

EXCHANGE OF CURRENT BPA SURPLUS POWER
FOR FUTURE POWER FROM CERTAIN
COMPANIES' SHARE OF WNP-3
TO SETTLE A DISPUTE OVER
CONSTRUCTION DELAY

RECORD OF DECISION

September 19, 1985

VOLUME I

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Exhibits

- A. Initial Draft Settlement Principles (January 17, 1985).
- B. Memorandum from Walter Pollock to Edward Sienkiewicz, BPA Assistant Administrator, Capacity Impact Studies-WNP-3 Settlement (September 17, 1985).
- C. Letter from Robert E. Ratcliffe, Deputy BPA Administrator to Jim Weaver, Estimated Investor Owned Utility Rate Impacts (June 17, 1985).
- D. Jim Weaver, Chairman of the House Subcommittee on General Oversight, Northwest Power and Forest Management, Press Release (September 6, 1985).
- E. Letter from Puget Sound Power & Light Co. to Peter Johnson, BPA Administrator, Retail Rate Impacts of WNP-3 Settlement on PSP&L Customers (August 1, 1985).
- F. Letter from The Washington Water Power Company to Peter Johnson, BPA Administrator, Rate Impacts of the WNP-3 Settlement (July 31, 1985).
- G. Letter from Portland General Electric Co. to Peter Johnson, BPA Administrator, Rate Impacts of the WNP-3 Settlement (July 30, 1985).
- H. Letter from Pacific Power and Light Co. to Peter Johnson, BPA Administrator, Rate Impacts of WNP-3 Settlement (July 31, 1985).
- I. City of Seattle, City, Light Department, Analysis of Modification to the Proposed WNP-3 Settlement Agreement (August 14, 1985).
- J. Memorandum from Nancy Glaser to Seattle City Council, Analysis of Proposed Agreements Related to the Construction Delay at WNP-3 (August 23, 1985).
- K. Eugene Water and Electric Board, WNP-3 Settlement Analysis (May 23, 1985).
- L. Memorandum from Steve Waddington to PNGC Board of Directors, Proposed WNP-3 Settlement--An Economic Evaluation (April 17, 1985).
- M. Letter from Doug Ragen, Washington Utility Group, Comment on the Revised WNP-3 Settlement (September 6, 1985).
- N. Memorandum from Dan Meek, Subcommittee on General Oversight, Northwest Power, and Forest Management, to Interested Parties, Impact of WNP-3 Settlement on Investor Owned Utility Rates (September 6, 1985).

GLOSSARY OF IMPORTANT TERMS

Capability means the amount of electric power a resource is capable of producing.

Capacity means the ability of a power system to deliver a specified amount of electric energy over a specified time to a particular point of delivery. Capacity is measured in kilowatts (Kw) or megawatts (MW).

Electric Energy^o, or Energy, means the ability to do work. In a thermal power plant electric energy is generated by producing steam from fuels such as coal, uranium, oil, or gas. In a hydroelectric project the "fuel" is falling water. Energy is measured in kilowatthours (kWh).

Electric Power or Power, is used in this Record of Decision (ROD) as a general term for electricity. Electric power is comprised of energy and capacity.

Firm Energy means energy that is continuously available. In a hydro system firm energy is energy that can be produced even during extended periods of low river flows due to dry weather. The amount of firm energy a power system can produce depends on historical river flows, storage capacity, and consumption patterns.

Kilowatt is a unit to measure capacity.

Kilowatthour is a unit to measure energy.

Load means the amount of electric power demanded by ultimate consumers. Electrical loads have an energy component and a capacity component.

Megawatt means 1,000 kilowatts.

Megawatt-Year means one megawatt of capacity made available for one year.

Mill means one-tenth of a cent.

Nonfirm Energy means energy in addition to firm energy which can be produced from a hydro system. Nonfirm Energy, sometimes called interruptible energy, is not continuously available because its existence depends on the weather or other uncertain events.

Plant Factor means the ratio of the amount of energy a power plant actually produces to the amount of energy it theoretically could produce were it to operate at full capacity all the time.

I. BACKGROUND

A. Overview

This Record of Decision (ROD) sets forth the Bonneville Power Administration's (BPA) reasons for settling litigation over the delay in constructing Washington Public Power Supply System (Supply System) Nuclear Project No. 3 (WNP-3). The litigation concerns the decision in May 1983 to defer construction until financing becomes available to the Supply System and a demonstrable need for the Project is established. The construction deferral was made at the request of the Administrator of BPA, a Federal power marketing agency in the Pacific Northwest. BPA is obligated to pay principal and interest on bonds sold by the Supply System to finance 70 percent of the project. The construction delay was opposed by the project's minority owners, four Northwest investor-owned utilities (companies) which collectively own 30 percent of the project.

The four companies maintained that the agreements governing WNP-3 prohibited the construction delay and obligated BPA to pay construction costs out of current revenues in the event the Supply System could not sell bonds. Together, the companies seek nearly \$2.6 billion in damages against the United States.

On November 26, 1984, District Court Judge Richard Bilby issued an opinion adverse to BPA. Judge Bilby found that BPA and the Supply System had breached various contracts. He reserved the damage claims for later adjudication. In January 1985, Bilby recused himself from the litigation. On May 16, 1985, Judge William Browning vacated all of Judge Bilby's rulings. On July 10, 1985, Judge Browning reinstated a number of Judge Bilby's rulings, but made no decision on the claim of breach.

BPA had discussed settlement possibilities as early as spring 1984. With definition of a power exchange as a potential basis of settlement, settlement negotiations began in earnest in November 1984, prior to Judge Bilby's ruling. These discussions culminated in a set of settlement principles publicly released on January 17, 1985. These principles are included in this ROD as Exhibit A. Representatives of the Supply System and public utilities were kept informed of the settlement progress, but did not participate directly in these early negotiations.

From the outset of negotiations, BPA had insisted that any settlement agreement must be subject to public review. The public comment period began on January 18, 1985, and ended on September 6, 1985. A more thorough discussion of the public involvement process is contained in ROD section IV(A).

Negotiations were also instituted with the Supply System. Tentative agreement on a settlement package was reached on April 17, 1985. Drafts of the proposed contracts were released shortly thereafter for public comment. ROD section IV(A)(1).

During the early months of the comment period, BPA received objections to various aspects of the proposed settlement from a number of its public utility

customers and others. In response, BPA met with representatives of public utilities. These discussions resulted in a list of proposed modifications to the settlement package, which were developed in negotiations with the companies. These modifications are discussed in ROD sections IV(C)(14) through (22). BPA distributed revised contracts for public review and comment on August 14. BPA received comments on the revised proposal from 11 parties within the comment period, which closed September 6, 1985. The Public Involvement section of this ROD (section IV) discusses and responds to all issues raised by commenters on the proposed settlement throughout the public process. Actual comments received during the course of the settlement process and other related documents in the Official Record are available for review at BPA's Public Involvement office.

Concurrently with the public comment period, BPA prepared an Environmental Assessment (EA) pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* BPA issued the EA and a Finding of No Significant Impact on May 22, 1985. On August 14, 1985, BPA released a revised EA to account for subsequent modifications to the proposed contracts. BPA reviewed comments on the revised EA before considering whether a Finding of No Significant Impact was appropriate for the settlement. Comments on the revised Environmental Assessment identified no new environmental concerns. The Acting Assistant Secretary for Policy, Safety and Environment of the Department of Energy issued a revised Finding of No Significant Impact on September 17, 1985.

B. The Dispute over Extended Construction Delay

1. Parties to the Litigation

The parties to the litigation are BPA, the Supply System, 103 of BPA's publicly-owned utility customers and the four companies. BPA, a Federal power marketing agency within the Department of Energy, supplies the bulk of power purchased by public utility districts, municipal-owned utilities, rural electric cooperatives and aluminum companies located in the Pacific Northwest. BPA was created by the Bonneville Project Act of 1937, 16 U.S.C. 832 *et seq.*, and today transmits and markets power produced by some 30 Federal dams in the Northwest. BPA operates one of the world's largest electric power transmission systems. BPA is a self-financed agency that does not depend on Congressional appropriations to meet its ordinary revenue requirements. 16 U.S.C. 838 *et seq.*

BPA participated in planning in the early 1970's for the construction of three of the Supply System's nuclear plants. Through a complex series of Net Billing Agreements, BPA acquired the generating capability of the Supply System's 70 percent share of WNP-3. Those agreements, discussed in more detail below, obligate BPA to pay the costs of WNP-3, including the debt service on bonds issued by the Supply System to pay for project construction and certain other project costs.

The Supply System is a municipal corporation of the State of Washington created in 1957 as a joint operating agency for the purpose of constructing and operating electric power resources. See RCWA 43.52 *et seq.* The Supply System's membership includes most of the larger public utility districts and

municipally-owned utilities in Washington State. The Supply System owns and operates a hydroelectric project (the Packwood Project), one nuclear project (WNP-2) and one steam generating plant using by-product steam from a DOE owned reactor, the Hanford Generating Plant). Two partially constructed Supply System nuclear projects are under extended construction delay. (WNP-1 and WNP-3). Two other Supply System nuclear projects in which BPA has no role (WNP-4 and WNP-5) have been terminated.

The Supply System has no tax base or other general source of revenues. Instead, its sole source of funds is the money it receives from bond sales and BPA and the public utilities that have acquired the capability of its various projects. The Supply System owns 70 percent of WNP-3 and acts as the agent for the companies in constructing and operating that project. In July 1983, the Supply System announced the largest municipal bond default in history when it was unable to repay the principal and interest on \$2.25 billion of bonds sold to finance construction of WNP-4 and -5, resulting in the largest municipal bond default in history.

One hundred and three of BPA's publicly-owned utility customers are also parties to the litigation by virtue of their participation in the Net Billing Agreements. BPA's costs associated with the Supply System's share of WNP-3 are included in the electric rates charged to the public utilities, Federal agencies, and residential consumers of certain investor-owned utilities. 16 U.S.C. 839a(10) and 839e(b)(1).

Four companies collectively own 30 percent of WNP-3. They are Pacific Power & Light Company (Pacific); Portland General Electric Company (Portland); Puget Sound Power & Light Company (Puget); and The Washington Water Power Company (Water Power). Together, these companies serve approximately half of the electric power load in Washington and Oregon. Pacific and Portland each own 10 percent of WNP-3. Puget and Water Power each own 5 percent.

The companies unsuccessfully sought a court order to compel BPA and the Supply System to resume construction. The companies' opposition to the deferral was driven primarily by the companies' perceived need for power and the deferral's financial impact on the companies. Investor-owned utilities in Oregon and Washington generally are precluded from recovering the construction costs of an uncompleted generating facility through electric rate increases resulting from increases in rate base. Oregon law precludes such recovery of construction costs until a project is completed. ORS 757.355. Thus, the longer the delay in completing WNP-3, the longer until the companies can recover their investment (\$750 million) from ratepayers. Further, interest on that investment continues to accrue during the deferral period. If WNP-3 were terminated, it is uncertain whether any of their investment would be recovered through rates.

2. Decision to Build WNP-3

Prior to the 1970's, hydroelectric projects generated most of the electric power consumed in the Northwest. By the late 1960's, however, existing resources appeared to be inadequate to meet the growing needs in the region. The region embarked on a program, the Hydro-Thermal Power Program, to

coordinate the construction of thermal generating resources (coal and nuclear) by public and private utilities. Some public and private utilities decided to develop and own jointly some thermal resources.

Because BPA has never had the authority to own or construct generating facilities, an entity other than BPA had to own and build the thermal projects. The Supply System filled this role.

3. Agreements Governing WNP-3

The WNP-3 litigation involves a dispute over the proper interpretation of three contracts which govern the ownership, construction and operation of the project: the Ownership Agreement, the Project Agreement and the Net Billing Agreements.

The Ownership Agreement sets out the rights and obligations of the owners of the project, the Supply System and the four companies. It establishes the Supply System as the agent of the companies in constructing and operating the project. It also establishes an Owners Committee that approves significant matters such as construction and operating budgets. BPA, although not an owner, is a member of the Owners Committee.

Any matter requiring approval of the Owners Committee must obtain more than 80 percent of the ownership share votes. Each company votes its respective ownership share. The Supply System and BPA each vote a 35 percent ownership share reflecting an equal division of the voting rights associated with the Supply System's 70 percent ownership share.

Upon a request of 20 percent of the ownership shares, any matter disapproved by the Owners Committee may be submitted for resolution to a special board. The Special Board determines whether the proposed action is "Prudent Utility Practice," a term defined to require "reasonable" rather than "optimum" action.

The Project Agreement defines the relationship between BPA and the Supply System. It gives BPA the right to disapprove significant matters which are not reviewed by the Owners Committee, principally Supply System financing proposals and annual budgets. The Project Agreement provides for a "Project Consultant" to review disagreements between BPA and the Supply System under the Prudent Utility Practice standard. BPA may disapprove each Supply System bond sale or other debt financing arrangement without regard to Prudent Utility Practice and without Project Consultant review.

The Net Billing Agreements are a series of three-party contracts among BPA, the Supply System and 103 of BPA's public utility customers. Each public utility, by signing a Net Billing Agreement, acquired a "participant's share" of the Supply System's share of the project's generating capability. Each participant is obligated to pay to the Supply System a fixed percentage of the Supply System's annual project costs, including debt service on outstanding bonds. Each participant assigned its share of the project's generating capability to BPA. BPA pays for the generating capability it acquired by crediting the participants' monthly power bills from BPA for the amount to be sent by the participants to the Supply System.

The Net Billing Agreements obligate BPA to pay all of the Supply System's costs related to WNP-3 included in approved annual budgets, subject to the availability of appropriations if BPA's revenues are not sufficient. For this reason BPA is keenly interested in controlling those costs and in defending claims that the Supply System owes the companies hundreds of millions of dollars for deferring construction.

4. Supply System's Financial Problems and the Decision to Defer Completion of WNP-3

In mid-1981 the skyrocketing costs of WNP-4 and -5, an increasing unwillingness of the bond market to absorb additional 4/5 bonds on acceptable terms, and diminished prospects of a need for power from these plants required a construction moratorium on these two plants. In January 1982, when it became apparent that funds would not be available to preserve the projects for a later construction restart, the Supply System terminated Projects 4 and 5. The Supply System has sold \$2.25 billion of bonds to finance their construction. The troubles at WNP-4 and -5, as explained below, adversely affected the Supply System's ability to obtain financing for the net billed projects, which had also experienced large cost increases.

A number of the public utility participants in WNP-4 and -5 refused to make payments to the Supply System for the debt service on the outstanding 4/5 bonds. The participants argued that while they were empowered to purchase electricity, they were prohibited from entering into agreements that required them to pay construction costs whether the projects produced electricity.

Some of the net-billing participants contended that their alleged lack of authority to pay for a generating facility whether it produced electricity also relieved them of the obligation to make payments on WNP-1, -2, and -3. Although the U.S. District Court for the District of Oregon in City of Springfield v. Washington Public Power Supply System, 564 F.Supp. 86 (D.Oregon 1983), had ruled the participants were bound by their promise to pay the debt service on the three net billed projects, the Supply System's four underwriters informed the Supply System that a sale of bonds for WNP-2 and -3 could not go forward, even assuming the default and bankruptcy problems were favorably resolved, until the Springfield appeal process was complete. (WNP-1 had been mothballed earlier, in April 1982.)

Construction on WNP-2, then 98 percent complete, and on WNP-3, then 75 percent complete, would almost certainly stop unless another means of financing could be found. One method was to pay construction costs out of BPA's current revenues. See Op. Comp. Gen. B-210929 (Aug. 2, 1983). In other words, rather than utilize net billing to pay the debt service on bonds sold to finance construction, net billing would be used to pay construction costs directly as they were incurred. This would increase BPA's rates. Rather than pay construction costs plus interest over thirty-five years, BPA would pay these costs as they were incurred.

BPA decided to pay the construction costs of WNP-2 out of current revenues, but to recommend a delay of construction on WNP-3 for three years. See generally BPA, "Analysis of Resource Alternatives" (May 26, 1983). Without a

source of funds to pay its share of costs, the Supply System, on May 27, 1983, slowed construction on WNP-3 for thirty days to determine if funds could be found to finance construction.

On June 1, 1983, the Supply System submitted BPA's three-year construction slowdown proposal to a vote of the Owners Committee. Each company responded that the proposed construction delay was not a matter properly before the Owners Committee. In their view the Supply System had an unconditional obligation to finance its share of WNP-3 to expeditiously complete the project. According to the companies, if the Supply System did not meet this obligation, BPA was required to do so. BPA's proposal did not receive approval from the Owners Committee.

On June 27, 1983, the Supply System proposed to the Owners Committee that the Supply System's 70 percent share of construction costs be paid out of BPA's current revenues. This proposal also failed to receive the approval of the Owners Committee. On July 7, 1983, the Supply System implemented an indefinite construction delay.

On July 22, 1983, the Supply System announced that it would submit the dispute to an arbitration panel pursuant to the terms of the Ownership Agreement. The companies and BPA opposed this proposal. The companies argued that there was nothing to arbitrate since the contracts, in their view, unconditionally required BPA to assume the Supply System's financing obligations. BPA argued that there was nothing to arbitrate because the contracts unambiguously placed the obligation to obtain financing solely on the Supply System, not BPA. In BPA's view, no arbitration decision could burden the agency with an obligation it did not assume in the contracts.

5. Lawsuit is Filed

The action began to resolve a dispute over the sharing of costs between the Supply System's twin plants, WNP-1 and -4, and WNP-3 and -5.

In June 1983, the companies filed an action challenging the decision to delay construction as a counterclaim in the pending cost-sharing suit. On August 19, 1983, they filed a motion to compel a restart of construction of WNP-3. In response, the Supply System, on September 14, 1983, filed a motion to compel arbitration of the dispute over construction delay.

On October 11, 1983, the court ordered the parties to arbitrate BPA's proposal to delay construction. On January 6, 1984, the arbitration panel issued a one-paragraph decision:

In May 1983, the Supply System was effectively foreclosed from the capital markets. Therefore, the proposed three year slowdown was a prudent utility practice as defined in Section 1(o) of the Ownership Agreement, based on the assumption that sufficient funds were not available from other sources to enable the Supply System to continue scheduled construction of WNP-3. If sufficient funds from other sources were

available to the Supply System in May 1983, the slowdown proposal would not be a prudent utility practice as so defined.

In February 1984, three of the four companies renewed their motion to compel financing construction out of BPA's current revenues. BPA opposed the motion on the grounds that the agreements did not obligate BPA to fund construction directly, and that sovereign immunity had not been waived to permit a suit against the United States for specific performance of a contract. Public utility participants argued that BPA is prohibited from financing construction out of current revenues. On February 24, 1984, the court denied the motion for injunctive relief based on sovereign immunity.

In August 1984, BPA moved for summary judgment contending that the agreements unambiguously permitted the construction slowdown and did not require BPA to finance construction directly out of current revenues. Cross-motions were filed by all the parties.

The court's opinion of November 26, 1984, addressed two issues that lie at the heart of the disputes among BPA, the Supply System and the companies: (1) whether the agreements require BPA to fund construction costs out of current revenues if the Supply System cannot otherwise finance construction; and (2) whether the mothballing of WNP-3 amounted to a material breach of the Ownership Agreement. The court held: (1) that the agreements required BPA to fund construction costs out of current revenues under the circumstances of this case; and (2) that BPA and the Supply System breached the Ownership Agreement in delaying construction. The court did not decide whether the breach was material.

In January 1985, Judge Bilby recused himself from the case upon his discovery that his father and stepmother own \$100,000 of WNP-3 bonds. The recusal prompted a motion by certain public utility participants to vacate all of Judge Bilby's rulings. On May 16, Judge William D. Browning granted the motion. Subsequently, in July, Judge Browning reinstated most of Judge Bilby's rulings. Judge Browning had not decided whether to reinstate the finding of breach as of the date of this ROD.

The most recent litigation has taken place over the proposed settlement. A group of twelve public utilities in the State of Washington sought to amend their pleadings to add ten counterclaims alleging that the proposed settlement breaches the Net Billing Agreements, violates various statutory rights, and exceeds BPA's authority. Similar claims have been filed in the 9th Circuit.

II. SUMMARY OF THE WNP-3 SETTLEMENT

A. Exchange of Surplus Federal Power as a Basis for Settling the Dispute

1. Introduction

The settlement is founded on an exchange of power. BPA delivers power that is surplus to BPA's present contractual obligations in exchange for the right to acquire power from the companies' resources and from each of the companies' share of WNP-3.

The exchange has three components: (1) BPA's obligation to deliver power to each company; (2) BPA's right to exercise an irrevocable offer to acquire each company's share of WNP-3 capability if BPA were to need the power to meet future loads; and (3) BPA's right to rely on power from the companies' combustion turbines or other resources. In addition, BPA has the right, under the settlement, to displace the power it receives from the companies' combustion turbines with other, lower cost power available on BPA's system, including nonfirm energy and surplus firm energy.

The amounts of capacity and energy exchanged differ. BPA expects the amount of energy exchanged over the life of the settlement to increase the amount of firm energy available to BPA if WNP-3 were completed. However, BPA expects the amounts of capacity exchanged, measured in terms of MW-months, to result in a disposal of capacity. The increase in firm energy to the Federal system would result if BPA were to acquire the companies' shares of WNP-3 capability. Otherwise, the amount of energy exchanged would be equal. In the early years the net effect is to dispose of BPA capacity. In later years, BPA may receive capacity from the companies' shares of WNP-3 that exceeds BPA capacity deliveries in those years.

In certain circumstances, the settlement agreement provides for the payment of money by the parties to one another to account for risk, to account for the time value of the power exchanged, to avoid an unintended windfall to the companies, to avoid adverse rate impacts to BPA's other customers, and to account for other factors. BPA refers to these payments as "equalizing the value of the exchange." In past power exchanges, BPA has usually adjusted the amounts of power exchanged to accomplish this equalizing. However, it is not unusual for BPA to use incidental money payments to equalize exchanges. Because of the difficulties of settling a complex lawsuit, the parties used money payments in this case. These payments are a condition of settlement incidental to the exchange.

These concepts and the reasons therefor are developed more fully below.

2. BPA's Obligation to Deliver BPA Exchange Power to the Companies

One objective of the settlement was to leave the companies in a position reasonably comparable to that which would have occurred had the construction of WNP-3 not been delayed. Had WNP-3 been constructed on schedule, each company would have received an amount of power equal to its ownership percentage times the actual net output from the project. This principle

formed the basis for determining the amount of power BPA would be obligated to deliver to the companies (BPA Exchange Power).

To reflect the fact that the companies have to date paid only two-thirds of the costs of their shares, the amount of power to be delivered to the companies has been reduced to two-thirds of that expected to be produced by their shares of WNP-3. Question 22, BPA Proposed WNP-3 Settlement: Update (February 26, 1985). The companies are relieved of any further obligation to pay construction costs as a result of the settlement by BPA's obligation to reimburse the companies for such costs.

