



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

Power Services

December 17, 2007

In reply refer to: PS-6

To Parties Interested in the Residential Exchange Program:

BPA is seeking public comment on a proposal to provide interim relief to the region's preference customers and investor-owned utilities (IOUs) in a temporary, non-prejudicial manner. As a result, BPA is seeking comment on interim "standstill" payments to public preference customers and interim relief to IOU residential and small farm customers in the form of temporary Residential Exchange Program (REP) payments to eligible IOUs, as described in the two proposed agreements enclosed with this letter as Exhibits A and B. These interim agreements are offered in exchange for suspension of certain litigation activities, and will be trued-up to the actual final REP benefit and associated overpayments, if any, by preference customers as established in BPA's pending administrative proceedings. The interim relief provided will be without prejudice to preference, IOU, and other customers' rights to challenge the final decisions on the level of REP benefits for the interim period. Following the close of comment on January 7, 2008, BPA will review all comments received and issue a record of decision on whether to offer the proposed agreements to customers. Attachment 1 to this letter provides an overview of the proposed agreements.

### How to comment

BPA is requesting your comments on the proposal described in this letter, Attachment 1, and the Standstill Agreement and IOU Agreement, enclosed as Exhibits A and B, respectively. The agreements can also be found at BPA's website at [www.bpa.gov/power/pl/regionaldialogue/implementation/correspond.shtml](http://www.bpa.gov/power/pl/regionaldialogue/implementation/correspond.shtml).

Comments on BPA's proposal or the agreements must be received by 5:00 p.m., Pacific Standard Time, on January 7, 2008. Comments can be submitted on-line at: [www.bpa.gov/comment](http://www.bpa.gov/comment); via e-mail to [comment@bpa.gov](mailto:comment@bpa.gov); via mail to: Bonneville Power Administration, Public Affairs Office - DKC-7, P.O. Box 14428, Portland, OR, 97293-4428; or faxed to 503-230-3285. You can also call us with your comments, toll free at 1-800-622-4519. Please reference "Interim Agreements" with your comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark O. Gendron", is written over a horizontal line.

Mark O. Gendron  
Vice President  
Northwest Requirements Marketing

3 Enclosures

## Attachment 1

### Overview of the Proposed Agreements

#### I. Background

In 2000 and 2001, BPA and its IOU customers entered into Residential Exchange Program Settlement Agreements (Settlement Agreements). These Settlement Agreements were intended to resolve disputes over BPA's implementation of the Residential Exchange Program (REP) benefits under section 5(c) of the Northwest Power Act (NPA) for a 10-year period. On May 3, 2007, the Ninth Circuit Court of Appeals (Court) held that these Settlement Agreements were unlawful.<sup>1</sup> In a companion case, the Court also remanded back to BPA its power rates for FY 2002-2006, holding that BPA's decision to allocate the costs of the Settlement Agreements to preference customers was "not in accordance with the law."<sup>2</sup> Subsequently, on May 21, 2007, BPA notified its IOU customers that it was suspending all REP payments under the Settlement Agreements and associated amendments until further notice. The Court's decisions were subject to petitions for rehearing, which the Court denied on October 5, 2007. Subsequently, by orders dated October 11, 2007, the Court remanded to BPA for consideration in light of its earlier opinions the 2004 amendatory agreements to the Settlement Agreements, as well as the "reduction of risk" discount provision in certain 2001 load reduction agreements BPA had entered into with PacifiCorp and Puget Sound Energy. The Court also dismissed challenges to the load reduction agreements.

BPA has been reviewing its current rates to determine what adjustments must be made in order to respond to the Court's opinions. This review has revealed that certain changes will need to be proposed to the current rates before REP benefits can once again be distributed. To that end, BPA has been preparing the statutory section 7(i) ratemaking processes that must be initiated to make changes to its present rates. Concurrent with these efforts, BPA has also engaged regional parties in discussions on how best to address the short-term and long-term issues raised by the Court in the May and October opinions. These issues will be formally addressed in the section 7(i) hearing as well. While BPA is proceeding expeditiously, under the present schedule the proposed administrative proceedings will not be completed until at least July of 2008. Federal Energy Regulatory Commission approval of revisions to current rates, at least on an interim basis, would take another 60 days.

The length of this process presents unique problems for both preference and IOU customers. BPA's WP-07 rates are currently recovering the full cost of the Settlement Agreements from preference customers even though BPA suspended all Settlement payments to the IOUs in May of 2007. BPA cannot make any permanent adjustments to its rates to account for the cessation of the Settlement payment until it has completed its legally required administrative process. If nothing changes, BPA will continue to charge, and preference customers will continue to pay, rates that contain the full costs of the Settlement Agreements. The unspent Settlement costs collected under these rates will accumulate in the Bonneville fund.

<sup>1</sup> *Portland General Elec. Co. v. Bonneville Power Admin.*, 501 F.3d 1009 (9th Cir. 2007). The Court also subsequently remanded to BPA certain amendments to the Settlement Agreements. See *Snohomish Pub. Utility Dist. v. Bonneville Power Admin.*, --- F.3d ---, 2007 WL 2948909 (9th Cir. 2007).

<sup>2</sup> *Golden Northwest Aluminum, Inc. v. Bonneville Power Admin.*, 501 F.3d 1037 (9th Cir. 2007).

