

2010 Wholesale Power Rate Case Initial Proposal

REBUTTAL TESTIMONY

**LOOKBACK RECOVERY AND RETURN
FOR FY 2010-2011**

April 2009

WP-10-E-BPA-40



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INDEX

REBUTTAL TESTIMONY of
ELIZABETH A. EVANS, CHARLES W. FORMAN, JR.,
and KENNETH J. MARKS,
Witnesses for Bonneville Power Administration

SUBJECT: LOOKBACK RECOVERY AND RETURN FOR FY 2010-2011

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2 ELIZABETH A. EVANS, CHARLES W. FORMAN, JR., and
3 KENNETH J. MARKS
4

5 **SUBJECT: LOOKBACK RECOVERY AND RETURN FOR FY 2010-2011**

6 **Section 1: Introduction and Purpose of Testimony**

7 *Q. Please state your names and qualifications.*

8 A. My name is Elizabeth A. Evans and my qualifications are described in
9 WP-10-Q-BPA-17.

10 A. My name is Charles W. Forman, Jr. and my qualifications are described in
11 WP-10-Q-BPA-20.

12 A. My name is Kenneth J. Marks and my qualifications are described in WP-10-Q-BPA-43.

13 *Q. Have you submitted testimony previously in this rate case?*

14 A. Yes. We collectively submitted direct testimony identified as Exhibit WP-10-E-BPA-19.

15 *Q. What is the purpose of your testimony?*

16 A. Our testimony responds to the direct testimony filed by several parties regarding the
17 direct testimony and studies of Evans, *et al.*, WP-10-E-BPA-19 (Lookback Recovery and
18 Return for FY 201-2011) and WP-10-E-BPA-09 (Lookback Recovery and Return). Our
19 rebuttal testimony responds to direct testimony filed by the Association of Public Agency
20 Customers (APAC), WP-10-E-AP-01 and associated exhibits; the Public Power Council,
21 City of Seattle, and City of Tacoma, Department of Public Utilities, Light Division, dba
22 Tacoma Power, (PPC), WP-10-E-JP8-01; and the Western Public Agency Group
23 (WPAG), WP-10-E-WP-01.

24 *Q. How is your testimony organized?*

25 A. Our testimony begins with this introductory section. It is followed by 5 additional
26 sections. Section 2 presents our responses to issues raised by parties regarding the

1 calculation and description of Lookback Amount balances. Section 3 deals with issues
2 regarding the amortization of Lookback Amounts. Section 4 follows with a discussion of
3 the issues regarding the accrual of interest on Lookback Amount balances. Section 5
4 presents a discussion of the treatment of Idaho Power's Lookback Amount. And lastly,
5 section 6 discusses the proposed Avista deemer settlement and its potential impacts on
6 the recovery and return of Avista's Lookback Amount.

7
8 **Section 2: Calculation and Description of Lookback Amount Balances**

9 *Q. Did any party comment on your calculation of the outstanding Lookback Amounts?*

10 A. Yes. APAC contends that the Lookback Amount must be updated, and that it should be
11 increased to \$2.232 billion. APAC alleges that these changes result from three factors: 1)
12 updates and corrections to the underlying numbers. For example, in the Final Proposal
13 (after testimony in the case was submitted) BPA made minor changes in the amounts
14 estimated to be paid out to IOUs; in addition, the 3-Month Treasury yield for 2008
15 presented in the original APAC analysis was updated to include the average of the full
16 FY 2008 instead of a portion of the year; 2) in 2009 BPA made payments of \$154.5
17 million on its estimate of the Lookback balance; and 3) the interest rate used for 2009
18 balances was increased to the APAC-recommended 11.5% to reflect the equity-like
19 position facing preference customers with respect to the amount owed to them.
20 Wolverton, WP-10-E-AP-01, at 11-12.

21 *Q. Do you agree with APAC's calculations?*

22 A. No, we do not. These are essentially the same calculations that APAC claimed should
23 have been made in the 2007 Supplemental rate case. *See, e.g.,* Wolverton, WP-07-AP-
24 01. In the 2007 Supplemental Wholesale Power Rate Case Administrator's Final Record
25 of Decision (Conformed) (WP-07 Supplemental ROD (Conformed)), BPA rejected
26 APAC's calculations. *See, e.g.,* Forman, *et al.*, WP-07-E-BPA-76. In particular, the

1 Administrator rejected APAC's argument that reconstructed Residential Exchange
2 Program (REP) benefits could not exceed the \$241 million forecast in the WP-02 rate
3 record. *See* WP-07 Supplemental ROD (Conformed), WP-07-A-05, at 68-77.

4 In addition, we do not agree with another significant component of APAC's
5 calculation of the REP settlement benefits that the IOUs received from FY 2002 through
6 FY 2006 – the value of the Load Reduction Agreements (LRAs). In the WP-07
7 Supplemental ROD (Conformed), the Administrator decided that the LRAs with Puget
8 Sound Energy (PSE) and PacifiCorp were valid and binding agreements that should
9 therefore be excluded from the Lookback calculations. *See* WP-07 Supplemental ROD
10 (Conformed), WP-07-A-05, sections 8.2 and 8.5. This is the largest difference between
11 BPA's calculation of the total Lookback Amount and APAC's calculation of \$2.232
12 billion. BPA's Lookback Amount that is comparable to APAC's calculations is \$766.6
13 million. FY 2002-2008 Lookback Study, WP-07-FS-BPA-08, at 270.

14 We also disagree with APAC's use of an equity return rate, 11.5 percent, to
15 compute the on-going interest to be accrued on unamortized Lookback Amounts. In the
16 WP-07 Supplemental ROD (Conformed) BPA discussed at length its reasons for
17 rejecting APAC's 11.5 percent interest rate. WP-07 Supplemental ROD (Conformed),
18 WP-07-A-05, at 213-216. Again, we believe the reasoning from the WP-07
19 Supplemental ROD (Conformed) is sound, and view APAC's continued use of an 11.5
20 percent interest rate in its computations as inappropriate.

21 *Q. Do you agree with APAC's other "updates" to the Lookback Amount?*

22 A. As to APAC's second update to its Lookback Amount calculations, it is true that BPA
23 offered a few minor changes to the amounts of Residential Exchange Program (REP)
24 benefits to be applied to the Lookback Amounts of three IOUs in FY 2009. These
25 changes affect the remaining Lookback balances for Avista, PacifiCorp, and PSE as of
26 the end of FY 2009, but resulted in the same total Lookback Amount recovered of \$70.77

1 million decided in the WP-07 Supplemental rate case. Evans, *et al.*, WP-10-E-BPA-19,
2 at 5-7.

3 Second, we agree with APAC regarding the \$154.5 million that is being returned
4 to the consumer-owned utilities (COUs) that paid the Priority Firm (PF) rate in FY 2002-
5 2006 (PF-02 customers) in FY 2009 and credited to the IOUs' Lookback Amounts. This
6 \$154.5 million is composed of \$87.5 million of reduced FY 2008 REP benefits that were
7 not paid to the IOUs in FY 2008 and applied to the Lookback Amounts for FY 2002-
8 2006, \$70.77 million of reduced FY 2009 REP benefits applied to the IOUs' Lookback
9 Amount, \$16.5 million of the remaining balance of the FY 2003 deferral of REP
10 settlement benefits by the IOUs that was not included in the original FY 2002-2006
11 Lookback Amount, and a reduction in the total of these three components of \$20.33
12 million of FY 2007 overcharges that had already been returned to PF-07 customers but
13 are part of the FY 2002-2007 Lookback that will be recovered and returned to the PF-02
14 customers over time. FY 2002-2008 Lookback Study, WP-07-FS-08, at 277.

15 *Q. What other claims did APAC make regarding its calculation of the outstanding Lookback*
16 *Amounts?*

17 *A.* APAC argues that its \$2.232 billion figure only reflects the "damages" the preference
18 customers have incurred from FY 2002-2007. APAC then asserts that BPA continued to
19 charge preference customers for inflated residential exchange estimates in FY 2008 and
20 in FY 2009 to date. Based on APAC's analysis, APAC contends that the "true" REP
21 obligation, described earlier in APAC's testimony, should be zero for FY 2008 and \$7.96
22 million for FY 2009. The difference between what was charged to preference customers,
23 or is currently being charged, and APAC's asserted REP estimates, including interest
24 based on the 3-Month Treasury yield curve rates APAC provides in WP-10-E-AP-05-
25 E01, results in a total at the end of FY 2009 of \$433.66 million. APAC identifies this
26 amount as the "additional damages" incurred by COUs should APAC prevail on its issues

1 in the challenge to the WP-07 Supplemental rate proceeding. Wolverton,
2 WP-10-E-AP-01, at 12-13.

3 *Q. Do you agree?*

4 A. No. As a general matter, APAC's calculations are based on a number of assumptions it
5 asserts would be appropriate provided that it prevails in legal challenges to the WP-07
6 Supplemental rate proceeding. We are not lawyers, but our understanding is that these
7 challenges have not been resolved. We question the value of speculating on complex
8 computational results that might flow from legal challenges that we have no specific
9 information about and that may or may not carry the day in whole or in part. That said,
10 we do not agree with the "rate test ceiling" results asserted by APAC that underlie its
11 calculations of REP benefits for FY 2008 and FY 2009. They are predicated on
12 assumptions regarding the operation of the 7(b)(2) Implementation Methodology that
13 differ from those decided by the Administrator in the WP-07 Supplemental ROD
14 (Conformed), Chapter 16. *See* WP-07 Supplemental ROD (Conformed), WP-07-A-05, at
15 395-672. In the WP-07 Supplemental ROD (Conformed), the Administrator refuted
16 many if not all of APAC's claims regarding the operation of the Section 7(b)(2) rate test
17 that are the basis for APAC's calculations. Needless to say, if one substitutes a number
18 of different assumptions regarding the operation of the Section 7(b)(2) rate test for those
19 consistent with the WP-07 Supplemental ROD (Conformed), one can get very different
20 results. Given this fact, we do not believe it is appropriate or constructive to attempt to
21 address in detail APAC's assertions regarding what might be "should APAC prevail on
22 its issues in the challenge to WP-07S".

23 In addition, APAC erroneously refers to the amount of \$266.80 million as the
24 "amount paid" in FY 2009. To the contrary, this amount is what we refer to as the REP
25 benefits due. APAC fails to recognize that not all of these REP benefits due are being
26 paid to the IOUs. First, about \$15 million is applied to Avista's remaining deemer

1 balance. After that, an additional \$70.77 million is applied to the IOUs' respective
2 Lookback Amounts and an equal amount is being returned to COUs that paid the PF-02
3 power rates as credits on their power bills. FY 2002-2008 Lookback Study, WP-07-FS-
4 BPA-08, at 274. It would have been better for APAC to refer to these as REP benefits
5 due instead of "amount paid" in making its point that staff's calculations of REP benefits
6 were, in its estimation, incorrect and that the PF-07R rate continues to include too-high of
7 an amount of REP benefits for the IOUs.

8 BPA's calculations of the overcharges to the PF-07 customers for FY 2008 are
9 presented in the FY 2002-2008 Lookback Study. WP-07-FS-BPA-08, at 279. Lastly, for
10 FY 2009, in the WP-07 Supplemental rate case BPA re-calculated its PF-07R rate to
11 reflect, among other things, the operation of the REP given the June 2008 Average
12 System Cost Methodology Administrator's Final Record of Decision and the various
13 decisions presented in the WP-07 Supplemental ROD (Conformed). *See* WP-07
14 Supplemental ROD (Conformed), WP-07-A-05, Chapter 16 at 395-672. Therefore, we
15 disagree with APAC's contention that the preference customers are currently being
16 overcharged for too-high REP benefits. As a result, we further disagree that there is a
17 Lookback Amount owed to the preference customers for FY 2009 as the amount of REP
18 benefits included in the PF-07R rate is the correct amount that results from the
19 implementation of the 7(b)(2) rate test as decided by the Administrator in the WP-07
20 Supplemental ROD. *See* WP-07 Supplemental ROD (Conformed), WP-07-A-05,
21 Chapter 16.

22
23 **Section 3: Amortization of the Lookback Amount in FY 2010-2011**

24 *Q. What parties raised concerns with your proposal for the amortization of the Lookback*
25 *Amounts for FY 2010-2011?*

26 *A.* APAC, PPC (with Seattle City Light and Tacoma Power), and WPAG submitted

1 testimony related to our proposal.

2 *Q. What concerns did APAC raise in its testimony?*

3 A. APAC claims that the Ninth Circuit nullified BPA's 2000 REP Settlement Agreements
4 with the IOUs and remanded the issue of reimbursement to BPA. To resolve the issues
5 presented by the Court, BPA entered into an extensive process in its WP-07
6 Supplemental rate proceeding and “drew up guidelines and goals” for repayment of the
7 damages incurred. BPA's result is under challenge at the same Court. Wolverton, WP-
8 10-E-AP-01, at 13. APAC remarks that although APAC considers BPA's Lookback
9 determination “irrationally low,” the issue of the appropriate level of Lookback Amount
10 — that is, damages to preference customers from the illegal payments — will be decided
11 in another forum. Wolverton, WP-10-E-AP-01, at 13.

12 *Q. What is your response to this statement?*

13 A. We agree that the issues decided and presented in the WP-07 Supplemental ROD
14 (Conformed) relating to the calculation of the Lookback Amount – the overcharges to the
15 preference customers due to the REP settlement agreements -- and its return to the
16 preference customers who incurred the overcharges is under challenge in the Ninth
17 Circuit Court. Whether or not there are changes to the decisions presented in the WP-07
18 Supplemental ROD (Conformed) depends on how the Court rules. We agree with APAC
19 that, if changes to the Administrator's decisions presented in the WP-07 Supplemental
20 ROD (Conformed) are required by the Court, any response to the Court's direction would
21 be decided in a forum different from this WP-10 rate proceeding.

22 *Q. Does APAC make any arguments relevant to your testimony in this case?*

23 A. Yes. APAC argues that what is important here is the adequacy of BPA's reimbursement
24 plan given the Lookback Amount that was determined. Wolverton, WP-10-E-AP-01, at
25 13. APAC states that, in the WP-07 Supplemental rate proceeding, they recommended a
26 seven year payback of the Lookback Amount (to balance the seven years over which the

1 injuries occurred) and an interest rate that reflects the carrying cost of capital in order to
2 account for the uncertainty of recovery asserted by APAC. *Id.* Unfortunately, APAC
3 fails to provide citations to any previous testimony. While we assume the summary of its
4 testimony is generally accurate, without citations we are unable to evaluate critically its
5 assertions in this proceeding.

6 *Q. APAC then asserts that “the Administrator acknowledged the importance of a seven year*
7 *deadline as a goal...” APAC cites to your direct testimony in this case,*
8 *WP-10-E-BPA-19, at 9. Wolverton, WP-10-E-AP-01, at 13-14. Do you agree with this*
9 *characterization of your testimony?*

10 *A. No. We believe APAC mischaracterizes our direct testimony. We did not find any*
11 *references in either our direct testimony or in the WP-07 Supplemental ROD*
12 *(Conformed) that equated the words “goal” to mean “deadline”. Without specific*
13 *citations from APAC to guide us, it is difficult to know exactly what the basis is for its*
14 *claim that the Administrator acknowledged a seven year “deadline” as a goal.*

15 It is true that the Administrator acknowledged a seven year goal for returning the
16 Lookback Amount, but there was no explicit guarantee that the seven years was a firm
17 deadline for full repayment, which APAC seems to be implying. To the contrary, the
18 Administrator specifically reserved flexibility to adjust the rate of repayment of the
19 Lookback Amount in order to “account for the circumstances of each [future rate] case.”
20 WP-07 Supplemental ROD (Conformed), at 269. Contrary to what APAC seems to
21 imply, if there was any kind of a guarantee, it was to return “the Lookback Amount in a
22 reasonable amount of time to the COUs, while allowing for a reasonable level of REP
23 benefits.” *Id.* at 276. In fact, the Administrator clearly stated in the WP-07 Supplemental
24 ROD (Conformed) on page 273 that “[t]o be clear, BPA is not setting a hard and fast rule
25 that within seven years all of the Lookback Amounts will be returned.”

1 Q. *What other concerns does APAC raise?*

2 A. APAC claims that it expressed fear in its testimony in the WP-07 Supplemental rate case
3 that BPA's then-current proposal was inadequate to provide sufficient assurance to
4 APAC's serving utilities of a timely repayment. APAC then says the “Administrator
5 responded to that concern with an assurance that BPA had sufficient flexibility in future
6 cases to make the full refund within the intended seven year time period”, and cites to the
7 WP-07 Supplemental ROD (Conformed). Wolverton, WP-10-E-AP-01, at 14.

8 Q. *What is your response to these assertions?*

9 A. APAC’s statement regarding the Administrator’s “assurance” regarding flexibility to
10 fulfill the seven year amortization goal is clearly contradicted by the very citation APAC
11 references. This citation says that the decisions in the ROD “ensure that the repayment of
12 the Lookback Amount will occur over a reasonable period of time.” WP-07
13 Supplemental ROD (Conformed), WP-07-A-05, at 268. APAC in effect is asserting that
14 BPA has defined “a reasonable period of time” as “making the full refund within the
15 intended seven year time period”. BPA has clearly and explicitly not so defined “a
16 reasonable period of time.”

17 In addition, APAC is relying on only one citation from the WP-07 Supplemental
18 ROD instead of acknowledging the entire text of Chapter 9. Taken as a whole, and as
19 captured in the decision on page 276 of the WP-07 Supplemental ROD (Conformed),
20 BPA’s intention was to focus “on returning the overcharges in seven years, where
21 possible.” In addition, the revised approach “achieves BPA’s stated objectives of
22 returning the Lookback Amounts within a reasonable time to the COUs, while allowing
23 for a reasonable level of REP benefits.” *Id.* Consequently, contrary to APAC’s claim,
24 BPA’s decision was clearly *not* a commitment to an unmovable seven year payback
25 period. Instead, the seven year payback period was a *goal* that would be evaluated in
26 light of the facts of each rate case. WP-07 Supplemental ROD (Conformed),

1 WP-07-A-05, at 273.

2 Q. APAC also says that the Administrator said in the prior rate case that the 50% threshold
3 (IOU benefits paid versus those to which they were eligible) could be adjusted if the goal
4 of repaying the Lookback amount within seven years was not being met. APAC then
5 argues BPA has not invoked that mechanism in this case to help ensure preference
6 customers are timely paid. Wolverton, WP-10-E-AP-01, at 16-17. Do you agree with
7 APAC's description of the Administrator's prior decisions?