The actual net output of WNP-3 will not be known unless and until WNP-3 is completed. However, had WNP-3 been constructed on schedule, the companies would have begun receiving power from WNP-3 in 1987. Thus, BPA's obligation to deliver power to the companies pursuant to the settlement begins in 1987.

To simulate the operation of WNP-3 for purposes of determining the amount of energy the companies are to receive from BPA, the parties agreed to use four surrogate nuclear plants comparable in design to WNP-3. BPA's obligation to deliver energy depends on the average performance of these four surrogate plants. If these plants perform poorly, BPA's obligation to deliver energy is correspondingly reduced. In the event performance of these four plants is exceptionally poor, BPA is obligated to deliver minimum amounts of power.

From BPA's perspective, the settlement is based on the concept of delivering to the companies the total amount of power they would have received from WNP-3 over its lifetime. A nuclear plant similar to WNP-3 can be expected to generate electricity for 35-40 years. In order to deliver 35-40 years of plant output in the 30-32-year term of the contract, the parties have agreed to use a multiplier principle. The reasons for limiting the term of the exchange in this manner are discussed in ROD section IV(C)(21). Thus, BPA's obligation to deliver power ceases in about 32 years, notwithstanding the continued operation of one or more of the surrogate plants for a longer time.

Because the likelihood of BPA's having nonfirm energy available to meet its exchange obligations without requesting power from the companies' combustion turbines is higher during winter months than during other times of the year, BPA requested that BPA Exchange Power be delivered in varying monthly amounts between November and April of each year. BPA's obligation to deliver energy is "shaped" into these months.

This shaping increases the likelihood that BPA will have ample hydropower available to meet its energy obligation because these months correspond to the period in which BPA expects to have surplus energy from winter rains in most years. Delivering BPA Exchange Power in this shape is less costly than spreading the deliveries over more months because the likelihood of BPA's displacing the operation of the companies' combustion turbines with less costly BPA resources is increased. These months correspond to the companies' winter peak demand due to winter heating loads.

3. Irrevocable Offer to BPA of the Companies' Share of WNP-3 Capability in Exchange for BPA Exchange Power

In partial exchange for power from BPA, each company irrevocably offered its share of WNP-3 capability to BPA. If BPA needs power from the companies' share of WNP-3, BPA need only complete section 6(c) procedures pursuant to the Pacific Northwest Power Act, 16 U.S.C. 838d(c), comply with the National Environmental Policy Act, and subsequently accept the offers. BPA then becomes entitled to receive power from each company's share of WNP-3 for the life of WNP-3.

BPA pays only the costs to complete the plant. The companies will absorb their investment costs prior to February 1, 1985 (sunk costs).

Since BPA is receiving from the companies' combustion turbines an amount of energy equal to that which BPA will deliver to the companies over the life of the settlement agreement (see the following discussion of Company Exchange Energy), the energy from the companies' shares of WNP-3 will result in a net increase in firm energy to the Federal System.

4. The Companies' Obligation to Make Company Exchange Energy Available to BPA in Exchange for BPA Exchange Power

In partial exchange for BPA Exchange Power, the companies are also obligated to make firm energy available to BPA in an amount equal to that which BPA is obligated to deliver to the companies. Had BPA settled the litigation by agreeing to sell power to the companies, BPA would have had to acquire new resources to meet BPA's exchange obligation once BPA's firm energy surplus is exhausted. By including the right to request energy from the companies through an exchange, BPA avoids this acquisition.

At BPA's request, the companies must make energy available from combustion turbines or other available resources for delivery to BPA at specified points of delivery. In many instances BPA will simultaneously deliver that power back to the companies at the same points of delivery as BPA Exchange Power. Physically, of course, power would flow from generation to load via the path of least resistance; electric power cannot flow to a specified delivery point on BPA's system, reverse direction, and flow back into a company's system. Under these circumstances, this exchange right is equivalent electrically to the right to have the companies meet loads which would be served with BPA Exchange Power with power from their own resources.

In other circumstances BPA may request energy from the companies at times when BPA is not obligated to deliver power to the companies. In this instance, energy would be physically taken into BPA's system to displace hydroelectric generation, allowing energy to be stored in the form of water behind a reservoir or in some other form. BPA would later use that stored water to generate power to deliver back to the companies as BPA Exchange Power. This mechanism permits BPA to maximize the economical operation of BPA power systems. These transactions appear as if the companies were temporarily storing energy from their own combustion turbines in BPA's system for later return to the companies.

The exchange enables BPA to list the right receive energy from the companies' combustion turbines as a BPA firm resource for planning purposes. That is, in the event the region experiences poor rainfall in any given year, BPA can always not displace the power from the companies' combustion turbines if the firm energy from the companies is needed. This avoids BPA's having to acquire a resource to meet BPA's exchange obligations.

Thus, one can view BPA Exchange Power as consisting of three components. The first is BPA's right to request firm energy from the companies' combustion turbines. The second is surplus capacity from BPA's system that enables BPA to shape the energy deliveries to meet BPA exchange obligations. The third is nonfirm energy available to displace the combustion turbines.

BPA must reimburse the companies for the costs of operating the companies' combustion turbines or other, lower-cost resources when BPA receives energy from those resources. However, BPA is not obligated to pay anything for the right to request such energy. The cost of operating the companies' combustion turbines will almost always exceed the cost of operating other resources available to BPA. Thus, BPA will only request energy from the companies in dry years when less costly energy is not available to BPA.

BPA expects the market price for energy that is surplus to BPA's obligations to remain well below the cost of operating the companies' combustion turbines. For this reason, it would be uneconomical for BPA to operate these combustion turbines and offer such energy for sale at market prices. BPA expects to meet 88 percent of its exchange obligation without operating the companies' combustion turbines or calling upon other resources. See, generally, ROD section III(A). BPA also has the right to purchase less expensive power from any other source in lieu of requesting energy from the companies. Thus, the effect of the exchange under these conditions would be to lessen the amount of energy that BPA sells pursuant to section 5(f) of the Pacific Northwest Power Act.

Were market conditions such that buyers were willing to purchase energy at a price equal to, or greater than, the cost of operating the companies' combustion turbines, it would be economical for BPA to request operation of the companies' combustion turbines to sell to that market, although BPA would not be obligated to do so. In short, if the price is right, the supply of surplus energy from BPA will not be reduced by the settlement. If WNP-3 comes on line, the settlement results in additional firm energy to BPA. This issue is discussed further in ROD section IV(C)(11).

5. Net Effect of the Exchange: A Disposal of Surplus BPA Capacity

BPA's obligations to deliver energy are shaped into a six-month period. The ability of the companies to rely upon BPA's obligation to deliver BPA Exchange Power during hours of high power demand provides the companies a capacity benefit in those months.

Any power that BPA would receive from WNP-3 would most likely be produced at a relatively uniform rate for approximately ten months a year. Thus, were BPA to acquire the companies' shares of WNP-3 capability, BPA would receive future

capacity benefits as well as future energy benefits as a result of the exchange were WNP-3 completed.

Thus, the settlement exchange is an exchange of like for like. That is, present surplus energy and capacity is exchanged for future energy and capacity. However, the amounts of energy and capacity exchanged are not necessarily equal. Assuming WNP-3 were built and its performance were to match that of the four surrogate plants, the exchange will result in a net disposal of capacity over the life of the settlement equal to the difference between the capacity benefits received by BPA from the companies' share of WNP-3 capability and the capacity benefits received by the companies from BPA.

Before WNP-3 is constructed, BPA will be disposing of excess capacity that BPA cannot replace by requesting energy from the companies. This is because the companies, unlike BPA, are not obligated to provide power at times which would give BPA dependable capacity. However, this disposal of capacity does not expose BPA to the threat of insufficient capacity to meet BPA's capacity obligations as a result of the settlement because BPA's system is capacity rich. ROD section IV(C)(23). BPA's surplus capacity exceeds 4,000 MW during the six-month winter period of BPA's exchange obligations. (BPA's current firm energy surplus is approximately 1,500 avg. MW). BPA, Executive Summary: Twenty Year Capacity Projection, Table 10, April 1985.

On the other hand, BPA will run out of surplus firm energy before it will run out of surplus capacity. As BPA acquires firm energy resources to meet energy load growth, BPA will obtain capacity benefits from those resources. For this reason, BPA expects its capacity surplus to extend over the term of the settlement. ROD section IV(C)(23); Exhibit B. Of course, that the settlement provides a guaranteed source of firm energy--so there will never be a firm energy loss even if WNP-3 is not constructed.

Once BPA's obligation to deliver power to the companies ceases, BPA will receive a net capacity benefit for any remaining life of WNP-3. Thus, the effect of the exchange is to shift current capacity to the future, although, on balance, the exchange reasonably can be expected to result in some net disposal of capacity during the term of the exchange.

6. Equalizing the Value of the Exchange: Incidental Money Payments

In addition to the exchange of power, the settlement provides for several money payments. These payments are incidental to the exchange. That is, the purpose of the exchange is to trade like for like, power for power, not to obtain revenue through sales. For the reasons discussed above, BPA was only willing to deliver BPA Exchange Power if it received in exchange an irrevocable offer of the companies' shares of WNP-3 capability and the right to request energy from the companies.

While the exchange was a principle acceptable to all parties to the settlement, the exchange presented a number of problems related to the relative value of the commodities exchanged. The solutions to these problems have generally been referred to as "equalizing the value of the exchange." These problems and their solutions are discussed below.

Delivering power to the companies necessarily reduces the amount of power BPA could have sold to other utilities on the spot market or otherwise disposed of for appropriate consideration. In other words, these foregone sales are an opportunity cost to BPA of the exchange. All other factors being equal, this opportunity cost, if uncompensated for in the settlement, leads to higher BPA rates. The revenue that would have been recovered through selling surplus power used to provide BPA Exchange Power on the spot market must now be recovered from other sales, raising the per unit price of BPA's power.

Receiving BPA Exchange Power without charge, in amounts comparable to that which the companies would have received had WNP-3 been constructed on schedule, would provide the companies with a windfall. Had WNP-3 been constructed on schedule, the companies would have paid the operating and maintenance costs for power produced from their share of WNP-3. If the companies pay nothing for BPA Exchange Power, they would be advantaged to the extent that they would avoid those costs.

BPA similarly would receive a windfall if it were to receive energy from the companies at no cost. In this instance, BPA would have a strong incentive to operate the companies' combustion turbines continuously to the full extent of its rights under the settlement. Were this the case, the companies would have to absorb the cost of operating combustion turbines to meet loads that they would have been able to serve with lower cost power from their share of WNP-3. This result would work to the advantage of BPA at the expense of the companies.

BPA's opportunity cost is mitigated to the extent the cost of power from the companies' share of WNP-3 is less than the cost of the next most costly resource BPA would have to acquire in lieu of acquiring the companies' share of WNP-3 capability. The companies' share of WNP-3 capability is an attractive resource to BPA because under the terms of the settlement, the companies will absorb their costs invested in WNP-3 to date (sunk costs). That is, BPA is obtaining a right to acquire the capability of a partially constructed plant at no cost. BPA need only finance completion of construction.

However, this benefit must be discounted to account for the time value of money. In addition, BPA absorbs most of the costs of preserving the Project until it is needed. (Pacific pays these costs if the plant is terminated in proportion to its retained share). For further discussion see ROD section II(B)(2). This reduces the benefit to BPA of the exchange. Moreover, BPA carries the risk that WNP-3 may never become a cost-effective resource, that WNP-3 may become obsolete, or that WNP-3 cannot be completed for other reasons. These risks also reduce the value to BPA of the exchange.

In past exchange agreements, BPA has usually equalized the value of the commodities exchanged by varying the amounts of power exchanged. For example, the Hanford exchange provided for BPA to exchange firm power from BPA for the power produced from the Hanford project. BPA OGC Op. (April 10, 1962); Comp. Gen. Op. Nos. B149016, B149083 (1962). Here the problem was to overcome the disincentive of BPA's customers to invest in a new resource that costs more than the price of BPA power. To equalize the value of the Hanford exchange,

BPA agreed to exchange for Hanford power an amount of BPA power equal to that which the Hanford participants could have purchased from BPA at BPA's current rate. Id.; Contract No. 14-03-35622. Thus, if the average cost of Hanford power were 50 percent more expensive than BPA power, BPA would be obligated to deliver 50 percent more power to the Hanford participants than BPA would receive in exchange.

In another past exchange arrangement, BPA exchanged surplus capacity for the right to receive energy from California utilities. For example, see BPA Contract No. 14-03-53297. To equalize the value of the commodities exchanged, the California utilities must deliver to BPA 2500 kilowatthours for each hour in which BPA is obligated to make a kilowatt of capacity available to California utilities. Id.

This capacity-energy exchange also provides for the incidental payment of money to BPA in the event BPA elects not to accept the energy proffered by the California utilities to pay for BPA capacity. Id. Thus, the idea of including incidental money payments in exchange contracts is not new.

In addition, this capacity-energy exchange, like the WNP-3 settlement exchange, disposes of BPA capacity to obtain additional amounts of energy. Thus, BPA has used its exchange authority to obtain additional energy resources as it is doing with the WNP-3 settlement exchange.

In short, a capacity-energy exchange is comparable in many respects to the WNP-3 settlement exchange. However, the difficulties of attempting to equalize the value of the commodities exchanged in the WNP-3 settlement by adjusting the relative amounts of power far outweighed the benefits of doing so when compared to the alternative of making incidental money payments. Therefore, the parties agreed to equalize the value of the exchange through the following payments.

First, the companies agreed to pay BPA an amount equal to the operating and maintenance costs of the surrogate nuclear plants. If WNP-3 were completed, these payments would be based on the operating and maintenance costs of WNP-3. This reduces the opportunity cost to BPA of the exchange and avoids a windfall to the companies at the expense of BPA's other customers.

Second, BPA agreed to pay the operating and maintenance costs of the companies' combustion turbines in the event BPA receives energy from these resources. This prevents BPA from capturing an unfair windfall at the expense of the companies and their ratepayers and insures that the combustion turbines will be run only when needed.

Most of the time the net flow of money will be from the companies to BPA. However, during those times when BPA requests power from the companies, the net flow of money will be from BPA to the companies. This is because BPA expects the cost of operating the companies' combustion turbines to exceed the average cost of power from either the surrogate plants or WNP-3, as the case may be. Further, because BPA expects to rely on the companies' combustion turbines to meet less than 12 percent of BPA's exchange obligations, BPA expects that the total flow of money (the difference between the cumulative

amounts paid to BPA and the cumulative amounts paid to the companies over the lifetime of the exchange to be in BPA's favor.

B. Description of the Settlement Contracts

1. Introduction

BPA intends to execute contracts settling the pending litigation regarding the extended construction delay of WNP-3. Three basic documents were prepared for each company. They are the Settlement Agreements and Covenants Not to Sue, the Settlement Exchange Agreements, and Irrevocable Offers of the Companies' Share of WNP-3 Capability.

2. Settlement Agreements and Covenants Not to Sue Agreement (Agreement)

This contract provides for BPA and the respective company to dismiss all claims against each other with respect to construction delay. Section 2, Pacific's Agreement; section 5, Other Companies' Agreements. The parties may not aid in the prosecution of any other claim arising from the construction delay. Id.

BPA shall reimburse each company for all costs associated with each company's share of WNP-3 after February 1, 1985. Section 1(a), Pacific's Agreement; section 4(a), Other Companies' Agreements. BPA agrees to enter into the Exchange Agreement. Exhibit B of Pacific's Agreement; section 2, Other Companies' Agreements. Each company agrees to offer irrevocably its share of WNP-3 capability to BPA (Exhibit A to Pacific's Agreement; section 1, Other Companies' Agreements) and to vote in the same manner as BPA regarding matters submitted to the Owners Committee. Exhibit G to Pacific's Agreement; section 3, Other Companies' Agreements. Each company agrees to allow BPA to defer reimbursement of any preservation costs for WNP-3 until September 30, 1987. Section 1(c)(ii), Pacific's Agreement; section 4(c)(ii), Other Companies' Agreements. All the companies except Pacific agree to enter into an Exchange Agreement with BPA (section 2, Other Companies' Agreements). The parties also agree to file a joint Motion to require other interested parties to show cause why the suit should not be dismissed. Section 5, Pacific's Agreement; section 8, Other Companies' Agreements.

The agreement with Pacific differs slightly from the documents signed by the other companies. Pacific has offered irrevocably its share of WNP-3 capability in two steps. See Exhibit A to Pacific's Agreement. The first offer covers that portion of Pacific's share of WNP-3 capability not constructed at Pacific's expense. Id. The second offer covers that portion of Pacific's share of WNP-3 capability already constructed at Pacific's expense. Id. Pacific's offers are discussed further in ROD section II(B)(4). Pacific has an option to enter into the Exchange Agreement. See, Exhibit B to Pacific's Agreement. Pacific also retains the right to proceeds from the sale of assets upon termination of its already constructed share and agrees to pay any excess costs associated with that share upon termination. Section 1(b)(vii), Pacific's Agreement.

3. Settlement Exchange Agreements (Exchange Agreement)

Under the exchange agreements, BPA is obligated to provide each company with an amount of power based on the expected output of WNP-3 corresponding to the company's investment in WNP-3 as of January 1, 1985. BPA's obligation commences on January 1, 1987, the estimated date on which WNP-3 would have been completed had work not been halted. Section 4, Exchange Agreement. In exchange, BPA receives the right to obtain power from the companies' full shares of WNP-3 by accepting their offers and completing construction. In exchange, BPA also receives the right to request energy from each company's combustion turbines or other available, lower-cost resources in an amount equal to the energy component of BPA's obligation. Section 4(a), Exchange Agreement.

The amount of power provided to each company assumes that WNP-3 was about two-thirds complete as of January 1, 1985, and that WNP-3 would have operated for a period slightly longer than 36 years. BPA is obligated to deliver to the companies power for about 30 years from January 1, 1987, to June 30, 2017. Definition of "Exchange Termination Date," section 1(i), Exchange Agreement. To reflect the longer period of anticipated operation of WNP-3 than the term of the exchange, BPA's obligation to deliver power during each year is increased by the fraction 36 divided by 30 (1.2). Section 4(c), Exchange Agreement; ROD section IV(C)(21). Each company except Pacific has the option to defer the 20 percent increase in deliveries for the first 10 years of the exchange into the 31st and 32nd years. Id.

BPA's obligation to deliver power is also conditioned on the operation of specified surrogate nuclear power plants. Definition of "Surrogate Equivalent Annual Availability Factor" (SEAAF), sections 1(bb), 4(b), Exchange Agreement. These surrogate plants were selected based on design characteristics similar to WNP-3. ROD section IV(C)(16). BPA's obligation to deliver power during each contract year increases or decreases based on the average performance of these plants. The contract provides for a minimum amount to be delivered to each company in the event of exceptionally poor performance by the surrogate plants. Section 4(d), Exchange Agreement. The contract will terminate when BPA has made the minimum deliveries if the surrogate plants have ceased operation by then. Section 1(i)(1), Exchange Agreement.

BPA is obligated to provide specified monthly and hourly deliveries of power to each company. Section 4(b), Exchange Agreement. The monthly and hourly shapes of BPA's deliveries vary from the monthly and hourly deliveries of energy provided to BPA in exchange by the companies. Sections 4(a) and 4(b), Exchange Agreement.

BPA has surplus capacity that allows it to make guaranteed hourly deliveries of power to each company. ROD section IV(C)(23). Each company has reserved the right to use its combustion turbines to meet its own load on any hour. Section 4(a)(1)(iii), Exchange Agreement. However, each company is obligated at BPA's request to make an amount of energy available to BPA equal to that which BPA is obligated to provide to the company. Section 4(a), Exchange Agreement. Because BPA cannot depend on receiving power from the companies on

any hour, BPA cannot rely on the companies combustion turbines to meet peak loads. This means that the right to receive energy from the companies provides no capacity benefits to BPA.

The agreement contains an exhibit which defines nuclear operation and maintenance costs (Nuclear O&M Costs). Exhibit C to the Exchange Agreement. Prior to the operation of WNP-3, payments are based on the average costs of operating surrogate plants. Definition of "Surrogate O&M Costs," sections 1(cc) and 5(b)(1), Exchange Agreement. The average costs cannot be less than a specified floor or more than a specified ceiling price. Id.; ROD section IV(C)(14). In the event WNP-3 were completed, each company would pay a portion of the actual operation and maintenance costs of WNP-3. Section 5(b)(2), Exchange Agreement. The shift of costs from the surrogate plants to WNP-3 will be phased in over a 5-year period. Id. No floor or ceiling will apply to costs based on WNP-3. Id. BPA will have a one-time election to shift the basis for payments by the companies back to the surrogate plants if WNP-3 operates commercially but subsequently does not produce any power for 12 consecutive months. Sections 5(b)(3) and 6(h)(3), Exchange Agreement.

The agreement also provides for the parties to receive the benefit of the exchange in the event the exchange is declared unlawful. Section 6, Exchange Agreement. This is called the "fallback." Under it, each company is to obtain power to replace the power BPA would have had to provide under the exchange. Section 6(a), Exchange Agreement. BPA is to pay money to each company (or, as the case may be, each company is to pay money to BPA) to ensure that the costs and benefits under the fallback are identical to those under the exchange. Section 6(h), Exchange Agreement. Each company must purchase power from BPA at BPA's available rates if BPA makes it available. Sections 6(b) and 6(e), Exchange Agreement. If not, they may purchase power from other sources. BPA may assist the company in acquiring replacement power under a separate trust agreement. Section 6(b), Exchange Agreement; ROD section IV(C)(10)(c).

Pacific's exchange agreement differs from that of the other companies. First, Pacific has the option to enter the exchange any time prior to January 1, 1996. Section 2, Pacific's Exchange Agreement. Second, Pacific may receive BPA Exchange Power 30 years from the date it enters the exchange to the extent necessary for Pacific to receive its minimum deliveries. Section 1(i), Pacific's Exchange Agreement. Third, Pacific does not have an option to defer deliveries of BPA Exchange Power. Compare, section 4(c), Pacific's Exchange Agreement; section 4(c), Exchange Agreement. Fourth, Pacific, which does not have sufficient combustion turbines to make deliveries to BPA under the exchange, will provide power from other resources at a cost no greater than the operation and maintenance costs of Portland's turbines. Sections 1(r), 4(a)(2)(i), and 6(c)(1), Pacific's Exchange Agreement. Fifth, the agreement assures that Pacific will pay the same for BPA Exchange Power as the other companies pay during any year. Section 1(t), Pacific's Exchange Agreement.

