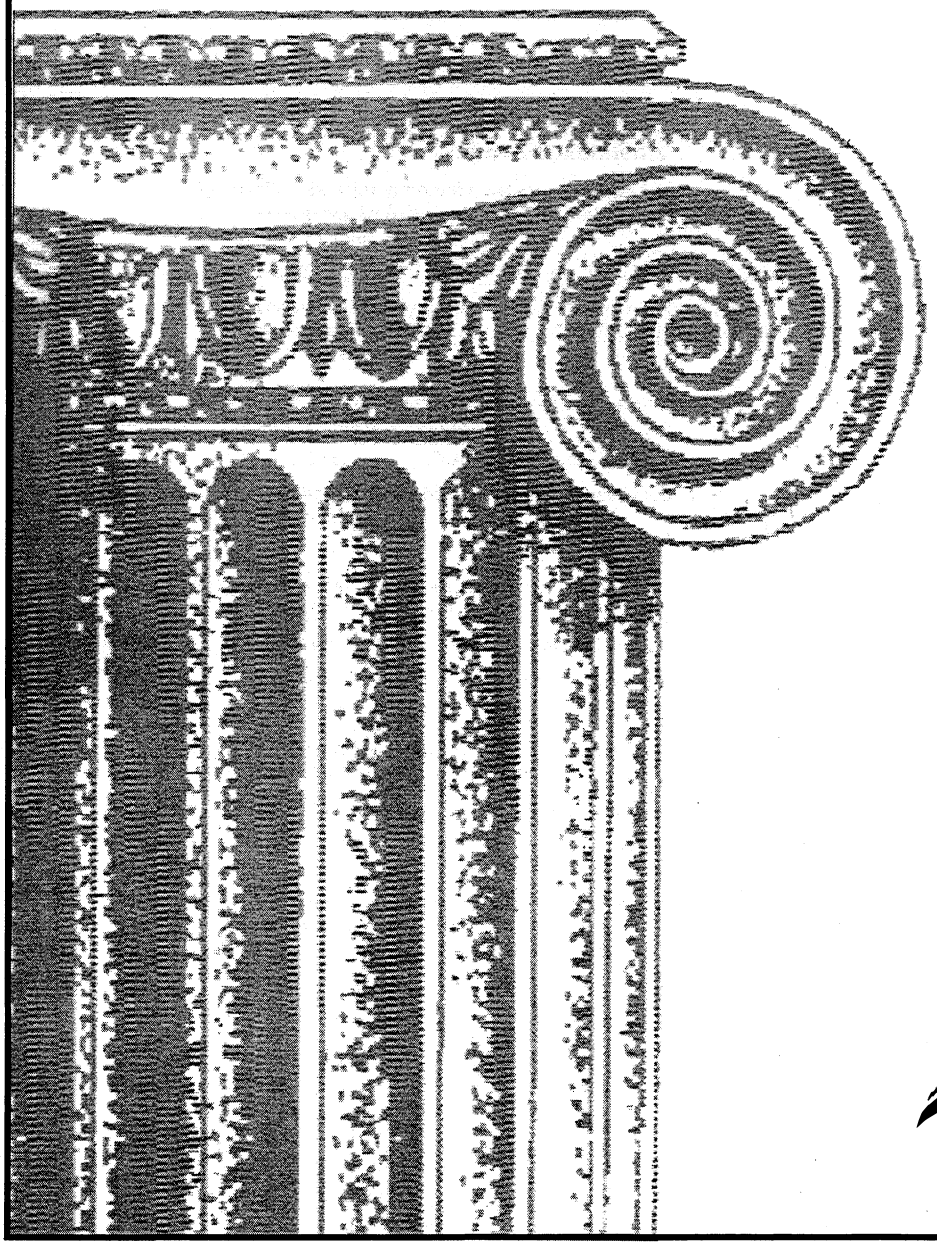
PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

16 United States Code Chapter 12H
(1994 & Supp. I 1995).
Act of Dec. 5, 1980, 94 Stat. 2697.
Public Law No. 96-501, S. 885.



Northwest Power and Conservation Council

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839. Congressional declaration of purpose

Purposes

The purposes of this chapter, together with the provisions of other laws applicable to the Federal Columbia River Power System, are all intended to be construed in a consistent manner. Such purposes are also intended to be construed in a manner consistent with applicable environmental laws. Such purposes are:

839(1). to encourage, through the unique opportunity provided by the Federal Columbia River Power System—

839(1)(A). conservation and efficiency in the use of electric power, and
[Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), §2(1)(A), Dec. 5, 1980, 94 Stat. 2697.]

839(1)(B). the development of renewable resources within the Pacific Northwest;
[Northwest Power Act, §2(1)(B), 94 Stat. 2697.]

839(2). to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply;
[Northwest Power Act, §2(2), 94 Stat. 2697.]

839(3). to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in—

839(3)(A). the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating, and enhancing fish and wildlife resources.
[Northwest Power Act, §2(3)(A), 94 Stat. 2697.]

839(3)(B). facilitating the orderly planning of the region's power system, and
[Northwest Power Act, §2(3)(B), 94 Stat. 2698.]

839(3)(C). providing environmental quality;
[Northwest Power Act, §2(3)(C), 94 Stat. 2698.]

839(4). to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization on a current basis of the Federal investment in the Federal Columbia River Power System;
[Northwest Power Act, §2(4), 94 Stat. 2698.]

839(5). to insure, subject to the provisions of this chapter—

839(5)(A). that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and
[Northwest Power Act, §2(5)(A), 94 Stat. 2698.]

839(5)(B). that Congress intends that this chapter not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this chapter; and
[Northwest Power Act, §2(5)(B), 94 Stat. 2698.]

839(6). to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.
[Northwest Power Act, §2(6), 94 Stat. 2698.]

839a. Definitions
As used in this chapter, the term—

839a(1). "Acquire" and "acquisition" shall not be construed as authorizing the Administrator to construct, or have ownership of, under this chapter or any other law, any electric generating facility.
[Northwest Power Act, §3(1), 94 Stat. 2698.]

839a(2). "Administrator" means the Administrator of the Bonneville Power Administration.
[Northwest Power Act, §3(2), 94 Stat. 2698.]

839a(3). "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.
[Northwest Power Act, §3(3), 94 Stat. 2698.]

Cost-effective

839a(4)(A). "Cost-effective", when applied to any measure or resource referred to in this chapter, means that such measure or resource must be forecast—

Reliable

839a(4)(A)(i). to be reliable and available within the time it is needed, and
[Northwest Power Act, §3(4)(A)(i), 94 Stat. 2698.]

Meet or reduce electric power demand

839a(4)(A)(ii). to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.
[Northwest Power Act, §3(4)(A)(ii), 94 Stat. 2698.]

System cost

839a(4)(B). For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.
[Northwest Power Act, §3(4)(B), 94 Stat. 2698-9.]

839a(4)(C). In determining the amount of power that a conservation measure or other resource may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.
[Northwest Power Act, §3(4)(C), 94 Stat. 2699.]

Conservation favored

839a(4)(D). For purposes of this paragraph, the "estimated incremental system cost" of any conservation measure or resource shall not be treated as greater than that of any non-conservation measure or

resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.
[Northwest Power Act, §3(4)(D), 94 Stat. 2699.]

839a(5). "Consumer" means any end user of electric power.
[Northwest Power Act, §3(5), 94 Stat. 2699.]

839a(6). "Council" means, unless otherwise specifically provided, the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established pursuant to section 839b of this title.
[Northwest Power Act, §3(6), 94 Stat. 2699.]

839a(7). "Customer" means anyone who contracts for the purchase of power from the Administrator pursuant to this chapter.
[Northwest Power Act, §3(7), 94 Stat. 2699.]

839a(8). "Direct service industrial customer" means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.
[Northwest Power Act, §3(8), 94 Stat. 2699.]

839a(9). "Electric power" means electric peaking capacity, or electric energy, or both.
[Northwest Power Act, §3(9), 94 Stat. 2699.]

839a(10). "Federal base system resources" means—

839a(10)(A). the Federal Columbia River Power System hydroelectric projects;
[Northwest Power Act, §3(10)(A), 94 Stat. 2699.]

839a(10)(B). resources acquired by the Administrator under long-term contracts in force on December 5, 1980; and
[Northwest Power Act, §3(10)(B), 94 Stat. 2699.]

839a(10)(C). resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B) of this paragraph.
[Northwest Power Act, §3(10)(C), 94 Stat. 2699.]

839a(11). "Indian tribe" means any Indian tribe or band which is located in whole or in part in the region and which has a governing body which is recognized by the Secretary of the Interior.
[Northwest Power Act, §3(11), 94 Stat. 2699.]

Major resource

839a(12). "Major resource" means any resource that—

839a(12)(A). has a planned capability greater than fifty average megawatts, and
[Northwest Power Act, §3(12)(A), 94 Stat. 2699.]

839a(12)(B). if acquired by the Administrator, is acquired for a period of more than five years.
[Northwest Power Act, §3(12)(B), 94 Stat. 2699.]

839A(12) [cont.]. Such term does not include any resource acquired pursuant to section 838i(b)(6) of this title.
[Northwest Power Act, §3(12), 94 Stat. 2699.]

839a(13). "New large single load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility—

839a(13)(A). which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or Federal agency customer prior to September 1, 1979, and
[Northwest Power Act, §3(13)(A), 94 Stat. 2699-2700.]

839a(13)(B). which will result in an increase in power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period.
[Northwest Power Act, §3(13)(B), 94 Stat. 2700.]

839a(14). "Pacific Northwest", "region", or "regional" means— *"Region"*

839a(14)(A). the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and
[Northwest Power Act, §3(14)(A), 94 Stat. 2700.]

839a(14)(B). any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on December 5, 1980, which has a distribution system from which it serves both within and without such region.
[Northwest Power Act, §3(14)(B), 94 Stat. 2700.]

839a(15). "Plan" means the Regional Electric Power and Conservation plan (including any amendments thereto) adopted pursuant to this chapter and such plan shall apply to actions of the Administrator as specified in this chapter.
[Northwest Power Act, §3(15), 94 Stat. 2700.]

839a(16). "Renewable resource" means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.
[Northwest Power Act, §3(16), 94 Stat. 2700.]

839a(17). "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator (A) from resources or (B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract provisions, portions of the electric power supplied to customers.
[Northwest Power Act, §3(17), 94 Stat. 2700.]

839a(18). "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.
[Northwest Power Act, §3(18), 94 Stat. 2700.]

839a(19). "Resource" means—

839a(19)(A). electric power, including the actual or planned electric power capability of generating facilities, or
[Northwest Power Act, §3(19)(A), 94 Stat. 2700.]

839a(19)(B). actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.
[Northwest Power Act, §3(19)(B), 94 Stat. 2700.]

839a(20). "Secretary" means the Secretary of Energy.
[Northwest Power Act, §3(20), 94 Stat. 2700.]

839b. Regional planning and participation

839b(a). Pacific Northwest Electric Power and Conservation Planning Council; establishment and operation as regional agency

Establishment of the Pacific Northwest Electric Power and Conservation Planning Council

Prepare plan and program

839b(a)(1). The purposes of this section are to provide for the prompt establishment and effective operation of the Pacific Northwest Electric Power and Conservation Planning Council, to further the purposes of this chapter by the Council promptly preparing and adopting (A) a regional conservation and electric power plan and (B) a program to protect, mitigate, and enhance fish and wildlife, and to otherwise expeditiously and effectively carry out the Council's responsibilities and functions under this chapter.
[Northwest Power Act, §4(a)(1), 94 Stat. 2700.]

839b(a)(2). To achieve such purposes and facilitate cooperation among the States of Idaho, Montana, Oregon, and Washington, and with the Bonneville Power Administration, the consent of Congress is given for an agreement described in this paragraph and not in conflict with this chapter, pursuant to which—

839b(a)(2)(A). there shall be established a regional agency known as the "Pacific Northwest Electric Power and Conservation Planning Council" which (i) shall have its offices in the Pacific Northwest, (ii) shall carry out its functions and responsibilities in accordance with the provisions of this chapter, (iii) shall continue in force and effect in accordance with the provisions of this chapter, and (iv) except as otherwise provided in this chapter, shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law; and

[Northwest Power Act, §4(a)(2)(A), 94 Stat. 2701.]

839b(a)(2)(B). two persons from each State may be appointed, subject to the applicable laws of each such State, to undertake the functions and duties of members of the Council.

[Northwest Power Act, §4(a)(2)(B), 94 Stat. 2701.]

Member appointment

839b(a)(2). The State may fill any vacancy occurring prior to the expiration of the term of any member. The appointment of six initial members, subject to applicable State law, by June 30, 1981, by at least three of such States shall constitute an agreement by the States establishing the Council and such agreement is hereby consented to by the Congress. Upon request of the Governors of two of the States, the Secretary shall extend the June 30, 1981, date for six additional months to provide more time for the States to make such appointments.

[Northwest Power Act, §4(a)(2), 94 Stat. 2701.]

Term

839b(a)(3). Except as otherwise provided by State law, each member appointed to the Council shall serve for a term of three years, except that, with respect to members initially appointed, each Governor shall designate one member to serve a term of two years and one member to serve a term of three years. The members of the Council shall select from among themselves a chairman. The members and officers and employees of the Council shall not be deemed to be officers or employees of the United States for any purpose. The Council shall appoint, fix compensation, and assign and delegate duties to such executive and additional personnel as the Council deems necessary to fulfill its functions under this chapter, taking into account such information and analyses as are, or are likely to be, available from other sources pursuant to provisions of this chapter. The compensation of the members shall be fixed by State law. The compensation of the members

Compensation

and officers shall not exceed the rate prescribed for Federal officers and positions at step 1 of level GS-18 of the General Schedule.
[Northwest Power Act, §4(a)(3), 94 Stat. 2701.]

839b(a)(4). For the purpose of providing a uniform system of laws, in addition to this chapter, applicable to the Council relating to the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Council, advisory committees, disclosure of information, judicial review of Council functions and actions under this chapter, and related matters, the Federal laws applicable to such matters in the case of the Bonneville Power Administration shall apply to the Council to the extent appropriate, except that with respect to open meetings, the Federal laws applicable to open meetings in the case of the Federal Energy Regulatory Commission shall apply to the Council to the extent appropriate. In applying the Federal laws applicable to financial disclosure under the preceding sentence, such laws shall be applied to members of the Council without regard to the duration of their service on the Council or the amount of compensation received for such service. No contract, obligation, or other action of the Council shall be construed as an obligation of the United States or an obligation secured by the full faith and credit of the United States. For the purpose of judicial review of any action of the Council or challenging any provision of this chapter relating to functions and responsibilities of the Council, notwithstanding any other provision of law, the courts of the United States shall have exclusive jurisdiction of any such review.
[Northwest Power Act, §4(a)(4), 94 Stat. 2701-2.]

