New Large Single Load Treatment of Utility Service to Direct Service Industry Expansions; Initiating a Northwest Power Act Section 5(d)(3) Process to Increase Direct Service Industry Contract Demand.

Administrator's Record of Decision

Bonneville
POWER ADMINISTRATION

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ADMINISTRATOR'S RECORD OF DECISION

Service to DSI Load Expansions
Above Their Contract Demand

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ABBREVIATIONS

PARTIES

Atochem North America	Atochem
Bonneville Power Administration	BPA
The Carborundum Company (Carborundum, Standard Oil, Sohio, BP America)	Carborundum

OTHER ABBREVIATIONS

average megawatt (1 aMW for 1 yr = 8,760 MWh)	aMW
Conservation/Modernization program for aluminum DSI's	Con/Mod
contracted for, or committed to	CF/CT
direct service industry	DSI
new large single load	NLSL
Guide to Bonneville Power Administration New Large Single Load Determinations	NLSL Guide
New Resources Firm Power (rate)	NR
Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501	Northwest Power Act
Priority Firm Power (rate)	PF

I. INTRODUCTION

This Record of Decision (ROD, describes a final action, which is BPA's policy decision regarding a DSI's request for power service in excess of its existing Contract Demand to meet new plant or load expansion needs. BPA considered increasing DSI service above current Contract Demand levels by means of service from a local utility and through increases in Contract Demand under section 5(d)(3) of the Northwest Power Act.

A. Organization of Record of Decision

This ROD contains three chapters with three Appendices. The Introduction is the first chapter and includes a procedural history and a discussion of statutory interpretation. The second and third chapters describe BPA's proposed options to serve DSI load expansions above their Contract Demand (service from a local utility and service as an increase in DSI Contract Demand). Contract Demand is defined as the maximum amount of power that BPA was statutorily obligated to make available to a DSI under its 1981 power sales contract. These two chapters present the specific issues related to serving DSI load expansions above their original Contract Demand, summaries of comments received from parties interested in or affected by these issues, BPA's evaluation of those comments, BPA's analysis of the issues, and the Administrator's Decision on the NLSL and section 5(d)(3) proposals.

Other DSI service related issues raised by interested parties are addressed in Appendix 3. Other appendices contain (1) a chart of the NLSL options, and (2) BPA correspondence, papers, notices, and letters from interested parties.

B. Procedural History of This Decision

In January 1989, a DSI customer of BPA, Atochem (then Pennwalt Corporation), sought additional electrical service for a proposed plant expansion of its sodium chlorate plant in Portland, Oregon. Atochem asked BPA, which served the existing load at that site, to explore options for increasing BPA service in excess of its Contract Demand.

Specifically, Atochem requested BPA to approve an assignment .of another DSI contract from Carborundum Corporation to Atochem (BPA Contract No. DE-MS79-81BP90346). BPA agreed to consider this action after Atochem asserted that delay in an assignment would increase Atochem's risks associated with capital investments in the expansion. BPA's consideration of an assignment of the Carborundum contract to Atochem raised certain objections from various organizations within the region, including the Public Power Council, Natural Resources Defense Council, Northwest Conservation Act Coalition, Pacific Northwest Generating Cooperative, Washington Public Utility District Association, and several other utilities. These entities uniformly objected to BPA's proposal to assign a DSI power sales contract from one DSI to another which involved a change in the use of power and point of delivery. Due to these objections, on January 5, 1990, BPA determined additional discussion of the issue was necessary and did not proceed with its proposal to approve the requested assignment.

Following BPA's consideration of an assignment, Atochem then sought a supply of power for its planned expansion by approaching Columbia River People's Utility District. Atochem asked Columbia River People's Utility District to supply up to 9.95 megawatts for the first phase of its new plant expansion, and planned to serve the second phase of the expansion with BPA

power under its DSI contract. Atochem's expected increase in BPA Contract Demand was requested by means of a determination of a need for increased reserves under section 5(d)(3) of the Northwest Power Act. Atochem also continued to pursue an assignment of the Carborundum contract. The service proposal by Columbia River People's Utility District and Atochem raised objections, most notably from Portland General Electric Company, regarding which utility might have authority under State law to provide service to this site. The proposal also raised NLSL issues for BPA.

On October 19, 1990, BPA initiated a public comment period asking for input on two issues with respect to Atochem's January 1989 request to increase its Contract Demand. BPA informed its customers that the State law issue, regarding Columbia River People's Utility District's ability under Oregon law to serve Atochem at its Portland site, must be resolved by the parties before BPA would provide service to a utility for service to this load. One issue was BPA's proposal that the need for reserves under section 5(d)(3) of the Northwest Power Act should be considered during development of BPA's biennial Resource Program. Another issue was what policy should BPA adopt regarding NLSL treatment of a utility's retail service in excess of a DSI's Contract Demand to an expansion of a load or new load of a DSI.

Comments from interested parties were received from a wide range of sources. A letter from the Oregon Congressional delegation on November 27, 1990, urged BPA to provide an open forum in which interested parties would attempt to find a consensus answer to the Atochem power supply question. The Congressional delegation stated:

> "[W]e ask that, as a part of the public comment process currently under way on this matter, you provide a forum for the interested parties in an effort to find an acceptable answer to the Atochem power supply question."

On November 27, 1990, BPA held a public meeting to receive comment on the issues surrounding the Atochem expansion.

In response to this letter BPA held two meetings, on December 18, 1990, and January 3, 1991, with representatives of interested parties. The group attempted to develop a proposal that would allow Atochem's expansion to receive service in Portland. The parties rejected the mechanism of an assignment to Atochem of another DSI's power sales contract and focused on increasing service under section 5(d)(3) of the Northwest Power Act. Participants in the forum agreed that a site-specific section 5(d)(3) analysis could be justified only if the result of the process would reasonably yield the same result as a general section 5(d)(3) process which was not restricted to any particular DSI. On January 30, 1991, BPA extended the period for public comment on the issues of (1) using the biennial Resource Program to determine BPA's need for reserves, (2) the policy on NLSL treatment, and (3) service to Atochem based on a site-specific analysis under section 5(d)(3). BPA informed interested parties that the forum participants did not reach a consensus that a site-specific section 5(d)(3) analysis was an acceptable solution.

On August 2, 1991, BPA mailed an Atochem Public Comment Summary (Summary) to interested parties. The Summary contained comments on issues involving service to Atochem at its Portland plant.

Upon review of the comments on NLSL issues, BPA developed an additional NLSL policy alternative for the parties to consider and on February 3, 1992, BPA requested comments on the new policy alternative. BPA received 10 additional comment letters.

C. Legal Guidelines Governing NLSL Status and Contract Demand Increases

1. Statutory Guidelines

a. Section 3(13)

When Congress enacted Public Law 96-501, the Northwest Power Act, it included a provision regarding the definition of loads which were new to the region and above a certain size and the rate BPA would charge for electric power service to those loads. Section 3(13) of the Northwest Power Act contains this definition which provides:

> "(13) 'New large single load' means any load associated with a new facility, an existing facility, or an expansion of an existing facility--
>
> "(A) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or a federal agency customer prior to September 1, 1979, and
>
> "(B) which will result in an increase in power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period." 16 U.S.C. 839a(13).

This NLSL provision had been modified twice in House committee drafts from the original Senate version in terms of its application to end use consumers, coverage of BPA utility customers, and the size of load which constitutes a NLSL. See S. Rept. No. 96-272, 96th Cong. lst Sess. (1980), pp. 2, 22; H. Rept. 96-976, 96th Cong. 2nd Sess., Part II (1980) pp. 3, 39.

The designation of a load of a consumer as a NLSL for purposes of BPA's sales of electric power to a BPA utility or Federal agency customer does not affect the amount or quality of electric service which BPA provides. BPA treats these loads as any other load in terms of its supply of power and quality of service under its utility power sales contract.

However, the designation of a load as a NLSL does affect the price of the electric power sold for service.to that load. As the House Interior Committee report explains, the definition of NLSL has "rate consequences under section 5(c) and 7(b) of the (Act)." Id. at p. 39. The consequences referred to under section 5(c), the residential exchange provision, of the Northwest Power Act is that for those loads which are NLSL's, the cost of resources to serve the load are excluded from an exchanging utility's "average system cost" under section 5(c)(7) and BPA's Average System Cost Methodology. The other consequence is that for public preference agency customers, BPA may not sell electric power at the section 7(b) rate for Priority Firm power, for loads which are NLSL's. Rather, electric power for NLSL's is sold at a section 7(f) rate, NR.

In the House Interior Committee's report, the section by section analysis states:

> "Section 7(b) contains the rate directives for power sold to meet the 'general requirements' (defined in this subsection) of BPA's public body and cooperative customers and Federal agency customers, as well as power sold by BPA under the section 5(c) exchange. This will be BPA's lowest cost rate, based on BPA's lowest cost resources . . . Subsection 7(b)(4) defines 'general requirements' as the power purchased by the relevant customers under section 5(b), exclusive of power used by the customer to serve any new large single loads (defined in section 3(13)). This provision affects power rates only, not the amount of power supplied to the customer under section 5(b)." H. Rept. 96-976, 96th Cong. 2nd Sess., Part II (1980) p. 52 (emphasis added).

and the Committee further commented:

> "Section 7(f) is the rate directives for the so-called new resources rate that BPA will charge customers for sales other than those to which a different rate applies. . . It will be used for example, for power sold to investor owned utilities to meet their net requirements, and for power sold to preference customers for service to new large single loads." Id. at p. 53 (emphasis added).

Thus, when a utility customer's consumer load is determined to fit within the definition of section 3(13), the impact is that service is at the section 7(f) rate rather than at the section 7(b) rate, if the utility is a BPA preference customer. A further impact results if the utility is an exchanging utility, because NLSL's cannot be included in the loads of that utility and the resources used to serve that load must be removed from costs in computing its average system costs.

(1) Prior BPA Interpretation and Policy Determinations. In 1981, BPA negotiated and offered new power sales contracts to its utility, DSI and Federal agency customers consistent with sections 5(b), (d) and (g) of the Northwest Power Act. These utility power sales contracts contain a section regarding the terms for BPA's implementation of section 3(13), NLSL, for electric power service. Section 8 of the utility power sales contract specifies terms for measuring the electrical load of a utility at a consumer's facility, for determining what constitutes a facility, for notice and billings, normalization of load, and other matters.

Since 1981, BPA has addressed, through letters to several of its customers, a large number of issues regarding interpretation of the provisions of this section 8, as well as section 3(13) of the Northwest Power Act. On March 12, 1991, BPA sent the NLSL Guide to its customers. The purpose of the NLSL Guide was to inform BPA customers of its practice and interpretations to date regarding the implementation of section 8 of the power sales contract and section 3(13) of the Northwest Power Act, including the processes and mechanics of the various determinations BPA makes. Many of the practices, procedures and policy covered by the NLSL Guide are applied in this determination.

BPA's DSI power sales contracts do not contain any specific provisions regarding NLSL, nor any provisions for implementation of the terms of section 3(13). BPA did not include any NLSL contractual provisions in those contracts because section 3(13) makes no specific

reference to DSI loads served by BPA. Rather, BPA's obligations regarding DSI service are specifically addressed in section 5(d) of the Northwest Power Act. Therefore, BPA's intent in adopting this policy is to apply NLSL provisions to electric power service in excess of a DSI's Contract Demand when an expansion of a load or a new load of a DSI customer is served by a utility customer. It is not to modify BPA's past interpretations or practices under the utility power sales contract. This policy applies those practices and policies in a fair, practicable and reasonable manner to the additional load service needed by an industry, when that additional load will not be served directly with Federal power from BPA.

