OS-14 Oversupply Rate Proceeding

ADMINISTRATOR'S DRAFT RECORD OF DECISION

February 13, 2014

OS-14-A-01

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ADMINISTRATOR'S PREFACE

Since 1999, the Pacific Northwest has installed more than 7,000 megawatts of wind energy to add to its already-abundant endowment of zero-carbon hydroelectric resources. This has been a tremendous accomplishment for the region and has built on the Northwest's legacy of sustainable energy and economic development. At BPA, where we now have more than 4,500 MW of the region's wind generation integrated into our balancing authority, we have dedicated significant resources, in terms of both transforming our operations and expanding our transmission grid, to facilitate this development. I am committed to continuing to collaborate with our customers and stakeholders to further help the Northwest meet its renewable resource objectives in a reliable and cost-effective fashion.

Amidst this generally positive success story have come some challenges, with springtime generation oversupply being perhaps the most controversial. To me, the oversupply issue has been somewhat disheartening, because it pits two clean energy resources—hydro and wind—and their respective interests against each other at a time when we should be working collaboratively to find ways to better leverage and harmonize our zero-carbon resources.

The oversupply issue raises important public policy questions as well as issues of fairness and equity. In many ways, the issue is an unintended consequence of two important public policy objectives: promoting renewable resource development and protecting aquatic life, including endangered species, consistent with the law. At the same time, BPA must continue to fulfill its historic mission of providing power and transmission services at the lowest possible rates consistent with sound business principles. The combination of total dissolved gas standards for the Federal hydro system and production incentives for renewable resource development has created a complicated issue of how best to mitigate and allocate costs while ensuring that BPA balances its multiple statutory responsibilities.

The region has already spent considerable time and resources seeking a long-term, widely supported solution to this difficult issue. So far our discussions have not succeeded. While the region continues to seek alternative ways to manage oversupply, I believe the Oversupply Management Protocol will serve as a reasonable approach to defining and mitigating costs. Meanwhile, we face the difficult question of how to allocate oversupply costs.

As the Administrator of BPA, I must now select one alternative from a set of cost allocation alternatives under consideration in this rate case. I understand and respect the perspectives of the many parties to this case, and I have selected an alternative that I believe is consistent with our multiple statutory responsibilities, is rooted in the basic principles of cost causation and fairness that underlie BPA's rate directives, and reflects the guidance we have received from FERC.

The Northwest has a promising future of sustainable energy and economic development. I look forward to working with regional interests to identify a long-term solution to the oversupply issue that harmonizes our zero-carbon hydro and wind energy resources.

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1.0 INTRODUCTION

The Bonneville Power Administration (BPA) is conducting the OS-14 rate proceeding to establish rates to recover costs attributable to BPA's Oversupply Management Protocol (OMP). The scope of the OS-14 rate proceeding includes determination of the costs to be recovered by the rates, functionalization and allocation of the costs, and features of the proposed OS-14 rate schedule. The OS-14 rate will become effective upon confirmation and approval by the Federal Energy Regulatory Commission (FERC or Commission).

1.1 The Oversupply Management Protocol

BPA markets power from the Federal hydro projects operated by the U.S. Army Corps of Engineers (Corps) and the Bureau of Reclamation in the Pacific Northwest. During spring runoff, water flows can be higher than needed to meet regional electric load and exports. In addition, water storage and hydro generating capacity at Federal dams are limited. Therefore, excess water sometimes must be spilled over the dams' spillways (channels to permit the release of excess water). However, high levels of spill can create excessive amounts of total dissolved gas (TDG) in the water, which can lead to gas bubble trauma that threatens the health of the ecosystem and aquatic life, including Endangered Species Act (ESA)-listed fish. Bonneville Power Administration, BPA's Interim Environmental Redispatch and Negative Pricing Policies: Administrator's Record of Decision 5-11 (2011).

The states of Washington and Oregon have authority under the Clean Water Act (CWA) to set TDG levels. BPA must adhere to both the CWA and the ESA. Therefore, the Corps and the Bureau of Reclamation plan Federal Columbia River Power System (FCRPS) operations to comply with applicable state and tribal water quality standards and minimize excess TDG to the extent practicable by limiting the amount of excess spill. For the last several years, spill and water quality constraints were adopted by court order in litigation mandating that spill operations be conducted as set forth in annual spill orders and Fish Operation Plans. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 839 F. Supp.2d 1117 (D. Or. 2011).

To avoid excess spill, historically Bonneville offered to displace non-Federal generation with low-cost or free Federal hydropower. In recent years, however, BPA has integrated 4,500 megawatts of wind generation into the Federal Columbia River Transmission System (FCRTS). Some wind generators receive Federal production tax credits (PTCs) and state renewable energy credits (RECs). PTCs are credits against wind generators' Federal income taxes, and RECs are credits that purchasers of wind generation can use to satisfy their obligations under state law to ensure that a certain percentage of the electricity they sell is produced by renewable resources. Since the generators are granted credits based on the amount of energy they generate, wind generators have no incentive to accept free power to curtail their production and allow BPA to mitigate excess spill.

In March 2011 BPA established an interim environmental redispatch policy under which BPA displaced generators that did not accept offers of free power during periods of high water. BPA substituted free Federal hydropower for the displaced generation. Wind generators and other parties filed a complaint with the Commission under section 211A of the Federal Power Act. That Act authorizes the Commission to order unregulated transmitting utilities (including BPA) to offer transmission service on terms and conditions that are comparable to the terms and conditions under which they provide transmission service to themselves and that are not unduly discriminatory or preferential. The complainants argued that BPA's policy discriminated against wind projects.

The Commission held that BPA's environmental redispatch policy violated section 211A and directed BPA to file tariff revisions within 90 days that addressed the comparability concerns raised in the proceeding in a manner that provides comparable transmission service that is not unduly discriminatory or preferential.

BPA responded by adopting the Oversupply Management Protocol, under which BPA compensates displaced generators for certain costs related to displacement, including (1) PTCs; (2) RECs unbundled (sold separately) from the sale of energy; and (3) for contracts executed prior to March 6, 2012, certain losses under bundled contracts (sales of renewable energy credits and energy together) because of the generator's failure to deliver wind power. Fredrickson *et al.*, OS-14-E-BPA-01, at 5.

On March 6, 2012, BPA filed the OMP with the Commission. In the filing BPA informed the Commission that it intended to make an initial proposal in the oversupply rate case to allocate 50 percent of the costs of oversupply to power customers and 50 percent to wind generators.

On December 20, 2012, the Commission issued an order conditionally accepting the OMP on an interim basis, subject to BPA's filing a new cost allocation proposal within 90 days. BPA requested rehearing on this issue and also requested a stay of the compliance filing deadline to allow BPA to complete its rate case. The Commission denied rehearing but granted BPA's request for a stay, extending the deadline for filing the cost allocation methodology to a date 30 days after BPA submits its final oversupply rate decision to the Commission.

BPA's original OMP expired on March 30, 2013. Therefore, on March 1, 2013, BPA filed an updated protocol to be effective from March 31, 2013, through September 30, 2015. The Commission has not yet ruled on this filing.

1.2 Procedural History of this Rate Proceeding

On November 8, 2012, BPA published its "Notice of Proposed 2014 Oversupply Rates" in the Federal Register. 77 Fed. Reg. 66,963. As noted above, on December 20, 2012, the Commission issued an order conditionally approving the protocol but rejecting BPA's suggested cost allocation. BPA held a conference call with the parties on January 10, 2013, and a workshop on January 16, 2013, to discuss how to proceed with the OS-14 rate case in light of the

Commission's ruling. Based on these discussions, BPA counsel filed an unopposed motion to suspend the procedural schedule. BPA also asked the parties to submit proposed cost allocation alternatives and agreed to provide an analysis of the rate impacts of all alternatives. BPA analyzed each alternative to determine the proportion of oversupply costs that would be paid by each customer class and presented its results at a workshop held on February 11, 2013.

BPA and the parties agreed that the parties would file narrative statements that included their factual and legal positions, to be followed by a standard rate case schedule that would include a BPA supplemental proposal, parties' direct cases, and rebuttal testimony. The parties filed their narrative statements on March 18, 2013. BPA filed its supplemental proposal on April 12, 2013. Close of participant comment was May 22, 2013. The parties filed their direct cases on May 23, 2013. BPA and the parties filed rebuttal testimony on July 24, 2013. All parties waived cross-examination.

This Draft Record of Decision (ROD) is being issued on February 13, 2014. Briefs on exceptions are due March 4, 2014. The OS-14 Final Record of Decision and final studies in the OS-14 case are scheduled to be issued March 27, 2014. Order Granting BPA's Motion to Amend Procedural Schedule, OS-14-HOO-38.

1.3 Legal Guidelines Governing Establishment of the OS-14 Rates

1.3.1 Statutory Guidelines

Section 7(a)(1) of the Northwest Power Act directs the Administrator to establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. 16 U.S.C. § 839e(a)(1). Rates are to be set to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the FCRPS (including irrigation costs required to be paid by power revenues) over a reasonable period of years. *Id*. Section 7 of the Northwest Power Act also contains rate directives describing how rates for individual customer groups are to be derived.

Section 7(a)(1) of the Northwest Power Act reaffirms the applicability of section 5 of the Flood Control Act of 1944 (Flood Control Act), which directs that rate schedules shall encourage the widespread use of power at the lowest possible rates to consumers consistent with sound business principles. 16 U.S.C. § 825s. Section 5 of the Flood Control Act also provides that rate schedules shall be drawn having regard to the recovery of the cost of producing and transmitting electric energy, including the amortization of the Federal investment over a reasonable number of years. *Id*.

Section 7(a)(1) of the Northwest Power Act also reaffirms the applicability of sections 9 and 10 of the Federal Columbia River Transmission System Act of 1974, 16 U.S.C. § 838 (Transmission System Act), which include requirements similar to those of the Flood Control Act. Section 9 of the Transmission System Act, 16 U.S.C. § 838g, provides that power and transmission rates shall

be established (1) with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles; (2) with regard to the recovery of the cost of producing and transmitting electric power, including amortization of the capital investment allocated to power over a reasonable period of years; and (3) at levels that produce such additional revenues as may be required to pay, when due, the principal, premiums, discounts, expenses, and interest in connection with bonds issued under the Transmission System Act. Section 10 of the Transmission System Act, 16 U.S.C. § 838h, allows for uniform rates and specifies that the costs of the Federal transmission system shall be equitably allocated between Federal and non-Federal power utilizing the system.

Finally, section 211A of the Federal Power Act provides that the Commission has the authority to require unregulated transmitting utilities (which, as noted, includes BPA) to provide transmission services at rates that are comparable to those that the unregulated transmitting utility charges itself. 16 U.S.C. § 824j-1(b). The Commission has ordered BPA to file an oversupply rate that satisfies this standard. *Iberdrola Renewables, Inc., v. Bonneville Power Admin.*, 137 FERC ¶ 61,185 (2011).

1.3.2 <u>The Broad Ratemaking Discretion Vested in the Administrator</u>

The Administrator has broad discretion to interpret and implement statutory directives applicable to ratemaking. These directives focus on cost recovery and do not restrict the Administrator to any particular rate design methodology or theory. *See Pacific Power & Light Co. v. Duncan*, 499 F.00A0Supp. 672 (D. Or. 1980); *accord City of Santa Clara v. Andrus*, 572 F.2d 660, 668 (9th Cir. 1978) ("most widespread use" standard is so broad as to permit "the exercise of the widest administrative discretion"); *ElectriCities of North Carolina v. Southeastern Power Admin.*, 774 F.2d 1262, 1266 (4th Cir. 1985).

The United States Court of Appeals for the Ninth Circuit (Ninth Circuit or Court) has recognized the Administrator's ratemaking discretion. *Central Lincoln Peoples' Utility District v. Johnson*, 735 F.2d 1101, 1116-29 (9th Cir. 1984) ("Because BPA helped draft and must administer the [Northwest Power] Act, we give substantial deference to BPA's statutory interpretation"); *PacifiCorp v. FERC*, 795 F.2d 816, 821 (9th Cir. 1986) ("BPA's interpretation is entitled to great deference and must be upheld unless it is unreasonable"); *Atlantic Richfield Co. v. Bonneville Power Admin.*, 818 F.2d 701, 705 (9th Cir. 1987) (BPA's rate determination upheld as a "reasonable decision in light of economic realities"); *Dep't of Water and Power of the City of Los Angeles v. Bonneville Power Admin.*, 759 F.2d 684, 690 (9th Cir. 1985) ("Insofar as agency action is the result of its interpretation of its organic statutes, the agency's interpretation is to be given great weight"); *Pub. Power Council v. Bonneville Power Admin.*, 442 F.3d 1204, 1211 (9th Cir. 2006) ("[The General Rate Schedule Provisions] are entirely bound up with BPA's rate making responsibilities, and we owe deference to the BPA in that area"). The Supreme Court of the United States has also recognized the Administrator's ratemaking discretion. *Aluminum Co. of Am. v. Cent. Lincoln Peoples' Util. Dist., et al.* 467 U.S. 380, 389 (1984) ("The Administrator's interpretation of the [Northwest Power Act] is to be given great weight.").

1.3.3 Waiver of Issues by Failure to Raise in Briefs

Pursuant to section 1010.13(b) of BPA's rules for general rate proceedings, 51 Fed. Reg. 7611 (1986), arguments not raised in parties' briefs are deemed to be waived. Under this provision, a party's brief must specifically address the legal or factual dispute at issue. Blanket statements that seek to preserve every issue raised in testimony will not preserve the matter at issue.

However, a party need only raise an issue in either its initial brief or its brief on exceptions. While a party may wish to reassert an issue for other reasons, the party need not reassert an issue in its brief on exceptions in order to avoid waiving the issue. All arguments raised by a party in its initial brief shall be deemed to have been raised in the party's brief on exceptions. Special Rules of Practice to Govern These Proceedings, OS-14-HOO-02.

