

Department's program, financial and procurement personnel to evaluate proposals and administer contracts. These collections are used to exercise management oversight and control of the Department's management contractors operating the Department's major facilities and other contractors furnishing goods and services; (5) Respondents: 7,539; (6) Estimated Number of Burden Hours: 896,209.

**Statutory Authority:** Section 644 of the Department of Energy Organization Act, 42 U.S.C. 7254, and section 205(c) of the Federal Property and Administrative Services Act, 40 U.S.C. 486(c).

Issued in Washington, DC on February 1, 2008.

**Edward R. Simpson,**

*Director, Office of Procurement and Assistance Management.*

[FR Doc. E8-2341 Filed 2-7-08; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

#### 2007 Supplemental Wholesale Power Rate Adjustment Proceeding, Public Hearings, and Opportunities for Public Review and Comment

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of Proposed Wholesale Power Rates (Notice). *BPA File No.:* WP-07.

**SUMMARY:** The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. BPA is reopening its WP-07 wholesale power rate proceeding, which established power rates for Fiscal Years (FY) 2007-2009, in order to respond to recent decisions from the United States Court of Appeals for the Ninth Circuit (Ninth Circuit or Court) and to revise rates for FY 2009.

This 2007 Supplemental Wholesale Power Rate Adjustment Proceeding (WP-07 Supplemental Proceeding) responds to the Court's remand of BPA's WP-02 power rates for FY 2002-2006. This proceeding also responds to a

separate Court decision that found BPA's 2000 Residential Exchange Program (REP) Settlement Agreements (REP Settlement Agreements) contrary to law. In response, BPA proposes to determine the amounts of REP settlement costs improperly included in FY 2002-2008 power rates, recover those amounts from investor owned utility customers (IOUs) over time and return improperly included amounts to preference customers. The WP-07 Supplemental Proceeding also includes proposed revisions to BPA's *Section 7(b)(2) Legal Interpretation and Section 7(b)(2) Implementation Methodology*.

Persons that previously intervened in BPA's WP-07 Wholesale Power Rate Adjustment Proceeding automatically continue their party status in the WP-07 Supplemental Proceeding. Other persons wishing to become a formal party to the proceeding must file a petition to intervene, notifying BPA in writing of their intention to do so in conformance with the requirements stated in this Notice.

**DATES:** Petitions to intervene must be received no later than 5 p.m., Pacific Standard Time, on February 18, 2008. Non-party participants may make written comments between February 8, 2008, and May 5, 2008. Comments must be received by 5 p.m., Pacific Daylight Savings Time, on May 5, 2008, in order to be considered in the Supplemental Record of Decision (Supplemental ROD). (See Part III (A) for more information.)

**ADDRESSES:** Petitions to intervene should be directed to Robert Welsh, Hearing Clerk, LP-7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232 or by *e-mail to:* [wp07rate@bpa.gov](mailto:wp07rate@bpa.gov). In addition, a copy of the petition must be served concurrently on BPA's General Counsel and directed to Kurt R. Casad, LP-7, Office of General Counsel, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232 or by *e-mail to:* [krcasad@bpa.gov](mailto:krcasad@bpa.gov). See Part III (A) for more information.) Written comments by non-party participants must be received by 5 p.m. Pacific Daylight Savings Time, on May 5, 2008, in order to be considered in the Supplemental Record of Decision (Supplemental ROD). Written comments may be made as follows: In person at the field hearings (see schedule and locations in Part I of this Notice), online at BPA's Web site: <http://www.bpa.gov/comment>, or by mail to: BPA Public Affairs, DKE-7, P.O. Box 14428, Portland, OR 97293-4428. Please identify written or electronic comments as "WP-07 Supplemental Proceeding."

The Supplemental ROD will consider and address the comments received.

The WP-07 Supplemental Proceeding will begin with a prehearing conference at 9 a.m., Pacific Standard Time, on February 19, 2008, held in the BPA Rates Hearing Room, 2nd Floor, 911 NE 11th Avenue, Portland, OR. Due to increased security requirements, attendees should allow additional time to enter the building and complete the required screening process. Photo identification will be required for entry. BPA will release its 2007 Supplemental Wholesale Power Rate Proposal (WP-07 Supplemental Proposal) and supporting documents at the prehearing conference. Compact discs (CDs) containing the WP-07 Supplemental Proposal will be provided to the parties at the prehearing conference. The WP-07 Supplemental Proposal will also be available on BPA's Web site at <http://www.bpa.gov/corporate/ratecase>.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Heidi Helwig, Public Affairs Specialist, Public Affairs Office, DKE-7, P.O. Box 3621, Portland, OR 97208. Interested persons may also call 503-230-3458 or 1-800-622-4519 (toll-free)

Ms. Leslie M. Dimitman, Paralegal Specialist, Office of General Counsel, LP-7, P.O. Box 3621, Portland, OR 97208. Interested persons may also call Ms. Dimitman at (503) 230-5515, or the general BPA toll-free numbers 1-800-282-3713 (answered Monday through Friday 6:30 a.m. to 5 p.m.) or 1-866-879-2303 (answered by voicemail)

Information also may be obtained from:

Mr. Raymond D. Bliven, Power Rates Manager—PFR-6, P.O. Box 3621, Portland, OR 97208

Ms. Suzanne B. Cooper, Power Policy and Rates Manager—PF-6, P.O. Box 3621, Portland, OR 97208

Ms. Elizabeth Evans, Policy Analysis Manager—PFB-6, P.O. Box 3621, Portland, OR 97208

Mr. Garry Thompson, Manager, Eastern Power Business Area; Mr. Ken Hustad, Senior Customer Account Executive; Ms. Carol Hustad, Customer Account Executive; Mr. Michael Normandeau, Customer Account Executive, Eastern Power Business Area—PSE, 707 W. Main, Suite 500, Spokane, WA 99201

Mr. Scott Coe, Manager, Western Power Business Area; Mr. Charles Forman, Customer Account Executive; Ms. Claire Hobson, Customer Account Executive; Ms. Tina Ko, Customer Account Executive; Ms. Theresa Rockwood, Customer Account

Executive; Western Power Business Area—PSW—6, P.O. Box 3621, Portland, OR 97208

Mr. Larry King, Customer Account Executive, 2700 Overland, Burley, ID 83318

Mr. C. T. Beede, Customer Account Executive, P.O. Box 40, Big Arm, MT 59910

Mr. Dan Bloyer, Customer Account Executive, 1011 SW Emkay Drive, Suite 211, Bend, OR 97702

Mr. Larry Felton, Senior Account Executive, Kootenai Building, Room 215, N. Power Plant Loop, Richland, WA 99352-0968

Mr. Stuart Clarke, Senior Customer Account Executive; Mr. George Reich, Senior Customer Account Executive; Ms. Shannon Greene, Customer Account Executive; Ms. R. Kirsten Watts, Customer Account Executive; 909 First Avenue, Suite 380, Seattle, WA 98104-3636

#### SUPPLEMENTARY INFORMATION:

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- II. Policy Guidance and Scope of Hearing
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- IV. Summary of WP-07 Supplemental Proposal and Major Studies
- V. Section 7(b)(2) Legal Interpretation and Implementation Methodology
- VI. Summary of Proposal To Respond to the Court's Opinions Regarding BPA's 2000 REP Settlement Agreements, WP-02 Rates, and by Extension, WP-07 Rates
- VII. 2007 Supplemental Wholesale Power Rate Case Schedules (FY 2009) and 2007 Supplemental General Rate Schedule Provisions (FY 2009)

#### Part I—Introduction and Procedural Background

##### A. Overview and Background to This Rate Filing

BPA is proposing to conduct a WP-07 Supplemental Proceeding in order to: (1) Adjust BPA's FY 2009 power rates consistent with recent decisions of the Ninth Circuit regarding BPA's WP-02 power rates for FY 2002-2006; and (2) respond to the Court's decision finding BPA's REP Settlement Agreements contrary to the Northwest Power Act.

Due to the time it takes to conduct a general rate adjustment proceeding, BPA determined that its first opportunity to establish revised power rates to conform to the Court's opinions was prior to the one-year FY 2009 rate period. Because BPA's WP-07 rates (FY 2007-2009) are currently before the Federal Energy Regulatory Commission (FERC) for final approval, BPA asked FERC to stay its review until BPA was able to conduct a supplemental rate proceeding to address the issues noted above. This will permit FERC to review

a single supplemented record supporting BPA's proposed rates for FYs 2007, 2008, and 2009.

In developing BPA's WP-02 power rates, BPA's revenue requirement included anticipated costs of REP Settlement Agreements with six regional IOUs. BPA allocated the majority of these settlement costs to the Priority Firm Power (PF) Preference rate. Following final approval of BPA's WP-02 rates by FERC, a number of parties challenged the WP-02 power rates in the Ninth Circuit. In *Golden NW Aluminum, Inc. v. Bonneville Power Admin.*, 501 F.3d 1037 (9th Cir. 2007) (*Golden NW*), the Court held BPA had improperly allocated REP Settlement Agreement costs to BPA's rates for preference customers. During the litigation of *Golden NW*, but prior to the Court's decision, BPA conducted a subsequent hearing (WP-07) to establish power rates for FY 2007-2009. In establishing these rates, BPA allocated REP settlement costs in the same manner as in BPA's WP-02 rates. Because the Court held in *Golden NW* that BPA's allocation of REP settlement costs in its WP-02 rates was improper, BPA's allocation of such costs in the WP-07 rates is similarly flawed.

In addition, the Court held that BPA's WP-02 fish and wildlife cost estimates, and by extension the rates set pursuant to those estimates, were not supported by substantial evidence. The Court indicated BPA relied on outdated assumptions and had not appropriately considered information presented regarding its fish and wildlife costs. BPA's subsequent approach to forecasting fish and wildlife costs in the development of its WP-07 rates differed from the approach BPA used in developing its WP-02 rates. Nonetheless, as described in more detail in Part II.A.5, BPA is taking steps to ensure that its final WP-07 Supplemental rates for FY 2009 are based on the most recent projections of fish and wildlife costs available at the time of rate development. In a procedural forum separate from the WP-07 Supplemental Proceeding, BPA will provide opportunities for fish and wildlife managers and others to provide input to BPA regarding BPA's fish and wildlife program costs for FY 2009. Decisions made based on the information gained from this separate program cost review forum will be used in the development of BPA's final WP-07 Supplemental rates.

In a companion case to *Golden NW*, the Court held that BPA's REP Settlement Agreements with the IOUs were contrary to the Northwest Power Act. *Portland General Elec. Co. v.*

*Bonneville Power Admin.*, 501 F.3d 1009 (9th Cir. 2007) (PGE). Also, subsequent to the *Golden NW* and PGE decisions, the Court reviewed three petitions for review challenging Load Reduction Agreements (LRAs) BPA executed with two IOUs during the energy crisis of 2000-2001. The Court dismissed two of the petitions for lack of jurisdiction and one petition as moot. The Court also reviewed challenges to amendments to the REP Settlement Agreements signed in 2004. In *Public Utility Dist. No. 1 of Snohomish County, Wash. v. Bonneville Power Admin.*, 506 F.3d 1145 (9th Cir. 2007) (*Snohomish*), the Court remanded the amendments and a contract provision establishing a Reduction of Risk Discount to BPA. BPA must respond to the foregoing decisions. Because the ratemaking and REP issues are interrelated, BPA is proposing to address its response to the Court's decisions in the WP-07 Supplemental Proceeding.

