

## 9.0 TRANSMISSION FOR NON-FEDERAL POWER

### 9.1 Introduction

BPA announced that it would address all GTA and GTA replacement issues in the power rate case, including determining the allocation of the costs to transmit the non-Federal power purchases of GTA customers over third-party transmission systems, and allocation of costs for delivering the Federal power purchases for such customers. 64 Fed. Reg. 44,318, 44,323 (1999). The treatment of GTA costs, whether for Federal or non-Federal power deliveries, is an issue that involves an equitable balancing of a number of historical, economic, and other factors. BPA built the Federal transmission system to provide regional transmission facilities to integrate Federal and non-Federal power, and to interconnect with other utility systems to transmit such power to existing and potential regional and interregional markets. *See* Bonneville Project Act, 16 U.S.C. §832a(b); and Transmission System Act, 16 U.S.C. §838b. These transmission services were provided on a rolled-in, average cost basis. The FCRTS was not extended to all of BPA's customers, however. BPA did not construct transmission facilities to some preference and DSI customers when it was less expensive to acquire GTA service over existing non-Federal transmission facilities. This decision resulted in lower overall network transmission rates that benefited all of BPA's customers.

BPA proposed that its historical GTA customers should be afforded the same opportunity as its other customers to acquire access to competitive bulk power markets and make non-Federal power purchases. Due to the unique history surrounding the provision of transmission service to BPA's historical GTA customers, BPA proposed to pay up to \$6.5 million annually for the acquisition of network equivalent non-Federal transmission service for their non-Federal power purchases and roll such costs into the network. The proposal was limited to arrangements that transfer non-Federal power *from* BPA's transmission system over a third-party's system and *to* BPA's historical GTA customers. BPA believes that this proposal provides an equitable solution to a complex historical problem, and promotes competition in wholesale power markets, avoids pancaked rates, and promotes open access.

Issues relating to GTAs and GTA replacement costs for Federal power deliveries are discussed in section 8.3. This section analyzes the record evidence and addresses issues regarding the treatment of third-party transmission costs for non-Federal power as raised by the parties in their briefs.

### 9.2 Payment of Non-Federal Transmission Cost for GTA Customers' Non-Federal Power Purchases

#### Summary Issue

*Whether BPA should pay up to \$6.5 million per year for transmission over third-party systems to deliver non-Federal power to customers historically served by GTAs, and roll such costs into the network cost.*

## **Summary of Parties' Positions**

The Idaho Consumer-Owned Utilities Association, Inc. (ICUA), NRU, PNGC, and PPC supported BPA's proposal. ICUA stated that the proposal was an appropriate means of providing Idaho customers and the regional electric utility community the opportunity to resolve transmission pricing and operations issues until a Regional Transmission Organization (RTO) is established. Gendron, WP-02-E-ID-01, at 2. NRU maintained that the BPA proposal promotes a level playing field for wholesale power purchasers, promotes competition in bulk power markets, and advances the national policy to eliminate pancaked rates. Saven, WP-02-E-NI-03, at 8. PNGC claimed that the BPA proposal allows customers served over GTAs to access Federal and non-Federal power suppliers equally, and mitigates adverse transmission rate impacts and uncertainty associated with pancaked rates. Holt and Scott, WP-02-E-PN-01, at 2-5. The PPC supported the BPA proposal so long as costs were limited to \$6.5 million a year to acquire network equivalent transmission. Hansen and O'Meara, WP-02-E-PP-08, at 1. WPAG generally supported BPA's GTA proposals. Oral Tr. 26.

CRITFC, Confederated Tribes and Bands of Yakama Nation (Yakama), and UCUT Tribes objected to BPA's proposal to the extent such offer was not also available to new preference customers. Sheets, WP-02-E-CR/YA-01, at 6; CRITFC/Yakama Brief, WP-02-B-CR/YA-01, at 48; UCUT Brief, WP-02-B-UC-01, at 10. The Joint DSIs opposed BPA's proposal, and claimed that BPA is not obligated by statute or common practice to pay for the transmission costs to deliver non-Federal power to some BPA customers. Schoenbeck and Bliven, WP-02-E-DS/AL/VN-06, at 22-27. The IOUs and Enron opposed BPA's proposal, and argued that the proposal is discriminatory and counter to FERC policy. The IOUs and Enron also asserted that the issue of pancaking should be addressed in RTO discussions. Brattebo *et al.*, WP-02-E-AC/GE/IP/MP/PL/PS/EN-05, at 7-10; Brattebo *et al.*, WP-02-E-AC/GE/MP/PL/PS/EN-11, at 4; IOU/Enron Brief, WP-02-B-AC/GE/IP/MP/PL/PS/EN-01, at 65-72. The IOUs and Enron concluded that withdrawal of the proposal would not result in GTA customers suffering economic harm, as it is unlikely that they will purchase much non-Federal power. Brattebo *et al.*, WP-02-E-AC/GE/MP/PL/PS/EN-11, at 6. The Public Generating Pool (PGP) argued that the issue of how costs should be allocated should be decided in the transmission rate proceeding; PGP opposed recovering the cost from network rates. Knitter and Peters, WP-02-E-PG-01, at 2; Knitter and Peters, WP-02-E-PG-02, at 1-2; PGP Brief, WP-02-B-PG-01, at 3.