4. Irrevocable Offer (Offer) and Acquisition Agreement

This document offers for sale a company's share of the WNP-3 capability. Section 4, Pacific's Offer; section 3, Other Companies' Offer. The offer

remains open until WNP-3 is terminated. Section 2, Pacific's Offer; section 1, Other Companies' Offer. BPA may accept the offers (except Pacific's second offer, see below) at any time by executing the attached Acquisition Agreement. Section 4, Pacific's Offer; section 3, Other Companies' Offer.

The Acquisition Agreement assigns to BPA the actual net electrical generating capability of a company's ownership share of WNP-3. Section 4, Acquisition Agreement. BPA agrees only to pay the costs to complete construction of the company's ownership share of WNP-3 and all costs of operation and maintenance for that company's ownership share. Section 7, Acquisition Agreement. BPA will not pay any of the companies' cost invested in their share of WNP-3 prior to February 1, 1985. Section (1)(f), Acquisition Agreement.

BPA may assign these irrevocable offers. Section 6, Pacific's Offer; section 4, Other Companies' Offer. Thus, should some other entity wish to participate in WNP-3, it is possible to do so.

Pacific's irrevocable offer is different from the offers made by the other companies. Pacific makes two irrevocable offers. Section 4, Pacific's Offer. The first offers 33.3 percent of Pacific's share of WNP-3 capability, representing that portion of Pacific's share of WNP-3 capability not yet constructed. *Id.* BPA may accept this offer at any time. *Id.* The second offers 66.7 percent of Pacific's share of WNP-3 already constructed. *Id.* BPA may not accept this latter offer until the earlier of fuel loading or January 1, 1990. *Id.* The offer expires immediately before commercial operation. At that time Pacific can require BPA to acquire Pacific's remaining 66.7 percent share of capability for 10 days. Section 21(b), Exhibit A to Pacific's Offer. Subsequently, BPA may again acquire the remaining share for 10 days in the event Pacific elects not to require BPA to acquire the remaining share. Section 21(b), Exhibit A to Pacific's Offer. Thereafter, Pacific has the right to retain its share.

Pacific's offer allows BPA to resume construction of WNP-3 whenever it elects by acquiring Pacific's 33.3 percent share of WNP-3 capability and the WNP-3 capability of the other three companies. BPA could then acquire the remaining 66.7 percent share of Pacific's share of WNP-3 capability near the completion of construction when fuel was loaded at the project for pre-commercial testing.

BPA does not expect to accept the companies' offer before January 1, 1990. BPA will comply with NEPA and section 6(c) of the Pacific Northwest Power Act prior to acquiring any portion of the WNP-3 capability owned by the companies.

5. Miscellaneous Documents:

a. Agreement to Dismiss Claims and Covenant Not to Sue Between BPA and the Supply System (BPA/Supply System Agreement)

BPA and the Supply System agree to dismiss claims over construction delay of WNP-3. Section 1, BPA/Supply System Agreement. The parties also agree not to continue pending litigation. Section 2, *id.* They also agree that the interpretation of prudent utility practice contained in Judge Browning's July

1985 order is erroneous. Id. BPA and the Supply System will not use that interpretation unless required to do so by court order.

b. Agreement to Dismiss Claims and Covenant Not to Sue Between Each Company and the Supply System (Company/Supply System Agreement)

The Supply System and each company agree to dismiss all claims against each other related to construction delay. Section 3, Company/Supply System Agreement. They agree not to prosecute any other related claim they may have against one another. Section 2, id. The Supply System covenants not to assert that the Settlement Agreement (or any of its exhibits therein) between the company and BPA are invalid or that they violate the rights of any party under the Ownership Agreement. See, sections 1 and 6, id.

III. ECONOMIC ANALYSIS

Much of the material presented in this section was originally published in the Revised EA and its technical appendices unless otherwise noted in the text. Thus, this analysis has previously been made available for public comment and review.

A. Benefits and Costs of the Exchange

BPA's economic analyses indicates that the proposed WNP-3 exchange is likely to create benefits to BPA in excess of costs. A discussion of the costs, benefits, and uncertainties of these analyses follows. The benefits and costs of the exchange have been analyzed by companies' changes in BPA costs and revenues resulting from the exchange. This analysis may not match the costs which would be allocated, in a rate setting process to the various services provided, because such an allocation would reflect average embedded costs.

1. Costs

The cost of the exchange to BPA is primarily either the cost of producing the energy or the opportunity cost associated with the energy BPA delivers to the companies. Delivering this energy would require BPA to forego marginal revenues (the revenue derived from the last sale) from other sales of about 15 mills per kWh or less during the near-term surplus and about 24 mills per kWh when BPA's firm surplus is exhausted. BPA would incur costs of up to 65 mills per kWh to run company combustion turbines in the rare instances when there is no other available source of energy. On the average, over the life of the exchange, the foregone revenues or cost of delivering this energy would average approximately 25 mills per kWh, in 1984 dollars.

2. Benefits

The primary benefit to BPA is the value of the companies' shares of WNP-3. This value of WNP-3 could be zero if WNP-3 were not needed, negative if WNP-3 were mistakenly completed when not needed, or over 20 mills per kWh if WNP-3 were to replace a coal plant BPA would otherwise acquire. These figures would have to be reduced by the cost of preserving, completing, and operating the companies' shares. Considering all these possibilities, the average expected value of the companies' shares is approximately 5 mills per kWh. Benefits of the exchange also include company payments to BPA based on Nuclear O&M Costs. These payments are expected to average 24 mills per kWh, in 1984 dollars. Thus, expected benefits of the proposed exchange are approximately 29 mills per kWh. Table 1.

Expected benefits exceed costs by about 4 mills per kWh. This is roughly the value of the option to acquire the companies' shares of WNP-3 capability. In short, the net benefit of the exchange is roughly equal to the value of receiving power from the companies' shares of WNP-3 in the future.

The economics of the exchange can also be viewed in terms of net present value of costs and benefits. On this basis, benefits would exceed costs by approximately \$132 million in 1984 dollars. Table 2.

TABLE 1
WNP-3 SETTLEMENT
ROUGH COMPARISON OF BENEFITS AND COSTS ^{1/}

COSTS TO BPA

VALUE TO BPA OF NONFIRM ENERGY	= 24 mills/kWh	(88%)
COST OF COMBUSTION TURBINES	= 65 mills/kWh	(12%)
WEIGHTED AVERAGE COST	= 29 mills/kWh	
ADJUSTED FOR NEAR-TERM FIRM SURPLUS	= <u>-4 mills/kWh</u> ^{2/}	
TOTAL COST TO BPA	= 25 mills/kWh	

BENEFITS TO BPA

COMPANY O&M PAYMENTS TO BPA	= 24 mills/kWh	
NET VALUE OF IOU SHARE OF WNP-3	= <u>5 mills/kWh</u> ^{3/}	
TOTAL BENEFIT TO BPA =	= <u>29 mills/kWh</u>	

-
- 1/ WNP-3 completion and termination cases are averaged together in this table.
 - 2/ When there is firm surplus, the marginal revenue associated with nonfirm energy is lower, and combustion turbines are needed less than 12 percent of the time.
 - 3/ Average value of output of WNP-3, minus cost to complete and operate.

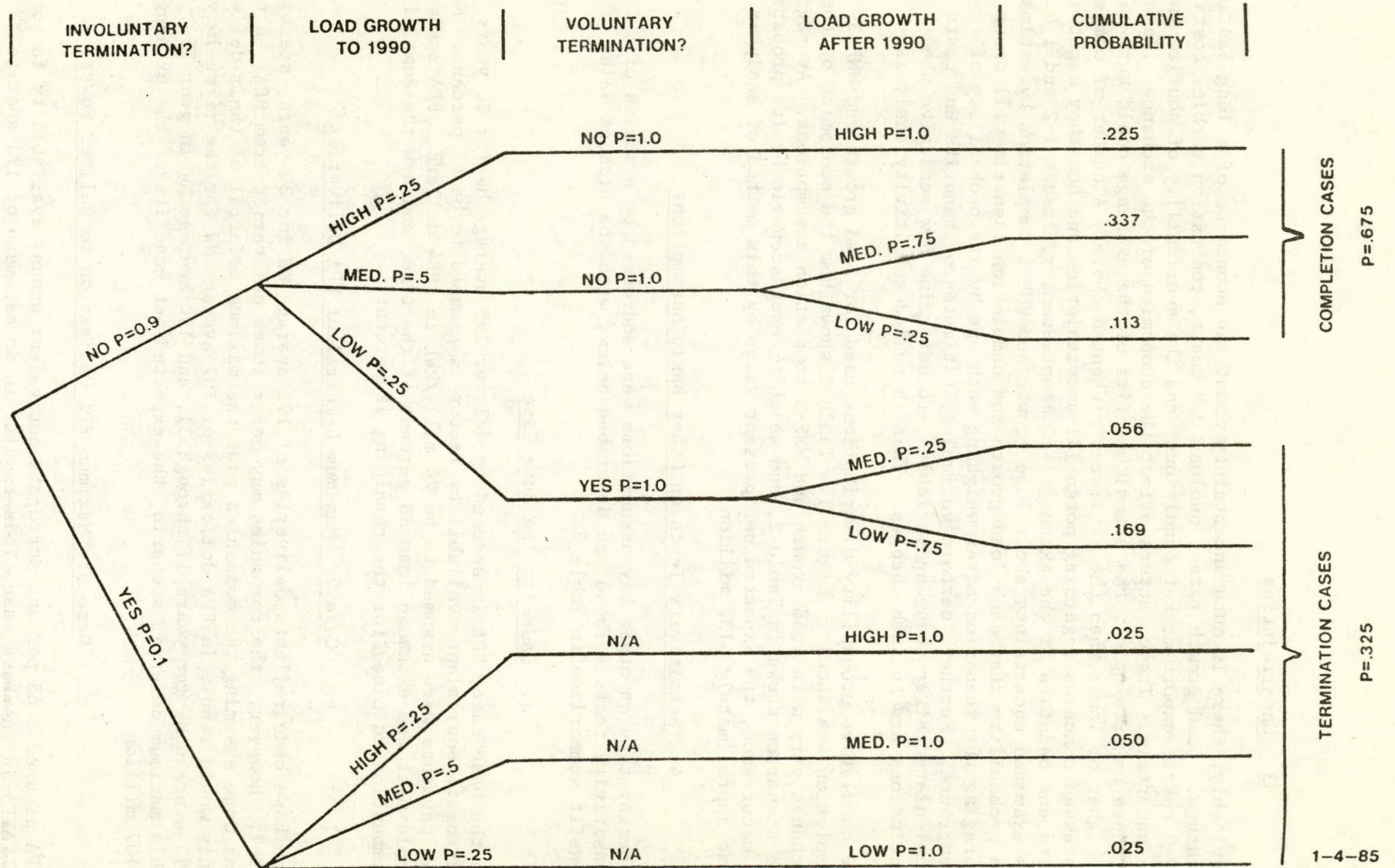
TABLE 2
 BENEFITS AND COSTS OF THE WNP-3 EXCHANGE
 (Present Value, Million of 1984\$)

WNP-3 Status Load Growth Scenario	Completion			Voluntary Termination		Involuntary Termination		
	<u>Base</u>	<u>Low</u>	<u>High</u>	<u>Base</u>	<u>Low</u>	<u>Low</u>	<u>Base</u>	<u>High</u>
Probability	.337	.113	.225	.056	.169	.025	.050	.025
Cost to BPA of Energy Delivered	780	606	882	748	617	617	845	908
IOU Payments to BPA in Lieu of O&M	750	750	750	750	750	750	750	750
Value of an Option on IOU Share of WNP-3	245	-526	520	0	0	0	0	0
Total Benefit to BPA	995	224	1270	750	750	750	750	750
Net Benefit	<u>215</u>	<u>-382</u>	<u>388</u>	<u>4</u>	<u>133</u>	<u>133</u>	<u>-95</u>	<u>-158</u>
Expected Net Benefit	<u>171</u>			<u>53</u>				
Expected Net Benefit	132							

FIGURE 1

WNP-3 EXCHANGE ECONOMICS

LOAD GROWTH AND WNP-3 COMPLETION ASSUMPTIONS



3. Uncertainties

Inevitably, there is much uncertainty about the economics of a long lasting exchange. Load growth rates, nuclear O&M costs, combustion turbine costs, WNP-3 costs, export market conditions, and the availability of nonfirm energy are uncertain. These factors affect the economics of the exchange. Because of these uncertainties, the actual benefits of the exchange could turn out to be higher or lower than the estimates presented above. A number of commenters expressed concerns regarding potential uncertainties and how they might affect costs and benefits of the exchange. Comment Summary, Issues I-2 and I-6. BPA has examined uncertainty about load growth and WNP-3 completion by estimating the probability that each load growth and completion scenario will occur and averaging the scenarios after weighing each one by its probability of occurrence. Further, certain variables, estimates of benefits and costs were recalculated after changing variables, to determine how sensitive the conclusions are to such changes. This is called sensitivity analysis.

The cumulative probability distributions used for load growth and WNP-3 completion are shown in Figure 1. Table 2 shows how the economics of the exchange vary with load growth and WNP-3 completion assumptions. Averaging the scenarios shown in Table 2, and weighing each scenario by its probability of occurrence, the expected net present value by this method of analysis is also approximately \$132 million.

4. Sensitivity Tests on Other Basic Assumptions

Uncertainties on other key assumptions were addressed by a series of sensitivity tests. These are described below, with the present value of net benefit summarized in Table 3.

a. Case 1: The Base Case

In the base case, BPA is assumed to deliver 193 average MW for 30 years. The surrogate equivalent availability factor is assumed to be 65 percent. Nuclear O&M payments were assumed to be 24 mills/kWh in 1984 dollars. BPA assumed it would meet the exchange load 88 percent of the time, and use the companies' combustion turbines for the remaining 12 percent.

b. Case 2: Maximum Deferral of BPA Deliveries

The base case reflects deliveries of 193 average MW for 30 years, starting in 1987. However, the companies may defer power deliveries from BPA. A test was done assuming the companies made the maximum deferral of their deliveries. This would result in BPA deliveries of 107 average MW for the first 10 years, 193 average MW for years 11 through 31, and 150 average MW in year 32. Under this maximum deferral scenario, the expected net benefits of the exchange are \$107 million.

c. Case 3: Maximum BPA Obligation to Deliver Power

BPA assumed a 65 percent surrogate equivalent annual availability factor (SEAFF) in the base case. This results in an estimate of 193 average MW of

deliveries to the companies. Because of uncertainties in this factor, BPA developed a maximum delivery case using a 75 percent surrogate equivalent annual availability factor. This assumption raised assumed deliveries from 193 average MW to 223 average MW. This change has very little effect on the results, because expected nuclear O&M payments are close to BPA's expected average power costs.

d. Case 4: Minimum BPA Obligation to Deliver Power

A minimum delivery case was also tested. For this case, surrogate units were assumed to operate at 65 percent capacity factor for 10 years, and then at lower factors as the plants age, such that the companies would receive only minimum deliveries after year 10. The delivery pattern in this case would be 193 average MW for the first 10 years, 131 average MW for the next 17 years, and no deliveries thereafter. In this case net benefits would be about \$152 million.

e. Case 5: Lower Nuclear O&M Payments (22 Mills)

The base case assumes that nuclear O&M payments will average 24 mills per kWh in 1984 dollars over the life of the exchange. This is an increase of 2 mills from the 22-mill figure used in previous analyses. The increase is due to elimination of Calvert Cliffs as a surrogate unit, better information on the likely costs of the surrogates, and some technical clarifications to the calculation of nuclear O&M costs. However, considerable uncertainty remains about the future level of nuclear O&M costs. If nuclear O&M payments average 22 mills per kWh in 1984 dollars over the life of the exchange, net benefits would be about \$69 million.

f. Case 6: Lower Nonfirm Availability and Alternative Purchased Power Costs

For the base case analysis, sufficient BPA energy was assumed to be available to provide BPA Exchange Power to the companies without requesting energy from the companies about 88 percent of the time once the region is in firm load/resource balance. The other 12 percent of the time, combustion turbines were assumed to be used. As shown on Table 1, the weighted average cost to BPA of providing power to the companies in the absence of a firm energy surplus is 29 mills.

BPA received comments to the effect that energy to displace combustion turbines will be available less than 88 percent of the time. Arguments were made that other studies showed lower percentages, that BPA was too optimistic about availability of nonfederal nonfirm energy, and that hydro system flexibility is less than BPA assumed.

Counterbalancing these considerations are the facts that BPA used a 40-year water record instead of the higher average flows of the 102-year record, and that BPA assumed nearly full operation of the DSIs in all load scenarios. BPA studies have continued to indicate that 88 percent is a reasonable estimate. However, because of the comment received, sensitivity analysis using a lower figure was warranted.

BPA also received comment to the effect that other cheaper energy sources could be tapped before using company combustion turbines. The Pacific Southwest and Canada would be the most likely sources. For the sensitivity test, BPA assumed that combustion turbines could be displaced with Pacific Northwest resources only 75 percent of the time instead of 88 percent; that Pacific Southwest baseload gas-fired generation costing 45 mills per kWh would be used to make up 75 percent of the remaining 25 percent of exchange power; and that company combustion turbines would be used for the remainder. Under these assumptions, the exchange costs to BPA would increase from 29 mills to 30.5 mills per kWh. This would result in net benefits of about \$111 million.

g. Cases 7 and 8: 10 Percent Higher or Lower WNP-3 Costs

BPA estimates WNP-3 to have a levelized cost to complete and operate of about 37.3 mills per kWh, in 1984 dollars. BPA believes this to be a reasonable estimate. In fact, more recent estimates suggest that 37.3 mills may be too high. However, actual costs could turn out to be higher or lower than 37.3 mills. To test the sensitivity of this estimate, costs 10 percent higher and lower were tested. Assuming that higher costs would not affect the decision when to build the project, a 10 percent increase in WNP-3 costs (to 41 mills) would result in net benefits of about \$47 million. A 10 percent decrease (to 33.6 mills) would result in net benefits of about \$218 million.

TABLE 3
WNP-3 SETTLEMENT EXCHANGE
ECONOMIC ANALYSIS SENSITIVITY TESTS^{1/}

Present Value of Net Benefit, Millions of 1984 \$
(Expected Value)

Case 1: Base Case	+ 132
Case 2: Maximum deferral of BPA deliveries	+ 107
Case 3: Maximum BPA delivery obligation	+ 133
Case 4: Minimum BPA delivery obligation	+ 152
Case 5: Lower nuclear O&M payments (22 mills)	+ 69
Case 6: Lower Nonfirm availability	+ 111
Case 7: 10 percent increase in WNP-3 cost	+ 47
Case 8: 10 percent decrease in WNP-3 cost	+ 218

1/ See text for explanation of sensitivity tests.

5. Unquantified Uncertainties

There is also uncertainty about several other assumptions for which it was not practical to do quantified sensitivity analyses. These additional uncertainties are described below. On balance, BPA believes that quantification of these uncertainties would not significantly affect the conclusions of the economic analysis.

a. Wheeling Revenue

BPA will be paid for transmitting BPA Exchange Power. This revenue was not counted in the economic analysis. Transmission revenue could amount to a present value of roughly \$25 million to \$50 million over the course of the exchange based on the revenues that would have been received from wheeling the companies' share of WNP-3.

b. WNP-3 Completion Date

BPA assumed that WNP-3 would be completed in 1995. Earlier completion under high load growth, or later completion under medium load growth may occur. The benefits of an option on WNP-3 would have been increased if the analysis had been able to match more precisely the completion date of WNP-3 to the date it actually will be needed, if at all.

c. Combustion Turbine Value Limitation

BPA has received comment that the value given combustion turbines in the economic analysis is too high, because new combustion turbines could be built to capture the benefits of combining low-fixed/high-variable cost resources with nonfirm energy, even without the exchange. Other ways of capturing this benefit could include changing the critical water planning criterion, making power purchases from California, and increasing DSI interruptible load.

These methods of taking advantage of nonfirm hydropower may have merit. However, each method has institutional obstacles and costs which do not occur with the companies' combustion turbines. For example, most of the companies' combustion turbines are grandfathered under the Fuel Use Act, while new combustion turbines would be subject to Fuel Use Act restrictions that could make them uneconomic. The settlement does not preclude adopting those proposals to reduce the cost of serving the exchange load if they have merit.

d. Capacity Value

BPA expects the settlement to result in a net disposal of capacity. ROD section II(A)(5). BPA does not expect to acquire additional resources to provide this capacity because BPA forecasts substantial capacity surpluses for the foreseeable future. ROD section IV(C)(23). Therefore, the settlement will not cause BPA to incur additional capacity resource costs.

BPA recognizes that the delivery of energy over peak periods has a greater value in surplus markets than deliveries over off-peak periods. That greater

value is reflected in BPA's estimated marginal value of nonfirm energy of 24 mills per kWh.

e. Load Growth

The economic analysis was done using BPA's 1984 range of load forecasts. BPA's 1985 load forecast is roughly the same as that of 1984. The high-growth scenario is very close to that of 1984. The 1985 medium-growth scenario is somewhat lower. The 1985 low-growth scenario is much lower. Using the 1985 forecast would slightly reduce the value of the right to acquire the companies' share of WNP-3 capability. However, this reduction in benefits would be offset by a reduction in the cost of supplying exchange energy, particularly in the low-growth scenario because the frequency of having to rely on the companies' combustion turbines would be reduced and because the marginal revenue loss from nonfirm energy would be reduced. The Regional Council's 1985 load forecasts are correspondingly lower than BPA's.

