

**BONNEVILLE POWER ADMINISTRATION  
INTERPRETATIVE RULEMAKING:  
FY 1997 RESIDENTIAL EXCHANGE BENEFIT  
ALLOCATION RECORD OF DECISION**

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## INTRODUCTION

On November 13, 1995, President Clinton signed into law the the Energy and Water Development Appropriations Act, P.L. 104-46. Among other things, this Act provides that the Bonneville Power Administration (BPA) shall pay \$145 million in benefits for FY 1997 to utilities participating in the residential exchange program. See 16 U.S.C. 839c(c). The Act also prescribes the manner in which the benefits are to be allocated to exchanging utilities. On January 16, 1996, BPA began a public process in order to develop an interpretative rule governing the implementation of the statute. In order to understand the context of the residential exchange provisions of the Energy and Water Development Appropriations Act, it is helpful to review the genesis of the residential exchange program and the rate protection afforded BPA's preference customers from the costs of that program in specified circumstances.

### A. Background

BPA was established by the Bonneville Project Act of 1937 (Project Act), 16 U.S.C. 832 *et seq.* After enactment of the Project Act, BPA marketed the low cost hydropower generated by Federal dams in the Pacific Northwest. While section 4(a) of the Project Act requires BPA to "give preference and priority to public bodies and cooperatives" when selling power, 16 U.S.C. 832c(a), BPA had sufficient power for many years to serve the needs of all customers in the region. These customers include public bodies and cooperatives, known as "preference customers" because of their statutory first right to Federal power under the preference clause noted above. *Id.* These customers also included investor-owned utilities (IOUs) and direct service industrial customers (DSIs). In 1948, the increasing demand for power caused BPA to require that contracts with the DSIs must include provisions to allow the interruption of service when necessary to meet the needs of BPA's preference customers. In the 1970's, forecasts showed that preference customers would soon require all of BPA's power. Therefore, in 1973, BPA gave notice that new contracts for firm power for IOUs would not be offered and that as DSI contracts expired between 1981-1991, the contracts were not likely to be renewed. In 1976, BPA advised preference customers that BPA would not be able to satisfy preference customer load growth after 1983, and would have to determine how to allocate power among preference customers.

While Federal appropriations were used in the construction of the Federal hydrosystem, Federal taxpayers did not ultimately pay these costs. The costs of the hydrosystem are repaid with interest over time by BPA's ratepayers through BPA's wholesale power revenues. Thus, BPA's ratepayers are the parties that paid the costs of the Federal hydrosystem.

The high cost of alternative sources of power caused BPA's non-preference customers to attempt to regain access to low-cost Federal power. Many areas served by IOUs moved to establish public entities designed to qualify as preference customers and be eligible for

administrative allocations of power. Because the Project Act provided no clear way of allocating power among preference customers, and because the stakes involved in buying low-cost federal power had become very high, the competition for administrative allocations threatened to produce contentious litigation. The uncertainty inherent in the situation greatly complicated the efforts by all BPA customers to plan for their future power needs. In order to avoid the prospect of unproductive and endless litigation regarding access to the Federal power marketed by BPA, Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) in 1980. 16 U.S.C. 839 et seq.

The Northwest Power Act expressly reaffirmed the right of BPA's preference customers to first call on Federal power before such power could be offered to BPA's investor-owned utility or DSI customers. 16 U.S.C. 839g(c). The Act also established the residential exchange program. 16 U.S.C. 839c(c). As noted above, when BPA had insufficient Federal power to meet the needs of investor-owned utilities in the 1970s, such utilities developed their own resources which were generally more costly than Federal hydropower. The residential exchange program provides Pacific Northwest utilities a monetary form of access to low-cost Federal power. Under the program, Pacific Northwest utilities may sell power to BPA at a rate based on the utility's average system cost (ASC) of its resources. BPA is required to purchase that power and sell, in exchange, an equivalent amount of power to the utility at BPA's Priority Firm Power (PF) rate. This is the same rate that applies to BPA's sales of power to its preference customers, although the Act expressly provides that the PF rate for the residential exchange program may be higher than the PF rate for preference customers due to the section 7(b)(2) rate ceiling described below. 16 U.S.C. 839e(b)(3). Where a utility's ASC is higher than BPA's PF rate, the difference between the rates is multiplied by the utility's jurisdictional residential load to determine an amount of money that is paid to the utility as residential exchange benefits. These benefits are passed through directly to the utility's residential consumers through lower retail rates. The cost of providing these benefits to exchanging utilities is borne primarily by BPA's publicly owned utility and DSI customers, subject to the rate ceiling established in section 7(b)(2) of the Northwest Power Act, as discussed below, which protects BPA's preference customers from excessive costs of the residential exchange program.

Numerous, complex tradeoffs were necessary in order to resolve the competing claims for BPA's low-cost hydropower in the late 1970's and in order to solve the electric power planning uncertainties facing the Pacific Northwest at that time. The provisions of the Northwest Power Act reflect the give and take of those tradeoffs. While the Act established the residential exchange program to provide utilities a monetary form of access to low cost Federal power, this access, or "share in the economic benefits" of Federal power, was expressly limited by a "rate ceiling" for preference customers to ensure that "[c]ustomers of preference utilities will not suffer any adverse economic consequences as a result of this exchange . . ." H.R. Rep. No. 976, Part II, 96th Cong., 2d Sess. 35 (1980); see also H.R. Rep. No. 976, Part I, 96th Cong., 2d Sess. 34 (1980); S. Rep. No. 272, 96th Cong., 1st Sess. 15 (1979).

The preference customer "rate ceiling" was established in section 7(b)(2) of the Northwest Power Act. Section 7(b)(2) provides that after July 1, 1985, the rates charged for firm power sold to public body, cooperative and Federal agency customers (exclusive of amounts charged those customers for costs specified in section 7(g) of the Act) may not exceed in total, as determined by the Administrator, such customers' power costs for general requirements if specified assumptions are made. In determining public body and cooperative customers' power costs for any rate period after July 1, 1985, and the ensuing four years, the following assumptions are made:

(A) the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are (i) served by the Administrator, and (ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

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

(C) no purchase or sales by the Administrator as provided in section 5(c) were made during such five-year period;

(D) all resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B) of this paragraph) were (i) purchased from such customers by the Administrator pursuant to section 6, or (ii) not committed to load pursuant to section 5(b), and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) the quantifiable monetary savings, during such five-year period, to public body, cooperative and Federal agency customers resulting from (I) reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D) of this paragraph, and (ii) reserve benefits as a result of the Administrator's actions under this Act were not achieved.

16 U.S.C. 839e(b)(2).

In summary, section 7(b)(2) of the Northwest Power Act directs BPA to conduct, after July 1, 1985, a comparison of the projected rates to be charged its preference and Federal agency customers for their general requirements with the costs of power (hereafter called rates) to those customers if certain assumptions are made. 16 U.S.C. 839e(b)(2). The effect of this rate test is to protect BPA's preference and Federal agency customers' wholesale firm power rates from certain specified costs resulting from the provisions of the Northwest Power Act, including the cost of the residential exchange program. The rate test can result in a reallocation of costs from the general requirements loads of preference and Federal agency customers to other BPA loads.

The rate test involves the projection and comparison of two sets of wholesale power rates for the general requirements of BPA's public body, cooperative and Federal agency customers (or 7(b)(2) customers). The two sets of rates are: (1) a set for the test period and ensuing four years assuming that section 7(b)(2) is not in effect (or Program Case rates); and (2) a set for the same period taking into account the five assumptions listed in section 7(b)(2) (or 7(b)(2) Case rates). Certain specified costs allocated pursuant to section 7(g) of the Northwest Power Act are subtracted from the Program Case rates. Next, each nominal rate is discounted to the test year of the relevant rate case. The discounted Program Case rates are averaged, as are the 7(b)(2) Case rates. Both averages are rounded to the nearest tenth of a mill for comparison. If the average Program Case rate is greater than the average 7(b)(2) Case rate, the rate test triggers. Based on the extent to which the test triggers, the amount to be reallocated in the rate proposal test period is calculated.

Because of the importance and complexity of the 7(b)(2) rate test, and in order to provide customers certainty as to how section 7(b)(2) would be applied, BPA conducted a special evidentiary hearing that lasted from February 29, 1984, to August 17, 1984, to establish a Section 7(b)(2) Implementation Methodology. On March 26, 1984, BPA published in the Federal Register a notice of the "Proposed Section 7(b)(2) Implementation Methodology, Public Hearings, and Opportunities for Public Review and Comment." 49 Fed. Reg. 11,235 (1984). BPA then conducted a formal evidentiary hearing on the methodology pursuant to section 7(i) of the Northwest Power Act. All of BPA's customers (public utilities, investor-owned utilities and DSIs) intervened in the proceeding, in addition to state and Federal agencies and other interested parties. Both written and oral discovery was conducted. Direct and rebuttal testimony was filed by BPA and all parties. The hearing officer presided over two days of cross-examination. Parties filed briefs with BPA and BPA reviewed and responded to the briefs in a draft 7(b)(2) Methodology. Parties then filed reply briefs. BPA issued a Record of Decision including a final 7(b)(2) Methodology on August 17, 1984. See B-2-84-F-02. The 7(b)(2) Methodology prescribes in detail how the 7(b)(2) test is to be conducted. The Record of Decision and the 7(b)(2) Methodology address the major issues involving the implementation of section 7(b)(2), including reserve benefits, financing benefits, natural consequences, selection of a

computer model, and the rate test trigger. The 7(b)(2) Methodology has been used by BPA in every rate case since 1985 and was used in the development of BPA's 1996 rate case.

The operation of section 7(b)(2) has been summarized previously. Section 7(b)(3) of the Northwest Power Act governs the allocation of costs in the event the rate test triggers. Section 7(b)(3) provides that "Any amounts not charged to public body, cooperative and Federal agency customers by reason of paragraph (2) of this subsection shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers." 16 U.S.C. 839e(b)(3). In other words, if the rate test triggers (i.e., the rate ceiling for preference customers is exceeded), the costs in excess of the ceiling must be allocated to other power sales, including sales to utilities participating in the residential exchange program. These costs increase the PF Exchange rate, which is the rate at which BPA sells power to utilities participating in the residential exchange. When the PF Exchange rate increases, the difference between that rate and the utility's average system cost rate decreases, resulting in a reduction of residential exchange benefits paid to the utility. Because each exchanging utility's average system cost rate and residential load are different, exchange benefits differ by utility. A utility receives no benefits when its average system cost rate goes below BPA's PF Exchange rate.

The legislative history of section 7(b)(2) of the Northwest Power Act repeatedly and consistently recognizes that residential exchange benefits are subject to elimination or reduction due to the section 7(b)(2) rate ceiling. The report of the House Committee on Interior and Insular Affairs states:

Section 5(c) of S. 885 contains provisions for a residential power "exchange". Under these provisions, any utility in the region would be entitled to sell to BPA an amount of power equal to the utility's residential and small farm load at the "average system cost" of such power and BPA would be required to sell back to each such utility an equivalent amount of power at a rate identical to what preference customers pay BPA for power to meet their "general requirements" (subject to a "rate ceiling").

... This exchange will allow the residential and small farm consumers of the region's IOUs to share in the economic benefits of the lower-cost Federal resources marketed by BPA and will provide these consumers wholesale rate parity with residential consumers [of] preference utilities in the region. Consumers of preference utilities will not suffer any adverse economic consequences as a result of this exchange since, as discussed below, the direct-service industrial customers of BPA are required to pay the costs of the exchange during its initial years while a "rate ceiling" protects the customers of preference utilities during later years.

H.R. Rep. No. 976, Part II, 96th Cong., 2d Sess. 35 (1980)(emphasis added). The report reiterates this point:

As an added protection against preference utilities and their customers suffering adverse economic consequences as a result of this legislation, section 7(b)(2) establishes a "rate ceiling" which is hypothetically intended to insure that these customers' rates will be no higher than they would have been had the Administrator not been required to participate in power sales or purchase transactions with non-preference customers under this legislation.

Id. at 36. The report emphasizes this point yet again:

Subsection 7(b)(2) establishes a "rate ceiling" for BPA's preference customers, and specifies the method of calculating this ceiling, in order to insure such customers the cost benefits of their preference rights for sales under this subsection. Amounts not recoverable from preference customers because of this ceiling are to be recovered through supplemental rate charges for all other power sold by BPA under other provisions of section 7, as subsection 7(b)(3) specifies.

