

DEPARTMENT OF ENERGY

Bonneville Power Administration

Policy Decision Regarding Bonneville Power Administration's Standards for Service

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of final policy decision.

SUMMARY: This notice announces the final policy decision regarding BPA's standards for service in order for customers to qualify as an eligible purchaser of Federal power under section 5(b) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. §839. Section 5(b)(4) of the Northwest Power Act directs the Administrator of Bonneville Power Administration to require all public body, cooperative, federal agency and investor owned utilities to comply with the Administrator's standards for service when purchasing Federal power.

The BPA Administrator has decided to retain BPA's present standards for service, including ownership of distribution facilities, and will not adopt the proposed modification to permit ownership-type lease arrangements of distribution facilities.

ADDRESSES: The Administrator's Record of Decision regarding BPA's final policy on standards for service is available on BPA's web site at:

<http://www.bpa.gov/Power/subscription>. Copies are also available by contacting BPA's Public Information Office at 1-800-622-4520.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208-3621, telephone (503) 230-4328 or 1-800-622-4519.

Information can also be obtained from your BPA Account Executive or from:

Mr. Allen Burns, Vice President, Power Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230-7640

Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358-7409

Mr. John Elizalde, Manager, Western Power Business Area, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230-7597

Mr. Steve Oliver, Vice President, Bulk Marketing and Transmission Services, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230-3295

Mr. Fred Rettenmund, Customer Account Executive, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358-7403

SUPPLEMENTARY INFORMATION

It is within the Administrator's discretion to decide and establish the applicable standards for service and whether changes in such standards are warranted. BPA has traditionally made its determination regarding compliance with BPA standards for service on a case-by-case basis and communicated its standards and assessment of a party's qualifications in correspondence to parties seeking to purchase Federal power.

One of the BPA's long standing standards for service for purchasing Federal power under section 5(b) of the Northwest Power Act requires a customer to own the distribution facilities necessary and used to serve such customer's retail consumers. This standard applies to public body, cooperative, and privately owned utilities selling to the general public and to federal agencies. BPA proposed, as published in 64 Federal Register 24382 (May 6, 1999), that it modify this standard to permit in the future that a customer either (1) own a distribution system; or (2) have an ownership-type lease arrangement for a distribution system. The reason for this proposal was driven by the BPA's Power Subscription Strategy adopted December 21, 1998, ongoing changes to the electric power industry, and increased interest by some regional parties in becoming eligible to buy Federal power at BPA's lowest cost-based rate.

BPA received over seventy-five written comments from various interested parties, as well as oral comment during two public meetings, on this proposed modification. These comments were addressed in the Record of Decision signed by the Administrator on December 22, 1999. Copies of the Record of Decision (DOE/BP 3225) are available by calling Bonneville Power Administration's Public Information Office at 1-800-622-4520.

I. Relevant Statutory Provision

The relevant Northwest Power Act provision is:

5(b)(4) Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on December 5, 1980 or as subsequently revised.

II. Standards for Service Policy

BPA's determination of a customer's eligibility to purchase Federal power is made in an overall review to determine if the customer is in compliance with the Administrator's standards for service. The standards for service are summarized as follows and explained in greater detail below.

The purchaser must:

- (1) be legally formed in accordance with local, state, Federal or tribal laws;
- (2) own a distribution system and be ready, willing and able to take power from BPA within a reasonable period of time;
- (3) have a general utility responsibility within the service area;
- (4) have the financial ability to pay BPA for the Federal power it purchases;
- (5) have adequate utility operations and structure; and
- (6) be able to purchase power in wholesale amounts.

The standards for service are used more as a guideline when applied to Federal agencies. This is because BPA makes a disposition of Federal power to Federal agencies for service to Federal installations and facilities, which is unlike a sale to a utility in the

business of selling electric power to the general public. Furthermore, service to Federal agencies is generally for end-use consumption, and sometimes for redistribution, within the Federal installations and facilities; therefore, the standards for service may not directly apply.

