes that it has the discretion to act in this manner, such a policy would not at this time best serve the Federal stewardship role BPA presently sees for itself with respect to the Intertie. BPA acts as Federal steward with ownership or contract rights to most of the high voltage transmission needed to sell power outside the Region. As a steward, BPA believes the best policy at this time is to offer to share this transmission capacity with other Pacific Northwest scheduling utilities and entities. This sharing concept can facilitate longer term sales of firm power to California than would otherwise be possible. BPA is unable to make such sales directly because of the restrictions of the Northwest Preference Act. However, BPA believes that non-Federal long term sales can offer the opportunity to reduce the regional surplus of power and, over time, can cause those utilities which are BPA customers to purchase additional power from BPA. In this manner BPA believes that its Policy will benefit both the Pacific Northwest and the Southwest and help assure the widespread use of power to consumers at the lowest possible rates consistent with sound business principles.

The objections raised against this policy are that BPA will not maximize its own revenues and therefore will be unable to keep rates as low as would otherwise be possible. (Wilcox, DSI, letter dated 8/13/84 and attachments.) BPA recognizes that its Policy will need to be carefully balanced against BPA's revenue requirements. BPA believes that the revenue requirements provisions of the statutes which govern its operations are incorporated into the Power Marketing Program definition. BPA will weigh the effectiveness of the Policy against these revenue requirements and will review requests for access accordingly. BPA will consider revising the Policy if among other reasons its concept of shared access unreasonably impedes its ability to meet its reasonable revenue needs. BPA believes that this is consistent with the comments of those who recognized that one of BPA's obligations is to generate revenues which will permit BPA to maintain BPA rates at the lowest possible level consistent with sound business principles while repaying the Federal investment in the BPA system. (Foleen, letter dated 8/10/84 at p. 1; Wilcox, DSI, letter and attachments dated 8/13/84, p. 2.)

BPA has the authority to utilize Intertie capacity on a priority basis to effectuate BPA's own sales. However, the statutes only provide the authority to do so, not the obligation to apply it to the fullest extent possible. As stated above, the Interior Department reported to Congress in 1964 that BPA intended to allocate transmission capacity to Pacific Northwest utilities on the basis of their pro rata shares of the Region's surplus, a concept contradictory to the present assertion of the DSIs. Obviously, BPA's contemporaneous understanding of the Regional Preference Act was that it had been granted that authority because it quickly offered and executed the Exportable Agreement after the completion of Intertie construction. That agreement is now in its 15th year of operation.

In contrast to statutory obligations based on social policy, such as the mandate to provide preference and priority to public bodies and cooperatives in the sale of BPA power, the statutes provide substantial discretion to the Administrator in exercising business judgment in the use and management of Federal property, including whether to sell surplus energy, how much, and under what terms. This discretion also applies to determine how much of the Intertie is appropriate or necessary to carry out BPA's Power Marketing Program. Section 6 of the Federal Columbia River Transmission System Act, cited by the DSIs to support their assertion that Congress mandated use of sufficient Intertie capacity to sell all of the available Federal surplus, states that the Administrator (not Congress) is to determine how much transmission capacity is needed by BPA. Section 9(i)(3) of the Northwest Power Act, also cited by the DSIs, similarly defers to the Administrator's judgment with the words "unless he determines such services cannot be furnished without substantial interference." Even section 2(b) of the Bonneville Project Act, which the DSIs cite as the source of BPA's power marketing obligations, strongly defers to the Administrator's judgment with the words "as he finds necessary, desirable or appropriate". The statutory provisions referenced by the DSIs do not contain the mandate which they assert has been imposed on the Administrator. There is no such mandate. Congress provided an authorization to make first use of the transmission facilities, not a mandate.

Section 5(b) of the Bonneville Project Act was the first statutory provision dealing with BPA's system surplus. It merely authorizes the Administrator to enter into contracts for its sale or exchange. Similarly, the provisions in the Regional Preference Act and the Northwest Power Act relating to sales of Federal surplus energy outside the region do not require the Administrator to effectuate such sales; they merely place restrictions on such sales if they are made. Indeed, section 5(f) of the Northwest Power Act states that "the Administrator is authorized to sell, or otherwise dispose of, electric power . . . that is surplus to his obligations . . . ." All of these sections are consistent with Congress' grant of broad discretionary authority to the Administrator in section 2(f) of the Bonneville Project Act to operate BPA's system and facilities essentially as a utility business, with the same flexibility and decisionmaking freedom that characterizes a business. To argue that Congress mandated the Administrator to use all available Intertie capacity to sell all of BPA's existing surplus is contrary to the express wording of the statutes that the Administrator has the discretion to enter into such sales. Such a construction would result in a negation of that discretion and therefore is to be avoided. (C. Sands, Sutherland Statutory Construction, §46.06 (4th ed. 1973).)

The DSIs argue that the Administrator has the obligation to operate Federal Intertie ownership consistent with sound business principles and that such principles require the reservation of sufficient Intertie capacity to transmit all of the available Federal surplus. Though BPA respects others' views of what constitutes sound business principles, this decision ultimately is lodged with the Administrator. Congress' reference to "sound business principles" in section 5 of the Flood Control Act of 1944 and in section 9 of the Federal Columbia River Transmission System Act was not an objective mandate, but rather a limitation on the obligation to provide the "lowest possible rates." Congress' use of the term in section 7(a)(1) of the Northwest Power Act is in reference to establishing rates to recover BPA's costs. It is not a mandate to take any particular power marketing action with respect to sales of Federal surplus.

6. Relationship to 7(i) and 7(k)

Issue #1: Summary of Comments

SCE suggests that the Intertie Access Policy represents a change in the availability and implementation of BPA's transmission and wholesale power rates. (Myers, SCE, letter dated 8/13/84, p. 6.) LADWP suggests that the Intertie Access Policy constitutes a change in rates. (Cotton, LADWP, comment dated 8/13/84, p. 2.) PG&E suggests that the Intertie Access Policy is a rate adjustment. (Gardiner, PG&E, letter dated 8/10/84, p. 4.)

Evaluation of Comments

SCE suggests that the Intertie Access Policy is an integral part of the implementation of BPA's rates which should be subject to the procedural requirements of section 7(i) of the Northwest Power Act. SCE does not suggest that the Intertie Access Policy constitutes ratemaking, rather that the Intertie Access Policy constitutes an attempt to limit competition with BPA sales of surplus firm power and nonfirm energy. (Myers, SCE, letter dated 8/13/84, p. 7.) This alleged attempt to limit competition is suggested by SCE to effectively modify rates. (Id. at 7.) SCE relies on sections D.2.d. and E. of the draft Policy as "demonstrating an intent to modify rates."

> Section D.2.d. provided:
>
> d. In either Condition 2 or 3, if a Southwest purchaser cannot purchase power because the Pacific Northwest power available to it is priced at a level that would not allow the purchaser to displace the highest cost thermal resources it would otherwise operate, and there are no other Southwest utilities that are able to accept the offer, then if the Pacific Northwest utility is unwilling to lower the price to an economic level, the Pacific Northwest utility would lose the allocated share of the Interties to other Pacific Northwest suppliers.

Section D.2.d. required that a Pacific Northwest utility which does not reduce its selling price to an economic level would lose its allocated share of the Intertie. Section D.2.d. generally was opposed by Pacific Northwest and Southwest utilities for a variety of reasons and has been removed from the

proposed Intertie Access Policy. SCE's argument based on section D.2.d. is therefore moot.

SCE also suggests that section E of the Policy "demonstrate[s] an intent to modify rates . . . ." (Myers, SCE, letter dated 8/13/84, p. 7.) Section E, however, provides conditions when extraregional utilities may gain access to Intertie capacity. Again, SCE has provided no explanation of how extraregional access to the Intertie would affect BPA's established rates. There is no support for the suggestion that the Policy constitutes ratemaking.

SCE apparently argues that the Intertie Access Policy limits competition with BPA sales, thus allowing BPA to maximize its revenues from nonregional customers. As noted above, however, BPA can only charge established rates for power. Nothing in the Policy changes this fact. If BPA were to change its rates, such changes would be subject to section 7(i) proceedings. The Policy, however, does not modify BPA's rates.

LADWP cites section 7(a) of the Northwest Power Act as supporting the proposition that the Intertie Access Policy constitutes a change in rates. (Cotton, LADWP, comments dated 8/13/84, p. 2.) Section 7(a)(1), (16 U.S.C. §839e(a)(1)), provides in part:

> "The Administrator shall establish and periodically revise rates for the sale and disposition of electric energy and capacity and for transmission of nonfederal power." (emphasis added).

This provision requires the Administrator to establish rates for transmission services. The fact that the Administrator establishes transmission rates is completely separate from development of the Policy. Rates establish the price at which customers purchase transmission from BPA. BPA's Procedures Governing Bonneville Power Administration Rate Adjustments, (47 Fed. Reg. 6240 (1982)), define the term "rate":

> (g) Rate. The monetary charge or the formula for computing such a charge for any electric service provided by BPA, including charges for capacity (or demand), energy, or transmission service, and discounts or surcharges; however, it does not include transmission line losses, leasing fees, or other types of facility use charges for other than transmission of non-Federal power, or charges for operation and maintenance of customer-owned facilities. A rate may be set forth in a rate schedule or in a contract.

BPA establishes rates in accord with the procedures established in section 7(i) of the Northwest Power Act. (16 U.S.C. §839e(i).) The Intertie Access Policy, however, clearly is not a rate. The Policy does not establish charges for transmission services. The Policy simply allocates limited access to the Federal portion of the Intertie. The Policy therefore does not establish new transmission rates. LADWP has given no explanation of how the Policy constitutes any change in BPA's rates.

PG&E alleges the Intertie Access Policy effectively adjusts BPA's rates for three reasons. First, PG&E alleges that BPA stated the Policy would be changed if BPA were experiencing a revenue shortfall, quoting a statement by Jim Jones of BPA. Second, PG&E quotes a statement from BPA's Issue Alert that describes the NF-83 Nonfirm Energy rate. Finally, PG&E alleges that the Intertie Access Policy will affect the amount of energy BPA can offer on a guaranteed basis under the NF-83 rate schedule.

PG&E's first argument alleges that a BPA representative stated the Policy would change if BPA were experiencing a revenue shortfall. The quotation of the BPA representative, however, belies PG&E's allegation. PG&E states:

> "At the July 24, 1984, hearing, Jim Jones of BPA was asked:
>
> > [L]et's say Bonneville was not collecting the revenues they thought it would -- would Bonneville then go through a due process in order to change the policy -- in order to allow you to meet your revenue requirements?
>
> Mr. Jones replied:
>
> > I think what I am trying to say is that Bonneville will not change the policy without going through due process. The decision on whether we have to change the policy will be made by the Administrator, looking at the facts that exist at the time.
>
> (July 24, 1984, Hearing Transcript, at 40.)"

(Gardiner, PG&E, letter dated 8/10/84, p. 1.)

Mr. Jones clearly did not state that BPA would change the Policy if BPA were experiencing a revenue shortfall. Mr. Jones simply stated that if BPA were to change the Policy, BPA would comply with appropriate procedures in doing so. Any decision to change the Intertie Access Policy would have to be made by the Administrator after consideration of all facts existing at that time. PG&E has provided no support for its allegation. Even if one were to assume, arguendo, that the Policy might have some indirect effect on BPA's revenue requirement, this does not constitute ratemaking. Every BPA program affects BPA's revenue requirement. This does not mean every BPA program constitutes ratemaking.

PG&E's second argument consists solely of a quote from BPA's Issue Alert:

> "BPA's standard nonfirm rate now is 18.5 mills. But the spill rate of 11 mills served to undercut that rate. Allocation of access to the Intertie among BPA and all Northwest generating utilities with surpluses to market should enable them to increase their revenue from

> California sales. BPA has gained necessary approvals to charge the standard nonfirm rate of 18.5 mills for transactions on the Intertie and intends to do so."

(BPA Issue Alert, Update: BPA's New Intertie Access Policy, 7/84, p. 6.)

This statement simply describes the existing NF-83 Nonfirm Energy rate. The NF-83 rate contains both a Standard rate and a Spill rate. The Intertie Access Policy does not amend or modify the multicomponent NF-83 rate in any way. All components of the NF-83 rate were approved on an interim basis by the October 26, 1983, order of the Federal Energy Regulatory Commission. The fact that different components of the NF-83 rate may be used in transactions on the Intertie does not mean the Intertie Access Policy constitutes ratemaking. PG&E's citation to the Issue Alert provides no basis for suggesting the Policy modifies BPA's rates.

PG&E's final argument is that "The daily allocation of Intertie capacity under the proposed sharing method would reduce the amount of nonfirm energy that BPA can offer with a guarantee of delivery, because BPA would be uncertain how much Intertie capacity would be available to it for NF-83 sales." (Gardiner, PG&E, letter dated 8/10/84, p. 5.) PG&E's argument assumes that BPA is required to guarantee delivery under its NF-83 rate schedule. To the contrary, there is no requirement that BPA guarantee any portion of nonfirm energy sold under the NF-83 rate. As the Administrator noted in his Record of Decision, 1983 Final Rate Proposal, at p. 301:

> On the first and last working day of each week, or more often if BPA determines that it is appropriate, BPA will indicate the amounts of nonfirm energy available for delivery on a guaranteed basis. On the first working day of each week BPA will indicate the daily (and, if necessary, the hourly) amounts that it is willing to guarantee through at least the coming Friday. On the last working day of each week BPA will so indicate through at least the coming Tuesday. Such daily (or hourly) amounts may be as small as zero or as much as all the nonfirm energy BPA plans to offer for sale on such days. BPA may so offer to guarantee delivery of nonfirm energy offered for sale at the Standard rate, Spill rate, Displacement rate, or Contract rate.

(BPA Record of Decision, 1983 Final Rate Proposal, p. 301 (1983).)

The amount of guaranteed nonfirm energy the Administrator may offer is not fixed, but is subject to the Administrator's discretion. Consequently, there is no basis for concluding that guaranteed sales would be reduced under the Policy. PG&E has failed to establish any modification of BPA's rates resulting from the Policy.

Decision

The section D.2.d. provision objected to has been eliminated from the Policy.

The Intertie Access Policy is a policy for allocating capacity on the Intertie. The Policy does not establish or modify BPA's wholesale power or transmission rates. The requirements of section 7(i) of the Northwest Power Act, (16 U.S.C. §839e(i)), apply to ratemaking, not development of a Policy. Section 7(i) provides that "[i]n establishing rates under this section, the Administrator shall use the following procedures . . .". (Emphasis added.) The parties commenting on this issue provide no basis for concluding that the Intertie Access Policy constitutes ratemaking. Therefore, section 7(i) procedures are inappropriate for development of the Intertie Access Policy.

Issue #2. Summary of Comments

BPA maintains that the Intertie Access Policy is consistent with section 7(k) of the Northwest Power Act. SCE suggests that the Intertie Access Policy is inconsistent with the alleged requirements of section 7(k) of the Northwest Power Act to provide nonfirm energy to nonregional customers at the lowest possible rates. (Myers, SCE, letter dated 8/13/84, p. 8.) LADWP suggests that the Intertie Access Policy should be subject to a hearing at FERC under section 7(k). (Cotton, LADWP, letter dated 8/13/84, p. 2.)

Evaluation of Comments

SCE suggests that statements of BPA regarding the Intertie Access Policy are inconsistent with section 7(k) of the Northwest Power Act. SCE states that BPA has suggested the Intertie Access Policy will benefit Pacific Northwest ratepayers by assuring a more equitable division of benefits between California and the Pacific Northwest, that it would enable Pacific Northwest utilities with surpluses to increase their revenues from California sales, and that Congressional authorization of the Intertie was intended "to provide the lowest possible rates to Pacific Northwest consumers of Federal power." (Myers, SCE, letter dated 8/13/84, p. 4.) Notably, SCE is not criticizing the Intertie Access Policy itself, but rather a few of many possible effects of the Intertie Access Policy. SCE singles out benefits to the Pacific Northwest, but ignores benefits to California.

SCE's basic argument is that the potential benefits to the Northwest are inconsistent with the alleged statutory requirement "to provide nonfirm energy to nonregional customers at the lowest possible rates." SCE has misstated BPA's statutory obligations. Section 7(k) requires that BPA's nonfirm energy rate be consistent with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. The Flood Control Act of 1944 and the Transmission System Act provide that BPA's rates should be established to encourage the widest diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles. (16 U.S.C. §§825s and 838g.) This does not require the Administrator's rates to California alone to be the lowest possible rates, nor the Administrator's rates to the Pacific Northwest alone. The statutes require that BPA's rates be set as low as possible consistent with sound business principles so long as they are cumulatively high enough to recover the Federal debt plus other costs, while encouraging the widest possible use.

SCE confuses the general effects on the market price that may result from the Intertie Access Policy with ratemaking, the process which establishes

the prices BPA may lawfully charge for energy. As SCE well knows, BPA's established rates permit BPA to sell energy at a variety of prices, depending on market conditions.

Section 7(k) regards BPA ratemaking, not development of the Intertie Access Policy, which allocates Intertie capacity to utilities. This allocation is not a rate for nonfirm energy. Section 7(k) applies only to "all [BPA] rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region . . ." (16 U.S.C. §839e(i).) There is no authority to apply ratemaking standards to the development of a policy for allocation of access to transmission facilities. (See discussion regarding section 7(i) hearings, above.) For the same reasons, LADWP's suggestion that a hearing pursuant to section 7(k) must be held to review the Intertie Access Policy is contrary to law.

Decision

Section 7(k) provides statutory directives for the establishment of BPA's nonfirm energy rate for sales outside the Pacific Northwest, but within the United States. Section 7(k) does not apply to development of the Intertie Access Policy. Development of the Policy does not constitute establishment of a BPA nonfirm energy rate for purposes of conducting a hearing under section 7(k) of the Northwest Power Act.

II. Preliminary Issues

A. Relationship to Other BPA Actions

1. Marketing Efforts - "Agency Sale"

Issue #1: Summary of Comments

PG&E and SCE maintain that implementation of the Near Term Intertie Access Policy will impede negotiations with BPA and other Pacific Northwest utilities for long term firm sales of power under what has been called the "Agency Sale." (Gardiner, PG&E, letter dated 8/10/84, p. 7; Myers, SCE, letter dated 8/13/84, p. 20.) The current "Agency Sale" is an offer proposed by BPA to Pacific Northwest utilities for the disposal of surplus power.

Evaluation of Comments

PG&E and SCE urge that BPA abandon the Near Term Intertie Access Policy because they assert it could negatively impact negotiations for long term sales contracts between BPA and Pacific Northwest utilities and the Southwest utilities. (Gardiner, PG&E, letter dated 8/10/84, p. 7; Myers, SCE, letter dated 8/13/84, p. 20.) PG&E believes this Policy may forestall useful options. (Gardiner, PG&E, letter dated 8/10/84, p. 7.)

These comments are not well taken. The Intertie Access Policy is designed to foster sales of firm energy on a longer basis than has occurred in the past.

As these commenters know, BPA past practice has been, with limited exceptions, not to grant firm transmission contracts on the Pacific Intertie. Unless BPA changes its past Intertie practices and develops an Intertie Policy, no agency sale can take place. These practices were designed to reserve Intertie capacity for the sale of nonfirm energy and helped assure that resource construction in the Pacific Northwest was undertaken for the purpose of meeting the firm loads of the Region, not for export to California.

As the Region moved into a planning surplus due to a decreased rate of load growth, the need arose to reexamine BPA's Intertie practices in light of changed circumstances. The Near Term Intertie Access Policy is the product of that reexamination.

Adopting a permanent policy to facilitate the sale of the region's surplus power on a long term basis is not feasible because a permanent Intertie Policy could significantly affect new resource development in the Pacific Northwest and Southwest. BPA may be required to prepare an environmental impact statement (EIS) on a permanent Intertie Policy. If an EIS were required, it could take up to 2 years to prepare.

In light of this, BPA plans to adopt an Intertie Policy for up to 2 years that does not significantly affect the environment. BPA expects to adopt such a Policy as soon as BPA completes an environmental assessment in 6 months. While BPA completes that assessment, BPA is adopting an interim

Policy for 6 months. Environmental issues associated with this interim Policy are discussed elsewhere in this Record of Decision.

Continuing the sale of BPA economy energy at very low prices would make potential agency sales very difficult. California utilities would have very little incentive to enter into long term transactions when short term benefits were so high. Further, the Pacific Northwest would have a very high incentive to find competing long term uses for BPA's economy energy because of low short term benefits.

To have continued BPA's past practice of refusing to allow firm transmission contracts on the Intertie would have presented the wrong signal to potential California buyers of the Region's firm surplus. Thus, an essential feature of the interim Intertie Access Policy is that it creates a priority for the sale of firm power from existing surplus resources for up to 2 years.

BPA strongly disagrees with the commenters' assertions that the interim Policy discourages agency and other sales of the Region's surplus. To the extent that the Intertie Access Policy results in higher prices for BPA economy energy, provides for the sale of surplus firm power during the near term, and begins a dialogue on the environmental effects of long term sales of Pacific Northwest surplus firm power, the Intertie Access Policy facilitates rather than impedes potential agency sales.

Even if the Near Term Access Policy has what BPA believes to be an unlikely negative effect on long term contract negotiations, that is outweighed by the necessity to resolve short term access issues, both for BPA's revenue outlook and to provide short term access certainty for Pacific Northwest utilities. In addition, BPA's proposal to implement this Policy at this time has received considerable support by Pacific Northwest utilities--those same utilities involved in the "agency sale." (Schultz, ICP, letter dated 8/10/84; p. 1; Garman, PGP, letter dated 8/9/84, p. 1; Brawley, PPC, letter dated 8/13/84; Nadal, PNGC, letter dated 8/13/84; Boucher, PP&L, letter dated 8/13/84, pp. 1 and 4; Bredemeier, PGE, letter dated 8/13/84; Bryan, WWP, letter dated 8/9/84.)

Decision

Unless BPA changes its past practices, no sale of the Region's firm surplus on a long term basis is possible. BPA believes that the benefits of the orderly process provided by this Policy to resolve short term issues, while at the same time beginning a dialogue and process to address long term issues far outweigh any possible negative impacts. Therefore, BPA believes it is essential and thus reasonable to implement this Policy at this time.

2. Additional Intertie Expansion

Issue #1: Summary of Comments

Several persons suggested that the Intertie Access Policy may adversely affect the proposed Intertie expansion. These commenters believe that higher prices for Pacific Northwest economy energy may result from adopting the

Policy, and may reduce the expected benefits from additional Intertie expansion so as to jeopardize their investment in such expansion. (Myers, SCE, letter dated 8/13/84; p. 2; Gardiner, PG&E, letter dated 8/10/84, pp. 1 and 7; Imbrecht, CEC, letter dated 8/13/84, p. 5.) The Northern California Public Power Agency (NCPPA), indicated that they were ready to proceed with construction of additional Intertie capacity. (Pugh, NCPPA, letter dated 8/13/84, p. 1.) The Wyoming Public Service Commission (WPSC) encouraged BPA and all Pacific Northwest utilities to pursue the construction of additional Intertie capacity between Oregon and California. (Jacquot, WPSC, letter dated 8/10/84, p. 1.)

Evaluation of Comments

The California Energy Commission (CEC) and others argue that the Intertie Access Policy will erode the fundamental economic justification for Intertie additions and will eliminate opportunities for expanded purchases of Pacific Northwest power. (Imbrecht, CEC, letter dated 8/13/84, p. 5; Myers, SCE, letter dated 8/13/84, p. 2; Gardiner, PG&E, letter dated 8/10/84, pp. 1 and 7.) BPA recognizes the importance of assessing the expected benefits from a major investment such as that required for additional Intertie capacity. BPA has analyzed in depth the expected costs and benefits associated with expansion of both the AC and DC Interties. BPA studies show large benefits associated with those expansions even when utilizing the expansions only for nonfirm transactions. The potential for future firm transactions could substantially enhance these benefits. The Intertie Access Policy could result in some shift of benefits associated with nonfirm transactions, but also may substantially increase the benefit to California utilities by providing Intertie access for firm transactions. Even if the shift were dramatic, there are still ample benefits available to both regions. Congress has recently spoken to this issue, authorizing BPA to proceed with the DC Intertie uprate, and concluding the AC uprate also should proceed.

BPA has not been provided with cost/benefit analyses conducted by California utilities. Potential investors in additional Intertie capacity who may have based their analysis of expected benefits on an assumption of continued availability of Pacific Northwest energy at prices substantially below cost have based their analysis on a faulty assumption. BPA hopes that potential investors have assumed realistic prices for economy energy purchases. BPA's analysis suggests that the proposed DC and AC expansion plans are overwhelmingly good investments for most California utilities. This is primarily the result of the low cost of constructing the proposed additional Intertie capacity as compared to other alternatives.

BPA believes that because the Pacific Intertie is an economic investment for California utilities, sufficient investors can be found to develop additional capacity. Potential investors include those utilities who have not enjoyed the benefits of owning a portion of the Pacific Intertie. The NCPPA stated that they, together with Sacramento Municipal Utility District (SMUD), are moving forward to cooperate with BPA, Western, and others on developing additional AC transmission. They further stated that BPA's Intertie Access Policy generally is consistent with the mutual goal of maximizing and sharing benefits between the two regions. (Pugh, NCPPA, letter dated 8/13/84, p. 1.)

Decision

BPA believes that its Intertie Access Policy will not impede the construction of additional Intertie capacity and may increase the benefits to both regions of Intertie expansion.

B. Relative Benefits

Issue #1: Summary of Comments

A number of commenters suggest that BPA's published information concerning the relative benefits to BPA and the Southwest from use of the Intertie is either misleading or inaccurate. (Myers, SCE, letter dated 8/13/84, pp. 12-17; Gardiner, PG&E, letter dated 8/13/84, pp. 3-34; Cotton, LADWP, letter dated 8/13/84, pp. 6-10; Niggli, SDG&E, letter dated 8/13/84, p. 1.) Western requested that BPA add Western's purchases to Table 2 accompanying BPA's proposed policy. (Coleman, WAPA, letter dated 8/13/84, p. 5.) A number of commenters request that BPA establish a more equitable sharing of benefits between the two regions. (Sander, Clark, letter dated 8/10/84; Brawley, PPC, letter dated 8/13/84, p. 1; Driscoll, MPSC, letter dated 8/19/84, p. 2.)

Evaluation of Comments

BPA has published information in a BPA Issue Alert concerning the benefits that have accrued to California through purchases over the Intertie in comparison to the revenues received by BPA for sales to California. (BPA Issue Alert, Update: BPA's New Intertie Access Policy, 7/84.) BPA regrets that certain information contained in this document was incorrectly characterized. That information is clarified below. BPA also included information about benefits in the discussion accompanying BPA's proposed Intertie Access Policy. That information also is clarified below.

Several California commenters argue that comparison of benefits is irrelevant to the Intertie Access Policy. BPA disagrees with the general assertion. However, BPA agrees that the authority to adopt a policy is not dependent on any particular ratio of benefits between Pacific Northwest and Southwest utilities.

BPA acknowledges that California utilities propose different methods for calculation of benefits. See, for example, the comments of PG&E (Gardiner, PG&E, letter dated 8/10/84, p. 4) which encourage BPA to consider value based on alternative purchases available to PG&E rather than fuel costs. These arguments have been made in great detail before BPA and FERC. BPA has considered these arguments, and stands by the testimony and argument BPA presented in the recent 7(k) hearings and briefs.

Decision

The discussion of benefits that appeared in BPA's proposed Near Term Intertie Access Policy were an approximation of the value accruing to

California utilities resulting from purchases in FY 1983 under BPA's NF-2, CF-2, SP-1, SE-1 rates, and purchases of obligation energy under the capacity-energy exchange. The total of $1.0 billion in value to California purchasers includes roughly $934 million calculated value of nonfirm energy purchases based on California fuel costs, $8 million calculated value of seasonal capacity purchases, $4 million calculated value of purchases of obligation energy, and $49 million calculated value of firm surplus purchases based on alternative fuel costs. This figure does not include wheeling benefits, capacity-energy exchange benefits, stability benefits, reserve benefits, and others. BPA acknowledges that these figures are rough approximations and that different parties may propose different methods for the calculation of benefits. BPA's believes, however, that these figures reasonably represent the range of benefits enjoyed by California purchasers. The $0.2 billion amount represents the actual amount paid to BPA. Under any method of comparison, the benefits to California outweigh the benefits to BPA.