(2) Congress' Consideration of DSI Loads and Section 3(13). Congress did not specifically address BPA's DSI customers in section 3(13) of the Northwest Power Act. In fact, the only enumeration of customer classes contained within this definition makes no specific mention of the DSI customer class. Section 3(13)(A) provides for an exception to the NLSL provisions, if a load was CF/CT by a "public body, cooperative, investor owned utility, or federal agency customer prior to Sept. 1, 1979," as determined by the Administrator. A DSI is a customer of BPA, as defined under sections 3(7) and 5(d) of the Northwest Power Act. It is not a customer whose load as of September 1, 1979, would be exempt from the NLSL definition, if it should seek service for its existing load served by BPA from a utility customer.

The House Interior Committee report supports this interpretation. Its section by section analysis states:

> "Section 3(13) defines 'new large single loads', a term with rate consequences under section 5(c) and 7(b) of the legislation. Under this definition, September 1, 1979, is the cutoff date for all categories of new large single loads; no cutoff date distinction is made between industrial and non-industrial loads of this type. Thus a large single load of a utility is a 'new large single load' if it was not contracted for or committed to by that utility prior to such date." H. Rept. 96-976, 96th Cong. 2nd Sess., Part II (1980) p. 52 (emphasis added).

Because DSI's had a requirements contract for service directly from BPA for their existing loads as of September 1, 1979, those loads could not be CF/CT by a utility as of that date. The exclusion of DSI's as a customer class from section 3(13)(A) has a specific consequence for existing DSI loads. If a utility were to provide service to the existing DSI loads, those loads would become NLSL's of the utility.

The House Commerce Committee report confirms that Congress' intent in section 3(13) was to classify existing DSI loads as NLSL's if they replaced BPA service with local utility service. The House Commerce Committee report first notes a competing interest in Federal power used to serve DSI's. It states:

> "The preference customers claim that upon termination of the DSI contracts (in the 1981-91 period) they are entitled to any (BPA) power thus freed up. The DSI's are claiming that, if cut off from direct (BPA) service, they are entitled to service similar to their current service from the appropriate local utility. Ten of the 15 DSI's are located in, or adjacent to, BPA preference customer service areas. These ten make up about 85 percent of the total DSI

> load." H. Rept. No. 96-976, 96th Cong. 2d Sess., Part I (1980), p. 25.

The report then discusses the effect of the NLSL provision on existing DSI service in its section by section analysis:

> "This is an important definition in many respects. Although the Administrator will be obligated to sell power to meet these loads, power for new large single loads will be sold at the 7(f) rates which are likely to be the marginal cost of power. . . The definition also will serve to induce DSI's to terminate their existing contracts in favor of new long term contracts to be offered under section 5(d). The DSI's would, if they could obtain service, be treated as a new large single load and thus subject to the 7(f) rate. This rate would be higher than the rates they would pay under the (new BPA) contracts offered under this bill." Id. at p. 51.

The definition of the existing DSI load is set forth in section 5(d)(1)(B) as "an amount of power equivalent to that to which such LDSI] customer is entitled under its contract dated January or April 1975 providing for the sale of 'industrial firm power.'" 16 U.S.C. 839c(d)(1)(B). See Aluminum Comb any of America v. Central Lincoln People's Utility District, 467 U.S. 380, 388-392 (1984). The amount of power which a DSI may purchase directly from BPA, or Contract Demand, is fixed by its power sales contract with BPA. BPA might sell additional power to a DSI if BPA has gone through a process and made the determinations required under section 5(d)(3) of the Northwest Power Act. 16 U.S.C. 839c(d)(3).

Although the Northwest Power Act legislative history discussed in detail the consequence to a DSI of taking service from a local utility for its then existing DSI load, Congress did not specifically address expansions of a load or new load at the site of a DSI in excess of the DSI's service from BPA beyond the general provisions of section 3(13) regarding service to new loads of BPA's utility customers. The legislative history of the Northwest Power Act suggests that Congress' intent then was to treat such new load as any other new load occurring in the region. The status of the end-use company or industry as a DSI was not intended to be a detriment or deter adding any new load by that company.

This Record of Decision and the policy adopted herein provides a reasonable treatment for such new loads while protecting BPA direct industry service, and is consistent with the intent of Congress expressed in sections 3(13) and 5(b), 5(c) and 5(d) of the Northwest Power Act, as discussed above. To those parties who proposed a different intent of Congress than that expressed above, including the proposal that all loads of a DSI should be served as an NLSL, BPA finds such constructions unreasonable and unsupported by any expressions of legislative intent. Specifically, Congress did not limit DSI load expansions to only additional direct service from BPA. Likewise, Congress did not intend by section 3(13) to forever foreclose the development of new loads in the region, nor to foreclose any company (even if it had some of its load(s) served directly by BPA as a DSI) from taking additional service from a local utility for new load. Such an interpretation would go far beyond the restriction reasonably placed upon new loads by section 3(13).

However, Congress did intend for section 3(13) to apply to any new loads in the region served by a BPA utility customer and

BPA's policy is to do just that consistent with BPA's present practice and reasonable administration of both its utility power sales contracts and DSI power sales contracts. Congress also intended that existing DSI loads as defined under power sales contracts would continue to be served directly by BPA. Therefore, for an existing load under a BPA DSI power sales contract, it could become a NLSL if electric power service to that load is transferred to a local utility from BPA. Also, this policy will include provisions for protection of BPA direct service to DSI loads and ensure that any transfer of service to a utility results in NLSL status.

b. Section 5(d)(3)

The Northwest Power Act contains a limitation on the amounts of power BPA can sell to DSI's. BPA is limited to selling to each DSI an amount of power equivalent to its entitlement under the 1975 BPA Industrial Firm Power Contract. (These contracts preceded the contracts issued after the Northwest Power Act was passed.) Congress allowed an exception to this limitation in section 5(d)(3), if BPA determines that additional power system reserves are required for the region's firm loads, and BPA (and the Northwest Power Planning Council) make the other determinations required by statute.

Section 5(d)(3) reads in its entirety as follows:

> "5(d)(3) The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines, after a plan has been adopted pursuant to section 4 of this Act, that such proposed sale is consistent with the plan and that--
>
> "(A) additional power system reserves are required for the region's firm loads,
>
> "(B) the proposed sale would provide a cost-effective method of supplying such reserves,
>
> "(C) such loads or loads of similar character cannot provide equivalent operating or planning benefits to the region if served by an electric utility under contractual arrangements providing reserves, and
>
> "(D) the Administrator has or can acquire sufficient electric power to serve such loads, and
>
> "unless the Council [Northwest Power Planning Council] has determined such sale is consistent with the plan. After such determination by the Administrator and by the Council, the Administrator is authorized to offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) of this subsection as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads."

As of this date, BPA has not granted any increases in DSI Contract Demand under the provisions of section 5(d)(3).

Section 5(d)(3) does not contain any requirements concerning the forum or manner in which BPA must make the determinations that are a precondition to selling increased amounts of power to DSI's. This is a decision left for the Administrator's discretion.

2. BPA's Current Practices Under its Utility Power Sales Contract for Measuring Any Large Loads Which May Become NLSL's

The NLSL Guide describes BPA's current practices and interpretations to date regarding the implementation of section 8 of the power sales contract and section 3(13) of the Northwest Power Act.

Section 8(b) of the power sales contract states that an increase in load shall be considered a NLSL if the energy consumption of the consumer's load associated with a new facility, existing facility or expansion of an existing facility during the immediately past 12-month period exceeds by 10 aMW or more the consumer's energy consumption for such new facility, existing facility or expansion of an existing facility for the consecutive 12-month period 1 year earlier, or the amount of CF/CT load of the consumer as of September 1, 1979, whichever is greater.

Under section 8(d) of the power sales contract, if a load increases by 87,600 MWh or more within any consecutive 12-month monitoring period, the increase in the load becomes a NLSL and billing at the NR rate or its successor rate for that load continues thereafter.

The NLSL Guide follows these contract provisions in implementing the power sales contract.

a. Begin Measurement of the Consumption of the Load

(1) Establish the start date and time for the 12-month measuring period, based on the utility's selection, with BPA's concurrence, of either the date of energization or the date of first commercial operation as the start date for measurement. To avoid complications in metering and billing, it is preferable to start load measurement at the beginning of the billing month.

For existing loads, including all CF/CT loads, the start date for measurement is September 1, based on the September 1, 1979, cutoff date for grandfathered loads under the Northwest Power Act.

(2) Measure consumption at the consumer's facilities rather than at the utility point of delivery from BPA.

(3) Construction loads are not included in first year consumption, and do not establish the energization date. The energization date must be based on the consumption of power by a permanent installation (other than substation equipment) owned by the consumer.

b. Read the meter(s) at the load on the anniversary of the start date. Unless the start date coincides with the start of the billing period, it will be necessary to arrange for a special reading on each anniversary date. To obtain a precise measurement over the 12-month measurement period, such as when the increase in load over the measuring period is close to the 10 aMW threshold amount, it may be appropriate to read the meter at the same hour of the day that the measuring period started.

c. Calculate the amount of the increase. If the load is a new load, the increase is simply the total consumption for the measuring period. If the load was in operation in previous measuring periods, the increase is the difference between the consumption during the measuring period and the consumption during the immediately preceding 12-month period.

d. If cogeneration or a renewable resource is permanently committed to the load, the load measured for the purpose of determining whether the load is a NLSL must be the net load after the subtraction of the amount served by the committed cogeneration or renewable resource. If the resource is removed from service to the load, the entire load is measured to determine whether the load is a NLSL. (Power sales contract section 8(e)).

e. Normalization is possible where the consumer's facility has a period of normal operation, then a period of reduced load, and then an increase in load. The consumer can request normalization through the retail utility, supplying data to support the request. The increase in load from one year to the next will continue to control the status of the load, unless a reduction in load is "due to unusual events reasonably beyond the control of the Consumer." Where the reduction is due to such events, the increase in load is normalized, i.e., measured, for NLSL purposes, as if the load reduction had not occurred. (Power sales contract section 8(f)).

In all other cases, especially where the reduction in load is the consumer's voluntary choice, the consumer and the utility must be vigilant about resuming consumption if the increase from the previous 12-month measuring period will be 10 aMW or more. The right to service at the PF rate, which is secured by phasing to a load in increments of less than 10 aMW in each 12-month measuring period, is not permanent when the load undergoes a reduction, and, except for normalized loads, depends on avoiding load increases of 10 aMW or more in any 12-month measuring period as compared with the previous period.

f. If, after all of the above adjustments, the increase over the 12-month measuring period is greater than 10 aMW, the facility is a NLSL as of the beginning of the 12-month measuring period. The amount of the NLSL includes both the threshold 10 aMW amount and the increase above 10 aMW. All future increases in the load at the facility are also part of the NLSL. (Power sales contract section 8(g)).

No modification of these practices for implementing section 8 of the power sales contract is made by this policy. The same practices will be applied to new loads served by a local utility at a DSI site.

D. Environmental Analysis.

The proposals addressed in this Record of Decision concern the administration of power sales contracts between BPA and a DSI and between BPA and a utility which may serve DSI load above its Contract Demand with BPA. The proposal regarding NLSL's governs the application of the provisions of section 8 of the utility power sales contract and section 4(d) of the DSI power sales contract to DSI expansion loads in excess of their BPA Contract Demand. The proposal concerning section 5(d)(3) of the Northwest Power Act concerns the conditions under which BPA would undertake a section 5(d)(3) process to increase a DSI's Contract Demand under its power sales contract with BPA. Both of these proposals address and clarify administration of BPA's utility and DSI power sales contracts or interpret the language of the

contracts to address DSI expansion service. As such, these proposals do not require preparation of either an environmental assessment or an environmental impact statement under the National Environmental Policy Act (NEPA). According to NEPA regulations of the U.S. Department of Energy (10 CFR Part 1021), these proposals fall within a class of actions, "Contract interpretations, amendments, and modifications, that are clarifying or administrative in nature" (10 CFR 1021, Appendix A; 57 FR 15152) which do not require an environmental assessment or an environmental impact statement.

