

**Revised Policy on Determining Net Requirements of Pacific Northwest Utility  
Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act  
(First revision. Issued March 19, 2009; effective October 1, 2011)**



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## **INTRODUCTION**

### *Background*

On May 23, 2000, after extensive public review and comment, BPA issued its Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act (hereafter: May 2000 Policy) and its associated Record of Decision (ROD). The May 2000 Policy and ROD contain BPA's interpretation of sections 5(b)(1) and 9(c) of the Pacific Northwest Electric Power and Conservation Planning Act, 18 U.S.C. §839 *et seq.* (Northwest Power Act) for its net requirements load service and surplus power sales contracts. The Policy and ROD provide guidance on implementation of BPA's Subscription power sales contracts and describe how certain statutory factual determinations will be made regarding the amount of Federal power public and cooperative utilities and investor-owned utilities (IOUs) may purchase from BPA under section 5(b)(1) as net requirements load service. The May 2000 Policy also provides BPA's interpretation of section 3(d) of the Act of August 31, 1964, 16 U.S.C. 837 *et seq.*, as amended (the Regional Preference Act) and describes BPA's review of its utility customers' sales, as exports of their non-Federal power or resources under section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act.<sup>1</sup> The May 2000 Policy guides BPA's statutory determination of whether or not BPA can sell firm power as replacement for non-Federal power sold by a customer when a customer has exported its non-Federal hydroelectric, thermal, or other resources outside the Pacific Northwest. It also addresses what constitutes an export of non-Federal power or resources out of the Region. BPA also incorporated and reaffirmed its Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy of July 1994 and the BPA determinations made under section 9(c) with only minor modifications, as noted in section IV of the May 2000 Policy.

After publication of the May 2000 Policy, several BPA preference customers, direct-service industrial customers (DSIs), and IOUs filed legal challenges against the policy in the U.S. Court of Appeals for the Ninth Circuit. See *Goldendale Aluminum Co. et al. v. United States Department of Energy*, case nos. 00-70717, 00-70719, 00-70743, and 00-70778. In March 2003, all parties, with the exception of Grant PUD, executed a settlement agreement and motion to dismiss. BPA adopted the clarifications on March 7, 2003, making them part of the May 2000 Policy. The clarifications are denominated as "Clarifications Issued on BPA's Policy for Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act, dated May 23, 2000" (hereafter: Clarifications). Together, the May 2000 Policy and Clarifications constitute BPA's existing policy on its application of sections 5(b)(1) and 9(c) of the Northwest Power Act, effective through September 30, 2011. The Clarifications are incorporated herein as Appendix A.

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<sup>1</sup> The May 2000 Policy incorporates BPA's legal interpretation of sections 5(b), 5(f), 9(c), and 9(d) of the Northwest Power Act and sections 1(f) and 3(d) of the Regional Preference Act from BPA's 1994 3<sup>rd</sup> AC Participation Record of Decision.

## *The Regional Dialogue Policy and Tiered Rates*

In July 2007, BPA published its Long-Term Regional Dialogue Policy (RD Policy) and accompanying Record of Decision for selling Federal power under new contracts to its regional preference, Federal agency, IOU, and DSI customers after October 1, 2011.

Under the RD Policy, BPA has offered 20-year Regional Dialogue power sales contracts (Contract High Water Mark [CHWM] contracts) to market core products for net requirements load service similar to what BPA offered under the current Subscription contracts. The Load Following product and Block and Slice with Block products are available under a tiered rate structure to BPA's preference and Federal agency customers.

BPA established tiered rates through a Tiered Rate Methodology (TRM). The TRM is a two-tiered rate design applicable to net requirement load service for customers that sign CHWM contracts. The TRM differentiates between the costs of service associated with a defined set of existing Federal resources and the costs associated with additional Federal resources needed to serve any remaining portion of a customer's net requirement load. Pursuant to the TRM, a customer will receive a Contract High Water Mark, measured in average megawatts, that defines the customer's eligibility to buy an amount of firm power priced at Tier 1 rates. A customer's CHWM will be adjusted to account for changes in the planned Tier 1 System Resources capability for each rate period, resulting in a Rate Period HWM (RHWM). A customer's BPA power purchases in excess of its RHWM will be priced at Tier 2 rates. For its load above BPA's RHWM service obligation (Above-RHWM Load), a customer may purchase Federal power from BPA at Tier 2 rates, supply its own non-Federal power, or both. Independent of the RHWM, a customer's purchase of Federal power is limited by the customer's net requirement, the amount of a customer's retail load that BPA is obligated to serve under statute.

The foregoing brief summary of BPA's TRM is intended to provide terms and concepts that are unique to the RD Policy and RD contracts and that are used in this Revised 5(b)9(c) Policy. The use of any such terms or concepts in this Revised 5(b)9(c) Policy is consistent with the TRM and RD contract terms (see Appendix B). The TRM describes a rate structure and does not determine BPA's obligation to supply a customer's net requirement load, which is the subject of this Revised 5(b)9(c) Policy.

For the purposes of implementing the RD Policy and TRM, it is necessary under this Revised 5(b)9(c) Policy to address the difference in treatment of a customer's non-Federal resources previously dedicated to serve load under its Subscription or pre-Subscription contracts from non-Federal resources that a customer subsequently acquired to serve load above its RHWM for a rate period. Accordingly, the following definitions for customers' non-Federal resources will apply as of the effective date of this Revised 5(b)9(c) Policy:

1. "Above-RHWM Resources"<sup>2</sup> means those Specified Resources listed in section 2 of Exhibit A of a customer's CHWM contract and any Unspecified Resource amounts listed in section 3 of Exhibit A of a customer's RD contract that were dedicated to serve the customer's firm regional retail load after September 30, 2006.

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<sup>2</sup> Above-RHWM Resources are the same resources identified by the term "New Resources" in the RD contracts. A different term is used here because "New Resources" is already a defined term used in the Clarifications to the May 2000 Policy.

2. “Existing Resource” means a Specified Resource listed in section 2 of Exhibit A of a customer’s CHWM contract that such customer was obligated by contract or statute to use to serve its Total Retail Load prior to October 1, 2006.

#### *The Revised 5(b)9(c) Policy*

On October 12, 2008, BPA published a proposed Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act (Revised 5(b)9(c) Policy). The proposed Revised 5(b)9(c) Policy was the result of a limited-scope review of the May 2000 Policy and Clarifications; it reflects changes to specific provisions as described in section II.B.8 of the RD Policy that are important to implementation of the RD contracts.

BPA received public comment on its proposed Revised 5(b)9(c) Policy and, after having reviewed and considered public comment, the Administrator has decided to adopt this final Revised 5(b)9(c) Policy. Review and analysis of public comment is being published in the Administrator’s Record of Decision that accompanies this final Revised 5(b)9(c) Policy.

This Revised 5(b)9(c) Policy will become effective on October 1, 2011 when service under the Regional Dialogue contracts commences. It provides guidance on implementation of the RD Policy under applicable statutes and describes how certain statutory factual determinations will be made regarding the amount of Federal power that publicly and cooperatively owned utilities and IOUs may purchase from BPA under section 5(b)(1) of the Northwest Power Act. BPA’s determination of its net requirement load obligation, as described in this Policy, will be affected by a customer’s export of hydroelectric resources and non-hydroelectric resources in accordance with BPA’s policies and section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. BPA will review a customer’s export of power or output from resources under BPA’s Section 9(c) Policy as set forth in Section IV.B of this Revised 5(b)9(c) Policy, consistent with the Clarifications.

#### *Applying the Clarifications to the Revised 5(b)9(c) Policy*

Notwithstanding any language in the May 2000 Policy and Clarifications that they are limited in application to BPA’s Subscription contracts, the May 2000 Policy (as revised) and Clarifications will apply to BPA’s CHWM contracts and other subsequent power sales contracts with regional customers after expiration of the Subscription contracts. The Clarifications, in some instances, use language that is unique to the Subscription contracts. Since the Clarifications are part of a litigation settlement, BPA is not revising the Clarifications document as part of developing the Revised 5(b)9(c) Policy. The language of the Clarifications will be interpreted to permit its application under this Revised 5(b)9(c) Policy, which uses terms unique to the RD Policy and TRM and that are embodied in the CHWM contract. Accordingly, for the purpose of applying the Clarifications to the Revised 5(b)9(c) Policy, the following terms from the Clarifications will be read as follows:

1. “New Resources” will be read as defined in section 10(d) of the Clarifications. This is unchanged from its use under the Subscription contracts. However, alternative uses of the same defined term under the RD Policy and CHWM contracts should be noted. In the CHWM contracts, the defined term “New Resources,” and the term “New non-Federal Resources” in section II.B.7 of the RD Policy, have a unique meaning different from that

used in the Clarifications and refer to customer non-Federal resources added after September 30, 2006.