6. BPA Rates Compared to Company Nuclear O&M Payments

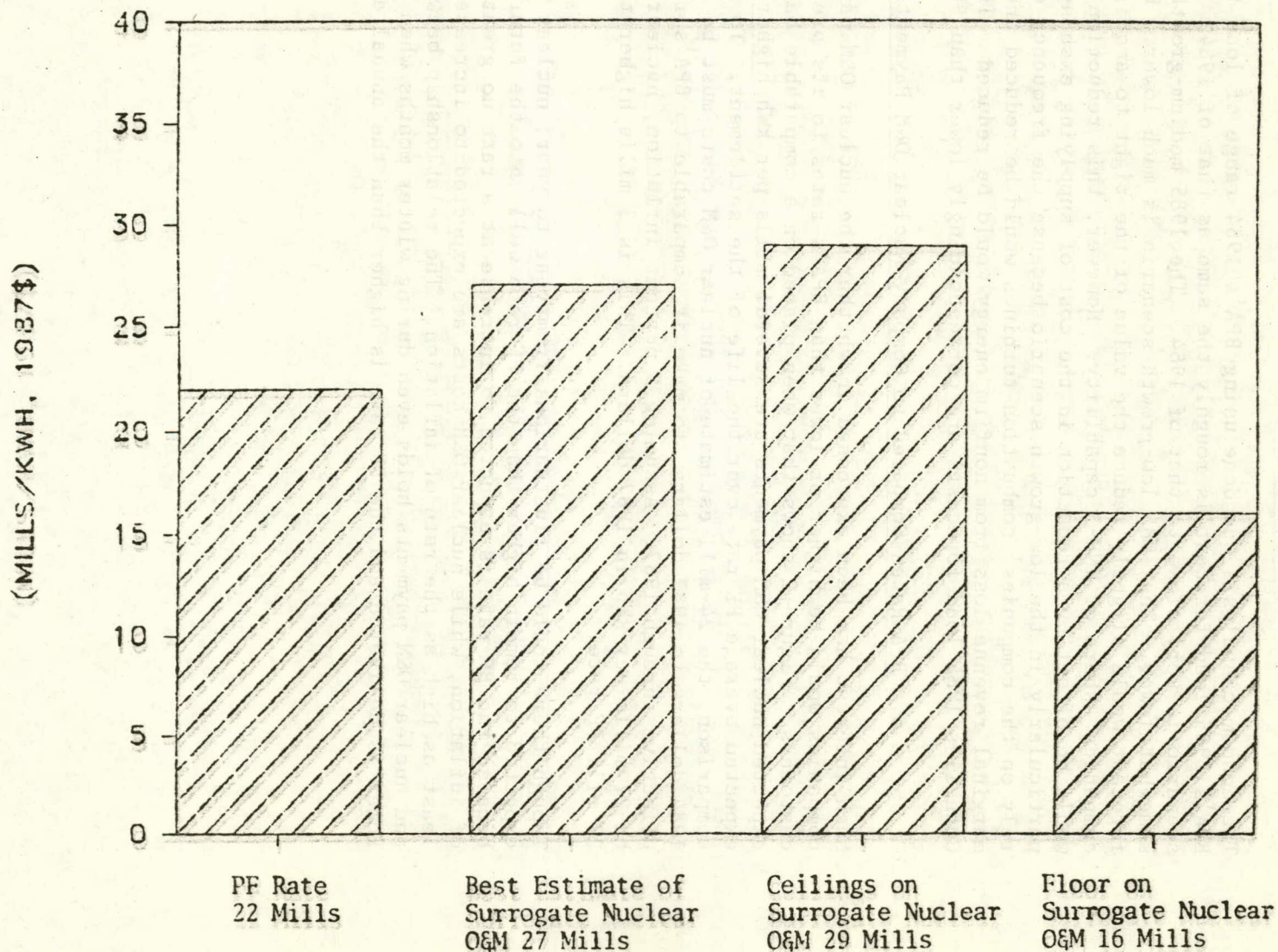
Much interest has been expressed in whether the nuclear O&M payments by the companies would be higher or lower than BPA's rates to its preference customers. Figure 2 shows that when placed on a comparable basis, the expected nuclear O&M payments are several mills per kWh higher than BPA's expected average PF rate over the life of the settlement. To make this comparison, the 24-mill estimate of nuclear O&M costs must be escalated from 1984 dollars to 1987 dollars, to make it comparable to BPA's rates which are effective through 1987. Assuming 5 percent inflation, nuclear O&M costs will be 27 mills per kWh in 1987 dollars. This is 5 mills higher than BPA's 22 mill PF rate.

Though there could be fluctuations from year to year, nuclear O&M payments are expected to remain higher than the PF rate well into the future. This is because the PF rate is expected to increase at a rate no greater than the rate of inflation, while nuclear O&M costs are expected to increase at a rate at least as high as the rate of inflation. The relationship between the PF rate and nuclear O&M payments holds even during winter months when BPA Exchange Power is delivered and the PF rate is higher than the annual average.



FIGURE 2

PRIORITY FIRM RATE VS. NUCLEAR O & M



B. Effects of the Settlement on Rates

1. Effects on BPA's Rates Under the Settlement Exchange

The settlement is expected to have little impact on BPA rates, based on BPA's analysis of wholesale and retail rate impacts over the next 20 years. In reaching this conclusion, BPA has addressed both WNP-3 completion and termination scenarios. The reasons for the nearly neutral impact on BPA rates include (1) that no new resources are required by the energy exchange, and (2) that the conditions of the exchange are expected to result in a near balance between costs and benefits to BPA. The expected impact on the Priority Firm rate under several scenarios is shown on Table 4.

Considerable data and information has been developed on the costs of WNP-3 and treatment of such costs in the retail rates of the companies. The treatment of these costs under alternative scenarios, reflecting different State public utility commission (PUC) treatment of the costs, is included in BPA's analysis. The treatment of these costs may impact all of BPA's firm power rates through the residential exchange program. The analysis assumes that all company firm power surpluses are sold in the nonfirm market to the Pacific Southwest or used to displace regional firm resources. When the companies are in deficit, the power received under the settlement exchange is assumed to be used to reduce power purchases from BPA at the New Resources (NR) Firm Power rate.

The base cases assume no settlement and that BPA wins the lawsuit. However, the outcome of this suit is uncertain. The base cases could also have included estimated damages that BPA could have been required to pay if it lost the suit. Inclusion of potential damages would make the settlement look even more attractive to BPA. ROD section III(C).

TABLE 4
WNP-3 SETTLEMENT
BPA PRIORITY FIRM RATES
ALTERNATIVE RATE BASE AND ASC DETERMINATIONS
(Constant 1984 mills/kWh)

<u>YEAR</u>	<u>1C</u>	<u>2C</u>	<u>3C</u>	<u>4C</u>	<u>1T</u>	<u>2T</u>	<u>3T</u>	<u>4T</u>
1987	19.5	19.5	19.6	20.0	19.0	19.2	19.4	19.4
1988	19.1	19.5	19.6	20.0	18.7	19.1	19.2	19.6
1989	20.9	21.0	21.1	21.4	20.2	20.4	20.5	20.7
1990	20.2	20.4	20.5	20.7	19.2	19.4	19.5	19.7
1991	20.6	20.7	20.9	21.1	19.4	19.5	19.6	19.9
1992	20.9	20.6	20.7	20.9	19.2	19.4	19.5	19.7
1993	20.5	20.2	20.2	20.5	18.8	19.0	19.1	19.2
1994	20.0	19.7	19.9	20.0	18.2	18.3	18.5	18.7
1995	19.5	19.2	19.2	19.4	17.8	18.0	18.1	18.2
1996	19.2	18.8	19.0	19.1	17.3	17.5	17.6	17.7
1997	18.7	18.5	18.5	18.6	17.1	17.2	17.2	17.3
1998	18.0	17.8	17.8	18.0	16.7	17.0	17.0	17.1
1999	17.6	17.3	17.3	17.5	16.5	16.6	16.7	16.8
2000	17.2	17.0	17.0	17.1	16.2	16.2	16.3	16.5
2001	16.8	16.6	16.7	16.7	16.0	16.0	16.1	16.1
2002	16.6	16.3	16.5	16.5	15.8	15.8	16.0	16.0
2003	16.5	16.1	16.2	16.3	16.8	16.3	16.5	16.6
2004	16.3	16.0	16.1	16.1	17.0	17.0	17.1	17.1
2005	16.8	16.1	16.2	16.2	17.1	17.1	17.1	17.2

- NOTES: C = WNP-3 is completed.
T = WNP-3 is terminated.
- 1C: No settlement is reached.
- 2C: Settlement costs are spread over all rate pools. PUCs do not allow WNP-3 sunk costs in rate base. WNP-3 sunk costs are not included in ASC.
- 3C: Settlement costs are spread over all rate pools. PUCs allow all WNP-3 sunk costs in rate base. WNP-3 sunk costs are not included in ASC.
- 4C: Settlement costs are spread over all rate pools. PUCs allow all WNP-3 sunk costs in rate base. WNP-3 sunk costs are included in ASC.
- 1T: No settlement is reached.
- 2T: Settlement costs are spread over all rate pools. PUCs do not allow WNP-3 sunk costs in rate base. WNP-3 sunk costs are not included in ASC.
- 3T: Settlement costs are spread over all rate pools. PUCs allow all WNP-3 sunk costs in rate base. WNP-3 sunk costs are not included in ASC.
- 4T: Settlement costs are spread over all rate pools. PUCs allow all WNP-3 sunk costs in rate base. WNP-3 sunk costs are included in ASC.

The PF rate shown in Table 4 is the annual average PF rate. During the winter months when Exchange Power is being delivered by BPA, preference customers will pay a rate that is higher than the annual average.

2. Effects on BPA's Rates under the Fallback

Operation under the fallback would have essentially the same impact on BPA rates as would occur under the exchange. This result occurs because costs to the participating utilities under the fallback were designed to be equal to those which would occur under the exchange. ROD section II(B)(3). BPA expects that the costs to BPA of paying for replacement power would not exceed BPA's costs of providing BPA Exchange Power. This assumption is based on BPA's right to approve power purchases by the companies and its right to sell BPA power to the participating utilities in lieu of company purchases. Sections 6(b), 6(d), and 6(e), Exchange Agreement.

3. Effects on the Companies' Retail Rates

The respective public utility commissions (PUCs) may be asked to treat BPA Exchange Power as a resource and to include the costs to the companies of the exchange in the utilities' rate bases. The PUCs also may be asked to include a portion of the companies' investment in WNP-3 as a cost of BPA Exchange Power. Whether the PUCs allow such costs is exclusively a matter of State law and policy. However, the treatment of these costs could affect the companies' retail rates.

If retail rate regulators allow the companies' exchange costs to be recovered through retail rates, BPA may be asked to include such costs in the utilities' average system cost for purposes of the residential exchange program. 16 U.S.C. 839c(c). In this instance some of the companies' costs of the settlement might be passed on to BPA's other customers depending on BPA's average system cost methodology. ~~Nothing in the settlement forecloses~~ either the PUCs' or BPA's ability to review the proposed treatment of any WNP-3 related costs in their respective jurisdictions. ROD section IV(C)(18).

If WNP-3 were completed in the absence of a settlement, most of the utilities' investment costs would appear in the utilities' rate bases. These costs would likely be higher than any that would appear in the utilities' rate bases with the settlement. This is true in part because the companies' investment costs (if WNP-3 were completed in the absence of a settlement) would be significantly higher than they would be under the settlement, which relieves the companies of the obligation to incur additional investment costs. The investment costs would also be higher to the extent the PUCs exclude more sunk costs from rate bases under the settlement than they would were WNP-3 completed in the absence of the settlement. In BPA's view, this will likely be the case.

If there were no settlement, WNP-3 were terminated, and other resources were needed to replace WNP-3, the costs of such resources would appear in the utilities' rate bases. Since the costs of resources used to replace WNP-3 could be greater or smaller, or occur sooner or later, than any WNP-3 costs appearing in their rate bases because of the settlement, the rate impacts of

substitute resources are not accurately predictable. Some of the PUCs could also allow some of the sunk costs into rate bases even if WNP-3 were terminated.

Such rate impacts depend on the timing of new resources, future PUC rulings, and subsequent decisions made by BPA under the then applicable average system cost methodology. It is reasonable to assume there will be no substantial difference between the amount of WNP-3 costs recovered in the companies' retail rates under the settlement and the cost of obtaining replacement resources recovered in the companies' retail rates without the Settlement, assuming other resources would be needed to replace power which would have been available from WNP-3.

BPA does not have models that can accurately forecast individual company rates on a long-term basis. That model would have to take into account the interaction between company rates, purchases from BPA, the economy energy market, and regional load growth. Table 5 presents the expected average retail rate for all investor-owned utilities in the region (including Idaho Power Co., Montana Power Co., and CP National which are not WNP-3 participants). BPA expects the companies' rates to follow a similar pattern over time.

Considerable uncertainty still exists about the completion of WNP-3 and about State PUC treatment of the companies' investment costs today in setting retail rates. Uncertainty also exists regarding BPA's determination of average system costs for the residential exchange. Therefore, BPA's analysis includes scenarios under which WNP-3 is completed, and under which it is terminated. Differing assumptions about PUC treatment of sunk costs are also examined. This includes a "worst case" where WNP-3 is terminated, all PUCs allow full recovery of sunk costs in the companies' retail rates, but no sunk costs are allowed in any company's average system cost. These scenarios provide a sense of the uncertainty associated with the potential impacts on companies' retail rates of the WNP-3 settlement.

Under the worst case, the effect of the settlement on the companies' retail rates reaches a high of 2.6 mill/kWh (constant 1984 dollars) in FY 1987 and declines to 0.2 mills/kWh in FY 2005. Table 5. (The base case assumes that WNP-3 is terminated and there is no settlement.) Were WNP-3 to be completed, the PUCs were to allow no sunk costs in retail rates, and BPA were to exclude such costs from average system cost, the maximum impact on the companies' retail rates is 0.2 mills/kWh in FY 1987. This declines to a point where the companies' rates in FY 2005 are 1.8 mills/kWh less than the base case. These results generally bound the results for the other cases.

TABLE 5
WNP-3 SETTLEMENT
IOU AVERAGE RETAIL RATES
ALTERNATIVE RATE BASE AND ASC DETERMINATIONS
(Constant 1984 mills/kWh)

YEAR	1C	2C	3C	4C	1T	2T	3T	4T
1987	39.8	40.0	42.3	41.6	39.6	40.0	42.2	41.6
1988	39.8	40.0	42.1	41.7	39.6	39.8	42.0	41.5
1989	40.8	41.0	43.0	42.6	40.6	40.7	42.6	42.2
1990	40.7	40.8	42.6	42.3	40.2	40.3	42.1	41.8
1991	41.1	41.2	42.8	42.5	40.5	40.6	42.1	41.8
1992	42.1	41.2	42.6	42.3	40.5	40.6	42.0	41.7
1993	42.7	41.1	42.5	42.2	40.5	40.6	41.8	41.6
1994	42.5	41.0	42.2	42.0	40.2	40.3	41.6	41.3
1995	42.2	40.8	41.8	41.7	40.1	40.3	41.3	41.2
1996	42.1	40.7	41.7	41.5	40.0	40.1	41.1	41.0
1997	41.7	40.5	41.3	41.2	39.7	39.8	40.8	40.6
1998	41.6	40.5	41.2	41.1	39.8	40.0	40.8	40.7
1999	41.5	40.3	41.1	41.0	39.8	40.0	40.7	40.6
2000	41.3	40.5	41.1	41.0	40.1	40.1	40.7	40.6
2001	41.2	40.3	41.0	40.8	40.1	40.0	40.6	40.5
2002	41.2	40.3	40.8	40.8	40.3	40.1	40.7	40.6
2003	41.3	40.6	41.1	41.1	42.8	41.7	42.3	42.2
2004	41.6	40.7	41.2	41.1	43.4	43.2	43.7	43.6
2005	43.1	41.3	41.7	41.7	44.0	43.9	44.2	44.2

- NOTES: C = WNP-3 is completed.
T = WNP-3 is terminated.
- 1C: No settlement is reached.
- 2C: Settlement costs are spread over all rate pools. PUCs do not allow WNP-3 sunk costs in rate base. WNP-3 sunk costs are not included in ASC.
- 3C: Settlement costs are spread over all rate pools. PUCs allow all WNP-3 sunk costs in rate base. WNP-3 sunk costs are not included in ASC.
- 4C: Settlement costs are spread over all rate pools. PUCs allow all WNP-3 sunk costs in rate base. WNP-3 sunk costs are included in ASC.
- 1T: No settlement is reached.
- 2T: Settlement costs are spread over all rate pools. PUCs do not allow WNP-3 sunk costs in rate base. WNP-3 sunk costs are not included in ASC.
- 3T: Settlement costs are spread over all rate pools. PUCs allow all WNP-3 sunk costs in rate base. WNP-3 sunk costs are not included in ASC.
- 4T: Settlement costs are spread over all rate pools. PUCs allow all WNP-3 sunk costs in rate base. WNP-3 sunk costs are included in ASC.

BPA has prepared a one-year analysis for each of the four companies. Table 6. BPA described the expected impact on the companies' retail rates in a letter to Congressman Weaver. Exhibit C. These results can reasonably be expected to follow a similar pattern over time as the aggregate rate impacts described in cases 3C and 3T of Table 5 when adjusted for magnitude. Under this scenario, BPA estimates an average increase in the companies' retail rates of up to 3 mills per kilowatthour (1984 dollars) for the worst year of the 20 years analyzed. This would correspond approximately to an 8 percent increase. Rate impacts in all other years would be lower than this. This conclusion has been disputed although BPA's estimate is close to that of others. See, e.g., Statement of Congressman Weaver, Exhibit D (estimating an increase in Pacific's and Portland's retail rates in Oregon of 7 percent and 11 percent, respectively).

TABLE 6
 POTENTIAL WORST CASE WNP-3 SETTLEMENT EFFECTS
 ON REGIONAL IOU AVERAGE PRICE OF ELECTRICITY

	<u>PGE</u>	<u>PP&L</u>	<u>WWP</u>	<u>PSP&L</u>	<u>Combined</u>
WNP-3 Addition to Average Rate Base (\$000)	300,643	212,907	152,687	129,227	
Before Tax Return (%)	<u>20.73</u>	<u>18.90</u>	<u>18.80</u>	<u>20.71</u>	
Return on Rate Base (\$000)	62,323	40,239	28,705	26,763	
WNP-3 Deprec. Expense (\$000)	8,714	6,171	4,426	3,746	
WNP-3 O&M Expense (\$000)	<u>11,620</u>	<u>8,595</u>	<u>5,810</u>	<u>5,810</u>	
Subtotal - Increase in Rev. Req. (\$000)	82,657	55,005	38,941	36,319	
Credit for Incremental Off-System Sales Rev. (\$000)	<u>(11,620)</u>	<u>(8,595)</u>	<u>(5,810)</u>	<u>(5,810)</u>	
Net Increase in Revenue Requirement (\$000)	<u>71,037</u>	<u>46,410</u>	<u>33,131</u>	<u>30,509</u>	<u>181,087</u>
Total Retail Load (gWh) (excludes sales for resale)	<u>13,765</u>	<u>15,308</u>	<u>7,084</u>	<u>15,945</u>	<u>52,102</u>
Mills/kWh Increase - \$87 (across retail loads)	5.2	3.0	4.7	1.9	3.5
Mills/kWh Increase \$84 (across retail loads)	4.4	2.6	4.0	1.6	3.0

Notes and Assumptions for Table 6

- (i) This analysis assumes that utility commissions would allow the companies to include WNP-3 capital costs, direct and indirect, in rate bases and earn a return; in addition, it assumes WNP-3 depreciation expense and surrogate O&M expenses would be allowed. For purposes of this analysis, in determining the full worst-case effects of the settlement, a full year's effect of rate-basing including WNP-3 capital costs in rate base has been shown.
- (ii) This analysis assumes that additional power provided by the proposed settlement would be sold off-system, producing revenues equal to WNP-3 O&M expense.

(iii) This analysis does not take into account possible benefits to the companies from the exchange program. If the companies were allowed to exchange such costs, the increased net benefits received from BPA would reduce the rate increase to company residential customers (provided the utility is not deeming).

WNP-3 Addition to Average Rate Base: This reflects the average rate base increase during the first full year based on addition of IOU WNP-3 capital costs reported as of the end of calendar year 1984. Sources: PGE-1984 Annual Report, PP&L-1984 Annual Report, WWP-1984 Annual Report, PSP&L-1984 Form 10K. This analysis assumes that additional capital costs will not be incurred and that no additional AFUDC is accrued. No write-off of losses or associated income tax benefits are assumed.

Before Tax Return (%): This is the before tax rate of return required to achieve the approved after tax rate of return. The after tax rates of return used in this analysis are those rates of return from the rate orders upon which the most recent ASC filings are based. In computing the aggregate before tax rate of return for each IOU, the equity portion of the after tax allowable return was adjusted by the utility's net to gross factor.

Return on Rate Base: Computed as WNP-3 Addition to Average Rate Base X Before Tax Return.

WNP-3 Depreciation Expense: Assumes 100% is depreciated over 35 years.

WNP-3 O&M Expense: O&M is expressed in 1986 dollars, assuming 161 MW are exchanged; 22.0 mills/kWh in 1984 dollars, 6% annual escalation.

Total Retail Load (excludes sales for resale): Source: Northwest Regional Forecast of Power Loads and Resources, July 1985 - June 2005, PNUCC, March 1985; adjusted downward by 4.3% to exclude losses.

BPA's analysis has attempted to analyze the impacts on the investor-owned utility rates of the cost of BPA Exchange Power compared to the avoided cost of other company resources through its supply pricing model. This model shows that the settlement will likely provide a resource to the companies at a cost less than the cost of resources the companies would otherwise purchase. While BPA acknowledges that its model is designed on a regional basis and does not analyze costs on a company by company basis, it shows regional trends of avoided costs. Since BPA's model is unable to calculate potential reductions in tax liability the companies may receive, BPA's analysis overstates potential rate impacts to the extent of these tax benefits. The major assumptions of BPA's Supply Pricing Model are described in ROD section III(B)(4). Operation under the fallback would have similar impacts on the companies' rates as would have occurred under the exchange because the costs to the companies remain the same in either case.

BPA asked each company what impact the settlement might have on the company's retail rates, if any. Their responses indicate that the companies believe the impact to be small. Exhibit E (Puget), F (Water Power), G (Pacific), and H (Portland); see also Attachment 3 to Exhibit C.

4. Major Assumptions and Methodologies

a. Supply Pricing Model (SPM) for Aggregate Analyses of the Aggregate Impacts on Companies' Retail Rates.

b. If WNP-3 is completed, it is assumed to be on-line in March 1992.

c. WNP-1 is assumed to come on-line in September 1993 in all cases. If WNP-3 is terminated, it is assumed to be terminated in October 1986.

d. Incremental revenue ~~requirement streams~~ for the companies' sunk costs were developed endogenously and input directly into the SPM.

e. Nonfirm revenues are calculated endogenously in the SPM based on a probabilistic allocation of available nonfirm and surplus firm energy. Rates applied are projected BPA Standard nonfirm rates and Displacement rates.

f. Level of service to the companies under the settlement from Federal nonfirm and the companies' combustion turbines is calculated endogenously by the SPM.

g. Companies' deficits are assumed served by BPA under the NR rate.

h. Annual increments to the companies' revenue requirements, including a "gross up" for income tax liabilities, were input into the SPM.

i. BPA was assumed to make power deliveries of 161 average megawatts annually to the companies under the settlement. Sensitivities were run to check the impact of increasing the deliveries to 190 average

megawatts. The change in the results was insignificant and did not warrant revising the entire analysis.

Economic Analyses Performed by Entities Other than BPA

There have been several economic analyses of the settlement by entities and individuals other than BPA. These include analyses by Seattle City Light (Exhibit I), the Seattle City Council (Exhibit J), the Eugene Water and Electric Board (EWEB) (Exhibit M), the Pacific Northwest Generating Company (PNGC) (Exhibit L), the Washington Utilities Group (WUG) (Exhibit M), and Mr. Dan Meek, Subcommittee on General Oversight, Northwest Power, and Forest Management (Exhibit N). These other organizations used the same basic analysis approach and methodology as used in BPA's analysis, but varied some data and assumptions.