II. NEW LARGE SINGLE LOAD PROPOSAL

A. Issue

What is the appropriate NLSL treatment of local utility service to a DSI customer's new load expansion under the Northwest Power Act and the utility's power sales contract with BPA?

B. Options Considered

BPA developed and reviewed several options for NLSL treatment upon which its customers and interested parties provided their comments. They are:

Option 1. A local utility which undertook service to a new load or a load expansion at a DSI site would have a utility responsibility to serve all of the load of its new customer absent other service. The entire DSI load, new and old (including the entire BPA Contract Demand) would be attributed to the local utility for purposes of NLSL measurement based upon the utility's responsibility to provide service. Because the utility would be providing service to the load, and because the utility would have a responsibility to serve the entire load whether or not BPA service were available, the measured load for NLSL purposes would include all of a DSI's Contract Demand plus the utility's service to the new load and would be measured assuming the consumption during the 12 months prior to the utility commencing service was zero. The entire production load, apart from any wheel turning load, would be a single facility. (Shown as Option 1 in Appendix 1.)

Option 2. The same proposal as described in Option 1 above, except that a utility could request a facility determination under section 8(a) of its power sales contract with BPA to divide the DSI production load into multiple facilities according to the criteria for facility determinations stated in the utility's power sales contract. For purposes of NLSL measurement all load, new and existing, at the individual facility would be included when measuring consumption at that facility. If the attributed load of a facility plus any new load increases were 10 aMW or more in the first 12-month period of utility service, the load would be served as a NLSL. (Shown as Option 2 in Appendix 1.)

Option 3. In determining whether utility service to an expansion at a DSI facility increases by 10 aMW or more in any 12 consecutive months, BPA would treat a DSI's actual consumption as if it were a phased-in load (load growth over each of several years of less than 10 aMW in any 12-month period, thus increasing more than 10 aMW in total without becoming a NLSL) under a utility power sales contract. A DSI load or expansions might be divided into multiple facilities. BPA would measure actual increases in load in excess of the prior 12-month period's usage for a facility. The increase in energy consumption under the BPA Contract Demand (if any) and the increase in utility load would be combined when measuring actual energy consumption at each facility to determine whether the load has increased by 10 aMW or more during a 12-month period.

An exception to this measure will occur when and if the utility's load for the facility goes to zero and remains at zero for the full 12-month measurement period. When the utility service begins after such period of no utility service, BPA would measure increases in load by measuring from actual energy consumption in the prior 12-month period as above, except that the prior load was zero. The measurement would be made against the total amount

of energy taken during the previous 12-month period at the facility. Any reductions in the amount of energy taken at the facility due to BPA's exercise of restriction rights in a prior 12-month period would be added back to that period's amount when measuring current 12-month period consumption.

In order to ensure that existing DSI load is not served as part of a new load BPA would require both separate electrical service and metering as well as full use of the DSI's Contract Demand to preserve BPA's existing restriction rights. In any BPA-utility joint service agreement, the utility service would be allowed only after the DSI's full amount of Contract Demand is used. (Shown as Option 3 in Appendix 1.)

Option 4. Treat BPA's service to DSI Contract Demand as if it were a separate service to the load and treat the expansion of load in excess of Contract Demand as new load. BPA would measure only the increases in actual load served by the utility above the DSI's Contract Demand. Apply the NLSL definition to the new load served by the utility above the amount of Contract Demand, such that the new load would be a NLSL if its energy consumption above the DSI's Contract Demand exceeded 10 aMW or more in the 12-month measurement period. The amount of energy the new load consumed would be measured over a "floor amount" of energy, which amount is the greater of the amount the DSI could take under its Contract Demand or the total energy consumption under the DSI contract together with load served by the utility in the 12 months just prior to the measurement, if any. (Shown as Option 4 in Appendix 1.)

C. Summary of Comments

First Round of Comments: BPA received several responses to the NLSL options proposed in BPA's October 19, 1990. The interested parties' comments are summarized below:

1. Richard Carlson (ATCM 1-1)
Thought the BPA Journal article on NLSL's and the NR rate "hit the issue." Felt that load growth should pay its own way.

2. Larry Peterson (ATCM 1-2)
Peterson felt that including DSI Contract Demand with the facility load should be the basis for determining NLSL status. He believed the Northwest Power Act's intent was to preclude encouraging loads shifting suppliers to gain access to the Federal Base System.

3. Ted Hallock Member of the Northwest Power Planning Council (ATCM 1-3)
BPA should find some method which will allow service to Atochem in Portland. Hallock, concerned with environmental overtones for the Portland area, said "...facilitating rapid production increases of sodium chlorate..." can replace chlorine in pulp blending and reduce dioxin levels in the Columbia River. Northwest Power Planning Council member Hallock did not support any particular option in the Atochem issue but favored any reasonable alternative that will result in service in Portland rather than in Tacoma. No NLSL comment.

4. Fred Eisen of Fought and Company, Inc. (ATCM 1-4)
Plant expansion should be allowed to promptly go forward and assist the local economy and the environment by production of a better alternative product for bleaching paper. No NLSL comment.

5. Mary O'Leary of Pilcher O'Leary Construction, Inc. (ATCM 1-6)
Plant expansion should be allowed to promptly go forward and assist the local economy and the environment. No NLSL comment.

6. Oregon Congressional Delegation (Hatfield, Packwood, AuCoin, Wyden) (ATCM 1-5)
BPA should convene a forum to reach regional consensus on service to the Atochem expansion in Portland. The expansion will benefit the economy and the environment. No NLSL comment.

7. Jim Nylen of Campbell Crane and Rigging Service, Inc. (ATCM 1-7)
Plant expansion should be allowed to assist the local economy and aid the environment. No NLSL comment.

8. Gene Spina, Plant Manager of Atochem (ATCM 1-8)
Plant expansion should be allowed in Portland to assist the regional power system and the environment. BPA should approve a contract assignment. No NLSL comment.

9. William Fell President of the Inorganic Chemicals Division of Atochem (ATCM 1-12; public meeting 11/27/90)
Believes the issue is basically over service territory and that Portland will gain significant economic benefits if Atochem's plant expansion resumes. Portland facility is key to future of Atochem in Pacific Northwest. No NLSL comment.

10. Steve L. Loveland General Manager of Springfield Utility Board (ATCM 1-9)
Comments related to Columbia River People's Utility District annexation ordinance and its effect on Oregon utility service territory. He also expressed concerns over DSI contract assignment and impacts on resource needs. No NLSL comment.

11. William Drummond Manager of the Public Power Council (ATCM 1-10; ATCM 1-18)
(Letters of January 14, 1991, and March 1, 1991.) Comments related to Northwest Power Act section 5(d)(3) and on assignment of a DSI contract to Atochem. No NLSL comments.

12. R.G. Bailey, Vice President for Power Systems of Puget Sound Power & Light (ATCM 1-11)
Did not believe that NLSL issues were relevant to the process of Atochem service. It is not at all clear that purchases by a public agency from BPA to serve a load such as that proposed by Atochem could or should be available at the PF rate. More importantly, NLSL issues appear irrelevant to an analysis as contemplated by section 5(d)(3) of the Northwest Power Act.

13. Elden Nordahl, President of Oregon People's Utility District Association (ATCM 1-13)
Supports lost opportunity approach to analysis and process under the Northwest Power Act section 5(d)(3) to increase Atochem Contract Demand. No NLSL comment, prefer service through BPA rather than a utility.

14. Robert Myers Senior Vice President of Puget Sound Power & Light (ATCM 1-14)

Repeated prior comments made by Puget regarding relevance of NLSL issues. Stated that purchases by a public utility to serve a new load of a DSI was never intended to be available from BPA at the PF rate. Viewed the Northwest Power Act as preventing industrial customers from capturing disproportionate share of low-cost Federal power.

Puget Sound Power & Light stated that the Northwest Power Act prohibits BPA service to a new DSI, BPA service to existing DSI's is restricted, and the availability of BPA PF rates to utilities serving NLSL's is limited.

Puget Sound Power & Light also argued that phasing in of PF purchases to serve NLSL's is an attempt to evade the Northwest Power Act's 10 aMW threshold for application of the NR rate, which would be inconsistent with the legislative intent.

Myers stated that Alternative A in BPA's October 19, 1990, letter (Option 1) reflected the intent of Congress. The load of the Atochem facility would be 94 aMW and, as such, would be a NLSL if served by a public agency customer.

15. Fergus A Pilon, General Manager of Columbia River People's Utility District (ATCM 1-19; public meeting 11/27/90)

BPA should not attribute load served by BPA to Columbia River People's Utility District. Columbia River People's Utility District cannot have service responsibility for serving that part of Atochem's load that is served by BPA. Furthermore, the legislative history regarding DSI's switching to ability service does not apply to expansions above Contract Demand. The Northwest Power Act does not call for BPA to treat DSI expansions above Contract Demand any differently than would be the treatment of a new industrial customer being served by a BPA public agency customer.

Columbia River People's Utility District's service to Atochem will not constitute a NLSL. Characterized BPA as arguing that the increment of power which should be considered for NLSL measurement is the amount above Atochem's present utilization plus Columbia River People's Utility District's 9.95 megawatts. In relying on this BPA maintains that Atochem's full DSI Contract Demand is not CF/CT. This is merely a play on words. The DSI loads to their full Contract Demands are every bit as CF/CT as are the public agency loads.

16. Patrick LaCrosse, Executive Director of the Portland Development Commission (ATCM 1-21)

The Portland Development Commission views Atochem's development as a significant opportunity. We are concerned about BPA adopting a policy which would make it uneconomic and uncompetitive for industry to secure additional power. We encourage BPA to adopt a NLSL policy interpretation which would provide the tools and flexibility needed to allow economical service to new loads such as-the Atochem expansion.

17. Allan Garten, Attorney for Portland General Electric Company (ATCM 1-15)

BPA should give strict scrutiny to Atochem's proposed expansion, and BPA's test for determining whether the expansion is a NLSL should be strictly applied. The amount and use of the proposed expansion of

firm service at Atochem is not clear. The NLSL provisions were included in the Northwest Power Act to require significant new firm loads to pay power prices more nearly equal to the cost of providing the power. This is not the case with PF rate power, priced as it is based on Federal Base System costs. The region demands that significant new loads see the proper price signal for their activities in the Northwest. Otherwise, existing customers will subsidize these new loads by building at higher prices the new resources these new loads require.

18. Jonathan Ater, Attorney for Atochem (ATCM 1-16)

Regardless of the serving utility, Atochem will not be a NLSL unless its load on that utility increases by more than 10 aMW in any consecutive 12-month period. BPA should adopt Alternative C in BPA's October 19, 1990, letter (Option 4) as the only option consistent with the Northwest Power Act.

Atochem's new load is measured for NLSL purposes by the amount of power supplied to that load through Atochem's utility supplier, not to Atochem. There is no attribution in this case.

Atochem's new load will not be a NLSL because the load will not reach the 10 aMW load-growth threshold in any 12-month period.