1.4 Federal Energy Regulatory Commission Confirmation and Approval of Rates

Under the Northwest Power Act, BPA's rates become effective upon confirmation and approval by the Commission. 16 U.S.C. § 839e(a)(2) and (k). The Commission's review is appellate in nature, based on the record developed by the Administrator. *U.S. Dep't of Energy—Bonneville Power Admin.*, 13 FERC ¶ 61,157, 61,339 (1980). The Commission may not modify rates proposed by the Administrator but may only confirm, reject, or remand them. *U.S. Dep't of Energy—Bonneville Power Admin.*, 23 FERC ¶ 61,378, 61,801 (1983). Pursuant to section 7(i)(6) of the Northwest Power Act, 16 U.S.C. §839e(i)(6), the Commission has promulgated rules establishing procedures for the approval of BPA rates. 18 C.F.R. Part 300 (1997).

Under section 211A of the Federal Power Act, the Commission may remand transmission rates to an unregulated utility for review and revision if necessary to meet the requirements of the section. 16 U.S.C. § 824j-1(g).

1.4.1 Standard of Commission Review

The Commission reviews BPA's rates under the Northwest Power Act to determine whether they (1) are sufficient to ensure repayment of the Federal investment in the FCRPS over a reasonable number of years after first meeting BPA's other costs; and (2) are based on BPA's total system costs. With respect to transmission rates, Commission review includes an additional requirement: to ensure that the rates equitably allocate the cost of the Federal transmission system between Federal and non-Federal power using the system. 16 U.S.C. § 839e(a)(2). *See U.S. Dep't of Energy—Bonneville Power Admin*, 39 FERC ¶ 61,078, 61,206 (1987). The limited Commission review of rates permits the Administrator substantial discretion in the design of rates and the allocation of power costs, neither of which is subject to Commission jurisdiction. *Cent. Lincoln Peoples' Util. Dist. v. Johnson*, 735 F.2d 1101, 1115 (9th Cir. 1984).

Under section 211A of the Federal Power Act, the Commission has the authority to require unregulated transmitting utilities to provide transmission services at rates that are comparable to those that the unregulated transmitting utility charges itself. 16 U.S.C. § 824j-1(b).

1.5 Related Topics

This section discusses topics that are related to the OS-14 rate case but are outside its scope.

Although the OS-14 rate case is separate from the last BPA general rate case (BP-14), the issue of whether BPA should include a mechanism in its transmission rate schedules for the recovery of oversupply costs was raised in the BP-14 proceeding. This issue is addressed in section 1.3.2 of the BP-14 Power and Transmission Rate Proceeding Administrator's Final Record of Decision, July 2013, BP-14-A-03.

Issue 1.5.1

Whether BPA's decision to substitute zero-cost generation from the FCRPS for displaced wind and thermal generation violates section 7(i) of the Northwest Power Act, because BPA has not established a rate for the power provided to the displaced generators.

Parties' Positions

Iberdrola argues that BPA's replacement of wind and thermal generation with "free" FCRPS generation is the sale of power at a rate of zero and therefore must be made under an established rate. Iberdrola Br., OS-14-B-IR-01, at 52-53. According to Iberdrola, in this proceeding BPA is seeking to establish "an oversupply rate to collect its displacement costs," but will be in violation of section 7(i) of the Northwest Power Act if it does not establish a rate for the sale of power to the displaced generators. *Id.* at 53.

BPA Staff's Position

This issue was raised for the first time in Iberdrola's initial brief. Consequently, Staff has not taken a position on the matter.

Evaluation of Positions

First, this issue is outside the scope of this proceeding. As explained in the Federal Register notice, BPA initiated the OS-14 rate case solely to "establish rates to recover the costs already incurred under the Oversupply Management Protocol, and any future costs incurred up to September 30, 2015, in the event the Oversupply Management Protocol is renewed after it expires on March 30, 2013." 77 Fed. Reg. 66,963, 66,964 (Nov. 8, 2012). The notice specifically excluded from the proceeding "rates previously established or to be established in any other rate case." *Id*. at 66,965. Therefore, no other rate is at issue in this proceeding.

Second, assuming the displacement is in fact a sale of power, BPA has an established rate that supports the sale at a rate of zero. BPA's Firm Power Products and Services Rate Schedule, FPS-14, provides for "the purchase of Firm Power … for use inside and outside the Pacific Northwest." Under section 2.1 of the rate schedule, the rate is "as specified by BPA or as mutually agreed by BPA and the Customer." In addition to displacement under the OMP, at times BPA has entered into bilateral sales of power at a zero price, based on the FPS rate

schedule. The OMP itself provides that, before displacing generation under the protocol, BPA will dispose of as much excess power as possible through bilateral sales:

> Before displacing generation under this attachment, Transmission Provider will take the following actions when available and Transmission Provider determines they will reduce or avoid the need for displacement:
>
> a. sales through bilateral marketing, including offering to sell power at zero cost.

All of these sales are made under the FPS rate schedule. If displacement is considered a sale of power, it is also supported by this rate schedule.

Draft Decision

The question of whether BPA must establish a rate for the displacement of wind and thermal generation with Federal generation is outside the scope of this proceeding. In addition, assuming the displacement is a sale of power, BPA's FPS-14 rate supports the sale.

Issue 1.5.2

Whether BPA's Open Access Transmission Tariff allows BPA to charge transmission customers for oversupply costs.

Parties' Positions

Iberdrola argues that BPA's Oversupply Management Protocol provides no authority for BPA to allocate oversupply costs to any customers because "it has expired by its own terms; it does not allow an allocation of costs on transmission customers or generators within Bonneville's [balancing authority area] generally; and it has not been finally approved by the Commission." Iberdrola Br., OS-14-B-IR-01, at 51. In addition, Iberdrola argues, although section 9 of BPA's tariff provides BPA with the ability to propose changes to rates, terms, and conditions of service, the OMP is not a "service," so it "cannot become integrated into Bonneville's tariff through this mechanism." *Id.*

BPA Staff's Position

The transmission tariff sets out the terms and conditions of transmission service, not the rates. Metcalf *et al.*, OS-14-E-BPA-03, at 12. If an entity is taking service under the tariff or is subject to tariff provisions, such as the OMP, the entity is subject to the applicable rate. *Id.*

Evaluation of Positions

BPA's authority to set rates to recover its costs, including oversupply costs, is not based on its Open Access Transmission Tariff or the OMP. BPA is required by law to establish rates to recover its costs and does so under the authority of the Northwest Power Act. 16 U.S.C.

§ 839e(a). BPA has incurred costs caused by oversupply and expects that it will continue to do so. Fredrickson *et al.*, OS-14-E-BPA-01, at 6-7. The Northwest Power Act authorizes and obligates BPA to recover these costs. 16 U.S.C. § 839e(a). Sections 1.3 and 1.4 of this Draft ROD explain in detail the statutory guidelines BPA follows in setting its rates, the Administrator's discretion in setting rates, and the Commission's role in confirming and approving BPA's rates.

For similar reasons, section 9 of the transmission tariff is irrelevant to this proceeding. Section 9 allows BPA to change the terms and conditions of its tariff upon approval by the Commission. The tariff does not include any rates, and BPA will not include the oversupply rate in the tariff. Therefore, the establishment of the oversupply rate is not a change to the tariff, and section 9 does not apply.

Draft Decision

BPA has the authority and responsibility under the Northwest Power Act to establish rates that recover its costs, including oversupply costs. This authority is based on BPA's incurrence of costs and is not derived from its Open Access Transmission Tariff.

Issue 1.5.3

Whether BPA should pay negative market prices or enter into mutually agreeable arrangements with wind generators to manage oversupply events rather than use the OMP.

Parties' Positions

Several parties argue that BPA should pay negative market prices instead of using the OMP. Caithness states that the purpose of the OMP "is to avoid the need [for BPA] to accept negative prices for unsold hydro energy during times when it has more unsold energy than federal load. The purpose of OMP … is revenue maximization." Caithness Br., OS-14-B-CS-01, at 36. Iberdrola argues that BPA should "abandon its oversupply proposals and negotiate mutually agreeable bilateral arrangements with parties for displacement during oversupply events, and pay negative prices as necessary." Iberdrola Br., OS-14-B-IR-01, at 61. RNP states that oversupply events can be managed with "storage agreements, displacement agreements, increased spill, and disposing of excess hydropower at the prevailing market price …. In this proceeding, BPA should reverse its previous policy decision to not pay market-determined negative prices to dispose of excess hydropower. " RNP Br., OS-14-B-RN-01, at 27-28.

JP03 argues that BPA should decline to answer arguments about whether to pay negative market prices because they are outside the scope of the rate case. JP03 Br., OS-14-B-JP03-01, at 37-38. In addition, JP03 argues, the issue of whether BPA should pay negative prices was litigated at the Commission, and the Commission has conditionally accepted the OMP. *Id*. at 38. JP03 also argues that BPA would be taking on substantial financial risk in exposing itself to negative

market prices and could pay far in excess of the compensation now being paid under the OMP. *Id.* at 38-39.

WPAG also argues that BPA should not address issues related to paying negative market prices because BPA will be forced to accept "whatever negative prices sellers demanded." WPAG Br., OS-14-B-WG-01, at 17-18.

BPA Staff's Position

Staff did not address this issue in testimony.

Evaluation of Positions

The Federal Register notice defines the scope of the OS-14 rate case and provides in part:

> [T]he following issues are not part of the scope of the case, and the Hearing Officer is directed to strike all testimony concerning these issues: the terms of the Oversupply Management Protocol; whether the Oversupply Management Protocol complies with the Commission's Order issued on December 7, 2011; whether BPA took all actions to avoid using the Oversupply Management Protocol, including the payment of negative prices to generators outside of BPA's balancing authority area; the scope of BPA's environmental obligations; program levels and program level forecasts for any BPA program; and rates previously established or to be established in any other rate case.

77 Fed. Reg. 66,963, 66,965.

As set forth in the Federal Register notice, issues raised by parties that fall outside the scope of the rate case will not be addressed. This rate case is intended only to set rates to recover costs incurred under the OMP. Moreover, whether BPA should pay negative prices instead of using the OMP is not a rates issue and therefore is not an appropriate issue for any rate case. This issue has been raised in various other forums and should be discussed there. Thus, this issue is specifically excluded from the rate case and will not be addressed.

Draft Decision

Whether BPA should pay negative prices or enter into mutually agreeable arrangements with wind generators is outside the scope of this rate case.

Issue 1.5.4

Whether BPA has the authority to compensate generators under the Oversupply Management Protocol.

Parties' Positions

WPAG argues that "BPA has not been granted the authority by Congress to make PTC or REC payments under circumstances not permitted under the legislation establishing such programs." WPAG Br., OS-14-B-WG-01, at 20. According to WPAG, "BPA is asserting the authority to amend or extend these state and federal subsidy programs to provide payment to wind generators when the Congress and state legislatures have determined that no such payment should be made." *Id*. at 19.

BPA Staff's Position

Staff did not address this issue in testimony.

Evaluation of Positions

For the same reasons as stated in response to Issue 1.5.3, this issue is not a rate case issue and will not be addressed. WPAG's argument is a challenge to the OMP itself, not to the rate. If WPAG wishes to challenge the OMP, it should raise the issue in the appropriate forum.

Draft Decision

Whether BPA has the authority to compensate wind generators for displacement is outside the scope of the rate case.

1.6 Procedural Issues

Issue 1.6.1

Whether failing to provide parties an opportunity to submit surrebuttal testimony violated section 7(i)(2)(A) of the Northwest Power Act and BPA's Rules of Procedure Governing Rate Hearings.

Parties' Positions

Iberdrola argues that the "procedural schedule did not provide parties an opportunity to submit surrebuttal testimony or otherwise comment upon Bonneville's Rebuttal Proposal." Iberdrola Br., OS-14-B-IR-01, at 55. Iberdrola claims that BPA's "failure to allow parties to respond to its Rebuttal Proposal creates a significant procedural deficiency" in that "Bonneville's failure to adjust the procedural schedule to allow for surrebuttal testimony after it changed its rate proposal" violated section 7(i)(2)(A) of the Northwest Power Act and BPA's Rules of Procedure Governing Rate Hearings. *Id.*

RNP argues that "BPA's submission of a Rebuttal Proposal in rebuttal testimony without giving parties the opportunity to respond creates a procedural deficiency under the Northwest Power Act and the Administrative Procedure Act." RNP Br., OS-14-B-RN-01, at 23. RNP argues that under the Administrative Procedure Act "a reviewing court may 'hold unlawful and set aside agency action, findings, and conclusions found to be … without observance of procedure required by law.'" *Id.* at 24 (quoting 5 U.S.C. § 706(2)(D)). RNP argues that if BPA adopted the rebuttal proposal it would violate the Administrative Procedure Act because BPA would "not hav[e] observed the procedure required by the Northwest Power Act." *Id.*

BPA Staff's Position

Iberdrola and RNP raised this issue for the first time in their initial briefs, and therefore Staff did not address it in testimony.

Evaluation of Positions

Iberdrola and RNP's argument misconceives the procedural rules that govern the rate case and places blame on BPA Staff for the parties' failure to pursue their procedural rights. Iberdrola and RNP note that under section 7(i)(2) of the Northwest Power Act parties must be provided "an adequate opportunity … to offer refutation or rebuttal of any material submitted by any other person or the Administrator." Iberdrola Br., OS-14-B-IR-01, at 55 (quoting 16 U.S.C. § 839e(i)(2)(A)); RNP Br., OS-14-B-RN-01, at 24. More fully, section 7(i)(2) provides that the hearing shall be conducted "by a hearing officer to develop a full and complete record" and that the opportunity to offer refutation or rebuttal shall be provided "by the hearing officer." 16 U.S.C. §§ 839e(i)(2) & 839e(i)(2)(A).

