The Pacific Northwest Electric Power Planning And Conservation Act—Solution For A Regional Dilemma

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I. INTRODUCTION

For the past four decades, the Bonneville Power Administration (BPA) has played a singular and powerful role in developing the Northwest regional electric power system, and indirectly in the regional economy that system supports. The federal government’s decision during the first half of this century to develop multi-purpose water resource projects led to the construction of many dams, most of them in the Western United States, most built since the mid-1930’s, and most including hydroelectric generation.

Congress has designated BPA as the marketing agent for power and energy produced at these federal dams in the Northwest, and recently authorized BPA to serve also as marketing agent for certain non-federal power resources, most of which are still under construction. As a complement to its marketing role,

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1. Outside the Tennessee Valley, which is provided bulk power by the Tennessee Valley Authority, a federal corporation pursuant to the Tennessee Valley Authority Act of 1933, 16 U.S.C. §§ 831-831dd (1976 & Supp. III 1979), either the Army Corps of Engineers or the Bureau of Reclamation (now the Water and Power Resources Service) constructed federal multipurpose dams. The Alaska Power Administration, Bonneville Power Administration (BPA), Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration, all agencies of the Department of Energy, market energy from these dams. See note 3 infra.

2. BPA formerly was an agency of the Department of the Interior but is now part of the Department of Energy. See 42 U.S.C. § 7152(a)(1)(D) (Supp. II 1978).


BPA has constructed and operates a sophisticated and complex regional transmission grid that is one of the world's best.\(^5\) Since the federal government constructed the Bonneville and Grand Coulee dams in the 1930's, energy from the Federal Columbia River Power System has been available at low cost and in ample quantities. Oil, natural gas, and coal indigenous to other regions are almost nonexistent in the Northwest. Consequently, the region is much more dependent on electric energy than the United States as a whole. The average Northwest consumer uses twice as much electric energy as consumers in the nation as a whole; however, Northwesterners use much less of other forms of energy. Indeed, per capita consumption of all forms of energy in the Northwest is slightly less than the national average.

II. THE NEED FOR A REGIONAL PLANNING MECHANISM

As we enter the 1980's, fundamental changes have occurred. Historically, BPA has had sufficient resources to sell power to any utility or other customer in the region. Until recently, finding markets for the abundant low-cost federal power was a perennial problem. However, the era of abundance has abruptly ended. The entire region now faces substantial electric energy deficits for the foreseeable future.\(^6\)

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5. In 1974, Congress granted BPA the right to issue bonds to finance transmission improvements and for other purposes. Federal Columbia River Transmission System Act, Pub. L. No. 93-454, § 13, 88 Stat. 1376 (codified at 16 U.S.C. § 838k (1976)). Largely because of BPA's preeminent role as a power marketing and transmission agency, a cohesive, integrated power supply system large enough to construct efficient units and realize operating efficiencies has evolved in the Northwest region. For a general discussion of system size, electric transmission development and their impact on power pooling efficiencies, see S. BREYER & P. MACAVOY, ENERGY REGULATION BY THE FEDERAL POWER COMMISSION 106, 107 (1974); Marritz & Culp, Governmental Impediments to Electric System Efficiency Through Integration, in 2 NATIONAL POWER GRID STUDY 332, 333 (1979).

Since 1973, the Bonneville Power Administration has been unable to sell any firm power to private utilities. Beginning on July 1, 1983, BPA will have insufficient resources to supply all the needs of its present publicly-owned utility customers with “preference” rights under the Bonneville Project Act. It will terminate service to direct-service industrial customers (DSI’s) as their present contracts expire and each DSI will have to seek alternate service, probably through a nearby utility.7

As existing DSI and public agency power sales contracts expire, BPA must “allocate” all of the power from those contracts in accordance with the “preference clause” among public bodies and cooperatives that want a share of it.8 Each preference customer will receive a portion of the federal resources, but not enough to meet all its requirements. Under present law, BPA has no authority to secure sufficient power resources to eliminate the need for allocation. The allocation process, which has already begun, is likely to be lengthy and contentious.

