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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 926

In the Matter of the Investigation Regarding the)	
Purchase of Subscription Power From the Bonneville)	ORDER
Power Administration.)	

DISPOSITION: STIPULATION ADOPTED; TEN YEAR CONTRACT TERM ORDERED

Background. On February 16, 2000, the Public Utility Commission of Oregon (Commission) directed Portland General Electric (PGE) and PacifiCorp to begin contract negotiations with Bonneville Power Administration (BPA) relating to providing federal power benefits to the investor owned utilities' (IOUs) residential and small farm customers. The Commission also required PGE and PacifiCorp to prepare monthly reports summarizing the status of their contract negotiations with BPA for Subscription power and related matters. Finally, the Commission opened an investigation to determine whether it is prudent for PGE and PacifiCorp to purchase, and to what amount and term, Subscription power from BPA on behalf of the utilities' residential and small farm consumers.

BPA markets low cost power throughout the Pacific Northwest to public agencies, large industries, and to the IOUs. For ten years, beginning October 1, 2001, BPA has offered to provide 1900 average megawatts (MWa) of federal system benefits to the residential and small-farm consumers of the IOUs. Some of the benefits will be provided through the sale of power, other benefits will be provided in the form of cash payments to offset the IOU cost of power purchases from non-BPA sources. The Commission has two key objectives regarding access to BPA low cost power. First, the benefits must be protected and preserved for the benefit of qualifying PGE and PacifiCorp consumers. Second, the benefits must be shared equitably among all qualifying PGE and PacifiCorp consumers.

The Commission's decisions in this docket evolved from BPA's December 22, 1998 Record of Decision (ROD) for sharing the benefits of the federal system among Pacific Northwest agencies. BPA proposed two alternatives, the traditional exchange method contained in Section 5(c) of the Regional Power Act and a

mix of power and cash in exchange for waiver of the utility's 5(c) rights. Staff's public meeting memorandum, attached to this order as Appendix A and incorporated herein, details the implications of each of these options.¹

Senate Bill 1149 permits Commission involvement in contracts between PGE and PacifiCorp, on the one hand, and BPA. Section 19 of that bill provides that the Commission may require an electric company to contract with BPA in order to preserve the benefits of federal low cost power for residential and small farm consumers. Contracts are subject to approval by OPUC, taking specified factors into consideration.²

Parties to this docket included PGE, PacifiCorp, and Citizens' Utility Board (CUB). All parties worked with Commission Staff to resolve the four issues posed by this docket:

1. Should PacifiCorp and PGE participate in the BPA Subscription Settlement or the Residential Exchange Program?
2. Should PGE and PacifiCorp request their Subscription benefits as delivered in power or as monetary benefits?
3. What basis should BPA use to calculate monetary benefits?
4. Should PGE and PacifiCorp enter into Subscription power sales contracts of five or ten year duration?

Stipulation. On August 4, 2000, parties and Staff executed and submitted a Stipulation, attached to this order as Appendix B and incorporated herein, resolving the first three issues. The parties agreed that PGE and PacifiCorp should participate in the Subscription settlement, signing up for the full amount of benefits BPA is offering, either as delivered power, monetary benefits, or a mix of the two. They also agreed that PGE should request all Subscription benefits allocated to it as delivered power, and that PacifiCorp may request any or all of its benefits as monetary benefits. Finally, the parties agreed that they will attempt to convince BPA to use a market price forecast to calculate monetary benefits that is consistent with a market price forecast supporting the analysis of BPA's recently estimated 65 percent Treasury payment probability and to amend the

¹ The Staff memorandum lists Idaho Power along with PGE and PacifiCorp as affected utilities. At its February 16, 2000 public meeting, the Commission decided that the Idaho Commission should deal with Idaho Power issues. Senate Bill (SB) 1149 exempts Idaho Power from most provisions of the Bill, because Idaho Power has fewer than 25,000 customers (see Section 2 of SB 1149).