## **Summary of BPA's Position**

BPA proposed to pay up to \$6.5 million annually for network equivalent non-Federal transmission service *from* BPA's network to deliver non-Federal power *to* customers historically served by GTAs. Metcalf and Furst, WP-02-E-BPA-35 at 1-3. BPA argued that its proposal would promote competition in bulk power markets and avoid introducing pancaked rates. *Id.* at 2-3. The lesser of \$6.5 million or the forecast of the cost of network equivalent non-Federal transmission would be included in BPA's network cost. *Id.* at 3.

## **Summary Evaluation of Positions**

BPA would roll the lesser of \$6.5 million or the forecast of the cost of network equivalent non-Federal transmission into its network cost. Metcalf and Furst, WP-02-E-BPA-35, at 3. If BPA's forecast cost exceeded the cap, then BPA would calculate for each GTA customer a preliminary load percentage that would limit BPA's costs to \$6.5 million per year. *Id.* at 6. BPA also proposed to include losses over the non-Federal transmission systems BPA paid for in the calculation of BPA's network loss factors. *Id.* at 7. Finally, BPA proposed that where both Federal and non-Federal power could be delivered at both GTA or BPA points of delivery, a *pro rata* share of the Federal and non-Federal power would be delivered over each path. PBL would pay the cost for delivering Federal power over the non-Federal point, and TBL would pay the cost for delivering non-Federal power over the same point consistent with the proposal described herein. *Id.* at 7-8. No parties raised any issue in their briefs on the allocation methodology if the cap is exceeded, the allocation methodology for GTA customers with both Federal and non-Federal points of delivery (PODs), or the treatment of losses. Accordingly, consistent with BPA's Procedures, where no issue is raised then the parties shall be deemed to take no position on these issues. Moreover, arguments are deemed to be waived. *Procedures*, §1010.13(c).

The parties' briefs raised several legal, factual, and policy issues to be resolved by the Administrator. Evaluations of the parties' and BPA's positions on these contested issues are presented below.

### **Sub-Issue 1**

*Whether BPA should decide in the power rate proceeding whether to pay up to \$6.5 million per year for transmission over third-party systems to deliver non-Federal power to GTA customers.*

PGP objected to the Administrator making a decision in the power rate case on BPA's proposal to pay for third-party transmission service to deliver non-Federal power to GTA customers. PGP argued that the decision should be made in the transmission rate case. Knitter and Peters, WP-02-E-PG-01, at 2; Knitter and Peters, WP-02-E-PG-02, at 2; PGP Brief, WP-02-B-01, at 2. ICUA, NRU, and PNGC maintained that they needed a decision regarding GTA or GTA equivalent service for deliveries of both Federal and non-Federal power made in the power rate case in order to make informed choices on their power supply decisions during the Subscription process. Gendron, WP-02-E-ID-01, at 3; Saven, WP-02-E-NI-03, at 8; Holt and Scott, WP-02-E-PN-01, at 9-10. PNGC declared that without BPA's proposal, GTA customers would pay additional transmission costs up to 10 mills/kWh for delivery of non-Federal power purchases. They argued that these additional costs would make it uneconomic for them to participate in the competitive power markets. Holt and Scott, WP-02-E-PN-01, at 4. Thus, the decision on this issue is far more likely to affect a customer's choice of power supplier than decisions on other transmission issues that will be made in the transmission rate case. The IOUs and Enron claimed BPA's proposal was improper, and lessening or eliminating pancaked rates would best be addressed through an RTO process. Brattebo *et al.*, WP-02-E-AC/GE/IP/MP/PL/PS/EN-05, at 10; Brattebo *et al.*, WP-02-E-AC/GE/MP/PL/PS/EN-11, at 4; IOU Brief, WP-02-B-AC/GE/IP/MP/PL/PS-01, at 71.

NRU asserted that deferring the decision and waiting for an RTO was a chimera, as BPA's participation in an RTO is voluntary, and an RTO is not likely to provide relief for the relevant time frame. Saven, WP-02-E-NI-05, at 37.

BPA committed to address all issues on GTA-related costs, including GTA replacement costs, in the power rate case. Burns and Elizalde, WP-02-E-BPA-08, at 19-20; Cherry and Metcalf, WP-02-E-BPA-10, at 7. *See also* 64 Fed. Reg. 44318, 44323 (1999), providing that the allocation for non-Federal transmission costs for deliveries of Federal and non-Federal power to GTA customers would be decided in the power rate case. BPA included all GTA proposals in the power rate case because their resolution affects the level of the power revenue requirement. Burns and Elizalde, WP-02-E-BPA-08, at 19. BPA acknowledged that the GTA customers would be able to make more informed power purchase decisions by knowing BPA's decisions on the GTA issues for Federal and non-Federal power deliveries. Burns and Elizalde, WP-02-E-BPA-08, at 19-20; Cherry and Metcalf, WP-02-E-BPA-10, at 7.