839b(b). Alternative establishment of Council as Federal agency

839b(b)(1). If the Council is not established and its members are not timely appointed in accordance with subsection (a) of this section, or if, at any time after such Council is established and its members are appointed in accordance with subsection (a)—

839b(b)(1)(A). any provision of this chapter relating to the establishment of the Council or to any substantial function or responsibility of the Council (including any function or responsibility under subsection (d) or (h) of this section or under section 839d(c) of this title) is held to be unlawful by a final determination of any Federal court, or
[Northwest Power Act, §4(b)(1)(A), 94 Stat. 2702.]

839b(b)(1)(B). the plan or any program adopted by such Council under this section is held by a final determination of such a court to be ineffective by reason of subsection (a)(2)(B) of this section,
[Northwest Power Act, §4(b)(1)(B), 94 Stat. 2702.]

839b(b)(1) [cont.]. the Secretary shall establish the Council pursuant to this subsection as a Federal agency. The Secretary shall promptly publish a notice thereof in the Federal Register and notify the Governors of each of the States referred to in subsection (a) of this section.

[Northwest Power Act, §4(b)(1), 94 Stat. 2702.]

839b(b)(2). As soon as practicable, but not more than thirty days after the publication of the notice referred to in paragraph (1) of this subsection, and thereafter within forty-five days after a vacancy occurs, the Governors of the States of Washington, Oregon, Idaho, and Montana may each (under applicable State laws, if any) provide to the Secretary a list of nominations from such State for each of the State's positions to be selected for such Council. The Secretary may extend this time an additional thirty days. The list shall include at least two persons for each such position. The list shall include such information about such nominees as the Secretary may request. The Secretary shall appoint the Council members from each Governor's list of nominations for each State's positions, except that the Secretary may decline to appoint for any reason any of a Governor's nominees for a position and shall so notify the Governor. The Governor may thereafter make successive nominations within forty-five days of receipt of such notice until nominees acceptable to the Secretary are appointed for each position. In the event the Governor of any such State fails to make the required nominations for any State position on such Council within the time specified for such nominations, the Secretary shall select from such State and appoint the Council member or members for such position. The members of the Council shall select from among themselves one member of the Council as Chairman.

[Northwest Power Act, §4(b)(2), 94 Stat. 2702.]

839b(b)(3). The members of the Council established by this subsection who are not employed by the United States or a State shall receive compensation at a rate equal to the rate prescribed for offices and positions at level GS-18 of the General Schedule for each day such members are engaged in the actual performance of duties as members of such Council, except that no such member may be paid more in any calendar year than an officer or employee at step 1 of level GS-18 is paid during such year. Members of such Council shall be considered officers or employees of the United States for purposes of title II of the Ethics in Government Act of 1978 (5 U.S.C. app.) and shall also be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5. Such Council may appoint, and assign duties to, an executive director who shall serve at the pleasure of such Council and who shall be compensated

at the rate established for GS-18 of the General Schedule. The executive director shall exercise the powers and duties delegated to such director by such Council, including the power to appoint and fix compensation of additional personnel in accordance with applicable Federal law to carry out the functions and responsibilities of such Council.

[Northwest Power Act, §4(b)(3), 94 Stat. 2702-3.]

839b(b)(4). When a Council is established under this subsection after a Council was established pursuant to subsection (a) of this section, the Secretary shall provide, to the greatest extent feasible, for the transfer to the Council established by this subsection of all funds, books, papers, documents, equipment, and other matters in order to facilitate the Council's capability to achieve the requirements of subsections (d) and (h) of this section. In order to carry out its functions and responsibilities under this chapter expeditiously, the Council shall take into consideration any actions of the Council under subsection (a) and may review, modify, or confirm such actions without further proceedings.

[Northwest Power Act, §4(b)(4), 94 Stat. 2703.]

839b(b)(5)(A). At any time beginning one year after the plan referred to in such subsection (d) of this section and the program referred to in such subsection (h) of this section are both finally adopted in accordance with this chapter, the Council established pursuant to this subsection shall be terminated by the Secretary 90 days after the Governors of three of the States referred to in this subsection jointly provide for any reason to the Secretary a written request for such termination. Except as provided in subparagraph (B), upon such termination all functions and responsibilities of the Council under this chapter shall also terminate.

[Northwest Power Act, §4(b)(5)(A), 94 Stat. 2703.]

839b(b)(5)(B). Upon such termination of the Council, the functions and responsibilities of the Council set forth in subsection (h) of this section shall be transferred to, and continue to be funded and carried out, jointly, by the Administrator, the Secretary of the Interior, and the Administrator of the National Marine Fisheries Service, in the same manner and to the same extent as required by such subsection and in cooperation with the Federal and the region's State fish and wildlife agencies and Indian tribes referred to in subsection (h) of this section and the Secretary shall provide for the transfer to them of all records, books, documents, funds, and personnel of such Council that relate to subsection (h) matters. In order to carry out such functions and responsibilities expeditiously, the Administrator, the Secretary of the Interior, and the Administrator of the National Marine Fisheries

Service shall take into consideration any actions of the Council under this subsection, and may review, modify, or confirm such actions without further proceedings. In the event the Council is terminated pursuant to this paragraph, whenever any action of the Administrator requires any approval or other action by the Council, the Administrator may take such action without such approval or action, except that the Administrator may not implement any proposal to acquire a major generating resource or to grant billing credits involving a major generating resource until the expenditure of funds for that purpose is specifically authorized by Act of Congress enacted after such termination.
[Northwest Power Act, §4(b)(5)(B), 94 Stat. 2703.]

839b(c). Organization and operation of Council

839b(c)(1). The provisions of this subsection shall, except as specifically provided in this subsection, apply to the Council established pursuant to either subsection (a) or (b) of this section.
[Northwest Power Act, §4(c)(1), 94 Stat. 2703.]

Quorum

839b(c)(2). A majority of the members of the Council shall constitute a quorum. Except as otherwise provided specifically in this chapter, all actions and decisions of the Council shall be by majority vote of the members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of—

839b(c)(2)(A). a majority of the members appointed to the Council, including the vote of at least one member from each State with members on the Council; or
[Northwest Power Act, §4(c)(2)(A), 94 Stat. 2704.]

839b(c)(2)(B). at least six members of the Council.
[Northwest Power Act, §4(c)(2)(B), 94 Stat. 2704.]

Meetings

839b(c)(3). The Council shall meet at the call of the Chairman or upon the request of any three members of the Council. If any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reasons for such disagreement or views.
[Northwest Power Act, §4(c)(3), 94 Stat. 2704.]

839b(c)(4). The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions and responsibilities under this chapter. The Council shall make available to the public a statement of its organization, practices, and procedures,

and make available to the public its annual work program budget at the time the President submits his annual budget to Congress.
[Northwest Power Act, §4(c)(4), 94 Stat. 2704.]

839b(c)(5). Upon request of the Council established pursuant to subsection (b) of this section, the head of any Federal agency is authorized to detail or assign to the Council, on a reimbursable basis, any of the personnel of such agency to assist the Council in the performance of its functions under this chapter.
[Northwest Power Act, §4(c)(5), 94 Stat. 2704.]

839b(c)(6). At the Council's request, the Administrator of the General Services Administration shall furnish the Council established pursuant to subsection (b) of this section with such offices, equipment, supplies, and services in the same manner and to the same extent as such Administrator is authorized to furnish to any other Federal agency or instrumentality such offices, supplies, equipment, and services.
[Northwest Power Act, §4(c)(6), 94 Stat. 2704.]

Information to Congress

839b(c)(7). Upon the request of the Congress or any committee thereof, the Council shall promptly provide to the Congress, or to such committee, any record, report, document, material, and other information which is in the possession of the Council.
[Northwest Power Act, §4(c)(7), 94 Stat. 2704.]

Solicit studies from customers and from other bodies or organizations in the region with particular expertise

839b(c)(8). To obtain such information and advice as the Council determines to be necessary or appropriate to carry out its functions and responsibilities pursuant to this chapter, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator and from other bodies or organizations in the region with particular expertise.
[Northwest Power Act, §4(c)(8), 94 Stat. 2704.]

839b(c)(9). The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.
[Northwest Power Act, §4(c)(9), 94 Stat. 2704.]

Compensation and expenses payment

839b(c)(10)(A). At the request of the Council, the Administrator shall pay from funds available to the Administrator the compensation and other expenses of the Council as are authorized by this chapter, including the reimbursement of those States with members on the Council for services and personnel to assist in preparing a plan

pursuant to subsection (d) of this section and a program pursuant to subsection (h) of this section, as the Council determines are necessary or appropriate for the performance of its functions and responsibilities. Such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act [16 U.S.C. 838 *et seq.*] and shall be subject to the requirements of that Act, including the audit requirements of section 11(d) of such Act [16 U.S.C. 838i(d)]. The records, reports, and other documents of the Council shall be available to the Comptroller General for review in connection with such audit or other review and examination by the Comptroller General pursuant to other provisions of law applicable to the Comptroller General. Funds provided by the Administrator for such payments shall not exceed annually an amount equal to 0.02 mill multiplied by the kilowatthours of firm power forecast to be sold by the Administrator during the year to be funded. In order to assist the Council's initial organization, the Administrator after Dec. 5 1980, shall promptly prepare and propose an amended annual budget to expedite payment for Council activities.

Payment limit

[Northwest Power Act, §4(c)(10)(A), 94 Stat. 2704-5.]

839b(c)(10)(B). Notwithstanding the limitation contained in the fourth sentence of subparagraph (A) of this paragraph, upon an annual showing by the Council that such limitation will not permit the Council to carry out its functions and responsibilities under this chapter the Administrator may raise such limit up to any amount not in excess of 0.10 mill multiplied by the kilowatt hours of firm power forecast to be sold by the Administrator during the year to be funded, adjusted for inflation.

May raise limit

[Northwest Power Act, §4(c)(10)(B), 94 Stat. 2705, as amended by Pub. L. 119-74, div. B, title III, § 312,]an. 23, 2026, 140 Stat. B9]

839b(c)(11). The Council shall establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

[Northwest Power Act, §4(c)(11), 94 Stat. 2705.]

839b(c)(12). The Council may establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions and responsibilities under this chapter.

[Northwest Power Act, §4(c)(12), 94 Stat. 2705.]

839b(c)(13). The Council shall ensure that the membership for any advisory committee established or formed pursuant to this section shall, to the extent feasible, include representatives of, and seek the

advice of, the Federal, and the various regional, State, local, and Indian Tribal Governments, consumer groups, and customers.
[Northwest Power Act, §4(c)(13), 94 Stat. 2705.]

839b(d). Regional conservation and electric power plan

Electric power plan to administrator

839b(d)(1). Within two years after the Council is established and the members are appointed pursuant to subsection (a) or (b) of this section, the Council shall prepare, adopt, and promptly transmit to the Administrator a regional conservation and electric power plan. The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed by the Council not less frequently than once every five years. Prior to such adoption, public hearings shall be held in each Council member's State on the plan or substantial, nontechnical amendments to the plan proposed by the Council for adoption. A public hearing shall also be held in any other State of the region on the plan or amendments thereto, if the Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator may seek to acquire. Action of the Council under this subsection concerning such hearings shall be subject to section 553 of title 5, and such procedure as the Council shall adopt.

Hearings on the plan

[Northwest Power Act, §4(d)(1), 94 Stat. 2705.]

839b(d)(2). Following adoption of the plan and any amendment thereto, all actions of the Administrator pursuant to section 839d of this title shall be consistent with the plan and any amendment thereto, except as otherwise specifically provided in this chapter.
[Northwest Power Act, §4(d)(2), 94 Stat. 2705.]

839b(e). Plan priorities and requisite features; studies

Plan priority

839b(e)(1). The plan shall, as provided in this paragraph, give priority to resources which the Council determines to be cost-effective. Priority shall be given: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.
[Northwest Power Act, §4(e)(1), 94 Stat. 2705.]

Conservation measures

839b(e)(2). The plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 839d of this title to reduce or meet the Administrator's obligations with due consideration by the Council for (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish

and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.
[Northwest Power Act, §4(e)(2), 94 Stat. 2706.]

839b(e)(3). To accomplish the priorities established by this subsection, the plan shall include the following elements which shall be set forth in such detail as the Council determines to be appropriate:

839b(e)(3)(A). an energy conservation program to be implemented under this chapter, including, but not limited to, model conservation standards;
[Northwest Power Act, §4(e)(3)(A), 94 Stat. 2706.]

839b(e)(3)(B). recommendation for research and development;
[Northwest Power Act, §4(e)(3)(B), 94 Stat. 2706.]

839b(e)(3)(C). a methodology for determining quantifiable environmental costs and benefits under section 839a(4) of this title;
[Northwest Power Act, §4(e)(3)(C), 94 Stat. 2706.]

Twenty-year demand forecast

839b(e)(3)(D). a demand forecast of at least twenty years (developed in consultation with the Administrator, the customers, the States, including State agencies with ratemaking authority over electric utilities, and the public, in such manner as the Council deems appropriate) and a forecast of power resources estimated by the Council to be required to meet the Administrator's obligations and the portion of such obligations the Council determines can be met by resources in each of the priority categories referred to in paragraph (1) of this subsection which forecast (i) shall include regional reliability and reserve requirements, (ii) shall take into account the effect, if any, of the requirements of subsection (h) of this section on the availability of resources to the Administrator, and (iii) shall include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long-term basis and may include, to the extent practicable, an estimate of the types of resources from which such power should be acquired;
[Northwest Power Act, §4(e)(3)(D), 94 Stat. 2706.]

839b(e)(3)(E). an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost;
[Northwest Power Act, §4(e)(3)(E), 94 Stat. 2706.]

839b(e)(3)(F). the program adopted pursuant to subsection (h); of this section and
[Northwest Power Act, §4(e)(3)(F), 94 Stat. 2706.]

839b(e)(3)(G). if the Council recommends surcharges pursuant to subsection (f) of this section, a methodology for calculating such surcharges.

[Northwest Power Act, §4(e)(3)(G), 94 Stat. 2706.]

839b(e)(4). The Council, taking into consideration the requirement that it devote its principal efforts to carrying out its responsibilities under subsections (d) and (h) of this section, shall undertake studies of conservation measures reasonably available to direct service industrial customers and other major consumers of electric power within the region and make an analysis of the estimated reduction in energy use which would result from the implementation of such measures as rapidly as possible, consistent with sound business practices. The Council shall consult with such customers and consumers in the conduct of such studies.

[Northwest Power Act, §4(e)(4), 94 Stat. 2706.]

