

16.0 SLICE OF THE SYSTEM PRODUCT

16.1 Introduction

Slice is a new and different product compared with BPA's more traditional requirements power products. It is important to understand the fundamental aspects of Slice product design, because the issues raised by the parties largely relate to the unique features of the product. The fundamental decisions regarding the product design were made in the Subscription Strategy and the Power Subscription Strategy ROD. A detailed description of the product design can be found in the above-referenced documents.

By design, Slice is a requirements power product sale, not a sale or lease of any part of the ownership of or operational rights to the FCRPS. Subscription ROD, at 85. Slice is a power sale based upon a Slice purchaser's annual net firm requirements load that is shaped to BPA's generation output from the FCRPS, rather than to the Slice purchaser's load. Mesa *et al.*, WP-02-E-BPA-32, at 2. The Slice purchaser will be entitled to a fixed percentage of the generation output from the FCRPS, based upon the size of the Slice purchaser's net firm requirements load. *Id.* The upper limit of the Slice percentage is determined by looking at the ratio of the customer's annual average net firm regional requirements load to the annual average FELCC of the FCRPS resources identified in the Slice contract. Wholesale Power Rate Development Study, WP-02-E-BPA-E-05, at 154. During certain periods of the year and under certain water conditions, the power delivered will exceed the customer's actual firm load. *Id.* As a consequence, Slice entails a sale of both net requirements and surplus power products. *Id.*

Eligibility for purchasing Slice is limited to PNW public preference customers as defined under section 5(b)(1) of the Northwest Power Act. 16 U.S.C. §839c(b)(1). Subscription ROD, at 89. By purchasing Slice, these public preference customers will forgo the right to have BPA serve their actual firm load in return for an energy product indexed to a percentage of the output from the FCRPS. *Id.* The IOUs and DSIs will not be eligible to purchase Slice. *Id.* Slice will be offered to the public preference customers on a contract basis of no less than 10 years. Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 41.

Rather than paying a set price per MW for the power, Slice purchasers will assume the obligation to pay a percentage of BPA's costs proportionate to the percentage of the FCRPS that the Slice purchaser elects to purchase. *Id.* at 42. The costs considered by the Slice contract are referred to collectively as the Slice Revenue Requirement. *Id.* The Slice Revenue Requirement will be comprised of all the line items identified in the 2002 power rate case revenue requirement, with certain limited exceptions. Mesa *et al.*, WP-02-E-BPA-32, at 5. The exceptions to the PBL revenue requirement for Slice purchasers are:

- Transmission costs other than those associated with GTAs and with fulfilling System Obligations.

- Power purchase costs other than the net costs incurred as part of the Inventory Solution, which is discussed below.
- PNRR.

Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 155.

BPA has excluded these items from the Slice Revenue Requirement because these costs are not attributable to the Slice product. *Id.* at 155.

BPA is forecasting the need to increase or supplement the capability of the FCRPS, which is also referred to as the Inventory Solution. *Id.* at 156. The net costs associated with the Inventory Solution will become an obligation of the Slice purchaser. *Id.* The Slice purchaser will be responsible for a proportionate share of the net costs associated with the Inventory Solution. Mesa *et al.*, WP-02-E-BPA-32, at 13. However, the Slice purchaser will not receive any portion of the additional power. Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 156.

The net cost of the Inventory Solution is estimated in the rate case and is not adjusted for actual expenses incurred for augmenting the system. Mesa *et al.*, WP-02-E-BPA-32, at 13. However, there will be an adjustment to the Inventory Solution for the actual MW necessary to augment the system after the close of the window for signing Subscription contracts. Mesa *et al.*, WP-02-E-BPA-54, at 11. Slice purchasers will be responsible for a proportionate share of that cost. *Id.* at 12. The manner in which the Inventory Solution shall be calculated for the Slice rate shall be through the Slice True-Up Adjustment Charge. The Slice True-Up Adjustment Charge is a monthly charge applied to the Slice product that is expressed in terms of dollars per percent Slice selected. The Slice True-Up Adjustment Charge consists of two components: (1) an Inventory Solution True-Up Adjustment that is calculated once for each rate period and is applied as a constant adjustment in each month of the rate period; and (2) the Annual Slice True-Up Adjustment that is calculated once each fiscal year and is applied to specific months of the fiscal year. In no event shall the Inventory Solution True-Up Adjustment exceed the net cost of the Inventory Solution.

One of the underlying principles of the Slice product design was that there would be no cost shifts either to or from the Slice purchasers. Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 160. Slice was designed so that the overall financial impact would be revenue-neutral for all parties. *Id.* In order to determine whether offering Slice created cost shifts either to or from the Slice purchasers, BPA did a Cost Shift Study to ensure that the product was consistent with this underlying principle. *Id.*

The Cost Shift Study uses the same basic assumptions as the 2002 power rate case. Mesa *et al.*, WP-02-E-BPA-32, at 20. The first part of the Cost Shift Study compares the change in BPA's net revenues that would result from a customer switching from a requirements product purchase to a Slice product purchase. *Id.* at 20. This change in net revenues is independent of water conditions and therefore is referred to as the "Direct Revenue Impact." Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 161. The second part of the Cost Shift Study examines the change in BPA's net revenues from sales of secondary energy and power purchase

costs resulting from delivering a share of BPA's secondary energy (surplus power) to the Slice purchaser. *Id.* The surplus power delivered to the Slice purchaser is the power BPA would otherwise have sold at market prices or used to displace its power purchases. *Id.* Since these revenue impacts vary, depending on water conditions, they are referred to as "Variable Revenue Impacts." *Id.*

The Cost Shift Study found that there was an average annual cost shift to Slice purchasers of \$5.7 million as a result of BPA selling 15 percent of the generation output of the FCRPS as Slice. Wholesale Power Rate Development Study, WP-02-FS-BPA-05, Appendix C, Section 5.3. This cost shift is considered to be insignificant, given the margin of error in the Cost Shift Study assumptions and the relatively small size of the cost shift results. *Id.*

16.2 Product Design

16.2.1 Introduction

Slice is a requirements power product that sells a fixed percentage of the energy generated by the FCRPS to the public preference customers. The Slice product differs from traditional requirements products in that the power sold through Slice is shaped to BPA's generation output of the FCRPS rather than the purchaser's load. Because the Slice sale is a percentage of the generation output of the FCRPS, the actual deliveries of power will vary. During certain parts of the year and under certain water conditions, power deliveries will exceed the purchaser's net firm requirements. As a consequence, Slice entails both requirements and surplus power sales.

16.2.2 Consistency of Slice with BPA's Statutory Obligations

Issue 1

Whether BPA's decision to offer Slice is outside the scope of the 2002 power rate case.

Parties' Positions

Alcoa/Vanalco believe that by offering a percentage of the generation output of the FCRPS, in return for payment of an equal percentage of the PBL revenue requirement, BPA violated the Northwest Power Act, 16 U.S.C. §839 *et seq.*, and the Urgent Supplemental Appropriations Act of 1986, Public Law No. 99-349. Alcoa/Vanalco Brief, WP-02-B-AL/VN-01, at 54-55. Specifically, they contend that the sale is prohibited under the Northwest Power Act because Slice is designed to sell part of the Federal generation resources as opposed to the power produced by the FCRPS. *Id.* at 54.

Alcoa/Vanalco also believe that Slice is not an authorized sale under sections 5(b), (c), or (d) of the Northwest Power Act. *Id.* at 54-55. Specifically, Alcoa/Vanalco contend that Slice does not fit the definition of a net requirements sale under section 5(b), a Residential Exchange under section 5(c), or a sale to the DSIs under section 5(d). Alcoa/Vanalco contend that, in addition to violating various aspects of the Northwest Power Act, Slice violates the Urgent Supplemental Appropriations Act of 1986, Public Law No. 99-349. *Id.* at 55. According to Alcoa/Vanalco,

Slice is a long-term lease of the Federal system that transfers to the Slice purchasers the ability to manage and control the operation of the generating facilities. *Id.* at 55. Alcoa/Vanalco contend that this long-term transfer of control violates the Urgent Supplemental Appropriations Act of 1986, Public Law No. 99-349. *Id.* at 55.

In Alcoa/Vanalco's brief on exceptions, they argue that the legality of the decision to offer Slice is a rate case issue. Alcoa/Vanalco Ex. Brief, WP-02-B-AL/VN-02, at 89. They contend that Slice is a rate for which a pricing formula must be established in the rate case. *Id.* As such, Slice is subject to challenge in the rate case. *Id.*

BPA's Position

Slice is a power product that BPA intends to offer as part of the Subscription Strategy. This rate proceeding is designed, in part, to establish a rate for the Slice product. BPA believes that the issues raised by Alcoa/Vanalco regarding the decision to offer Slice were issues either decided in the Subscription ROD or are subject to challenge after the execution of any Slice contract. In either case, the issues raised are outside the scope of this rate proceeding and are not subject to review in this ROD.

Even though the issues are outside the scope of this rate proceeding, Alcoa/Vanalco's arguments lack merit. Each of the three arguments relies primarily upon the contention that Slice is a sale or lease of the FCRPS resources that somehow transfers operational control of the system to the Slice purchaser. There is no factual basis for this contention. In the Wholesale Power Rate Development Study, WP-02-E-BPA-05, where the Slice product is described, it states unambiguously that "Slice is a sale of a fixed percentage of the generation capability of the FCRPS and is *not a sale or lease of any part of the ownership of, or operational control rights to, the FCRPS.*" (Emphasis added.) Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 41.

Evaluation of Positions

Alcoa/Vanalco argue that BPA is prohibited by law from offering Slice to its public preference customers. Alcoa/Vanalco Brief, WP-02-B-AL/VN-01, at 54-55. Each of their arguments is premised upon their belief that Slice, by design, transfers a portion of the operational and managerial control of the Federal power system to the Slice purchaser. *Id.* at 54-55. Alcoa/Vanalco believe this transfer of control constitutes a violation of the Northwest Power Act, 16 U.S.C. §839 *et seq.*, and the Urgent Supplemental Appropriations Act of 1986, Public Law No. 99-349. *Id.* at 54-55.

Irrespective of whether Slice actually transfers some level of operational or managerial control of the Federal power system to the Slice purchaser, the resolution of this issue is a matter that is outside the scope of this rate proceeding.

The decision to offer Slice as a requirements product to BPA's public preference customers was made in the Subscription Strategy and the corresponding Subscription ROD. In the Subscription ROD, BPA explained the features of the Slice product and the rationale for BPA's decision to

offer Slice. Part of the discussion in the Subscription ROD involved questions surrounding the potential for the sale or transfer of ownership or control of the FCRPS to the Slice purchaser. Subscription ROD, at 85. The Subscription ROD is clear that the sale of Slice does not entail the transfer of ownership or control of the FCRPS. The Subscription ROD states:

Moreover, Slice does not sell any part of the ownership or the right to operation of the FCRPS to the purchaser. Control of the hydrosystem operation will continue to rest with the Federal agencies now charged with making operational decisions. Slice purchasers obtain only that power and service available based on the river conditions and reservoir operations BPA must implement for fish, flood control, or other considerations. BPA will not agree to any dispute resolution with Slice purchasers that could compromise decision making regarding fish and wildlife protection, or any other aspect of river operations.

Id.

Alcoa/Valenco maintain that the un rebutted testimony and draft Slice contract demonstrate that BPA is transferring ownership, management, and control of the FCRPS to Slice customers. Alcoa/Valenco Ex. Brief, WP-02-B-AL/VN-02, at 90. These arguments are without merit. One of the primary tenets of Slice was that it did not transfer ownership or operational control of the FCRPS to the purchaser of the product. Subscription ROD, at 85. There is substantial evidence on the record that demonstrates that ownership, management, and control of the FCRPS is not transferred with the purchase of Slice. Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 41, 154.

While not all features of the Slice product had been determined at the time of the Subscription ROD, it was BPA's position that the sale of a net requirements product based on the generation shape of the FCRPS did not constitute a transfer of operational control or ownership of the FCRPS. *Id.* That decision in the Subscription ROD constituted a final action by the Administrator and as such, is subject to judicial review. 16 U.S.C. §839f(e)(1), (3), and (5).

Alcoa and Valenco both challenged the legality of the Subscription ROD before the Ninth Circuit. *Goldendale Aluminum Company et al. v. BPA*, No. 99-70268 (9th Cir. 2000). However, the challenge by Alcoa and Valenco focused on alleged violations of their constitutional first amendment and due process rights. Alcoa and Valenco both elected not to raise any questions about BPA's decision to offer Slice. The Ninth Circuit Court of Appeals dismissed the case filed by Alcoa and Valenco for lack of jurisdiction. *Goldendale Aluminum Company et al., v. BPA*, No. 99-70268 (9th Cir. 2000); Order dated February 9, 2000.

By failing to raise the issue before the Ninth Circuit, any objection Alcoa and Valenco may have had with the decisions made in the Subscription ROD related to Slice are time-barred. 16 U.S.C. §839f(e)(5).

Having failed to raise the matter before the Ninth Circuit, Alcoa and Valenco are now attempting to introduce a decision made in the Subscription ROD into this proceeding. The Federal Register

Notice outlined the scope of this proceeding. 64 Fed. Reg. 44318 (1999). Regarding matters resolved in the Subscription ROD, the Federal Register Notice states:

The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit decisions that were made in BPA's Subscription Strategy, including the ROD for the Strategy.

Id. at 44322.

Clearly, the questions Alcoa and Vanalco are attempting to introduce are outside the scope of this proceeding as it is framed in the Federal Register Notice.

This is not to say that Alcoa and Vanalco are without a remedy. If BPA signs contracts with public preference customers for the sale of Slice, and Alcoa and Vanalco still believe the product, as set forth in the contract, is prohibited by statute, they would be able to make the appropriate legal challenge. 16 U.S.C. §839f(e)(1)(B), and (5).

In Alcoa/Vanalco's brief on exceptions, they contend that Slice is a rate or pricing formula which is being established in this proceeding, rather than a type of power product. Alcoa/Vanalco Ex. Brief, WP-02-B-AL/VN-02, at 89. Alcoa/Vanalco's argument attempts to confuse the distinction between a power rate and a power product. BPA is offering a variety of power products to its customers through the Subscription process. This rate proceeding will establish the rates for those various products. Slice, contrary to Alcoa/Vanalco's assertion, is not a rate or a pricing formula. Rather, it is a power product for which a rate is being established in this proceeding. As noted above, the decision to offer Slice was made in the Subscription Strategy and Subscription ROD.