The summary of benefits that appeared in BPA's Issue Alert entitled "Update: BPA's New Intertie Access Policy" is in error. The Issue Alert stated that in 1983 total benefits to California were $1.6 billion while BPA received $0.3 billion in revenues. A correct statement of BPA's position is that over the NF-1 and NF-2 periods combined, benefits to California utilities from economy energy purchases were $1,521 million. BPA received a total of $269 million in revenue from these sales. As BPA testimony in the 7(k) proceeding before the Federal Energy Regulatory Commission described these benefits, during the NF-1 period, California utilities realized savings of more than $744 million while BPA realized $127 million in revenues. Under NF-2, Pacific Southwest utilities saved more than $777 million while BPA realized revenues of $142 million. These figures do not include any consideration of value to California or revenue to BPA from sales of seasonal capacity, surplus firm power, the capacity-energy exchange, or other benefits.

C. Environmental Impact Assessment Issues

Issue #1: Summary of Comments

At the same time that BPA is assessing the environmental effects of a proposed 18-month Near Term Intertie Access Policy, BPA is adopting a Policy for 6 months. Pacific Northwest environmental interests, such as the Northwest Conservation Act Coalition (NCAC), expressed the following opinion: "The proposed two-step process, of an interim and an eventual final policy, seems to us a particularly graceful way to insure a rational use of the Intertie in the short term while not precluding any desirable options in the long term." (Stearns, NCAC, letter dated 8/9/84, p. 1.) A similar opinion was voiced by Solar Oregon Lobby (SOL) and Seattle City Light (SCL). They believe that the multi-step process is an opportunity to test the concept and provide advance notice of BPA policy direction. (Saven, SCL, letter dated 8/13/84, p. 1; Heutte, SOL, letter dated 8/13/84, p. 1.)

Some California utilities, however, stated that BPA must consider the environmental impacts of the interim Near Term Intertie Access Policy prior to its adoption, and that an environmental assessment (EA) or environmental impact statement (EIS) should be prepared prior to the initial

implementation. (Myers, SCE, letter dated 8/13/84, p. 11; Cotton, LADWP, letter dated 8/13/84, p. 3; Niggli, SDG&E, letter dated 8/13/84, p. 3; Gardiner, PG&E, letter dated 8/13/84, p. 8.) In contrast, the Montana Public Service Commission (MPSC) believes that BPA should adopt a long term Policy immediately, rather than waiting 2 years until an EIS is completed. (Driscoll, MPSC, letter dated 8/10/84, p. 3.) SCE suggested that by bifurcating the policy and the consequent environmental review, into near term and long term proposals, BPA might not be complying with the National Environmental Policy Act (NEPA). (Myers, SCE, letter dated 8/13/84, p. 11.)

Two California utilities and an individual expressed concern that the allocation provisions in the Policy will cause major changes in the types of resources that will be operated in the Pacific Northwest and the Southwest. They believe this should be evaluated prior to adoption of the Intertie Access Policy. They claim to be concerned that some of these changes will result in inefficient operations, causing environmental impacts and consequent harm to national interests. (Myers, SCE, letter dated 8/13/84, p. 17; Gardiner, PG&E, letter dated 8/10/84, p. 6; Meek, letter dated 8/20/84, pp. 1-3.) Several California utilities believe that the Intertie Access Policy, because of the pro rata nonfirm allocation and its alleged effect on price, could result in increased thermal generation in the Pacific Northwest at times when hydro generation may be available in the Pacific Northwest and Canada to provide the necessary power. (Gardiner, PG&E, letter dated 8/10/84, p. 6; Meek, letter dated 8/20/84, p. 5; Cotton, LADWP, letter dated 8/13/84, p. 5; Heutte, SOL, letter dated 8/13/84, p. 1; Whitney, LADWP, TR 178-79.)

Some of these California utilities also believe that Southwest thermal generation will increase as a response to the change in allocations. A Pacific Northwest utility believes, however, that the terms of the policy may in fact displace more oil generation in the Southwest. (Saven, SCL, letter dated 8/13/84, p. 1.) Another Pacific Northwest utility representative was of the opinion that the major impact of the Near Term Intertie Access Policy is to determine which utilities make sales to California and whether those sales are firm or nonfirm. He concluded that this Intertie Access Policy would not change the actual mix of resources operating and thus, BPA should consider the possibility that there may be no environmental effect. (Schultz, ICP, TR 175-77.)

Evaluation of Comments

The commenters from environmental organizations have supported the BPA multistep proposal, and have commended BPA for its approach as being reasonable and practical. (Heutte, SOL, letter dated 8/13/84, p. 1.) BPA agrees that a multi-step process is a "graceful way to insure a rational use of the Intertie in the short term." (Stearns, NCAC, letter dated 8/9/84, p. 1.)

Some of the foregoing California commenters express a concern for environmental impacts that they allege may occur if an increase in thermal plant operation results from the economic aspects of the interim adoption of the Near Term Intertie Access Policy. This concern contrasts with BPA's understanding that operation of thermal resources contributes only a small fraction of the air pollution in most airsheds in California. Automobile

exhaust is thought to be the major contributor to air pollution. Thus, the speculative additional incidental operation of thermal plants in the Southwest is unlikely to result in noticeable change in air quality.

It is significant to note that this concern for the environment is being expressed most strongly by those who believe that the Intertie Access Policy adversely affects their economic interest. These commenters have the most to gain by a delay in adoption of the Intertie Access Policy until an EA or EIS could be prepared. Other California entities believe their economic interests may be improved by the Intertie Access Policy and would like to see the long term Policy implemented soon. (Pugh, NCPPA, letter dated 8/13/84, pp. 1 and 4.) Environmental groups that commented did not express concern as did the California utilities. This suggests that it is the utilities' economic interests that are the true interests they are seeking to protect. NEPA was not designed to protect economic interests.

Immediate application of the proposed Near Term Intertie Access Policy is necessary so that BPA will have an allocation procedure in place during the fall and winter months when river conditions most often result in Conditions 2 and 3. These are conditions under which BPA presently has no allocation method in place. Normally, in the spring and summer months, the availability of surplus energy as a result of spring runoff gives rise most often to Condition 1 under which Intertie capacity is allocated under the Exportable Agreement. Not to implement the Policy at this time would delay any real experience under the proposed Near Term Intertie Access Policy for about 1 year.

BPA has chosen this multi-step process for more than that reason. The delay in implementing the Policy pending completion of the environmental review of a Near Term Intertie Access Policy could result in the loss of significant amounts of revenue that may jeopardize BPA's ability to repay the Federal Treasury the amount BPA projected it would pay at the end of 1985. BPA runs a risk that an interest penalty may be imposed on future borrowings from the Treasury if BPA does not meet its projected Treasury payments for reasons within BPA's control. (16 U.S.C. §838k.)

It is appropriate to review what the interim Policy does not do. It will not limit the choice of reasonable alternatives nor prejudice the ultimate decision an 18-month Policy because there will be no irreversible or irretrievable commitment of resources as a result of the 6-month adoption. In 6 months, BPA can return to past practices, extend the interim Policy or modify the Policy in any manner. None of those options are precluded as a result of the interim Policy.

The interim Policy will not change the environmental status quo. It will not alter any operational constraints, limitations, or the terms and conditions of any permits or licenses. The operation of the FCRPS will continue to be within existing and long established constraints. All generating resources will continue to operate within provisions of existing licenses or permits. The environmental status quo will remain unchanged for the following reasons:

(1) The interim application of the Policy will be in effect for only 6 months.

(2) There will be no change in planning for the construction of thermal or any other energy resources in the Pacific Northwest or the Southwest as a result of the interim application of the Policy, because no new resources are allowed on the Intertie.

(3) No transmission facilities or structures of any other kind will be erected, torn down, or modified as a result of the Policy.

(4) There will be no effect on FCRPS operating constraints, which include provisions to protect fish and wildlife, such as minimum flows for adults spawning. Violation of these constraints will not occur as a result of the Policy.

(5) No adverse effects on fish and wildlife will result from the adoption of the Policy. BPA included provisions in the Policy that permit BPA to deny access to any energy resource that may have deleterious effects on BPA's efforts to protect, mitigate, and enhance the fish and wildlife resources of the Columbia River Basin. If any such adverse effects to BPA efforts on behalf of fish and wildlife are demonstrated, the Administrator will deny further access unless the energy resource is modified to alleviate the effect, or the resource sponsor takes offsetting measures not inconsistent with the Council's Fish and Wildlife Program.

(6) The overall amount of power sold over the Intertie will not be significantly increased under of the Policy over what it would be otherwise. Pacific Northwest sellers and Southwest buyers will seek, as they do now, to fill the Intertie as much of the time as possible by negotiating mutually satisfactory prices.

Some California commenters suggest that circumstances might arise where higher prices for Pacific Northwest nonfirm would result in the operation of thermal resources in California in lieu of purchasing higher cost allegedly cleaner hydro power from the Pacific Northwest. This is not likely to occur because of the higher cost to operate Southwest thermal resources than to operate Pacific Northwest hydro resources under most market conditions. It is theoretically possible that some higher cost thermal resources may operate in lieu of lower cost hydro power. However, it will usually be in the interest of the Pacific Northwest sellers to lower prices by displacing the operation of thermal resources in order to capture the benefits of selling power, thereby minimizing the possibility.

With respect to the operation of thermal plants in the Pacific Northwest, some California commenters suggest that instances could arise where a utility may operate a thermal resource that would not be operated were the price for nonfirm energy lower. Thus, they argue, to the extent that the interim adoption of the Policy results in higher prices for nonfirm energy, some operation of thermal resources may occur that would not otherwise have occurred in the absence of the interim adoption of the Policy. Of course, under the environmental status quo, such thermal operation is permitted within the limits of the operators' licenses. No greater impact will occur than that

which the law presently allows. Furthermore, any impact the interim adoption of the Policy might have on the operation of an individual thermal facility would be within the range of variation in operations that normally occur with the Pacific Northwest power system that result from yearly, seasonally, daily, and hourly load/resource circumstances. Nevertheless, some California commenters speculate that greater thermal operation may result under the interim adoption of the Policy than would otherwise occur. The likelihood that such operation would occur is reduced by a number of factors.

First, BPA sells nonfirm energy at very low rates designed to be less than the costs of generating energy from Pacific Northwest thermal plants. Thus, only when the market price is very strong will these thermal resources operate. This possibility will be reduced because of the increased supply of hydro power if river flows are high this fall. At this time it would be purely speculative to attempt to quantify the amount of additional thermal generation that will actually occur. Thus, thermal plants will operate within normal ranges, resulting in no changes to the environmental status quo beyond those that would occur in the absence of the Policy.

Second, occasional operation of Pacific Northwest thermal plants beyond levels at which they would otherwise operate, in the absence of the Policy, would produce minimum adverse air quality effects. This is true because these plants generally are located in areas of good air quality. However, these effects are purely speculative; it is not possible to quantify them; they may not occur at all and if they occur, they will be within the permissible existing operating parameters.

It is clear that an Intertie sale would only be economical for a thermal resource owner if the price received, net of the costs of production, were greater than the savings achieved by displacement. Under current nonfirm rate structures, Pacific Northwest thermal resources that do not qualify for displacement cost nearly the same to operate for export sale to California, with transmission charges, as Pacific Northwest hydro resources.

In addition, operational constraints on thermal resources, which will be primarily coal-fired generation, such as the inability to start up or shut down on short notice or for short periods, combined with the inherent interruptibility of nonfirm sales and the 1-day notice period for allocation under the policy, lessen the ability of the owners of coal plants to generate nonfirm power for export. Interim adoption of the Policy does not improve the ability of the owner of a thermal plant to plan to enter the economic energy market by selling thermal power. The thermal plants that are most likely to participate in the export market are those that require only incremental increases in generation at already operating plants. These slight changes would be within the restrictions of applicable licenses and permits, with no changes to the overall environmental status quo beyond those that would occur in the absence of the Near Term Intertie Access Policy.

Third, BPA expects that a secondary market may develop in the Pacific Northwest where sellers of lower cost power, which is in excess of the their Intertie allocation, sell power to other Pacific Northwest utilities with allocations to displace operation of higher cost resources. Thus, BPA expects that any environmental effects would be well within the range of effects that would occur were BPA to continue its current Intertie Access practices.

Fourth, the impacts associated with the interim application of the Policy appear to be almost exclusively economic, and such impacts are not environmental impacts within the meaning of NEPA.

Decision

BPA has implemented the Near Term Intertie Access Policy on an interim basis without first preparing an EA or EIS because there will be no changes in the overall environmental status quo beyond those that would occur in the absence of the Policy. Even if there may be intrinsic environmental effects, the effects are impossible to quantify, are remote from the interim adoption, and are so speculative as not to be reasonably meaningful to the underlying decision on interim application. There is no prejudice to the ultimate decision or preclusion of reasonable alternatives of an 18-month Near Term Intertie Access Policy to be adopted following environmental review, since there is no irreversible or irretreivable commitment of resources made as a result of interim adoption of the Policy.

D. Optimal Use of Resources

Issue #1: Summary of Comments

Several commenters expressed the view that the Intertie Access Policy will result in an inefficient allocation of resources to serve the economy energy market. PG&E said that higher prices resulting from the Intertie Access Policy will result in a waste of fossil fuels in the Pacific Northwest and Southwest. (Gardiner, PG&E, letter dated 8/13/84, pp. 6-7.) Another commenter expressed the view that allocating Intertie capacity without regard to expected price, the cost of the resource, or the environmental effect would result in an inefficient use of resources. (Meek, letter received 8/21/84, pp. 1-3.) The DSIs suggested that BPA adopt an Intertie Access Policy that reserves sufficient Intertie capacity to sell all of BPA's surplus so as to optimally use BPA's resources and avoid sales at distressed prices. (Wilcox, DSI, letters dated 8/13/84 and 3/15/84, p. 2.) The DSIs went on to assert that it is not an efficient use of exchange resources to sell them at less than their fully allocated cost. (Id.)

Evaluation of Comments

BPA agrees that sales of exchange resources at distressed prices, the bulk of BPA's firm power surplus, is not an optimal use of BPA's resources. It is less than optimal because distressed prices enable the buyer to purchase surplus firm power as economy energy. Using firm power to serve an economy energy market is not the highest and best use of firm power. As discussed elsewhere in this Record of Decision, one of the objectives of the Intertie Access Policy is to permit Pacific Northwest utilities to sell firm power. This promotes optimal use of resources by encouraging firm power to be put to higher and better uses than is presently the case.

Low prices for Pacific Northwest energy create a disincentive for buyers to enter into long term contracts to purchase firm energy because low prices encourage the continuation of short-sighted strategies among buyers. This

results in increased financial pressure on Pacific Northwest utilities to develop other markets in the Pacific Northwest for their surplus firm power at higher prices. This pressure has already manifested itself in the form of BPA's sale of surplus energy to the DSIs for their incremental loads. BPA also had offered lower priced energy through its customers for the benefit of farmers who increase their irrigation load and to displace alternative fuel sources of other consumers. Some Pacific Northwest utilities are considering assistance to commercial entities to induce them to install electric boilers to displace other fuels used to produce industrial process stream.

Building permanent load to absorb a portion of the Region's firm surplus may not be the most efficient use for the Region's surplus firm power. Using the Region's surplus to serve existing firm loads in the Southwest is a better use of such energy. However, unless the seller can recover the cost of producing firm power through such sales, alternatives such as those listed above may seem more attractive.

As is discussed elsewhere in the Record of Decision, BPA believes that the market for Pacific Northwest economy energy is not functioning efficiently. This is in part because of the surplus supply of firm energy and in part because of the access policies of the owners of the southern Intertie. The Intertie Access Policy partially alleviates this latter problem by providing Pacific Northwest sellers with market power comparable to that enjoyed by the buyers of Pacific Northwest energy who own a share of the southern Intertie. This generally should improve efficiency in the use of Pacific Northwest resources.

Several observations can be made with regard to the efficient allocation of resources to serve the economy energy market under the Intertie Access Policy. First, a Pacific Northwest thermal resource used to serve the economy energy market is displacing some other more expensive resource. To the extent that price is a measure of efficiency, resource efficiency will occur. Second, while suggestions that thermal resources may serve the economy energy market at times when cheaper hydro power is available may be true under certain circumstances. However, nothing in this Policy prevents a utility with hydro power in excess of its allocation from offering to sell its excess to another Pacific Northwest utility to displace a thermal plant being operated for export at prices below the incremental cost of the thermal plant. In fact, BPA expects the Intertie Access Policy to result in a secondary market where hydro power is sold to displace thermal resources and the purchaser instead will sell the hydro over their allocation. BPA has for a long time competed in this market and has established low rates to do so. For example, in addition to the Spill rate, BPA has established Displacement rates at 7.0 mills and 3.0 mills for displacement of coal and nuclear plants, respectively. BPA would expect other utilities to do the same. BPA recognizes that transmission costs of a mill or two are a transaction cost of participating in this market. Of course a utility may choose to wait out the market in hopes of a larger allocation and better prices at some future time.

A memorandum was received by BPA on August 21, 1984, from Daniel Meek, Counsel to the House Subcommittee on Mining, Forest Management, and BPA. This memorandum raises issues that may be considered more appropriately in the development of the Long Term Intertie Acces Policy or the deliberations regarding extension of the proposed Policy to the full 2 years. The

memorandum suggests that the proposed Policy would inefficiently allocate access among Pacific Northwest utilities, and proposes that an alternative could be developed that would provide a free market in Pacific Northwest/California power transactions. The alternative suggested seeks to achieve a result where there is assurance that transactions between the Pacific Northwest and the Southwest always displace the highest-cost displacable California resources with the lowest-cost Pacific Northwest resources that could be operated. It is suggested that this be done by a computer-operated system that achieves this result on an hourly basis.

BPA agrees that neither the present system of transactions between the Pacific Northwest and Southwest nor the adoption of the Near Term Intertie Access Policy can assure optimum economic operation of Pacific Northwest and Southwest resources. To strive to do so is a desirable goal. However, this system must be viewed as a long term objective since the existing framework of contracts, Intertie ownership, and relatively independent operation of the approximately 150 utilities involved cannot be quickly modified. The proposed Policy provides mechanisms that encourage efficient resource operation. Mr. Meek's comments will be carefully considered in refining the Near Term Policy and in the development of a Long Term Intertie Access Policy.

Decision

BPA believes that on balance, the Near Term Intertie Access Policy will improve the efficient use of Pacific Northwest resource by promoting the application of the Region's surplus firm power to higher and better uses. BPA generally expects the economy energy market will be served with least cost resources through the development of secondary markets in the Pacific Northwest to displace more costly resources that would otherwise be operated for export.

E. Existing Pacific Northwest Resources

1. Introduction

BPA's proposed policy defined "Existing Pacific Northwest resources" to mean: "the resources of Pacific Northwest utilities which are in operation or dedicated to regional load in recognized regional resource planning documents, and which have not been terminated, prior to the effective date of this policy." (Draft Policy at 15.)

2. Existing Resources

Issue #1: Summary of Comments

Most commenters urged that the Near Term Intertie Policy exclude new resources from access. (Reed, MEIC, letter dated 8/10/84, p. 2; Stearns, NCAC, letter dated 8/9/84, p. 1; Evans, NMFS, letter dated 8/13/84, p. 2; Cavanagh, NRDC, letter dated 8/13/84, p. 5; Jacquot, WPSC, letter dated 8/8/84; p. 2.) Some comments criticized the definition of existing Pacific

Northwest resources for vagueness. (O'Banion, SMUD, letter, dated 8/10/84, p. 4; Pugh, NCPPA, letter dated 8/13/84, p. 3.)

However, many commenters felt that a general exclusion of new resources should not necessarily apply to cogeneration resources. (Colbo, NPPC, letter dated 8/10/84, p. 2; Boner, NP&P, letter dated 8/8/84, p. 2; Canon, ICNU, letter dated 8/13/84, p. 1; Van Curen, AWPPW, letter dated 8/10/84, p. 1.) The Industrial Customers of Northwest Utilities (ICNU) believe that there should be flexibility to sell cogenerated power over the Intertie, instead of creating a surplus, so as not to mislead potential developers. (Canon, ICNU, letter dated 8/13/84, p. 2.) The WPSC believes that BPA should suspend acquisitions of small resources until the pricing structure is more realistic. (Jacquot, WPSC, letter dated 8/8/84, p. 2.)

BPA's proposed definition of existing Pacific Northwest resources contemplated that some planned utility resources could qualify for access if they were dedicated to regional load in "recognized regional resource planning documents." Several commenters suggested that instead, planned resources be given access only if included in the Northwest Power Planning Council's Plan. (Thatcher, NWF, letter dated 8/13/84, p. 1; Stearns, NCAC, letter dated 8/9/84, p. 1; Cavanagh, NRDC, letter dated 8/13/84, p. 6; Toole, letter dated 8/9/84, p 1; Reed, MEIC, letter dated 8/10/84, p. 1.)

Evaluation of Comments

The comments supporting the exclusion of new resources from access generally were based on a concern that Intertie Access Policy not create an incentive for any additions to the present surplus of generation resources. (Jacquot, WPSC, letter dated 8/8/84, p. 2.) A number of comments asserted that the policy should hold out no possibility that Intertie access could be gained for new resources. (Cavanagh, NRDC, letter dated 8/13/84, p. 5; Reed, MEIC, letter dated 8/10/84, p. 2; Evans, NMFS, letter dated 8/13/84, p. 2.) Although not explicitly stated, many comments inferred that access should not be provided blindly to new resources with unknown or ill-defined environmental consequences.

Sponsors of cogeneration urge that new cogeneration resources be an exception to this general rule because of special advantages of cogeneration. They maintained that cogeneration could be a "lost opportunity" if not developed now, and could be available to meet the possible unavailability of planned resources such as Supply System Plants 1 and 3. The ICNU noted that natural gas turbine cogeneration may be developed at a low enough cost to be cost-effective for internal use by industries. However, the ICNU felt that it would be better served if this resource could be sold over the Intertie rather than be used by local industries, thereby exacerbating existing surpluses. (Canon, ICNU, letter dated 8/13/84, pp. 1-2.) Continuing this argument, one commenter maintained that cogeneration enhances the economics of some industries, and therefore can create regional economic and employment advantages. (Van Curen, AWPPW, letter dated 8/10/84, p. 1.) To further encourage cogeneration one commenter urged that the Near Term Intertie Access Policy state that the Long Term Intertie Access Policy would provide access for cogeneration resources. (Boner, NP&P, letter dated 8/7/84, p. 2.)

The Northwest Power Planning Council (NPPC) urged that BPA's Near Term Policy recognize the Council's Plan regarding cogeneration resources that could be lost to the region for lack of access to California markets. (Colbo, NPPC, letter dated 8/11/84, p. 2.) However, the Council noted that it was not aware of any such potential cogeneration, and understood that projects started within the next 2 years may not be operational within the term of the Near Term Intertie Access Policy.

The NCAC believes that new generating resources, except those acquired under the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. §1332 et seq., hereinafter PURPA), will not have access to the Intertie. (Stearns, NCAC, letter dated 8/9/84, p. 2.) But the Idaho Power Company (IPC) believes that under the proposed Policy a situation may arise in which a utility may be denied access to the Intertie because a PURPA resource, required to be purchased by that utility, was inconsistent with BPA's Fish and Wildlife Program. (Barclay, IPC, letter dated 8/13/84, pp. 14-15.) The Natural Resource Defense Council (NRDC) believes that a denial of access for a required purchase is unfair since the purchase is a necessary concession to state and Federal law. (Cavanagh, NRDC, letter dated 8/13/84, p. 7.) Some parties also believe, however, that PURPA does not require BPA to provide access to the Intertie. (Thatcher, NWF, letter dated 8/13/84, p. 2; Cavanagh, NRDC, 8/13/84, p. 7.)

The comments critizing the proposal to rely on "recognized regional planning documents" were well-founded. BPA agrees that the 6-month Policy should be restricted to resources that are operational on the effective date of the Policy.

Decision

BPA's Near Term Policy has been changed to allow access only for existing resources operational on the effective date of the Near Term Policy. BPA's Near Term Policy is neutral with respect to cogeneration and PURPA resources.

3. Resources Owned by Nonutility Entities

Issue #1: Summary of Comments

The proposed definition of "Existing Pacific Northwest Resources" referred only to utility-owned resources. (Draft Policy at 15.) Several commenters suggested that this should include nonutility-owned resources, provided that Intertie access would be accomplished by an arrangement with the local scheduling utility. (Nadal, PNGC, letter dated 8/13/84, p. 1; Hoehne, LFC, letters dated 8/9/84 p. 1 and 2/27/84; Boner, NP&P, letter dated 8/7/84, p. 2; McKinney, Cowlitz, letter dated 8/9/84, p. 1; Canon, ICNU, letter dated 8/10/84, p. 2; Wilcox, DSI, letter dated 3/15/84, p. 5; Coleman, WAPA, letter dated 8/13/84, p. 5.) Other commenters felt that the basic premise of limiting access to scheduling utilities was sound. (Schulz, ICP, letter dated 8/10/84, p. 2; Labrie, MPC, letter dated 8/13/84.)

Evaluation of Comments

Some comments acknowledged that contracts already exist between cogenerators, scheduling utilities, BPA and California markets. One example is the contract between Longview Fibre Co. (LFC) and Western. (Van Curen, AWPPW, letter dated 8/8/10/84; Coleman, WAPA, letter dated 8/13/84, p. 5; McKinney, Cowlitz, letter dated 8/9/84, p. 1; Hoehne, LFC, letter dated 8/9/84 and 2/27/84.) The Longview Fibre Contract provides for the sale of Longview's cogenerated power to Western, with access to the Intertie provided through Cowlitz Public Utility District (Cowlitz). (Hoehne, LFC, letters dated 8/9/84, p.1 and 2/27/84, p. 2.) BPA did not intend to exclude these resources from access.

The Pacific Northwest Generation Company (PNGC) recommended language to the effect that "nonscheduling utility resources will qualify for firm Intertie access if proper arrangements are made through a scheduling utility." (Nadal, PNGC, letter dated 8/13/84, p. 1.) The DSIs suggested that all arrangements for access to the Intertie be made by, or through, utilities with generation control because neither BPA nor the utilities can assume responsibilities for others without suitable contracts. (Wilcox, DSI, letter dated 3/15/84, attachment 1, p. 5.) These are reasonable suggestions, which BPA's Policy incorporates.

Decision

The definition of existing Pacific Northwest resources is changed to make clear that existing resources owned by entities other than utilities may gain access to the Intertie if the resource is operational on the effective date of the Policy and had an established relationship with a scheduling utility to serve regional load. An entity that is not a scheduling utility, but that desires access to the Intertie, must do so by or through a scheduling utility.

4. Enforcement

Issue #1: Summary of Comments

The draft Policy provided that utilities specify the resource to be used to make a sale before assured delivery would be provided for new firm sales contracts, but did not otherwise provide for the identification of the sources of power being transmitted over the Intertie.

Some commenters said that BPA needed an enforcement mechanism to exclude undesirable resources from benefiting de facto from Intertie access by operating ostensibly to serve domestic load, thereby allowing other resources to be used for Intertie sales. They maintained that this "laundering" would subvert the policy. (Reed, MEIC, letter dated 8/8/84, p. 1; Thatcher, NWF, letter dated 8/10/84, p. 2; Cavanagh, NRDC, letter dated 8/13/84, pp. 6-8; Thatcher, NWF, TR 276-277.)

NPPC and National Marine Fisheries Service (NMFS) pointed out that the draft policy failed to provide a means of identifying the sources of power

being transmitted over the Intertie. (Colbo, NPPC, letter dated 8/10/84, p. 2; Evans, NMFS, letter dated 8/13/84; Bodi, NMFS, TR 294.) National Wildlife Federation (NWF) believes that the "anti-laundering provision must apply to resources that do not meet the Policy's fish and wildlife conditions, as well as to those that are not within the definition of "existing resources". (Thatcher, NWF, letter dated 8/10/83, p. 2.) Columbia River Inter-Tribal Fish Commission (CRITFC) and NMFS believe that the Policy is flawed in not guaranteeing that "dirty" resources will not be laundered in a manner that permits Intertie marketing of otherwise ineligible resources. (Wapato, CRITFC, letter dated 8/13/84, p. 1; Evans, NMFS, letter dated 8/13/84, pp. 1-2; Hemple, SOL, letter dated 8/13/84, p. 1.) Another commenter saw no need to set any sort of conditions for access because no new resources would be expected to come on line during the 6 months of the interim Policy. (Copp, et al., Chelan, letter dated 8/10/84, p. 2.)