In summary, this WP-07 Supplemental Proceeding is being held for four primary purposes: (1) To establish new power rates for FY 2009; (2) to determine the amount of benefits that BPA's IOU customers received, or would have received, from FY 2002 through FY 2008 under REP settlements; (3) to determine the amount of REP benefits the IOUs would have received in the absence of the REP settlements; and (4) to address any difference between these two amounts. Specifically, the revised power rates for FY 2009 include the PF Preference rate and the PF Exchange rate. The average PF Preference rate of \$26.2/MWh, about a four percent (4%) reduction, results largely from the reduced REP costs. The revised PF Exchange rate is used to determine REP benefits in FY 2009. As part of this process, BPA is also proposing revisions to BPA's *Section 7(b)(2) Legal Interpretation and Section 7(b)(2) Implementation Methodology*. An introduction to BPA's WP-07 Supplemental Proposal is contained in Part IV of this Notice. A summary of BPA's proposal regarding the calculation of REP benefits for FY 2002-2008 is contained in Part VI.

##### B. Legal Requirements

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things: publication of a notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; public opportunity to provide both oral and written views

related to the proposed rates; opportunity to offer refutation or rebuttal of submitted material; and a decision by the Administrator based on the record. This proceeding is governed by § 1010 of BPA's Rules of Procedure Governing Rate Hearings, 51 FR 7611 (1986) (BPA Hearing Procedures). These procedures implement the statutory section 7(i) requirements.

Section 1010.7 of the BPA Hearing Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any outside communications with BPA and/or DOE personnel regarding BPA's rate case by other Executive Branch agencies, Congress, existing or potential BPA customers (including tribes), and nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The general rule does not apply to communications relating to: (1) Matters of procedure only (the status of the rate case, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters BPA is responsible for under statutes other than

the ratemaking provisions; or (5) matters that all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final ROD is issued, which is scheduled to occur on or about August 18, 2008.

The Bonneville Project Act, 16 U.S.C. 832, the Flood Control Act of 1944, 16 U.S.C. 825s, the Federal Columbia River Transmission System Act, 16 U.S.C. 838, and the Northwest Power Act, 16 U.S.C. 839, provide guidance regarding BPA ratemaking. The Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of acquiring, conserving and transmitting electric power, including amortization of the Federal investment in the FCRPS over a reasonable period of years, and certain other costs and expenses incurred by the Administrator.

BPA's 2007 Supplemental Wholesale Power Rate Schedules (FY 2009) and 2007 Supplemental General Rate Schedule Provisions (GRSPs) (FY 2009), as well as the Section 7(b)(2) Legal Interpretation and Section 7(b)(2) Implementation Methodology, are available for viewing and downloading on BPA's Web site at <http://www.bpa.gov/corporate/ratecase> as discussed in Part VII of this Notice. The

studies addressing the factors used to develop these rates are listed in Part IV and will be available for examination beginning February 19, 2008, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE 11th Avenue, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on February 19, 2008, beginning at 9 a.m., Pacific Standard Time, Room 223, 911 NE 11th Avenue, Portland, Oregon.

Copies of the studies and documentation can be downloaded from BPA's Web site at <http://www.bpa.gov/corporate/ratecase> or can be requested (on a compact disc or hard copy) by calling BPA's document request line toll-free at: 1-800-622-4519.

A formal evidentiary rate hearing will be conducted that is open to rate case parties. Interested parties that did not previously intervene in BPA's WP-07 power rate proceeding must file petitions to intervene in order to take part in the WP-07 formal hearing. A proposed schedule for the WP-07 Supplemental Proceeding is stated below.

The Hearing Officer will establish a final schedule at the prehearing conference.

Prehearing/BPA Direct Case .....	02/19/08
Clarification .....	02/27/08–02/29/08
Motions to Strike .....	03/07/08
Data Request Deadline .....	03/07/08
Answers to Motions to Strike .....	03/14/08
Data Response Deadline .....	03/14/08
Spokane, WA Field Hearing .....	03/18/08
Portland, OR Field Hearing .....	03/20/08
Parties file Direct Cases .....	03/28/08
Clarification .....	04/07/08–04/09/08
Motions to Strike .....	04/11/08
Data Request Deadline .....	04/11/08
Answers to Motions to Strike .....	04/18/08
Data Response Deadline .....	04/18/08
Litigants file Rebuttal .....	05/05/08
Close of Participant Comments .....	05/05/08
Clarification .....	05/12/08–05/14/08
Motions to Strike .....	05/15/08
Data Request Deadline .....	05/15/08
Answers to Motions to Strike .....	05/22/08
Data Response Deadline .....	05/22/08
Cross-Examination .....	05/27/08–05/30/08
Initial Briefs Filed .....	06/09/08
Oral Argument .....	06/16/08–06/17/08
Publish Draft ROD .....	07/16/08
Briefs on Exceptions .....	07/28/08
Publish Final ROD—Final Studies .....	08/18/08

As noted above, BPA will conduct two public field hearings in the Pacific Northwest. Public field hearings are an opportunity for persons who are not parties in the formal rate hearing to have their views included in the official record. Written transcripts will be made at all of the field hearings. The field

hearings have been scheduled to take place at the locations, dates, and times specified below. The hearing dates also will be posted on the BPA's Web site (<http://www.bpa.gov/corporate/ratecase>) and through announcements in local newspapers. Any changes to the scheduled public hearings will be

available on the rate case Web site. The BPA Public Affairs Office also may be contacted for this information at the telephone number previously listed.

## PUBLIC FIELD HEARINGS SCHEDULE

03/18/08 ...	6 p.m. ...	Spokane, Wash- ington.
03/20/08 ...	6 p.m. ...	Portland, Oregon.

**Part II—Policy Guidance and Scope of Hearing***A. Policy Guidance*

The following policies are foundational elements that guided the development of major components of this supplemental rate proposal.

## 1. BPA's Subscription Strategy

On December 21, 1998, BPA issued a Power Subscription Strategy and Record of Decision (Subscription Strategy). The Subscription Strategy reflected BPA's position on the equitable distribution of Federal power for FY 2002–2011. The Subscription Strategy was the culmination of a multi-year public process that established BPA's plan for the availability of Federal power post-2001, the products from which customers could choose, and an outline of the contracts and pricing framework for those products.

The Subscription Strategy provided a marketing framework for the WP–02 and WP–07 power rate cases. The WP–02 and WP–07 power rate cases developed the rate schedules necessary for the products and contracts that were developed through Subscription. The Subscription contracts, except for the REP Settlement Agreements, continue to be the basis for the contractual relationship between BPA and nearly all of its firm power customers. BPA is assuming for purposes of this WP–07 Supplemental Proceeding that the IOUs, except Idaho Power Company (Idaho Power), would have signed Residential Purchase and Sale Agreements (RPSAs) in the fall of 2000 instead of the 2000 REP Settlement Agreements.

## 2. Regional Dialogue and the Near-Term and Long-Term Policies

The Regional Dialogue process began in April 2002 when a group of BPA's Pacific Northwest electric utility customers submitted a "joint customer proposal" to BPA that addressed both near-term and long-term contract and rate issues. Since then, BPA, the Northwest Power and Conservation Council (Council), customers, and other interested parties have worked on these near- and long-term issues. Considering the depth and complexity of many of these issues, BPA concluded it was not practical to resolve all issues before the start of the WP–07 rate case. Therefore, BPA determined that it would address the issues in two phases. The first phase

of the Regional Dialogue, referred to as the Near-Term Policy, addressed issues that had to be resolved in order to replace power rates that expired in September 2006. See Bonneville Power Administration's Policy for Power Supply Role for Fiscal Years 2007–2011 (February 2005). The issues in the second phase were addressed in BPA's Long-Term Regional Dialogue Final Policy and Record of Decision, which was published on July 19, 2007. The Long-Term Regional Dialogue Final Policy is expected to be implemented through new power sales contracts and a future rate case conducted before such contracts go into effect in FY 2012. The Long-Term Regional Dialogue Final Policy does not affect this WP–07 Supplemental Proceeding.

## 3. Service to Direct Service Industries (DSIs)

The Near-Term Policy established parameters for service to the DSIs that were further addressed in "Bonneville Power Administration's Service to DSI Customers for Fiscal Years 2007–2011, Administrator's Record of Decision" (DSI ROD) (June 30, 2005), and Supplement to Administrator's Record of Decision on Bonneville Power Administration's Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007–2011, Administrator's Record of Decision (May 31, 2006), (together the "DSI RODs").

In the DSI RODs, BPA determined to offer to aluminum company DSIs power sales contracts for an aggregate 560 aMW of benefits at a capped cost of \$59 million. In addition, BPA offered a 17 aMW surplus firm power sales contract for Port Townsend Paper Company through the local public utility under the FPS rate (or the Industrial Firm Power (IP) rate, if viable) at a price approximately equivalent to, but in no case less than, its lowest-cost PF rate.

BPA decided to allocate a share of the 560 aMW of service benefits to each DSI aluminum company for purposes of making an initial offer of service. Because of the financial risks inherent in providing actual power and in order to meet the known and capped cost prerequisite, BPA determined that the delivery mechanism would be to monetize the value of the below-market power sales to provide service benefits through cash payments.

## 4. Power Function Review and Other Cost Reviews

In January 2005, BPA initiated an extensive process, known as the Power Function Review (PFR), to examine Power Services' (formerly known as Power Business Line or PBL) intended

program spending levels. The PFR process consisted of two phases designed to give interested parties an opportunity to examine, understand and provide input on the cost projections that would form the basis for BPA's WP–07 Power Rate Proposal. The first phase concluded in June 2005 when BPA issued the PFR Final Report. At that time, BPA committed to re-examine the program levels prior to establishing power rates in BPA's final proposal. In early 2006, BPA conducted the second phase, known as PFR II, allowing interested parties an opportunity to review these program levels. Workshops were held during January through March, 2006 and in April of 2006, BPA issued a draft closeout report for comment. After the close of comment, BPA reviewed all comments and issued the PFR II Final Closeout Report documenting BPA's decisions on June 1, 2006. These updated program levels were then incorporated into BPA's WP–07 Final Proposal.

## 5. Mid-WP–07 Rate Period Cost Forecast Changes

For the WP–07 Supplemental Proceeding, BPA reviewed the FY 2009 program levels incorporated into the WP–07 Final Proposal that were developed through the PFR I and II processes. BPA then evaluated whether these forecasts remain reasonable in light of current projections. From this evaluation, BPA determined that adjustments were needed in certain program areas to address significant changes in forecast program levels. Specifically, these cost areas include: The Residential Exchange Program; Columbia Generating Station (CGS) operation and maintenance; interest; amortization; depreciation; renewables; energy efficiency; long-term generating projects; augmentation; purchased power; and fish and wildlife costs. BPA described the nature of the non-REP cost changes to interested persons in a public workshop on October 10, 2007.

In the October workshop, BPA notified attendees that it intended to initiate a separate public process to address possible changes to the fish and wildlife cost forecast for FY 2009,<sup>1</sup> costs of operating the CGS, and other cost changes identified that are relevant to the WP–07 Supplemental Proceeding. In

<sup>1</sup> Such changes could result from, for example, the issuance by NOAA Fisheries of a final Biological Opinion regarding the impacts of the mainstem Federal Columbia River Power System dams on threatened and endangered salmon and steelhead, and from any related commitments BPA may make in a long-term Memoranda of Agreement currently being discussed with some regional governmental entities.

this separate forum, BPA will provide interested persons an opportunity to review and comment on any adjustments to program levels. After the close of comment, BPA will issue a closeout report detailing any necessary adjustments to program levels. These forecast costs will then be incorporated into BPA's final rate proposal for FY 2009.

#### 6. Post-2006 Conservation Program Structure Proposal

The Conservation Program Structure Proposal was finalized and issued June 28, 2005. It describes BPA's approach to offering conservation programs during FY 2007 through FY 2009. The decisions of this post-2006 proposal were used as inputs in the development of BPA's WP-07 Power Rate Case Final Proposal. BPA does not propose any changes in this area for the WP-07 Supplemental Proceeding.