BPA's procedural rules carry forth the statutory responsibility and authority of the hearing officer. As quoted by Iberdrola, the rule concerning testimony provides that parties "shall be provided an adequate opportunity … to offer refutation or rebuttal on any material submitted by any other person or the Administrator." Iberdrola Br., OS-14-B-IR-01, at 55 (quoting 16 U.S.C. § 839e(i)). As also quoted by Iberdrola, the same rule makes clear that it is the hearing officer who provides such opportunity: "In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue." *Id.* at 56 (quoting Bonneville Power Administration Rules of Procedure Governing Rate Hearings § 1010.11(a)(2)) (Rules of Procedure).

Thus, BPA Staff does not provide the opportunity to offer surrebuttal testimony or decide whether the parties are able to do so. Instead, the hearing officer does so, just as the hearing officer, not BPA, establishes the entire procedural schedule. The procedural rules provide that, at the prehearing conference, "the hearing officer shall … establish a procedural schedule for the entire hearing." Rules of Procedure § 1010.6(d). The hearing officer established the initial procedural schedule in this case after BPA and the parties had agreed on the schedule and submitted a proposed, uncontested schedule at the prehearing conference. Order Establishing Schedule, OS-14-HOO-01. BPA Staff did not establish the procedural schedule.

Nor did BPA Staff amend the schedule at any time. The procedural schedule was amended eight times in this case. Each time BPA filed a motion to amend—after testing the proposed schedule with the parties—which the hearing officer then granted.

For example, after the rate case was briefly suspended for settlement discussions, BPA filed a motion to resume the case on a new schedule with certain new procedures. The hearing officer granted the motion, noting that "BPA notes that the parties have come to a general agreement on these procedures in order to resume this proceeding." Order Granting BPA's Motion and Amending Procedural Schedule, OS-14-HOO-22, at 1. In subsequent orders amending the schedule, the hearing officer noted that "BPA circulated the proposed schedule among the parties in advance of filing its motion and received no objections." *See, e.g.*, Order Granting BPA Motion to Amend the Procedural Schedule, OS-14-HOO-30, at 1; Order Granting BPA Motion to Amend the Procedural Schedule, OS-14-HOO-32, at 1; Order Granting BPA's Motion to Amend Procedural Schedule, OS-14-HOO-37, at 1.

Thus, BPA does not amend the schedule, and Iberdrola and RNP are alleging that BPA Staff failed to take an action it cannot take. If Iberdrola and RNP believe they would have benefitted from filing surrebuttal testimony, they had every right and ample opportunity to file a motion to amend the schedule, just as BPA Staff did a number of times. However, Iberdrola and RNP did not make such a motion or ask BPA to do so, and Iberdrola and RNP now attempt to place their failure to pursue their procedural rights on BPA Staff.

Moreover, Iberdrola and RNP's argument suggests that BPA can never change its initial proposal, at least not without providing for more process. Yet the very purpose of parties' testimony (as to those parties opposed to elements of BPA's initial proposal) is to convince BPA Staff or the Administrator to pursue a different course. Thus, the possibility that BPA may change its proposal is a fundamental part of the process rather than an extraordinary event that necessarily entails additional process.

In this case, Staff's rebuttal testimony responded to the arguments that parties raised in their direct testimony. Many parties raised reasonable concerns with certain portions of Staff's supplemental proposal, which Staff addressed by offering the Administrator another proposal to consider. If Iberdrola and RNP's procedural position were adopted, BPA Staff could never incorporate parties' ideas into its rate case proposals in its rebuttal testimony without violating the Northwest Power Act. This result would not be helpful to the rate case parties and is unnecessary given the parties' right to file procedural motions at any time.

For the above reasons, RNP is incorrect that BPA violated the Administrative Procedure Act. As explained above, BPA followed the procedures of the Northwest Power Act; therefore, BPA observed procedures required by law.

Draft Decision

BPA did not fail to provide parties an opportunity to submit surrebuttal testimony. Parties had the right to file motions with the hearing officer requesting the opportunity to file surrebuttal testimony, but failed to do so.

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2.0 OVERSUPPLY COST ALLOCATION

2.1 Introduction

2.1.1 History of the OS-14 Rate Proceeding

BPA Staff's initial proposal was to allocate half of oversupply costs to power customers and half to the generators that submitted displacement costs under OMP. Fredrickson *et al.*, OS-14-E-BPA-01, at 7-8. Staff testified that

> the costs are caused by two separate factors—the obligation to avoid spilling excess water over the dams that would harm endangered fish and other aquatic life, and the integration of approximately 4,000 MW of wind generation that requires compensation for displacement. Both of these factors result in the need for the OMP and cause the costs; however, we believe it is impossible to precisely quantify how much each factor contributes. We do know that the costs related to oversupply would not exist without either factor.

Id. at 8.

After Staff released its initial proposal, the Commission issued an order on December 20, 2012, accepting the OMP conditioned on BPA's submitting an acceptable cost allocation methodology. The Commission stated that BPA's 50/50 allocation proposal (which BPA had not formally submitted to the Commission for review, but which BPA briefly described in its OMP filing) did not result in comparable transmission service for displaced wind generators. Parker *et al*., OS-14-E-BPA-02, at 2-3.

BPA and the parties then prepared a revised procedural schedule. The first step under the revised schedule was for the parties to submit narrative statements of position for BPA Staff to consider in formulating a supplemental proposal. In their statements, the parties proposed a range of cost allocation methodologies: (1) allocate the costs to transmission rates by melding the costs into existing transmission rates; (2) allocate the costs to power rates; and (3) allocate the costs to the generation that is on line during oversupply events (this option was suggested only in the context of a settlement). *Id*. at 10. In its supplemental proposal, Staff proposed to charge the costs to transmission customers based on their scheduled use of the transmission system during oversupply event hours. *Id.* at 4.

In their direct cases, parties generally supported one of two cost allocation methodologies: BPA's power customers (preference customers and one direct-service industrial customer) argued that oversupply costs should be allocated to transmission rates, and BPA's transmission-only customers (including wind generators, marketers, and investor-owned utilities) argued that the costs should be allocated to power rates.

In its rebuttal testimony, Staff proposed to allocate the costs to generation within BPA's balancing authority area that had scheduled power during oversupply event hours. (A balancing authority area is defined by the National Electric Reliability Corporation (NERC) as "[t]he collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area." *Glossary of Terms Used in NERC Reliability Standards*, at 9 (Jan. 23, 2014). NERC has been certified by the Commission as the Electric Reliability Organization responsible for developing and enforcing electric reliability standards under section 215 of the Federal Power Act.) The difference between this proposal and Staff's supplemental proposal is that the supplemental proposal included wheel-throughs (transmission of power across BPA's transmission system from a source outside of the BPA balancing authority to a delivery point outside the BPA balancing authority) and wheel-ins (wheeling of generation sourced outside BPA's balancing authority area) in the cost allocation, and the rebuttal proposal does not. ("Wheeling" is the transmission of another party's power.)

2.1.2 Cost Allocation Alternatives Considered by this Draft Record of Decision

Four cost allocation alternatives are considered in this Draft Record of Decision: (1) allocation to transmission rates; (2) allocation to customers using BPA's transmission system during oversupply event hours; (3) allocation to generation in BPA's balancing authority area scheduled during oversupply event hours; and (4) allocation to power rates. Because of the Commission's December 20, 2012, order, Staff's initial proposal to allocate 50 percent of the costs to power rates and 50 percent to wind generators is not considered a viable alternative. The four alternatives are briefly described below.

2.1.2.1 Alternative 1: Allocate oversupply costs either to all transmission rates or to network rates.

BPA's power customers propose to allocate oversupply costs to transmission rates. JP03 and WPAG argue that the oversupply protocol is needed to maintain load-resource balance in the BPA balancing authority area, which is fundamental to transmission system reliability and benefits all transmission system users. Therefore, these parties argue, oversupply costs should be allocated to all transmission rates. JP03 Br., OS-14-B-JP03-01, at 7, 23; WPAG Br., OS-14-B-WG-01, at 15.

WPAG and JP03 also propose that FY 2012-2013 oversupply costs should be paid out of transmission financial reserves. WPAG Statement, OS-14-P-WG-01, at 5; JP03 Statement, OS-14-P-JP03-01, at 4. For FY 2014-2015, WPAG proposes that costs should be forecast and treated as a component of the transmission revenue requirement that is allocated to all firm transmission rates, including rates for firm use of the interties. WPAG Statement, OS-14-P-WG-01, at 5. WPAG proposes that any over- or under-collection of costs be addressed in the rate case following the rate period in which the over- or under-collection occurs, with any credit or cost being allocated in the same manner as forecast costs. *Id*.

JP03 proposes that FY 2014-2015 costs be forecast and treated as a component of the Network segment revenue requirement and recovered through firm Network rates—PTP, NT, IR, and FPT. JP03 Statement, OS-14-P-JP03-01, at 5. JP03 proposes that transmission customers that have a transmission contract for Intertie service but no Network service should pay a share of oversupply costs through a rate adder. *Id*. JP03 also proposes that BPA provide an annual accounting of displacement costs that builds on the accounting required by the OMP. *Id*.

2.1.2.2 Alternative 2: Allocate oversupply costs to all customers with scheduled use of BPA's transmission system during oversupply event hours.

BPA Staff's supplemental proposal was to charge transmission customers for oversupply costs based on their transmission schedules during oversupply event hours (hours in which BPA displaces generation under the protocol), including schedules for generation sourced outside of BPA's balancing authority area and schedules for resources that are displaced under the oversupply protocol. Parker *et al*., OS-14-E-BPA-02, at 4, 7. Under this proposal, if the generation source on the transmission schedule is Federal power, costs are charged to BPA and passed through to BPA's power customers. *Id.* at 9. If the generation is non-Federal, costs are charged to the transmission contract holder. *Id.* at 7-8.

Costs charged to BPA would be reallocated to BPA power customers based on Tier 1 Cost Allocators (TOCAs) that are modified to include non-Priority Firm power customers. *Id.* at 9; Fredrickson *et al.*, OS-14-E-BPA-01, at 9-11. (Priority Firm power customers are the customers entitled to preference under BPA's organic statutes. A TOCA is the billing determinant—the unit to which the rate is applied—that represents each firm power customer's proportionate share of BPA's power costs.)

The rate would be based on a customer's scheduled use of transmission during oversupply event hours, aggregated monthly. Parker *et al.*, OS-14-E-BPA-02, at 9. The rate would recover FY 2012 administrative costs through a separate one-time charge and would recover FY 2013-2015 administrative costs half through general power rates and half through general transmission rates. *Id.* at 8-9.

Staff's supplemental proposal included an Unauthorized Decrease Charge (UDC) that would apply to Slice/Block customers (customers with particular power purchase agreements) that failed to take delivery of Slice energy equal to or greater than their Slice minimum delivery amount for each hour in which generation is displaced under the OMP. *Id*. at 15. The charge would also apply for failure to take delivery of hourly Block amounts. *Id.* However, Staff later withdrew the proposed UDC, agreeing with parties that more discussion with customers and other stakeholders was needed before determining whether to include a UDC in BPA's rates. Metcalf *et al*., OS-14-E-BPA-03, at 3.

In support of its supplemental proposal, Staff testified that oversupply is a result of both BPA's environmental responsibilities and renewable generation that will not voluntarily curtail for zero-priced power. Parker *et al*., OS-14-E-BPA-02, at 4-5. Staff noted that one causal factor was

BPA's open access transmission policies, which have contributed to the costs of oversupply by increasing non-Federal use of BPA's transmission system. *Id*. In addition, Staff included wheel-ins and wheel-throughs, because any user of BPA's transmission system that will not voluntarily displace its deliveries with free Federal hydropower indirectly contributes to the cost of solving the oversupply problem. *Id*.

2.1.2.3 Alternative 3: Allocate oversupply costs to generation in BPA's balancing authority area scheduled during oversupply event hours.

Staff's rebuttal proposal was to charge oversupply costs to generators in the BPA balancing authority area based on their transmission schedules during oversupply event hours, including transmission schedules for resources that are displaced under the oversupply protocol. Metcalf *et al*., OS-14-E-BPA-03, at 5. The primary difference between this proposal and Staff's supplemental proposal is that the rebuttal proposal limits allocation of oversupply costs to generation in BPA's balancing authority area. *Id*. at 2. MSR supports this cost allocation as a temporary measure and part of a proposed overall strategy for BPA and customers to work toward permanent solutions to the oversupply issue. MSR Brief, OS-14-B-MS-01, at 6.

The limitation to generation in the balancing authority area is based on Staff's understanding that BPA's obligation to take action to mitigate harm to fish and wildlife extends only to resources over which BPA has operational control as the balancing authority; that is, generation in the balancing authority area. Metcalf *et al*., OS-14-E-BPA-03, at 10-11.

2.1.2.4 Alternative 4: Allocate oversupply costs to power rates.

BPA's transmission-only customers propose to allocate all oversupply costs to power customers on the grounds that oversupply costs are caused by fish mitigation obligations and BPA's inability to sell excess power, and the Northwest Power Act requires that such costs be allocated to power rates. Caithness Br., OS-14-B-CS-01, at 21; Iberdrola Br., OS-14-B-IR-01, at 61; JP05 Br., OS-14-B-JP05-01, at 27-28 and 33-38; Powerex Br., OS-14-B-PX-01, at 28; RNP Br., OS-14-B-RN-01, at 27-28; SCE Br., OS-14-B-SC-01, at 16; TransAlta Br., OS-14-B-TC-01, at 15. Several of these parties argue that BPA should abandon the oversupply protocol and use a market-based approach to managing oversupply conditions. Caithness Br., OS-14-B-CS-01, at 43; Iberdrola Br., OS-14-B-IR-01, at 61; JP05 Br., OS-14-B-JP05-01, at 53; RNP Br., OS-14-B-RN-01, at 27-28.