839b(f). Model conservation standards; surcharges

Model conservation standards

839b(f)(1). Model conservation standards to be included in the plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and climatic differences within the region and other appropriate considerations, and shall be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers, taking into account financial assistance made available to consumers under section 839d(a) of this title. These model conservation standards shall be adopted by the Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator, States, and political subdivisions, customers of the Administrator, and the public.

[Northwest Power Act, §4(f)(1), 94 Stat. 2706-7.]

839b(f)(2). The Council by a majority vote of the members of the Council is authorized to recommend the Administrator a surcharge and the Administrator may thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards. Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected

energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.
[Northwest Power Act, §4(f)(2), 94 Stat. 2707.]

839b(g). Public information; consultation; contracts and technical assistance

839b(g)(1). To insure widespread public involvement in the formulation of regional power policies, the Council and Administrator shall maintain comprehensive programs to—

839b(g)(1)(A). inform the Pacific Northwest public of major regional power issues,
[Northwest Power Act, §4(g)(1)(A), 94 Stat. 2707.]

839b(g)(1)(B). obtain public views concerning major regional power issues, and
[Northwest Power Act, §4(g)(1)(B), 94 Stat. 2707.]

839b(g)(1)(C). secure advice and consultation from the Administrator's customers and others.
[Northwest Power Act, §4(g)(1)(C), 94 Stat. 2707.]

839b(g)(2). In carrying out the provisions of this section, the Council and the Administrator shall—

839b(g)(2)(A). consult with the Administrator's customers;
[Northwest Power Act, §4(g)(2)(A), 94 Stat. 2707.]

839b(g)(2)(B). include the comments of such customers in the record of the Council's proceedings; and
[Northwest Power Act, §4(g)(2)(B), 94 Stat. 2707.]

839b(g)(2)(C). recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible to the people of the Pacific Northwest for the planning, conservation, supply, distribution, and use of electric power and the operation of electric generating facilities.
[Northwest Power Act, §4(g)(2)(C), 94 Stat. 2707.]

Plan preparation

839b(g)(3). In the preparation, adoption, and implementation of the plan, the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate Federal agencies, State entities, State political subdivisions, and Indian tribes. The Council and the Administrator are authorized to contract, in

accordance with applicable law, with such agencies, entities, tribes, and subdivisions individually, in groups, or through associations thereof to (A) investigate possible measures to be included in the plan, (B) provide public involvement and information regarding a proposed plan or amendment thereto, and (C) provide services which will assist in the implementation of the plan. In order to assist in the implementation of the plan, particularly conservation, renewable resource, and fish and wildlife activities, the Administrator, when requested and subject to available funds, may provide technical assistance in establishing conservation, renewable resource, and fish and wildlife objectives by individual States or subdivisions thereof or Indian tribes. Such objectives, if adopted by a State or subdivision thereof or Indian tribes, may be submitted to the Council and the Administrator for review, and upon approval by the Council, may be incorporated as part of the plan.

Technical assistance

[Northwest Power Act, §4(g)(3), 94 Stat. 2707-8.]

839b(h). Fish and wildlife

839b(h)(1)(A). The Council shall promptly develop and adopt, pursuant to this subsection, a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries. Because of the unique history, problems, and opportunities presented by the development and operation of hydroelectric facilities on the Columbia River and its tributaries, the program, to the greatest extent possible, shall be designed to deal with that river and its tributaries as a system.

Program

[Northwest Power Act, §4(h)(1)(A), 94 Stat. 2708.]

839b(h)(1)(B). This subsection shall be applicable solely to fish and wildlife, including related spawning grounds and habitat, located on the Columbia River and its tributaries. Nothing in this subsection shall alter, modify, or affect in any way the laws applicable to rivers or river systems, including electric power facilities related thereto, other than the Columbia River and its tributaries, or affect the rights and obligations of any agency, entity, or person under such laws.

[Northwest Power Act, §4(h)(1)(B), 94 Stat. 2708.]

839b(h)(2). The Council shall request, in writing, promptly after the Council is established under either subsection (a) or (b) of this section and prior to the development or review of the plan, or any major revision thereto, from the Federal and the region's State fish and wildlife agencies and from the region's appropriate Indian tribes, recommendations for—

839b(h)(2)(A). measures which can be expected to be implemented by the Administrator, using authorities under this chapter

and other laws, and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries;
[Northwest Power Act, §4(h)(2)(A), 94 Stat. 2708.]

Request recommendations

839b(h)(2)(B). establishing objectives for the development and operation of such projects on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife; and
[Northwest Power Act, §4(h)(2)(B), 94 Stat. 2708.]

839b(h)(2)(C). fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation, and enhancement of anadromous fish at, and between, the region's hydroelectric dams.
[Northwest Power Act, §4(h)(2)(C), 94 Stat. 2708.]

839b(h)(3). Such agencies and tribes shall have 90 days to respond to such request, unless the Council extends the time for making such recommendations. The Federal and the region's water management agencies, and the region's electric power producing agencies, customers, and public may submit recommendations of the type referred to in paragraph (2) of this subsection. All recommendations shall be accompanied by detailed information and data in support of the recommendations.
[Northwest Power Act, §4(h)(3), 94 Stat. 2708.]

Notice

839b(h)(4)(A). The Council shall give notice of all recommendations and shall make the recommendations and supporting documents available to the Administrator, to the Federal and the region's, State fish and wildlife agencies, to the appropriate Indian tribes, to Federal agencies responsible for managing, operating, or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility. Notice shall also be given to the public. Copies of such recommendations and supporting documents shall be made available for review at the offices of the Council and shall be available for reproduction at reasonable cost.
[Northwest Power Act, §4(h)(4)(A), 94 Stat. 2708.]

Comments

839b(h)(4)(B). The Council shall provide for public participation and comment regarding the recommendations and supporting documents, including an opportunity for written and oral comments, within such reasonable time as the Council deems appropriate.
[Northwest Power Act, §4(h)(4)(B), 94 Stat. 2709.]

Protect and enhance fish and wildlife

839b(h)(5). The Council shall develop a program on the basis of such recommendations, supporting documents, and views and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers referred to in subparagraph (A) of paragraph (4). The program shall consist of measures to protect, mitigate, and enhance fish and wildlife affected by the development, operation, and management of such facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent such measures are designed to achieve improved protection and mitigation.
[Northwest Power Act, §4(h)(5), 94 Stat. 2709.]

Measures

839b(h)(6). The Council shall include in the program measures which it determines, on the basis set forth in paragraph (5), will—

839b(h)(6)(A). complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes;
[Northwest Power Act, §4(h)(6)(A), 94 Stat. 2709.]

839b(h)(6)(B). be based on, and supported by, the best available scientific knowledge;
[Northwest Power Act, §4(h)(6)(B), 94 Stat. 2709.]

839b(h)(6)(C). utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost;
[Northwest Power Act, §4(h)(6)(C), 94 Stat. 2709.]

839b(h)(6)(D). be consistent with the legal rights of appropriate Indian tribes in the region; and
[Northwest Power Act, §4(h)(6)(D), 94 Stat. 2709.]

839b(h)(6)(E). in the case of anadromous fish—

839b(h)(6)(E)(i). provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and
[Northwest Power Act, §4(h)(6)(E)(i), 94 Stat. 2709.]

839b(h)(6)(E)(ii). provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives.
[Northwest Power Act, §4(h)(6)(E)(ii), 94 Stat. 2709.]

Recommendations

839b(h)(7). The Council shall determine whether each recommendation received is consistent with the purposes of this chapter. In the event such recommendations are inconsistent with

each other, the Council, in consultation with appropriate entities, shall resolve such inconsistency in the program giving due weight to the recommendations, expertise, and legal rights and responsibilities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes. If the Council does not adopt any recommendation of the fish and wildlife agencies and Indian tribes as part of the program or any other recommendation, it shall explain in writing, as part of the program, the basis for its finding that the adoption of such recommendation would be—

Recommendations not adopted

839b(h)(7)(A). inconsistent with paragraph (5) of this subsection;
[Northwest Power Act, §4(h)(7)(A), 94 Stat. 2709.]

839b(h)(7)(B). inconsistent with paragraph (6) of this subsection; or
[Northwest Power Act, §4(h)(7)(B), 94 Stat. 2709.]

839b(h)(7)(C). less effective than the adopted recommendations for the protection, mitigation, and enhancement of fish and wildlife.
[Northwest Power Act, §4(h)(7)(C), 94 Stat. 2709.]

839b(h)(8). The Council shall consider, in developing and adopting a program pursuant to this subsection, the following principles:

Principles

839b(h)(8)(A). Enhancement measures may be used, in appropriate circumstances, as a means of achieving offsite protection and mitigation with respect to compensation for losses arising from the development and operation of the hydroelectric facilities of the Columbia River and its tributaries as a system.
[Northwest Power Act, §4(h)(8)(A), 94 Stat. 2709.]

839b(h)(8)(B). Consumers of electric power shall bear the cost of measures designed to deal with adverse impacts caused by the development and operation of electric power facilities and programs only.
[Northwest Power Act, §4(h)(8)(B), 94 Stat. 2710.]

839b(h)(8)(C). To the extent the program provides for coordination of its measures with additional measures (including additional enhancement measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs), such additional measures are to be implemented in accordance with agreements among the appropriate parties providing for the administration and funding of such additional measures.
[Northwest Power Act, §4(h)(8)(C), 94 Stat. 2710.]

839b(h)(8)(D). Monetary costs and electric power losses resulting from the implementation of the program shall be allocated by the

Administrator consistent with individual project impacts and system wide objectives of this subsection.
[Northwest Power Act, §4(h)(8)(D), 94 Stat. 2710.]

839b(h)(9). The Council shall adopt such program or amendments thereto within one year after the time provided for receipt of the recommendations. Such program shall also be included in the plan adopted by the Council under subsection (d) of this section.
[Northwest Power Act, §4(h)(9), 94 Stat. 2710.]

Expenditures

839b(h)(10)(A). The Administrator shall use the Bonneville Power Administration fund and the authorities available to the Administrator under this chapter and other laws administered by the Administrator to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, if in existence, the program adopted by the Council under this subsection, and the purposes of this chapter. Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.
[Northwest Power Act, §4(h)(10)(A), 94 Stat. 2710.]

839b(h)(10)(B). The Administrator may make expenditures from such fund which shall be included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act [16 U.S.C. 838 *et seq.*]. Any amounts included in such budget for the construction of capital facilities with an estimated life of greater than 15 years and an estimated cost of at least $1,000,000 shall be funded in the same manner and in accordance with the same procedures as major transmission facilities under the Federal Columbia River Transmission System Act.
[Northwest Power Act, §4(h)(10)(B), 94 Stat. 2710.]

839b(h)(10)(C). The amounts expended by the Administrator for each activity pursuant to this subsection shall be allocated as appropriate by the Administrator, in consultation with the Corps of Engineers and the Water and Power Resources Service, among the various hydroelectric projects of the Federal Columbia River Power System. Amounts so allocated shall be allocated to the various project purposes in accordance with existing accounting procedures for the Federal Columbia River Power System.
[Northwest Power Act, §4(h)(10)(C), 94 Stat. 2710.]

Scientific Review Panel

839b(h)(10)(D)(i). The Northwest Power Planning Council (Council) shall appoint an Independent Scientific Review Panel (Panel), which shall be comprised of eleven members, to review projects

proposed to be funded through that portion of Bonneville Power Administration's (BPA) annual fish and wildlife budget that implements the Council's fish and wildlife program. Members shall be appointed from a list of no fewer than 20 scientists submitted by the National Academy of Sciences (Academy), provided that Pacific Northwest scientists with expertise in Columbia River anadromous and non-anadromous fis and wildlife and ocean experts shall be among those represented on the Panel. The Academy shall provide such nominations within 90 days of the date of this enactment, and in any case not later than December 31, 1996. If appointments are required in subsequent years, the Council shall request nominations from the Academy and the Academy shall provide nominations not later than 90 days after the date of this request. If the Academy does not provide nominations within these time requirements, the Council may appoint such members as the Council deems appropriate.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(i), September 30, 1996, 110 Stat. 3005.]

Peer Review Groups

839b(h)(10)(D)(ii). The Council shall establish Scientific Peer Review Groups (Peer Review Groups), which shall be comprised of the appropriate number of scientists, from a list submitted by the Academy to assist the Panel in making its recommendations to the Council for projects to be funded through BPA's annual fish and wildlife budget, provided that the Pacific Northwest scientists with expertise in Columbia River anadromous and non-anadromous fish and wildlife and ocean experts shall be among those represented on the Peer Review Groups. The Academy shall provide such nominations within 90 days of the date of this enactment, and in any case not later than December 31, 1996. If appointments are required in subsequent years, the Council shall request nominations from the Academy and the Academy shall provide nominations not later than 90 days after the date of this request. If the Academy does not provide nominations within these time requirements, the Council may appoint such members as the Council deems appropriate.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(ii), September 30, 1996, 110 Stat. 3005.]

839b(h)(10)(D)(iii). Panel and Peer Review Group members may be compensated and shall be considered subject to the conflict of interest standards that apply to scientists performing comparable work for the National Academy of Sciences; provided that a Panel or Peer Review Group member with a direct or indirect financial interest in a project, or projects, shall recuse himself or herself from review of, or recommendations associated with, such project or projects. All expenses of the Panel and the Peer Review Groups shall be paid by BPA as provided for under paragraph (vii). Neither the Panel nor the

Peer Review Groups shall be deemed advisory committees within the meaning of the Federal Advisory Committee Act.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(iii), September 30, 1996, 110 Stat. 3005.]

839b(h)(10)(D)(iv). The Peer Review Groups, in conjunction with the Panel, shall review projects proposed to be funded through BPA's annual fish and wildlife budget and make recommendations on matters related to such projects to the Council no later than June 15 of each year. If the recommendations are not received by the Council by this date, the Council may proceed to make final recommendations on funding to BPA, relying on the best information available. The Panel and Peer Review Groups shall review a sufficient number of projects to adequately ensure that the list of prioritized projects recommended is consistent with the Council's program. Project recommendations shall be based on a determination that projects: are based on sound scientific principles; benefit fish and wildlife; and have a clearly defined objective and outcome with provisions for monitoring and evaluation of results. The Panel, with assistance from the Peer Review Groups, shall review, on an annual basis, the results of prior year expenditures based upon these criteria and submit its findings to the Council for review.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(iv), September 30, 1996, 110 Stat. 3005.]

839b(h)(10)(D)(v). Upon completion of the review of projects to be funded through BPA's annual fish and wildlife budget, the Peer Review Groups shall submit its findings to the Panel. The Panel shall analyze the information submitted by the Peer Review Groups and submit recommendations on project priorities to the Council. The Council shall make the Panel's findings available to the public and subject to public comment.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(v), September 30, 1996, 110 Stat. 3005.]