#### 7. Transmission Rate Case

BPA is committed to marketing its power and transmission services separately in a manner modeled after the regulatory initiatives adopted in 1996 by FERC to promote competition in wholesale power markets. FERC's initiatives in Orders 888<sup>2</sup> and 889<sup>3</sup> directed public utilities regulated under the Federal Power Act to separate their power merchant functions from their transmission reliability functions; unbundle transmission and ancillary services from wholesale power services; and set separate rates for wholesale generation, transmission, and ancillary services. Although BPA is not required by law to follow FERC's regulatory directives that promote competition and open access transmission service, BPA elected to separate its power and transmission operations and unbundle its rates in a manner consistent with the directives concerning open access transmission service. BPA develops its transmission rates in separate proceedings from its power rates.

On February 5, 2007, BPA's Transmission Services (formerly known as the Transmission Business Line or TBL) initiated a rate case to establish transmission rates for the FY 2008–2009 transmission rate period. Prior to the initiation of that rate case, Transmission Services held several public meetings

with customers from July through November 2006 to discuss transmission costs, revenues, and rate design issues for the FY 2008–2009 rate period. Customers expressed interest in meeting with Transmission Services to develop a settlement for the FY 2008–2009 rate period. Transmission Services continued meetings with customers between October and November 2006, resulting in the 2008 Transmission Rate Case Settlement Agreement.

On April 23, 2007, BPA issued the "Final Transmission Rate Proposal Administrator's Record of Decision" which adopted the transmission and ancillary services rates reflected in the 2008 Transmission Rate Case Settlement Agreement. FERC granted interim approval to these rates on September 20, 2007. The Transmission Services rate case settlement established fixed rates for certain ancillary services and some transmission rates that incorporate ancillary services. The generation inputs that support the ancillary services and other control area services sold by Transmission Services are provided by Power Services. BPA is not proposing any changes to its generation input costs for FY 2009 except for the recognition of additional revenues expected from Transmission Services for Wind Integration.

#### *B. Scope of the WP-07 Supplemental Proceeding*

Many of the policies that guide BPA's power marketing decisions have been made or will be made in other public review processes. In addition, many decisions about BPA's financial commitments, including for example, what BPA plans to spend on meeting its fish and wildlife obligations, are made in forums other than the rate case. This section provides guidance to the Hearing Officer as to those matters that are within the scope of the rate case, and those that are outside the scope.

##### 1. Program Level Expense Forecasts and Commitments

Section 7(i) rate proceedings establish the rates applicable to BPA's products and services at levels set to assure recovery of BPA's costs in total. The section 7(i) proceeding does not establish the program levels to be recovered during a rate period. Instead, program levels (including programmatic decisions and decisions regarding spending commitments) are decided in various forums outside the section 7(i) proceedings. Once set, however, program levels are taken into consideration when designing the rates proposed in a section 7(i) proceeding to ensure such costs are recovered. As

described in Part II.A.5, BPA evaluated whether updated forecasts of program levels were needed for this WP-07 Supplemental Proceeding, and determined that, except in a few instances, they were not. Therefore, except as noted above in Part II.A.5 and described below, this WP-07 Supplemental Proceeding will not revisit the previous forecasts of program levels for FY 2007–2009 made in the PFR I and II processes and incorporated into the WP-07 Final Proposal. Nor is this WP-07 Supplemental Proceeding the forum to revisit or seek new decisions regarding program spending commitments for this period.

To allow public review and input on program level forecasts that BPA has determined require updating, BPA will hold a separate process to address adjustments to the program level forecasts for FY 2009 associated with CGS costs, fish and wildlife costs and any other necessary program categories for which significant changes have or may occur before BPA's final rate proposal. This separate process will include an opportunity for entities, such as fish and wildlife managers, to engage BPA on the cost assumptions made and the appropriateness of any proposed adjustments in forecasts. Any adjustments adopted by BPA to the program level forecasts for FY 2009 as a result of this separate process will be incorporated into BPA's final rate proposal for FY 2009. Because discussions regarding spending commitments or discussions about adjustments in forecasts of costs in these program areas will occur in forums separate from this rate proceeding, pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek to address program spending commitment decisions, or address adjustments in the program level forecasts for FY 2009 for CGS costs, fish and wildlife costs, and any other program categories.

##### 2. Near-Term Policy Decisions

As detailed above, BPA issued the Near-Term Policy on February 4, 2005. The Policy resolved a number of policy decisions that affect BPA's WP-07 Supplemental Proposal. Those issues include, but are not limited to, decisions on the availability of the lowest cost PF rate to public agency customers; the term of the rate period; DSI service options; and the availability of products for new or existing customers. Pursuant to § 1010.3(f) of the BPA Hearing

<sup>2</sup>Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities Reg-Preamble, FERC Stats & Regs 1991–96, para. 31,036 (1996).

<sup>3</sup>Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Reg-Preamble, FERC Stats & Regs 1991–96, para. 31,035 (1996).

Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek to in any way to revisit the appropriateness or reasonableness of BPA's decisions made in the Near-Term Policy ROD.

### 3. DSI Service

The DSI Service RODs established the manner in which BPA would provide service and benefits to its DSI customers during FY 2007–2011. Pursuant to § 1010.3(f) of the BPA Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek to in any way to revisit the appropriateness or reasonableness of BPA's decisions made in the DSI RODs.

### 4. Transmission Acquisition Expense

In the PFR I and II processes, BPA reviewed with interested persons program levels related to Power Services' transmission acquisitions. These program levels represent the costs associated with services necessary to deliver energy from generating resources to markets and loads. These costs include: transmission expenses; ancillary services; real power losses; generation integration costs associated with BPA-owned transmission facilities; and metering and communication requirements. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing that seek to in any way revisit the appropriateness or reasonableness of BPA's transmission acquisition program level estimates.

### 5. Other Transmission Issues

#### a. Generation Inputs

Power Services provides a portion of the FCRPS's available generation to Transmission Services to enable Transmission Services to meet its various transmission and control area requirements. Transmission Services uses the generation inputs to provide ancillary and control area services. To recover the costs associated with providing these generation inputs, Power Services develops charges based on relevant FCRPS costs that are assessed the transmission function. The costs Power Services are proposing to use to determine the generation input costs and associated unit costs to Transmission Services were addressed

in the BPA's WP-07 Final Proposal. Based on updated information, the WP-07 Supplemental Proposal will include revised charges for some generation inputs and these revisions are included within the scope of this rate proceeding. Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek to in any way to revisit the appropriateness or reasonableness of any issues, other than the charges, related to the generation inputs. This exclusion includes, but is not limited to, issues regarding the level or quality of the generation inputs that Transmission Services requests from Power Services. These determinations are generally made by Transmission Services in accordance with industry, reliability, and other compliance standards and criteria, and are not matters appropriate for the WP-07 Supplemental Proceeding.

In addition, BPA will conduct a section 7(i) process related to within-hour balancing capacity for wind generation. Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the WP-07 Supplemental Proceeding that seek to in any way to address the issues contained within the scope of the within-hour balancing capacity for wind generation rate proceeding (Proposed Wind Integration—Within-Hour Balancing Service Rate (WI-09)), except that the appropriate treatment of the additional revenue resulting from this proceeding is a matter that is included within the scope of the WP-07 Supplemental Proceeding.

#### b. Transmission Rate Case

On April 23, 2007, BPA issued the 2008 "Final Transmission Proposal-Administrator's Record of Decision" that adopted the transmission and ancillary services rates as reflected in the 2008 Transmission Rate Case Settlement Agreement. FERC granted interim approval to these transmission rates on September 20, 2007. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way to revisit the appropriateness or reasonableness of issues determined in the transmission rate case. That proceeding addressed, among other things, transmission and ancillary

service rate levels, redispatch costs between Transmission Services and Power Services related to Attachment K redispatch for FY 2008–2009, and the level of the GTA Delivery Charge for FY 2009.

### 6. Post-2006 Conservation Program Structure Proposal

Through the post-2006 workgroup collaboration, customers and constituents provided input on the development of BPA's post-2006 conservation approach. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing that seek to in any way revisit the appropriateness or reasonableness of BPA's conservation programs and establishment of their associated expense levels through the Post-2006 Conservation Program Structure Proposal dated June 28, 2005. The Hearing Officer is also directed to exclude from the scope of this proceeding evidence regarding BPA's portfolio of conservation programs, as well as their expenses, that BPA intends to pursue during FY 2009.

### 7. Federal and Non-Federal Debt Service and Debt Management

During the PFR, and in other forums, BPA has provided background information on its internal Federal and non-Federal debt management policies and practices. The discussions of these topics in the PFR and other forums were not intended to seek input from customers and constituents regarding BPA's debt management policies and practices. Rather, these discussions were intended to merely inform interested parties about these matters so that they would better understand BPA's debt structure. Although the PFR closeout letter did not make any decisions regarding BPA's debt management policies and practices, these remain outside the scope of the rate case. Therefore, pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way visit the appropriateness or reasonableness of BPA's debt management policies and practices.

### 8. Average System Cost Methodology

Concurrent with the publication of this notice, BPA is publishing a separate notice in the **Federal Register** to commence a consultation proceeding to

develop a new Average System Cost (ASC) Methodology. Section 5(c) of the Northwest Power Act established the REP, which provides benefits to residential consumers of Pacific Northwest utilities based, in part, on a utility's "average system cost" of resources. Section 5(c)(7) of the Act authorizes the Administrator to consult with regional interests to develop an ASC methodology. The ASC Methodology prescribes which costs are included and excluded from a utility's ASC, as well as the procedural rules for filing proposed ASCs with BPA. Comments on BPA's proposed ASC Methodology will be submitted, reviewed and addressed solely in the separate consultation proceeding. For this reason, issues related to the proposed ASC Methodology are not within the scope of this proceeding. Therefore, pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the hearing that seek to in any way visit the appropriateness or reasonableness of the proposed ASC Methodology.

#### 9. Potential Environmental Impacts

For the reasons stated in Section C below, the Administrator directs the Hearing Officer to exclude from the record all evidence and arguments that seek in any way to address the potential environmental impacts of the rates being developed in the WP-07 Supplemental Proceeding. Any such evidence and arguments submitted will be considered and addressed in the separate, concurrent process described in the next section.

#### C. The National Environmental Policy Act

BPA is in the process of assessing the potential environmental effects of its WP-07 Supplemental Proposal, consistent with the National Environmental Policy Act (NEPA). BPA's Business Plan Environmental Impact Statement (Business Plan EIS), completed in June 1995, evaluated the environmental impacts of a range of business plan alternatives that could be varied by applying policy modules, including one for rates. Any combination of alternative policy modules should allow BPA to balance its costs and revenues. The Business Plan EIS also addressed response strategies, including adjusting rates, that BPA could pursue if BPA's costs exceeded its revenues. In August 1995, the BPA Administrator issued a Record

of Decision (Business Plan ROD) that adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts. BPA also committed to apply as many response strategies as necessary when BPA's costs and revenues do not balance. In April 2007, BPA completed and issued a Supplemental Analysis to the Business Plan EIS. The Supplemental Analysis found that the Business Plan EIS's relationship-based and policy-level analysis of potential environmental impacts from BPA's business practices remains valid, and that BPA's current business practices are still consistent with BPA's Market-Driven approach. The Business Plan EIS and ROD thus continue to provide a sound basis for making determinations under NEPA concerning BPA's policy-level decisions.

Because the WP-07 Supplemental Proposal likely would assist BPA in accomplishing the goals identified in the Business Plan ROD, the proposal appears consistent with these aspects of the Market-Driven Alternative. In addition, this rate proposal is similar to the type of rate designs evaluated in the Business Plan EIS; thus, implementation of this rate proposal would not be expected to result in significantly different environmental impacts from those examined in the Business Plan EIS. Therefore, BPA expects that this WP-07 Supplemental Proposal will fall within the scope of the Market-Driven Alternative that was evaluated in the Business Plan EIS and adopted in the Business Plan ROD.