8 A. We agree that it is possible that the Administrator *could* adjust the level of REP benefits
9 if it appears that the seven year goal was not being met. The ROD states that “[i]f the
10 objective of returning the Lookback Amounts is not on track, the Administrator *may*
11 decrease the level of REP benefits paid to the IOUs.” WP-07 Supplemental ROD
12 (Conformed), WP-07-A-05, at 268, (emphasis added). However, the word “may” should
13 not be construed to imply that the Administrator will, in all future cases, decrease the
14 level of REP benefits paid to accomplish a faster return to the PF-02 customers at the
15 expense of providing a “reasonable” level of benefits to the residential and small farm
16 customers of the IOUs. And, as already discussed, the Administrator clearly states later
17 in the WP-07 Supplemental ROD (Conformed) that BPA is not setting a hard and fast
18 rule that within seven years all of the Lookback Amounts will be returned. WP-07
19 Supplemental ROD (Conformed), WP-07-A-05, at 273. The overarching principle
20 adopted in the WP-07 Supplemental ROD, which we believe applies here, is that the
21 Lookback Amount should be returned to the preference customers within a reasonable
22 amount of time while also allowing for a reasonable level of REP benefits. WP-07
23 Supplemental ROD (Conformed), WP-07-A-05, at 276.

24 Furthermore, we have recommended that the REP benefits paid to two utilities be
25 provided at the 50 percent level in the FY 2010-2011 rate period. This would result in
26 the full amortization of their Lookback Amounts in FY 2021 and FY 2023. As noted in

1 the ROD, the amounts to be applied to the IOUs Lookback Amounts would be addressed
2 in each rate case and could account for current circumstances. WP-07 Supplemental
3 ROD (Conformed), WP-07-A-05, at 273. On this point, our proposal is consistent with
4 the guidance from the Administrator in the previous ROD. In that ROD, the
5 Administrator stated that “there may be legitimate reasons to consider a different
6 approach for recovering the Lookback Amounts that could either accelerate *or decelerate*
7 the pace of repayment.” *Id.* at 269 (emphasis added). The Administrator emphasized
8 that “BPA will have some discretion in future rate proceedings to adjust the Lookback
9 recovery terms to account for the circumstances of each case.” *Id.* In the current
10 instance, we are recognizing that Avista’s and PacifiCorp’s REP benefits for
11 FY 2010-2011 are not particularly high (about \$15 million and \$46 million, respectively)
12 relative to their outstanding Lookback Amounts. In addition, we recognize that it is an
13 objective, to provide a reasonable level of benefits for their residential and small farm
14 customers, as provided for in the WP-07 Supplemental ROD (Conformed). WP-07-A-05,
15 at 269. Hence, it is appropriate to consider 50 percent of the REP benefits due as a
16 reasonable level of benefits.

17 *Q. What does APAC recommend you adopt for this rate proceeding?*

18 A. APAC concludes its testimony with a recommendation that we assume \$131.77 million
19 should be paid to preference customers each year between 2010 and 2015, inclusive.
20 APAC acknowledges that this recommendation may mean that some utilities will have
21 repaid their obligation fully before 2015 when the seven years are up, so a replacement
22 source of funds is needed to fully fund the \$131.77 million annual payment. Wolverton,
23 WP-10-E-AP-01, at 17.

24 *Q. Please respond to this recommendation.*

25 A. APAC’s recommendation, in the context of BPA’s decision in the WP-07 Supplemental
26 ROD (Conformed) to reduce IOU REP benefits as the source of funding the return of

1 overcharges to the PF-02 customers, does not work for the reason APAC itself notes.
2 Returning the proposed amount of \$131.77 million through 2015 to the PF-02 customers
3 would result in Portland General Electric (PGE) and Puget paying off their Lookback
4 Amounts earlier than 2015. Once any IOU has paid off its entire Lookback Amount,
5 there is no basis under BPA's Lookback construct to continue reducing that utility's REP
6 benefits due, and as a result there is not an obvious source of funds to provide the full
7 \$131.77 million payment.

8 In theory, PGE and Puget could continue to accept reduced REP benefits paid in
9 each year to achieve the higher total. This would be hard to justify to PGE's and Puget's
10 eligible residential and small farm consumers since they would be effectively returning
11 overpayments made to the residential and small farm consumers of other IOUs. We do
12 not agree that attempting to recover additional amounts from PGE and Puget beyond their
13 respective Lookback Amounts is appropriate or defensible.

14 *Q. What would happen if a "replacement source of funds" could not be found to pay*
15 *APAC's recommended \$131.77 million?*

16 *A. If no replacement source of funds is found, then the default source would necessarily*
17 *have to be BPA's reserves. If BPA were to provide such additional funds out of reserves,*
18 *then all PF customers would be paying for the return of those additional overcharges to*
19 *the PF-02 customers through rates that would be higher than otherwise, all else being*
20 *equal. Since all PF-02 customers are also PF-10 customers, they would be paying for the*
21 *majority of their own refunds. As we explain more thoroughly in section 5, BPA rejected*
22 *in the WP-07 Supplemental ROD (Conformed) the notion of increasing rates to pay back*
23 *refunds because it leads to the perverse result of the preference customers paying for their*
24 *own refund. WP-07 Supplemental ROD (Conformed), WP-07-A-BPA-05, at 282-286.*
25 *We believe that analysis still applies here.*

26 *Q. APAC suggests that BPA seek the return of payments from Idaho Power to cover for the*

1 *payments not made by other utilities, presumably Puget and PGE, under APAC's*
2 *recommendation. Do you agree?*

3 A. No we do not agree that it is reasonable or appropriate at this time to pursue recovery of
4 Lookback Amounts from Idaho Power. Please see Section 5 of this testimony.

5 *Q. Moving now to the testimony of PPC, is there any aspect of your proposal that PPC*
6 *appears to support in its testimony?*

7 A. Yes. PPC appears to support our objective of returning the Lookback Amount within
8 seven years. In its testimony, PPC argues that a seven year repayment of the Lookback
9 Amount is more appropriate than a longer period. Seven years is approximately the same
10 time period over which the COUs and their ratepayers were overcharged under the REP
11 settlement agreements. PPC states that a time frame for repayment that corresponds to
12 the time frame over which the COUs were overcharged at least appears to be a more
13 tailored attempt to remedy the harm that was experienced by the COUs than BPA's
14 original proposal of recovering and returning the Lookback Amount over 20 years. PPC
15 also claims that a seven year period better meets a number of policy objectives that were
16 outlined by BPA in Section 9.3.2 the WP-07 Supplemental ROD (Conformed), such as
17 minimizing intergenerational equity issues for Lookback repayment and providing
18 maximum possibility that the preference customers will be fully compensated for their
19 overpayments under the REP settlement agreements. O'Meara, *et al.*, WP-10-1E-JP8-01,
20 at 9-10.

21 *Q. What concerns, then, does the PPC have with your proposal?*

22 A. PPC argues that staff's proposal does not result in the amortization of the Lookback
23 Amounts over a "reasonable period of time." Specifically, PPC claims that any plan to
24 extend amortization of Lookback amounts past 2015, which corresponds to a seven year
25 repayment period, is objectionable because it results in preference customers waiting an
26 "unreasonably long time" before receiving recoupment of funds overpaid under the REP

1 settlement agreements. O'Meara, *et al.*, WP-10-1E-JP8-01, at 9.

2 Q. Are you proposing to extend the repayment period for certain utilities in this case beyond
3 the seven year goal?

4 A. Yes, but this is not a new result. In BPA's final studies for the WP-07 Supplemental rate
5 case, two out of the six IOUs slated to receive REP benefits in FY 2009, Avista and
6 PacifiCorp, were projected to pay down their Lookback Amounts in 2018 and 2020,
7 respectively, if REP benefits remained flat in nominal terms. FY 2002-2008 Lookback
8 Study, WP-07-FS-BPA-08, at 276. This extended amortization period of 10 and 12
9 years, respectively, resulted from preserving their REP benefits paid to not less than 50
10 percent of the REP benefits due in order to ensure that the IOUs' residential and small
11 farm customers received a reasonable level of REP benefits in FY 2009. *Id.* at 273-275

12 We recommended in our direct testimony that, in the case of Avista and
13 PacifiCorp, 50 percent of their REP benefits due be preserved during the WP-10 rate
14 period. Evans, *et al.*, WP-10-E-BPA-19, at 9-12. As a result, again under the simplifying
15 assumption that future REP benefits would not change, there is an extension in the
16 amortization of their Lookback Amounts for 3 years (compared to the WP-07
17 Supplemental rate proceeding estimate) to FY 2021 and FY 2023, respectively.
18 Lookback Recovery and Return Study, WP-10-E-BPA-09, at 9 (as modified by the
19 errata). We believe it is appropriate to continue the application of the 50 percent
20 threshold because it continues to meet the policy objectives established in the WP-07
21 Supplemental ROD (Conformed) in the same way that application of the 50 percent
22 limitation in FY 2009 met the policy objectives in the WP-07 Supplemental proceeding.
23 Evans, *et al.*, WP-10-E-BPA-19, at 9-12, WP-07 Supplemental ROD (Conformed),
24 WP-07-A-05, at 273-275.

25 As in the WP-07 Supplemental rate proceeding, this proposal is only for this rate
26 period. The question of how best to balance the level of REP benefits paid with the rate

1 at which the Lookback Amount is returned to the PF-02 customers will again be up for
2 debate in the WP-12 rate case. Also, it is important to note that many factors are in play
3 when determining the level of REP benefits, such as utility ASCs and BPA's cost
4 structure. It is possible that future levels of REP benefits could result in a shift away
5 from the 50 percent limitation and toward the full repayment of the Lookback Amounts
6 of Avista and PacifiCorp. However, there is no guarantee, and things could go in the
7 opposite direction as well. One major consideration is the future ruling from the Ninth
8 Circuit Court that will decide if BPA's response to its decisions in May, 2007 will stand,
9 or not. If not, there could likely be a significant shift in the level of REP benefits due.

10 *Q. In your initial testimony, you outlined a number of reasons for maintaining the same*
11 *treatment of the Lookback Amount in this case. In particular, you identified three*
12 *reasons for continuing the 50% limitation set forth in the previous case. Did the PPC*
13 *comment on the reasons you identified?*

14 *A. Yes.*

15 *Q. What arguments does PPC raise?*

16 *A. PPC disagreed with the "premise" that applying all or a large portion of an IOU's*
17 *projected net REP benefits for FY 2010-2011 towards its Lookback Amount results in an*
18 *"inappropriate loss of value" for the residential and small farm customers in the region.*
19 *PPC claims that a more rapid amortization serves to minimize any intergenerational*
20 *equity issues among IOU ratepayers that might arise from a more extended amortization.*
21 *Further, PPC argued that every dollar applied to amortizing the IOUs' Lookback*
22 *Amounts over a shorter period of time would avoid the situation where some of the*
23 *region's residential and small farm customers forego benefits many years in the future in*
24 *order to pay back interest accrued on a principal amount. PPC alleges that BPA has, in*
25 *other contexts, argued that having to do so would be "inequitable," and PPC does not*
26 *want to run the risk that BPA would not enforce repayment of the Lookback Amounts*

1 due to those concerns. O’Meara, *et al.*, WP-10-1E-JP8-01, at 11.

2 *Q. Do you agree with this comment?*

3 A. In general, we agree that a shorter amortization of Lookback Amounts has fewer
4 intergenerational equity issues than a more extended amortization. It is also true that
5 dollars paid now toward an IOU’s Lookback Amount results in a slower accumulation of
6 interest earned on the Lookback Amount. However, as stated in the WP-07
7 Supplemental ROD, there are several objectives that our rate case-by-rate case decisions
8 should meet when determining the proper balance among those objectives. In each rate
9 case, an appropriate balance must be struck among the seven objectives – and particularly
10 between the degree to which an IOU’s REP benefits are reduced relative to the rate at
11 which its Lookback Amount is recovered and returned to the PF-02 customers.

12 We note that it would be easier to address the PPC’s concerns about the risk that
13 BPA would not enforce repayments of Lookback amounts if it had provided more
14 specificity regarding where “BPA has, in other contexts, argued (repayment) would be
15 inequitable.” It is possible that PPC is referring to a brief discussion in the WP-07
16 Supplemental ROD where BPA offered that 20 years worth of accumulating interest
17 might “inappropriately burden future generations of ratepayers.” WP-07 Supplemental
18 ROD (Conformed), WP-07-A-05, at 275. Alternatively, PPC may be referring to a
19 proposed settlement of the disputed Avista deemer account balance.

20 Regardless of the source of PPC’s concerns, we do not believe any additional
21 inequities that arguably might be created for the residential and small farm customers by
22 extending the repayment of a utility’s Lookback Amount by three years compared to the
23 result of the WP-07 Supplemental rate proceeding due to the adoption of the 50 percent
24 limitation are sufficient to warrant reducing current REP benefits paid to below 50
25 percent of benefits due.

1 Q. *What other arguments did PPC raise?*

2 A. PPC also disagrees with our notion that the current proposal will provide the PF-02
3 customers with a reasonable portion of the Lookback Amounts by 2015. PPC states that
4 we believe our proposal is supported by the assertions that all but two currently
5 exchanging IOUs will have amortized their balances completely by 2015 and that
6 approximately 70% of combined Lookback Amounts owed by Puget, PacifiCorp, PGE,
7 and Avista will have been recovered by that date. However, PPC argues that the number
8 of utilities that have fully amortized their Lookback Amounts is a much less significant
9 metric than the total outstanding dollar amounts. Based on Table 2 of WP-10-E-BPA-09,
10 PPC claims that at least roughly \$160 million of Lookback principal plus interest will not
11 have been recovered within the seven year timeframe. PPC does not view this as a
12 reasonable outcome under the circumstances. O'Meara, *et al.*, WP-10-1E-JP8-01, at
13 11-12.

14 Q. *Do you agree with PPC's conclusion that recovering 70% of the Lookback Amounts from*
15 *Puget, PacifiCorp, PGE, and Avista is not "a reasonable outcome under the*
16 *circumstances"?*

17 A. No. From a different perspective, by the end of FY 2015, BPA will have returned to the
18 COUs about \$500 million of the original \$679 million end-of FY 2008 Lookback
19 Amount. In terms of the FY 2002-2007 Lookback Amount of \$767 million, the
20 corresponding amount returned to the COUs by the end of FY 2015 is \$588 million or 77
21 percent. BPA acknowledges that under our simplified assumptions there is a possibility
22 that additional Lookback Amounts will remain unrecovered in FY 2016 and beyond. But
23 very substantial progress will have been made based on several measures. BPA simply
24 does not agree with PPC's view that returning 70 percent of the original Lookback
25 Amount, or more, depending on your point of measurement, is an unreasonable outcome.

1 Q. *What other arguments does PPC make?*

2 A. PPC also argues that under BPA's Initial Proposal the amortization period for the Avista
3 and PacifiCorp Lookback Amounts have both been further extended by four years even
4 beyond what was projected in the WP-07 Supplemental proceeding. PPC asserts that in
5 the WP-07 Supplemental ROD, BPA stated that it would assess the progress of Lookback
6 repayment each rate period, and, "if it is determined that the objective of returning the
7 Lookback Amounts is not on track, the Administrator may decrease the level of benefits
8 paid to the IOUs." WP-07 Supplemental ROD (Conformed), section 9.3.2, p. 268. Given
9 all of the reasons described in PPC's testimony, including the very substantial amount of
10 money that will not be recovered by the COUs in the reciprocal seven year timeframe and
11 the fact that the projected amortization of Lookback damages has expanded by a further
12 four years, PPC argues BPA should modify the 50 percent threshold for this rate period
13 and increase the amount of Lookback repaid by the IOUs consistent with BPA's policy
14 determination in the WP-07 Supplemental ROD. O'Meara, *et al.*, WP-10-1E-JP8-01, at
15 12.

16 Q. *Do you agree with PPC's statement that to be consistent with the policy direction from*
17 *the WP-07 Supplemental ROD, BPA should modify the 50 percent threshold for this rate*
18 *period?*

19 A. No. First, as we have addressed in the preceding answer, our view differs from PPC in
20 that we believe a very substantial amount of money will have been returned to the COUs
21 by the end of FY 2015. Second, we believe that PPC has perhaps missed an errata issued
22 by BPA to its testimony and study that corrects the year of amortization for Avista from
23 FY 2022 to FY 2021, and for PacifiCorp from FY 2024 to FY 2023. As a result, the
24 amortization periods for these utilities are 3 years rather than 4 years longer than
25 established in the WP-07 Supplemental proceeding. Lookback Recovery and Return
26 Study, WP-20-E-BPA-09, at 9.

1 As for our position that it is appropriate to continue the 50 percent threshold of
2 REP benefits applied to Avista's and PacifiCorp's Lookback Amounts for this rate
3 period, we refer to our direct testimony. Evans *et al.*, WP-10-E-BPA-19, at 8-12. Our
4 testimony tested the continuation of the 50 percent threshold against each of the policy
5 objectives established in the WP-07 Supplemental proceeding and concluded that
6 continuation of the 50 percent threshold in the WP-10 rate period would be reasonable in
7 light of the policy objectives. Evans, *et al.*, WP-10-E-BPA-19, at 8-12. PPC's arguments
8 do not persuade us otherwise.

9 *Q. What conclusions does PPC draw from its testimony?*

10 *A.* PPC concludes that its proposal to suspend the 50 percent threshold for this rate period
11 and attempt to amortize all Lookback Amounts by 2015 is a better objective regarding
12 recovery and repayment of the Lookback than the objectives set out in the Initial
13 Proposal. PPC asserts that its proposal provides the greatest chance of recovery of the
14 Lookback in a reasonable time period, results in no inappropriate loss of value to the
15 affected residential and small farm customers of the IOUs, and provides the greatest
16 equity for the region as a whole. O'Meara, *et al.*, WP-10-1E-JP8-01, at 14.

17 *Q. Do you agree with these conclusions?*

18 *A.* We do not. With regard to the first assertion, PPC's proposal offers no greater "chance"
19 of recovery of the Lookback Amount than does our proposal. They are each different
20 ways of accomplishing the same objective of recovering and returning the Lookback
21 Amount. Our approach, under simplified assumptions, is projected to take up to 8 years
22 longer to fully amortize Avista and PacifiCorp's remaining Lookback Amount balance of
23 approximately \$180 million.