Given the enormous economic value of the federal hydro resource in the Northwest, someone almost certainly will challenge the final allocation policy in the federal courts. Neither this litigation, nor its unknown outcome, will be conducive to the cooperation and certainty essential to planning and operating an interdependent bulk power industry. The formation of additional public agency customers seeking the federal system’s economic benefits, service requests to utilities from present DSI’s, the growing overall regional shortage of electric power capacity, and the lack of any effective regionally financed and coordinated conservation program will further complicate the allocation process.

The Northwest needs a regional mechanism for planning and developing its electric energy future. It must be a mecha-

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7. Because of a large, long-term surplus of electric energy from federal projects in the Northwest, BPA was able to sell energy surplus to the needs of preference customers to investor-owned utilities (IOU’s) and direct service industrial customers (DSI’s), most of them producers of aluminum ingot. BPA terminated firm energy sales to IOU’s in 1973 under the five-year notice of withdrawal provisions. See 16 U.S.C. § 832(d)(a) (1976). Contracts with DSI’s are not subject to these withdrawal provisions, but BPA will not renew them when they expire between 1981 and 1991. See 44 Fed. Reg. 57,824 (1979).

8. The Bonneville Project Act of 1937 requires that “the administrator at all times, in disposing of electric energy . . . , give preference and priority to public bodies and cooperatives.” 16 U.S.C. § 832a(a) (1976). Under this authority BPA sells firm power to municipalities, rural electric cooperatives, and public power districts in Washington, Oregon, Idaho, and Montana.
nism assuring early public and governmental involvement from throughout the region. The present system simply does not permit such regionally coordinated planning. Too often public involvement begins at after-the-fact licensing and siting hearings that are adversary in nature and, consequently, an inefficient way to reach timely and considered planning decisions. Early public involvement would provide agreement on power needs and the best means of meeting them before specific resource planning begins.

Northwest utilities presently operate as an integrated regional utility system. The entire region will suffer if the integrity and reliability of any major part of that system is threatened. No class of customer or consumer would be immune from the effects of shortages and chaotic utility planning. These general problems have some specific and immediate implications for BPA customer groups.

III. THE IMPLICATIONS OF INACTION

A. Existing Preference Customers

The vast majority of BPA's 115 existing preference customers now receive 100% of their power supply from BPA. Exactly how these utilities will be able to provide additional resources to meet their responsibility to serve growing loads is unclear. If BPA eventually adopts its proposed allocation policy, public agencies would receive a base allocation, but would not know from year to year how much federal power they might receive. Meanwhile, forty-three preference customer contracts expire between 1984 and 1986, which is much too soon for those utilities to plan and acquire additional resources, even if they were sure what their additional unmet requirements might be.

B. New Preference Customers

Some areas now served by private utilities will almost certainly try to form new public agencies so they can receive the economic benefits of the federal system. If BPA had sufficient power to serve additional preference customers this development would not complicate the planning process, but under present conditions such systems would have no assurance of a power supply. New preference customer formation may or may not be desirable in itself; but without sufficient power to meet all potential demands, such a development would reduce each pub-
lic agency's relative share of the federal power supply, and increase the complexity and contentiousness of the BPA allocation process. The establishment of new preference customers would not result in the production or conservation of any additional kilowatts, but it would add to the Northwest's difficulties in making rational utility planning decisions.

C. Direct Service Industries

Direct service industries are of regional and national economic significance. Most notable among the DSI customers are aluminum reduction mills producing one-third of the nation's primary aluminum. Aluminum is increasingly important in national efforts to improve automobile fuel efficiency and provide other modes of transportation. It also is significant in national defense programs. DSI's provide thousands of jobs in the Northwest and historically have reduced utility rates in the region by providing operating reserves and a market for surplus power. However, BPA will be unable to continue serving DSI's as their contracts expire over the next decade. Consequently, DSI's will have to apply to utilities for service, or attempt to develop or acquire their own generating resources. The DSI's will argue that they have legal rights to service under state laws, and ultimately they will likely prevail; however, courts may take years to determine which utility will serve which DSI and at what price. The delay while the courts made these decisions would subject thousands of jobs, large amounts of plant and equipment, and nationally important economic productivity to years of uncertainty. Companies would delay decisions about plant modernization, which could produce significant conservation savings in this energy intensive industry, until the courts clearly resolved these questions.