The legislative history of the Northwest Power Act referenced in Legislative History of the Act, BPA's section-by-section analysis at pages 77-78 (1981), which states that a DSI switching to utility service would become a NLSL, deals with "...a DSI shifting all or part of its existing load requirements from BPA to a local utility." However, the legislative history of the Northwest Power Act does not evidence an intent that BPA treat new loads of a DSI differently than any other loads of any industrial consumers of local utility customers when applying the NLSL provision to new load growth served by a utility.

19. Steven C. Petersen of the Oregon Economic Development Department (ATCM 1-17)

Alternatives A and B (Options 1 and 2) would have the effect of discouraging DSI's from expanding and favor non-DSI companies wishing to expand or locate new facilities in the Northwest over existing DSI's wishing to expand here. A newcomer would be better treated than a DSI. Alternatives A and B would likewise create an incentive for expansions by existing Northwest non-DSI's over DSI's. Oregon's business climate would be undercut by the imbalance. .

We encourage BPA not to handicap local companies' expansion efforts because they already happen to be DSI customers of BPA.

20. John Carr, Executive Director of Direct Service Industries, Inc. (ATCM 1-20)

The 11 DSI's who are members of Direct Service Industries, Inc., have reviewed the comments submitted on behalf of Atochem by Jonathan Ater and agree with them.

It is difficult to understand the logic behind BPA's decision to treat Atochem as a NLSL even though the load to be placed by Atochem on Columbia River People's Utility District by contract would not exceed 10 aMW in any consecutive 12-month period. This treatment is inconsistent with the Northwest Power Act's express provision and the policy underlying the

Northwest Power Act. A NLSL is defined as a load "which will result in an increase in power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period." "Customer" is defined as a BPA customer and, in this context, clearly refers to Columbia River People's Utility District. BPA should not decide that Atochem's request for less than 10 aMW of service from Columbia River People's Utility District is a NLSL. Furthermore, BPA's preferred alternative discriminates against DSI's as compared to industrial customers of utilities.

21. Paul Murphy (public meeting 10/27/92)

The Northwest Power Act states that a NLSL must meet two tests, one of which will result in an increase in power requirements of such customer. "Customer" is defined in the Northwest Power Act to be a customer of BPA. In this case, it would have to be the utility serving BPA "...which will result in an increase in power requirements of such Customer of 10 average megawatts." If the increase in load doesn't exceed 10 aMW, it is not a NLSL by the definition contained in the Northwest Power Act. It is not necessary to read the legislative history regarding conversions of BPA's DSI's to utility service, which does not deal with the issue in any event.

22. Ed Mosey on behalf of Atochem (public meeting 10/28/90)

This is a unique situation. A DSI has two locations to choose from for additional load. The service of additional load in Tacoma is not as advantageous as service of the load in Portland for several reasons--one being system integrity, another being that, from Atochem's point of view, the marketing opportunities in Portland and proximity to market is much better.

23. Ed Locke Plant Manager of Atochem's Portland Plant (public meeting 10/27/90)

The position that Atochem has had and continues to maintain is that we are not switching load. Atochem is not moving the plant load. Atochem is looking for additional power, above the Contract Demand. This is new load. That new load is less than 10 aMW. Therefore, it is not a NLSL.

24. Phil Sher on behalf of Pacific Northwest Generating Cooperative (public meeting 10/27/90)

The reason for the NLSL provisions was the protection of the Federal Base System, maintaining the Federal Base System for the existing customers as long as possible.

Second Round of Comments: (Comments made after BPA requested comments on NLSL Option 3.)

25. Coe Hutchison, Director of Rates and Power Supply of Snohomish County Public Utility District No. 1 (NLSL-02-022)

BPA's proposal for NLSL treatment of utility service to DSI expansions states that if the facility's load declined due to market fluctuations and later increased more than 10 aMW in a 12-month period, it would be a NLSL. That may be appropriate for DSI expansions, but should not apply to CF/CT loads of a utility.

BPA should take two actions. First the NLSL policy should expressly state that it applies solely to increases in existing DSI loads. Second it should state that it has no effect on the right of existing CF/CT retail industrial loads to fluctuate loads within their preexisting 1979 contractual limits without triggering treatment as a NLSL.

26. J.R. Lauckhart, Vice President of Power Planning for Puget Sound Power & Light (NLSL-02-023)

Repeated several comments previously made. Noted that one purpose of the Northwest Power Act was to prevent industrial customers from capturing a disproportionate share of low-cost Federal power. BPA's Alternative A stated in its October 19, 1990, request for comments (Option 1) was based on the intent of Congress. Also, BPA's new option (Option 3) fails to recognize that phase-in of Priority Firm power service to new load is inconsistent with the legislative intent of the Northwest Power Act.

27. William Drummond, Manager of the Public Power Council (NLSL-02-024)

(Letter dated April 7, 1992.) After considerable discussion, The Public Power Council concluded that Option 4 is a preferred solution to this complex issue because any risk appears manageable. It is the simplest solution and falls within the range of reasonable policy alternatives.

There is no public policy reason to distinguish for purposes of a NLSL determination, between loads served solely by a retail utility and a load served jointly by a retail utility and by BPA under a power sales contract with a DSI. Public Power Council further argues that if a utility and BPA jointly serve an industrial load of a DSI, BPA should evaluate whether the portion of the DSI's load that is served by the utility is a NLSL using the same criteria BPA would use for any other load served by its utility customers.

BPA's attribution proposal (in Options 1 and 2) improperly puts BPA in the position of interpreting State law or setting State policy regarding a utility's obligation to serve its consumers' loads.

Public Power Council believes Options 1 and 2 and the new Option 3 raise concerns about inhibiting economic development by increasing the level of administrative uncertainty. These options may encroach upon rights of CF/CT loads and existing NLSL practices--which the Public Power Council believes to be that a CF/CT load will not have a facility determination until after the CF/CT level is reached. The Public Power Council believes that Option 4 is consistent with this practice, and that their possible Option 5 would allow breaking up of DSI Contract Demands and CF/CT loads into facilities prior to expansion beyond the CF/CT level or Contract Demand. Public Power Council does not favor their own Option 5 (not proposed by BPA for comment) because it is more complicated than Option 4 and would lead to unnecessary dilution of the Federal Base System.

BPA should interpret the language in section 8(f) of the utility power sales contract to include declines in the price received by the consumer for output produced, so that retail operations are able to respond to changes in economic conditions without the threat of paying a higher rate in the future.

28. Jack Speer of Aluminum Company of America (ALCOA) (NLSL-02-030)

BPA policies should not disadvantage DSI customers just because they purchase their electricity directly from BPA instead of through a local utility. The same principles which apply to an industrial customer of a utility should apply to a DSI. It may increase its load by any amount within its Contract Demand (service from BPA) without being a NLSL, and if it wants

to increase its load by service from a local utility at less than 10 aMW per 12 months, it should do so without NLSL consequences.

BPA's statement in its new Option 3 that joint utility/BPA service agreements for the DSI load and its expansion should require use of all BPA Contract Demand before allowing utility service is outside the scope of the policy and should be stricken. BPA should not restrict its ability to reach mutually agreeable terms for an agreement. There are other methods for preserving needed BPA restriction rights, and circumstances may occur where it would be advantageous to allow termination of BPA's service obligation while utility service continues. BPA should not limit its flexibility through this policy.

Further, there is no legal authority for BPA to limit a utility's service to one of its customers, even if that customer is partially served by BPA. The Northwest Power Act cannot be read as granting BPA this authority.

If an industrial load does not operate to its full potential in any one year because of market conditions or physical problems, the load that was not a NLSL prior to the load reduction should not be a NLSL when conditions return to normal and the load is increased to its previous potential.

29. William Drummond, Manager of the Public Power Council and John Carr, Executive Director of Direct Service Industries, Inc. (NLSL-02-029)

(Letter dated April 8, 1992.) There is no public policy reason to distinguish for purposes of NLSL determination between loads served solely by a retail utility and a load served jointly by a retail utility and by BPA under a power sales contract with a DSI company. BPA should use the same criteria for any other load served by its utility customers. Only the load served by the local utility should be measured for determining NLSL status. BPA's treatment should be equitable and nondiscriminatory in considering appropriate NLSL policy.

30. K.E. Burt, District Purchasing Manager of Atochem (NLSL-02-027)

BPA should adopt Alternative C (Option 4) and not discriminate against DSI's in applying the Northwest Power Act definition of NLSL as any load associated with a new facility, an existing facility, or an expansion of an existing facility which was not CF/CT by BPA prior to September 1, 1979, or which will result in increases in the power requirements of a BPA customer of 10 aMW or more in any consecutive 12-month period. Atochem supports the Public Power Council and Direct Service Industries, Inc. comments.

31. Ann L. Fisher, Assistant General Counsel of Portland General Corporation (NLSL-02-025)

No DSI expansion (new load) is a CF/CT load for a utility. If a utility serves the expanded or new load the NLSL determination should be based upon whether the load placed on the utility results in a 10 aMW or more increase in any consecutive 12-month period.

All of the options proposed by BPA, except for Option 4, attempt to artificially create a floor amount from which load growth will be measured; or to phase in a transfer of load from BPA to the utility.

Option 4 represents a simple, objective, straightforward method that Portland General Electric Company supports. Under this option BPA could

serve any DSI load at an existing facility up to the amount of the applicable Contract Demand. There would be no artificial load attribution, phased transfer of load, division of facilities, or tinkering with the floor load.

32. John D. Carr, Executive Director of Direct Service Industries, Inc. (NLSL-02-026)

(Letter of April 10, 1992.) Alternative C and Option 4 accord equal treatment to DSI and other loads and should be adopted so that discrimination does not occur between DSI and non-DSI expansions.

Power sold to a DSI by BPA is not "utility load" warranting NLSL treatment since NLSL applies only to power sold by BPA to a utility. The only relevant load to consider in a NLSL determination is the increase to the utility customer's load caused by the facility. The portion of facility load served directly by BPA under its power sales contract with the DSI is, by the express terms of the Northwest Power Act, and based on the intent of Congress expressed in the legislative history, irrelevant. BPA's Alternative C (Option 4) is silent with respect to the facility issue. BPA should apply the same facility criteria that it applies to utility industrial loads. The two purposes of the Northwest Power Act have been met by the DSI's renewing contracts for their existing loads with BPA and by the application of NLSL to new load whether of a DSI or a non-DSI. The policy alternatives which attribute BPA's DSI service to a utility are simply punitive. Facility determinations for expansions of load should apply the same criteria as for any other load.

BPA should read the section 8(f) normalization provision in the utility power sales contract broadly to avoid prolonging any economic downturn. BPA should treat all economic curtailments as "reasonably beyond the control of the consumer."

BPA should decide the question of whether it will require full use of DSI Contract Demand before allowing utility service in order to protect BPA's restriction rights on a case-by-case basis rather than as a matter of policy. The decision should be based on the unique circumstances of each actual proposal for joint service.

33. Ken Canon, Executive Director of the Industrial Customers of Northwest Utilities (NLSL-02-028)

Of the four NLSL options proposed by BPA for utility service to DSI's, Option 4 best carries out the intent of Congress. It is also the most simple to apply and explain. The attribution approaches of Options 1, 2, and 3 alternate between being unnecessarily intrusive to the utility/industry relations and unnecessarily complex.

BPA should allow normalization under section 8(f) of the utility power sales contract if severe economic pressures result in utility industrial load curtailment.