Some transmission-only customers offer no specific recommendation regarding the treatment of the costs in power rate design. Others argue that oversupply costs should be added to secondary revenue because they are no different from the secondary revenue that BPA forecasts in each rate case. Caithness Br., OS-14-B-CS-01, at 35-36; RNP Br., OS-14-B-RN-01, at 27-28. Caithness proposes that forecast oversupply costs be included in base power rates, and that a CRAC-like adjustment be used for any net extraordinary oversupply cost. Caithness Br., OS-14-B-CS-01, at 43-44.

2.2 Oversupply Cost Allocation Methodology

Issue 2.2.1

Which methodology BPA should adopt for allocation of oversupply costs.

Parties' and BPA Staff's Positions

The cost allocation methodologies supported by parties and Staff are outlined in section 2.1.2.

Evaluation of Positions

BPA's draft decision is to adopt Alternative 3, under which costs are allocated to generators in the balancing authority area based on their transmission schedules during oversupply event hours. Alternative 3 best aligns with principles of cost causation because the scheduling of generation during oversupply events, as measured by transmission schedules, causes the need to displace generation and hence oversupply costs, and because the need to displace extends only to generators within BPA's balancing authority area.

In some hours, however, BPA does not have sufficient load to absorb the additional generation that must be produced to minimize excess TDG, and BPA must take all reasonable actions to avoid excess spill. BPA has determined that the displacement of other generating resources in BPA's balancing authority area—resources that BPA has operational control over—is a reasonable action to satisfy this obligation. Fredrickson *et al.*, OS-14-E-BPA-01, at 3. Because BPA does not have operational control over resources outside of its balancing authority area, it has concluded that it does not have the same obligation with respect to those resources.

Before the interconnection and integration of wind generation, BPA would offer generators low-cost or even free power for displacement. Operators of thermal generation generally accepted these offers, because they saved on fuel costs and their loads were served by BPA's power. *Id.* at 3-4. As stated earlier, however, wind generators receive Federal and state benefits that are based on the amount of energy they generate. *Id*. at 4. At the Federal level, some wind generators receive PTCs, which are tax credits granted for every kilowatthour of electricity produced by the generator. At the state level, some receive RECs, which utilities use to comply with state laws under which a certain percentage of the electricity they sell must be generated by renewable energy. *Id.* The wind generators do not receive these credits for periods in which they are shut down, and therefore they have an incentive to continue operating even when there is an oversupply of energy. Thus, wind generators do not accept BPA's offers of free power.

In recent records of decision concerning the interconnection of wind projects, BPA identified the need for displacing wind generators to mitigate the impact of the interconnection of wind on BPA's fish and wildlife obligations. Metcalf *et al*., OS-14-E-BPA-03, at 7-8. If not for the interconnection of wind generation, BPA would have met its fish and wildlife obligations by displacing generation in its balancing authority area with free Federal hydropower, as it did in

the past, and BPA would not incur any costs for oversupply. It follows that those generators responsible for causing the costs should bear a share of the costs BPA incurs in meeting that responsibility. Alternative 3 follows this logic because it allocates costs to generators in BPA's balancing authority area—all of the generators that affect BPA's fish and wildlife obligations.

Caithness, Iberdrola, JP05, Powerex, RNP, SCE, and TransAlta advocate for the adoption of Alternative 4, which allocates all costs to power rates. These parties argue that oversupply is caused solely by BPA's fish and wildlife obligations and inability to sell excess power, and thus oversupply costs are power costs that must be allocated to power rates. Caithness Br., OS-14-B-CS-01, at 36; Iberdrola Br., OS-14-B-IR-01, at 10, 28; JP05 Br., OS-14-B-JP05-01, at 15, 25; Powerex Br., OS-14-B-PX-01, at 9; RNP Br., OS-14-B-RN-01, at 27; SCE Br., BP-14-B-SC-01, at 4; TransAlta Br., OS-14-B-TC-01, at 2. These arguments overlook the fact that BPA incurred no oversupply costs before the interconnection and integration of wind generation. Because of the interconnection of wind generation in BPA's balancing authority area, and because these generators require compensation for displacement, BPA now incurs oversupply costs. As discussed below, BPA's power customers will still ultimately bear almost three-quarters of the oversupply costs, as Federal generation is almost three-quarters of the generation online during an oversupply event. It is not equitable for them to bear all the costs related to the additional displacement obligation created by the interconnection of wind generation in BPA's balancing authority area.

Further, several of the parties' arguments demonstrate a misunderstanding of BPA's environmental responsibilities and the causes of BPA's displacement obligation. For example, Caithness argues that "BPA wrongly assumes that if the wind generators did not exist in BPA's Balancing Authority, then the loads served by those wind generators would have been supplied by thermal generation that it could have displaced voluntarily with positively priced, excess BPA power during times of high hydro runoff." Caithness Br., OS-14-B-CS-01, at 15. Caithness concludes that, because state requirements to buy renewable energy would still exist, those loads would still buy renewable energy, not Federal hydropower. *Id.* at 15-16.

This may be true; however, if wind generators did not exist in BPA's balancing authority area, the loads would be buying renewable energy from generators outside of the balancing authority area. As explained above, BPA satisfies its environmental responsibilities when it displaces the generation in its balancing authority area, over which BPA has operational control. Because BPA does not have operational control over generation outside of its balancing authority area, BPA would not (and indeed could not) displace the renewable generators in Caithness's example and would not incur costs. If wind generators did not exist in BPA's balancing authority area, the situation would be just as it was before the interconnection of wind generation: BPA would not incur oversupply costs.

Similarly, JP05 argues that "[i]f there were no non-Federal generation on BPA's transmission system, BPA would not be able to curtail non-Federal generation so that its power function could substitute Federal power for non-Federal power." JP05 Br., OS-14-B-JP05-01, at 19. Again, if

there "were no non-Federal generation on BPA's transmission system," BPA would not need to seek displacement to satisfy its environmental responsibilities.

Conversely, although JP03 and WPAG urge BPA to adopt Alternative 1, they argue that wind generation is the sole cause of oversupply costs, and that under a strict "but for" causation wind generation should bear all oversupply costs. JP03 Br., OS-14-B-JP03-01, at 13-21; WPAG Br., OS-14-B-WG-01, at 8-10. Their argument overlooks the fact that if not for its environmental responsibilities, BPA would have no need to displace wind generators. Just as it would not be equitable for BPA's power customers to bear all oversupply costs, it would not be equitable for the wind generators to bear all the costs.

Alternative 3 strikes a balance between these competing positions by allocating costs to all generation in the balancing authority area based on scheduled generation. When BPA displaces generation, it is in essence finding load to absorb Federal hydropower that must be generated to reduce TDG levels. *See* Metcalf *et al.*, OS-14-E-BPA-03, at 7 (oversupply is partly due to "a lack of load to absorb additional energy"). The scheduled generation by non-Federal generators in BPA's balancing authority area represents the amount of generation BPA must displace (at least down to a generator's minimum generation level for reliability purposes) with Federal generation to the extent necessary to mitigate excess spill. *See* Frederickson *et al.*, OS-14-E-BPA-01, at 3 (displacement of generating resources interconnected in BPA's balancing authority area is a "reasonable action" BPA must take to reduce spill).

The more wind generation that is scheduled, the more generation BPA must displace to avoid excess spill, and the greater the costs of compensating these generators. Each generator's schedule represents that generator's contribution to BPA's total obligation (BPA's obligation is to produce enough additional Federal hydroelectric generation to avoid the excess spill that will exceed state TDG limits; therefore, BPA must reduce scheduled non-Federal generation by the amount of the necessary additional hydroelectric generation). Applying this methodology to the displacement that took place in 2012, Federal power generation would be allocated 72 percent of oversupply costs, wind generation 14 percent, and thermal generation 14 percent. Data Response JP03-BPA-2.

Caithness, Iberdrola, JP05, and RNP argue that charging displaced wind generators based on their schedules violates section 211A of the Federal Power Act. That issue is addressed in Issue 2.3.2. They also argue that it is unfair to charge the displaced wind generators, because they are not using the transmission system. Caithness Br., OS-14-B-CS-01, at 17-18; Iberdrola Br., OS-14-B-IR-01, at 44-47; JP05 Br., OS-14-B-JP05-01, at 43-44; RNP Br., OS-14-B-RN-01, at 13-15. However, the fact that the wind generation is displaced does not mean that these customers are not using the transmission system. Their loads are being served, and they are being compensated for their displacement costs under the OMP. Fredrickson *et al.*, OS-14-E-BPA-01, at 5-6.

Moreover, if wind generators did not schedule power during oversupply hours, BPA would incur no oversupply costs. *Id.* at 4. As explained above, the existence of wind generation in the BPA

balancing authority area is one of the primary causes of oversupply costs. If wind generators were not charged for their displaced schedules, in most oversupply events they would bear no oversupply costs, thus placing the entire cost obligation on BPA's other customers. This result would violate cost causation principles. Metcalf *et al.*, OS-14-E-BPA-03, at 4.

As stated above, it is the scheduling of generation that necessitates the use of the OMP. Therefore, to determine which generators cause OMP costs, it is necessary to examine the schedules submitted before BPA deploys the OMP. Those scheduled amounts, up to the additional amount that BPA must generate to avoid exceeding state gas limits, represent the amount of generation that BPA must displace in order to mitigate excess spill. *Id.* at 5.

Moreover, Alternative 3 is consistent with the Commission's statements. The Commission rejected BPA's proposed allocation of 50 percent of oversupply costs to wind generation because wind generation was only "a fraction of the firm transmission service on Bonneville's system during oversupply situations," adding that BPA should allocate oversupply costs based on "Bonneville's *management of the transmission system* during oversupply situations." *Iberdrola Renewables, Inc., v. Bonneville Power Admin.*, 141 FERC ¶ 61,234, at P 45 (2012) (emphasis added). The Commission concluded that BPA should submit "a methodology to allocate displacement costs in a manner that *equitably allocates such costs to all firm transmission customers based on their respective transmission usage during oversupply situations*, or setting forth a different method altogether that ensures comparability in the provision of transmission service by Bonneville." *Id.* at P 46 (emphasis added; footnote omitted).

Alternative 3 allocates costs based on BPA's "management of the transmission system" during oversupply events because, as explained above, in order to mitigate excess spill BPA is required to displace only those generators that are in its balancing authority area. Alternative 3 allocates costs only to such generators. In addition, Alternative 3 recognizes that wind generation is only a fraction of the scheduled generation during an oversupply event and allocates costs based on the fraction of total scheduled generation that wind generation represents.

As noted, JP03 and WPAG advocate for adoption of Alternative 1, under which costs are allocated to the Network segment and spread across all transmission users. Their position is based on the premise that the OMP exists primarily to manage the reliability of the transmission system, which is a benefit to all transmission users. JP03 Br., OS-14-B-JP03-01, at 23, 25; WPAG Br., OS-14-B-WG-01, at 16. Thus, JP03 states, allocation of costs to the Network segment based on reservations or peak usage would assign "costs to each customer in proportion to its firm rights to use the system." JP03 Br., OS-14-B-JP03-01, at 25. JP03 states that this cost assignment would ensure that "all customers bear proportionate shares of the system management costs and FERC's concerns about the disproportionate allocation of costs are alleviated." *Id.*

Although reliability must be maintained during oversupply events, the sole or primary purpose of the OMP is not to maintain reliability. Spilling all excess water over the dams would also maintain reliability. If the issue were solely reliability, once BPA had made all possible sales

down to a zero price it would simply spill all remaining water. BPA does not do so, because of its duty to minimize excess TDG to the extent practicable. BPA displaces generation under the OMP rather than spill in order to fulfill its environmental responsibilities. Moreover, under Alternative 1, costs would be allocated to all users of the transmission system at all times, even though costs are caused only by those customers within the balancing authority area that schedule generation during oversupply events.

Alternative 2 fails for similar reasons: assigning costs to generation located outside BPA's balancing authority area is inconsistent with cost causation. As noted earlier, because BPA does not have operational control over generators outside BPA's balancing authority area, BPA is not responsible for displacing those resources. Thus, generators located outside BPA's balancing authority area do not contribute to oversupply costs and should not be allocated any costs. Metcalf *et al.*, OS-14-E-BPA-03, at 4.

Citing BPA's acknowledgement that oversupply is not caused by insufficient transmission capacity, Metcalf *et al.*, OS-14-E-BPA-03, at 11, several parties argue that use of BPA's transmission system is not a cause of or contributor to oversupply. Iberdrola Br., OS-14-B-IR-01, at 18; JP05 Br., OS-14-B-JP05-01, at 28; Powerex Br., OS-14-B-PX-01, at 11-14, 16; SCE Br., OS-14-B-SC-01, at 12-13; TransAlta Br., OS-14-B-TC-01, at 9-11. This argument is a non sequitur: that BPA has sufficient transmission does not mean that transmission cannot be the cause of costs. In fact, it is the interconnection of wind generators to the transmission system and the scheduled use of transmission by generators in BPA's balancing authority area that forces BPA to displace generation and causes costs.

Draft Decision

Oversupply costs will be allocated to generation in BPA's balancing authority area based on the scheduled use of the transmission system during oversupply event hours.

2.3 Other Cost Allocation Issues

Issue 2.3.1

Whether the allocation of oversupply costs to transmission rates complies with section 7(g) of the Northwest Power Act.