² Section 19 of SB 1149 provides:

In order to preserve the benefits of federal low-cost power for residential and small-farm consumers of electric utilities, the Public Utility Commission may require an electric company to enter into contracts with the Bonneville Power Administration for the purpose of securing such benefits. The contracts shall be subject to approval by the commission. In reviewing a contract, the commission, at a minimum, shall consider:

- (1) The short-term expected cost of electric power from the Bonneville Power Administration compared to market-priced alternatives;
- (2) The long-term benefit of retaining the rights to purchase electric power from the Bonneville Power Administration at cost, compared to market-priced alternatives; and
- (3) Other factors deemed relevant by the commission.

April 2000 Subscription Strategy to reflect use of such a revised market forecast. The Commission has reviewed the parties' stipulation and finds it reasonable. The stipulation should be adopted.

Parties also stipulated to a list of documents to be included in the record on October 10, 2000. On October 20, 2000, PacifiCorp moved to correct the stipulated list of documents and to supplement the list. No party opposed PacifiCorp's motion as of the date of this order, and the motion is granted. The stipulation and the modifications to the stipulation contained in PacifiCorp's motion are attached to this order as Appendix C and are incorporated herein.

The five versus ten year contract issue. After parties negotiated their stipulation, the only disputed issue was whether the utilities should sign five or ten year contracts with BPA. Parties submitted comments to the Commission on this issue.

We note that BPA has required that parties execute contracts by close of business on October 30, 2000, in order to proceed with the settlement. BPA has set October 31, 2000, as the deadline for executing agreements, including proposed settlements of the Residential Exchange. This gives one day for BPA signature processing prior to the close of the Subscription window. In addition, BPA has reopened its WP-02 rate case, in which the final ROD was issued in May 2000. The implication of this action is that neither parties nor the Commission will know what BPA's rates will be or how any rate adjustment may affect PGE's or PacifiCorp's monetary benefits before the deadline for executing settlement contracts.

Positions of the Parties: CUB and Commission Staff. CUB and Staff advocate signing ten year contracts.

CUB reaches this conclusion reluctantly, noting that through the Subscription process, BPA has driven the result and that the political landscape suggests that five year contracts are not a feasible alternative. CUB asserts that BPA has made it clear that for those who sign up for five years and then want to sign up again in 2006, the second five year block could be priced higher than for those who sign up for 10 years today. BPA has also made statements conditioning an additional 300 MWa for IOUs on ten year contract commitments by the IOUs. BPA's positions leave little flexibility for the IOU residential customer.

CUB would prefer the five year contract for all customers. According to CUB, Oregon attempted to convince BPA earlier this year that all contracts should be limited to five years. To offer ten year contracts would de facto establish allocation policy in the region for a decade and negate the purpose and usefulness of a near term review of the current sharing of BPA benefits in the Northwest. But CUB acknowledges that to show how seriously we mean our five year position by signing contracts only for that term is to flirt with disaster. We would be unable to claim any more power from those who have locked up ten year contracts and will have left the second five year period

exposed. CUB also notes that any IOU that chose to sign up for only five years would also almost certainly be accused of a lack of commitment to BPA.

CUB states that the argument for five year contracts revolves around the long term commitment of a ten year contract without the reciprocal commitment from BPA that the residential rate will be equivalent to the lowest preference rate. Those who sign ten year contracts with BPA will sign without knowing what the preference rate will be during the second five year period. Only the IOU customers suffer from that uncertainty and from the lack of certainty that BPA will price the residential block (RL rate) at or near preference in the 2005 rate case. The contracts with BPA do provide some modest recourse in the event that the residential rate is not equivalent to preference. CUB notes that we have only this to rely on to assure ourselves that a ten year contract is safe from political manipulation, and that in signing ten year contracts we are not only accepting the long term risk that BPA will be above market six or seven years from now, but also we are taking the long term risk that BPA will manipulate the residential rate to our disadvantage in the next rate case.

On the positive side, CUB argues that signing ten year contracts locks in our access to BPA during a time when California's power price problems have that state groping about for a cheaper solution. The ten year contract would seem to prevent other regions from claiming the output of the Northwest system, at least in theory. The Direct Service Industries (DSIs) are being offered only five year contracts. This, CUB asserts, means that we still reserve the right to argue that the power freed up at the expiration of the DSI contracts should be reallocated to those with a superior moral and legal claim to that power: the citizens of the Northwest.

CUB reasons that PGE and PacifiCorp should sign ten year contracts, due to BPA's elimination of alternatives and to the problems inherent in five year contracts and modest arguments in favor of 10 year contracts.