34. Scott Brattebo, Administrator of Power Planning Regulation for PacifiCorp (NLSL-02-031)

Option 4 appears to be the simplest solution to this complex issue. Under this option, BPA would serve all the DSI load at an existing facility up to the applicable Contract Demand. To the extent a retail utility serves any expansion of such facility above the DSI's Contract Demand, a NLSL determination would be based solely upon the amount of load served by the utility in any consecutive 12-month period. All other options

propose complex subjective determinations which would be inconsistently applied and raise additional issues of administration unnecessarily. There is no reason to differentiate for purposes of NLSL determinations, industrial loads served solely by a retail utility from industrial loads served jointly by a retail utility and BPA.

Regarding section 8(f) of the utility power sales contract, PacifiCorp urges BPA to include declines in the price of or demand for an industrial product as events beyond the control of the consumer.

D. Analysis of Comments

The Public Power Council, Direct Service Industries, Inc; ALCOA; Atochem; Industrial Customers of Northwest Utilities; Portland General Corporation; Columbia River People's Utility District' and PacifiCorp all expressly supported Option 4. Puget Sound Power & Light Company supported Option 1. Portland General Electric Company initially indicated support for Option 1, but in its response to the second round of comments Portland General Corporation changed its position and supported Option 4. Comments which were submitted by Atochem through their attorneys, Ater, Wynne, et. al, also provided argument in favor of Option 4.

Steve C. Petersen of the Oregon Economic Development Department pointed out that all options except Option 4 favor non-DSI or new companies who wish to locate new facilities in the Northwest over existing DSI's who wish to expand here.

The interpretation of section 3(13) of the Northwest Power Act is a central issue. BPA's interpretation as noted above is that section 3(13)applies to expansions of DSI loads in excess of their Contract Demand because those expansions are new loads. If the expansion exceeds 10 aMW in any 12 consecutive months it will be billed to the utility as a NLSL. The existing DSI load will serve as a floor from which to measure the expansion. By requiring Contract Demand to be served first, BPA has addressed the possibility of existing DSI load phasing on to utility service at the PF rate and has closed that door. The question is, what is the appropriate method of measurement for NLSL purposes where a utility serves a DSI customer's expansion beyond Contract Demand? The majority of commenters agree that Option 4 is the best method and emphasize that it is a straightforward, simple and objective method.

Puget Sound Power & Light supported Option 1. Puget Sound Power & Light argues that BPA new service to a DSI is prohibited and further argues that phasing-in a load is inconsistent with the Northwest Power Act. A NLSL is defined as an increase in consumption of 10 aMW or more in a 12-month period as compared to the previous 12-month period. This statutory definition states that a load, if it increases less than 10 aMW in any 12 months, is not a NLSL and thus a load may increase over multiple years by amounts totalling over 10 aMW without becoming a NLSL. Congress' intent that measurement of increases in load consider only the increase in each 12-month period is demonstrated by the fact that the Senate proposed a 36-month period in its version of the bill (S. 885). That provision would have been more restrictive and limited increases in a year to 3 aMW. Congress ultimately rejected this restriction and adopted the more lenient 12-month period as the measure as stated in the House version of the bill. (S. Rept. 96-272, 96 Cong. 1st Sess (1979), p. 22; H. Rept. 96-976, 96 Cong. 2nd Sess. Part I and II (1980), p. 3) The interpretation that a new load or expansion would be allowed to increase by up to 10 aMW was also considered in BPA's public

process and contract negotiations conducted for the initial section 5(g) Northwest Power Act power sales contracts during the summer of 1981. BPA and its customers specifically addressed the issue of phasing-on new load in 9.9 aMW increments. The resulting contractual provisions reflect BPA's 1981 interpretation that a new load or expansion was permitted to increase up to 9.9 aMW in any 12-month period. However, if the load reached or exceeded 87,600 MWh in a measurement period it would become a NLSL. BPA does not agree with Puget Sound Power & Light Company's argument and does not propose to change this longstanding interpretation and policy.

BPA service to a new DSI is prohibited. However, BPA may serve new load of a DSI after it has complied with provisions of section 5(d) of the Northwest Power Act. Although new service may be limited, it is not prohibited by the Act for existing DSI customers.

Although the House Commerce Committee Report indicates that a DSI which shifts its existing load to a local utility and receives retail service will become a NLSL, the proposed policy and Atochem's expansion regards a new load. The issue is not a reduction in BPA's existing DSI load service with a commensurate shift of that service to a local retail utility. As discussed above, the treatment of new load at a DSI site was not directly addressed by Congress in the legislative history. The general provision of Northwest Power Act section 3(13)(B) should apply to such new loads just as they do to any other new loads in the region. As discussed below, BPA finds merit in the position of those customers which argued that no distinction or discrimination should attach to a "new load" of a DSI.

Portland General Electric Company initially pointed out that significant new loads should be required to pay a rate for Federal electric power service which is nearly equal to that of the cost of providing the power. Portland General Electric Company then stated that the section 7(b) rate for PF does not reflect the cost of new services to serve new load and that the region needs proper price signals so that BPA customers do not subsidize new loads with lower cost. Puget Sound Power & Light and Mr. Richard Carlson made similar comments. Mr. Carlson argued that load growth should pay its own way. BPA agrees that the intent of Congress was for NLSL's to pay the higher cost of resources needed to serve them and does not find this intent in conflict with the proposed policy. Portland General Electric Company is correct when it states that "significant new firm loads" should pay the cost of power from new resources. Those significant new loads are only "significant" if the increase in new load equals or exceeds the amount of energy consumption which Congress set as a threshold, i.e., 10 aMW in any 12 consecutive months when compared to the prior 12-month period.

BPA's policy proposes to implement that threshold measurement and apply it to new load or increases in load of a DSI in excess of its Contract Demand when served by a utility. However, BPA will not apply NLSL measurement to its existing DSI loads which do not exceed Contract Demand when those loads continue to be served solely by BPA. The reason is simple. The NLSL provisions of the Northwest Power Act and the utility power sales contract do not apply to existing DSI loads being served by BPA. That service is defined under section 5(d) of the Northwest Power Act and such service is charged at a rate under section 7(c) of the Northwest Power Act, not section 7(f). Congress did not intend BPA's DSI customers to pay for their direct service from BPA at a rate other than the section 7(c) rate.

Portland General Electric Company correctly recognizes that the load must be both new and significant. That is, an increase of 10 aMW or more in a 12-month period so that the load increase fits within the definition of section 3(13)(B), in order for the section 7(f) rate to apply. Portland General Electric Company correctly recognizes in its second set of comments that the load to be measured is not the existing DSI load served by BPA. For purposes of section 3(13), it is the new load served by a local utility customer of BPA and thus billed by BPA to the utility under its power sales contract. BPA agrees with Portland General Electric Company that the fourth option has the additional advantage of being both an objective and straightforward way to measure this type of load. It is also not an artificial measurement which is difficult to administer. A further policy consideration is that for any load of this type, BPA service for energy delivered up to the full amount of Contract Demand must be taken before service from the utility, so that no phase-off of DSI load occurs. Larry Peterson commented that DSI load should be discouraged from shifting suppliers to get access to Federal Base System rates. Phil Sher of Pacific Northwest Generating Cooperative also favored a conservative NLSL policy, noting that the intent of the NLSL statutory provisions was to conserve Federal Base System Resources. BPA's policy requirement that a DSI first use its full Contract Demand before taking utility service is consistent with this intent and these comments, and protects BPA's revenues, Federal Base System Resources, and DSI restriction rights.

BPA also agrees with the position taken by Atochem and Columbia River People's Utility District that a new load will not be a NLSL if it does not result in an increase in energy consumption in excess of 9.9 aMW within one 12-month period. However, BPA's practice and interpretation has been to rely upon actual energy consumption of a load as metered at a consumer's facilities. BPA will not accept a "contract" or "contractual limitation" as the determinant of the actual size of load served by the utility for purposes of section 8 of its power sales contract. BPA also does not anticipate service to a load from multiple sources, rather than a single local utility with authorization to serve that load. In the instance of service to a single consumer from multiple utility suppliers, BPA may aggregate the load at the consumer's facility in making measurements.

The Oregon Economic Development Department and the Portland Development Commission both commented upon the need for an interpretation which does not discriminate against DSI companies with existing loads in the region in favor of new companies in developing new loads. BPA's NLSL policy on new loads of a DSI should permit reasonable economic development and investment in new loads without discrimination. BPA recognizes that these are significant considerations in developing a fair and reasonable policy. Existing companies, whether DSI's or utility customers, should be permitted to expand or develop new loads on an equal footing with those companies which are not DSI's or new consumers of a utility.

Furthermore, BPA's proposed policy will treat new loads of DSI's in excess of their Contract Demand, the same as any other new load of an industrial company new to the region. The fourth option should not result in any great disadvantage to any company which is currently a DSI or which might become one as a successor to an existing DSI company. Most of the comments received during the second round of comments argued that expansions of DSI load above Contract Demand should be treated no differently than expansions of any other utility industrial load. The policy agrees with this position and will also provide the necessary protection for BPA's existing DSI loads,

as noted above. No preferential advantage for economic expansion by non-DSI's over DSI's should result from adoption of this policy.

Ater, Wynne on behalf of Atochem provided extensive comments on the options and NLSL service and DSI service in general. Many of these comments are either responded to by way of BPA's statutory interpretation or are reasons for not adopting one or another option which BPA does not adopt. Therefore, many of these comments will not be responded to in detail. However, Atochem's and Ater, Wynne's comments, except as expressly noted in this ROD, are not adopted by BPA as part of its policy or interpretations.

Moreover, several positions taken by Atochem or Ater, Wynne must have a response because they may affect the future application of this policy adopted herein or other NLSL policy. These positions are Ater, Wynne's discussion of Northwest Power Act section 3(13) and preference customer rights; the CF/CT nature of DSI loads; the misinterpretation of section 8(b) of the utility power sales contract; the argument that "new load" is only new if it results in an increase in the total requirements of the utility; and the argument that BPA should look only at the contract between the utility and the consumer to determine whether a load is a NLSL. Each of these is addressed below.

First, BPA does not accept or agree with the Atochem position that section 3(13) of the Northwest Power Act is a limitation upon the preference rights of its public agency and cooperative customer class. As noted above in the statutory interpretation section, section 3(13) does not affect preference customer rights to a priority on Federal power, and does not limit their right to BPA service or their ability to purchase any amount of Federal power necessary to serve their loads. Section 3(13) likewise does not affect BPA's obligation to supply power to its preference customers by purchase or acquisition. Preference rights are not affected. Both the legislative history of the House and Senate committees on this section affirm that the only impact is upon the price at which Federal power will be sold and upon the average system cost of any utility which is exchanging power with BPA under a Northwest Power Act section 5(c) contract.

Section 3(13) does require that Federal power sold to serve a NLSL be charged at a section 7(f) rate, which is a higher rate than BPA's section 7(b) rate for Federal power sold for general requirements of a preference customer. Also the classification of a load as a NLSL will have the consequence of removing the load and the resources used to serve it from an exchanging utility's average system cost, consistent with section 7 of the Northwest Power Act and BPA's average system cost methodology. Both of these impacts on preference customer utilities which have NLSL's are the intended result of this section and this policy. Nonpreference utilities would have only the impact of the average system cost adjustment since they are not eligible to purchase Federal power at the preference rate.

Second, Atochem interprets section 3(13) as having a number of tests prior to a load being designated as a NLSL. They argue a key test is whether the load contracted by the local utility is 10 aMW. Atochem argues that if the contract for service from the supplying utility states a "contract limit of less than 10 aMW, e.g., 9.95 aMW," then the load by definition based on the contract is not a NLSL. Although on the surface this may be appealingly simple, this artifice of a "contract limitation" could make the statute nonapplicable to almost any load. Utility suppliers to new loads or

expansions would simply write multiple contracts, each of only 9.95 aMW, and avoid the statute's application. BPA rejects this argument and design.