Parties' Positions

Caithness, Iberdrola, JP05, Powerex, RNP, SCE, and TransAlta argue that under section 7(g) of the Northwest Power Act, the costs of fish and wildlife measures and the inability to sell excess power must be allocated to power rates. Caithness Br., OS-14-B-CS-01, at 19; Iberdrola Br., OS-14-B-IR-01, at 29; JP05 Br., OS-14-B-JP05-01, at 33; Powerex Br., OS-14-B-PX-01, at 19; RNP Br., OS-14-B-RN-01, at 15; SCE Br., OS-14-B-SC-01, at 8; TransAlta Br., OS-14-B-TC-01, at 5. These parties further argue that, because oversupply costs are caused by both fish and wildlife measures and the inability to sell excess power, they must be allocated to power

rates. Caithness Br., OS-14-B-CS-01, at 19; Iberdrola Br., OS-14-B-IR-01, at 29; JP05 Br., OS-14-B-JP05-01, at 33; Powerex Br., OS-14-B-PX-01, at 19; RNP Br., OS-14-B-RN-01, at 15; SCE Br., OS-14-B-SC-01, at 8; TransAlta Br., OS-14-B-TC-01, at 5.

Caithness, Iberdrola, Powerex, RNP, and JP05 also argue that the savings clause of section 7(g) (which provides that the costs listed in section 7(g) are governed by that section "[e]xcept to the extent that the allocation of costs and benefits is governed by provisions of law in effect on December 5, 1980, or by other provisions of this section") does not apply in this case, as no other provision of law addresses the allocation of costs related to fish and wildlife measures and the inability to sell excess power. Caithness Br., OS-14-B-CS-01, at 29-34; Iberdrola Br., OS-14-B-IR-01, at 32-35; Powerex Br., OS-14-B-PX-01, at 23-24; RNP Br., OS-14-B-RN-01, at 17-19; JP05 Br., OS-14-B-JP05-01, at 35-36. Caithness, Iberdrola, SCE, and JP05 further argue that BPA, the Commission, and the Ninth Circuit Court of Appeals have all consistently interpreted section 7(g) to require that fish and wildlife costs be allocated to power rates. Caithness Br., OS-14-B-CS-01, at 24-27; Iberdrola Br., OS-14-B-IR-01, at 30; SCE Br., OS-14-B-SC-01, at 9-10; JP05 Br., OS-14-B-JP05-01, at 34.

JP03 and WPAG argue that OMP costs are transmission costs. JP03 Br., OS-14-B-JP03-01, at 23; WPAG Br., OS-14-B-WG-01, at 4. These parties argue that section 7(g) of the Northwest Power Act does not apply, because it does not address the allocation of transmission costs but only power costs. JP03 Br., OS-14-B-JP03-01, at 30-32; WPAG Br., OS-14-B-WG-01, at 7. Instead, JP03 and WPAG argue, allocation of oversupply costs is expressly governed by sections 9 and 10 of the Transmission System Act and section 7(a) of the Northwest Power Act. JP03 Br., OS-14-B-JP03-01, at 32; WPAG Br., OS-14-B-WG-01, at 7.

BPA Staff's Position

This is a legal issue and was not addressed by Staff in testimony.

Evaluation of Positions

Section 7(g) of the Northwest Power Act provides as follows:

> *Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on December 5, 1980, or by other provisions of this section*, the Administrator shall equitably allocate to power rates, in accordance with generally acceptable ratemaking principles and the provisions of this chapter, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 839d of this title, the cost of credits granted pursuant to section 839d of this title, operating services, and the sale of or inability to sell excess electric power.

16 U.S.C. § 839e(g) (2006) (emphasis added).

Caithness, Iberdrola, JP05, Powerex, RNP, SCE, and TransAlta too easily dismiss section 7(g)'s savings clause. It is true that BPA adopted the OMP primarily to mitigate harm to fish by reducing excess spill. *See* Fredrickson *et al.*, OS-14-E-BPA-01, at 3, 5. However, ultimately these costs are caused by the interconnection of wind generation in BPA's balancing authority area and by BPA's displacement of generation as the balancing authority. Both of these actions are attendant to the transmission of power. Metcalf *et al.*, OS-14-E-BPA-03, at 6-8. As discussed in Issue 2.2.1, BPA's environmental responsibilities require BPA to take all reasonable actions to avoid excess spill. BPA has determined that the displacement of non-Federal generation in its balancing authority area is a reasonable action, because BPA is responsible for interconnecting these resources and retains operational control over them. Fredrickson *et al.*, OS-14-E-BPA-01, at 3. Thus, the addition of generation in BPA's balancing authority area increases the scope of BPA's displacement obligation.

Before the interconnection of significant wind generation in BPA's balancing authority area, BPA incurred no costs related to oversupply. Rather than spill, BPA would offer low-cost or free power to thermal generators to displace their generation. *Id.* Because these generators saved fuel costs by shutting down, they generally would accept BPA's offers. *Id.* at 3-4.

Some wind generators receive Federal and state benefits (PTCs and RECs) that are based on the amount of energy they generate. *Id*. They do not receive these credits for periods in which they are shut down, and therefore have an incentive to continue operating even when there is an oversupply of energy. *Id*. Under the OMP, BPA pays the wind generators to shut down so that BPA can generate additional hydropower and thereby minimize excess TDG to the extent practicable. In records of decision concerning the interconnection of wind projects, BPA noted that it would need to displace wind generation to mitigate potential harm to fish. Metcalf *et al.*, OS-14-E-BPA-03, at 7-8.

It was only after the interconnection of a significant amount of wind generation in BPA's balancing authority area that BPA incurred costs to manage oversupply. *Id.* at 8. The entirety of oversupply costs is the payment of compensation to those wind generators and payment of an independent evaluator who reviews generators' submissions of cost data. Fredrickson *et al.*, OS-14-E-BPA-01, at 6. But for the interconnections of wind generators, these costs would not exist. Metcalf *et al.*, OS-14-E-BPA-03, at 8.

Interconnection is a transmission service. In *Tennessee Power Co.*, 90 FERC ¶ 61,238, at 61,761 (2000), *reh'g dismissed*, 91 FERC ¶ 61,271 (2000), the Commission stated, "*Interconnection is an element of transmission service* and is already required to be provided under our *pro forma* tariff" (emphasis added). *See also Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 137 FERC ¶ 61,185, at P 62 (2011) (finding that under BPA's Environmental Redispatch policy, the predecessor to the Oversupply Management Protocol under which BPA displaced generation without compensation, "Bonneville affects the non-Federal generator's ability to inject energy at the point of receipt … [and] thereby impinges on the transmission service obtained by non-Federal generation."); 16 U.S.C. § 824k(i) (2006) ("The Commission shall have authority pursuant to section 824i of this title [interconnection authority] … to (A) order the Administrator

of the Bonneville Power Administration to provide transmission service ….") Therefore, the Commission required "public utilities that own, control, or operate facilities for transmitting energy in interstate commerce" to file revised open access transmission tariffs that included standard interconnection procedures and a standard interconnection agreement. Standardization of Generator Interconnection Agreements and Procedures, 104 FERC ¶ 61,103, at P 2 (2003).

Although BPA is not a public utility, in conformance with national policy BPA has adopted an open access transmission tariff, including the standardized interconnection agreement and procedures. Parker *et al*., OS-14-E-BPA-02, at 5-6. The adoption of this transmission policy has led to the interconnection and integration of over 4,500 megawatts of wind energy in BPA's balancing authority. *See id*.; Fredrickson *et al*., OS-14-E-BPA-01, at 4.

The Commission has recognized that oversupply involves transmission service. In conditionally accepting BPA's OMP, the Commission rejected BPA's initial rate proposal (50/50 cost sharing between power customers and wind generators) because wind generation was only "a fraction of the firm transmission service on Bonneville's system during oversupply situations," adding that BPA should allocate oversupply costs based on "Bonneville's *management of the transmission system* during oversupply situations." *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 141 FERC ¶ 61,234, at P 45 (2012) (emphasis added).

The issue of the appropriate allocation of fish and wildlife costs arose in BPA's 2012 power and transmission rate case, in which BPA concluded that section 7(g) does not require that all fish and wildlife costs be allocated to power rates if those costs are caused by the transmission of power. 2012 Wholesale Power and Transmission Rate Adjustment Proceeding (BP-12) Administrator's Final Record of Decision, BP-12-A-02, at 365. In that case, Iberdrola and Northwest Wind Group argued that section 7(g) prohibits BPA from allocating fish and wildlife costs to the Variable Energy Resources Balancing Service (VERBS) rate (VERBS is a control area service; control area services and ancillary services are services that ensure transmission system reliability). *Id.* at 359. In rejecting this argument, BPA first noted that section 7(g) makes clear that it "does not modify the Administrator's responsibility to allocate costs in accordance with other provisions of law" and that "[t]he Transmission System Act was a provision of law that was in effect on December 5, 1980[.]" *Id.* at 361. BPA added that section 7(a)(i) of the Northwest Power Act "provides that power and transmission rates shall be established in accordance with the Northwest Power Act, section 9 and 10 of the Transmission System Act, and section 5 of the Flood Control Act of 1944." *Id.* (citing 16 U.S.C. § 839e(a)(1) (2006)).

BPA next quoted section 9 of the Transmission System Act, which provides that BPA's rates shall be established

> (1) with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles, (2) *having regard to the recovery (upon the basis of application of such rate schedules to the capacity of the electric facilities of the projects) of the*

> *cost of producing and transmitting such electric power*, including the amortization of the capital investment allocated to power over a reasonable period of years and payments provided for in section 838i(b)(9) of this title.

16 U.S.C. § 838(g) (2006) (emphasis added). BPA concluded that section 9 of the Transmission System Act "clearly authorizes transmission rates to be set to recover all costs attendant to the transmission of power." BP-12 ROD at 362. Ancillary and control area services are necessary to maintain the reliability and stability of the transmission system, and the fish and wildlife costs allocated to these services were related to the operation of the power projects that provided the generation needed for the services. Therefore, section 9 authorized the allocation of the costs to transmission rates.

As BPA noted in the BP-12 ROD, section 7(a)(1) of the Northwest Power Act expressly preserves the mandates of sections 9 and 10 of the Transmission System Act ("rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act"), further underscoring congressional intent that costs attendant to the transmission of power be recovered through transmission rates. *Id.* at 363. In addition, section 10 of the Transmission System Act provides that "[t]he recovery of the cost of the Federal transmission system shall be equitably allocated between Federal and non-Federal power utilizing such system." 16 U.S.C. § 838h (2006). As discussed in Issue 2.3.3, this provision requires BPA to ensure that power customers pay power costs and transmission customers pay transmission costs. *See Bonneville Power Admin.*, 25 FERC ¶ 61,140, at 61,375-76 (1983).

As previously explained, oversupply costs are caused by the interconnection of wind generation in the BPA balancing authority area and by the management of the transmission system to fulfill BPA's environmental responsibilities. Therefore, as a cost of managing the transmission system, oversupply costs are appropriately recovered through transmission rates. Allocating all oversupply costs to power rates, as many rate case parties advocate, would violate section 10 of the Transmission System Act. As Iberdrola acknowledges, "A well-established tenet of statutory construction is that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void, or insignificant.'" Iberdrola Br., OS-14-B-IR-01, at 32 (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). Interpreting section 7(g) to require that oversupply costs be allocated to power rates would result in a conflict in BPA's statutory mandates. In addition, Federal users of the system would bear all the costs, even though non-Federal users of the transmission system contribute substantially to the incurrence of oversupply costs.

Therefore, like the fish and wildlife costs allocated to transmission rates in the 2012 rate case, oversupply costs are "costs attendant to the transmission of power" and are allocated under sections 9 and 10 of the Transmission System Act and section 7(a)(1) of the Northwest Power Act rather than under section 7(g). These costs would not occur if not for the interconnection of generation in BPA's balancing authority area and BPA's management of the transmission system. Metcalf *et al.*, OS-14-E-BPA-03, at 8.

JP03 and WPAG reach the same conclusion. As stated by JP03, "the costs BPA incurs in providing transmission service at any time, including during oversupply situations, are specifically governed by the provisions of sections 9 and 10 of the Transmission System Act, which was enacted into law [prior to the Northwest Power Act]." JP03 Br., OS-14-B-JP03-01, at 31-32. WPAG also concludes that oversupply costs are transmission costs already governed by sections 9 and 10 of the Transmission System Act, and that "by its own terms, [section] 7g does not require the Administrator to allocate OMP costs to power rates, and arguments that it does so are simply wrong." WPAG Br., OS-14-B-WG-01, at 7-8.

Caithness argues that section 10 of the Transmission System Act provides only that BPA may establish uniform transmission rates and that it must separate power and transmission-related costs, and does not authorize the allocation of oversupply costs to transmission rates. Caithness Br., OS-14-B-CS-01, at 30. Caithness also argues that section 7(a)(1) of the Northwest Power Act contains only general ratemaking language requiring BPA to recover its costs and does not address the specific mandates in section 7(g). Caithness Br., OS-14-B-CS-01, at 32-33. Iberdrola argues that section 7(g) is a mandatory cost allocation provision that applies unless another provision specifically states otherwise and that the general ratemaking language in section 7(a)(1) does not apply. Iberdrola Br., OS-14-B-IR-01, at 32. Iberdrola adds that reading section 7(g) "in an overbroad way" would render it meaningless. *Id.* at 33. Iberdrola also argues that, in any event, oversupply costs are not costs of transmitting power and are not covered by any other section. *Id.* at 34-35.

Caithness and Iberdrola both rely on a canon of statutory construction that specific terms govern over general terms. Caithness Br., OS-14-B-CS-01, at 33; Iberdrola Br., OS-14-B-IR-01, at 32. However, "the general/specific canon is not an absolute rule, but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2072 (2012). Here, Northwest Power Act section 7(g) is clear that it was not intended to abrogate ratemaking authorities held by the Administrator under other provisions of law. As explained above, oversupply costs are allocated under those provisions of law that govern the allocation of transmission costs.

