

IN THE MATTER OF PROPOSED PAYMENT OF
PRECONSTRUCTION AND INVESTIGATION EXPENSES
TO SELECTED SPONSORS OF MAJOR RESOURCES
PURSUANT TO THE RESOURCE CONTINGENCY PROGRAM

ADMINISTRATOR'S RECORD
OF DECISION

BONNEVILLE POWER ADMINISTRATION
U.S. DEPARTMENT OF ENERGY
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ADMINISTRATOR'S RECORD OF DECISION

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CHAPTER I

INTRODUCTION

This Record of Decision contains the Bonneville Power Administration's (BPA) determinations and rationale on whether the proposal to pay preconstruction and investigation expenses to sponsors of major resources under the Resource Contingency Program (RCP) is consistent or inconsistent with 1991 Northwest Conservation and Electric Power Plan (Plan) of the Pacific Northwest Electric Power and Conservation Planning Council (Council). The Administrator's determination in this proceeding is based on evidence submitted by BPA and admitted into the record during the 6(c) hearing.

The Record of Decision is divided into four chapters. The first chapter describes the proposal, the procedural history and the legal requirements of § 6(c). Chapter II contains background information on BPA's RCP including a discussion of the evaluation process BPA used in selecting a final group of major resources for which preconstruction and investigation expenses may be paid. Chapter III considers whether the proposal is consistent with the Council's 1991 Plan. Within Chapter III, specific sub-issues are identified. Chapter IV presents the Administrator's conclusions.

Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act), 16 U.S.C. § 839d(c), is included in this document as Appendix A. A list of the qualified major resource for which BPA may pay preconstruction and investigation expenses is included in this document as Appendix B.

A. Description of BPA's 6(c) Proposal

Section 6(a)(2) of the Northwest Power Act, authorizes the Administrator to acquire sufficient resources, including conservation and renewable resources, to meet BPA's contractual obligations. 16 U.S.C. § 839d(a). Moreover, section 6(i) directs the Administrator to structure acquisition contracts with terms and conditions that will ensure "timely construction, scheduling, completion, and operation of resource." 16 U.S.C. § 839d(i).

Pursuant to Section 6(c)(1) of the Northwest Power Act, BPA proposes to pay preconstruction and investigation expenses to sponsors of major resources in exchange for an exclusive right to acquire the resource at some future date. 16 U.S.C. § 839d(c)(1). Preconstruction and investigation expenses are defined as expenses incurred by, or on behalf of, sponsors to obtain required regulatory approval. 51 Fed. Reg. 42,902 (1986). These preconstruction and investigation expenses can include, but are not limited to, licenses and permits, environmental analysis/impact statements, land options, easements and right-of way acquisition, sponsor's expenses during siting and licensing, geotechnical surveys, and architectural and engineering fees. These expenses do not include the procurement of capital equipment or the expenses of construction. 57 Fed. Reg. 31,361, 31,362 (1992).

The RCP calls for BPA to hold options on a portfolio of resources that can be called on, if necessary, to meet the Administrator's load obligations. This options concept, which allows for one "consistency" decision at the preconstruction or investigation stage, and a separate "consistency" decision at the resource acquisition stage, fulfills section 6(i)'s mandate by promoting timely scheduling and construction of resources.

BPA estimates that preconstruction and investigation expenses under the RCP will not exceed \$10 million per year through 1998. BPA's Fiscal Year 1993 budget contains \$6.7 million to use for payment of these expenses in the event that such payment is found consistent with the Council's Plan. Id. In exchange for paying a sponsor's preconstruction and investigation expenses under the RCP, BPA receives an option, or a future right, to call on the resource, if necessary to meet the Administrator's load obligations. An option differs from a resource acquisition in that an option does not involve sales of electric power or savings of electric power. An option is only a right to make a decision to acquire the resource at a later date, not an obligation to acquire the resource at a later date. Oster, Ex. RCP-6(c)-BPA-01, 5.

B. Procedural History

Section 6(c) of the Northwest Power Act requires BPA to publish a notice in the Federal Register and to hold a hearing on proposals to, inter alia, pay preconstruction and investigation expenses to sponsors of a major resource. 16 U.S.C. § 839d(c). On July 15, 1992, BPA published in the Federal Register a notice of hearing and opportunity for public review and comment on BPA's proposal to pay preconstruction and investigation expenses to sponsors of major resources pursuant to the RCP. 57 Fed. Reg. 31,361 (1992).