Id. at 52. This intent is affirmed throughout the legislative history of the Northwest Power Act. H.R. Rep. No. 976, Part I, 96th Cong., 2d Sess. 34, 68-69 (1980); S. Rep. No. 272, 96th Cong., 1st Sess. 20, 32, 56-59, 61-62 (1979).

In addition to section 7(b)(2) and its legislative history, section 5(c)(4) of the Northwest Power Act establishes that Congress was well aware that section 7(b)(2) could result in reduction or complete elimination of residential exchange benefits for utilities participating in the residential exchange program. Section 5(c)(4) provides:

An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 7(b)(3) is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of the rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.

16 U.S.C. § 839c(c)(4). See S. Rep. 272, 96th Cong., 1st Sess. 15 (1979). In other words, the Northwest Power Act expressly contemplates that section 7(b)(2) could eliminate or reduce exchange benefits for utilities whose average system cost rate was less than BPA's PF Exchange rate.

In developing its initial proposal for BPA's 1996 rate case, BPA implemented the 7(b)(2) rate test in the same manner as BPA has always conducted the test. BPA followed the provisions of section 7(b)(2) of the Northwest Power Act and BPA's Legal Interpretation of Section 7(b)(2) which has been in effect since 1984. BPA also followed the 7(b)(2) Methodology which provides detailed directions for conducting the rate test and which also has been implemented in the same manner since it was established in 1984. BPA used the same computer model adopted in the 7(b)(2) Methodology which has remained virtually unchanged since 1984.

BPA's 1996 initial proposal contained preliminary proposed rates that served as a starting point for the section 7(i) formal evidentiary hearing to establish revised rates. BPA's initial proposal did not establish any rates. Rates are only established after the conclusion of the hearing upon issuance of the Administrator's Final Record of Decision and after the rates are granted confirmation and approval by the Federal Energy Regulatory Commission. During the hearing, all parties are provided the opportunity to file testimony and conduct cross-examination in order to challenge BPA's proposal. When BPA conducted the section 7(b)(2) rate test in developing its initial proposal, the rate test triggered significantly. The significant trigger was the result of running the test with the data used in developing BPA's 1996 rate proposal. When the results of the section 7(b)(2) rate test were incorporated into BPA's initial proposed rates, this resulted in an increase in the PF Exchange rate for exchanging utilities but a decrease in the PF rate for preference customers. The proposed Industrial Firm Power (IP) rate for BPA's industrial customers also decreased. Because the PF Exchange rate increased in BPA's initial proposal, this meant that if the initial proposed rates were eventually adopted as final rates, the difference between the PF Exchange rate and the utilities' ASCs would be smaller, resulting in lower residential exchange benefits. When the benefits decrease, the exchanging utilities' retail rates for residential customers increase. While the section 7(b)(2) rate test had triggered in the past, the amount of the trigger in BPA's 1996 initial rate proposal was larger than in prior rate cases. This created concerns about retail rate impacts at a time when cheaper alternative power was becoming available through competition.

Upon review of BPA's initial rate proposal and the potential decrease in residential exchange benefits resulting from the section 7(b)(2) rate test, the IOUs responded by alleging that BPA had made incorrect assumptions in conducting the section 7(b)(2) rate test. These allegations are currently being addressed in BPA's rate hearing. Despite the fact that BPA's initial proposal did not establish any rates or change any exchange benefits, and despite the fact that the exchanging utilities would have the opportunity to argue for changes in the rates during the formal evidentiary proceeding, the IOUs expressed concern to Congress regarding the potential changes in rates that could potentially reduce their residential exchange benefits. While Congress did not conduct any



investigation into the manner in which BPA developed the rates for its initial proposal and therefore Congress did not conclude that BPA had developed rates in any improper manner whatsoever, Congress was concerned about potential retail electric rate increases that might occur in the Pacific Northwest as a result of revised BPA rates, even if properly developed.

While Congress was concerned about possible retail rate increase for exchanging utilities, Congress was also concerned about BPA's ability to establish rates that recovered its costs. BPA is required by law to establish rates to recover its total costs, including the cost of the residential exchange program. BPA must follow detailed statutory and administrative rate directives in establishing rates. BPA first determines its revenue requirement, that is, the amount of costs BPA must recover from its rates overall. BPA then allocates these costs to the different rates for different customer classes in accordance with the rate directives. BPA's rates recover only its costs. Therefore, if BPA developed rates properly, but Congress were to impose additional costs on BPA, BPA would run a greater risk of not recovering its costs during the term of the rates.

In developing BPA's initial proposal, BPA prepared forecasts of the residential exchange benefits for each exchanging utility based on the proposed rates. BPA's forecasts of residential exchange benefits for exchanging utilities under BPA's initial proposal showed reductions in such benefits from the levels forecasted under then-current rates. However, BPA's rates were only designed to recover the forecasted levels of exchange benefits under the initial proposal rates. The requirement to pay greater benefits than were forecasted and used in the development of rates would increase the likelihood that BPA would not recover its costs under the rates.

Because of concern about potential retail rate increases for exchanging utilities that might result from increased BPA rates, Congress sought to determine how to address this problem. Congress was contacted by exchanging utilities, who wanted to increase exchange benefits over the levels resulting from the normal development of rates. Congress also heard from BPA's preference customers and DSI customers, who pay the cost of the residential exchange program through their rates. These customers noted that increasing exchange benefits over the benefits that would result from the normal development of rates would impose greater costs on BPA and thus increase rates for these customers. If an increase in benefits were granted, these customers wanted any increase to be clearly established and have a minimal impact on their rates. Congress also contacted BPA, who must implement the residential exchange program and recover its total system costs through rates. All of the regional parties worked with Congress to develop an acceptable approach.

In order to avoid potential impacts on retail rates of exchanging utilities from possible reductions in residential exchange benefits and to provide certainty to BPA regarding its exposure to residential exchange costs, Congress enacted the residential exchange provisions of the Energy and Water Development Appropriations Act, P.L. 104-46 (hereafter the "Appropriations Act" or "Act"). The Act provides:

Notwithstanding the establishment, confirmation and approval of rates pursuant to 16 U.S.C. 839e, and notwithstanding the provisions of 16 U.S.C. 839c(c), the cost benefits of eligible utilities' total purchase and exchange sales under 16 U.S.C. 839c(c)(1) shall be \$145,000,000 for fiscal year 1997, and the net benefits paid to each eligible electric utility shall be \$145,000,000 multiplied by the percentage of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995.

After enactment of the legislation, BPA began a public interpretative rulemaking process in order to establish the manner in which the statute would be implemented.

#### **B. Procedural History of the Interpretative Rulemaking**

On January 16, 1996, the Bonneville Power Administration (BPA) sent a letter to all BPA customers and interested parties announcing a public process to determine the allocation of \$145,000,000 in FY 1997 residential exchange program benefits to eligible utilities. In its letter, BPA noted that BPA's 1996 supplemental rate case proposal included a total of \$145,000,000 in FY 1997 residential exchange benefits. Consistent with the manner in which BPA calculated residential exchange benefits in BPA's 1996 initial rate case proposal, the first-year total of residential exchange benefits included \$10,000,000 to Puget Sound Power & Light Company (Puget) as an estimate of its Periodic Rate Adjustment Mechanism (PRAM) true-up. BPA noted that it had made no determination regarding the proper relationship of the \$145,000,000 to the PRAM true-up and would resolve this issue in the interpretative rulemaking process it was initiating.

BPA's letter also noted that BPA would distribute a list of issues regarding the allocation of the \$145 million on or about February 1, 1996. BPA noted that some of the issues expected to be addressed in the proceeding included the allocation of benefits among participants, the treatment of Puget's PRAM true-up payments, the timing of benefit payments, and other adjustments (e.g., resulting from average system cost (ASC) compliance reviews or ASC adjustments). BPA would then conduct a public meeting on February 7, 1996, to answer questions, receive oral comment on the identified issues, and/or to develop consensus on an allocation methodology. BPA stated that it would then publish a draft allocation methodology on March 13, 1996. Parties would have the opportunity to submit written comments on the draft methodology until April 12, 1996. A final Record of Decision on the allocation methodology was scheduled to be released on April 29, 1996. This was intended to coincide with the date for publication of BPA's 1996 rate case Draft Record of Decision, which might have addressed certain of the allocation issues.

On January 29, 1996, BPA sent a second letter to BPA customers and interested parties listing issues regarding the allocation of \$145 million in residential exchange benefits for FY 1997. This list was intended to facilitate discussion at the public meeting. The letter

announced a public meeting to be held on February 7, 1996. Parties were encouraged to identify and be prepared to discuss issues of interest at the public meeting.

On February 7, 1996, BPA conducted a public meeting to discuss the issues identified in BPA's January 29, 1996, letter. The meeting was well attended and provided BPA with oral comments on many issues pertaining to the allocation of the \$145 million in residential exchange benefits for FY 1997. BPA noted at the meeting that it would welcome any written comments from parties in addition to the parties' oral comments prior to the development of BPA's initial proposal for an interpretative allocation rule. In response, BPA received preliminary written comments from a number of parties. These comments, in addition to all comments previously received, were used by BPA in developing its initial proposal.

On March 12, 1996, BPA sent a letter to all BPA customers and interested parties with a copy of BPA's 'Interpretative Rulemaking: FY 1997 Residential Exchange Benefit Draft Allocation Proposal.' BPA's cover letter noted that the draft allocation proposal addressed the issues raised in BPA's letter dated January 29, 1996, and discussed at BPA's public meeting of February 7, 1996. The draft allocation proposal addressed 10 separate issues regarding the \$145 million allocation. The most significant issue concerned the manner in which BPA should treat Puget's Periodic Rate Adjustment Mechanism (PRAM) in the allocation process. BPA identified four alternative interpretations of the statute regarding this issue. BPA noted that written comments on the draft allocation proposal were to be submitted to BPA not later than April 12, 1996.

In response to BPA's draft allocation proposal, BPA received written comments from many parties, including 27 individual public agency customers of BPA; the Pacific Northwest Generating Cooperative (PNGC) representing 10 public agency customers; the Public Power Council (PPC) representing 114 public agency customers; the Washington Public Utility Districts Association (WPUA); three investor-owned utilities: Portland General Electric Company (PGE), PacifiCorp, and Puget Sound Power & Light Company (Puget); the Direct Service Industries (DSIs), representing 10 industrial customers of BPA; and the Washington Utilities and Transportation Commission (WUTC), Oregon Public Utility Commission (OPUC), Idaho Public Utility Commission (IPUC), the Public Counsel Section of the Office of the Washington Attorney General, and the Citizens' Utility Board of Oregon (hereafter collectively referred to as the "Commissions, et al."). By letter dated April 18, 1996, BPA extended the release date for the Record of Decision to May 14, 1996.

BPA reviewed all comments submitted by the parties and developed a final interpretative rule regarding the \$145 million allocation set forth below. BPA has attempted to interpret the statute in accordance with its terms, in accordance with congressional intent, and in a manner that is fair to all parties. This Record of Decision is divided into 10 sections, each addressing a particular issue regarding the allocation of the \$145 million in FY 1997 exchange benefits. Each section identifies an issue, summarizes the parties' positions on the issue, evaluates the parties' positions, and states a final decision.

## ISSUES

### I. Puget Sound Power & Light Company's (Puget's) Periodic Rate Adjustment Mechanism (PRAM)

#### Issue

*Whether Puget's PRAM should be considered in determining utility allocations of the \$145 million in FY 1997 residential exchange benefits.*

**Background on the PRAM:** The Washington Utilities and Transportation Commission (WUTC) and Puget jointly began the PRAM ratemaking experiment effective with the one-year forecasted rate period that began October 1, 1991. This first period was designated PRAM 1. Differences between forecasted costs and actual costs (on a modeling basis) that occurred during the test year were to be compared at the beginning of the second subsequent PRAM rate period. Any under- or overrecovery of costs (with certain limitations) would then be "trued up," that is, Puget's revenue requirement would be adjusted. At that time, Puget would make an Average System Cost (ASC) filing with BPA. Following the 210-day ASC review period, Puget's PRAM true-up ASC filing would result in a change to its ASC and exchange benefits for a period approximately two years earlier.