By accident of history and geography, eighty-five per cent of the DSI loads are located in or adjacent to public agency service areas. Many DSI's will apply to preference customers for a power supply when their BPA contracts expire and most of those preference customers will, in turn, seek additional power from BPA to meet their suddenly increased loads. Like the formation of new preference customers, large increases in existing public agencies' loads will not create additional power for BPA to distribute—it will simply increase preference customer demand for the limited existing supply and further complicate the allocation process and utility planning in general.
D. Private Utilities

Investor-owned utilities face the same overall power supply problems confronting the entire region. Forecasters predict that the 1980's will be a decade of shortages and curtailments in any year of poor water conditions in the Northwest.

A more immediate problem for the private utilities, however, is that their rates are becoming significantly higher than public agency rates. In some areas private rates are two or three times higher than public rates. The most important reason for this disparity is that private utilities have lost their ready access to firm BPA hydropower and have had to cross the "thermal threshold" to high-cost coal and nuclear generation years before public agencies have had to do so. The privates lost their firm BPA supply in 1973 when BPA reclaimed it to serve the needs of public bodies and cooperatives as the Bonneville Act's preference clause requires.

Public agencies are beginning to experience similar cost increases as they blend the costs of their own thermal resources with the large but fixed pool of federal hydropower. Even if the existing public agencies could retain their exclusive use of the federal system, public agency rates would eventually catch up with private utility rates. However, the enormous economic advantage the federal system provides to existing public agencies is the very reason why the formation of new public agencies out of private utility service areas will accelerate the catch-up process. This poses a direct threat to the continued existence of investor-owned utilities. But, in the absence of a legislative settlement like that in the Pacific Northwest Electric Power Planning and Conservation Act, this process would continue and private utility customers would probably reap a net benefit despite the private utilities' demise, because existing lower cost resources would stretch further to serve remaining consumers.

Public agency customers could face serious economic disadvantages, however. Compensation for the new publics' acquisition of private utility properties would be expensive. Most DSI's would seek federal system service through public agencies, thereby reducing federal hydropower availability. The legal battle over every available scrap of federal power would be on, mak-

ing planning and sensible economic decision-making almost impossible. The disputes and uncertainty would seriously dilute the economic benefits of the federal system for existing preference customers and greatly reduce the net amount of available power.

E. All Customer Groups

In addition to legal contests of the allocation process itself, there would likely be condemnation suits, litigation involving new preference customer formation, "duty to serve" suits between large industries and utilities trying to avoid serving them, and suits to block financing of any significant resource on the basis that the sponsor may not need the resource. The litigation would create turmoil throughout the Northwest economy, which is extraordinarily dependent on electric energy.

IV. Needed: Rules for Orderly Planning

What the Pacific Northwest needs most are some rules to play by: rules for allocation, rules for planning and conservation, and rules enabling the region to efficiently integrate new resources, including conservation, with the hydro system. Entities other than the federal government will likely finance and own most future resources, but the region must carefully plan and operationally integrate them with existing resources—including those of the federal government.

The Pacific Northwest Electric Power Planning and Conservation Act,10 which I cosponsored in the Senate with Senators Magnuson, Church, Hatfield, McClure, and Packwood, would guide the Northwest during this transition period in three important respects:

A. Allocation of Federal Hydropower

Instead of allowing the region to fall into lengthy wrangling over how much power BPA should allocate to which customer, the bill would legislatively allocate power supplies and costs.

B. Cooperative Regional Planning

The bill would establish a public, region-wide planning pro-

10. See S. 885, supra note 9.
cess that would guide and control BPA’s exercise of purchase authority within the confines of a regional plan. A Regional Planning Council, in which the Northwest states would participate directly, would develop the plan. Local governments, utilities, interested citizens and groups would all have access to the Council and could participate in its proceedings and the development of its plan.

C. Conservation Priorities

The bill would make conservation the highest priority resource. Renewable resources also would have priority over conventional resources. Such resources frequently have environmental advantages and avoid consumption of depletable fuels.

V. BPA Purchase Authority: Key to a Legislative Solution

The Pacific Northwest Electric Power Planning and Conservation Act is an enormously complex bill dealing with the full range of utility planning issues confronting the Northwest. Despite its complexity, the nub of the bill is a relatively simple concept called “purchase authority.” This concept underlies the solution to the outstanding utility planning problems described above. Not only does purchase authority address these problems, but in the more than three years the Senate has considered regional power legislation, it is the only means we have found to be both workable and effective.