24 PPC's second point, that the adoption of the 50 percent threshold for this rate
25 period, results in an inappropriate loss of value to the affected residential and small farm
26 customers, presumably due to the accrual of interest over a longer time period, is not

1 persuasive. The residential and small farm customers of Avista and PacifiCorp, who
2 receive more benefits in FY 2010 and FY 2011 under our proposal than under PPC's
3 proposal, also incur some additional accrued interest. However, the value proposition
4 between money received now relative to money not received in the future because the
5 Lookback Amount is larger by the incremental amount of interest accrued should work
6 out to about the same amount.

7 The PPC's third claim, that suspension of the 50 percent threshold provides the
8 "greatest equity for the region as a whole" is not clear and unsupported. It is not clear
9 how PPC measures equity across all customer groups and ratepayers within the region.
10 Plus, it is hard to say what that measurement should be because the PPC does not say
11 what percentage of REP benefits due should be provided to Avista and PacifiCorp. PPC
12 merely states that the BPA should "increase the amount of Lookback repaid by the
13 IOUs." O'Meara, *et al.*, WP-10-E-JP8-01, at 12.

14 *Q. Let's now move to WPAG's testimony. WPAG's testimony begins with a description of*
15 *the background leading up to the decisions BPA made in the WP-07 Supplemental ROD*
16 *(Conformed). Please describe this background information.*

17 *A. WPAG notes that the approach BPA adopted in the WP-07 Supplemental ROD*
18 *(Conformed) for the recovery and return of the Lookback Amounts was different than*
19 *BPA's initial proposal in the WP-07 Supplemental case. Specifically, WPAG says staff*
20 *proposed in the WP-07 Supplemental Initial Proposal to repay the Lookback Amount*
21 *over a 20 year period, and to do so by way of reducing the PF rate. See, e.g., Bliven, et*
22 *al., WP-07-E-BPA-52, at.21-22; Marks, et al., WP-07-E-BPA-62, p.18. However, BPA*
23 *subsequently realized that there were sound policy reasons to shorten the Lookback*
24 *Amount repayment period. WPAG states that, according to BPA, shortening the*
25 *repayment period from 20 years to seven years would minimize intergenerational equity*
26 *issues, would match the repayment period with the overcharge period, and would*

1 eliminate the problems attendant to interest accruals over a 20 year period, which have
2 become apparent in the application of interest over a long period of time with the deemer
3 account accruals. WP-07 Supplemental ROD (Conformed), WP-07-A-05, pp. 268, 271,
4 275. In short, WPAG contends that BPA concluded that extending the repayment period
5 out to 20 years had many detrimental impacts that were eliminated by using the much
6 shorter seven year repayment period. Saleba, *et al.*, WP-10-E-WG-01, at 8-9.

7 *Q. Do you agree with this characterization of the background facts?*

8 *A.* In general, yes. However, WPAG seems to be implying that the seven year repayment
9 goal for repayment of the Lookback Amount adopted in the WP-07 Supplemental ROD is
10 a fixed repayment period when in fact it is a goal. Furthermore, progress toward that goal
11 will be assessed each rate period, in the context of then-current circumstances, and
12 decisions made on the amount of repayment for that rate period. *See* WP-07
13 Supplemental ROD (Conformed), WP-07-A-05, section 9.3.2.

14 In addition, we note that WPAG in some instances uses the word “eliminates” in
15 its characterizations of BPA’s conclusions, which mischaracterizes those conclusions.
16 WPAG states that “according to BPA, shortening the repayment period from 20 years to
17 seven years would eliminate the problems associated with interest accruals”. Saleba, *et*
18 *al.*, WP-10-E-WG-01, at 8. What BPA actually said was “[b]y shortening the time period
19 for repayment of the Lookback Amounts, the potential for the Lookback Amounts to
20 grow quickly due to accumulating interest . . . -is greatly diminished.” WP-07
21 Supplemental ROD (Conformed), WP-07-A-05, at 275.

22 WPAG also states that “BPA concluded that extending the repayment period out
23 to 20 years had many detrimental impacts that were eliminated by using the much shorter
24 seven year repayment period.” Saleba, *et al.*, WP-10-E-WG-01, at 9. BPA did not state
25 and does not believe shortening the repayment period “eliminates” “many” of the
26 detrimental impacts of a longer repayment period. BPA did state that a shorter

1 repayment period mitigates some detrimental impacts and otherwise supports several of
2 the objectives BPA established to guide recovery and return of Lookback Amounts. WP-
3 07 Supplemental ROD (Conformed), WP-07-A-05 at 273-275.

4 *Q. What other statements does WPAG make regarding BPA's prior decisions?*

5 A. WPAG claims that when BPA shifted from the 20 year repayment period to the seven
6 year repayment period for the Lookback Amount, BPA did not guarantee the IOUs any
7 particular level of REP benefits during the repayment period. WPAG cites to the WP-07
8 Supplemental ROD and says the ROD expressly noted that the ability to provide REP
9 benefits to the IOUs at any level, let alone at the 50% level, during the Lookback Amount
10 repayment period would be reviewed in each rate case in light of the progress being made
11 in the repayment of the Lookback Amount during the seven-year period adopted by BPA.
12 Saleba, *et al.*, WP-10-E-WG-01, at 8-9.

13 *Q. Is WPAG correct in stating that BPA did not guarantee the IOUs any particular level of*
14 *REP benefits?*

15 A. Yes. In fact, in the ROD BPA went to great length to point out that the decisions
16 regarding the amount of REP benefits due that would be applied to the Lookback Amount
17 would be a decision to be made in each subsequent rate case. *See* WP-07 Supplemental
18 ROD (Conformed), WP-07-A-05, Chapter 9. In taking this position, BPA stated very
19 clearly in section 9.3.2 that the amount of Lookback to be amortized during a rate period
20 would be determined in each rate case. Thus, "the goal of returning the Lookback within
21 seven years may change as a result of the particular circumstances and evidence
22 presented in a future rate case." *Id.* at 273.

23 *Q. Did BPA guarantee that it would return all of the Lookback Amounts to the preference*
24 *customers within seven years?*

25 A. No. The WP-07 Supplemental ROD (Conformed) clearly points out that BPA did not
26 guarantee that the Lookback Amounts would be returned within seven years. BPA stated

1 in the WP-07 Supplemental ROD that “[t]o be clear, BPA is not setting a hard and fast
2 rule that within seven years all of the Lookback Amounts will be returned.” WP-07
3 Supplemental ROD (Conformed), WP-07-A-05, at 273. Similarly, BPA stated previously
4 that “BPA’s objective is to repay the Lookback Amounts in seven years, depending upon
5 the particular circumstances of each rate proceeding.” *Id.* at 271. The progress toward
6 recovering and returning the Lookback Amounts would be assessed for each rate period
7 and the seven policy objectives outlined in Bliven, *et al.*, WP-07-E-BPA-62, would
8 continue to guide future rate case decisions. *Id.* at 269. These objectives are
9 overlapping, complex, and, at times, in tension with one another, so a balance will always
10 need to be struck among them that will be influenced by the circumstances of each rate
11 case.

12 Additionally, BPA qualified its statements regarding the seven-year goal with
13 respect to Idaho Power’s Lookback Amount by acknowledging that BPA’s approach to
14 recovering the Lookback Amount through future REP benefits makes it difficult to
15 recover Idaho Power’s Lookback Amount within seven years because it is not known
16 when Idaho Power will sign an RPSA and/or become eligible for REP benefits. WP-07
17 Supplemental ROD (Conformed), WP-07-A-05, at 273.

18 *Q. If BPA retained flexibility regarding the seven-year goal and the 50% threshold, what is*
19 *WPAG’s concern?*

20 *A.* WPAG argues that BPA was clear in the ROD that the payment to the IOUs of 50% of
21 their calculated REP benefits due might well have to give way to ensure that the
22 preference customers were repaid the Lookback Amounts in seven years. Saleba, *et al.*,
23 WP-10-E-WG-01, at 9-10. WPAG then contends that despite the language in the WP-07
24 Supplemental ROD meant to reassure preference customers that BPA was committed to
25 ensuring repayment to them of the Lookback Amounts within seven years, BPA is
26 proposing in this case to abandon that standard for two IOUs. WPAG continues to state

1 that BPA's commitment to requiring repayment of the Lookback amount in seven years
2 lasted exactly one rate period. Saleba, *et al.*, WP-10-E-WG-01, at 10.

3 *Q. How do you respond to WPAG's assessment?*

4 *A. WPAG's testimony only refers to one side of the discussion presented in the WP-07*
5 *Supplemental ROD. See WP-07 Supplemental ROD (Conformed), WP-07-A-05, section*
6 *9.3.2. BPA's decisions in the ROD established a goal, not a requirement, of full*
7 *repayment within seven years. Id. BPA's decisions, however, also recognized the*
8 *importance of maintaining a reasonable level of benefits for the IOUs and thus allowed*
9 *the Administrator some flexibility in making decisions in future rate cases. Id. at 269.*
10 *Retaining this discretion was necessary because it was fully expected that in each case the*
11 *Administrator would weigh the two competing objectives that form the basis of BPA's*
12 *Lookback recovery and return proposal: returning the Lookback Amounts to the*
13 *preference customers with the goal of seven-years while also maintaining a reasonable*
14 *level of lawfully due REP benefits to the IOUs. In laying out these dual goals, the*
15 *WP-07 Supplemental ROD (Conformed) does not say that the seven year goal would*
16 *forever-after take precedence and priority over the goal of a reasonable level of REP*
17 *benefits for the IOUs residential and small farm customers.*

18 The decisions in the WP-07 Supplemental ROD (Conformed) regarding the 50
19 percent limit on the amount of REP benefits due to be applied to the IOUs Lookback
20 Amounts was a decision solely for FY 2009. We are now in the process that leads to
21 decisions for the upcoming two-year rate period. For this rate period, we believe
22 maintaining the 50 percent threshold is appropriate based on the considerations we
23 outlined in our direct testimony. In taking this position, we believe it must be
24 emphasized that we are not establishing a firm, immovable amortization period for the
25 remaining Lookback Amounts. As pointed out more than once in the WP-07
26 Supplemental ROD (Conformed), adjustments may be made in subsequent rate cases to

1 respond to the circumstances of each case. *See* WP-07-Supplemental ROD (Conformed),
2 WP-07-A-05, at 267, 269, 271, 273, and 274.

3 We also point out that the WP-07 Supplemental ROD, in adopting the 50 percent
4 limitation for Avista and PacifiCorp for FY 2009, resulted in a projection of a full
5 amortization for these two utilities in FY 2018 and FY 2021, respectively, which resulted
6 in an amortization period greater than seven years. BPA was not accused of abandoning
7 its seven-year objective at that time.

8 *Q. Why does WPAG claim that BPA is “abandoning” the seven year Lookback Amount*
9 *repayment goal in this rate proceeding?*

10 *A. WPAG states that preserving the 50 percent threshold on REP benefits paid for Avista*
11 *and PacifiCorp will result in neither of them repaying their respective Lookback Amounts*
12 *within seven years. Providing these two utilities with 50% of their calculated REP*
13 *benefits will extend, based on simplified assumptions, the Lookback Amount repayment*
14 *period to FY 2021 for Avista, and to FY 2023 for PacifiCorp, or repayment periods of 13*
15 *and 15 years respectively. WPAG claims that with the addition of Idaho Power, this will*
16 *result in three investor-owned utilities not repaying their Lookback Amounts in seven*
17 *years, and only two investor-owned utilities repaying their Lookback Amounts in seven*
18 *years. WPAG contends that with this proposal, BPA has “abandoned the objective of*
19 *requiring full repayment of the Lookback Amounts in seven years” in order to guarantee*
20 *that all of the investor-owned utilities receive 50% of their calculated REP benefits.*
21 *(Emphasis added.) By so doing, WPAG asserts that “BPA has placed the interests of*
22 *those who benefited from contracts that have been found to be unlawful over the interests*
23 *of those who were wrongfully charged by BPA.” Saleba, et al., WP-10-E-WG-01,*
24 *at 10-11.*

1 Q. Do you agree that you have “abandoned” the seven year “requirement” of returning the
2 Lookback Amount in the initial proposal?

3 A. No. WPAG, like APAC, seems to equate BPA’s goal of returning the Lookback
4 Amounts within seven years to an unwavering and concrete commitment. Webster’s
5 dictionary defines the word “goal” to mean “the end toward which effort is directed.”
6 See Webster’s II New Riverside University Dictionary. This definition is quite different
7 than the meaning of the word “requirement,” which means “to impose an obligation on:
8 compel.” *Id.* The seven year goal is just that – a goal. It is not a hard deadline, but a
9 goal that allows for flexibility in balancing the policy objectives established in the WP-07
10 Supplemental rate case. Bliven, *et al.*, WP-07-E-BPA-62, at 21-22. These objectives
11 include the goal of establishing the return of the Lookback Amount within a reasonable
12 time, while also maintaining a reasonable level of REP benefits. BPA established in the
13 WP-07 Supplemental ROD that “it is appropriate to provide some level of legally
14 determined REP benefits to the residential consumers of the IOUs.” WP-07
15 Supplemental ROD (Conformed), WP-07-A-05, at 277. As stated in the WP-07
16 Supplemental ROD, “BPA does not believe it reasonable or necessary to go to the other
17 extreme and effectively eliminate the REP for the next seven years or so” in order to
18 ensure that an alleged seven year requirement is met. WP-07 Supplemental ROD
19 (Conformed), WP-07-A-05, at 278. The proposed approach for the recovery and return
20 for Lookback Amounts in FY 2010-2011 is consistent with the decisions in the WP-07
21 Supplemental ROD as outlined in our direct testimony. Evans, *et al.*, WP-10-E-BPA-19,
22 at 9-12. As in the WP-07 Supplemental case, our approach to recovering and returning
23 the Lookback Amounts “presents a reasonable balance between the interests of the COUs
24 and the residential consumers of the IOUs...” WP-07 Supplemental ROD (Conformed),
25 WP-07-A-05, at 278.

1 Q. *In the initial proposal, you outlined several reasons for your proposal in this case. Did*
2 *WPAG comment on these reasons?*

3 A. Yes.

4 Q. *How did WPAG describe your first reason?*

5 A. WPAG states that we first considered the impact on the REP benefits paid during the rate
6 period if repayment were required by all investor-owned utilities in seven years. WPAG
7 contends that according to our calculations, this would result in Avista receiving about
8 11% of its calculated REP benefits and PacifiCorp receiving none at all.

9 WP-10-E-BPA-19, pp. 9-10. WPAG further notes that we concluded that these results
10 did not comport with the second or fourth objectives adopted in the WP-07 Supplemental
11 proceeding for judging the merits of Lookback Amount repayment proposals. Saleba,
12 *et al.*, WP-10-E-WG-01, at 11.

13 Q. *Does WPAG make any comments regarding this reason?*

14 A. No.

15 Q. *What does WPAG's testimony say about your second reason?*

16 A. WPAG claims that we looked at the impact of guaranteeing Avista and PacifiCorp 50%
17 of their respective REP benefits due on the repayment to the preference customers, and
18 found it would nearly double the repayment period for Avista, and more than double the
19 repayment period for PacifiCorp. WPAG then states that "BPA concluded that doubling
20 the length of time it would take to repay its preference customers money wrongfully
21 taken from them was not unreasonable." Saleba, *et al.*, WP-10-E-WG-01, at 11.

22 Q. *Do you agree with this characterization of your position?*

23 A. No. WPAG's characterization is simply wrong. There is no doubling of the length of
24 time it would take to repay preference customers under our proposal compared to the
25 decisions in the WP-07 Supplemental ROD (Conformed), which did not lead to a seven
26 year amortization for Avista or PacifiCorp. Our proposal only extends the repayment

1 period for Avista and PacifiCorp by 3 years – or about 20 percent and 25 percent,
2 respectively, relative to the 10 and 12 years estimated in the WP-07 Supplemental
3 proceeding. Lookback Recovery and Return Study, WP-10-E-BPA-09, at 9. The
4 doubling that WPAG asserts appears to be based on the difference between a seven year
5 repayment by Avista and PacifiCorp that BPA had not proposed in the previous rate case
6 and the 13 and 15 year repayment under our current proposal. Since the original decision
7 in the WP-07 Supplemental rate case resulted in a projected, not certain, amortization
8 period of 10 and 12 years, respectively, calculations based on a seven year repayment
9 period for these two utilities does not speak to the merits of the proposal to continue the
10 50 percent limitation for the upcoming rate period.

11 *Q. Does WPAG provide any substantive arguments in response to your position that*
12 *maintaining the 50 percent threshold is reasonable?*

13 A. WPAG tries. WPAG asserts that when all of the investor-owned utilities are taken into
14 account, including Idaho Power and the reduced payments proposed by BPA for Avista
15 and PacifiCorp, the percentage of the total Lookback Amounts paid by FY 2015 would
16 amount to about 50 percent of the original Lookback Amount, not the 70% claimed by
17 BPA. There will be over \$335 million in Lookback Amount obligations unpaid to
18 preference customers by the "end" of the seven year repayment period. Delay of the
19 repayment of the Lookback Amounts to preference customers for up to 15 years, in order
20 to make larger REP payments to the IOUs who received the wrongful payments under an
21 unlawful contract, is both unreasonable and inequitable. Saleba, *et al.*, WP-10-E-WG-01,
22 at 12.

23 *Q. How do you respond to these statements?*

24 A. The debate seems to be centered around whether or not to count Idaho Power's Lookback
25 Amount when citing statistics regarding the repayment of the total Lookback Amount.
26 While WPAG may wish to debate whether our number or their number is the correct

1 characterization, the fact remains that under our simplified projections a substantial
2 amount of the Lookback Amounts associated with the IOUs who are currently in the
3 exchange is projected to be returned to preference customers by FY 2015. As we discuss
4 more fully in section 5 of this testimony, we recognize that Idaho Power presents unique
5 Lookback recovery issues. Those issues, however, cannot be resolved in this case or by
6 us making any adjustments to our proposal. As such, we believe that the proper focus of
7 this case, and our testimony, should be on the utilities and Lookback Amounts that can be
8 recovered through the mechanisms available in the rate case, such as prospective
9 reductions in REP benefits. Viewed in this context, we believe BPA is making
10 substantial progress in returning the Lookback Amounts to the preference customers by
11 the FY 2015 goal. WPAG's concerns with Idaho Power, which are not resolvable in this
12 case, should not color that progress.