The Seattle City Light and the Seattle City Council analyses found the economics to be essentially neutral, showing a small net benefit in the City Light base case and a small net cost in the City Council base case. The PNGC analysis shows net costs to BPA of \$84 million to \$306 million. The WUG analysis shows a wide range of economic results, from small net benefits to several hundred million dollar net costs. The EWEB analysis on the preliminary settlement proposal has not been revised to reflect the revised settlement.

BPA found these other analyses to be professionally done and further found that differences between BPA's analysis and the other analyses were simply the result of differences in assumptions about certain variables. BPA believes it has used the most realistic assumptions about these variables in its analysis. In many cases, BPA believes the assumptions used in the other analyses are within the range of reasonable debate, but in some cases, a series of assumptions all on the pessimistic end of the range were combined.

Assumptions on which there were differences from BPA's assumptions are as follows:

1. WNP-3 Completion: Some of the other analyses assumed a lower probability that WNP-3 will be completed.
2. Nonfirm Opportunity Cost: Some assumed a higher opportunity cost for nonfirm energy, especially in the near term.
3. Nuclear O&M: Some assumed lower nuclear O&M costs.
4. WNP-3 Costs: Some assumed higher costs to complete and operate WNP-3.
5. Combustion Turbine Usage: Some assumed higher usage of Company Combustion Turbines, and some assumed less usage.
6. Average System Cost: Some assumed that the amount of Company sunk costs in WNP-3 that would appear in BPA rates, if any, via the

residential and small farm exchange would be greater with the settlement than without the settlement.

Another view of the impacts of the settlement on the companies retail rates is presented by Mr. Dan Meek. Exhibit N. Mr. Meek's analysis does not attempt to analyze the avoided cost of other resources the companies would purchase absent the settlement. Mr. Meek acknowledges that his analysis overstates the potential rate impact of the settlement in later years due to the impact of avoided cost assumptions on investor-owned utility rates. Id.

Mr. Meek is correct in asserting that Pacific's avoided cost is currently lower than the surrogate operation and maintenance cost payments that Pacific would be required to make under the exchange. For this reason Pacific insisted on having an option to enter the exchange at a later date when it would be economical for them to do so. For this reason it is unlikely the Oregon PUC would allow rate increases for Pacific in the amount stated by Mr. Meek. Id.

Mr. Meek also ignores an analysis prepared by Portland of the rate impacts of the settlement. Attachment 3 to Exhibit N. This analysis estimates that Portland's avoided cost will be slightly above the surrogate operation and maintenance payments in 1987. This analysis also shows that Portland will receive substantial reductions in tax liability since the settlement allows Portland to write off portions of its investment in WNP-3. Id. These factors reduce the worst case rate impacts to Portland ratepayers which could occur under the settlement.

C. Additional Benefits of Settling the Lawsuit

None of the economic analyses assumed any dollar benefit to BPA of settling the lawsuit. This is because BPA continues to believe that it would have prevailed had the lawsuit been pursued. For this reason, BPA has based its decision to enter into the exchange solely on whether the exchange would be economical for BPA and its customers in the absence of the lawsuit. In short, BPA believes the exchange makes good business sense. Of course, there is a possibility of losing any lawsuit.

Were one to factor in a monetary value to account for the risk of BPA's having to pay damages if the companies were to prevail, the net benefits of the exchange are obviously increased. Assuming that the companies' claim of \$2.6 billion in damages were reduced by a factor of 10 and that BPA's odds of losing were 10 percent, the value of settling the lawsuit would be \$26 million ($\$2.6 \text{ billion} \times 0.10 \times 10 \text{ percent}$). This would increase the value of the settlement by about 20 percent from \$132 million to \$158 million. More pessimistic assumptions would increase the value of settling; more optimistic assumptions would decrease the value.

However, there are intangible benefits that outweigh the dollar benefits of settling. Settlement should promote better cooperation among Northwest utilities who will be able to put this dispute behind them. Top utility management throughout the region will be able to focus attention on other regional problems. In other words, regional energy policy will again be set

by professional utility managers, rather than by lawyers. See Governor's Advisory Panel, A Report to Governor John Spellman of Washington and Governor Victor Atiyeh of Oregon, at 27 (November 1983). The settlement should also signal the financial institutions that the Northwest is capable of resolving its problems without the acrimony of a lengthy, expensive lawsuit, the outcome of which is uncertain. One member of financial community has already firmly indicated this to be the case. Comment 242. The reduction of uncertainty as a result of this settlement should improve the attractiveness of the Northwest to investors. Id. As investors' perceptions of the Northwest improve, this should result in lower costs of raising capital to Northwest utilities generally. Id. This settlement will also hopefully provide some momentum to efforts to settle other litigation that divides the Northwest--particularly that related to WNP-4 and -5. See generally, id.

V. PUBLIC INVOLVEMENT

A. Public Involvement and Consultation Process

1. Summary of Process

BPA kept the public fully informed on the evolving proposed settlement. Public comments received throughout the settlement process were considered during negotiations. The public comments received in the BPA Public Involvement office were made available to BPA negotiators and management throughout the course of settlement negotiations.

The following describes the public information and consultation process which began January 18, 1985, and concluded September 6, 1985. This does not include any comments or discussions which occurred as part of the negotiation process. Major issues discussed during the settlement negotiation meetings are discussed in ROD section IV(C).

In November and December 1984, BPA and the four companies conducted intensive negotiations to prepare a settlement proposal. BPA kept interested public utilities informed of the progress of these negotiations through briefings following these negotiation sessions. BPA also insisted that any settlement should be subject to public review before acceptance by BPA.

On January 18, 1985, BPA issued a press release describing the first proposed settlement, which at that time consisted of a 14-page set of principles, and asked for public comment. These principles are attached to this ROD as Exhibit A. This announcement was followed on January 25 by a 4-page Issue Alert describing the proposed settlement, and once again called for public comment. BPA mailed the Alert to a broad audience of approximately 8,000 persons ranging from BPA's customers to interested members of the public. The 14-page set of principles was made available upon request, as were BPA's analyses of the costs, benefits, and rate impacts of the proposed settlement.

Also beginning January 18, BPA began conducting consultation briefing calls describing the settlement principles to approximately 150 selected parties, including members of Congress, state and local governments, BPA customers, the press, customer organizations and others. Offers to give more detailed briefings were also made during these initial calls, which resulted in 16 briefings through March 11.

On February 26, 1985, BPA mailed a 33-page "Update" on the settlement effort to BPA's customers; Federal, State, and local governments; and other interested persons. The update described the public consultation process to date, provided answers to public questions on the proposed settlement, discussed expected rate impacts and updated benefit/cost analyses.

Commenters began asking to see the actual settlement documents and expressed concern about the public utilities being excluded from negotiations. BPA could not immediately release drafts of settlement documents because complete draft documents did not exist as many issues had not yet been resolved. Negotiators for BPA and the companies increased their efforts to draft a

comprehensive set of contracts. Many of the terms negotiated during this period were the result of suggestions from the public.

In mid-April the parties finished drafting proposed contracts. BPA mailed an Issue Update and press release to about 800 parties on April 18 summarizing the proposed settlement, recapping the settlement process to date, and calling for further public comment. BPA distributed a 300-page package of proposed contracts on April 19 to about 650 interested parties. The update set a comment deadline of May 31 and announced 5 public meetings to be held the week of May 13-17 in Burley, ID; Seattle, Spokane and Kennewick, WA; and Eugene, OR. A sixth public meeting in Vancouver, WA, was announced in a letter dated April 19. BPA took notes during these meetings; comments received are reflected in the Comment Summary. Exhibit O.

The Board of Directors of the Supply System met in mid-April to discuss the proposed settlement of WNP-3. They recommended that the Executive Board of the Supply System not take any action to settle litigation regarding WNP-3 unless public utilities had an opportunity to participate. The Executive Board discussed the proposed contracts to settle the WNP-3 litigation but took no action.

The second round of telephone call briefings to BPA customers and other interested parties also began April 19. BPA again offered more extensive briefings upon request.

BPA received nearly 100 comment letters on the settlement in May along with a number of other indications of public concern regarding the settlement. These included petitions, a newspaper ad campaign, and a variety of newspaper articles. Most comments received during this period were general expressions of support or opposition. BPA received some specific concerns about the settlement procedure (e.g., the comment period should be longer; negotiations should not take place behind closed doors).

Benton County PUD printed a full-page advertisement in the May 14, 1985 Tri-City Herald. The ad briefly described the settlement proposal and how it could result in significant rate increases. It asked PUD customers to return a coupon opposing the proposed settlement and the manner in which it was negotiated. The coupon included space for personal comments. Benton County PUD forwarded more than 800 of these coupons to BPA, including 223 which included additional personal comments. The coupons and personal comments are reflected in the comment summary. Numerous editorials, some supporting and some opposing the proposal, appeared in newspapers throughout the region. A number of letters were received in support of the settlement. These are among the 100 letters received in May.

BPA distributed an Environmental Assessment (EA) on the proposed settlement to about 1,000 parties on May 22. The comment period was initially to end June 21. BPA extended this deadline to July 12 on June 17. On May 22, in response to public requests, BPA extended the comment period on the settlement to July 31.

In June attorneys from BPA and the Department of Justice met with attorneys and other representatives of interested utilities to discuss the complex settlement documents. Three such discussions were held.

In late June, representatives of public utilities requested a meeting with the BPA Administrator to discuss the proposed settlement. These representatives brought a list of proposed changes and asked BPA to negotiate these changes with the companies. They also asked that public utilities be represented in the renewed negotiations with the companies. BPA agreed to recommend participation of public utilities to the companies in renewed negotiations if a joint list of proposed changes could be developed between BPA and the public utilities.

After three days of discussions, a joint list of issues was developed. The public agencies selected representatives of Seattle City Light, Snohomish County PUD, and Eugene Water and Electric Board to participate in subsequent negotiations with the companies. Two groups of public utilities declined to participate in any further negotiations with the companies. See ROD section IV(C)(3)(b).

Negotiations were reopened on July 11. In addition to BPA and the four companies, public agency representatives from Seattle City Light, Snohomish County PUD, and the Eugene Water and Electric Board participated. These seven utilities serve approximately 64 percent of the residential households in the region (50 percent by the four companies; 14 percent by these publicly owned utilities). On July 26, BPA issued a press release announcing that these discussions might result in a revised settlement proposal. Simultaneously, BPA suspended the July 31 comment deadline on the April 18 settlement proposal.

BPA, company and public agency discussions then produced a revised proposal. BPA announced the new settlement principles on August 2, 1985, and began a third series of telephone briefings to BPA customers and other interested parties. A revised EA and revised settlement contracts and exhibits were distributed on August 14, together with an Issue Update describing the general terms and major changes in the proposed settlement. A summary of comments received between January 18 and July 31 was also made available on request. Exhibit O. BPA also made available letters from the companies which explained the companies' views of how the settlement would affect their rates. Exhibits E through H; see also Attachment 3 to Exhibit C.

BPA established September 6, 1985, as the deadline for public comments on the revised settlement and revised EA. Eleven parties submitted comments on the revised settlement contracts and the revised EA within the comment period. One individual, 1 business (E. F. Hutton), 6 BPA customers and customer associations, Congressman Jim Weaver, the Army Corps of Engineers, and the Utility Reform Project. E. F. Hutton and the Eugene Water and Electric Board favored the new settlement, while the Army Corps of Engineers and Direct Service Industries, Inc., were neutral or ambivalent. The remainder opposed the settlement, generally for reasons cited in opposition of the initial proposal. However, a number of new issues and questions emerged, including the effect settlement has on contract rights under the net billing agreement, the obligations companies would retain on ownership payments and project

completion costs should WNP-3 be finished, and the effect on WNP-3 bondholders. All issues raised by these 11 commenters are addressed in the Evaluation and Responses section of this ROD. Comments received after the deadline but prior to September 16 are included in this ROD.

BPA recognized that there were still several issues of concern to the publicly owned utilities involved in the settlement negotiations. These issues concerned actions BPA might take to implement the settlement, rather than terms of the settlement proposal itself. Therefore, BPA and the utilities agreed to discuss these issues separately.

On August 30, Snohomish County PUD wrote BPA a letter describing these concerns on behalf of itself and other public utilities. BPA responded in a letter dated September 3. Exhibit Q. The letter was made available to concerned utilities and other interested parties through Snohomish County PUD, the Public Power Council, and BPA's Area and District Offices. Several of the comments BPA received discuss issues covered in these letters.

On September 13, 1985, the full Board of Directors again considered documents the Supply System would sign to dismiss claims in the extended construction delay litigation. See ROD section II(B)(5). The full Board of Directors voted 8 yes, 6 no, and 1 abstention to recommend that the Executive Board accept the staff recommendation to sign the agreements to dismiss claims. The Executive Board considered the staff recommendation later that day and voted 8 yes and 2 no to authorize the Managing Director of the Supply System to sign the agreements to dismiss claims. The Executive Board noted that its action did not constitute support or endorsement of the actions BPA was taking under the proposed settlement.

In summary, the major written documents BPA used to keep the general public informed as the settlement progressed were the January 18 press release, an Issue Alert mailed January 25, an Update on February 26, release of the proposed contracts package and another Issue Update on April 18/19, an Environmental Assessment May 22, and a revised settlement package containing new contract drafts, a revised Environmental Assessment and an Issue Update sent August 14. All issues raised by the public and received by September 16, 1985, in response to the settlement proposal have been analyzed by BPA, and are addressed in the Evaluation and Responses section of this record.

2. Sources of Comments on the Initial Proposal

BPA's Office of Public Involvement received numerous comments on the settlement proposal from January 18 through August 12, 1985, including:

- 235 letters and telephone calls to BPA/Public Involvement, which includes 9 comments on the proposed settlement Environmental Assessment (EA)
- 105 commenters at the May 13 - 15 customer/public meetings
- 849 coupons received from Benton County PUD
- 342 signatures on a petition circulated by PUD #1 of Clallam County, Washington

Letters and Telephone Calls

Of the 235 letters and telephone calls BPA has received on the initial settlement, 118 have been in favor of the proposal, 60 were opposed and 53 did not take a position or were withholding judgment pending further information. These figures include 9 comment letters on the proposed settlement EA, of which seven were generally neutral or made no comment on the settlement itself and two of which opposed the settlement.

Public Meetings

BPA heard comments from 105 individuals who attended meetings in Seattle, Spokane, Kennewick, Burley, Vancouver and Eugene in May. A total of 454 people attended these meetings. Of those who commented, 11 were in favor of the settlement, 49 were opposed and the remainder were predominately asking questions or clarifying points about the settlement.

Area Briefings

These briefings were primarily to alert customers and the press of the upcoming settlement or major changes in the proposed settlement as it evolved, rather than to solicit opinions (although some opinions were expressed). Briefings began January 18, April 18 and August 2 and ran for several days thereafter. Somewhere between 150 and 200 different organizations and individuals were contacted.

Coupon Campaign

The Benton Co. PUD published an advertisement in the Tri-City Herald expressing concern about possible impacts of the settlement on public power ratepayers, and dissatisfaction with public power's exclusion from the negotiating process. This ad asked PUD customers to mail a coupon back to the PUD. These coupons were subsequently submitted to BPA as comments. Two hundred twenty-three of the 849 persons who returned coupons also added personal comments.

Petition

The Public Utility District #1 of Clallam County, WA circulated a petition and collected 342 signatures, which were subsequently mailed to BPA. The petition opposed the settlement and objected to the "secret" negotiation process. It also contended that settlement would raise electric rates for customers of Clallam County PUD.

Comments Received from January 18 to July 31, 1985

Table 7 summarizes the comments on the proposal from January 18 to July 31. No attempt was made to eliminate double-counting of multiple comments made by one individual or organization in different forums. Thus, each comment was counted separately, regardless of how many other letters or comments were made by that commenter, or how many comments were made by other individuals from the same organization. The names of individuals who wrote or called BPA and the organization they represent are listed in Exhibit P.

TABLE 7
 SOURCES OF PUBLIC COMMENTS
 INITIAL WNP-3 SETTLEMENT
 January 18 to August 12, 1985

<u>Type of Commenter</u>	<u>Number (excluding coupon and petition)</u>	<u>Add'l (from coupon and petition)</u>
Individuals and unaffiliated commenters	112	1191
Businesses excluding DSIs	54	0
BPA customers (total)	(195)	0
PUDs and PUD associations	84	0
IOUs	3	0
DSIs	16	0
Municipal and coop utilities	90	0
Other Customers	2	0
Governments (total)	(39)	0
Other Federal	11	0
State	10	0
County	3	0
City	15	0
Interest groups (total)	(26)	0
Environmental/public interest	11	0
Utility associations/public power interest groups	14	0
Political Groups	1	0
Other (primarily press)	18	0
<u>Unknown/Not Specified</u>	<u>1</u>	<u>0</u>
TOTAL	445	1191

B. Nature of the Negotiation Process

It is important to emphasize that the settlement is the product of negotiation. A negotiation process differs from a process where BPA unilaterally adopts a policy on some aspect of Federal power marketing or related matters. The difference lies in the degree of control that BPA exercises over the outcome. The other negotiating parties have veto power over solutions to issues proposed by BPA. As with any negotiation, each issue is resolved through compromise. On many issues, neither party may feel particularly wedded to any particular view. On other issues one party may have very strong views while the other side may not. Then, of course, there are the issues on which both sides firmly disagree.

In addition, this negotiation differs from BPA's typical power marketing negotiations because the purpose here is to settle a lawsuit rather than to market power or offer related services. In the case of a power marketing negotiation, each party knows that a failure to agree means that the parties will not obtain the expected benefits of the agreement. This does not impose a cost on either party, even though the price the buyer expected to obtain, or the seller to receive, through negotiation may have been better than other alternatives. In the case of negotiations to settle a lawsuit, each party knows that the failure to agree carries with it the cost of continued litigation. While both parties expect to prevail in litigation, each party knows that there is a risk of losing.

For the plaintiff, losing also means absorbing the alleged damages. For the defendant, losing means an involuntary change in the status quo to the benefit of the plaintiff in addition to its litigation costs. In addition, there are intangible costs to each party, such as continued strained relations of continued litigation, particularly where, as here, the parties involved must continue to do business with each other on a day to day basis.

BPA can explain what its objectives were in seeking settlement. It can also provide its reasoning for compromising various issues in order to achieve as many of those objectives as possible. However, as in any negotiation, neither side fully achieves all its objectives. The Evaluation and Responses section below, therefore, describes the issue, the comments received on the issue, how the issue was resolved, and BPA's rationale in agreeing to pertinent settlement terms.

C. Evaluation and Responses to Public Comment by Issue

1. Issue: Should BPA Enter into the Proposed Settlement?

Comments: BPA received comments from several public and municipal utilities, as well as from several special interest groups, to the effect that BPA should not settle the WNP-3 lawsuit because litigation was preferable to the version of settlement proposed and because BPA's legal position was sound. Comment Summary, Issue L-3. Some commenters believed that BPA should publicly assess the risks of continued litigation before settling. Id. Some said that BPA and the Supply System should appeal the court order finding BPA in breach of Supply System contracts. Comment Summary, Issue B-3. Other comments stated

that settlement, in view of the exclusion of certain public utility groups, was an assurance of continued litigation. Comments 222, 252.

Others, however, including 13 Congressmen and eight Senators, told BPA that while they did not necessarily endorse this settlement, the best interests of the region would be served by an out-of-court resolution. Comment Summary, Issue L-1. Some public utilities also recognized merit in a settlement of the lawsuit. Id.

Comments supporting the concept of settlement were sometimes qualified to the extent that they desired more information before endorsing a particular settlement proposal. Comment Summary, Issue C-1. Other commenters favored settlement even though they were dissatisfied with the settlement as then proposed. Comment Summary, Issues B-1, B-2.

During negotiations, BPA received comments from customer groups, a Congressman, and special interests questioning the continuation of settlement discussions in light of the Judge Browning May 16, 1985 order vacating the orders by Judge Bilby. Comment Summary, Issue L-2. They stated that absent a court finding of breach on the part of BPA and the Supply System, as Judge Bilby had found, there was no reason for settlement, settlement could not be justified, or settlement was premature. Id. A few called for a reassessment of settlement and consideration of other alternatives. Id. These comments generally preceded Judge Browning's July 10, 1985 adoption of Judge Bilby's ruling that the delay in the construction of WNP-3 was not a prudent utility practice.

Comments opposing the April settlement proposal, if not directed towards opposing the concept of settlement or to a reassessment of settlement following Judge Browning's vacation of Judge Bilby's order, were primarily focused on the exclusion of public utility groups in the negotiation process. Comment Summary, Issue B-1. They said that the settlement was unfair due to the exclusion of groups they saw as affected parties. Id. BPA also received comments urging settlement of the litigation, but opposing the settlement as drafted. Comment Summary, Issues B-1, B-2. They suggested a renewed effort to negotiate a better settlement. Id. Opposition to the settlement proposal centered on a perceived inequity between the interests of the private utilities and the public utilities. Some charged that the companies received special treatment at the expense of the public utility customer or that the companies were walking away from an expensive obligation with cheap Federal power. Comment Summary, Issues B-1, B-2. Some commenters believed that the net costs of the settlement proposal will fall on the region's ratepayers. Comments 246, 247.

Some commenters stated that under the settlement the region's ratepayers would pay for the mistakes of BPA and the Supply System. Comment Summary, Issue B-4. Some commenters suggested that a settlement of the WNP-3 lawsuit would reduce motivation to settle litigation involving WNP-4 and -5. Comment Summary, Issue J-7.

BPA also received comments supporting the settlement effort throughout the negotiation process. The comments supporting the April proposal included,

aside from general statements supporting the concept of settlement, statements that the proposal benefited electrical customers everywhere because it settled a potentially expensive lawsuit by use of BPA's surplus and with no rate increases for BPA customers. Comment Summary, Issue A-1. Several commenters noted that, because the settlement proposal was not a mere cash payment to the companies, it avoided a rate increase. A professional engineering group commented that the settlement proposal provided a flexible solution to handle the region's energy future. Comment 231.