2. “[S]ection 2(a) of Exhibit C” and variations of the same will be read as “section 2 of Exhibit A” to refer in the latter case to the Specified Resources section of the firm resources exhibit in the customer’s CHWM contract or the corresponding section of the firm resources exhibit in other 5(b)(1) contracts.
3. “[S]ection 2(b) of Exhibit C” and variations of the same will be read as “section 3 of Exhibit A” to refer in the latter case to the Unspecified Resources section of the firm resources exhibit in the customer’s CHWM contract or the corresponding section of the firm resources exhibit in other 5(b)(1) contracts.
4. For section 11(c), “Critical Slice Amount” will be read as “Slice Output Energy,” and “Initial Critical Slice Amount” will be read as “2012 Critical Slice Amount.”
5. “Net Requirements Exhibit” will be read to refer to Exhibit A of a customer’s CHWM contract or the corresponding firm resources exhibit in other 5(b)(1) contracts.

## **I. Relevant Statutory Provisions**

The Northwest Power Act provisions are:

**5(b)(1)** Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds –

(A) The capability of such entity’s firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

(B) Such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region.

**5(b)(1)** In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights. 16 U.S.C. 839c(b)(1).

**9(c)** Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 23, 1964 (16 U.S.C 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term “surplus energy” shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term “surplus peaking capacity” shall mean electric peaking capacity for which there is no



demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837d and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. The Administrator shall, in making any determination, under any contract executed pursuant to section 839c of this title, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

16 U.S.C. 839f(c) (emphasis supplied).

The Northwest Preference Act provision is:

**3(d)** The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility's own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy.

16 U.S.C. 837b(d).

## **II. Scope of the Policy**

The Policy on Determining Net Requirements as described in section III addresses the amount of Federal power that BPA is obligated to offer to customers requesting contracts to serve firm power loads under section 5(b)(1) of the Northwest Power Act. Purchasers eligible to request a contract under section 5(b)(1) include public body, cooperative, and investor-owned utilities in the region that have met BPA's standards for service under section 5(b)(4). BPA has a corresponding statutory duty when determining the net requirements of a requesting purchaser to apply the provisions of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is contained in section IV. Such provisions direct the Administrator to determine whether an export or proposed export of a requesting purchaser's non-hydroelectric or hydroelectric resource(s) would result in an increase in the firm energy requirements of any of BPA's customers. Findings by BPA that the export of such resources is likely to increase BPA's firm obligations, and that the resource could have been conserved or otherwise retained to serve regional loads, will result

in a reduction (decrement)<sup>3</sup> of the amount of Federal power and energy available for purchase under section 5(b)(1) equal to the amount of power and energy, and for the duration, of the export. Determinations under this policy will be made by BPA based on demonstrations made by the customer and other available information.

### **III. Policy on Determining Net Requirements**

#### **A. Determination of the Amount of Federal Power For Sale Under Section 5(b)(1)**

1. BPA will determine the amount of Federal power for sale under section 5(b)(1) in the manner described below. In making this determination BPA will reduce the amount of Federal power a customer may purchase in accordance with section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act.
  - (a) BPA will offer an amount of Federal power for sale to a customer under section 5(b)(1) based upon such customer's actual retail firm power loads in the region. To establish the customer's actual retail firm power loads in the region, BPA shall use either the actual measured load of the customer or the customer's own actual load forecast. However, if BPA finds the customer's forecast unreasonable, or the customer has not produced such a forecast, BPA will substitute its own forecast. (Any actual or forecast loads of the customer shall exclude any wholesale loads served by the customer. "Wholesale Loads" means power sales made by the customer using its own resources to serve its own wholesale customers who are purchasing to resell the power at wholesale or retail.)
  - (b) For purposes of determining the amount of Federal power BPA will offer to existing customers in the post-FY 2011 period, BPA will require an existing customer to continue to use all of its Existing Resources. Existing Resources include those non-Federal resources required to be applied to a customer's consumer load under section 5(b)(1)(A) and those non-Federal resources subsequently dedicated prior to October 1, 2007, to serve a customer's consumer load under section 5(b)(1)(B). BPA will not, however, require customers to continue the use of Existing Resources under any one of the following conditions: (1) the customer's contractual resource(s) expires prior to October 1, 2011; (2) the customer's generating resource(s) is determined by BPA to be lost due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); or (3) the customer's contractual resource(s) is determined to be lost in accordance with section III.B.2 (loss of contractual resources). In addition, customers who were given express written consent by the Administrator to permanently remove a resource from use in serving regional firm power loads are not required to return such resource to use.

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<sup>3</sup> The 1994 Section 9(c) Policy BPA published uses the term "decrement" to mean a decrease or reduction in BPA's obligations to sell power to a customer under its section 5(b)(1) power sales contract with BPA. The same term was incorporated by reference in the May 2000 Policy and Clarifications. When used in this Revised 5(b)9(c) Policy, the terms "decrement," "decrease," "reduce," or "reduction" have the same meaning.

- (c) BPA will require that all Federal surplus firm power contracts or excess Federal power contracts with terms that specify that such power be used to serve the customer's retail firm power load in the region be so applied.
- (d) Under a section 5(b)(1) contract, customers may elect to dedicate other generating resources or contractual resources to serve their consumer load (Above-RHWM Resources under a CHWM contract) in addition to generating resources or contractual resources customers must use to serve load under section III.A.1.(b). Customers can also agree to contractually commit power purchases from the market (market purchases) (including Unspecified Resources under the Clarifications)<sup>4</sup> to serve any remaining amounts of their retail firm power load in the region that are not served by (1) generating resources or contractual resources that a customer must use to serve load under section III.A.1.(b); and (2) additional generating resources or contractual resources that a customer elects to use under this section. Resources used for load by a customer under this section must be added to the Firm Resource Exhibit of the customer's contract, e.g. Exhibit A of the CHWM contract. Application of additional generating resources, contractual resources, or market purchases by a customer under a section 5(b)(1) contract shall be as follows:
  - (i) All additional generating resources or contractual resources shall be used for load for the useful life of the resource, or the term of the contract, including renewals or extensions, unless (1) the customer's generating resources determined by BPA to be lost during the term of the contract due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); (2) the customer's contractual resources are determined by BPA to be lost during the term of the contract in accordance with section III.B.2 (loss of contractual resources); or (3) BPA has provided express written consent to permanently remove the resource.
  - (ii) Market purchases used to serve retail firm power load in the region shall be used for the entire rate period for which BPA establishes rates of general application, except as provided in section III.D.2.
  - (iii) Consistent with the applicable terms on resources in the customer's section 5(b)(1) contract and the customer's product selection, a customer that elects to use market purchases to serve its retail load that does not match the customer's then-current resources and its delivery of Federal power from time to time shall make such market purchases to serve that portion of load that does not match such customer's then-current resources and delivery of Federal power under all such circumstances.
- (e) BPA will apply the Declaration Parameters included in the Power Products Catalog, as it may be revised, and related contract provisions to establish the amount of power available from the customer's generating and contractual

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<sup>4</sup> Unspecified Resources and market purchases are functionally equivalent and interchangeable terms, as explained in BPA's Long-Term Regional Dialogue Contract Policy ROD (Oct. 31, 2008), at 13-19.

resources under the customer's 5(b)(1) contract. Because the Declaration Parameters are subject to revision, BPA will use the Declaration Parameters in effect at the time of each of BPA's annual net requirement load determinations to determine the amount of Federal power offered. The customer may declare a reduction in the amount of power that would otherwise be available from its own generating and contractual resources by the amount of power the customer uses from such resources to serve its Wholesale Loads, defined above, that were served prior to December 5, 1980, and that continue to be served by such resources. The Declaration Parameters in effect at the time of the most current revision of this Revised 5(b)9(c) Policy are attached hereto as Appendix C. This appendix is included for reference use only. The Declaration Parameters are not made a part of the Revised 5(b)9(c) Policy.

2. In addition to subsections III.A.1.(a) through (e), BPA shall reduce the amount of Federal power offered to a customer under section 5(b)(1) when such reductions are consistent with the application of BPA's Section 9(c) Policy, as modified, and resultant findings made under section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

**B. Statutory Permanent Discontinuance for a Customer's Generating and Contractual Resource**

1. A customer's non-Federal generating resource is considered no longer used to serve regional retail firm power load under a section 5(b)(1) contract if the resource's use is permanently discontinued due to obsolescence, retirement, or loss.
  - (a) Obsolescence is a permanent discontinuance of a generating resource resulting from the inability to continue to operate such resource at the end of its useful life due to lack of available replacement parts, deterioration of the physical facility, or lack of sources of fuel supply.
  - (b) Retirement is a permanent discontinuance of a generating resource for which the customer can demonstrate that the costs of replacements, improvements, or additions necessary to continue to operate the resource, combined with the resource's variable operating costs, exceed the reasonable economic return over the remaining life of the resource. The customer will demonstrate the reasonable economic return of the resource by comparing (1) the costs to the customer of replacing the resource with market purchases plus the cost to permanently shut down the resource to (2) the cost of continuing to operate the resource.
  - (c) Loss of a resource is a permanent discontinuance caused by factors beyond the reasonable control of the customer and that the best efforts of the customer are unable to remedy. Such factors include, but are not limited to, complete destruction of the resource, complete loss of the Federal or State license to own or operate the resource, or complete and/or partial reduction of the capability of a resource to the extent of the loss resulting from requested operations or orders of a cognizant State or Federal agency directly or indirectly affecting the operation of the resource and changing its planned capability.