Commission Staff also urges that PGE and PacifiCorp should sign ten year contracts. Staff notes that in the late 1990s, BPA held public forums and sought formal requests for comments on how the benefits of the Pacific Northwest federal power system should be distributed among various agencies and customers. This process was known as Subscription. BPA needed to develop its policies for allocating federal system benefits because nearly all of its power sales contracts terminate on September 30, 2001. The Oregon Commission cooperated with the other Pacific Northwest regulatory commissions to advocate a more equitable share of federal system benefits for the residential and small farm consumers of the investor owned utilities. These efforts culminated in an agreement with BPA that BPA would provide 1900 MWa for the IOUs for the five year period from 2001 through 2006. In addition, if the IOUs executed contracts with ten year terms, BPA agreed to provide 2200 MWa in the five year period from 2007 through 2011. The table below shows the approximate benefits for the two five year contract periods for PGE and PacifiCorp:

Utility	2001-2006 period	2007-2011 period
PGE	490 MWa	560 MWa
PacifiCorp ³	253 MWa	341 MWa

According to Staff, the record in this case and the current trend in electricity prices make it apparent that the power offered by BPA to PGE and PacifiCorp, priced at cost, should provide significant benefits to the their residential and small farm consumers. Table 1 also shows that BPA is offering a significantly larger share of benefits in the second five year periods if PGE and PacifiCorp execute ten year contract terms. The level of PGE benefits increases from 490 MWa in the first five years to 560 MWa in the second five years, an increase of 14 percent. PacifiCorp similarly increases by roughly 35 percent. In addition, BPA has committed itself to act in good faith to provide the entire amount of benefits in power in the second five year period.

It should also be noted that the Commission has been advocating changes in federal system statutes and a more equitable distribution of federal system benefits among all the Pacific Northwest residential and small farm consumers. If the Commission directs the utilities to enter into ten year contract terms, Staff contends that it is not a signal that no changes need be made with regard to BPA and its role for the ten year period. To ensure that there is no misunderstanding on this issue, Paul Norman of BPA wrote a letter dated August 3, 2000, in response to the Commissioners' July 19, 2000 letter requesting clarification of BPA's position on issues raised during the Commission's investigation with regard to requiring PGE and PacifiCorp to enter into contracts with BPA on behalf of the residential and small farm consumers of those utilities. Mr. Norman wrote in relevant part:

One of the key issues in your investigation is contract duration. As you correctly state, BPA's commitment to provide 2200 MWa of benefits in the 2007-2011 period, which BPA intends to provide as power if able to do so, is contingent upon executing Subscription Settlement Agreements with ten year terms. However, you are concerned that if you direct PGE and PacifiCorp to execute ten year contracts, you may be signaling others that the Commission believes no major changes in BPA's organic statutes are needed for ten years.

Please accept my assurance that in the event your Commission directs investor owned utilities (IOUs) to execute ten year contracts, BPA understands this action has no bearing on whether Oregon believes BPA's organic statutes should be revisited. The IOUs' execution of the Subscription Settlement Agreements does not limit the continued efforts of the State of Oregon or the IOUs regarding these issues, and we understand you will continue your efforts.

³ The numbers for PacifiCorp are approximate and will be made final based on actual relative shares of qualifying residential and small farm load data between Washington and Oregon.

You also expressed concern that any commitment on the part of the Commission or the IOUs to take Subscription power may serve as precedent in the future as to the adequacy or legality of the Subscription offer and/or process. It should be recognized that the Subscription Settlement Agreement is intended to comprehensively settle a signatory's rights under the Residential Exchange Program for the duration of the contract. However, BPA agrees that execution of the currently proposed Subscription Settlement Agreements will not establish an agreement on the part of the Commission or the executing party as to the adequacy of the current Subscription offer or process for future settlements. With regard to precedential value, if any party challenges the settlements in court, and the court issues a decision, BPA has no control over the legal precedential effect of the court's opinion. BPA further acknowledges that acceptance by the IOUs of the Subscription Settlement Agreement does not signal that these utilities agree with BPA's calculation of Residential Exchange benefits, are abandoning any of their previous positions on the Residential Exchange Program, or are waiving any rights to challenge BPA's implementation of the Residential Exchange Program as it applies after the term of the Agreement, except as provided in the Subscription Settlement Agreement.