BPA also received many comments to the effect that the settlement was fair, equitable and in the region's best interests. Comment Summary, Issue A-2. One of the public utilities participating in the negotiations commented that the August proposal was preferable to continued litigation and cost uncertainties and that its customers were "best served by encouraging Bonneville to proceed toward finalizing such an out-of-court settlement agreement." Comment 244, letter from EWEB, September 6, 1985. A number of commenters recognized intangible settlement benefits such as an increased spirit of cooperation, reconciliation and healing among the region's utilities. Comment Summary, Issue A-3. Commenters also expressed hope that a settlement of the WNP-3 lawsuit would provide the basis for settlement of other WNP-related litigation. Comment Summary, Issue J-7. Another public utility requested that BPA conclude a settlement because the proposed settlement was "in the best interest of the District's customer owners." Comment 253, letter from Chelan Co. PUD, September 4, 1985. See also, Comment 261. One commenter suggested that concurrent settlement of the WNP-related lawsuits would provide the best equity among all interests. Comment 248.

Resolution: BPA and the companies, together with participating public utilities, negotiated the revised settlement proposal. For the reasons set forth in this ROD, BPA has entered into the settlement proposal and executed the settlement contracts.

Rationale: BPA believes that settlement of the WNP-3 lawsuit is preferable to continued litigation. The proposed settlement is the product of negotiation and is in the best interest of BPA, its customers, and the region.

The settlement meets three BPA needs. See generally, Revised EA, section 1.2. First, the settlement avoids the adverse consequences of continued litigation, including the time, expense and planning uncertainty associated with litigation. Second, the settlement assures that WNP-3 will be preserved until needed. Under the settlement the future of the plant will be based on regional needs. This follows because BPA will exercise its rights to acquire the companies' share of project capability and finish the plant, or propose termination it, based on regional electric energy load growth projections, cost effectiveness, availability of financing and other factors. Third, during BPA's current energy surplus, the exchange settlement enables BPA to obtain revenues comparable to, or greater than, that which BPA would have obtained in the absence of the settlement. BPA estimates that the expected present value of the net benefits of the settlement are \$132 million. This value does not include benefits to be gained by avoiding further litigation costs. ROD section III(C).

The issue of whether BPA should enter into the August settlement proposal also raised two subissues which are discussed here.

a. Subissue: Does the Settlement Promote the Economic Well Being of the Region?

Comments: Major proponents of settlement were the financial communities both within and outside the region. They felt strongly that a settlement of the WNP-3 lawsuit would avoid lengthy and costly litigation, would lift the cloud of uncertainty surrounding the Northwest's ability to handle its problems, would improve the perceptions of investment institutions towards the Northwest, would reduce the cost of raising future capital, and would improve the predictability of the Northwest's energy future. Comment Summary, Issue A-3. One commenter noted that the direct savings of litigation costs coupled with the indirect advantages to the industrial development marketplace would benefit the entire region. Comment 116. Citing the settlement proposal as fair, equitable, and "a model and an inspiration" to other parties involved in similar litigation, one commenter strongly endorsed the August proposal: "We feel the financial markets support the settlement as a means of reducing the overall investment uncertainty and improving the investment climate in the Pacific Northwest and as an indication of a new era in relations between the region's issuers of securities and financial investors, particularly in light of the recent turbulent history." Comment 242. Within the region support for a settlement came from building and contractor trade councils who viewed the proposal as a benefit to the region's ratepayers, customers and workers. Comment Summary, Issue A-1.

Resolution: BPA, believes the settlement promotes the economic well being of the region.

Rationale: Throughout negotiations BPA believed, and continues to believe, that an out-of-court settlement of the WNP-3 lawsuit would serve the interests of Bonneville, its customers, regional utilities and ratepayers, and would provide a backdrop for the efforts of states and local governments in their pursuit of a more stable Northwest economy. BPA believes that the proposed settlement will result in renewed efforts to bring about regional economic stability.

b. Subissue: Should the Settlement Resolve Cost-Sharing Claims?

Comments: Two commenters believed that the settlement proposal was deficient because it did not resolve the cost-sharing claims contained in the WNP-3 lawsuit. Comments 246, 249.

Resolution: The proposed settlement does not address the cost-sharing claims contained in the WNP-3 lawsuit. The settlement agreements and covenants not to sue between BPA and each of the companies leave each party as they now stand receiving the proceeds or paying any costs that result from cost-sharing judgment between Projects 3 and 5. Section 1(b)(iii), Pacific's Agreement; section 4(b)(iii), Other Companies' Agreement.

Rationale: This settlement was never intended to address the cost-sharing claims of other litigants.

2. Issue: Are there Other Reasonable Ways in which to Settle the Lawsuit?

Comments: A few comments outlined alternative settlement proposals. One comment suggested either that BPA bear the entire cost of the WNP-3 project or that the loss be borne by WNP-3 participants. Comment 187. In support of the first alternative, it was suggested that BPA rate base the costs of WNP-3 in its average system costs, sell additional power to California, or give the companies full title to WNP-3. Id. The comment also proposed that the WNP-3 participant public utilities alone bear the costs of WNP-3 by apportioning the loss on the basis of investment. Id. Alternatively, the comment supported terminating WNP-3 and providing the companies with the right to purchase firm power in the near term and nonfirm power once the present surplus disappears, or an opportunity to purchase conservation. Id. The comment also proposed that BPA pay the full costs of producing firm power at the current preference rate and assume full control over WNP-3's fate while the companies retained proportionate shares of liability in the plant. Id. Another commenter in an oral briefing on the settlement proposal recommended that the private utilities be offered a share of WNP-2. Comment 16.

Resolution: BPA believes the proposed settlement is a reasonable, fair settlement. While other alternatives are possible, no other alternative was proposed that has the advantages of the proposed settlement.

Rationale: BPA entered negotiations with several objectives in mind: First, BPA sought a settlement which was fair and reasonable. Second, BPA desired a settlement that minimized any adverse effects on BPA's customers and minimized rate impacts on other ratepayers. The settlement, as proposed, will meet these objectives. It will have no rate impact on BPA's current rates which extend through September 1987. Third, BPA sought to preserve the current status of WNP-3 and to obtain control over the future of WNP-3. Fourth, BPA sought a settlement that would avoid BPA's having to acquire new resources and that any BPA obligations to deliver power use as little available nonfirm energy as possible. Finally, BPA proposed that the settlement be in the form of a power exchange in order to capture the unique opportunity an exchange would provide.

3. Issue: Was the Process of Settlement Proper?

This issue is divided into four subissues which follow.

a. Subissue: Was it Appropriate for BPA and the Companies to Conduct Two-Party Negotiations?

Comments: BPA received a number of objections to the manner in which negotiations were conducted. Comment Summary, Issue C-1. Only BPA and the companies were involved in early negotiations, which culminated in the release of the first set of proposed settlement contracts on April 18, 1985. Some

groups, including some public utilities, sought earlier representation in the negotiations. Others urged a more open, public negotiation process. Id.

Resolution: On advice of counsel, BPA and the companies conducted initial negotiations privately. Subsequently, after July 1985 and at BPA's request, representatives of public utilities were invited to participate in settlement negotiations.

Rationale: Until July 1985, only BPA and the companies conducted negotiations. BPA believed that open negotiation sessions could severely jeopardize the possibility of settlement by inhibiting a frank exchange of views. BPA and the companies had a lengthy list of issues to identify and analyze. Many of these issues were complex and contentious. Without an opportunity to structure a package of agreements privately, BPA believed that settlement was not realistic prospect.

After initial settlement proposals had been drafted, meetings were held between BPA and representatives of public utilities to discuss issues. As a result of the meetings, representatives of Seattle City Light, Snohomish County PUD, and Eugene Water and Electric Board participated in subsequent negotiations. These negotiations led to publication of a proposed settlement contracts on August 14, 1985, which reflected many of the proposals by public agencies. Other public utilities were invited to participate but elected instead to sue BPA to set aside the possibility of settlement. ROD section IV(C)(3)(b).

b. Subissue: Were Some Public Utility Representatives Unfairly Excluded from the Final Series of Negotiations with the Companies?

Comment: In a July 26, 1985 letter addressed to Judge Browning Mr. John D. Lowery an attorney representing the "Small Utilities Group" complained that most of the public utility defendants were prevented from participating in negotiations with the companies because they did not agree to conditions imposed by the BPA Administrator. Exhibit R. He stated that the Administrator required public utilities to adopt the position that the settlement (as it then existed) was "fundamentally sound," as a condition for participation in the negotiations that resumed on July 11. Mr. Lowery stated that the settlement agreement had been criticized by many as inequitable, unfair, and potentially illegal. For those reasons, the Small Utilities Group could not take the position that the proposed settlement was "fundamentally sound." Id.

Resolution: Representatives of Snohomish PUD, Seattle City Light, and the Oregon Public Utilities Group accompanied BPA in the final series of negotiations with the companies, commencing on July 11. The Small Utilities Group voluntarily chose to withdraw from the negotiations.

A description of the factual events that led up to the final negotiations is provided in a letter from Department of Justice attorney Mark Rutzick addressed to Judge Browning:

Beginning in late June, a group of utility managers and attorneys encompassing representatives of all the utility "groups" in this litigation, including the Small Utilities Group, began meeting with representatives of the Bonneville Power Administration for the purpose of developing a negotiating agenda of improvements in the then-proposed settlement package to bring to the bargaining table for discussion with representatives of the investor-owned utilities. The first such meeting was held on June 24, with subsequent meetings held on June 27 and July 3. At these three lengthy meetings, a serious effort was given to identifying negotiating items and positions satisfactory to both the public utilities and BPA.

At the July 3 meeting, held the day after the Washington Utilities Group filed its latest motion to amend its pleading to challenge the yet-unsigned settlement, a discussion was held regarding the position of utilities which sought a "seat at the table" for the renewed negotiations with the IOU's. The BPA Administrator advised the utility representative that BPA was not asking utilities to make any binding commitment whatever regarding the settlement talks, and that there were no legal preconditions for the participation by any utility in the renewed negotiations. However, the Administrator set forth three nonbinding positions which he felt it reasonable to ask utilities to accept in return for being given a "seat at the table." These positions were: 1) that the utilities view the existing settlement framework, involving an energy exchange and possible future acquisition by BPA of the IOUs' share of Project 3, as fundamentally sound (in other words, the renewed negotiations were to improve, rather than discard, the existing settlement framework); 2) the utilities should be able to endorse a finite list of proposed changes in the settlement which would be developed jointly with BPA representatives (in other words, the renewed negotiations were not to be "open-ended") and; 3) the utilities would have to recognize that in any negotiation it was possible (even likely) that the BPA/public utility negotiating team would not be able to achieve all the desired changes in the settlement package which it would seek. The Administrator explicitly advised the utility representatives attending the meeting that BPA was not asking the utilities to give up any legal rights, and that any utility accepting these three positions would remain free to file a legal challenge to the revised settlement if one should ever be executed.

Rutzick's Response, pp. 1-2. Exhibit S.

Later, representatives of all but one of the other litigation groups (including the Small Utilities Group), commenced another meeting with other

BPA representatives for the purpose of continuing to develop and respond to the joint negotiating agenda. Rutzick explained:

It is important to note that after the first July 3 meeting (with all litigation groups), BPA representatives never again raised the three nonbinding positions as an issue with utility representatives. In BPA's view, the fact that the utility groups other than the Washington Group and the Columbia Defendants continued to work with BPA to adopt a joint negotiating agenda was satisfactory evidence that those utilities accepted the three nonbinding positions proposed by BPA.

At the close of the July 10 meeting, representatives of the Inland Utilities and the Small Utilities Group thanked the BPA representatives for their efforts, wished them good luck in the negotiations with the IOU's (beginning the next day) and explained that for a reason unrelated to the three nonbinding positions, representatives of those two groups had decided not to participate in the joint negotiations with the IOU's. A lawyer for the Small Utilities Group then raised the three positions, expressing his view that his group of utilities had not accepted the three positions. Following the lawyer's speech, representatives of Seattle City Light, Snohomish County P.U.D. and the Oregon Public Utilities Group were selected to serve as part of the joint BPA/public utility negotiating team. The negotiating agenda to be advanced by that team was the agenda adopted by all the utility representatives attending the meetings between July 3 and July 10.

. . . .

The Small Utilities Group was never prevented from participating in the negotiations with the IOU's. The Small Utilities Group chose to withdraw from the negotiations voluntarily. Representatives of that Group would have been free to attend negotiating meetings with the IOU's at any time had they wished to do so and had they been selected by the other utilities to do so, without any preconditions or limitations of any kind.

Rutzick Response, pp. 3-4. Mr. Lowery's reply is attached as Exhibit T.

Rationale: BPA offered the public utility defendants the opportunity to participate in the final negotiations on a fair and reasonable basis. The purpose was to facilitate negotiation of prepared agenda items proposing a finite list of changes, while striving for a final consensus on a proposed settlement package. The voluntary withdrawal of the Small Utilities Group, in view of the Administrator's assurance that participation in negotiations would

not preclude any subsequent legal challenges to the proposed settlement (if executed), was beyond BPA's control.

c. Subissue: Did BPA Provide an Adequate Comment Period for the Proposed Settlement Contracts?

Public comment began on January 18, 1985, when BPA released for comment a 14-page draft of settlement principles. On April 18, 1985, BPA released a 300-page package of proposed settlement contracts. On April 19, BPA released an "issue update" summarizing the terms of the proposed settlement, describing the process to date, and asking for public comment. The initial comment deadline was May 31.

Comments: After the BPA released the draft contracts on April 18, BPA received numerous comments urging extensions to the comment periods, due to the complex and highly technical nature of the proposed settlement documents and the necessity for review by a variety of technical experts and attorneys. Requests for extensions ranged from one to six months. Comment Summary, Issues C-2, C-3.

Resolution: Thus, in response to these comments, BPA extended the deadline for comments on the proposed contracts to July 31. However, subsequent negotiations led BPA to announce on July 31 that the comment period was indefinitely extended. After release of a revised set of proposed settlement documents and a revised EA on August 14, BPA extended the comment deadline for all documents to September 6, 1985. In view of the extensive opportunities for public comment, BPA believes the public comment periods were adequate.

Rationale: In light of the fact that the settlement is complex and highly technical, BPA extended the initial comment period to allow for further public review. Subsequently, BPA again extended public review to allow comment on significant changes that had been made. BPA believes that public review of its major decisions is vital to its role as a leader in regional power affairs.

d. Subissue: Did BPA Provide Adequate Public Review of the Environmental Assessment (EA) on the Settlement?

BPA released an environmental assessment (EA) on the proposed settlement contracts on May 22, 1985. The initial public comment deadline was June 21.

Comments: The Washington Utilities Group complained that the public review process on BPA's EA was invalid, as changes were made to the proposed settlement agreements after the EA was first released. Comment Summary, Issue C-3.

Resolution: In response to comment, BPA extended the comment period on the EA to July 12. BPA revised the EA to assess the environmental effects of significant changes to the initially proposed settlement contracts. BPA then released the revised EA, and extended the comment period to September 6, 1985. ROD section IV(C)(3)(d).

Rationale: BPA agrees with the Washington Utilities Group that an EA should analyze the proposal to be adopted. Thus, BPA released a revised EA that assessed significant changes made to the settlement subsequent to the release of the initial EA. BPA believes this approach enhances the environmental review process.

e. Subissue: Was BPA's Public Involvement Process Adequate?

Comments: BPA received comments on the public involvement information process. Some comments criticized the manner in which it was conducted. Comment Summary, Issues C-2, C-3. (E.g., (1) criticism of daytime public meetings which made attendance difficult for working people; (2) criticism of confusing and overly technical documents.) Other comments supported the public meetings which BPA conducted on the proposed settlement following the initial release of documents on April 19, 1985. Comment Summary, Issue C-3; Comment 254.

Resolution: BPA developed a public involvement process that it believe reasonably responded to the needs of the public. BPA published summaries of these documents to assist people's understanding of the settlement. BPA developed a public process to permit as many interested persons to participate as reasonably possible. See generally, ROD section IV(A). BPA believes that its public involvement process was adequate. BPA carefully considered and in many instances modified the settlement accordingly. See generally, ROD sections IV(C)(14) to (22).

Rationale: BPA went to great lengths to explain the settlement to a broad cross section of the public. This was intended to help people understand what the settlement does and to explain why BPA believes the settlement is in the best interest of its customers and the region, and to give people an opportunity to provide constructive criticism and to offer alternative views.

4. Issue: Are the Costs and Benefits of the Settlement Distributed Equitably in the Region?

Comments: BPA received comments from those in opposition to the settlement who believed that the costs and benefits of the settlement will not be shared equitably among various customer groups. Comment Summary, Issues B-1 to B-3. Most of these comments were from private citizens and representatives of public utilities who felt that the settlement was a benefit to the IOUs and at the expense of the ratepayers. Id.; Comments 55, 69, 106, 146. Some commenters asserted that nuclear O&M payments to BPA would be below BPA's PF rate thereby raising power rates to public agencies. Comment Summary, Issues B-1 to B-3. Some commenters were concerned about rate increases as a result of the settlement. Id. Some commenters believed that BPA would pay the costs of preserving the companies' shares of WNP-3 without receiving any benefit from the companies' shares. Id. A public utility was concerned that the exchange could adversely affect BPA's ability to serve the Direct Service Industries (DSIs). Comment 36. BPA also received comments from those who believed that the settlement proposal was fair, equitable, and in the best interests of the region. Comment Summary, Issue A-2. See also, ROD section IV(C)(1).

Resolution: However, BPA believes that, when all the benefits and costs of the exchange are fairly considered and balanced against each other, the costs and benefits are distributed equitably.

Rationale: It is impossible to specify with precision how much each customer group may gain or lose as a result of the settlement. This is not possible to quantify accurately because the level of costs and benefits depends on uncertain variables such as Nuclear O&M Costs, actions by State regulatory bodies, BPA's average system cost determinations, and BPA's future rate cases. However, BPA does not expect the aggregate rate effect or the rate effect on any particular customer group to be inequitable. See generally ROD section III(B); Exhibit Q.

When nuclear O&M payments and BPA's rates are compared under the same inflation assumptions, estimates of nuclear O&M payments are higher than estimates of BPA's PF rate. Specifically, the PF rate in 1987 will be approximately 22 mills per kWh. The current best estimate of nuclear O&M payments is 27 mills per kWh in 1987. The actual nuclear O&M payments will likely fluctuate from year-to-year, but is expected to be above the PF rate for the foreseeable future. See, ROD section III(A)(5).

In analyzing the settlement, BPA believes that it will realize a substantial benefit from the companies' share of WNP-3 capability if WNP-3 is needed. See, generally, ROD section III(A). BPA also recognizes that little benefit will be realized if future load growth is too low to make the project needed. Id. DSI service will not be affected because the settlement does not change the DSIs' priority of access to BPA nonfirm energy. See ROD section IV(C)(10)(a). This means that at times BPA may use available nonfirm to serve the DSIs top quartile and request energy from the companies combustion turbines to meet BPA's settlement exchange obligations.

BPA believes that economic equity reaches beyond the rate effects of the proposed settlement. A resolution by settlement of WNP-3 litigation, if not all Supply System litigation, may have immeasurable benefits to all who work and live in the Pacific Northwest. See ROD section IV(C)(1)(a). BPA believes that the settlement equitably balances the economic interests of BPA and the region's utilities and ratepayers.

5. Issue: Does the Settlement Affect Whether WNP-3 Will be Constructed?

Comments: Several commenters were concerned about the effect of the settlement on the restart of WNP-3. Comment Summary, Issue E-1. One commenter felt that a decision on the proposed settlement should be made along with an examination of the need for WNP-3. Comment 83. Without a need for WNP-3, it would be uneconomical to settle. Id. A few comments suggested that settling was beneficial in that it removes legal obstacles to restart and places ownership in a single party. Comment Summary, Issues A-1, A-3. One public agency was pleased that the proposed settlement appeared to it to be neutral as to whether WNP-3 is terminated or completed. Comment No. 83, 216. Some public agency commenters thought that the settlement was biased towards termination. Comments 37, 249. Others felt the economics of the settlement

favor completion because the net benefits are higher with completion than with termination. Other commenters wanted to know if BPA could unilaterally decide to terminate WNP-3. Comments 36, 112.

Resolution: The proposed settlement will not bias the decision whether to complete or terminate WNP-3. The settlement does not change who could decide to terminate the plant. The settlement provides that the companies will vote in the same manner as BPA on decisions to terminate WNP-3. Either the Supply System or BPA could propose to terminate WNP-3 as they have always been able to do.

Rationale: The three primary factors that will determine whether WNP-3 will be restarted or terminated are load growth, WNP-3 costs, and the cost of alternative resources. Under medium and high load growth, BPA studies indicate that completing the plant is preferable to termination. If load growth is low, WNP-3 is likely not to be needed and the settlement results in a smaller or negative net benefit. These results do not indicate that the settlement forces completion. Rather, it indicates that the settlement may be of greater value to BPA in a higher load growth scenario than a lower load growth scenario simply because the companies' irrevocable offers are worth more if there is high load growth. See, generally, ROD section III(A).

Under a low load growth scenario, the need for the plant is so distant that termination may be preferable if low load growth were confirmed. Id. If medium or high load growth were experienced, the completion of WNP-3 is much more likely, and the proposed settlement yields a small net benefit to BPA because the cost of completing and operating the project is likely to be less than the cost of new coal-fired generation. Id.

The proposed settlement does not affect regional load growth. Rate effects, if any, of the settlement are expected to be too small to affect load growth (and thereby influence the likelihood of restart or termination). See, generally, ROD section III(B). The proposed settlement also does not change the cost of completion of WNP-3 on any given schedule, and it does not change the cost of alternative resources. Thus, the primary factors that will determine when WNP-3 is completed, if ever, are not affected by the settlement.

Institutional obstacles to completion also exist. Before accepting the irrevocable offers, BPA must comply with section 6(c) of the Pacific Northwest Power Act. 16 U.S.C. 839d(c). BPA would also have to comply with the National Environmental Policy Act prior to a decision to restart construction.

Financing problems may also be an obstacle. Rating agencies have suspended the investment rating for bonds sold by the Supply System. BPA continues to believe that conventional debt financing is the most desirable method for financing completion of WNP-3. BPA would consider financing construction costs out of current revenues only if the economic benefits of a restart were so compelling as to outweigh the obvious adverse rate impact of including such costs in current rates. Exhibit Q.

6. Issue: Does the Settlement Adversely Affect Electric Power Rates?

Comments: Many commenters wanted to know the rate impacts of the Settlement. Comment Summary, Issue D-2. Their question was asked both from the standpoint of public utility ratepayers and private utility ratepayers. Id. Other commenters asserted that the Settlement would, in fact, increase their rates. Id.; Comments 235, 239, 243, 246, 249.

Resolution: BPA has conducted an analysis of the rate impacts of the Settlement. This analysis is discussed in ROD section III(B). This analysis concludes that under the settlement, BPA's rates would increase or decrease only by very small amounts. Id. Rates of the participating private utilities under the Settlement are dependent on actions of others, such as the state public utility commissions and may increase or decrease over the life of this settlement. Even in the worst case impacts, these rates are not expected to increase substantially over the life of the exchange. Id. These points are true whether the exchange or the fallback is in effect. Id.