2. A customer's contractual resource is considered no longer used to serve regional firm power load if the customer experiences a permanent loss of contract rights. Loss of contract rights must result from expiration of the term of the contract, after any extensions of the contract unilaterally available to the customer, or from factors beyond the reasonable control of the customer and that the best efforts of the customer are unable to remedy. The Administrator may grant consent to a customer's permanent discontinuance of a contract resource upon expiration of such contract, notwithstanding a customer's right to renew or extend such contract if the customer demonstrates that substantial and material changes in the terms of a successor contract, such as price, will deny the basic benefit of the bargain to the customer, which effectively results in the loss of existing contract rights.

**C. Addition and Removal of Non-Federal Resources During Contract Term**

1. A customer may elect to add a non-Federal resource (Above-RHWM Resource under a CHWM contract) to serve its regional retail firm power load as provided in its 5(b)(1) contract. Under a CHWM contract, (1) the customer must provide the requisite notice to BPA specified in its CHWM contract and (2) the power from the resource must be delivered in the shape that the customer has agreed to in its contract. The customer shall obtain any needed shaping services for the resource, which may be self supplied or provided by either a third party or BPA.
2. A customer may elect to temporarily remove a non-Federal resource from serving its regional retail firm power load, due to a loss of load, provided that the customer returns the resource to load service consistent with its contract and complies with the other related terms specified in its 5(b)(1) contract. Under a CHWM contract, such removal shall be for such periods and durations as provided in the customer's contract, consistent with sections D.2 and D.3, below.
3. Application of a customer's non-Federal resource (Above-RHWM Resource under a CHWM contract) under section III.C.1 shall reduce BPA's net requirements load obligation. The disposition and use of a customer's non-Federal resource (Above-RHWM Resource under a CHWM contract) that is temporarily removed from serving load under the customer's 5(b)(1) contract is subject to the requirements of section 9(c) of the Northwest Power Act and section IV of this Policy.

**D. Changes in the Amount of Federal Power Purchased During the Term of a Contract**

1. Under a section 5(b)(1) contract, including CHWM contracts, BPA will require a customer to submit annual reports that track and forecast the customer's retail firm power loads in the region, except for customers that purchase their full net requirement service from BPA and for which BPA meters their total retail load. The purpose for the annual report is to provide information that allows BPA to perform an annual net requirement load calculation and shows any increase or reduction in the amount of the customer's retail firm power loads in the region from the amount served when the contract was executed. Based on such load information, or BPA's forecast of the customer's load if BPA finds the customer's load forecast is unreasonable, BPA shall make an annual determination of the net firm requirement load of the customer under a

section 5(b)(1) contract as follows.<sup>5</sup> First, BPA will account for and subtract from the customer's retail load:

- a) the amounts of generating and contractual resources a customer is required to use to serve firm power load in the region under section III.A.1.(b) (Existing Resources);
- b) amounts of additional resources a customer has elected to use under section III.A.1.(d) (additional generating and contractual dedicated resources); and
- c) amounts of power purchases from the market that a customer has contractually committed to purchase in its 5(b)(1) contract, consistent with section III.A.1.(d) (market purchases).<sup>6</sup>

Second, BPA will make adjustments for:

- d) changes in a customer's Above-RHWM Resources used to serve retail firm power load in the region, as provided for in section III.C.1;
- e) changes in the customer's own resources serving its load pursuant to III.A.1.(b) and III.A.1.(d), based on BPA's determination of a statutory discontinuance under section III.B;
- f) any reductions in the amount of power a customer may purchase under a section 5(b)(1) contract due to the annual export review under section III.D.4; and
- g) changes in the customer's hydroelectric resource capability declarations due to changes in coordinated planning allowed under section III.A.1(e).

## **2. Temporary Removal of Above-RHWM Resources Under a CHWM Contract**

In some cases, a customer may face a loss or reduction in the annual amount of its retail load. Such a year-to-year reduction in a customer's Above-RHWM Load could result in the customer having purchase obligations in excess of its net requirement or Above-RHWM Resources, absent a mitigation tool, that could reduce a customer's purchase of Federal power at the Tier 1 rate. Under the CHWM Contracts, customers that purchase the Load Following, Block, or Slice with Block products may choose to temporarily remove Above-RHWM Resources from serving their regional firm load, or elect to have BPA remarket purchase obligations at Tier 2 rates, or both, in most cases of a forecast reduction in their Above-RHWM Load.

### **a) Block and Slice with Block CHWM Contracts**

Under the CHWM contract, Block and Block with Slice customers shall have a resource removal right as follows. If BPA's annual net requirement load

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<sup>5</sup> Such reports may be in addition to other load or resource information the customer is required to provide BPA on its loads or resources for contract administration and planning purposes. Such determinations may be in addition to other determinations of net firm power requirements loads made more frequently under the terms of the customer's contract.

<sup>6</sup> See also sections 2 and 9 of the Clarifications regarding the contractual commitment of unspecified resources.

determination finds that a customer's Preliminary Net Requirement is less than its contracted amount of BPA power to be purchased for the next contract year, then the customer may elect to remove Above-RHWM Resources from use for its regional firm load for a period of one year, have BPA remarket its purchase obligations at Tier 2 rates or a combination of both. The reduction(s) may continue for that year until (a) the total of the resources removed and BPA purchase obligations remarketed equals the amount that the customer's purchase obligations at Tier 2 rate plus its RHWM exceeds its Preliminary Net Requirement, or (b) until all Above-RHWM Resources have been removed and all the customer's purchase obligations at Tier 2 rates have been remarketed by BPA.

**b) Load Following CHWM Contracts**

Under the CHWM contract, Load Following customers shall have a resource removal right as follows. If BPA's RHWM Process load forecast may indicate that a customer's net requirement for a Fiscal Year of a Rate Period is less than its contracted amount of BPA power to be purchased in that Fiscal Year, then the customer may elect to remove Above-RHWM Resources from use for its regional firm load for that Fiscal Year or exercise contractual mitigation measures to reduce its BPA purchase obligations at Tier 2 rates. The reduction(s) may continue until (a) the total of the non-Federal resources removed and reduction of the customer's BPA purchase obligations equals the amount that the customer's Tier 2 Rate purchase obligations plus its Above-RHWM Resources exceeds its Above-RHWM Load, or (b) until all Above-RHWM Resources have been removed and no BPA purchase obligations at Tier 2 rates remain.

Above-RHWM Resource removals shall be such that the annual shape of the resource shall be maintained, as required by the customer's CHWM contract. Any Above-RHWM Resource that is removed for the Fiscal Year must be made available in the next Fiscal Year to serve any increases in the customer's planned Above-RHWM Load.

**3. Temporary Removal of Existing Resources Under a CHWM Contract**

**a) Block and Slice with Block CHWM Contracts**

Removal of Existing Resources is available to only Block or Block with Slice customers, and then only in limited circumstances. If BPA's annual determination of such a customer's net requirement for the second or subsequent years of a Rate Period, after the remarketing of all of its BPA purchase obligation(s) at Tier 2 rates and removal of its Above-RHWM Resources, is less than the annual net requirement BPA calculated for the first year of the Rate Period, then BPA will consent to the customer's limited removal of Existing Resources from use for its regional firm retail load as follows. Such removal shall be for a period of only one year, and only in an amount that is the lesser of (1) the remaining amount that the customer's RHWM exceeds its Preliminary Net Requirement, or (2) the difference between the customer's Preliminary Net Requirement for the first Fiscal Year and Preliminary Net Requirement for the applicable subsequent Fiscal Year of the Rate Period. That portion of Existing Resources shall be removed in the same shape in which the customer has agreed in its CHWM contract to provide the resource. Amounts of any

Existing Resource removed for the Fiscal Year must be reapplied in the next Fiscal Year.

**b) Block, Slice with Block and Load Following CHWM Contracts**

To the extent that an Above-RHWM Resource that is eligible for removal from serving the customer's regional load is being used to fulfill a state or Federal renewable resource portfolio standard or similar legal obligation, the customer may remove in its place the same amount of an Existing Resource, in accordance with the requirements of its CHWM Contract.

**4. General Provisions for Temporary Removal or Permanent Discontinuance of Non-Federal Resources**

a) Any customer's resources, other than market purchases (Unspecified Resources), that are removed from use in serving the customer's regional firm load under this section are subject to a BPA determination made under section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act. If the customer's disposition or use of that resource results in a reduction or decrease in BPA's obligation to provide power pursuant to section III.D.4, then BPA will recalculate the amount of power the customer may purchase for the upcoming year as provided under this section (III.D.2 and III.D.3). In such cases, no resource removal rights may be used to reduce or avoid the section 9(c) decrement.

(b) On an annual basis, as provided under a section 5(b)(1) contract, BPA will review the export of power from a customer's regional non-Federal generating and contractual resources and, if required, will reduce the amount of Federal power a customer may purchase in accordance with section IV of this policy. BPA shall reduce the amount of power a customer may purchase for the remainder of the year or the duration of the export, whichever is longer.