Finally, I know the Commission and others are concerned that new statutes might have an impact on any contract PGE and/or PacifiCorp might sign with BPA. BPA agrees that if legislation were enacted that required BPA to attempt to amend the PGE and/or PacifiCorp contracts for the second five years, we would make a good faith effort to amend these contracts to conform to the new legislation.

In the event your Commission directs investor owned utilities (IOUs) to execute ten year contracts, BPA understands this action has no bearing on whether Oregon believes BPA's organic statutes should be revised.

Staff believes that the BPA letter acknowledges and preserves Oregon's efforts to review BPA's role and the allocation of federal system benefits. Because the offer of additional benefits in the second five year period is contingent on executing ten year contract terms, Staff recommends that the Commission direct the IOUs to enter into ten year contract terms.

Positions of the Parties: PGE and PacifiCorp. PGE argues that the Commission should direct PGE and PacifiCorp to enter into five year contracts. According to PGE, BPA has made it clear that there is no guarantee of obtaining benefits for PGE's residential and small farm consumers (qualifying consumers) beyond 2006, if PGE does not sign up for ten years. The offered contract is a take or pay agreement, however, that could place all the risk of BPA's financial ups and downs on PGE's

qualifying consumers. PGE points out two aspects to the financial risks associated with a ten year BPA contract. First, there is the risk that BPA's prices will be above market. Second, there is the risk that the value associated with power or cash "benefits" may be lost in BPA's next rate case. These two aspects are discussed below. In addition, PGE is very concerned about signing a take or pay contract on behalf of its qualifying consumers when the price of the power is not known.

PGE notes that BPA's power prices are currently well below market, even considering the need to raise rates to deal with increased loads and market volatility. Some people believe that BPA prices are so far below market that there is no chance that they will be above market in the next ten years. However, PGE argues that no one can accurately predict where prices may go. Augmentation for BPA customers and escalating fish costs could well drive BPA's prices higher over the next ten years. BPA is also financed by debt. Its only equity is accumulated reserves that can be rapidly depleted during bad water conditions. BPA must then raise its rates to cover the high fixed cost of the debt. BPA's prices were above market in 1996, and the region convened the Comprehensive Regional Review to figure out how to get BPA's customers to buy its overpriced power. In addition, market prices could easily come down. There may currently be a shortage of generation, but it takes only three years to build a combined cycle combustion turbine from start to finish, less if the authorities put permits on a fast track as they are doing in California. Gas prices are also high at the moment, but the gas industry has traditionally had a boom and bust cycle of about two years. Stable rates are important to residential and small farm consumers who have neither the clout nor the ability to go to the marketplace for electricity. PGE is concerned about placing BPA's risks on its qualifying consumers for the next ten years.

According to PGE, the second element of financial risk in tying its qualifying consumers to BPA for ten years is related to the discretion BPA has to interpret its statutes and set its own rates. In 1980, the Northwest IOUs believed that they had secured a stable means of bringing rates for qualifying consumers into line with the rates paid by consumers of publicly owned utilities—the Residential Exchange Program. BPA, however, changed the average system cost methodology in 1984 and eliminated much of the benefit. Then, in its 1996 rate case, BPA eliminated most of the remaining benefits for PGE's qualifying consumers by changing the way they calculated the 7(b)(2) rate test of the Regional Power Act even though that meant BPA had to reinterpret the Pacific Northwest Electric Power Planning and Conservation Act (Regional Power Act). These examples point out the vulnerability inherent in being a BPA customer that is not entitled to preference.

PGE is also concerned that BPA sets its own rates through a process that has no oversight from an impartial third party. In the WP-02 rate case concluded last May, BPA decided to set the RL rate, applicable to sales for qualifying consumers of IOUs, equal to the APF Preference Rate, but there is no certainty that the RL Rate will be as favorable in the next rate case. In fact, the history cited above indicates that it is unlikely that BPA will continue the benefits for IOU qualifying consumers at that level

beyond the current rate period, especially if it is in financial difficulty. Moreover, the “benefits” could reverse so that PGE would have to charge its qualifying consumers and pay BPA. The Settlement Agreement being offered by BPA is already set up for payments to flow both ways.