Rationale: The rate effects of the settlement and supporting documentation are discussed in ROD section III(B).

7. Issue: Does the Settlement Require BPA to Acquire Additional Resources?

Comments: One commenter suggested that BPA may be forced to acquire new resources to meet the firm energy commitment of the settlement. Comment 212.

Resolution: The settlement will not increase the need for additional resource acquisitions. Indeed, the settlement has been deliberately structured to avoid BPA's having to acquire new resources to meet its obligations under the settlement.

Rationale: The exchange will either increase BPA's supply of firm energy (if WNP-3 is completed) or have no effect on BPA's energy load-resource balance. See, generally, ROD section II(A). While the exchange disposes of Federal capacity, BPA expects to have more than sufficient capacity to meet its contractual obligations to all its customers over the life of the settlement without having to acquire new capacity resources. Id.; ROD section IV(C)(23).

8. Issue: Does the Settlement Create Unacceptable Environmental Effects?

Comments: The comments expressed two major themes. Commenters voiced concern about the effect the proposed settlement may have on the operation of the Columbia River. Comments 5, 212, 218. The possibility of changed streamflows and altered reservoir levels--and the consequent effects on fish and wildlife were particularly of concern. Id.; Comment 250.

The second theme relates to environmental effects resulting from various actions including the possibility of constructing thermal power plants to meet the new firm energy commitments embodied in the settlement, Comment 221; the

possibility of increased operation of the companies' combustion turbines, Comment 218; and the possibility of consumer shifts to alternatives such as wood stoves, Comments 218, 212, 219. Other comments stated that inadequate consideration was given in BPA's NEPA process to alternatives to the settlement, Comments 221 and 218, and that an EIS should have been prepared. Comments 215 and 218.

Resolution: BPA has determined through an Environmental Assessment and Finding of No Significant Impact that the settlement agreement will not create unacceptable environmental effects. The settlement does not require BPA to acquire new resources or to operate its power system in a manner that results in significant environmental effects. The settlement will not significantly increase combustion turbine operation or cause shifts to alternative fuels.

Rationale: BPA has studied the environmental risks and has concluded that, while the settlement may occasionally effect a slight change in the management of the river system, adverse environmental effects will be negligible. Two particular effects on streamflows could arise from the settlement. First, stream flows could change in critical water years. Since water conditions may prevent BPA from fulfilling BPA's settlement obligations from BPA's system, BPA would operate the companies' combustion turbines or purchase energy from other sources to meet its exchange obligations under these circumstances.

Thus, relative to what would occur without the settlement, flows in the early fall would be reduced to fill reservoirs. Flows in the late fall and winter would increase as BPA met its settlement obligations. In wet years these effects would be greatly diminished. The use of nonfirm energy to meet BPA's exchange obligations would create effects no different than those resulting from disposing of nonfirm energy in some other manner.

The second possible effect on streamflows would occur in wet years. Because the settlement will increase use of BPA nonfirm energy to displace operation of the companies' combustion turbines, the frequency and degree of uncontrolled spill periods could decrease as more water will be used to turn turbines. However, as the amount of BPA's nonfirm energy needed to displace the combustion turbines is small (6 percent) relative to BPA's available nonfirm energy, their effects are not expected to be significant.

Streamflows help protect anadromous fish by providing sufficient flows for the downstream migration of spring smolts and the upstream migration of returning adults. The settlement will not affect the Water Budget, which establishes minimum stream flows to aid migrating smolts, or the Army Corps of Engineers spill program, which provides downstream fish passage at dams lacking mechanical passage facilities. Revised EA section 3.1.1.1, at 23. Moreover, BPA insisted that it not be obligated to provide power to the companies during May and June when downstream migration is greatest. Id. Smolts that migrate during other seasons are not so critically dependent on streamflows and will not suffer as a result of the expected changes in flows. Id. Flows needed for upstream migration of adult salmonids are so low that they will not be affected by these changes. Id.

In dry years some variation from normal reservoir operation may occur. These variations will not be significant. Generally, drawdown will increase in the winter and decrease in the summer and early fall. Resident fish and wildlife are protected by Army Corps of Engineers and Bureau of Reclamation programs that maintain habitat in the free flowing stretches of streams immediately downstream from dams. Id. Section 3.1.1.2, at 24; FONSI at 3. Similarly, resident fish and wildlife in reservoirs are protected by Corps and Bureau reservoir standards. These measures will not be affected by the settlement. The marginal benefit to resident fish and wildlife of flow above these program levels is negligible. Id. Thus, any reduction in flows above these levels has little impact on fish and wildlife. No action under the settlement would result in river operations exceeding constraints designed to protect fish and wildlife. Id.

The recreation on reservoirs peaks in the late spring and summer. BPA studies indicate that no discernible change, other than possible increases in reservoir elevations in the late summer, will result from the settlement because reservoir operation will continue as it has in the past. There will be no discernible effect on recreation.

Even though BPA's obligation to deliver power to the companies is firm, BPA will not need to acquire new resources as a result of the settlement. See, generally, ROD sections II(A), and IV(C)(23). In low water years, BPA will lack only energy, not capacity. Id.; ROD section IV(C)(23). The combustion turbine capability that BPA receives in the exchange assures a supply of energy in the amount of BPA's settlement obligations under all water conditions. Id. While BPA will be able to use energy from the combustion turbines only in off peak hours, the energy received will be stored for generation during peak load hours. Id. In any event, BPA projects a surplus of capacity for the life of the settlement. ROD sections II(A) and IV(C)(23).

Combustion turbine operation will not increase significantly under the settlement. BPA's reliance on combustion turbines depends on the occurrence of critical water and the exhaustion of BPA's firm energy surplus. Historical data indicates that the region can expect to suffer near critical water years approximately 15 percent of the time. Under critical water, combustion turbine operation will occur more frequently than under average water. Over the life of the settlement, BPA projects that no more than 12 percent of the BPA Exchange Power will be supplied by combustion turbines or other non-Federal generation. See, generally, ROD section III(A).

BPA expects the settlement to cause no significant impact on rates. ROD section III(B). Consequently, no significant shift to alternative energy sources will occur as a result of changes in rates.

Alternatives suggested for consideration are discussed in ROD section IV(C)(2). BPA's Revised EA and FONSI evaluated only those alternatives that were considered to be reasonable. An EIS on the settlement is not required because the settlement will not significantly affect the quality of the human environment for the reasons stated in the FONSI.

9. Issue: Does the Settlement Relieve the Companies of Nuclear Risks?

Comments: Several members of the public stated that the settlement allowed the companies to escape the risk of nuclear plant ownership and that surrogate plant costs were not a reasonable risk substitute. Comment Summary, Issue G-1. Some felt that the companies' risks would shift to the public agencies through BPA's right to acquire the companies' shares of WNP-3 capability. Id. A few said the settlement did not put the companies in the same position they would have been in if no delay of WNP-3 had occurred. Comments 8, 36, 249.

Resolution: The settlement does not relieve the companies of risks of owning a nuclear project. The companies must still pay O&M costs on nuclear plants, although the risks of O&M cost overruns are spread among four surrogate plants. In addition, nuclear O&M costs are capped. ROD section IV(C)(14). The risks of generating less power than expected is similarly spread among four surrogate plants. Further, minimum deliveries are guaranteed by BPA. See, ROD section IV(C)(21). On the other hand, a floor is set on nuclear O&M payments that could be higher than WNP-3 O&M costs. Further, the exchange ends in about 32 years, notwithstanding a much longer WNP-3 operating life. The settlement puts the companies in a different position with respect to the risks of nuclear plant involvement than they would be without the settlement. Some differences favor the companies; some do not.

Rationale: The companies have a supply risk. If the surrogates do not generate up to projected capability, then the companies risk a reduction in deliveries of exchange power. The risk of reduced deliveries is spread over four surrogate plants, thereby mitigating the companies' risks.

In the initial proposed settlement, the companies' deliveries would have been reduced to zero if the surrogates ceased to operate for extended periods. On the other hand, deliveries could have continued for 30, 40, 50 years or longer if the surrogate plants continued to operate.

The settlement now terminates deliveries after 30-1/2 years, but provides minimum delivery guarantees. The companies have given up the benefits that would have accrued to the companies were the surrogate plants to operate for longer than 30-1/2 years. The minimum deliveries relieve the companies of the risk of early termination of the surrogates.

If WNP-3 were constructed, deliveries would still be based on the surrogate plants as described above. This is true notwithstanding the fact that WNP-3 may perform better than the four surrogates or that WNP-3 may operate longer than the four surrogates. By settling, the companies have foregone these benefits, which would have accrued to the companies had WNP-3 turned out to be an exceptionally long-lived, efficient plant compared to the four surrogate plants.

The companies also carry financial risks associated with nuclear power under the settlement. Prior to WNP-3 becoming commercially operative, the cost of exchange power to the companies will be based on the operation and maintenance

costs of the surrogate plants. Averaging these costs over four plants reduces the risks associated with one plant but also reduces the potential benefits were a single plant (WNP-3) to perform exceptionally well so as to result in very low O&M costs.

After WNP-3 is operating, the cost to the companies for exchange power will be based on the actual costs of WNP-3. This provision assures that the companies will share in the financial risks of WNP-3 along with the rest of the region. In the event WNP-3 becomes inoperative, BPA may elect to continue basing the payments for exchange power on WNP-3 costs, or to revert back to the costs of the surrogate plants.

10. Issue: Does BPA's Obligation to Provide Power Interfere with BPA's System Operations?

This issue is divided into the following five subissues.

a. Subissue: Does the Settlement Affect BPA's Ability to Serve Its Other Customers?

Comments: Several commenters were concerned that BPA's obligation to provide power during the winter months will adversely affect the availability of BPA power to other customers. Comment Summary, Issue H-1. One commenter suggested that BPA received no compensating benefit for the shift of BPA obligations to deliver power to the companies to the winter months. Comment 249.

Resolution: BPA requested to make deliveries of BPA Exchange Power between November and April. The compensating benefits included willingness of the companies to provide energy from their combustion turbines under terms more favorable to BPA than those originally proposed in February 1985. Exhibit A.

Rationale: Making deliveries from November through April increases the frequency with which BPA is able to forego requesting energy from the companies' combustion turbines and use the lower cost resources to supply BPA Exchange Power. BPA requested deliveries in this shape because BPA's projected capacity resources during the winter months are in sufficient surplus that providing power during this period will not interfere with BPA's ability to meet other loads without acquiring additional resources. For further explanation, see ROD section II(A)(5). This shift in deliveries to a later period increases the frequency with which BPA is able to forego its right to request Company Exchange Energy and use lower cost resources.

The shaping of BPA's obligation to deliver power and the companies' obligation to delivery energy from combustion turbines went through several steps in the negotiations. The original principles of the settlement provided that BPA would deliver power in ten equal monthly amounts (excluding the months of May and June) and that the companies would deliver an equal amount of energy in the last 36 months of the 42-month critical period. Exhibit A. BPA requested that the companies deliver an equal amount of energy during each year instead of during the critical period used in power planning. The companies were

willing to make such deliveries but only on the same schedule as BPA's ten equal monthly deliveries of power.

b. Subissue: Does the Settlement Affect Transmission Revenue?

Comment: One commenter questioned providing for uniform transmission payments throughout the year. Comment 249.

Resolution: The settlement provides that the companies pay a monthly transmission charge. Section 9, Exchange Agreement. This charge reflects the costs the companies would have paid BPA for wheeling power from WNP-3 to their systems. These charges are based on BPA's current transmission rate schedules. The monthly charge is applied to an annual transmission demand which, prior to completion of WNP-3, is based on the annual average amount of energy that each company's share of the capability of WNP-3 would have produced at a 65 percent equivalent annual availability factor. Section 8, Exchange Agreement. Were WNP-3 completed, the charge would be based on each company's ownership share of WNP-3. The transmission demands are then increased by the multiplier.

Rationale: The transmission demands for the settlement were assumed to be of uniform shape to approximate the transmission costs the companies would have paid to transmit power from WNP-3. BPA requested that deliveries of BPA Exchange Power be made in the winter months. Basing transmission demand on these deliveries would result in much higher transmission costs than those which the companies would have paid BPA to wheel power from WNP-3.

c. Subissue: How Does the Option to Execute a Trust Agreement under the Fallback Affect the Settlement?

Comment: One commenter claimed it was unable to review the provisions for the companies to purchase replacement power in the event the exchange is declared unlawful and the fallback takes effect. Comment 249.

Resolution: In the event the exchange is declared unlawful, the settlement provides for the companies to purchase replacement power. ROD section II(B). BPA may assist the company acquire replacement power under a separate trust agreement. Section 6(b)(2), Exchange Agreement. There is no requirement that a trust agreement be used. BPA expects the trust agreement to be similar to other trust agreements BPA has used in the past, e.g., BPA's Industrial Replacement Energy Agreements for BPA's direct-service industries.

Rationale: The parties may at some later time develop a trust agreement to assist the company in acquiring replacement power. BPA would be authorized to purchase power on behalf of the companies. Funds provided by the companies to pay for such purchases would be held by BPA in trust. Execution of a trust agreement would allow BPA to purchase resources from other suppliers with funds from each company. Such purchases would replace use of the companies' combustion turbines or other resources. Use of a trust agreement instead of direct purchase by the companies would allow BPA to coordinate purchase of resources from other suppliers with power sold by BPA to the companies as

replacement power to minimize the costs the utilities would pay to obtain such power.

d. Subissue: Is BPA Required to Give the DSI Top Quartile Priority in the Use of Advance (Provisional) Energy or Flexibility Energy over BPA's Obligation to Deliver Power to the Companies?

Comment: In a letter dated September 6, 1985, addressed to Peter Johnson, DSI, Inc. Executive Director, Mark Crisson, commented:

"BPA's Environment Assessment appropriately recognizes the DSI priority rights to nonfirm energy and FELCC that BPA can shift among years of the critical period for service to DSI top quartile loads. However, it makes no mention of such priorities for Advance Energy (provisional) and Flexibility Energy. Nor does it assure that timing and amounts of DSI returns of these classes of energy will not be adversely impacted. We ask that each of these matters be covered in the Administrator's Decision Document if the settlement proceeds."

Comment 248.

Resolution: BPA will perform its obligations with respect to DSI first quartile service in accordance with the terms of the DSI contract.

Rationale: The DSI contract provides in section 8(c)(1) that "Bonneville at its sole discretion may make available to its Industrial Purchasers such Advance Energy as it determines can be made available by making releases from Federally controlled and Canadian reservoirs, . . ." in addition to those releases it would otherwise make. Section 8(c)(2) also states that "Bonneville shall determine in its sole discretion how Advance Energy shall be made available."

Section 8(d)(1) states that "Bonneville may provide service to the Purchaser's first quartile loads during a Contract Year using FELCC borrowed from later months of such Contract Year (borrowed FELCC or Flexibility Energy) as permitted under the Coordination Agreement."

The above provisions, as well as other portions of the DSI contract, provide Bonneville with the operational flexibility required to operate the system in a prudent, economical, and efficient manner. BPA will carry out its obligations with respect to DSI first quartile service in accordance with its DSI contracts, while protecting the integrity of the operation of its system.

e. Subissue: Must BPA Assure the DSIs that the Timing and Amounts of DSI Returns of Advance and Flexibility Energy Will Not be Adversely Affected by the Use of Provisional and Flexibility Energy for the Exchange Obligations?

Comment: See Comments on subissue IV(C)(10)(d).

Resolution: BPA will perform its obligations with respect to DSI first quartile service in accordance with the terms of the DSI contract.

Rationale: Section 8(d)(4) of BPA's DSI contract states that "Bonneville will use its best efforts, including use of water previously stored in reservoirs for this purpose to avoid the need for return of Flexibility Energy." BPA will continue to perform its DSI contractual obligations accordingly.

11. Issue: Does the Settlement Adversely Affect Export Sales from the Northwest to California?

Comments: California State agencies raised the concern that BPA's obligation would reduce the amount of economy energy available for purchase in California. Comment Summary, Issues H-2, I-4. Comments 66, 238, 252, 256, 259. These agencies were also concerned that the settlement will increase costs that California purchasers must pay for economy energy from the Northwest. Id.

Resolution: The settlement does not affect the amount of energy potentially available for export until WNP-3 comes on line. At that time, additional energy may become available for export as a result of the settlement. However, BPA does not expect to operate the companies' combustion turbines to serve export markets unless the purchaser pays the costs of doing so. This has the practical effect of reducing the amount of energy which BPA would make available for export at prices the market would usually be expected to support.

Rationale: The amount of energy potentially available to BPA to export as economy energy would not change as a result of BPA's obligation to deliver power to the companies. See, generally, ROD section II(A).

However, BPA expects the spot market price for economy energy to be less than the cost of operating the companies' combustion turbines. Thus, BPA does not expect to operate these turbines to meet economy energy markets. Id. To do so would adversely affect the rates of other BPA customers which would have to absorb any unrecovered costs of such sales. This effectively reduces the amount of energy BPA has available for export by the amount of BPA's energy exchange obligation assuming BPA does not otherwise have resources sufficient to serve the economy energy market. Were the buyers willing to pay the cost of operating the companies' turbines, BPA could make energy from turbines available although BPA is not obligated to do so.

BPA expects the companies to use BPA Exchange Power to serve firm loads rather than to serve the economy energy market. This may enable the companies to make available to the Southwest energy from resources which the companies would otherwise use to serve those loads. Whether the companies would make those resources available to serve the economy energy market would depend on the cost of operating the resource and on the price buyers were willing to pay.

Availability would also depend on the companies' ability to obtain a transmission path for these resources. Unless the companies own their own

transmission, access would be subject to BPA's Intertie Access Policy as presently in place and as it may subsequently be modified.

12. Issue: Is the Settlement Consistent with Public Preference?

Comments: Several preference customers asserted that the proposed settlement violates public preference. Comment Summary, Issue I-2. Comments 244, 249. In this regard, the comments indicated the following specific concerns: (1) the settlement would deprive preference customers of the first opportunity to purchase Federal power in the future, Comments 13, 36, 126; and (2) the settlement would provide firm power to the companies at a rate lower than that enjoyed by preference customers, Comments 51, 182, 244, 249.

Resolution: The settlement is consistent with public preference.

Rationale: The commenters raise two preference issues and mistakenly confuse a rates issue with a preference issue. The comments are addressed in order.

The commenters preference questions assume, first, that BPA violated preference by entering into the settlement agreements and, second, that BPA violates preference by reserving to a later time the question of whether to use its own, otherwise surplus, resources to meet its settlement commitments.

The commenters are in error when they suggest that the settlement violates preference by depriving public bodies and cooperatives of the first opportunity to purchase nonfirm energy in the future. Comments 13, 16, 126. Preference is an issue only in those instances where there are competing applications between preference and nonpreference entities for uncommitted power that is available for sale or other disposition.

In this case there is no question that there was power available for disposal that was surplus to the Administrator's other obligations. BPA entered into the WNP 3 settlement discussions with a view toward settlement of that litigation by disposing of some of this surplus power through an exchange. See ROD section II(A). BPA's plans were well known and widely discussed. See ROD Section IV(A). BPA received no competing applications during the entire period of these discussions and, as of September 17, 1985 when BPA signed the settlement agreements, BPA had still received no competing applications. BPA is not required to hold surplus power on the shelf in anticipation of possible future preference requests.

Nor does the settlement deprive preference customers of the first opportunity to purchase surplus nonfirm energy in the future. 16 U.S.C. 839c(f), Aluminum Company of America v. Central Peoples Utility District, 104 S. Ct. 2472, 2482 at fn. 10 (1984) (Central Lincoln I). Power and energy in excess of the amount needed to fulfill BPA's settlement commitments and other existing contractual obligations will continue to be offered for sale in accordance with applicable preference law. 16 U.S.C. 832c(a), 16 U.S.C. 839c(a).

Commenters next suggest that preference is violated when BPA displaces the power BPA is entitled to receive from the companies' combustion turbines with

nonfirm energy or surplus energy. BPA's contractual right to receive the power from the combustion turbines makes such power a BPA resource. A preference issue does not exist because BPA's displacement of its own resources, namely the power from the combustion turbines, with other, less expensive power on BPA's system does not result in a sale or other disposition to which preference can apply. BPA's decision to use its own resources in this manner is irrelevant to preference. BPA has broad discretion to determine whether, when, how, and on what terms to sell or otherwise dispose of electric power that is surplus to BPA obligations. BPA is authorized, but not required, to dispose of those resources. 16 U.S.C. 839c(f). It has been a longstanding BPA practice to displace expensive power with less expensive resources on BPA's system. For example, BPA displaces the comparatively expensive power BPA is entitled to receive from the Trojan Nuclear plant with nonfirm energy available on its system. Such displacement does not result in a sale of other disposition subject to preference, and no one has ever claimed otherwise.

BPA will economically displace the combustion turbines with its own nonfirm energy when that decision allows BPA to meet most economically its contract commitments. Such a decision would be prudent and consistent with sound business principles. The effect would be to hold down rates for all of BPA's customers. BPA is directed to hold rates as low as possible consistent with sound business principles. 16 U.S.C. 839e(a).

The suggestion that BPA will provide Exchange Power to the companies at a price lower than the average PF rate is not supported by BPA's studies of the rate impacts of the exchange. ROD section III(B). BPA does not expect the Priority Firm rates to exceed projected nuclear O&M costs. Id. Nuclear O&M costs are projected to average 24 mills per kWh in 1984 dollars over the life of the exchange. Id. The highest Priority Firm rate projected in any of the scenarios is 21.4 mills/kWh in 1984 dollars, and declines after that. Id.

13. Issue: Is the Settlement Subject to Section 6(c) of the Pacific Northwest Power Act?

Comments: A number of comments suggested that the settlement should be reviewed by the Council pursuant to section 6(c) of the Pacific Northwest Power Act. Comments 9, 246, 249. Others stated that section 6(c) applies to the settlement because: (1) the settlement is an acquisition of the companies' shares of WNP-3, Comments 9, 13, 36, 39, 240, 246, 249, 255; and (2) the right to receive power from the companies' combustion turbines is a major resource acquisition. Comments 9, 13, 182, 221, 246.

Resolution: BPA will comply with section 6(c) before it acquires the companies' share of WNP-3 capability. However, the settlement will not otherwise be subject to a section 6(c) process. The Northwest Power Council has had ample opportunity to review and comment on the proposed settlement.

Rationale: Section 6(c) does not apply to agreements to settle lawsuits, to exchanges of power, or to irrevocable offers. Section 6(c) of the Pacific Northwest Power Act applies only to BPA proposals to acquire a major resource; to fund preconstruction studies for a major resource; and to grant billing

credits for a major resource. 16 U.S.C. 839d(c)(1). Thus, the settlement does not fall within the scope of section 6(c).