13 *Q. In your initial testimony, you also mentioned that the preference customers would be*
14 *entitled to interest on their Lookback Amounts. How did WPAG respond to this point in*
15 *their comments on your second reason?*

16 *A.* WPAG claims that our argument that the preference customers will be protected over a
17 15 year repayment period by the accrual of interest was debunked by BPA in the WP-07
18 Supplemental Record of Decision, and by recent events. WPAG states that, in that ROD,
19 BPA argued that the contentious and on-going disputes over the deemer balances owed
20 by Avista and Idaho Power stemmed in part from the long period over which interest was
21 accrued, and that a 20 year repayment period for the Lookback Amounts would run the
22 risk of replaying these types of disputes. Saleba, *et al.*, WP-10-E-WG-01, at 13.

23 *Q. Do you agree with this statement?*

24 *A.* Not entirely. The reference provided by WPAG is not the only relevant statement about
25 interest and presents an incomplete if not inaccurate picture of BPA's decisions and
26 arguments. The appropriate decision to refer to from the WP-07 Supplemental ROD is

1 found in Chapter 8. In that section, BPA argues for adoption of a “neutral rate of interest
2 that does not advantage or disadvantage either the COUs or the IOUs.” WP-07
3 Supplemental ROD (Conformed), WP-07-A-05, at 214. Later BPA established that this
4 “would be the T-bill rate used to calculate the interest applicable to the IOUs’ Lookback
5 Amounts to correspond to the expected term of repayment.” *Id.* It was decided that this
6 interest rate “appropriately compensates the COUs for the delay in returning the
7 Lookback Amount over BPA’s proposed payment term.” WP-07 Supplemental ROD
8 (Conformed), WP-07-A-05, at 215.

9 *Q. What other reasons did WPAG give in support of its argument that interest would not
10 protect the preference customers?*

11 *A.* WPAG also claims that the recently proposed settlement by BPA of the Avista deemer
12 account makes it difficult to credit assurances offered by BPA that it will enforce and
13 collect from IOUs interest accrued over an extended period of time (such as 15 years) on
14 amounts owed to preference customers. Saleba, *et al.*, WP-10-E-WG-01, at 13.

15 *Q. Do you agree with this comparison?*

16 *A.* No. The Avista deemer situation and BPA’s proposed settlement of the disputed Avista
17 deemer balance is a fundamentally and factually different situation from the recovery of
18 Lookback Amounts from the IOUs. The former involves a long-standing dispute over
19 contractual rights and obligations where the interest component is a very substantial
20 portion of the total disputed deemer balance. The facts surrounding the deemer principal
21 amounts, the accumulation of interest and the appropriate interest rate are all matters of
22 dispute between Avista and BPA. The Lookback recovery construct involves BPA’s
23 response to court rulings regarding REP Settlement agreements and the treatment of their
24 costs in power rates. In contrast to the deemer dispute, the interest component is a much
25 smaller portion of the total initial Lookback Amount plus potential interest. We believe
26 the differences between these two issues are so substantial that any inference that BPA’s

1 decision to propose settlement of the deemer dispute means BPA may be unwilling to
2 enforce and collect from IOUs interest accrued on Lookback Amounts is without merit.

3 *Q. Your fourth reason for maintaining the treatment of the Lookback Amounts from the prior*
4 *rate case for this rate period is that it meets the objective of stability and predictability of*
5 *REP benefits to IOUs and the return of Lookback Amounts to preference customers.*
6 *What did WPAG say to this reason?*

7 A. WPAG argues that it is clear how BPA's departure from the seven year repayment period
8 works to maintain a constant level of REP benefit payments to the investor-owned
9 utilities, but it is not at all clear how this results in a stable Lookback Amount repayment.
10 WPAG contends that by abandoning its objective of repaying to preference customers
11 within seven years the money wrongfully taken from them, BPA has reduced the amount
12 of repayment that preference customers will receive by about \$58 million for the two year
13 rate period. WPAG argues that this is the type of "stability" preference customers can
14 well do without. WPAG claims that this approach amounts to preference customers
15 receiving 30% less than they would receive if BPA retains the seven year repayment
16 period. Saleba, *et al.*, WP-10-E-WG-01, at 13.

17 *Q. Do you agree with WPAG's arguments?*

18 A. No. Once again WPAG asserts that BPA is "abandoning" the seven year goal and then
19 calculates a reduction in repayments to preference customers from a base that has never
20 existed. The "about \$58 million for the 2-rate period" that WPAG cites would appear to
21 be the difference between the repayments to preference customers under our proposal and
22 what the payments would be if Avista and PacifiCorp extinguished their Lookback
23 Amounts by 2015. In fact, the Lookback Amount repayment is stable under our
24 proposal, contrary to the conclusion WPAG suggests we draw from its calculation. In
25 FY 2009, the Lookback Amount recovered from IOUs and returned to COUs is
26 \$71 million. WP-07-FS-BPA-08, at 274. Under our proposal, the FY 2010-2011 annual

1 average Lookback Amount recovered from IOUs and returned to COUs is \$72 million.

2 *Q. Does WPAG offer any other factors that the Administrator should consider in dealing*
3 *with this issue?*

4 A. Yes. WPAG notes that BPA power costs typically make up from one-third to one-half of
5 the total costs of most preference customers, meaning that any BPA rate increase hits
6 them and their communities hard, especially in these difficult economic times. WPAG
7 states that this is the worst possible time for BPA to reverse course on the duration of the
8 Lookback Amount repayment period, to the detriment of the parties who suffered the
9 original wrong. The decision to essentially double the length of the Lookback Amount
10 repayment period punishes those who prevailed in the *Golden Northwest* and *PGE* cases
11 in order to reward those who participated in, and benefitted from, the contracts that were
12 found to be unlawful. There are no circumstances under which such a decision can be
13 characterized as either fair or reasonable. Saleba, *et al.*, WP-10-E-WG-01, at 14.

14 *Q. What is your response to WPAG's proffered factors?*

15 A. As we have already stated, we are mindful of the current economic conditions in the
16 Pacific Northwest, which argues against taking a stronger action to recover more of the
17 Lookback Amount from the IOUs. The Pacific Northwest as a region is experiencing one
18 of the worst economic downturns in recent history. The affects of this downturn are
19 being felt by IOUs and preference customers alike. We recognize that COU and IOU
20 ratepayers are being affected in this current economic climate; therefore, it is reasonable
21 to strike an appropriate balance between the goals of providing a reasonable level of REP
22 benefits to the region's residential consumers and the return of such amounts to the PF-02
23 customers. Contrary to to WPAG's testimony, we do believe our approach is fair and
24 reasonable because it does take into consideration the affect our rates have on the end use
25 consumers in the Pacific Northwest.

1 **Section 4: Lookback Amount Interest Rate Calculation**

2 *Q. Did any party raise any concerns with your proposal for the calculation of interest in this*
3 *case?*

4 A. Yes. APAC and PPC both raised issues in their direct testimony.

5 *Q. What concerns did APAC raise?*

6 A. APAC argues that in the WP-07 Supplemental case it recommended using an interest rate
7 that reflected the uncertainty of BPA's proposed payback method. BPA, however, chose
8 instead to use a long-term Treasury interest rate. Given the proposal in WP-10 Initial
9 Proposal, APAC states it believes using a Treasury rate is even more inappropriate now.
10 Wolverton, WP-10-E-AP-01, at 14.

11 *Q. What is APAC's rationale for claiming that a Treasury rate is even "more inappropriate*
12 *now"?*

13 A. APAC explains that the U.S. Treasury rates reflect a very different risk profile than what
14 BPA proposes. APAC states that U.S. Treasury securities are backed by the "full faith
15 and credit" of the U.S. Treasury and that he interprets "full faith and credit" to mean that
16 all the money invested is returned in full and on time. APAC further contends that a
17 "goal" that is not met and a return of only part of the capital are sufficient to justify a "full
18 faith and credit" interest rate. BPA's payback method is not risk free, and certainly not in
19 the seven year "goal" timeframe established by the Administrator in WP-07
20 Supplemental rate case. The seven year goal has only six years remaining. Wolverton,
21 WP-10-E-AP-01, at 15.

22 *Q. Do you agree with APAC's claim that your choice of an interest rate that is based on the*
23 *"full faith and credit" of the U.S. Treasury is inappropriate?*

24 A. APAC appears to be looking for a new way of stating that the interest rates BPA
25 established for the ongoing amortization of the Lookback Amounts are risk free interest
26 rates. In these passages, APAC is justifying why Treasury rates are considered to be risk

1 free. But in our WP-07 Supplemental rate case rebuttal testimony responding to this
2 same argument (though APAC used different words) we stated that: 1) we agreed that the
3 repayment of the Lookback Amount is not free of risk; and 2) nevertheless, the T-Bill
4 rate seemed a fair rate to apply because it was a neutral rate, favoring neither the COUs'
5 or IOUs' positions. *See* Forman, *et al.*, WP-07-E-BPA-76, at 84-95. We stated that since
6 the IOUs signed the Settlement Agreements in good faith, BPA should not punish them
7 now with overly high interest rates. *Id.* Again, we disputed the assertion that the COUs
8 deserved an equity rate of return for the reasons mentioned above.

9 We also find that the use of this "full faith and credit" argument highly
10 inappropriate. In no way is the "full faith and credit" of the U.S. government involved in
11 this process. APAC could just as easily have referred to the interest rates as "risk free"
12 which is true, but which denotes a much different obligation on the part of BPA and the
13 IOUs. APAC's characterization of these interest rates as "full faith and credit" interest
14 rates is misplaced and thus we will not recognize them as such.

15 *Q. APAC claims in its testimony that BPA's payback method is not "risk free". Does APAC*
16 *explain the basis for this view?*

17 *A. Yes. APAC outlines three "areas" that it evaluated to determine that the Lookback*
18 *Amounts are not risk free.*

19 *Q. What is the first area?*

20 *A. First, APAC claims that by using BPA's own choice of interest rates and BPA's*
21 *outstanding Lookback balance, a present-value analysis of the six remaining years of the*
22 *"goal" period shows BPA paying back only slightly more than half the Lookback amount.*
23 *APAC then claims that this figure contrasts with a 44% repayment using the APAC*
24 *recommended higher interest rate of 11.5%. Wolverton, WP-10-E-AP-01, at 15.*

25 *Q. Do you agree with this analysis?*

26 *A. We agree that the mechanics of the analysis are standard present value (NPV) mechanics.*

1 We do not agree that the correct basis to compare the NPVs is the \$2.2 billion in
2 Lookback Amount. Wolverton, WP-10-E-AP-07-E01.

3 *Q. What is the second area?*

4 A. Second, APAC argues that using the same interest rates and Lookback balance adopted
5 by BPA over the full schedule of Lookback charges to utilities (which schedule was
6 extended for two utilities), the present value of what the utilities will pay over the full
7 estimated period to amortize the Lookback is just over 75% of the balance owed. That
8 figure contrasts with a return of 55% using the recommended APAC interest rate.
9 Wolverton, WP-10-E-AP-01, at 15-16.

10 *Q. Do you agree?*

11 A. We generally agree with the conclusions of this analysis but do not agree with the
12 APAC's assumed interest rate, as mentioned elsewhere. Furthermore, it should be noted
13 that these calculations do not reflect BPA's errata (WP-10-E-BPA-09-E01). Nor does the
14 analysis by APAC reflect a small error mentioned in a data response that APAC indicated
15 would be followed by an errata.

16 *Q. What is the third area?*

17 A. Third, APAC contends that it is "obvious" from the second point above that there is no
18 return of the full Lookback principal either under a Treasury interest rate or an APAC-
19 recommended rate. APAC presumes the shortfall is due in part to BPA's "unwillingness"
20 to seek reimbursement of illegal payments from Idaho Power. BPA's figures show that
21 Idaho Power received over \$100 million in benefits under the Settlement
22 (WP-10-E-BPA-09, p. 6), but no repayment amount is shown for that utility in the
23 Lookback calculations in Exhibit 6. Wolverton, WP-10-E-AP-01, at 16.

24 *Q. Do you agree?*

25 A. We agree that Idaho Power is not assumed to be repaying any of its Lookback Amount
26 over the 20-year period we analyzed in our Initial Proposal. We address more fully in

1 section 5 the issues concerning the Idaho Power.

2 *Q. What is APAC's recommendation?*

3 A. APAC concludes that BPA should amortize its estimate of the Lookback balance at the
4 APAC interest rate, with a refund payment of \$162.82 million coming out of the
5 residential exchange each year between 2010 and 2015; this level of payment further
6 underscores the need for a vigorous pursuit of the Idaho Power obligations. Wolverton,
7 WP-10-E-AP-01, at 17.

8 *Q. Please respond to this proposal.*

9 A. First, as noted above, we do not agree that the APAC interest rate is appropriate. As to
10 the appropriateness of providing \$162.82 million per year to the preference customers,
11 our response is the same as that provided earlier in this section where we address
12 APAC's proposal to set refund payments of \$131.77 million per year.

13 *Q. What concerns did the PPC raise with respect to your proposal for interest?*

14 A. The interest rates proposed by BPA to accrue on unpaid Lookback amounts is based on
15 Treasury Bill rates of terms equivalent to the expected length of Lookback amortization
16 projected in the WP-07 Supplemental Case. PPC claims that the Treasury Bills are an
17 inappropriate benchmark because they represent essentially a risk free interest rate. PPC
18 then cites BPA's policy direction for recovering and returning the Lookback amounts in
19 WP-10-BPA-19 (p. 8):

20
21 ...the approach should reflect the fact that key factors impacting
22 future REP benefits, including IOU and BPA costs, load growth,
23 regulatory, and environmental policies and other factors cannot be
24 forecast with precision.

25 From this, PPC concludes that to the extent that BPA is choosing to recover Lookback
26 amounts by offsetting future REP benefits to the IOUs, the interest rate for unamortized
27 balances should include a risk component reflecting the fact that there is no inherent
28 guarantee that they will ever be completely amortized, let alone within the planned

1 timeframe. As support, PPC notes that in this case alone, BPA has proposed to extend
2 the predicted amortization periods for PacifiCorp and Avista beyond the original WP-07
3 Supplemental prediction. O'Meara, *et al.*, WP-10-1E-JP8-01, at 12-13.

4 *Q. Do you agree with the PPC's assessment?*

5 A. No. In the WP-07 Supplemental ROD we considered the argument raised here and
6 responded that while the Lookback recovery method we proposed is not risk free, we
7 adopted T-Bill interest rates to avoid punishing the IOUs for signing contracts in good
8 faith that were later declared to be not in accordance with the law. WP-07 Supplemental
9 ROD (Conformed), WP-07-A-05, at 213-16.

10 *Q. Did PPC raise any other concerns with your proposal for the calculation of interest?*

11 A. Yes. In addition to the issues raised above, PPC argues that to the extent that BPA
12 proposes a change in the planned amortization period of an IOU's Lookback Amount, the
13 term that its interest rate is based on needs to be changed appropriately. In the present
14 case, BPA has proposed to extend the planned amortization period of Avista and
15 PacifiCorp to FY 2022 and FY 2024, respectively, but has not proposed to make any
16 interest rate adjustments to compensate for this extension. O'Meara, *et al.*,
17 WP-10-1E-JP8-01, at 13.

18 *Q. Please respond to these concerns.*

19 A. PPC raises a valid point. Our proposal to use the U.S. Treasury bill rates determined in
20 the WP-07 Supplemental rate proceeding to accrue interest each month on the
21 outstanding Lookback Amount balances in the FY 2010-2011 rate period yields interest
22 rates for Avista and PacifiCorp of 4.46 percent and 4.57 percent, respectively.
23 WP-10-E-BPA-09, at 10. These interest rates correspond to amortization of the Avista
24 and PacifiCorp Lookback Amounts in FY 2018 and FY 2020, respectively. *Id.* In this
25 case, however, we anticipate that Avista and PacifiCorp Lookback Amounts would be
26 extinguished in FY 2021 and FY 2023, respectively, under our simplified assumptions.

1 WP-10-E-BPA-09, at 9, as corrected by errata. The interest rates that correspond to
2 amortization of Lookback Amounts in FY 2021 and FY 2023 are 4.63 percent and
3 4.74 percent, respectively. We concur with PPC's view that the interest rate applicable to
4 Avista's and PacifiCorp's outstanding Lookback Amounts should match the projected
5 amortization period. We will therefore recommend that the interest rates for both Avista
6 and PacifiCorp be adjusted. We believe these slightly higher interest rates are reasonable
7 because they provide additional compensation to the preference customers in
8 consideration for the extended expected recovery periods for the Avista and PacifiCorp
9 Lookback Amounts.

10
11 **Section 5: Treatment of Unrecovered Lookback Amounts**

12 *Q. WPAG raised a number of arguments in its testimony regarding your treatment of the*
13 *unrecovered Lookback Amounts associated with Idaho Power. Before addressing*
14 *WPAG's specific arguments, please describe the background WPAG provided.*

15 *A. In its testimony, WPAG notes that as of October, 2003, Idaho Power had an outstanding*
16 *deemer account balance of about \$191.5 million, and that BPA did not require Idaho*
17 *Power to extinguish that deemer balance before receiving cash payments under the REP*
18 *Settlement, but permitted it to carry that balance forward while receiving the REP*
19 *Settlement payments. Saleba, et al., WP-10-E-WG-01, at 15.*

20 *Q. Do you agree?*

21 *A. Not entirely. First, it is unclear to us why WPAG chose to identify Idaho Power's*
22 *deemer balance as of October 2003. Idaho Power executed the REP Settlement*
23 *Agreement in October of 2000, at which time, BPA's calculations indicated that Idaho*
24 *Power's deemer balance was approximately \$160 million. See Attachment 1. If WPAG*
25 *was intending to identify the beginning deemer balance as of the signing of the REP*
26 *Settlement Agreement, we believe this figure would be a more accurate number.*

1 Second, WPAG’s testimony describes Idaho Power’s deemer balance without any
2 mention of the fact that the balance is in dispute. BPA was very clear in its testimony in
3 the WP-07 Supplemental case, as well as the WP-07 Supplemental ROD (Conformed),
4 that any information related to the parties’ deemer balances was presented only as an
5 assumption. *See* Forman, *et al.*, WP-07-E-BPA-76, at 67; WP-07 Supplemental ROD
6 (Conformed), WP-07-A-05, at 218-219. In making these statements, BPA readily
7 acknowledged that its deemer assumptions were in dispute and would have to be resolved
8 in other forums. *Id.* Thus, we would add to WPAG’s description of the relevant facts
9 that Idaho Power’s beginning deemer balance is disputed by Idaho Power.