BPA's present policy on measuring loads has remained unchanged since the contract provisions implementing section 3(13) were negotiated with customers and included in our 1981 initial Northwest Power Act utility power sales contracts. BPA's policy is to measure the actual energy consumed by the load at a facility of a consumer using our customer's meters, or other appropriate information. Section 8 of the power sales contract states how the comparison of energy consumption at a facility will be made and the trigger of 87.6 MWh (10 aMW x 8,760 hours per year). If actual energy consumption exceeds the trigger, BPA has meter and billing data to establish that load as a NLSL. BPA does not propose to change its policy or practices in adopting this ROD and will not rely upon a "contract limitation" as establishing whether a utility's service to a load at a specific facility of a consumer is less or more than 10 aMW in any 12 consecutive months.

As a final point, although a contract for the sale of power may state a specific energy limit, it is not clear that a local utility could cut off service to that load once the limitation was reached. State law generally provides limitations on a utility's cutting off of service for various public policy reasons of health, safety, or monopoly service practice. Moreover, Northwest utilities usually contract with large load customers on the basis of an instantaneous peak load demand limit, not an energy limit. These peak demand contracts help the utility size its capital investments in distribution. Also, service contracts usually contain provisions for emergency service, temporary service, or removal of contract limitation in specific circumstances or upon specific request. At least one Northwest public utility does not contract at all with its consumers, large or small. Rather, it makes all sales under its board-approved rate schedules. For these reasons, reliance upon a stated contract limitation is not reasonable or practicable as a policy.

Third, Atochem suggests that section 8(b) of the contract may be inconsistent with section 3(13)(B) which they argue requires that in order for a load to be a NLSL, it must result in a 10 aMW increase in "the power requirements of such customer (utility)." They argue that section 8(b) might be inconsistent if it meant anything other than that the total loads of a utility customer must increase. BPA rejected this interpretation of section 3(13)(B), as did our customers, during negotiations in 1981. This argument would read section 3(13)(B) out of context and ignores the preamble of section 13 which states that a NLSL is "...any load associated with a new facility, an existing facility or an expansion of an existing facility." The loads to be measured are those of the consumer at a facility, not the total loads of the utility customer. Total loads or total power requirements would cause NLSL's to be aggregated with all other types of loads--residential, or commercial--that the BPA utility customer might have. Such aggregated loads would vary widely and be affected by resource performance, weather, inmigration and activities wholly unrelated to a load associated with a specific consumer's facility.

BPA's 1981 interpretation and practice is wholly consistent with the statute and its intent. The only inconsistency is in Atochem's reading which would ignore a relevant portion of the language. BPA will apply its longstanding practice and policy on measuring loads for NLSL purposes under section 8(b) of the power sales contract in administering this new policy.

Consumer in section 8(b) means consumer as defined by the Northwest Power Act, section 3(5).

Additionally, Atochem takes the position that BPA may not make a facility determination until there is a usage of 10 aMW or more by the utility customer. Atochem has misconstrued section 8(a) and BPA's practice and policy on facility determinations. A facility determination may be requested by a utility at any time. Most facility requests have been made before a load increase occurs or a new plant goes in. There is no requirement under BPA's utility power sales contract or the statute that a facility determination be made after an increase in load. This result would be counterintuitive. Therefore, BPA will make and apply facility determinations under this new policy in the same way it has for the past 12 years.

Atochem further argues as an adjunct to its preceding interpretation, that BPA has no authority to aggregate loads served by two utilities, or loads served by BPA and one or more other utilities. BPA rejects this argument as guidance for its policy and statutory implementation of section 3(13) as it regards electric service provided to any one facility of a consumer at a site by more than one local utility. Were a consumer's facility's load to be disaggregated by having multiple utility suppliers each provide 9.95 aMW of energy, the entire NLSL provision would be circumvented, contrary to the statute and Congress' intent. This argument is similar to their "contractual limitation" argument and would have the same result: No load would be a NLSL. BPA has both the authority and the obligation to prevent such a result.

However, BPA does not aggregate different loads at different facilities of the same consumer. Rather, it measures the energy consumption of each load independently through an individual meter at each facility. Thus, a load at a facility of Atochem in Columbia River People's Utility District's service territory will be measured separately and not aggregated with a load measured at another Atochem facility served by the City of Tacoma's Department of Public Utilities in that service territory. If Columbia River People's Utility District and the City of Tacoma both serve a load at one single facility of a consumer, BPA may aggregate that service for the reason stated above.

To the extent that BPA's DSI service to Atochem might be considered as part of a multiple utility supplier issue under the policy options, BPA has determined this would be inconsistent with its service under section 5(d) and will not treat its contractual obligation to provide Federal power to a DSI under the DSI's initial section 5(g) power sales contracts as the same as service from a utility. Existing DSI loads served with Federal power by BPA will not have their Federal power service added to the service provided by a local utility. Service to existing DSI load was specified by Congress in section 5(d) of the Northwest Power Act and is not a sale of Federal power to a utility serving the general public. BPA cannot charge a price for this direct Federal power service which is different from that established by BPA pursuant to section 7(c) of the Northwest Power Act. Neither could BPA charge a utility, a section 7(f) rate, for power BPA itself provides directly. BPA's policy reflects this distinction.

Fourth, Atochem argues that in order for a load at a facility to be "new load" it must be an increase in power requirement and existing load is not a increase in load. BPA does not agree. By its comment Atochem seeks to

read out of section 3(13)(B) the express words, "of such customer" following the term "power requirements." BPA has read all of section 3(13)(B), together with the preamble and section 3(13)(A), and found that the provision is specific both to the facility (owned by a consumer) and to the utility. This interrelation is a basic premise of this statutory section.

BPA specifically explored this interpretation during the 1981 contract negotiations with our customers over NLSL implementation. This issue arose particularly in the instance of a load which changed from one local utility to a new local utility. Although BPA declined to write a contract section addressing this issue, in 1982 BPA gave a letter interpretation of both the statute and the contract. Boise Cascade Corporation requested the letter while it was considering a change in its local serving utility from Portland General Electric Company to Columbia River People's Utility District. BPA stated that when a load of a consumer at a facility shifts from one utility to a new utility-that load would be considered as "new" to "such customer" even though it may have been a preexisting load. Particularly this principle held in the case of a load which was previously CF/CT by its then-serving utility and which later changed serving utility, the entire load would be considered as "new" to the second utility. BPA has consistently applied this principle and interpretation since 1982. This policy does not modify or amend BPA's interpretation and practice stated in its 1982 letter to Boise Cascade Corporation.

Fifth, Atochem argues that BPA had "committed to" serve its DSI load of 84 aMW as of September 1, 1979, and that the load was CF/CT by BPA as reflected in BPA's 1981 DSI contract with Atochem. Atochem asserts that one can only start counting energy use which exceeds pre-Northwest Power Act usage and thus only the 9.95 aMW proposed additional load may be considered.

BPA does not agree that the intent of section 3(13) was to exclude existing DSI loads from consideration as NLSL's in the same way preexisting loads of utility and Federal agency customers were excluded. Congress' intent expressed in House Committee reports was quite the opposite. An existing DSI load, if it received service from a local utility rather than BPA, would become a NLSL. In fact, Congress twice modified section 3(13)(A) by addition of investor-owned utilities to the list of those customers for whom preexisting loads might be exempt. The second modification to this subsection was the elimination of the distinction between commercial and industrial loads of different cutoff dates for an exemption. Upon either occasion, Congress could have added the DSI's as a category of BPA service which predated the Northwest Power Act and exempted those loads, but it did not. BPA's review found no support for this proposition in legislative history. Thus, there is no CF/CT exemption from the NLSL provision for the preexisting load of a DSI served by BPA.

BPA will start its measurement of new load or load expansions from a floor which is the full amount of Contract Demand served by BPA. The reasons for measuring new loads in this way have been previously discussed and such loads will be monitored on the basis of actual energy consumption by the consumer at the facility. However, this policy does not grant CF/CT status to the existing load of a DSI served by BPA, if that load were to be served by a utility rather than BPA.

The above responses are also made to similar comments received from the Columbia River People's Utility District. The Direct Service Industries,

Inc., also commented that only amounts in excess of "contract entitlements" should be considered for NLSL evaluation. To the extent that contract entitlements as used by Direct Service Industries, Inc. is the same as Atochem's arguments, BPA responds with the same arguments. If Direct Service Industries, Inc. meant that "contract entitlements" are direct service from BPA for DSI existing load served by BPA, then this policy will both ensure that such load is served up to Contract Demand limit first, and only service from a local utility will thereafter be measured by meter.

The Direct Service Industries, Inc. letter of April 10, 1992, and ALCOA's letter of April 7, 1992, suggested that BPA's requirement of full use of a DSI's Contract Demand may be the right result today but need not be decided now to prejudice the issue. BPA will require such full use of Contract Demand for three reasons. First, the requirement of ensuring full DSI service will help insure the availability of the reserves which DSI's are by statute required to provide to BPA. Second, DSI's remain a significant percentage of BPA revenues and their contribution to the fiscal integrity of the Federal system will be maintained. Third, by this requirement BPA will not create a loophole for its existing DSI service to transfer over to a local utility at increments of 9.95 aMW and thereby permit DSI's existing load to avoid becoming NLSL's. This requirement is consistent with the public policy expressed by Congress regarding these loads. Finally, as ALCOA itself points out, joint service from BPA and a utility under the DSI power sales contract can be negotiated. The lack of BPA authority which ALCOA asserts as a limit on utility service is answered either by BPA's authority to include necessary terms in the contract or BPA's adoption of a policy to implement a statutory provision within the directions given and intent expressed by Congress, as noted above.

Snohomish County Public Utility District No. 1 commented that only increases over existing DSI Contract Demand are treated and that the policy does not allow CF/CT retail industrial loads to fluctuate. BPA's policy will apply to increases in DSI loads as outlined above if those increases are above the DSI's Contract Demand in full. This policy does not permit load to be phased off BPA and onto a utility. Also, this policy and BPA's NLSL interpretation and practices do permit fluctuation for a consumer's loads served by a utility which are <u>less than</u> the CF/CT amount. Above a CF/CT amount the load which is phased on is not "grandfathered," so that a load which is phased on and then reduced may become a NLSL for that portion of load above the CF/CT amount.

E. <u>Summary</u>

There is no policy reason to treat DSI expansion differently than other consumers' industrial expansions, other than protecting reserves and BPA service. BPA's policy is consistent with statute in that it will measure only the "new" load above the DSI Contract Demand, that is, the increase in load served by the utility above the DSI Contract Demand.

Upon its review, BPA found that Congress had expressed an intent that existing DSI load served by BPA would become NLSL's if served by a utility, but did not find any expression of Congressional intent that new loads or expansions in excess of BPA Contract Demand service be treated the same as existing DSI load. Congress gave direction and expressed an intent that any new load would be subject to the provision of section 3(13). BPA's Option 4 will accomplish this objective. Beyond this statutory consideration, the policy will also protect BPA's revenues and restriction rights by requiring full use of existing Contract Demand. This policy is

intended to avoid a DSI phasing off BPA service onto utility service. The policy is simple to administer between the DSI and utility's BPA contracts, in applying the NLSL provisions of the Northwest Power Act, and the utility power sales contract to the new load of the DSI to be served by a utility. The policy applies only to expansions of DSI load in excess of their Contract Demand when served by a utility.