Council consideration of Panel recommendations

839b(h)(10)(D)(vi). The Council shall fully consider the recommendations of the Panel when making its final recommendations of projects to be funded through BPA's annual fish and wildlife budget, and if the Council does not incorporate a recommendation of the Panel, the Council shall explain in writing its reasons for not accepting Panel recommendations. In making its recommendations to BPA, the Council shall consider the impact of ocean conditions on fish and wildlife populations and shall determine whether the projects employ cost-effective measures to achieve program objectives. The Council, after consideration of the recommendations of the Panel and other appropriate entities, shall be responsible for making the final recommendations of projects to be funded through BPA's annual fish and wildlife budget.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(vi), September 30, 1996, 110 Stat. 3005.]

839b(h)(10)(D)(vii). Cost limitation. The annual cost of this provision shall not exceed $500,000 in 1997 dollars.
[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(vii), September 30, 1996, 110 Stat. 3005; Pub.L. 106-60, § 610, Sept. 29, 1999, 113 Stat. 502.]

Managing, operating and regulating facilities

839b(h)(11)(A). The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall—

839b(h)(11)(A)(i). exercise such responsibilities consistent with the purposes of this chapter and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated;
[Northwest Power Act, §4(h)(11)(A)(i), 94 Stat. 2710.]

839b(h)(11)(A)(ii). exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under this subsection. If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with this subsection.
[Northwest Power Act, §4(h)(11)(A)(ii), 94 Stat. 2711.]

Consultation between agencies

839b(h)(11)(B). The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes, and affected project operators in carrying out the provisions of this paragraph and shall, to the greatest extent practicable, coordinate their actions.
[Northwest Power Act, §4(h)(11)(A), 94 Stat. 2711.]

Report to congressional committee

839b(h)(12)(A). Beginning on October 1 of the first fiscal year after all members to the Council are appointed initially, the Council shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate and to the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives. The report shall describe the actions taken and to be taken by the Council under this chapter, including this subsection, the effectiveness of the fish and wildlife program, and potential revisions or modifications to the program to be included in the plan when

adopted. At least ninety days prior to its submission of such report, the Council shall make available to such fish and wildlife agencies, and tribes, the Administrator and the customers a draft of such report. The Council shall establish procedures for timely comments thereon. The Council shall include as an appendix to such report such comments or a summary thereof.
[Northwest Power Act, §4(h)(12)(A), 94 Stat. 2711, H. Res. 549, March 25, 1980.]

Communication by Administrator

839b(h)(12)(B). The Administrator shall keep such committees fully and currently informed of the actions taken and to be taken by the Administrator under this chapter, including this subsection.
[Northwest Power Act, §4(h)(12)(B), 94 Stat. 2711.]

Council review

839b(i). Review

The Council may from time to time review the actions of the Administrator pursuant to this section and section 839d of this title to determine whether such actions are consistent with the plan and programs, the extent to which the plan and programs is being implemented, and to assist the Council in preparing amendments to the plan and programs.
[Northwest Power Act, §4(i), 94 Stat. 2711.]

Council requests

839b(j). Requests by Council for action

839b(j)(1). The Council may request the Administrator to take an action under section 839d of this title to carry out the Administrator's responsibilities under the plan.
[Northwest Power Act, §4(j)(1), 94 Stat. 2711.]

839b(j)(2). To the greatest extent practicable within ninety days after the Council's request, the Administrator shall respond to the Council in writing specifying—

839b(j)(2)(A). the means by which the Administrator will undertake the action or any modification thereof requested by the Council, or
[Northwest Power Act, §4(j)(2)(A), 94 Stat. 2711.]

839b(j)(2)(B). the reasons why such action would not be consistent with the plan, or with the Administrator's legal obligations under this chapter, or other provisions of law, which the Administrator shall specifically identify.
[Northwest Power Act, §4(j)(2)(B), 94 Stat. 2711.]

839b(j)(3). If the Administrator determines not to undertake the requested action, the Council, within sixty days after notice of the

Administrator's determination, may request the Administrator to hold an informal hearing and make a final decision.
[Northwest Power Act, §4(j)(3), 94 Stat. 2711.]

839b(k). Review and analysis of 5-year period of Council activities

839b(k)(1). Not later than October 1, 1987, or six years after the Council is established under this chapter, whichever is later, the Council shall complete a thorough analysis of conservation measures and conservation resources implemented pursuant to this chapter during the five-year period beginning on the date the Council is established under this chapter to determine if such measures or resources:

Conservation measures and resources analysis

839b(k)(1)(A). have resulted or are likely to result in costs to consumers in the region greater than the costs of additional generating resources or additional fuel which the Council determines would be necessary in the absence of such measures or resources;
[Northwest Power Act, §4(k)(1)(A), 94 Stat. 2711-2.]

839b(k)(1)(B). have not been or are likely not to be generally equitable to all consumers in the region; or
[Northwest Power Act, §4(k)(1)(B), 94 Stat. 2712.]

839b(k)(1)(C). have impaired or are likely to impair the ability of the Administrator to carry out his obligations under this chapter and other laws, consistent with sound business practices.
[Northwest Power Act, §4(k)(1)(C), 94 Stat. 2712.]

839b(k)(2). The Administrator may determine that section 839a(4)(D) of this title shall not apply to any proposed conservation measure or resource if the Administrator finds after receipt of such analysis from the Council that such measure or resource would have any result or effect described in subparagraph (A), (B) or (C) of paragraph (1).
[Northwest Power Act, §4(k)(2), 94 Stat. 2712. as amended Pub.L. 106-60, § 610, Sept. 29, 1999, 113 Stat. 502.]

839c. Sale of power

Sale of power

839c(a). Preferences and priorities

All power sales under this chapter shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof [16 U.S.C. 832c and 832d]. Such sales shall be at rates established pursuant to section 839e of this title.
[Northwest Power Act, §5(a), 94 Stat. 2712.]

Preference and priorities

839c(b). Sales to public bodies, cooperatives, and Federal agency customers

Sales to preference customers and investor-owned utilities

839c(b)(1). Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 *et seq.*] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the Region to the extent that such firm power load exceeds—

839c(b)(1)(A). the capability of such entity's firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

[Northwest Power Act, §5(b)(1)(A), 94 Stat. 2712.]

839c(b)(1)(B). such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region.

[Northwest Power Act, §5(b)(1)(B), 94 Stat. 2712.]

User of firm load resources

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

[Northwest Power Act, §5(b)(1), 94 Stat. 2712.]

839c(b)(2). Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937 [16 U.S.C. 832d(a)].

[Northwest Power Act, §5(b)(2), 94 Stat. 2712.]

Sales to Federal agencies

839c(b)(3). In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

[Northwest Power Act, §5(b)(3), 94 Stat. 2712.]

839c(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.

[Northwest Power Act, §5(b)(4), 94 Stat. 2712.]

Restriction provisions in contracts

839c(b)(5). The Administrator shall include in contracts executed in accordance with this subsection provisions that enable the Administrator to restrict his contractual obligations to meet the loads referred to in this subsection in the future if the Administrator determines, after a reasonable period of experience under this chapter, that the Administrator cannot be assured on a planning basis of acquiring sufficient resources to meet such loads during a specified period of insufficiency. Any such contract with a public body, cooperative, or Federal agency shall specify a reasonable minimum period between a notice of restriction and the earliest date such restriction may be imposed.

Notice of restrictions

[Northwest Power Act, §5(b)(5), 94 Stat. 2712-3.]

Contract requirements

839c(b)(6). Contracts executed in accordance with this subsection with public body, cooperative, and Federal agency customers shall—

839c(b)(6)(A). provide that the restriction referred to in paragraph (5) shall not be applicable to any such customers until the operating year in which the total of such customers' firm loads to be served by the Administrator equals or exceeds the firm capability of the Federal base system resources;

[Northwest Power Act, §5(b)(6)(A), 94 Stat. 2713.]

839c(b)(6)(B). not permit restrictions which would reduce the total contractual entitlement of such customers to an amount less than the firm capability of the Federal base system resources; and

[Northwest Power Act, §5(b)(6)(B), 94 Stat. 2713.]

839c(b)(6)(C). contain a formula for determining annually, on a uniform basis, each such customer's contractual entitlement to firm power during such a period of restriction, which formula shall not consider customer resources other than those the customer has determined, as of December 5, 1980, to be used to serve its own firm loads.

[Northwest Power Act, §5(b)(6)(C), 94 Stat. 2713.]

839c(b)(6)[cont.]. The formula referred to in subparagraph (C) shall obligate the Administrator to provide on an annual basis only firm power needed to serve the portion of such customer's firm load in excess of the capability of such customer's own firm resources determined by such customer under paragraph (1) of this subsection to be used to serve its firm load.

[Northwest Power Act, §5(b)(6), 94 Stat. 2713.]

839c(b)(7). Required sale-

839c(b)(7) (A). DEFINITION OF A JOINT OPERATING ENTITY- In this section, the term 'joint operating entity' means an entity that is

lawfully organized under State law as a public body or cooperative prior to the date of enactment of this paragraph, and is formed by and whose members or participants are two or more public bodies or cooperatives, each of which was a customer of the Bonneville Power Administration on or before January 1, 1999.

839c(b)(7) (B). SALE- Pursuant to paragraph (1), the Administrator shall sell, at wholesale to a joint operating entity, electric power solely for the purpose of meeting the regional firm power consumer loads of regional public bodies and cooperatives that are members of or participants in the joint operating entity.

839c(b)(7)(C). NO RESALE- A public body or cooperative to which a joint operating entity sells electric power under subparagraph (B) shall not resell that power except to retail customers of the public body or cooperative or to another regional member or participant of the same joint operating entity, or except as otherwise permitted by law.

[As amended Pub. L. 106-273 (2000), § 1, Sept. 22, 2000, 114 Stat. 802.]

839c(c). Purchase and exchange sales

Purchases and exchange sale

839c(c)(1). Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region.

[Northwest Power Act, §5(c)(1), 94 Stat. 2713.]

Limitation

839c(c)(2). The purchase and exchange sale referred to in paragraph (1) of this subsection with any electric utility shall be limited to an amount not in excess of 50 per centum of such utility's Regional residential load in the year beginning July 1, 1980, such 50 per centum limit increasing in equal annual increments to 100 per centum of such load in the year beginning July 1, 1985, and each year thereafter.

[Northwest Power Act, §5(c)(2), 94 Stat. 2713.]

Cost benefits

839c(c)(3). The cost benefits, as specified in contracts with the Administrator, of any purchase and exchange sale referred to in paragraph (1) of this subsection which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State, except that a State which lies partially within and partially without the region may require that such cost benefits be distributed among all of the utility's residential loads in that State.

[Northwest Power Act, §5(c)(3), 94 Stat. 2713.]

Termination

839c(c)(4). An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 839e(b)(3) of this title is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.
[Northwest Power Act, §5(c)(4), 94 Stat. 2713.]

In lieu acquisition

839c(c)(5). Subject to the provisions of sections 839b and 839d of this title, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1) of this subsection, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.
[Northwest Power Act, §5(c)(5), 94 Stat. 2714.]

839c(c)(6). Exchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection.
[Northwest Power Act, §5(c)(6), 94 Stat. 2714.]

Average system cost

839c(c)(7). The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average system cost shall not include—

839c(c)(7)(A). the cost of additional resources in an amount sufficient to serve any new large single load of the utility;
[Northwest Power Act, §5(c)(7)(A), 94 Stat. 2714.]

839c(c)(7)(B). the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after December 5, 1980; and
[Northwest Power Act, §5(c)(7)(B), 94 Stat. 2714.]

839c(c)(7)(C). any costs of any generating facility which is terminated prior to initial commercial operation.
[Northwest Power Act, §5(c)(7)(C), 94 Stat. 2714.]

839c(d). Sales to existing direct service industrial customers

Direct service industrial customers; reserves

839c(d)(1)(A). The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.
[Northwest Power Act, §5(d)(1)(A), 94 Stat. 2714.]

839c(d)(1)(B). After December 5, 1980, the Administrator shall offer in accordance with subsection (g) of this section to each existing direct service industrial customer an initial long term contract that provides such customer an amount of power equivalent to that to which such customer is entitled under its contract dated January or April 1975 providing for the sale of "industrial firm power."
[Northwest Power Act, §5(d)(1)(B), 94 Stat. 2714.]

839c(d)(2). The Administrator shall not sell electric power, including reserves, directly to new direct service industrial customers.
[Northwest Power Act, §5(d)(2), 94 Stat. 2714.]

839c(d)(3). The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines, after a plan has been adopted pursuant to section 839b of this title, that such proposed sale is consistent with the plan and that—

839c(d)(3)(A). additional power system reserves are required for the region's firm loads,
[Northwest Power Act, §5(d)(3)(A), 94 Stat. 2714.]

839c(d)(3)(B). the proposed sale would provide a cost-effective method of supplying such reserves,
[Northwest Power Act, §5(d)(3)(B), 94 Stat. 2714.]

839c(d)(3)(C). such loads or loads of similar character cannot provide equivalent operating or planning benefits to the region if served by an electric utility under contractual arrangements providing reserves, and
[Northwest Power Act, §5(d)(3)(C), 94 Stat. 2714.]

839c(d)(3)(D). the Administrator has or can acquire sufficient electric power to serve such loads, and
[Northwest Power Act, §5(d)(3)(D), 94 Stat. 2714.]

839c(d)(3) [cont.]. unless the Council has determined such sale is consistent with the plan. After such determination by the Administrator and by the Council, the Administrator is authorized to

offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) of this subsection as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads.
[Northwest Power Act, §5(d)(3), 94 Stat. 2714-5.]

Definitions; direct service industrial customer

839c(d)(4)(A). As used in this section, the term "existing direct service industrial customer" means any direct service industrial customer of the Administrator which has a contract for the purchase of electric power from the Administrator on December 5, 1980.
[Northwest Power Act, §5(d)(4)(A), 94 Stat. 2715.]

839c(d)(4)(B). The term "new direct service industrial customer" means any industrial entity other than an existing direct service industrial customer.
[Northwest Power Act, §5(d)(4)(B), 94 Stat. 2715.]

New contracts

839c(d)(4)(C)(i). Where a new contract is offered in accordance with subsection (g) of this section to any existing direct service industrial customer which has not received electric power prior to December 5, 1980, from the Administrator pursuant to a contract with the Administrator existing on December 5, 1980, electric power delivered under such new contract shall be conditioned on the Administrator reasonably acquiring, in accordance with this chapter and within such estimated period of time (as specified in the contract) as he deems reasonable, sufficient resources to meet, on a planning basis, the load requirement of such customer. Such contract shall also provide that the obligation of the Administrator to acquire such resources to meet such load requirement shall, except as provided in clause (ii) of this subparagraph, apply only to such customer and shall not be sold or exchanged by such customer to any other person.
[Northwest Power Act, §5(d)(4)(C)(i), 94 Stat. 2715.]