10 Third, WPAG’s observations regarding the treatment of the deemer balance
11 during the term of the REP Settlement Agreement are imprecise. Factually, WPAG is
12 correct that BPA did not require Idaho Power to pay down its disputed deemer balance
13 before receiving cash payments under the REP Settlement Agreement. However, WPAG
14 is incorrect in asserting that Idaho Power and BPA “agreed to carry that balance forward
15 while receiving the REP Settlement payments.” Saleba, *et al.*, WP-10-E-WG-01, at 15.
16 More precisely, the REP Settlement Agreement retained BPA’s right to assert, and Idaho
17 Power’s right to object, to the continuation of the deemer balance. As provided in the
18 REP Settlement Agreement:

19 As a result of entering this Agreement, neither BPA nor Idaho Power
20 Company has prejudiced its right, if any, to assert that a Deemer Account
21 balance, if any, from the 1981-002 Residential Purchase and Sale
22 Agreement between BPA and Idaho Power Company is required to be
23 carried over to any subsequent agreement offered by BPA pursuant to
24 section 5(c) of P.L. 96-501.
25

26
27 *See* Attachment 2. Thus, WPAG is incorrect when it suggests that Idaho Power had
28 agreed to carry forward the deemer balance from its 1981 Residential Purchase and Sales
29 Agreement to any subsequent agreement offered by BPA. Instead, the REP Settlement

1 preserved BPA's right to "assert" that the balance be carried forward.

2 *Q. What other background material did WPAG provide in its testimony?*

3 A. WPAG asserts that BPA's "plan" for recovering Lookback Amounts from the IOUs is
4 predicated on splitting actual REP benefits, and using part to pay the participating
5 investor-owned utilities and part to repay preference customers the Lookback Amounts.
6 Saleba, *et al.*, WP-10-E-WG-01, at 16-17.

7 *Q. Is that BPA's plan?*

8 A. In general, yes. Our proposal in this proceeding is to continue to implement the recovery
9 and return of the Lookback Amounts in a manner consistent with the prior rate
10 proceeding. *See* Evans, *et al.*, WP-10-E-BPA-19, at 3-4. One component of the prior
11 proposal was to return Lookback Amounts to preference customers by reducing
12 prospective REP payments to the IOUs. *Id.* BPA determined in the WP-07
13 Supplemental proceeding that this approach to returning the Lookback Amounts was the
14 most appropriate because it avoided the absurd result of the preference customers paying
15 for their own refunds. *See* WP-07 Supplemental ROD (Conformed), WP-07-A-05, at
16 283. The amount of the repayment to the preference customers and the amount of the
17 reduction in REP benefits to the IOUs, will be determined through each rate proceeding.
18 *Id.* at 266.

19 *Q. What are WPAG's concerns with your approach in this case to recovering the Lookback
20 Amounts from Idaho Power?*

21 A. WPAG maintains that by 2015, Idaho Power's Lookback amount owed to the Preference
22 customers will have increased to \$142.49 million. Saleba, *et al.*, WP-10-E-WG-01, at 16.
23 WPAG complains that BPA has adopted an administrative approach for recouping the
24 Lookback Amounts that is virtually certain not to "return a dime of the amount owed by
25 Idaho Power." Saleba, *et al.*, WP-10-E-WG-01, at 17. Later in its testimony, WPAG also
26 claims that BPA's estimates show Idaho Power will not qualify for REP benefits

1 “anytime in the foreseeable future.” *Id.* at 17. WPAG complains that under BPA’s
2 “general plan,” the preference customers are unlikely to receive any repayment of the
3 nearly \$100 million owing to them by Idaho Power under any reasonable set of
4 circumstances. *Id.*

5 *Q. Do agree with this assessment?*

6 A. We do not agree with WPAG’s statement that it is “virtually certain” that the preference
7 customers will “not see a dime of the amount owed by Idaho Power.” Nor do we agree
8 that it is a certainty that Idaho Power’s Lookback Amount will grow unabated to
9 \$142.49 million by 2015. The information that WPAG relies upon to make this assertion
10 is a BPA developed model that projects an amortization schedule for the Lookback
11 Amounts. As we stated in our initial testimony, this model uses several simplified
12 assumptions to reach the forecasted payoff dates. *See Evans, et al., WP-10-E-BPA-19, at*
13 *11.* One of those simplified assumptions is that Idaho Power’s REP benefit level will
14 remain constant at the FY 2010 levels until FY 2015. Because BPA is not forecasting
15 that Idaho Power will receive any REP benefits in FY 2010, the result of this modeling
16 simplification is that Idaho Power’s Lookback Amount is not reduced at all over the next
17 six years. While for modeling purposes this assumption may be reasonable, in reality,
18 there are numerous factors that could occur between now and FY 2015 that could change
19 this result. As such, we do not agree with WPAG’s assertion that it is a “virtual
20 certainty” that preference customers are unlikely to see any of Idaho Power’s Lookback
21 Amount because Idaho Power will not qualify for REP benefits “anytime in the
22 foreseeable future.” There are simply too many variables at play to definitively conclude
23 at this early point that for the next six years Idaho Power will be ineligible to participate
24 in the REP.

25 *Q. What are some of the factors that could change between now and FY 2015?*

26 A. For example, if Idaho Power were to experience a combination of low water conditions

1 and a substantial increase in its production related costs, say associated with investments
2 in renewable resources, it is entirely possible that Idaho Power's ASC could become high
3 enough to make Idaho Power eligible to re-enter the Residential Exchange Program. This
4 is a real possibility considering the current press by many state utility commissions to
5 require their regulated utilities to acquire more renewable resources.

6 *Q. WPAG argues that if the approach adopted by BPA for the repayment of the Lookback*
7 *Amounts does not work for Idaho Power, BPA must employ a different approach that will*
8 *result in repayment. Saleba, et al., WP-10-E-WG-01, at 17. Do you agree?*

9 *A. No. We believe that it is too early to tell whether BPA's general approach to recovering*
10 *the Lookback Amounts from IOUs is unworkable for Idaho Power. This rate proceeding*
11 *is only the second rate case to address the recover of the Lookback Amounts. While it is*
12 *true that we are forecasting that Idaho Power will not participate in the REP for*
13 *FY 2010-2011, it is not possible for us to conclude that this trend will continue*
14 *indefinitely into the future. As noted before, there a many factors that could change that*
15 *would result in Idaho Power returning to the REP.*

16 Furthermore, BPA already considered other ways of recovering the Lookback
17 Amounts from the IOUs in the WP-07 Supplemental ROD, and determined that reducing
18 prospective REP benefits was, for the time being, the most appropriate way for
19 recovering these funds. *See generally*, WP-07 Supplemental ROD (Conformed),
20 WP-07-A-05, at 285. For example, several parties requested that BPA consider tapping
21 other sources of revenue owed to the IOUs, such as payments under non-REP related
22 contracts, to make the Lookback Amount payments. *Id.* at 285. BPA ultimately rejected
23 this proposal because it would have caused a significant disruption to BPA's business.

24 *Id.* As noted in the ROD:

25
26 . . . BPA foresees at least two serious problems with a policy that requires
27 BPA to withhold payments from the IOUs on contracts unrelated to the
28 REP to recover the Lookback. To begin with, BPA's ability to enter into

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1 new agreements and arrangements with the IOUs would be compromised.
2 The IOUs would justifiably be cautious of entering any new arrangements
3 with BPA because they would have no way of knowing whether BPA
4 would claim a right to withhold payments under the new agreements to
5 recover the Lookback Amounts. This result would seriously undermine
6 BPA's ability to operate in a businesslike fashion.
7

8 Furthermore, if BPA were to reduce future non-REP payments as a form
9 of Lookback recovery, the IOUs might have a claim for initiating litigation
10 against BPA for breach of contract. Such litigation could, in turn, threaten
11 the continued viability of other non-REP agreements, which could cause
12 BPA to lose potential lucrative arrangements. . . . BPA does not believe it
13 either reasonable or necessary to incur this inordinate amount of legal and
14 business risk to recover the Lookback Amounts if another viable
15 alternative is available. As described above, Staff's proposal to reduce
16 future REP benefits is such an alternative.

17 *Id.*

18 We believe these concerns were well said, and remain relevant to the present case.

19 Thus, we continue to recommend using prospective REP benefits as the source of the
20 funds to repay the Lookback Amounts.

21 *Q. What is WPAG requesting that you do for purposes of setting rates in this proceeding?*

22 A. WPAG recommends that for purposes of setting rates for this proceeding, BPA should
23 accept as a fact that the Lookback Amount is a valid obligation of Idaho Power, and that
24 BPA will take the necessary actions to enforce repayment of this obligation within the
25 seven year repayment period BPA adopted in the WP-07 Supplemental proceeding.
26 Saleba, *et al.*, WP-10-E-WG-01, at 17.

27 *Q. Please respond to this suggestion.*

28 A. First, we are confused by WPAG's first remark in its testimony. WPAG recommends
29 that we accept for purpose of setting rates that the Lookback Amount is a "valid
30 obligation" of Idaho Power. It is unclear to us how this suggestion is any different from
31 what we have already proposed in this case. We are not lawyers, so we will not opine on
32 what is or is not a valid obligation of Idaho Power or the other IOUs. Nevertheless, from
33 a general perspective we are of course assuming that BPA has the right to collect the

1 Lookback Amounts from the IOUs as described in the WP-07 Supplemental ROD
2 (Conformed). That is why we are proposing to reduce the IOUs' REP benefits by
3 approximately \$70 million in both FY 2010 and FY 2011 and sending these funds to the
4 appropriate preference customers. *See Evans, et al., WP-10-E-BPA-19.* If we believed
5 the Lookback Amounts were "invalid obligations," we would obviously not have
6 proposed to reduce any of the IOUs REP benefits to pay back the Lookback Amounts.

7 For Idaho Power, this assumption is no different. We assume that Idaho Power
8 has an outstanding Lookback Amount as of the end of FY 2009 of \$107 million that is
9 available to reduce any REP benefits legally owed to it. Lookback Recovery and Return
10 Study, WP-10-E-BPA-09, page 6. However, because our current projections indicate
11 Idaho Power is not expected to receive any benefits during the rate period, we also
12 assume that Idaho Power will not be making any payments towards its Lookback
13 Amounts this rate period. Thus, we have already made the "ratemaking" assumption
14 WPAG requests us to make in the first part of their testimony; that is, Idaho Power's
15 Lookback Amount is a valid outstanding obligation.

16 *Q. What about the second point made in WPAG's testimony?*

17 *A.* WPAG's second point is also confusing. WPAG suggests that, for purposes of setting
18 rates, we assume BPA will take the "necessary actions" to enforce repayment of Idaho
19 Power's Lookback Amount obligation within the seven year repayment period BPA
20 adopted in the WP-07 Supplemental proceeding. *Saleba, et al., WP-10-E-WG-01, at 17.*
21 We are not sure what "necessary actions" WPAG refers to in this statement. In response
22 to a data request on this issue, WPAG responded that "the actions necessary to enforce
23 the repayment of this obligation within the seven year repayment period are legal matters
24 that will be addressed in brief." *See Attachment 3, Data Response BPA-WG-02.* We
25 will therefore have to wait until WPAG files its Initial Brief to understand under what
26 theory of recovery we should be assuming the Lookback Amounts would be returned.

1 *Q. What exactly is WPAG suggesting you assume for the FY 2010-2011 rate period?*

2 A. WPAG's testimony is unclear as to what we should assume for purposes of setting rates.

3 In response to a data request on this subject, WPAG responded as follows:
4

5 The quoted testimony implies that for FY 2010 and FY 2011, BPA should
6 assume the collection of about one-seventh of Idaho Power's outstanding
7 Lookback Amount plus accumulated interest for each fiscal year.
8

9 Attachment 4, Response to Data Request BPA-WG-01.

10 Thus, WPAG would have us assume that BPA would recover approximately
11 \$30 million (\$15 million for each rate period) in total from Idaho Power by the end of the
12 FY2010-2011 rate period.

13 *Q. Do you think assuming that BPA will recover \$30 million of Idaho Power's Lookback
14 Amount during the FY 2010-2011 rate period is a reasonable assumption?*

15 A. We believe making this assumption is fundamentally flawed and unreasonable. WPAG's
16 assumption would place an untenable level of pressure on the proposed rates. The
17 current approach to returning Lookback Amounts results in no net impact on BPA's rates.
18 For every dollar that is credited to the preference customers as a refund, a corresponding
19 dollar is reduced from the payments being made to the IOUs. This balance is absolutely
20 essential to ensuring that payment of the Lookback Amounts does not result in BPA
21 increasing its rates.

22 WPAG's suggestion, however, would completely upend this important balance.
23 In effect, WPAG is requesting BPA to make a \$30 million advance payment to the
24 preference customers through the rate period based on the assumption that BPA will
25 recover these funds from Idaho Power through some yet unidentified actions. The
26 financial risk this assumption would have on BPA's rates would be immense. Because
27 Idaho Power is not receiving any REP benefits and is not expected to receive REP
28 benefits during the rate period, the initial source of these funds will have to be BPA's

1 reserves. BPA's reserves will remain the source of these payments until BPA receives
2 payment from Idaho Power pursuant to the "necessary actions" WPAG believes BPA
3 should take. Indeed, WPAG itself recognizes that, under the current approach, BPA's
4 reserves will remain the source of these funds:

5
6 BPA has treated the payments of the Lookback Amounts as a pass through
7 to its preference customers as a credit on their monthly power bill. In that
8 regard it operates in the same manner as the Residential Exchange
9 payments made to the IOUs. If BPA makes the Lookback payments to the
10 preference customers in the amounts owed by Idaho Power during the rate
11 period and for some reason not articulated in the data request the
12 Lookback Amounts owed by Idaho Power are not collected in the rate
13 period, the result would be a reduction in BPA's financial reserves that
14 would be reflected when BPA's rates are next set.
15

16 Attachment 5, Response to Data Request BPA-WG-04.

17 As recognized by WPAG in its data response, unless BPA is able to recover the
18 funds from Idaho Power by the end of the rate period, BPA will have to make up for
19 these loss reserves in the next rate period. In addition, having fewer reserves also may
20 cause higher rates in the short-term because it increases the chances that a CRAC will
21 trigger during the rate period. In both cases, the net effect is that BPA's rates will have to
22 be raised to cover the shortfall in reserves, resulting in the perversity of the preference
23 customers paying for their own refunds. BPA specifically rejected this approach in the
24 WP-07 Supplemental ROD:

25
26 All costs (regardless of their source) must eventually be included and
27 recovered through the cost-based rates charged to BPA's regional firm
28 power customers, including preference customers. In general, if BPA were
29 to make payments to the COUs from reserves available for risk, BPA
30 would likely need to subsequently increase the COUs' rates to replenish
31 such reserves, all else being equal. Payments out of reserves would likely
32 result in higher rates to the COUs because the remaining reserves for risk
33 would probably be too low to support BPA's Treasury Payment
34 Probability (TPP) standard. Thus, Planned Net Revenues for Risk (PNRR)
35 would need to be added to the revenue requirement, and the PF Preference
36 rate would increase. The end result is that the use of reserves to pay

1 Lookback Amounts would result in the COUs effectively paying for their
2 own remedy through higher future rates, all else being equal.

3 WP-07 Supplemental ROD (Conformed), WP-07-A-05, at 283 (internal citations
4 omitted).

5 In short, we do not agree in any way that “for purposes of setting rates” we should
6 assume BPA will recover funds from Idaho Power during the rate period. To do so,
7 would be to expose BPA to untoward financial risk and place an untenable level of
8 pressure on the PF rates. We find this proposal particularly unreasonable when
9 considering that it is based on the thin hope that BPA’s reserves will be reimbursed by
10 Idaho Power at some future unknown point pursuant to some future unknown action by
11 BPA.

12 *Q. Do you have any other concerns with WPAG’s suggestion?*

13 *A. Yes we do. Apart from the problem of sending out additional refunds without funds*
14 *coming from Idaho Power, we do not believe that it is within the purview of the rate case*
15 *for us to try and predict “for ratemaking purposes” when BPA can expect to receive*
16 *disputed funds from another party like Idaho Power. The purpose of our testimony in this*
17 *rate case is to provide our best estimate of what we believe will be returned to the*
18 *preference customers through prospective reductions in REP benefits to the IOUs. Our*
19 *analysis and assumptions come from the documentation and forecasts provided in other*
20 *parts of our initial proposal. In this way, the assumptions we have reached are sound*
21 *ratemaking assumption because they are built upon forecasts and analyses that are readily*
22 *available in the rate case record.*

23 WPAG’s “ratemaking” assumption, however, calls for a wholly different analysis.
24 Instead of basing our opinions on sound rate case forecasts, WPAG would have us
25 speculate on matters that we believe are next to impossible to determine. First, WPAG
26 requests that we predict the outcome of a yet-to-be-determined action against Idaho
27 Power. We have no basis as experts in our respective fields to even begin to identify

1 what actions BPA may take against Idaho Power to recover its Lookback Amount.
2 WPAG's witnesses acknowledge that they are also equally ill-equipped to discuss this
3 matter. See Attachment 4 Response to Data Request BPA-WG-01. Thus, to request that
4 we make a ratemaking assumption based on an answer to this question is fundamentally
5 flawed.

6 Second, assuming we could answer this question, we would have even less of a
7 basis for stating BPA's likely chances of success on such a claim. We are not lawyers,
8 let alone judges, so our prediction of the whether BPA's claim, even if known, would be
9 based on pure speculation. These are not the types of "rate case" assumptions that BPA
10 should use in setting its rates for FY 2010-2011.