An evidentiary hearing on the proposed action was conducted by Dean F. Ratzman, Hearing Officer, in accordance with BPA's 6(c) Hearing Procedures, 51 Fed. Reg. 42,902 (1986), and section 6(c) of the Northwest Power Act. 16 U.S.C. § 839d(c). A prehearing conference was held on September 22, 1992, before the Hearing Officer at which time he issued special rules of practice, granted interventions, adopted a procedural schedule, and established a list for service documents. Two petitions to intervene were filed: Tenaska Power Partners, LP (Tenaska) and Puget Sound Power and Light (Puget). By order issued by Judge Ratzman, the established service list included persons granted party status and interested persons requesting courtesy service. Prehearing Conference at 8; RCP-6(c)-O-03.

BPA's written testimony was made available at the prehearing conference on September 22, 1992, at which time BPA's witness, Dennis Oster, was sworn in and his testimony offered subject to cross-examination. Prehearing Conference at 10-11. On the same day, BPA requested that the Hearing Officer take official notice of the 1991 Council's Plan pursuant to section 10(c) of BPA 6(c) Policy. Id., at 15; see also, 51 Fed. Reg. 42,902, 42,907 (1986). The Council's Plan establishes the goals and objectives upon which BPA's consistency determination is based. Judge Ratzman granted BPA's request for

purposes of this hearing because of the relationship between the Council's Plan and BPA's determination in the 6(c) hearing. Prehearing Conference at 16.

The parties did not engage in any discovery. No party submitted written data requests. The parties also waived oral clarification of BPA's direct testimony. The parties also elected not to file testimony responding to BPA's direct testimony. Cross-examination was scheduled to begin on November 10, 1992. By oral agreement prior to November 10, all parties agreed to waive cross-examination of BPA's witness. On November 12, 1992, BPA moved for an order admitting the testimony of BPA's witness and, by affidavit, the filed errata to that testimony. Judge Ratzman granted BPA's motion by order dated November 18, 1992. RCP-6(c)-0-04. On November 16, 1992, BPA moved for an order by affidavit to supplement the record with excerpts from BPA's Final 1992 Resource Program, 10-Year Plan. Judge Ratzman granted BPA's motion to supplement the record by order dated November 24, 1992. RCP-6(c)-0-05.

The parties' initial briefs were scheduled to be filed on November 17, 1992; no party filed a brief. BPA issued its Draft Record of Decision on November 25, 1992. The parties' briefs on exception were scheduled to be filed on December 1, 1992; no party filed a brief on exception.

BPA announced it would accept written and oral comments from participants through November 19, 1992. No comments were received.

C. Legal Requirements

The Northwest Power Act requires the Administrator to conduct a section 6(c) review on proposals to, inter alia, pay preconstruction and investigation expenses to sponsors of a major resource. 16 U.S.C. § 839d(c). Section 6(c) directs the Administrator to "conduct one or more public hearings, presided over by a hearing officers, at which time testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record". Id. The hearing record will assist the Administrator in evaluating the proposal to determine whether the action is consistent with the Council's Plan. Id. The Northwest Power Act describes the material that should be contained in the record as "transcript of the public hearings, together with exhibits and such other materials and information as may have been submitted to, or developed by, the Administrator". Id. Following completion of the hearings, in accordance with section 6(c) of the Northwest Power Act, the Administrator is directed to make a written determination (1) regarding the requirements of subsection (a), (b), (f), (h), (l) or (m) as appropriate, and (2) that the proposed action is either consistent or inconsistent with the Council's Plan. Id.; see also 51 Fed. Reg. 42,902, 42,907 (1986).

As noticed in the Federal Register, the Administrator shall make one primary determination in this 6(c) Record of Decision: whether the proposal to pay preconstruction and investigation expenses to sponsors of major resources under the Resource Contingency Program is consistent or inconsistent with the Council's Plan. 57 Fed. Reg. 31,361 (1992). BPA's proposal to pay preconstruction and investigation expenses in this 6(c) hearing does not