CRITFC and NMFS suggest that BPA should prepare monthly reports summarizing use of the Intertie by utility and by resource. (Wapato, CRITFC, letter dated 8/13/84, p. 1; Evans, NMFS, letter dated 8/13/84; p. 1; Bodi, NMFS, TR 294.) NMFS suggests that a list of resources be submitted by each scheduling utility that would certify that the resources on the list do not adversely affect fish and wildlife. (Bodi, NMFS, TR 294; Evans, NMFS, letter dated 8/13/84, pp. 2-3.) The fish and wildlife agencies and Tribes would be given 30 days to consult with BPA over the list and the resource operator or owner would submit an annual compliance report.

Evaluation of Comments

Commenters believed that resources that BPA would not allow on the Intertie may be used to serve loads within the Pacific Northwest, thereby freeing up other acceptable resources for Intertie transactions. They felt this would encourage the operation of resources that otherwise would be incompatible with BPA's and the Region's best interests. Comments referred to the problems of identifying the source of energy transmitted over the Intertie when some of the utility's resources are operated for Intertie sales and others are operated to serve domestic loads. It was said that if a resource were disqualified for Intertie access, but was operated for domestic loads at the same time as Intertie sales were being made, the output of the disqualified resource would be "laundered" and the Policy would not achieve its objective. Suggested enforcement mechanisms included BPA denial of Intertie access to a utility that constructs, operates, or acquires new resources. (Reed, MEIC, letter dated 8/8/84, p. 1.) NRDC suggested that BPA either bar the utility from access or reduce its Intertie access by the amount of the generation from the nonqualifying resources. (Cavanagh, NRDC, letter dated 8/13/84, pp. 6-7.) However, the NWF and the NCAC noted that a utility should not be penalized if it were required to purchase a new facility qualifying under PURPA. (Thatcher, NWF, letter dated 8/10/84, p. 2; Stearns, NCAC, letter dated 8/9/84, p. 1.) (PURPA issues are addressed under the section titled Resources Owned by Nonutility Entities.)

BPA agrees with the NPPC, NMFS, NWF, CRITFC, and NRDC that a means to identify the sources of power actually transmitted over the Intertie is a desirable component of the Policy. This will help not only as a means of effecting both the fish and wildlife provisions and to assure that unqualified resources are not gaining access. BPA does not see the value of preparing

monthly reports by utility and by resource use of the Intertie, particulary since system sales are made on an hourly basis from utilities resource mixes, not from one particular source on a constant basis. A list of new resources would serve no purpose because only existing resources are allowed access under the Policy. (See discussion in the section of this Record of Decision on fish and wildlife.) Since the Policy provides a means to discover such information on an as needed basis, routine reporting would merely assure the proliferation of data, very little of which would be of use in implementing the Policy.

BPA agrees with the view that some remedy should be imposed by noncompliance with the Policy. BPA believes that reasonable remedies include denial of access for a resource, refusal to accept schedules, or reduction of allocation. Appropriate remedies will be imposed after a reasonable opportunity to correct noncompliance.

Decision

BPA has added a remedies section to the Policy, indicating a selection of remedies BPA may employ. BPA will require a utility that makes use of the Intertie to provide such information on the resources operating and those used to serve load during given periods as may be requested by BPA. BPA may require this information before or after Intertie schedules are made. The information provided will be made available to the public, unless clearly identified as proprietary with appropriate explanation. Reports of actual or planned operation will include all the utility's resources, not just those scheduled for Intertie sales. This information could be used to identify amounts of power that should be deleted from a utility's Intertie schedule. However, the existence of this checking mechanism should be a strong disincentive so that reduction of Intertie schedules would be rare. A similar problem was addressed by the Intercompany Pool (ICP) with respect to extraregional power. Because the impermissable action by one utility will reduce all other utilities' allocation, other utilities will have an interest in preventing subterfuge. (Schultz, ICP, letter dated 8/10/84, p. 8.)

F. Economic Override

Issue #1: Summary of Comments

BPA's initial proposal included an "economic override" provision. This provided that under Conditions 2 or 3 of the Intertie Access Policy a Southwest purchaser could submit evidence to BPA to demonstrate that neither that particular purchaser nor any other purchaser could economically purchase power from a particular Pacific Northwest seller with allocated Intertie capacity. The basis of this showing would be that the seller's price exceeded the highest cost displaceable thermal resource otherwise available to serve the purchaser's load. Upon this demonstration, BPA would reallocate the would be seller's Intertie capacity to other Pacific Northwest utilities if the particular seller would not lower its price. (Draft Policy at section II.D.2.d.)

This proposal generally was criticized by both Pacific Northwest and Southwest parties for its potential administrative complexities and technical difficulties. For these reasons many parties urged the elimination of this provision from the Policy. (Bredemeier, PGE, letter dated 8/13/84,p. 2; Bryan, WWP, letter dated 8/13/84, p. 2; Pritchard, LADWP, TR 142-48; Fiske and Long, PG&E, TR 148-54; Myers, SCE, letter dated 8/13/84, pp. 20-21; Garman, PGP, letter dated 8/13/84, p. 4.) Western suggested that BPA defer to the Southwest purchaser's determination of the highest price it could economically afford and override the Pacific Northwest utility's allocation. (Coleman, WAPA, letter dated 8/13/84, p. 5.)

Evaluation of Comments

BPA proposed the economic override provision to overcome the unlikely circumstance that would result should the market system totally break down, leaving Intertie capacity unloaded because Southwest buyers and Pacific Northwest sellers could not negotiate an acceptable price. BPA would reallocate the Intertie capacity if the Southwest purchaser could demonstrate that the Pacific Northwest seller's price was not economical for that particular Southwest purchaser or any other potential Southwest purchaser.

BPA's initial proposal specified that the appropriate upper limit of a Southwest economical purchase price would be the price of the highest cost thermal resource that could be displaced. During the public comment forum, BPA indicated that it was considering including firm purchase contracts among the displaceable resources to determine the Southwest utility's highest economic price. (Griffin, BPA, TR 141.) However, at the time of the initial proposal and the public comment forums, BPA had not established a thorough description of the necessary information a Southwest utility would have to submit or the procedure to be used to evaluate the submittal. To establish these procedures BPA needs the cooperation of Southwest utilities and a thorough understanding of the decremental cost information that Southwest utilities could generate to reliably demonstrate the economic operation of their systems.

The discussion with Southwest utility representatives that ensued at the public comment forums demonstrated that the Southwest utilities' would not welcome the economic override provision. They viewed it as very complex to administer and highly intrusive on their internal operations and negotiating flexibility. (Pritchard, LADWP, TR 142-48; Fiske and Long, PG&E, TR 148-54.) The comments by Southwest representatives can be summarized in the words of one representative that "If you are doing this to protect the California parties, maybe we can do without such a gift." (Fiske, PG&E, TR 154.)

The consensus among Southwest and Pacific Northwest commenters is that the economic override provision would be an unwarranted and unacceptable interference by BPA into the free market and therefore the provision should be eliminated. SCE believes that it is unclear as to who would benefit from the provision, and that the free market should be allowed to operate to resolve any price disputes. (Myers, SCE, letter dated 8/13/84, p. 2.) Portland General Electric (PGE) observes that the administrative oversight that would be required of BPA would be an unacceptable intrusion on Pacific Northwest utilities' marketing, and an effectively functioning market was more likely to

occur without the provision. (Bredemeier, PGE, letter dated 8/13/84, p. 2.) WWP stated that the provision appears to be impractical. (Bryan, WWP, letter dated 8/13/84, p. 2.)

Western suggested that BPA defer to the Southwest utility's determination of its acceptable price and invoke the economic override provision to reallocate the unwilling seller's allocation. (Coleman, Western, letter dated 8/13/84, p. 5.) If the economic override provision were designed as Western suggests, without any requirement that the Southwest utility present objective evidence that the offered power is not economic for itself or any other Southwest utility to purchase, this would enable the Southwest purchaser to dictate any price it would choose. This would give the Southwest utilities an unacceptable ability to dictate price, by requiring the movement of allocations to utilities with "rock bottom" prices. This would allow Southwest utilities not only to negotiate with the utilities offering the best price, but also to completely remove any market force from sellers with higher prices. In fact, sellers originally with lower prices also would have no protection because Southwest utilities would force the removal of their Intertie access as well.

The PGP commented that they believed BPA should clarify that the economic price determination would be made by buyers and sellers, not BPA. (Garman, PGP, letter dated 8/9/84, p. 4.) This comment indicates that the PGP favors eliminating the economic override provision.

Decision

BPA offered the economic override provision to prevent Intertie capacity from going unloaded in what BPA believes would be unusual circumstances. However, because of the procedural difficulties to implement the provision and the general consensus that the provision is ill-advised, BPA is not including an economic override provision in the initial 6-month Policy. The experience gained over the 6 months will provide evidence as to the need for such a provision. In addition, during this period BPA will continue to investigate potential procedures to implement the economic override provision, should it prove necessary.

G. Competition

Issue #1: Summary of Comments

A number of commenters expressed concern that the Near Term Intertie Access Policy is not consistent with the policies expressed in the antitrust laws. The thrust of many comments was that the allocation Policy has anticompetitive effects in several respects.

California utilities that own the southern portion of the Intertie commented that they believe the Policy impermissibly precludes competition and violates the policies of antitrust laws. (Myers, SCE, letter dated 8/13/84, pp. 8-9; Gardiner, PG&E, letter dated 8/13/84, p. 6; Cotton, LADWP, letter dated 8/13/84, pp. 3-4.) CPUC also viewed the Policy as restrictive of competition. (Fairchild, CPUC, letter dated 8/14/84, p. 2.) Western

suggested BPA should participate on an equal basis with other Pacific Northwest utilities marketing power to the Southwest. (Coleman, WAPA, letter dated 8/13/84, p. 5.)

SCE argued that BPA's proposal was an attempt to avoid the natural effects of supply and demand on price by artificially limiting supply. (Myers, SCE, letter dated 8/13/84, p. 9.) PG&E commented that the Policy could reduce competition in two ways. First, the criteria for qualifying firm contracts for assured delivery limits the ability of Pacific Northwest and Southwest utilities to negotiate sales. Second, under the formula allocation procedures, once BPA or a Pacific Northwest utility has gained an allocation, that allocation cannot be increased by subsequent bargaining over price, so price competition for nonfirm sales will be eliminated. (Gardiner, PG&E, letter dated 8/13/84, p. 6.)

California utilities described three adverse consequences that allegedly will occur as a result of adopting the Near Term Intertie Access Policy. First, higher rates to California retail consumers; second, less power purchased from the Pacific Northwest and more from other suppliers; and third, adverse economic and environmental impacts resulting from increased thermal operation. (Myers, SCE, letter dated 8/13/84, p. 18; Gardiner, PG&E, letter dated 8/13/84, pp. 1, 6-8; Niggli, SDG&E, letter dated 8/13/84, p. 1.) SG&E presented information showing that its resource mix was shifting to lower-cost resources and that it had increased transmission capacity to lower-cost coal sources in Arizona. These comments were to imply that the Near Term Intertie Access Policy would result in increased reliance on power from these sources. (Niggli, SDG&E letter dated 8/13/84, p. 1.)

By comparison, California utilities that do not own an interest in the southern portion of the Intertie suggested that, while they believe the Policy promotes competition, it should go even further to support increased competitive access for other potential California buyers. (Brearley, Vernon, letter dated 8/9/84, p. 2.) Other California utility interests commented that the Policy could provide a positive step forward to rational, free market transactions between our regions. (Pugh, NCPPA, letter dated 8/13/84, p. 4; O'Banion, SMUD, letter dated 8/10/84, p. 6.) A California municipal utility noted that the argument likewise could be made that the practices of California utilities with Intertie capacity entitlements artificially limit demand and necessitate the provisions of this Policy to which the California utlities now object. (Brearley, Vernon, letter dated 8/9/84, p. 2.)

Evaluation of the Comments

The Near Term Intertie Access Policy allocates access in a way that may affect competition in several markets for Pacific Northwest power. The effect on competition is discussed more fully below and is based in part on BPA's testimony on market power in the 1983 section 7(k) hearing before FERC. This testimony is incorporated in the Administrator's Record. Because of the complexities of analyzing market effects, BPA responds to the above comments with a general discussion of the markets affected by the Near Term Intertie Access Policy.

BPA is not subject to the antitrust laws because it is a Federal agency. However, because of the importance of the policies expressed by the

antitrust laws, BPA believes it appropriate to consider the effects of the Near Term Intertie Access Policy on competition in markets potentially affected by the Near Term Intertie Access Policy.

Markets that may be affected by the Near Term Intertie Access Policy include, but are not necessarily limited to:

(1) purchases of economy energy as it becomes available from Pacific Northwest and other sellers to displace higher cost energy otherwise available to the purchaser for periods generally ranging from 1 hour to a week or more (economy energy may be firm or nonfirm energy);

(2) purchases of firm power or nonfirm energy on a guaranteed delivery basis from Pacific Northwest and other sellers to displace higher cost power otherwise available to the purchaser for periods ranging from a few hours to several months;

(3) purchases of firm power from Pacific Northwest and other sellers to displace higher cost firm power available to the purchaser to meet future loads on a planning basis ranging from one to twenty years;

(4) exchanges of power between utilities whereby power typically flows from one utility to the other at certain times, and in the opposite direction at other times so as to increase the efficiency with which each utility's generating resources are used; and

(5) transactions consisting of a combination of these products.

While these markets can be defined more broadly, for example, by including Pacific Northwest purchasers of economy energy, the primary focus of this evaluation is on the markets for these products in California. This is not to say that other market areas are not affected. The Pacific Northwest market for economy energy may be affected during those times when the Near Term Intertie Access Policy results in higher prices. This is because Pacific Northwest buyers may have to compete against higher offers from California buyers than would otherwise be the case in the absence of the Near Term Intertie Access Policy. Similarly, economy energy sellers located in California and the Southwest may see changes in the prices offered for their products. It also is possible that a higher price for nonfirm, offered by California, would mean that some generating utilities in the Pacific Northwest would sell the nonfirm to California, instead of using it to displace purchases of firm from BPA. If less displacements were to occur, BPA might be able to offer to sell more guaranteed nonfirm energy, thereby increasing the overall supply of quasi-firm energy.

It is impossible to predict with precision the effect of the Near Term Intertie Access Policy on these markets. However, for the purpose of analyzing general tendencies, it is useful to compare the effect of the Near Term Intertie Access Policy on two of the primary markets that may be affected: (1) the economy energy market; and (2) the long term firm power market.

Presently, the supply of Pacific Northwest firm and nonfirm energy to meet the market for economy energy exceeds the capacity of the Intertie much

of the time. Thus, the capacity of the Intertie restricts supply to Southwest buyers under these circumstances. For purposes of this discussion, this is assumed to be the case unless otherwise indicated in the text.

Discussion of the Long Term Firm Power Market

BPA, with few exceptions, has not provided firm access to the Intertie. This practice generally has precluded Pacific Northwest utilities from competing in the market for long term firm power sales. BPA cannot compete in this market because Pub. L. 88-552 effectively precludes export sales by BPA of firm capacity for longer than 5 years, and sales of energy for longer than 60 days.

The Near Term Intertie Access Policy creates a priority for transactions that require firm access to the Intertie. Thus, firm access is available to any Pacific Northwest utility to the extent that it has firm power on its system that is surplus to its needs on a planning basis and that it is able to sell on a firm basis to a Southwest utility. The present Policy limits the priority for firm power to 2 years. Thus, the Near Term Intertie Access Policy does not create a priority with unlimited duration as BPA ultimately expects to do. The discussion that follows should be read with this in mind.

With respect to the market for long term firm power, the Near Term Intertie Access Policy enables Pacific Northwest utilities to compete in a market BPA generally had not allowed them to compete in prior to adoption of the Near Term Intertie Access Policy. Adopting the Near Term Intertie Access Policy fosters competition in the long term firm power market because buyers have access to sellers who previously had been precluded from competing in this market by BPA's refusal to make firm Intertie transmission capacity available. If more potential sellers exist in a market, given a certain number of buyers, then that market can be described as more competitive.

Of course, providing firm access for sales of long term firm power reduces the Intertie space available for other transactions, such as sales of economy energy. This suggests that granting firm access would affect competition in the economy energy market by making economy energy more scarce, and thus more expensive. This is not the case here.

In a perfectly competitive market, higher prices will occur if supply is reduced and demand is constant. However, at least two aspects of the market for economy energy on the Intertie violate the assumptions of perfect competition. First, the Intertie itself is a physical constraint that restricts the quantity of energy that can be sold to an amount that is, in most circumstances, less than the market-clearing amount. Second, the amount of market demand for economy energy to be sold over the Intertie is restricted by the operating policies of the owners of the southern portion of the Intertie. Those owners do not allow other potential buyers in California to compete for Pacific Northwest economy energy and limit their competition with each other to their respective shares of the southern segment of the Intertie. Under these circumstances it is not possible to predict accurately how a shift in supply or demand will affect the overall relationship between quantity offered and price received.

Further, any sale of long term firm power necessarily allocates capacity on the southern portion of the Intertie to the firm sale. This has the effect of reducing the demand for Pacific Northwest economy energy by an equivalent amount. That is, a long term firm power sale reduces both the demand for Pacific Northwest nonfirm energy and the amount of Intertie capacity available for nonfirm sales at the same time and thus in the same amount. In addition, there is a decline in the amount of economy energy (firm or nonfirm) available from Pacific Northwest utilities. These factors (supply, demand, and Intertie capacity) all will work together to define a new market for economy energy on the Intertie, and thus the resulting prices may be higher or lower than current prices. Finally, allocating a portion of the Intertie to long term firm power has an unknown effect on the market for economy energy because there is no competition among southern Intertie owners for economy energy beyond the individual search to fill their portions of the Intertie with the cheapest available Pacific Northwest energy. Southwest Intertie owners are more accurately described as a set of monopsonists, each with a separate transmission connection to the Pacific Northwest. Thus, there is already little if any competition on the buyers' side of the market for economy energy on the Intertie. The Near Term Intertie Access Policy cannot reduce that lack of competition further.

Allocating Intertie capacity to long term transactions facilitates the interplay of more participants on both the demand and the supply sides of this market, thus facilitating competition more fully than did prior practices that limited access to sales only of economy energy. Under BPA's past practices, buyers preferring long term transactions with Pacific Northwest sellers were foreclosed from that market regardless of the price they were willing to pay for long term firm power. Sellers wishing such transactions were foreclosed regardless of how low a price they were willing to accept for such power.

Under the interim Policy, if buyers and sellers can agree on terms for long term transactions, and are willing to use a portion of available Intertie capacity for such transactions, then such transactions can occur. But unless such transactions occur, thus indicating buyer-seller preference for these transactions, Intertie capacity will remain available for economy energy transactions.

It is a truism that Intertie capacity used for long term transactions is unavailable for short term transactions. It is equally true that space used for short term transactions is unavailable for long term transactions. The interim Policy is designed to give market factors greater influence in determining how Intertie capacity is to be allocated between short term and long term transactions and to allow transactions to occur that were not possible before.

Description of the Economy Energy Market Prior to Adoption of the Policy

Economy energy is energy purchased on the spot market either to displace operation of higher cost resources on the purchaser's system, or to avoid the cost of purchasing higher priced economy energy from other sellers. Pacific Northwest sellers may sell firm or nonfirm energy to serve the economy energy market. The value of economy energy can be measured by the decremental costs of the purchaser. Decremental costs are the costs that a purchaser can avoid

by shutting down a resource it would otherwise operate or by avoiding a purchase of higher cost energy.

The economy energy market prior to adoption of the Near Term Intertie Access Policy was not a free and open market. Rather, it was a highly restricted, closed market. The southern portion of the Intertie is allocated into defined shares, primarily by ownership. Buyers of economy energy in California are divided into two groups: (1) utilities who own a portion of the southern segment of the Intertie (referred to below as "Owners") and (2) utilities who do not own a portion of the southern segment of the Intertie (referred to below as "Nonowners").

As noted above, the Owners deny Intertie access to the Nonowners. (See generally 26 FERC §65,178 - 65,233 (Feb 10, 1984) (Quad 7).) This exclusionary policy is applied even when the Nonowners may be willing to bid higher prices for Pacific Northwest economy energy than the Owners are offering to pay. This policy results in a less competitive market than would occur were the Owners to compete with the Nonowners for Pacific Northwest economy energy. This tends to reduce the price offered for Pacific Northwest economy energy below that which would result from a more competitive market.

The Owners do not compete with one another to purchase economy energy in quantities greater than those defined by their ownership shares of the Intertie. Consider a simple situation in which there are only two owners, each with 50 megawatts of a 100-megawatt Intertie. Each owner knows that it cannot bargain with potential sellers in the Pacific Northwest for more than 50 megawatts because it does not have guaranteed access to more than 50 megawatts of transmission capacity. Competition between the two owners thus is effectively eliminated. This lack of competition tends to reduce the price of Pacific Northwest economy energy sold to California utilities compared to that which would occur in a more competitive market. That is, if the two owners had to bid not only for Pacific Northwest energy but also for transmission capacity (from, say, different utilities altogether), then each owner would know that bidding too low might result in gaining access to no energy and no transmission capacity, because the other owner, by bidding slightly higher, could succeed in buying enough energy for itself to fill the entire transmission capacity. This dynamic situation thus would lead to higher prices being offered by the Pacific Northwest utilities.

In short, while several commenters argued that a free, open, and competitive market is the most desirable way to allocate economy energy among buyers and sellers, the economy energy market has not operated in the past as a free, open, and competitive market. The Intertie access practices of the Owners yield them greater market power to affect prices for economy energy purchased from Pacific Northwest sellers than Pacific Northwest sellers, lacking allocated shares, usually possess.

In the past by offering lower prices, Pacific Northwest sellers, on the other hand, could capture a larger portion of the Intertie, except when the Exportable Agreement was in effect, by offering prices lower than those of other sellers. Because Pacific Northwest sellers lacked guaranteed access to the Intertie, they were forced to lower prices in order to participate in the economy energy market. Just as buyers without guaranteed access would bid the price up in an attempt to bump other buyers out of the market, sellers without

guaranteed access have actually bid the price down in an attempt to bump other sellers out of the market. Therefore, because some potential buyers are excluded from the market and because of limited competition among the Owners, prices resulting from competition among Pacific Northwest sellers tended to be driven downward in many instances below those that a more competitive market may have produced. This tendency occurred in part because the market power of sellers was less than the market power of the buyers in many instances.

Projection of the Economy Energy Market After Adoption of the Policy

The Near Term Intertie Access Policy changes the way transactions can occur on the northern portion of the Intertie to allow more balanced operation of the economy energy market. In a sense, the Near Term Intertie Access Policy divides the northern portion of the Intertie into ownership interests that may change hour-by-hour. Thus, on any given hour, buyers in California face Pacific Northwest sellers who are unable to compete with each other for an allocation on the Intertie greater than that which they receive under the Near Term Intertie Access Policy. However, because the ownership interests in the Pacific Northwest may change hourly based on cost and availability conditions, there will still be more competition and flexibility on the northern portion of the Intertie than on the southern portion. Further, there will be more potential sellers on the northern portion than potential buyers on the southern portion, ensuring continued greater approximation to competitive market conditions on the northern portion.

The Near Term Intertie Access Policy increases the market power of Pacific Northwest sellers relative to that of California buyers. This effect tends to mitigate the previously existing imbalance in market power between the buyers and sellers. This may result in higher prices for economy energy purchased from Pacific Northwest sellers. However, the prices for economy energy after adoption of the Near Term Intertie Access Policy may more closely approximate those prices which would occur in a market where buyers and sellers have comparable market power.

The Near Term Intertie Access Policy consists of rules for allocating the northern portion of the Intertie under three conditions. These conditions and the general effects of the rules on competition are discussed for each condition in turn.

CONDITION 1

Condition 1 occurs when the existing supply of Pacific Northwest energy at applicable rates is greater than either the market demand or the available Intertie capacity, whichever is less. Under this condition, available Intertie capacity is allocated on a pro rata basis according to procedures specified in the Exportable Agreement, an existing contract between BPA and other Pacific Northwest sellers of energy. In sum, BPA, in these conditions of excess supply, does not reserve the Intertie to itself in order to sell the maximum amount of its own energy, but rather grants access to other sellers on terms that assume that BPA itself will not be completely shut out. Under the Exportable Agreement the applicable rate as defined in the Exportable

Agreement is the rate at which BPA offers to sell. This has been BPA's practice for 15 years.

For purposes of allocating Intertie capacity, BPA, at the request of California buyers, assumes that the demand for economy energy equals the capacity of the Intertie. BPA uses deviation accounting to cover instances when this assumption is not true.

The allocation occurs on a pro rata basis based on offers to sell at the applicable rate. Once an allocation is made, a utility is free to set any price it wishes for its allocation.

The Exportable Agreement provides for BPA to offer to purchase energy offered for sale by Pacific Northwest utilities that is not sold directly to California buyers. This energy is then resold to California buyers at the applicable rate. Thus, the applicable rate set by BPA tends to be the lowest price at which Pacific Northwest energy is sold to California buyers under the Exportable Agreement. BPA does not permit Pacific Northwest sellers to increase their allocation by lowering prices, although sellers are free to sell at any price they choose if they enter into direct sales to California utilities.

Pacific Northwest sellers of economy energy under Condition 1 must compete with a variety of other supply sources to which California buyers may turn. First, California buyers can operate their own generating resources if the price of Pacific Northwest energy exceeds the incremental cost of such resources. Second, other utilities in California may offer to sell economy energy at prices lower than Pacific Northwest prices. Third, California utilities can import economy energy from regions other than the Pacific Northwest. These regions include Arizona, New Mexico, Nevada, Mexico, and Utah. Thus, while Pacific Northwest sellers do not compete under Condition 1 to sell at prices below the applicable rate, the price for Pacific Northwest economy energy tends to be a more competitive price under Condition 1 than were Pacific Northwest sellers the exclusive market suppliers.

The effects of the Exportable Agreement on the economy energy market have been a market norm for 15 years since the Exportable Agreement was executed. The degree to which these effects have affected the economy energy market over the years has changed with changing circumstances, including changes in the applicable rate.

CONDITION 2

Condition 2 exists when Condition 1 is not in effect and the aggregate of offers from BPA and Pacific Northwest utilities to sell energy at any price exceeds available Intertie capacity. Under this condition, the Intertie is allocated among Pacific Northerwest utilities on a pro rata basis similar to that in Condition 1. Extraregional utilities will not receive an allocation unless they agree to coordinate operation of their system with those of the Pacific Northwest so as to optimize the production of electric power as through these systems were operated by a single utility, or to provide the Region with an appropriate benefit. Providing extraregional utilities with an allocation under Condition 2 probably would not substantially change the

effects of the Policy on competition in the economy energy market. Allowing another seller with access limited to its allocation to participate in the market may make additional energy available at prices different from those offered by other sellers, but otherwise the market should function in much the same manner whether or not extraregional utilities are granted access under Condition 2.

Once a Pacific Northwest utility receives an allocation, it is free to negotiate the price with potential buyers. As in Condition 1, a seller can set any price it wishes for energy sold under its allocation. However, a utility will not be able to increase its allocation.

Once an allocation is made to a Pacific Northwest seller, it will have market power comparable to that of California Owners who do not face competition from the Nonowners or from the other Owners offering higher prices to obtain a portion of the Intertie greater than their ownership interest.

In contrast to the rules governing access to the southern portion of the Intertie which limit the number of buyers who may participate in the market for Pacific Northwest energy, the Policy permits any Pacific Northwest utility capable of scheduling energy to a buyer to participate in the market. Any Pacific Northwest utility capable of scheduling electric power to a California buyer may make a declaration to sell, and thereby receive an allocation. Other entities, such as PURPA resource sponsors, can sell economy energy through their local utility. Each Pacific Northwest seller (including BPA) runs the risk that its offer will represent a small percentage of the total offers, resulting in a smaller hourly allocation. Thus, in circumstances where the demand for economy energy is high, many sellers are able to participate in the market should they choose to do so.

This situation may not always result in a reduction in price. However, this approach results in a sharing of the benefits of such transactions by a broad range of consumers. In instances where the demand for economy energy from the Pacific Northwest is less than the available Intertie capacity, the sellers will compete with one another to make sales up to their allocations.

Because of competition from other sellers located in California and other areas of the Southwest, the price for economy energy from the Pacific Northwest will reflect these competitive conditions. Because the Near Term Intertie Access Policy has the effect of making the market power of the sellers more comparable to that of the buyers, prices for economy energy purchased from Pacific Northwest sellers may tend to be somewhat higher than they would be were BPA to continue its past Intertie allocation practices. However, competition from sources outside the Pacific Northwest will continue to limit the prices received in the Pacific Northwest.