11 Finally, even if we could articulate a basis for assuming BPA should recover
12 funds from Idaho Power, there is absolutely no way we could say with certainty that such
13 resolution would occur within the terms of this rate period. Predicting when these
14 payments would be made is even more precarious when considering that BPA's WP-07
15 Supplemental rate case is currently in litigation. While we cannot provide legal opinions
16 about the nature or state of the case, it is common knowledge that resolving complex
17 litigation in today's courts takes a significant amount of time. If the size of BPA's record
18 of decisions is any indication of the complexity of the issues involved with the Lookback,
19 then we assume the 700-plus page ROD BPA issued in the WP-07 Supplemental rate
20 case will be one of the more difficult BPA-related cases for the Court to decide.
21 Assuming that all of the litigation involving BPA's decisions in that document will be
22 resolved with the result that Idaho Power will have paid some or all of its Lookback
23 Amount by the end of the rate period defies credulity. We simply do not know when this
24 will occur, and assuming otherwise is not an appropriate rate case assumption.

25 *Q. WPAG argues that while the prospect of enforcing the Lookback Amount repayment*
26 *obligation may be distasteful to BPA, it is hoped that depriving its preference customers*

1 *of the repayment of nearly \$100 million they are rightfully owed would be even more*
2 *distasteful to BPA. Saleba, et al., WP-10-E-WG-01, at 17-18. Please respond to this*
3 *remark.*

4 A. Regardless of whether we believe it would be “distasteful” to seek \$100 million from
5 Idaho Power, we believe that as a ratemaking matter, it is imprudent for us to assume that
6 BPA will receive these cash payments from Idaho Power during the rate period. As
7 noted above, if we adopt this assumption and it does not come to fruition, the preference
8 customers could end up paying for their own refund. WPAG would obviously not want
9 this result, so we continue to believe that there recommendation is faulty.

10 Furthermore, we do not agree that we are “depriving . . . [the] preference
11 customers of the repayment of nearly \$100 million they are rightfully owed” as alleged
12 by WPAG. Saleba, *et al.*, WP-10-E-WG-01, at 17-18. Just because the preference
13 customers are not receiving Idaho Power’s Lookback Amounts this rate period does not
14 mean that Idaho Power’s Lookback Amount disappears. Rather, as noted before, Idaho
15 Power’s Lookback Amount is an outstanding obligation which Idaho Power will have to
16 contend with when they reenter the exchange. Thus, WPAG is incorrect in asserting that
17 we have “deprived” the preference customers of anything. The simple fact is that this
18 rate period there are no benefits available to setoff these amounts. This lack of benefits,
19 however, could very well change in a future rate case.

20 Q. *Assume for the sake of argument that Idaho Power paid some or all of its Lookback*
21 *Amount during the rate period. If BPA does not make an assumption in the rate case*
22 *regarding these amounts, is BPA in some way prohibited from returning the recovered*
23 *funds to the preference customers during the rate period?*

24 A. No. Our assumptions in this case only relate to the collection and return of Lookback
25 Amounts as they relate to REP benefits. If as a result of some action, Idaho Power were
26 to return Lookback Amounts to BPA, BPA would have the option of returning these

1 funds to preference customers as additional credits on their bills. Thus, the fact that we
2 do not “assume” these payments in the rate case does not in any way alter the
3 Administrator’s ability to make additional Lookback Amount payments to the preference
4 customers if additional Lookback Amount payments were to be made during the rate
5 period.

6 *Q. WPAG argues that its proposal is particularly warranted in light of a proposed rate*
7 *increase and the recessionary economy being faced by preference customers. Saleba, et*
8 *al., WP-10-E-WG-01, at 18. Do you agree?*

9 *A.* We do not agree that just because of the current economic downturn it is appropriate for
10 BPA to seek to recover an additional \$30 million from Idaho Power over this rate period.
11 For one, the “recessionary economy” referenced in WPAG’s testimony is not isolated to
12 only preference customers. The Pacific Northwest as a region is experiencing one of the
13 worst economic downturns in recent history. The affects of this downturn are being felt
14 by IOUs and preference customers alike. Adopting WPAG’s suggestion would only
15 serve to shift the economic hardship from the preference customers to the residential and
16 small farm customers of Idaho Power, who are already experiencing significant troubles
17 associated with the economy. As a matter of policy, we do not believe it would be
18 reasonable or justified to use the current state of the economy as a reason to side with the
19 preference customers and take draconian measures against Idaho Power. Again, we are
20 not releasing Idaho Power from its Lookback Amount obligation. Rather, because Idaho
21 Power is not receiving any REP benefits in this rate period, we are not proposing to
22 return any Lookback Amounts associated with Idaho Power for this rate period.

23 *Q. Did any other party comment on Idaho Power’s Lookback Amount?*

24 *A.* Yes. APAC raised it as an issue in its testimony.

25 *Q. What arguments did APAC raise?*

26 *A.* In its testimony, APAC recommends that BPA pay \$131.77 million to Preference

1 Customers each year between 2010 and 2015, inclusive. APAC acknowledges that this
2 recommendation may mean that some utilities will have repaid their obligation fully
3 before the period is over, so a replacement source to fully fund the \$131.77 million
4 annual payment will have to be found. To cover for the payments not made by the other
5 utilities, APAC recommends that BPA seek the return of the payments from Idaho Power
6 by “appropriate means.” APAC claims that BPA’s level of payment further underscores
7 the need for a vigorous pursuit of the Idaho Power obligations. Wolverton, WP-10-E-
8 AP-01, at 17. APAC also argues that an alleged “shortfall” in the repayment of the
9 Lookback Amount is caused by BPA’s unwillingness to seek reimbursement of “illegal”
10 payments from Idaho Power. Wolverton, WP-10-E-AP-01, at 16.

11 *Q. What is your response to these arguments?*

12 A. In many respects, APAC identifies the same issues we’ve already addressed above in
13 response to WPAG. Thus, here we only testify to the areas that we believe are issues not
14 otherwise addressed above.

15 *Q. Which argument would you first like to address?*

16 A. We first respond to APAC’s recommendation that BPA pay \$131.77 million to
17 Preference Customers each year between 2010 and 2015, inclusive. Wolverton,
18 WP-10-E-AP-01, at 17. On this point, we note that it has never been BPA’s policy to pay
19 a “fixed” amount of the Lookback Amount each year. Rather, it has always been BPA’s
20 position that this decision is left to the Administrator in each rate case. WP-07
21 Supplemental ROD (Conformed), WP-07-A-05, at 266-67. This flexibility is essential.
22 BPA previously discussed the merits of a fixed seven year term for the Lookback
23 Amount repayments in the WP-07 Supplemental ROD. In that document, BPA rejected
24 this approach, noting:

25
26 This proposal must be rejected because it is self-defeating. BPA believes
27 that the most appropriate approach is one that ties the return of funds to
28 the COUs with the recovery of funds from the IOUs. While BPA has a

1 reasonable degree of confidence that most, if not all, of the Lookback
2 should be repaid within seven years, BPA cannot ensure that the future
3 level of REP benefits will support a seven-year payback. If BPA commits
4 to return the Lookback Amounts in seven years, but has not recovered the
5 funds from the IOUs, BPA would be left in the position of paying
6 Lookback Amounts to the COUs from financial reserves. As noted in
7 Section 9.5, BPA would have to replenish these reserves through future
8 rate increases to the COUs, which has the perverse effect of the COUs
9 paying for their own refund. For this reason, then, BPA will not commit to
10 an absolute seven-year repayment period.

11 *Id.* at 268-69.

12 We believe that the rationale outlined in the WP-07 Supplemental ROD
13 (Conformed) is equally applicable to APAC's present recommendation. We believe no
14 further discussion on this topic is necessary.

15 *Q.* APAC also acknowledges that its recommendation may mean that some utilities will have
16 repaid their obligation fully before the period is over, so a replacement source to fully
17 fund the \$131.77 million annual payment will have to be found. To cover for the
18 payments not made by the other utilities, APAC recommends that BPA seek the return of
19 the payments from Idaho Power by appropriate means. APAC also claims that BPA's
20 level of payment further underscores the need for a vigorous pursuit of the Idaho Power
21 obligations. *Wolverton, WP-10-E-AP-01, at 17. Please comment on this statement.*

22 *A.* This recommendation by APAC is faulty for several reasons. First, recovering the
23 Lookback Amounts from individual IOUs before the seven year goal is contrary to the
24 decisions BPA made in the WP-07 Supplemental ROD (Conformed). In the ROD, BPA
25 was very clear that the goal of returning the Lookback Amounts was seven years, not
26 seven years or sooner. *See WP-07 Supplemental (Conformed) ROD, WP-07-A-05, at 266*
27 *("BPA will also change the goal of returning the Lookback Amounts from 20 years or*
28 *less to seven years.")* This was one of the compromises BPA adopted as it shifted from
29 its initial proposal of returning the Lookback Amounts from 20 years or less to a general
30 goal of seven years. Thus, APAC's suggestion that BPA accelerate the payments of
31 some IOUs so that the pay off some IOU Lookback Amounts will occur before the seven

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Witnesses: Elizabeth A. Evans, Charles W. Forman, Jr., and Kenneth J. Marks

1 year objective is counter to the policy objectives outlined in WP-07 Supplemental ROD.

2 Second, APAC's suggestion that BPA find a "replacement source" to fund the
3 remaining years of the recommended \$131.77 million fixed payment is faulty for the
4 same reasons we identified above in response to WPAG's similar suggestion. As noted
5 before, we do not believe it is reasonable to gamble with BPA's limited reserves by
6 committing to make Lookback Amounts payments to the preference customers based on
7 the feeble hope that BPA will succeed in recovering these funds from some yet-to-be-
8 identified "replacement source" by "appropriate means."

9 Third, APAC's request that we "vigorously pursu[e]" claims against Idaho Power
10 is uncalled-for. This case is only the second case to implement BPA's Lookback
11 construct. BPA does not believe that at this early stage it is necessary to abandon its
12 REP-based recover efforts for Idaho Power. This is particularly the case since the entire
13 Lookback construct is the subject of pending litigation. We are not lawyers, so we
14 cannot opine on the whether a party may pursue a claim against a party in multiple
15 forums. However, as a matter of business sense, we do not see why it would be
16 reasonable for BPA to commence costly and time intensive litigation against Idaho Power
17 for the recover of the Lookback Amounts while the very validity of the entire Lookback
18 construct is being resolved in other pending litigation. To us, the more logical thing to do
19 is to maintain the return and recovery of the Lookback Amounts as expressed in the
20 WP-07 Supplemental ROD until the Court finally resolves the issues with BPA's
21 Lookback construct.

22 *Q. APAC argues that an alleged "shortfall" in the repayment of the Lookback Amount is*
23 *caused by BPA's unwillingness to seek reimbursement of "illegal" payments from Idaho*
24 *Power. Wolverton, WP-10-E-AP-01, at 16. Please respond to these accusations.*

25 *A. First, the "shortfall" identified in APAC's analysis comes from its own erroneous belief*
26 *that BPA must return the Lookback Amounts to the preference customers in a fixed*

1 amount over the next seven years. As already discussed, BPA rejected this approach in
2 the WP-07 Supplemental ROD (Conformed) for sound reasons.

3 Second, APAC is simply wrong in asserting that BPA is “unwilling” to seek
4 reimbursement of the payments made to Idaho Power. Again, as noted above, Idaho
5 Power’s Lookback Amount will remain an outstanding obligation of Idaho Power that
6 Idaho Power will need to contend with when it reenters the exchange. Thus, we are not
7 “forgiving” Idaho Power of its obligation to pay the Lookback Amount. Rather, we are
8 proposing for this rate period to give the remedy that BPA crafted no more than 9 months
9 ago a chance to work. As noted before, it is too early to tell whether BPA must abandon
10 its REP-based approach to recovering Lookback Amount from Idaho Power.

11
12 **Section 6: Avista Deemer Settlement**

13 *Q. Did any party comment on your proposed treatment of the proposed deemer settlement in*
14 *the Lookback calculations?*

15 A. Generally, no. Although PPC’s witnesses submitted comments objecting to the
16 settlement itself, they did not comment on our proposed treatment of the settlement in the
17 Lookback calculations.

18 *Q. What comments did PPC make regarding the proposed Avista deemer settlement?*

19 A. PPC noted it opposes the proposed settlement regarding the Avista deemer account in
20 separate proceedings and would like to assert its position that a settlement of the deemer
21 amount for an amount significantly below its current level is inequitable to BPA's
22 preference customers. As is, PPC argues that it does not see any significant reciprocal
23 value in the proposed settlement for the preference customers, and the fact that BPA now
24 projects fully amortizing Avista's Lookback amount in FY 2020 rather than FY 2022 as a
25 result of reducing the liability does not change this position. O’Meara, *et al.*,
26 WP-10-1E-JP8-01, at 13-14.

1 Q. *What is your response to this comment?*

2 A. PPC correctly recognizes that the merits of settling the Avista deemer dispute are being
3 addressed in a separate process. PPC's position that settling the disputed Avista deemer
4 amount for an amount below its current level is inequitable to BPA's preference
5 customers is understandable, but does not acknowledge the fact that "its current level" is
6 an amount assumed by BPA in the WP-07 Supplemental Wholesale Power Rates
7 proceeding. BPA believes its assumed deemer balance amount is reasonable for rate
8 setting purposes given the facts available to it on the WP-07 Supplemental record. That
9 said, this amount and the validity of any deemer obligation are disputed by Avista. In
10 particular, the facts surrounding the termination of Avista's 1981 RPSA and the basis for
11 accumulation of interest on any deemer balance from 1993 through 2001, facts that are
12 unique to the Avista situation, are complicated as the WP-07 Supplemental record
13 indicates. If the issue is fully litigated, BPA believes additional facts could be established
14 and additional arguments could be made that support a deemer balance materially lower
15 than the balance assumed in the WP-07 Supplemental rate proceeding. Any assessment
16 of whether or not the proposed Avista Deemer settlement is equitable for BPA's
17 preference customers needs to take into account the possibility of BPA not fully
18 sustaining its assumed Avista Deemer balance in litigation as well as the value of
19 avoiding the time and expense of litigation and other considerations secured. BPA will
20 address these considerations in its Record of Decision on the proposed Avista Deemer
21 settlement. Finally, PPC correctly observes that any settlement of the deemer dispute
22 resulting in a smaller deemer obligation will advance the date by which Avista
23 extinguishes its Lookback Amount, all else equal. BPA acknowledges and understands
24 that advancing repayment of Avista's Lookback Amount due to substituting a smaller
25 deemer obligation is cold comfort, at best, to the preference customers.

1 Q. *Does this conclude your testimony?*

2 A. Yes.

3

4

5

Attachments 1-5

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ATTACHMENT 1

IDAHO POWER DEEMER BALANCE SUMMARY

**Through Oct
2000**

Idaho Power - ID	\$ 145,607,979
Idaho Power - OR	\$ 12,554,029
Idaho Power - NV	\$ 1,896,521
Sum	\$ 160,058,529

AUTHENTICATED (SEE OOPB-12164 FOR EXHIBIT A)

Contract No. 00PB-12158
09/29/00

SETTLEMENT AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
IDAHO POWER COMPANY

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Exhibit A Block Power Sales Agreement (Contract No. 00PB-12164

Exhibit B Residential Load Definition

This SETTLEMENT AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and **IDAHO POWER COMPANY (IDAHO POWER COMPANY)**. **IDAHO POWER COMPANY** is a CORPORATION organized under the laws of the State of IDAHO. BPA and **IDAHO POWER COMPANY** are sometimes referred to in the singular as “Party” or in the plural as “Parties.”

RECITALS

The Northwest Power Act establishes a Residential Exchange Program to provide benefits to residential and small farm consumers of Pacific Northwest utilities.

BPA implements the Residential Exchange Program through the offer, when requested, of a Residential Purchase and Sale Agreement.

BPA and **IDAHO POWER COMPANY** desire to enter into this Agreement in order to settle the Parties' rights and obligations for the Residential Exchange Program for the term of this Agreement.

The Parties agree:

1. **TERM**

This Agreement takes effect on the date signed by the Parties. Performance of this Agreement by the Parties shall begin on October 1, 2001, and shall continue through September 30, **2011** (Expiration Date), unless terminated earlier pursuant to section 14 below.

2. **DEFINITIONS**

- (a) "Contract Year" means each period during the term of this Agreement that begins each October 1 and which ends the following September 30. For instance, Contract Year 2002 begins October 1, 2001, and continues through September 30, 2002.
- (b) "Deemer Account" means the separate account established pursuant to section 10 of the 1981 Residential Purchase and Sale Agreement between **IDAHO POWER COMPANY** and BPA that identifies a monetary payment plus interest that would have been owed to BPA by **IDAHO POWER COMPANY** if **IDAHO POWER COMPANY** had not "deemed" its Average System Cost equal to the PF Exchange rate.
- (c) "Firm Power" means electric power that PBL will make continuously available to **IDAHO POWER COMPANY** under the Firm Power Block Power Sales Agreement.
- (d) "Firm Power Block Power Sales Agreement" means Contract No. 00PB-12164, attached to this Agreement as Exhibit A.
- (e) "Forward Flat-Block Price Forecast" means BPA's forecast of the wholesale market price for the purchase of additional amounts of power at 100 percent annual load factor established in the same BPA power rate case as that which established the RL rate and for the period of the RL Rate established in a BPA power rate case Record of Decision (ROD) as finally approved by the Federal Energy Regulatory Commission and affirmed, if appealed, by the United States Court of Appeals for the Ninth Circuit.

- (f) “Lowest PF Rate” means the lowest applicable cost-based power rate provided under the applicable PF rate schedule as applied to purchases of Firm Power by BPA’s preference customers at 100 percent annual load factor. The applicable power rate shall be the PF rate for the same period as the RL Rate for the Firm Power purchases provided under the Firm Power Block Power Sales Agreement.
- (g) “Monetary Benefit” means the monetary settlement benefits provided under this Agreement as determined pursuant to the methodology described in section 4(c) below.
- (h) “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.
- (i) “Qualified Entity” means an entity authorized under state law or by order of the applicable state regulatory authority to serve all or a portion of **IDAHO POWER COMPANY**’s Residential Load.
- (j) “RL Rate” means the then-current applicable Residential Load Firm Power rate schedule.
- (k) “Residential Exchange Program” means the program established under section 5(c) of the Northwest Power Act.
- (l) “Residential Load” means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit B.
- (m) “Residential Purchase and Sale Agreement,” or “RPSA,” means an agreement between BPA and a Pacific Northwest utility that implements the Residential Exchange Program.