involve a resource acquisition. Neither the RCP nor the individual major resource proposals short-listed through BPA's evaluation process are subject to 6(c) review. BPA's 6(c) Policy specifically exempts resource solicitations from 6(c) review. 51 Fed. Reg. 42,902, 42,905 (1986). The RCP involved such a resource solicitation. See Oster Ex. RCP-6(c)-BPA-01, Attachments 2 and 3. As part of the solicitation process, BPA employed a competitive evaluation process in order to select a final negotiation group. The individual major resources in the negotiation group are also exempt from 6(c) review. BPA plans to negotiate option development agreements with sponsors of major resources in the negotiation group. BPA expects that the negotiations will result in BPA obtaining resource options on approximately 800 aMW of firm energy. Id., Attachment 2 at 11. The individual optioned resources are also specifically exempt from 6(c) review. See 51 Fed. Reg. 42,902, 42,905 (1986). An option is defined in BPA's Section 6(c) Policy as "a unilateral right to acquire an existing or proposed generating or conservation resource within a particular time period on specified terms. No commitment to acquire a resource is made at the time an option is purchased. Options will be used as low-cost means to increase BPA's flexibility in meeting the range of future resource needs." 51 Fed. Reg. 42,902, 42,904 (1986).

BPA witness Oster testified that BPA is not proposing to acquire any of the major short-listed resources at this time. Oster, Ex. RCP-6(c)-BPA-01, 3. The optioned resources will be subject to 6(c) review and corresponding consistency review only when and if BPA proposes to exercise its option to acquire any of these major resources. Id. Since BPA is not proposing to acquire any of the major short-listed option resources at this time and a consistency determination will be made when BPA makes such a proposal, 6(c) review of the individual options is premature and inappropriate.

In accordance with section 15(b) of BPA's Section 6(c) Policy, after issuing the Record of Decision, the Administrator shall promptly provide a copy to the Council. 51 Fed. Reg. 42,902, 42,907 (1986). Copies of the Record of Decision shall also be served on all parties to the proceedings and made available to participants and the public upon request to BPA's Public Involvement Manager. Id. The Northwest Power Act permits the Council to determine, by majority vote, within 60 days after receipt of the Administrator's decision, whether the proposed action is consistent with the Council's Plan. If either the Administrator or the Council determines that the proposal is inconsistent with the Council's Plan, BPA can undertake the proposed action only after receiving approval from Congress. 16 U.S.C. § 839d(c).

After the Administrator and the Council have made their respective 6(c) determinations, the Northwest Power Act requires the Administrator to submit the Record of Decision and the Council's determination to Congress, publish the notice of the decision in the Federal Register, and note the proposal in BPA's Congressional budget submittal. Id. BPA then may implement the action ninety days after the later of (1) the proposal has been noted in the budget or (2) the decision has been published in the Federal Register. Id. The full text of section 6(c) of the Northwest Power Act is set forth in Appendix A.

D. Consistency Standard

The Administrator's primary determination in this 6(c) Record of Decision is whether the proposal to pay preconstruction and investigation expenses to

sponsors of major resources under the RCP is consistent with the Council's Plan. 57 Fed. Reg. 31,361 (1992). BPA's 6(c) Policy states that a proposal made pursuant to section 6(c)(1) "shall be found consistent with the Plan [if the proposal] is judged to be so structured that it will achieve substantially the goals and objectives of the Plan in effect at the time the proposal is made". 51 Fed. Reg. 42,902, 42,905 (1986) (emphasis added). The Council's Plan currently in effect and in effect at the time when the proposal to pay preconstruction and investigation expenses was made is the Council's 1991 Plan. The consistency determination for this 6(c) is thus based on the goals and objectives of the Council's 1991 Plan. The 6(c) Decision Document supporting BPA's 6(c) Policy contains specific directives on the consistency standard. "[C]onsistency should be tested against the relevant and broad objectives of the Plan. . . . a proposal may achieve substantially the relevant goals and objectives of the Plan without exactly matching Plan details. . . . Detailed implementation or design statements are not goals and objectives [of the Council's Plan] in the context of Section 6(c) consistency determination". BPA's Decision Document Supporting Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (hereinafter referred to as 6(c) Decision Document), at 14.

E. Council's Consistency Review

The Council's 1986 Policy Implementing Section 6(c) (hereinafter referred to as the Council's 6(c) Policy) describes the criteria the Council will use in determining whether a BPA proposal made pursuant to section 6(c)(1) is consistent with the Council's Plan. According to the Council's 6(c) Policy, a BPA proposal shall be found consistent with the Council's Plan if the proposal is so structured that it is likely to substantially achieve the goals and objectives of the Council's Plan. 51 Fed. Reg. 42,028 (1986). The Council's 6(c) Policy further explains that the Council intends to afford BPA flexibility in implementing the plan, and as such this consistency standard does not require that BPA implement "every particular activity enumerated in the plan." Id. The Council's consistency standard reflects the Council's commitment to allowing BPA latitude in selecting the means to achieve the goals and objectives of the Council's Plan. According to the Council's 6(c) Policy, the goals and objectives of the Council's Plan should be understood in a broad sense. And finally, under the Council's 6(c) Policy, each BPA proposal under section 6(c) is reviewed for consistency with those provisions of the Council's fish and wildlife program that are relevant to the proposal.