Even worse than the uncertainty about rates five years from now is that PGE does not know what the rate will be when BPA begins deliveries of Subscription power. Before starting the WP-02 rate case, BPA promised its publicly owned utility customers to keep rates at the same level as in the 1996 rate case. BPA then used its rate case process to fulfill that promise, only to discover three months later that those rates were not sustainable. BPA has reopened the WP-02 rate case and we may not know what price we will pay for power or what the financial benefits will be until spring of 2001. Unfortunately, BPA is demanding that contracts be signed by October 31, 2000.

Another consideration is restructuring under recently passed Senate Bill (SB) 1149. PGE wants restructuring to work because PGE believes that consumers will benefit in the long run from a restructured competitive market for power. PGE is concerned that BPA’s fifty year old view of the world could impede implementation of SB 1149. For instance, BPA operates under a plethora of organic statutes that could interfere with restructuring. Long term Subscription contracts with BPA may interfere with the region’s ability to modernize river governance and make needed changes to those statutes.

Others share PGE’s concerns. Eleven of BPA’s IOU and DSI customers wrote to the entire Northwest Congressional Delegation in April 2000 urging that contracts be limited to five years or, alternatively, contain a reopener to accommodate changes in the industry. In March 2000 there were three letters on the subject. Oregon Representatives Blumenauer and DeFazio urged BPA to include language in contracts that would allow them to be amended if the region “promotes and achieves changes in law governing the activities or policies of BPA and the FCRPS.” Senator Wyden wrote to Secretary Richardson expressing concern that contracts longer than five years could interfere with legislation needed to modernize BPA. The Senator also urged that if the Secretary were convinced that longer term contracts were necessary, they should not preclude necessary legislative changes. Montana Governor Racicot also wrote to the BPA Administrator urging her to limit contracts to five years in order to allow the region to come up with a better form of river governance. Alternatively, Governor Racicot recommended that contracts include a clause nullifying them after five years to “encourage and facilitate changes in river governance.” Last but not least, in January 2000, the Chair of the Commission and the Director of the Oregon Office of Energy wrote BPA Administrator Judi Johansen urging BPA to include provisions in all contracts requiring the contracts to be amended to “allow conformance and implementation of any new statutes” governing BPA. That letter went on to say that absent such language, BPA should “sign no contracts longer than five years in duration.”

Another risk PGE faces is that with so many people from outside the region complaining about BPA's power marketing activities, there is some chance that changes could occur to BPA's statutes. The publicly owned utilities in the Northwest have resisted changes to BPA, but if extra regional parties such as the California Congressional Delegation drive that process, changes could occur in less than ten years. If PGE is locked into a ten year contract, its qualifying consumers could be excluded from any advantages gained through those changes in the statutory environment.

To summarize, PGE believes that five years is time enough to make overdue changes to the archaic system of laws and regulations governing BPA and bring the agency in line with the goals of SB 1149. Delay could be fatal and allow outside interests to determine the future of the river.

PacifiCorp weighs both the five and the ten year option and urges the Commission to give serious consideration to both. *PacifiCorp* believes that the Commission's goal should be to position the IOUs to respond flexibly to future changes in the electricity market and to motivate BPA, regional leaders, and Congress to increase the level of benefits to residential and small farm consumers in the region for the period from 2007 to 2011.

PacifiCorp notes that the benefits of a ten year settlement contract are well understood. BPA has offered to provide more power or financial benefits to *PacifiCorp* for its Oregon jurisdiction during 2007-2011. A ten year settlement means that *PacifiCorp*'s residential and small farm consumers will receive some BPA benefits throughout the next decade. Furthermore, if other customer groups enter into ten year contracts and PGE and *PacifiCorp* do not, PGE's and *PacifiCorp*'s consumers may be at risk of receiving fewer benefits in the second five year period than those now offered by BPA for that period.