For example, the PRAM 1 period revenues were trued up on October 1, 1993. Puget was authorized to recover additional revenue for the period that had commenced two years earlier. Puget submitted an ASC filing which, when approved by the Administrator, resulted in a one-time residential exchange payment in fiscal year (FY) 1994 of \$12.1 million to "true up" the FY 1992 residential exchange benefit period. Similarly, the PRAM 2 period (FY 1993) was trued up in FY 1995. BPA paid Puget \$26.4 million for the PRAM 2 true up, plus interest in the amount of \$4.4 million, for a total of \$30.8 million.

The PRAM 2 and PRAM 4 true ups are of particular interest to the FY 1997 benefit allocations. This is due to language in the Appropriations Act which states that benefit payments "shall be \$145,000,000 for fiscal year 1997," and the net benefits shall be determined as "the percentage of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995." The PRAM 2 true up occurred in FY 1995 and was an adjustment to benefits that would have been paid in FY 1993 had forecasts been accurate. The PRAM 4 true up will occur in FY 1997 and will adjust for benefits that would have been paid in FY 1995. In FY 1995, BPA paid Puget \$30.8 million, including interest, as an adjustment to its benefits that would have been paid in FY 1993. Two determinations must be made regarding PRAM true ups: (1) whether or not a PRAM true up should be included when calculating Puget's percentage share of FY 1995 benefits; and (2) whether or not a PRAM true up paid in FY 1997 for FY 1995 should be included in the \$145 million provided in the Act.

## **BPA's Position**

In BPA's initial proposal, BPA identified four alternative interpretations of the residential exchange provisions of the Act, which are described and discussed below.

### **Alternative 1**

#### **Summary:**

<b>Puget FY 1995 Share Calculation</b>	<b>FY 1997 Benefit Payment</b>
PRAM 2 excluded, PRAM 4 included	\$145 million plus PRAM 4

#### **Discussion:**

Alternative 1 views the statutory language "benefits . . . for fiscal year 1997" and "net benefits . . . for fiscal year 1995" as referring to all benefits that would have been paid for the particular fiscal year, regardless of when actually paid. The PRAM 4 period (the year beginning October 1, 1994) true up benefits will be paid during FY 1997. However, such payments, if any, would be viewed as a true up of what would have been paid in FY 1995 had forecasts been accurate and are therefore viewed as "for" FY 1995. Similarly, in calculating Puget's share of FY 1997 benefits, any benefit payments to Puget in FY 1995 for a different fiscal year (e.g., truing up for FY 1993) would be excluded from Puget's percentage share of FY 1995.

This alternative views the \$145 million as benefits only "for" FY 1997. Any benefits that comprise an adjustment to a prior year's benefits would not be included in the \$145 million but would be paid in addition to the \$145 million. Thus, under this alternative the FY 1995 PRAM true up would occur in FY 1997 and would be paid in addition to the \$145 million.

#### **Description:**

Consistent with the foregoing discussion, Puget's share of the \$145 million would be determined based on payments made by BPA for FY 1995. Therefore, PRAM 2 payments made in FY 1995 for FY 1993 would not be considered in the share calculation. However, payments made in FY 1997 for FY 1995 would be included in the share calculation.

The PRAM 4 true up ASC review will not be completed until mid-to-late FY 1997. Therefore, utilities' share calculations would initially be based on an estimate of the PRAM 4 true up benefits and then adjusted. The initial PRAM 4 true up estimate would be consistent with the amount included in BPA's final 1996 rate case. Adjustments to the share calculations would be made following the PRAM 4 true up final ASC report. For example, if the 1996 rate case includes a PRAM true up estimate of \$10 million and the final PRAM 4 true up report results in a benefit payment to Puget for an additional \$10 million, utilities' annual FY 1997 percentage shares would be recalculated using a PRAM 4 true up benefit of \$20 million. The utilities' FY 1997 benefits would then be

recalculated. Utilities' monthly benefit payments for the remainder of the fiscal year would be determined as recalculated annual benefits, less the sum of the monthly benefits previously paid, divided by the number of months in which the payment has yet to be paid.

BPA's payment of 1997 residential exchange program benefits would include, in addition to \$145 million, any PRAM payments due Puget for FY 1995.

## **Alternative 2**

### **Summary:**

#### **Puget FY 1995 Share Calculation**

All PRAM true ups excluded

#### **FY 1997 Benefit Payment**

\$145 million plus PRAM 4

### Discussion:

Alternative 2 is the approach endorsed jointly by Puget, PacifiCorp and Portland General Electric Company. This alternative, like Alternative 1, also views the \$145 million as the benefits only "for" FY 1997. Under this alternative the FY 1995 PRAM true up will occur in FY 1997 and would be paid in addition to the \$145 million. This alternative also provides that the amount paid in 1995 for truing up FY 1993 benefits (PRAM 2 true up) would be excluded in determining percentage shares of the \$145 million because such payment is not "for" FY 1995. However, this approach would not treat the payment made in FY 1997 to true up FY 1995 in the same manner. This alternative views the language "the net benefits paid to each eligible electric utility shall be \$145,000,000 multiplied by the percentage of the total of such benefits paid by the Administrator to such utility for fiscal year 1995" as imposing a limit on such benefits based on whether the payments were made before or after enactment of the Act. While the Act does not expressly limit the net benefits to those paid prior to or after enactment of the Act, this alternative would preclude the PRAM payment Puget would receive in FY 1997 "for" FY 1995 from being included in calculation of Puget's share of FY 1995 benefits, thereby reducing Puget's percentage allocation of the \$145 million from what it would be in Alternative 1.

### Description:

Consistent with the foregoing discussion, Puget's share of the \$145 million would be determined based on payments made by BPA for FY 1995. Therefore, PRAM 2 payments made in FY 1995 for FY 1993 would not be considered in the share calculation.

However, payments made in FY 1997 for FY 1995 also would not be included in the share calculation because they were not made prior to the date of the Act. BPA's payment of 1997 residential exchange program benefits would include, in addition to \$145 million, any PRAM 4 payments due Puget for FY 1995.

### Alternative 3

#### Summary:

##### **Puget FY 1995 Share Calculation**

All PRAM true ups excluded

##### **FY 1997 Benefit Payment**

\$145 million (includes up to \$10 million for PRAM 4) plus any excess of PRAM 4 over \$10 million

#### Discussion:

This alternative is similar to Alternative 2 in that the amount paid in 1995 for truing up FY 1993 benefits (PRAM 2 true up) would be excluded in determining percentage shares of the \$145 million because such payment is not "for" FY 1995. This approach is also similar to Alternative 2 in that it would also view the language "the net benefits paid to each eligible electric utility shall be \$145,000,000 multiplied by the percentage of the total of such benefits paid by the Administrator to such utility for fiscal year 1995" as imposing a limit on such benefits based on whether the payments were made before or after enactment of the Act.

The primary difference between Alternative 3 and the prior Alternatives 1 and 2 is that it would look to congressional intent in determining what should comprise the \$145 million in FY 1997 benefits. The Conference Report for Public Law 104-46 states that total FY 1997 benefits to exchanging utilities were intended to be "approximately equivalent to the benefits they received in fiscal year 1996." H.R. Conf. Rep. No. 293, 104th Cong., 1st Sess. 95 (1995). At the time P.L. 104-46 was drafted, the latest projection of FY 1996 residential exchange benefits was from BPA's forecast of residential exchange benefits for FY 1996 based upon the final rates developed in BPA's 1995 Rate Case. See BPA's Final 1995 Revenue Requirement Study, WP-95-FS-BPA-10, page 56. This forecast was provided to BPA's Washington, D.C. office and was used in discussions regarding the legislation. BPA's forecast of FY 1996 benefits was \$147.5 million, which included implementation and administrative and general overhead costs of approximately \$3 million and a projected estimate of \$10 million for a PRAM 3 true up. Because a \$10 million payment for the PRAM 3 true up was included within the forecasted \$147.5 million of FY 1996 benefits, it is appropriate that a component for the PRAM 4 true up be included within the \$145 million payment for FY 1997. In the event that the actual PRAM 4 adjustment exceeds \$10 million, this alternative would pay Puget the excess in addition to its share of the \$145 million. An adjustment to the distribution of benefits to the utilities would be required if Puget's PRAM 4 true up benefits should be less than \$10 million.

#### Description:

Puget's share of the \$145 million would be determined based on payments made by BPA for FY 1995. Therefore, PRAM 2 payments made in FY 1995 for FY 1993 would not be considered in the share calculation. However, payments made in FY 1997 for FY 1995 also would not be included in the share calculation because they were not made prior to the date of the Act.

BPA's payment of \$145 million in FY 1997 residential exchange program benefits would include \$10 million for the provision of a PRAM 4 true up payment to Puget. In addition to the \$145 million, BPA would pay Puget any PRAM 4 benefits due Puget for FY 1995 in excess of \$10 million. To the extent the FY 1997 PRAM 4 true up amount is less than or equal to \$10 million, the difference between the \$10 million and the actual PRAM 4 true up amount would be allocated among all parties using the FY 1995 allocation share percentages.

#### Alternative 4

##### Summary:

<b>Puget FY 1995 Share Calculation</b>	<b>FY 1997 Benefit Payment</b>
PRAM 2 included	\$145 million

##### Discussion:

Alternative 4 is the approach endorsed by the Public Power Council (PPC) and the Direct Service Industries, Inc. (DSIs). This alternative views the \$145 million payment for FY 1997 as a cap for the total exchange benefits paid in FY 1997. This approach might emphasize the statutory language that residential exchange benefits shall be \$145 million for FY 1997 "notwithstanding the provisions of 16 U.S.C. 839c(c)." Section 5(c) of the Northwest Power Act, 16 U.S.C. 839c(c), establishes the fundamental rules for determining residential exchange benefits. It provides, in simple terms, that a utility may offer to sell power to BPA at the utility's average system cost and that BPA will purchase such power and, in exchange, sell an equivalent amount of power to the utility at BPA's applicable rate. Section 5(c) addresses the determination of a utility's average system cost, the amount of load eligible for the residential exchange program, and other fundamental principles which determine exchange benefits. Because the P.L. 104-46 established a level of FY 1997 benefits at \$145 million "notwithstanding the provisions of 16 U.S.C. 839c(c)," any other exchange benefits which might otherwise be paid in FY 1997 are precluded, including the implementation of PRAM, which is a subset of the fundamental principles that determine residential exchange benefits. This alternative also is consistent with the Conference Report's statement that FY 1997 benefits to exchanging utilities be "approximately equivalent to the benefits they received in fiscal year 1996."

Under this alternative, Puget would receive its percentage share of \$145 million, which would include the 1995 PRAM payment for FY 1993 in the derivation of Puget's percentage. Puget's percentage share would be relatively large with the inclusion of the \$30.8 million PRAM 2 true up payment, including interest. However, Puget would not receive any PRAM 4 true up benefits in FY 1997 over and above this amount. This alternative posits that P.L. 104-46 anticipated a continuation of "equivalent" benefits in FY 1997, not an increase (or decrease) in benefits of an unknown amount.



Description:

Utilities' percentage shares would be based on residential exchange benefits paid in FY 1995. Therefore, Puget's calculation would include PRAM 2 true up payments paid in FY 1995 for FY 1993. Total FY 1997 benefits would be \$145 million. Puget's benefits for FY 1997 would not include any additional payments for a PRAM true up.

Parties' Positions

The PPC, DSIs, PNGC, WPUA, and all of the public utility respondents argue that benefits should be allocated according to Alternative 4. They contend that the essence of the residential exchange portion of the Appropriations Act is a cap on residential exchange benefits for 1997: the sum of \$145,000,000. They argue that this sum is not subject to adjustment or conditioned in any way. The amount established by legislation was derived from the final Revenue Requirement Study performed by BPA in its 1995 rate proceeding.

With respect to the "paid for" language of the legislation, the foregoing parties contend that the year in which the benefits were accrued is irrelevant. The relevant consideration is when the benefits are paid by the Administrator. Therefore, PRAM true up payments for 1993 and received in 1995 should be considered residential exchange benefits received in 1995 in calculating Puget's FY 1997 benefit share. Similarly, benefits to be received in FY 1997 should be considered residential exchange benefits received in FY 1997, even though the benefits may be attributable to 1995. Benefits for FY 1997 should be \$145 million without PRAM (or any other) adjustment.