Several commenters called for equity and fairness in treating these loads so as not to place companies who are DSI's at a disadvantage to others. The policy does not discriminate against DSI's as compared to existing industrial loads of utilities or extraregional loads. The NLSL provisions of the Northwest Power Act and the utility power sales contract will apply equally to both expansions of DSI load above their BPA Contract Demand and any expansions of existing non-DSI loads of Northwest utilities.

F. Administrator's Decision

Consistent with the foregoing analysis, BPA's policy for NLSL treatment of service to DSI loads above their Contract Demand will be to measure only the increase in load at a consumer's (DSI) facility above the DSI's Contract Demand. The NLSL provisions of the utility power sales contract will be applied to any proposed service by a local utility. BPA will also apply its present longstanding practices, interpretations, and policies in measuring the load served by a utility at a DSI site. The amount of energy consumed at a facility will be measured from a floor amount of energy consumption, which is either the greater of the amount of energy the DSI could take under its Contract Demand or the prior 12 months' total energy consumption under the DSI power sales contract and the utility's service to the expansion of load, whether the load is metered jointly or separately.

BPA will require full use of the DSI's Contract Demand for service with a utility in order to preserve BPA's existing restriction rights and Industrial Firm Power revenues. In any BPA-utility joint service agreement, the utility service would be provided only in excess of the DSI's Contract Demand.

This policy applies only to new load which are expansions of existing DSI load above the DSI's Contract Demand when served by a local utility purchasing or exchanging Federal power from BPA. It does not apply to conversions of load from BPA service under the DSI power sales contract to utility or other service. This policy does not apply in those circumstances in which a DSI reduces Contract Demand or Operating Level of its existing BPA load and takes service from a utility. This policy does not address whether such conversion will be permitted and, if permitted, would be a NLSL.

III. NORTHWEST POWER ACT SECTION 5(d)(3) PROPOSAL

A. Issue

Is the need for reserves under section 5(d)(3) of the Northwest Power Act best considered in the context of the biennial Resource Program, rather than on a case-by-case basis?

B. Options Considered

Option 1. First identify the need for additional power system reserves in the Resource Program, and then initiate a section 5(d)(3) process at BPA's discretion. Section 5(d)(3) of the Northwest Power Act provides that the Administrator must determine that additional reserves are needed for the region's firm loads before granting increased Contract Demand to a DSI. This option attempts to use a forum established for developing the Resource Program to reach regional consensus on the need for additional power system reserves. By first identifying the need for reserves and then complying with the other requirements of section 5(d)(3), BPA could sell additional amounts of electric power to the DSI's as a means to acquire additional reserves.

Option 2. At BPA's discretion, initiate a site-specific section 5(d)(3) analysis if a DSI has requested an increase in its Contract Demand. A site specific analysis may not necessarily be undertaken within the Resource Program. BPA could initiate an analysis, which would be limited to a specific site and a specific DSI, after a DSI request was made.

C. Summary of Comments

On October 19, 1990, BPA requested comment on Option 1, above. The first round of comments, summarized below through comment number 10, refers to Option 1, above.

On December 18, 1990, and January 3, 1991, at the request of the Oregon Congressional delegation, BPA held two meetings with those parties principally affected by service to Atochem's expansion and examined the possibility of a site-specific Northwest Power Act section 5(d)(3) analysis for Atochem. Because the meeting attendees were unable to reach consensus that the site-specific proposal would be an acceptable basis for increased service to Atochem, and because BPA could not show sufficient benefit to the regional power system, BPA proposed not to develop any further the site-specific analysis. On January 30, 1991, BPA requested comment from all interested parties on that proposal. Beginning with comment number 11, below, the summarized comments address whether BPA should undertake a site-specific section 5(d)(3) analysis, as well as on the general issue of whether a need for reserves is best considered in the context of the biennial Resource Program.

First Round of Comments:

1. Richard Carlson (ATCM 1-1)
   No section 5(d)(3) comment. Refer to Appendix 3, Commenters' Views on Other Issues; D. Other.

2. Larry Peterson (ATCM 1-2)
   Agrees with BPA's position.

3. Ted Hallock, Member of the Northwest Power Planning Council (ATCM 1-3)

Urges BPA action to facilitate the Atochem expansion in Portland. No specific section 5(d)(3) comment.

4. Fred Eisen of Fought & Company (ATCM 1-4)

Plant expansion should be allowed to assist the economy and the environment. No specific section 5(d)(3) comment.

5. Oregon Congressional Delegation (ATCM 1-5)

BPA should convene a forum to reach regional consensus on service to the Atochem expansion in Portland. The expansion will benefit the economy and the environment. No specific section 5(d)(3) comment. Refer to comment summary in Chapter II, NLSL Proposal; and Appendix 3, Commenters' Views on Other Issues; D. Other.

6. Mary O'Leary of Pilcher-0'Leary Construction Co. (ATCM 1-6)

Plant expansion should be allowed to assist the economy and the environment. No specific section 5(d)(3) comment.

7. Jim Nylen of Campbell Crane (ATCM 1-7)

Plant expansion should be allowed to assist the economy and the environment. No specific section 5(d)(3) comment.

8. Gene Spina, Plant Manager of Atochem (ATCM 1-8)

BPA will need to undertake additional firm power obligations if the increased load is served in Tacoma. However, if it is served in Portland BPA will have access to additional reserves without having to acquire any additional firm resources.

Additional comment referenced in Appendix 3, Commenters' Views on Other Issues; A. Contract Assignment.

9. William Fell, President of Inorganic Chemicals Division of Atochem (ATCM 1-12)

Believes the issue was basically over service and that Portland will gain significant economic benefits if their plant expansion resumes. No section 5(d)(3) comment.

10. Steve L Loveland, General Manager of Springfield Utility Board (ATCM 1-9)

No section 5(d)(3) comment. Comment referenced in Appendix 3, Commenters' Views on Other Issues; C. Service Territory.

Second Round of Comments:

11. William K Drummond, Manager of the Public Power Council (ATCM 1-10)

The rate at which a load is to be served, and whether the load would be a NLSL, is irrelevant to a section 5(d)(3) analysis. The Public Power Council states that in order to increase a DSI's Contract Demand under section 5(d)(3) BPA must have first identified the need for additional reserves. No need for reserves has been identified, therefore, in the absence of such a determination a section 5(d)(3) analysis should not be undertaken. The Public Power Council believes that the Resource Program development is the appropriate forum in which to identify any need for additional reserves by BPA. The need for reserves must be apparent and all

of the conditions listed in section 5(d)(3) must be met in full even in a site-specific analysis. Undertaking an abbreviated analysis of section 5(d)(3) based on assumptions and without the required analysis is not a suggested approach. In this instance the door would be open to similar treatment of other requests.

The Public Power Council further pointed out that City of Tacoma has standard retail interruptible industrial contracts and would treat Atochem similarly to other DSI's. The existence of City of Tacoma's interruptible loads suggests that BPA is not the only power supplier that a DSI may consider to meet its needs and provide equivalent reserves. In addition, the Public Power Council opposed BPA service to Atochem on an interim basis while undertaking an abbreviated section 5(d)(3) process (including the appropriate National Environmental Policy Act analysis), because Atochem will proceed to make capital investments in their facility. Once this happens it will be virtually impossible for BPA to justify a refusal to grant a permanent increase in Contract Demand for the plant expansion. The determination of a need for additional reserves should be part of the biennial Resource Program.

12. R.G. Bailey, Vice President for Power Systems of Puget Sound Power & Light (ATCM 1-11)

Puget Sound Power & Light believes that a section 5(d)(3) process requires a thorough analysis and may in some circumstances be a time-consuming process. Depending on the types of reserves required and that may be provided, Puget Sound Power & Light did believe that an abbreviated section 5(d)(3) analysis done in a complete manner could ensure that the reserves gained through increasing a DSI's Contract Demand are both required for the region's firm loads and that a BPA sale to Atochem would provide a cost-effective method of supplying those reserves. Puget Sound Power & Light sees an added value to the region in reserves over and above those reserves described in existing DSI contracts.

The rate at which a load is to be served, and whether the load would be a NLSL, is irrelevant to a section 5(d)(3) analysis.

13. Elden Nordahl, President of Oregon People's Utility District Association (ATCM 1-13)

The Atochem request warrants special handling by BPA due to the unique situation for both BPA and Atochem to benefit from increased service and cheap reserves. The six Oregon People's Utility Districts support BPA service to Atochem through a "Lost Opportunity"/abbreviated section 5(d)(3) process in exchange for the agreed-to interruptibility of the entire Atochem load (except wheel turning) and defeasance of the Carborundum DSI power sales contract. The term "Lost Opportunity" used here refers to BPA meeting the section 5(d)(3) requirements and concerns of the region in an abbreviated fashion which make the most of the Atochem expansion opportunities.

14. Allan M. Garten, Attorney for Portland General Electric Company (ATCM 1-15)

Atochem's continued attempt to press for Columbia River People's Utility District to serve their load undermines the basis for an expedited section 5(d)(3) process. The continued attempts by Atochem to pursue Columbia River People's Utility District service will force BPA into litigation and make it "difficult, if not impossible, for BPA to act in concert with Atochem in pursuit of a [section] 5(d)(3) process."

Portland General Electric Company maintained that service to Atochem from Columbia River People's Utility District is illegal and Atochem is not acting consistently in its representations to BPA to work closely for "an expansion in Tacoma or in Portland at the DSI rate."

15. Jonathan A. Ater. Attorney for Atochem (ATCM 1-16)

BPA is obligated to make section 5(d)(3) findings in conjunction with a DSI request, such as Atochem's, in order to properly analyze the section 5(d)(3) criteria of the load. Such criteria cannot be calculated in any meaningful way in the context of the biennial Resource Program. Instead, BPA must put itself in a position where it can analyze opportunities as they arise. Moreover, the nature and kind of restriction rights that can be developed in connection with an industrial project can have many different characteristics.

BPA is empowered to develop section 5(d)(3) findings by any method that will ensure that the request has been sufficiently examined, without the need for a regional consensus. The size of Atochem's 31 MW request allows BPA to develop findings in a concise process. Atochem's request, even as a site-specific analysis, should be approved.

16. John D. Carr, Executive Director of Direct Service Industries, Inc. (ATCM 1-20)

Direct Service Industries, Inc. concurred with the comments submitted by Atochem and also saw no reason for, or benefit to identifying "generic contract reserves" in the context of the biennial Resource Program. Direct Service Industries, Inc. does not see contract reserves as a fungible commodity. "Generic contract reserves" are not a fungible commodity. The Resource Program is not responsive enough to meet and examine customer needs by taking advantage of specific opportunities which may arise. An actual site specific request or a proposal from a DSI for increased Contract Demand must be the basis upon which to evaluate the need for "generic reserve requirements." The lag between Resource Programs is too great to capture the reserve benefits that Atochem offers.

17. S. Petersen of Oregon Economic Development Department (ATCM 1-17)

No section 5(d)(3) comment.

18. Fergus Pilon, General Manager of Columbia River People's Utility District (ATCM 1-19)

No section 5(d)(3) comment.

19. Patrick LaCrosse, Executive Director of the Portland Development Commission (ATCM 1-21)

No section 5(d)(3) comment.

D. Evaluation of Comments

The majority of commenters supported Atochem's expansion and either BPA and/or Columbia River People's Utility District providing electric power to meet Atochem's needs. Without addressing the actual purpose of this provision of the Northwest Power Act, such comments showed strong concern that BPA is not being viewed as fulfilling its social obligations to the region regarding DSI growth and preserving and expanding employment levels. Only those comments relevant to the section 5(d)(3) issue will be evaluated here.

Atochem proposed that BPA provide increased Federal power service by means of a DSI contract assignment or a favorable section 5(d)(3) determination, and alternatively proposed local utility service by Columbia River People's Utility District.