As part of the Administrator's Supplemental ROD that will be prepared for the FY 2007 Supplemental Wholesale Power Rate Proposal, BPA may tier its decision under NEPA to the Business Plan ROD. However, depending upon the ongoing environmental review, BPA may, instead, issue another appropriate NEPA document. During the public review and comment period for the WP-07 Supplemental Proposal, persons interested in submitting comments regarding its potential environmental effects may do so by submitting comments to Katherine Pierce, NEPA Compliance Officer, KEC-4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232. Any such comments received by the comment

deadline identified in Part I will be considered by BPA's NEPA compliance staff in the NEPA process that will be conducted for this Proposal.

#### Part III—Public Participation

##### A. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the section 7(i) hearing process. Apart from the formal hearing process, BPA will accept comments, views, opinions, and information from "participants," who are defined in the BPA Hearing Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made a part of the official record and considered by the Administrator when making his decision. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

The views of participants are important to BPA. Written comments by participants will be included in the record if they are received by 5:00 p.m., Pacific Daylight Savings Time, on May 5, 2008. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA Public Affairs at the address listed in Paragraph 2 of the Summary. In addition, BPA will hold two field hearings in the Pacific Northwest region. Participants may appear at the field hearings and present verbal and written comments. The transcripts of these hearings will be part of the record upon which the Administrator makes his final rate decisions.

Persons who previously intervened in BPA's 2007 Wholesale Power Rate Adjustment Proceeding automatically continue their party status in the 2007 Supplemental Proceeding. Other persons wishing to become a party to BPA's rate proceeding must notify BPA in writing and file a Petition to Intervene with the Hearing Officer. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to Intervene must state the name and address of the person requesting party status and the person's interest in the hearing.

Petitions to Intervene as parties in the rate proceeding are due to the Hearing

Officer by 5 p.m., Pacific Standard Time, on February 18, 2008. The petitions should be directed as stated below or may be e-mailed to [wp07rate@bpa.gov](mailto:wp07rate@bpa.gov): Robert Welsh, Hearing Clerk—LP—7, Bonneville Power Administration, 905 NE 11th Avenue, P.O. Box 3621, Portland, OR 97208—3621.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the proceeding. Pursuant to § 1010.1(d) of BPA Hearing Procedures, BPA waives the requirement in § 1010.4(d) that an opposition to an intervention petition must be filed and served 24 hours before the February 19, 2008, prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored.

#### B. Developing the Record

The record will comprise, among other things, verbal and written comments made by participants, including the transcripts of all hearings, any written materials submitted by the parties, documents developed by BPA staff, and other materials accepted into the record by the Hearing Officer. Written comments by participants will be included in the record if they are received by 5 p.m., Pacific Daylight Savings Time, on May 5, 2008. The Hearing Officer will then review the record, supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates for FY 2009 based on the entire record, which includes the record certified by the Hearing Officer, as described above. The basis for the final proposed rates first will be expressed in the Administrator's Draft Supplemental ROD. Parties will have an opportunity to respond to the Draft Supplemental ROD as provided in the BPA Hearing Procedures. The Administrator will serve copies of the Final Supplemental ROD on all parties. At the conclusion of the rate proceeding, BPA will file the supplemental rate case record and rates for FY 2009 in a timely manner to receive FERC confirmation and approval effective October 1, 2008.

BPA must continue to meet with customers in the ordinary course of business during the rate case. To comport with the rate case procedural rule prohibiting ex parte communications, BPA will provide the prescribed notice of meetings involving rate case issues in order to permit the opportunity for participation by all rate case parties. These meetings may be held on very short notice. Consequently, parties should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding and attend meetings any day during the course of the rate case.

#### Part IV—Summary of WP-07 Supplemental Proposal and Major Studies

##### A. Summary of Proposed 2009 Wholesale Power Rate Structure

###### 1. List of Proposed 2009 Wholesale Power Rates

BPA is proposing to revise several rate schedules for its 2007 Supplemental Wholesale Power Rates to respond to the Court's recent opinions. The rate schedules and the GRSPs are available for viewing and downloading on BPA's Web site at <http://www.bpa.gov/corporate/ratecase> as discussed in Part VII of this Notice.

###### a. PF-07R Priority Firm Power Rate

The PF rate schedule is comprised of two rates: the PF Preference rate and the PF Exchange rate.

The PF Preference rate applies to BPA's firm power sales to public bodies, cooperatives, and Federal agencies for resale to their regional consumers. This power is guaranteed to be continuously available. The proposed average PF Preference rate is \$26.2/MWh. The rate applies to the following products:

Full Service Product  
Actual Partial Service Product—Simple  
Actual Partial Service Product—Complex  
Block Product  
Block Product with Factoring  
Block Product with Shaping Capacity  
Slice Product

The PF Exchange rate applies to sales of power to regional utilities that participate in the Residential Exchange Program established under section 5(c) of the Northwest Power Act. 16 U.S.C. 839c(c). BPA is proposing to revise the PF Exchange rate to remove the demand and energy rates and substitute a single annual rate. In addition, BPA is proposing to include utility-specific supplemental rate charges, consistent with section 7(b)(3) of the Northwest Power Act. 16 U.S.C. 839e(b)(3). These

PF Exchange rates are used in determining REP benefits in FY 2009.

###### b. NR-07R New Resource Firm Power Rate

The New Resource Firm Power (NR) rate applies to net requirements power sales to IOUs for resale to ultimate consumers for direct consumption, construction, test and start-up, and for station service. NR-07R firm power is also available to public utility customers for serving New Large Single Loads. This rate applies to the following products:

New Large Single Loads  
Full Service Product  
Actual Partial Service Product—Simple  
Actual Partial Service Product—Complex  
Block Product  
Block Product with Factoring  
Block Product with Shaping Capacity  
c. IP-07R Industrial Firm Power Rate

The IP rate is available for discretionary firm power sales to DSI customers authorized by section (5)(d)(1)(A) of the Northwest Power Act. 16 U.S.C. 839c(d)(1)(A).

###### d. FPS-07R Firm Power Products and Services Rate

The FPS rate schedule is available for the purchase of Firm Power, Capacity Without Energy, Supplemental Control Area Services, Shaping Services, and Reservation and Rights to Change Services for use inside and outside the Pacific Northwest. The rates for these products are posted and/or negotiated. BPA is proposing only minor changes to this rate schedule for FY 2009.

###### e. GTA-07R General Transfer Agreement Delivery Charge

The GTA Delivery Charge applies to customers who purchase Federal power that is delivered over non-Federal low voltage transmission facilities. This rate was originally set in the 2006 Transmission Services Rate Case Settlement to mirror the Utility Delivery rate from October 1, 2005, through September 30, 2007. BPA's 2007 Power Rate Case determined that the GTA Delivery Charge would continue to mirror the Utility Delivery rate, which is \$1.119 per kilowatt through September 30, 2009. For FY 2009, Power Services is proposing to continue to set the GTA Delivery Charge to the same rate as Transmission Services' posted monthly Utility Delivery rate, which is \$1.119 per kilowatt.



2. Significant Rate Development Issues

a. Residential Exchange Program Costs

For FY 2009, BPA expects qualifying regional utilities to participate in the REP. BPA is concurrently developing a new ASC Methodology in a separate proceeding and will be offering new RPSAs to requesting utilities. In order to include the costs of an REP in BPA's FY 2009 rates, BPA is forecasting the ASCs of utilities expected to participate in the program. In addition, BPA is forecasting the expected utilities' system and exchangeable residential and small farm loads. However, the ASC Methodology being revised in a concurrent process will be used to conduct an expedited review of utilities' ASCs outside of this WP-07 Supplemental Proceeding. This review will determine the actual ASCs for eligible utilities for FY 2009. Those ASC determinations, when complete, will be incorporated into the final rate proposal and used to determine REP costs in FY 2009 rates.

b. Inter-Function Costs and Credits

BPA is not proposing any changes to its inter-function generation input unit charges for FY 2009. The forecast of

revenues for FY 2009 in the WP-07 Final Proposal will continue to be used. However, BPA will adjust the inter-function revenue credit to reflect the additional revenues that Power Services expects to receive from Transmission Services based on the proposed Wind Integration—Within-Hour Balancing Service Rate Proceeding (WI-09). Therefore, BPA is proposing to incorporate the forecast revenues determined in the Wind Integration rate case into the final rates of this proceeding.

c. DSI Service FY 2007–2011

BPA continues to forecast no direct service sales under the IP rate to its DSI customers. Instead, BPA provides the DSI aluminum smelters 560 aMW of surplus firm power service benefits for the FY 2007–2011 period at a capped cost of \$59 million per year. Benefits have been monetized under the contacts with these companies. In addition, BPA provides a 17 aMW surplus firm power sales contract for Port Townsend Paper Company through the local public utility under the FPS rate schedule at a rate that is approximately equivalent to BPA's lowest-cost PF rate.

3. Rate Design and Rate Adjustments

Consistent with the Partial Resolution of Issues negotiated between BPA and rate case parties before the WP-07 Final Proposal, BPA is generally continuing its existing WP-07 rate design for its FY 2009 rates, with only minor modifications listed below. In addition, BPA is generally continuing its existing set of rate adjustments for its FY 2009 rates, also described below.

a. Conservation Rate Credit (CRC)

BPA is not proposing any changes from its WP-07 Final Proposal for the CRC.

b. Risk Mitigation Tools

Other than resetting the cap for the FY 2009 Cost Recovery Adjustment Clause (CRAC) and the thresholds for the FY 2009 CRAC and Dividend Distribution Clause (DDC), BPA is proposing no other changes to the CRAC or DDC in the WP-07 Supplemental Proposal. BPA will use the same technical methodology to assess risks and intends to employ the same risk mitigation measures as presented in the WP-07 Final<sup>4</sup> Proposal.

TABLE 1.—CRAC CAP AND CRAC AND DDC ANNUAL THRESHOLDS FOR FY 2009

[Millions of dollars]

	AMNR calculated at end of fiscal year	CRAC or DDC applied to fiscal year	CRAC or DDC threshold in AMNR <sup>4</sup>	Approx. threshold as measured in power services' reserves	Maximum CRAC recovery amount (cap)
CRAC .....	2008	2009	(\$81.4)	\$750	\$36
DDC .....	2008	2009	218.6	1,050	n/a

BPA proposes to continue the National Marine Fisheries Service (NMFS) Federal FCRPS Biological Opinion (NFB) Adjustment and the Emergency NFB Surcharge. Although BPA expects to include the forecast cost of implementing the final Biological Opinion for the FCRPS in its final supplemental rates, litigation regarding the Biological Opinion may continue, so the Emergency NFB Surcharge and the NFB Adjustment remain appropriate. In order to balance the need to cover risk with overall rate levels, BPA proposes to meet its Treasury Payment Probability (TPP) standard through a combination of financial reserves, the CRAC, the NFB Adjustment, the Emergency NFB Surcharge, and the Flexible PF Rate Program. See Part IV.A.4.

c. Excess Factoring Charge

This is a charge that applies to purchasers of the Complex Actual Partial Service Product under the PF rate schedule. BPA is proposing no changes to this charge as established in the WP-07 Final Proposal.

d. Green Energy Premium (GEP)

BPA is proposing no changes to the GEP in this Supplemental Proposal. The proposed GEP continues to range from zero to 40 mills per kWh depending on the specific products and associated costs selected by each customer. BPA forecasts an average of \$3 million of annual revenue from the GEP for FY 2009, which is an increase from the WP-07 Final Proposal. A portion of revenues from the GEP will support BPA's renewable-related research,

development and demonstration projects.