Contract rights

Transfer

839c(d)(4)(C)(ii). Rights under a contract described in clause (i) of this subparagraph may be transferred by an existing direct service industrial customer referred to in clause (i) to a successor in interest in connection with a reorganization or other transfer of all major assets of such customer. Following such a transfer, such successor in interest (or any other subsequent successor in interest) may also transfer rights under such a contract only in connection with a reorganization or other transfer of all assets of such successor in interest.
[Northwest Power Act, §5(d)(4)(C)(ii), 94 Stat. 2715.]

839c(d)(4)(C)(iii). The limitations of clause (i) of this subparagraph shall not apply to any customer referred to in clause (i) whenever the Administrator determines that such customer is receiving electric power pursuant to a contract referred to in such clause (ii).
[Northwest Power Act, §5(d)(4)(C)(iii), 94 Stat. 2715.]

839c(e). Contractual entitlements to firm power

Firm power entitlement

839c(e)(1). The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 839d of this Title may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers of the same class before being available for the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class:

839c(e)(1)(A). public bodies and cooperatives;
[Northwest Power Act, §5(e)(1)(A), 94 Stat. 2715.]

839c(e)(1)(B). Federal agencies;
[Northwest Power Act, §5(e)(1)(B), 94 Stat. 2715.]

839c(e)(1)(C). direct service industrial; and
[Northwest Power Act, §5(e)(1)(C), 94 Stat. 2715.]

839c(e)(1)(D). investor owned utilities.
[Northwest Power Act, §5(e)(1)(D), 94 Stat. 2715.]

839c(e)(2). Any contractual entitlement to firm power which is based on electric power acquired from, or on behalf of, a customer pursuant to section 839d of this Title shall be in addition to any other contractual entitlement to firm power not subject to restriction that such customer may have under this section. For the purposes of this subsection, references to amounts of power acquired by the Administrator pursuant to section 839d of this Title shall be deemed to mean the amounts specified in the resource acquisition contracts exclusive of any amounts recognized in such contracts as replacement for Federal base system resources.
[Northwest Power Act, §5(e)(2), 94 Stat. 2715-6.]

839c(e)(3). The Administrator shall, consistent with the provisions of this chapter, insure that any restrictions upon any particular customer class made pursuant to this subsection and subsection (b) of this section are distributed equitably throughout the region.
[Northwest Power Act, §5(e)(3), 94 Stat. 2716.]

Surplus power

839c(f). Surplus power

The Administrator is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsections (b), (c), and (d) of this section in accordance with this and other Acts

applicable to the Administrator, including the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), and the Act of August 31, 1964 (16 U.S.C. 837-837h).
[Northwest Power Act, §5(f), 94 Stat. 2716.]

839c(g). Long-term contracts

Administrator shall offer contracts

839c(g)(1). As soon as practicable within 9 months after December 5, 1980, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act [16 U.S.C. 832(a)]) simultaneously to—

839c(g)(1)(A). existing public body and cooperative customers and investor-owned utility customers under subsection (b) of this section;
[Northwest Power Act, §5(g)(1)(A), 94 Stat. 2716.]

839c(g)(1)(B). Federal agency customers under subsection (b) of this section;
[Northwest Power Act, §5(g)(1)(B), 94 Stat. 2716.]

839c(g)(1)(C). electric utility customers under subsection (c) of this section; and
[Northwest Power Act, §5(g)(1)(C), 94 Stat. 2716.]

839c(g)(1)(D). direct service industrial customers under subsection (d)(1) of this section.
[Northwest Power Act, §5(g)(1)(D), 94 Stat. 2716.]

One year to accept

839c(g)(2). Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection.
[Northwest Power Act, §5(g)(2), 94 Stat. 2716.]

Effective date of contracts

839c(g)(3). An initial contract with a public body, cooperative or investor-owned electric utility customer or a Federal agency customer pursuant to subsection (b) of this section shall be effective on the date executed by such customer, unless another effective date is otherwise agreed to by the Administrator and the customer.
[Northwest Power Act, §5(g)(3), 94 Stat. 2716.]

839c(g)(4). An initial contract with an electric utility customer pursuant to subsection (c) of this section shall be effective on the date executed by such customer, but no earlier than the first day of the tenth month after December 5, 1980.
[Northwest Power Act, §5(g)(4), 94 Stat. 2716.]

839c(g)(5). An initial contract with a direct service industrial customer pursuant to subsection (d)(1) of this section, shall be effective on the date agreed upon by the Administrator and such customer, but no later than the first day of the tenth month after December 5, 1980. When such contract is executed, it may for rate purposes be given retroactive effect to such first day.
[Northwest Power Act, §5(g)(5), 94 Stat. 2716.]

Periods of insufficiency

839c(g)(6). Initial contracts offered public body, cooperative and Federal agency customers in accordance with this subsection shall provide that during a period of insufficiency declared in accordance with subsection (b) of this section each customer's contractual entitlement shall, to the extent of its requirements on the Administrator, be no less than the amount of firm power received from the Administrator in the year immediately preceding the period of insufficiency.
[Northwest Power Act, §5(g)(6), 94 Stat. 2716.]

Sufficient resources

839c(g)(7). The Administrator shall be deemed to have sufficient resources for the purpose of entering into the initial contracts specified in paragraph (1)(A) through (D).
[Northwest Power Act, §5(g)(7), 94 Stat. 2716.]

839d. Conservation and resource acquisition

839d(a). Conservation measures; resources

Acquisition of conservation and resources

839d(a)(1). The Administrator shall acquire such resources through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commercial consumer to reduce load, as the Administrator determines are consistent with the plan, or if no plan is in effect with the criteria of section 839b(e)(1) of this Title and the considerations of section 839b(e)(2) of this Title and, in the case of major resources, in accordance with subsection (c) of this section. Such conservation measures and such resources may include, but are not limited to—

839d(a)(1)(A). loans and grants to consumers for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application,
[Northwest Power Act, §6(a)(1)(A), 94 Stat. 2717.]

839d(a)(1)(B). technical and financial assistance to, and other cooperation with, the Administrator's customer and governmental authorities to encourage maximum cost-effective voluntary

conservation and the attainment of any cost- effective conservation objectives adopted by individual States or subdivisions thereof,
[Northwest Power Act, §6(a)(1)(B), 94 Stat. 2717.]

839d(a)(1)(C). aiding the Administrator's customers and governmental authorities in implementing model conservation standards adopted pursuant to section 839b(f) of this Title, and
[Northwest Power Act, §6(a)(1)(C), 94 Stat. 2717.]

839d(a)(1)(D). conducting demonstration projects to determine the cost effectiveness of conservation measures and direct application of renewable energy resources.
[Northwest Power Act, §6(a)(1)(D), 94 Stat. 2717.]

839d(a)(2). In addition to acquiring electric power pursuant to section 839c(c) of this title, or on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act [16 U.S.C. 838i(b)(6)(i)], the Administrator shall acquire, in accordance with this section, sufficient resources—

839d(a)(2)(A). to meet his contractual obligations that remain after taking into account planned savings from measures provided for in paragraph (1) of this subsection, and
[Northwest Power Act, §6(a)(2)(A), 94 Stat. 2717.]

839d(a)(2)(B). to assist in meeting the requirements of section 839b(h) of this title.
[Northwest Power Act, §6(a)(2)(B), 94 Stat. 2717.]

839d(a)(2) [cont.]. The Administrator shall acquire such resources without considering restrictions which may apply pursuant to section 839c(b) of this Title.
[Northwest Power Act, §6(a)(2), 94 Stat. 2717.]

839d(b). Acquisition of resources

Acquisition of resources

839d(b)(1). Except as specifically provided in this section, acquisition of resources under this chapter shall be consistent with the plan, as determined by the Administrator.
[Northwest Power Act, §6(b)(1), 94 Stat. 2717.]

839d(b)(2). The Administrator may acquire resources (other than major resources) under this chapter which are not consistent with the plan, but which are determined by the Administrator to be consistent with the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title.
[Northwest Power Act, §6(b)(2), 94 Stat. 2717.]

839d(b)(3). If no plan is in effect, the Administrator may acquire resources under this chapter which are determined by the Administrator to be consistent with the criteria of section 839b(e)(1) of this Title and the considerations of section 839b(e)(2) of this title.
[Northwest Power Act, §6(b)(3), 94 Stat. 2717.]

839d(b)(4). The Administrator shall acquire any non-Federal resources to replace Federal base system resources only in accordance with the provisions of this section. The Administrator shall include in the contracts for the acquisition of any such non-Federal replacement resources provisions which will enable him to ensure that such non-Federal replacement resources are developed and operated in a manner consistent with the considerations specified in section 839b(e)(2) of this title.
[Northwest Power Act, §6(b)(4), 94 Stat. 2717.]

839d(b)(5). Notwithstanding any acquisition of resources pursuant to this section, the Administrator shall not reduce his efforts to achieve conservation and to acquire renewable resources installed by a residential or small commercial consumer to reduce load, pursuant to subsection (a)(1) of this section.
[Northwest Power Act, §6(b)(5), 94 Stat. 2717-8.]

Procedure for acquiring major resources

839d(c). Procedure for acquiring major resources, implementing conservation measures, paying or reimbursing investigation and preconstruction expenses, or granting billing credits

Proposals

839d(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—

Notice

839d(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;
[Northwest Power Act, §6(c)(1)(A), 94 Stat. 2718.]

Hearing

839d(c)(1)(B). not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, 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;
[Northwest Power Act, §6(c)(1)(B), 94 Stat. 2718.]

Record

839d(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
[Northwest Power Act, §6(c)(1)(C), 94 Stat. 2718.]

Written decision

839d(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—

839d(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 chapter, or
[Northwest Power Act, §6(c)(1)(D)(i), 94 Stat. 2718.]

839d(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 839b(e)(1) of this Title and the considerations of section 839b(e)(2) of this Title or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this chapter.
[Northwest Power Act, §6(c)(1)(D)(ii), 94 Stat. 2718.]

839d(c)(1)(D)[cont.]. 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.
[Northwest Power Act, §6(c)(1)(D), 94 Stat. 2718.]

839d(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—

839d(c)(2)(A). that the proposal is either consistent or inconsistent with the plan, or
[Northwest Power Act, §6(c)(2)(B), 94 Stat. 2718.]

839d(c)(2)(B). if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 839b(e)(1) of this Title and the considerations of section 839b(e)(2) of this Title.
[Northwest Power Act, §6(c)(2)(B), 94 Stat. 2718.]

Implementation of inconsistent proposals

839d(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 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title—

839d(c)(3)(A). unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this chapter, and
[Northwest Power Act, §6(c)(3)(A), 94 Stat. 2718-9.]

839d(c)(3)(B). until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after December 5, 1980.
[Northwest Power Act, §6(c)(3)(B), 94 Stat. 2719.]

Implementation of proposals

839d(c)(4). Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

Submit record to Congress

839d(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 [42 U.S.C. 4321 *et seq.*],
[Northwest Power Act, §6(c)(4)(A), 94 Stat. 2719.]

Notice

839d(c)(4)(B). publish notice of the decision in the Federal Register, and
[Northwest Power Act, §6(c)(4)(B), 94 Stat. 2719.]

Note in budget

839d(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).
[Northwest Power Act, §6(c)(4)(C), 94 Stat. 2719.]

839d(c)(4) [cont.]. 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.
[Northwest Power Act, §6(c)(4), 94 Stat. 2719.]

839d(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.
[Northwest Power Act, §6(c)(5), 94 Stat. 2719.]

Acquisition of other than major resources

839d(d). Acquisition of resources other than major resources

The Administrator is authorized to acquire a resource, other than a major resource, whether or not such resource meets the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title but which he determines is an experimental, developmental, demonstration, or pilot project of a type with a potential for providing cost-effective service to the region. The Administrator shall make no obligation for the acquisition of such resource until it is included in the annual budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act [16 U.S.C. 838 *et seq.*].

[Northwest Power Act, §6(d), 94 Stat. 2719.]

839d(e). Effectuation of priorities; use of customers and local entities

839d(e)(1). In order to effectuate the priority given to conservation measures and renewable resources under this chapter, the Administrator shall, to the maximum extent practicable, make use of his authorities under this chapter to acquire conservation measures and renewable resources, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures (including the funding of, and the securing of debt for, expenses incurred during the investigation and preconstruction of resources, as authorized in subsection (f) of this section).

[Northwest Power Act, §6(e)(1), 94 Stat. 2719.]

839d(e)(2). To the extent conservation measures or acquisition of resources require direct arrangements with consumers, the Administrator shall make maximum practicable use of customers and local entities capable of administering and carrying out such arrangements.

[Northwest Power Act, §6(e)(2), 94 Stat. 2719.]

Acquisition agreements

839d(f). Agreements; investigation and initial development of renewable resources other than major resources; reimbursement of investigation and preconstruction expenses

839d(f)(1). For resources which the Administrator determines may be eligible for acquisition under this section and satisfy the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title or, if a plan is in effect, to be consistent with the plan, the Administrator is authorized to enter into agreements with sponsors of—

Renewable resources

839d(f)(1)(A). a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource, or

[Northwest Power Act, §6(f)(1)(A), 94 Stat. 2719.]

Reimbursement of expenses

839d(f)(1)(B). any other resource to provide for the reimbursement of the sponsor's investigation and preconstruction expenses concerning such resource (which expenses shall not include procurement of capital equipment or construction material for such resource).
[Northwest Power Act, §6(f)(1)(B), 94 Stat. 2720.]

839d(f)(1) [cont.]. In the case of any resource referred to in subparagraph (B) of this paragraph, such reimbursement is authorized only if—

839d(f)(1)(B)(i). such resource is subsequently denied State citing approval or other necessary Federal or State permits, or approvals,
[Northwest Power Act, §6(f)(1)(B)(i), 94 Stat. 2720.]

839d(f)(1)(B)(ii). such investigation subsequently demonstrates, as determined by the Administrator, that such resource does not meet the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title or is not acceptable because of environmental impacts, or
[Northwest Power Act, §6(f)(1)(B)(ii), 94 Stat. 2720.]

839d(f)(1)(B)(iii). after such investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.
[Northwest Power Act, §6(f)(1)(B)(iii), 94 Stat. 2720.]

839d(f)(2). The Administrator may exercise the authority of this subsection only after he determines that the failure to do so would result in inequitable hardship to the consumers of such sponsors. The Administrator may provide reimbursement under this subsection only for expenses incurred after December 5, 1980.
[Northwest Power Act, §6(f)(2), 94 Stat. 2720.]