In a further clarification, the Council noted that the fundamental criterion to be used in evaluating a BPA proposal for consistency is "whether a resource is needed and cost-effective when it enters service, considering overall power system cost, reliability, risk management, and environmental effects. Council Document No. 92-25, Process and Criteria to be used in 6(c) Review, August 17, 1992. A finding of substantial consistency also requires a finding that the proposal "meets or exceeds federal, state and local environmental standards." Id., at 1.

CHAPTER II

DESCRIPTION OF THE RESOURCE CONTINGENCY PROGRAM

The RCP originated from BPA's 1990 Resource Program. In the 1990 Resource Program, BPA concluded that taking actions now to reduce the risk of deficit and to shorten lead times was prudent. Oster, Ex. RCP-6(c)-BPA-01, 4. At the time the 1990 Resource Program was concluded, the most promising action to accomplish these objectives appeared to be to option about 800 average megawatts (aMW) of resources that, if necessary, could be called upon to meet long-term energy needs. Id. BPA's recent 1992 Resource Program concludes that, to meet uncertainties through 1995, BPA should pursue an additional 250 aMW of options over the 800 aMW of options identified in BPA's 1990 Resource Program. Oster, Ex. RCP-6(c)-BPA-02, 9-8. BPA has not yet identified how the additional 250 aMW option target will be met. Id., at 4, 12. Currently BPA is exploring several different alternatives to meet this 250 aMW option target. One alternative is the possibility of signing option energy contracts with Southwest utilities that would allow BPA to reserve the right to receive firm energy in exchange for capacity or cash payments. Id., at 5. Because the cost and availability of inter-regional transactions are uncertain, BPA may, as other alternatives, conduct another option solicitation or rely on some of the option resource proposals submitted as part of the RCP to meet this additional 250 aMW option target.

Under the terms of the RCP, resource options offered to BPA must conform to certain threshold requirements. Oster, Ex. RCP-6(c)-BPA-01, 6. Each resource must have a minimum resource size of at least 20 aMW and each resource sponsor must offer the resource for a contract term of five years for system sales and ten years for all other resources. All preconstruction development tasks and approvals must be completed by December 31, 1995. The sponsor must be capable of delivering firm energy to BPA within 3 years from the date BPA decides to exercise the option. The proposed resource must be mature and commercially available. Sponsors must identify project locations and demonstrate capability in securing property rights. If a sponsor offers a new hydroelectric project, that resource must not be located in the Council's designated protected areas. Finally, firm energy from resources declared by BPA utility customers as firm resources in their Power Sales Contracts is not eligible for consideration. Id.

Resource proposals that did not meet these threshold requirements were rejected at the start of the process. BPA continued to review and monitor whether these threshold requirements were still being met through the entire evaluation process. At any time these threshold requirements were no longer met, the resource proposal was rejected. Id. These threshold requirements were developed in consultation with the Council's staff and were, in some instances, specifically included to address their concerns. These threshold requirements, however, are but one component in the competitive evaluation process BPA employed in selecting the final group of sponsors from which a resource option may be negotiated.

The RCP follows a four-step evaluation process in order to select sponsors for negotiating an Option Development Agreement. Step 1 involved a preliminary screening and pre-qualification process to identify project sponsors who have demonstrated a high level of experience and capability to deliver firm energy to BPA. Id., at 5. BPA received 64 proposals from 47 sponsors in response to the RCP solicitation. After this first step, BPA reduced that list to 25 project and 19 sponsors resulting in a short-list of qualified sponsors. Id., at 6. The short-list of qualified sponsors was announced June 26, 1992. The short list included non-major resources, (i.e., resources less than 50 aMW), resources already constructed for which BPA is not paying preconstruction and investigation expenses, and major resources for which BPA is proposing to pay preconstruction and investigation expenses. The two types of qualified major resources for which BPA is proposing to pay preconstruction and investigation expenses are either cogeneration facilities or combined-cycle combustion turbines. Id., Attachment 1, 1. Of the short-listed major resources for which preconstruction and investigation payment may be made, 57% or 2,047 aMW are cogeneration facilities, and 43% or 1,264 aMW are combined-cycle combustion turbines, which may be used in a hydro-firming strategy. Id. A more detailed description of the major resources for which for which BPA may pay preconstruction and investigation expenses is contained in Appendix B of this document. BPA believes that these short-listed major resources are likely to be consistent with the Council's Plan because these two resource types are specifically mentioned as the types of resources for which BPA should secure an option. See 1991 Northwest Power Plan-Volume I, (91-05) at 37-38.