SCE and RNP argue that, since the Transmission System Act was adopted before the Northwest Power Act, which created BPA's fish and wildlife program, fish and wildlife costs cannot be allocated by provisions of the Transmission System Act. SCE Br., OS-14-B-SC-01, at 13-14; RNP Br., OS-14-B-RN-01, at 18. SCE and RNP's argument is overbroad. Under the Transmission System Act, transmission costs are allocated to transmission rates. The passage of the Northwest Power Act did not change the nature of these costs or transform them into power costs; costs of interconnection remain costs of interconnection. Moreover, section 7(a)(1) of the Northwest Power Act expressly incorporates sections 9 and 10 of the Transmission System Act. Therefore, it does not matter that the Transmission System Act preceded the Northwest Power Act, as the latter expressly provides that the Transmission System Act remains in force.

Moreover, BPA incurred costs for protecting fish and wildlife even before passage of the Transmission System Act, much less passage of the Northwest Power Act. *See Pacific Northwest Electric Power Planning: Hearing on S. 885, H.R. 3508, H.R. 4159, and H.R. 5146 Before the H. Subcommittee on Energy and Power*, 96th Cong. 149, at 156 (Oct. 19, 1979) (BPA Administrator Sterling Munro testifying that "BPA has used the implied authority in Section 2(f) of the Bonneville Project Act to expend or commit about $3.3 million through fiscal 1980 for programs to revitalize fisheries." The Bonneville Project Act was enacted in 1937.). In addition, BPA adopted the OMP to fulfill its obligations under the Clean Water Act and the Endangered Species Act. These obligations exist apart from BPA's other environmental responsibilities under its enabling statutes, and they are not pre-empted by fish and wildlife measures adopted under the Northwest Power and Conservation Council's fish and wildlife program. For both these reasons, allocation of fish and wildlife expenses does not depend solely on the Northwest Power Act.

Caithness, Iberdrola, JP05, SCE, and RNP also argue that allocating oversupply costs to transmission rates would be contrary to BPA precedent. Caithness Br., OS-14-B-CS-01, at 24-27; Iberdrola Br., OS-14-B-IR-01, at 29-30; JP05 Br., OS-14-B-JP05-01, at 34; SCE Br., OS-14-B-SC-01, at 9-10; RNP Br., OS-14-B-RN-01, at 19. They cite BPA's 2010 rate case, in which BPA rejected a proposal to allocate secondary sales revenues to Wind Balancing Service on the grounds that the Wind Balancing Service was not a power rate and section 7(g) required that secondary sales revenues be allocated to power rates. Caithness Br., OS-14-B-CS-01, at 26; Iberdrola Br., OS-14-B-IR-01, at 30 n.102; JP05 Br., OS-14-B-JP05-01, at 34; SCE Br., OS-14-B-SC-01, at 9-10; RNP Br., OS-14-B-RN-01, at 19 (all citing 2010 Wholesale Power and Transmission Rate Adjustment Proceeding (BPA-10) Administrator's Final Record of Decision, WP-10-A-02/TR-10-A-02, at 308).

The 2010 rate case concerned a significantly different issue. Secondary sales—the sale of additional power off-system after BPA has satisfied its contractual obligations for the sale of power—are purely a power function. The revenues from these sales are not created by the interconnection of generators or by any other transmission action. In allocating these revenues to power rates in the 2010 rate case, BPA said "this treatment of secondary revenues is consistent with the responsibility of power requirements customers to pay BPA's power costs." BP-10 ROD, WP-10-A-02/TR-10-A-02, at 308.

As discussed above, oversupply costs are created by transmission actions. As BPA recognized in the BP-12 ROD, in which BPA allocated certain fish and wildlife costs to transmission rates, the evaluation in the 2010 rate case "did not consider the factual and statutory arguments and factors that have now been more fully and, BPA believes, correctly addressed in this ROD." BP-12 ROD, BP-12-A-02, at 362.

Finally, several rate case parties cite Commission and Ninth Circuit cases for the proposition that section 7(g) requires that fish and wildlife costs be allocated to power rates. Caithness Br., OS-14-B-CS-01, at 28-29 (citing *U.S. Dep't of Energy, Bonneville Power Admin.*, 36 FERC ¶ 61,335, at 61,810 (1986) (addressing the allocation of fish and wildlife costs among firm and

nonfirm power customers)); Iberdrola Br., OS-14-B-IR-01, at 29 n.100 (citing *Cent. Lincoln Peoples' Util. Dist. v. Johnson*, 735 F.2d 1101, 1123-24 (9th Cir. 1984) (addressing the allocation of fish and wildlife costs among power customers)). Both cases cited by the parties concern only the allocation of fish and wildlife costs among power customers. They do not address the issue of whether the costs are power costs in the first place, an issue that was not raised. Indeed, Caithness correctly recognizes that the Ninth Circuit's decision in *Central Lincoln* was not a dispute over whether the costs were power or transmission costs. As Caithness concluded, "the case is inapposite." Caithness Br., OS-14-B-CS-01, at 21. Therefore, there is no conflict between BPA's draft decision in this Draft ROD and prior Commission or Ninth Circuit decisions.

Draft Decision

BPA's cost allocation methodology complies with section 7(g) of the Northwest Power Act.

Issue 2.3.2

Whether BPA's cost allocation methodology complies with section 211A of the Federal Power Act.

Parties' Positions

Caithness, Iberdrola, JP05, and RNP argue that BPA's cost allocation methodology does not result in comparable rates, because it allocates costs to generators displaced under the OMP based on scheduled use. Caithness Br., OS-14-B-CS-01, at 17-18; Iberdrola Br., OS-14-B-IR-01, at 44-47; JP05 Br., OS-14-B-JP05-01, at 43-44; RNP Br., OS-14-B-RN-01, at 13-15. According to these parties, displaced generators are not using the transmission system when they are displaced and therefore should not be allocated any oversupply costs. Caithness Br., OS-14-B-CS-01, at 17-18; Iberdrola Br., OS-14-B-IR-01, at 44-47; JP05 Br., OS-14-B-JP05-01, at 43-44; RNP Br., OS-14-B-RN-01, at 13-15.

JP05 and SCE argue that BPA's cost allocation methodology does not result in comparable rates, because oversupply costs should be allocated exclusively to power rates. JP05 Br., OS-14-B-JP05-01, at 43; SCE Br., BP-14-B-SC-01, at 16.

SCE also argues that the rates are not comparable because BPA's transmission customers are required to pay the same rate as BPA's own generation for "vastly inferior" transmission service. SCE Br., OS-14-B-SC-01, at 15. SCE adds that BPA's cost allocation methodology "discriminates between and among transmission customers" by allocating costs only to transmission customers that source power from within BPA's balancing authority area. *Id.*

JP03 and WPAG argue that BPA's cost allocation methodology fails to result in comparable rates, because it allocates too much cost to power customers and none to wheeling customers. JP03 Br., OS-14-B-JP03-01, at 29-30; WPAG Br., OS-14-B-WG-01, at 13-14.

BPA Staff's Position

This is a legal issue and was not addressed by Staff in testimony.

Evaluation of Positions

Under section 211A of the Federal Power Act, the Commission has the authority to require unregulated transmitting utilities (a category that includes BPA) to provide transmission services "at rates that are comparable to those that the unregulated transmitting utility charges itself" and "on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential." 16 U.S.C. §§ 824j-1(b)(1) and (b)(2) (2006).

In 2011, a group of BPA's transmission customers filed a complaint under section 211A alleging that BPA's Environmental Redispatch policy, under which BPA displaced generators without compensation, failed to provide comparable transmission service. The Commission agreed and issued an order under section 211A requiring BPA to file tariff revisions that provided for comparable transmission service. *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 137 FERC ¶ 61,185, at P 62 (2011). In response to the Commission's order, BPA filed its Oversupply Management Protocol, under which BPA would compensate displaced generators for certain costs. Fredrickson *et al.*, OS-14-E-BPA-01, at 5. In the filing, BPA informed the Commission that it intended to file an initial rate proposal in its rate case allocating 50 percent of oversupply costs to power customers and 50 percent to wind generators. *See id.* at 7. In rejecting this proposal, the Commission stated:

> Bonneville has not demonstrated that all customers taking firm transmission service would bear an appropriate cost burden during Bonneville's management of the transmission system during oversupply situations. Transmission service for wind generators that submit displacement costs represents a fraction of the firm transmission service on Bonneville's system during oversupply situations, yet those entities are allocated half of displacement costs. Based on the record in this proceeding, we are not persuaded that a 50/50 sharing of displacement costs results in comparable transmission service for displaced wind generators.

Iberdrola Renewables, Inc. v. Bonneville Power Admin., 141 FERC ¶ 61,234, at P 45 (2012). The Commission conditionally accepted the terms and conditions of the OMP subject to BPA's submitting a compliance filing "setting forth a methodology to allocate displacement costs in a manner that equitably allocates such costs to all firm transmission customers based on their respective transmission usage during oversupply situations, or setting forth a different method altogether that ensures comparability in the provision of transmission service by Bonneville." *Id.* at P 46 (footnotes omitted).

BPA's cost allocation methodology provides "rates that are comparable to those that [BPA] charges itself" pursuant to section 211A. As explained in Issue 2.2.1, BPA's methodology

allocates costs in proportion to each generator's schedule, whether Federal or non-Federal. Therefore, BPA's cost allocation methodology ensures that non-Federal generation is charged the same rate as Federal generation.

JP05 and SCE argue that the allocation method does not result in comparable rates, because oversupply costs are power costs. JP03 Br., OS-14-B-JP03-01, at 29-30; WPAG Br., OS-14-B-WG-01, at 13-14. As explained in Issue 2.3.1, oversupply costs did not exist until BPA interconnected wind generators. Also, BPA's obligation to displace generation is defined by the amount of generation BPA has operational control over. Both interconnection and the exercise of operational control are actions attendant to the transmission of power. Metcalf *et al.*, OS-14-E-BPA-03, at 6-8. Thus, oversupply costs are appropriately allocated to transmission rates.

Caithness, Iberdrola, JP05, and RNP argue that BPA's allocation of costs to scheduled use of the transmission system fails to result in comparable rates, because it allocates costs to generators that are displaced and therefore do not use the transmission system during oversupply events. Caithness Br., OS-14-B-CS-01, at 17-18; Iberdrola Br., OS-14-B-IR-01, at 44-47; JP05 Br., OS-14-B-JP05-01, at 43-44; RNP Br., OS-14-B-RN-01, at 13-15. It is the scheduled use, however, that causes BPA to incur costs. Each scheduled use by a wind generator within BPA's balancing authority area increases BPA's displacement obligation and thereby increases BPA's costs. Metcalf *et al.*, OS-14-E-BPA-03, at 5. Therefore, allocating oversupply costs based on scheduled use meets comparability requirements. Moreover, as explained in Issue 2.2.1, even after generators are displaced, BPA's transmission is still being used to deliver power to the customers that purchase power from those generators.

JP03 and WPAG argue that BPA's cost allocation methodology fails to result in comparable rates, because it allocates too much cost to Federal generation and none to wheelers. JP03 Br., OS-14-B-JP03-01, at 29; WPAG Br., OS-14-B-WG-01, at 13-14. JP03 asserts that BPA should allocate fewer costs to power customers, because they "do not cause the costs and benefit from the costs only to the same extent and in the same manner as all other BPA customers who benefit from having a reliable transmission system." JP03 Br., OS-14-B-JP03-01, at 29. JP03 also asserts that excluding wheelers gives them a "free ride" at power customers' expense. *Id.* JP03 concludes that the only method that would meet comparability would be to treat oversupply costs the same as any other transmission cost and allocate them to Network transmission rates. *Id.* at 30. WPAG advances similar arguments. WPAG Br., OS-14-B-WG-01, at 13-14.

First, only wheelers of generation sourced outside of BPA's balancing authority area are exempt from cost allocation. This distinction is critical; as already explained, generation outside of BPA's balancing authority area does not contribute to the costs of oversupply, because BPA does not have the responsibility to displace these generators in order to mitigate excess spill.

Central to JP03 and WPAG's arguments is the assumption that the OMP is primarily a reliability measure that benefits all users of the transmission system. That is not the case. The protocol is primarily designed to ensure that BPA complies with its environmental responsibilities. To satisfy its reliability obligations, BPA must ensure that generation equals load at all times.

BPA could meet this test if it could spill all of the excess water, but BPA cannot do so because of the effect the excess spill may have on fish and other aquatic species. *See* Issue 2.2.1. Instead, BPA displaces non-Federal generation and generates additional hydropower to minimize excess TDG to the extent practicable. This course of action also ensures that generation matches load, but it does so in a way that mitigates the potential harm to fish and other aquatic species. Thus, while BPA may either spill or displace non-Federal generation to satisfy its reliability obligations, it must choose the course of action that also satisfies its environmental responsibilities. It is the need to adopt this option that causes BPA to incur costs.

SCE's argument that BPA's cost allocation methodology "discriminate[s] between and among transmission customers," SCE Br., OS-14-B-SC-01, at 15, also appears to be based on BPA's exclusion of wheelers from cost allocation. As stated above, wheelers of generation sourced outside of the balancing authority area do not contribute to BPA's fish and wildlife obligations and do not cause oversupply costs. BPA also does not agree with SCE's claim that displaced generators receive "vastly inferior" service, *id.* BPA displaces generators only when essential for it to meet its environmental responsibilities, and then only because these generators would otherwise cause BPA to fail to meet those responsibilities. Moreover, BPA compensates displaced generators for the losses caused by the displacement, and their loads are still served.