(c) BPA shall make available additional amounts of power to a customer under a section 5(b)(1) contract to serve the customer's regional firm retail load that was formerly served by a customer's generating resources or contractual resources that are no longer required to be so used based on consent of the Administrator to permanently discontinue use of the resource or in accordance with section III.B (statutory permanent discontinuance). Such service shall be made available based on the notice required under the customer's 5(b)(1) contract, or 6 months' notice that such an event has occurred, or as mutually agreed.

**IV. Section 9(c) Policy**

**A. BPA's Non-Federal Participation Section 9(c) Policy**

BPA's May 2000 Policy revised in part and affirmed in part BPA's 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy). BPA's 1994 NFP, as modified, was retitled: BPA's Section 9(c) Policy, and is adopted in this Revised 5(b)9(c) Policy with minor clarifications, as set forth in section IV.B below.

BPA reaffirms the application of its 1994 NFP Policy and legal interpretation published in July of 1994 as adopted by this Revised 5(b)9(c) Policy. The context for some of the determinations made in the 1994 NFP Policy was, in part, prior exports and new exports of firm



power from customer resources by participation in the new Third AC Intertie. The interpretation has been of general application since 1994 to customer exports and continues to be applicable. However, BPA is now modifying the policy to clarify certain issues that were not previously addressed. Prior determinations made under the 1994 NFP Policy remain in effect for the duration of the export sales currently subject to that policy.

In the 1994 NFP Policy, BPA did not address the export of firm power from IOU resources because the IOUs were not placing any firm power loads on BPA under their section 5(b)(1) power sales contracts with BPA. *See* footnote 3, page B-10, BPA's 1994 NFP Policy. Since the IOUs were not taking any power service from BPA, reductions in their service under those section 5(b)(1) contracts pursuant to a section 9(c) determination would not have affected their BPA service. The May 2000 Policy has been modified to update the technical provisions, as discussed in section IV.B below.

## **B. Section 9(c) Policy**

### **Section 1. Northwest Power Act Section 9(c) Determinations**

As required by the Northwest Power Act, BPA shall make its Section 9(c) determinations for the exports of its customers. Export for purposes of this policy means the sale of the firm power output of a generating or contractual resource in a manner that such output is not planned to be used solely to serve firm consumer load in the Region as the term "Region" is defined in section 3(14) of the Northwest Power Act.

### **Section 2. Finding Required**

In examining the export of Pacific Northwest resources, BPA shall make its finding based on the following requirements of Section 9(c):

- a) BPA shall analyze whether the customer's exports would result in an increase in the electric power requirements of any of its customers in the region. BPA shall do this by examining its load/resource forecasting and planning documents to determine the impact the exports will have on BPA's and its customers' ability to meet Pacific Northwest load presently and in the future. BPA shall also analyze the information available from other sources, including least-cost plans and load/resource information of Pacific Northwest utilities that do not currently place any load on BPA.
- b) BPA shall review the specific resources being exported on an annual basis, unless the customer requests review for a longer period, to determine if the resources being exported are hydroelectric resources, and if not, whether they are conservable. BPA shall review categories of resources eligible for export for a period selected by BPA. If the resources are not hydroelectric resources and BPA determines the resource is not conservable (see section 6(b) for a description of those resources BPA has determined are conservable), BPA shall determine if such exports will result in an increase in the firm energy requirements of its customers. If they will, BPA shall determine whether the resource could be otherwise retained for service to regional loads by using reasonable means. If BPA finds in its analysis that the fully allocated nominal cost of the resource a customer is proposing to export exceeds the fully allocated nominal cost of the region's marginal resource, BPA will conclude that such resource can be exported without

having to decrement the customer's section 5(b) utility power sales contract. If the resources are hydroelectric resources BPA shall make its determination in accordance with section 3(d) of the Regional Preference Act.

### **Section 3. Scope of Section 9(c) Policy**

This Section 9(c) Policy addresses a customer's exports of power from Pacific Northwest resources out of the region. BPA shall make its section 9(c) determinations based on a factual determination using information about the specific resource the customer intends to export.

### **Section 4. Data on Specific Resources**

BPA shall base its section 9(c) determination on specific information BPA has obtained from the customer on the resources it has or intends to export. The customer shall provide this information when it notifies BPA that it intends to export a resource or when BPA requests information regarding a possible export. This includes, but is not limited to, the following information:

- a) name of the resource to be exported;
- b) location of the resource;
- c) type of resource;
- d) whether the resource is currently in any Pacific Northwest utility's firm resource exhibit;
- e) whether the resource is planned or existing;
- f) type of transaction or sale, and if it is a seasonal exchange, the terms of the exchange; and
- g) the cost of the resource (including reasonable rate of return) included in the customer's retail rates and a forecast of such costs for each year of the proposed export.

BPA will also consider any past use of the resource, including prior efforts to market it to BPA or other Pacific Northwest utilities.

### **Section 5. Prior Case-by-Case Section 9(c) Interpretations**

BPA is not modifying its existing determinations on Pacific Northwest utility exports, including its 1994 NFP Policy determinations, and will apply its prior case-by-case interpretations of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act to such decisions without modification. Therefore, BPA incorporates by reference in this Policy these prior interpretations of sections 9(c) and 3(d) and the determinations made there under for the duration of the export sale.

### **Section 6. Categories of Resources**

- a) **Exports That Will Not be Decrement by BPA.** Under this Section 9(c) Policy determination, BPA will determine based on the finding in section 2 of this policy whether or not the export of certain resources will result in an increase in the electric power requirements of any of its customers. If the export of a resource does not

increase the firm energy requirements of BPA's customers or could not otherwise be retained for service to regional loads, the resource may be exported without a reduction in BPA's firm load obligation under the customer's section 5(b) utility power sales contract.

- b) **Exports That Will be Decrement by BPA.** BPA has determined, based on its prior policy interpretations of Northwest Power Act section 9(c), that the following categories of resources are conservable, and if they are exported BPA shall decrement the customer's section 5(b) power sales contract:
- 1) all Pacific Northwest hydroelectric resources owned or purchased by a Pacific Northwest utility, whether or not dedicated in any Pacific Northwest utility's firm resource exhibit which through reasonable measures can be conserved or otherwise kept available for the utility's own needs; and
  - 2) all section 5(b)(1)(A) and 5(b)(1)(B) thermal resources that are currently dedicated by a utility in any customer's firm resource exhibit.

### **Section 7. System Sales**

BPA shall utilize a case-by-case approach to system sales. BPA shall require the exporting utility to submit an operating plan for the duration of the export, identifying the specific resources or categories of resources supporting the system sale. If the export is a system sale made up solely of a customer's resources that if exported individually would not result in a decrement, then BPA would not decrement a customer's firm power purchase under section 5(b) for such a system sale. BPA shall decrement the customer's section 5(b) utility power sales contract in the amount and to the extent the system sale involves the export of the planned capability of hydroelectric resources to support a power sale (whether or not in a firm resource exhibit); the planned capability of a non-hydroelectric resource that is in a firm resource exhibit, or if not, that could otherwise be retained to serve regional load; or any portion of the sale that is a prohibited resale of Federal power.

Any customer that was previously a Contracted Requirements customer of BPA and that is currently purchasing power and energy from BPA under its power sales contract shall have BPA's firm power obligation under its section 5(b)(1) contract reduced for the duration of the export sale in the amount and to the extent a system sale involves the resources described above. If the customer was not placing load on BPA under its section 5(b) utility power sales contract at the time of the export sale, then at such time as the customer requests to place a firm load obligation on BPA, BPA shall make an appropriate determination and may reduce its energy sales to such customer in the amount and to the extent the export sale involves the resources described above and for any remaining duration of the export sale.

If the exporting utility does not provide an operating plan identifying the resources supporting the system sale, BPA will treat the system sale as made up of resources that would result in a decrement of the customer's section 5(b) utility power sales contract.

### **Section 8. Seasonal Exchange**

Any seasonal exchange between a customer and an out of region entity that results in no net regional energy deficit during any Fiscal Year shall not result in a decrement by BPA of the customer's section 5(b) utility power sales contract.

## **Section 9. Resource Offer**

A customer may offer any non-hydroelectric resource to BPA or to all other Pacific Northwest customers. If neither BPA nor any Pacific Northwest customer purchases the offered resource (offered at the customer's cost, including a reasonable rate of return), the resource may then be exported without a decrement of the customer's Northwest Power Act section 5(b) power sales contract. If offered for sale to BPA, the resource shall be treated as an unsolicited proposal. If BPA proposes to acquire the resource, and if it is greater than 50 aMW or offered for longer than 5 years, it will be subject to the Northwest Power Act section 6(c) process, which can take more than 12 months. If the resources are hydroelectric resources BPA shall make its determination in accordance with section 3(d) of the Regional Preference Act.

## **Section 10. Consumer-Owned and Independent Power Producer-Owned Resources**

If a customer contracts to purchase and then export any consumer-owned resource or any resource developed by an independent power producer, such resource shall be subject to this Policy as a generating or contract resource of the purchasing customer, as appropriate.