During step two, the most qualified sponsors met with BPA staff. Id., at 6. The consultation gave short-listed sponsors an opportunity to ask questions about the optioning process. In step three, sponsors of short-listed resources were invited to submit a detailed resource option proposal in order for BPA to conduct a more thorough evaluation. Id. In step four BPA selected a group of proposals for which an Option Development Agreement may be negotiated based on its evaluation of the third step submittals. Id.

In the fourth step of the evaluation process each of the short-listed resource proposals was reviewed based on (1) the system cost of the resource, (2) the viability of the resource, and (3) the non-price environmental impacts of the resource. Id., at 7. Each proposal selected, after applying these criteria, was then compared with the Council's Plan recommendations and BPA's resource needs. Id., at 8. These evaluation criteria were developed and structured in light of the goals and objectives of the Council's 1991 Plan. As such, each project on BPA's RCP short-list was evaluated with an eye to the goals and objectives of the Council's Plan. The three evaluation criteria, (1) system cost, (2) resource viability, and (3) non-price environmental factors, were developed to coincide with the one of the Council's goals, which is to ensure that the Pacific Northwest has an adequate, efficient, economical, and reliable electricity supply. BPA believes the system cost criterion advances the Council's goal of an economical electricity supply. Id. The resource viability criterion was used to determine the reliability of the resource in furtherance of the Council's goal of a reliable electricity supply. Evaluation of non-price environmental impacts takes into account the

Council's goal of an economical and efficient electricity supply. Finally, to ensure the Council's goal of an adequate electricity supply, BPA selected a quantity of resource option necessary to secure 800 aMW of option contracts. Id., at 8-9.

In summary, although the consistency determination on the individual optioned resources will be made through a 6(c) review at the time when BPA proposes to exercise the option, BPA believes that those major resources selected for payment of preconstruction and investigation expenses that satisfy the evaluation criteria employed in each step of the RCP process are likely to be consistent with the Council's Plan.

CHAPTER III

CONSISTENCY WITH THE GOALS AND OBJECTIVES OF THE COUNCIL'S PLAN

The primary determination in this 6(c) review is whether the proposal to pay preconstruction and investigation expenses to sponsors of major resources under the RCP is consistent with the Council's 1991 Plan. 57 Fed. Reg. 31,361, 31,363 (1992). A proposal shall be found consistent with the Plan if it is judged to be so structured that it will substantially achieve the goals and objectives of the Council's 1991 Plan. 51 Fed. Reg. 42,902, 42,905 (1986). One of the goals of the Council's 1991 Plan is to ensure that the Pacific Northwest has an adequate, efficient, economical and reliable electricity supply well into the next century. 1991 Northwest Power Plan-Volume I, (91-05), at 1. One of the objectives of the Council's 1991 Plan is to reduce lead time for resource development. 1991 Northwest Power Plan-Volume I, (91-05), at 36.

A. Payment of Preconstruction and Investigation Expenses to Major Resource Sponsors under the RCP Substantially Meets the One of Goals of the Council's Plan of Ensuring that the Pacific Northwest has an Adequate, Efficient, Economical, and Reliable Electricity Supply Well into the Next Century.

As noted by BPA witness Oster, payment of preconstruction and investigation expenses is a necessary precursor to acquiring resource options and to accomplishing specific tasks or milestones to ensure resource development. Oster, Ex. RCP-6(c)-BPA-01, 9. The proposed payment of preconstruction and investigation expenses allows BPA to shorten lead times for bringing resources on-line. Since preconstruction and investigation expenses are contingent on a sponsor achieving specific tasks, the sponsor has an economic incentive to proceed with resource development along a path that coincides with the time when BPA may need the power. Timing resource development closer to the time when the power is needed allows BPA to respond to future changes in demand for power. This flexibility is consistent with the Plan's goal of "securing a reliable, low-cost [supply] system". Id.; see also 1991 Northwest Power Plan-Volume I, (91-05), at 36.