PGP asserted that BPA "commingled" power and transmission decisions directly, and such action is contrary to FERC policy. PGP Ex. Brief, WP-02-R-PG-01, at 9. BPA does not understand PGP's assertion that power and transmission issues have been "commingled." GTA costs for Federal power deliveries were proposed to be included in the power rates. Cherry and Metcalf, WP-02-E-BPA-10, at 7. *See* discussion in section 8.3, *supra*, regarding GTA expenses for Federal power deliveries. The costs for non-Federal power deliveries were proposed to be included in transmission rates. *Id.* Non-Federal transmission costs for non-Federal power deliveries are addressed in this ROD chapter. The decisions made in the power rate case will not be revisited in the subsequent transmission rates and terms and conditions cases. *Id.* at 8. Tr. 316-318. PGP also claims that deciding these issues in the power rate case is a direct violation of Order 888. PGP Ex. Brief, WP-02-R-PG-01, at 9. PGP, however, fails to identify any particular provision of Order 888 that is violated.

The treatment of GTA costs for delivery of Federal or non-Federal power is an issue that involves an equitable balancing of a number of historical, economic, and other factors. It is appropriate that BPA evaluate these issues in one forum, rather than two. BPA, however, has not commingled the decisions.

### **Decision 1**

*BPA is addressing all issues concerning GTA and GTA replacement costs for Federal and non-Federal power deliveries for GTA customers in the 2002 power rate case. Accordingly, in this ROD BPA decides whether to pay for a portion of the non-Federal transmission costs for delivery of non-Federal power to GTA customers.*

### **Sub-Issue 2**

*Whether the costs for third-party transmission to deliver non-Federal power to GTA customers should be rolled into network cost, and whether such treatment is contrary to FERC policy.*

ICUA, PNGC, and NRU support rolling the third-party transmission costs for non-Federal power deliveries into BPA's network cost. Gendron, WP-02-E-ID-01, at 1; Holt and Scott, WP-02-E-PN-01, at 2; Saven, WP-02-E-NI-03, at 8, 10. ICUA stated that the FCRTS was not extended into Idaho for a variety of economic and political reasons. As a result, BPA established GTA service to Idaho customers in lieu of constructing network facilities. ICUA maintains that GTAs are the functional equivalent of BPA's network service. Gendron, WP-02-E-ID-01, at 1-2; ICUA Brief, WP-02-B-ID-01, at 1. ICUA opposes directly assigning the costs to GTA customers. ICUA Brief, WP-02-B-ID-02, at 8. PNGC declared that BPA's decision to acquire transmission through GTAs rather than constructing additional Federal transmission facilities was prudent. PNGC agreed with BPA that this decision resulted in lower overall network transmission rates that benefited all BPA customers, especially wheeling or predominantly wheeling customers. Holt and Scott, WP-02-E-PN-01, 2-3; PNGC Brief, WP-02-B-PN-01, at 19-20.

The IOUs and Enron claimed that Northwest utilities used a "one-system planning" model to avoid building duplicative facilities. They admitted that this practice benefited the region's power and wheeling customers, but argued that such benefit is not a justification for rolling third-party transmission costs into BPA's network costs. Brattebo *et al.*, WP-02-E-AC/GE/IP/MP/PL/PS/EN-05, at 8-9. The IOUs and Enron contended that BPA's network rates were not lower because of GTA service. They maintained that GTA costs were historically assigned to the Fringe segment, and were charged to BPA's power customers. The IOUs and Enron asserted that the cost of duplicative facilities that might have been constructed would also have been charged to BPA's Fringe segment and borne by power customers. Brattebo *et al.*, WP-02-E-AC/GE/IP/MP/PL/PS/EN-11, at 4.

PGP argued that certain conditions should be met before the third-party transmission costs are recovered through network transmission rates. Knitter and Peters, WP-02-E-PG-01, at 2. These conditions include a demonstration that BPA applied for and acquired the third-party transmission, and that the non-Federal transmission capacity is available to any transmission customer, except Federal power. Knitter and Peters, WP-02-E-PG-01, at 3. PNGC countered that PGP's proposed conditions resulted in a higher test for inclusion of GTA costs in transmission rates than for any other type of forecasted transmission expense. Accordingly, PNGC argued, the PGP's proposed conditions should be rejected. Scott and Scher, WP-02-E-PN-17, at 15.

BPA's proposal to include non-Federal transmission cost in the network is due to the unique history surrounding the provision of transmission service to BPA's historical GTA customers. Scott and Scher, WP-02-E-PN-02, Attachment at 2. BPA built the Federal transmission system to deliver Federal power to BPA's preference and DSI customers and to other regional and inter-regional markets, and to provide wheeling service for non-Federal power. BPA did not construct transmission facilities to some preference and DSI customers when it was less expensive to acquire GTA service over existing non-Federal transmission facilities. Metcalf and Furst, WP-02-E-BPA-35, at 2. When BPA's non-GTA customers constructed resources or made non-Federal power purchases or sales, BPA provided transmission service to them on a rolled-in average basis. Scott and Scher, WP-02-E-PN-02, Attachment at 2. The GTA arrangements benefited all BPA power and transmission customers, particularly wheeling customers. BPA

spent less money on acquiring transmission service over the GTAs than it would otherwise have spent to construct transmission facilities. While the GTA costs were not included in BPA's network cost, the GTA customers' loads were allocated network costs. Metcalf and Furst, WP-02-E-BPA-35, at 2.