## **Section 11. BPA Notification**

BPA shall notify in writing any customer that has exported a resource or proposes to export a resource of the outcome of BPA's section 9(c) determination. The BPA notification shall be made within 30 working days from the date BPA receives the information specified in section 4 about a specific resource.

### **C. Scope of the Section 9(c) Policy**

BPA's Section 9(c) Policy addresses the effect of exports of resources by any public body, cooperative, or IOU purchasing power under a section 5(b) contract for service after October 1, 2001. The findings and interpretations of this Section 9(c) Policy shall be applied to all exports occurring after publication of this Section 9(c) Policy. Customers that have exported resources prior to publication of the Section 9(c) Policy may face a reduction in the amount of Federal power that BPA will offer at the time they request a contract under section 5(b)(1) for service after September 30, 2001. A reduction in BPA's obligation to provide firm power requirements to a customer under its section 5(b)(1) contract will be based on a case-by-case factual determination regarding the export of a resource by a BPA customer, and may be based on the regional load-resource balance at the time of the export and other factors. BPA shall address on a case-by-case basis the effect of exports of resources by a customer purchasing power under a contract pursuant to section 5(c), section 5(d)(1), or section 5(f) of the Northwest Power Act.

**APPENDIX A – 2003 Clarifications (March 7, 2003)**  
**Clarifications Issued on BPA’s Policy for Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act, dated May 23, 2000**

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**Clarifications Issued on BPA's Policy for Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act, dated May 23, 2000**

The Bonneville Power Administration (BPA) issued a "Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Section 5(b)(1) and 9(c) of the Northwest Power Act" and Administrator's Record of Decision (the 5(b) 9(c) Policy) in May of 2000. The 5(b) 9(c) Policy addresses numerous issues regarding the amount of Federal power a customer would be eligible to purchase under section 5(b)(1) of the Northwest Electric Power Planning and Conservation Act, P.L. 96-501, (Northwest Power Act) as firm requirements power for the customer's firm power loads in the Pacific Northwest.

The 5(b) 9(c) Policy also addresses issues regarding BPA's 1994 policy and statutory interpretation of section 9(c) and 3(d), retaining the policy in part and modifying it in part. The 5(b) 9(c) Policy covers circumstances when reductions (decrements) in the amounts of Federal power that a customer could buy would, or would not, occur due to the customer's disposition or sale outside of the Pacific Northwest region of nonfederal power from its resources.

After publication of the 5(b) 9(c) Policy, several preference utility customers, direct service industries, and investor owned utility customers filed challenges to the 5(b) 9(c) Policy in the United States Court of Appeals for the Ninth Circuit, in *Goldendale Aluminum Co., et al v. United States Department of Energy, et al*, nos. 00-70717; 00-70719; 00-70743; 00-70778. The petitioners, interveners and BPA jointly moved for a stay and referral of the case to the Circuit Mediator granted on December 29, 2000. Settlement discussions focused on specific "clarifications" of the 5(b) 9(c) Policy. Preference customer petitioners and petitioner-interveners identified specific issues and submitted them to BPA.

BPA then conducted discussions first with the preference customer petitioners and interveners over several months that produced a proposal for settlement. BPA then discussed specific issues identified by the investor-owned utility petitioners in several meetings. BPA then held discussions with the direct service industry attorneys. Finally, BPA met with the mediator and the parties on the proposed settlement. The parties have executed a settlement agreement and made a joint motion for dismissal of the consolidated actions in cases nos. 00-70717; 00-70719; 00-70743; 00-70778 filed in the United States Court of Appeals for the Ninth Circuit, or do not oppose the dismissal of the litigation. The following are the clarifications to BPA's 5(b) 9(c) Policy and Record of Decision resulting from this litigation settlement process.

**Clarifications Regarding Section 5(b) 9(c) Policy.**

1. For purposes of section 5(b)(1), a resource is only declared as dedicated to serving the customer's load under section 5(b) of the Northwest Power Act when it is named as so used in section 2(a) of Exhibit C of the BPA Power Sales Agreement.

A customer only declares a resource, whether it is a generating resource or a firm power purchase, as serving load when it is shown as dedicated to serve the customer's load in Exhibit C, section 2(a) of the customer's BPA Power Sales Agreement. Any specific resources that the

customer does not include in this Exhibit are not "declared or dedicated" to serve the customer's regional load under section 5(b) of the Northwest Power Act.

2. A customer can use all or a portion of a resource as an unspecified resource (no identification beyond amount) to serve the customer's load under section 2(b) of Exhibit C of the customer's BPA Power Sales Agreement, and such use does not constitute a declaration of a specific resource under section 2(a) of Exhibit C of such BPA Power Sales Agreement or under 5(b) of the Northwest Power Act.

A customer may use all or a portion of a resource as an unspecified resource, stated in a whole megawatt and megawatt-hour numbers. However, the portion of the resource used as an unspecified resource cannot be otherwise dedicated or declared under section 2(a) of the customer's BPA Power Sales Agreement to serve a portion of its consumer load.

3. A customer can use an undeclared resource to serve its load with no long-term consequences to its 5(b) entitlements. Only resources specifically named as committed to load in section 2(a) of Exhibit C of the customer's BPA Power Sales Agreement will be expected to be committed to load in subscription and follow-on contracts.

The use of undeclared resources to serve the customer's firm load is not a declaration under section 5(b)(1) of the Northwest Power Act. A customer may or may not apply such resource to its load under the next contract.

4. A customer can sell the unplanned output, which cannot be output included in section 2(a) of Exhibit C of its resources declared under section 2(a) of Exhibit C, anywhere for any price without a 9(c) decrement.

From time to time, generating resources are able to produce power in excess of planned amounts that the customer has declared under section 2(a) due to water conditions that exceed the planning criteria, increased heat rate due to temperature, or other conditions. Such temporary over-generation is not part of the firm power that a customer declares under its section 2(a) resource dedication as being applied to load. Such temporarily available power is not conservable by the fact that the customer has dedicated firm power from the resource to meet consumer load. Such over-generation available on a temporary basis is not subject to section 9(c) determinations and may be sold in or out of the region without consideration of a reduction in BPA's obligations.

5. A customer can sell the planned firm output of a regional resource to any regional utility, joint operating agency (JOE), or direct service industry (DSI) for use in the region for any price for any term without a 9(c) decrement. Such sales must be made to a utility, JOE, or DSI with a planned or actual load deficit in the region for the period of the sale. An unspecified resource amount listed in section 2(b) of Exhibit C constitutes a planned deficit.

Any firm power from a resource, other than a declared resource under section 2(a) of Exhibit C, sold by one BPA regional utility customer to another BPA regional customer for use in a



regional load may be sold at any price – the cost plus a reasonable rate of return does not apply – and without a decrement.

6. Customers are responsible for the use of resources or portions [parts] of resources [output] or contract resources that they own as follows:

6(a). If a customer sells a resource or its output to a third party that does not have a 5(b) power purchase from BPA, the selling customer remains responsible for the in-region use of that power in order to avoid a 9(c) decrement to its BPA entitlement. A customer may include a contract provision requiring in-region use of the power in the sales contract with the third party that does not have a 5(b) power purchase from BPA. However, the selling customer remains responsible for the in-region use of the power.

6(b). If a customer sells a resource or its output to a third party that does have a 5(b) power purchase from BPA, the 5(b) 9(c) Policy obligations transfer to the third party, and in such case the selling customer is no longer responsible for the use of the power by the purchaser under the 5(b) 9(c) Policy.

Because the third party purchaser has a section 5(b)(1) power sales contract with BPA including obligations to report its exports, BPA and the seller will rely upon the BPA customer to use the resource purchased for its regional load.

7. A customer may declare as dedicated to its load service under section 5(b)(1) of the Northwest Power Act, a part of a resource by naming that part in section 2(a) of Exhibit C, without causing the remainder of the resource to be dedicated to serving load under section 5(b) of the Northwest Power Act.

8. Customers may resell purchases of less than 12 months running from the date of commencement of delivery of power to termination of delivery, without 5(b) or 9(c) decrements, provided that the customer has not accepted any section 5(b) or 9(c) obligations as part of its purchase.

9. The customer may sell a resource that has been used as an unspecified resource under section 2(b) of Exhibit C, consistent with the 5(b) 9(c) Policy. The fact that the unspecified resource has been used to serve load is not pertinent to the 5(b) 9(c) Policy application.

BPA will not treat a resource that is used to meet an unspecified resource obligation under its 5(b) 9(c) Policy as if it were a declared resource under section 2 of Exhibit C to the power sales contract, or under section IV. B. 6(b) of the 5(b) 9(c) Policy. Resources used to meet a portion of, or all of a customer's obligations for "unspecified resource" or its market purchase commitment, may be sold consistent with the terms of these clarifications, and BPA's 5(b) 9(c) Policy.

10. New Resources, as defined in 10(d) below may be sold in the following manner and remain consistent with the 5(b) 9(c) Policy:

10(a). Sales for the balance of the month and the prompt month may be made without restrictions regarding price, purchaser or location where power sold is used.

Power from New Resources sold on a short-term basis for the month and the prompt month will not be considered as subject to reductions in BPA's obligations if they are sold for export out of the region.