e. Load Variance Charge

Except for a change in its level, consistent with the Partial Resolution of Issues, BPA is proposing no other changes to the Load Variance Charge. This proposed charge of \$0.45/MWh covers BPA's cost of meeting customers' load growth for reasons other than annexation or retail access load gain or loss. In addition, it provides Full and Partial Service purchasers the right to deviate from their monthly forecast of BPA purchases due to weather, economic business cycles, plant energy consumptions and other reasons.

f. Low Density Discount (LDD)

BPA is proposing no changes to the LDD as established in the WP-07 Final

<sup>4</sup> Accumulated Modified Net Revenue

Proposal and as agreed to in the Partial Resolution of Issues.

g. Monthly Demand and Energy Charges

BPA is proposing no changes to the methodology for calculating demand and energy charges. There will be two diurnal periods, Heavy Load Hour (HLH) and Light Load Hours (LLH), for each month. BPA continues to adopt slight changes to the definitions of HLH and LLH to be consistent with NERC definitions. The proposed demand and energy charges will be updated consistent with the Partial Resolution of Issues.

h. PF Targeted Adjustment Charge (PF TAC)

BPA is proposing no changes to the Targeted Adjustment Charge from that established in the WP-07 Final Proposal.

i. Unauthorized Increase Charges (UAI) for Power Sales

These are penalty charges for Unauthorized Increases in Energy and Unauthorized Increases in Demand for deliveries that exceed contractual entitlements for energy and demand, respectively. BPA is proposing no changes relative to the WP-07 Final Proposal.

j. Demand Adjuster

This is an adjustment that is made to the demand billing factor for certain requirements products. BPA is proposing no changes relative to the WP-07 Final Proposal.

k. Flexible PF and NR

These are rate options available, at BPA's discretion, to purchasers under the PF and NR rate schedules. BPA is proposing no changes relative to the WP-07 Final Proposal.

l. Slice True-Up Adjustment

BPA is proposing changes to the Slice True-up Adjustment process that are consistent with the (Slice Mediation) Settlement Agreement that was signed after the WP-07 Final Proposal was published. This Settlement Agreement provided for the Slice True-Up Adjustment Charge to be calculated using the average Slice Revenue Requirement for the rate period instead of the Slice Revenue Requirement for each individual year. In addition, this Settlement Agreement provided for changes in the treatment of certain expenses, which are incorporated in this proposal.

m. Value of Reserves

Section 7(c)(3) of the Northwest Power Act, 16 U.S.C. 839e(c)(3),

provides that the Administrator shall adjust rates to the DSI customers "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." The DSIs may provide two types of reserves: Supplemental Contingency Reserves and Stability Reserves. The WP-07 Supplemental Proposal reflects Stability Reserves being purchased by Transmission Services and addressed in Transmission Services' transmission rate case. BPA is proposing no changes relative to the WP-07 Final Proposal.

n. Development of IP and NR Rates

Other than the level of the rates, BPA is proposing no changes to the NR or IP rates relative to the WP-07 Final Proposal.

4. Rate Methodology for FY 2009

a. Risk Mitigation Package

Power Services is proposing to rely on a number of elements for its risk mitigation package in the WP-07 Supplemental Proposal. These include a CRAC, with the NFB Adjustment and Emergency NFB Surcharge, and a DDC, as well as the following:

(1) *Starting Reserves Available for Risk*. The financial reserves available for risk that are attributable to Power Services at the start of the rate period provide some protection against financial uncertainties. Starting financial reserves available for risk include portions attributed to the generation function of cash in the BPA Fund and the deferred borrowing balance that are attributed to the generation function. Projections of Power Services' reserves available for risk at the beginning of FY 2009 range from \$50 million to \$2.7 billion, with an expected value of \$1.03 billion. These amounts do not include cash that has accumulated as a result of the suspension of payments under the REP Settlement Agreements.

(2) *Planned Net Revenues for Risk (PNRR)*. PNRR is a dollar amount in the generation revenue requirement that generates additional revenue in order to increase the generation function reserves. The anticipated generation function reserves available for risk, with the tools noted above, are sufficient for the agency to meet its financial objective of a 97.5 percent one-year TPP for FY 2009. As a result, BPA's proposed risk mitigation package will not include any PNRR.

(3) *Flexible PF Rate Program*. This program is designed to provide \$193 million of liquidity cash through an

accelerated payment of certain participating public utilities' power bills. This accelerated payment will be triggered at BPA's sole discretion should the probability of reserves falling below a certain reserve threshold be greater than the acceptable probability, as decided prior to a cash crisis.

b. Rates Analysis Model (RAM)

The RAM2009 model is a large Excel spreadsheet model that is automated with Visual Basic macros. RAM2009 has two main steps: a Rate Design Step and a Slice Separation Step. The RAM2009 Rate Design Step implements BPA's rate directives by modifying the costs associated with the three resource pools (Federal Base System, Residential Exchange, and New Resources) used to serve three rate pools (7(b) loads, 7(c) loads, and 7(f) and surplus loads) as developed in the Cost of Service Analysis (COSA). After the initial allocation of costs, the Northwest Power Act requires that some rate adjustments be made, such as those described in section 7(b) and section 7(c) of the Northwest Power Act. The RAM2009 performs these rate adjustments, and several others, including the 7(b)(2) rate test, in its Rate Design Step. The Rate Design Step of RAM2009 concludes with the calculation of proposed power rates. The Slice Separation Step then separates the PF Slice product costs and firm loads from the overall PF Preference rate pool, leaving the costs that must be covered by the remaining non-Slice product PF Preference load.

*B. Major Studies in Support of WP-07 Supplemental Proposal for FY 2009 Rates*

Because this proceeding reopens the WP-07 docket, all material already filed on the record remains on the record and is available to all parties. BPA's WP-07 Final Proposal Studies constitute the foundation on which the Supplemental Proposal is built. However, certain new information will be incorporated to form the Supplemental Proposal. BPA will explain and document the revisions that are incorporated in the Supplemental Proposal in a new set of studies. The studies that have been prepared to support BPA's WP-07 Supplemental Wholesale Power Rate Proposal are described in detail in this section:

Supplemental Load Resource Study and Documentation;  
 Supplemental Revenue Requirement Study and Documentation;  
 Supplemental Market Price Forecast Study and Documentation;  
 Supplemental Risk Analysis Study and Documentation;

Supplemental Wholesale Power Rate Development Study and Documentation;

Supplemental Section 7(b)(2) Rate Test Study and Documentation; and Lookback Study and Documentation for FY 2002–2008.

1. Supplemental Load Resource Study

The Load Resource Study represents the compilation of the load and resource data necessary for developing BPA’s wholesale power rates. The Study has three major interrelated components: (a) BPA’s Federal system load forecast; (b) BPA’s Federal system resource forecast; and (c) the Federal system load and resource balances.

Since publication of the WP–07 Final Proposal, only a few minor changes have occurred. The Supplemental Load Resource Study documents the increase in load BPA is currently forecasting for FY 2009 relative to the WP–07 Final Proposal. It also recognizes some

changes in Federal resource output for FY 2009 resulting from recent BPA acquisitions and contract purchases, updated assumptions for the CGS maintenance schedule, and revisions to BPA’s hydro efficiency improvement estimates.

2. Supplemental Revenue Requirement Study

The purpose of the Revenue Requirement Study is to establish the level of revenues from wholesale power rates necessary to recover, in accordance with sound business principles, the FCRPS costs associated with the production, acquisition, marketing, and conservation of electric power. Generation revenue requirements include: Recovery of the Federal investments in hydro generation; recovery of fish and wildlife costs and energy conservation; Federal agencies’ operations and maintenance expenses allocated to power; capitalized contract

expenses associated with such non-Federal power suppliers as Energy Northwest; other purchase power expenses, such as short-term power purchases; power marketing expenses; cost of transmission services necessary for the sale and delivery of FCRPS power; and all other power-related costs incurred by the Administrator pursuant to law.

For FY 2009, BPA is forecasting that most power-related costs will remain at the same levels as in the WP–07 Final Proposal, with the exception of the costs associated with the REP. A limited number of additional changes is proposed for the Supplemental Proposal. Forecasts of operating costs for the CGS show an increase as do the costs related to system augmentation. Depreciation, amortization, Federal interest and non-Federal debt service will be updated. The proposed changes are presented in Table 2.

TABLE 2.—DIFFERENCES IN MAJOR COST CATEGORIES BETWEEN THE WP–07 FINAL PROPOSAL AND THE WP–07 SUPPLEMENTAL PROPOSAL FY 2009 (EXCLUDING REP COST CHANGES)

[Millions of dollars]

Cost category	Changes from WP–07 final proposal
Operating Generation:	
CGS .....	31
Long-term Projects .....	6
Contracted Power Purchases:	
DSI Monetized Power Sale .....	(4)
Other Power Purchases (Short-term) .....	11
Augmentation Power Purchases .....	17
Renewable Generation .....	11
Energy Efficiency .....	9
Transmission Acquisition/Ancillary Services .....	(5)
EN Debt Service .....	1
Depreciation .....	(7)
Amortization .....	(8)
Net Federal Interest .....	(27)
Minimum Required Net Revenues .....	(35)
Planned Net Revenues for Risk .....	(11)
Total Change from WP–07 Final Proposal .....	(10)

BPA also expects changes to the costs of its fish and wildlife commitments, particularly from the final FCRPS Biological Opinion, now expected on March 18, 2008. For reasons of efficiency and to ensure the most up-to-date information, BPA prefers to estimate those changes when the Biological Opinion is issued. If the Opinion is delayed, BPA will forecast those costs using the best available information. As noted above, BPA does not establish program levels in rate cases. BPA will conduct a review of changes to the power-related costs from the WP–07 Final Proposal in a forum external to this proceeding. The results

of that review will be incorporated into the final studies of this WP–07 Supplemental Proceeding.

3. Supplemental Market Price Forecast Study

The Market Price Forecast Study estimates the variable hourly cost of the marginal resource for transactions in the wholesale energy market. The specific market used in this analysis is the Mid-Columbia trading hub in the State of Washington. For the WP–07 Supplemental Proposal, BPA does not propose to change the price forecast from the WP–07 Final Proposal.

4. Supplemental Risk Analysis Study

The Risk Analysis Study focuses upon two types of risks and their impacts on BPA’s revenues and expenses. The first type of risks is comprised of operating risks such as variations in economic conditions, load, and generation resource capability. These operating risks include the impacts of water supply conditions and market prices on net revenues. The second type of risks comprises non-operating risks—all the risks included in the rate case risk modeling other than operating risks. This type of non-operating risks also includes uncertainty in achieving cost

reductions identified in the Power Function Review.

BPA subsequently evaluates the impact that different risk mitigation measures have on reducing net revenue risk by calculating the TPP. The TPP is a measure of the probability that BPA will make each Treasury payment on time and in full. If the TPP is below BPA's one-year 97.5 percent standard, the combination of risk mitigation tools (e.g., Cost Recovery Adjustment Clause, NFB Adjustment, Emergency NFB Surcharge, Dividend Distribution Clause) is modified to meet the TPP standard.

BPA is proposing no changes in the form or methodology of the risk analysis. The Supplemental Proposal risk analysis will be updated for changes to input data that account for changes in BPA's loads, resources, costs, and financial position.

#### 5. Supplemental Wholesale Power Rate Development Study

The Wholesale Power Rate Development Study (WPRDS) is the primary source for details concerning the development of BPA's power rates. It reflects the results of all of the other studies and calculates the rates for BPA's wholesale power products and services. The WPRDS documents the allocation and recovery of Federal power costs; development of the Slice cost table; the development and forecast of inter-function revenues and expenses; the development of diurnal energy rates; the development of rates for demand, load variance, unauthorized increase usage, and excess load factoring; and other rate provisions (e.g., the Low Density Discount, Conservation Rate Credit, and irrigation rate mitigation). The results of the WPRDS are reflected in the wholesale power rate schedules.

