



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
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EXECUTIVE OFFICE

July 24, 2009

In reply refer to: A-7

To Regional Customers, Stakeholders, and Other Interested Parties:

On June 10, 2009, the Bonneville Power Administration (BPA) issued a letter indicating it would commence a bifurcated process to address Lookback issues that arose as part of the Ninth Circuit's remand in *Pacific Northwest Generating Cooperative, et al. v. Bonneville Power Administration*, 550 F.3d 846 (9th Cir. 2008) (*PNGC*). The suit challenges the validity of BPA's FY 2007 – 2011 direct-service industrial customer (DSI) service construct and contracts. The June 10 announcement indicated that, in early July, BPA planned to issue a draft record of decision, pursuant to the Court's instructions, on "the applicability and construction of the severability clause, the damage waiver, and the physical power sale option."

BPA's original announcement reflects BPA's view, as well as the view of a number of interested parties, that BPA should act as promptly as reasonably possible in resolving issues related to the Lookback. However, BPA also acknowledged that the timing of events under this process might have to be adjusted to accommodate any decisions of the court relevant to the Lookback determination.

In this light, BPA has reconsidered its earlier announcement. The court is still reviewing its original decision pursuant to the filing of petitions for rehearing filed by the Port Townsend Paper Company and BPA. Also, oral arguments were recently completed on an expedited basis in the court's review of challenges to the contract amendment providing service to Alcoa through FY09. Thus, the case is still within the Court's original and continuing jurisdiction, no mandate has been issued, and the court is free to change its opinion until it issues a mandate. It would be unfortunate indeed if BPA were to issue a draft ROD on the DSI Lookback only to have the Court issue an opinion, or opinions, shortly thereafter that have a material effect on BPA's consideration of the salient issues.

Due to this uncertainty, BPA has determined that it would be prudent to delay issuing the draft record of decision until no earlier than 30 days after the mandate issues in *PNGC* or December 1, 2009. In the meantime, BPA will continue to evaluate pertinent issues and await the Court's final determination in the hope that the Court will provide some degree of finality in the near future.

If you have additional questions about this issue, please call Mark Symonds at (503) 230-3027 or Heidi Helwig of the Public Affairs Office at (503) 230-3458.

Sincerely,

//s// Allen Burns

Allen Burns  
Acting Deputy Administrator

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