CONDITION 3

Condition 3 occurs when the offers of Pacific Northwest sellers are not sufficient to fill the available Intertie capacity. In this situation, each seller receives an allocation equal to its declaration. Each seller can sell as much as it wishes at any price it chooses--provided it can find a willing buyer. The remaining capacity is available for use by extraregional sellers

such as the British Columbia Hydro and Power Authority (B.C. Hydro). As in Condtions 1 and 2, a utility's allocation may not be enlarged. When market demand is insufficient to fill the Intertie capacity, competition will occur because Intertie access is not a market constraint. Competition among Pacific Northwest sellers and extraregional utilities to fill their respective allocations will occur as in Condition 2. In general the competitive effects of the Near Term Intertie Access Policy will be similar under Conditions 2 and 3.

Decision

BPA has assessed the impact the Near Term Intertie Access Policy may have on competition. In the same respects, the Near Term Intertie Access Policy will improve the functioning of the market for Pacific Northwest energy and enhance competition; notably, the Policy facilitates long term transactions that in the past had been foreclosed. In other respects, the Policy may alter some aspects of competition. Where this is so, California buyers have alternative sources that continue to limit the significance of changed competitive conditions. On balance, the Near Term Intertie Access Policy does not unreasonably restrict competition. Any potentially negative effects are not sufficient reason to forego the attainment of BPA's objectives in adopting the Near Term Intertie Access Policy.

III. Conditions for Access

A. Power Marketing Program

1. Relationship to Intertie Access Policy

Issue #1: Summary of Comments

BPA's proposed Intertie Access Policy provided that BPA would allow access to the Intertie only for power from existing Pacific Northwest resources that would not create substantial interference with the Administrator's Power Marketing Program. (Draft Policy, section II.C.) The discussion of BPA's proposed Intertie Access Policy stated that the Power Marketing Program criteria is important to the Policy because it will help insure that BPA has access to a portion of its own Intertie on a continuing basis. (Draft Policy, section I.B.) PG&E noted the possible importance of the Power Marketing Criteria to the Intertie Access Policy. (Fiske, PG&E, TR 21.) PG&E wondered, however, whether the inclusion of the Power Marketing Program criteria would really make any difference to the implementation of the Policy. (Fiske, PG&E, TR 59-60.)

Evaluation of Comments

BPA's Intertie Access Policy proposed to allocate Intertie capacity controlled by BPA, a power marketing agency of the Department of Energy. BPA has defined the Power Marketing Program as the aggregate of the laws, contracts, and policy directives pursuant to which BPA conducts its business. It is reasonable for BPA to give notice that Intertie access to Federal Intertie capacity will be granted only where such access does not substantially interfere with BPA's Power Marketing Program. Scheduling utilities and entities that request Intertie access need reasonable notice of BPA's intent to manage the Intertie consistent with such laws, contracts, and policies.

Decision

BPA has included the concept of the Power Marketing Program in its Intertie Access Policy. Requests for access will be measured against BPA's Power Marketing Program needs as defined by the Policy. The inclusion of the Power Marketing Program as an access standard gives notice of how BPA will share its ownership and contract rights. BPA believes it is important to give potential Intertie users notice of the terms which the Federal government will review when considering requests for access.

2. The Administrator's Power Marketing Program

Issue #1: Summary of Comments

BPA proposed to retain the authority to restrict access to the Intertie for any transaction if it determined that substantial interference with the Administrator's Power Marketing Program would result. Many comments were

received on this issue. The comments both supported and opposed BPA exercise of such authority.

Those who supported BPA's use of the Power Marketing Program as a standard for access said that the standard is reasonable if it is synonymous with and built on the foundation of the statutes, legislative history, contracts, and public statements, both permissive and restrictive, that affect BPA's marketing. (Schultz, ICP, letter dated 8/9/84, p. 5; Schultz, ICP, TR 10.) Other commenters also supported the general principle that the Near Term Inertie Access Policy should create no substantial interference with the Administrator's Power Marketing Program. (Wilcox, DSI, letter dated 8/13/84, p. 1; Canon, ICNU, letter dated 8/13/84, p. 1; McKinney, Cowlitz, letter dated 8/9/84, p. 1; Copp, et al., Mid-Col. PUD's, letter dated 8/10/84, p. 1; Foleen, letter dated 8/10/84, p. 1; Boner, NP&P, letter dated 8/7/84, p. 1; Sanders, Clark, letter dated 8/10/84, p. 1; Maudlin, OPUC, letter dated 8/9/84, p. 1.; Brawley, PPC, letter dated 8/13/84, p. 1.)

While supporting the priority of the Power Marketing Program, one commenter said that BPA had not fully used its authority to condition access to the intertie on its Power Marketing Program and should allow sales of non-Federal energy only after BPA had disposed of its resources. (Wilcox, DSI, letter dated 8/13/84, p. 2.) This comment is discussed as Issue #4 in the Authority section of this Record of Decision. Another commenter also observed a relationship between the Power Marketing Program and BPA's revenue requirements, and argued that BPA should use the Intertie to maximize its own revenues and thereby keep the rates of its customers as low as possible. (Foleen, letter dated 8/10/84, p. 1; Foleen, TR 28, 68; Kemp, PG&E, TR 35-36.)

Other commenters felt equally strongly that BPA had no authority to condition Intertie access on a Power Marketing Program standard. (Bailey, PSP&L, letter dated 8/13/84, pp. 1-4; Myers, SCE, letter dated 8/13/84, p. 3; Gardiner, PG&E, letter dated 8/13/84, pp. 2-3.)

Several arguments were made by those who opposed BPA's utilization of the Power Marketing Program standard. California entities said that the standard was "broad and logically circular" and would grant the Administrator "unbounded discretion over Intertie access, well beyond that envisioned by statute." (Gardiner, PG&E, letter dated 8/10/84, p. 3.) LADWP agreed. (Cotton, LADWP, comments dated 8/13/84, p. 3.) PG&E asked whether there were any statutes which define the Power Marketing Program. (Fiske, PG&E, TR 70.) Western said that BPA's position went beyond reasonable limits. (Coleman, WAPA, letter dated 8/13/84, p. 2.) Finally, a Pacific Northwest private utility said that BPA's Power Marketing Program should be removed as a standard because BPA would gain an unfair advantage for Federal power. (Bailey, PSP&L, letter dated 8/13/84, p. 4.)

Evaluation of Comments

BPA believes that it has both express and implied authority to condition access to the Intertie on a showing that such access does not substantially interfere with the Administrator's Power Marketing Program.

BPA therefore agrees with the commenter who observed that Power Marketing Program was a reasonable condition of access to the extent that it

was a short-hand reference for the totality of the statutes, legislative history, policies, and contracts pursuant to which BPA conducts its power marketing role. (Schultz, ICP, letter dated 8/10/84, p. 5.)

BPA also carefully evaluated the position of those who opposed inclusion of the Power Marketing Program standard on the grounds that BPA had no authority to include such a standard in its policy.

Puget Sound Power and Light (PSP&L) argues that the Regional Preference Act (16 U.S.C. §837 et seq.) and the Northwest Power Act (16 U.S.C. §839 et seq.) do not provide authority to restrict access to the Intertie in order to avoid substantial interference with the Administrator's Power Marketing Program. (Bailey, PSP&L, letter dated 8/13/84, p. 2.) It argues that section 6 of the Regional Preference Act mandates access to capacity presumably in excess of that needed to transmit power under existing BPA power sales contracts. PSP&L also asserts that section 9 of the Northwest Power Act cannot be interpreted to allow restrictions on access in order to protect the Administator's Power Marketing Program.

According to PSP&L, section 9(d) of the Northwest Power Act mandates non-Federal access to Intertie capacity subject only to the Administrator's contractual obligations, obligations under existing law and availability of transmission capacity. PSP&L stated that is only in section 9(i), which authorizes the Administrator upon request to provide additional services to his customers such as the acquisition of power for them or assistance in the disposal of their power, where substantial interference with the Administrator's Power Marketing Program is stated as a restriction on access.

Both PSP&L and Western argue that a sentence in the legislative history of the Regional Preference Act prohibits the Administrator from refusing access to non-Federal entities in order to protect prospective BPA sales. (Coleman, WAPA, letter dated 8/13/84, p. 2.) CEC argues that BPA may not monopolize the Intertie for its own needs. (Imbrecht, CEC, letter dated 8/13/84, p. 3.) On the other hand, the Pacific Northwest Utilities Conference Committee (PNUCC) and the IPC assert that the transmission of non-Federal surplus power over the Intertie may be restricted if it would substantially interfere with the Administrator's Power Marketing Program. (Hardy, PNUCC, letter dated 8/13/84, pp. 8 and 33; Barclay, IPC, letter dated 8/13/84, p. 16.) PG&E also states that substantial interference with the Administrator's Power Marketing Program is sufficient justification for not granting transmission services, though it has reservations about BPA's interpretation of the phrase "Power Marketing Program." (Gardiner, PG&E, letter dated 3/16/84, p. 3.) The DSIs not only support the primacy of the Administrator's Power Marketing Program, but argue that the Administrator has no legal authority to provide Intertie access until sufficient Intertie access has been reserved to sell all of BPA's surplus. (Wilcox, DSI, letter dated 8/13/84.) The DSI argument is addressed below.

BPA is a power marketing agency of the United States Department of Energy, and the Secretary of Energy acts by and through the Bonneville Administrator. (16 U.S.C. §825s(a)(1)(D).) As a power marketing agency, BPA disposes of surplus Federal property. This property consists of both electric power and transmission services and disposal is made pursuant to the authority of the property clause of the United States Constitution and relevant statutes.

The generally accepted rule of law is that unless otherwise constrained, the power to dispose of surplus power is vested in Congress without limitation. Congress has delegated broad authority to dispose of surplus power to the Administrator. Relevant statutes include the Bonneville Project Act of 1937, the Flood Control Act of 1944, the Pacific Northwest Preference Act, the Federal Columbia River Transmission System Act, the Northwest Power Act, and the National Environmental Policy Act, among others. The statutes of power marketing agencies are to be interpreted in pari materia. (See Disposition of Surplus Power Generated at Clark Hill Reservoir Project, 41 Op. Att'y Gen. 236 (1955).)

These statutes include general directives such as the directive to set rates as low as possible consistent with sound business principles and to recover adequate revenue to repay the Federal investment in the BPA system. (16 U.S.C. §§832f, 838g, 839e(a)(1).) To achieve these and the other purposes of the laws, Congress has authorized the Administrator "to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof, upon such terms and conditions and in such manner as he may deem necessary." (16 U.S.C. §832a(f).) This authority was recently reaffirmed in the Northwest Power Act. (16 U.S.C. §839(f)(a).)

Key among these authorities is the Congress' recognition that the Administrator shall make all arrangements for the sale and disposition of electric energy. (16 U.S.C. §832a(a).) In this capacity, the Administrator is authorized to operate electric transmission lines as he finds necessary, desirable, or appropriate for the purpose of transmitting electric energy. (16 U.S.C. §832a(b).) Operation is to encourage the widest possible use of all electric energy, to provide reasonable outlets therefor, and to prevent the monopolization thereof by limited groups. (Id.) These and related standards have been interpreted as being susceptible of widely divergent interpretations and permitting the widest administrative discretion by the Secretary.

The Northwest Power Act and other laws, including section 6 of the Federal Columbia River Transmission System Act and section 6 of the Regional Preference Act, also recognize that BPA is authorized to make first use of its Intertie capacity in such a manner as the Administrator determines will satisfy the transmission requirements of the United States. (16 U.S.C. §§837e and 838d.) In section 9(i)(3) of the Northwest Power Act, it is expressly recognized, that:

> The Administrator shall furnish services including transmission . . . unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations, or existing contractual obligations.

(16 U.S.C. §839(f)(i)(3). emphasis added)

BPA has incorporated into the Near Term Intertie Access Policy its authority to protect its Power Marketing Program by denying Intertie access to transactions of non-Federal entities. BPA interprets relevant legislation as providing the authority for this action. The thrust of section 6 of the

Regional Preference Act and its legislative history, section 6 of the Federal Columbia River Transmission System Act (16 U.S.C. §838 et seq.) and section 9 of the Northwest Power Act is that BPA shall determine its own needs for priority use of the Intertie, and only thereafter make remaining capacity available to non-Federal entities.

The major theme running through the legislative history of the Regional Preference Act was the need for BPA to build Intertie capacity in amounts sufficient to assure BPA's access to the Southwest market for sales of BPA's surplus power. The Federal Task Force, which reviewed Intertie construction proposals from non-Federal entities, specifically recommended a plan of construction that would result in BPA controlling, by ownership and contract right, approximately 75 percent of the Intertie capacity. This figure approximated BPA's share of the regional surplus. (H.R. No. 590, 88th Cong., 2d Sess. (1964), reprinted in 1964 U.S. Code Cong. Ad. News 3351.) (Dept. of Interior Rept., p. 26.) As then-Administrator Luce stated in testimony before the House Committee on Interior and Insular Affairs, BPA had to:

> be assured of its fair share of the capacity of any proposed plants [i.e. Intertie facilities], inasmuch as we have three-fourths or more of the surplus power in the Northwest. We, of course, want to be sure that we have at least three-fourths or more capacity of any plants for interconnection with California. Otherwise, we might be frozen out of markets that we think are rightfully ours.

(Hearings on S.1007, H.R. 994, H.R. 1160, H.R. 4071, and H.R. 4485 before the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs, 88th Cong., 1st Sess. 152 (1963).)

Interior Secretary Udall, in testimony before the same Subcommittee, made the following statement in response to a question:

> "MR. HOSMER: Why should you and the public taxpayers build those lines when somebody else is willing to put up their own money to build them?
>
> "Secretary UDALL: Well, Congressman, the answer I think, the whole answer is with regard to how the power should be marketed and who controls the marketing of power . . . .
>
> "MR. HOSMER: You want the power of control - - -
>
> "Secretary UDALL: (continuing) A piece at a time.
>
> "MR. HOSMER: You want the power of control in the Department of Interior, do you not?
>
> "Secretary UDALL: This is a power that has been in the Interior Department . . . ."

(Id. at 120.)

The Regional Preference Act provides clear authority to the Administrator to use the Federally owned Intertie capacity on a priority basis for the transmission of Federal power. Section 6 states that capacity in excess of that "required for the transmission of Federal energy [and also Canadian Treaty energy] shall be made available as a carrier for transmission of other electric energy." To clarify that this priority for Federal power does not pertain only to existing BPA power sales contracts but also to potential future BPA transactions, both the House and Senate reports specifically state that the Administrator may take into account "Federal needs reasonably foreseeable" in determining the amount of excess Intertie capacity available for use by non-Federal entities. (H. Rep. No. 590, 88th Cong., 1st Sess. 9 (1963); S. Rep. No. 122, 88th Cong., 1st Sess. 12 (1963).)

As authority for their argument that the Administrator may not restrict access to protect his Power Marketing Program, Western, PSP&L, and PG&E cite the phrase immediately following the above-cited statement: "[T]he Secretary may not decline to enter into a wheeling agreement merely because he may have energy available for sale to serve the same load." (Id.) Given the numerous legislative history references to the Intertie's primary goal of transmitting Federal power and the above-cited statement concerning the Administrator's authority to protect "Federal needs reasonably foreseeable", this statement can only be construed as prohibiting BPA from restricting Intertie access for a non-Federal transaction merely to reserve that capacity for a potential BPA sale to the same buyer involved in the restricted non-Federal transaction with energy the Administrator cannot assume will be available on a planning basis. If Congress had wanted to require the Administrator to compete with other Pacific Northwest sellers for sales in order to gain access to the Federal Intertie, it would at least have used the words "merely because he <u>has</u> energy available for sale to serve the same load." The use of the words "<u>may</u> have energy available for sale" are to be read in conjunction with the prospective planning authority granted in the previous phrase. They were intended to restrict the horizon of that authority.

The phrase cited by PSP&L and Western, at most, speaks to a struggle between BPA and a non-Federal entity for a surplus sale to the same Southwest entity. The words cannot be stretched to prohibit appropriate planning of Intertie use in order to serve "Federal needs reasonably foreseeable," particularly if those needs do not specifically involve the Southwest buyer involved in the non-Federal transaction that is being restricted. Indeed, the explicit sanction given in the legislative history to planning for "Federal needs reasonably foreseeable" directly contradicts PSP&L's, Western's, and PG&E's assertions. However, it should be noted that the Administrator's Policy does <u>not</u> state that BPA would necessarily restrict access to the Intertie for a transaction between a Pacific Northwest entity and a Southwest buyer merely because BPA desires to make a surplus sale to the same Southwest buyer.

The Western, PSP&L, and PG&E argument also violates the fundamental rule of statutory construction that statutes should not be read to produce absurd results. It is wholly inconsistent with law and logic to argue that Congress would handicap the Administrator's ability to recover the large Federal investment in the Intertie and other components of the Federal Columbia River Power System by precluding him from priority use of the Federally owned Intertie.

The Northwest Power Act did not restrict the authority to manage the Intertie in order to protect the Administrator's existing and reasonably projected transactions with Southwest entities. Section 2 of the Northwest Power Act specifically states that the Act is intended to be construed in a manner consistent with the provisions of other laws applicable to the Federal Columbia River Power System. The legislative history of section 9(i) makes explicit reference to protecting the Administrator's Power Marketing Program while providing transmission services to non-Federal entities, stating that it "essentially ratifies BPA's existing policies on services." (H. Rep. No. 96-976, Part II, 96th Cong., 1st Sess. 56 (1980).) PSP&L therefore attempts to make a substantive distinction between the intent of section 9(i) and section 9(d), which also addresses transmission services for non-Federal entities but does not explicitly reference the primacy of the Administrator's Power Marketing Program. PSP&L argues that section 9(d) was intended to address Intertie transmission services to non-Federal entities while section 9(i) only addresses "additional services" that BPA provides to its customers to assist them in the sale of their own power. Therefore, it argues, since section 9(d) does not reference the primacy of the Administrator's Power Marketing Program, the Administrator may not manage the Intertie so as to protect that program, and the multibillion dollar Federal investment in the Federal Columbia River Power System.

No such distinction can stand scrutiny. Congress saw fit to address transmission services for non-Federal entities in two separate subsections of section 9. Both speak of providing transmission services to the Administrator's customers. Section 9(i)(3) indicates no intent that it be limited to transmission of resources that the Administrator is requested to attempt to sell for the owner. Further, PSP&L has not provided any rationale to explain why Congress, in defining BPA's Intertie management authorities, would distinguish between the Intertie transmission rights of utilities that sell their own power to California and utilities that request BPA to make the sales.

Section 9(d) likely was intended to be a reassertion of section 9(i), since the latter had been included in earlier versions of this section while the former had not. (H. Rep. No. 96-976, Part I, 96th Cong., 2d Sess. 20 (1980).) Section 9(d) explicitly incorporates the provisions of section 9(i). It is not intended to provide a substantively different transmission mandate. Indeed, as PSP&L's comment shows, the legislative history of section 9(d) explicitly references the priority granted to the transmission of Federal power. Without a clear Congressional statement that section 9(d) was intended to restrict the broad authority previously granted in the Regional Preference Act to take into account "Federal needs reasonably foreseeable," it must be assumed that Congress was referring to the entirety of the previously granted authority.

Several commenters asked whether the BPA was aware of any reference to Power Marketing Program other than that contained in section 9(i)(3). The answer is yes. The concept of the Power Marketing Program is implicitly recognized in the Department of Energy (DOE) Organization Act. The DOE Organization Act requires that the Secretary appoint an Assistant Secretary who shall have responsibility for "(10) Power marketing functions, including responsibility for marketing and transmission of Federal power." (42 U.S.C. §7133(a)(10).) The legislative history of the DOE Organization Act

characterizes the BPA as a "power marketing agency" responsible for acting as the "power marketing agent" for electrical generation and, in that capacity, "owning and operating the largest high-voltage transmission system in the free world . . . ." (S. Rep. No. 164, 95th Cong., 1st Sess. 30 (1977) U.S. Code Cong. and Ad. News 884.)

In short, the words "power marketing function" and "power marketing agent" as used in the DOE Organization Act represent, when read in connection with the "power marketing program" language of the Northwest Power Act, a congressional recognition of BPA's power marketing role. As a "power marketing agent" BPA has a "power marketing function" that is the subject of a "power marketing program." The concept of the "power marketing program" is also found in the Code of Federal Regulations (CFR) pertaining to Parks, Forests, and Public Property. Applications for the construction of electric transmission lines across Federal land must be prepared in such a way as to avoid conflict with the "power marketing program of the United States." (36 CFR §§14.76 and 251.54.)

The objection was raised that if BPA defines Power Marketing Program in a "broad and logically circular" manner it would grant the Administrator "unbounded discretion over Intertie access, well beyond that envisioned by statute." (Gardiner, PG&E, letter dated 8/10/84, p. 3.) LADWP submitted that BPA's proposed policy "vests in the Administrator discretion to determine unilaterally what uses shall be made of the Intertie, at what time, and by whom." (Cotton, LADWP, letter dated 8/13/84, p. 3.)

BPA recognizes that the statutes and authorities pursuant to which it conducts business afford it broad discretion in disposing of Federal property. BPA believes that Congress granted it this broad authority because of the need for BPA in disposing of Federal property to "operate in a businesslike fashion . . . free . . . from the requirements and restrictions ordinarily applicable to the conduct of Government business." (S. Rep. No. 164, supra Report of the Senate Energy and Natural Resources Committee at 30.) The decision that BPA has such broad authority has been judicially affirmed in several forums, including the United States Supreme Court. The Comptroller General has concurred. BPA's Policy attempts to reasonably balance its authorities in an equitable manner. The 6 month term of the Policy will allow BPA to determine whether equity is being achieved.

Decision

BPA's final Policy retains the concept of providing access to existing resources consistent with BPA's Power Marketing Program.

Issue #2: Summary of Comments

BPA's proposed Policy included eight criteria as elements of the Power Marketing Program for the purposes of the Policy. (Near Term Intertie Access Policy, section 3(a)-(h).) PG&E asked whether this was an exhaustive list. (Fiske, PG&E, TR 62.) The same commenter wondered whether the specific elements of the Power Marketing Program had appeared elsewhere before preparation of the draft Intertie Access Policy or whether this definition was

put together just for the purpose of the Policy. (Fiske, PG&E, TR 69.) PG&E also asked whether there was a statutory basis for items (a), (b), and (c) of the criteria listed in the draft Policy. (Fiske, PG&E, TR 63.)

Generally, those entities which believed BPA lacked authority to condition Intertie Access on the Power Marketing Program standard also believed that BPA's definition of Power Marketing Program was so broad as to lack meaning. (Bailey, PSP&L, letter dated 8/13/84, p. 1; Gardiner, PG&E, letter dated 8/10/84, p. 3; Coleman, WAPA, letter dated 8/13/84, p. 2; Schultz, ICP, letter dated 8/10/84, p. 5.) Others stated that the BPA Power Marketing Program needs to be defined. (Schultz, ICP, TR 20; Fiske, PG&E, TR 20; Budhraja, SCE, TR 55; Parks, EWEB, letter dated 8/10/84, p. 1.) PG&E submitted that BPA had yet to provide adequate definitions of both "power marketing program" and "substantial interference." (Gardiner, PG&E, letter dated 8/10/84, p. 3.) Western suggested that BPA's standards would permit BPA to act arbitrarily. (Coleman, WAPA, letter dated 8/10/84, p. 2.)

Evaluation of Comments

As noted above, the statutes of Federal power marketing agencies, including BPA, are to be read in pari materia. While the term "Power Marketing Program" appears in one specific statutory provision, it is but a shorthand reference to all of BPA's laws and policies. These laws and policies vest BPA with broad discretion to make decisions with respect to the conditions under which entities will be given access to the Federally owned intertie. This discretion would exist independent of any specific statutory provision, and BPA actions are to be judged on a case-by-case basis as applied to specific decisions to deny or allow access. To the extent that the definition is broad, it is broad by virtue of Congress' election to permit latitude in making decisions about the disposal of surplus Federal property. Reserving the authority to allow access consistent with the agency's laws and policies under the general rubric of "Power Marketing Program" is not, however, overly broad. Whether specific decisions are supported is a question that arises with the application of the policy, and not independent of it.

If a party disagrees with BPA's decision to deny access, it may seek judicial relief. Normally, due process requirements require BPA to notify the party seeking access of its decision and the reasons for the denial. However, there is no legal requirement that BPA describe in the Policy with absolute certainty what interferes with its Power Marketing Program and what does not. It is well established that agencies can implement policy by rule or on a case-by-case basis.

Decision

Rather than try to list the elements of the Power Marketing Program, BPA has elected to define the Power Marketing Program as the "aggregate of BPA's power marketing actions taken and policies developed to fulfill BPA's statutory obligations and policy directives." BPA will measure each request for assured delivery or allocation of Intertie Capacity against these laws and policies and determine whether the request will not substantially interfere with the Power Marketing Program.

Issue #3: Summary of Comments

One commenter raised an important issue regarding ongoing review of access to assure compliance with BPA's Power Marketing Program. The commenter said that BPA should define conditions for Intertie access temporally, and having once determined to grant access should honor contracts signed after such determination. (Coleman, WAPA, letter dated 8/10/84, p. 3.) A second commenter also stressed the need for certainty in Intertie access. (Boucher, PP&L, letter dated 8/13/84, p. 2.) Another questioned whether BPA believed that the concept of Power Marketing Program allowed BPA to change the policy midstream. (Williams, SCE, TR 31.)

Evaluation of Comments

Western questioned the lack of "a stated temporal limit to the application of this test, i.e., the test for significant interference with the Power Marketing Plan . . . ." (Coleman, WAPA, letter dated 8/10/84, p. 3.) Western suggested that "if a contract was originally granted firm Intertie access based on its compliance with the C.2. conditions [of the draft Policy] and the 'true firm' contract test, it still would have no assurance of continued Intertie Access." (Id. at 3.) PP&L urged BPA "to clarify that firm and nonfirm Intertie allocations and methodologies will not be subservient to future determinations of Bonneville's Power Marketing Program. The absence of such assurance will preclude or inhibit the Northwest utilities' negotiations for firm contracts." (Boucher, PP&L, letter dated 8/13/84, p. 2.) The third commenter was concerned that BPA not "exercise a veto and modify the policy mid-stream" by reliance on the concept of Power Marketing Program. (Williams, SCE, TR 31.)

These comments are well taken. BPA desires to provide as much certainty as possible with respect to Intertie transactions. BPA agrees that to the extent certainty is achieved in commercial transactions, a better business climate is created. This is as true with respect to the sale of power and transmission services as it is with respect to the sale of other goods and services. At the same time, it is unlikely that BPA would approve a request for Intertie access if it knew that during the term of the contract the party with whom it had contracted would operate the resource in such a way as to substantially interfere with BPA's Power Marketing Program or the other criteria of C.3 of the Near Term Intertie Access Policy as adopted. This does not mean, however, that BPA will amend the policy without appropriate procedure. (Jones, BPA, TR 31.) If BPA agrees to provide assured delivery to a utility under agreed upon conditions, BPA will not subsequently recall that assured delivery if the utility meets those conditions even if BPA changes its Power Marketing Program or its Policy.

Decision

Once BPA signs a contract for Intertie access there will be an assurance of continued delivery subject to the terms of the contract or arrangements agreed to when access is initially granted. The terms of service for assured delivery have been clarified in the Policy to permit schedules to be arranged with certainty. Assured delivery has been added as a defined term to clarify that the service provided is firm in the sense that it is not interruptible

except for force majeur even if BPA changes its Power Marketing Program or its Intertie Policy. Changes to the policy will be made by following appropriate procedure.

Issue #4: Summary of Comments

Under the proposed policy, BPA would have Intertie access for its existing contracts, new firm contracts which meet the criteria for assured delivery, and allocated shares of capacity under the Exportable Agreement, as in the past, and under Conditions 2 and 3.

Several commenters asked about the relationship of the Power Marketing Program and the Formula Sharing Method. Generally, these commenters questioned whether the Power Marketing Program could supercede, override, or limit the formula for allocations. (Fiske, PG&E, TR 24; Long, PG&E, TR 27, 42-43, 61; Budhraja, SCE, TR 52.)

Evaluation of Comments

The commenters seek certainty. The basic question is whether the Policy applies the Power Marketing Program standard in the same manner to assured delivery and to formula allocation requests. The comments were well taken. The operative provisions of the draft Policy did not adequately specify how the test of substantial interference with the Power Marketing Program would be made. It was not clear if the capacity available for formula allocation was subject to the Power Marketing Program needs, or if an hourly allocation might be interrupted without notice.