Payment of preconstruction and investigation expenses is also cost-effective insurance against future uncertainties. BPA's witness notes that, in BPA's judgment, without payment of preconstruction and investigation expenses, resource developers would not give BPA an exclusive future right to the resource. As such, for a period of time, BPA would need to rely on short-term power purchases or build ahead of need. Oster, Ex. RCP-6(c)-BPA-01, 10. Both of these alternatives, according to BPA witness Oster, could be more uncertain or more costly than securing resource options through payment of preconstruction expenses. See generally Id., 10-12. As such payment of preconstruction and investigation expenses is a cost-effective means for managing risk. For instance, short-term power purchases may be limited in amount and duration, or may simply not be available. Preconstruction work is time-consuming, but it comprises only a small fraction of the total cost to construct a generation resource. The costs associated

with building ahead of need could potentially be much higher than the proposed preconstruction and investigation payments. By acquiring options through paying preconstruction and investigation expenses, BPA is buying insurance that the power will be available in the amounts and close to the time when it is needed. This insurance is substantially consistent with the Council's goal of securing a reliable, cost-effective electricity supply well into the next century. Id., at 9-10 (emphasis added); see also 1991 Northwest Power Plan-Volume I (91-05), at 1.

Payment of preconstruction and investigation expenses provides resource developers an economic incentive to advance a project to a point where BPA can determine if a resource can be permitted and constructed because payment is contingent on achieving specified tasks. Oster, Ex. RCP-6(c)-BPA-01, 10. If BPA determines that the resource cannot be permitted or constructed, BPA can terminate the optioned resource without incurring any future liabilities. Again, because BPA will be able to determine resource viability and reliability with relatively small cash outlays and without a commitment to purchase the output from the resource, payment of preconstruction and investigation expenses substantially meets the Council's goal of securing reliable, cost-effective electricity supply well into the next century. Id.; see also 1991 Northwest Power Plan-Volume I, (91-05), at 1.

Finally, payment of preconstruction and investigation expenses provides a guarantee that if the demand for power changes in the future, BPA can call upon the resource. Oster, Ex. RCP-6(c)-BPA-01, 10. As such, this proposal provides BPA with a tool for managing uncertainty. Without the payment of preconstruction and investigation expenses, BPA would not have any guarantee that the resource would be available to BPA if needed in the future. Id. A tool to manage uncertainty also substantially meets the Council's goal of securing an adequate and reliable supply of electricity well into the next century. Id.; see also 1991 Northwest Power Plan-Volume I, (91-05), at 1.

B. Payment of Preconstruction and Investigation Expenses to Major Resource Sponsors under the RCP Substantially Meets Objective 2 of the Council's Plan--Reducing Lead Time.

Planning, designing, and securing approvals and constructing power facilities require long lead times. As the Council's 1991 Plan notes, some power plants may take a number of years to go from concept to power production. 1991 Northwest Power Plan-Volume I, (91-05), at 36. For some resources, the preconstruction phase can take longer than the construction phase. In order to assure that resources are available when needed, payment of preconstruction and investigation expenses allows preconstruction work to begin before a proposal is made to acquire a resource. In the event BPA decides to acquire a resource, power deliveries could begin in three years or less. Oster, BPA, RCP-6(c)-BPA-01 at 12.

In addition, by agreeing to pay a sponsor for certain costs, during the resource option development process and hold period, in exchange for an exclusive right to call upon the resource in the future, BPA is introducing

multiple decision points in the resource development process. Id., at 13. As noted earlier, the option concept allows for one decision at the preconstruction or investigation stage, and a separate later decision at the resource construction or acquisition stage. According to the Council's 1991 Plan, "[t]he key to reducing lead times is to introduce multiple decision points in the resource development process, so that energy needs can be periodically reassessed before committing large amounts of money to the next step in the development". 1991 Northwest Power Plan-Volume I, (91-05), at 36. Because payment of preconstruction and investigation expenses give BPA a future right to acquire the resource if needed, with relatively small cash outlay, payment of preconstruction and investigation expenses to sponsors under the RCP allows for multiple decision points before committing to purchase the output from the resource. Structuring resource development with multiple decision points substantially meets the Objective 2 of the Council's 1991 Plan. Oster, BPA, RCP-6(c)-BPA-01 at 12.

C. Payment of Preconstruction and Investigation Costs to Major Resource Sponsors Conforms with the Council's Resource Acquisition Implementation Principles that Sponsors should be Compensated for Preconstruction Activities.