“Purchase authority” would authorize the Bonneville Power Administration to acquire additional non-federal resources, including conservation. BPA could then enter into new contracts with all Northwest customers to serve their needs at rates specified in the bill. Purchase authority would enable BPA to eliminate the present insufficiency and avert the allocation battle over the limited federal resources. The ways in which BPA would exercise purchase authority and the possible solutions it could provide for the region’s power planning problems include:

A. Purchase Authority and Allocation

Under existing law, BPA cannot avoid an administrative or judicial power allocation because the present supply is finite and there is little prospect for adding more power to the system. BPA has sold all its firm power to preference customers and
direct-service industrial consumers. Those contracts begin to expire next year, and all will expire by 1995. The proposed allocation policy that BPA published in October, 1979, cannot become final for almost two years, and then it would be subject to challenge in the federal courts. Although the Ninth Circuit precluded judicial review of one preference customer allocation in _Santa Clara v. Andrus_, a similar result would not necessarily obtain in the Pacific Northwest. The federal courts might find a variety of bases to review the allocation. The crucial difficulty an administrative or judicial allocation poses is that it might not become final for perhaps a decade.

Because most of BPA's 115 preference customers presently receive their total supply from BPA, circumstances and legal uncertainties would prevent these systems from coherently planning to meet their future requirements. They would not know how many new preference systems, like Oregon's proposed Domestic and Rural Power Authority, might form and apply to BPA for service or how many direct service industrial customers would turn to preference customers for service when their BPA contracts expire. Also, pending the outcome of the allocation proceeding and other lawsuits, they would not know the results of the many contested issues. Such a situation is intolerable with the region confronting possible serious power deficits each year in the 1980's.

The purchase authority and allocation provisions of the bill assure BPA an adequate power supply to meet its customers' requirements, thus eliminating the need for the region to endure what one Northwest governor called a "regional civil war" over the allocation of Bonneville power. The bill would resolve the


12. 572 F.2d 660 (9th Cir.), cert. denied, 439 U.S. 859 (1978). _Santa Clara_ dealt with the allocation of federally generated hydroelectric power marketed by the Bureau of Reclamation in California. The Ninth Circuit held that the federal marketing law in question provided no statutory standard for the court to apply on review, _id._ at 668, aside from the clear mandate that sales be made with preference customers. _Id._ at 670. The Bonneville Act, however, provides specific guidelines for preference customer formation and financing. 16 U.S.C. § 832c(c)-(d) (1976). The statute specifies that "the general public, and particularly, . . . domestic and rural consumers" should benefit from federal power sales, _id._ § 832c(a), and contains antimonopoly language which might well be the basis of challenges to an administrative allocation, _see id._ § 832a(b).

allocation problem by imposing a legislated "peace treaty" to govern the supply and cost entitlement of BPA's customers. It would direct BPA to enter into requirements contracts with its preference customers, direct service industrial customers and investor-owned utilities, as well as with federal agencies, to the extent these systems elected to contract with BPA for their supply.\textsuperscript{14} It spells out the entitlements of individual BPA customers in the event BPA does not have sufficient power to serve all its customers' needs,\textsuperscript{18} thus affording utilities and others a predictable planning base. The bill also sets forth a detailed allocation of various costs to different BPA rates.\textsuperscript{16} It would give customer groups a basis for computing their rates. Public agencies and residential and small farm customers of private utilities would be the favored customer class. They could use up the low-cost federal system power before using higher cost power.

The purchase authority provision\textsuperscript{17} would permit BPA to sign these requirements contracts, and to avoid allocating the shortage it now contemplates. In addition, BPA could acquire the production capability of specific conservation or resource development measures. With the ability to acquire additional nonfederal resources, BPA could contract to supply all its customers' requirements, thereby avoiding the problems associated with imminent contract expiration dates and the need to allocate.