BPA responded to questions regarding this matter at the public comment meetings. BPA staff said that there was nothing in the policy that would provide for superceding a nonfirm allocation once made. (Jones, BPA, TR 53.)

Decision

The Policy clarifies the application of the Power Marketing Program standard to formula allocations. Language has been added to reflect the fact that BPA will determine the capacity available for formula allocation with reference to the BPA Power Marketing Program, as well as operating limitations, existing contracts, and other specified conditions for access. The needs of assured delivery contracts will be subtracted before determining the access that remains for formula allocation. In the event that BPA must make use of the Intertie capacity or a portion of it to serve the conditions of section C of the Policy, this will decrease the amount of capacity available for formula allocation. However, BPA will not interrupt schedules made pursuant to the formula allocation methodology for Power Marketing Program purposes or other section C conditions.

3. Relationship of Power Marketing Program, Intertie Access and Other BPA Obligations

Issue #1: Summary of Comments

A number of comments were made regarding the relationship between BPA's Intertie access, its revenue needs, and the Power Marketing Program.

The PNGC asked whether the BPA Power Marketing Program was satisfied if transactions that otherwise met the criteria for firm power sales were found to adversely affect BPA revenues, including nonfirm revenues. (Nadal, PNGC, TR 39.) Western stated that BPA's Power Marketing Program should not be allowed to permit BPA to make nonfirm sales while denying firm access to others. (Coleman, WAPA, letter dated 8/10/84, p. 4.) Western also observed that BPA should limit application of the Power Marketing Program to those contracts or actions necessary to meet the needs of its firm requirements and should not preclude access on any other basis, including allowing its nonfirm sales to be made in lieu of granting firm power contracts access. (Coleman, WAPA, letter dated 8/10/84, p. 2.) The Oregon Public Utilities Commissioner (OPUC) also asked whether BPA's intent was to refuse access to others to preserve sales of BPA nonfirm energy. (Maudlin, OPUC, letter dated 8/9/84, p. 2.)

PG&E asked whether the BPA Power Marketing Program was satisfied if BPA can market its pro rata share of surplus as set forth in the allocation formulae. (Long, PG&E, TR 30; Jones, BPA, TR 30.) SCE asked if the Power Marketing Program would be violated if other Intertie users sell at rates lower than BPA (Moran, SCE, TR 24; Jones, BPA, TR 24, 25.)

At least two commenters said that BPA's Intertie Access Policy should not adversely affect BPA revenues needed to repay the Federal investment and keep rates to customers as low as possible consistent with sound business principles. (Foleen, TR 28; Jones, BPA, TR 28-29; Kemp, PG&E, TR 36; Jones, BPA, TR 36; Foleen, TR 68; Jones, BPA, TR 68; Foleen, letter dated 8/10/84; Dotten, DSI, TR 322-323.) The DSIs stated that BPA should only provide Intertie access to others to the extent the Intertie "is not required for the transmission of federal energy . . . ." (Wilcox, DSI, letter dated 8/13/84, p. 1.)

Evaluation of Comments

BPA's explanation of the major provisions of its draft policy stated with respect to this issue that "The proposed policy will insure that BPA has access to a portions of its own Intertie capacity on a continuing basis." (Draft policy, section I.B.1.) BPA added that, "If BPA can have a reasonable expectation of selling its firm surplus and nonfirm energy for established cost-based rates, its power marketing program will experience minimal interference." (Id.)

Commenters were concerned that BPA's need to meet its own revenue requirements would be used as a basis to deny access. Their logic was that unless BPA revenue requirements are met, allowing access to others would substantially interfere with the Power Marketing Program. Many felt that the interests of others in Intertie access should be treated equally with that of BPA. This tends to overlook BPA's need to recover revenues that are adequate to repay the Federal investment in the BPA system within a reasonable period of years. (16 U.S.C. §§839g and 839e(a)(1).) This is an obligation that has

recently been of particular interest to Congress and the General Accounting Office. It also is an obligation that affects BPA's ability to set the lowest possible rates consistent with sound business principles. (16 U.S.C. §§839g and 839e(a)(1).)

BPA stated that the Policy was not intended to be used to deny assured delivery on the basis that providing for firm transactions could adversely affect BPA nonfirm sales. (Jones, BPA, TR 29.) However, it was emphasized that predicting the financial impacts on BPA of individual transactions could not be done independent of review of the individual transaction, and that BPA could not rule out circumstances where proposed firm transactions might have such an impact on BPA's revenue requirement as to substantially interfere with the Power Marketing Program. BPA also indicated that the Policy presumes that if BPA had a pro rata share of the Intertie and could market its surplus on that share, BPA revenue requirements would be satisfied. (Jones, BPA, TR 29.)

Decision

BPA's ability to meet its revenue needs remains an integral part of the Power Marketing Program.

4. The Relationship Between Substantial Interference With the Power Marketing Program and Significant Adverse Impact on the Power Marketing Program

Issue #1: Summary of Comments

One commenter noted that in the background discussion on the proposed Policy, BPA had in one instance described as a condition of access no "substantial interference with BPA's Power Marketing Program" and in another instance spoken of "significant adverse impact on BPA's power marketing program." (Foleen, TR 28-29.)

Evaluation of Comments

The comment was well taken. BPA staff stated at the public comment meeting that the two phrases "substantial interference" and "significant adverse impact" were intended to be synonymous. (Jones, BPA, TR 28.) Occasionally, discrepancies between language prefatory to the policy, other statements regarding the policy, and the policy itself will occur. BPA's final policy has sought to correct all such discrepancies. However, in all instances the policy controls.

Decision

The discrepancy has been corrected. The final Policy provides that requests for available Intertie capacity will be reviewed to assure that such requests do not ". . . . substantially interfere with the Administrator's Power Marketing Program." (Final Policy, section C.3.a.(1).) The defined term, "substantially interfere" also applies to BPA's Power Marketing Program.

5. Power Marketing Program and 9(i)(3) Resources

Issue #1: Summary of Comments

One commenter asked for clarification that resources meeting the criteria of section 9(i)(3) of the Northwest Power Act would be considered as resources consistent with the Administrator's Power Marketing Program. (Dyer, PG&E, TR 64.)

Evaluation of Comments

The transmission priority referred to at the Public Comment Forum is a priority for services to be given to selected resources: those under construction on the effective date of the Northwest Power Act if the capability of such resources is offered to BPA for sale at cost, plus a reasonable rate of return, pursuant to the Northwest Power Act and the offer is not accepted within 1 year. (16 U.S.C. §839f(i)(3).)

Decision

To the extent that section 9(i)(3) priority resources are identified by the Administrator, those resources will have the priority identified by statute. To date BPA has identified no such resources.

6. BPA's Reservation of Capacity

Issue #1: Summary of Comments

As indicated earlier in the Record of Decision, the DSIs said that BPA was mandated to reserve sufficient capacity on the Intertie to sell its surplus.

Evaluation of Comments

While BPA concluded that the Administrator was not mandated to reserve that amount of capacity, and BPA elected to accept a limitation on the account of capacity to be used for assured deliveries and to partake in Condition 2 allocations on the same terms and conditions as other scheduling utilities, BPA agrees that it may from time-to-time have need of Intertie capacity to meet other Federal obligations.

Decision

BPA will provide assured delivery or allocate Intertie capacity to BPA and scheduling utilities, subject to reserving Intertie capacity otherwise required by the Administrator to support his Power Marketing Program.

B. Federal System Operating Limitations

1. Operating Conditions and Prevention of Monopolization by Limited Groups

Issue #1: Summary of Comments

Two commenters inquired regarding the draft policy language respecting operating conditions and how BPA viewed the interrelationship between operating conditions and monoplization of transmission facilities by limited groups. (Schultz, PG&E, TR 74, 76; Pritchard, LADWP, TR 77.)

Evaluation of Comments

The commenters wanted to know how the Intertie Access Policy prevents monopolization by limited groups. (Long, PG&E, TR 74-75) BPA staff observed at the public comment forums that this was accomplished by providing an equitable basis for BPA's sharing of its ownership or contract interest in Intertie capacity. (Jones, BPA, TR 76-77.) Referencing statutory provisions such as the prevention of monopolization by limited groups is unnecessary. They have been removed from the Policy.

Decision

BPA's final policy limits operating conditions to those conditions which truly affect day-to-day operational practices. (Final Policy, section C.4.(a)(e)). Statutory marketing directives such as the directive to operate the transmission system in such a way as to encourage the widest possible use, provide reasonable outlets, and prevent monopolization have been deleted. While these and other statutory provisions and policies guide the Administrator in allocating Intertie capacity, the interpretation of statutes is a matter of law and not an operating limitation.

2. BPA Operating Criteria and Standards and the Western States Coordinating Council Minimum Operating Reliability Criteria

Issue #1: Summary of Comments

One commenter wanted to know whether BPA met the criteria of the Western States Coordinating Council. (Foleen, TR 79.)

Evaluation of Comments

BPA staff stated that he believed BPA met the Western States Coordinating Council (WSCC) criteria. (Jones, BPA, TR 79.)

Decision

BPA meets the WSCC standards. The criteria remains in the final Policy.

C. Existing Contractual Obligations

1. Interference With Existing Contractual Obligations

Issue No. 1: Summary of Comments

Some commenters believe that BPA's actions under the proposed Near Term Intertie Access Policy impair performance of existing contracts, alter existing business arrangements and constitute intentional interference with contracts between California utilities and Pacific Northwest entities. (Myers, SCE, letter dated 8/13/84, pp. 18-19; Gardiner, PG&E, letter dated 8/10/84, p. 7; Cotton, LADWP, letter dated 8/13/84, p. 4; Imbrecht, CEC, letter dated 8/13/84, p. 5.) Some commenters claim interference with or fear constraint of contractual relations with Canadian utilities. (Cotton, LADWP, letter dated 8/13/84, p. 4; Gardiner, PG&E, letter dated 8/10/84, p. 7.)

SCE believes that under the proposed Policy BPA is given unnecessary discretion to determine access to the Intertie because the criteria conditioning access are not reasonably predictable. (Myers, SCE, letter dated 8/13/84, p. 18.) PG&E believes that if Pacific Northwest utilities do not have a sufficient allocation on the Intertie, PG&E will not be able to realize a full benefit under its contracts. (Gardiner, PG&E, letter dated 8/10/84, p. 7.) LADWP considers the proposed Policy a breach of its Exchange Agreement with BPA, as well as a breach of existing contracts between BPA and affected utilities. (Cotton, LADWP, letter dated 8/13/84, p. 4.) LADWP also considers the Policy an intentional interference with the contractual arrangements between utilities, such as LADWP, and other Pacific Northwest and Canadian utilities. (Id.) CEC believes that the proposed Policy "raises suspicions and concerns that California will not receive fair treatment in negotiating firm contracts and transmission capacity expansions." (Imbrecht, CEC, letter dated 8/13/84, p. 5.)

Evaluation of Comments

The Near Term Intertie Access Policy allocates BPA's portion of the Intertie pursuant to statutory mandate. (16 U.S.C. §§837, 838, 839.) The Policy provides that in allocating capacity on the Intertie, BPA will not act in conflict with BPA's existing contractual obligations. (Final Policy, section II.C.3.b(1).) SCE recognizes that BPA will provide assured access pursuant to existing contractual obligations. (Myers, SCE, letter dated 8/13/84, p. 19.) PG&E's concern with respect to not obtaining the "full benefit" of a contract if a Pacific Northwest utility is not given a sufficient allocation on the Intertie is not warranted. BPA believes that sales to the Southwest have always been conditioned on the ability to transmit the power. Furthermore, BPA has stated in the Intertie Access Policy that it intends to respect all of the terms and conditions of its own contracts. There may be contracts in existence to which BPA is not a party that purport to rely on BPA transmission for fulfillment of the contracts.

LADWP charges that BPA is interfering with LADWP's contracts with Canadian suppliers. (Cotton, LADWP, letter dated 8/13/84, p. 4.) BPA is aware that during the development of the Near Term Intertie Access Policy, LADWP negotiated and executed an energy sales agreement with B.C. Hydro. When

BPA first became aware of the potential for such an agreement, BPA informed LADWP of BPA's concern that the transaction would of necessity utilize Federal facilities and requested information. (Johnson, BPA, Mailgram dated 11/3/83.) On November 18, 1983, BPA again warned LADWP, in response to a November 10, 1983, letter, that:

> "We want to make it clear that there is no firm transmission path for amounts of power between B.C. Hydro and LADWP. Further, the agreement as stated appears to assume that very large but unspecified amounts of Federal transmission will be available on a non-firm basis. Availability of such excess capacity will be affected by intertie access policy and other considerations."

That letter also reminded LADWP that BPA had announced its intent to develop an Intertie Access Policy by FEDERAL REGISTER notice on July 22, 1983. (Johnson, BPA, letter dated 11/18/83.) Again, on January 25, 1984, BPA warned LADWP that no significant discussions had taken place between LADWP, BPA, and B.C. Hydro and that BPA was concerned about expectations of LADWP and B.C. Hydro regarding the availability of BPA-owned transmission, including the Intertie. The letter also reminded LADWP that neither LADWP nor B.C. Hydro had requested transmission services from BPA. LADWP was informed again that BPA was developing an Intertie Access Policy. (Jones, BPA, letter dated 1/25/84.)

Despite repeated reminders by BPA that it could not assure firm or nonfirm transmission after the completion of the Intertie Access Policy, LADWP and B.C. Hydro entered into a contract on January 26, 1984, without a transmission agreement with BPA. It is BPA's position that to the extent that LADWP was aware of the development of and was involved in the comment on this Policy, LADWP cannot claim that BPA is intentionally interfering with a LADWP - B.C. Hydro contract.

LADWP and B.C. Hydro lack the authority to enter into an agreement that dictates how BPA, as an agency of the Federal government, may or may not allocate space on the Intertie. It is BPA's Intertie Access Policy that determines access rights to the Intertie, not any contract to which BPA is not a party. As the parties to these agreements well know, it has been a longstanding BPA policy not to provide firm access to the Intertie. For these parties now to suggest that somehow they have entered into contracts conferring on themselves an exemption to BPA's Intertie Access Policy, without BPA's consent, is absurd.

Furthermore, implementation of the LADWP - B.C. Hydro contract is specifically conditioned on BPA providing transmission service between the Canada-USA border and the Nevada-Oregon border. (B.C. Hydro-Los Angeles Energy Sales Agreement Between British Columbia Hydro and Power Authority and Department of Water and Power of the City of Los Angeles, DWP No. 10103, Art. 5.1.4, dated 1/26/84, p. 4.) Thus, the contractual rights of the parties are expressly conditioned on BPA's transmission policies including the Intertie Access Policy. Any claim by LADWP that BPA is interfering with this contract, in adopting the Intertie Access Policy, is without merit. BPA recognizes that LADWP disputes BPA's interpretation of the LADWP - B.C. Hydro agreement. That dispute is presently the subject of litigation.

BPA believes that claims against it for interference with existing contracts are without merit. As stated above, sales between the Pacific Northwest and the Southwest historically have been conditioned on availability of capacity on the Intertie.

Decision

The Near Term Intertie Access Policy expressly provides that BPA's allocation of its portion of the Intertie will not conflict with BPA's existing contractual obligations. (Final Policy, section II.C.3.b.(1).) Parties who have entered into contracts to which BPA is not a party, however, have entered into a contract subject to BPA's Near Term Intertie Access Policy.

2. Western - BPA Memorandum of Understanding

Issue #1: Summary of Comments

There were several comments suggesting that BPA should not have entered into the Memorandum of Understanding (MOU) with Western for transmission of 185 megawatts of Basin Electric Power over the Intertie to Western's customers in northern California. (Driscoll, MPSC, letter dated 8/10/84, p. 3; Sterns, NCAC, letter dated 8/9/84, p. 2.) Another comment suggested that BPA omit the BPA-Western MOU with its obligation to transmit Basin Electric Power from the list of existing obligations that BPA recognized as outside the proposed Intertie Access Policy. (Cavanaugh, NRDC, letter dated 8/13/84, pp. 8-9.) Other comments commended BPA for its action regarding the contract between Western and Basin Electric Power. (O'Banion, SMUD, letter dated 8/10/84, p. 3.) Another comment expressed approval for the MOU and concern about the absence of long term provisions for the delivery of energy under the Western Basin Electric power sales contract. (Pugh, NCPPA, letter dated 8/13/84.)

Evaluation of Comments

BPA has considered these and other similar comments received in response to its environmental assessment for the BPA-Western MOU. BPA's position respecting these comments was set forth in the decision record on that MOU dated February 7, 1984, as follows:

> We have determined that the MOU does not predetermine the results of BPA's Intertie Access Policy. The MOU recognizes a need of Western to transmit electric power for which it is under an obligation to pay a share of the costs even if it does not take delivery and an affirmation by BPA that we will use our ownership and managerial responibility for the northern part of the Intertie to assist in meeting Western's needs.

Decision

The Basin Electric - Western contract is an existing firm contract and will be treated as such in the manner specified in the BPA - Western MOU of February 7, 1984.

D. Fish and Wildlife Provision

1. BPA's Authority

Issue #1: Summary of Comments

The draft Intertie Access Policy proposed to condition or deny access for resources that adversely affect the Administrator's efforts on behalf of fish and wildlife. The PNUCC and PSP&L assert BPA has no explicit authority to regulate the operation of non-Federal hydroelectric projects as an element of the Intertie Access Policy, and the PNUCC and IPC call the proposal an additional unauthorized layer of regulation. (Hardy, PNUCC, letter dated 8/13/84, p. 1; Hardy, PNUCC, TR 181-82; Bailey, PSP&L, letter dated 8/13/84, p. 5; Barclay, IPC, letter dated 8/13/84, pp. 2-3; Schultz, ICP, TR 184.) In a prior document dated March 16, 1984 (submitted with its 8/13/84 letter), however, PNUCC took the position that BPA has discretion to address fish and wildlife matters in furnishing surplus power marketing or related transmission service to its customers. (Hardy, PNUCC, letter dated 8/13/84, attachment 1, pp. 17-18.) Specifically, PNUCC stated that under section 9(i) of the Northwest Power Act, BPA may address whether furnishing service would conflict with policies of the Northwest Power Act, including protection, mitigation, and enhancement of fish and wildlife, as well as assurance of an adequate, efficient, reliable, and economical power supply, among other things. PNUCC also stated that BPA may deny service on this basis. (Id. at pp. 18 and 31.) Furthermore, PNUCC recognized that the Intertie Access Policy involves the management and use of Federal property over which Congress has plenary authority. (Id. at p. 20.)

The ICP believes there is no logic, no justification, and no authority for BPA to apply a fish and wildlife qualification to a transmission access policy. (Schultz, ICP, letter dated 8/10/84, p. 3; Schultz, ICP, TR 11 and 13.) The ICP believes that the time for taking fish and wildlife into account is in the licensing and permitting process. (Schultz, ICP, TR 11-12.) EWEB does not believe that the output of any hydroelectric project, while operating in full conformance with its FERC license, may be denied access to the Intertie. (Parks, EWEB, letter dated 8/10/84, p. 1.)

On the other hand, the NWF argues that BPA has and must employ its discretion in a manner not in conflict with the policies of the Northwest Power Act. (Thatcher, NWF, letter dated 3/16/84, p. 1.) From this assumption, it reaches the conclusion that BPA must manage the Intertie in a manner consistent with the Northwest Power Planning Council's Fish and Wildlife Program. (Thatcher, NWF, letter dated 3/16/84, p. 4.) In a comment dated March 7, 1984 (incorporated by reference in its 8/13/84 letter) the NRDC stated that BPA has legal authority to condition access to its transmission system for the protection of fish and wildlife. The NRDC urges that BPA exercise its discretion in a manner consistent with the Council's Fish and Wildlife Program. (Cavanagh, NRDC, letter dated 3/7/84, pp. 4-5.)

The NMFS and CRITFC agreed that BPA has authority to impose fish and wildlife conditions on Intertie access. (Bodi, NMFS, TR 291; Wapato, CRITFC, letter dated 3/16/84, p. 2.) The NPPC believes that BPA is required to take

action on Intertie access that is consistent with the Council's Fish and Wildlife Program. (Colbo, NPPC, letters dated 3/16/84, p. 1, and 8/11/84, p. 1.)

Evaluation of Comments

Although BPA's proposed fish and wildlife provisions apply generally to power from any existing non-Federal resources it should be understood at the outset that most comments, both from the utility community and from those concerned about adverse effects on fish and wildlife, have focused on non-Federal hydroelectric projects. BPA intends that the Intertie Access Policy apply a single standard to non-Federal hydroelectric and nonhydroelectric generating resources. However, BPA recognizes that differing regulatory regimes at the state and Federal level may apply to individual resources. For purposes of BPA's evaluation of comments here, however, BPA's concerns with accommodating the role of the Federal Energy Regulatory Commission (FERC) also apply to others with regulatory authority over a particular resource.

BPA has the authority to impose fish and wildlife conditions on non-Federal access to its share of the Intertie capacity. The electrical energy produced at each of the 31 dams in the Federal Columbia River Power System and the facilities for transmitting that energy, are property of the United States. Authority to dispose of that property is expressly granted to Congress by Section 3 of Article 4 of the Constitution of the United States. Congress exercises complete power under the property clause, and may constitutionally direct the disposal of such property in a manner consistent with Congress' view on public policy, which may include concerns for competition and the widespread distribution of benefits.

The construction of the Intertie was an exercise of Congress' broad authority under the property clause. The manner in which Congress exercised that authority is reviewed in a separate section of this Record of Decision. (See section III(A)(2).) Congress authorized Federal construction and ownership of approximately 75 percent of the Intertie capacity, approximating BPA's share of the regional power surplus at that time, to assure Federal control of BPA's share of that market. The Regional Preference Act (section 6), the Transmission System Act (section 6), and the Northwest Power Act (section 9), ensure that BPA satisfies Federal needs first. Thereafter, BPA may dispose of its remaining Intertie capacity to non-Federal entities on a fair and nondiscriminatory basis, as long as their use does not conflict with the Administrator's Power Marketing Program, BPA operating conditions, existing contracts, and applicable law, including the policies of the Northwest Power Act.

This authority must be read in pari materia with BPA's other organic authorities, including the Bonneville Project Act, such as subsections 2, 6, and 7, and other provisions of the Northwest Power Act, such as sections 2 and 4. (See, Disposition of Surplus Power Generated at Clark Hill Reservoir Project, 41 Op. Att'y IG. 236 (1955).) For example, BPA concluded that section 2(f) constitutes an extremely broad grant of authority that authorized BPA to expend monies for fish purposes. (Authority of Bonneville Power Administrator to Participate in Funding of Program to Help Restore the

Columbia River Anadromous Fishery, M-36885, 83 I.D. 589, at 597 (Nov. 22, 1976).) Of course, the Northwest Power Act explicitly authorizes expenditures for fish and wildlife. (See, for example, section 4(h).) NEPA also supports the Administrator's authority to apply environmentally sensitive criteria to BPA's marketing program.

BPA is not suggesting that any one statutory purpose or policy, e.g., protection of fish, is an overriding policy under these laws. As the PNUCC pointed out, the Northwest Power Act furthers not only protection, mitigation, and enhancement of fish and wildlife, but also the assurance of an adequate, effficient, reliable and economical power supply, among other purposes. (PNUCC, letter dated 3/16/84, attachment 1, p. 31.) Under the Bonneville Project Act, Transmission System Act, Regional Preference Act, and Northwest Power Act, BPA's Marketing Program serves a broad use standard that permits the exercise of the widest administrative discretion. The United States Supreme Court recently has recognized that BPA's interpretation of its statutory authority is to be accorded great weight, particularly in interpreting the Northwest Power Act, which is a recently enacted statute in the passage of which BPA actively participated.

There is ample authority for BPA to condition access to its share of the Intertie capacity on a fish and wildlife basis. The question then becomes, as NWF and NRDC have observed, what use should BPA make of this authority?

Decision

BPA recognizes that the Northwest Power Act preserved the pre-existing regulatory authorities of state and Federal agencies, but BPA finds nothing in the Northwest Power Act to suggest that BPA lacks authority to protect BPA's very significant and growing investment in fish and wildlife protection, mitigation, and enhancement. BPA has determined that it is reasonable to use this authority to condition or deny Intertie access to existing Pacific Northwest resources if the operation of the resource would decrease the effectiveness of or increase the need for expenditures or other actions by the Administrator, or would otherwise interfere with his obligations, to protect, mitigate, and enhance fish and wildlife.

2. BPA's Exercise of Authority

Issue # 1: Summary of Comments

BPA proposed in the draft Policy to exercise its authorities to assure that where the operation of an existing resource will adversely impact fish and wildlife resources in a manner that adversely affects the Administrator's own efforts on behalf of fish and wildlife, either Intertie access will not be provided or, as a condition of access, the owner or operator of the resource will be required to modify the operation of the resource or take offsite mitigative action equal to the adverse impact. Generally, the Pacific Northwest utilities and their representative organizations believe that resource operations are adequately regulated by FERC, and that FERC should remain the exclusive regulatory body for this purpose. They believe that either BPA does not have authority or BPA should not exercise any authority it may have to place additional requirements on resource operations as a

condition for Intertie access. (Hardy, PNUCC, letter dated 8/13/84, p. 1; Hardy, PNUCC, TR 181; Bredemeier, PGE, letter dated 8/13/84, p. 1; Boucher, PP&L, letter dated 8/13/84, p. 3; Barclay, IPC, letter dated 8/13/84, p. 6; Bailey, PSP&L, letter dated 8/13/84, p. 5; Brawley, PPC, letter dated 8/13/84, p. 2; Nadal, PNGC, letter dated 8/13/84, p. 1; Parks, EWEB, letter dated 8/10/84, p. 6; Labrie, MPC, letter dated 8/13/84, p. 2; Garman, PGP, letter dated 8/9/84, p. 1; Schultz, ICP, letter dated 8/10/84, p. 4, TR 11, 13; Copp et al., Mid-Col. PUD's, letter dated 8/10/84, pp. 1-2.) Moreover, the PNUCC believes that BPA would be encroaching on FERC's authorities if BPA were to require modifications in the operations of a project or other actions that might be inconsistent with a project license. (Marritz, PNUCC, letter dated 8/21/84, p. 1.)

The NWF, on the other hand, believes that BPA should not only impose conditions to avoid or mitigate adverse impacts on the Administrator's own efforts on behalf of fish and wildlife, but BPA also should impose conditions to cure any other harmful effects of resource operation on fish and wildlife and environmental quality. (Thatcher, NWF, letter dated 8/13/84, p. 5.) The NMFS agrees that fish and wildlife conditions should be imposed to protect BPA's investment, but suggests that BPA go further. BPA should not enable or encourage resources which adversely affect anadromous fish. (Bodi, NMFS, TR 292.)

The Mid-Col. PUD's urge the deletion of the fish and wildlife provisions since the Policy will apply only to existing resources including the mid-Columbia dams, which are under an open petition before FERC, and could not be influenced by BPA in a contravening process. (Copp et al., Mid-Col. PUD's letter dated 8/10/84, p. 2.) NMFS has suggested access be denied to any resource that has been formally contested and is awaiting resolution. (Evans, NMFS, letter dated 8/13/84, p. 2.)

Evaluation of Comments

Some utilities assert that inclusion of such provisions is inappropriate because operations of existing resources are adequately dealt with by state and Federal agencies with legal authority over fish and wildlife issues. (Bredemeier, PGE, letter dated 8/13/84, p. 1; Nadal, PNGC, letter dated 8/13/84.) PPC and PGP believe that BPA must recognize FERC's role. PGP believes that any action by BPA is premature, while PPC believes that BPA should not use its authorities or responsibility to deny a utility access to the Intertie when the utility is acting in accordance with its FERC license. (Brawley, PPC, letter dated 8/13/84, p. 2; Garman, PGP, letter dated 8/9/84, p. 1.) BPA expresses no opinion as to the adequacy of present regulation of existing resources by FERC, but does agree with the PNUCC that FERC's authorities were preserved by the Northwest Power Act and does respect the regulatory role assigned to FERC. As NWF has indicated, BPA is not regulating, but is simply effecting public policy decisions about how to rationally allocate a limited amount of space on the Intertie, over which BPA maintains substantial control. (Thatcher, NWF, TR 289.) BPA does not intend to supplant FERC's role.