3. SATISFACTION OF SECTION 5(c) OBLIGATIONS

- (a) **Satisfaction of Section 5(c) Obligations**
BPA shall, in full and complete satisfaction of all of its obligations during the period from October 1, 2001, through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act, provide to **IDAHO POWER COMPANY** Firm Power or Monetary Benefit payments, or both, pursuant to this Agreement. **IDAHO POWER COMPANY** agrees that the Firm Power and Monetary Benefits provided under this Agreement satisfy all of BPA’s obligations during the period from October 1, 2001, through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act.
- (b) **Invalidity**
In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that this Agreement (or section 4(a), section 4(c), or section 5 of this Agreement) is

unlawful, void, or unenforceable, then the provisions of section 3(a) above shall be of no further force or effect, and the Parties intend and agree that: (1) the Firm Power and Monetary Benefits provided prior to such final determination shall be retained by **IDAHO POWER COMPANY**; and (2) the satisfaction of BPA's obligations to **IDAHO POWER COMPANY** under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 3(b) shall survive notwithstanding any determination that any other provision of this Agreement (or the exhibits) is unlawful, void, or unenforceable.

- (c) **Negotiation of New Agreement if this Agreement Held Invalid**
If this Agreement (or section 4(a), section 4(c), or section 5 of this Agreement) is finally determined to be unlawful, void, or unenforceable as described in section 3(b) above, then both Parties agree to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act. The term of such new agreement would continue for the remaining term of this Agreement.

4. SETTLEMENT BENEFITS

- (a) **Total Benefits**
BPA shall provide to **IDAHO POWER COMPANY** a total benefit comprised of Firm Power and Monetary Benefit, both of which are expressed in annual average megawatts (aMW). This total benefit is as follows:

<u>Period of Time</u>	Total of Firm Power and Monetary Benefit for IDAHO POWER COMPANY <u>(annual aMW)</u>	<u>IDAHO (annual aMW)</u>	<u>OREGON (annual aMW)</u>	<u>NEVADA (annual aMW)</u>
10/1/01 through 9/30/06	120	115	5	0
10/1/06 through 9/30/11	225	215	9	1

The allocation and disposition of this total benefit between Firm Power and Monetary Benefit is described in sections 4(b) and 4(c) below.

- (b) **Firm Power Sale Portion of Total Benefits**
 - (1) **October 1, 2001, through September 30, 2006**
 - (A) Subject to the terms of this Agreement, BPA shall make available and sell, and **IDAHO POWER COMPANY** shall purchase, Firm Power at a "flat" rate of delivery (100 percent annual load factor) during every hour under the RL Rate. The

terms and conditions for this sale shall be as provided for in the Firm Power Block Power Sales Agreement, attached hereto as Exhibit A. The annual amounts of Firm Power are as follows:

<u>Period of Time</u>	<u>Firm Power (annual aMW)</u>	<u>Idaho (annual aMW)</u>	<u>Oregon (annual aMW)</u>	<u>Nevada (annual aMW)</u>
10/1/01 through 9/30/06	63	60	3	0

- (B) If **IDAHO POWER COMPANY** terminates the Firm Power Block Power Sales Agreement pursuant to section 16 of such agreement, BPA shall convert the Firm Power sale to Monetary Benefits and provide Monetary Benefits in the amount of the Firm Power sale, pursuant to section 4(c) below (except as provided in section 5(a)(6) below), from the effective date of such termination through September 30, 2006.
- (C) If an investor-owned utility signs an agreement settling the rights of such utility under the Residential Exchange Program and that utility takes Monetary Benefits instead of the Firm Power offered by BPA, BPA shall offer to amend **IDAHO POWER COMPANY's Settlement Agreement to substitute Firm Power for Monetary Benefits. The amount of Firm Power offered by BPA shall be IDAHO POWER COMPANY's share of the amounts of Firm Power not taken by an investor-owned utility, based on the allocation methodology described in the Administrator's Record of Decision issued with agreements offered to settle the rights of investor-owned utilities under the Residential Exchange Program. BPA shall determine whether such amounts of Firm Power are available as soon as possible after the expiration of the termination right in section 14 of such agreements offered to settle the rights under the Residential Exchange Program. IDAHO POWER COMPANY shall have 30 days to accept the offer.**

(2) October 1, 2006, through September 30, 2011

- (A) Subject to the terms of this Agreement, BPA shall, no later than October 1, 2005, notify **IDAHO POWER COMPANY** in writing of the amount of Firm Power in annual aMW that will be provided to **IDAHO POWER COMPANY** during the period that begins October 1, 2006, and ends on September 30, 2011. The terms and conditions for this sale shall also be as provided for in the Firm Power Block Power Sales Agreement, and such agreement shall be amended by the Parties to reflect the amount of Firm Power to be sold during such period. BPA shall not offer an amount of Firm Power that exceeds **IDAHO POWER COMPANY's** net requirement at the time of the notice

issued pursuant to this section. Prior to issuing such notice, BPA shall consult with **IDAHO POWER COMPANY** regarding its desire for Firm Power or Monetary Benefits.

- (B) If **IDAHO POWER COMPANY** does not purchase any Firm Power during the period from October 1, 2001, through September 30, 2006, **IDAHO POWER COMPANY** shall establish an initial net requirement under Exhibit C of the Firm Power Block Power Sales Agreement by August 1, 2005, for Contract Year 2007. **IDAHO POWER COMPANY** shall execute a contract including the terms and conditions of the Firm Power Block Power Sales Agreement, and the information provided on net requirements under this section by January 1, 2006, if BPA notifies **IDAHO POWER COMPANY** under section 4(b)(2)(A) that a portion of its benefits under section 4(a) will be provided as Firm Power.
- (C) If the RL Rate calculated at 100 percent annual load factor for the period from October 1, 2006, through September 30, 2011, exceeds the Lowest PF Rate for the same 100 percent annual load factor during such period, **IDAHO POWER COMPANY** may, by written notice to BPA within 30 days after BPA published its power rate case ROD, notify BPA that it will convert its entire Firm Power purchase under the Firm Power Block Power Sales Agreement to Monetary Benefits, pursuant to section 4(c) below (except as provided in section 5(a)(6) below), for the remaining term of this Agreement.

(c) Monetary Benefit Portion of Total Benefits

(1) Amount of Monetary Benefit

- (A) **October 1, 2001, through September 30, 2006**
BPA shall provide the following Monetary Benefits expressed in annual aMW to **IDAHO POWER COMPANY** for the period that begins October 1, 2001, and continues through September 30, 2006.

<u>Period of Time</u>	<u>Monetary Benefit (annual aMW)</u>	<u>Idaho (annual aMW)</u>	<u>Oregon (annual aMW)</u>	<u>Nevada (annual aMW)</u>
10/1/01 through 9/30/06	57	55	2	0

- (B) **October 1, 2006, through September 30, 2011**
BPA shall, no later than October 1, 2005, notify **IDAHO POWER COMPANY** in writing of the amount of Monetary Benefit expressed in annual aMW, for which payments will be

made to **IDAHO POWER COMPANY** during the period that begins October 1, 2006, and continues through September 30, 2011.

(2) **Determination of Monetary Benefit Monthly Payment Amounts**

(A) **October 1, 2001, through September 30, 2006**

The Monetary Benefit monthly payment amounts shall be determined in accordance with the following formula:

$$MP = \frac{(FBPF - RL) \times MB \times 8,760 \text{ hours (8,784 hours in leap years)}}{12 \text{ months}}$$

Where:

MP = Monthly Payment Amount

FBPF = Forward Flat-Block Price Forecast established in the same BPA power rate case as that which established the RL Rate during the period beginning October 1, 2001, through September 30, 2006.

RL = The RL Rate calculated at 100 percent annual load factor.

MB = Monetary Benefit amount in annual aMW.

(B) **October 1, 2006, through September 30, 2011**

The Monetary Benefit monthly payment amounts shall be determined in accordance with the following formula:

$$MP = \frac{(FBPF - RL) \times MB \times 8,760 \text{ hours (8,784 hours in leap years)}}{12 \text{ months}}$$

Where:

MP = Monthly Payment Amount

FBPF = Forward Flat-Block Price Forecast established in the same BPA power rate case as that which established the RL Rate during the period beginning October 1, 2006, through September 30, 2011.

RL = The RL Rate calculated at 100 percent annual load factor.

MB = Monetary Benefit amount in annual aMW.

(C) **Exception to Use of RL Rate in Sections 4(c)(2)(A) and 4(c)(2)(B)**

If, for the purposes of the formulas shown in sections 4(c)(2)(A) and 4(c)(2)(B) above, there is: (i) no RL Rate in effect; or (ii) the RL Rate exceeds the Lowest PF Rate, then the Lowest PF Rate shall replace the RL Rate in such formulas. Use of the Lowest PF Rate in such event shall apply to Monetary Benefits provided in accordance with sections 4(b)(1)(B), 4(b)(2)(C), and 4(c)(1).

(3) **Payment Provisions**

BPA shall pay “IDAHO POWER COMPANY” the monthly Monetary Benefit as determined in section 4(c)(2). The monthly Monetary Benefit shall be netted against the monthly payment amounts IDAHO POWER COMPANY owes BPA for Firm Power purchased in accordance with section 4(b). If the monthly Monetary Benefit exceeds the monthly amount IDAHO POWER COMPANY owes BPA, then BPA shall pay IDAHO POWER COMPANY either: (A) on the due date of the bill issued under Exhibit A; or (B) if IDAHO POWER COMPANY is not purchasing power under the Firm Power Block Power Sales Agreement within 30 days of the end of the calendar month for which Monetary Benefits are paid (Due Date). After the Due Date, and for the purposes of section 4(c)(3)(B), a late payment charge is calculated at a daily, simple interest rate determined by dividing the Prime Rate for Large Banks, as reported in the Wall Street Journal, plus 4 percent, by 365. The applicable Prime Rate for Large Banks shall be the rate reported on the first day of the month in which payment was received. BPA shall pay by electronic funds transfer using IDAHO POWER COMPANY’s established procedures.

5. CASH PAYMENTS IF FIRM POWER NOT DELIVERED

(a) **Conditions Under Which Firm Power Not Delivered**

(1) **Amount of Firm Power Purchased Exceeds Net Requirement**

If, for any Contract Year, pursuant to section 5 of Exhibit C of the Firm Power Block Power Sales Agreement, there is a reduction in the hourly amounts of Firm Power provided during each hour of the Contract Year or a portion thereof, then the amount of such Firm Power reduction (“Excess Requirements Energy”) shall be converted to cash payments as provided for in section 5(b) below.

(2) **Firm Power Not Delivered Pursuant to Section 8(b)**

If, pursuant to section 8(b) below, monthly amounts of Firm Power

cannot be delivered, then such amounts of Firm Power shall be converted to cash payments as provided for in section 5(b) below.

(3) **Insufficiency and Allocations**

If, pursuant to section 14(b) of Exhibit A, there is a restriction of power deliveries under this Agreement, then such restricted amounts shall be converted to cash payments as provided in section 5(b) below.

(4) **Termination or Decrement for Export of Regional Resource**

If, pursuant to section 14(e)(3) of the Firm Power Block Power Sales Agreement, BPA terminates the Firm Power Block Power Sales Agreement, the amounts of Firm Power provided under such agreement shall be converted to cash payments as provided in section 5(b) below. If, pursuant to section 14(e)(3) of the Firm Power Block Power Sales Agreement, BPA decrements the amount of Contracted Power under the Firm Power Block Power Sales Agreement, then the amounts of Contracted Power provided under such agreement shall be converted to cash payments as provided in section 5(a)(1) above.

(5) **Firm Power Not Delivered Due to a Monthly Purchase Deficiency**

If, for any month, there is a Monthly Purchase Deficiency, as that term is defined in section 5 of the Firm Power Block Power Sales Agreement for reasons other than Excess Requirements Energy as defined in section 5(a)(1) above, then such amount(s) of Monthly Purchase Deficiency shall be converted to cash payments as provided in section 5(b) below.

(6) **Termination of Block Power Sales Agreement**

If **IDAHO POWER COMPANY** terminates the Firm Power Block Sales Agreement pursuant to section 16 of such agreement and section 4(c)(2)(C) of this Agreement applies, then section 4(b)(1)(B) of this Agreement shall not apply and the amounts of Firm Power not delivered during any month from the Effective Date of such termination through September 30, 2006, shall be converted to cash payments as provided in section 5(b) below.

(7) **Block Power Sales Agreement Held Invalid**

If any or all power deliveries under the Firm Block Power Sales Agreement are restricted due to such agreement being unlawful, void, or unenforceable, then such restricted amounts shall be converted to cash payments as provided in section 5(b) below.

(b) **Determination of Cash Payment Amounts**

(1) **Default Payment Option**

Cash payments pursuant to this section shall be made monthly according to the following formula:

$$FBNDP = (MIDC - WC - RL) \times MWH$$

Where:

FBNDP = Monthly Cash Payment Amount for Firm Power in MWh not delivered under sections 5(a)(1) through 5(a)(7) above.

MIDC = The average price for the month of the Dow Jones daily firm On-Peak index price at the Mid-C for HLH, and the Dow Jones daily firm Off-Peak index price at the Mid-C for LLH based on volume weighted amount not delivered to **IDAHO POWER COMPANY under Exhibit A**. If, in the future, the Mid-C index is no longer available, or does not accurately reflect the value of daily firm energy, then it will be replaced with another prevailing index (or indices) that best represents the market price for firm power traded in eastern Washington.

WC = Wheeling Charge from Federal system generators to the Mid-C point of delivery based on the posted Point-to-Point tariff of BPA's transmission business or its successor over unconstrained paths plus any mandatory posted ancillary service charges and transmission losses for scheduled power under such tariff. If, in the future, the Point-to-Point tariff is no longer available, or does not accurately reflect the cost of wheeling power from Federal system generators to the Mid-C point of delivery, then it will be replaced with a tariff that best represents the cost of wheeling fixed amounts of power between known points over unconstrained transmission paths.

RL = The monthly RL rate calculated at 100 percent load factor for HLH and LLH periods.

MWH = Monthly amount of power that cannot be delivered, expressed in megawatthours for HLH and LLH periods.

(2) **IDAHO POWER COMPANY Offer of Put Right to BPA**

Rather than receive payments under the default option described in section 5(b)(1) above, **IDAHO POWER COMPANY** may elect to offer BPA a put right for amounts of power not delivered pursuant to sections 5(a)(1) through 5(a)(4), section 5(a)(6), and section 5(a)(7) subject to the following terms:

- (A) No later than 10 days prior to the start of a month, **IDAHO POWER COMPANY** shall notify BPA if it desires to provide BPA with a put right for such month. Such put right shall provide BPA the right to sell the amount of power determined in sections 5(a)(1) through 5(a)(4), section 5(a)(6), and section 5(a)(7) above at the Mid-C index price as specified in section 5(b)(2)(C) below for the applicable delivery period, and at the point of delivery described in section 5(b)(2)(D) below.
- (B) If BPA chooses to exercise the put, it must do so prior to 2 p.m. on the later of: (i) three business days prior to the end of the month; or (ii) the day prior to the last day of trading for that month on the New York Mercantile Exchange futures market, or the put right expires for that month.
- (C) If **IDAHO POWER COMPANY** offers BPA the put right for a given month, then BPA shall pay **IDAHO POWER COMPANY** a cash payment according to the following formula:

$$PRP = (MIDC - RL) \times MWH$$

Where:

PRP = Monthly Cash Payment Amount for Firm Power in MWh not delivered under sections 5(a)(1) through 5(a)(4), section 5(a)(6), and section 5(a)(7).

MIDC = The average price for the month of the Dow Jones daily firm On-Peak index price at the Mid-C for HLH, and the Dow Jones daily firm Off-Peak index price at the Mid-C for LLH based on volume weighted amounts not delivered to **IDAHO POWER COMPANY under Exhibit A**. If, in the future, the Mid-C index is no longer available, or does not accurately reflect the value of daily firm energy, then it will be replaced with another prevailing index (or indices) that best represents the market price for firm power traded in eastern Washington.

RL = The monthly RL rate calculated at 100 percent load factor.

MWH = Monthly amount of power that is offered by **IDAHO POWER COMPANY** as a put right, expressed in megawatthours.

(D) The point of delivery for power that is put to **IDAHO POWER COMPANY** will be the same point where BPA makes Firm Power available to **IDAHO POWER COMPANY** in the Firm Power Block Power Sales Agreement to wheel to its load.

(3) **Exception to Use of RL Rate in Sections 5(b)(1) and 5(b)(2)**

If, for the purposes of the formulas shown in sections 5(b)(1) and 5(b)(2) above, there is: (i) no RL Rate in effect; or (ii) the RL Rate exceeds the Lowest PF Rate, then the Lowest PF Rate shall replace the RL Rate in such formulas. Use of the Lowest PF Rate in such event shall apply to cash payments provided in accordance with sections 5(a), 5(b)(1), and 5(b)(2).

(4) **Payment Provisions**

If the monthly payment amount determined pursuant to the formulas in sections 5(b)(1) and 5(b)(2) is positive, then BPA shall pay **IDAHO POWER COMPANY** such amount; if any such amount is negative, then **IDAHO POWER COMPANY** shall pay BPA such amount. Monthly payment obligations under this section 5 shall appear as adjustments to BPA's payments or **IDAHO POWER COMPANY**'s payments under section 4(c)(3) above.

6. PASSTHROUGH OF BENEFITS

- (a) Except as otherwise provided in this Agreement, Firm Power and Monetary Benefit amounts received by **IDAHO POWER COMPANY** from BPA under this Agreement shall be passed through, in full, to each residential and small farm consumer, as either: (1) an adjustment in applicable retail rates; (2) monetary payments; or (3) as otherwise directed by the applicable State regulatory authority.
- (b) Monetary payments shall be distributed to the Residential Load in a timely manner, as set forth in this section 6(b). The amount of benefits held in the account described in section 6(c) below at any time shall not exceed the expected receipt of monetary payments from BPA under this Agreement over the next 180 days. If the annual monetary payment is less than \$600,000, then **IDAHO POWER COMPANY** may distribute benefits on a less frequent basis provided that distributions are made at least once each Contract Year.
- (c) Benefits shall be passed through consistent with procedures developed by **IDAHO POWER COMPANY**'s State regulatory authority(s). Monetary Benefits and any cash benefits under section 5 shall be identified on **IDAHO POWER COMPANY**'s books of account. Funds shall be held in an interest

bearing account, and shall be maintained as restricted funds, unavailable for the operating or working capital needs of **IDAHO POWER COMPANY**. Benefits shall not be pooled with other monies of **IDAHO POWER COMPANY** for short-term investment purposes. Firm Power shall be delivered monthly, and only to Residential Load.