839d(f)(3). Any agreement under paragraph (1) of this subsection shall provide the Administrator an option to acquire any such resource, including a renewable resource, and shall include such other provisions, as the Administrator deems appropriate, for the Administrator's recovery from such sponsors or any assignee of the sponsors, if such sponsor or assignee continues development of the resource, of any advances made by the Administrator pursuant to such agreement.
[Northwest Power Act, §6(f)(3), 94 Stat. 2720.]

839d(f)(4). The Administrator shall not reimburse any expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after the date of a final denial of application for State citing approval or after the date the Administrator determines

that the resource to be inconsistent with the plan or the criteria of [16 U.S.C. 839b(e)(1)] and the considerations of [16 U.S.C. 839b(e)(2)].
[Northwest Power Act, §6(f)(4), 94 Stat. 2720.]

839d(g). Environmental impact statements

At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator in accordance with applicable law and regulations, may be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.
[Northwest Power Act, §6(g), 94 Stat. 2720.]

839d(h). Billing credits

Billing credits

839d(h)(1). If a customer so requests, the Administrator shall grant billing credits to such customer, and provide services to such customer at rates established for such services, for—

839d(h)(1)(A). conservation activities independently undertaken or continued after December 5, 1980, by such customer or political subdivision served by such customer which reduce the obligation of the Administrator that would otherwise have existed to acquire other resources under this chapter, or
[Northwest Power Act, §6(h)(1)(A), 94 Stat. 2720.]

839d(h)(1)(B). resources constructed, completed, or acquired after December 5, 1980, by a customer, an entity acting on behalf of such customer, or political subdivision served by the customer which reduce the obligation of the Administrator to acquire resources under this chapter. Such resources shall be renewable resources or multipurpose projects or other resources which are not inconsistent with the plan or, in the absence of a plan, not inconsistent with the criteria of [16 U.S.C. 839b(e)(1)] and the considerations of [16 U.S.C. 839b(e)(2)].
[Northwest Power Act, §6(h)(1)(B), 94 Stat. 2720-1.]

Basis for credit

839d(h)(2). The energy and capacity on which a credit under this subsection to a customer is based shall be the amount by which a conservation activity or resource actually changes the customer's net requirement for supply of electric power or reserves from the Administrator.
[Northwest Power Act, §6(h)(2), 94 Stat. 2721.]

839d(h)(3). The amount of credits for conservation under this subsection shall be set to credit the customer implementing or continuing the conservation activity for which the credit is granted for the savings

resulting from such activity. The rate impact on the Administrator's other customers of granting the credit shall be equal to the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually saved by the activity for which the credit is granted.
[Northwest Power Act, §6(h)(3), 94 Stat. 2721.]

839d(h)(4). For resources other than conservation, the customer shall be credited for net costs actually incurred by such customer, an entity acting on behalf of such customer, or political subdivision served by such customer, in acquiring, constructing, or operating the resource for which the credit is granted. The rate impact to the Administrator's other customers of granting the credit shall be no greater than the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually produced by the resource for which the credit is granted.
[Northwest Power Act, §6(h)(4), 94 Stat. 2721.]

839d(h)(5). Retail rate structures which are voluntarily implemented by the Administrator's customers and which induce conservation or installation of consumer-owned renewable resources shall be considered, for purposes of this subsection, to be (A) conservation activities independently undertaken or carried on by such customers, or (B) customer-owned renewable resources, and shall qualify for billing credits upon the same showing as that required for other conservation or renewable resource activities.
[Northwest Power Act, §6(h)(5), 94 Stat. 2721.]

839d(h)(6). Prior to granting any credit or providing services pursuant to this subsection, the Administrator shall—

Notice

839d(h)(6)(A). comply with the notice provisions of subsection (c) of this section, and include in such notice the methodology the Administrator proposes to use in determining the amount of any such credit;
[Northwest Power Act, §6(h)(6)(A), 94 Stat. 2721.]

Include in budget

839d(h)(6)(B). include the cost of such credit in the Administrator's annual or amended budget submittal to the Congress made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838(j))[16 U.S.C. 838 *et seq.*];
[Northwest Power Act, §6(h)(6)(B), 94 Stat. 2721.]

Excess resources offered to others

839d(h)(6)(C). require that resources in excess of customer's reasonable load growth shall have been offered to others for ownership participation or other sponsorship pursuant to subsection (m) of this

section, except in the case of conservation, multi-purpose projects uniquely suitable for development by the customer, or renewable resources; and
[Northwest Power Act, §6(h)(6)(C), 94 Stat. 2721.]

839d(h)(6)(D). require that the operators of any generating resource for which a billing credit is to be granted agree to operate such resource in a manner compatible with the planning and operation of the region's power system.
[Northwest Power Act, §6(h)(6)(D), 94 Stat. 2721.]

Operation

839d(i). Contracts
Contracts for the acquisition of resources and for billing credits for major resources, including conservation activities, entered into pursuant to this section shall contain such terms and conditions, applicable after the contract is entered into, as will—

Contracts

839d(i)(1). insure timely construction, scheduling, completion, and operation of resources,
[Northwest Power Act, §6(i)(1), 94 Stat. 2721.]

839d(i)(2). insure that the costs of any acquisition are as low as reasonably possible, consistent (A) with sound engineering, operating, and safety practices, and (B) the protection, mitigation, and enhancement of fish and wildlife, including related spawning grounds and habitat affected by the development of such resources, and
[Northwest Power Act, §6(i)(2), 94 Stat. 2722.]

839d(i)(3). insure that the Administrator exercises effective oversight, inspection, audit, and review of all aspects of such construction and operation.
[Northwest Power Act, §6(i)(3), 94 Stat. 2722.]

839d(i) [cont.]. Such contracts shall contain provisions assuring that the Administrator has the authority to approve all costs of, and proposals for, major modifications in construction, scheduling or operations and to assure that the Administrator is provided with such current information as he deems necessary to evaluate such construction and operation.
[Northwest Power Act, §6(i), 94 Stat. 2722.]

839d(j). Obligations not to be considered general obligations of United States or secured by full faith and credit of United States.

839d(j)(1). All contractual and other obligations required to be carried out by the Administrator pursuant to this chapter shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall

Contract obligations secured by revenues

they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.
[Northwest Power Act, §6(j)(1), 94 Stat. 2722.]

839d(j)(2). All contracts entered into by the Administrator for the acquisition of resources pursuant to this chapter shall require that, in the sale of any obligations, all offerings and promotional material for the sale of such obligations shall include the language contained in the second sentence of paragraph (1) of this subsection. The Administrator shall monitor and enforce such requirement.
[Northwest Power Act, §6(j)(2), 94 Stat. 2722.]

839d(k). Equitable distribution of benefits

Benefits distributed equitably

In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this chapter and the Administrator's obligations to particular customer classes, insure that benefits under this section, including financial and technical assistance, conduct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.
[Northwest Power Act, §6(k), 94 Stat. 2722.]

839d(l). Investigations

Extra-regional opportunities

839d(l)(1). The Administrator is authorized and directed to investigate opportunities for adding to the region's resources or reducing the region's power costs through the accelerated or cooperative development of resources located outside the States of Idaho, Montana, Oregon, and Washington if such resources are renewable resources, and are now or in the future planned or considered for eventual development by nonregional agencies or authorities that will or would own, sponsor, or otherwise develop them. The Administrator shall keep the Council fully and currently informed of such investigations, and seek the Council's advice as to the desirability of pursuing such investigations.
[Northwest Power Act, §6(l)(1), 94 Stat. 2722.]

Inter-regional exchanges

839d(l)(2). The Administrator is authorized and directed to investigate periodically opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in the Pacific Northwest and the regions with which such exchanges may occur. The Council shall take into consideration in formulating a plan such investigations.
[Northwest Power Act, §6(l)(2), 94 Stat. 2722.]

839d(l)(3). After the Administrator submits a report to Congress pursuant to paragraph (5) of this subsection, the Administrator is

authorized to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of [16 U.S.C. 839b(e)(1)] and the considerations of [16 U.S.C. 839b(e)(2)]. Such acquisitions shall be in accordance with the provisions of this subsection.
[Northwest Power Act, §6(l)(3), 94 Stat. 2722.]

839d(1)(4). The Administrator shall conduct the investigations and the acquisitions, if any, authorized under this subsection with the assistance of other Federal agencies as may be appropriate.
[Northwest Power Act, §6(l)(4), 94 Stat. 2723.]

839d(1)(5). No later than July 1, 1981, the Administrator shall submit to the Congress a report of the results of the investigation undertaken pursuant to this subsection, together with the prospects for obtaining additional resources under the authority granted by this subsection and for reductions in generation or generating capacity through exchanges.
[Northwest Power Act, §6(l)(5), 94 Stat. 2723.]

839d(m). Offering of reasonable shares to each Pacific Northwest electric utility

Share offer to utilities

Except as to resources under construction on December 5, 1980, the Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest electric utility for ownership, participation, or other sponsorship, but not in excess of the amounts needed to meet such utility's Regional load.
[Northwest Power Act, §6(m), 94 Stat. 2723.]

Improvements funded by Administrator

839d-1. Without further appropriation and without fiscal year limitation, the Secretaries of the Interior and Army are authorized to plan, design, construct, operate and maintain generation additions, improvements and replacements, at their respective Federal projects in the Pacific Northwest Region...and to operate and maintain the respective Secretary's power facilities in the Region, that the respective Secretary determines necessary or appropriate and that the Bonneville Power Administrator subsequently determines necessary or appropriate, with any funds that the Bonneville Power Administrator determines to make available to the respective Secretary for such purposes. Each Secretary is authorized, without further appropriation, to accept and use such funds for such purposes: *Provided*, That, such funds shall continue to be exempt from sequestration pursuant to [section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901-922] (2 U.S.C. 905(g)(1))]: *Provided further*, That this section not modify or affect the applicability of any provision of [this chapter.] This provision shall be effective on October 1, 1993.
[Energy Policy Act of 1992, P. L. No. 102-486, Title XXIV, §2406, Oct. 24, 1992, 106 Stat. 3099.]

839e. Rates

839e(a). Establishment; periodic review and revision; confirmation and approval by Federal Energy Regulatory Commission

Rates for sale and distribution of power

839e(a)(1). The Administrator shall establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Such rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the cost associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this chapter and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838) [16 U.S.C. 838g and 838h], section 5 of the Flood Control Act of 1944 [16 U.S.C. 825s], and the provisions of this chapter.

[Northwest Power Act, §7(a)(1), 94 Stat. 2723.]

Approval by FERC

839e(a)(2). Rates established under this section shall become effective only, except in the case of interim rules as provided in subsection (i)(6) of this section, upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission, that such rates—

839e(a)(2)(A). are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs,

[Northwest Power Act, §7(a)(2)(A), 94 Stat. 2723.]

839e(a)(2)(B). are based upon the Administrator's total system costs, and

[Northwest Power Act, §7(a)(2)(B), 94 Stat. 2723.]

839e(a)(2)(C). insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.

[Northwest Power Act, §7(a)(2)(C), 94 Stat. 2723.]

839e(b). General application of rates to meet general requirements

Application of rates

839e(b)(1). The Administrator shall establish a rate or rates of general application for electric power sold to meet the general

requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under [16 U.S.C. 839c(c)]. Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under [16 U.S.C. 839c(c)] and then from other resources.

[Northwest Power Act, §7(b)(1), 94 Stat. 2723.]

Section 7(b)(2) analysis

839e(b)(2). After July 1, 1985, the projected amounts to be charged for firm power for the combined general requirements of public body, cooperative and Federal agency customers, exclusive of amounts charged such customers under subsection (g) of this section for the costs of conservation, resource and conservation credits, experimental resources and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator assumes that—

839e(b)(2)(A). the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are—

839e(b)(2)(A)(i). served by the Administrator, and

[Northwest Power Act, §7(b)(2)(A)(i), 94 Stat. 2724.]

839e(b)(2)(A)(ii). located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

[Northwest Power Act, §7(b)(1)(A)(ii), 94 Stat. 2724.]

839e(b)(2)(B). public body, cooperative, and Federal agency customers were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of December 5, 1980, (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A) of this paragraph;

[Northwest Power Act, §7(b)(2)(B), 94 Stat. 2724.]

839e(b)(2)(C). no purchases or sales by the Administrator as provided in [16 U.S.C. 839c(c] were made during such five-year period;

[Northwest Power Act, §7(b)(2)(C), 94 Stat. 2724.]

839e(b)(2)(D). all resources that would have been required, during such five-year period, to meet remaining general requirements

of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B) of this paragraph) were—

839e(b)(2)(D)(i). purchased from such customers by the Administrator pursuant to [16 U.S.C. 839d], or
[Northwest Power Act, §7(b)(2)(D)(i), 94 Stat. 2724.]

839e(b)(2)(D)(ii). not committed to load pursuant to section 839c(b), of this section
[Northwest Power Act, §7(b)(2)(D)(ii), 94 Stat. 2724.]

839e(b)(2)(D) [cont.]. and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and
[Northwest Power Act, §7(b)(2)(D), 94 Stat. 2724.]

839e(b)(2)(E). the quantifiable monetary savings, during such five-year period, to public body, cooperative and Federal agency customers resulting from—

839e(b)(2)(E)(i). reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D) of this paragraph, and
[Northwest Power Act, §7(b)(2)(E)(i), 94 Stat. 2724.]

839e(b)(2)(E)(ii). reserve benefits as a result of the Administrator's actions under this chapter[,]
[Northwest Power Act, §7(b)(2)(E)(ii), 94 Stat. 2724.]

839e(b)(2)(E) [cont.]. were not achieved.
[Northwest Power Act, §7(b)(2)(E), 94 Stat. 2724.]

Supplemental rate charges

839e(b)(3). Any amounts not charged to public body, cooperative, and Federal agency customers by reason of paragraph (2) of this subsection shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers. Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occurring for the period ending June 30, 1985, to the extent such surplus or deficiency is caused by—

839e(b)(3)(A). a difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1) of this subsection, and
[Northwest Power Act, §7(b)(3)(A), 94 Stat. 2724.]

839e(b)(3)(B). an overrecovery or underrecovery of the net costs incurred by the Administrator under [16 U.S.C. 839c(c)] as a result of such difference.
[Northwest Power Act, §7(b)(3)(B), 94 Stat. 2724.]

839e(b)(3) [cont.] Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonable period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.
[Northwest Power Act, §7(b)(3), 94 Stat. 2724-5.]

839e(b)(4). The term "general requirements" as used in this section means the public body, cooperative or Federal agency customer's electric power purchased from the Administrator under [16 U.S.C. 839c(b)], exclusive of any new large single load.
[Northwest Power Act, §7(b)(3), 94 Stat. 2725.]