A. Legal Formation

This standard is applicable to potential new preference customers and to new private utilities selling to the general public. It does not apply to Federal agencies. As applied to an entity seeking to purchase Federal power as a preference customer, it requires an applicant to demonstrate that all required steps under applicable local, state, Federal, or tribal laws have been taken to authorize its formation as a public body or cooperative. Tribal utilities seeking to purchase must be formed by Indian tribes which are federally recognized. As applied to investor owned utilities, this standard requires that such entities are legally incorporated as utilities, authorized to sell and distribute electric power at retail, and are subject to state utility regulation. This standard ensures that the applicant is in the public business of buying and distributing, at retail, power to be purchased from BPA, or is in the process of going into such a business. All applicants must provide copies of filings of certificates and approvals from designated officials, such as by-laws and articles of incorporation, regulatory approvals as required, and information on whether public elections were required and held.

B. Distribution Ownership

This standard requires purchasers, including Federal agencies, to own the distribution facilities necessary and used to deliver Federal power to the applicant's retail consumers. Such standard assures that BPA sells power consistent with the legal requirement that Federal power be sold to customers engaged in the public business of buying and distributing power through distribution facilities owned by the customer. The

requirement to own, operate, maintain, and control the costs of distribution is viewed as a means to assure that the benefits of low cost Federal power reach the citizens of the Pacific Northwest. Under certain circumstances the Administrator may determine it is appropriate to provide an exception to the standard to own all the necessary distribution facilities located on tribal reservations. The Administrator will consider, on a case-by-case basis, issues related to the ownership standard regarding difficulties that tribes may face in pursuing the acquisition of all the distribution facilities on tribal reservations.

For newly forming public body and cooperative utilities, BPA must give the applicant a reasonable opportunity to achieve ownership, including time needed to finance the acquisition or construction of the necessary distribution. In general, public bodies have the power of eminent domain which allows them to acquire the distribution facilities of another utility through condemnation. In general, cooperatives have been able to construct or purchase their own systems through financing obtained from loans made by the Federal Rural Electric Administration (predecessor to the Rural Utility Service) or by other sources of financing.

C. General Utility Responsibility

This standard requires that a purchaser serving retail consumer load have a “utility responsibility,” i.e., an obligation to serve. This means that any retail consumer may request and obtain service from the potential BPA customer, limited only by service area or geographic franchise allocation restrictions. Such a standard assures that Federal power will be sold by the applicant in a non-discriminatory manner for the benefit of the general public and particularly of domestic and rural consumers. An applicant must have obtained authorization to serve loads or areas prior to receiving Federal power from BPA for service to such loads or areas. Any legal action that challenges such service must be

resolved by final order before BPA begins service. This standard is not applicable to Federal agencies.

D. Financial Ability to Pay

This standard requires that an applicant have the authority to collect money for the services it renders to its retail consumers—the ability to bill—and the applicant’s authority to sue and be sued. Such a standard assures BPA that the purchaser is able to pay for the Federal power. In applying this standard BPA reviews the applicant’s organizational structure to see if there is administrative staff that performs a billing and collection function. BPA will also examine, particularly in the case of a municipal or tribal applicant, whether the applicant has the authority to segregate utility funds from a general fund, if one exists. In applying this standard to Federal agencies, BPA will review an agency’s appropriations and authorities to purchase power.

E. Operations and Structure

This standard requires that a purchaser have the ability through the operational and organizational structure to perform utility functions such as metering, billing, operation and maintenance on utility facilities. Such a standard provides BPA reasonable assurance that the applicant has the ability to fulfill responsibilities and duties under its power sales contract with BPA.

F. Wholesale Amounts

This standard requires that Federal power be purchased in wholesale amounts. BPA is directed to sell power at “wholesale” and has generally required that customers purchase Federal power in wholesale amounts of one megawatt or more.

III. Connection to BPA’s Transmission System

Prior to BPA’s voluntary compliance with orders of the Federal Energy Regulatory Commission which require utilities to functionally separate their power and transmission

functions, BPA's standards for service addressed not only these standards, but also standards related to the configurations and operations of electrical facilities necessary for the applicant's interconnection with BPA's transmission system. Such standards for interconnection to the BPA transmission system are now promulgated by BPA's Transmission Business Line in accordance with BPA's Open Access Transmission Tariff and are therefore not addressed in this policy. The standards for service expressed in this policy are administered by the Power Business Line.

Issued in Portland, Oregon, on January 13, 2000.

/s/ J. A. Johansen
Judith A. Johansen
Administrator and Chief Executive Officer