Although a consistency determination does not require meeting all or any of the detailed implementation or design statements underlying the Council's Plan, in this case payment of preconstruction and investigation expenses does conform with some of the Council's resource acquisition principles. The Council recommended that as a means for acquiring resource options and completing all preliminary preconstruction activities, "resource developers' costs must be appropriately compensated by utilities". 1991 Northwest Power Plan-Volume II, (91-05) at 894. BPA's proposal to pay preconstruction and investigation expenses of major resource sponsors under the RCP provides such compensation. See generally Oster, Ex. RCP-6(c)-BPA-01, 13-14. Under the Option Development Agreement, BPA will compensate developers for certain negotiated preconstruction and investigation expenses incurred during the resource development stage.

The Council views option development agreements as a method for securing a right to the firm energy and completing all initial preconstruction activities leading up to the construction. 1991 Northwest Power Plan-Volume II, (91-05) at 898. Preconstruction activities specifically mentioned by the Council include "designing, siting and preliminary licensing" of a resource. Id., at 894. The activities for which the Council recommended compensation are included within the preconstruction and investigation activities for which BPA is proposing to pay. For instance, preconstruction and investigation expenses include costs incurred by sponsors in order to obtain required regulatory approvals. Oster, Ex. RCP-6(c)-BPA-01, 14. Preconstruction and investigation expenses are defined as, but are not limited to, licenses and permits, environmental analysis/impact statements, land options, easements and right-of-way acquisition, sponsor's expenses during siting and licensing, geotechnical surveys, and architectural and engineering fees. 57 Fed. Reg. 31,361, 31,362 (1992) (emphasis added).

Even though a BPA proposal can be found consistent with the Council's Plan without meeting any of the detailed implementation recommendations made by the Council, the fact that this proposal takes into account and generally conforms with the Council's recommended principles provides additional evidence in support of BPA's consistency determination.

D. Payment of Preconstruction and Investigation Expenses to Major Resource Sponsors under the RCP will not Conflict with the Council's Fish and Wildlife Program and Addresses Federal, State and Local Environmental Standards.

The proposal is limited to the payment of preconstruction and investigation expenses. In BPA's judgment these payments will have no impact on any provision of the Council's fish and wildlife program. Oster, Ex. RCP-6(c)-BPA-01, 15. By way of example, any proposed hydroelectric projects located in the Council's protected areas have been and will be rejected.

BPA's definition of preconstruction and investigation expenses includes costs associated with environmental analysis/impact statements, and licenses and permits. 57 Fed. Reg. 31,361, 31,362 (1992). Under this proposal, BPA could pay a sponsor to apply for and gain approval of all Federal, state and local permits and licenses on an agreed upon schedule. Oster, Ex. RCP-6(c)-BPA-01, 15. By paying preconstruction and investigation expenses BPA, in effect, would compensate a sponsor for expenses associated with meeting Federal, state and local environmental standards. In exchange for BPA paying a sponsor's preconstruction and investigation expenses, the sponsor agrees to commit to securing all Federal, State and local permits and approvals. Because payment of these expenses are tied to meeting all Federal, state and local permits and approval including environmental approvals, the resource sponsor has an economic incentive to secure all Federal, state and local permits and approvals, which includes meeting the appropriate environmental standards.

Summary: For all the reasons discussed above, payment of preconstruction and investigation expenses substantially meets the goals and one of the objectives of the Council's 1991 Plan. In summary Payment of preconstruction and investigation expenses is one of the cost-effective ways by which BPA can acquire resource options. In BPA's judgment, resource developers would not begin preconstruction work and give BPA an exclusive right to the resource in the future without some payment from BPA. Paying preconstruction and investigation expenses in order to obtain resource options is less costly and more certain than the identified alternatives such as either building ahead of need or relying on short-term purchases. In exchange for paying preconstruction and investigation expenses to sponsors of major resource, BPA has a firm guarantee that BPA can call upon the resource if the demand for power changes in the future. As such, preconstruction and investigation payments provides cost-effective insurance to manage future risk and uncertainties.

Payment of preconstruction and investigation expenses provides the sponsors with an economic incentive to proceed with resource development that coincides with the time when BPA may need the power and thereby reduces the lead time for when power can be delivered. Moreover, tying preconstruction and investigation expense payments to a resource development schedule provides an incentive for the resource sponsors to advance a project to point where BPA can determine the resource's reliability. By paying preconstruction and investigation expenses BPA is not committing to purchase the output from the resource. In the event conditions change, BPA can terminate the optioned resource with relatively small cash outlays and without any future liabilities. For instance, if BPA determines that the resource cannot be permitted and constructed, BPA can terminate the agreement. This allows BPA to take another look at the optioned resource prior to committing to purchase the resource output.