Decision

BPA's decision to offer Slice is outside the scope of the 2002 power rate case.

Issue 2

Whether the Slice rate is consistent with section 7 of the Northwest Power Act.

Parties' Positions

Alcoa/Vanalco contend that BPA's decision to offer Slice is in violation of section 7 of the Northwest Power Act. Alcoa/Vanalco Brief, WP-02-B-AL/VN-01, at 54. Alcoa/Vanalco claim that because the Slice rate is a power rate for a product that contains both firm and surplus components, it violates section 7 of the Northwest Power Act. *Id.*

In its brief on exceptions, Alcoa/Vanalco contend that the Administrator's discretion in setting rates does not extend to the adoption of products not specified in the Northwest Power Act. Alcoa/Vanalco Ex. Brief, WP-02-B-AL/VN-02, at 90. Alcoa/Vanalco believe that BPA may

establish rates only for “power sales enumerated by Congress.” *Id.* Because Slice is not a sale “enumerated by Congress” in the Northwest Power Act, Alcoa/Vanalco contend the Administrator is proposing a “total elimination of the statutory rate directives” through Slice. *Id.* at 91.

BPA’s Position

Nothing in the Northwest Power Act prohibits BPA’s Administrator from establishing a single rate for a product that is comprised of both firm and surplus components. 16 U.S.C. §839e. BPA has considerable discretion under section 7 to set rates. This discretion allows the Administrator the ability to set rates to send customers price signals, as in the Slice rate.

The Administrator is not limited to setting rates for products that are specifically enumerated in BPA’s organic statutes.

Evaluation of Positions

Alcoa/Vanalco contend that the Slice rate violates section 7 of the Northwest Power Act because it combines into a single rate both a requirements and a surplus power product. Alcoa/Vanalco Brief, WP-02-B-AL/VN-01, at 54. Alcoa/Vanalco provide no support for their interpretation of the statute.

Alcoa/Vanalco further contend that the Administrator may set rates only for products that Congress has enumerated in statute. Alcoa/Vanalco Ex. Brief, WP-02-B-AL/VN-02, at 91. Because Slice is a product not specifically enumerated in statute by Congress, Alcoa/Vanalco claim that the Administrator is abusing her discretion by establishing a rate for Slice. *Id.* Alcoa/Vanalco state that if the Administrator is allowed to develop a “whole new class of rates not authorized by Congress, the rate directives of §7 would be meaningless.” *Id.*

BPA notes that the Administrator has broad discretion in establishing rates, and the Slice rate is consistent with the ratemaking standards established by the Northwest Power Act.

The Administrator has broad discretion to interpret and implement statutory standards applicable to ratemaking. These standards focus on cost recovery, and they do not restrict the Administrator to any particular rate design methodology or theory. *See Pacific Power & Light v. Duncan*, 499 F. Supp. 672 (D.C. Or. 1980); *accord City of Santa Clara v. Andrus*, 572 F.2d 660, 668 (9th Cir. 1978) (“widest possible use” standard is so broad as to permit “the exercise of the widest administrative discretion”); *Electricities of North Carolina v. Southeastern Power Admin.*, 774 F. 2d 1262, 1266 (4th Cir. 1985). The United States Court of Appeals for the Ninth Circuit has also recognized the Administrator's ratemaking discretion. *Central Lincoln Peoples' Utility District v. Johnson*, 735 F.2d 1101, 1120-29 (9th Cir. 1984).

The Slice rate is not inconsistent with section 7 of the Northwest Power Act because it blends into a single rate a requirements sale and a surplus power sale. Section 7(e) of the Northwest Power Act grants the Administrator considerable rate design discretion, including the ability to employ rate designs which recover BPA’s costs through blended rates or pricing methodologies.

This broad discretion is found in section 7(e) of the Northwest Power Act, which provides:

Nothing in this Act prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or *other rate forms*.

16 U.S.C. §839e(e) (emphasis added). The Ninth Circuit has recognized this authority, finding that “the statute does not require BPA to impose any particular type of rate on its customers. Rather it restricts BPA only to ‘sound business principles’ in setting rates to meet its revenue requirements.” *City of Seattle v. Johnson*, 813 F.2d 1364, 1367 (9th Cir. 1987). Thus, the Administrator’s primary ratesetting obligation is to set rates to meet BPA’s revenue requirements, consistent with sound business principles. *See* 16 U.S.C. §839e(a)(1).

In *Central Lincoln Peoples’ Utility District. v. Johnson*, 735 F.2d 1101 (9th Cir.1984), the Court noted that the Northwest Power Act “specifically allows the Administrator latitude in choosing rate forms” and has, as a main purpose, encouraging “conservation and efficiency.” *Id.* at 1122. 16 U.S.C. §839e(e) and 16 U.S.C. §839(1). The point of such ratemaking is to “encourage efficiency and conservation by enabling customers to make informed consumption decisions based on the costs of producing each type of electric power.” *Id.* at 1121. This is exactly the same logic used to develop the rate for Slice. Despite Alcoa/Vanalco’s assertions to the contrary, it is a proper exercise of statutory ratemaking authority that “permits rate forms designed to give BPA customers price signals.” *Id.* at 1122 (H.R. Rep. No. 976, Part II, 96th Cong., 2d Sess. (1980) at 53).

Alcoa/Vanalco’s argument that the Administrator is limited to setting rates only for products enumerated by Congress is equally without support. Alcoa/Vanalco’s argument is premised on the idea Slice is a product not specifically enumerated by Congress and therefore, the Administrator is prohibited from establishing a rate for the product. There is, however, no specific limitation in the Northwest Power Act, or any of the other ratesetting directives, that limits BPA’s ability to design and offer a variety of products. The Northwest Power Act is silent regarding product design features and the types of products BPA can offer. BPA has traditionally designed power products to meet the needs of its customers. This flexibility has allowed BPA not only to meet the needs of its customers and but also to meet its financial obligations. Alcoa/Vanalco’s argument would limit BPA’s ability to design and offer products to some undefined categories. As noted above, section 7 of the Northwest Power Act gives the Administrator a great deal of flexibility to set rates for new products.

Decision

The Slice rate is consistent with the ratemaking directives in section 7 of the Northwest Power Act.

Issue 3

Whether BPA’s offer of the Slice product complies with NEPA.

Parties' Positions

Alcoa/Vanalco contend that prior to making Slice a product available under Subscription, BPA was required to conduct an Environmental Assessment (EA) to determine whether an EIS was necessary. Alcoa/Vanalco Brief, WP-02-B-AL/VN-01, at 56. Alcoa/Vanalco state that by failing to perform an EA or issue an EIS, BPA failed to comply with NEPA and ignored the significant environmental impacts on the FCRPS that will result from offering Slice. *Id.* at 57. According to Alcoa/Vanalco, Slice purchasers may use the surplus portion of the Slice purchase to displace more expensive resources. *Id.* at 57-58. Alcoa/Vanalco state that this may result in the curtailment or closure of nonsystem power generating facilities, causing significant environmental impacts. *Id.* at 58. Alcoa/Vanalco contend that Slice will, in addition to potentially causing the curtailment or closure of generation facilities, allow purchasers to change the flow of the river and operation of the dams, causing a direct impact on the environment. *Id.* at 58.

In their brief on exceptions, Alcoa/Vanalco contend that “BPA does not dispute that Slice triggers the environmental assessment requirements of NEPA” and “that the environmental impacts alleged by Alcoa and Vanalco may occur.” Alcoa/Vanalco Ex. Brief, WP-02-B-AL/VN-02, at 91. Alcoa/Vanalco state that BPA’s attempt to tier the Subscription Strategy and Subscription ROD to the BP EIS was in error, because Slice was a program not even proposed at the time the BP EIS was drafted. *Id.* at 92. Alcoa/Vanalco acknowledge that this fact is not fatal to BPA’s NEPA compliance, but they contend that the NEPA ROD was flawed because it did not adequately analyze Slice. *Id.* at 93. Alcoa/Vanalco believe that they do not need to show any change in circumstances between the issuance of the BP EIS and issuance of the Subscription ROD. They contend that Slice is such a different product that it changed the environmental circumstances. *Id.*

BPA’s Position

In December 1998, BPA issued the Subscription Strategy and Subscription ROD. These documents addressed, in part, BPA’s decision to offer Slice, and outlined the design features of the product. Subscription ROD, at 81-109. In addition to the Subscription Strategy and Subscription ROD, BPA also issued the NEPA ROD. The NEPA ROD relied upon the BP EIS for the analysis of the environmental consequences of BPA’s proposed actions in the Subscription Strategy and Subscription ROD. NEPA ROD, at 15-22. The NEPA ROD found the environmental impacts from BPA’s Subscription Strategy were adequately covered in the BP EIS. NEPA ROD, at 22. While the BP EIS was issued well before the decision to offer Slice, the BP EIS was designed to support a number of subsequent decisions, including the Subscription Strategy. BP EIS, at 1-5, 1-7.

BPA believes that questions regarding its compliance with NEPA were decisions made in the NEPA ROD. To the extent that NEPA ROD failed to comply with the NEPA by not properly addressing the environmental consequences of the final decisions made in the Subscription Strategy and the Subscription ROD, those concerns should have been raised before the Ninth Circuit Court of Appeals. By failing to appeal this final action, the matter is time barred.

Evaluation of Positions

Alcoa/Vanalco's argument is founded on the fact that BPA issued the BP EIS well before the decision to offer Slice was ever considered. Alcoa/Vanalco Brief, WP-02-B-AL/VN-01, at 58. Because of the sequence of these two events, Alcoa/Vanalco contend that BPA cannot rely upon the BP EIS, as it did in the NEPA ROD, as a basis for fulfilling its NEPA obligations. *Id.* at 56. Implicit in the argument is the contention that BPA cannot rely on a comprehensive programmatic impact statement such as the BP EIS and must perform a contract-specific EIS before offering Slice to public preference customers.

In their brief on exceptions, Alcoa/Vanalco contend that the NEPA ROD did not adequately address the environmental consequences of Slice. Because there were limited references to Slice in the NEPA ROD, Alcoa/Vanalco believe that BPA has not met its environmental obligations under NEPA.

Alcoa/Vanalco incorrectly assume BPA cannot rely on the BP EIS to fulfill BPA's obligations under NEPA. The fact that the BP EIS (June 1995) was issued several years prior to the decision in the Subscription ROD (December 1998) to offer Slice does not automatically make the decision to rely on the prior environmental impact statement inconsistent with BPA's NEPA requirements. The BP EIS was designed to provide BPA with a comprehensive impact statement that would allow BPA to respond to the changes in the marketplace. Business Plan ROD, at 1. "Other decisions on specific issues will be the subject of subsequent RODs that will be tiered to this ROD and distributed to the public. For example, while this ROD provides general direction on rate policies, decisions on how policies will be applied in the 1996 rate case will be applied in a tiered ROD. The BP EIS will sufficiently document the analysis needed for a variety of these business decisions." *Id.* at 14. As further explained the BP EIS:

This BP EIS is a programmatic EIS: that is, it addresses 'umbrella' policies and concepts. Approaches, strategies, and general agency direction--not site-specific actions--are recommended here. As the Administrator implements his broader policies and business strategies, other more specific business decisions such as the development of individual energy generation resources and transmission facilities will have their own environmental review and decision process. These additional environmental reviews will look at site-specific actions, using the information and decision in this EIS as a base to understand how they fit into the more global policies and business strategies. This process is called 'tiering' where more specific additional information on potential environmental consequences adds to the understanding for subsequent decisions (where more specific information on environmental consequences does not improve decisions or segments the decisions by focusing on only small pieces which lose sight of the cumulative concerns, then no more environmental analysis is conducted).

The EIS is intended to support the following decisions:

- A business concept BPA will adopt, with response strategies for changing circumstances;

- Products and services BPA will market;
- Rates for BPA products and services to be implemented in the 1995 and 1996 rate cases and future rate cases;
- A strategy BPA will use to administer its fish and wildlife responsibilities;
- Policy direction for BPA's sale of power products to publicly owned utilities, IOUs, DSIs, and non-utility purchases, and for Residential Exchange agreements with PNW utilities;
- Contract terms BPA will offer for power sales to PNW publicly owned utilities, IOUs, DSIs, and IPPs for transmission services; and for extraregional sales, including non-PNW IPPs/broker/marketers;
- Plans for BPA resource acquisitions (including renewables, conservation, and thermal) and power purchase contracts;
- A policy for transmission system access and development.

Before taking action, BPA will review the decisions listed above to ensure that they are adequately covered within the scope of alternatives and impacts described in the BP EIS.

BP EIS, at 1-5 to 1-7.

The NEPA ROD stated that "A review of the BP EIS clearly shows that the potential environmental impacts from BPA's Power Subscription Strategy are adequately covered." NEPA ROD, at 16. The NEPA ROD analyzed the potential air, land, water, and socioeconomic effects of the Subscription Strategy in the context of the BP EIS and found the Subscription Strategy to be consistent with the decision and strategy laid out in the BP EIS. *Id.* at 16-22. This analysis included the decision to offer Slice to BPA's public preference customers. Subscription ROD, at 89-90.

BPA's decision to tier its subsequent RODs to the BP EIS has been supported by the Ninth Circuit. In *APAC v. BPA*, the court found that BPA's reliance on the BP EIS obviated the need for a subsequent site- or project-specific EIS. *APAC v. BPA*, 126 F3d 1158, 1183 (9th Cir. 1997). In *APAC*, the petitioners challenged BPA's decision to offer the DSIs cost protection in the Block Sale contracts. *Id.* The petitioners argued that BPA could not tier the ROD for these contracts to the BP EIS, but rather, BPA was required to issue a separate EIS for each contract. *Id.* at 1184. The court rejected the petitioners' argument and found that tiering the ROD to the BP EIS was consistent with NEPA. *Id.* The court went on to find that a comprehensive programmatic environmental impact statement was superior to a contract-specific one, because the former examines the entire range of policy issues rather than engaging in a piecemeal analysis. *Id.* The court further found that the mere passage of time would not cause the EIS to become outdated.