All section 5(d)(3) commenters except Larry Peterson and Portland General Electric stated that BPA could in its discretion undertake a site-specific section 5(d)(3) analysis. Portland General Electric did not specifically address that issue. The Public Power Council and Puget Sound Power & Light emphasized the need for a thorough site-specific process meeting the tests of section 5(d)(3). The Public Power Council stated that identifying a need for reserves should be the first step in any section 5(d)(3) analysis. The Oregon People's Utility District Association, Atochem, and Direct Service Industries, Inc., all commented that a site-specific section 5(d)(3) analysis should be responsive and flexible enough for BPA to take advantage of opportunities to serve DSI load growth as they arise.

The Public Power Council provided two sets of comments on the section 5(d)(3) issue. The first comment, dated January 14, 1991, stated that "Without a determination in the Resource Program that additional reserves are required, implementation of section 5(d)(3) cannot and should not go forward." However, in their March 1, 1991, comment letter, they stated that they thought BPA had misunderstood their January 14 letter and that the Public Power Council had supported the site-specific analysis offered in BPA's January 30, 1991, letter. The March comment did not propose that the analysis must begin with a Resource Program determination of the need for reserves. Therefore, BPA understands the Public Power Council to be willing to have BPA consider a site-specific analysis under appropriate circumstances, provided that BPA makes an initial determination of the need for the reserves offered in that case.

In their January 14, 1991, letter, the Public Power Council detailed comments on a BPA preliminary draft paper developed by staff regarding specific steps toward undertaking a section 5(d)(3) analysis. Because BPA did not request comments on that paper, and because BPA does not address in this policy the mechanics of specific steps needed to conduct a section 5(d)(3) analysis, BPA will not respond to those detailed comments in this ROD.

E. Analysis

Northwest Power Act section 5(d)(3) establishes the tests that BPA must satisfy to grant increased DSI Contract Demand. The statute does not require BPA to undertake those steps in any particular forum, nor to undertake the test whenever a customer or party makes a request that BPA do so. BPA believes it has the discretion to implement the requirements of section 5(d)(3) in any reasonable manner, or to decide not to undertake a section 5(d)(3) analysis.

BPA believes that it should be responsive to customer needs while meeting the requirements of the law and the needs of the region as a whole. The most efficient way for BPA to determine its need for reserves is through its biennial Resource Program. In the Resource Program process, BPA analyzes all its long-term resource needs, which would include the need for reserves. Undertaking an analysis of the need for reserves outside the Resource Program would entail an unnecessary duplication of this effort without significant additional benefits. Since the analysis would be done biennially in any event, it is unlikely that a need would arise more quickly on the Federal

system. Once a need for reserves is identified, then BPA may use that information and could proceed to the remaining steps in section 5(d)(3) if, in BPA's discretion, the additional analysis is appropriate to acquire reserves to meet identified needs.

BPA agrees with the Public Power Council that all the tests of section 5(d)(3) should be met in a process which is not driven by assumptions. After first identifying the need for reserves in the Resource Program, BPA could then implement the remaining steps in section 5(d)(3) in response to needs of BPA and its customers, including consideration of any site-specific proposal from a DSI. Nothing in the first step, identification of need, would impair completion of the remaining tasks if an opportunity resource were to become available.

F. Administrator's Decision

In the interest of an efficient and coordinated process which does not foreclose later opportunities, BPA will first identify the need for additional power system reserves in every Resource Program development process following the 1992 Resource Program. If a need is determined to exist in that program, the DSI's and other customers will be informed, and BPA in its sole discretion will decide whether it will conduct a complete section 5(d)(3) analysis. If BPA decides to undertake such an analysis, it will only grant increased DSI Contract Demand under section 5(d)(3) after it has made those determinations required by law. The determinations required by law will include an examination of whether the potential power system reserves made available through increased Contract Demand to provide expanded DSI service would properly meet the needs identified in the Resource Program. A decision to acquire reserves following a section 5(d)(3) analysis would be implemented by the Office of Energy Resources and the Office of Power Sales.

I have reviewed and hereby approve this decision regarding NLSL treatment of service to DSI loads expanding above their Contract Demands; and to establish an appropriate process to meet all the requirements of Northwest Power Act section 5(d)(3) in the event the BPA power system requires additional reserves of its DSI customers.

ISSUED in Portland, Oregon, on November 16, 1992.

/s/ Randall W. Hardy
Randall W. Hardy
Administrator

"Appendix 1"

Options for NLSL Treatment of DSI expansion loads

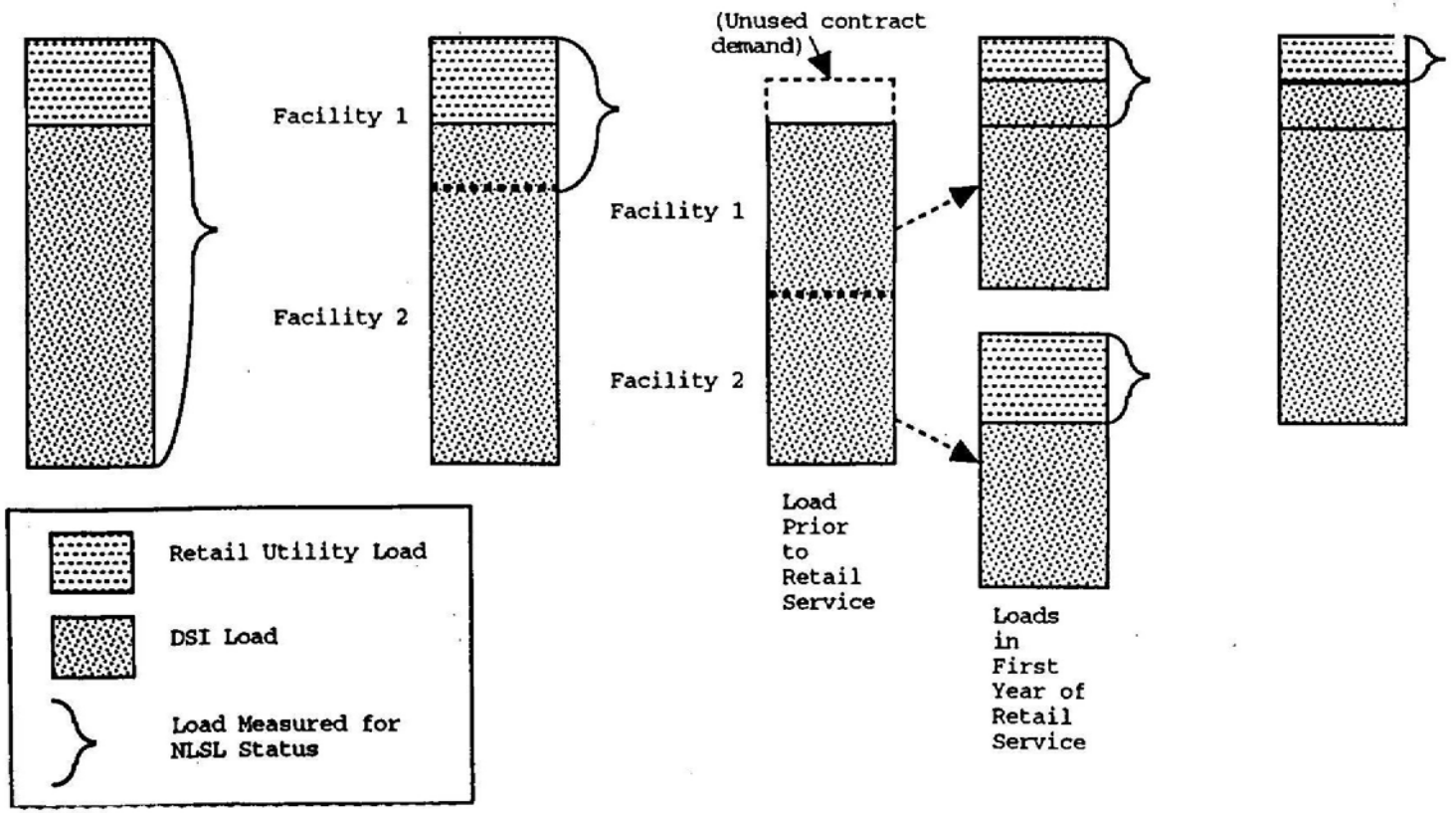
Loads measured to determine NLSL status of
DSI expansion loads served by retail utilities

Option 1:
Measure entire DSI process load with retail load

Option 2:
Measure total load at each facility, including both DSI and retail portions

Option 3:
Measure increase in each facility's load over previous year's consumption when utility is serving part of the load

Option 4:
Measure only retail utility load



Appendix 2

BPA Correspondence, Papers, Notices, and Letters from Interested Parties

Appendix 2 is available on request through the Bonneville Power Administration's Public Involvement Office: (503) 230-3478, or (800) 622-4520.

APPENDIX 3
COMMENTERS' VIEWS ON OTHER ISSUES

BPA is not by this policy making any determination of when or how it will address issues which were raised by commenters but which are outside the scope of this Record of Decision. The comments received are valuable and BPA will consider them, should BPA undertake a decision on these other issues.

A. Contract Assignment

1. Gene Spina of Atochem stated that service to Atochem is best achieved by BPA under a contract assignment. This decision can and should be approached as a unique nonprecedential matter. This service is advantageous to BPA and to the region. The plant will provide important economic and environmental benefits.

2. Jonathan Ater, Attorney for Atochem said the Northwest Power Act utility and DSI power sales contracts expressly permit one DSI to assign contract service rights to another DSI, provided that both DSI's were "existing DSI's" on the effective date of the Northwest Power Act. Section 5(d)(3) of the Northwest Power Act establishes a limit on aggregate sales to the DSI customer class. It was not intended to prohibit transfers of contract entitlements among existing DSI's.

3. Steve L. Loveland of Springfield Utility Board said reassignment of DSI contract loads that involve a change in the use of power and a change in the point of delivery should not be approved. Such actions raise questions about BPA's forecast of declining DSI loads and the impact on resource need if reassignments mask the projected declines, and about the effect on energy saving from Con/Mod programs.

B. Normalization

William Drummond of the Public Power Council, John Carr of Direct Service Industries Inc., Ken Cannon of the Public Power Council and Scott Brattebo of Pacific Power & Light (PacifiCorp subsidiary) agreed that section 8(f) refers to "unusual events reasonably beyond the control of the Consumer." Economic conditions in the industry should be considered "beyond the control of the Consumer." BPA should interpret the language in section 8(f) to include declines in the price received by the consumer for output produced, so that retail operations are able to respond to changes in economic conditions without the threat of paying higher rate in the future.

C. Service Territory

1. Steve L. Loveland of Springfield Utility Board said the language in the Columbia River People's Utility District annexation ordinance could be used by a utility looking to raid industrial customers. The measure provides that Columbia River People's Utility District may annex territory that is not served by another utility. Columbia River People's Utility District's ordinance should be revised to more specifically address this unusual situation.

2. Steve L. Loveland of Springfield Utility Board also said other utilities may try to use this special case to justify "leapfrogging" across another utility's boundary. Atochem could be viewed as a Federal

enclave because of its DSI status. Nonetheless, the policy precedent it sets could escalate customer raiding and boundary disputes.

D. Other

These comments are indirectly related to the specific policy BPA is deciding.

1. Richard Carlson was concerned with the rising utility cost and asks, "Why can't growth pay its own way in power services?"

2. The Oregon Congressional Delegation asked BPA to provide a forum for interested parties to find an acceptable answer to the Atochem power supply question.

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