The legal authority to acquire resources will not of itself be enough to actually develop resources. But the additional provisions set forth in the bill, such as the resource acquisition procedures,\textsuperscript{18} and preconstruction financing of resource\textsuperscript{19} costs, should assist in their development. The cooperative planning process the bill contemplates includes interaction between BPA and the Pacific Northwest states on the Regional Planning Council.\textsuperscript{20}

\begin{footnotesize}
\begin{enumerate}
\item See S. 885, supra note 9, § 7; accord, H.R. 8157, supra note 9, §§ 5(b), (d).
\item See S. 885, supra note 9, §§ 5(a), (c); accord, H.R. 8157, supra note 9, §§ 5(a)-(b), (d)-(e).
\item "‘Resource’ means (1) electric power, including the actual or planned electric power capability of generating facilities or (2) actual or planned load reduction resulting from direct application of a renewable energy resource, or from a conservation measure." S. 885, supra note 9, § 3(p); accord, H.R. 8157, supra note 9, § 3(19).
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That interaction should provide a useful early warning system that would enlist the states' early cooperation. It would not, however, preempt their siting, or other authorities.²¹

Although purchase authority resolves the allocation problem, it was necessary for Congress to provide specific protections for public body and cooperative customer systems, so they could retain the federal system benefits to which they are entitled under the Bonneville Project Act's preference clause. BPA's Northwest preference customers, and other preference customer groups throughout the country, insisted on retaining their existing preference rights. Accordingly, the bill clearly reserves these supply²² and economic²³ benefits for existing preference customers. It provides, in effect, that preference systems will pay no more for power under the proposed legislation than they would have paid if the legislation were never passed.²⁴

The bill provides for rate parity between the residential customers of public and private utilities. It accomplishes this rate equivalency through two provisions: (1) an exchange of power on behalf of residential customers,²⁵ and (2) a regional rate, based on the lowest cost blocks of power, available to both preference customers and residential consumers of all utilities participating in the exchange.²⁶

The circumstances permitting preference customers to retain all their economic and supply benefits, while making essentially equivalent economic benefits available to the residential consumers of any utility, are unique to the Northwest. They involve (1) the presence of the enormous DSI load Bonneville now serves, (2) the probability that without the regional bill

variation from the Senate bill.

21. S. 885, supra note 9, § 10(a); accord, H.R. 8157, supra note 9, § 10(a)(3).
22. S. 885, supra note 9, § 5(a); accord, H.R. 8157, supra note 9, §§ 5(a)-(b).
23. S. 885, supra note 9, § 7(b); accord, H.R. 8157, supra note 9, § 7(b).
24. See S. 885, supra note 9, § 7(b); accord, H.R. 8157, supra note 9, § 7(b). The rate limit criteria of § 7(b) assume: (1) preference customers would serve DSI loads in or adjacent to their service area during the applicable period; (2) preference customers would receive all federal power not otherwise committed; (3) there is no residential utility exchange under Section 5(b)(2); (4) the remaining general requirements of preference customers other than requirements met by available federal base system resources were met first, with the least expensive resources owned or purchased by public bodies and cooperatives and second, with other resources acquired by BPA at the average cost of acquisition; and (5) preference customers do not achieve quantifiable money savings under the bill resulting from reduced financing costs and reserve benefits. Id.; accord, S. 885, supra note 9, § 7(b).
25. See S. 885, supra note 9, § 5(b); accord, H.R. 8157, supra note 9, § 5(c).
26. See S. 885, supra note 9, § 5(b); accord, H.R. 8157, supra note 9, § 7(b).
DSI's would turn to their local preference utility for service when their BPA contracts expire, and (3) the DSIs' willingness to pay more for power if they can be sure of a continued, reasonably priced supply. In essence, the DSIs' higher rates would make lower rates possible for residential customers.

If BPA remained unable to enter into contracts with the private utilities and DSI's, the rate parity compromise described above would be impossible. Purchase authority would return BPA to sufficiency and make such contracts possible. With it, the DSI's would give up their present contracts and low-cost power in return for an assurance of long-term supply at higher costs; private utility customers would benefit from the low-cost power freed through this exchange.

The bill's allocation scheme would make it unnecessary for new preference systems to form, if their formation were only to secure low-cost federal power for residential and small farm consumers. But it clearly assures essentially equivalent treatment to any new preference systems that do form.27 It would also provide the additional economic benefits of lower cost commercial and industrial power for new preference systems. By contrast, present law provides no assurance of an available BPA supply for new public systems nor is one possible without enlarging present supply through purchase authority.