Id. A significant change in circumstances between issuance of the programmatic EIS and the ROD is necessary to trigger the need for a new or supplemental EIS. *Id.*

The impact of the Ninth Circuit's decision in *APAC* is fourfold. First, the decision establishes that it was appropriate to tier a later ROD to a prior programmatic EIS. Second, Alcoa/Vanalco have not demonstrated any intervening change of circumstances that would necessitate supplementing or issuing a new EIS. Third, the NEPA ROD constitutes a final action by the Administrator, and by failing to challenge the action, Alcoa/Vanalco waived any objection. Finally, the Federal Register Notice specifically determined that issues related to the Subscription Strategy were beyond the scope of the 2002 power rate case proceeding.

Alcoa/Vanalco's contention that Slice had to be contemplated at the time the BP EIS was drafted in order for it to satisfy the environmental analysis under NEPA demonstrates a fundamental lack of understanding of the requirements of the statute. A programmatic EIS, by design, does not address contract-specific issues, but rather it is designed to address a broad range of policy issues. The BP EIS was designed to provide BPA with a programmatic environmental impact statement that could address decisions to offer new and different products and contracts to its customers. As with the Slice product, the Block Sales offered to the DSIs in the *APAC* case were not contemplated at the time the BP EIS was drafted. Despite this fact, the court determined that the environmental consequences of decision to offer the Block contract was covered by the BP EIS.

The NEPA ROD also constituted a final action by the Administrator and as such, is subject to judicial review. 16 U.S.C. §839f(e)(1), (3), and (5). Alcoa and Vanalco both challenged the legality of the Subscription ROD (which incorporated the NEPA ROD) before the Ninth Circuit. *Goldendale Aluminum Company et al. v. BPA*, No. 99-70268 (9th Cir. 2000). However, the challenge by Alcoa and Vanalco focused on alleged violations of their constitutional first amendment and due process rights. Alcoa and Vanalco both elected not to raise any questions about BPA's decision to offer Slice or the adequacy of BPA's compliance with NEPA. The Ninth Circuit Court of Appeals dismissed the case filed by Alcoa and Vanalco for lack of jurisdiction. *Goldendale Aluminum Company et al. v. BPA*, No. 99-70268 (9th Cir. 2000); Order dated February 9, 2000.

By failing to raise the issue before the Ninth Circuit, any objection Alcoa and Vanalco may have had to the decisions made in the Subscription ROD or the NEPA ROD related to Slice are time barred. 16 U.S.C. §839f(e)(5).

Having failed to raise the matter before the Ninth Circuit, Alcoa and Vanalco are now attempting to introduce the matter into this proceeding. The Federal Register Notice outlined the scope of this proceeding. 64 Fed. Reg. 44318 (1999). Regarding matters resolved in the Subscription ROD, the Federal Register Notice states:

The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit decisions that were made in BPA's Subscription Strategy, including the ROD for the Strategy.

Id. at 44322.

Decision

The decision to offer Slice to BPA's public preference customers was made consistent with BPA's statutory obligations under NEPA, but the matter is outside the scope of the 2002 power rate case.

Issue 4

Whether BPA's decision not to offer Slice to the IOUs is a matter within the scope of the 2002 power rate case.

Parties' Positions

The IOUs contend that they should be offered Slice. IOU Brief, WP-02-B-AC/GE/IP/MP/PL/PS-01, at 63. The IOUs claim that the decision to offer Slice only to BPA's public preference customers violates BPA's obligation under section 7 of the Northwest Power Act to offer rates of general applicability to the residential and small farm customers of the IOUs. *Id.*

In IOUs' brief on exceptions, they repeat their contention that BPA's decision not to offer Slice to the IOUs is a violation of section 7 of the Northwest Power Act and section 9 of the Transmission System Act. IOU Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 46. The IOUs believe that it is arbitrary and capricious to rely upon the Subscription ROD as a basis for excluding consideration of this issue in this proceeding. *Id.* at 47. The IOUs contend that the Administrator cannot avoid the statutory ratesetting requirements that are part of this proceeding by asserting that the decision on the eligibility of the IOUs to purchase Slice was made in another forum. *Id.*

The IOUs also believe they have not waived any right to contest this issue by failing to appeal the issue in the Ninth Circuit Court of Appeals. *Id.* at 48. The IOUs contend that the matter may still be appealed to the Ninth Circuit and that their failure to raise this issue before the Ninth Circuit is factually incorrect, because the Ninth Circuit dismissed the matter on jurisdictional grounds before the IOUs submitted a statement of the issues. *Id.* at 49.

BPA's Position

The decision to sell Slice only to BPA's public preference customers was made in the Subscription Strategy and the corresponding Subscription ROD and is therefore beyond the scope of the issues in this rate proceeding. Subscription ROD at 88-90; 64 Fed. Reg. 44318, 44322 (1999).

Evaluation of Positions

Whether the decision to limit the eligibility to purchase Slice constitutes a violation of section 7 of the Northwest Power Act or section 9 of the Transmission System Act as alleged by the IOUs is a matter that is beyond the scope of this proceeding. The decision to offer Slice as a requirements product to BPA's public preference customers was made in the Subscription

Strategy and the corresponding Subscription ROD. Subscription Strategy, at 14; Subscription ROD, at 81-109. In the Subscription ROD, BPA explained the features of the product and the rationale for BPA's decision to offer Slice. *Id.* The issue of whether the IOUs would be offered a Slice product was squarely addressed in the Subscription ROD. *Id.* at 88-90. In the Subscription ROD, it was determined that BPA would not offer Slice to any customer class other than BPA's public preference customers. The reasoning for that decision was explained in the Subscription ROD. *Id.*

The decision in the Subscription ROD constituted a final action by the Administrator and as such, is subject to judicial review. 16 U.S.C. §839f(e)(1), (3), and (5). Failure to appeal a final decision by the Administrator is time barred if not raised within 90 days of the final action. 16 U.S.C. §839f(e)(5). The IOUs are now attempting to introduce a decision made in the Subscription ROD into this proceeding. The Federal Register Notice outlined the scope of this proceeding. 64 Fed. Reg. 44318 (1999). Regarding matters resolved in the Subscription ROD, the Federal Register Notice states:

The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit decisions that were made in BPA's Subscription Strategy, including the ROD for the Strategy.

Id. at 44322.

Clearly, the question the IOUs are attempting to introduce is outside the scope of this proceeding, as it is framed in the Federal Register Notice. In their brief on exceptions, the IOUs contend that their appeal rights to the Ninth Circuit have not been waived by their failure to address this issue sooner. IOU Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 48-49. Whether the IOUs' right to appeal has been waived is not a matter within scope of this Record of Decision, nor is it within the Administrator's authority to make such a determination. Ultimately, a decision as to whether the IOUs have waived their appeal rights on this issue will be made by the Ninth Circuit, if the IOUs choose to raise this matter before the court.

Decision

BPA's decision not to offer Slice to the IOUs is a matter that is beyond the scope of the issues in the 2002 power rate case.

16.3 Transmission

Issue 1

Whether Slice purchasers will pay twice for transmission losses if the amount of Slice offered is capped or limited.

Parties' Positions

SPG argued in its direct case that BPA's Slice Revenue Requirement should be reduced so that Slice purchasers do not pay twice for transmission losses. Carr *et al.*, WP-02-E-SG-01, at 26. In its initial brief, however, SPG agreed with BPA's rebuttal testimony that the adjustments were not necessary, because the manner in which losses on the system are calculated fully accounts for transmission losses without any double collection. SPG Brief, WP-02-B-SG-01, at 18-19. SPG states, however, that if BPA limits or caps the amount of Slice it offers, Slice purchasers will pay twice for transmission losses. *Id.* at 19. They contend this will occur because a limit or cap will not allow the Slice purchaser to "obtain the extra power made available through the adjustment of FELCC for transmission losses." *Id.*

BPA's Position

In rebuttal, BPA stated that Slice purchasers were not paying twice for transmission losses. Mesa *et al.*, WP-02-E-BPA-54, at 14-15. The FELCC of the Federal system used in the initial proposal was reduced to account for system transmission losses. *Id.* To determine the maximum percentage of the system generation a Slice purchaser is eligible to buy, the Slice purchaser's annual net requirements are divided by the FELCC, less system losses. *Id.* Losses are factored into the calculation, ensuring that Slice purchasers do not pay twice. *Id.* If a Slice purchaser buys less than its full net requirements as Slice, or a cap or limit is placed on the amount of Slice available, there is no impact on the treatment of losses.

The decision to cap or limit the amount of Slice is not an issue in this rate proceeding. There is a separate public process dealing with the decision to limit or cap the amount of Slice offered. Tr. 1344. To the extent that a limit or cap is placed on the amount of Slice BPA makes available, that decision will be made in that public process and not in this rate case. If, at the conclusion of the public process, the amount of Slice made available to purchase is limited, transmission losses will not be collected twice, because a Slice purchaser's percentage of the system would still be calculated in the same fashion. The denominator in the above-referenced equation would still be the FELCC less transmission losses, ensuring that losses are not collected twice. Mesa *et al.*, WP-02-E-BPA-54, at 14-15.

Evaluation of Positions

A Slice purchaser would have two basic purchase options. The Slice purchaser could make an economic decision to purchase all of its net requirements as Slice. By making this decision, a Slice purchaser would purchase the maximum percentage of Slice allowed, and would be required to declare resources to serve the balance of its net requirements. Subscription ROD, at 84. The other alternative would be for the Slice purchaser to purchase part of its net requirements as Slice. The Slice purchaser could voluntarily combine Slice with a Block purchase. *Id.* at 92-93. Under this option, the Slice purchaser would serve a portion of its load with Slice at some percentage less than the maximum allowed. The balance of the Slice purchaser's net requirements would consist of a Block purchase and additional resources to serve the balance of its net requirements. *Id.* at 84. Under either scenario, transmission losses are

deducted from the FELCC prior to determining the percentage of Slice purchased. *Mesa et al.*, WP-02-E-BPA-54, at 14-15.

SPG agreed with BPA that if transmission losses are deducted from the FELCC before determining the maximum percentage a Slice purchaser is eligible to purchase, there is no double collection of transmission losses. SPG Brief, WP-02-B-SG-01, at 18-19. Despite general agreement on the subject, the SPG argued that if the amount of Slice product available to public preference customers is capped or limited, Slice purchasers will pay twice for transmission losses. *Id.* at 18. This would occur, SPG contends, because “if Slice purchasers cannot purchase their full Slice Percentage, they will not obtain the extra power made available through the adjustment to the FELCC for transmission losses.” *Id.* at 19. SPG provides no substantive analysis to support this conclusion.

SPG’s argument on this point appears to be inconsistent with its own testimony. The SPG claims, on one hand, that Slice purchasers are paying twice for transmission losses if Slice is limited or capped. *Id.* Yet SPG acknowledges that absent some limit or cap on the amount of Slice available, there is no double collection of transmission losses, because the losses are deducted from the FELCC before the maximum percentage is determined. *Id.* The only factual difference between the two circumstances would be that rather than voluntarily taking less than the maximum percentage available, there is a limit imposed by BPA on the amount purchased. In either case, the treatment of transmission losses would be the same, as would be the impact on the Slice purchaser.

There is no reason that transmission losses will be double collected in the event that there is some limit or cap. The calculation of the percentage of the Federal system generation which the Slice purchaser is buying will be the same. Transmission losses will be deducted from the FELCC prior to the calculation of the percentage of Slice purchased, whether or not there is a limit or cap on the amount available. The only difference is that the limit would be imposed by BPA, rather than chosen by the Slice purchaser.

However, any decisions regarding limiting or capping the amount of Slice available to public preference customers are not part of this proceeding. Those issues are being addressed in a separate public process. Tr. 1344. In the event that limits are placed on the amount of Slice available, questions regarding the impact of limiting the amount available on the payment for transmission losses should be posed in that public process.

Decision

Slice purchasers will not be charged twice for transmission losses in the event they purchase less than a maximum percentage of Slice or if the amount of Slice is limited or capped.

Issue 2

Whether costs associated with transmission activities of the PBL should be removed from the Slice Revenue Requirement to avoid double collection of such costs by BPA.

Parties' Positions

The MAC argues that BPA should remove costs associated with transmission activities of the PBL from the power scheduling costs allocated to the Slice product. MAC Brief, WP-02-B-MA-01, at 10. MAC contends that Slice purchasers will bear the costs associated with transmission activities of the PBL through their transmission rates, which will be determined in the upcoming BPA transmission rate case. *Id.* at 10. MAC argues that this represents a double collection of such costs if they are included in the Slice Revenue Requirement. *Id.* at 10.

BPA's Position

Costs associated with transmission activities of the PBL will not be included in the costs allocated to BPA's transmission rates. Pedersen and McRae, WP-02-E-BPA-28, at 1-8. Furthermore, should there be such a cost that should be shared between BPA's PBL and TBL, but by mutual agreement that cost is allocated in full to the PBL, PBL will charge the TBL for its share of that cost, and the payment from TBL would be appropriately accounted for as a credit in PBL's revenue requirement. *Id.* Correspondingly, this credit would be reflected in the Slice Revenue Requirement. Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 157-158.

Evaluation of Positions

MAC argues that Slice purchasers will be paying twice for certain costs associated with transmission activities of the PBL, if these costs are not removed from the Slice Revenue Requirement. MAC Brief, WP-02-B-MA-01, at 10. MAC contends that unless removed, certain costs will be collected through both BPA's transmission rates and the Slice Revenue Requirement. *Id.* MAC does not identify what costs are part of both the transmission rates and Slice Revenue Requirement.

MAC's argument is factually incorrect. BPA has specifically removed all costs related to transmission activities, except for those associated with System Obligations and GTAs, from the Slice Revenue Requirement. Mesa *et al.*, WP-02-E-BPA-54, at 13. No costs associated with transmission activities of the PBL will be included in the costs allocated to BPA's transmission rates. Pedersen and McRae, WP-02-E-BPA-28, at 1-8. The costs associated with transmission activities of the PBL are power marketing expenses associated with procuring transmission service for particular power products. They are correctly functionalized to generation and included in generation revenue requirements, not transmission revenue requirements. Revenue Requirement Study, WP-02-E-BPA-02, at 63. Therefore, Slice purchasers will not be paying twice for such costs.