As a policy matter, BPA agrees that GTA customers should be afforded the same ability as BPA's other customers to acquire non-Federal power from BPA's transmission system over network-equivalent facilities without paying pancaked transmission rates. Scott and Scher, WP-02-E-PN-02, Attachment at 3. BPA capped the annual cost at \$6.5 million as a reasonable balance between mitigating the effect of pancaked rates on GTA customers and protecting the network transmission rates from large cost increases. Metcalf and Furst, WP-02-E-BPA-35, at 5. BPA will forecast costs in the transmission rate case based on the best information available at the time, and the lesser of the forecasted amount or \$6.5 million will be included in the network cost. *Id.* at 3. Only costs for which BPA could get billing determinants would be put into the network. Tr. 362.

The IOUs and Enron claimed that BPA's proposal to include the costs of third-party transmission service in its transmission network revenue requirement runs counter to FERC policy. Brattebo *et al.*, WP-02-E-AC/GE/IP/MP/PL/PS/EN-05 at 8. The IOUs, Enron, and the DSIs rely on *Niagara Mohawk Power Corp.(Niagara)*, 82 FERC ¶ 63,018 (1998) and *New England Power Co. (New England)*, 65 FERC ¶ 61,153 (1993) to support their argument that FERC policy would not allow past avoided costs to justify BPA's proposal to roll the costs into BPA's network rates. IOU Brief, WP-02-B-AC/GE/IP/MP/PL/PS-01, at 69; DSI Brief, WP-02-B-DS-01, at 83. These parties agree, however, that the FERC policy allows the transmission costs of facilities used as part of the transmission provider's integrated network to be included in the network transmission revenue requirement. *Id.* The DSIs also contend that such costs may be included in the utility's rates if it uses the facilities on a day-to-day basis. DSI Brief, WP-02-B-DS-01, at 83.

ICUA, PNGC, and NRU argue that BPA's proposal is consistent with FERC policy. ICUA maintains that BPA must provide the same level of service to users of its network as it provides for deliveries of Federal power. ICUA Brief, WP-02-B-ID-02, at 6. ICUA contends that the policies of Orders 888 and 889 argue forcefully for providing broad and nondiscriminatory access to bulk power markets. *Id.* at 7. PNGC claims that FERC's policy goals to hold the transmitting utility's native load customers harmless, and to charge third-party transmission customers the lowest reasonable cost-based rates, would be furthered by BPA's proposal. PNGC Brief, WP-02-B-PN-02 at 19. The proposal also would promote FERC's ultimate goal, articulated in the Regional Transmission Organization Notice of Proposed Rulemaking, of promoting fully competitive bulk power markets by providing an opportunity for historical GTA customers to avoid pancaked rates. *Id.* at 20. NRU acknowledges that FERC policies are many, and a comprehensive view recognizes that promoting wide and nondiscriminatory access to bulk power markets is among the most significant of FERC's concerns. Saven, WP-02-E-NI-05, at 36; NRU Brief, WP-02-B-NI-02, at 17. NRU contends that FERC policy does not prevent rolling in third-party costs if the facilities are effectively a part of the utility's integrated transmission system. Finally, NRU argues that elimination of pancaked rates is encouraged by Order 2000. NRU Brief, WP-02-B-NI-02, at 18; Oral Tr. 191. PPC notes that the IOU, Enron,

and DSI objections to BPA's proposal are based on FERC policy and precedent applicable to IOUs. PPC is unclear that this policy is applicable to BPA. PPC Brief, WP-02-B-PP-01, at 42.

BPA disagrees with the IOU, Enron, and DSI position that BPA's proposal is contrary to FERC policy. BPA's proposal meets the FERC test for inclusion of these costs in its transmission rates. TBL, historical GTA, or other open access transmission tariff eligible customers would acquire open access service over the non-Federal transmission system to deliver non-Federal power to historical GTA customers. That transmission would be available to be used on a day-to-day basis, in combination with BPA-owned facilities, to provide flexible open access service to such customers. BPA's proposal also supports FERC's policies to eliminate pancaked rates, and to promote competition in bulk power markets, in the context of the historical GTA service. Metcalf and Furst, WP-02-E-BPA-35, at 2-3. The IOUs/Enron claim that BPA is not proposing to eliminate pancaked rates, nor is BPA's proposal an incremental step in eliminating pancaked rates. IOUs/Enron Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 54 (IPC and MPC do not join the brief on this issue). BPA does not disagree. BPA clarified that it supports FERC's objectives under Order 2000 to establish RTOs which purpose, among others, is to eliminate pancaked rates. BPA, however, is neither proposing to eliminate pancaked rates nor rely on its proposal as an incremental step in eliminating pancaked rates. Rather, BPA's proposal is designed to avoid *introducing* pancaked rates to customers who have not faced them in the past. Tr. 380-383.