Because of the Ninth Circuit's decisions on the allocation of the costs of the REP Settlement Agreements, most of the changes in the Supplemental Proposal are focused on the WPRDS. With the exception of certain auxiliary rate provisions, the WPRDS will be reproduced to document fully the development of BPA's power rates for the WP-07 Supplemental Proposal.

#### 6. Supplemental Section 7(b)(2) Rate Test Study

The 7(b)(2) rate test is explained below in Part V. The Section 7(b)(2) Rate Test Study describes the application and results of the *Section 7(b)(2) Legal Interpretation (Legal Interpretation)* and *Section 7(b)(2) Implementation Methodology (Implementation Methodology)*. BPA is proposing revisions to the *Legal*

*Interpretation and Implementation Methodology* in the WP-07

Supplemental Proceeding. See Part V below.

The 7(b)(2) rate test triggers in this proposal, causing costs to be reallocated in the test period. The PF Preference rate applied to the general requirements of the 7(b)(2) Customers has been reduced by the 7(b)(3) amount. Other rates, the PF Exchange rate and the NR and IP rates, have been increased by an allocation of the 7(b)(3) amount.

Because of the proposed changes to the *Legal Interpretation* and *Implementation Methodology*, the Section 7(b)(2) Rate Test Study is being fully reproduced to document the changes to the rate test and its inputs and assumptions.

#### 7. Lookback Study for FY 2002-2008

The Lookback Study for FY 2002-2008 quantifies the amounts of REP settlement costs improperly included in FY 2002-2008 power rates (Lookback Amounts) and describes how these amounts will be recovered over time from IOUs and returned to preference customers. These are not simple calculations for each year of the lookback period because of the need to account for Load Reduction Agreements and existing deemer balances. See Part VI.D. The differences are referred to as Lookback Amounts for FY 2002-2008. The calculation of Lookback Amounts is described and documented in the Lookback Study.

### Part V—Section 7(b)(2) Legal Interpretation and Implementation Methodology

#### A. Background

As explained above, section 7(b)(2) of the Northwest Power Act directs BPA to conduct a rate test to assure that the wholesale power rates for 7(b)(2) customers are no higher than the costs of power would be to those customers for the same time period if specified assumptions are made. The rate test is conducted in conformance with the *Section 7(b)(2) Legal Interpretation* and *Section 7(b)(2) Implementation Methodology*.

Issues requiring interpretation of Section 7(b)(2) of the Northwest Power Act were initially resolved in the *Legal Interpretation of Section 7(b)(2) of the Pacific Northwest Electric Power Planning and Conservation Act*, 49 FR 23,998 (June 8, 1984). The *Legal Interpretation* was developed in a public comment process.

The methodology to implement section 7(b)(2) was developed in a section 7(i) proceeding that preceded

BPA's 1985 rate case. The 7(i) process culminated in the *Section 7(b)(2) Implementation Methodology Record of Decision* (b-2-84-F-02). The 7(i) process conducted to develop the *Implementation Methodology* for section 7(b)(2) was designated as the first phase of BPA's 1985 rate filing. The *Implementation Methodology* prescribes in detail how the 7(b)(2) rate test is to be conducted. The *Implementation Methodology* and its ROD address the major issues involving the implementation of section 7(b)(2), including reserve benefits, financing benefits, natural consequences, and the rate test trigger.

BPA is proposing revisions to the *Implementation Methodology* and the *Legal Interpretation* in the WP-07 Supplemental Proposal. Proposed changes to the *Implementation Methodology* will be explained in BPA's Supplemental Proposal testimony. Proposed changes to the *Legal Interpretation* are contained in the *Legal Interpretation* attached to this Notice. Legal arguments concerning the *Legal Interpretation* will be addressed by BPA in the WP-07 Supplemental Proposal Draft and Final Records of Decision. BPA expects parties to have the opportunity to file legal briefs or memoranda to accompany and support their rate test testimonies in order that their legal arguments can be reviewed by BPA prior to receiving the parties' initial briefs.

In preparing for the WP-07 Supplemental Proceeding, BPA and interested parties explored various issues regarding the *Legal Interpretation* and *Implementation Methodology* through several workshops. In order to bring greater clarity and certainty to the conduct of the rate test, BPA is proposing a number of modifications to the *Legal Interpretation* and *Implementation Methodology*. The major modifications are listed below.

#### A. Treatment of Preference Customer Resources Used To Serve Requirements Loads

The current *Legal Interpretation* and *Implementation Methodology* provide that preference customers' resources dedicated to serving their own firm loads under section 5(b) of the Northwest Power Act are not available to BPA in the 7(b)(2)(D) resource stack to serve 7(b)(2) Customer load. BPA proposes to clarify its interpretation of section 7(b)(2)(D) to provide that preference customer resources that are used to serve any utility's section 5(b) load are not available in the 7(b)(2) Case resource stack.

### B. Treatment of BPA-Acquired Conservation

The current *Implementation Methodology* provides that BPA-acquired conservation will be included in the section 7(b)(2)(D) resource stack and that 7(b)(2) Customer loads will be adjusted to remove the effects of the conservation. The *Implementation Methodology* made no provision for conservation that is no longer effective in reducing loads. BPA is proposing to revise the *Methodology* to remove past conservation that is no longer effective.

### C. Identification and Use of Natural Consequences

The current *Legal Interpretation* and *Implementation Methodology* provide that three natural consequences will be reflected in the rate test: demand elasticities amount of surplus firm power available, and size of nonfirm energy markets. The surplus and nonfirm consequences are the results of reasonable mathematical computations stemming from differing assumptions between the two rate test cases. Demand elasticities are not necessarily the result of reasonable mathematical computations. BPA is proposing to remove demand elasticities from the natural consequences listed in the *Implementation Methodology*.

### D. Treatment of Specified 7(g) Costs

The current *Legal Interpretation* provides that specified 7(g) costs will be removed from the Program Case, but not from the 7(b)(2) Case. However, this language does not conform to BPA's past practices in conducting the rate test. BPA proposes to change this language to specify that the 7(g) cost exclusion applies to both cases prior to the incorporation of the assumptions specified in section 7(b)(2).

### E. Identification and Treatment of Resources in the 7(b)(2)(D) Resource Stack

The current *Implementation Methodology* provides that certain resources taken from the resource stack would be added in discrete lumps. BPA proposes to remove the effects of the discrete lumps on the rate test by selling excess resources at the cost of the excess resources.

### F. Treatment of REP Settlement Costs in the Rate Test

Neither the current *Legal Interpretation* nor *Implementation Methodology* addresses the treatment of REP settlement costs. BPA proposes to add language that clarifies that REP settlement costs are costs that should be

excluded from the 7(b)(2) Case pursuant to section 7(b)(2)(C).

## Part VI. Summary of Proposal to Respond To the Court's Opinions Regarding BPA's 2000 REP Settlement Agreements, WP-02 Rates, and by Extension, WP-07 Rates

### A. Introduction

Although BPA is proposing an approach to address the Court's decisions, as described in greater detail below, BPA recognizes there are several ways to approach this matter. For example, one element of BPA's proposal for calculating the Lookback Amounts limits the amounts retained by IOUs to the lesser of an IOU's REP settlement benefits or the amount the IOU would have received under the REP. The proposed FY 2009 REP benefits to the IOUs would be significantly higher if, instead of proposing to limit the amounts the IOUs were entitled to in FY 2007 and FY 2008 to the amounts they would have received under the REP settlements, BPA had instead proposed that the IOUs were entitled to the recalculated REP benefits for those years. BPA encourages parties to propose alternative approaches to this or other elements of BPA's proposal to address the Court's decisions for the agency to consider.

This section describes, in general, BPA's proposal for responding to recent decisions of the Ninth Circuit noted previously. In *PGE*, the Court held that BPA's REP Settlement Agreements were inconsistent with the Northwest Power Act. In a companion opinion, *Golden NW*, the Court held that BPA improperly allocated REP Settlement Agreement costs to BPA's preference customers in its WP-02 power rates and remanded the rates to BPA. Although the Ninth Circuit in *Golden NW* also found infirmities in BPA's estimates of fish and wildlife costs for the WP-02 rates, the rates nevertheless recovered all of the costs of BPA's fish and wildlife commitments for FY 2002-2006. BPA acknowledges that entities may continue to assert that BPA had not committed enough funding to fish and wildlife activities during this period, but as the Court notes, that is not a matter determined in a rate proceeding. As a result, BPA is not proposing any changes in the WP-07 Supplemental Proceeding to its fish and wildlife commitments for FY 2002-2006. As discussed elsewhere, BPA is proposing a specific process, external to the rate case, to ensure its forecasts for fish and wildlife costs are as up-to-date as possible for purposes of establishing rates for FY 2009.

In a subsequent opinion, *Snohomish*, the Court remanded amendments to the REP Settlement Agreements and a provision regarding a Reduction of Risk discount the Court found was based on such Agreements. Three memorandum opinions, released at the same time as *Snohomish*, dismissed challenges to BPA's 2001 LRAs with PacifiCorp and Puget Sound Energy.

BPA is proposing to respond to the Court's decisions by: (1) Determining Lookback Amounts, which are the costs associated with the REP settlements that were improperly included in FY 2002-2008 rates and therefore should be recovered from IOUs and returned to preference customers; (2) recovering Lookback Amounts over time by reducing future REP benefits due to IOUs; and (3) concomitantly reducing preference customers' rates to reflect the lower REP benefit payments. Because BPA allocated REP settlement costs in its WP-07 power rates in the same manner as BPA allocated such costs in its WP-02 rates, BPA has reopened its WP-07 power rate proceeding to revise its power rates for FY 2009.

### 1. REP Settlement Agreement Background

In 1998, BPA's Subscription Strategy proposed offering BPA's regional IOU customers the option of signing RPSAs to participate in a traditional REP or signing REP Settlement Agreements for FY 2002-2011. The REP Settlement Agreements were to provide power and monetary benefits to the IOUs' residential and small farm consumers in order to resolve disputes arising under BPA's implementation of the REP. Prior to the development of the RPSAs and REP Settlement Agreements in 2000, the IOUs submitted letters to BPA stating their intent to participate in the REP. Through negotiations and a public notice and comment administrative proceeding, BPA developed prototype RPSAs and REP Settlement Agreements. BPA issued respective records of decision on October 4, 2000, for the RPSAs and REP Settlement Agreements. BPA then offered the RPSAs and REP Settlement Agreements to the IOUs.

All of the IOUs elected to execute the REP Settlement Agreements. For FY 2002-2006, the Settlement Agreements included 900 aMW of financial benefits and 1000 aMW of power at a cost-based rate, consistent with the Subscription Strategy. Subsequent to the execution of the REP Settlement Agreements, BPA entered into LRAs with PacifiCorp and Puget Sound Energy whereby BPA bought back the power component of the utilities' REP Settlement Agreements as part of BPA's strategy to limit the

financial impacts of the West Coast energy crisis. Through amendments to the REP Settlement Agreements signed in 2004, benefits for FY 2007–2011 were set at 2200 aMW of financial benefits.

BPA conducted the WP–02 rate proceeding to establish power rates for FY 2002–2006. BPA allocated the costs of the REP settlements to the PF Preference rate. A cost recovery adjustment clause captured the costs of the LRAs with PacifiCorp and Puget Sound Energy. A number of parties subsequently filed separate challenges to BPA's REP Settlement Agreements and BPA's WP–02 power rates in the Ninth Circuit. On May 3, 2007, the Court issued the *PGE* and *Golden NW* opinions noted above.