Decision

The Slice Revenue Requirement reflects the appropriate costs that the Slice purchasers should be responsible for, and there are no costs associated with transmission activities of the PBL that are allocated to BPA's transmission rates.

16.4 Slice Revenue Requirement

16.4.1 Minimum Net Revenue Requirement

Issue

Whether to ensure consistency with the revenue requirements of other products and to avoid the possibility of a cost shift to non-Slice purchasers, it is necessary to modify the Slice true-up for capital cost recovery to the greater of PBL's non-cash expenses or amortization and irrigation assistance payments.

Parties' Positions

SPG argued that rather than having the Slice Revenue Requirement true-up to BPA's depreciation expense, as was suggested in BPA's direct case, the true-up should be based on the greater of amortization or depreciation. In those years when the amortization payment exceeds depreciation expense, the excess would be recovered through the true-up. Carr *et al.*, WP-02-E-SG-01, at 25.

BPA's Position

Capital investments are recovered through depreciation, and depreciation is part of the annual true-up. Mesa *et al.*, WP-02-E-BPA-54, at 9.

Evaluation of Positions

No party, including SPG, raised this issue. However, after careful consideration of the issue, it became apparent that there was the potential for a cost shift under certain circumstances if BPA's initial proposal was adopted for the final rates. By using only depreciation as the mechanism for the annual recovery of capital investments, BPA may fail to fully recover its actual costs under the same conditions that necessitate adding funds to the generation revenue requirement to avoid a cash shortfall in a particular year. SPG's proposal to use the greater of amortization or depreciation, while similar in concept to the decision in this ROD, also does not ensure full cost recovery or ensure no cost shift, because of the manner in which BPA accounts for these costs in the generation revenue requirement.

BPA's Revenue Requirement Study, WP-02-E-BPA-02, produces the total generation revenue requirement necessary for BPA to meet its annual financial obligations. The basis for BPA's generation revenue requirement is total annual generation expenses, which include items related to capital cost recovery that do not require outlays of cash in that year (non-cash expenses). Revenue Requirement Study, WP-02-E-BPA-02, at 38-39. These capital cost recovery items (non-cash expenses) are: Federal Projects Depreciation, Amortization of Conservation and Fish and Wildlife Investments, and the Capitalization Adjustment. *Id.* at 40.

In order to ensure full annual cost recovery, BPA must determine whether it is necessary to add funds to cover those cash payments that are not directly included in revenue requirements.

Id. at 38-39. Minimum Required Net Revenues is the component of the generation revenue requirement that, when combined with the non-cash expenses, ensures there is sufficient cash to cover planned amortization and irrigation assistance payments. *Id.* If the non-cash expenses do not cover these cash payments, the difference is added to the revenue requirement so that cash considerations will be met by revenues in that year. *Id.* In the FY 2002-2006 rate period, the revenue requirements for 2005 and 2006 include forecasted amounts for Minimum Required Net Revenues. *Id.* at 47.

The Slice Revenue Requirement is a subset of the generation revenue requirement. There are discrete elements that are excluded from the generation revenue requirement to produce the Slice Revenue Requirement. Mesa *et al.*, WP-02-E-BPA-32, at Attachments 1 and 2. The Slice Revenue Requirement will have an annual true-up that will calculate the difference between the forecasted Slice Revenue Requirement and actual expenses and credits. Mesa *et al.*, WP-02-E-BPA-32, at 9. BPA's proposed capital investments will be recovered through depreciation expense. Mesa *et al.*, WP-02-E-BPA-54, at 9. Minimum Required Net Revenues are not part of the Slice Revenue Requirement, so there is no mechanism for ensuring that there is sufficient cash to ensure payment of planned amortization and irrigation assistance. Wholesale Power Rate Development Study Documentation, WP-02-E-BPA-05A, at 105-06. SPG made an alternative proposal that "[i]n those years when actual amortization expenses exceed actual depreciation expenses, the excess would be recovered through the True-Up. In those years when the reverse occurs, no adjustment is necessary in the True-Up." Carr *et al.*, WP-02-E-SG-01, at 25.

This proposal, while principally sound, does not capture fully the considerations that BPA uses to ensure the adequacy of funds for amortization/irrigation assistance payments. As noted above, one of the non-cash expenses included in BPA's generation revenue requirement is the Capitalization Adjustment, a negative component of Net Interest Expense. Revenue Requirement Study, WP-02-E-BPA-02, at 37-38. Similarly, BPA does not include amortization/irrigation assistance directly in its generation revenue requirement. Rather, the generation revenue requirement includes a reference to Minimum Required Net Revenues. This item accounts for the amount by which all of the non-cash expenses may be exceeded by planned amortization and irrigation assistance. *Id.* at 39.

BPA stated in its testimony that the "Slice product, by design, is attributed with the same costs for its revenue requirement as the other products." Mesa *et al.*, WP-02-E-BPA-32, at 5. This would not be the case if BPA's initial proposal is adopted. Under BPA's initial proposal, there is no Minimum Required Net Revenues that is part of the true-up. Wholesale Power Rate Development Study Documentation, WP-02-E-BPA-05A, at 105-06. As previously referenced, there are years (2005-2006) in which BPA's forecasted generation revenue requirement includes Minimum Required Net Revenues to cover the cash requirement for amortization and irrigation assistance payments. Revenue Requirement Study, WP-02-E-BPA-02, at 47.

The SPG proposal parallels on an actual basis the conditions addressed by Minimum Required Net Revenues. However, the comparison between depreciation expense (Federal Projects Depreciation and Amortization of Conservation and Fish and Wildlife Investments) and amortization payments (including irrigation assistance) falls short of ensuring adequate coverage

for all cash payments. The other non-cash expense, the Capitalization Adjustment, which is a negative component of interest expense, must also be taken into account. As previously described, all non-cash expenses must be weighed against amortization and irrigation assistance payments to ensure sufficient coverage of these cash requirements. *Id.*

In order to have the Slice Revenue Requirement comport with the generation revenue requirements for other Subscription products, the Slice Revenue Requirement and, more importantly, the true-up to actual costs should include a Minimum Required Net Revenues component. This will ensure sufficient funds to cover the cash payments for debt reduction from which Slice purchasers, as well as other purchasers of Subscription products, will benefit.

One of the fundamental tenets of Slice is that the product would be designed in such a fashion that there would not be cost shifts to or from Slice purchasers from or to BPA's other customers. If the proposal advocated by BPA, in its testimony, were adopted, the potential for a cost shift to BPA's non-Slice purchasers would exist. If BPA true-up the Slice Revenue Requirement and did not include a Minimum Required Net Revenues component, a cost shift would occur in those years when non-cash expenses do not cover these cash payments. Therefore, to avoid the possibility of a cost shift, a Minimum Required Net Revenues component should be added to the actual Slice Revenue Requirement.

Decision

To ensure consistency with the revenue requirements for other products, thereby avoiding any cost shift in this area, the Slice True-Up for capital cost recovery has been modified to be the greater of PBL's non-cash expenses or amortization and irrigation assistance payments.

16.4.2 Power Marketing Costs

Issue

Whether BPA should remove the costs associated with BPA's power marketing from the Slice Revenue Requirement.

Parties' Positions

MAC argues that most of BPA's power marketing costs should be removed from the Slice Revenue Requirement. MAC Brief, WP-02-B-MA-01, at 10. MAC claims that the costs associated with sales of other products, managing short-term purchases and sales, and other such power costs are costs the Slice purchaser assumes independently, and they should be removed from the Slice Revenue Requirement. *Id.*

BPA's Position

BPA has attempted to segregate the costs associated with BPA's power marketing activities and remove them from the Slice Revenue Requirement. Mesa *et al.*, WP-02-E-BPA-54, at 12. BPA made some policy decisions in developing the Slice product, one of which included a decision

not to conduct a detailed accounting of certain items such as salary and overhead expenses, to determine with absolute precision the costs that should be excluded from the Slice Revenue Requirement. *Id.* While BPA has agreed to continue to refine its accounting practices to further identify costs that should be excluded from the Slice Revenue Requirement, there will be a point beyond which BPA may not be able to segregate such costs. *Id.*

Evaluation of Positions

MAC contends that power marketing costs should be removed from the Slice Revenue Requirement. MAC Brief, WP-02-B-MA-01, at 10. MAC's argument describes in very broad terms the types of costs it believes should be excluded from the Slice Revenue Requirement. *Id.* MAC notes that "[c]osts associated with managing transmission purchases and sales, negotiating new surplus power sales contracts, and managing secondary energy sales from the Federal system are the types of costs that the Slice product description excludes by definition." *Id.* at 10. However, before MAC raised this issue in its brief, BPA testified that power marketing costs would not be included in the Slice Revenue Requirement. Mesa *et al.*, WP-02-E-BPA-54, at 12. There is general agreement on the issue and the dispute, if any, appears to be over the level of detail to which one should go to segregate the costs into separate categories.

BPA believes that power marketing costs have been appropriately excluded from the Slice Revenue Requirement, with the limited exception of salary and overhead expenses associated with these activities. *Id.* BPA has attempted to account for program level expenses and include only those associated with Slice. *Id.* BPA will continue to refine its accounting practices to properly segregate costs and will reflect any adjustments in the annual true-up. *Id.*

Decision

BPA believes that power marketing costs have been appropriately excluded from the Slice Revenue Requirement, with the potential limited exception of some specific salary and overhead expenses associated with these activities.

16.4.3 Hedging Costs

Issue

Whether BPA should remove all non-Slice hedging costs from the Slice Revenue Requirement.

Parties' Positions

SPG argues that BPA should remove from the Slice Revenue Requirement all hedging costs not associated with the Slice product. SPG Brief, WP-02-B-SG-01, at 18. SPG contends that hedging costs should be removed because these costs benefit only non-Slice customers. *Id.*

MAC also argues that BPA should remove all costs associated with BPA's risk hedging program. MAC Brief, WP-02-B-MA-01, at 11. Specifically, MAC is concerned about the inclusion of costs of BPA's risk hedging activities associated with aluminum prices and natural

gas prices. *Id.* MAC states that these activities do not benefit the Slice purchasers and therefore, the costs associated with these activities should not be included in the Slice Revenue Requirement. *Id.* MAC states that Slice purchasers assume this risk directly, so if BPA includes these costs, Slice purchasers essentially would be paying twice for mitigating this risk. *Id.*

BPA's Position

All hedging costs for risks assumed directly by the Slice purchaser are removed from the Slice Revenue Requirement. Mesa *et al.*, WP-02-E-BPA-54, at 13. However, hedging costs associated with the Inventory Solution will be included in the Slice Revenue Requirement, because these costs associated with the Inventory Solution are part of the Slice Revenue Requirement. *Id.*

There may be some costs associated with hedging activities that are not accounted for. BPA will not conduct a detailed accounting of staff salaries and related overhead costs in order to remove these costs associated with hedging activities from the Slice Revenue Requirement. *Id.*

Evaluation of Positions

SPG and MAC argue that BPA should remove all hedging costs from the Slice Revenue Requirement. SPG Brief, WP-02-B-SG-01, at 18; MAC Brief, WP-02-B-MA-01, at 11. BPA generally agrees with the idea that all hedging costs unrelated to the Slice product should be removed from the Slice Revenue Requirement. Mesa *et al.*, WP-02-E-BPA-54, at 13. BPA has attempted to do this, and the Slice Revenue Requirement reflects this effort.

However, the benefits of BPA's hedging activities do not flow only to non-Slice purchasers. Aspects of BPA's hedging activities provide benefits to both Slice purchasers and non-Slice customers. *Id.* Where the hedging activities provide a benefit to the Slice purchaser, the hedging costs will be included in the Slice Revenue Requirement or, if necessary, made part of the true-up. *Id.* An example of such cost would be hedging activities associated with the Inventory Solution. The Slice purchasers are responsible for the costs associated with the Inventory Solution. Mesa *et al.*, WP-02-E-BPA-32, at 13. In the event BPA incurs hedging costs or expenses associated with the Inventory Solution, it would be appropriate to include such costs in the Slice Revenue Requirement. Mesa *et al.*, WP-02-E-BPA-54, at 13.

The only possible exception to this general proposition is for the expenses associated with salaries and overhead for BPA's hedging activities. BPA stated in its rebuttal testimony that it will not perform a detailed accounting of staff salaries and related overhead costs to ensure that all non-Slice related costs are removed. *Id.* The segregation of these costs into Slice and non-Slice categories is not justified given limited benefit. *Id.* at 14. Even if such salary and overhead expenses were segregated, the amount would be insignificant and would have a negligible effect on the Slice Revenue Requirement. *Id.*

Decision

BPA eliminated hedging costs from the Slice Revenue Requirement, except for those hedging costs from which Slice purchasers receive some benefit.

16.4.4 IOU Residential Exchange Settlement Costs

Issue

Whether the Slice Revenue Requirement fully allocates to Slice purchasers the proportionate cost of the proposed settlement of the Residential Exchange with the IOUs.

Parties' Positions

SPG states that Slice purchasers will not be insulated from paying their share of the actual net costs of the settlement of the Residential Exchange with the IOUs. SPG Brief, WP-02-B-SG-01, at 17. This includes both the power and the financial benefits of the proposed settlement. SPG argues that, by virtue of BPA including the 1,000 aMW block sale to the IOUs in its loads and resources analysis, power is included in the Inventory Solution cost, which is included in the Slice Revenue Requirement. *Id.* at 13. In addition, Slice purchasers will be required to pay for a net cash equivalent of an additional 800 aMW, which has a projected cost of \$54 million per year. *Id.* Slice purchasers will pay the proportionate share of the actual cost of this financial benefit, whatever the actual amount turns out to be. *Id.*

The DSIs contend that the Slice purchasers should pay their proportionate share of the settlement of the Residential Exchange with the IOUs. DSI Brief, WP-02-B-DS-01, at 84. The DSIs believe that SPG's proposal would limit the Slice purchasers' contribution to the power and financial benefits that BPA is offering to IOUs to settle the Residential Exchange. *Id.*

MAC disagrees with the DSIs' contention that the Slice Revenue Requirement includes only the 800 to 900 aMW of financial benefit of the proposed settlement of the Residential Exchange with the IOUs. MAC Brief, WP-02-B-MA-01, at 13. MAC states that the 1,000 aMW sold to the IOUs already is included in the load/resource balance used to calculate the net cost of the Inventory Solution, which the Slice Revenue Requirement includes. *Id.*

BPA's Position

BPA proposed that the Slice purchasers would be obligated for their proportionate share of the REP, including any settlement of the Exchange benefits with the IOUs. *Mesa et al.*, WP-02-E-BPA-54, at 9. This includes both the costs associated with the power deliveries and financial benefits to the IOUs under the proposed settlement. *Id.*

Evaluation of Positions

There appears to be some confusion among the parties regarding the obligation of the Slice purchasers for the cost of the REP and any settlement of the REP.