Puget, PGE, PacifiCorp, and the Commissions, et al., support an allocation consistent with Alternative 2. Alternative 2, they contend, is the only approach consistent with the law that benefits "shall be \$145,000,000 for fiscal year 1997 . . ." These parties argue that BPA's PRAM obligation for fiscal year 1995 is an obligation for BPA to fulfill regardless of the level of benefits established by Congress for fiscal year 1997. These parties also argue that payments made subsequent to the date of enactment of the Appropriations Act, regardless of when such payments were actually accrued, should not be included in FY 1995 net benefits for purposes of determining utilities' allocations of the \$145 million.

Based on the foregoing positions, these parties argue that Alternative 4 should be rejected because it would ignore BPA's separate PRAM obligation and include as part of the \$145 million "exchange benefits clearly associated with a period 2 years in the past." They argue that there is no evidence that the \$145 million was intended to represent a program budget for all residential exchange program dispersals in FY 1997, regardless of when the obligations associated with such dispersals were incurred. These parties argue that Alternative 1 should be rejected because it relies on the fiscal year 1995 PRAM true up payment for the allocation formula while the true up payment can only be estimated and, furthermore, the PRAM true up payment for FY 1995 should not be included because it

occurs subsequent to passage of the Act. Finally, the Commissions, et al., contend that Alternative 3 should be rejected in the absence of clear evidence in the legislative history that: (1) Congress arrived at \$145 million based on estimated FY 1996 residential exchange program payments; (2) the estimated FY 1996 payment included some estimate of PRAM true up associated with prior year benefits; and (3) Congress intended FY 1997 benefits to be similarly inclusive of true ups for prior years.

### **Evaluation of Positions**

The Energy and Water Development Appropriations Act of 1995, Public Law 104-46, provides:

Notwithstanding the establishment, confirmation and approval of rates pursuant to 16 U.S.C. 839e, and notwithstanding the provisions of 16 U.S.C. 839c(c), the cost benefits of eligible utilities' total purchase and exchange sales under 16 U.S.C. 839c(c)(1) shall be \$145,000,000 for fiscal year 1997, and the net benefits paid to each eligible electric utility shall be \$145,000,000 multiplied by the percentage of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995.

BPA's interpretation of the statute must begin with the statutory language itself. The statute provides that "Notwithstanding the establishment, confirmation and approval of rates pursuant to 16 U.S.C. 839e, and notwithstanding the provisions of 16 U.S.C. 839c(c), the cost benefits of eligible utilities' total purchase and exchange sales under 16 U.S.C. 839c(c)(1) shall be \$145,000,000 for fiscal year 1997." The statute begins by distinguishing the normal development of BPA's wholesale power and transmission rates, which are established pursuant to section 7 of the Northwest Power Act, from the provision of \$145 million in exchange benefits for FY 1997. See 16 U.S.C. 839e. One of BPA's wholesale power rates is the PF rate. As noted previously, the comparison of BPA's PF rate with a utility's ASC, multiplied by the utility's residential load, determines the utility's exchange benefits.

The statute then distinguishes the normal implementation of the residential exchange program from the provision of \$145 million in exchange benefits for FY 1997. See 16 U.S.C. 839c(c). Section 5(c) of the Northwest Power Act does not simply deal with the determination of exchange benefits, but with the implementation of the entire residential exchange program. Section 5(c) establishes the requirement of a purchase of power from an exchanging utility at its ASC and a sale of the same amount of power back to the utility at BPA's PF rate. 16 U.S.C. 839c(c)(1). Section 5(c) also requires, among other things, that benefits be passed through directly to an exchanging utility's residential loads, 16 U.S.C. 839c(c)(3); that a utility may terminate its participation in the residential exchange program, 16 U.S.C. 839c(c)(4); that BPA may purchase power from a cheaper source than the utility in lieu of purchases at the utility's ASC, 16 U.S.C. 839c(c)(5); that BPA will determine a utility's ASC based on a methodology developed by BPA in consultation with other parties, 16 U.S.C. 839c(c)(7); that certain costs are excluded from a utility's

ASC, *id.*, etc. In summary, the Energy and Water Development Appropriations Act provides that the entire implementation of the residential exchange program be ignored such that \$145 million in exchange benefits be provided to exchanging utilities for FY 1997.

After distinguishing BPA's development of rates and the normal implementation of the residential exchange program, the statute provides that BPA shall pay exchanging utilities a total of \$145 million in residential exchange benefits for FY 1997. The plain meaning of the foregoing provisions is that Congress intended to suspend the normal use of BPA's rates and the normal operation of the residential exchange program in determining exchange benefits for FY 1997. With these directives, however, the statute creates an ambiguity.

As demonstrated by the comments BPA received on the allocation alternatives, the residential exchange provisions of the Energy and Water Development Appropriations Act are ambiguous. As noted above, while Congress directed the payment of \$145 million in exchange benefits for FY 1997, Congress did so with the proviso that the residential exchange program would not be implemented as provided by law. When the residential exchange program is not implemented in the normal manner, the only component that exists for FY 1997 is the payment of \$145 million. As noted previously, however, Puget receives a PRAM true-up amount in a particular year as a correction for exchange benefits it would have received in a prior year. For example, Puget would normally receive a PRAM true-up adjustment in FY 1997 for benefits it would otherwise have received in FY 1995. However, where the residential exchange program is no longer implemented for FY 1997 under section 5(c) of the Northwest Power Act, the PRAM true-ups, as part of the normal implementation of the program for 1997, would no longer be implemented. The question then arises whether the statute intended the \$145 million payment to include or exclude the PRAM true-up payment to be paid in FY 1997. On one hand, the statute could be interpreted to provide that the \$145 million is the total amount of benefits to be paid to exchanging utilities in FY 1997 and, since the remainder of the program is no longer implemented for that period, no PRAM true-ups would occur. On the other hand, the statute could be interpreted to provide that the \$145 million was for FY 1997 only and that any benefits that would be paid in FY 1997 for a prior year would not be included in the \$145 million. Given the ambiguity in the statutory language, it is necessary to consult the legislative history to determine congressional intent.

The Conference Report for the Appropriations Act states that total FY 1997 benefits to exchanging utilities were intended to be "approximately equivalent to the benefits they received in fiscal year 1996." H.R. Conf. Rep. No. 293, 104th Cong., 1st Sess. 95 (1995). The Conference Report was published on October 26, 1995. This was less than one month into fiscal year 1996. The Conference Report's reference to "the benefits they received in fiscal year 1996" is therefore a reference to a forecast of benefits that

exchanging utilities were expected to receive for the coming fiscal year. Congress necessarily had to have some source for its \$145 million figure for FY 1997, because the \$145 million figure was not based on historical fact, but rather established based on a forecast of future benefits.

BPA is the federal agency that administers the residential exchange program. 16 U.S.C. 839c(c). In conducting the residential exchange program, BPA routinely forecasts the average system costs (ASCs) of all exchanging utilities and the Priority Firm (PF) rate schedule at which sales are made to exchanging utilities. As explained previously, the difference between these two factors, multiplied by the utilities' residential loads, determines the total residential exchange benefits that BPA pays to exchanging utilities. BPA forecasts future residential exchange benefits as part of the development of BPA's wholesale power rates. The costs of the residential exchange program, including all forecasted residential exchange benefits, are included in BPA's total system costs. BPA is required by law to establish rates that recover BPA's total costs. 16 U.S.C. 839e(a). At the time the Conference Report was published, the latest forecast of FY 1996 residential exchange benefits was included in the final studies from BPA's 1995 rate case and based upon the final rates developed in that case. See BPA's Final 1995 Revenue Requirement Study, WP-95-FS-BPA-10, page 56. See Affidavit of Raphael M. Grinberg, Attachment 3. The level of FY 1996 exchange benefits from the forecast was provided to BPA's Washington, D.C. office and was provided to congressional staff and interested parties regarding the legislation. See Affidavit of Stephen J. Wright, Attachment 4.

BPA's forecast of FY 1996 benefits was \$147.5 million, which included implementation and administrative and general overhead costs of approximately \$3 million and a projected estimate of \$10 million for a PRAM 3 true up. See Affidavit of Raphael M. Grinberg, Attachment 3. Because a \$10 million payment for the PRAM 3 true-up was included within the forecasted \$147.5 million of FY 1996 benefits, this demonstrates that the \$145 million provided by Congress for FY 1997 benefits also included a component for a PRAM true-up. It is therefore appropriate that a component for the PRAM 4 true up be included within the \$145 million payment for FY 1997. One approach would be to treat \$10 million of the \$145 million as a PRAM true-up that would be paid to Puget. The remaining \$135 million would then be allocated among the exchanging utilities based on their percentages of the total net benefits paid to exchanging utilities for FY 1995. This proposal, however, would be inconsistent with the statutory language. The Act expressly provides that \$145 million is to be allocated according to the formula, not \$135 million. However, Congress clearly based the \$145 million on a forecast including a PRAM amount. Therefore, as discussed in greater detail below, the forecasted \$10 million PRAM true-up amount should be included in Puget's FY 1995 benefits for purposes of determining the utilities' allocation percentages.

The allocation of the \$145 million is prescribed by the Energy and Water Development Appropriations Act. The Act provides that "the net benefits paid to each eligible electric utility shall be \$145,000,000 multiplied by the percentage of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995." BPA must therefore

determine the total benefits paid to each exchanging utility for FY 1995. As noted above, the Act states that the net benefits shall be determined as "the percentage of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995" (emphasis added). The PRAM 2 true up occurred in FY 1995 and was an adjustment to benefits that would have been paid in FY 1993 had forecasts been accurate. The PRAM 2 true-up was therefore not a payment for FY 1995 but rather for FY 1993. The PRAM 2 true-up should therefore be excluded from the calculation of the total benefits paid to exchanging utilities for FY 1995.

The PRAM 4 true up will occur in FY 1997 and is an adjustment to benefits that would have been paid in FY 1995 had forecasts been accurate. Under the plain meaning of the Act, the PRAM 4 true-up is therefore a payment for FY 1995. The PRAM 4 true-up therefore must be included in Puget's 1995 benefits for purposes of determining the allocation percentages. Because the PRAM 4 true-up will not be paid until 1997, the exact amount of the true-up is not known. However, it is not necessary to know the final amount of the true-up for purposes of implementing the Act. The PRAM 4 true-up amount was forecasted to be \$10 million for FY 1995. As noted previously, Congress was relying on BPA's forecast in determining FY 1996 exchange benefits and thus the amount of exchange benefits that would be provided for FY 1997 under the Act. Therefore, \$10 million is the appropriate amount to be included in determining the parties' percentage allocations. If more than \$10 million were included in Puget's FY 1995 benefits, this would reduce the shares of the other utilities, thereby making them less "approximately equivalent" to the FY 1996 forecasted benefits. As discussed below, when \$10 million is used to determine utilities' allocation percentages, Puget's FY 1997 benefits increase by \$8.354 million. If the actual PRAM 4 true-up amount is larger than \$8.354 million, BPA will pay Puget the additional amount. Under this methodology, there is no need for an impractical adjustment to reflect the final PRAM 4 true-up amount. It is possible that a problem could arise if the PRAM 4 true-up amount turns out to be less than \$8.354 million. In such a case, BPA would have to recalculate the shares of the FY 1995 benefits. This potential problem will likely not arise, however, because data from the Washington Utilities and Transportation Commission establishes that the PRAM 4 true-up amount should be significantly greater than \$8.354 million. The WUTC approved costs in WUTC Docket No. UE-950618 that resulted in a \$28.9 million PRAM 3 true-up filing by Puget. The WUTC also approved PRAM 4 costs for the first seven months of the PRAM 4 period in the same WUTC docket. The approved PRAM 4 costs for the 7-month period are \$32,764,459 and the approved PRAM 3 deferrals for the same period are \$40,479,182. The PRAM 4 deferrals are therefore approximately 80 percent of the PRAM 3 deferrals for the same 7 month period. The level of PRAM 4 deferrals approved to date indicates that the trend of relatively high PRAM true-ups will continue through the remainder of the PRAM 4 period. Assuming that the PRAM 4 deferrals are 80 percent of the PRAM 3 deferrals, the total PRAM 4 true-up amount should be approximately \$21 million.