B. Purchase Authority and Regional Power Planning

In addition to granting BPA purchase authority the proposed Pacific Northwest Electric Power Planning and Conservation Act would establish statutory and administrative controls over the exercise of that power. Overseeing BPA's acquisitions would be a regional "publicly accountable" body. The bill's constraints on resource acquisition are (1) that BPA could purchase only those resources its customers required, and (2) that acquired resources would have to be cost-effective and consistent with a regionally-developed plan, or if no plan exists they must be consistent with the bill's resource priorities and cost-effectiveness criteria28 and Congressionally approved. Major

27. See S. 885, supra note 9, § 5(a); accord, H.R. 8157, supra note 9, § 5(b).
28. S. 885, supra note 9, §§ 4(e), 6(b); accord, H.R. 8157, supra note 9, §§ 4(e), 6(b). Section 4(e) is the bill's basic priority provision: "The plan shall give the following priority to resources: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat and generating resources of high fuel conversion efficiency; and fourth, to all other resources: Provided, that all such resources shall be cost
resource acquisitions must also comply with rigorous procedures, and would be subject to judicial review.\textsuperscript{29}

It is not unusual for Congress to subject federal agency actions to constraints exercised by a nonfederal body. Courts have on many occasions upheld such schemes as constitutional.\textsuperscript{30} Under the Senate bill, the Administrator could only acquire resources that were consistent with a plan developed by a Regional Council. Four of the five Council members would be representatives of the Pacific Northwest states. To adequately protect the federal interest, the Senate bill would require an affirmative vote by the BPA Administrator plus at least two other Council members for adoption of a regional plan.\textsuperscript{31} The Council’s composition and functions under the bill closely parallel a proposal by the four Northwest governors.\textsuperscript{32}

The states now have legal authority to determine future power requirements and control facility licensing based on the need for power and alternatives to the proposed facility. These are essentially the kind of determinations the Regional Council would make. But the bill also would create new federal interests and obligations under the power purchase and sale authorities. The purchase authority would create such a mixture of federal and nonfederal interests as to almost require a regional planning council anyway. Absent the proposed BPA purchase and contracting authority, there would be scant reason for federal intervention in the region’s future power planning; likewise, there would be little need for the states to seek control over BPA activities.

The Council would be publicly accountable because the

effective and feasible.” S. 885, supra note 9, § 4(e); accord, H.R. 8157, supra note 9, § 4(e)(1).

29. S. 885, supra note 9, § 9(e); accord, H.R. 8157, supra note 9, § 9(e).


31. S. 885, supra note 9, § 4(b); cf. H.R. 8157, supra note 9, §§ 4(a)-(c) (BPA Administrator not a member of the Council, and a majority, including at least one member from each state, or at least six members, must vote for a plan or amendment).

respective governors would appoint and remove the state representatives pursuant to applicable state laws. To more fully involve the general public in planning, the Council would hold public hearings in each state during development of the regional plan and substantial revisions thereto. The bill would require the Administrator and Council to conduct programs to inform and solicit the views of the general public and BPA’s customers. The regional plan, and other significant actions of the Council and the Administrator, also would be subject to judicial review.

The Senate bill also would grant mandatory billing credits as a sort of counterbalance to BPA’s purchase authority. Billing credits would be available to BPA customers for (1) conservation actions taken by them or political jurisdictions they serve, which exceed the regional plan’s requirements, and (2) renewable resource or multipurpose projects they undertake and retain for their use, so as to reduce their need for BPA power. This provision should encourage local initiative by those systems that do not wish to depend entirely on BPA for their future supply. It should also provide incentive for systems to develop their special local conservation or resource opportunities. The bill would permit, but not require, credits for resources other than conservation, renewable, and multipurpose projects.

Purchase authority would permit BPA to acquire the planned capability of projects not yet constructed, as well as electric power that is actually available. The bill adopts this definition of resources because, in almost all cases, they would be new resources not yet committed to particular uses. Once a project sponsor has borne the financial burdens and risks of the ten to twelve years necessary to bring a major project on line it will have committed the output by contract and by necessity to its own loads. Similarly, if BPA requires an additional resource to meet its regional customers’ needs, it must acquire it before its sponsors commit it to serve other loads.