However, BPA does not concede that it has any duty to provide Intertie access to any resource operating in compliance with its FERC license. Even as FERC's regulatory role over resource operations is preserved by the Northwest

Power Act, BPA's role as proprietor of the Intertie is exclusive and not delegable to FERC. BPA's proposed Policy provisions give appropriate deference to FERC. They provide that when a resource is not being operated in compliance with applicable law, it will be denied access if it also is adversely affecting the Administrator's efforts on behalf of fish and wildlife. The provisions also provide that as an alternative when modifying resource operations is not practically or legally possible, a resource owner or operator who is in compliance with applicable law but is causing adverse effects on fish and wildlife may negotiate offsite enhancement or other actions not inconsistent with the NPPC's Fish and Wildlife Program to offset the resource's adverse effect on the Administrator's interests. Accordingly, PNUCC's concerns that enforcement of BPA's Policy would necessarily result in superceding, or violating, an applicable FERC license are unfounded. (Marritz, PNUCC, letter dated 8/21/84, p. 1.)

Both the Mid-Columbia PUD's and NMFS have raised questions as to BPA's role and determinations on providing access to a resource, the continued operation of which is under challenge or open petition before FERC. The Mid-Columbia's believe BPA should not take action respecting such a resource in a contravening process. (Copp, et al., Mid-Col. PUD's, letter dated 8/10/84, p. 2.) NMFS, on the other hand, would have BPA deny access pending resolution of any challenge. (Evans, NMFS, letter dated 8/13/84, p. 2.) BPA understands in cases such as these, a presumption of compliance with law clearly may be disputed. BPA, however, can not appropriately presume noncompliance with the law, nor can BPA resolve that dispute. BPA also realizes that FERC, in accepting such a challenge or otherwise reviewing a license, is exercising its own very comprehensive jurisdiction. BPA is not willing to defer to FERC respecting which resources will be provided Intertie access, or which resources in their operation may adversely affect the Administrator's efforts on behalf of fish and wildlife. In any case such as this, BPA will be called upon to scrutinize closely whether operation of the resource would adversely affect the Administrator's efforts on behalf of fish and wildlife. BPA's determination must be made on the basis of applicable facts, particularly relating to the adverse effect on the Administrator's efforts, after an opportunity for comment from the public and interested parties.

PNUCC and MPC point out that section 4(h)(11)(A) of the Northwest Power Act requires that FERC regulate existing resources taking into account the Council's Fish and Wildlife Program to the fullest extent practicable. (Hardy, PNUCC, letter dated 8/13/84, p. 5; Labrie, MPC, letter dated 8/13/84, p. 2.) PNUCC argues that if BPA finds that the operation of any non-Federal projects harms its own fish and wildlife protection efforts, BPA should petition FERC for relief. (Hardy, PNUCC, letter dated 8/13/84, p. 5.) BPA realizes that this avenue exists, and may from time-to-time take advantage of it, particularly in a case where operation of a resource invariably causes or would cause an adverse effect on the Administrator's efforts on behalf of fish and wildlife. However, BPA believes that it has an affirmative duty to utilize its own authorities in a manner that will achieve the purposes of the Act--in this case, protecting, mitigating and enhancing fish and wildlife--while acting in a sound and business-like manner.

The standard BPA proposes to utilize is derived from those two mandates, and by its application, BPA believes it will have fulfilled its legal

responsibility. NWF asserts that the Policy should be amended such that access will not be provided if the operation of a resource would have any adverse affect on fish and wildlife resources or environmental quality, as well as if the operation would decrease the effectiveness or increase the need for additional expenditures or other actions by the Administrator to protect, mitigate, and enhance fish and wildlife. (Thatcher, NWF, letter dated 8/13/84, p. 5.) Necessarily, not all adverse effects on fish and wildlife caused by resource operation will be susceptible to correction by the application of a standard based on adverse effects on the Administrator's efforts, even though his expenditures are substantial and his undertakings far-ranging. From the point of view of fish and wildlife advocates, this is its weakness. (Thatcher, NWF, letter dated 8/13,84, p. 5.)

BPA believes that application of the first standard cited by NWF, i.e., where operation of a resource would have any adverse affect on fish and wildlife resources or environmental quality, is precisely the role preserved for FERC under the terms of section 10(i) of the Northwest Power Act. BPA is directed to apply the 4(e)(2) standards only in the acquisition of new resources. (See sections 6(a) and 6(b)(2) of the Northwest Power Act.) To protect his substantial investment in fish and wildlife resources, the Administrator has chosen a standard based upon adverse effects on his own efforts on behalf of fish and wildlife. BPA believes that for other adverse effects, a diverse array of other applicable regulatory schemes are available for enforcement by appropriate authorities.

Seattle City Light (SCL) suggests that BPA's determination that a resource's operation adversely affects the Administrator's efforts on behalf of fish and wildlife should be made subject to FERC review and approval. (Saven, SCL, letter dated 8/23/84, p. 4.) BPA can find no authority for such a role for FERC. FERC's authority does not reach governing access to the Intertie, any more than does BPA's authority reach the regulation of the operation of non-Federal hydroelectric resources.

In developing the standard, BPA recognizes the necessary balance between resource regulation, which is reserved to FERC, and protecting fish and wildlife resources in a sound and business-like manner, which is the Administrator's responsibility. As BPA pointed out in the hearing, BPA must define its appropriate jurisdiction and not assume the regulatory jurisdiction of other agencies. (McLennan, BPA, TR 283.) In providing Intertie access, the Administrator is not responding to a pre-ordained right accorded by FERC to the owner or operator of a resource. The Administrator is exercising his discretion to bestow a privilege and a benefit of access on power from a resource or collection of resources. This is consistent with BPA's authority to dispose of surplus Federal property such as Intertie capacity owned and controlled by BPA. That benefit enlarges the market for such power, but denial of that benefit does not vitiate the resource or prevent its operation consonant with applicable law.

As NWF points out in arguing for consistency with the Council's Plan, "A conditioned Intertie Access Policy does no more than guarantee that a publicly controlled instrumentality will not be used to encourage or facilitate" resources that meet energy needs at greater regional economic and environmental costs. (Thatcher, NWF, letter dated 3/16/84, p. 5.) BPA is "making public policy decisions about how to rationally allocate a limited

space on a tie line over which [BPA] maintain(s) substantial control, . . . and (BPA) can certainly say that [BPA is not] regulating." (Thatcher, NWF, TR 288-89.) The question is not whether the project can operate in violation of the Program, but whether BPA will provide operators access to the Intertie to sell the power they produce in violation of the Program. (Id.) "[BPA] is not telling [operators] how to operate their project unless they want to get the advantage of [BPA's] Intertie." (Id.)

PNUCC has pointed out that BPA should restrict its scope of concern to the time and amount of impact actually caused by the resource operation enabled by access. (Hardy, PNUCC, TR 182-84.) While BPA understands that its appropriate concern for fish and wildlife in this Policy is triggered by the provision of access, BPA does not conclude that the mitigation to be sought for errant resources should be so limited as the PNUCC seems to suggest. BPA's efforts are not so much directed at recovering damages for past actions which adversely affect the Administrator's efforts on behalf of fish and wildlife, though that may in some cases be necessary. As NWF has pointed out, it is operation of a resource that adversely affects fish and wildlife, not access to the Intertie. (Thatcher, NWF, TR 281.) The standard has now been clarified; access will only be provided if it will not result in scheduling energy from resources whose operation will adversely affect the Administrator's efforts on behalf of fish and wildlife. BPA's emphasis will be on obtaining assurance that future operation of such a resource cause no future adverse impact. As indicated by the Policy, this may be accomplished either by modification of the operation or by some compensatory offsite action, when it is impractical to modify resource operation.

Decision

BPA has determined that it is reasonable to exercise its authorities, including those respecting fish and wildlife, to assure that existing resources that might adversely impact BPA's fish and wildlife expenditures do not gain Intertie access, unless the owner or operator modifies the operation of the resource, or mitigates for the impacts to the resource in a manner not inconsistent with the Council's Fish and Wildlife Program. Capital facilities costing over $500 million are in place or under construction to mitigate adverse effects of Federal hydroelectric development on Columbia River fish and wildlife. BPA is repaying this sum to the U.S. Treasury over time with interest. BPA also annually reimburses the Treasury for the operations and maintenance costs incurred by Corps of Engineers, Bureau of Reclamation, and U.S. Fish and Wildlife Service associted with these facilities. In addition, BPA makes direct expenditures from its revenues, uses its borrowing authority and forfeits revenue as a result of modified operation of the system in order to fulfill its obligations to further protect, mitigate, and enhance fish and wildlife. BPA's fish and wildlife budget for 1985 will be $34 million, and loss of revenue as a result of modified operation has been estimated to average as much as $58 million per year depending on applicable rates, and water and power marketing conditions. BPA feels it is appropriate to exercise its authorities to protect this significant investment.

BPA also believes it is reasonable to defer to FERC and other Federal and state agencies with jurisdiction over resource operations that adversely impact fish and wildlife. In this way BPA's role as proprietor of the Intertie will not encroach upon other agencies' jurisdiction over resource

operations that impact on fish and wildlife. BPA retains the prerogative, however, to participate in other agency proceedings, such as those before FERC, to protect BPA's investment in fish and wildlife protection, mitigation and enhancement.

3. Consistency With the Council's Fish and Wildlife Plan and Program

Issue #1: Summary of Comments

As a part of its proposed Policy provisions to protect, mitigate, and enhance fish and wildlife, BPA did not require consistency with the Council's Fish and Wildlife Program. The NPPC believes that BPA has a legal duty to act consistently with the Council's Program. (Colbo, NPPC, letter dated 8/11/84, p. 1.) CRITFC, NWF, and NMFS generally support the idea that BPA should require resources to operate consistent with the Council's Plan and Program as a condition of Intertie access. (Wapato, CRITFC, letter dated 3/16/84, p. 1; Thatcher, NWF, letters dated 3/16/84, p. 2, and 8/13/84, p. 3; Thatcher, NW, TR 278, 290; Evans, NMFS, letters dated 3/15/84, p. 1, and 8/13/84, p. 1; Bodi, NMFS, TR 292.) The PNUCC and PP&L believe that the Council's Program is not applicable to transmission access, and the PNUCC asserts the Council must deal with FERC, not BPA, on regulation of non-Federal hydroelectric facilities. (Hardy, PNUCC, letter dated 8/13/84, pp. 2, 7-8; Boucher, PP&L, letter dated 8/13/84, p. 3.) In earlier comment, the PNUCC had suggested that the policies of the Northwest Power Act were applicable to transmission access, and such access could be denied on that basis. (Hardy, PNUCC, comments dated 3/13/84, p. 31.) The OPUC, WPSC, and Clark County PUD urge that BPA not use its authorities as a means of enforcing the Council's Program. (Maudlin, OPUC, letter dated 8/9/84, p. 3; Jacquot, WPSC, letter dated 8/8/84, p. 2; Sanders, Clark, letter dated 8/10/84, p. 1.)

Evaluation of Comments

NWF asserts that the Administrator should indicate that BPA has taken the Council's Fish and Wildlife Program into account in formulating the Intertie Access Policy, has determined to require consistency to the greatest extent practicable, and will provide access only to utilities that operate their existing resources consistent with the Council's Fish and Wildlife Program, unless that is legally or physically impracticable. (Thatcher, NWF, letter dated 8/13/84, p. 3; Thatcher, NWF, TR 278-79.) NWF asserts that the Administrator has already made a commitment to act consistent with the Council's Energy Plan. BPA has recognized that the Council's Plan, though a fluid, changing document, provides guidelines for the future development of the Pacific Northwest power system, and intends to be guided by it in the acquisition of resources and in the protection, mitigation, and enhancement of fish and wildlife. (BPA, Implementation Programs for the Northwest Power Planning Council's Two-Year Action Plan, August 1983, pp. i-viii.)

BPA, however, has not committed to follow either the Plan or the Fish and Wildlife Program under all circumstances. BPA takes note of the dictionary definition of consistent: agreeing, compatible, not contradictory, conforming to the same principles or course of action (The American Heritage Dictionary of the English Language); or, marked by harmony, regularity, or

steady continuity throughout, showing no significant change, unevenness, or contradiction (Webster's Third New International Diction, Unabridged). BPA believes it is acting, and intends to continue to act, consistent with the Council's Plan and Fish and Wildlife Program with respect to those subjects within the jurisdiction of the Council as defined in the Northwest Power Act. The Administrator however will not forfeit his duty to make independent decisions using not only the standard of consistency but other applicable standards and authorities.

The NPPC's assertion that BPA has a legal duty to act consistently with the Council's Program is based on their reading of section 4(h)(10)(A) of the Northwest Power Act. (Colbo, NPPC, letter dated 3/16/84, p. 1.) CRITFC urges that section 4(h)(10)(A) extends beyond funding to all of the Administrator's authorities. (Wapato, CRITFC, letter dated 3/16/84, p. 2.) In that subparagraph the Administrator is instructed to use the Bonneville Fund and other authorities available to him to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the Council's Energy Plan, Fish and Wildlife Program, and the purposes of the Northwest Power Act. The OPUC believes BPA should not be jury and judge in regard to consistency with fish and wildlife programs, that access to the Intertie is not an appropriate tool for enforcing compliance with fish and wildlife policies, and that BPA should seek its remedies in court. (Maudlin, OPUC, letter dated 8/9/84, p. 3.) The WPSC asserts that BPA should not set itself up as the enforcer of the Council's policies by conditioning access on compliance with the Fish and Wildlife Program, since the Council has no regulatory authority. (Jacquot, WPSC, letter dated 8/8/84, p. 2.)

Even if, as a matter of Policy, BPA were to accept the Council's interpretation of "the authorities available to the Administrator under this Act and other laws administered by the Administrator," BPA still must relate its intent to condition Intertie access on fish and wildlife concerns to his undertakings pursuant to section 4(h)(10), which are limited by the extent fish and wildlife are affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries. PSP&L points out that section 4(h)(10)(A) and 4(h)(11)(A) authorities are related only to hydroelectric development. (Bailey, PSP&L, letter dated 8/13/84, p. 6.) With this in mind, BPA has developed a standard which relates its section 4(h)(10)(A) authorities to its proposed management of the Intertie. BPA believes this linkage is required if it is to give meaning to all parts of applicable law.

Further, if BPA were to accept CRITFC's and the Council's interpretation, the question would remain whether the Council has any authority under the Northwest Power Act to include measures or policies in their Plan or Program to require the Administrator to exercise BPA's proprietary responsibilities over the Intertie in any particular manner.

PNUCC asserts that the consistency standard provided for in section 4(h)(10)(A) of the Northwest Power Act does not apply to transmission system management. This argument rests on the theory that the other authorities referred to in section 4(h)(10)(A) of the Northwest Power Act were generically related to the expenditures of funds. PNUCC points out that Congress in section 4(h)(11)(A) specified a different standard for other

responsibilities of the Administrator's and questions why section 4(h)(11) would have been at all necessary vis-a-vis BPA if section 4(h)(10)(A) applied to BPA authorities other than expenditure of funds. (Hardy, PNUCC, letter dated 8/13/84, p. 2.) Similarly, PP&L notes that Congress has been explicit in requiring consistency respecting resource acquisition and fish and wildlife expenditures and concludes that BPA should not imply such a standard to condition access to the Intertie on a utility's compliance with the Council's Energy Plan or Fish and Wildlife Program. (Boucher, PP&L, letter dated 8/13/84, p. 3.) To the extent the Plan or Fish and Wildlife Program deals with subjects not within the jurisdiction of the Council, BPA believes those provisions would have no force and effect.

Only one of the commenters urging that BPA require consistency with the Council's Fish and Wildlife Program as a condition for providing Intertie access, specified which portions of the program they thought provided guidance respecting operation of resources or transmission access. NPPC indicated Sections 1304(a)(1), 1304 (a)(3), and portions of 1200 of the Program as relevant to Intertie access. (Colbo, NPPC, letter dated 3/16/84, pp. 1-2.) In response to a question from BPA at the public comment forum on Tuesday, July 24, 1984, NWF and CRIFTC suggested Section 300, calling for a Water Budget, Section 400, on downstream passage, and Section 1200, on new hydro, as relevant sections. (Thatcher, NWF, TR 284: Lothrop, CRITFC, TR 284.) Because this interim adoption of the Intertie Access Policy only deals with power from existing Pacific Northwest resources and Section 1200 applies to <u>development</u> of hydroelectric facilities, consistency with Section 1200 does not appear to be an issue.

Section 300 by its terms is directed to the Federal project operators and regulators. From BPA's perspective, the Water Budget is implemented by de-rating the amount of firm energy load carrying capability in submissions under the Coordination Agreement and in studies that form the basis of BPA ratemaking. Accordingly, that amount of power that is set aside to assure the spring fish flush will not be generated and transmitted over the Intertie at other times in the year. BPA's authorities with respect to that power are exercised taking into account to the fullest extent practicable the Council's Fish and Wildlife Program, as required by section 4(h)(11)(A) of the Northwest Power Act. BPA has an additional concern that the benefit to fish and wildlife of that action not be diluted or impaired by the operation of any non-Federal resource that might enjoy the privilege of Intertie Access. Accordingly, the Intertie Access Policy provides that BPA, before or as a result of according that privilege to a scheduling utility, may require that the operation of that non-Federal resource be in compliance with applicable licenses, permits and law, and that operations either be modified or other actions taken to offset any adverse impact on the Administrator's efforts on behalf of fish and wildlife.

With the exception of providing funds for some studies, the Council requests BPA to take no action under Section 400 of the Council's Fish and Wildlife Program. Section 400 is primarily directed to the Corps of Engineers and the Federal Energy Regulatory Commission. With respect to several non-Federal projects, Section 400 calls on FERC to exercise its regulatory jurisdiction to require those projects to take certain actions. FERC has authority to undertake such actions. BPA does not. If FERC fails to heed the Council's Fish and Wildlife Program, BPA cannot fulfill FERC's role through

denial of Intertie access for energy from a resource. If FERC imposes terms and conditions that the owner or operator of such a resource fails to heed, presumably the resource will not be in compliance with its license or permit. In that event, if operation of the resource impairs the effectiveness of the Administrator's expenditures or actions, or otherwise interferes with the Administrator's obligations to fish and wildlife, BPA will deny access to the Intertie under the terms of this Policy. In that event, the Council's purpose will be served.

Section 1304(a) addresses Federal agency operation and regulation of Federal hydroelectric projects. In exercising its management and operation responsibilities under the Northwest Power Act, BPA is specifically directed to take the Council's Program into account to the fullest extent practicable by section 4(h)(11)(A)(ii) of that Act. Therefore, BPA cannot be required to meet a different standard, consistency with the Program, through Section 1304(a) of the Program. This also is undesirable for the reasons discussed above in this section.

No fish and wildlife representative was willing to identify a resource in the region which he or she felt was operating inconsistently with the Council's Plan or Program. (Michie, BPA, TR 285; Thatcher, NWF, TR 286; cf. Bodi, NMFS, TR 292.) BPA asked one fish and wildlife advocate what would be gained by additional language in the Policy concerning consistency with the Program since BPA funds Program measures and impacts on those measures would be impacts on BPA's expenditures. (Michie, BPA, TR 290.) The NWF responded only that the substantial effect on BPA's efforts might not be coincident with the Fish and Wildlife Program obligations imposed on BPA. (Thatcher, NWF, TR 290.) As BPA has elsewhere pointed out, and as is borne out by the failure to identify any inconsistent resources, the problems to be attributed to resource operation are more apt to be seasonal, occasional or unanticipated. Accordingly, BPA feels little would be gained by adding a standard related to the Council's Program, which, though dynamic in the sense it will be updated biennially, is a document that cannot provide much guidance for unexpected aberrations in resource operation.

It is of course true, as NWF has pointed out, that BPA is not always able to accomplish full implementation of the Council's expectations, particularly in an instance where the cooperation or willingness of a necessary third party is involved. For example, IPC has raised the question of whether BPA would use the Intertie Access Policy as a basis for refusing or conditioning Intertie access on whether IPC would develop a plan for wildlife mitigation associated with one of its projects after BPA had expended funds on identifying wildlife mitigation status as requested in the Council's Program. (Barclay, IPC, letter dated 8/13/84, p. 13.) BPA's Fish and Wildlife Provisions in the Intertie Access Policy are directed at discouraging resource operation which would adversely affect the Administrator's efforts on behalf of fish and wildlife. BPA does not assume that refusal to develop a plan for wildlife mitigation at a hydroelectric project is an element of project operation. The fact that BPA cannot assure full performance of the Council's Fish and Wildlife Program in this instance is an argument in itself for not attempting to do so by means of a consistency standard.

The Council has included proposed language changes with its comments requiring, among other things, consistency with the Council's Fish and

Wildlife Program. NPPC also has included language which would recognize their Fish and Wildlife Program as "applicable law." (Colbo, NPPC, letter dated 8/11/84, attachment 2, p. 3.) Whether the Program has the status of applicable law is beyond the scope of this Policy, or this evaluation. If what the Council seeks with respect to non-Federal resources is a means of enforcing its program in view of FERC's indifference, this is clearly not an appropriate role for BPA. If what the Council seeks is application of a different standard of "consistency" when FERC is bound to take the Fish and Wildlife Program "into account to the fullest extent practicable," this is clearly not what Congress provided.

BPA notes that included in the changes proposed by the Council is the insertion of the words "directly or indirectly" to modify providing access. The draft defines "Indirect access" as transmission by an owner or operator of resources that are inconsistent with the Council's Program, and proposes that the penalty for such "indirect access" or transmission of an inconsistent resource would be reduction in the amount of access accorded that owner. Exactly how one determines whether a resource is or may become inconsistent is not made clear. While the proposed reduction of access may be one appropriate means of enforcing its Policy based on the standard BPA has set, BPA believes that the Council's proposal that access be reduced on the test of consistency is not presently workable, and that its reach is beyond the Council's jurisdiction.

Decision

BPA believes that its Intertie Access Policy is consistent with the Council's Program in so far as it concerns: (1) BPA's implementation of the Council's Water Budget; (2) denying access to an existing Pacific Northwest resource that is not operating in compliance with applicable licenses, permits and law and that is adversely affecting the Administrator's efforts on behalf of fish and wildlife; and (3) providing a means to remedy the operation of existing Pacific Northwest resources that are adversely affecting the Administrator's efforts on behalf of fish and wildlife. After review of all BPA's authorities, and reading them in pari materia, BPA believes that the Fish and Wildlife provisions of the Policy best reconcile and fulfill BPA's statutory directives. BPA does not believe requiring consistency with the Council's Fish and Wildlife Program for non-Federal resources as a condition of Intertie access would provide additional benefits without creating unacceptable uncertainty and ambiguity.

4. Procedural Issues

Issue #1: Summary of Comments

The draft Policy proposed to define "substantial," when referring to "substantially decrease, increase, or interfere," as meaning a change that is significant, and measurable or identifiable. (Draft Policy, p. 22.) The NMFS believes the term "substantially" could be subject to varying interpretations. (Evans, NMFS, letter dated 8/13/84, p. 2.) IPC believes that the language in the Policy is subject to various interpretations, making its application discretionary. (Barclay, IPC, letter dated 8/13/84, p. 1.) The PNUCC has submitted a proposed revision that would change the definition

of "substantial decrease, increase, or interfere" to mean a change that is serious, considerable and measureable. (Hardy, PNUCC, letter dated 8/13/84, attachment 2, p. 6.) According to the PNUCC, the effects of non-Federal projects that BPA seeks to guard against must be substantial before Intertie access is refused. (Hardy, PNUCC, letter dated 8/13/84, p. 6.)

NWF pointed out that the draft Policy used different language in subsections 6(c) and 6(d), and indicated its preference for the language in subsection 6(c). (Thatcher, NWF, letter dated 8/13/84, p. 6.) NWF also suggested that BPA define how it will take the Council's Program into account to the fullest extent practicable. (Thatcher, NWF, TR 278.)

Evaluation of Comments

BPA agrees that its original definition of substantial could be improved, and has done so in the revised Policy. While BPA did not fully accept PNUCC's proposal, BPA believes that its definition addresses PNUCC's concerns. "Substantial" is now defined as a change that is of qualitative significance, of significant measurable effect, or of sufficient magnitude to require remedial action.

NWF has suggested there is a difference in the standards of subsection 6(c) and 6(d) of the draft Policy. (Thatcher, NWF, letter dated 8/13/84, p. 6, TR 282-84.) BPA notes that subsection 6(d) provides for the denial of access for those resources that are both adversely affecting the Administrator's efforts on behalf of fish and wildlife, and also not being operated in compliance with applicable licenses, permits or other applicable law. Section 6(c) in the draft Policy provided means to mitigate adverse effects on the Administrator's efforts on behalf of fish and wildlife for those resources that were presumed to be in compliance with applicable licenses, permits and law. In the Policy as adopted, BPA has provided additional clarity with respect to how an interested person may challenge either the presumption that a resource is being operated in compliance with applicable law, or the presumption that operation of a resource is adversely affecting the Administrator's efforts on behalf of fish and wildlife. The Policy, however, remains unchanged. If NWF's comment on the difference in standards goes to the question of whether or not BPA should rely on a rebuttable presumption, that issue is covered in the discussion immediately below.

Decision

BPA has concluded that a meaningful and workable definition of "substantial" is a change that is of qualitative significance, of significant measurable effect, or of sufficient magnitude to require remedial action. BPA has clarified the language governing presumptions respecting resource operation, and how such presumptions may be challenged, and hopes thereby to have addressed some of NWF's concerns.

Issue #2: Summary of Comments

The draft Policy created a rebuttable presumption that existing resources operated or to be operated consistent with applicable licenses,

permits, and state and Federal laws, are not adversely affecting the Administrator's efforts on behalf of fish and wildlife. The NMFS requests that the Policy clearly state that access only be allowed for projects that comply with Federal and state licenses and laws. (Evans, NMFS, letter dated 8/13/84, pp. 2-3; Bodi, NMFS, TR 293-94.) The NMFS and NWF question BPA's presumption that all hydropower projects are being operated consistent with the Council's Program, and that they are not adversely affecting the Administrator's obligation. (Evans, NMFS, letter dated 8/13/84, pp. 2-3; Bodi, NMFS, TR 292; Thatcher, NWF, letter dated 8/13/84, p. 5; Thatcher, NWF, TR 286.) However, neither was willing to identify any resource for which the presumption should not apply. (Thatcher, NWF, TR 286; Bodi, NMFS, TR 292.) CRITFC believes that administration of presumptive consistency may work a hardship on the agencies and tribes to monitor day-to-day marketing activity. (Wapato, CRITFC, letter dated 8/13/84, p. 1.) IPC has asked that BPA make a determination in advance with respect to a submitted list of existing resources, that those resources can be operated in a manner that will not adversely affect the Administrator's efforts on behalf of fish and wildlife. (Barclay, IPC, letter dated 8/13/84, p. 17.) NMFS suggested a procedure whereby resource owners or operators would apply to the Administrator for such a determination. (Evans, NMFS, letter dated 8/13/84, p. 3; Bodi, NMFS, TR 294.)

Evaluation of Comments

The NWF and NMFS suggests that instead of the presumption, BPA require a certification under oath from the scheduling utility for each project for which access to the Intertie is sought. The scheduling utility would attest not only that any hydropower project is operating consistent with applicable licenses, but also that its operation is consistent with the Council's Fish and Wildlife Program. (Thatcher, NWF, letter dated 8/13/84, p. 5; Thatcher, NWF, TR 280; Evans, NMFS, letter dated 8/13/84, pp. 2-3; Bodi, NMFW, TR 294.) BPA is not the appropriate party to judge FERC provisions, as explained in the discussion above titled BPA's Exercise of Authority. As indicated in the discussion above on Consistency with the Council's Fish and Wildlife Program, BPA is unclear as to what provisions in the Program each existing Pacific Northwest resource should be consistent with, or how that consistency test is to be met. In order for BPA to assess whether a resource would adversely affect the Administrator's efforts on behalf of fish and wildlife, NWF also urges that owners or operators of a resource should be required to provide BPA with a description of the resources' impacts on fish and wildlife. (Thatcher, NWF, letter dated 8/10/84, p. 6.) NMFS asks what information will be required from project operators, how will it be considered, and how will fish and wildlife agencies get to address it. (Bodi, NMFS, TR 295.) NMFS is also concerned that the Policy does not expressly provide for BPA consultation with the fish and wildlife agencies. (Bodi, NMFS, TR 293.) Among the procedures NMFS suggested were provisions that BPA require of scheduling utilities written requests for access, and annual reports of compliance, copies of which would be circulated to fish and wildlife agencies and Indian tribes for comment and consultation. (Evans, NMFS, letter dated 8/13/84, p. 3.)