Slice purchasers will be responsible for paying their proportionate share of the costs of the REP or any settlement of the REP. The costs of the settlement of the REP include costs associated with both the power delivery and financial payment components of the proposed settlement. *Mesa et al.*, WP-02-E-BPA-54, at 9. Slice purchasers will not be insulated from the full cost of the proposed settlement of the REP, nor will they be insulated from the actual cost of the REP should some utilities choose not to accept the proposed settlement.

Decision

The Slice Revenue Requirement fully covers the full cost of the Residential Exchange, including any settlement of the benefits under that exchange.

16.4.5 Transmission Costs

Issue 1

Whether costs associated with transmission activities of the PBL should be removed from the Slice Revenue Requirement.

Parties' Positions

MAC states that BPA should remove costs associated with transmission activities of the PBL from the power scheduling costs allocated to the Slice product. MAC Brief, WP-02-B-MA-01, at 10.

BPA's Position

BPA has excluded all transmission costs (other than those associated with the transmission of System Obligations and GTAs) from the Slice Revenue Requirement. *Mesa et al.*, WP-02-E-BPA-54, at 13. BPA will not conduct detailed accounting of costs attributable to staff salaries and related overhead to remove "non-Slice" costs. *Id.* BPA believes that these amounts are insignificant and have a negligible effect on the Slice Revenue Requirement. *Id.* at 14.

Evaluation of Position

MAC's concern is that Slice purchasers will be paying for transmission management expense that should be excluded from the Slice Revenue Requirement. MAC Brief, WP-02-B-MA-01, at 10. MAC correctly notes that the Slice Revenue Requirement should not include costs associated with transmission management from power scheduling, except for those costs associated with the transmission of System Obligations and GTAs. *Id.* With the limited exception of the transmission expenses for System Obligations and GTAs, Slice purchasers directly assume the obligation for the transmission expense to market any surplus power. The only remaining aspect of transmission management costs that has not been separated for purposes of the Slice Revenue Requirement is salaries and overhead expenses. *Mesa et al.*, WP-02-E-BPA-54, at 13.

The BPA's transmission management group performs functions that would be considered both Slice and non-Slice related costs. Many of these activities would be difficult or impossible to precisely assign to the appropriate cost category.

For staff salary costs and related overhead costs associated with transmission management, BPA noted that it will not be conducting detailed accounting to remove such non-Slice costs from power scheduling costs allocated to the Slice product. *Id.* The amounts of staff salary costs and related overhead costs associated with managing non-Slice products, in general, are insignificant and have a negligible effect on the Slice Revenue Requirement. *Id.* at 14.

Decision

The costs associated with transmission activities of the PBL were removed from the Slice Revenue Requirement to the greatest extent possible, other than those associated with the transmission of System Obligations and GTAs.

Issue 2

Whether the stranded cost of PBL's transmission rights over the Southern Intertie should be included in the Slice Revenue Requirement.

Parties' Positions

The DSIs argue that the PBL is paying a significant amount of money to the TBL to purchase transmission rights over the Southern Intertie to market short-term firm power. DSI Brief, WP-02-B-DS-01, at 85; DSI Ex. Brief, WP-02-R-DS-01 at 30-31. The DSIs contend this transmission expense should be included in the Slice Revenue Requirement, because Slice sales diminish the short-term firm power available to BPA and thus diminish the amount of transmission rights needed by BPA. *Id.* The DSIs recommend that the Slice Revenue Requirement should include the annual cost of \$8.1 million for excess intertie capacity already purchased by the PBL, plus any increase in "stranded" transmission rights created by Slice sales. *Id.*

MAC argues the transmission costs associated with PBL's pre-purchased Southern Intertie capacity should be excluded from the Slice Revenue Requirement. MAC Brief, WP-02-B-MA-01, at 14. MAC believes the DSIs overlook some important rights PBL has with respect to its obligations to the TBL related to the Southern Intertie that remove any possibility that there will be any stranded transmission costs for Southern Intertie capacity. *Id.* First, the MOA between TBL and PBL grants PBL termination rights prior to March 2017, pursuant to BPA's Open Access Transmission Tariff in effect at the time the termination is being noticed. *Id.* The current Open Access Transmission Tariff allows the PBL to terminate or reduce transmission demand upon two years' notice. *Id.* Second, should the PBL hold unneeded transmission rights on the intertie, the PBL should be able to remarket these unneeded rights, especially if they occur during the summer, when demand for intertie capacity is high. *Id.* Third, the MOA states that the notice periods for termination and conversion to another transmission service may be shortened upon mutual agreement of the parties. *Id.* at 15.

Therefore, the MAC concludes that there should not be any unused or surplus transmission rights for which costs would have to be included in the Slice Revenue Requirement. *Id.*

SPG states that there will not be any stranded transmission expenses related to the Southern Intertie as a result of the sale of Slice, because BPA can terminate or resell any excess capacity. SPG Brief, WP-02-B-SG-01, at 10-11.

BPA's Position

BPA did not include in the Slice Revenue Requirement the costs of pre-purchased transmission that BPA was intending to use for surplus sales outside the region. Tr. 1378. There are three reasons why BPA did not include these costs. First, BPA does not anticipate selling 100 percent of the generation output of Federal system resources as Slice products; therefore, some amount of pre-purchased transmission will be necessary for surplus sales outside the region. *Id.* Second, BPA has not pre-purchased transmission for all the surplus sales it anticipates making in the absence of Slice sales, so there is the potential that the amount of pre-purchased transmission may not be in excess of the amount of surplus sales BPA makes, once Slice sales are known. Tr. 1379. Third, BPA has termination rights with a two-year notice period, so that any excess transmission can be terminated, once Slice sales are known. *Id.* The gap in time between the commencement of Slice sales and the termination date for pre-purchased transmission could be approximately one year. *Id.* Any costs resulting from excess transmission held by BPA during this gap could be mitigated by remarketing to other customers, including Slice purchasers. *Id.*

Evaluation of Positions

The DSIs argue that \$8.1 million of stranded Southern Intertie capacity should be added to the Slice Revenue Requirement. DSI Brief, WP-02-B-DS-01, at 85. The DSIs are concerned that responsibility for these stranded transmission costs will be borne solely by non-Slice purchasers. *Id.* The DSIs believe that if these costs are not included in the Slice Revenue Requirement, there will be a cost shift. *Id.*

The DSIs' contention that \$8.1 million should be added to the Slice Revenue Requirement is highly speculative. DSI Brief, WP-02-B-DS-01, at 84-85. The DSIs do not explain how they determined that there would be \$8.1 million in stranded transmission costs. *Id.* There is no evidence in the record that supports this conclusion. The Joint DSIs made a similar argument in their rebuttal testimony, but there they concluded that only \$6.7 million should be included each year. Schoenbeck and Bliven, WP-02-E-DS/AL/VN-06, at 32. The DSIs provided no substantive analysis to support their conclusion that \$6.7 million should be added to the Slice Revenue Requirement.

The DSIs' argument is premised on some assumed level of Slice sales. However, BPA did not forecast any Slice load as part of its initial proposal. Tr. 1341. Based on the zero Slice load forecast assumption, BPA is forecasting a need for all of the pre-purchased Southern Intertie transmission capacity to market surplus generation. Pedersen and McRae, WP-02-E-BPA-28, at 3. In fact, BPA may need to acquire additional transmission capacity to market its surplus, based on the assumption of no Slice load. Tr. 1378.

To create a stranded transmission expense, there must be a level of Slice sales high enough to displace BPA's need for the transmission capacity. The DSIs do not provide any explanation of what assumptions they are making about the presumed level of Slice sales. Without some understanding as to how the DSIs came to the conclusions they reach, it is impossible to evaluate, much less adopt, the proposal.

The DSIs' argument is further undermined by the fact that BPA has the ability to avoid most, if not all, of these stranded costs. Under PBL's agreement with the TBL, PBL can terminate a portion of the purchase upon two years' notice. Tr. 1378-79. Because the level of Slice sales will be known at least one year prior to the start of the Slice contract, BPA can terminate the agreement in whole or in part to limit its exposure. This one year of stranded costs will result only if BPA is unable to remarket the capacity or reach a mutual agreement with TBL to take it back on a shorter notice. *Id.*

MAC argues that BPA should have no costs associated with any excess transmission intertie capacity, because of BPA's termination rights through its MOA with the TBL. MAC Brief, WP-02-B-MA-01, at 14. Furthermore, any excess transmission intertie capacity can be remarketed, especially if it occurs during periods when demand for transmission intertie capacity is high. *Id.*

BPA agrees with MAC's argument, and BPA testified during cross-examination that BPA would not be encumbered with any stranded transmission costs as a consequence of selling Slice:

- Q. Will the amount of transmission that BPA would need for that purpose change if, for example, BPA were to sell 100 percent of the Federal system generation as a slice product?
- A. (Mr. Pearson) If we sold 100 percent, yes. But you have to look at the reason we did not--we chose not to include it. And there's three reasons for that: One, is in actuality we will not be selling 100 percent of the system with slice. We have not fully pre-purchased all the transmission we need, so there could be the potential that the amount of slice we sell will not interfere with the pre-purchase. Second, to the extent we do sell enough slice that it does displace some of that pre-purchased transmission, it has a two-year termination notice. We would know how much slice we sell by September 30, 2000. By October 1, 2001, the slice contracts would start. So there is--and we would terminate that what we do not need. There is only one year overlap there from October 1, 2001, to September 30, 2002. We would look at reselling that transmission so it would not result in a net cost and potentially reselling it to the slice customers, because there is still only a certain amount of transmission available in the Northwest.

Tr. 1378-79.

Decision

BPA will not adjust the Slice Revenue Requirement to include potential stranded costs due to excess Southern Intertie capacity.

16.4.6 Inventory Solution True-Up

Issue

Whether BPA should include the forecasted costs of the Inventory Solution in the Slice Revenue Requirement, rather than trueing up to actual costs.

Parties' Positions

NRU testified that Slice purchasers will be shielded from costs associated with the Inventory Solution. Saven, WP-02-E-NI-04, at 12.

MAC argues that the actual costs of the Inventory Solution should be excluded from the true-up process for the Slice product. MAC Brief, WP-02-B-MA-01, at 12. MAC argues that the cost uncertainty associated with the Inventory Solution is due to BPA's discretionary decision to sell power to the DSIs, which is unrelated to the Slice product. *Id.* MAC believes that trueing up to the actual costs of the Inventory Solution violates the basic premise of the product, because these are costs which result from decisions that go beyond BPA's statutory obligations. *Id.*

SPG also notes that, because BPA will true-up the Inventory Solution to actual MW after the Subscription contracts are signed, Slice purchasers will not, as NRU's testimony suggests, be shielded from the costs associated with an expanding Inventory Solution. SPG Brief, WP-02-B-SG-01, at 12. Any additional load placed on BPA after the close of Subscription will include a TAC that will place the costs of the additional augmentation on the actual purchaser and not all other customers. *Id.*

BPA's Position

BPA anticipates taking steps to supplement the capability of the FCRPS to meet the total load placed on BPA (Inventory Solution). Mesa *et al.*, WP-02-E-BPA-32, at 12. The Inventory Solution is defined as the power purchases needed to meet all load service requests made under the Subscription process on a planning basis. *Id.*

Slice purchasers will pay their proportionate share of all costs associated with increasing the current inventory in order to meet the total Subscription load. *Id.* at 13. The estimated net cost of the Inventory Solution will be included in the Slice Revenue Requirement. *Id.* The "net cost" of the Inventory Solution refers to the net amount of the costs associated with any inventory augmentation and the associated revenues from such inventory augmentation. *Id.*

The actual costs of the Inventory Solution will be excluded from the true-up process for the Slice product. Mesa *et al.*, WP-02-E-BPA-54, at 11. BPA will true-up to the actual MW of the

Inventory Solution after the Subscription contract signing window closes, but the price of the Inventory Solution (\$/MWh) will not be subject to the true-up process and will remain as forecast in the 2002 power rate case. *Id.*

The rationale for service to the DSIs is discussed in the testimony of Berwager *et al.*, WP-02-E-BPA-09, at 6-7. Both Slice and non-Slice customers will share the costs of extending the Inventory Solution. Mesa *et al.*, WP-02-E-BPA-54, at 10.

Evaluation of Positions

MAC argues that forecasted rather than actual costs of the Inventory Solution should be included in the Inventory Solution. MAC Brief, WP-02-B-MA-01, at 12. MAC does not specify whether the term “costs” refers to Inventory Solution MW or to the price (\$/MWh) of the Inventory Solution, or both. There is some ambiguity, because MAC alludes to both the MW associated with BPA’s decision to serve the DSIs and the volatility in the net cost of such service. *Id.* at 12-13.

BPA distinguishes between the MW component and the price component of its Inventory Solution costs. The MW component will be true-up after the closing of the Subscription contract signing window, but the cost of the Inventory Solution (\$/MWh) will not be subject to the true-up process. Mesa *et al.*, WP-02-E-BPA-54, at 11. By truing up to the actual MW of the Inventory Solution at the close of the Subscription contract signing window as opposed to using the forecasted MW amount of the Inventory Solution, all customer classes will share responsibility for the full amount of the Inventory Solution. Mesa *et al.*, WP-02-E-BPA-54, at 11-12. The equitable treatment between customer classes for this expense is assured by having both Slice and non-Slice customers assessed the same forecasted price for the replacement power. If BPA did not true-up to the actual MW of the Inventory Solution, there would be the possibility of a cost shift to or from Slice purchasers, if BPA did not accurately forecast the amount of Inventory Solution MW. Truing up to actual MW at the close of the Subscription signing window also assures that Slice purchasers will be not be shielded from an expansion of BPA’s loads, as NRU’s testimony suggested would be the case. Saven, WP-02-E-NI-04, at 12.