BPA may accept the companies' irrevocable offers when BPA wishes to acquire their share of WNP-3 capability. BPA will not accept the irrevocable offers until BPA completes the section 6(c) process. However, this process will focus on the decision to acquire the companies' shares of WNP-3 capability. That process will not address any other aspect of the settlement.

14. Issue: Should Nuclear O&M Payments be Bounded by a Floor and a Ceiling?

Comments: Several public agencies indicated in discussions with BPA staff that unbounded nuclear O&M payments were too risky. While the potential existed for nuclear O&M payments to increase significantly in future years, the risk that it could drop below the average rate for BPA nonfirm sales and thereby produce adverse rate effects concerned several commenters. See also Comment 39. These commenters were willing to give up the opportunity to gain from a rapid increase in nuclear O&M payments in order to obtain protection from adverse rate impacts. See also Comment 235.

Resolution: In response to these comments, BPA negotiated a 16 dollars/MWh floor on Nuclear O&M payments. In order to obtain agreement with the companies on a floor, BPA had to consent to a ceiling. The agreed upon ceiling is 29 dollars/MWh. Both the floor and ceiling will escalate with the rate of inflation beginning in 1987. Section 1(u), Exchange Agreement.

Rationale: It is impossible to know whether the floor or ceiling will ever be triggered. BPA believes that average rates received for nonfirm energy sales will not increase as rapidly as they have in recent years. The floor is designed to keep revenues from the companies' payment of surrogate O&M costs from falling significantly below the revenues BPA would have realized from selling power on the spot market instead of using it to meet BPA's exchange obligations.

The ceiling limits BPA's ability to capture a windfall were nuclear O&M costs to increase at a rate faster than the price BPA could have received for power delivered to the companies in the absence of a settlement. The ceiling is currently higher than BPA's New Resources Rate and escalates at the GNP deflator. This is a faster escalation rate than BPA expects for its own rates.

If WNP-3 becomes commercially operable, payments made by the companies will be based upon the costs of WNP-3. The floor and ceiling will not apply during this period. If O&M Nuclear payments were to increase and remain at the ceiling, the benefits of the settlement would increase substantially.

BPA considered linking the floor to BPA's nonfirm energy rates. However, this proposal was not acceptable for a variety of reasons, among them the risk that BPA's nonfirm rate would decline in real terms. Consequently, the 16 and 29 dollar/MWh figures were selected as representing reasonable amounts for a floor and a ceiling, respectively.

BPA and the companies examined various escalators on the floor and ceiling. They settled upon the GNP deflator because it was a reasonable index to use, because it was already being used for other calculations in the exchange contract, and because no other acceptable index could be identified.

15. Issue: How Should Nuclear O&M Costs be Treated When a Plant's Equivalent Annual Availability Factor Equals Zero?

Comments: As initially proposed, the operation and maintenance costs of surrogate plants that do not operate because of a major plant outage are not included in Surrogate O&M Costs when the plant is not operating. If the plant never operated again, its costs would not be included in Surrogate O&M Costs. The commenters objected because they felt the companies were avoiding paying for major plant outages. Comments 13, 14, 16, 36.

The other concern was that once a plant returned to service after major repairs, only the cost of capital additions would be captured in Surrogate O&M Costs. The commenters also wanted the companies to pay for operation and maintenance costs incurred during those years. Id.

Resolution: BPA successfully revised the proposal to accommodate their concerns so that operation and maintenance cost during a major surrogate plant outage would be included in Nuclear O&M Costs. Section 1(t), Exhibit C to the Exchange Agreement. These costs will be amortized over the remaining plant life, once the plant returns to service. However, if a surrogate plant never returned to service, none of its costs would be included in Nuclear O&M Costs.

Rationale: It is appropriate to capture the operation and maintenance costs incurred during a major plant outage. Not including operation and maintenance costs during major outages in Nuclear O&M Costs would less accurately reflect the costs the companies would have incurred had WNP-3 been constructed on schedule and subsequently experienced a major outage.

16. Issue: Is There a Set of Surrogate Plants that Better Approximates WNP-3 than the Set Proposed?

Comments: In written comments and in discussions with various entities, some questioned whether the chosen surrogate units represent a reasonable approximation of WNP-3. Comments 14, 16.

Resolution: The surrogate units chosen (Palo Verde 1, San Onofre 3, Waterford 3, and Arkansas 1, Unit 2) provide a reasonable approximation of WNP-3. Section 1(ee), Exchange Agreement. The substitute surrogate unit (Calvert Cliffs 2) also is similar to WNP-3, though less so than the selected four surrogates. Under the revised settlement, it is highly unlikely that Calvert Cliffs 2 will be used as a surrogate unit for more than the first 18 months of the exchange, because Calvert Cliffs 2 only would be used permanently as a surrogate if Palo Verde 1 or Waterford 3 are not commercially operable by December 31, 1990. Both Palo Verde 1 and Waterford 3 are scheduled to be commercially operable by the end of 1985, and there is no reason to believe that either plant might be delayed until 1991.

Rationale: The criteria for choosing surrogate units which approximate WNP-3 were:

1. They should be Combustion Engineering designed units.
2. Their date of commercial operation should be as close as possible to the original schedule for WNP-3.
3. They should be close to WNP-3 in size.

The following table demonstrates how the selected surrogates meet these criteria:

	<u>Design</u>	<u>Capacity</u>	<u>Commercial Operation Date</u>
<u>WNP-3</u>			
	C-E	1240 MW	December, 1986
<u>Surrogate Units</u>			
Palo Verde 1	C-E	1270 MW	December, 1985
San Onofre 3	C-E	1080 MW	April, 1984
Waterford 3	C-E	1104 MW	September, 1985
Arkansas 1, Unit 2	C-E	912 MW	March, 1980
<u>Substitute Surrogates</u>			
Calvert Cliffs 2	C-E	845 MW	April, 1977

No one suggested that any other nuclear plant comes as close to meeting these criteria as do the plants selected.

17. Issue: Should Any Reference to Average System Cost be Included in the Settlement?

Comments: Several public utilities expressed concern that costs the companies were to bear under the settlement would be passed on to BPA ratepayers through the residential exchange program established in section 5(c) of the Pacific Northwest Power Act. 16 U.S.C. 839c(c).
Comments 30, 36, 187, 191, 246, 249.

Resolution: In response to these comments, all reference to Average System Cost was deleted from the proposed settlement. Nothing in the settlement affects how any cost related to WNP-3 or the settlement will be treated for purposes of the residential exchange.

Rationale: The initial proposed settlement agreements with Portland General Electric and Pacific Power and Light included a provision stating:

To the extent rate regulators recognize the Company's investment in WNP 3 as partial consideration for capacity and energy available to the Company under this Agreement and recoverable through retail rates, neither the future disposition of WNP 3, nor anything in this Agreement, shall exclude such cost from the Company's average system cost of resources under the methodology adopted by Bonneville pursuant to the Regional Act.

Bonneville Power Administration, Proposed WNP 3 Settlement Agreements and Exhibits, Document No. JJ (April 17, 1985). At the request of public utilities, this language was deleted from the settlement. Any determinations regarding average system cost would be made in accordance with BPA's applicable average system cost methodology. BPA believes that the treatment of costs for purposes of the residential exchange is a matter that should be kept separate from the settlement.

18. Issue: Should Any Reference to Section 9(i)(3) and Marketing Assistance be Included in the Settlement?

The initial set of proposed settlement documents included an exchange of letters that addressed section 9(i)(3) marketing services. These letters were based on an anticipated offer by investor-owned utilities to BPA of resources eligible for priority pursuant to section 9(i)(3) of the Northwest Power Act. 16 U.S.C. 839f(i)(3). This section requires BPA to give priority in providing transmission, storage, and load factoring services to resources under construction or the effective date of the Northwest Power Act unless BPA determines that such services cannot be furnished without substantial interference with BPA's power marketing program, applicable operating limitations or existing contractual obligations. In the letters BPA would have included a determination that providing access to BPA transmission in the amount of BPA Exchange Power would not substantially interfere with BPA's power marketing program.

Comments: Several public utilities suggested that this provision granted the companies unfair priority to the Pacific Northwest-Pacific Southwest Intertie transmission lines. Comments 8, 14, 36.

Resolution: Based on these comments, BPA insisted that these letters be deleted from the settlement package. The settlement does not include any agreement relating to transmission, other marketing services, or BPA's power marketing program. Any determinations pursuant to section 9(i)(3) will be made independently from the settlement.

Rationale: BPA does not believe the settlement is the appropriate forum to resolve section 9(i)(3) issues.

19. Issue: Should Scheduling Provisions be Added?

Comments: BPA received no written comments on this issue. However, this issue was raised in public comment forums, and was among those discussed with representatives of public utilities to take back to the companies in the last round of negotiations.

Resolution: Scheduling provisions were added specifying establishing schedules of BPA Exchange Power and Company Exchange Energy. See Exhibit G to the Exchange Agreement.

Rationale: These provisions provide greater assurance that the parties can coordinate operation of BPA's power system and the systems of the companies so that deliveries of Company Exchange Energy and BPA Exchange Power will not adversely affect the operation of other parties' systems.

20. Issue: Who Gets the Companies' 30 Percent Share of WNP-3 Capability During Insufficiency?

Comments: Snohomish County PUD questioned whether the companies should receive an allocation of power during insufficiency based on their 30 percent share of WNP-3 under the settlement. Comment 36. Several other public utilities expressed concern to BPA in various meetings that the treatment of the companies' shares of WNP-3 capability during insufficiency was not addressed in the settlement.

Resolution: Unless expressly stated otherwise in an acquisition agreement, section 5(e) of the Pacific Northwest Power Act provides for a utility to receive an allocation during insufficiency based on resources acquired by BPA from that utility. 16 U.S.C. 839c(e). Language was added to the irrevocable offer clarifying the treatment of WNP-3 during insufficiency. Section 8, Pacific's Offer; section 5, Other Companies' Offer. The companies will receive a section 5(e) allocation based on their 30 percent share of WNP-3 during insufficiency if BPA requests the companies to obtain financing to complete construction. If BPA elects not to request the companies to obtain financing, the companies waive any rights they may have to receive an allocation based on their 30 percent share of WNP-3 during insufficiency.

BPA agreed with representatives of public agencies that BPA would not voluntarily include the companies' 30 percent share of WNP-3 capability in the Federal Base System (FBS) if BPA were to request the companies to obtain financing. See Exhibit Q. To do so in that instance could result in a double allocation of the 30 percent share of WNP-3 capability during insufficiency--once as an FBS resource and once to the companies pursuant to section 5(e). 16 U.S.C. 839c(e). A double allocation could result in BPA's having to acquire resources to meet its allocation obligations during insufficiency. These resources are likely to be relatively expensive because BPA presumably would have acquired all cost-effective resources necessary to meet its firm loads before giving notice of insufficiency. Insufficiency would presumably result from unanticipated load growth, unexpected loss of a resource, similar unplanned event, or the inability of the region's utilities to develop resources to meet firm loads.

Rationale: BPA sought to avoid the problem of a double allocation and yet preserve the option of treating the companies' 30 percent share of WNP-3 capability as an FBS resource should that prove to be desirable. The companies, on the other hand, sought to obtain an allocation during insufficiency if they are asked to obtain financing to complete construction. The additional language accomplishes these objectives.

21. Issue: Should the Period of the Exchange be Limited?

Comments: Several commenters objected to the April proposal because it provided for an indefinite duration for the energy exchange or because the estimated 35-year duration was too long. Comment Summary, Issue J-2. Some commenters believed that the exchange could last much longer. Id. This would impact BPA's other ratepayers because the companies would be receiving cheap power in the later years while BPA would be paying for higher cost alternative resources to serve its preference customers. Id. Commenters suggested terms of 25 years, 20 years, or 10 years or less. Id.; Comment 235.

During negotiations the participating public utilities objected to the indefinite duration of the energy exchange under the April settlement proposal. Their desire was to reduce the risk that BPA would have to resort to the use of the companies' combustion turbines to meet its exchange obligation in the later years of the settlement. They emphasized the high cost of running the combustion turbines, the possibility that BPA's surplus may be exhausted in later years if BPA sells its surplus firm power, and the possibility of a low water year. Some cooperative and municipal utilities argued that the term of the August proposal was inordinately long and that a 20-year term, such as the term of preference customer power sales contracts, was more reasonable. Comments 246 and 255. Perceiving a possible net loss to the region resulting from the exchange, the public utilities participating in the negotiations proposed a date certain for the cutoff of the exchange period at 20-25 years.

The companies believed that a nuclear plant lasts between 30 and 50 years, and thus a 40-year maximum to the exchange was appropriate. The companies also proposed a minimum time period of 25 years, but in order to receive the same amount of exchange energy as under the original longer proposal, the average

yearly amount of energy exchanged needed to be increased substantially. In order to increase the amount of energy delivered, a multiplier would have to be applied to the amount of exchanged energy to compensate for the shorter duration. Suggested multipliers ranged from 1.75 to 1.3. Some public utilities suggested that the 1.2 multiplier negotiated in the August proposal needlessly increases power deliveries to the companies much as in the way that the use of Calvert Cliffs as a surrogate plant would have done. Comment 246.

Under the April settlement proposal the exchange would terminate if all of the surrogate nuclear plants had an average availability factor of zero during any calendar year. In consideration of a date certain for cutoff of the exchange, which in the view of the companies limited any possibility of receiving exchange power if the surrogate plants continued operating in later years, BPA agreed to provide a minimum amount of energy in addition to increasing the amount of power exchanged each year through the use of a multiplier. BPA received criticism for accepting this company proposal. Comment 249.

Resolution: The Settlement Exchange Agreement was redrafted to limit the duration of BPA's exchange obligations to 30-1/2 years, from January 1, 1987, to June 30, 2017. Sections 4(a) and 4(b), Exchange Agreement. In some circumstances the companies may extend the period an additional two years. Section 4(c), id. The rates of delivery of Bonneville Exchange Power and Company Exchange Energy were increased by a multiplier of 1.2 to retain the same total amount of energy to be exchanged included in the initial proposal and to compensate for the shorter duration. Id. The Exchange Agreement also provides for a deferral of the incremental increase (.2) in deliveries resulting from use of the multiplier which could extend the period of the exchange for up to two years. Id. This deferral right is only available during the first 10-1/2 years of the exchange and defers the use of the .2 increment to the 31st or 32nd years.

The settlement provides for minimum deliveries to the companies of 131 average annual megawatts (or 1.15 million megawatthours per year) until 35 million megawatthours have been delivered. Section 4(d), id. Any amounts of power delivered in excess of the contract minimum amounts because of a higher level of surrogate equivalent average availability factor are credited to future contract minimum levels. Thus, BPA's obligation to deliver power ceases in 2017, notwithstanding the continued operation of one or more surrogate plants beyond that date. The obligation may terminate at an earlier date if minimum deliveries have been made and the four surrogate plants have ceased operation.

Because of the unique financial position of Pacific, the Settlement Exchange Agreement between BPA and Pacific provides that Pacific has a 10 year period in which to elect to participate in the exchange. Section 2, Pacific's Exchange Agreement. Thus, Pacific's exchange may extend beyond the date the other three companies' exchanges cease. Pacific's right to receive BPA Exchange Power will extend beyond 2017 only to the extent necessary for Pacific to receive its minimum deliveries. Pacific does not have the right, however, to defer the 0.2 increment in energy deliveries because of its 10-year option to enter into the exchange. Section 4(c), Pacific's Exchange Agreement.

Rationale: BPA recognizes that the concerns raised by the lack of a finite duration to the energy exchange resulted in a complex compromise for the parties. BPA believes that a finite term reduces the risk of combustion turbine generation in the later years by eliminating the right of the companies to take power in those later years. This reduced exposure provides to BPA certainty in resources planning, stability in rate levels, and consistency in fish and wildlife matters. The basic 30-1/2 year exchange duration is a reasonable period in which to achieve the objectives of settlement. The statutory 20-year term required for BPA power sales contracts does not apply to an exchange of power.

22. Issue: Should the Dismissal of Claims Involving the Companies and Public Agencies Involved in WNP-3 be Included in the Settlement?

Comments: BPA received no written comments on this issue. However in discussing with BPA which issues to take back to the companies, representatives of public agencies suggested that a mechanism be developed to dismiss related claims between public agencies involved in WNP-3 and the companies.

Resolution: The companies have agreed to provide the opportunity to public agencies to have related claims dismissed. However, these documents are not among the settlement documents BPA is approving. These agreements are being developed by public utilities and the companies independently from the settlement.

Rationale: The proposal to allow each public utility to have related claims dismissed will reduce the legal exposure of, and foster cooperation among, the entities involved in WNP-3. These agreements are not included among the settlement documents because a failure to dismiss these claims would not affect BPA's or any other party's decision to enter into the settlement. In addition, there is no assurance that all public agencies will find the proposed conditions of dismissal acceptable.

23. Issue: Does BPA Have Adequate Capacity to Support the Exchange?

Comment: Comments expressed concern about the difference between the monthly amounts of energy provided by the companies and the higher monthly obligations of BPA in the winter months. Comment Summary, Issue H-1. Other commenters felt that shaping BPA's delivery obligations into the winter months was not a good idea. Id. Another commenter noted that BPA received no corresponding benefit for the companies' right to predeliver or delay delivery of energy to BPA or to deliver energy at twice the hourly rate requested by BPA under the exchange. Comment 249.

Resolution: BPA will have sufficient capacity available on its system during the term of the exchange to meet, without acquiring new capacity resources, all its customers' capacity needs and its exchange obligations. See generally, Exhibit B.

Rationale: BPA has studied the impact of the settlement on its projected surplus capacity. BPA assumed that the companies would use the exchange deliveries from BPA to serve their regional firm loads and that BPA would serve all future capacity needs in the region. Table 1 of Exhibit B shows the resulting amounts of surplus firm capacity on the Federal system over the next 20 years. This table is a revision of Table 10 of BPA's Twenty Year Capacity Projection. The amount of surplus firm capacity on the Federal system did not drop below the amounts necessary to support an annual sale of 2000 MW and in fact increased slightly. Table 1 of Exhibit B; BPA, Executive Summary, Twenty Year Capacity Projection at 7 and Table 10 (April 5, 1985).

BPA also studied the impact on BPA's surplus capacity if the settlement were executed, and WNP-3 and WNP-1 were not completed. BPA assumed that companies would continue to use exchange deliveries from BPA to serve their regional firm loads, that BPA would serve all future company capacity needs, that BPA would meet the future energy and capacity needs of public utilities and direct-service industries, but that the companies would meet their own energy load growth. Under these assumptions, BPA would have surplus capacity over 1500 MW through the year 2003-4. Table 2 of Exhibit B.

This study assumed that BPA would only acquire resources to meet energy deficits. BPA assumed that for each average MW of energy resource acquired BPA would receive 1.25 MW of capacity in each month of the year assuming that plant factors of resources BPA would acquire to meet energy deficits would average 80 percent. Table 2 does not assume that the companies would develop additional regional resources to meet energy deficits if they do not place additional energy loads on BPA. If the companies were to develop additional regional resources to meet their energy deficits, they would also obtain additional capacity from their energy resources; and would therefore have less need to purchase capacity from BPA.

BPA also studied the settlement's impact on BPA's capacity surplus and BPA's ability to meet public utilities' loads assuming that the settlement were executed, WNP-3 and WNP-1 were not completed, and the companies did not purchase any capacity or energy from BPA. Table 6 of Exhibit B. This study used the same assumptions as in Table 2 other than the amount of capacity purchased by the companies. This study reflects the surplus capacity resources that would be available on the Federal system to serve public utility capacity needs assuming execution of the settlement. BPA would be required to withdraw the sales of capacity that BPA assumes it would make to investor-owned utilities under Table 2 to provide service to public utility loads. Section 7(a)(4) of BPA power sales contracts, section 5(b)(2) of Pacific Northwest Power Act, and section 5(a) of the Bonneville Project Act.

24. Issue: Should BPA Continue the Lawsuit In Order to Develop a Clearer Interpretation of "Prudent Utility Practice" Found in the Ownership Agreement?

Comments: The Washington Utilities Group contended that the settlement forecloses a valuable opportunity to develop a binding legal interpretation of the term "prudent utility practice." Such a definition, it is asserted, will foster certainty in the application of that standard. Comment 249.

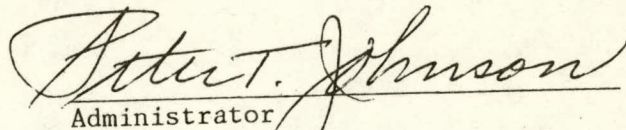
Resolution: BPA does not believe that pressing forward with litigation simply to determine the meaning of the phrase "prudent utility practice" warrants abandoning the settlement agreement.

Rationale: The phrase "prudent utility practice" stems from section 1(o) of the Ownership Agreement. It establishes a standard against which certain actions by BPA concerning WNP-3 may be tested. See, generally, ROD section II(C). BPA can find no reason to litigate the definition of that phrase. The issue should be addressed in a judicial forum only when necessary to do so. The phrase is necessarily broad and imprecise because it embodies a standard that must be applied to unlimited facts and circumstances. Applying that standard to these narrow circumstances will do nothing to promote certainty or to provide a concrete touchstone to test the validity of future actions. No single lawsuit can define the term for all future purposes. BPA believes that the risks and uncertainties inherent in this instance outweigh any benefit that might accrue by a judicial determination of the term "prudent utility practice" in the context of the subject lawsuit.

V. CONCLUSION

A list of supplemental documents relating to WNP-3 is attached as Exhibit U. Other relevant documents are available in BPA's Office of Public Involvement. For the reasons stated in this Record of Decision and its exhibits, which are hereby specifically incorporated herein, and after consideration of such relevant materials, I have determined:

1. That settlement of the lawsuit relating to the construction delay of WNP-3 is an equitable, sound business decision that is in the best interests of BPA, its customers, and the region;
2. That the electric power BPA is exchanging with the companies pursuant to the settlement is unused excess power;
 - a. That the settlement does not require BPA to acquire energy resources to meet BPA's exchange obligations;
 - b. That the settlement exchange is for the purpose of economical operation of BPA's power system;
 - c. That the settlement exchange terms are suitable;
3. That the settlement is consistent with public preference;
4. That BPA will have sufficient surplus capacity over the term of the exchange to meet all of its customer's capacity needs after accounting for BPA's exchange obligations; and
5. On the advice of counsel, that entering into the settlement is authorized by section 5(f) of the Pacific Northwest Power Act, 16 U.S.C. 839c(f); section 2(f) of the Bonneville Project Act, 16 U.S.C. 832a(f) (as reaffirmed in section 9(a) of the Pacific Northwest Power Act, 16 U.S.C. 839f(a)); section 5(b) of the Bonneville Project Act, 16 U.S.C. 832d(b); and other laws.


Administrator

Date: 19 September 1985

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