BPA would point out that requests for assured delivery for firm contracts and requests for hourly allocation pose somewhat different issues when implementing the fish and wildlife provisions of the Intertie Access Policy. In terms of requests for assured delivery of firm contracts, BPA will

be able to identify in advance which existing resources are being sold and absent any information to the contrary, will rely on a presumption that each resource is operating in compliance with law and will not adversely affect the Administrator's efforts on behalf of fish and wildlife. Should any fish and wildlife agency or Indian tribe have in hand information about the adverse effect of operation of any existing resource on the Administrator's efforts on behalf of fish and wildlife, of course that information should be brought to the attention of the Administrator. However, that initial determination is not binding on the agency. It may frequently be the case that adverse effect on the Administrator's efforts will not be identified in advance, nor will such effect be sustained in duration or invariable, but rather seasonal, occasional or unanticipated. (See, Hardy, PNUCC, TR 183.) Accordingly, BPA does not believe a one-time determination, or certification for resources being sold under firm contracts, even with annual review, is the preferred way to effectuate the Policy.

Prospective discovery of resources for which allocation may be sought under Conditions 1, 2, and 3 is not possible on an hour-by-hour basis. The CRITFC has recognized the difficulty in monitoring hourly sales and requests that some kind of monitoring procedure be established to make the Policy meaningful. (Lothrop, CRITFC, TR 287.) For this reason, among others, BPA has added section II.C.6. to the Policy, providing that as a condition of access the Administrator may require a scheduling utility to provide a list of resources that are to be operated or that were operated at such hours as access to the Intertie will be or was provided. When the Administrator believes that operation of a resource, whether under a firm contract or an allocation, may be adversely affecting his efforts on behalf of fish and wildlife, whether upon the challenge of an interested person or upon his own motion, he will have the means to identify whether and when that resource was being operated for transmission on the Intertie. Upon challenge the Administrator will make a determination in view of applicable facts, not only about the resource operation in question but also about the manner in which his expenditures or other actions are adversely affected.

Under the terms of the final Policy, fish and wildlife agencies will be notified of challenges since they are entities responsible for administering applicable law. Fish and wildlife agencies and Indian tribes may also bring challenges as interested persons under the Policy. (See, section 7(d)(e) of the Policy.) Operators will be required to provide any information relevant to a challenge. Detailed procedures will be developed during the pendency of the Neart Term Intertie Access Policy.

Decision

Because all existing resources are well-known or easily identified, BPA has elected to use the rebuttable presumption that resources are being operated in compliance with applicable law and are not adversely affecting the Administrator's efforts on behalf of fish and wildlife. With respect to allocation under Conditions 1, 2, and 3, and actual operation under assured delivery of firm contracts, the device is buttressed by the ability of the Administrator to discover actual resource operation at any time under either assured delivery or allocation procedures. For firm contracts, initial review will include consideration of specified resources proposed for sale and transmission over the Intertie.

Because BPA has elected to use the device of presumption, and not require precertification for the reasons stated above, BPA has not used the procedures for predetermination suggested by NMFS, which included a 30-day comment and consultation period for fish and wildlife agencies and Indian tribes and an annual report to demonstrate continuing compliance. (Evans, NMFS, letter dated 8/13/84, p. 3.) Similarly, BPA is not making a predetermination, as requested by ICP, that the 14 hydroprojects and 3 thermal projects submitted by Idaho Power Company would not decrease the effectiveness of BPA's Fish and Wildlife Program, increase the need for additional expenditures to protect, mitigate, or enhance fish and wildlife, or otherwise interfere with the obligations of the Administrator to protect, mitigate, and enhance fish and wildlife. (Barclay, IPC, letter dated 8/13/84, p. 17, Appendix A.)

Issue #3: Summary of Comments

PNUCC asks that BPA assure at least minimum due process in making the determinations called for in the proposed Policy. (Hardy, PNUCC, letter dated 8/13/84, pp. 6-7.) PNUCC requests an informal adjudicatory proceeding under 5 U.S.C. §558(c) with written decision, based on the record and subject to review on the arbitrary and capricious standard.

Evaluation of Comments

Existing resources are covered by the presumption the Policy retains that their operation does not adversely impact fish and wildlife resources. The Policy is now clear that those resources are also presumed to be operating in compliance with applicable licenses and laws. Any challenge to this latter presumption must be brought before the applicable governmental entity. Any challenge to the former presumption must be brought to the Administrator, in writing, with notice to the owner or operator of the resource and responsible governmental agencies. BPA also will accept public comment. After an opportunity to be heard, BPA will make a determination in writing.

PNUCC argues for an adjudicatory hearing under 5 U.S.C. §558(C), characterizing the granting of Intertie access as equivalent to the grant of a license. Section 558(c) provides that when a license is applied for, an agency will set the matter for hearing conducted in accord with sections 556 and 557 of the Administrative Procedures Act (APA) or other applicable law. Final actions by the Administrator are not subject to the hearing requirements of sections 556 and 557 of the APA. (See, Northwest Power Act, section 9 (e)(2).) No other law requires adjudicatory hearings in this matter. Use of the Federal share of the Intertie is handled as a matter of disposal of Federal property. (See, the above section on BPA's Exercise of Authority.) Such disposals are not subject to the same due process standard as the granting of licenses. An adjudicatory hearing is not required.

Decision

If any challenge is raised concerning the effects of the operation of an energy resource on BPA fish and wildlife efforts, in appropriate cases BPA will provide resource owners and operators, interested persons and the public with an opportunity to be heard regarding that effect. The challenge shall be

made in writing. The determination shall be put in writing. BPA will develop more detailed procedures through notice and comment during the pendency of the Near Term Policy.

5. Consistency and the "Off-Site" Mitigation Provision

Issue #1: Summary of Comments

In draft Policy section 6(c)(2), now section 7(e)(2) of the Policy, BPA provides that the owner or operator of a resources the operation of which adversely affects fish and wildlife resources in a manner described in section II.C.(3)(c), may make expenditures or take other actions offsite to offset the adverse effect. NMFS and NWF object to the provision on the grounds that it may permit offset expenditures or hatchery compensation. (Evans, NMFS, letter dated 8/13/84, p. 1; Thatcher, NWF, letter dated 8/13/184, p. 6; Thatcher, NWF, TR 281-282.) NMFS and CRITFC fear it might allow actions not consistent with the Council's Program (Bodi, NMFS, TR 292; Lothrop, CRITFC, TR 296), and CRITFC is concerned that such mitigation be consistent with the legal rights of appropriate Indian tribes. (Wapato, CRITFC, letter dated 8/13/84, p. 1.) Both NWF and NPPC propose the section be deleted, the Council averring that it would allow project operators and owners of existing resources to undermine or avoid compliance with the Council's Fish and Wildlife Program. (Thatcher, NWF, letter dated 8/13/84, p. ; Colbo, NPPC, letter dated 8/11/84, pp. 2-3,; attachment 2, p. 3.)

Evaluation of Comments

CRITFC asserts that implementation of this section should not permit a course of action that conflicts with the Council's Fish and Wildlife Program. (Wapato, CRITFC, letter dated 8/13/84, p. 1; Lothrop, CRITFC, TR 296.) NMFS interprets the section to permit "offset expenditures" in lieu of compliance. (Evans, NMFS, letter dated 8/13/84, p. 1.) NWF asserts that the section, as written, should be dropped for fear that it provides for payment or hatchery compensation in lieu of protection, mitigation, or enhancement at a particular project. (Thatcher, NWF, letter dated 8/13/84, p. 6.) The Northwest Power Planning Council also proposes that the section be deleted. (Colbo, NPPC, letter dated 8/11/84, p.2 ; attachment 2, p. 3.)

BPA had intended, when it is not legally or practically possible for the owner or operator to modify the operation of the resource to assure that it will not have an adverse effect, to negotiate an agreement to undertake "off-site enhancement" in lieu of mitigation at site. This would be done in a manner comparable to that provided in section 4(h)(8)(a) of the Northwest Power Act. The NPPC alleges that the Policy would allow operators or owners to undermine or avoid compliance with their Fish and Wildlife Program, citing sections 106, 701, 703, and 704(g) of the Program. The NPPC also asserts that the BPA proposal represents a BPA attempt to make de facto amendments to the Program without a public process and Council approval. (Colbo, NPPC, letter dated 8/11/84, p. 2.)

BPA continues to believe that even when a resource is in compliance with licenses, permits and applicable law, but onsite mitigation for resource operations that adversely affects fish and wildlife is not possible, the owner

or operator should take affirmative action to decrease the obligation of the Administrator to make expenditures or take other actions to protect, mitigate, or enhance fish and wildlife. NWF has urged that BPA seek ways to assure the Council that the Council's Program will guide BPA in its actions with respect to fish and wildlife. (Thatcher, NWF, letter dated 8/13/84, pp. 2-4.) BPA has no intent to unilaterally amend the Council's Fish and Wildlife Program, nor to undermine Sections 106, 701, 703, 704(g) or any other sections of the Council's Program. BPA believes the Council's Program is a comprehensive remedial program for fish and wildlife resources in the Pacific Northwest.

Decision

BPA has included an amended section 7(e)(2) in the Policy as adopted, to provide that expenditures or other actions agreed to by the owner or operator of the resource must not be inconsistent with the Council's Fish and Wildlife Program. The "not inconsistent" standard was selected because it is unlikely that the Council's Program, or any program, could anticipate and define all applicable off-site mitigation measures for existing resources that are operated in compliance with licenses, permits and other applicable law, the operation of which the Administrator might determine would adversely affect fish and wildlife resources. In such circumstances a consistency standard would be meaningless, and arguably might excuse the owner or operator of responsibility for mitigative expenditures or actions.

6. Consistency With Tribal Rights

Issue #1: Summary of Comments

Evergreen Legal Service (ELS) has expressed concern that the Policy adequately protect treaty reserved fish and wildlife resources from developments inconsistent with the Northwest Power Act and Plan, particularly with the statements in Appendix E thereof related to treaty rights. (Thaler, ELS, letters dated 7/29/83 and 7/27/84.) The CRITFC argues that Section (6)(c)(2) "mitigation" must be consistent with the legal rights of the appropriate Indian tribes. (Wapato, CRITFC, letter dated 8/13/84, p. 1.)

Evaluation of Comments

It is FERC's role to make the provisions of Appendix E directly applicable to resource development. BPA recognizes that Indian treaties are part of the supreme law of the land, and as such are among the duties imposed upon BPA. (See, above discussion on Authority of Bonneville Power Administrator.) These rights, however, do not depend for their existence upon special recognition in this Policy.

Decision

BPA has reasonably concluded that it should not add a provision to the Policy that Appendix E is applicable law. However, BPA notes that section 10(h) of the Northwest Power Act contains a savings clause with respect to treaty rights.

7. Relationship of Intertie Access Policy to the Water Budget

Issue #1: Summary of Comments

IPC has raised a number of questions respecting the Fish and Wildlife Provisions in the draft Intertie Access Policy. Central to their concern is inquiry respecting the meaning of phrases used in the introductory material: "BPA's Fish and Wildlife Program" and "the Administrator's Fish and Wildlife Program." In addition to other issues addressed elsewhere in this Record of Decision, IPC particularly is concerned that the provisions of the Policy not interfere with action BPA might take to compensate IPC in kind for energy lost as a result of water releases from Brownlee Reservoir to satisfy the Water Budget.

Evaluation of Comments

BPA agrees that the phrases "BPA Fish and Wildlife Program" and "the Administrator's Fish and Wildlife Program" are importune; they should have read instead "the Administrator's efforts on behalf of fish and wildlife." That introductory material, however, has been edited and shortened in the interim Near Term Policy now promulgated and neither phrase appears. Accordingly, those concerns of IPC which were premised on BPA having adopted either the Council's Program or some other program are unfounded.

Under the terms of the NPPC's Fish and Wildlife Program, IPC participation in the Water Budget is discretionary, the Council having acknowledged the IPC position that IPC through its settlement agreement and FERC license has compensated for all adverse effects of its projects on fish. The NPPC calls upon BPA to replace the loss in kind if IPC experiences a power loss as a result of participating in the Water Budget, and it is determined that the need for water from Brownlee Reservoir is not attributable to the development and operation of IPC's Hells Canyon Complex.

IPC is correct in stating that BPA has indicated that it will negotiate a contract to replace in kind the generation IPC might lose as a result of participating in the Water Budget. IPC is not correct, however, in stating that "BPA has apparently made a determination that ". . . the need for water from Brownlee Reservoir is not attributable to the development and operation of Idaho Power's Hells Canyon Complex . . .". (Barclay, IPC, letter dated 8/13/84, p. 11.) BPA stated in its letter of February 6, 1984, transmitting a draft interim contract to IPC which might have governed the operating year 1983-84, that such a determination prospectively would necessarily await completion of BPA's Policy on compensation for power losses and other costs incurred if other Federal agencies impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of a project. BPA's Compensation Policy will cover BPA's obligations under section 4(h)(11)(A), where another Federal agency has imposed such measures, and not BPA's undertakings pursuant to section 4(h)(10)(A) to compensate IPC in kind. However, after adoption of the Compensation Policy, the standards BPA will apply in determining the extent of the Administrator's obligation are expected to be similar.

BPA extended a draft interim contract prior to operating year 1982-83, and this last year, pending completion of Compensation Policy development, in order that IPC not withhold participation in the Water Budget if the need arose. In fact, in neither operating years 1982-83 or 1983-84 has such participation been required. Accordingly, no contract has been executed by BPA and IPC.

IPC now posits that under the terms of the Intertie Access Policy, BPA might condition Intertie access on IPC participation in the Water Budget without compensation from BPA, and suggests that if that is the case, IPC would consider withdrawing from Water Budget participation. (Barclay, IPC, letter dated 8/13/84, pp. 9-12.) With respect to BPA's repayment in kind to IPC for Water Budget participation, BPA is exercising authorities, other than expenditure authorities, under section 4(h)(10)(A) of the Northwest Power Act. The manner and cost of repayment is subject to BPA's determination that the need for water from Brownlee is not attributable to the development and operation of IPC's Hells Canyon Complex, and pursuant to standards comparable to those established under the Compensation Policy, BPA might conclude that not all power lost by IPC in some future year would be compensable. However, such a conclusion would be reached independently of the Intertie Access Policy.

BPA does not consider the Fish and Wildlife Provisions in its Intertie Access Policy as a means to avoid other obligations it may already have acknowledged to protect, mitigate, and enhance fish and wildlife. The Policy as written speaks to instances where scheduling of energy will result in the operation of resources, under either a firm contract or an allocation, which adversely affects the Administrator's efforts on behalf of fish and wildlife. IPC may determine the extent and duration of their Water Budget participation, and whether Brownlee is run to serve regional or extraregional load. Shou'd IPC seek an allocation to transmit energy from Brownlee over the Intertie, BPA would likely examine that action, if at all, after the fact and pursuant to a request from the Administrator that IPC disclose what resource had been run at a particular hour. Should the Brownlee operation be challenged, it would be challenged in terms of how its operation adversely affected the Administrator's efforts on behalf of fish and wildlife. BPA's control of access to the Intertie should not influence the amount of water made available by IPC for use in meeting the Water Budget. As a result repayment is not conditioned by access to the Intertie.

Decision

Repayment to IPC for participation in the Water Budget and implementation of the fish and wildlife provisions of the Near Term Intertie Access Policy are not inconsistent.

8. Resources Other Than Existing Resources

Issue #1: Summary of Comments

Most of the comment BPA received concerning fish and wildlife during the early stages of Intertie Access Policy development had to do with the relationship of the Policy to new resource development. Fish and wildlife agencies and advocates were primarily concerned about proposed new small

hydroelectric developments, literally hundreds (by one account, over 1000) of which are under consideration by FERC at the present time. (Thatcher, NWF, comments dated 3/14/84, pp. 6-9; Wapato, CRITFC, letter dated 3/16/84, p. 1.) The NPPC was concerned that FERC might not deal with those proposals in a manner consistent with the Council's Energy Plan, and collaterally with its Fish and Wildlife Program. (Colbo, NPPC, letter dated 3/16/84, pp. 1-2.) Fish and wildlife interests and Indian tribes saw conditioning Intertie access on consistency with the Council's Plan and Program as a means to make sure that in the licensing process so-called "dirty" hydro proposals would be seen as less readily marketable than other resources. (Wapato, CRITFC, letter dated 3/16/84, pp. 1-2.)

The NPPC alleges that BPA is acting inconsistently with its Fish and Wildlife Program in treating new resources more strictly than existing resources. (Colbo, NPPC, letter dated 8/13/84, p. 2.) IPC believes that this portion of the provision runs counter not only to the Northwest Power Act, but also to PURPA. (Barclay, IPC, letter dated 8/13/84, p. 14.) WWP believes BPA should delete provisions on fish and wildlife, and participate in licensing of new resources to assure their compliance with the Council's fish and wildlife provisions. (Bryan, WWP, letter dated 8/9/84, p. 1.) On the other hand, Seattle City Light urges that Intertie access for new resources should be conditioned on the Northwest Power Act and the Council's Fish and Wildlife Program. (Saven, SCL, letter dated 8/13/84, p. 3.) The NCAC believes that requiring utilities to be consistent with the Council's Plan is the only way to insure that utilities will not develop inconsistent resources (unless required by a regulatory body, i.e., PURPA) and free up existing resources for resale. (Stearns, NCAC, letter dated 8/9/84, p. 2.)

NWF also is concerned with what they call the laundering problem, that is, that new resources that might adversely affect fish and wildlife not be constructed to serve regional loads while other existing resources are sold on the Intertie. (Thatcher, NWF, TR 266.) They indicate that any anti-laundering provision should apply to resources that do not meet the definition of "existing resources". (Thatcher, NWF, letter dated 8/10/84, p. 2.) This issue is also discussed in the section titled Existing Resources. ELS calls for BPA to make explicit that Appendix E of the Council's Energy Plan is "applicable law." (Thaler, ELS, letter dated 7/27/84, p. 1.) The NWF concedes, however, that the lack of access for new resources appears to eliminate NWF's concern with respect to consistency of BPA efforts with the Council's Plan. (Thatcher, NWF, TR 286.)

The issue on consistency with the Council's Energy Plan was much diluted when BPA determined to develop an interim Near Term Intertie Access Policy to be implemented on a 6-month basis, preparatory to concluding on a Near Term Intertie Access Policy applicable for the 18 months thereafter, and to separately develop a Long Term Intertie Access Policy. The draft Near Term Intertie Access Policy, however, defined existing resources as including not only those operating, but also those contemplated within existing planning documents. To address partially the concerns evidenced it also provided in subsection 6(a) prospective guidance that BPA would not provide Intertie access in the future to resources the operation of which would adversely affect the Administrator's efforts on behalf of fish and wildlife.

Evaluation of Comments

NPPC believes that BPA establishes an inappropriate dual standard, treating new resources more strictly than existing resources. They allege this is inconsistent with the Council's Fish and Wildlife Program. (Colbo, NPPC, letter dated 8/13/84, p. 2.) BPA has failed to find in the Program any guarantee that new resources in the Pacific Northwest should not be held to a stricter standard than old. Indeed, it would appear that those constructed after the passage of the Northwest Power Act, either by application of section 4(h)(11)(A) or subsection 4(e)(2) might be held to a higher standard. BPA believes this to have been the intent of Congress in passing the Northwest Power Act, and would be dismayed if previous mistakes respecting hydro development and fish, were repeated in the future under the Council's plan.

BPA, again in the Policy as adopted, has provided guidance that any resource not covered by the Near Term Policy will not be accorded access if its construction or operation will adversely affect the Administrator's efforts on behalf of fish and wildlife. BPA recognizes that providing for unequivocal denial of Intertie access for resources that adversely affect the Administrator's efforts on behalf of fish and wildlife is a stricter standard than that accorded existing resources. Announcement of the standard at this point puts not only utilities and resource developers, but also applicable regulatory authorities on notice that the marketability of a prospective resource may be impaired if the construction or operation of that resource will interfere with the Administrator's efforts on behalf of fish and wildlife. It is, after all, in the interest of all in the Region that BPA's expenditures and other actions on behalf of fish and wildlife achieve optimum effectiveness. The NWF advocated including a clear statement that no access will be assured for new generating resources. (Thatcher, NWF, TR 277.) BPA now has modified that definition of Existing Pacific Northwest Resources to include only resources operational on the effective date of the Policy.

WWP has suggested that BPA should instead concentrate its efforts on assuring compliance with the Regional Council's fish and wildlife provisions through participation in the licensing of new resources. (Bryan, WWP, letter dated 8/9/84, p. 1.) BPA assumes that FERC, in the licensing of new resources, will take the Council's Fish and Wildlife Program into account to the fullest extent practicable, as it is required to do under the terms of section 4(h)(11)(A) of the Northwest Power Act, and that the Council will be its own advocate for consistency. However, to the extent that BPA has relevant information on the effect of a proposed resource on fish and wildlife, the need for such a resource, or the marketability of such a resource, BPA will consider participating in FERC proceedings.

Both NCAC and NWF are concerned that provision of Intertie Access not offer a vehicle whereby a scheduling utility may displace and sell to California benign resources not harmful to fish and wildlife after developing new resources that adversely affect fish and wildlife, or are otherwise not in compliance with the Council's Energy Plan. (Stearns, NCAC, letter dated 8/9/84, p. 2; Thatcher, NWF, letter dated 8/10/84, p. 2.) (See, Section D. 4., Enforcement.) BPA concedes the possibility that this may occur, especially in the case of hourly allocation of the Intertie under Conditions 1, 2, and 3, when BPA will not have advance knowledge of which resources a scheduling utility intends to run for transmission to the

Southwest. BPA has included in its Near Term Intertie Access Policy a provision whereby it may discover which resources are being used to generate power flowing to the Intertie. However, BPA does not believe that its authorities go to denying access to a scheduling utility for power from all of its resources, if FERC has allowed one to be constructed that is not in compliance with the Council's Energy Plan. BPA's role is not to reconcile FERC's licensing and the Council's Plan. However, if that new resource would also adversely affect the Administrator's efforts on behalf of fish and wildlife, prospectively it may be denied Intertie access by BPA.

Appendix E of the Council's Energy Plan, in the main, is drawn from Section 1200 of the Council's Fish and Wildlife Program. It is a list of terms and conditions designed to assure that fish and wildlife considerations are taken into account in the development of new hydroelectric resources. Whether that list has the status of applicable law is beyond the scope of this policy, or this evaluation. FERC has authority to make those terms and conditions applicable to new hydroelectric development.

Decision

BPA believes that it is reasonable and appropriate to include within the interim Near Term Intertie Access Policy notice of its intent to deny access to the Intertie to resources not in existence on the effective date of this Policy which would adversely affect the Administrator's efforts on behalf of fish and wildlife. For this decision, BPA relies upon the same authorities and rationale set forth in the discussions on BPA Authority and BPA Exercise of Its Authority above.

IV. Assured Delivery and Formula Allocation Methods

A. Available Capacity

1. Net Scheduling

Issue #1: Summary of Comments

BPA's proposal defined Intertie capacity as the capacity of the Intertie facilities controlled by BPA increased by the amount of obligation energy deliveries under capacity and capacity/exchange contracts with the Southwest. LADWP called this an artificial increase of Intertie capacity. (Cotton, LADWP, letter of 8/13/84, p. 5)

Evaluation of Comments

BPA's intent was to define Intertie capacity in such a way as to include all opportunities for contractual delivery over such facilities, including amounts that contractually flow from south to north as do obligation energy deliveries. There is an ongoing dispute between BPA and California utilities regarding the delivery terms for obligation energy pursuant to existing contracts.

LADWP's objection was based on two grounds: first, LADWP disputes BPA's contract right to require obligation energy to be delivered at the border points of delivery; and second, LADWP disapproves of the practice of net scheduling of the commercial transactions using transmission facilities. (Cotton, LADWP, letter of 8/13/84, p. 5.)

Net scheduling is the practice of netting the sum of all contractual schedules coming into a control area against the sum of all contractual schedules going from that control area to another. This net schedule must not exceed the rated scheduling capacity of transmission facilities in service between the two control areas. The Western Systems Coordinating Council and the Northwest Power Pool both subscribe to this standard indicating that it is within the concept of prudent utility practice and, further, it is included in the recommended minimum operating reliability criteria of these organizations. This practice achieves the most cost-effective use of transmission facilities. If net scheduling were not used, the total of contractual transactions that could be accommodated using the transmission facilities would be less.

Decision

The definition of Intertie capacity subject to allocation under this policy will reflect the prudent utility practice of net scheduling the interchange between control areas. The definition, however, has been modified to indicate that Intertie capacity may be decreased by loop flow, outages, and other factors that reduce transmission capacity from north to south.

2. Relationship to PGE Ownership

Issue #1: Summary of Comments

PGE requested that BPA confirm that (1) BPA's proposed policy applies only to BPA's ownership and rights in the Intertie, and (2) that PGE will be entitled to access onto BPA's Intertie share under BPA's policy in the same manner as other Northwest utilities (Bredemeier, PGE, letter dated 8/13/84, p. 1.). WPSC recommended that BPA make a final settlement as to the access rights of owning utilities before the Policy is finalized, and that each utility should have the right to control its share. (Jacqnot, WPSC, letter dated 8/8/84, p. 1.)

Evaluation of Comments

As explained at the Public Comment Forums of July 24 and 25, 1984, BPA's Intertie Access Policy applies only to BPA's Intertie ownership and rights of use. All written materials concerning the Policy have also explicitly stated this restricted application.

Under the PGE Intertie Agreement (BPA Contract No. 14-03-55063) BPA does have the right to use PGE's AC-Intertie capacity for transmission whenever PGE is not using such capacity for itself or others. PGE's use clearly has precedence. However, when PGE is not using its capacity, BPA will be applying the Intertie Access Policy to schedules which may flow over part of PGE's capacity.

When BPA issued its Notice of Intent to Develop an Intertie Access Policy, it included a statement that PGE's Intertie rights are currently in dispute and are being negotiated. There are no other negotiations concerning disputed Intertie rights underway with any other utility with an Intertie ownership right. Negotiations with PGE may be concluded and an agreement executed after BPA's Near Term Intertie Access Policy goes into effect. Such agreement will not in any way change BPA's policy; however, in settling disputed Intertie rights, this agreement could slightly effect the amount of Intertie capacity available for BPA's use.

PGE will be entitled to access to BPA's Intertie capacity on the same basis as other Pacific Northwest utilities after it makes full use of its own AC-Intertie capacity and its existing contract rights to utilize BPA's Intertie capacity.

Decision

No change in the Policy is required to confirm that it only applies to BPA's ownership and rights, and that PGE will be entitled to access on BPA's share of the Intertie after PGE makes full use of its own AC Intertie capacity.

B. Assured Delivery for Firm Contracts

1. Criteria

Introduction

In addition to meeting the conditions for Intertie Access that a firm contract must satisfy in order to be assured delivery, the proposed Policy listed a number of qualifying factors: (1) term of not less than 1 year; (2) take or pay obligation; (3) delivery of power not subject to displacement by the purchaser; (4) provision for sale of resources in excess of the Pacific Northwest supplier's other firm obligations, determined pursuant to the Coordination Agreement or similar planning criteria; and (5) obligation energy delivery consistent with BPA practices. In addition, a general statement was included concerning "firm hourly schedules" as being characteristic of a firm power sale. BPA's intent was to avoid providing assured delivery for a contract that was merely an advanced arrangement to sell nonfirm power.

Some commenters were in favor of BPA's intent to exclude nonfirm sales transactions from assured access. (Bredemeier, PGE, letter dated 8/13/84, p. 2; Boucher, PP&L, letter dated 8/13/84, p. 1; Schultz, ICP, letter dated 8/10/84, pp. 6-7.) Western also suggested what they believe is a truer test of firmness to recognize capability contracts. (Coleman, WAPA, letter dated 8/13/84, p. 4.)

BPA recognized that the question of assured delivery for firm contracts was one of the most troublesome issues in the proposal and scheduled an additional public meeting to discuss the issue. (Jones, BPA, TR 212.) The ICP realized that the problem was to make sure that the sales were truly firm. The ICP stated that there was two approaches to eligibility: (1) test the nature of the contract, or (2) test the ability of the supplying utility to provide firm power. They strongly recommend the first approach. (Schultz, ICP, letter dated 8/10/84, p. 6-7.)

The proposed Intertie Access Policy determined eligibility by testing the nature of the contract. Even in the proposal, however, a utility still had to have a monthly average firm surplus to qualify for assured delivery. BPA was unable to develop contract criteria that would not unduly burden innovative sales and still provide the assurance that the firm sale would not simply be an advanced arrangement to sell nonfirm.