Decision

BPA will true-up the MW component of its Inventory Solution costs, but the price of the Inventory Solution (\$/MWh) will not be subject to the true-up process.

16.5 Cost Shifts

Issue 1

Whether BPA should establish in this rate proceeding a limit on the amount of cost shift associated with Slice.

Parties' Positions

The DSIs are concerned that Slice sales may create unforeseen cost shifts. DSI Brief, WP-02-B-DS-01, at 85; DSI Ex. Brief, WP-02-R-DS-01, at 31. The DSIs believe that the greater the percentage of the generation output of the Federal system resources that is sold as Slice products, the greater the effect on non-Slice customers of any cost shift. *Id.* Given this uncertainty about the unforeseen cost shifts that could be caused by the sale of Slice, the DSIs recommend that BPA limit the volume of Slice products sold to 15 percent of the generation output of Federal system resources. *Id.* at 85-86.

NRU also is concerned about the magnitude of cost shifts due to Slice sales, particularly if the volume of Slice products sold exceeds 15 percent of the generation output of the Federal system resources. NRU Brief, WP-02-B-NI-02, at 27. NRU believes that the cost shifts associated with the sale of Slice will increase in terms of dollar amounts, proportionate to the increase in Slice sales beyond the 1,000 aMW range. *Id.* NRU believes that BPA should ensure that any cost shifts associated with the sale of Slice go no further than BPA's initial assumption of up to \$7.7 million, assuming 15 percent of the generation output of Federal system resources is sold as Slice products. *Id.*

UCUT is concerned about increasing amounts of Slice purchases beyond the estimates of potential sales in BPA's initial proposal. UCUT Brief, WP-02-B-UC-01, at 23. UCUT recommends BPA consider all rate impacts that must be mitigated that result from the actual level of Slice sales differing from the level considered in BPA's initial rate proposal. *Id.* at 23-24.

SPG states that sales of the Slice product will not cause significant cost shifts to other BPA customers. SPG Brief, WP-02-B-SG-01, at 6. SPG states that BPA's cost shift study and SPG's own sensitivity study both demonstrate that there would be no measurable, significant cost shifts to other customers due to the sale of Slice. *Id.* at 6-7. SPG states that the DSIs mistakenly assume that the magnitude of cost shifts will increase as BPA sells greater amounts of the Slice product. *Id.* at 9. SPG believes the DSIs' argument is flawed. SPG states that the DSIs assume that the relationship between potential costs and amount of power assumed to be sold as Slice products in BPA's Cost Shift Study is perfectly linear and can be applied to higher amounts of power sold as Slice products, without critical examination. *Id.* SPG claims that BPA's Cost Shift Study may be unreliable in the upper ranges of assumed percent of the generation output of Federal system resources sold as Slice products. *Id.* at 10. If BPA's Cost Shift Study is unreliable in the upper ranges, then the DSIs' conclusion is entirely unsupported. *Id.*

SPG asserts that there are significant benefits to BPA, the Federal Government, and to other BPA customers from the sale of the Slice product. SPG Brief, WP-02-B-SG-01, at 4. Benefits include the shift of risks from BPA to the Slice purchasers, the improvement of BPA's ability to make its Treasury repayments, and the Slice purchasers' payment of their share of BPA's costs. *Id.* at 5.

MAC states that the sale of the Slice product will not result in improper shifting of costs to other power customers. MAC Brief, WP-02-B-MA-01, at 9. This is due to two main reasons:

(1) the Slice purchaser alone will face an annual rate true-up; and (2) Slice purchasers alone will bear responsibility for incremental resources necessary to serve their loads. *Id.* No other customers have to bear those risks. *Id.* MAC concurs with the conclusions of both BPA's Cost Shift Study and SPG's analysis, which show that the sale of Slice will not result in the shifting of costs from Slice purchasers to other BPA customers. *Id.*

MAC asserts that the sale of the Slice product creates benefits to BPA's non-Slice customers, because the sale of Slice significantly shifts FBS cost responsibility from the Treasury to Slice purchasers. MAC Brief, WP-02-B-MA-01, at 7. The Slice purchaser directly assumes the risks associated with weather, fish, and the energy marketplace, which strengthens BPA's ability to make payments to the Treasury and reduces the amount of any potential stranded costs. *Id.*

BPA's Position

The Slice product is a balanced product that has some provisions that are favorable to Slice customers, as well as some provisions that provide benefits to BPA's other customers. Mesa *et al.*, WP-02-E-BPA-54, at 2. The Slice product, in total, represents an equitable balance between risks and benefits for the Slice customers and non-Slice customers. *Id.*

BPA conducted a Cost Shift Study to examine the potential for cost shifts between the Slice product and other requirements products. Mesa *et al.*, WP-02-E-BPA-32, at 20. The results of this Cost Shift Study indicated that the 50 water year average annual cost shift to Slice purchasers of selling 15 percent of the generation output from the Federal system resources as Slice products is equal to \$5.7 million. Wholesale Power Rate Development Study, WP-02-FS-BPA-05, Appendix C, Section 5.3. Given the sensitivity of the study, the margin of error in the assumptions, and the relatively small size of the cost shift results, BPA concluded that there would be no significant cost shift to or from Slice purchasers to or from other customers. Mesa *et al.*, WP-02-E-BPA-32, at 22-23. Therefore, BPA believes that no further adjustments to the Slice rate are necessary, including developing a cost shift "cap." Mesa *et al.*, WP-02-E-BPA-54, at 7. BPA's Slice Cost Shift Study, while useful in determining whether or not there would be significant cost shifts caused by BPA selling 15 percent of the generation output from Federal system resources as Slice products, was not intended to be used to precisely calculate a cost shift amount that would set a "tolerable" upper limit. *Id.* at 7.

Evaluation of Positions

The DSIs, NRU, and UCUT are all concerned about the magnitude of cost shifts due to Slice sales, particularly if the volume of Slice products sold exceeds 15 percent of the generation output of the Federal system resources. DSI Brief, WP-02-B-DS-01, at 85; NRU Brief, WP-02-B-NI-02, at 27; UCUT Brief, WP-02-B-UC-01, at 23. To limit the potential cost shift associated with Slice sales to tolerable levels, the parties have slightly different recommendations. The DSIs recommend that BPA limit the volume of Slice products sold to 15 percent of the generation output of Federal system resources. DSI Brief, WP-02-B-DS-01, at 85-86. NRU recommends that BPA limit the cost shift associated with Slice sales to \$7.7 million, assuming 15 percent of the generation output of Federal system resources is sold as Slice products. NRU Brief, WP-02-B-NI-02, at 27. UCUT contends that Slice should not be

extended beyond the levels considered in the initial proposal. UCUT Brief, WP-02-B-UC-01, at 23.

BPA's initial proposal was silent about the need to limit or cap the amount of Slice available to its public preference customers. Since the initial proposal, however, several parties have recommended in their testimony that BPA limit in some fashion the amount of Slice offered. Saven, WP-02-E-NI-04, at 9-10; Schoenbeck and Bliven, WP-02-E-DS/AL/VN-06, at 36-38. In response to these and other concerns regarding Slice, BPA initiated a separate public process to examine whether it would be appropriate to cap or limit the amount of Slice available to public preference customers. Tr. 1344. As a result, BPA will not be considering setting limits on volume of Slice sales in this rate case. The Power Subscription Strategy Administrator's Supplemental ROD stated that Slice sales will be capped. Decisions with respect to the amount of such a volume limit will be made outside the rate case in a different forum.

The DSIs assert that without imposing some limit on the amount of Slice, there would be a cost shift to the non-Slice customers. DSI Brief, WP-02-B-DS-01, at 85. The DSIs' argument assumes that with the sale of Slice there would be some unspecified cost shift. The DSIs do not provide any quantitative analysis to support their assumption of a cost shift.

BPA conducted a Cost Shift Study to determine the "potential for cost shifts between the Slice product and other requirements products." Mesa *et al.*, WP-02-E-BPA-32, at 22. The Cost Shift Study found that, over the 50 water years, the cost shift to BPA from selling 15 percent of the system as Slice was \$5.7 million. Wholesale Power Rate Development Study, WP-02-FS-BPA-05, Appendix C, Section 5.3. BPA concluded that "given the sensitivity of the study, margin of error in the assumptions, and relatively small size of the cost shift results," BPA did not believe offering Slice resulted in a significant cost shift. Mesa *et al.*, WP-02-E-BPA-32, at 22. BPA found that this cost shift of \$5.7 million was equal to 2.1 percent of the Slice revenue. Wholesale Power Rate Development Study, WP-02-FS-BPA-05, Appendix C, Section 5.3. The Cost Shift Study confirmed that this percentage remained constant over the range of percentages of the Federal system generation sold as Slice.

NRU's argument asks that the Cost Shift Study be used to set the bounds for an acceptable cost shift. NRU Brief, WP-02-B-NI-02, at 26-27. NRU misinterprets the purpose of the Cost Shift Study and ignores one of the fundamental principles of the Slice product. BPA's Cost Shift Study was not intended to be used to precisely calculate a cost shift amount that would set a "tolerable" upper limit, as NRU suggests. Mesa *et al.*, WP-02-E-BPA-54, at 7. Rather, the Cost Shift Study is a tool to examine whether significant cost shifts would result from the decision to offer the Slice product. *Id.*

BPA has stated that one of its guiding principles in the decision to offer Slice was that it would not create a cost shift to or from those who chose to purchase Slice. Subscription ROD, at 85. It is BPA's overall objective that there would be no "tolerable" level of cost shifts that would be acceptable, as NRU's interpretation suggests. BPA recognizes, however, that absolute precision in the allocation of expenses between Slice and non-Slice purchasers in some instances may be difficult, and likely would have negligible effects. (*See* section 16.4.5 on allocation of

transmission costs.) In these limited instances, however, the impact on rates, both Slice and non-Slice, is so negligible that there will be no material impact.

While SPG and MAC point out that there are significant benefits to BPA's non-Slice customers due to the costs and risks shifted to Slice purchasers, SPG Brief, WP-02-B-SG-01, at 4; MAC Brief, WP-02-B-MA-01, at 7; these benefits to non-Slice customers and BPA are balanced with benefits to Slice purchasers. Mesa *et al.*, WP-02-E-BPA-54, at 2.

Decision

BPA will not establish in this proceeding a limit on the amount of Slice cost shift.

Issue 2

Whether BPA offers comparability of future cost protection to Slice and non-Slice customers.

Parties' Positions

NRU argues that customers signing 10-year or longer Full Requirements contracts with BPA should receive the same protections Slice purchasers receive from the assignment of costs for future changes in the FBS (*e.g.*, fish and wildlife costs) or from the assignment of costs of load service obligations undertaken by BPA (*e.g.*, inclusion of DSI and IOU service in the Inventory Solution). NRU Brief, WP-02-B-NI-02, at 25.

BPA's Position

BPA believes that customers signing up for 10-year or longer Full Requirements contracts with BPA are treated no differently than Slice purchasers. Mesa *et al.*, WP-02-E-BPA-32, at 5.

Evaluation of Positions

NRU is concerned that BPA will provide Slice purchasers some extra protection from the assignment of costs, compared to costs assigned to non-Slice customers. NRU Brief, WP-02-B-NI-02, at 25. BPA does not believe this is the case in the FY 2002-2006 rate period, nor will this be the case in any future rate periods. Mesa *et al.*, WP-02-E-BPA-32, at 4. First, the Slice product, by design, includes the same costs for its revenue requirement as other products, with some limited exceptions. *Id.* at 5. Second, with respect to the assignment of costs of load service obligations undertaken by BPA (*e.g.*, inclusion of DSI and IOU service in the Inventory Solution), the Slice purchasers are required to pay their proportionate share of these costs for the FY 2002-2006 rate period. *Id.* at 13.

After 2006, BPA will be determining the amount of the Inventory Solution in the then-applicable rate periods. *Id.* at 15. Both Slice purchasers and non-Slice customers will be responsible for paying their share of the Inventory Solution costs determined in the then-applicable rate periods. *Id.*

Decision

BPA is offering comparability of future cost protection to Slice purchasers and non-Slice customers.

16.6 Impact of Slice on Risk Mitigation

Issue 1

Whether BPA should adjust the CRAC thresholds downward based on the percentage of the generation from the Federal system sold as Slice.

Parties' Positions

SUB states that a methodology should be developed which adjusts the CRAC threshold to correspond to the actual amount of Slice load. SUB Brief, WP-02-B-SP-01, at 10. SUB contends that preference customers who do not purchase Slice will be burdened with unnecessarily high reserve requirements. *Id.* SUB asserts that an adjustment should be made to the CRAC threshold after September 30, 2000, when the level of Slice sales is known. *Id.*

WPAG similarly indicates that the failure to reflect Slice load in the risk analysis will increase the likelihood of the CRAC triggering for those customers that will not purchase power under the Slice Rate. WPAG Brief, WP-02-B-WA-01, at 15. WPAG argues CRAC is more likely to trigger because of the diminution in the accumulation of reserves when load is being placed under the Slice rate rather than the PF rate. *Id.* Because Slice purchasers are not contributing to PNRR, increases in reserve levels through PNRR and positive market conditions make it necessary to adjust the CRAC threshold downward so the Slice load will not increase the likelihood of a CRAC triggering. *Id.*

BPA's Position

While a percentage of Slice sales greater than zero would lower the contribution to reserve levels by PNRR (Slice rates do not have a PNRR component), the magnitude of risk that the reserves are designed to cover will also be smaller. Mesa *et al.*, WP-02-E-BPA-32, at 18-19. CRAC is a risk mitigation tool designed to be used as part of an overall risk mitigation package. Lovell *et al.*, WP-02-E-BPA-14, at 3. CRAC is a temporary upward adjustment to posted power prices if AANR fall below threshold levels set forth in BPA's initial proposal. *Id.* at 6, and Table A, Attachment 1. Although the CRAC thresholds are often discussed in terms of reserves (*e.g.*, WPAG Brief, WP-02-B-WA-01, at 15), BPA proposed that the thresholds be based on AANR, a similar measure. Lovell *et al.*, WP-02-E-BPA-14, at 6-7. Because Slice purchasers assume directly the financial risks CRAC is designed to mitigate, Slice purchasers will not be subject to an upward CRAC adjustment to the Slice rate. Mesa *et al.*, WP-02-E-BPA-32, at 16-17. By assuming the risks for which CRAC was designed to mitigate directly, the CRAC threshold is no more likely to be reached when BPA sells Slice.