The IOUs/Enron also assert that the *Niagara* and *New England* opinions disallow the inclusion of third-party costs to deliver any power to retail load off the utility's system. IOU/Enron Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 53 (IPC and MPC do not join the brief on this issue). BPA disagrees that *New England* and *Niagara* opinions are concerned with *any* power deliveries to a utility's remote loads. BPA's proposal differs from the facts underlying FERC's policies that prohibit the inclusion of third-party transmission costs in a utility's transmission rates. Tr. 369. In the *New England* and *Niagara* opinions applicable to public utilities under the FPA, FERC did not allow the utilities to include third-party transmission costs to import remote generation *purchased* by the utility to serve its power customers, or that it used to deliver power *it owned or purchased* to serve its remote customers or retail load. *See New England*, 62 FERC ¶ 61,294, 62,908 (1993); and *Niagara*, 82 FERC ¶ 63,018, 65,136-7 (1998). BPA continues to treat as Federal power costs the costs of third-party transmission that is acquired to deliver power from Federal projects or power that BPA purchases to serve the full requirements needs of its remote customers. Tr. 369-370. *See also* section 8.3, *supra*. BPA clarified that this is not the purpose of the instant proposal. BPA would pay for the third-party transmission costs to deliver non-Federal power purchased by the historical GTA customer, not power purchased by BPA. Tr. 370.

The IOUs/Enron claim that BPA's proposal violates FERC's policy that the costs of facilities used to provide a particular transmission service should not be charged twice to customers who may use that service. IOU/Enron Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 54 (IPC and MPC do not join the brief on this issue). The IOUs/Enron assert that BPA will pay for such transmission only on the request of BPA's historical GTA customers, but would not acquire or pay for transmission over the same facilities that is acquired by other transmission customers. *Id.* The IOUs/Enron misunderstand BPA's proposal. It is available for the network equivalent

non-Federal transmission required for the delivery of non-Federal power to historical GTA customers. Metcalf and Furst, WP-02-E-BPA-35, at 3. The proposal is not limited to non-Federal transmission acquired only by GTA customers. The costs acquired by other transmission customers who access the same non-Federal transmission facilities from BPA's transmission system to deliver non-Federal power to historical GTA customers would also be eligible. Thus, there would be no double-charging under BPA's proposal.

Finally, PGP alleges that BPA's proposal violates FERC's Transmission Pricing Policy, because BPA fails to treat such costs as new construction or incremental costs; and such incremental costs have not been subjected to an "or" pricing or Direct Assignment test. PGP concludes that because BPA's proposal allegedly violates FERC's Transmission Pricing Policy, FERC will remand BPA's rates, and BPA's rates will not be sufficient to assure repayment of the Federal investment or meeting BPA's operating costs. PGP Ex. Brief, WP-02-R-PG-01, 8-12. PGP, however, fails to point to any record evidence that BPA's proposal contemplates any new construction or should be treated as new construction costs. BPA does not agree that the Transmission Pricing Policy relating to incremental costs is applicable to this transmission expense. BPA does not propose to construct any new transmission facilities. BPA proposes to pay only annual costs, not any new capital investment. Metcalf and Furst, WP-02-E-BPA-35, at 3. Because no new construction is contemplated, the "or" pricing test would not trigger. Furthermore, BPA's proposal is for the cost of transmission of non-Federal power over only *network-equivalent* transmission facilities. *Id.* Thus, even if the Transmission Pricing Policy were applicable, a Direct Assignment test is not required.

## **Decision 2**

*Rolling into the network the costs of third-party transmission service to deliver non-Federal power to historical GTA customers is appropriate and not contrary to FERC policy. It is an equitable solution to a complex historical problem, and would promote competition in wholesale power markets, avoid pancaked rates, and promote open access.*

## **Sub-Issue 3**

*Whether BPA's proposal is unduly discriminatory or preferential.*

The IOUs state that section 212(i) of the FPA requires the rates for certain BPA transmission service not be unjust, unreasonable, or unduly discriminatory or preferential. IOU Brief, WP-02-B-AC/GE/IP/MP/PL/PS-01, at 66; *see also* DSI Ex. Brief, WP-02-R-DS-01, at 22-23. The IOUs, Enron, Joint DSIs, and PGP maintain that limiting the BPA proposal to BPA's historical GTA customers is unduly discriminatory or preferential. Brattebo *et al.*, WP-02-E-AC/GE/IP/MP/PL/PS/EN-05, at 7; IOU Brief, WP-02-B-AC/GE/IP/MP/PL/PS-01, at 66; IOU/Enron Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 52 (IPC and MPC do not join the brief on this issue); Schoenbeck and Bliven, WP-02-E-DS/AL/VN-06, at 25-26; DSI Ex. Brief, WP-02-R-DS-01, at 23; PGP Brief, WP-02-B-PG-02, at 2.