839e(c). Rates applicable to direct service industrial customers

Direct services industries rates

839e(c)(1). The rate or rates applicable to direct service industrial customers shall be established—

839e(c)(1)(A). for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to [16 U.S.C. 839c(c)], based upon the Administrator's projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers; and
[Northwest Power Act, §7(c)(1)(A), 94 Stat. 2725.]

839e(c)(1)(B). for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.
[Northwest Power Act, §7(c)(1)(B), 94 Stat. 2725.]

839e(c)(2). The determination under paragraph (1)(B) of this subsection shall be based upon the Administrator's applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account—

839e(c)(2)(A). the comparative size and character of the loads served,
[Northwest Power Act, §7(c)(2)(A), 94 Stat. 2725.]

839e(c)(2)(B). the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and

[Northwest Power Act, §7(c)(2)(B), 94 Stat. 2725.]

839e(c)(2)(C). direct and indirect overhead costs,

[Northwest Power Act, §7(c)(2)(C), 94 Stat. 2725.]

839e(c)(2) [cont.]. all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.

[Northwest Power Act, §7(c)(2), 94 Stat. 2725.]

839e(c)(3). The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

[Northwest Power Act, §7(c)(3), 94 Stat. 2725.]

839e(d). Discount rates; special rates

Low-density discounts

839e(d)(1). In order to avoid adverse impacts on retail rates of the Administrator's customers with low system densities, the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.

[Northwest Power Act, §7(d)(1), 94 Stat. 2725.]

839e(d)(2). In order to avoid adverse impacts of increased rates pursuant to this chapter on any direct service industrial customer using raw minerals indigenous to the region as its primary resource, the Administrator, upon request of such customer showing such impacts and after considering the effect of such request on his other obligations under this chapter, is authorized, if the Administrator determines that such impacts will be significant, to establish a special rate applicable to such customer if all power sold to such customer may be interrupted, curtailed, or withdrawn to meet firm loads in the region. Such rate shall be established in accordance with this section and shall include such terms and conditions as the Administrator deems appropriate.

[Northwest Power Act, §7(d)(2), 94 Stat. 2725.]

839e(e). Uniform rates; rates for sale of peaking capacity; time-of-day, seasonal, and other rates

Rate forms

Nothing in this chapter prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or other rate forms.

[Northwest Power Act, §7(e), 94 Stat. 2726.]

839e(f). Basis for rates

Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under [16 U.S.C. 839c(c)] and additional resources which, in the determination of the Administrator, are applicable to such sales.

[Northwest Power Act, §7(f), 94 Stat. 2726.]

839e(g). Allocation of costs and benefits

Allocation of costs

Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on December 5, 1980, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this chapter, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under [16 U.S.C. 839d], the cost of credits granted pursuant to [16 U.S.C 839d], operating services, and the sale of or inability to sell excess electric power.

[Northwest Power Act, §7(g), 94 Stat. 2726.]

839e(h). Surcharges

Notwithstanding any other provision of this section (except the provisions of subsection (a) of this section), the Administrator shall adjust power rates to include any surcharges arising under [16 U.S.C. 839b(f)], and shall allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of [16 U.S.C. 839b(f)].

[Northwest Power Act, §7(h), 94 Stat. 2726.]

839e(i). Procedures

Rate-making procedures

In establishing rates under this section, the Administrator shall use the following procedures:

839e(i)(1). Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice shall include a date for a hearing in accordance with paragraph (2) of this subsection.

[Northwest Power Act, §7(i)(1), 94 Stat. 2726.]

839e(i)(2). One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing—

Hearings

839e(i)(2)(A). any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and
[Northwest Power Act, §7(i)(2)(A), 94 Stat. 2726.]

839e(i)(2)(B). the hearing officer, in his discretion, shall allow a reasonable opportunity for cross examination, which, as determined by the hearing officer, is not dilatory, in order to develop information and material relevant to any such proposed rate.
[Northwest Power Act, §7(i)(2)(B), 94 Stat. 2726.]

839e(i)(3). In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments submitted by persons prior to, or before the close of, hearings shall be made a part of the administrative record.
[Northwest Power Act, §7(i)(3), 94 Stat. 2726.]

839e(i)(4). After such a hearing, the Administrator may propose revised rates, publish such proposed rates in the Federal Register, and conduct additional hearings in accordance with this subsection.
[Northwest Power Act, §7(i)(4), 94 Stat. 2726.]

839e(i)(5). The Administrator shall make a final decision establishing a rate or rates based on the record which shall include the hearing transcript, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator. The decision shall include a full and complete justification of the final rates pursuant to this section.
[Northwest Power Act, §7(i)(5), 94 Stat. 2726-7.]

Interim rates

839e(i)(6). The final decision of the Administrator shall become effective on confirmation and approval of such rates by the Federal Energy Regulatory Commission pursuant to subsection (a)(2) of this section. The Commission shall have the authority, in accordance with such procedures, if any, as the Commission shall promptly establish and make effective within one year after December 5, 1980, to approve the final rate submitted by the Administrator on an interim basis, pending the Commission's final decision in accordance with such subsection. Pending the establishment of such procedures by the Commission, if such procedures are required, the Secretary is authorized to approve such interim rates during such one-year period in accordance with the applicable procedures followed by the Secretary prior to December 5, 1980. Such interim rates, at the discretion of the Secretary, shall continue in effect until July 1, 1982.
[Northwest Power Act, §7(i)(6), 94 Stat. 2727.]

839e(j). Cost figures to be indicated on rates schedules and power billings

All rate schedules adopted, and all power billings rendered, by the Administrator pursuant to this section shall indicate—

839e(j)(1). the approximate cost contribution of different resource categories to the Administrator's rates for the sale of energy and capacity, and

[Northwest Power Act, §7(j)(1), 94 Stat. 2727.]

839e(j)(2). the cost of resources acquired to meet load growth within the region and the relation of such cost to the average cost of resources available to the Administrator.

[Northwest Power Act, §7(j)(2), 94 Stat. 2727.]

839e(k). Statutory basis for procedures used in establishing rates or rate schedules

Rates for nonfirm

Notwithstanding any other provision of this chapter, all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established after December 5, 1980, by the Administrator in accordance with the procedures of subsection (i) of this section (other than the first sentence of paragraph (6) thereof) and in accordance with the Bonneville Project Act [16 U.S.C. 832 *et seq.*], the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act [16 U.S.C. 838 *et seq.*]. Notwithstanding section 201(f) of the Federal Power Act [16 U.S.C. 824(f)], such rates or rate schedules shall become effective after review by the Federal Energy Regulatory Commission for conformance with the requirements of such Acts and after approval thereof by the Commission. Such review shall be based on the record of proceedings established under subsection (i) of this section. The parties to such proceedings under subsection (i) of this section shall be afforded an opportunity by the Commission for an additional hearing in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act [16 U.S.C. 791a *et seq.*].

Review by FERC

[Northwest Power Act, §7(k), 94 Stat. 2727.]

839e(l). Rates for sales outside United States; negotiations

Negotiated rates outside U.S.

In order to further the purposes of this chapter and to protect the consumers of the region, the Administrator may negotiate, or establish, rates for electric power sold by the Administrator to any entity not located in the United States which shall be equitable in relation to rates for all electric power which is, or may be, purchased by the Administrator or the Administrator's customers from entities outside the United States. In establishing rates other than by negotiation, the provisions of subsection (i) of this section shall apply. In the case of any negotiation

Notice

with an entity not located in the United States, the Administrator shall provide public notice of any proposal to negotiate such rates. Such negotiated rates shall be not less than rates established under this chapter for nonfirm power sold within the United States but outside the region. The Administrator shall also afford notice of any rates negotiated pursuant to this subsection.
[Northwest Power Act, §7(l), 94 Stat. 2727.]

839e(m). Impact aid payments; formula

Payments

839e(m)(1). Beginning the first fiscal year after the plan and program required by section 838b(d) and (h) of this title are finally adopted, the Administrator may, subject to the provisions of this section, make annual impact aid payments to the appropriate local governments within the region with respect to major transmission facilities of the Administrator, as defined in section 3(c) of the Federal Columbia River Transmission Act [16 U.S.C. 838a(c)]—

839e(m)(1)(A). which are located within the jurisdictional boundaries of such governments,
[Northwest Power Act, §7(m)(1)(A), 94 Stat. 2727-8.]

839e(m)(1)(B). which are determined by the Administrator to have a substantial impact on such governments, and
[Northwest Power Act, §7(m)(1)(B), 94 Stat. 2728.]

839e(m)(1)(C). where the construction of such facilities, or any modification thereof, is completed after December 5, 1980, and, in the case of a modification of an existing facility, such modification substantially increases the capacity of such existing transmission facility.
[Northwest Power Act, §7(m)(1)(C), 94 Stat. 2728.]

Payment formula

839e(m)(2). Payments made under this subsection for any fiscal year shall be determined by the Administrator pursuant to a regionwide, uniform formula to be established by rule in accordance with the procedures set forth in subsection (i) of this section. Such rule shall become effective on its approval, after considering its effect on rates established pursuant to this section, by the Federal Energy Regulatory Commission. In developing such formula, the Administrator shall identify, and take into account, the local governmental services provided to the Administrator concerning such facilities and the associated costs to such governments as the result of such facilities.
[Northwest Power Act, §7(m)(2), 94 Stat. 2728.]

839e(m)(3). Payments made pursuant to this subsection shall be made solely from the fund established by section 11 of the Federal Columbia River Transmission System Act [16 U.S.C. 838i]. The

provisions of section 13 of such Act [16 U.S.C. 838k], and any appropriations provided to the Administrator under any law, shall not be available for such payments. The authorization of payments under this subsection shall not be construed as an obligation of the United States.

[Northwest Power Act, §7(m)(3), 94 Stat. 2728.]

839e(m)(4). No payment may be made under this subsection with respect to any land or interests in land owned by the United States within the region and administered by any Federal agency (other than the Administrator), without regard to how the United States obtained ownership thereof, including lands or interests therein acquired or withdrawn by a Federal agency for purposes of such agency and subsequently made available to the Administrator for such facilities.[9]

[Northwest Power Act, §7(m)(4), 94 Stat. 2728.]

839e (n). Limiting the inclusion of costs of protection of, mitigation of damage to, and enhancement of fish and wildlife, within rates charged by the Bonneville Power Administration, to the rate period in which the costs are incurred

839e [cont.]. Notwithstanding any other provision of this section, rates established by the Administrator, under this section shall recover costs for protection, mitigation and enhancement of fish and wildlife, whether under [this chapter] or any other Act, not to exceed such amounts the Administrator forecasts will be expended during the fiscal year 2002-2006 rate period, while preserving the Administrator's ability to establish appropriate reserves and maintain a high Treasury payment probability for the subsequent rate period.

[As amended Pub.L. 106-60, § 316, Sept. 29, 1999, 113 Stat. 497.]

839f. Administrative provisions

839f(a). Contract authority

Subject to the provisions of this chapter, The Administrator is authorized to contract in accordance with section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)). Other provisions of law applicable to such contracts on December 5, 1980, shall continue to be applicable.

Contracts

[Northwest Power Act, §9(a), 94 Stat. 2729-30.]

839f(b). Executive and administrative functions of Administrator of Bonneville Power Administration; sound and businesslike implementation of chapter

The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), section 7152(a)(2) and (3) of Title 42, and this chapter. The Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary

9. §8 of this Act consists of amendments to existing law and is codified as part of the statutes that it amends. *See, e.g.*, Transmission System Act §11(b)(6) (16 U.S.C § 838i(b)(6) *supra*, page 63.

to assure the timely implementation of this chapter in a sound and businesslike manner. Nothing in this chapter shall be construed by the Secretary, the Administrator, or any other official of the Department of Energy to modify, alter, or otherwise affect the requirements and directives expressed by the Congress in section 7152(a)(2) and (3) of Title 42 or the operations of such officials as they existed prior to December 5, 1980.

[Northwest Power Act, §9(b), 94 Stat. 2730.]

839f(c). Limitations and conditions on contracts for sale or exchange of electric power for use outside Pacific Northwest

Contracts outside Pacific Northwest

Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 31, 1964 (16 U.S.C. 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837e and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. The Administrator shall, in making any determination, under any contract executed pursuant to [16 U.S.C. 839c], of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

[Northwest Power Act, §9(c), 94 Stat. 2730.]

839f(d). Disposition of power which does not increase amount of firm power Administrator is obligated to provide to any customer

No restrictions contained in subsection (c) of this section shall limit or interfere with the sale, exchange or other disposition of any power by any utility or group thereof from any existing or new non-Federal resource if such sale, exchange or disposition does not increase the amount of firm power the Administrator would be obligated to provide to any customer. In addition to the directives contained in subsections (i)(1)(B) and (i)(3) and subject to:

839f(d)(1). any contractual obligations of the Administrator,
[Northwest Power Act, §9(d)(1), 94 Stat. 2730.]

839f(d)(2). any other obligations under existing law, and
[Northwest Power Act, §9(d)(2), 94 Stat. 2730.]

839f(d)(3). the availability of capacity in the Federal transmission system,
[Northwest Power Act, §9(d)(3), 94 Stat. 2731.]

839f(d) [cont.]. the Administrator shall provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities and shall not discriminate against any utility or group thereof on the basis of independent development of such resource in providing such services.
[Northwest Power Act, §9(d), 94 Stat. 2730-1.]

839f(e). Judicial review; suits

839f(e)(1). For purposes of sections 701 through 706 of Title 5, the following actions shall be final actions subject to judicial review— *Judicial review*

839f(e)(1)(A). adoption of the plan or amendments thereto by the Council under [16 U.S.C. 839b], adoption of the program by the Council, and any determination by the Council under [16 U.S.C. 839b(h)];
[Northwest Power Act, §9(e)(1)(A), 94 Stat. 2731.]

839f(e)(1)(B). sales, exchanges, and purchases of electric power under [16 U.S.C. 839c];
[Northwest Power Act, §9(e)(1)(B), 94 Stat. 2731.]

839f(e)(1)(C). the Administrator's acquisition of resources under [16 U.S.C. 839d];
[Northwest Power Act, §9(e)(1)(C), 94 Stat. 2731.]

839f(e)(1)(D). implementation of conservation measures under [16 U.S.C. 839d];
[Northwest Power Act, §9(e)(1)(D), 94 Stat. 2731.]

839f(e)(1)(E). execution of contracts for assistance to sponsors under [16 U.S.C. 839d(f)];
[Northwest Power Act, §9(e)(1)(E), 94 Stat. 2731.]

839f(e)(1)(F). granting of credits under [16 U.S.C. 839d(h)];
[Northwest Power Act, §9(e)(1)(F), 94 Stat. 2731.]

839f(e)(1)(G). final rate determinations under [16 U.S.C. 839e]; and
[Northwest Power Act, §9(e)(1)(G), 94 Stat. 2731.]