Draft Decision

BPA's cost allocation methodology complies with section 211A of the Federal Power Act.

Issue 2.3.3

Whether the cost allocation methodology equitably allocates costs between Federal and non-Federal users of the transmission system under section 10 of the Transmission System Act and section 7(a)(2)(C) of the Northwest Power Act.

Parties' Positions

Caithness, Iberdrola, JP05, and RNP all argue that the equitable allocation standard of section 10 of the Transmission System Act and section 7(a)(2)(C) of the Northwest Power Act require that BPA separately account for power and transmission costs to prevent cross-subsidization between power and transmission rates. Caithness Br., OS-14-B-CS-01, at 30-32; Iberdrola Br., OS-14-B-IR-01, at 40-41; JP05 Br., OS-14-B-JP05-01, at 37-38; RNP Br., OS-14-B-RN-01, at 21-22. These parties state that because oversupply costs are power costs BPA cannot allocate those costs to transmission rates. Caithness Br., OS-14-B-CS-01, at 30-32; Iberdrola Br., OS-14-B-IR-01, at 40-41; JP05 Br., OS-14-B-JP05-01, at 37-38; RNP Br., OS-14-B-RN-01, at 21-22.

JP03 and WPAG argue that the equitable allocation standard was intended to ensure that each user of the transmission system bears its fair share of costs, and that BPA Staff's proposed allocation excludes a large portion of transmission users and shifts too much of the costs to

Federal users of the system. JP03 Br., OS-14-B-JP03-01, at 27-28; WPAG Br., OS-14-B-WG-01, at 12.

BPA Staff's Position

This is a legal issue and was not addressed by Staff in testimony.

Evaluation of Positions

Section 10 of the Transmission System Act provides, in part, that "[t]he recovery of the costs of the Federal transmission system shall be equitably allocated between Federal and non-Federal power utilizing such system." 16 U.S.C. § 838h (2006). This standard was reiterated in section 7(a)(2)(C) of the Northwest Power Act, under which the Commission approves BPA's transmission rates upon a finding that such rates "equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system." 16 U.S.C. § 839e(a)(2)(C) (2006). *See Cent. Lincoln Peoples' Util. Dist. v. Johnson*, 735 F.2d 1101, 1114-15 (9th Cir. 1984) (the equitable allocation requirement of section 7(a)(2)(C) of the Northwest Power Act "has its roots" in section 10 of the Transmission System Act). The Commission has interpreted section 7(a)(2)(C) to require a separate accounting of power and transmission costs so that the Commission can determine that "(1) transmission revenues are only used to repay transmission costs; (2) *costs assigned to transmission are only transmission related costs*; and (3) any deficiencies or surplus in transmission revenues are being tracked and collected or credited to the appropriate customer class." *U.S. Dep't of Energy–Bonneville Power Admin.*, 25 FERC ¶ 61,140, at 61,375-76 (1983) (emphasis added).

Various parties argue that because oversupply costs are power costs, allocating the costs to transmission rates fails to assign only transmission-related costs to transmission rates. Caithness Br., OS-14-B-CS-01, at 30-32; Iberdrola Br., OS-14-B-IR-01, at 40-41; JP05 Br., OS-14-B-JP05-01, at 37-38; RNP Br., OS-14-B-RN-01, at 21-22. As explained in Issue 2.3.1, the costs are caused by BPA's interconnection of wind generators and BPA's management of the transmission system during oversupply conditions. Both interconnection and the exercise of operational control are actions attendant to the transmission of power. Therefore, assigning oversupply costs to transmission rates is consistent with the equitable allocation standard.

Moreover, allocating oversupply costs to transmission rates is consistent with the Commission's direction. In its order conditionally accepting the OMP, the Commission stated that BPA should submit "a methodology to allocate displacement costs in a manner that *equitably allocates such costs to all firm transmission customers based on their respective transmission usage during oversupply situations*, or setting forth a different method altogether that ensures comparability in the provisions of transmission service provided by Bonneville." *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 141 FERC ¶ 61,234, at P 46 (2012) (emphasis added). In its order denying rehearing, the Commission repeated that allocating costs based on transmission usage during oversupply conditions was "just one possible approach as an option that may result in an *equitable allocation of costs.*" *Iberdrola Renewables, Inc.*, 143 FERC ¶ 61,274, at P 39 (2013) (emphasis added).

JP03 argues that BPA should allocate oversupply costs to the Network segment, and that allocating costs only to generators within BPA's balancing authority area during oversupply events shifts a large portion of the costs from wheelers of non-Federal power to BPA's power customers. JP03 Br., OS-14-B-JP03-01, at 27-28. Similarly, WPAG argues that Staff's proposal allocates too much cost to power customers even though they are not the cause of oversupply payments and "do not inordinately benefit from the transmission system reliability procured by oversupply payments." WPAG Br., OS-14-B-WG-01, at 12. WPAG also challenges the exclusion of wheeling customers (customers outside the balancing authority area) from an allocation of oversupply costs. *Id.* As explained in Issue 2.2.1 of this Draft ROD, to satisfy its environmental responsibilities BPA displaces non-Federal generation in its balancing authority area to mitigate excess dissolved gas levels to the extent practicable. Fredrickson *et al*., OS-14-E-BPA-01, at 3-4. BPA is not obligated to displace generators outside its balancing authority area. Therefore, these generators do not contribute to BPA's costs. Allocating costs only to generators within BPA's balancing authority area does not shift costs; it assigns costs in the first instance to the parties that cause the costs.

WPAG also incorrectly assumes that implementation of the OMP is primarily a reliability measure intended to benefit all users of the transmission system. WPAG Br., OS-14-B-WG-01, at 15. That is not the case; this argument is addressed in Issue 2.2.1.

BPA's cost allocation satisfies the equitable allocation standard, because it allocates costs according to use: each customer's costs are based on that customer's scheduled use of the transmission system. Moreover, the allocation method draws no distinction between Federal and non-Federal use. Since each customer pays for only its scheduled use of the system, no Federal power customer pays for any non-Federal use, and no non-Federal customer pays for any Federal use. All costs of Federal use of the system are allocated to Federal users, and all costs of non-Federal use of the system are allocated to non-Federal users. The allocation is equitable.

Draft Decision

BPA's cost allocation methodology equitably allocates costs to Federal and non-Federal transmission users and complies with section 10 of the Transmission System Act and section 7(a)(2)(C) of the Northwest Power Act.

Issue 2.3.4

Whether BPA's rate proposal and BPA's refusal to pay negative prices under bilateral agreements violate BPA's rate directive to establish rates in accordance with sound business principles.

Parties' Positions

Iberdrola argues that BPA's failure to negotiate a mutually agreeable arrangement for displacement during oversupply events and BPA's refusal to pay negative prices are inconsistent with its obligation to set rates consistent with sound business principles. Iberdrola Br., OS-14-B-IR-01, at 57. Caithness argues that BPA is using transmission monopoly power to control market supply through displacement, and that such action violates sound business principles. Caithness Br., OS-14-B-CS-01, at 36-38.

Caithness and RNP both argue that by proposing to shift power costs to transmission rates, BPA is violating its obligation to set transmission rates consistent with sound business principles. Caithness Br., OS-14-B-CS-01, at 40; RNP Br., OS-14-B-RN-01, at 22. RNP further argues that even if it were proper for BPA to allocate oversupply costs to transmission rates, BPA's negative pricing policy is inconsistent with sound business principles because oversupply costs are "not as low as possible." RNP Br., OS-14-B-RN-01, at 23.

BPA Staff's Position

This issue was raised for the first time in the parties' initial briefs. Consequently, Staff has not taken a position on the matter.

Evaluation of Positions

The Transmission System Act provides that BPA shall set rates "with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles." 16 U.S.C. § 838g. Iberdrola, Caithness, and RNP raise issues with the OMP that are outside the scope of this proceeding, whose purpose is to set rates to recover oversupply costs. As stated in the Federal Register notice, BPA initiated the OS-14 proceeding solely to "establish rates to recover the costs already incurred under the Oversupply Management Protocol, and any future costs incurred up to September 30, 2015, in the event the Oversupply Management Protocol is renewed after it expires on March 30, 2013." 77 Fed. Reg. 66,963, 66,964 (Nov. 8, 2012). The notice specifically excluded from the case any issue regarding terms of the oversupply protocol:

> Pursuant to Rule 1010.3(f) of BPA's Procedures, the Administrator limits the scope of this proceeding to issues concerning the rates for recovering the costs of the Oversupply Management Protocol described in Part II.A of this notice. In particular, the following issues are not part of the scope of the case, and the Hearing Officer is directed to strike all testimony concerning these issues: *the terms of the Oversupply Management Protocol*; whether the Oversupply

> Management Protocol complies with the Commission's Order issued on December 7, 2011; whether BPA took all actions to avoid using the Oversupply Management Protocol, including the payment of negative prices to generators outside of BPA's balancing authority area.

Id. at 66,965 (emphasis added).

All of the parties that have raised this issue are also parties to the case before the Commission under section 211A of the Federal Power Act and to cases in the Ninth Circuit Court of Appeals challenging the OMP. For example, the parties have argued before the Commission that BPA should pay negative prices rather than use the OMP. That policy decision is not at issue here. Similarly, any argument that BPA is violating alleged monopoly power is unrelated to the establishment of rates to recover oversupply costs. This rate case is not the proper forum for any of these arguments.

Caithness and RNP also argue that BPA's rate proposal shifts power costs to transmission rates and thereby violates the statutory directive to set transmission rates as low as possible consistent with sound business principles. Caithness Br., OS-14-B-CS-01, at 40; RNP Br., OS-14-B-RN-01, at 22-23. This argument assumes that oversupply costs are power costs. As discussed in Issue 2.2.1, oversupply costs are not power costs.

Moreover, the "lowest possible rates" standard is an overall standard that applies to BPA's rates as a whole. Myriad factors go into setting rates, involving a variety of legal and policy directives. If BPA were required to satisfy this standard separately for each rate, it would be impossible to balance all of these factors and establish an appropriate mix of different rates.

The parties have presented no evidence that BPA's actions are inconsistent with sound business principles. They have merely made assertions. Moreover, BPA has broad discretion to determine how to operate in a businesslike manner. The Ninth Circuit has said that "Congress has delegated to BPA the discretion to determine how best to further BPA's business interests consistent with its public mission." *APAC v. BPA*, 126 F.3d 1158, 1171 (9th Cir. 1997). The Court has been "particularly deferential" to "the agency's assessment of whether its actions 'further BPA's business interests consistent with its public mission.'" *PNGC v. BPA*, 550 F.3d 846, 861 (9th Cir. 2008). The Court has further found that it "may only set aside such an assessment if it is unreasonable, meaning that it is 'contrary to clear congressional intent or that [it] frustrate[s] the policy Congress sought to implement.'" *PNGC v. BPA*, 596 F.3d 1065, 1080 (9th Cir. 2010) (alteration in original).

In *APAC*, the Court addressed questions concerning the unbundling of transmission and power service as part of the deregulation of the energy markets. There, the Court noted that "Congress never foresaw unbundling transmission service" but went on to find that "Congress addressed BPA's authority to act in response to unforeseen eventualities" such as unbundling by giving the Administrator significant discretion to determine how to further BPA's business interest. *APAC*,

126 F.3d at 1171. As in *APAC*, BPA today is responding to changes in the energy landscape. BPA explained at length in its Commission filing why it chose not to pay negative prices.

Draft Decision

BPA's rate proposal does not violate its obligation to set rates at the lowest possible cost consistent with sound business principles. Whether BPA's decision not to pay negative prices is consistent with sound business principles is outside the scope of this proceeding.

Issue 2.3.5

Whether BPA's intent to apply for credits under section 4(h)(10)(C) of the Northwest Power Act contradicts its position that oversupply costs are transmission costs.

Parties' Positions

Caithness, JP05, Powerex, RNP, and SCE all argue that Staff's testimony that BPA is in the process of applying for 4(h)(10)(C) credits demonstrates that oversupply costs are fish and wildlife costs and must be allocated to power rates. Caithness Br., OS-14-B-CS-01, at 41; JP05 Br., OS-14-B-JP05-01, at 30; Powerex Br., OS-14-B-PX-01, at 21; RNP Br., OS-14-B-RN-01, at 20-21; SCE Br., OS-14-B-SC-01, at 11-12. These parties argue that BPA's intent to apply for 4(h)(10)(C) credits contradicts its position that oversupply costs are transmission costs. Caithness Br., OS-14-B-CS-01, at 41; JP05 Br., OS-14-B-JP05-01, at 32; Powerex Br., OS-14-B-PX-01, at 21; RNP Br., OS-14-B-RN-01, at 21; SCE Br., OS-14-B-SC-01, at 12.

BPA Staff's Position

In its supplemental testimony, Staff testified that BPA was in the process of applying for 4(h)(10)(C) credits for oversupply costs. Parker *et al.*, OS-14-E-BPA-02, at 14. The proposed oversupply rate schedule included a provision to reduce the oversupply cost by 22.3 percent if BPA receives credits. *Id.* at 14, Att. 1 at 1. In its rebuttal testimony, Staff testified that oversupply costs may qualify for credits because the costs are incurred by the need to operate Federal hydropower projects to mitigate the effect excess spill may have on fish and other aquatic species. Metcalf *et al*., OS-14-E-BPA-03, at 9. Staff added that neither section 4(h)(10) nor section 7 of the Northwest Power Act states how such costs are to be recovered in rates. *Id.*

Evaluation of Positions

Section 4(h)(10)(C) requires that the costs of fish and wildlife measures be allocated "among the various hydroelectric projects" and further allocated "to the various project purposes." 16 U.S.C. § 839b(h)(10)(C). As noted by RNP, when applying for the credits BPA submits a signed certification to the Department of Energy with the following statement by the Administrator:

> I certify that this estimate of credits is completely due to operations and expenditures incurred in this fiscal year in compliance with the Administrator's

> statutory mandate to protect, mitigate, and enhance fish and wildlife, and their habitats, in the Columbia River Basin under section 4(h)(10)(C) of the Pacific Northwest Power Planning and Conservation Act.