ICUA claims that FERC's discrimination analysis examines whether the service a transmission owner provides to third-party users is similar to the service it provides itself. ICUA Brief,

WP-02-B-ID-02, at 6. ICUA concludes that BPA, through its reciprocity tariff and rates, must therefore provide the same level of service to other users of its network as it provides for deliveries of Federal power. *Id.* NRU claims that BPA's proposal is not unduly discriminatory or preferential, because BPA proposed to treat similarly situated customers, the entire class of customers served by GTAs, in the same way. Saven, WP-02-E-NI-05, at 34; NRU Brief, WP-02-B-NI-02, at 16.

In support of their argument that BPA's proposal is unduly discriminatory or preferential, the IOUs rely on the "undue" discrimination analysis articulated in *New England Power Pool (NEPOOL)*, 67 FERC ¶ 61,042 (1994). The IOUs claim that FERC's undue discrimination analysis examines whether factual differences justify different rates for similarly situated customers. IOU Brief, WP-02-B-AC/GE/IP/MP/PL/PS-01, at 66. In *NEPOOL*, FERC expanded its undue discrimination analysis to apply it to the rates and transmission services of the utility's own use of the system. *NEPOOL*, 67 FERC ¶ 61,042, at 61,132. The *NEPOOL* participants proposed to continue to discount transmission rates to existing generation jointly owned by the participants and charge full transmission rates to any new generation using the transmission system. FERC had previously found that the reduction in cost for one group of customers (the pool coordination group) was in the public interest and outweighed the reduction in wholesale competition. In *NEPOOL* it reevaluated that decision by looking at whether the proposal was so anti-competitive as to be unjust and unreasonable. *Id.* at 61,132-61,133.

In their brief on exceptions, the IOUs/Enron argued that FERC's undue discrimination analysis disallows *any* discrimination among similarly situated customers. IOU/Enron, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 52-53. BPA disagrees. FERC has long held that discrimination is unlawful under the FPA only when undue, and undue discrimination means "substantially different treatment to 'similarly situated' entities without good reasons." *ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp.*, 91 FERC ¶ 61,066, at 18 (2000) (citing *Pacific Gas & Electric Co.*, 38 FERC 61,242 (1987)). *See also The Electric and Water Plant Board of the City of Frankfort, Ky. v. Kentucky Utilities Co.*, 12 FERC ¶ 61,004 at 61,008 (1980) (where FERC found that discrimination that is undue or unreasonable is prohibited by the FPA, and discrimination which is anti-competitive in effect is presumptively undue).

These standards are not dissimilar to those articulated in *NEPOOL*. Here, BPA's proposal is a reasonable proposal that is available to historical GTA customers due to the unique history of providing transmission service to them. Eligibility is limited to the transmission of non-Federal power that is delivered *from* BPA's transmission system over a third party's system *to* historical GTA customers. No other BPA transmission customers are similarly situated to GTA customers. Moreover, the proposal is capped at the lower of \$6.5 million or the forecast of expected non-Federal power acquisitions by these customers. BPA settled on this cap as a reasonable balance to mitigate the effect on GTA customers of avoiding introducing pancaked rates and to protect network rates from large cost increases. Metcalf and Furst, WP-02-E-BPA-35, at 5. The proposal is in the public interest, as it promotes, rather than prevents, access to competitive bulk power markets, and it avoids introducing additional pancaked rates for non-Federal power deliveries *from* BPA's system *to* such customers' loads. *Id.* at 2-3. Finally, the proposal is not so anti-competitive as to be unjust and unreasonable. Nor does the proposal provide a significant advantage to historical GTA customers. The proposal levels the playing field to place historical

GTA customers in a position similar to BPA's other transmission customers. GTA customers, however, continue to be responsible, like all other BPA transmission customers, for transmission costs to deliver non-Federal power to BPA's transmission system. The proposal is expected to cause an increase to the transmission rates of less than 2 percent. Holt and Scott, WP-02-E-PN-02, Attachment at 3.

PNGC declared that without BPA's proposal, GTA customers would be significantly disadvantaged, as they would pay additional transmission costs up to 10 mills/kWh for delivery of non-Federal power purchases over third-party systems. They argued that these additional costs would make it uneconomic for them to participate in the competitive power markets. Holt and Scott, WP-02-E-PN-01, at 4-5. PNGC also pointed out that the inclusion of third-party wheeling costs for non-Federal power purchases allowed customers access to other power suppliers and eroded BPA's market power. Scott and Scher, WP-02-E-PN-07, at 11. Without BPA's proposal, the GTA customer's only economic power supplier other than BPA is the local IOU transmission provider. *Id.* at 12. PNGC argued that the IOU and Enron objection was merely an attempt to protect their own market power dominance over the captive GTA customers. *Id.* BPA's proposal is not unduly discriminatory and is consistent with the comparability standard, because it allows GTA customers to pay the same transmission costs regardless of whether they purchase power from the PBL or non-Federal power suppliers. All potential non-Federal power suppliers, including Enron and the IOUs, are eligible for this treatment.