BPA then considered assured deliveries up to the amount of an utility's annual average firm surplus whether or not the utility had a firm sales contract. However, such a policy would have unduly advantaged utilities with firm surplus over utilities that depend on the Intertie for nonfirm sales.

Finally, BPA arrived at a compromise that would provide assured delivery up to the amount of a utility's average annual firm surplus providing the utility had a firm sales contract. By limiting the amount that would be provided assured delivery, BPA was able to reduce the criteria to a minimum. The compromise assumed some shaping into the months of August through December.

BPA intends to watch the operation of the assured delivery feature of the contract carefully. Comments will be solicited during the next 6 months and the issue will be revisited before the final Near Term Intertie Access Policy is adopted.

Issue #1: Summary of Comments

Many comments addressed the question of the term of a firm contract. The ICP suggested as an alternative that any contract whose term is at least one year and is effected on an unconditional basis prior to any operating year, should qualify as "firm" for that year. (Schultz, ICP, letter dated 8/10/84, p. 7) Other comments were that the qualifying factors should not preclude capacity sales or exchanges, which may only require seasonal deliveries. (Bryan, WWP, letter dated 8/9/84, p. 1; O'Banion, SMUD, letter dated 8/13/84, pp. 3 and 5; Saven, SCL, letter dated 8/13/84, p. 2; Pugh, NCPPA, letter dated 8/13/84, p. 3.) Arrangements for periods of less than a year may be firm to some utilities. (Coleman, WAPA, letter dated 8/13/84, p. 3; Saven, SCL, letter dated 8/13/84, p. 2; Niggli, SDG&E, letter dated 8/13/84, p. 2.) SCE commented that the 1-year term requirement would appear to have disqualified for assured delivery a shorter term sale such as the Olympic Clean Air sale offered by BPA this year and rejected by all California utilities. (Myers, SCE, letter dated 8/13/84, p. 17.) SMUD indicated that bilateral firm arrangements with BPA and other Pacific Northwest utilities should not be foreclosed. (O'Banion, SMUD, letter dated 8/10/84, p. 4.)

Evaluation of Comments

Comments revealed that the meaning of the word "firm" in the utility industry is variable. Comments indicated that term of the contract may also be less important than provisions for delivery during parts of the year. BPA agrees that a requirement for a minimum 1-year term is not a good way to distinguish firm from nonfirm arrangements, since nonfirm sales arrangements may have terms in excess of 1 year.

Decision

Term of contract will not be included as a factor for qualifying firm contracts. This will allow flexibility for BPA to consider arrangements that utilities feel firm even though the term is less than 1 year. This also will avoid the possibility that a 1 year term could be specified while deliveries are restricted in such a way that the transaction is actually short term. BPA intends to avoid setting factors that could be confusingly represented in an agreement, making the process of qualification onerous and uncertain.

Issue #2: Summary of Comments

Some utilities felt that a take or pay criterion for firm contracts should not be required. Western claims this could preclude flexible negotiation of arrangements which are not totally take or pay. (Coleman, WAPA, letter dated 8/13/84, p. 3.) SDG&E believes take or pay provisions are not desirable because the supplier generally incurs no variable costs in event of curtailment or displacement. (Niggli, SDG&E, letter dated 8/13/84, p. 2.)

However, PP&L said that BPA's criteria must recognize minimum take or pay provisions. (Boucher, PP&L, letter dated 8/13/84, p. 2.)

Evaluation of Comments

BPA's intent in including the take or pay requirement was to avoid giving the advantage of assured delivery for an advance arrangement to sell nonfirm power. The mutual obligation to buy and sell is critical to this factor. BPA feels this must remain as a criterion. The comments by Western (Coleman, WAPA, letter dated 8/13/84, p. 3) and SDG&E (Niggli, SDG&E, letter dated 8/13/84, p. 2) state the buyer's preference for flexibility. They do not argue against the fairness of reserving assured delivery for sales with an mutual obligation, which is BPA's intent. The proposal was clarified by BPA in the August 24 Public Comment Forum. (Griffin, BPA, TR 104.) Assured delivery may be granted for schedules under a firm contract to the extent that such schedules meet the criteria, which should satisfy some concerns. The contract may provide for nonfirm sales in addition to some amount that is firm. This does not disqualify the schedules for delivery of firm power under that contract. PP&L recognized the significance of a minimum take or pay provision in its comment, as cited above.

Decision

Assured delivery may be provided for a contract to the extent the contract provides that the amount of power to be delivered, the price, and the terms for delivery are specified in a manner that assures that the contract is delivering firm power and is not merely an advance arrangement to sell nonfirm energy. Sales that do not qualify for assured deliveries must be made within the utility's Condition 2, or Condition 3.

Issue #3: Summary of Comments

BPA proposed that a contract would only qualify for assured delivery to the extent that the purchaser could not displace it with other power. Several commenters felt some displacement should not disqualify a contract for assured delivery. Interruptibility based on economic considerations, such as utilization of California hydro, or to meet minimum generation requirements are possible features of firm contracts. NP&P also suggested that only displacement with "nonfirm" power be prohibited. (Canon, ICNU, letter dated 8/13/84, p. 2; Boner, NP&P, letter dated 8/7/84, p. 2.) SDG&E felt that BPA's prohibition of displacement ignored BPA's own rate practices and standard utility practices. (Niggli, SDG&E, letter dated 8/13/84, p. 2.)

Evaluation of Comments

If the purchaser is allowed complete discretion to substitute other purchases and not compensate the original "firm" seller, BPA does not feel that the original sales contract should be classified as firm. This instead becomes an advance arrangement to buy or sell nonfirm energy when it is available. This also is related to the take or pay obligation discussed above. The provision is not intended to prevent economic displacement by the supplier, as some commenters suggested. (Canon, ICNU, letter dated 8/13/84, p. 2; Boner, NP&P, letter dated 8/7/84, p. 2.) BPA, as a supplier, will take

advantage of economic displacement, as do other suppliers. However, it must be noted that economic displacement of a resource usually is the right of the seller rather than a right of the buyer. However, the seller may still be committed to deliver firm energy to the buyer at a stated price. If the buyer has the right to displace the contract with lower priced nonfirm energy when it is available, then the contract may simply be an advanced arrangement to make nonfirm sales. In that case it would not be equitable to assure delivery of that contract ahead of other utilities selling nonfirm energy as economy energy.

Decision

BPA has removed displacement as an absolute factor required to qualify for assured delivery. However, BPA will consider the extent to which a contract provides the buyer with the right to displace purchases under the contract with nonfirm energy.

Issue #4: Summary of Comments

The proposed policy provided that the surplus to be sold be determined as indicated in the Coordination Agreement. The IPC was concerned that this should not be interpreted to require conformance with Coordination Agreement methodology by nonparties. (Barclay, IPC, letter dated 8/13/84, p. 1.)

Evaluation of Comments

At the August 27 public comment forum, BPA requested comment on other means for determining a utility's firm surplus, for use as an upper limit on assured delivery. BPA specifically requested comments on the suggestion that BPA could provide assured delivery for an amount of power up to a utilities average annual firm surplus provided the utility had made a sale of firm power over the Intertie. (Jones, BPA, TR 237.) There was general consensus that it was not appropriate to use data from the Coordination Agreement to determine the average annual firm surplus. (Smith, Cowlitz, TR 243; Nelson, SCL, TR 251; Durocher, DSI, TR 252.) There was support for using PNUCC long term planning documents. (Durocher, DSI, TR 252; Nelson, SCL, TR 253.)

BPA recognizes that it is the practice of many utilities with firm surplus to shape the surplus into the period of the year from August through December. Basing assured delivery on average annual firm surplus would deprive utililties of the advantages from that practice. Therefore, BPA considered increasing the amount of the firm surplus that could be provided assured delivery in those months. (Jones, BPA, TR 242.) This had the additional advantage that it facilitated the sale of firm surplus during the time when it was of most value to California utilities. Further, it tended to make more Intertie capacity available for nonfirm energy sales during the remainder of the year.

Decision

Assured delivery will be based on the Average Firm Surplus listed in of Exhibit B of the Policy. This exhibit is developed from PNUCC planning data and BPA's load forecast. During the months of August through December, the

Average Firm Surplus will be increased by a factor of 1.8, except that during the months of November and December no increase will be allowed when the Exportable Agreement is in effect.

Issue #5: Summary of Comments

Western pointed out that firm hourly schedules do not apply only to sale of firm power. (Coleman, WAPA, letter dated 8/13/84, p. 4.)

Evaluation of Comments

BPA agrees with Western's comment that a nonfirm sale can be "firm" on a given hour. BPA is not proposing to use its discussion about hourly schedules as a criterion to determine whether a contract qualifies as firm.

Decision

Firm hourly schedule will not be used as a criterion.

2. Return of Obligation Energy

Issue #1: Summary of Comments

The proposed Policy stated that replacement of firm capacity or deliveries of exchange energy under new firm sales contracts were to be delivered to the point of BPA's interconnection on BPA's system either at the California-Oregon border (COB) or the Nevada-Oregon border (NOB). A few commenters believe that to require such deliveries to COB-NOB is unacceptable and not justified. (Bryan, WWP, letter dated 8/9/84, p. 2; Myers, SCE, letter dated 8/13/84, p. 22; Cotton, LADWP, letter dated 8/13/84, p. 5; Schultz, ICP, letter dated 8/10/84, p. 7; Niggli, SDG&E, letter dated 8/13/84, p. 2.)

WWP believes that such a requirement is a charge for double wheeling. (Bryan, WWP, letter dated 8/9/84, p. 2.) Some parties claim that BPA is assessing a charge without rendering a service or charging for transmission losses that are not actual losses. (Myers, SCE, letter dated 8/13/84, p. 22; Niggli, letter dated 8/13/84, p. 2.)

Evaluation of Comments

BPA's intent in requiring new contracts to replace firm capacity or deliver exchange energy at COB-NOB was to avoid providing assured delivery for a contract that was merely an advance arrangement for the sale of nonfirm energy. However, this issue may not be pertinent at this time, since it appears that capacity/energy exchange contracts may not be the highest and best use of an Intertie that is fully loaded with surplus power and energy sales. BPA will study and encourage further comment on this issue during the next 6 months.

Decision

BPA will not require, as a condition of Intertie access, that COB/NOB be used as the point of delivery for returning obligation energy. BPA will, however, continue to specify its points of delivery in accordance with its contract rights.

3. Wheeling Charges

Issue #1: Summary of Comments

In the proposed Near Term Intertie Access Policy, BPA did not specifically address wheeling charges over the Intertie. During the hearing, PP&L requested clarification as to BPA's intent in the 1985 rate case as to modification of BPA's existing wheeling rate schedule to recognize deliveries which have been allocated space on the Intertie. (Boucher, PP&L, TR 134.) Specifically, PP&L inquired whether BPA will implement a capacity charge on allocations for assured deliveries. A similar question was posed during the hearing by LADWP as to whether a wheeling charge would be implemented for a Pacific Northwest utility receiving an allocation of the Intertie, but that does not physically wheel. (Whitney, LADWP, TR 207.)

PP&L also urged BPA to implement a cost-based firm capacity wheeling rate for firm Intertie capacity allocations to recognize the superior class of service associated with firm access. (Boucher, PP&L, letter dated 8/13/84, p. 2.) A similar comment was made by the ICP. The ICP said that a demand only rate should be implemented for firm transactions to remove some of the incentive for utilities to get a priority for what are really nonfirm energy deliveries. (Schultz, ICP, letter dated 8/10/84, p. 7.)

The MPSC commented that some version of marginal cost pricing is most appropriate for transmission services. (Driscoll, MPSC, letter dated 8/10/84, p. 4.) The DSIs proposed that the charges for Intertie use be based on all costs, including estimated revenue loss associated with wheeling for non-Federal use of the Intertie capacity. (Wilcox, DSI, letter dated 8/19/83, p. 2, attached to letter dated 8/13/84.)

Evaluation of Comments

All comments received dealt with rate adjustments for wheeling service on the Intertie. BPA responded in the public comment forums that the present Intertie South (IS-83) rate schedule would apply, which currently only has an energy charge, and that any future rate adjustments would be subject to a separate 7(i) rate proceeding. Any adjusted wheeling charges on the Intertie would be for post July 1985. (Jones, BPA, TR 135, TR 207.)

Decision

The current rate schedule, IS-83, will be utilized for all deliveries on the Intertie, except for transactions under the Exportable Agreement, in which case the ET-2 rate schedule will apply. In adjusting wheeling charges for the Intertie, BPA will follow the other procedures specified in section 7(i) of

the Northwest Power Act. That proceeding and rate determinations are separate from this policy proceeding.

BPA's initial rate proposal for 1984 (FEDERAL REGISTER, September 7, 1984), provides that the energy-based IS rate be retained. The proposed IS-85 rate is 2.34 mills/kWh. For assured delivery, BPA is proposing that the IS rate be utilized on a take-or-pay basis. The allocated energy which is entitled to assured delivery for wheeling over the Intertie will be utilized for billing purposes. BPA anticipates the new transmission rates will become effective on an interim basis on July 1, 1985.

C. Formula Sharing Method

1. Exportable Agreement Rights

Issue #1: Summary of Comments

The PGP recommended that the rights of parties to the Exportable Agreement be preserved by incorporation into the Intertie Access Policy. (Garman, PGP, letter dated 8/9/84, p. 3.)

Evaluation of Comments

The PGP's concerns were primarily related to their belief that the rights of Exportable Agreement parties should not be degraded. BPA recognizes its existing contractual obligations under the Exportable Agreement, described as Condition 1 under the Policy. When the Exportable Agreement is not in effect, and Condition 2 or 3 under the Policy are applicable, the rights of Exportable Agreement parties are not abridged.

Decision:

BPA's Near Term Intertie Access Policy is consistent with rights of Exportable Agreement parties.

2. Readjusting Allocations

Issue #2: Summary of Comments

Concern has been voiced that BPA not adjust allocations based on a scheduling utility's previous day(s) actual share of available scheduling capacity. At an informal operators' meeting on July 25, 1984, a BPA representative indicated that if a party received a larger share of available capacity on one day than it should have received based solely on the pro rata allocation methodology, such utility's allocation would be adjusted (reduced) on following day(s).

Evaluation of Comments

SCE argued that this was a clear example of trying to establish a Pacific Northwest price maintenance policy. (Myers, SCE, letter dated 8/13/84, p. 10.)

Decision

BPA will not adjust allocations based on use or actual market conditions. BPA's intent in proposing a reallocation based on sales was to increase the ease of administering the allocation process. However, on consideration of SCE's comment, BPA believes that such a practice would be widely misunderstood and that its negative effects would outweigh any positive benefits.

3. Access for Extraregional Resources and Utilities

Issue #1: Summary of Comments

BPA's proposal provided Intertie access for extraregional resources or entities only to the extent that capacity would be available in excess of the declarations of Pacific Northwest utilities. BPA included a proposal that extraregional utilities could gain access by virtue of greater participation in coordinated planning and operation, which would benefit the Region. This option specifically was supported by the PGP and EWEB. (Garman, PGP, letter dated 8/9/84, p. 3; Parks, EWEB, letter dated 8/13/84, p. 2.)

Many parties agreed that the Pacific Northwest utilities should have priority to Intertie access. (Schultz, ICP, letter dated 8/10/84, p. 5; Jacquot, WPSC, letter dated 8/8/84, p. 2; Brawley, PPC, letter dated 8/13/84, p. 1; Bredemeier, PGE, letter dated 8/13/84, p. 2; Boucher, PP&L, letter dated 8/13/84, p. 3; Parks, EWEB, letter dated 8/13/84, p. 3; Garman, PGP, letter dated 8/13/84, p. 3; Wilcox, DSI, letter dated 8/19/84, p. 3; Wilcox, DSI, letter dated 8/15/84, p. 2, attachment 1, p. 5.)

SMUD and the NCPPA agree that Pacific Northwest utilities are entitled to priority access to Pacific Northwest transmission. They also supported efforts to accommodate B.C. Hydro and other extraregional power suppliers because their resources may be important in the future. (O'Banion, SMUD, letter dated 8/10/84, p. 4; Pugh, NCPPA, letter dated 8/13/84, attachment, pp. 2-3.)

SCE and PG&E asserted that Pacific Northwest priority to Intertie capacity impermissibly excludes Canadian energy from access. (Myers, SCE, letter dated 8/13/84, pp. 11-12; Gardiner, PG&E, letter dated 8/10/84, p. 10.)

MPSC questioned whether, if Colstrip 3 and 4 are not Pacific Northwest regional resources, would they qualify for Intertie access as "Midwestern resources" under the Western-Basin transmission contract. (Jacquot, MPSC, letter dated 8/13/84, pp. 3-4.)

Evaluation of Comments

The comments regarding extraregional access fall into two categories: those directed to BPA's authority to exclude extraregional resources, and those directed to the reasonableness of the action from a policy view point. The comments directed to BPA's authority to exclude extraregional resources are discussed elsewhere in this Record of Decision.

The ICP agreed with BPA that the history of Intertie development and the coordination of planning and operation among the utilities of the Region justify the priority of access for such utilities ahead of extraregional enities. (Schultz, ICP, letter dated 8/13/84, p. 2.)

Pacific Northwest utilities are obligated to plan, construct, and operate the transmission system and resources of the Pacific Northwest as a coordinated system. Those Pacific Northwest utilities that are parties to the Coordination Agreement commit to the coordinated operation of their resources as if they were part of a single utility. Extraregional utilities make no similar commitment, yet seek to rely on regional facilities including transmission.

These same extraregional utilities do not share the obligations incurred by BPA customers in their ultimate responsibility to pay all costs necessary to produce, transmit, and conserve resources to meet the Region's electric power requirements, including amortization on a current basis of the Federal investment in the FCRPS. This is a mechanism employed by Congress to assure that BPA's customers, and not the nation's taxpayers, underwrite the costs associated with the construction and operation of BPA's ownership in the Interties and related facilities. The benefits of the Federal transmission system in the Pacific Northwest, accordingly are intended primarily for utilities in the Pacific Northwest.

Congress called on BPA to construct Federal transmission facilities in the Region if they were required to serve the Region's needs to integrate recsources under the "one utility" planning concept, to integrate the Pacific Northwest and the Southwest through diversity and peak/exchange transactions, and to transmit the Region's surplus power and energy to other regions, particularly the Southwest.

Federal transmission facilities were constructed, on the basis of general Pacific Northwest utility concensus, in order to avoid the costly facility duplication that would result if all utilities in the Region were to construct their own facilities. If extraregional utilities were give access to these facilities in times of regional surplus it would result in less capacity being available for regional utilities. In that case, the original purpose of the Federal facilities would be lost. Consequent detrimental effects would be felt by those regional utilities that might have originally built their own facilities, but instead relied on the cooperative planning and construction approach. Congress therefore authorized, but did not direct, that BPA afford transmission access to extraregional utilities.

The PGP supported the provision of Intertie access to extraregional resources in return for expanded participation in Pacific Northwest water and power planning. (Garman, PGP, letter dated 8/9/84, p. 2.) They went on to

suggest that allocation could be related to historical use patterns. Further they stated that such agreements will provide opportunity for increased mutual benefit through more efficient and effective use of the Columbia River system.

BPA strongly believes that opportunities exist for extraregional utilities to participate more fully in regional planning and operations. With this expanded participation, extraregional utilities will have an interest in the Pacific Northwest power system beyond use as a temporary conduit to markets in the Southwest.

Starting with a meeting on July 5, 1984, BPA and B.C. Hydro have held detailed discussions regarding just such an arrangement. These discussions were significant and substantive and continued through August 31, 1984. On that date the discussions were discontinued through the mutual agreement of B.C. Hydro and BPA. These discussions were an attempt to provide increased usage of the Canadian treaty reserviors in return for access to the Intertie in the amount of 3,100,000 megawatt hours per year and an hourly declaration of 900 megawatts under Condition 2. The proposed access to the Intertie approximated B.C. Hydro's historical access to the Intertie over the past 4 years. The increased usage of the treaty reserviors would have provided more flexibility in the management of the total storage available to the coordinated system to shape its firm capability and to regulate flows of the Columbia River.

While BPA and B.C. Hydro were unable to reach an agreement for operating year 1984-85, BPA is hopeful that discussions will begin in a timely fashion to reach an agreement for operating year 1985-86. BPA believes that other opportunities exist for extraregional entities to participate is similar arrangements that are beneficial to both regions.

The MPSC was less concerned over the exclusion of Montana Power Company's (MPC) share of Colstrip 3 as an extraregional resource than they were troubled over questions of consistency. (Jacquot, MPSC, letter dated 8/13/84, pp. 3-4). MPC made no comment on the exclusion of their share of Colstrip 3.

The effect of the Intertie Access Policy is to provide access for BPA surplus power, make Intertie access available for the surpluses of the Pacific Northwest, and to the extent that excess capacity is available to provide for the access for extraregional resources. To accomplish this, BPA considered two alternatives for determining the status of resources located outside the Region and owned by utilities within the Region.

First, BPA considered using resources committed to load under the Power Sales Contracts as the indication of which resources located out of region were actually committed to regional load. This alternative is logical since these resource exhibits were developed at a time when the Region perceived itself in deficit. Thus, it could be argued that the exhibits truly represented the commitment of utilities to dedicate resources located out of region to regional load.

The second alternative was to prorate out-of-region resources. This alternative would consider that portion of an out-of-region resource represented by the ratio of regional load of the utility to total load of the

utility as a regional resource. The remainder would be treated as an extraregional resource. This alternative also was reasonable since it is logical to assume that a utility would actually use its resources to serve its entire load regardless of location. The effect of the second alternative was to decrease average annual firm surplus of some utilities, while increasing the average annual firm surplus of others. However, the total regional average annual firm surplus remained approximately the same under both alternatives. Under the second alternative, more utilities received average annual firm surpluses.

BPA chose to implement the second alternative for this Policy. BPA will continue to observe the operation of the Policy during the next 6 months and will encourage discussion and comment on this issue.

Decision

During periods when Intertie capacity is insufficient to meet all Pacific Northwest requests for capacity, the Intertie will be allocated to the Pacific Northwest utilities. During periods when the capacity of the Intertie is greater than the requests from Pacific Northwest utilities, Intertie capacity in excess of that required to serve Pacific Northwest utilities will be made available to schedule energy from extraregional resources.

BPA will prorate existing out-of-region resources owned by Pacific Northwest utilities over their regional load for the purpose of defining extraregional resources.

I have reviewed and hereby approve this Record of Decision as supporting my decision of September 7, 1984, to adopt the Near Term Intertie Access Policy on an interim basis.

Issued at Hood River, Oregon this 10th day of September 1984.

Peter T. Johnson
Administrator

APPENDICES

Appendix A

ABBREVIATIONS

Arco Metals	ARCO
Association of Western Pulp & Paper	AWPPW
Basin Electric Power Cooperative	Basin
Bureau of Land Management	BLM
California Energy Commission	CEC
California Public Utility Commission	CPUC
Central Lincoln Public Utility District	Cen. Lin. PUD
Chelan County Public Utility District	Mid-Col. PUD's
City of Tacoma	Tacoma
City of Vernon	Vernon
Clark County Public Utility District	Clark
Columbia River Inter-Tribal Fish Commission	CRITFC
Cowlitz County PUD	Cowlitz
U.S. Department of Energy	DOE
Direct Service Industrial (Customers)	DSI
Douglas County PUD	Mid-Col. PUD's
Eugene Water & Electric Board	EWEB
Evergreen Legal Services	ELS
Grant County PUD	Mid-Col. PUD's
Idaho Power Company	IPC
Industrial Customers of Northwest Utilities	ICNU
Intercompany Pool	ICP
Longview Fibre Company	LFC
Los Angeles Department of Water & Power	LADWP
Montana Environmental Information Center	MEIC
Montana Power Company	MPC
Montana Public Service Commission	MPSC
National Marine Fisheries Service	NMFS
National Wildlife Federation	NWF
Natural Resources Defense Council	NRDC
Northern California Public Power Agency	NCPPA
Northwest Conservation Act Coalition	NCAC
Northwest Power Planning Council	NPPC
Northwest Pulp & Paper	NP&P
Oregon Public Utility District	OPUC
Pacific Gas & Electric Company	PG&E
Pacific Northwest Generating Company	PNGC
Pacific Northwest Utilities Conference Committee	PNUCC
Pacific Power & Light	PP&L
Portland General Electric	PGE
Public Generating Group	PGP
Public Power Council	PPC
Puget Sound Power & Light	PSP&L
Resource Management International	RMI
Sacramento Municipal Utility District	SMUD
San Diego Gas & Electric	SDG&E
Seattle City Light	SCL

Solar Oregon Lobby	SOL
South Columbia Basin Irrigation District	SCBID
Southern California Edison	SCE
Springfield Utility District	Springfield
Tillamook Public Utility DistrictUD	Tillamook
Washington Water Power	WWP
Western Area Power Administration	WAPA
Wyoming Public Service Commission	WPSC

Appendix B

Proposed Near Term Intertie Access Policy
Written Comments

Bailey, R. G.	PSP&L
Barclay, D. E.	IPC
Boner, Terry	NP&P
Boucher, R. M.	PP&L
Brawley, Douglas R.	PPC
Brearley, David B.	Vernon
Bredemeier, Glen E.	PGE
Bryan, W. L.	WWP
Canon, Kenneth D.	ICNU
Cavanagh, Ralph	NRDC
Colbo, Keith	NPPC
Coleman, David G.	WAPA
Copp, et al.	Mid-Col. PUD's
Cotton, Eldon A.	LADWP
Driscoll, John	MPSC
Evans, Dale R.	NMFS
Fairchild, Peter	CPUC
Foleen, Ray	Self
Gardiner, Stuart K.	PG&E
Garman, G. R.	PGP
Gibbins, Merle R.	SCBID
Gregory, Regina E.	Self
Hardy, Randy	PNUCC
Hoehne, M. E.	LFC
Huette, Fred	SOL
Imbrecht, Charles R.	CEC
Jacquot, Jon F.	WPSC
Labrie, Robert	MPC
Maudlin, Gene	OPUC
McKinney, Robert L.	Cowlitz
Meek, Daniel	Congress
Myers, Jr., Edward A.	SCE
Nadal, Joseph W.	PNGC
Neely, Jr., John C.	Self
Niggli, M. R.	SDG&E
Nolan, Paul J.	Tacoma
O'Banion, John P.	SMUD
Parks, Keith	EWEB
Pugh, Archer	NCPPA
Reed, Don	MEIC
Rivers, Robert J.	BLM
Sanders, James L.	Clark
Saven, John D.	SCL
Schultz, Merrill S.	ICP
Stearns, Tim	NCAC
Strebel, Watts	Spiegel & McDiarmid
Thaler, Toby	ELS

Thatcher, Terry	NWF
Toole, Sam	Self
Van Curen, Gale	AWPPW
Wapato, S. Timothy	CRITFC
Wilcox, Brett	DSI

Proposed Near Term Intertie Access Policy
Public Forum Participants

Anderson, Jack	Clark, Vancouver, WA
Barclay, D. E.	IPC, Boise, ID
Bodi, Lorraine	NMFS, Seattle, WA
Boner, Terry	NP&P, Seattle, WA
Boucher, Rod	PP&L, Portland, OR
Bredemeier, Glen E.	PGE, Portland, OR
Budhraja, Vihram	SCE, Rosemead, CA
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Carey, Linda	WAPA, Sacramento, CA
Cohn, Ann	SCE, Rosemead, CA
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Gray, Roger	LADWP, Los Angeles, CA
Hammerquist, Floyd	PP&L, Portland, OR
Hanson, Jan	NPPC, Portland, OR
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Schultz, Merrill	ICP, Spokane, WA
Shannon, Tad	PGE, Portland, OR
Shen, Fern	Oregonian, Portland, OR
Sher, Phillip	PNGC, Portland, OR
Siddall, R. G.	West Koolenai, Vancouver, B.C.
Simpson, G. L.	B.C. Hydro, Vancouver, B. C.
Skeahan, Brian	Springfield, Springfield, OR
Smith, Leon	Cowlitz, Longview, WA
Smuckler, Steven	LADWP, Los Angeles, CA
Steinberg, Dennis	PP&L, Portland, OR
Strong, Michael G.	SDG&E, San Diego, CA
Terhaar, Ed	RMI, Sacramento, CA
Thather, Terry	NWF, Portland, OR
Tivy, Bill	B.C. Hydro, Vancouver, B. C.
Whitney, Dennis	LADWP, Los Angeles, CA
Williams, Larry	SCE, Rosemead, CA
Williams, Luana	SCE, Rosemead, CA
Williams, Weston	SCE, Rosemead, CA