

# **SUPPLEMENT TO ADMINISTRATOR'S RECORD OF DECISION**

## **Amendatory Agreement to 1981 Power Sales Contracts**

On February 16, 1996, I signed a Record of Decision addressing my decision to provide certain of Bonneville Power Administration's (BPA) Federal and public agency Metered Requirements Purchasers with an opportunity to amend their 1981 Power Sales Contracts (1981 PSC). This opportunity took the form of an Amendatory Agreement to the 1981 PSC. The Amendatory Agreement was first offered to customers on February 21, 1996.

It has now become apparent that certain aspects of the Amendatory Agreement have caused concern for some of BPA's customers and that, by revising the Amendatory Agreement to address these concerns, it will be possible for many more customers to accept the agreement than would be the case if the agreement remained unchanged. Therefore, I have decided to incorporate changes in the Amendatory Agreement being offered to customers and to offer to include these changes in any Amendatory Agreements already accepted by customers.

### **Description of Changes in the Amendatory Agreement**

Conservation: Section 3(c) of the Amendatory Agreement committed BPA to incur reasonable costs to supplement a customer's conservation achievements, should those achievements fall short of a customer's conservation plan. The customer would be responsible for reimbursing BPA for these costs. I have decided to eliminate this provision from the Amendatory Agreement, consistent with recommendations I received from the Northwest Power Planning Council via letter from Council Chairman John Etchart, dated February 29, 1996 (copy attached), reflecting decisions reached by the Council in their meeting of February 21.

Rate Test: Customers have expressed concern that the Amendatory Agreement fails to provide them an opportunity for at least partial mitigation of the effect of BPA's failing to meet the rate test contained in the Amendatory Agreement. In order to address that concern, I have decided to revise the Amendatory Agreement to include a provision that if BPA fails to meet the rate test, in addition to being able to terminate the Amendatory Agreement (which merely returns the customer to its former status under the existing BPA Power Sales Contract), the customer will have the right to add, in a Purchaser's Firm Resource Exhibit, an amount of resource that does not exceed 10 percent of the Purchaser's Actual Firm Load, net of resources which the customer already has a contractual right to

use, provided that no further non-Federal resources are subsequently added to serve the Purchaser's retail load for the remaining term of the Amendatory Agreement.

Rate Stability: Customers have also indicated a concern about BPA's ability to sustain its commitment in the Amendatory Agreement to refrain from increasing its power rates during the term of the Amendatory Agreement. A revision of the rates by BPA would breach this agreement, and a customer could sue for damages. Because some customers prefer a specific remedy in the contract, rather than be required to establish the level of damages in litigation, I have decided to supplement the Amendatory Agreement by adding a provision that if BPA meets the rate test and then later increases rates to committed loads in violation of the agreement, affected customers would be allowed to reduce power purchases from BPA to keep themselves, to the extent possible, financially whole.

Stranded Costs: Finally, some customers have expressed concern that the stranded cost language of the original Amendatory Agreement was worded in such a way that, by signing the original Amendatory Agreement, they might appear to be granting that BPA has rights to recover stranded costs that the customers may not be willing to concede. Therefore, the stranded cost language has been revised in an effort to eliminate this concern without jeopardizing either the rights BPA believes it has to recover stranded costs or the intent of the original language of the Amendatory Agreement.

### **Anticipated Effects of Changes to the Amendatory Agreement**

Several of BPA's customers have indicated a willingness to sign contracts for 100 percent of their load under the terms of the original Amendatory Agreement. I believe many more may sign the revised Amendatory Agreement. Approximately 1,500 average megawatts (aMW) of BPA sales are to customers which presently purchase their entire power requirements from BPA. Therefore, if these customers were to place their total load on BPA under the terms of the revised Amendatory Agreement, the worst load loss BPA could experience in the event of a failure to meet the rate test would be approximately 150 aMW, resulting in an annual revenue loss of approximately \$11 million, net of revenues from remarketing this power at lower prices. I believe this risk is worth taking because (1) these are BPA's best customers and it is important they not feel they have been treated inequitably for committing their full load to BPA; (2) the risk is small in terms of the potential revenue impact; (3) these customers have a disposition not to take load off BPA; and (4) the momentum created by signing a significant number of utilities at 100 percent of their load is important to BPA's chances of overall success in its efforts to achieve the load commitment target for the preference customer class. (See the February 16, 1996, ROD for a discussion of the load commitment target.)

### **Public Availability**

Copies of the Business Plan EIS and the Business Plan ROD, as well as additional copies of this Supplemental ROD and the form of the revised Amendatory Agreement, are available to all interested and affected persons and agencies from BPA's Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212. Copies of these documents may also be obtained by using BPA's nationwide toll-free document request line, 1-800-622-4520.

## **Conclusion**

I believe the action of offering a revised Amendatory Agreement to BPA's customers is consistent with the purposes I stated in the February 16, 1996, ROD regarding BPA's Market-Driven approach for participation in the electric power market, including that of increasing net revenues and enhancing the business relationships required for BPA's long-term competitive success. This decision will reinforce my original intent to preserve the financial strength BPA must have in order to deliver the public benefits for which it is responsible. The revisions I have decided to offer to the Amendatory Agreement are consistent with my original goal of achieving a reasonable balance between the environmental effects associated with continuing to provide power to BPA's customers, as addressed in the BP EIS, and the benefits this service enables. Furthermore, the environmental effects of serving customers adopting the Amendatory Agreement would be basically the same as if those customers were to continue receiving service under their existing 1981 PSCs.

Issued in Portland, Oregon, on March 4, 1996.

/s/ Randall W. Hardy  
Administrator and  
Chief Executive Officer