## 2. Overview of Proposal

### a. FY 2002–2006 Rate Period

Together with the Court's decision in *PGE*, BPA interprets the Court's remand in *Golden NW* as requiring BPA to remove the cost of the REP settlements from the PF Preference rate. In removing these costs, however, the Court's decisions do not require BPA to ignore the fact that, in the absence of the REP Settlement Agreements, the IOUs would have received benefits during the FY 2002–2006 rate period under the traditional REP. As noted previously, prior to the development of the RPSAs and REP Settlement Agreements, the IOUs submitted letters to BPA stating their intent to participate in the REP. Consequently, absent BPA's offer of REP Settlement Agreements, BPA assumes that all IOUs except Idaho Power would have participated in the REP, the costs of which would have been reflected in setting BPA's power rates.

In response to the Court's decisions, BPA proposes to determine the amount of benefits provided to each IOU under the REP settlements. BPA also proposes to calculate the amount of REP benefits each IOU would have received from BPA during the FY 2002–2006 rate period in the absence of the REP Settlement Agreements. In order to calculate such REP benefits, BPA proposes to remove the REP settlement costs from BPA's WP–02 power rates and replace them with costs associated with a traditional REP. This change will establish the PF Exchange rate that would have been used to implement the REP during the rate period. This approach requires BPA to review and decide a number of issues in the WP–02 Final Proposal that were undecided or rendered moot by the presence of the REP Settlement Agreements. Failure to allow parties to address these issues on the merits would be inequitable. In

addition, BPA must estimate the IOUs' respective ASCs for the rate period, which are used in conjunction with the PF Exchange rate and the IOUs' residential and small farm loads to determine each IOU's respective REP benefits. BPA proposes to compare each IOU's REP benefits with the actual payments made to that IOU under the REP settlements.

Based on the resulting differences between these two amounts, BPA will determine the Lookback Amounts to be recovered from each IOU and returned to preference customers via lower rates, as described in Section D below. Section E describes BPA's proposal for how the Lookback Amounts will be recovered over time. This approach responds to the Court's remand of the WP–02 rates by effectively reimbursing, through lower rates over time, preference customers for costs that should not have been included in the WP–02 preference rates during the FY 2002–2006 rate period.

In constructing this approach, BPA is not proposing to recalculate any rates other than the PF Exchange rate for the FY 2002–2006 period. BPA is proposing to recalculate only the PF Exchange rate for this period because this is the rate necessary to calculate the REP benefits the IOUs would have received. Consequently, this approach does not require BPA to recalculate any other rates for this period.

The determination of utility-specific Lookback Amounts is complex. In addition to the REP Settlement Agreements, BPA must also account for the Court's decision in *Snohomish*, which remanded to BPA the 2004 amendments to the REP Settlement Agreements and the Reduction of Risk discount that the Court found was based on those Agreements. BPA also must consider three memorandum opinions that dismissed challenges to the LRAs. In addition, the operation of the REP would have accounted for existing deemer balances, that is, amounts accrued by exchanging utilities and owed to BPA that must be eliminated before REP benefits can be paid.

### b. FY 2007–2008

BPA is proposing to adopt a similar approach to that used for FY 2002–2006 to address BPA's WP–07 rates for FY 2007 and FY 2008. The rates charged in these years, like the WP–02 rates, included REP settlement costs. Although the Ninth Circuit has not ruled on the validity of BPA's WP–07 rates, the Court's holdings in *PGE*, *Golden NW*, and *Snohomish* implicate the validity of the rates BPA established for these years. Rather than wait for the

Court to remand these rates to BPA in a subsequent case, BPA proposes to remedy these problems now. BPA's specific proposal is to adopt a remedy similar to that described above; that is, BPA proposes to remove the REP settlement costs from power rates and replace such costs with the costs of providing benefits to IOUs under the REP in FY 2007 and FY 2008. BPA will then compare the benefits under the REP to the payments each IOU received, or would have received, under the REP settlements for these years, determine the appropriate difference, and propose how this difference should be returned to preference customers.

Once again, in constructing this approach, BPA is not proposing to recalculate any rates other than the PF Exchange rate for the FY 2007–2008 period. BPA is proposing to recalculate only the PF Exchange rate for this period because this is the rate necessary to calculate the REP benefits the IOUs would have received. Consequently, this approach does not require BPA to recalculate any other rates for this period.

### B. REP Settlement Agreement Benefits Paid During FY 2002–2008

The first step in responding to the *PGE*, *Golden NW*, and *Snohomish* decisions is to calculate the amount of benefits paid to each IOU under the REP settlements during FY 2002–2008. These benefits include, for example, the Conservation and Renewables Discount (C&RD) and Conservation Rate Credit (CRC), and a power sale to PGE. BPA reviewed its accounting records and determined the amounts paid to each IOU as well as the amounts that would have been paid had payments to the IOUs not been suspended. These amounts are detailed in the Lookback Study. This determination also identifies the source of the payments, i.e., the portion of the payments made under the REP Settlement Agreements, LRAs, etc. The total benefits paid were approximately \$1.96 billion for FY 2002–2006 and \$168 million for FY 2007. Benefits that would have been paid in the latter half of FY 2007 and in FY 2008 after the suspension of payments subsequent to the Court's rulings in May 2007 would have totaled \$505 million.

### C. Proposal for Determining REP Benefits for FY 2002–2008

As previously described, BPA proposes to determine the amount of REP benefits that would have been paid to each IOU in the absence of the REP settlements. These costs would have been included in the WP–02 and WP–

07 power rates for FY 2002–2008 instead of the costs of the REP settlements. In order to make this determination, BPA must evaluate two key elements of the REP: (1) The WP–02 and WP–07 PF Exchange rates and (2) the IOUs' respective ASCs during FY 2002–2008. BPA's proposals for these two rate periods are described below.

#### 1. BPA's Proposal for Calculating REP Benefits for FY 2002–2006

##### a. The PF Exchange Rate for FY 2002–2006

BPA proposes to recalculate the PF Exchange rate for FY 2002–2006 assuming that all IOUs except Idaho Power would have participated in the REP in the absence of the REP Settlement Agreements. To develop this rate, BPA proposes to return to its WP–02 Supplemental Rate Proposal and revise its base rates with altered input assumptions consistent with information available at that time and with reconsideration of section 7(b)(2) rate test issues that were previously undecided or rendered moot. The resulting PF Exchange rate is the rate that would have been used by BPA to calculate benefits under the traditional REP during FY 2002–2006.

##### b. IOU Average System Costs (ASC) for FY 2002–2006

Although BPA's PF Exchange rate is a critical element of the REP, actual REP benefits paid to each IOU are not determined in BPA's rate cases. BPA's rate cases only forecast the expected levels of REP benefits, which comprise the expected costs that will be included in rates for the rate period. The actual level of REP benefits a utility receives is determined during the rate period as the REP is implemented and is based on a comparison of the PF Exchange rate and a utility's filed ASC, multiplied by the utility's residential and small farm loads. To calculate REP payments for FY 2002–2006, BPA would normally use filed ASCs. The IOUs, however, did not make ASC filings with BPA during the WP–02 period because the REP Settlement Agreements did not require such filings. Consequently, to calculate the REP benefits that would have been paid during the WP–02 rate period, BPA proposes to determine annual ASC for each IOU during the rate period.

To determine these annual ASCs, BPA proposes to look to FERC Form 1 data filed by each IOU with FERC for FY 2002–2006. From these historical data, BPA proposes to calculate an annual ASC for each utility by following the functionalization rules as set forth in the 1984 ASC Methodology. Relying on the

1984 Methodology is a conservative assumption given that BPA would likely have re-opened the ASC Methodology had the IOUs not executed the REP Settlement Agreements. The imputed ASCs, in conjunction with the reconstituted PF Exchange rate and actual exchange loads, are used to calculate utility-specific amounts of REP benefits that would have been paid during the WP–02 rate period.

##### 2. BPA's Proposal for Calculating REP Benefits for FY 2007–2008

Similar to the FY 2002–2006 period, BPA's PF Preference rate for FY 2007–2008 included REP settlement costs. To remedy this infirmity, BPA proposes to use a similar construct as described previously to determine the REP benefits the IOUs would have received for FY 2007–2008; that is, BPA proposes to recalculate the PF Exchange rate for FY 2007–2008 assuming an REP, and then impute annual ASCs for each IOU customer for FY 2007–2008 to determine the REP benefits that would have been paid during this period.

##### a. BPA's PF Exchange Rate for FY 2007–2008

BPA is proposing to conduct the section 7(b)(2) rate test in this Supplemental Proposal in a manner consistent with the rate test used in the reformulation of the PF Exchange rate for FY 2002–2006. The results of the rate test, in conjunction with all other assumptions used in setting rates during the WP–07 rate proceeding, will be used in recalculating the PF Exchange rate for FY 2007–2008.

##### b. IOU Average System Costs for FY 2007–2008

Consistent with BPA's proposal to determine the REP benefits IOUs would have received in FY 2002–2006, BPA proposes to determine IOU ASCs for FY 2007–2008 relying on BPA's 1984 ASC Methodology. BPA is proposing to use FERC Form 1 data from 2006 and a trend analysis to project ASCs for FY 2007–2008. BPA believes this approach approximates what the actual ASCs would be for FY 2007–2008. As with the FY 2002–2006 rate period, these imputed ASCs, in conjunction with the reconstituted PF Exchange rate and actual and forecast exchange loads, are used to calculate a utility-specific amount of REP benefits that would have been paid for FY 2007–2008.

#### D. Determination of Lookback Amounts

Determining the Lookback Amounts is not a simple proposition. A number of factors affect the amount of settlement benefits received by the IOUs and, more

importantly, whether the IOUs are entitled to retain such benefits in the absence of the REP Settlement Agreements. For example, although the Court found the REP Settlement Agreements unlawful, the Court remanded the 2004 amendments to BPA. The Court also remanded the Reduction of Risk discount, also called the "litigation penalty" by some preference customers, to BPA. In addition, the Court issued three memorandum opinions dismissing challenges to the LRAs.

As a result, BPA cannot simply subtract the REP benefits otherwise due the IOUs from the benefits paid under the REP Settlement Agreements, 2004 amendments, and LRAs to calculate the amount to be recovered from the IOUs. In addition, implementation of the traditional REP would have meant that the deemer balances for certain IOUs would have to be considered in determining the REP benefits that would have been paid absent the REP Settlement Agreements. This section describes BPA's proposal for determining the Lookback Amounts.

##### 1. Treatment of Deemer Amounts

RPSAs are the contracts that implement the REP. BPA's 1981 RPSA established what was called a "deemer account." In the event that an exchanging utility's ASC fell below the PF Exchange rate, rather than pay BPA, the utility would accumulate a balance in a deemer account based on the difference between its ASC and the PF Exchange rate multiplied by the utility's eligible exchange load. The 1981 RPSA provided that any obligations incurred under that RPSA would continue until satisfied, even if the RPSA expired. The RPSA also provided that the utility must repay its deemer balance before receiving any positive REP benefits. Idaho Power, Northwestern Energy, and Avista Corporation (Avista) all have extant deemer balances.

BPA proposes that its determination of the amount of REP benefits that would have been provided to the IOUs should account for utilities' deemer balances. Therefore, BPA proposes that any REP benefits calculated for an IOU with a deemer balance will first be used to extinguish its deemer balance before being compared to the REP settlement payments to establish a Lookback Amount for that IOU. Under BPA's proposal, Northwestern Energy and Avista exhaust their deemer balances in FY 2005 and FY 2007, respectively. Under BPA's determination of REP benefits, absent the REP settlements, Idaho Power does not qualify for REP benefits during the FY 2002–2008

period so there are no reductions to its deemer balance and its Lookback Amount is equal to the REP settlement benefits it received.