PacifiCorp points out that there are also downside risks to ten year contracts, however, which make the five year option one that should be considered. First, the regional electricity market is in a state of unprecedented volatility. Consequently, *PacifiCorp*'s benefits under either a five year or a ten year settlement are uncertain. On August 1, 2000, BPA announced that it was temporarily suspending the signing of power sales contracts for the 2002-2006 rate period. BPA's action was taken in response to unprecedented market volatility, the addition of up to 1400 MWa of firm load, and climbing market prices. *PacifiCorp* notes that as of October 20, 2000, BPA has asked the Federal Energy Regulatory Commission (FERC) to stay its consideration of the proposed five year rates until BPA has had a chance to consult with its customers and determine how to ensure that BPA can meet its obligations to the United States Treasury. On August 31, 2000, BPA announced that it will reopen its rate case, WP-02. To date, efforts by PGE and *PacifiCorp* and the Commission to reach a settlement with BPA and other interested parties on the initial proposal for the reopened rate case have failed. PGE and *PacifiCorp* have urged BPA to propose revisions to its Forward Flat Block Forecast and Cost Recovery Adjustment Clause (CRAC) that retain the full value of the monetary

benefits under the settlement contracts. However, other parties have urged BPA not to increase the monetary benefits to reflect the higher market price forecast, thereby effectively reducing the value of benefits paid to PGE's and PacifiCorp's residential and small farm consumers as compared to the consumers of government owned utilities and cooperatives.

PacifiCorp does not know exactly how BPA will attempt to fix its 2002-2006 rate proposal to increase the likelihood that BPA will recover its total system costs and make its Treasury payments. Whatever the approach, PacifiCorp opines that BPA rates, including any surcharge under the CRAC, will be higher than those proposed in the WP-02 ROD of May 2000. Absent a rate settlement in the WP-02 case, neither the parties nor the Commission will know what BPA's rates will be or how any rate adjustment may affect the IOUs' monetary benefits before the deadline for executing settlement contracts.

Due to great fluctuation in regional market prices this year and given the uncertainty about BPA's rates for the first or second five years, it is impossible, PacifiCorp contends, to calculate with any certainty the value of the benefits that BPA has offered. It is also impossible to know whether monetary benefits will decline as a result of BPA's reopened rate process. PGE, PacifiCorp, and the Commission face this uncertainty whether the IOUs execute a five year contract or a ten year contract. PacifiCorp notes, however, that the Commission may be reluctant to be bound for ten years to an agreement for benefits that are undefined and may be reduced or eliminated by subsequent BPA action in the 2007-2011 rate case. PacifiCorp summarizes its three major concerns with a ten year contract as follows:

1. BPA may claim the right to provide all benefits as monetary benefits for the second five year period;⁴
2. There is no assurance that the market price forecast for power, which is used to set the IOUs' monetary benefit in the 2007-2011 rate case, will be the same forecast used by BPA to project its cost of purchased power, revenues from surplus sales, cost recovery mechanism, and its probability of repaying the United States Treasury;
3. Executing a ten year contract could harm efforts to restructure BPA and to obtain a more equitable share of the benefits for the IOUs' residential and small farm consumers (see discussion immediately below).

⁴ PacifiCorp notes that BPA intends all 2200 MWh of benefits offered for 2007-2011 to be power deliveries, but if BPA is unable to deliver all power for that period, there will be a financial component payment. Uncertainties about load and demand raise this issue.

PacifiCorp also fears that a ten year contract could harm PacifiCorp's ability to renegotiate an increase in its benefits for the 2007-2011 rate period. PacifiCorp believes that by entering into a ten year contract, it will be agreeing that BPA has satisfied its statutory obligations under the Residential Exchange for the periods 2002-2006 and 2007-2011. BPA may then have no incentive to renegotiate benefits for the second five year period. Even if Congress were to change the law to restructure BPA and provide greater benefits to PacifiCorp's customers, PacifiCorp notes that BPA has stated in its August 3, 2000, letter to the Commission that absent a specific directive to attempt to amend contracts before 2011, BPA will not make a commitment to doing so. Given BPA's position, congressional action will not ensure an increase in benefits during the next decade unless Congress expressly directs BPA to provide greater benefits before the settlement contracts expire.