10(b). Sales of power from New Resources made for beyond the prompt month up to 1 year (generally, 61 – 365 days) may be made without section 9(c) restrictions provided that 50% of such sales are for in-region use in each month. The customer will provide BPA with a tally of sales to check for the 50% limit and such check will be performed no more frequently than monthly. The selling customer will maintain records of these sales and upon a BPA request, will provide copies with the price and other proprietary information redacted. Such requests will be made no more frequently than once each month, and the selling utility will provide BPA with information necessary to reasonably determine compliance with this section 10(b).

10(c). Sales made for delivery periods of 366 days or longer and sales of portions of a year with the delivery period in future years may be made via a 'must take auction' that will be open to BPA customers with regional retail loads. Power sold will be for in-region use, with the minimum bid limited to cost plus a reasonable rate of return, or alternatively power sales may be made bilaterally with one or more parties, all of whom will make in-region use of the power.

10(d). "New Resources" are those generating resources, or the contractual right to the output of such resources, that were not in commercial operation as of the date of the 5(b) 9(c) Policy, May 23, 2000, that is the subject of this settlement. New Resources do not include those resources customers have developed solely for export and that are not for use in anticipation of service to the customer's present or future firm loads. Such resources that are developed solely for export, may qualify as a "market resource," in accordance with the meaning of such term under BPA's section 9(c) policy and ROD. If so qualified, the market resource is not subject to subsection 10 (a)-(c) above, and may be exported without a reduction in the customer's BPA firm power requirements obligation.

10(e). If the limitations in 10(b) and 10(c) above result in no sales for in-region use of the New Resources, the power may be sold for use outside the Pacific Northwest. If the outside purchaser was making the purchase at a price less than that offered by or to in-region users, then the New Resource must be offered in the region to BPA and BPA customers at such lower price before the out of region sale is made.

10(f). The customer has the responsibility for demonstrating that the resource is a New Resource by providing to BPA the pertinent information and data such as date of commercial operation, size, location, etc.

11. A customer has demonstrated that a power sale is for use in the region under the following circumstances:

11(a). The sale is to a Northwest Power Act section 5(b) customer of BPA with unspecified resource amounts declared in section 2(b) of Exhibit C.

11(b). The sale is to a Northwest Power Act section 5(b) customer of BPA as displacement of a resource or contract resource declared in either section 2(a) or section 2(b) of Exhibit C. The use of the displaced resource is subject to the 5(b) 9(c) Policy. The displacement of a resource that is declared in section 2(a) of Exhibit C does not represent a removal or replacement of that resource from service to load.

11(c). The sale is to a Northwest Power Act section 5(b) customer of BPA with a slice/block contract when the delivery of Critical Slice Amounts is forecast to be or is actually less than the Initial Critical Slice Amount.

11(d). The power sale is to a Northwest Power Act section 5(b) customer of BPA when it replaces a resource or contract resource declared in section 2(a) of Exhibit C that to have been lost in accordance with the 5(b) 9(c) Policy.

11(e). The sale is to a Northwest Power Act section 5(b) customer of BPA to supplement a resource or contract resource up to the amounts declared in section 2(a) of Exhibit C when such resource or contract resource does not produce, or is forecast not to produce, power in accordance with its declared amounts.

A sale of power by a Northwest utility from a resource that is not otherwise committed to its load, to supplement or make up power stated in 2(a) of Exhibit C of a purchaser and used for the purchaser's load, is a use of the power in the region.

11(f). The sale is to a DSI with a facility operating in the Pacific Northwest for service to that operating facility.

The portion of DSI loads not directly served by BPA are regional loads for the purpose of section 9(c) and 3(d) in determining use in the region when a power sale is made by a Pacific Northwest utility to a DSI.

11(g). The sale is to a Northwest Power Act section 5(b) customer of BPA for service to an operating NLSL. If the purchasing entity has a resource or contract resource declared for service to that NLSL then the sales of that resource or contract resource is subject to the 5(b) 9(c) Policy.

A Pacific Northwest utility may sell power to another Pacific Northwest utility for an operating NLSL. BPA will consider the sale an in-region use for purposes of section 9(c) and 3(d), provided that the load is operating and the power sold exceeds the other resource(s) identified for the NLSL by the purchaser, if any, but does not exceed the load; and provided that the purchase is not displacing any resources specifically identified for service to the NLSL.

11(h). The sale is to a Northwest Power Act section 5(b) customer of BPA for other transactions that are described prior to their deliveries and can be demonstrated to serve loads in the region.

11(i). The sale is to a Northwest Power Act section 5(b) customer of BPA as a substitute for a 5(b) resource declared under that customer's 5(b) contract, which the purchaser no longer owns, and is to provide the declared amount for such resource for the purchaser's load service obligation.

11(j). The sale is to a Northwest Power Act section 5(b) customer of BPA to serve the retail load of such customer in excess of planned levels.

11(k). The sale is to a BPA customer utility that has entered into an agreement with BPA to reduce its load requirements on BPA.

An alternate purchase of nonfederal power from another regional utility by a BPA customer to reduce its load under a specific load reduction agreement with BPA, that meets such load reductions, is power used in regional load.

12. BPA will not impose a 9(c) decrement on the selling customer if the selling customer retains the contractual right to terminate immediately the sale to a regional utility, DSI or JOE without a Northwest Power Act section 5(b) contract with BPA, if the selling customer discovers, or when BPA determines that the purchaser is not making in-region use of the power to serve load, and such right of termination is promptly exercised upon such discovery or determination.

13. Does the 5(b) 9(c) Policy apply to the export of any secondary firm energy? If so, under what circumstances would a utility's net requirement be decremented for exporting secondary firm energy?

Response: The 5(b) 9(c) Policy does not apply to sales of secondary energy. Secondary energy is unplanned over-generation from hydroelectric resources due to water conditions above critical water planning, thermal plant over-generation running at higher capacity due to ambient air conditions for limited time durations, or generation held until the month of delivery or prompt month to meet unanticipated loads. It is not firm purchased power. These conditions occur temporarily on a utility system, are variable as to the time of occurrence, and are dependent upon factors beyond those normally planned for continuous operation of the resource. A reduction in BPA's firm obligations to a customer would not result from sales of such temporary over-generation as opposed to planned generation available on a continuous firm basis during a year.

The 5(b) 9(c) Policy applies to all exports of firm power by a BPA customer. A customer must identify its planned resources to be used to serve its regional firm load annually under the contract. These planned resources (except for resources that are held to meet unanticipated load) include seasonal purchases on a multi-year basis; power purchase contracts with delivery periods greater than one year; customer-owned generation; and purchase power contracts with delivery periods less than one year, and obligate the customer to serve regional load with the power. Sales of any planned firm power from these resources in excess of the customer's forecasted regional firm load would be subject to the 5(b) 9(c) Policy. If a customer exported such planned firm power without a BPA determination that such power could not otherwise be retained to serve regional loads, a customer faces a decrement of its net requirements purchase. BPA could request information regarding any exports not reported by a customer. If BPA determines the

power has been exported and could have been retained to serve the customer's or another BPA customer's regional loads, then BPA would reduce the exporting customer's net requirement by adding an amount of power equal to the resource exported into the customer's Net requirements Exhibit and modify the customer's federal power purchase from BPA.

14. Does the 5(b) 9(c) Policy apply to any exports of non-firm energy?

Response: As discussed above, the 5(b) 9(c) Policy does not apply to the class of energy which is available only temporarily from over-generation of a customer's non-Federal resources and which is sometimes called non-firm or secondary energy.

15. Does the requirement of an offer at cost plus a reasonable rate of return apply only to exports of firm energy and not to exports of non-firm energy?

Response: Yes. The cost plus a reasonable rate of return standard for offers applies to planned firm power sold by a customer to other BPA customers in the region for their regional loads or to BPA and only applies to offers of firm power, and not to offers of non-firm energy by a customer.

16. Clarify the language in the 5(b) 9(c) Policy which appears to be inconsistent with the decision BPA made regarding the Residential Purchase and Sale Agreements ROD.

Response: The 5(b) 9(c) Policy and ROD was issued on May 23, 2000. On page 12 of the Attachment that includes the section 9(c) Policy, BPA stated that BPA would address the effect of exports of resources on section 5(c) contracts on a case-by-case basis. BPA's Record of Decision on Residential Purchase and Sale Agreements (RPSA) issued in October 4, 2000, addressed the application of the section 9(c) policy to deliveries of power under a section 5(c) contract. On page 74, BPA determined that section 5(c)(6) of the Northwest Power Act precluded any reductions in exchange sales due to the operation of section 9(c). BPA's policy decision under the RPSA ROD eliminates the need to address section 9(c) under section 5(c) contracts on a case-by-case basis.