In summary, BPA will allocate the \$145 million in FY 1997 residential exchange benefits as follows. The total net exchange benefits paid in FY 1995 were \$194,352,693 for the

Residential Purchase and Sale Agreement (RPSA) and \$258,398 for the Exchange Transmission Credit Agreement (ETCA), for a total of \$194,611,091 (see Issue 2). This figure excludes program implementation and administrative and general overhead costs. Consistent with BPA's proposal regarding utilities that have terminated their RPSA or ETCA since FY 1995 (see Issue 3 below), the total exchange benefits should be reduced by \$232,985 to \$194,378,106 to reflect Lincoln Electric Cooperative's termination of its RPSA. As noted above, the \$194,378,106 figure was subject to adjustment depending on the resolution of whether the Puget PRAM 2 or PRAM 4 true up amounts affect the FY 1995 percentage share calculations. See Issue 1. This amount is then reduced by \$30,804,278 to \$163,573,828 to reflect the removal of the PRAM 2 payment made in FY 1995 for FY 1993. Finally, because the resolution of Issue 1 includes \$10 million for PRAM 4 in FY 1995 benefits, the total FY 1995 benefit level is increased by \$10 million to \$173,573,828. By including \$10 million for the PRAM 4 true up in total FY 1995 exchange benefits, Puget's allocation percentage increases and Puget's share of the \$145 million in FY 1997 benefits increases by \$8.354 million. In addition to Puget's percentage allocation of the \$145 million, BPA will pay Puget the actual amount of the PRAM 4 true up in excess of the \$8.354 million in FY 1997 benefits that result from the \$10 million used to determine Puget's allocation percentage. Individual utility allocations of the \$145 million are shown in Attachment 2.

BPA's approach is similar to Alternative 3 identified in BPA's initial proposal. A number of parties filed comments regarding Alternative 3. While BPA's approach differs slightly from Alternative 3, some of the parties' comments are still relevant. Puget argues that Alternative 3 would erroneously decrease benefits for 1997 by a portion of benefits for FY 1995, arguing that the legislative history does not indicate congressional intent to make such a reduction. This argument is incorrect, however, because the benefits provided by Congress for FY 1997 include a component for PRAM. As noted previously, Congress was relying on BPA's forecast in determining FY 1996 exchange benefits and thus the amount of benefits that would be provided to exchanging utilities for FY 1997 under the Act. Because the forecast of FY 1996 exchange benefits included \$10 million for a PRAM adjustment, it is necessary that the \$145 million for FY 1997 benefits also reflect a PRAM adjustment. This is achieved by recognizing that a PRAM payment in FY 1997 is for FY 1995. This increases Puget's percentage of FY 1995 total exchange benefits and thereby increases Puget's share of the \$145 million of FY 1997 benefits.

Puget also argues that providing BPA's most current residential exchange cost forecast to Congress at the time the legislation was developed provides no indication of congressional intent. A similar argument is raised by the Commissions, et al., which filed joint comments regarding Alternative 3. They argue that this Alternative would only be acceptable if three conditions are met and documented in the legislative history of the Appropriations Act: (1) the \$145 million was based on estimated FY 1996 program payments, (2) the estimated FY 1996 payments included some estimate for PRAM true-up associated with prior year benefits, and (3) Congress intended the benefits for FY 1997 to be similarly inclusive of true-ups for prior years, to the degree that such true-ups were included in the estimated FY 1996 program. Beginning with the first listed item, the legislative history of the

Appropriations Act provides that the legislation "should result in total fiscal year 1997 benefits to these consumers being approximately equivalent to the benefits they received in fiscal year 1996." H.R. Conf. Rep. No. 293, 104th Cong., 1st Sess. 95 (1995). As noted above, the Conference Report was published on October 26, 1995, less than one month into fiscal year 1996. The Conference Report's reference to "the benefits they received in fiscal year 1996" is therefore a reference to a forecast of benefits that exchanging utilities were expected to receive for the coming fiscal year.

Turning to the second condition, it is clear that the estimated FY 1996 payments included some estimate for PRAM true-up associated with prior year benefits. As noted previously, Congress necessarily had to have some source for its \$145 million figure for FY 1997, because the \$145 million figure was not based on historical fact, but rather established based on a forecast of future benefits. At the time the Conference Report was published, the latest forecast of FY 1996 residential exchange benefits was included in the final studies from BPA's 1995 rate case and based upon the final rates developed in that case. See BPA's Final 1995 Revenue Requirement Study, WP-95-FS-BPA-10 at 56. See Affidavit of Raphael M. Grinberg, Attachment 3. The level of forecasted FY 1996 exchange benefits from BPA's forecast was provided to BPA's Washington, D.C. office and was provided to congressional staff and interested parties regarding the legislation. See Affidavit of Stephen J. Wright, Attachment 4. BPA's forecast of FY 1996 benefits was \$147.5 million, which included implementation and administrative and general overhead costs of approximately \$3 million and a projected estimate of \$10 million for a PRAM 3 true up. See Affidavit of Raphael M. Grinberg, Attachment 3. The \$145 million in FY 1997 benefits, which the legislative history establishes was based on a forecast of FY 1996 benefits, was therefore nearly identical to BPA's most recent forecast. The parties argue that the fact that BPA provided its exchange cost forecast to Congress at the time the legislation was developed does not mean that it was used by Congress. This argument is not persuasive. While the legislative history establishes that Congress relied on a forecast of FY 1996 exchange benefits, no party has identified any residential exchange cost forecast for FY 1996 benefits other than the forecast produced by BPA. No party has claimed that it provided an exchange cost forecast to Congress other than BPA's forecast. Furthermore, it is clear that the FY 1996 forecast relied on by Congress produced residential exchange benefits of approximately \$145 million because that was the sum established in the statute for FY 1997 benefits that were "approximately equivalent" to FY 1996 benefits. BPA's forecast, not coincidentally, estimated FY 1996 exchange benefits of \$144.5 million (net of administrative costs), nearly identical to the \$145 million used by Congress in the legislation.

Turning to the third condition, it is clear that Congress intended the benefits for FY 1997 to be similarly inclusive of true-ups for prior years. As noted above, BPA's FY 1996 residential exchange forecast of approximately \$145 million for FY 1996 included a \$10 million component for PRAM. The legislative history of the Appropriations Act provides that the \$145 million of FY 1997 benefits was intended to be "approximately equivalent" to the forecasted benefits for FY 1996. The methodology for determining the utilities' percentage shares of the \$145 million relies on the individual utilities' percentages of the

total FY 1995 benefits. Thus, Congress intended that individual utility shares of the \$145 million would also reflect the individual utilities' shares of the FY 1996 forecasted benefits. If the true-ups were not included in the determination of the utilities' shares of the \$145 million, the shares of the utilities other than Puget would be greater than the forecasted benefits and Puget's share would be less than the forecasted benefits such that all utilities' benefits would not be "approximately equivalent" to the forecasted FY 1996 benefits. Conversely, if true-ups greater than the forecasted true-up of \$10 million were included in the determination of the utilities' shares of the \$145 million, all parties' shares would also not be "approximately equivalent" to the forecasted FY 1996 benefits. In summary, the Appropriations Act, its legislative history, the facts, and simple logic establish that the three conditions identified by the parties are satisfied.

Puget argues that the BPA residential exchange forecast provided to Congress, BPA's Revenue Requirement Study, WP-95-FS-10, was part of a rate case that was settled rather than the outcome of a contested case. First, it should be noted that the rate case was settled with most, but not all, of the parties. In any event, however, the publication of the forecast as part of BPA's final rate case studies is irrelevant. BPA is the federal agency responsible for developing forecasts of residential exchange costs. BPA has tremendous expertise in developing residential exchange cost forecasts and has done so since the inception of the residential exchange program in 1981. The fact that the rate case in which BPA's most recent forecast was presented was settled with most parties does not change the fact that this was the most recent forecast developed by BPA. BPA studies do not have to be part of a rate case to reflect BPA's analysis of any particular issue. Furthermore, the final study was BPA's official basis for the rates developed in the rate case, even where the case was settled. Because not all parties agreed to the settlement, the study would be the basis upon which BPA would defend its rates upon judicial review. In summary, BPA's residential exchange cost forecast was BPA's most recent forecast and provided the most reliable and only identified estimate of residential exchange costs available at the time of the legislation.

While BPA is not required by law to seek written comment from the public in conducting an interpretative rulemaking, BPA chose to do so. This was done for two reasons. First, BPA recognizes that all of BPA's major customer groups within the region were involved in discussions with Congress in Washington, D.C., regarding the development of the residential exchange language in the Appropriations Act. Each of BPA's customers or customer classes participating in these discussions has an understanding of the intent of the statutory language. Many of the commenting parties have very strong feelings about the intent of the Act. BPA wanted to afford all interested parties an opportunity to express their understandings of congressional intent regarding the legislation. A second reason that BPA chose to solicit written comments on the interpretative rulemaking was to benefit from the legal analysis of all interested parties. Through the benefit of the parties' legal analyses, BPA was able to develop a statutory interpretation based on the identification of all relevant legal issues. Because BPA adopted a modified version of Alternative 3 as identified in BPA's initial proposal, BPA rejected Alternatives 1, 2 and 4. BPA will now explain briefly why these particular alternatives were not adopted.



### Alternative 1.

No parties argued in support of Alternative 1. Alternative 1 views PRAM 4 as separate and in addition to the \$145 million in benefits for FY 1997. In addition, this alternative views the PRAM 4 amount, whatever and whenever it is determined, as part of the total FY 1995 benefits for purposes of determining the allocation percentages. This alternative was rejected for two primary reasons. First, it would be inconsistent with the Act and its legislative history. The legislative history establishes that exchanging utilities' "total fiscal year 1997 benefits [should be] approximately equivalent to the benefits they received in fiscal year 1996." While the legislative history refers to the "total fiscal year 1997 benefits" being approximately equivalent to FY 1996 benefits, the Act itself bases the allocation on the individual utilities' shares of total FY 1995 benefits. Thus, some intent to make individual utility benefits approximately equivalent to FY 1996 levels was also demonstrated. Alternative 1, however, would result in Puget receiving benefits greatly in excess of forecasted FY 1996 benefits while other exchanging utilities would receive benefits that were not "approximately equivalent" to forecasted FY 1996 benefits. The second reason this approach was rejected is that it precludes BPA from determining FY 1997 benefits for exchanging utilities until the final determination of the PRAM 4 true-up amount, which will not occur until 1997. Any benefit allocations would have to be subject to recovery and redistribution at the time the PRAM 4 amount was determined. It is unlikely Congress would have intended such an impractical methodology for providing exchange benefits for FY 1997.

### Alternative 2.

Three of BPA's investor-owned utility customers filed comments in this proceeding: PacifiCorp, Portland General Electric Company and Puget Sound Power & Light Company. In addition, joint comments were filed by the Commissions, et al., who share the IOUs' interest in ensuring that the IOUs receive the largest amount of exchange benefits possible. These parties supported Alternative 2 as identified in BPA's initial proposal. Alternative 2 views PRAM 4 as benefits for FY 1995 and therefore as separate and in addition to the \$145 million in benefits for FY 1997. In addition, this alternative calculates the total FY 1995 benefits for purposes of determining the allocation percentages based on the assumption that FY 1995 benefits must have been actually paid prior to enactment of the Act in order to be included in total FY 1995 benefits. For this reason, Alternative 2 excludes the PRAM 4 true-up amount from the calculation of FY 1995 benefits.