The IOUs/Enron, CRITFC, Yakama, and UCUT also argue that BPA's proposal violates section 7(a)(2)(C) of the Northwest Power Act, which requires Federal transmission costs to be equitably allocated between Federal and non-Federal power using the transmission system. In addition, CRITFC, Yakama, and UCUT argue that the proposal is not consistent with section 10 of the Transmission System Act, containing similar provisions. IOU Brief, WP-02-B-AC/GE/IP/MP/PL/PS-01, at 66; IOU/Enron Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01; CRITFC/Yakama Brief, WP-02-B-CR/YA-01, at 50; UCUT Brief, WP-02-B-UC-01, at 12-15. The IOUs and Enron complain that it is inequitable to allocate the costs incurred for a group of customers to all users of the network. IOU/Enron Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 51-52. They also imply that the equitable allocation standard was intended to apply to customers traditionally *purchasing* Federal power. *Id.* at note 160. Section 7(a)(2)(C) clearly provides that transmission rates shall equitably allocate the costs of the Federal transmission system *between Federal and non-Federal power using the transmission system.* 16 U.S.C. §839e(a)(2)(C). As explained previously, the costs associated with the proposal are to deliver non-Federal power to historical GTA customers. Costs for GTA deliveries of Federal power are allocated to power rates as described in section 8.3, *supra*. BPA balanced competing issues and found that the public interest to provide access to and promote competitive bulk power markets and avoid the introduction of additional pancaked rates outweighed a small increase to network rates. Metcalf and Furst, WP-02-E-BPA-35, at 5. It is not uncommon for BPA to be faced with deciding whether costs incurred for service to particular utilities should be rolled into the network. A network rate increase is often the result of the aggregate of multiple projects and policies that benefit individual utilities. It would be inequitable for BPA to single out one of these projects or policies without considering the totality of the circumstances. Thus, balancing the competing

interests results in an equitable, or just and reasonable solution. CRITFC, Yakama, and UCUT contend that BPA's proposal is also a disincentive for the formation of new preference customers. CRITFC/Yakama Brief, WP-02-B-CR/YA-01; UCUT Brief, WP-02-B-UC-01, at 51-52. Preference status, however, grants public bodies and cooperatives priority access to Federal power, not to non-Federal power. 16 U.S.C. §832c(a).

The DSIs rely on section 205 of the FPA, which requires that a public utility's rates shall be just and reasonable, to assert that if BPA seeks reciprocity for its open access tariff its rates must also be just and reasonable. DSI Brief, WP-02-B-DS-01, at 82. The DSIs' reliance on section 205 is misplaced, as that section of the FPA applies to *public utilities* and is not applicable to BPA. 16 U.S.C. §824(e). Even if it were, the foregoing discussion demonstrates that the proposal is a just and reasonable resolution of the complex historical issues involved. In their brief on exceptions, the DSIs also claim that BPA's proposal is arbitrary, capricious, and contrary to law. DSI Ex. Brief, WP-02-R-DS-02. For the reasons described in the foregoing paragraphs and subsections, BPA disagrees that its proposal is arbitrary, capricious and contrary to law. See section 1.4, *supra*, for further discussion of the standard governing judicial review of BPA's rates. See also 16 U.S.C. §839f(e)(2).

### **Decision 3**

*BPA's proposal is not unduly discriminatory or preferential. BPA's proposal is in the public interest, as it promotes access to competitive bulk power markets, avoids the creation of additional pancaked rates, and is not anti-competitive. It takes into account historical equities, and results in an equitable or just and reasonable solution.*

### **Sub-Issue 4**

*Whether BPA's proposal should be modified to allow customers currently served by the South Idaho Exchange Agreement to participate.*

ICUA, NRU, and PNGC argued that BPA's proposal should be extended to customers currently served by the South Idaho Exchange Agreement between BPA and PacifiCorp. NRU claimed that the South Idaho Exchange Agreement serves a similar function as the GTAs, and urged BPA to provide the same treatment for utilities served from the South Idaho Exchange mechanism as BPA intended to provide to GTA customers. Saven, WP-02-E-NI-03, at 10-11; NRU Brief, WP-02-B-NI-02, at 16. ICUA recommended that BPA include deliveries of non-Federal power either through the South Idaho Exchange or an equivalent replacement. ICUA also contended that BPA should eliminate the requirement that non-Federal power deliveries come from the BPA network. Gendron, WP-02-E-ID-01, at 3. PNGC wanted BPA to extend its proposal to the South Idaho Exchange, and supported elimination of the requirement that non-Federal power use the BPA network for the affected South Idaho utilities. Holt and Scott, WP-02-E-PN-01, at 6-8; PNGC Brief, WP-02-B-PN-01, at 20-21. In contrast, the IOUs opposed any expansion of BPA's proposal. IOU Brief, WP-02-B-AC/GE/IP/MP/PL/PS-01, at 70. In particular, PacifiCorp argued that the South Idaho Exchange Agreement is limited to the exchange of Federal power and PacifiCorp power, and any amendment to the Agreement would require FERC approval.