17. Confirm the treatment of specific resources identified to support an export sale (a system sale).

Response: Section 7 of the 5(b) 9(c) Policy requires customers to provide an operating plan identifying the firm resources that support a firm power system sale. BPA will review those firm power resources identified by the seller as planned to support the export sale and determine whether they are sufficient to support the sale. If they are sufficient, they will be deemed to be the resources supplying the power for the sale. BPA will then assume for purposes of review that the export sale is of those planned resources, and will apply the provisions of the policy and section 9(c) and 3(d) to those specific resource(s) the customer has stated is supplying power on a planned basis for the export in the amount of the system sale. The actual resources of the customer operating in any hour may differ from those resources identified by the customer as supporting the export sale on a planning basis. Such hourly operations shall not invalidate the initial designation as reviewed by BPA.

18. Clarify that purchases under the Northwest Power Act's section 5(c) residential exchange settlement are not subject to decrement under section 9(c).

Response: BPA offered two types of power purchase contracts to utilities as an offer to settle BPA's residential exchange program obligations, a purchase under section 5(b) and a purchase under section 5(c). Sales made pursuant to contracts offered under section 5(b) based on a customer's net requirements are subject to decrement under section 9(c). See, pages 131-132 of the Residential Exchange Program Settlement Agreement ROD (Settlement ROD), and pages 18-19 of the 5(b) 9(c) Policy ROD. Sales made as a negotiated "in lieu" purchase under section 5(c) are not subject to decrement under section 9(c). See, pages 18-19 of the 5(b) 9(c) Policy ROD; page 74 of the RPSA Settlement ROD; and pages 140-150 of the Settlement ROD.

19. BPA should clarify that if there were past mistakes in the utility's Firm Resource Exhibit (FRE), which are continued in the FRE under new contracts, the 5(b) 9(c) Policy will not preclude making corrections.

Response: The 5(b) 9(c) Policy does not make any factual determinations, and the 5(b) 9(c) Policy allows making corrections in contractual determinations when warranted.

20. BPA should clarify that the 5(b) 9(c) Policy will permit the "automatic" removal of Qualifying Facility contracts, *i.e.*, purchases of PURPA resources, which were not independently made by the utility when such contracts are terminated.

Response: Pages 51-74 of the 5(b) 9(c) Policy describe when a statutory discontinuance of a resource has occurred. These factual events can include loss of a contract right.

21. Clarify that a customer's resources that are sited outside the region, and used to serve consumer's loads outside the region, are not subject to the Policy. Resources so located outside the region and used outside the region do not require any section 9(c) analysis of "exports" under the Policy and cannot cause a reduction in a utility's net requirement for its regional loads.

Response: A customer's resources, generation or power purchase contracts, or any portion thereof, which have not been dedicated to serve any portion of a customer's regional firm power load under section 5(b)(1), and which are used solely for service to loads outside the Pacific Northwest Region as defined by section 3(14) of the Northwest Power Act, will not result in a reduction or decrement to a customer's net requirement due to such use.

22. BPA should clarify that any power exported by a customer in an amount equal to any retail load under direct retail access will not result in a reduction to the utility's net requirement because the application of section 9(c) to power exported due to a reduction in load by direct retail access load loss will reduce power benefits for residential and small farm consumers under the residential and small farm exchange settlement.

Response: BPA included provisions in the 5(b) 9(c) Policy addressing the concerns over the loss of loads due to retail access. Section D.2 of the 5(b) 9(c) Policy allows a customer to remove a

generating or contractual resource from use to serve its regional load if load loss would otherwise result in a reduction of the utility's net requirements. Any export from the resource that has been removed is subject to the 5(b) 9(c) Policy. If the power is exported and could have been retained to serve a customer's regional consumer loads, BPA would reduce its 5(b)(1) obligation.

23. Would BPA "double count" exports under section 9(c) of the Northwest Power Act if for example, a utility sold its share of an existing generating project to a marketer and that sale were considered an export? Would the sale result in a reduction of both the utility's Net Requirement and its power allocation under its 5(b)(1) contract? Currently the utility's net requirement calculation without decrements for export is 1564 average megawatts. The utility's share of the existing resources it sold was 264 average megawatts. A reduction in net requirement equal to the existing resource sold would leave 1300 average megawatts. Would the power allocation for the utility's residential settlement of 258 average megawatts also be reduced by the 264 average megawatts or not?

Response: BPA would reduce its obligation to serve the utility by the amount of the megawatts of the export sale, but this would not result in a double counting of the 264 average megawatts exported. If the existing resource were included in the utility's Exhibit C as a dedicated resource in the amount of 264 average megawatts, then upon the sale BPA would notify the utility that it had the obligation to supply the same amount of megawatts as that sold outside the region and apply those megawatts to its load. Thus BPA's obligation to supply would not increase as a result of the sale since the utility would have to supply the 264 average megawatts.

If the existing resource is not a dedicated resource under Exhibit C and the 264 average megawatts are sold out of region, then section 9(c) applies, and BPA would have to determine if the resource could be conserved or otherwise retained by reasonable means for service to the utility's regional load, or BPA load, or other BPA customers' load that BPA was not serving. Assuming the determination concluded that the power could be retained for use in regional loads, then BPA would "decrement" its obligations to serve the utility for the duration of the export and in the amount of the export, 264 average megawatts. BPA would show the decrement by adding a nonfederal resource obligation to the utility's contract in section 2(b)(3) of Exhibit C in the amount of 264 average megawatts for the duration of the export. This would have the effect of reducing BPA's net requirement obligation to the utility by the amount of the export. It would not necessarily affect the 258 megawatts of Federal power purchased for load because the net requirement still exceeds the amount of the sale.

Only if the amount of load to be served was less than the total of the utility's dedicated resources, would the amount of both the nonfederal resource obligation included in section 2(b)(3) as a result of the 9(c) decrement and the 258 average megawatts of Federal power, result in an actual reduction of Federal power sold to the utility under its contract. The utility's current contracts also permit the removal, due to reductions in retail consumer loads, of the utility's nonfederal resources. Such removal of resources is for utility's resources other than specific section 2(b)(3) resource obligations added due to section 9(c) decrements. If the utility elects to use such removal rights for all its dedicated resources, such removal rights provide that only when the section 2(b)(3) resource obligations plus the Federal purchase exceed the total of the

utility's consumer loads would a reduction in BPA's power "allocation" sale result from a decrement for an export by the utility.

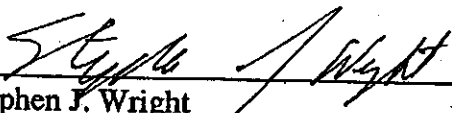
24. BPA anticipates this 5(b) 9(c) Policy will be effective for the duration of its 2001 subscription requirements contracts. However, BPA will review *de novo* its section 5(b) 9(c) Policy, including these clarifications, if there is a major change in BPA's or other statutes affecting its authority for marketing Federal power and this Policy, or if in the judgment of the Administrator, significant changes in the wholesale market require reconsideration of this Policy.

25. Please clarify that section B.6. (b) "Exports that will be decremented by BPA" does not constitute an exclusive, limited list of those regional resources that if exported, may result in a decrement to the customer firm federal power purchase.

The list in section B. 6. (b) is not an exclusive listing of customers' nonfederal resources that could result in a reduction in BPA's firm power obligations. Under the Policy other customer resources would be reviewed by BPA on a case-by- case basis for a determination of whether the resource is conservable, and if exported, whether the export requires or does not require BPA to reduce its firm power obligations to the customer.

These clarifications are adopted and will be applied under BPA's 5(b) 9(c) Policy following the filing of a settlement agreement and motions to dismiss the above referenced litigation. The 5(b) 9(c) Policy and these clarifications will be effective until BPA undertakes a review of this Policy by publishing a future notice.

Issued in Portland, Oregon, this 7th day of March 2003.

  
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Stephen J. Wright  
Administrator and CEO



## **APPENDIX B - Definitions**

### **RD CONTRACT DEFINITIONS**

“Contract Resource” means any source or amount of electric power that [a customer] acquires from an identified or unidentified electricity-producing unit or units by contract purchase, and for which the amount received by [the customer] does not depend on the actual production from an identified Generating Resource.

“Dedicated Resource” means a Specified Resource or an Unspecified Resource Amount listed in Exhibit A [of the CHWM contract] that [a customer] is required by statute to provide or obligates itself to provide under this Agreement for use to serve its Total Retail Load.

“Existing Resource” means a Specified Resource listed in section 2 of Exhibit A [of the CHWM contract] that [a customer] was obligated by contract or statute to use to serve [the customer]’s Total Retail Load prior to October 1, 2006.

“Fiscal Year” or “FY” means the period beginning each October 1 and ending the following September 30.

“Generating Resource” means any source or amount of electric power from an identified electricity-producing unit, and for which the amount of power received by [a customer] or [its] retail consumer is determined by the power produced from such identified electricity-producing unit. Such unit may be owned by [the customer] or [its] retail consumer in whole or in part, or all or any part of the output from such unit may be owned for a defined period by contract.

“Preliminary Net Requirement” means BPA’s forecast of [a customer]’s Net Requirement for each Fiscal Year prior to the removal of any resources in accordance with [section 10 of the CHWM contract].

“Specified Resource” means a Generating Resource or Contract Resource that has a nameplate capability or maximum hourly purchase amount greater than 200 kilowatts, that [a customer] is required by statute or has agreed to use to serve its Total Retail Load. Each such resource is identified as a specific Generating Resource or as a specific Contract Resource with identified parties and is listed in sections 2 and 4 of Exhibit A [of the CHWM contract].