- (d) Nothing in this Agreement shall require that any power be delivered on an unbundled basis to residential and small farm customers of **IDAHO POWER COMPANY** or that **IDAHO POWER COMPANY** provide retail wheeling of such power.

7. **AUDIT RIGHTS**

BPA retains the right to audit **IDAHO POWER COMPANY** at BPA's expense to determine whether the benefits provided to **IDAHO POWER COMPANY** under this Agreement were provided only to **IDAHO POWER COMPANY**'s eligible Residential Load. BPA retains the right to take action consistent with the results of such audit to require the passthrough of such benefits to eligible Residential Load. BPA's right to conduct such audits of **IDAHO POWER COMPANY** with respect to a Contract Year shall expire 60 months after the end of such Contract Year. As long as BPA has the right to audit **IDAHO POWER COMPANY** pursuant to this Agreement, **IDAHO POWER COMPANY** agrees to maintain records and documents showing all transactions and other activities pertaining to the terms of this Agreement with respect to which BPA has audit rights.

8. **ASSIGNMENT**

- (a) **IDAHO POWER COMPANY** shall be required to assign benefits under this section 8 to BPA if another Qualified Entity serves Residential Load formerly served by **IDAHO POWER COMPANY** unless: (i) BPA has approved an agency agreement for such Qualified Entity under section 8(c); or (ii) BPA has approved a state program for the passthrough of benefits by a distribution utility under section 8(c).
- (b) This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement without the other Party's written consent. Such consent shall not be unreasonably withheld; **provided, however**, that **IDAHO POWER COMPANY** agrees it shall assign benefits under this Agreement subject to the following terms and conditions:
 - (1) **IDAHO POWER COMPANY** shall quantify an amount of Residential Load each month served by Qualified Entities that would have been eligible to receive benefits if served by **IDAHO POWER COMPANY**, and provide written notice to BPA of such amount no later than five days prior to the beginning of a month. Such amount shall be determined in account months based on the amounts served by **IDAHO POWER COMPANY** and Qualified Entities in the last full

calendar month prior to such written notice to BPA. An account month is the number of days of service to a Residential Load account during a month, divided by the number of days in such month.

- (2) Based on the determination in section 8(b)(1) above, **IDAHO POWER COMPANY** shall assign to BPA during the month following such notice a share of the total benefits specified in section 4(a) above. Such share shall be the account months of Residential Load served by Qualified Entities divided by the account months of Residential Load of **IDAHO POWER COMPANY** that would be eligible to receive benefits, whether or not **IDAHO POWER COMPANY** continues to serve such Residential Load. For purposes of section 8(b)(1) and this section 8(b)(2), the Residential Load of **IDAHO POWER COMPANY** shall not include Residential Load receiving benefits over a new distribution system under section 8(d).
 - (3) The amounts of Firm Power and Monetary Benefit assigned to BPA shall be in the same proportion as **IDAHO POWER COMPANY** receives under this Agreement.
 - (4) If the passthrough of benefits is made to consumers under section 8(c) below, then **IDAHO POWER COMPANY** shall retain the Monetary Benefits assigned to BPA under this section 8(b) and the amount of Firm Power determined under this section 8(b) to be assigned to BPA shall be retained by BPA and converted to dollars pursuant to section 5 above. **IDAHO POWER COMPANY** shall use such amount of dollars plus the Monetary Benefits to provide benefits to individual residential and small farm consumers under section 8(c) below.
- (c) **IDAHO POWER COMPANY** may continue to pass through benefits to individual residential and small farm consumers under this Agreement not served by **IDAHO POWER COMPANY**: (i) if **IDAHO POWER COMPANY** is acting as the agent under an agreement entered into between **IDAHO POWER COMPANY** and a Qualified Entity which has been approved by **IDAHO POWER COMPANY**'s applicable state regulatory authority and BPA; or (ii) BPA has approved a program developed by the applicable state regulatory authority providing for the passthrough of benefits received by **IDAHO POWER COMPANY** under this Agreement to all its residential and small farm consumers acting in its capacity as a distribution utility. **IDAHO POWER COMPANY** may continue to act as an agent for a Qualified Entity until an RPSA is signed by BPA and the Qualified Entity. Such benefits shall be equal to each such consumer's share of the Qualified Entity's share of the Residential Load, as calculated under section 8(b) above. **IDAHO POWER COMPANY** may distribute such benefits on a less frequent basis than monthly, provided that distributions are made at least once each Contract Year.

- (d) If a Qualified Entity eligible to purchase Firm Power acquires all or a portion of the distribution system serving the Residential Load of **IDAHO POWER COMPANY, IDAHO POWER COMPANY** shall assign to BPA for the remaining term of this Agreement a share of the total benefits specified in section 4(a) above. Such share shall be based on the amount of Residential Load that would have been eligible to receive benefits from the new Qualified Entity for the 12-month period prior to the date of assignment divided by the total of Residential Load of **IDAHO POWER COMPANY** that would have been eligible to receive benefits during that same 12-month period regardless of who served such Residential Load. All provisions of this section 8, other than section 8(b)(2), shall apply to assignments under this section 8(d).

9. DEEMER ACCOUNT BALANCE

As a result of entering this Agreement, neither BPA nor **IDAHO POWER COMPANY** has prejudiced its right, if any, to assert that a Deemer Account balance, if any, from the 1981-2001 Residential Purchase and Sale Agreement between BPA and **IDAHO POWER COMPANY** is required to be carried over to any subsequent agreement offered by BPA pursuant to section 5(c) of P.L. 96-501.

10. CONSERVATION AND RENEWABLE DISCOUNT

Subject to the terms specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, BPA shall apply the Conservation and Renewables Discount to **IDAHO POWER COMPANY's** Monetary Benefits and Firm Power Sale as established in section 4 of this Agreement, unless **IDAHO POWER COMPANY** has notified PBL before August 1, 2001, that it will not participate in the Conservation and Renewable Discount. For purposes of establishing Monetary Benefits and Firm Power amounts eligible for this discount, **IDAHO POWER COMPANY** shall provide PBL a reasonable forecast of its Monetary Benefits and amounts of Firm Power provided pursuant to the Firm Power Block Power Sales Agreement through Contract Year 2006 by no later than August 1, 2001.

If, during any Contract Year, **IDAHO POWER COMPANY** has significant change in the total amount of Monetary Benefits or Firm Power provided pursuant to the Firm Power Block Power Sales Agreement, the Parties may, by no later than August 31 prior to the succeeding Contract Year, revise the forecast used to calculate the Conservation and Renewables Discount. If the revised forecast is less than 95 percent of, or greater than 105 percent of, the forecast used to calculate the existing Conservation and Renewables Discount, the revised forecast shall be used to recalculate the Conservation and Renewables Discount for the succeeding Contract Years.

To retain the full amount of the Conservation and Renewable Discount **IDAHO POWER COMPANY** shall satisfy all obligations associated with the Conservation and Renewables Discount as specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, and the Conservation and Renewable Discount implementation manual. **IDAHO POWER COMPANY** shall reimburse BPA for any amount it received but for which it did not satisfy such obligations.

Monetary Benefits shall be treated in the same manner as Firm Power for purposes of any Conservation and Renewable Discount program or similar program based on Firm Power purchases. **IDAHO POWER COMPANY** shall be eligible for the Conservation and Renewable Discount, or any similar program based on Firm Power purchases under section 5(b) of the Northwest Power Act that BPA decides to establish through a section 7(i) hearing for the period that begins October 1, 2006, and ends on September 30, 2011.

11. GOVERNING LAW AND DISPUTE RESOLUTION

- (a) This Agreement shall be interpreted consistent with and governed by Federal law. Final actions subject to section 9(e) of the Northwest Power Act are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. **IDAHO POWER COMPANY** reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this section 11. For purposes of this section 11, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 11, either Party may apply to the Federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section 11.
- (b) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through section 11(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.
- (c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; **provided, however,** that:
 - (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and
 - (2) for claims of \$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, they shall take turns striking names from the list of proposed arbitrators. The Party initiating the arbitration shall take the first strike. This process shall be repeated until three arbitrators remain on the list, and those individuals shall be designated

as the arbitrators. For disputes involving less than \$1 million, a single neutral arbitrator shall be selected consistent with section 6 of the CPR Rules.

- (d) Except for arbitration awards which declare the rights and duties of the Parties under the Agreement, the payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA. The arbitration award shall be final and binding on both Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.
- (e) Each Party shall be responsible for its own costs of arbitration, including legal fees. The arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as they deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

12. NOTICE PROVIDED TO RESIDENTIAL AND SMALL FARM CUSTOMERS
IDAHO POWER COMPANY will ensure that any entity that issues customer bills to IDAHO POWER COMPANY residential and small farm consumers shall provide written notice on such customer bills that a portion of their power and associated benefits is “Federal Columbia River Benefits supplied by BPA.”

13. STANDARD PROVISIONS

- (a) **Amendments**
No oral or written amendment, rescission, waiver, modification or other change of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.
- (b) **Information Exchange and Confidentiality**
The Parties shall provide each other with any information that is reasonably required, and requested by either Party in writing, to operate under and administer this Agreement, including load forecasts for planning purposes, information needed to resolve billing disputes, scheduling and metering information reasonably necessary to prepare power bills that is not otherwise available to the requesting Party. Such information shall be provided in a timely manner. Information may be exchanged by any means agreed to by the Parties. If such information is subject to a privilege of confidentiality, a confidentiality agreement or statutory restriction under state or Federal law on its disclosure by a Party to this Agreement, then that Party shall endeavor to obtain whatever consents, releases or agreements are necessary from the person holding the privilege to provide such information while asserting the confidentiality over the information. Information provided to PBL which is subject to a privilege of confidentiality or nondisclosure shall be

clearly marked as such and PBL shall not disclose such information without obtaining the consent of the person or Party asserting the privilege, consistent with BPA's obligation under the Freedom of Information Act. PBL may use such information as necessary to provide service or timely bill for service under this Agreement. PBL shall only disclose information received under this provision to PBL employees who need the information for purposes of this Agreement.

- (c) **Entire Agreement (03/29/00 Version)**
This Agreement, including all provisions, exhibits incorporated as part of this Agreement, and documents incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.
- (d) **Exhibits (03/29/00 Version)**
The exhibits listed in the table of contents are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.
- (e) **No Third-Party Beneficiaries (03/29/00 Version)**
This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.
- (f) **Waivers (03/29/00 Version)**
Any waiver at any time by either Party to this Agreement of its rights with respect to any default or any other matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.
- (g) **Severability**
All other provisions and exhibits to this Agreement are independent of Exhibit A (Firm Block Power Sales Agreement) attached hereto, and shall remain in effect even if any or all of such Exhibit A is unlawful, void, or unenforceable.

14. TERMINATION OF AGREEMENT

- (a) **IDAHO POWER COMPANY** may terminate this Agreement through a written notice up to 30 days after FERC grants interim approval for BPA's wholesale power rates that are effective October 1, 2001.
- (b) If BPA does not use BPA's then-current rate case Forward Flat-Block Price Forecast for all estimates of the cost of purchases of flat blocks of power in

any such rate case, which are made in advance of the period of delivery and which are made for the rate period established in such rate case that occurs between October 1, 2006, and September 30, 2011, **IDAHO POWER COMPANY** may terminate this Agreement through a written notice up to 30 days after FERC grants interim approval for BPA's wholesale power rates effective during such period occurring between October 1, 2006, and September 30, 2011. Unless BPA uses its Forward Flat-Block Price Forecast for purposes of: (1) pricing its firm power for augmentation purchases; and (2) estimating the cost of augmentation purchases in any or all demonstrations in the rate case of its ability to meet its obligations to the U.S. Treasury, **IDAHO POWER COMPANY** shall have the termination right specified in this section 14(b). In determining whether this section 14(b) applies, the price of any purchases of firm power for augmentation purposes that are not forecasted to be made on a flat annual basis shall be adjusted to a flat annual price. BPA shall adjust the forecasted price of a shaped augmentation purchase by multiplying such price by the ratio of the forecasted long-run marginal cost for a flat annual purchase to the forecast of the long-run marginal cost for a purchase in the same shape as the shaped augmentation purchase. Although BPA may use its long-run marginal cost of power as its Forward Flat-Block Price Forecast, establishing a Forward Flat-Block Price Forecast that is different than its long-run marginal cost of power shall not be considered a different estimate of the cost of purchases of flat blocks of power under this section 14(b).

15. SIGNATURES

Each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party for whom he or she signs.

IDAHO POWER COMPANY

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By **/S/ RICHARD RIAZZI**

By **/S/ LARRY E. KITCHEN**

Name: Richard Riazzi
(Print/Type)

Name: Larry E. Kitchen
(Print/Type)

Title Sr. Vice President, Generation and
Marketing

Date **10/31/00**

Date **10/31/00**

(PBLLAN-PSB-5-W:\PSC\PM\CT\SETT_5-2.DOC.DOC)
9/29/00 **SEE OOPB-12164 for Exhibit A**

Exhibit B
RESIDENTIAL LOAD DEFINITION

1. **IDAHO POWER COMPANY's** Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changes **IDAHO POWER COMPANY's** general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

- (a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by **IDAHO POWER COMPANY** under:

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- (1) Rate Schedule 440 – Residential Sales (4,090,453,000 kWh)
 - (2) Rate Schedule 21 – Interruptible Irrigation (322,000 kWh)
 - (3) Rate Schedule 24 – Irrigation Pumping (1,465,494,000 kWh)
- (b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit B, supplied by the Utility under the Northwest Power Act, section 5(c).
2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

$$\text{Irrigation/Pumping Load} = 400 \times 0.746 \times \text{days in billing period} \times 24$$

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period.

where:

400 is equal to the horsepower limit defined in the Northwest Power Act,

0.746 is the factor for converting horsepower to kW,

days in billing period is determined in accordance with prudent and normal utility business practices, and

24 is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.
4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to **IDAHO POWER COMPANY** which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

- use
 - ownership
 - control
 - operating practices
 - distance between parcels
5. Unused irrigation allocations may not be reallocated to other farms or to another billing period.

Attachment 2

- 6.** The operator of a farm is required to certify to **IDAHO POWER COMPANY** all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide **IDAHO POWER COMPANY** and BPA all documentation requested to assist in the farm determination.
- 7.** This Exhibit B shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

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ATTACHMENT 3

Request Detail

Request ID: BPA-WG-2

Page Number: 17

Line Number: 20-23

Exhibit Filing: [WP-10-E-WG-01](#)

Technical Contact Name: Elizabeth Evans

Technical Contact Phone: 503.230.4284

Technical Contact Email: eaevans@bpa.gov

Legal Contact Name: Richard Greene

Legal Contact Phone: 503.230.4626

Legal Contact Email: ragreene@bpa.gov

Request Text: On the above identified pages of WPAG's testimony, the witnesses state as follows: For purposes of setting rates for this proceeding, BPA should accept as a fact that the Lookback Amount is a valid and enforceable legal obligation of Idaho Power, and that BPA will take the necessary actions to enforce repayment of this obligation within the 7 year repayment period BPA adopted in the WP-07 Supplemental proceeding. What "necessary actions" are the witnesses referring to in the above paragraph?

Response Detail

Date Response Filed: 4/2/2009 2:14:43 PM

Contact Name: Anne Falcon

Contact Phone: 425.889.2700

Contact Email: falcon@eesconsulting.com

Response Text:

The actions necessary to enforce the repayment of this obligation within the 7 year repayment period are legal matters that will be addressed in brief.

ATTACHMENT 4

Request Detail

Request ID: BPA-WG-1

Page Number: 17

Line Number: 20-23

Exhibit Filing: [WP-10-E-WG-01](#)

Technical Contact Name: Elizabeth Evans

Technical Contact Phone: 503.230.4284

Technical Contact Email: eaevans@bpa.gov

Legal Contact Name: Richard Greene

Legal Contact Phone: 503.230.4626

Legal Contact Email: ragreene@bpa.gov

Request Text: What numerical value is this testimony requesting BPA assume in its ratemaking for purposes of setting the FY 2010-2011 rates?

Response Detail

Date Response Filed: 4/2/2009 2:13:50 PM

Contact Name: Anne Falcon

Contact Phone: 425.788.9474

Contact Email: falcon@eesconsulting.com

Response Text:

The quoted testimony implies that for FY 2010 and FY 2011, BPA should assume the collection of about one-seventh of Idaho Power's outstanding Lookback Amount plus accumulated interest for each fiscal year.

ATTACHMENT 5

Request Detail

Request ID: BPA-WG-4
Page Number: 17
Line Number: 20-23
Exhibit Filing: [WP-10-E-WG-01](#)

Technical Contact Name: Elizabeth Evans
Technical Contact Phone: 503.230.4284
Technical Contact Email: eaevans@bpa.gov
Legal Contact Name: Richard Greene
Legal Contact Phone: 503.230.4626
Legal Contact Email: ragreene@bpa.gov

Request Text: [If BPA assumes that it will collect a certain amount of Idaho Power's Lookback Amount during the FY 2010-2011 rate period, but does not actually receive that amount from Idaho Power, what source(s) should BPA draw upon to make payments to the preference customers?]

Response Detail

Date Response Filed: 4/2/2009 2:16:12 PM
Contact Name: Anne Falcon
Contact Phone: 425.889.2700
Contact Email: falcon@eesconsulting.com

Response Text:

BPA has treated the payments of the Lookback Amounts as a pass through to its preference customers as a credit on their monthly power bill. In that regard it operates in the same manner as the Residential Exchange payments made to the IOUs. If BPA makes the Lookback payments to the preference customers in the amounts owed by Idaho Power during the rate period and for some reason not articulated in the data request the Lookback Amounts owed by Idaho Power are not collected in the rate period, the result would be a reduction in BPA's financial reserves that would be reflected when BPA's rates are next set. Another alternative that BPA could consider in this situation would be an additional reduction by a uniform percentage to the Residential Exchange program benefits being paid to other IOUs. This approach would be consistent with the way the REP Settlement Agreement was implemented, which allocated financial benefits to the IOUs as a group without regard to whether the individual utility qualified for Residential Exchange benefits based on its own Average System Cost. This would sync up the retrieval of illegally paid benefits with the manner in which they were distributed under the REP Settlement Agreements.