Evaluation of Positions

WPAG and SUB both correctly note that there will be a direct relationship between the contribution to reserves through PNRR and the level of Slice sales. WPAG Brief, WP-02-B-WA-01, at 15; SUB Brief, WP-02-B-SP-01, at 10. However, WPAG and SUB focus on only one aspect of the impact of Slice load on BPA's risk profile and ignore a second, larger impact.

Slice sales have two major impacts on the relationship between the level of reserves and reaching the CRAC threshold. First, as noted by WPAG and SUB, the contribution to reserves based on PNRR is reduced by a percentage equal to the percent of the Federal system generation sold as Slice. Mesa *et al.*, WP-02-E-BPA-32, at 18-19. The higher the level of Slice sales BPA has, the lower the contribution to reserves will be from PNRR. *Id.* at 18-19. WPAG and SUB both argue that this will result in a greater likelihood of CRAC triggering due to a smaller number of customers contributing to the reserves through PNRR. WPAG Brief, WP-02-B-WA-01, at 15; SUB Brief, WP-02-B-SP-01, at 10.

While Slice sales do not contribute to reserves through PNRR, Slice creates a countervailing impact that provides a level of protection against reaching the CRAC threshold. Mesa *et al.*, WP-02-E-BPA-32, at 18-19. The Slice rate is based on BPA's actual costs, rather than the costs forecasted in the rate case. *Id.* at 9. As a consequence of Slice purchasers paying BPA's actual costs, the magnitude of risks that reserves will need to buffer will be smaller. *Id.* Through Slice, BPA is assured payment of its actual costs irrespective of generation levels, market prices, or expense levels. *Id.* at 2. The Cost Shift Study confirmed this. Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 141. The Cost Shift Study found that both of these reductions would be proportional to the percentage of the system sold as Slice (the "linear relationship"). *Id.* For example, if 10 percent of the system is sold under Slice, the annual contributions to reserves based on PNRR would be reduced by 10 percent. *Id.*

By examining the reserve forecasts contained in the initial proposal, it is apparent that rather than increasing the likelihood of reaching the CRAC threshold, Slice will decrease the potential of it triggering. Lovell *et al.*, WP-02-E-BPA-14, at Attachment 2. The annual contribution to reserves based on PNRR in the initial proposal was \$127 million. By contrast, the largest annual downswing in cash modeled in the ToolKit is approximately \$1.13 billion. *Id.* Assuming 10 percent of the Federal generation is sold as Slice, the result would be a \$12.7 million reduction in contribution to reserves from PNRR as compared to a \$113 million reduction in maximum downward swing in cash BPA receives due to transfer of 10 percent of BPA's risk to Slice purchasers. A comparison of the two amounts allows one to conclude that Slice loads will reduce the likelihood of reaching the CRAC threshold for the non-Slice customer, not increase it as SUB and WPAG suggest. The same comparisons could be made for hypothetical Slice percentages of 20, 30, and 40 percent, and so on, supporting the same conclusion.

Decision

BPA will not adjust the CRAC threshold downward based on the percentage of the Federal system generation sold as Slice.

Issue 2

Whether BPA has adequately taken into account risks associated with meeting BPA's environmental obligations, assuming high levels of Slice sales.

Parties' Positions

UCUT states that a higher level of Slice sales poses risks that were not considered in the initial proposal. UCUT Brief, WP-02-B-UC-01, at 23. UCUT claims BPA should increase the PNRR to offset these additional risks. *Id.* at 23-24. UCUT contends that a higher level of Slice sales will lead to fewer revenues to support future environmental costs. *Id.* They believe this will result in additional economic and political pressures on BPA to cut its environmental programs. *Id.*

BPA's Position

BPA testified it will meet all of its statutory environmental obligations under the Northwest Power Act, NEPA, and ESA. DeWolf *et al.*, WP-02-E-BPA-39, at 33. BPA's rates and risk mitigation measures are designed to be sufficient to recover the costs of a wide range of future decisions on system reconfiguration and associated standards. *Id.* The revenue requirement, repayment schedule, and risk analysis took into account the full range of potential fish costs by identifying and modeling all significant risks. *Id.*

Through Slice, BPA is assured payment of its actual costs (which will include environmental costs) irrespective of generation levels, market prices, or expense levels. Mesa *et al.*, WP-02-E-BPA-32, at 18-19. To ensure that Slice did not shift costs, including those associated with BPA's environmental obligations, from Slice purchasers to non-Slice customers, BPA performed the Cost Shift Study. Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 141. The Cost Shift Study confirmed there were no cost shifts that resulted from offering the product.

There is no evidence on the record to support UCUT's contention that Slice sales will have any impact on BPA's ability or motivation to meet its environmental obligations.

Evaluation of Positions

UCUT's concern is that the sale of Slice will increase the possibility that BPA will not meet its environmental obligations. UCUT Brief, WP-02-B-UC-01, at 23. UCUT provides no evidentiary support for this position.

UCUT's contention that the Slice sales will lead to fewer revenues to support future environmental costs is based primarily upon an assumption that Slice sales will somehow result in smaller revenues, lessening BPA's ability to meet its environmental obligations. *Id.* UCUT does not provide any analysis to support this contention, nor does it explain what features of the product design will cause this to happen.

BPA testified that it intends to fully comply with all of its environmental obligations. DeWolf *et al.*, WP-02-E-BPA-39, at 33. This includes obligations under the Northwest Power Act, ESA, and NEPA. *Id.* Rates (including that for Slice) were designed and the risk mitigation package was created to ensure that BPA will meet the broad range of potential environmental obligations it could face in the future. *Id.*

To confirm that Slice would not result in customers avoiding environmental or other obligations, BPA conducted the Cost Shift Study. Mesa *et al.*, WP-02-E-BPA-32, at 20. The Cost Shift Study found that there was a linear relationship between the percentage of the Federal system generation sold as Slice and the payment of an equal percentage of the Slice Revenue Requirement. Mesa *et al.*, WP-02-E-BPA-32, at 18. Therefore, over the term of the Slice contract, selling part of the Federal system generation as Slice products is net revenue-neutral to BPA and its customers, and therefore, there are no resulting cost shifts to or from Slice purchasers, and no further adjustments to the Slice rate are necessary. *Id.* at 23. Based upon the conclusion of the Cost Shift Study, there should be no negative financial consequence from Slice sales that would result in BPA failing to meet its financial obligations.

In addition, Slice was designed, in part, to relieve BPA of a degree of risk and share that risk with the Slice purchasers. Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 41-43; Tr. 1371; Mesa *et al.*, WP-02-E-BPA-32, at 17. As explained in the Subscription ROD, “Purchasers of Slice would pay a pre-established portion of BPA’s revenue requirement regardless of weather, streamflow, market, or generation output conditions. This assured payment would tend to mitigate BPA’s financial risks in the event that any of these conditions put adverse financial pressure on BPA.” Subscription ROD, at 83. The annual true-up mechanism would ensure that Slice purchasers pay the actual costs incurred by BPA. Mesa *et al.*, WP-02-E-BPA-32, at 9-12. As the Subscription ROD noted, “This feature would help stabilize BPA’s financial picture by sharing unexpected costs, as well as savings, with the Slice purchaser.” Subscription ROD, at 83.

Decision

BPA has adequately taken into account risks associated with meeting BPA’s environmental obligations even if there are high levels of Slice sales.

Issue 3

Whether BPA should revise its proposal to account for the risk-mitigating effects of expected Slice sales and adjust the TPP downward.

Parties’ Positions

The DSIs note that BPA’s risk mitigation package is based on a forecast of no Slice sales. DSI Brief, WP-02-B-DS-01, at 52-53. Because BPA anticipates some sales of Slice, these actual Slice sales will reduce some of BPA’s risk and increase the TPP. *Id.* BPA should revise the risk mitigation package to reflect the anticipated Slice sales. *Id.*

Alcoa/Vanalco argue that BPA is attempting to overcollect from its customers for risks that it does not face. Alcoa/Vanalco Brief, WP-02-B-AL/VN-01, at 53.

In Alcoa/Vanalco's brief on exceptions, they contend that the Risk Analysis Panel was incorrect in stating that BPA expected to make no Slice sales, because the evidence suggests that there is significant interest in the product. Alcoa/Vanalco Ex. Brief, WP-02-R-AL/VN-01, at 29. They also believe that BPA failed to analyze the effects of the anticipated Slice sales on BPA's risk position. *Id.* Alcoa/Vanalco state that BPA did not properly incorporate Slice sales into its risk analysis, because BPA only considered the increased risks Slice presented BPA and not reductions in risk. *Id.* at 29-30. As a consequence of these actions, Alcoa/Vanalco believe that BPA is double collecting for the same risk. *Id.* at 31. Alcoa/Vanalco believe that there should be a reduction in PNRR as the sales of Slice increase. *Id.* at 33. Alcoa/Vanalco also contend that there is no evidentiary support for BPA's claim that there is a corresponding decrease in PNRR as Slice sales increase. *Id.*

BPA's Position

BPA performed a risk analysis and designed a risk mitigation package for this rate case that assumed there would be no Slice sales. Tr. 1938. Using the forecast of no Slice load, the risk mitigation package in the initial proposal would assure that BPA achieved an 88 percent TPP. *Id.* BPA has developed the risk mitigation package in this fashion for two reasons. First, Slice is designed so that if there are Slice sales, the costs and risks to other parties, specifically including non-Slice customers and the Treasury, will not increase. Mesa *et al.*, WP-02-E-BPA-32, at 16-23. Similarly, no Slice sales were assumed in developing the risk package, so that in the event Slice sales are smaller than what BPA may have attempted to forecast, BPA's risk profile would not be adversely impacted. Tr. 1939.

Evaluation of Positions

The DSIs and Alcoa/Vanalco both argue that BPA's risk mitigation experts took it as their charge to assure BPA of having an 88 percent TPP. DSI Brief, WP-02-B-DS-01, at 52; Alcoa/Vanalco Ex. Brief, WP-02-R-AL/VN-01, at 33. Because BPA's risk mitigation package is based on no Slice sales, the DSIs contend TPP is actually greater than 88 percent, because some Slice sales are anticipated. DSI Brief, WP-02-B-DS-01, at 53. The DSIs argue that BPA does not dispute that there could be as much as 4,000 MW of Slice load, yet the DSIs fail to provide any substantive evidence as to the anticipated amount of Slice load. *Id.* The DSIs also do not provide any substantive analysis showing how much TPP would increase due to their undefined level of Slice sales.

Alcoa/Vanalco contend that BPA did not properly incorporate Slice sales into its risk analysis. Alcoa/Vanalco Ex. Brief, WP-02-R-AL/VN-01, at 29. Alcoa/Vanalco claim that because BPA failed to properly incorporate Slice sales into its risk analysis, BPA is double collecting PNRR. *Id.*

Despite the lack of substantive evidence to support the conclusion, the DSIs state that PNRR should be reduced to account for the increased TPP due to Slice sales. DSI Brief,

WP-02-B-DS-01, at 52-53. Alcoa/Vanalco similarly argue that BPA is attempting to overcollect PNRR for risk it does not face. Alcoa/Vanalco Brief, WP-02-B-AL/VN-01, at 53; Alcoa/Vanalco Ex. Brief, WP-02-R-AL/VN-01, at 33.

BPA believes that Slice load would not cause an overcollection of PNRR or significantly affect TPP. Tr. 1361. In the event there are actual Slice loads, as those actual loads increase, the amount of PNRR collected decreases. Mesa *et al.*, WP-02-E-BPA-32, at 17. The amount of PNRR collected decreases in a linear relationship to the amount of Slice that is purchased. *Id.* at 18-19. For example, if 15 percent of load were to be sold as Slice, then BPA would collect 15 percent less PNRR. Slice purchasers accept the risk of market variability, hydro variability, and other risks directly rather than using PNRR and CRAC to mitigate risks. *Id.* at 18-19.

If BPA were to project some percentage of Slice sales in its rate case forecast, BPA would have to add a corresponding level of PNRR to account for the volatility surrounding the assumption. Tr. 1360-62. This additional risk variable would likely counteract any projected decrease in PNRR and TPP. Tr. 1361.

It is appropriate to base BPA's risk mitigation package on a forecast of zero percent Slice load. Tr. at 1938, 1939. "By basing our risk analysis on an assumed level of no Slice sales, we were able to assemble a risk mitigation package that met the financial goal of 88 percent Treasury payment probability that would still be achieved almost certainly, not absolutely certainly, if there were Slice sales. It did this without shifting risk to the non-Slice customers." Tr. 1938-1939.

It would be imprudent to base BPA's risk analysis on an expected level of Slice sales, because the actual level of Slice sales is unknown. While there has been some preliminary interest in Slice, BPA testified that this interest could not be interpreted as a precise indication of the level of sales that will result. Tr. 1341-48. Furthermore, BPA testified that because of the unique nature of Slice, many of the parties participating in the dry runs were evaluating the product in light of their own power needs. *Id.* Given how different Slice is from BPA's traditional PF products, it would be impossible to anticipate with any degree of certainty the precise levels of Slice sales. *Id.* If BPA did assume a particular level of Slice load and reduced the PNRR in its rates, if the actual Slice loads turned out to be lower than the level assumed, BPA would find itself immediately in the position of having a TPP below its rate case goal.

While there is a potential for some levels of Slice sales, and while it is possible that actual Slice sales may increase the TPP, this does not require BPA to modify the risk mitigation package or risk analysis. Non-Slice customers are not harmed by this approach. If no Slice sales were anticipated, BPA would calculate PNRR in the manner it has in this rate case and in past rate cases. If it turns out that there are Slice sales, non-Slice customers will be no worse off than if there were no Slice sales.