“Tiered Rate Methodology” or “TRM” means the long-term methodology established by BPA in a Northwest Power Act section 7(i) hearing as the Tiered Rate Methodology to implement the [Regional Dialogue] Policy (as defined in the TRM) construct of tiering BPA’s Priority Firm Power rates for serving load under CHWM Contracts.

“Total Retail Load” means all retail electric power consumption, including electric system losses, within [a customer]’s electrical system excluding:

- (1) those loads BPA and [the customer] have agreed are nonfirm or interruptible loads,
- (2) transfer loads of other utilities served by [the customer], and
- (3) any loads not on [the customer]'s electrical system or not within [the customer]'s service territory, unless specifically agreed to by BPA.

“Unspecified Resource Amount” means an amount of firm energy, listed in sections 3 and 4 of Exhibit A [of the CHWM contract], that [a customer] has agreed to supply and use to serve its Total Retail Load. Such amount is not attributed to a Specified Resource.

### TIERED RATE METHODOLOGY DEFINITIONS

**7(i) Process** means a public process conducted, pursuant to section 7(i) of the Northwest Power Act or its successor, by BPA to establish rates for the sale of power and other products.

**Above-RHWM Load** means the forecast annual Total Retail Load, less Existing Resources, NLSLs, and the customer's RHWM, as determined in the RHWM Process. For the Transition Period, Above-RHWM Load will be established as described in TRM section 4.3.2.2.

**CHWM Contract** means the power sales contract between a customer and BPA that contains a Contract High Water Mark (CHWM), and under which the customer purchases power from BPA at rates established by BPA in accordance with the TRM.

**Contract High Water Mark (CHWM)** means the amount (expressed in average megawatts), computed for each customer in accordance with TRM section 4. For each customer with a CHWM Contract, the CHWM is used to calculate each customer's RHWM in the RHWM Process for each applicable Rate Period. The CHWM Contract specifies the CHWM for each customer.

**Fiscal Year (FY)** means the period beginning each October 1 and ending the following September 30.

**Forecast Net Requirement** means the forecast of each customer's Annual Net Requirement that BPA performs in each RHWM Process.

**Rate Period** means the period of time during which a specific set of rates established by BPA pursuant to this TRM is intended to remain in effect.

**Rate Period High Water Mark (RHWM)** means the amount, calculated by BPA in each RHWM Process pursuant to the formula in TRM section 4.2.1 and expressed in average megawatts, that BPA establishes for each customer based on the customer's CHWM and the RHWM Tier 1 System Capability. The maximum planned amount of power a customer may purchase under Tier 1 Rates each Fiscal Year of the Rate Period is equal to the RHWM for Load

Following customers and the lesser of RHWL or Annual Net Requirement for Block and Slice/Block customers.

**Tier 1 Rate** means any Priority Firm Power (PF) rate (e.g., Composite, Slice, and Non-Slice Customer Rates) that reflects Tier 1 Costs and Credits and applies to power purchased under a CHWM Contract to meet a customer's general requirements.

**Tier 1 System Firm Critical Output** means the Firm Critical Output of Tier 1 System Resources less Tier 1 System Obligations.

**Tier 1 System Obligations** means the amount of energy and capacity that BPA forecasts for the Designated BPA System Obligations over a specific time period.

**Tier 1 System Resources** means the Federal System Hydro Generation Resources listed in TRM Table 3.1; the Designated Non-Federally Owned Resources listed in TRM Table 3.2; and the Designated BPA Contract Purchases listed in TRM Table 3.3.

**Tier 2 Costs** are the expenses and revenue credits that BPA will identify on TRM Table 2 and allocate to the appropriate Tier 2 Cost Pool during the applicable 7(i) Process.

**Tier 2 Rate** means any Priority Firm Power (PF) rate that reflects Tier 2 Costs and applies to power purchased under a CHWM Contract to meet a customer's Above-RHWL Load.

**Total Retail Load (TRL)** means all retail electric power consumption, including electric system losses, within a customer's electrical system, excluding:

- those loads BPA and the customer have agreed are nonfirm or interruptible loads
- transfer loads of other utilities served by such customer
- any loads not on such customer's electrical system or not within such customer's service territory, unless specifically agreed to by BPA

As used in the TRM, TRL is always BPA's forecast of the customer's TRL.

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## APPENDIX C

### BPA POWER PRODUCTS CATALOG

1. Customer resource portfolio amounts will be declared in HLH and LLH energy amounts and peaking amounts for each month of the term of commitment. Flat Block (equal amounts of HLH/LLH energy for each month) and Slice product purchasers shall declare TRL and resource energy amounts for each month of the term of the commitment.
2. These core products are available to serve net requirements under section 5(b)(1) of the Northwest Power Act. Therefore, the monthly HLH/LLH resource portfolio amounts to be declared will be the reasonably determined capabilities of the customer's firm peaking and energy resources as referred to in sections 5(b)(1)(A) and (B) of the Northwest Power Act. The declarations will be consistent with BPA's policy on determining net requirements. Customers will notify BPA when required by that policy of load or resource changes that may affect the determination of net requirement. Initial declarations of customer resource amounts (for at least the term of the commitment) will include monthly peak and HLH /LLH energy amounts. The declared amounts will be based on reasonable and prudent utility practices and will be consistent with resource data used by the customer historically for purposes of its BPA contracts and for other purposes. Customer declared amounts may take into account change of conditions reasonably affecting resource capability. Prudent utility practices for establishing firm hydro resource capabilities may include criteria other than critical period planning. Any new contract resources may be added prior to contract signing in either equal amounts of HLH/LLH energy for each month or shaped to the TRL.
3. Subject to the requirements of BPA's Section 5(b)/9(c) Policy, a customer may adjust the capability of certain declared resources annually. Section 5(b)(1)(A) and (B) coordinated hydro resource capabilities may be revised annually consistent with Pacific Northwest Coordination Agreement (PNCA) planning processes. The final PNCA hydro-regulations for future operating years may result in changes in the level or distribution of coordinated hydro resources. BPA and other PNCA parties will agree to a method for customers to reflect the results of the final hydro-regulations in their Subscription contract resource declarations and to reflect hydro-regulation changes in the customers' resource declarations for future years. This method will protect BPA from incurring additional costs because of economic choices by customers.

Prior to August 1 of each operating year (OY), a series of PNCA planning hydro-regulation studies are performed that compute monthly energy production from each of the hydro projects included in PNCA planning. The monthly energy production may differ from operating year to operating year depending on: (1) estimated firm loads of the PNCA members, (2) firm resources (hydro, thermal, and miscellaneous) included in PNCA planning, and (3) non-power constraints on the coordinated resources.

Customers' resource declarations, in Subscription contracts, will rely on the results of the final PNCA planning regulation for OY 2001 unless BPA and customers agree to rely on another regulation. If the final PNCA planning regulation for a subsequent OY results in a different level or monthly distribution of production from a customer's hydro projects, the

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customer may reflect those differences in its declared resources in the manner agreed to between BPA and other PNCA parties. For a particular month, the customer may apply the monthly difference to declared HLH or LLH energy resources, or to a combination of both HLH and LLH resources. However, the customer may not decrease one diurnal capability while increasing the other diurnal capability of the same month. The HLH and LLH distribution of changes from the OY 2001 regulation will be subject to a review for compliance with the Section 5(b) Policy.

BPA may agree to a method for annually adjusting the capability of other hydro resources if such adjustments will be beneficial to BPA.

4. If the customer acquires new renewable resources for which it wishes to declare a firm capability, such capability may be added within the term of commitment if such resources meet the standards established to qualify for BPA's conservation and renewable resource discount, subject to the limits established in BPA's 5(b) 9(c) policy. The customer must give as much advance notice to BPA as is practical. Renewable resource firm capability would reflect the distribution among months of a year that is reasonable given its operating characteristics.
5. Declared resource portfolio amounts reflecting 5(b)(1)(A) or (B) generating resources and long term contracts that were declared prior to 2001 would be subject to the same principles as 1, 2 and 3 above.
6. For purposes of the standard core product, customer new resource amounts that are not related to resources referred to in subsections 3, 4, or 5 above would be required to be distributed across years, months, and monthly HLH and LLH periods either: (i) flat, in equal amounts for all such periods, or (ii) proportionally based on shape of the purchaser's system load.
7. Customer declared resource annual amounts may increase over the years of the commitment term.
8. In operations, the customer may provide its declared resource portfolio amounts from available power sources, consistent with prevailing electric utility interchange and transmission scheduling practices. For purposes of this product, the sources of such power are not limited to specific 5(b)(1)(A) or (B) generation resources owned by the customer or specific contracts.
9. For purposes of assuring consistency with BPA's policy on determining net requirements, the customer will also provide data for resources that are not being declared for purposes of entitlement to this or other core Subscription products. The peak and monthly HLH and LLH capabilities of such resources will also be based on reasonable and prudent utility practices and will be consistent with resource data used by the customer historically for purposes of its BPA contracts and for other purposes.

Revised April 2000