Consequently, preference customers will continue to pay rates that are likely higher than necessary. In addition, BPA is concerned that individual preference customers may attempt to preemptively seek relief from the courts to reduce their rates prior to the completion of the forthcoming administrative process. Such litigation would be an immense distraction to the upcoming administrative process and would undermine the ability of customers, BPA, and other parties to reach a long-term solution to the present issues.

For the residential and small farm customers of eligible IOUs, the estimated schedule means that the earliest possible date for the reinstatement of REP benefits is October 1, 2008. Thus, a significant segment of the Pacific Northwest population that could otherwise be entitled to benefits under section 5(c) of the NPA will receive no payments from the Federal power system. The continued loss of the REP credit would have negative consequences on the residential and small farm customers of eligible IOUs. Such a result is contrary to the intent and purpose of Congress in establishing the REP in section 5(c) of the NPA. BPA is also concerned that individual IOU's may commence litigation outside of BPA's approaching administrative process.

The culmination of these concerns has led BPA to the position that it should propose some level of interim relief to preference and IOU customers. Such relief only would be provided on an "interim" basis. That is, the interim measures would be made without prejudice to the parties' rights and obligations as to what should be done on a final basis, and would be superseded by whatever is determined on a final basis in BPA's administrative proceeding. Based on discussions with representatives of several major preference customer groups and representatives of the IOUs, BPA believes it has arrived at an interim proposal that meets the goal of providing interim relief in a non-prejudicial fashion and is seeking comment on this proposal.

## **II. Proposed Interim Solutions**

BPA expects that its upcoming administrative process will address the outstanding issues regarding the REP, costs of the REP properly includable in rates, and reinstate benefits to eligible IOUs by the fall of 2008. However, unless it is unavoidable, BPA does not believe it acceptable that regional consumers must experience unnecessarily high rates while BPA completes its administrative proceeding with over \$1.4 billion in its reserves. BPA is committed to complying with its statutory obligations and duties as required by law. BPA is also committed to the overarching statutory purposes of ensuring rates are as low as reasonably possible consistent with sound business principles and providing qualifying regional consumers the benefit of the Federal power system. BPA believes that it can meet both of these objectives in the near-term through an agreement that provides *interim* relief to eligible preference and IOU customers.

Attached to this letter are two prototype agreements that would provide interim financial benefits to eligible IOU customers (to pass on to their residential and small farm consumers) and to public preference customers. Under both agreements, BPA would make an interim cash payment to customers that execute the agreement. The key feature of both agreements is that the payment would only be made on an *interim* basis. These agreements are not substitutions for the

statutorily required process that will determine the actual level of benefits and associated overpayments, if any, by preference customers for fiscal years 2007 and 2008. The final determinations on the level of rates and REP benefits will still be made in the administrative processes. These agreements simply provide a bridge amount of financial relief while the proceedings are completed. All relief provided under these agreements will eventually be trued-up to the final determinations in BPA's administrative proceeding or other BPA actions.

The interim relief agreement will be offered to individual IOUs who, under the WP-07 rate proceeding, were forecasted to receive REP benefits. The amount of interim IOU payments would be calculated from information available from BPA's WP-07 rate case. In that rate case, BPA forecasted that a traditional REP would result in benefits of \$29.4 million to the IOUs in FY 2008. However, BPA refrained from deciding several disputed issues in that calculation, based on the assumption that benefits would continue to be paid under the REP Settlement Agreements. One of the key issues that was left open was whether to include a portion of the output of Mid-Columbia hydro resources sold to IOUs in the 7(b)(2)(D) resource stack. If BPA had determined these Mid-Columbia resources should not be included in the resource stack, the calculated REP benefits would have been approximately \$261.2 million in FY 2008. BPA believes that an equitable approach to determining the interim level of benefits is to take a neutral stance on the Mid-Columbia issue, and assume a 50-50 chance that the issue could be decided either way. This leads to a base level of interim benefits of \$145.3 million. This \$145.3 million is scaled back to the extent that an IOU would receive more under the interim payments than it would have under the Settlement Agreement. The end result is that, in total, eligible IOUs would receive \$131.1 million in interim relief.

For preference customers, BPA determined that there was up to \$191 million available for "standstill" payments. This number was derived by subtracting the \$145.3 million from \$336 million, the annual cost of the Settlement Agreements that BPA is currently collecting in its PF rates. The amount of each individual "standstill" payment under the Standstill Agreement would vary by customer. Generally, individual customer "standstill" payments would be determined by applying a ratio of the participating customer's share of BPA's total FY 2007 PF revenue to the aggregate \$191 million. The result would be paid to the preference customer.

As noted above, BPA's objective in offering the IOU Agreement and the Standstill Agreements is to provide *interim* relief. Consistent with this intent, both agreements contain "true-up" mechanisms. Under these provisions, payments made under the IOU Agreement or Standstill Agreement will be "trued-up" to the amounts, if any, due to or by the customers as a result of BPA's administrative process. BPA's intent in structuring the agreements with these provisions is to make the interim payments as financially neutral as possible.

The agreements are also structured so that it is clear that they are without prejudice to either IOUs' or Public customers' rights regarding final determination of the REP benefit. Both agreements contain "stay of litigation" provisions which require the customers' to temporarily stay litigation activities on a list of subjects. The intent of including such a provision is to focus regional attention on the administrative process that BPA will be conducting. Consequently, the customers' rights to raise issues in this proceeding and to challenge any BPA final action that result from the proceeding are preserved.