33. S. 885, supra note 9, § 4(d); H.R. 8157, supra note 9, § 4(d)(1).
34. S. 885, supra note 9, § 4(g); accord, H.R. 8157, supra note 9, § 4(g) (adds the requirement that the Council and Administrator consult with BPA clients and with state and local governments).
35. S. 885, supra note 9, § 9(e); accord, H.R. 8157, supra note 9, § 9(e).
36. S. 885, supra note 9, § 6(h); accord, H.R. 8157, supra note 9, § 6(h)(1) (making credits mandatory for conventional resources as well as conservation subject to certain criteria, standards, and guidelines).
According to standard industry practice, systems acquiring new resource capability bear the risk that the completed project may not operate satisfactorily. Investors who finance such projects would not bear "dry hole" risks for the limited return they receive. The regional bill would not change the normal distribution of risks; it merely would allocate the principal "dry hole" risk of a BPA-purchased resource to all regional beneficiaries of the project; that is, to all of BPA's customers. Of course, retail consumers ultimately pay the cost of "dry holes" one way or another; a rate-making body's failure to allow current recovery of dry hole costs in rates would precipitate sharp increases in the cost of new utility financing while merely delaying the rate increases to consumers.

The bill's allocation of dry hole risks is necessary because although individual utilities or groups of utilities build resources, all customers in the region use them. No utility board or public service commission could prudently permit one utility or group of utilities to bear all the risks of building a resource when they had committed the resource's benefits to all of BPA's customers by purchase contract. Such an allocation of risks and benefits would be unfair and it is doubtful that many utilities would sponsor a new plant on those terms.

The risk sharing aspect of purchase authority would not give utility investors any special benefit. To the extent that BPA purchase authority increased investor security, the financial marketplace would reflect a lower investor return. Indeed, this aspect of the legislation, by reducing financing costs, might do more to reduce utility costs to Northwest consumers by reducing financing charges than any other provision of the bill. Because the utility business is so capital intensive, percentage points saved on interest charges can amount to billions of dollars. Consumers would save these charges, which would otherwise appear in utility bills.

Existing law would grant the Federal Energy Regulatory Commission (FERC) authority to review and approve BPA purchase contracts. With the assistance of state regulatory commissions, the FERC could establish the costs utilities could pass on to BPA under such contracts. The U.S. Treasury

38. Id.
would not bear any "dry hole" risks,\textsuperscript{39} and there would be no other federal subsidy for BPA acquisitions. BPA's customers would bear all risks and share all benefits.

Finally, a point almost unrecognized by critics of the risk sharing aspect of purchase authority: BPA purchases would most benefit development of renewable and other unconventional resources. Investors see wind, solar, geothermal, and biomass resources as having greater "dry hole" risks than conventional resources. BPA purchases would increase the availability of capital for such projects and significantly reduce the cost of that capital.

\section*{C. Purchase Authority and Conservation}

BPA could undertake a significant conservation program without comprehensive legislation, such as the Pacific Northwest Electric Power Planning and Conservation Act, if Congress authorized it to do so. However, such a conservation program could not be as effective without purchase authority. BPA's proposed allocation policy, if the regional bill does not pass, would require its customer systems to realize energy savings of fifteen per cent by a target date or demonstrate that they have attempted to achieve such savings to the best of their ability.\textsuperscript{40} Failing either of these, BPA would reduce customers' potential allocations by approximately fifteen per cent.\textsuperscript{41} If BPA adopted this requirement as part of the final allocation policy, it would no doubt yield some energy savings. BPA could also seek authority to use the Bonneville Fund under its transmission and self-financing authority to finance conservation activities, as a recent House-passed bill proposed.\textsuperscript{42} But these measures would do only part of the job. Only comprehensive legislation, including purchase authority, can provide three crucial elements.