#### 2. Cap on REP Benefits Credited Against Settlement Payments

BPA proposes a second condition on the calculation of the amount to be recovered from each IOU for FY 2002–2008. In calculating this Lookback Amount for each utility, BPA proposes that REP benefits that exceed the REP settlement benefits shall not be credited to the Lookback Amount. Said another way, an IOU cannot receive more benefits under the REP than it received, or would have received, under the REP settlements. This condition is applied each year for FY 2002–2008.

#### 3. Treatment of Reduction of Risk Discount and Load Reduction Agreements

As previously mentioned, the LRAs with PacifiCorp and Puget Sound Energy are contracts wherein BPA bought back power from these two IOUs to limit exposure to the high and volatile market prices of the West Coast energy crisis. No party filed a challenge to the LRAs within the Northwest Power Act's 90-day statute of limitations. Two petitions for review were filed with the Ninth Circuit challenging BPA's unsuccessful attempts to develop a broad settlement of all outstanding litigation against BPA. The Court noted that the petitions were challenging actions that never occurred and dismissed the petitions for lack of jurisdiction. Another petition was filed that challenged the LRAs, but it was filed two and one half years after expiration of the 90-day statute of limitations. The Court noted that the only issue raised in the petition concerned the Reduction of Risk Discount provision of the LRAs. Having dealt with the Reduction of Risk Discount in *Snohomish*, the Court dismissed the petition challenging the LRAs as moot.

In light of the Court's actions, BPA proposes to treat the LRA payments to PacifiCorp and Puget Sound Energy in the following manner. First, BPA will assume that the total REP settlement benefits paid to these two IOUs include the REP Settlement Agreement benefits, the LRA payments, and the C&RD/CRC benefits. BPA proposes that PacifiCorp and Puget Sound Energy (Puget) keep the lesser of the REP settlement benefits or the REP benefits the utilities would have received in the absence of the REP Settlement Agreements, but not less than the amount of the LRA payments. This proposal effectively treats the LRA

payments to PacificCorp and Puget Sound Energy as "protected" payments that are not subject to recovery as part of their Lookback Amounts.

In *Snohomish*, the Court held that the Reduction of Risk Discount was founded on the original REP Settlement Agreements and remanded the issue to BPA. Therefore, BPA proposes to treat the Reduction of Risk discount payments as suffering the same fate as the REP Settlement Agreement payments. Any amount paid to PacifiCorp and Puget for the Reduction of Risk Discount will be included in their REP Settlement Agreement benefits and will therefore be subject to recovery through the lookback process.

#### 4. Results

The application of the previous three sections results in annual Lookback Amounts for each IOU. BPA is proposing to escalate the annual Lookback Amounts for FY 2002–2006 to 2007 dollars to adjust for the effects of inflation. The resulting cumulative Lookback Amounts for each IOU, in 2007 dollars for FY 2002–2007 are provided in Table 3.

TABLE 3.—PROPOSED CUMULATIVE LOOKBACK AMOUNTS  
[Millions of 2007 dollars]

Utility name	Proposed lookback amounts
Avista .....	\$62.1
Idaho Power .....	96.6
Northwestern Energy .....	7.7
PacifiCorp .....	239.4
Portland General Electric .....	64.1
Puget Sound Energy .....	150.5
Total .....	620.4

The Lookback Amounts in Table 3 assume that BPA offers, and the IOUs sign, the Interim Agreements. In the absence of Interim Agreements, no REP benefits will be paid in FY 2008, creating an amount of REP benefits otherwise due to the IOUs for that year, which will be used to reduce accumulated Lookback Amounts by \$189 million.

#### E. Application of the Results of the Lookback Analysis

Because the IOUs have already passed REP Settlement and LRA benefits on to their residential and small farm customers for FY 2002–2006 and part of FY 2007, BPA proposes to recover Lookback Amounts from the IOUs by reducing future REP benefits determined to be otherwise due them. The amount of the reduction in benefits

due will be determined by the Administrator in each rate case. The reduced REP payments to IOUs will result in lower PF Preference rates for FY 2009 and beyond until Lookback Amounts are fully amortized. These lower PF rates constitute a portion of the compensation to preference customers for the amounts they overpaid in FY 2002–2008 power rates.

An additional portion of the compensation may occur as provided in Standstill Payment Agreements, if offered, for those preference customers that sign such agreements or via customer-specific credits on FY 2009 power bills if such agreements are not signed.

The reduction in the amounts of REP benefits that would have otherwise been due will be credited against each IOU's Lookback Amount. This practice will continue as needed each rate period until each IOU has amortized its total Lookback Amount, including interest. BPA proposes that unamortized Lookback balances will accrue interest. The proposed reduction in REP benefits for FY 2009 is an amount that is expected to amortize each IOU's Lookback Amount plus accrued interest within 20 years, with the exception of Idaho Power. The assumptions and proposal with regard to Idaho Power are described in more detail below.

BPA expects that all IOUs except Idaho Power will amortize their respective Lookback Amounts, including interest, within 20 years based on a set of simple assumptions regarding the future. These assumptions are:

1. The FY 2009 individual IOU REP benefits paid continue in future rate periods until such time each IOU fully amortizes its Lookback Amount;
2. Each IOU's FY 2009 REP benefits amount (before reductions applied for Lookback Amounts) increases by 2.5 percent per year (as a consequence of growth in eligible exchange loads and/or increases in IOU ASCs and/or changes in PF Exchange rates, none of which is specifically forecasted or otherwise modeled); and
3. Interest accrues on unamortized Lookback balances at the rate of 5.03 percent per year.

BPA proposes to proportionally reduce each IOU's benefits due for FY 2009 such that the aggregate benefit paid, before consideration of any deemer obligations, for all IOUs is 210 million. This amount represents a balance between ensuring that regional residential and small farm consumers receive benefits from the Residential Exchange Program while returning to preference customers the overpayments



to IOUs that occurred under the REP settlements. This aggregate benefit is in the middle of the \$200 million to \$220 million range contained in the Recommendations of Representatives of the Investor-Owned and Certain Consumer-Owned Utilities Regarding the Residential Exchange Benefits for Customers Served by the Pacific Northwest Investor-Owned Utilities dated November 7, 2007. BPA understands that this document enjoys broad, albeit not universal, customer support. BPA views such support as a measure of the reasonableness of its approach to recovering the Lookback Amounts over time.

Table 4 shows FY 2009 REP benefits due and REP benefits paid before consideration of any deemer obligations.

**TABLE 4.—FY 2009 REP BENEFITS DUE AND BENEFITS PAID BEFORE DEEMER ADJUSTMENT**

[Millions of dollars]

Utility name	FY 2009 REP benefits due	FY 2009 REP benefits paid
Avista .....	\$27.8	\$23.3
Idaho Power .....	9.2	7.7
Northwestern Energy .....	7.6	6.4
PacifiCorp .....	50.8	42.7
Portland General Electric .....	54.6	45.8
Puget Sound Energy .....	100.2	84.1
Total .....	250.2	210.0

BPA maintains the position that Idaho Power has a substantial deemer balance at the end of FY 2008. BPA is proposing to apply the same treatment to Idaho Power's deemer balance for FY 2009 that was applied when determining the Lookback Amounts for FY 2002–2008. Specifically, REP benefits will first be applied toward deemer balances. Only when Idaho Power's deemer balance is extinguished would REP benefits be available to apply against Lookback Amounts and to provide positive REP benefits to Idaho Power. Based on Idaho Power's current deemer balance and reasonable expectations of future REP benefits, Idaho Power is not expected to amortize its Lookback Amount by 2028. BPA acknowledges that Idaho Power disputes its current deemer balance and has requested to explore with BPA the possibility of settling this dispute.

#### F. Summary

In summary, BPA's proposal responds to the Court's rulings in several ways to remedy the improper allocation of REP settlement costs to the PF Preference

rate. First, the WP–07 Supplemental Proposal results in an average PF Preference rate of \$26.2/MWh—about a four percent (4%) reduction from current rates. This proposed reduction results from several changes or revisions to the WP–07 Final Studies. The most significant change is a reduction in the costs of the REP for FY 2009 from about \$336 million to \$202 million, which includes \$39 million of the Lookback Amount.

Second, BPA is determining the magnitude of the Lookback Amounts for FY 2002–2007 that need to be recovered from the region's IOUs and returned to public utilities. BPA proposes to recover this total, approximately \$620 million, out of future REP benefits, starting with the \$39 million for FY 2009 noted above. BPA proposes that the amount of future Lookback Amounts recovered, and by extension the associated PF rate reduction, will be decided in each subsequent rate case.

Lastly, BPA is proposing to provide public utilities with either a one-time payment or a credit on their power bills for the difference between the REP settlements costs in power rates for FY 2007–2008, and the amount of FY 2007–2008 REP benefits the IOUs would be paid under BPA's proposal. If BPA offers, and preference customers sign, Standstill Payment Agreements, they will receive a portion of this credit in FY 2008 and the remainder in FY 2009. If they do not sign Standstill Payment Agreements, or the agreements are not offered, preference customers will receive the credit in FY 2009. BPA has the financial reserves to provide this FY 2008–2009 payment or credit of about \$315 million because BPA has been collecting REP settlement costs in the PF Preference rate but has not been paying benefits to the IOUs since the Court's May, 2007, rulings.

#### Part VII—2007 Supplemental Wholesale Power Rate Schedules (FY 2009) and 2007 Supplemental General Rate Schedule Provisions (GRSPs) (FY 2009)

BPA's proposed 2007 Supplemental Wholesale Power Rate Schedules and GRSPs, as well as the *Section 7(b)(2) Legal Interpretation and Section 7(b)(2) Implementation Methodology*, incorporated by reference as a part of this Notice, are available for viewing and downloading on BPA's Web site at <http://www.bpa.gov/corporate/ratecase>. A copy of the proposed rate schedules and GRSPs are also available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE 11th Avenue, Portland, OR.

Issued this 1st day of February, 2008.

**Stephen J. Wright,**

*Administrator and Chief Executive Officer.*

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## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6695–7]

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or <http://www.epa.gov/compliance/nepa/>

Weekly receipt of Environmental Impact Statements

Filed 01/28/2008 through 02/01/2008 Pursuant to 40 CFR 1506.9

EIS No. 20080035, Draft EIS, IBR, WA, Yakima River Basin Water Storage Feasibility Study, Create Additional Water Storage, Benton, Yakima, Kittitas Counties, WA, Comment Period Ends: 03/31/2008, Contact: David Kaumheimer 509–575–5848 Ext. 612.

EIS No. 20080036, Final EIS, GSA, CO, Denver Federal Central Site Plan Study, Master Site Plan, Implementation, City of Lakewood, Jefferson County, CO, Wait Period Ends: 03/10/2008, Contact: Lisa D. Morpurgo 303–236–8000 Ext. 5039.

EIS No. 20080037, Draft EIS, AFS, ID, Yakus Creek Project, Proposes Timber Harvest, Watershed Improvement, and Access Management Activities, Lochsa Ranger District, Clearwater National Forest, Idaho County, ID, Comment Period Ends: 03/24/2008, Contact: Craig Trulock 208–926–4274.

EIS No. 20080038, Draft EIS, BLM, WY, West Antelope Coal Lease Application (Federal Coal Lease Application WYW163340), Implementation, Converse and Campbell Counties, WY, Comment Period Ends: 04/08/2008, Contact: Sarah Bucklin 307–261–7587.

EIS No. 20080039, Final EIS, BLM, NV, Kane Springs Valley Groundwater Development Project, To Construct Infrastructure Required to Pump and Convey Groundwater Resources, Right-of-Way Application, Lincoln County Water District, Lincoln County, NV, Wait Period Ends: 03/10/2008, Contact: Penny Wood 775–861–6466.

EIS No. 20080040, Draft EIS, IBR, NV, Folsam Lake State Recreation Area & Folsam Powerhouse State Historic Park, General Plan/Resource Management Plan, Implementation, El