These parties based their comments on three primary arguments. First, they argue that the PRAM 4 true-up is not part of the \$145 million payment for FY 1997. This argument relies on the statutory language that the benefits "shall be \$145,000,000 for fiscal year 1997." Because the PRAM 4 true-up is for FY 1995, not 1997, the PRAM true-up would be in addition to the \$145 million. As discussed previously, however, this interpretation ignores the legislative history of the Act which provides that the \$145 million in total FY

1997 benefits to exchanging utilities was intended to be "approximately equivalent to the benefits they received in fiscal year 1996." H.R. Conf. Rep. No. 293, 104th Cong., 1st Sess. 95 (1995). The Conference Report's reference to "the benefits they received in fiscal year 1996" was a reference to a forecast of benefits that exchanging utilities were expected to receive for the 1996 fiscal year. At the time the Conference Report was published, the latest forecast of FY 1996 residential exchange benefits was included in the final studies from BPA's 1995 rate case and based upon the final rates developed in that case. See BPA's Final 1995 Revenue Requirement Study, WP-95-FS-BPA-10, page 56. See Affidavit of Raphael M. Grinberg, Attachment 3. The level of forecasted FY 1996 exchange benefits from the forecast was provided to BPA's Washington, D.C. office and was used in discussions with congressional staff and interested parties regarding the legislation. See Affidavit of Stephen J. Wright, Attachment 4. BPA's forecast of FY 1996 benefits was \$147.5 million, which included implementation and administrative and general overhead costs of approximately \$3 million and a projected estimate of \$10 million for a PRAM 3 true up. See Affidavit of Raphael M. Grinberg, Attachment 3. Because a \$10 million payment for the PRAM 3 true-up was included within the forecasted \$144.5 million of FY 1996 benefits, this demonstrates that the \$145 million provided by Congress for FY 1997 benefits also included a component for a PRAM true-up. It is therefore appropriate that a component for the PRAM 4 true up be included in determining the allocation of the \$145 million payment for FY 1997.

The second primary argument raised by the IOUs suggests that the PRAM 2 true-up should not be included in the FY 1995 net benefits for purposes of determining the allocation percentages. This argument relies on the statutory language providing that the allocation percentages are to be based on "the percentages of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995." The PRAM 2 true-up was for benefits paid for FY 1993, not FY 1995. Because the PRAM 2 true-up amount is not part of benefits paid for FY 1995, it should be excluded from FY 1995 net benefits for purposes of determining the allocation percentages. As discussed previously, BPA agrees with this argument and excluded the PRAM 2 true-up amount from the FY 1995 benefits.

The third primary argument raised by the IOUs is that the PRAM 4 true-up should not be included in the FY 1995 net benefits for purposes of determining the allocation percentages. The IOUs cite the statutory language providing that "the net benefits paid to each eligible electric utility shall be \$145 million multiplied by the percentage of the total of such benefits paid by the Administrator to such utility for fiscal year 1995." The IOUs argue that "paid" means paid for fiscal year 1995 as of the date of enactment of the Act. Because the PRAM 4 true-up will not be paid prior to enactment of the Act, the IOUs argue that it should not be included in the FY 1995 net benefits for purposes of determining the allocation percentages. This argument is not persuasive. In addition to the statutory language cited by the IOUs, additional language provides that the benefits for exchanging utilities "shall be \$145,000,000 for fiscal year 1997." The IOUs previously argued that this language meant that the PRAM 4 adjustment should not be included in the \$145 million because the PRAM 4 adjustment, while paid in FY 1997, was for benefits accrued in FY 1995. The language "for fiscal year 1997" and "for fiscal year 1995"

should be interpreted in the same manner. Therefore, the PRAM 4 true-up amount is comprised of benefits that were accrued in FY 1995 and is thus "for FY 1995." The IOUs' argument that the benefits paid to the utility for FY 1995 should be limited to benefits that were paid prior to enactment of the Act is not supported by statutory language. If Congress had intended such a limitation, it would have so indicated. Congress is clearly capable of establishing limitations based on the date of enactment of a particular statute as evidenced by section 3(10)(A) of the Northwest Power Act. 16 U.S.C. 839a(10)(A). In defining the term "Federal base system resources," Congress stated that such resources included "resources acquired by the Administrator under long-term contracts in force on the effective date of this Act." See also 16 U.S.C. 839e(b)(2)(B). In summary, the plain language of the Appropriations Act provides that "benefits paid by the Administrator to such utility for fiscal year 1995" means the amounts accrued for FY 1995, including the PRAM 4 true-up. As noted previously, however, Congress stated that it was establishing \$145 million in FY 1997 benefits in order to provide "total fiscal year 1997 benefits . . . approximately equivalent to the benefits they received in fiscal year 1996." The estimate of FY 1996 benefits was based on a forecast that included \$10 million for a PRAM adjustment, therefore, the \$145 million in FY 1997 benefits also includes a PRAM amount. If BPA were to include more than \$10 million of PRAM 4 in FY 1995 benefits, BPA would be increasing one utility's share over the other utilities and thus departing from congressional intent to keep the FY 1997 benefits "approximately equivalent" to FY 1996 benefits. For this reason BPA has included \$10 million of PRAM 4 in Puget's share of total FY 1995 benefits in calculating the allocation percentages.

#### Alternative 4.

The PPC and DSIs filed joint comments on BPA's interpretative rulemaking. These joint comments contain many of the same positions as other comments filed by BPA's public agency customers. All of these parties support Alternative 4 as identified in BPA's initial proposal. Alternative 4 views PRAM 4 as irrelevant to the payment of \$145 million in benefits for FY 1997 because those benefits are a cap for what is paid for FY 1997. In addition, this alternative views the PRAM 2 amount as part of the total FY 1995 benefits for purposes of determining the allocation percentages.

As noted in their comments, the PPC and DSIs have long had a direct interest in residential exchange issues because their members provide the preponderance of the funding for the program. The PPC and DSIs argue that the \$145 million is a cap on residential exchange monies for FY 1997. They argue that the \$145 million is a cap because Congress intended to balance the competing interests of controlling cash outlays by BPA and avoiding a precipitous change in cash receipts by utilities in FY 1997. In reviewing the statutory language and legislative history, they emphasize that there is consistent language providing that \$145 million is the total amount of benefits available for FY 1997. They also argue that the mechanism for distributing the \$145 million is the relative proportion of total residential exchange benefits that an eligible utility received for fiscal year 1995: "the total of such net benefits paid by the Administrator to such utility for

fiscal year 1995.” They argue that the year in which the benefits were accrued is irrelevant in determining the relative proportion of total residential exchange monies due an eligible utility and that the relevant consideration is when the monies are paid by the Administrator. The PPC and DSIs cite the legislative history of the Act in support of their argument, which provides that the payment of the \$145 million “should result in total fiscal year 1997 benefits to these consumers being approximately equivalent to the benefits they received in fiscal year 1996.” H.R. Conf. Rep. No. 293, 104th Cong., 1st Sess. 95 (1995).

The PPC and the DSIs have presented strong policy reasons behind their statutory interpretation. BPA agrees that at the time of the legislation, Congress was concerned with controlling cash outlays by BPA, because if costs were imposed on BPA above those that could be recovered through rates, BPA would risk being unable to make its payments to the Treasury. Congress also had a competing concern, that BPA’s rates could potentially result in a decline in exchange benefits to exchanging utilities in FY 1997 with resulting retail rate increases. With such concerns, it is logical that the \$145 million would be considered a cap to BPA’s total exposure for residential exchange costs for FY 1997 and that other adjustments would be precluded. It would make little sense to increase exchange benefits substantially from what they would have been if BPA’s rates were adopted, thereby placing an added burden on BPA’s ability to recover its costs through rates, only to have the increased amount subject to being increased even higher to accommodate another adjustment. Unfortunately, however, the legislative history of the Act is extremely limited. While the PPC and DSIs cite the statutory language that exchange benefits “shall be \$145 million for fiscal year 1997,” this does not necessarily preclude the payment of potential benefits accrued for a different fiscal year. As noted previously, the legislative history of the Act makes clear that Congress intended that exchange benefits would be “approximately equivalent to the benefits they received in fiscal year 1996.” Congress based its estimate of FY 1996 benefits on a forecast. This forecast included a component for PRAM. Where the forecast includes a component for PRAM, it is reasonable for PRAM to be considered in determining the proper allocation of the benefits. Furthermore, the legislative history’s statement that benefits would be “approximately equivalent to the benefits they received in fiscal year 1996” refers to the amount of total benefits that exchanging utilities would receive, but the statutory language is based on benefits accrued “for” particular fiscal years.

### Decision

*In determining the parties’ allocations of \$145 million in FY 1997 residential exchange benefits, BPA must first establish the total net benefits paid to exchanging utilities for FY 1995. The total net exchange benefits paid in FY 1995 were \$194,352,693 for the Residential Purchase and Sale Agreement (RPSA) and \$258,398 for the Exchange Transmission Credit Agreement (ETCA), for a total of \$194,611,091 (see Issue 2 below). This figure excludes program implementation and administrative and general overhead costs. Consistent with BPA’s proposal regarding utilities that have terminated their RPSA or ETCA since FY 1995 (see Issue 3 below), the total net exchange benefits for*

*FY 1995 should be reduced by \$232,985 to \$194,378,106 to reflect Lincoln Electric Cooperative's termination of its RPSA. The \$194,378,106 figure is then reduced by \$30,804,278 to \$163,573,828 to reflect the removal of the PRAM 2 payment made in FY 1995 for FY 1993, including interest. This figure is then adjusted by adding \$10 million to reflect the PRAM 4 true up paid as part of FY 1995 benefits. This increases the total FY 1995 benefit level to \$173,573,828. Having established that the total net benefits for FY 1995 are \$173,573,828, BPA then determines each utility's percentage share of these benefits. These percentages are then applied to the \$145 million to determine the utilities' benefits for FY 1997. By including \$10 million for the PRAM 4 true up in total FY 1995 exchange benefits, Puget's allocation percentage increases and Puget's share of the \$145 million in FY 1997 benefits increases by \$8.354 million. In addition to Puget's percentage allocation of the \$145 million, BPA will pay Puget the actual amount of the PRAM 4 true up in excess of the \$8.354 million used to determine Puget's allocation percentage. Individual utility allocations of the \$145 million are shown in Attachment 2.*

## **II. Determining Total FY 1995 Exchange Benefits**

### **Issue**

*Whether total FY 1995 exchange benefits should be those published by BPA in its FY 1995 Annual Report and Generation and Sales Statistics Report modified, as necessary, to reflect the resolution of Issue 1.*

### **BPA's Position**

The total FY 1995 exchange benefits should be those published by BPA in its FY 1995 Annual Report and Generation and Sales Statistics Report modified, as necessary, to reflect the resolution of Issue 1.

### **Parties' Positions**

PacifiCorp was the only party filing comments on this issue. PacifiCorp agrees with BPA's position. PacifiCorp also states that program implementation costs should be excluded from total FY 1995 benefits.

### **Evaluation of Positions**

The total net exchange benefits paid in FY 1995 was \$194,352,693 for the Residential Purchase and Sale Agreement (RPSA) and \$258,398 for the Exchange Transmission Credit Agreement (ETCA), for a total of \$194,611,091. This figure excludes program implementation and administrative and general overhead costs. Consistent with BPA's proposal regarding utilities that have terminated their RPSA or ETCA since FY 1995 (see Issue 3 below), the total exchange benefits should be reduced by \$232,985 to \$194,378,106 to reflect Lincoln Electric Cooperative's termination of its RPSA. As noted above, the \$194,378,106 figure was subject to adjustment depending on the resolution of whether the Puget PRAM 2 or PRAM 4 true up amounts affect the FY 1995 percentage share calculations. See Issue 1. This amount is then reduced by \$30,804,278 to \$163,573,828 to reflect the removal of the PRAM 2 payment made in FY 1995 for FY 1993, including interest. Finally, because the resolution of Issue 1 includes \$10 million for PRAM 4 in FY 1995 benefits, the total FY 1995 benefit level is increased by \$10 million to \$173,573,828.

### **Decision**

*BPA will determine FY 1995 exchange benefits based on the benefits published by BPA in its FY 1995 Annual Report and Generation and Sales Statistics Report, less benefits received by Lincoln Electric Cooperative and Puget's PRAM 2 true-up, including interest, plus \$10 million for a total of \$173,573,828. Program implementation costs will not be included in FY 1995 exchange benefits.*

### **III. Terminated RPSAs and Eligibility to Receive Benefits for FY 1997**

#### **Issue**

*Whether utilities that terminated participation in the residential exchange program during or since FY 1995 should be eligible to receive benefits for FY 1997.*

#### **BPA's Position**

Utilities that terminated participation in the residential exchange during or since FY 1995 should not be eligible to receive residential exchange benefits for FY 1997. The total FY 1995 exchange benefits should be adjusted to remove benefits received by such utilities during FY 1995 for purposes of determining allocation percentages.