A ten year contract, PacifiCorp believes, may also affect Congress's willingness to take action to increase benefits to PacifiCorp's residential and small farm consumers under the Residential Exchange Program. Congress may be deterred, PacifiCorp believes, from acting to restore benefits during the 2007-2011 period by arguments that PGE and PacifiCorp, with the Commission's support, voluntarily settled the benefits issue through 2011. If Congress does act, on the other hand, it may be reluctant to implement such a benefit increase during the decade when the settlement is in effect.

Resolution. In their comments, Staff and the parties have raised serious concerns with both the five and the ten year contract terms. It is difficult to contemplate signing a contract of any duration when neither the price of power nor the value of the monetary benefits is known. We share the concerns expressed by Staff and the parties and will direct Staff to continue to work with BPA to address these concerns.

In the current situation, BPA is forcing both the Commission and the affected utilities to act under considerable uncertainty. We wish it clearly understood that in directing PGE and PacifiCorp to enter into Subscription contracts with BPA, we in no way endorse BPA's existing organic statutes. We in no way restrict our efforts to bring about a more equitable distribution of federal system benefits among all Pacific Northwest residential and small farm consumers. In directing the IOUs to enter into Subscription Settlement Agreements, we in no way endorse the adequacy of the current Subscription offer or process. We believe that the August 3, 2000 letter from Mr. Norman of BPA, set out in the discussion of Staff's position above, makes clear that BPA has heard and addressed our concerns about how our order might be interpreted in a political context.

BPA has chosen to address the changed circumstances affecting its power rates and the probability of Treasury repayment through reopening its recently completed rate case, WP-02. BPA has stated that the purpose of reopening the rate case is to revise the CRAC to provide for more certainty that BPA's revenues will suffice to ensure an adequate probability of Treasury repayment. The circumstances that prompted BPA to

reopen WP-02 and to consider modifications to the CRAC have significant implications for the level of actual federal power system benefits to the residential and small farm consumers of IOUs. We strongly believe that in these changing circumstances BPA must preserve the equity and balance of the Subscription policy that benefits residential and small farm consumers.

The Subscription policy establishes that the IOUs are provided access to 1900 MWa of federal power to benefit residential and small farm consumers for the period through 2006. To accommodate flexibility for BPA and the utilities, this policy provided for a minimum of 1000 MWa in actual power sales, with the remainder of the 1900 MWa of total benefits to be provided through cash payments. The important principle that underlay this flexibility was that the cash payments were to be of equivalent value to actual power purchases. This is the principle that we, and we believe BPA, should preserve as BPA responds to changing circumstances. With the increase in market prices for power recognized in BPA's own revised market forecasts, the value of the cash benefits to residential and small farm consumers will be substantially diluted unless BPA takes action to make the cash benefits more comparable to the power benefits.

We will continue to urge equitable treatment of residential and small farm consumers under the Subscription process. In the meantime, however, to preserve access to federal power for these consumers, we must direct PGE and PacifiCorp to enter into contracts whose terms and conditions are presently unknown. We note that the Subscription Settlement Agreements contain a right to terminate. If appropriate, we may direct PGE and PacifiCorp to exercise this right.

We have considered the parties' and Staff's arguments above five versus ten year contract terms. We appreciate the concerns that PGE and PacifiCorp raise about the disadvantages of ten year terms. We believe that the letter from Mr. Norman of BPA allays some of the concerns. Other concerns, having to do with the vagaries of the power market, increases in demand, and BPA's response to those developments, remain outstanding. In balancing the advantages and disadvantages of each contract term, however, we conclude that the advantages of the ten year term outweigh its disadvantages. Uncertainties about load and demand make it attractive to lock in benefits for residential and small farm consumers for the 2007 to 2011 period. It is a useful heuristic under uncertainty to minimize one's maximum regret. Our maximum regret would be to leave the residential and small farm consumers of the IOUs without access to Residential Exchange power. Therefore, we will direct PGE and PacifiCorp to enter into ten year contract terms.

BPA is requiring the Commission to issue our order while some issues have not been resolved to our satisfaction. Therefore, we direct PGE and PacifiCorp to execute ten year contracts and provide evidence that the final Subscription Settlement Agreements and attached Firm Power Block Power Sales Agreements executed by PGE and PacifiCorp are materially consistent with or superior to the terms and conditions set

forth in the Subscription Strategy and ROD, both dated December 21, 1999, and the Power Subscription Strategy Supplemental ROD, dated April 26, 2000.