Decision

BPA will not change the risk mitigation package based on the expectation of some level of Slice sales.

16.7 Irrigation Mitigation

Issue

Whether combining Slice with an irrigation mitigation product is an issue within the scope of the 2002 power rate case.

Parties' Positions

WPAG testified that Slice purchasers should not be eligible to purchase the surplus irrigation mitigation product. Cross *et al.*, WP-02-E-WA-01, at 48. WPAG states that under Slice, the purchaser is entitled to both requirements and surplus power generated by the system. *Id.* WPAG claims that no further irrigation mitigation is necessary, because the Slice purchaser will already be receiving its share of surplus power through the Slice purchase. *Id.*

NRU contends that WPAG's assertion that no further irrigation mitigation is necessary is factually incorrect. NRU Brief, WP-02-B-NI-02, at 23. NRU states that because most of the irrigation utilities have summer peaks, Slice may meet the utilities' load during May and June, but will likely not meet its needs in July and August, when the surplus component of Slice is generally smaller. Saven, WP-02-E-NI-05, at 31-32. NRU suggests that Slice purchasers should be entitled to a block purchase heavily shaped during the late summer when irrigation loads are the greatest. *Id.* at 32. NRU noted, however, that this is not an issue in the 2002 power rate case. *Id.* at 33.

BPA's Position

The determination of whether a Slice purchase can combine Slice with an irrigation mitigation product is not an issue in the 2002 power rate case.

Evaluation of Positions

The debate between WPAG and NRU over whether a Slice purchaser is entitled to some type of irrigation mitigation product is not an issue in this rate case. There are a number of issues surrounding the decision to offer Slice that will be resolved outside of this proceeding. These issues include at what level the amount of Slice offered should be capped (the decision whether to cap Slice sales already having been made outside the power rate case in the Power Subscription Strategy Administrator's Supplemental ROD), as well as eligibility for an irrigation mitigation product.

Decision

Any decision regarding combining Slice with an irrigation mitigation product will be made outside of the 2002 power rate case.

16.8 **Slice Methodology**

16.8.1 **Introduction**

The idea of submitting a Slice Methodology to FERC for approval was first raised by SPG in its direct case. Carr *et al.*, WP-02-E-SG-01, at 11. BPA, in rebuttal, agreed in general with the idea of submitting a Slice Methodology to FERC for approval for 10 years, but differed with SPG on some of the elements contained in SPG’s proposed Methodology. Mesa *et al.*, WP-02-E-BPA-54, at 10.

In concept, the proposed Slice Methodology would provide the basis for calculating the Slice rate and annual true-up in the current rate period and also in future rate periods. Carr *et al.*, WP-02-E-SG-01, at 11. The methodology was to provide a consistent method of calculating the rate without determining what the rate will be in the future. *Id.*

16.8.2 **Approval of Slice Methodology**

Issue

Whether BPA should seek 10-year approval of the Slice Methodology.

Parties’ Positions

The DSIs argue that BPA should not seek 10-year approval of the Slice Methodology because of the uncertainty surrounding the Slice product. DSI Brief, WP-02-B-DS-01, at 85-86; DSI Ex. Brief, WP-02-R-DS-01, at 31. The DSIs reason that because Slice is a new and untested product, BPA cannot be assured that it will actually recover all of its costs as planned. *Id.* at 85. The DSIs state that because of the absence of any experience with the product, BPA should not seek FERC approval of the methodology for more than five years so that BPA can make any necessary adjustments to ensure total cost recovery. *Id.* at 86.

MAC states that BPA should seek approval of the Slice Methodology for a minimum of 10 years. MAC Brief, WP-02-B-MA-01, at 5-7. MAC contends that seeking long-term approval of the Slice Methodology is the “only real protection against the vagaries of BPA’s programmatic spending decisions.” *Id.* at 5. Without long-term approval of the Slice Methodology, MAC contends, the “Slice contract would become the customer’s blank check that BPA could endorse over to any cause or interest group. . . .” *Id.* at 5-6. MAC believes that “FERC approval ensures the balance of risks between the Slice product and other products will be maintained over the long term.” *Id.* at 7.

SPG also states that BPA should seek 10-year approval to ensure the proper balance of risks between Slice and BPA’s other power products. SPG Brief, WP-02-B-SG-01, at 15-16. SPG believes that seeking 10-year approval is consistent with section 7(a)(1) of the Northwest Power Act and does not conflict with the Administrator’s ratesetting directives. *Id.* at 16.

In the IOU brief on exceptions, the IOUs contend that BPA should not offer the Slice contract for a period of 10 years. IOU Ex. Brief, WP-02-R-AC/GE/IP/MP/PL/PS/EN-01, at 49. The IOUs believe that it is poor public policy to offer a Slice contract for 10 years because the product is new and untested and there is no assurance that BPA will recover its costs. *Id.* at 49-50.

SPG states in its brief on exceptions that BPA adopted the new cost test in the Slice methodology that will drastically change the Slice rate. SPG Ex. Brief, WP-02-R-SG-01, at 5. The SPG contends that BPA's proposal, which provides for adding new generation costs or credits to the Slice Revenue Requirement that result from fulfilling System Obligations or other generation function costs, makes the methodology meaningless and is a fundamental change from BPA's initial proposal. *Id.* According to the SPG, BPA's proposal was that the costs and credits would be included "if and only if they are directly attributed to the costs of the Slice generating resources (Slice System)." *Id.* at 3-4. The SPG believe the change to the Slice methodology is not supported by any evidence in the record and is arbitrary and capricious. *Id.* at 6.

BPA's Position

BPA believes it is appropriate to offer Slice contracts for a period of 10 years and to seek approval of the Slice Methodology from FERC for a period of 10 years as well. Mesa *et al.*, WP-02-E-BPA-54, at 10.

BPA also believes that the addition of new generation costs or credits to the Slice Revenue Requirement should include those that result from fulfilling System Obligations or other generation costs. Whether this test for adding new cost or credit items to the Slice Revenue Requirement will result in a drastically different Slice rate is highly speculative. Any change (increasing or decreasing) to the Slice rate will depend entirely upon whether there are cost or credit items that should appropriately be assessed to the Slice Revenue Requirement.

Evaluation of Positions

The Slice contract will be for a minimum of 10 years (2002-2011). Wholesale Power Rate Development Study, WP-02-E-BPA-05, at 154. As such, Slice purchasers will be locked into a contractual obligation through the FY 2007-2011 rate period. Because rates for those five years will not be set until some time in the future, there is uncertainty surrounding what the Slice rate will be in that second rate period. SPG proposed in its direct testimony that BPA seek FERC approval for the methodology used to develop the Slice rate for a 10-year period. Carr *et al.*, WP-02-E-SG-01, at 11. SPG points out that the primary purpose for seeking 10-year approval of the Slice Methodology would be to provide the Slice purchaser with some level of assurance that the Slice Revenue Requirement will consist of the same basic components and that the annual true-up will be conducted in a consistent fashion for the duration of the contract. *Id.* FERC approval of the Slice Methodology would not constitute a mechanism for locking in the proposed rate for the term of the contract and thereby would avoid the possibility of contributing to the payment of higher costs BPA may face in the next rate period. *Id.* Rather, the Slice Methodology is the establishment of a set of cost categories and rate design features that would be employed for the duration of the contract. *Id.* at 11-12.

By seeking 10-year approval of the Slice Methodology, the balance of risks between Slice purchasers and non-Slice purchasers is ensured. *Mesa et al.*, WP-02-E-BPA-54, at 10. While BPA agrees with the concept of 10-year approval of the Slice Methodology, BPA does not agree with all of the elements contained in the proposed Slice Methodology attached to the SPG's direct testimony. Approval for 10 years also ensures that Slice purchasers have rate protections similar to ones BPA has given other customers signing contracts for a duration beyond the current rate period.

In their brief on exceptions, the IOUs raise for the first time BPA's decision to offer Slice contracts for a 10-year period. The IOU argument is barred for two reasons. First, the decision to offer Slice contracts for a period of 10 years is not a rate case issue. The decision to allow a Slice contract for a minimum of 10 years was made in the Subscription ROD. Subscription ROD, at 96.

Even if the issue is not outside the scope of this proceeding, the IOUs are nonetheless barred from advancing it for the first time in their brief on exceptions. Pursuant to §1010.13(b) of BPA's *Rules of Procedure Governing Rate Hearings*, "Parties whose briefs do not raise and fully develop their position on any issue shall be deemed to take no position on such issue. Arguments not raised are deemed to be waived." Having not raised this argument in its initial brief, the IOUs have waived the matter. *See* ROD section 1.1.3.

SPG contends that there is not sufficient evidence in the record to support changing the Slice Methodology to require the addition of new generation costs or credits to the Slice Revenue Requirement resulting from fulfilling System Obligations or other generation cost. SPG Ex. Brief, WP-02-R-SG-01, at 5. The SPG believes that this provision in the Slice Methodology is a fundamental change to BPA's initial proposal that incorporated the Slice product description.

The SPG's argument is based upon the notion that adding of new costs or credits to the Slice Revenue Requirement is a fundamental change from the initial proposal. Contrary to the SPG argument, however, BPA's initial proposal did not include a Slice Methodology. SPG Ex. Brief, WP-02-R-SG-01, at 5. The concept of the Slice Methodology was first proposed by the SPG in its direct case. WP-02-E-SG-01, at Attachment 5. BPA also did not discuss the "new cost test" or incorporate the Slice Product description as part of its initial proposal as stated by the SPG. SPG Ex. Brief, WP-02-R-SG-01, at 5.

The Slice Methodology was designed to ensure that new costs that are appropriately assigned to Slice purchasers are incorporated into the Slice Revenue Requirement. PBL costs or credits not otherwise specifically dealt with in the Slice Revenue Requirement may be included in both the Slice Revenue Requirement and the Actual Slice Revenue Requirement (True-Up) if and to the extent that:

Such PBL costs or credits could be properly includable in PBL's wholesale power rates; and either:

- Such PBL costs or credits are: (1) incurred by PBL to provide service to customers other than Slice purchasers; and (2) incurred to provide service to or otherwise benefit Slice purchasers;

OR

- Such PBL costs or credits are not incurred to provide service to customers other than Slice purchasers, nor to provide service to or otherwise benefit Slice purchasers.

By designing the Slice Methodology in this fashion, BPA will be assured that there will not be any cost shifts between Slice and non-Slice customers.

Decision

BPA will seek approval of the Slice Methodology for a minimum of 10 years.

Issue

Whether there is sufficient evidence on the record to support the inclusion of System Augmentation and Conservation Augmentation in the Slice Revenue Requirement.

Parties' Positions

The SPG raises for the first time in its brief on exceptions the belief that BPA has improperly revised the amount of System Augmentation from the 1,112 aMW in the Slice Revenue Requirement contained in the initial proposal to 1,282 aMW in the Draft ROD. SPG Ex. Brief, WP-02-R-SG-01, at 7. In addition, the SPG contends that BPA has also improperly added Conservation Augmentation to the Slice Revenue Requirement. *Id.* at 8. The SPG argues that there is no evidence in the record to support either of these changes. *Id.*

BPA's Position

There is substantial evidence on the record to support and explain the addition of Conservation Augmentation. Tr. at 877. There is also substantial evidence to support the update of the System Augmentation numbers. Tr. at 839 and 841-43.

SPG's attempt to raise these issues in its brief on exceptions is barred. Under BPA's *Rules of Procedure Governing Rate Hearings*, parties are prohibiting from raising new issues in their briefs on exceptions. *See Procedures*, §1010.13.

Evaluation of Positions

The Slice Revenue Requirement is designed to include the same cost items as other products, with the exception of power purchases, inter-business line transmission costs and PNRR. Mesa *et al.*, WP-02-E-BPA-32, at 5. One aspect of the Slice Revenue Requirement for which Slice purchasers are responsible is the net cost of the Inventory Solution. *Id.* at 12-13. The net

cost of the Inventory Solution in the initial proposal included the costs associated with purchasing 1,112 aMW. *Id.* (This amount should have been the 1,116 aMW reflected in the Loads and Resources Study)

During cross examination, BPA witnesses explained that there would be two changes to the Loads and Resources Study that would impact the augmentation purchases from which the net cost of the Inventory Solution is calculated. The first adjustment was that there would be a change to the load forecast due to Conservation Augmentation. Tr. 839 and 877. This adjustment reduced the public agency loads by 20 aMW per year for each of the five years of the rate period. Tr. 877. This results in an average 60 aMW annual reduction over the five years of the rate period. *Id.*

The second adjustment to the Loads and Resources Study was an update to current hydroregulations. Tr. 839. BPA updated the Study to incorporate the 99/2000 PNCA data submittals. Tr. 842. As a consequence of updating to the more recent PNCA submittals, there are 144 fewer megawatts generated by the hydro system during critical water. Tr. 841.

The reduction in these generation levels leads to a need to forecast additional augmentation purchases. Tr. 843. The combination of the Conservation Augmentation and the reduction in hydro generation levels resulted in a need to increase augmentation purchases from the 1,116 aMW forecasted in the initial proposal to the current forecast of 1,282 aMW. It should be noted, however, that the net cost of the Inventory Solution for system augmentation will be adjusted to reflect actual megawatts and not the amount forecasted in this rate case. *Mesa et al.*, WP-02-E-BPA-54, at 11. BPA testified that it will true-up System Augmentation, after the Subscription contract signing window closes, to the amount of actual megawatts necessary, based on the level of sales. *Id.* Therefore, for purposes of the Slice Revenue Requirement and the precise calculation of the Slice rate, the current forecast of 1,282 aMW of System Augmentation purchases may increase or decrease, depending on the actual level of power sales that result from the Subscription process.

Even if the SPG could legitimately contend that this issue is not supported in the record, the SPG is nonetheless barred from advancing it for the first time in its brief on exceptions. Pursuant to §1010.13 (b) of BPA's *Rules of Procedure Governing Rate Hearings*, "Parties whose briefs do not raise and fully develop their position on any issue shall be deemed to take no position on such issue. Arguments not raised are deemed to be waived." Having not raised this argument in its initial brief, the SPG has waived the matter.

Decision

There is substantial evidence in the record to support the inclusion of System Augmentation and Conservation Augmentation in the Slice Revenue Requirement.