



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**Office of General Counsel, GCNW**  
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January 19, 1988

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Walt Pollock  
 Power Manager  
 Bonneville Power Administration  
 P.O. Box 3621  
 Portland, OR 97208

RE: Revised Draft Intertie  
 Access Policy (December 15, 1987)

Dear Mr. Pollock:

At recent public meetings to discuss the revised draft Intertie Access Policy (IAP), some of the region's utilities questioned the policy's fish and wildlife provisions in light of mandatory power purchases under the Public Utility Regulatory Policies Act (PURPA). A review of the current status of PURPA reveals that the utilities' concerns are largely exaggerated given the many hurdles that face a hydroelectric developer seeking PURPA benefits.

In October 1986, PURPA was substantially revised and narrowed by the Electric Consumer Protection Act (ECPA), Pub. L. No. 99-495. The categories of hydroelectric projects qualifying for mandatory purchase under PURPA are now severely restricted. First, benefits can still be sought for new hydroelectric development at existing federal dams, an extremely limited class of projects. Second, benefits can be sought for a project using a new dam or diversion only if it meets four protective conditions: (1) the project has no substantial adverse effect on the environment, including recreation and water quality; (2) the project is not located on an existing or potential state or national wild and scenic river segment; (3) the project is not located on a river segment determined by a state to "possess unique natural, recreational, cultural, or scenic attributes" that would be affected by hydroelectric development; and (4) the project is subject to conditions set by fish and wildlife agencies to prevent loss or damage to fish wildlife resources. Needless to say, it will be difficult for a hydroelectric project located in a protected area to meet these conditions, given the environmental rationale underlying protected area designations.

ECPA's new limitations apply to all licenses and exemptions sought or issued after October, 1986. However, even projects that meet these limitations are subject to a moratorium. ECPA requires the Federal Energy Regulatory Commission (FERC) to prepare a report on whether PURPA benefits should apply to any project using new dams or diversions. The law imposes a

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moratorium on PURPA benefits for such projects that extends until the end of the second session after FERC submits the report to Congress. The report is currently in draft form and has just been made available for public comment.

There are only three exceptions to ECPA's new environmental limitations and to the moratorium. PURPA benefits may still be obtained (1) if a hydroelectric license application (but not a preliminary permit application) was accepted by FERC before October 1986; (2) if a hydroelectric license application (but not a preliminary permit application) was submitted before October 1986, is accepted by FERC within three years, and falls outside of the protected river segments described above; or (3) a license application was submitted after October 1986, satisfies the first three conditions described above, and the applicant expended substantial monetary resources prior to October 1986. Considering that more than three quarters of pending applications in the region are for preliminary permits, the first two exceptions are not applicable to most projects covered by the IAP. And only one project in the region has requested an exception under the third exception relating to monetary resources.

Because of the successive environmental and procedural hurdles posed by ECPA, few hydroelectric projects in the region will remain eligible for PURPA benefits. Thus, the region's utilities will only be required to make mandatory power purchases under PURPA in unusual cases.

Of course, the likelihood of mandatory purchase under PURPA is even further reduced because "avoided costs" are now relatively low compared with the costs of new hydro development and construction. The provisions of the IAP, specifically the automatic decrement requirement, should help to ensure that avoided costs remain relatively low.

Under these circumstances, PURPA should pose no impediment to adoption of the revised IAP. Please feel free to circulate this letter for discussion purposes at your January 20, 1988 public meeting.

Sincerely,



F. Lorraine Bodi  
Staff Attorney

cc: Donna L. Geiger, Public Involvement Manager  
John Cameron, IAP Project Manager  
Merritt Tuttle, NMFS

bc: Rob Lothrop  
Ralph Cavanagh  
Rick Applegate  
John Volkman