#### **Parties' Position**

PacifiCorp was the only party filing comments on this issue. PacifiCorp agrees with BPA's position. PacifiCorp states that any utility terminating its contract knowingly waived any future right to exchange benefits.

## **Evaluation of Positions**

Utilities that terminated their participation in the residential exchange program have done so through contractual agreements. In these agreements the utilities have given up their rights to any future exchange benefits through the term of the RPSA, which expires June 30, 2001.

Any payment made to a utility in FY 1995 that terminated its RPSA during or since FY 1995 should have its payments removed from the FY 1995 benefit amount. Only those utilities that remain active participants in the residential exchange program should receive a share of the \$145 million and should have their FY 1995 benefits included in the total used to determine the allocation percentages. This would ensure that the sum of the percentages equals 100 percent and that the entire \$145 million is allocated.

## **Decision**

*Utilities that terminated participation in the residential exchange during or since FY 1995 are not eligible to receive residential exchange benefits for FY 1997. The total FY 1995 exchange benefits will be adjusted to remove benefits received by such utilities during FY 1995 for purposes of determining allocation percentages.*

## **IV. Eligibility to Receive Benefits for FY 1997 for RPSAs or ETCAs Activated after September 30, 1995**

### **Issue**

*Whether utilities that activated an RPSA or ETCA after September 30, 1995, should be eligible to receive benefits for FY 1997.*

### **BPA's Position**

BPA should not pay FY 1997 benefits to any utility that activates an RPSA or ETCA after September 30, 1995.

### **Parties' Positions**

PacifiCorp was the only party filing comments on this issue. PacifiCorp agrees with BPA's position, noting that Congress's intent was that a set level of benefits would be provided only to utilities exchanging and receiving benefits during FY 1995.

### **Evaluation of Positions**

The Appropriations Act establishes the residential exchange benefit level for FY 1997 at \$145 million and prescribes a method for calculating each utility's share of the \$145 million. Utilities that did not have an active RPSA or ETCA during FY 1995 do not have exchange benefits upon which to calculate a percentage for allocating the \$145 million. The Appropriations Act states that "the net benefits paid to each eligible electric utility for fiscal year 1997 shall be \$145,000,000 multiplied by its percentage of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995." If a utility did not receive benefits in FY 1995, there is no means by which to calculate the percentage to use in determining its share of the \$145 million. This is supported by the legislative history of the Act, which provides that the legislation "[e]stablishes the total amount of benefits available for residential and small farm consumers . . . for fiscal year 1997." H.R. Conf. Rep. No. 293, 104th Cong., 1st Sess. 95 (1995). Because the \$145 million is the total amount of exchange benefits to be paid for FY 1997, there are no benefits available for those utilities which do not satisfy the allocation criteria, that is, those utilities which did not receive a portion of the residential exchange benefits paid for FY 1995. However, any utility that activates an ETCA or RPSA post-FY 1995 should be allowed to participate in the exchange program from the effective date of its election to participate, except that it should receive no net exchange benefits for the FY 1997 period. Benefits for eligible exchange load prior to October 1, 1996, should be paid if owed. Payment of benefits to such utilities for eligible FY 1997 load should be suspended during FY 1997. Eligible load occurring after October 1, 1997, will be invoiced and paid in the normal manner.

### **Decision**

*BPA will not pay FY 1997 benefits to any utility that activates an RPSA or ETCA after September 30, 1995.*

### **V. Deemer Status in FY 1995 and Eligibility to Receive FY 1997 Benefits**

#### **Issue**

*Whether utilities in "deemer" status in FY 1995 should be eligible to receive benefits for FY 1997.*

#### **BPA's Position**

Utilities that were in "deemer" status in FY 1995 did not receive actual positive exchange payments in FY 1995 and should receive no portion of the \$145 million for FY 1997.



## **Parties' Positions**

PacifiCorp was the only party filing comments on this issue. PacifiCorp agrees with BPA's position that utilities receiving no positive benefits in FY 1995 should receive no benefits for FY 1997. PacifiCorp requests clarification of this proposal, however, noting that a utility serving more than one jurisdiction should not be denied FY 1997 benefits if "one (but not all) of its jurisdictions was in deemer status in FY 1995."

## **Evaluation of Positions**

Utilities that were in "deemer" status in FY 1995 did not receive actual positive exchange payments. Although a utility's deemer balance may have decreased during FY 1995, indicating that positive benefits would have been received if the utility had no deemer balance, this is not the same as receiving positive exchange benefits. There were no actual payments made to the utility or benefits passed on to the utility's residential and small farm customers. Furthermore, the RPSA requires that utilities zero out their deemer balances before they are eligible to receive positive exchange benefits. As noted in Issue 4 above, where a utility did not receive benefits in FY 1995 there is no means by which to calculate the percentage to use in determining its share of the \$145 million. Furthermore, because \$145 million comprises the total benefits available for FY 1997, no benefits are available for those utilities that did not receive a portion of the residential exchange benefits paid for FY 1995.

PacifiCorp argues that a utility is eligible to receive FY 1997 benefits even if one (but not all) of its jurisdictions was in deemer status in FY 1995. Because the calculation of FY 1997 benefits should be based only on jurisdictions receiving positive exchange benefits in FY 1995, the distribution of such benefits should only be to those jurisdictions and not the deemer jurisdictions. PacifiCorp's argument on this issue is not a concern because no utility meets the conditions described by PacifiCorp.

## **Decision**

*Utilities that were in "deemer" status in FY 1995 did not receive actual positive exchange payments in FY 1995 and will receive no portion of the \$145 million for FY 1997.*

## **VI. Deemer Status in FY 1997 and Eligibility to Receive FY 1997 Benefits**

### **Issue**

*Whether utilities in "deemer" status in FY 1997, but which received positive exchange benefits in FY 1995, should be eligible to receive benefits for FY 1997.*

### **BPA's Position**

Utilities that have deemer balances as of October 1, 1996, but which received positive exchange payments in FY 1995, should receive a portion of the \$145 million for FY 1997 based on their allocation percentages, less any accrued deemer balance.

### **Parties' Positions**

PacifiCorp was the only party filing comments on this issue. PacifiCorp argues that a utility that received benefits in FY 1995 but which has a deemer balance as of October 1, 1996, should receive its full share of the \$145 million. PacifiCorp contends that Congress made clear that benefits were to be paid to eligible utilities based on net benefits paid to those utilities for FY 1995 and without regard to rates established by BPA for FY 1997. PacifiCorp recommends that a utility receiving FY 1995 benefits but in (or entering) deemer status as of October 1, 1996, should be allowed to freeze its deemer balance for FY 1997. This would afford such utility treatment equivalent to that proposed by BPA for utilities not receiving benefits in FY 1995 and in deemer status as of October 1, 1996. See Issue 7. Similarly, a utility with one or more (but not all) jurisdictions that received no benefits in FY 1995 should not have its total FY 1997 share reduced by the amount of deemer balances as of October 1, 1996.

### **Evaluation of Positions**

Benefits paid for FY 1995 determine allocation percentages for FY 1997. Consistent with provisions of the RPSA, however, a utility must work down or pay off its deemer balance before receiving actual cash benefits.

PacifiCorp argues that requiring a utility to work down or pay off its deemer balance before receiving its share of FY 1997 benefits is contrary to the Appropriations Act. PacifiCorp contends that Congress made clear that benefits were to be paid to eligible utilities based on net benefits paid to those utilities for FY 1995 and without regard to the rates established by BPA pursuant to its section 7(i) rate proceeding for FY 1997. Clearly, the statutory language specifies that FY 1997 benefits are to be determined and distributed outside BPA's established ratemaking and residential exchange program guidance. This unique statutory guidance applies only to FY 1997, however, and has no bearing on administration of the residential exchange program prior to FY 1997 or to deemer balances that might arise prior to FY 1997. The Appropriations Act requires that "the net benefits paid to each eligible electric utility shall be \$145 million for fiscal year 1997" (emphasis added). BPA will pay utilities their portion of the \$145 million but will not require this payment to be used to reduce the utility's deemer account balance prior to receiving payment.

PacifiCorp's argument that a utility's share of the \$145 million should not be reduced by a jurisdiction that received no benefits during FY 1995 and that has a deemer balance as of October 1, 1996, is not a concern because no utility meets this description.

### **Decision**

*Utilities that have deemer balances as of October 1, 1996, but which received positive exchange payments in FY 1995 may elect to freeze their deemer balances. See Issue 7. Such utilities will receive a portion of the \$145 million for FY 1997 based on their allocation percentages, with no adjustment for any accrued deemer balance.*

## **VII. Treatment of Utilities' Deemer Balances in FY 1997**

### **Issue**

*Whether deemer balances should be tracked and adjusted for utilities that did not receive positive exchange benefits in FY 1995.*

### **BPA's Position**

A utility that has a deemer balance as of October 1, 1996, and which did not receive positive exchange benefits in FY 1995, should choose one of the following two options:

- I. Freeze its deemer balance at the amount as of October 1, 1996, for the entire year. The deemer balance, however, will continue to accrue interest at the applicable rate; or
- II. Continue to invoice BPA in the normal fashion, letting the deemer balance change each month as a result of the invoice amount. The deemer balance will continue to accrue interest at the applicable rate.

### **Parties' Positions**

PacifiCorp was the only party filing comments on this issue. PacifiCorp states that BPA's proposal is appropriate.

### **Evaluation of Positions**

The Appropriations Act changes the usual method by which utilities' residential exchange benefits are determined. Utility benefits for FY 1997 will be determined independent of the utilities' eligible exchange loads, ASCs, and BPA's Priority Firm rate. Benefits instead will be solely a function of some predetermined share of \$145 million. There is a possibility that some utilities receiving benefits under the Appropriations Act would, absent the law, begin to accrue deemer balances during FY 1997. However, deemer balances for utilities receiving FY 1997 benefits under the Act will not be affected. It would be inequitable to require a utility not receiving FY 1997 benefits to invoice BPA as

if the Act did not exist and be penalized by a growing deemer balance. By the same token, such utility should not be penalized by being foreclosed from submitting invoices in the normal fashion in order to work down its deemer balance.

### **Decision**

*A utility that has a deemer balance as of October 1, 1996, and which did not receive positive exchange benefits in FY 1995, must choose one of the following two options:*

- I. Freeze its deemer balance at the amount as of October 1, 1996, for the entire year. The deemer balance, however, will continue to accrue interest at the applicable rate; or*
- II. Continue to invoice BPA in the normal fashion, letting the deemer balance change each month as a result of the invoice amount. The deemer balance will continue to accrue interest at the applicable rate.*

### **VIII. Timing of Distribution of Benefits**

#### **Issue**

*When should BPA distribute each utility's share of the \$145 million during FY 1997?*

#### **BPA's Position**

BPA should distribute each utility's share of the \$145 million for FY 1997 in 12 equal installments beginning December 1996, payable on the last business day of the month.

#### **Parties' Positions**

PacifiCorp states that BPA's proposal is acceptable. PNGC agrees with "the traditional two month lag," e.g., payment for October arriving in December. PNGC is concerned, however, that such lag not deprive a utility of its full FY 1997 benefits if it should terminate its RPSA after September 30, 1996.

#### **Evaluation of Positions**

The Appropriations Act makes no reference to the method in which BPA shall distribute the FY 1997 benefits to exchanging utilities. Payment of benefits to utilities at the end of the month simulates how exchanging utilities currently receive payment from BPA. Utilities currently submit a monthly invoice to BPA after they have determined the amount of eligible load. BPA then processes the invoice and arranges for payment by wire transfer. This results in a delay from the time the load was accrued and the actual time of payment to the utility. Since payment for September exchange loads does not normally occur until November, payment of FY 1997 benefits commencing in December will maintain an unbroken stream of residential exchange payments.

PNGC is concerned that a utility terminating its RPSA after September 30, 1997, might forego up to two months' FY 1997 benefits. However, a utility terminating its RPSA after FY 1997 should be considered to have participated in the residential exchange program for the entirety of FY 1997 and therefore be eligible to receive its full share of FY 1997 benefits. Any termination would be by contract which would specify the disposition of any amounts owed to or owed by the utility prior to the effective date of termination.