839f(e)(1)(H). any rule prescribed by the Administrator under [16 U.S.C. 839e(m)(2)].
[Northwest Power Act, §9(e)(1)(H), 94 Stat. 2731.]

Record of final action

839f(e)(2). The record upon review of such final actions shall be limited to the administrative record compiled in accordance with this chapter. The scope of review of such actions without a hearing or after a hearing shall be governed by section 706 of title 5, except that final determinations regarding rates under [16 U.S.C. 839e] shall be supported by substantial evidence in the rulemaking record required by [16 U.S.C. 839e(i)] considered as a whole. The scope of review of an action under [16 U.S.C. 839d(c)] shall be governed by section 706 of Title 5. Nothing in this section shall be construed to require a hearing pursuant to section 554, 556, or 557 of Title 5.
[Northwest Power Act, §9(e)(2), 94 Stat. 2731.]

839f(e)(3). Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the Council or Administrator.
[Northwest Power Act, §9(e)(3), 94 Stat. 2731.]

839f(e)(4). For purposes of this subsection—

839f(e)(4)(A). major resources shall be deemed to be acquired upon publication in the Federal Register pursuant to [16 U.S.C. 839d(c)(4)(B)];
[Northwest Power Act, §9(e)(4)(A), 94 Stat. 2731.]

839f(e)(4)(B). resources, other than major resources, shall be deemed to be acquired upon execution of the contract therefor;
[Northwest Power Act, §9(e)(4)(B), 94 Stat. 2731.]

839f(e)(4)(C). conservation measures shall be deemed to be implemented upon execution of the contract or grant therefor; and
[Northwest Power Act, §9(e)(4)(C), 94 Stat. 2731.]

839f(e)(4)(D). rate determinations pursuant to [16 U.S.C. 839e] shall be deemed final upon confirmation and approval by the Federal Energy Regulatory Commission.
[Northwest Power Act, §9(e)(4)(D), 94 Stat. 2731.]

Legal challenges

839f(e)(5). Suits to challenge the constitutionality of this chapter, or any action thereunder, final actions and decisions taken pursuant to this chapter by the Administrator or the Council, or the implementation of such final actions, whether brought pursuant to this chapter, the Bonneville Project Act [16 U.S.C. 832 *et seq.*], the Act of August 31, 1964 (16 U.S.C. 837-837h), or the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), shall be filed in the United States court of appeals for the region. Such suits shall be filed within ninety days of the time such action or decision is deemed final, or, if notice of the action is required by this chapter to be published in the Federal Register, within ninety days from such notice, or be barred. In the case of a challenge of the plan or programs or amendments thereto, such suit shall be filed within sixty days after publication of a notice of such final action in the Federal Register. Such court shall have jurisdiction to hear and determine any suit brought as provided in this section. The plan and program, as finally adopted or portions thereof, or amendments thereto, shall not thereafter be reviewable as a part of any other action under this chapter or any other law. Suits challenging any other actions under this chapter shall be filed in the appropriate court.
[Northwest Power Act, §9(e)(5), 94 Stat. 2731-2.]

Time bar

Jurisdiction

839f(f). Tax treatment of interest on governmental obligations
For purposes of enabling the Administrator to acquire resources necessary to meet the firm load of public bodies, cooperatives, and Federal agencies from a governmental unit at a cost no greater than the cost which would be applicable in the absence of such acquisition, the exemption from gross income of interest on certain governmental obligations provided in section 103(a)(1) of Title 26 shall not be affected by the Administrator's acquisition of such resources if—

839f(f)(1). the Administrator, prior to contracting for such acquisition, certifies to his reasonable belief, that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 839c of this title are public bodies, cooperatives, and Federal agencies, unless the Administrator also certifies that he is unable to acquire such resources without selling a portion thereof to persons who are not exempt persons (as defined in section 103(b) of Title 26), and
[Northwest Power Act, §9(f)(1), 94 Stat. 2732.]

839f(f)(2). based upon such certification, the Secretary of the Treasury determines in accordance with applicable regulations that less than a major portion of the resource is to be furnished to persons who are not exempt persons (as defined in section 103(b) of Title 26).
[Northwest Power Act, §9(f)(2), 94 Stat. 2732.]

839f(f) [cont.]. The certification under paragraph (1) shall be made in accordance with this subsection and a procedure and methodology approved by the Secretary of the Treasury. For purposes of this subsection, the term "major portion" shall have the meaning provided by regulations issued by the Secretary of the Treasury.
[Northwest Power Act, §9(f), 94 Stat. 2732.]

839f(g). Review of rates for sale of power to Administrator by investor-owned utility customers

Review by FERC of investor-owned rates

When reviewing rates for the sale of power to the Administrator by an investor-owned utility customer under [16 U.S.C. 839c(c) or 839d], the Federal Energy Regulatory Commission shall, in accordance with [16 U.S.C. 824h]—

839f(g)(1). convene a joint State board, and
[Northwest Power Act, §9(g)(1), 94 Stat. 2732.]

839f(g)(2). invest such board with such duties and authority as will assist the Commission in its review of such rates.
[Northwest Power Act, §9(g)(1), 94 Stat. 2732.]

839f(h). Companies which own or operate facilities for the generation of electricity primarily for sale to Administrator

839f(h)(1). No "Company" (as defined in section 79b(a)(2) of Title 15), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under [16 U.S.C. 839d] shall be deemed an "electric utility company" (as defined in section 79b(a)(3) of the Title 15), within the meaning of any provision or provisions of chapter 2C of Title 15, if at least 90 per centum of the electricity generated by such company is sold to the Administrator under [16 U.S.C. 839d], and if—

839f(h)(1)(A). the organization of such company is consistent with the policies of section 79a(b) and (c) of Title 15, as determined by the Securities and Exchange Commission, with the concurrence of the Administrator, at the time of such organization; and
[Northwest Power Act, §9(h)(1)(A), 94 Stat. 2732.]

839f(h)(1)(B). participation in any facilities of such "company" has been offered to public bodies and cooperatives in the region pursuant to section 839d(m) of this title.
[Northwest Power Act, §9(h)(1)(B), 94 Stat. 2733.]

839f(h)(2). The Administrator shall include in any contract for the acquisition of a major resource from such "company" provisions limiting the amount of equity investment, if any, in such "company" to that which the Administrator determines will be consistent with achieving the lowest attainable power costs attributable to such major resource.
[Northwest Power Act, §9(h)(2), 94 Stat. 2733.]

839f(h)(3). In the case of any "company" which meets the requirements of paragraph (1), the Administrator, with the concurrence of such Commission, shall approve all significant contracts entered into by, and between, such "company" and any sponsor company or any subsidiary of such sponsor company which are determined to be consistent with the policies of section 79a(b) and (c) of Title 15 at the time such contracts are entered into. The Administrator and the Securities and Exchange Commission shall exercise such approval authority within sixty days after receipt of such contracts. Such contracts shall not be effective without such approval.
[Northwest Power Act, §9(h)(3), 94 Stat. 2733.]

839f(h)(4). Paragraph (1) of this subsection shall continue to apply to any such "company" unless the Administrator or the Securities and Exchange Commission, or both, through periodic review, (A) determine at any time that the "company" no longer operates in a manner consistent with the policies of section 79a(b) and (c) of Title 15 and in accordance with this subsection, and (B) notify the "company" in writing of such preliminary determination. This subsection shall cease to apply to such "company" thirty days after receipt of notification of a final determination thereof. A final determination shall be made only after public notice of the preliminary determination and after a hearing completed not later than sixty days from the date of publication of such notice. Such final determination shall be made within thirty days after the date of completion of such hearing.
[Northwest Power Act, §9(h)(4), 94 Stat. 2733.]

839f(i). Electric power acquisition or disposition

Acquisition and disposition of electric power

839f(i)(1). At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable—

839f(i)(1)(A). acquire any electric power required by (i) any customer or group of customers to enable them to replace resources

determined to serve firm load under section 839c(b) of this title, or (ii) direct service industrial customers to replace electric power that is or may be curtailed or interrupted by the Administrator (other than power the Administrator is obligated to replace), with the cost of such replacement power to be distributed among the direct service industrial customers requesting such power; and

[Northwest Power Act, §9(i)(1)(A), 94 Stat. 2733.]

839f(i)(1)(B). dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this chapter and other applicable laws.

[Northwest Power Act, §9(i)(1)(B), 94 Stat. 2733.]

839f(i)(2). In implementing the provisions of subparagraphs (A) and (B) of paragraph (1), the Administrator may prescribe policies and conditions for the independent acquisition or disposition of electric power by any direct service industrial customer or group of such customers for the purpose of assuring each direct service industrial customer an opportunity to participate in such acquisition or disposition.

[Northwest Power Act, §9(i)(2), 94 Stat. 2733.]

839f(i)(3). The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on December 5, 1980, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this chapter and such offer is not accepted within one year.

[Northwest Power Act, §9(i)(3), 94 Stat. 2734.]

839f(j). Retail rate designs which encourage conservation and efficient use of electric energy, installation of consumer-owned renewable resources, and rate research and development

839f(j)(1). The Council, as soon as practicable after December 5, 1980, shall prepare, in consultation with the Administrator, the customers, appropriate State regulatory bodies, and the public, a report and shall make recommendations with respect to the various retail rate designs which will encourage conservation and efficient

Report

use of electric energy and the installation of consumer-owned renewable resources on a cost-effective basis, as well as areas for research and development for possible application to retail utility rates within the region. Studies undertaken pursuant to this subsection shall not affect the responsibilities of any customer or the Administrator which may exist under the Public Utility Regulatory Policies Act of 1978.
[Northwest Power Act, §9(j)(1), 94 Stat. 2734.]

839f(j)(2). Upon request, and solely on behalf of customers so requesting, the Administrator is authorized to (A) provide assistance in analyzing and developing retail rate structures that will encourage cost-effective conservation and the installation of cost-effective consumer-owned renewable resources; (B) provide estimates of the probable power savings and the probable amount of billing credits under section 839d(h) of this Title that might be realized by such customers as a result of adopting and implementing such retail rate structures; and (C) solicit additional information and analytical assistance from appropriate State regulatory bodies and the Administrator's other customers.
[Northwest Power Act, §9(j)(2), 94 Stat. 2734.]

839f(k). Executive position for conservation and renewable resources

Conservation and renewable resources position established

There is hereby established within the administration an executive position for conservation and renewable resources. Such executive shall be appointed by the Administrator and shall be assigned responsibility for conservation and direct-application renewable resource programs (including the administration of financial assistance for such programs). Such position is hereby established in the senior executive service in addition to the number of such positions heretofore established in accordance with other provisions of law applicable to such positions.
[Northwest Power Act, §9(k), 94 Stat. 2734.]

839g. Savings provisions

Savings provisions

839g(a). Rights of States and political subdivisions of States

Nothing in this chapter shall be construed to affect or modify any right of any State or political subdivision thereof or electric utility to—

839g(a)(1). determine retail electric rates, except as provided by section 839c(c)(3) of this Title;
[Northwest Power Act, §10(a)(1), 94 Stat. 2734.]

839g(a)(2). develop and implement plans and programs for the conservation, development, and use of resources; or
[Northwest Power Act, §10(a)(2), 94 Stat. 2734.]

Citing

839g(a)(3). make energy facility citing decisions, including, but not limited to, determining the need for a particular facility, evaluating alternative sites, and considering alternative methods of meeting the determined need.
[Northwest Power Act, §10(a)(3), 94 Stat. 2734.]

839g(b). Rights and obligations under existing contracts

Nothing in this chapter shall alter, diminish, or abridge the rights and obligations of the Administrator or any customer under any contract existing as of December 5, 1980.
[Northwest Power Act, §10(b), 94 Stat. 2735.]

839g(c). Statutory preferences and priorities of public bodies and cooperatives in sale of federally generated power

Preference

Nothing in this chapter shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.
[Northwest Power Act, §10(c), 94 Stat. 2735.]

839g(d). Contractual rights under provisions later found to be unconstitutional

Contracts not affected

If any provision of this chapter is found to be unconstitutional, then any contract entered into by the Administrator, prior to such finding and in accordance with such provisions, to sell power, acquire or credit resources, or to reimburse investigation and preconstruction expenses pursuant to section 839c of this Title, and section 839d(a), (f) or (h) of this title shall not be affected by such finding.
[Northwest Power Act, §10(d), 94 Stat. 2735.]

839g(e). Treaty and other rights of Indian tribes

Nothing in this chapter shall be construed to affect or modify any treaty or other right of an Indian tribe.
[Northwest Power Act, §10(e), 94 Stat. 2735.]

Reservation

839g(f). Reservation of electric power for Montana; Hungry Horse and Libby Dams and Reservoirs

The reservation under law of electric power primarily for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State is hereby affirmed. Such reservation shall also apply to 50 per centum of any electric power produced at Libby Reregulating Dam if built. Electric power so reserved shall be sold at the rate or rates set pursuant to section 839e of this Title.
[Northwest Power Act, §10(f), 94 Stat. 2735.]

839g(g). Rights of States to prohibit recovery of resource construction costs through retail rates

Nothing in this chapter shall be construed to affect or modify the right of any State to prohibit utilities regulated by the appropriate State regulatory body from recovering, through their retail rates, costs during any period of resource construction.

[Northwest Power Act, §10(g), 94 Stat. 2735.]

839g(h). Water appropriations

Water appropriations

Nothing in this chapter shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this chapter of any plan or program adopted pursuant to the chapter (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

[Northwest Power Act, §10(h), 94 Stat. 2735.]

839g(i). Existing Federal licenses, permits, and certificates

Nothing in this chapter shall be construed to affect the validity of any existing license, permit, or certificate issued by any Federal agency pursuant to any other Federal law.

[Northwest Power Act, §10(i), 94 Stat. 2735.]

839h. Separability of provisions

Severability

If any provision of section 839b(a) through (c) of this title or any other provision of this chapter or the application thereof to any person, State, Indian tribe, entity, or circumstance is held invalid, neither the remainder of section 839b of this Title or any other provisions of this chapter, nor the application of such provisions to other persons, States, Indian tribes, entities, or circumstances, shall be affected thereby.

[Northwest Power Act, §12, 94 Stat. 2735.]

LEGISLATIVE HISTORY FOR

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

Dates of Consideration and Passage

Senate August 3, 1979; November 19, 1980

House November 17, 1980

SENATE REPORT (Energy and Natural Resources Committee) No. 96-272

July 30, 1979 [To accompany S. 885]

HOUSE REPORT (Interstate and Foreign Commerce Committee) No. 96-976(I)

May 15, 1980 [To accompany S. 885]

HOUSE REPORT (Interior and Insular Affairs Committee) No. 976(II)

Sept. 16, 1980 [To accompany S. 885]

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