Payment of preconstruction and investigation expenses also comports with the Council's recommendation that resource developers receive compensation for preconstruction activities. And finally payment of preconstruction and investigation expenses has no impact on any provision of the Council's fish and wildlife program.

CHAPTER IV

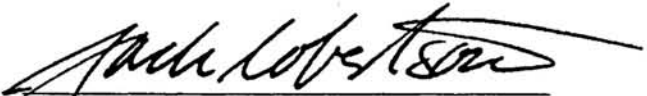
CONCLUSION

The proposal to pay preconstruction and investigation expenses under the Resource Contingency Program substantially achieves the goals and Objective 2 of the Council's 1991 Plan. The proposal is also consistent with the provisions of the Council's fish and wildlife program.

In performing his duties under section 6(c) of the Northwest Power Act, the Hearing Officer has conducted a full and fair hearing open to all interested parties and participants. All parties in this proceeding have been given every reasonable opportunity to engage in discovery, present testimony, cross-examine adverse witnesses, and submit briefs. A record of this proceeding includes all materials submitted to or developed by BPA.

I hereby determine that the proposal to pay preconstruction and investigation expenses to sponsors of major resources under the Resource Contingency Program is consistent with the Council's 1991 Plan.

Issued at Portland, Oregon, this 11th day of December 1992.


FOR Randall W. Hardy
Administrator

APPENDIX A
Section 6(c) of the Pacific Northwest Electric Power
Planning and Conservation Act
16 U.S.C. § 839d(c)

6.(c)(1) For each proposal under subsection (a), (b), (f), (h) or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall--

6.(c)(1)(A) publish notice of the proposed action in the Federal Register and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

6.(c)(1)(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officers, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

6.(c)(1)(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

6.(c)(1)(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate--

6.(c)(1)(D)(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

6.(c)(1)(D)(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

6.(c)(1)(D) In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

6.(c)(2) Within sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator--

6.(c)(2)(A) that the proposal is either consistent or inconsistent with the plan, or

6.(c)(2)(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

6.(c)(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)--

6.(c)(3)(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and

6.(c)(3)(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.

6.(c)(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall--

6.(c)(4)(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969.

6.(c)(4)(B) publish notice of the decision in the Federal Register, and

6.(c)(4)(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

6.(c)(4) The Administrator may not implement any such proposal until ninety days after the date on which such proposal has been noted in such budget or after the date on which such decision has been published in the Federal Register, whichever is later.

6.(c)(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

ATTACHMENT B

MAJOR RESOURCES IN BPA'S RESOURCE CONTINGENCY PROGRAM

WESTSIDE RESOURCES

<u>SOURCE</u>	<u>LOCATION</u>	<u>AMW</u>	<u>RESOURCE TYPE</u>
WILLPEN POWER DEVELOPMENT COMPANY	PIERCE CO., WA	209.0	COMBUSTION TURBINE
WPPSS	SATSOP, WA	160.0	COMBUSTION TURBINE
TENASKA POWER PARTNERS	BROOKS, OR	240.0	COMBUSTION TURBINE
CRSS CAPITAL	CHEHALIS, WA	420.1	COGENERATION
ENERGY INITIATIVES	PORTLAND, OR	207.9	COGENERATION
SEI, INC.	BREMERTON, WA	223.0	COGENERATION
SITHE ENERGIES, INC.	TACOMA, WA	210.0	COGENERATION
EPUD, COBURG POWER, GE CAPITAL	LANE CO., OR	119.5	COGENERATION

EASTSIDE RESOURCES

<u>SOURCE</u>	<u>LOCATION</u>	<u>AMW</u>	<u>RESOURCE TYPE</u>
WILLPEN POWER DEVELOPMENT COMPANY	FRANKLIN CO., WA	209.0	COMBUSTION TURBINE
U.S. GENERATING COMPANY	HERMISTON, OR	216.9	COGENERATION
U.S. GENERATING COMPANY	KOOTENAI CO., ID	207.7	COMBUSTION TURBINE
HANFORD GENERATING COMPANY	HANFORD, WA	214.0	COGENERATION
IDA-WEST ENERGY	HERMISTON, OR	435.0	COGENERATION
TRANSALTA RESOURCES	TWIN FALLS, ID	103.0	COGENERATION

OUT OF REGION RESOURCES

<u>SOURCE</u>	<u>LOCATION</u>	<u>AMW</u>	<u>RESOURCE TYPE</u>
PROVINCIAL CANADA	HOPE, B.C., CANADA	238.0	COMBUSTION TURBINE

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