PacifiCorp asserts, without citing to any testimony, that the affected South Idaho utilities may require transmission service over Idaho Power's facilities, as well as PacifiCorp's facilities. *Id.*

The proposal is available for the delivery of non-Federal power that uses BPA's network to historical GTA customers with existing service territories. Payment under the proposal would be limited to the cost of non-Federal transmission service from BPA's network *over* the intervening non-Federal transmission system *to* such customers, up to the limits of the proposal. Metcalf and Furst, WP-02-E-BPA-35, at 4. BPA maintained that no modification to its proposal was necessary to allow customers currently served through the South Idaho Exchange to participate. Metcalf and Furst, WP-02-E-BPA-57, at 2. BPA explained that transmission service could be provided to the affected South Idaho utilities if non-Federal power deliveries used a South Idaho Exchange mechanism or the redispatch provisions of a non-Federal utility's open access tariffs. *Id.* Redispatch arrangements, including arrangements like the South Idaho Exchange, are consistent with FERC policy if they are made by the utility's transmission function. *See Utah Associated Municipal Power Systems (UAMPS) v. PacifiCorp*, 83 FERC ¶ 61,337 (1998) (where FERC concluded that all redispatch arrangements were the responsibility of the transmission function). On rehearing, FERC clarified that where PacifiCorp's merchant function purchased power at receipt points on PacifiCorp's transmission system, and simultaneously sold the same amount of power to the party at other delivery points on PacifiCorp's transmission system, such redispatch arrangement effected transmission service. *See UAMPS v. PacifiCorp*, 87 FERC ¶ 61,044 (1999). FERC reiterated that this type of arrangement is the responsibility of the transmission function. *See also, Arizona Public Service Co. (Arizona) v. Idaho Power Co. (IPC)*, 87 FERC ¶ 61,303 (1999), where FERC directed IPC to consider whether redispatch could serve to meet Arizona's transmission request; and IPC's Compliance Filing, July 19, 1999, concluding that there may be some capacity available in months of the year other than July for short-term or monthly firm service.

BPA rejected the ICUA and PNGC proposal that would eliminate the requirement that non-Federal power be delivered from the BPA network to the third-party transmission system for customers currently served by the South Idaho Exchange. Metcalf and Furst, WP-02-E-BPA-57, at 2. BPA explained that the customer would be responsible for costs to deliver the non-Federal power to BPA's system at Goshen, and under the proposal, BPA would pay for the non-Federal transmission from Goshen over the intervening non-Federal transmission system to the customer's points of delivery, subject to the conditions of its proposal. *Id.*

#### **Decision 4**

*It is not necessary to modify or eliminate any provisions in BPA's proposal to allow customers currently served by the South Idaho Exchange to participate. These customers would be eligible, under the proposal, for arrangements that deliver non-Federal power from BPA's system over a third party's system to the customer.*

#### **Sub-Issue 5**

*Whether the BPA proposal should be adopted through FY 2006.*

NRU urged BPA to pay up to \$6.5 million for non-Federal transmission to deliver non-Federal power to GTA customers until an RTO is operational that completely addresses pancaking issues. Saven, WP-02-E-NI-03, at 9. NRU recommended that, if the pancaking problem persists beyond September 30, 2006, then BPA should extend the proposal until the pancaking issue is resolved. *Id.*; NRU Brief, WP-02-B-NI-01, at 15. PNGC supported extending BPA's proposal for the duration of the five-year power rate period. Holt and Scott, WP-02-E-PN-01, at 5. PGP disagreed with both the PNGC and NRU views that payments of up to \$6.5 million for non-Federal power deliveries to GTA customers should be extended beyond the transmission rate period ending 2003. Knitter and Peters, WP-02-E-PG-02, at 2. PGP argued that the Administrator should not decide in the power rate case that any particular treatment of transmission rates should persist until resolution of the pancaking issue is achieved. *Id.* at 3. The IOUs and Enron expressed concern that BPA's proposal is not a harmless means of filling the gap until an RTO is formed. Brattebo *et al.*, WP-02-E-AC/GE/IP/MP/PL/PS/EN-11, at 5. The IOUs and Enron argued that if an RTO is formed that does not completely address the pancaking issue, then the BPA proposal could continue indefinitely. *Id.*

BPA explained that an RTO that would include BPA's transmission facilities is expected to be formed and operational before September 30, 2003. BPA anticipates that pancaking issues will be addressed by the RTO. Metcalf and Furst, WP-02-E-BPA-35, at 4. BPA declared that if an RTO is not operational or does not completely address the pancaking problem, then BPA's proposal would be continued for the full five-year power rate period.

#### **Decision 5**

*BPA's proposal will be effective until the earlier of the formation of an RTO that incorporates BPA's transmission facilities or through September 30, 2006.*

#### **Summary Decision**

*BPA will pay up to \$6.5 million per year for transmission over third-party systems to deliver non-Federal power to customers historically served by GTAs or to utilities currently served by the South Idaho Exchange arrangement, and will roll such costs into the network. This proposal will be effective until the earlier of the formation of a regional RTO that incorporates BPA's transmission facilities or September 30, 2006. Eligibility is limited to arrangements that transfer power from BPA's system over a third-party's system to historical GTA customers or utilities currently served by the South Idaho Exchange arrangement.*