First, only a comprehensive bill would create a regional resource planning process that would treat conservation as "supply" and place it first in priority for acquisition.\textsuperscript{43} Such a program of planned regional conservation, financially supported by BPA purchase, would be impossible without comprehensive leg-

\textsuperscript{39} S. 885, supra note 9, § 6(k); accord, H.R. 8157, supra note 9, § 6(j).
\textsuperscript{40} See 44 Fed. Reg. 57,824 (1979).
\textsuperscript{41} Id.
\textsuperscript{43} See, e.g., S. 885, supra note 9, §§ 3(c), 4(e)(1), 6(a), 6(b).
islation. The Office of Technology Assessment (OTA) called the bill's basic approach, which treats conservation as supply, "the most important new idea regarding power and capacity questions of recent years."\(^4\) Comparing the proposed Pacific Northwest Electric Power Planning and Conservation Act with utility planning programs in other parts of the country, including the Tennessee Valley Authority, the OTA report concluded the Northwest power bill "would seem a much stronger lever to encourage conservation choices in the Northwest"\(^5\) and that "[o]ther regional electric associations, i.e., regional power planning and power pooling areas, lack authority to undertake similar initiatives."\(^6\)

Second, the bill would make BPA legally responsible for meeting its contract requirements. Utilities that now are hesitant about their ability to rely individually on conservation as a planned resource could undertake required conservation activities relatively secure that they would receive sufficient power whether or not they meet their individual goals. It is far more likely that the total BPA system could meet conservation goals than could individual utilities. In this sense, as in the conventional resource supply sense, purchase authority and BPA's expanded marketing role would make a region-wide risk sharing pool possible, thus reducing the risk that a system aggressively pursuing conservation savings might get caught short. As previously noted, the credit provision\(^7\) would directly reward extraordinary customer conservation efforts.

Absent an assurance of supply, which BPA requirements contracts would provide, public utilities actually have an incentive not to conserve, at least until July 1, 1983, when BPA's proposed allocation policy\(^8\) would become effective. Current public agency contracts restrict their future BPA supply to an amount roughly equivalent to their requirements on July 1, 1983, or, in many cases, significantly less. Therefore, each utility has an interest in maximizing demand as of that date.

\(^5\) Id. at 2.
\(^6\) Id.
\(^7\) S. 885, supra note 9, § 6(h); accord, H.R. 8157, supra note 9, § 6(h) (making credits mandatory for conventional resources as well as conservation).
\(^8\) See text accompanying notes 8-13 supra.
The third element that only comprehensive legislation can provide is the novel, but strong, concept of model regional conservation standards. If states or political subdivisions did not implement conservation standards, BPA could enforce surcharges through its sales contracts. The bill would complement this conservation "stick" with financial incentive "carrots," the requirements contracts, and the marketing scheme, all of which purchase authority would make possible.

VII. Conclusion

As the nation grows ever more vulnerable to spiraling cost increases for imported oil and its uncertain supply, we must seek to transcend our economic dependence on oil and increase our use of indigenous resources such as water, wind, solar, coal, and nuclear.

The Pacific Northwest is less oil dependent than other regions because it is more dependent on electric energy. The abundant, low-cost hydropower that has fueled the Northwest economy cannot continue to satisfy all its growth needs. But careful growth management, including aggressive, well-financed, and planned conservation, can stretch out the supply of hydropower and keep electric costs competitive. When growth exceeds the region's ability to "mine" power through conservation, careful planning can assure that the region selects the lowest cost alternative resources.

Planning is the essence of the proposed Pacific Northwest Electric Power Planning and Conservation Act. The impending "regional war" over allocation is the greatest present impediment to planning. The bill would avert this crisis by expanding BPA's supply of available power. The power and cost allocation features, agreed upon by every power interest in the region and every Northwest governor, would be dispositive: in effect, a legislative "peace treaty."

Bonneville Power Administration purchase authority is the nub of the bill and the mechanism that would make it possible for the region to resolve its supply and allocation problems. Purchase authority would also lend a significant region-wide impetus to conservation that the region could not achieve in any other way. Finally, purchase authority would make possible a

49. E.g., S. 885, supra note 9, § 6(a) (conservation purchase); id. § 8(b) (conservation financing); id. § 6(h) (conservation credits).
timely, new federal-state marriage in regional electric power planning. I have great hopes that the Regional Council will move the Northwest toward open, broadly-based planning to chart its energy future, and away from reliance on expensive, adversary proceedings alone to control development.