The Commission directs Staff, PGE and PacifiCorp to actively advocate and support an outcome under which:

a. BPA provides the equivalent of 1900 MWa for the benefit of residential and small farm consumers of investor owned utilities for the period 2002-2006 based on a reasonable updated five year market price forecast that is also used by BPA to forecast the cost of augmentation purchases and to determine its probability of repaying the United States Treasury on time and in full. In the alternative, parties should advocate for a proposal that provides equivalent benefits, for instance that set forth in the Commission's October 13, 2000 letter to BPA, that BPA provide 1250 MWa of benefits through power and the remaining 650 MWa of monetary benefits based on a market price of 34 mills per kWh; and

b. BPA offers the Pacific Northwest IOUs 2200 MWa of delivered power for the period 2007-2011.

As noted above, in the interim, the Commission will order PGE and PacifiCorp to execute ten year Subscription contracts subject to the Commission's continuing jurisdiction. The Commission will continue the current docket, UM 926, through the period ending thirty (30) days after FERC grants interim approval to BPA's final wholesale power rate proposal in the reopened WP-02 proceeding.

Staff should consult with PacifiCorp, PGE, and CUB promptly regarding efforts to resolve the outstanding implementation issues related to Subscription contracts. By December 4, 2000, those parties should propose a schedule for continuing review and oversight of implementation efforts by the Commission.

The Commission will reevaluate the risks and benefits of Subscription contracts at the conclusion of the reopened WP-02 proceeding and upon FERC's granting interim approval to BPA's wholesale power rates for the period 2002-2006. At that time, the Commission will determine whether to order PacifiCorp and PGE to exercise their respective rights to terminate the Subscription Settlement Agreements and/or Flat Power Block Power Sales Agreements pursuant to their terms.

ORDER

IT IS ORDERED that:

1. PGE and PacifiCorp shall enter into ten year Subscription contracts with BPA.
2. PGE and PacifiCorp shall provide evidence that the final Subscription Settlement Agreements and attached Firm Power block Power Sales Agreements they have executed are materially consistent with or superior to the terms and conditions set forth in the Subscription Strategy and ROD dated December 21, 1999, and the Power Subscription Strategy ROD dated April 26, 2000.
3. Staff, PGE, and PacifiCorp shall actively advocate and support an outcome under which:
 - a. BPA provides the equivalent of 1900 MWa for the benefit of residential and small farm consumers of investor owned utilities for the period 2002-2006 based on a reasonable updated five year market price forecast that is also used by BPA to forecast the cost of augmentation purchases and to determine its probability of repaying the United States Treasury on time and in full. In the alternative, parties should advocate for a proposal that provides equivalent benefits, for instance that set forth in the Commission's October 13, 2000 letter to BPA, that BPA provide 1250 MWa of benefits through power and the remaining 650 MWa of monetary benefits based on a market price of 34 mills per kWh; **and**
 - b. BPA offers the Pacific Northwest IOUs 2200 MWa of delivered power for the period 2007-2011.
4. PGE's and PacifiCorp's ten year Subscription contracts are subject to the Commission's continuing jurisdiction, and Docket UM 926 will remain open through the period ending thirty (30) days after FERC grants interim approval to BPA's final wholesale power rate proposal in the reopened WP-02 proceeding.
5. Staff shall consult with PacifiCorp, PGE, and CUB promptly regarding efforts to resolve the outstanding implementation issues related to Subscription contracts. By December 4, 2000, those

parties shall propose a schedule for continuing review and oversight of implementation efforts by the Commission.

6. The Commission will reevaluate the risks and benefits of Subscription contracts at the conclusion of the reopened WP-02 proceeding and upon FERC's granting interim approval to BPA's wholesale power rates for the period 2002-2006. At that time, the Commission will determine whether to order PacifiCorp and PGE to exercise their respective rights to terminate the Subscription Settlement Agreements and/or Flat Power Block Power Sales Agreements pursuant to their terms.
7. The stipulation entered into by Staff, PGE, PacifiCorp, and CUB dated August 4, 2000, attached as Appendix B to this order, is adopted.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. The request must be filed with the Commission within 60 days of the date of service of this order and must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.