### **Decision**

*BPA will distribute each utility's share of the \$145 million for FY 1997 in 12 equal installments beginning December 1996, payable on the last business day of the month. Any utility receiving a share of the \$145 million and terminating its RPSA after September 30, 1997, will receive its full allocated share of FY 1997 benefits.*

## **IX. Utility and BPA Obligations Under the RPSA, ETCA and the 1984 ASC Methodology (ASCM)**

### **Issue**

*How to implement the provisions of the RPSA, ETCA, and the 1984 ASC Methodology during FY 1997.*

### **Parties' Positions**

PacifiCorp was the only party filing comments on this issue. PacifiCorp notes that the Conference Report recommended that BPA and its customers work together to phase out the residential exchange program by October 2001. A phase-out will not be possible without a fair resolution for the residential customers of exchanging utilities. Such a resolution could potentially eliminate the need for some or all of the administrative costs now associated with the exchange program, resulting in possible savings. BPA should consider the potential for a resolution which protects the interests of the exchange beneficiaries and reduces its costs.

### **BPA's Position**

With the exception of section 5 of the RPSA regarding utilities' submissions of accounting invoices (see Issue 10), utilities and BPA are still obligated to comply with the requirements of the RPSA, ETCA, and 1984 ASCM during FY 1997. Utilities continue to be required to directly pass through all residential exchange benefits to their residential and small farm customers.

## **Evaluation of Positions**

While the Appropriations Act has established the amount of net exchange benefits for FY 1997, parties must still comply with the requirements of the 1984 ASCM and the RPSA and ETCA in order to provide an efficient transition into FY 1998. Utilities still must make Preliminary and Revised Appendix 1 Filings with BPA in accordance with the 1984 ASCM. BPA will continue to review Appendix 1 filings and issue final determinations of ASC in accordance with the 1984 ASCM. However, any change in a utility's ASC during FY 1997 will not affect its FY 1997 benefit payments. Beginning October 1, 1997, a utility's benefits will be computed with its ASC in effect at that time in accordance with the RPSA, ETCA, and 1984 ASCM.

Utilities must directly pass through all residential exchange benefits to their residential and small farm customers. BPA retains the authority to review the manner in which utilities pass through benefits to such customers.

While PacifiCorp encourages BPA to consider the potential for a resolution of the residential exchange program which protects the interests of the exchange beneficiaries and reduces BPA's costs, no such resolution has occurred at this time. This issue will be addressed outside of this proceeding. BPA is willing to consider PacifiCorp's suggestion in the proper forum.

## **Decision**

*With the exception of section 5 of the RPSA regarding utilities' submissions of accounting invoices (see Issue 10), utilities and BPA are still obligated to comply with the requirements of the RPSA, ETCA, and 1984 ASCM during FY 1997. Utilities must directly pass through all residential exchange benefits to their residential and small farm customers. BPA retains the authority to review the manner in which utilities pass through benefits to such customers.*

## **X. Invoicing Requirements**

### **Issue**

*Whether, and if so, how, utilities should be required to submit invoices for FY 1997 exchange load.*

### **BPA's Position**

Utilities should not be required to submit monthly invoices to BPA for payment of residential exchange benefits for FY 1997. However, on or before December 1, 1997, utilities must submit to BPA an end of year statement for FY 1997 showing the eligible

monthly energy exchange load by jurisdiction. In addition, the end of year statement must distinguish between irrigation and other eligible exchange load.

### **Parties' Positions**

PacifiCorp was the only party filing comments on this issue. PacifiCorp supports BPA's proposal.

### **Evaluation of Positions**

A statement of load exchanged by month in each fiscal year is needed by BPA for verification purposes. Even though utilities will not be required to submit a monthly invoice for payment, they should keep a record of the amount of load eligible for exchange benefits. BPA will need to have the annual statement of load by month in order to conduct its compliance review program. Utilities may choose to provide BPA the information on a monthly basis.

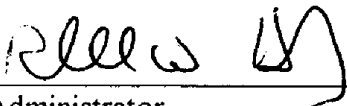
### **Decision**

*Utilities are not required to submit monthly invoices to BPA for payment of residential exchange benefits for FY 1997. However, on or before December 1, 1997, utilities must submit to BPA an end of year statement for FY 1997 showing the eligible monthly energy exchange load by jurisdiction. In addition, the end of year statement must distinguish between irrigation and other eligible exchange load.*

## CONCLUSION

Based upon BPA's legal interpretation of the applicable provisions of the Energy and Water Development Appropriations Act, P.L. 104-46, the factual and legal arguments of all parties contained in the administrative record compiled in this proceeding, the decisions expressed in this Record of Decision, and all other applicable requirements of law, I hereby adopt this interpretative rule of the Bonneville Power Administration establishing an allocation methodology for the distribution of \$145 million for FY 1997 residential exchange benefits.

Issued at Portland, Oregon this 14<sup>TH</sup> day of May, 1996.

  
\_\_\_\_\_  
Administrator



## Attachment 1

### **Parties Providing Written Comments Regarding The Interpretative Rulemaking**

City of Ashland	Northern Lights
Benton County PUD	Pacific County PUD
City of Cheney	Pacific Northwest Generating Cooperative
Clallam County PUD	PacifiCorp
Douglas County PUD	Portland General Electric Co. (PGE)
Town of Eatonville	Public Power Council (PPC)
Elmhurst Mutual Power & Light	Puget Sound Power & Light Co. (Puget)
Franklin County PUD	Ravalli County Electric Coop
Grays Harbor PUD	Snohomish County PUD
Inland Power & Light	Springfield Utility Board
Klickitat County PUD	Tillamook People's Utility District
Kootenai Electric Cooperative	Umatilla Electric Coop
Lewis County PUD	Vera Water & Power
Lincoln Electric Cooperative	Wahkiakum County PUD
Lower Valley Power & Light	Wasco Electric Coop
Mason County PUD	Washington Public Utility Districts Ass.
City of Milton	

Washington Utilities and Transportation Commission  
Oregon Public Utility Commission  
Idaho Public Utility Commission  
Public Counsel Section of the Office of the Washington Attorney General  
Citizen's Utility Board of Oregon

**Attachment 2**

**FY 1997 Residential Exchange Program Benefits**

<u>Utility</u>	<u>FY 1995 Benefits</u>	<u>%</u>	<u>FY 1997 Benefits</u>
Pacific Power & Light	\$16,836,320	9.70%	\$14,064,715
Portland General Electric	\$52,544,060	30.27%	\$43,894,225
Puget Sound Power & Light 1/	\$77,879,381	44.87%	\$65,058,830
Utah Power & Light	\$16,859,242	9.71%	\$14,083,863
 Subtotal IOUs	 \$164,119,003	 94.55%	 \$137,101,634
 Benton REA	 \$361,416	 0.21%	 \$301,919
Blachly Lane	\$119,771	0.07%	\$100,054
Central Electric	\$1,843,744	1.06%	\$1,540,226
Clearwater Power	\$200,501	0.12%	\$167,494
Consumers Power	\$892,983	0.51%	\$745,980
Coos-Curry Electric	\$525,978	0.30%	\$439,391
Douglas Electric	\$477,658	0.28%	\$399,026
Fall River Electric	\$291,773	0.17%	\$243,741
Harney Electric (ETCA)	\$258,398	0.15%	\$215,860
Lost River	\$39,040	0.02%	\$32,613
Lower Valley P & L	\$954,970	0.55%	\$797,762
Oregon Trail	\$2,736,030	1.58%	\$2,285,623
Raft River Electric	\$471,918	0.27%	\$394,231
Umatilla Electric	\$280,645	0.16%	\$234,445
 Subtotal Publics	 \$9,454,825	 5.45%	 \$7,898,366
 Totals	 \$173,573,828	 100.00%	 \$145,000,000

1/ Excludes PRAM and associated interest payments of \$30,804,2787 made in FY 1995.  
Includes \$10,000,000 forecasted PRAM 4 payments.

UNITED STATES DEPARTMENT OF ENERGY

BEFORE THE

BONNEVILLE POWER ADMINISTRATION

In the Matter of BPA's Interpretative )  
Rulemaking for Allocation of FY 1997 )  
Residential Exchange Benefits )

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AFFIDAVIT OF RAPHAEL M. GRINBERG

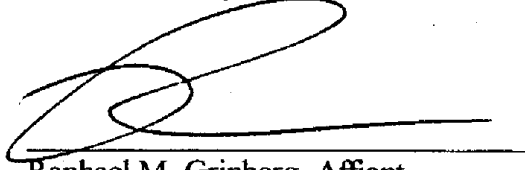
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I, Raphael M. Grinberg, Financial Analyst for the Bonneville Power Administration (BPA), hereby state and swear as follows:

1. In my employment by BPA, I am responsible for the development of forecasts of the residential exchange benefits provided by BPA to utilities participating in the residential exchange program.
2. I worked on BPA's forecast of residential exchange benefits for fiscal year 1996 that was published in BPA's final 1995 Rate Case Revenue Requirement Study, WP-95-FS-10.
3. BPA's 1995 rate case residential exchange forecast for fiscal year 1996 was the most recent forecast of fiscal year 1996 residential exchange benefits available during the development of the residential exchange provisions of the Energy and Water Development Appropriations Act, Public Law 104-46.
4. During the development of the residential exchange provisions of the Energy and Water Development Appropriations Act, Public Law 104-46, I received a request from Stephen J. Wright, Vice President Manager of the Bonneville Power Administration's (BPA's) Washington, D.C. office, for the results of BPA's most recent forecast of fiscal year 1996 residential exchange benefits.
5. In response to Mr. Wright's request, I provided Mr. Wright with the results of BPA's most recent forecast of fiscal year 1996 residential exchange benefits, which was the forecast contained in BPA's final 1995 Rate Case Revenue Requirement Study, WP-95-FS-10, as noted above.

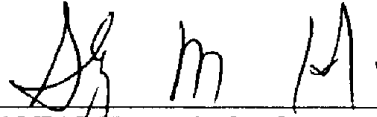
6. BPA's residential exchange forecast for FY 1996 benefits was \$147.5 million, which included implementation and administrative and general overhead costs of approximately \$3 million and a projected estimate of \$10 million for a PRAM 3 true up.

This statement is true and correct to the best of my knowledge and belief.



Raphael M. Grinberg, Affiant  
Bonneville Power Administration

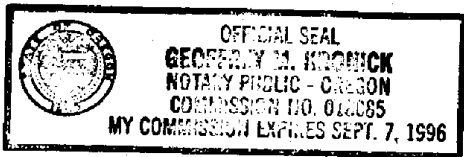
Subscribed and sworn to before me this 13 Friday of May, 1996.



NOTARY PUBLIC FOR THE STATE OF  
OREGON

County of Multnomah

My commission expires 9-7-96



UNITED STATES DEPARTMENT OF ENERGY

BEFORE THE

BONNEVILLE POWER ADMINISTRATION

In the Matter of BPA's Interpretative )  
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Residential Exchange Benefits )

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AFFIDAVIT OF STEPHEN J. WRIGHT

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I, Stephen J. Wright, Vice President Manager of the Bonneville Power Administration's (BPA's) Washington, D.C. office, hereby state and swear as follows:


1. In my capacity as Vice President of BPA, I provided information to congressional staff and interested parties regarding the residential exchange program administered by BPA during the development of the residential exchange provisions of the Energy and Water Development Appropriations Act, Public Law 104-46.

2. During the course of discussions with congressional staff and interested parties regarding the above-noted legislation, many parties expressed an interest in having the residential exchange benefits provided for fiscal year 1997 under the legislation be approximately equivalent to the benefits that exchanging utilities were forecasted to receive in fiscal year 1996.

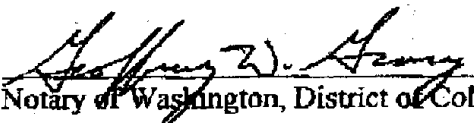
3. As part of these discussions, I advised congressional staff and interested parties regarding BPA's forecast of fiscal year 1996 residential exchange benefits of approximately \$150 million.

4. The information I provided was based on BPA's forecast of fiscal year 1996 residential exchange benefits as provided to me by BPA staff who prepared the forecast.

This statement is true and correct to the best of my knowledge and belief.

  
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Stephen J. Wright, Affiant  
Bonneville Power Administration

Subscribed and sworn to before me this 10th day of May, 1996.

  
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Notary of Washington, District of Columbia  
MY COMMISSION EXPIRES 9-30-98