RNP Br., OS-14-B-RN-01, at 21.

BPA Staff testified that there are multiple causes of oversupply conditions, including, in addition to the need to mitigate the effect excess spill may have on fish and other aquatic species, lack of load and Federal and state incentives that provide a disincentive for renewable generation to accept displacement. Metcalf *et al*., OS-14-E-BPA-03, at 6-7. As discussed in Issue 2.3.1, oversupply costs are caused by the interconnection of wind generation in BPA's balancing authority area and BPA's management of the transmission system during periods of excess spill.

Therefore, the costs are not completely caused by the Administrator's statutory mandate to protect, mitigate, and enhance fish and wildlife and do not qualify for credits. The provision in the rate schedule for reducing the costs by the amount of the credits will be removed.

Draft Decision

Oversupply costs do not qualify for 4(h)(10)(C) credits. The provision in the rate schedule to reduce the rate for 4(h)(10)(C) credits will be removed.

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3.0 RATE SCHEDULE

3.1 Description of Proposed Rate Schedule

In most respects, the oversupply rate schedule that is being proposed in this Draft Record of Decision is the same as the rate schedule in BPA Staff's rebuttal testimony. Metcalf *et al*., OS-14-E-BPA-03, Att. 1. The oversupply rate is calculated on a monthly basis by dividing the Displacement Cost by Scheduled Generation. (In testimony, Staff used the term Actual Transmission Use; to avoid confusion between scheduled generation and actual generation, the rate schedule will use the term Scheduled Generation.) *Id*., Att. 1, at 1.

Displacement Cost is the amount paid under the OMP to displace generating facilities in the BPA balancing authority area. *Id*. The definition of "Displacement Cost" will be revised to reflect the draft decision that oversupply costs do not qualify for 4(h)(10)(C) credits. *See* Issue 2.3.5. Displacement costs for FY 2012 will be recovered through the oversupply rate rather than taken out of reserves. *See* section 3.2.1. The other type of costs related to oversupply is administrative costs, which are the costs paid to the independent third-party evaluator selected by BPA under the OMP. The oversupply rate will not include administrative costs, which will be recovered 50 percent from power rates and 50 percent from transmission rates. *See* section 3.2.2.

Oversupply costs are charged to generators in the BPA balancing authority area based on their Scheduled Generation, as measured by their transmission schedules during oversupply hours. *See* Issue 2.2.1. Non-Federal generators that did not submit costs under the 2012 OMP are exempted from an allocation of FY 2012 oversupply costs. *See* section 3.2.3. Oversupply costs charged to BPA are recovered from power customers using Modified Tier 1 Cost Allocators (TOCAs). Metcalf *et al.*, OS-14-E-BPA-03, at 14-15. TOCAs are customer-specific billing determinants, expressed as percentages, that are established under the Tiered Rate Methodology for Priority Firm power customers. 2012 Wholesale Power and Transmission Rate Adjustment Proceeding (BP-12) Tiered Rate Methodology, BP-12-A-03, at 57. For the oversupply rate, the TOCAs will be modified to allocate oversupply costs to PF and non-PF power customers. Fredrickson *et al.*, OS-14-E-BPA-01, at 9-11.

The Unauthorized Decrease Charge for Slice customers that Staff proposed in its supplemental testimony (Parker *et al.*, OS-14-E-BPA-02, at 15-17 & Att. 2) is not being adopted. However, BPA may institute a special 7(i) proceeding to consider the UDC or include a proposal for such a charge in the next general rate case if BPA observes actions that exacerbate oversupply conditions. BPA plans to meet with interested customers to discuss the enforcement of Slice minimum delivery amounts during oversupply events. Metcalf *et al.*, OS-14-E-BPA-03, at 16-17.

Parties did not address the rate schedule in their initial briefs. However, certain features of the proposed rate schedule are explained below.

3.2 Rate Schedule Features

3.2.1 Recovery of FY 2012 Displacement Costs

The proposed oversupply rate recovers displacement costs incurred in FY 2012 through FY 2015. In their narrative statements, JP03 and WPAG argued that BPA should recover FY 2012 and FY 2013 oversupply costs through the use of Transmission Services' financial reserves. JP03 Statement, OS-14-P-JP03-01, at 6-7; WPAG Statement, OS-14-P-WG-01, at 5, 13-15.

In each of its rate proposals, Staff has proposed to collect all displacement costs incurred from March 31, 2012, through September 30, 2015, through the oversupply rate. Fredrickson *et al.*, OS-14-E-BPA-01, Att. 1, at 1, 5; Parker *et al.*, OS-14-E-BPA-02, at 13 & Att. 1, at 1; Metcalf *et al.*, OS-14-E-BPA-03, Att. 1, at 1.

Since BPA incurred no displacement costs during FY 2013, the only costs it has not yet recovered are the FY 2012 displacement costs. BPA incurred $2.7 million in displacement costs in FY 2012. BPA initially paid 2012 displacement costs out of financial reserves, just as it pays other unanticipated costs during a rate period. JP03 argues that recovering the FY 2012 displacement costs through the oversupply rate would be retroactive ratemaking, which should be discouraged. Baker *et al.*, OS-14-E-JP03-01, at 13. JP03 implies that it would be better to recover the FY 2012 and FY 2013 oversupply costs from "transmission customers as a whole" rather than from "specific customers." *Id.* at 16.

WPAG states that paying FY 2012 and FY 2013 OMP costs by using Transmission Services' financial reserves should not pose a financial risk to BPA. WPAG Statement, OS-14-P-WG-01, at 13-14. Further, WPAG states, its proposal comports with and advances the allocation directives in BPA's enabling legislation because it implicitly allocates the costs to all transmission customers in proportion to their contribution to transmission reserves and helps ensure that transmission rates are set at the lowest possible level consistent with sound business principles. *Id.* at 14. WPAG adds that use of reserves to pay FY 2012 and FY 2013 OMP costs would be easily administered and is consistent with Commission guidance, and BPA would not be unduly burdening certain transmission users to the benefit of others. *Id.*

Although BPA necessarily used reserves to pay the FY 2012 costs (since no oversupply rate was yet in place), its intent to recover those costs through the oversupply rate has been clear throughout the OS-14 rate case. *See* Fredrickson *et al.*, OS-14-E-BPA-01, Att. 1, at 1, 5; Parker *et al.*, OS-14-E-BPA-02, at 13; Metcalf *et al.*, OS-14-E-BPA-03, Att. 1, at 1. Even when the costs were incurred, BPA clearly stated that it would be developing a rate to recover the costs. *Iberdrola Renewables, Inc., v. Bonneville Power Admin.*, FERC Docket No. EL11-44-002, Compliance Filing of the Bonneville Power Administration (Mar. 6, 2012).

Recovering FY 2012 displacement costs is not retroactive ratemaking. A utility engages in retroactive ratemaking when it retroactively adjusts rates for past periods to compensate for an underrecovery. For example, assume that a utility sets rates for 2013 based on a given projected

sales level. Because sales are less than projected, the utility recovers less revenue than it expected. If the utility then adds the underrecovery to future rates, it has engaged in retroactive ratemaking. Here, BPA is not adjusting past rates but simply recovering actual costs incurred in FY 2012, consistent with its statutory mandate to recover its costs. Thus, recovery of past oversupply costs would not be retroactive ratemaking even if the concept applied to BPA, which it does not. A thorough discussion on BPA and retroactive ratemaking is contained in the 2007 Supplemental Final ROD, WP-07-A-05, at 22-30.

WPAG states that using reserves should not pose a financial risk to BPA. WPAG Statement, OS-14-P-WG-01, at 13-14. The issue of using reserves to pay rate period costs was thoroughly discussed in the BP-14 Power and Transmission Rate Proceeding Administrator's Record of Decision, BP-14-A-03, issues 4.2.5.1 and 4.2.5.5. Although the Administrator decided to use a specified amount of reserves to mitigate a relatively large proposed transmission rate increase, he was concerned that use of reserves for this purpose might be perceived by credit rating agencies as BPA's unwillingness to recover its full costs through rates. BP-14 ROD, BP-14-A-03, at 142-44. Using reserves to pay for FY 2012 oversupply costs might add to the credit rating agencies' perception that BPA is not willing to recover its full costs through rates.

WPAG argues that 2012 displacement costs will not recur. Nevertheless, BPA has not yet recovered the FY 2012 oversupply costs and is charged with setting rates to recover all of its costs.

3.2.2 <u>Recovery of Administrative Costs</u>

Staff's supplemental proposal was to collect FY 2012 administrative costs under the oversupply rate in the same manner as FY 2012 displacement costs, and to recover FY 2013-2015 costs 50 percent through general power rates and 50 percent through general transmission rates. Parker *et al.*, OS-14-E-BPA-02, at 8-9. Staff's rebuttal proposal was to use financial reserves to pay FY 2012 administrative costs. Metcalf *et al.*, OS-14-E-BPA-03, at 16.

In response to Staff's supplemental proposal, JP03 testified that BPA should recover all administrative costs for all years through the proposed oversupply rate based on cost causation and comparability standards. Baker *et al*., OS-14-E-JP03-01, at 17. In its testimony, Caithness described the FY 2012 administrative cost as "miniscule" [*sic*] and supported using power financial reserves to pay FY 2012 administrative costs and recovering future administrative costs through power rates. Pascoe, OS-14-E-CS-01, at 20.

The administrative cost is the cost of the independent evaluator selected by BPA under the OMP. This cost has been, and is expected to remain, modest. It was $249,000 in FY 2012 and $180,000 in FY 2013 and is expected to remain at the latter level through the rate period. BPA has accounted for these costs as regulatory assets with the expectation that they will be recovered through rates.

If this cost were to be recovered through the oversupply rate, in years in which there are no oversupply events BPA would be unable to recover the costs, because the billing determinants

would be zero. Metcalf *et al.*, OS-14-E-BPA-03, at 16. In such a case, the costs would have to be carried forward or taken from reserves. BPA would have to determine how to allocate the costs among customers when there were no oversupply events in the year in which the costs were incurred.

To avoid those difficulties, BPA Staff proposed to split all administrative costs 50/50 between power and transmission rates. This methodology is easy to implement. Given the relatively small cost, this approach is reasonable. BPA will continue to treat administrative costs as regulatory assets through FY 2015, and will include the accrued administrative costs in the power and transmission revenue requirements developed for FY 2016-2017.

3.2.3 Allocation of FY 2012 Displacement Costs

In its initial proposal Staff proposed functionalizing oversupply costs 50 percent to the power function and 50 percent to the transmission function. Fredrickson *et al.*, OS-14-E-BPA-01, at 8. Under this proposal, oversupply costs functionalized to the power function would be allocated to the PF, IP, and NR rates. *Id.* at 9. Costs functionalized to transmission would be allocated to a new control area service rate and charged only to generators that submitted costs under the OMP. *Id.* at 11. Only wind generators submitted costs in FY 2012. *Id.*, Att. 2, Tables 2 and 3. Thus, under this proposal, oversupply costs would not be allocated to any generator that did not submit costs, including wind generators and thermal generators. *Id.* at 11. In its supplemental and rebuttal proposals, Staff proposed allocating costs to a wider group of transmission system users regardless of whether a generator submitted costs under the OMP. Parker *et al.*, OS-14-E-BPA-02, at 4; Metcalf *et al.*, OS-14-E-BPA-03, at 2, 3-4.

The oversupply protocol in effect during FY 2012 exempted generators that did not submit displacement costs from cost allocation. It provided as follows:

> 3. No later than March 31, 2012, the Generator shall make an election with respect to each of its generating facilities (other than facilities with a nameplate capacity under 3 MW, which are exempt from displacement under this attachment) as follows:
> a. the Generator elects not to submit the facility's costs of displacement, in which case the costs of displacement for the facility shall be deemed to be $0/MWh and, except in the case of Generators that own or operate federal generating facilities, the Generator shall not be subject to cost allocation with respect to such facility for costs incurred under this attachment; or
> b. the Generator elects to submit the facility's costs of displacement, in which case the Generator shall be subject to cost allocation with respect to such facility for costs incurred under this attachment.

On March 1, 2013, BPA filed with the Commission a revised oversupply protocol, asking that it be effective March 31, 2013, through September 30, 2015. *Iberdrola Renewables, Inc., v. Bonneville Power Admin.*, FERC Docket No. EL11-44-006, Request for Approval of Revised

Oversupply Management Protocol of the Bonneville Power Administration (Mar. 1, 2013). The revised protocol does not address cost allocation.

The Commission's December 20, 2012, order indicated that BPA's proposal to allocate 50 percent of costs to power rates and 50 percent to wind generators would not provide for comparable rates. In response, BPA Staff issued its supplemental proposal, which would allocate costs based on transmission schedules on the hours of oversupply events regardless of whether a generator submitted displacement costs in FY 2012. Parker *et al.*, OS-14-E-BPA-02, at 4. Staff's rebuttal proposal, adopted in this Draft Record of Decision, also does not exempt generators that did not submit displacement costs in FY 2012. Metcalf *et al.*, OS-14-E-BPA-03, at 2, 4-5.

Nevertheless, the protocol in place in FY 2012 assured generators that if they did not submit displacement costs—which means they would have been displaced without receiving compensation—they would not be allocated any costs. Generators may well have relied on the exemption in deciding whether to submit costs in 2012 and in making operational decisions. For example, thermal generators may have decided not to submit a transmission schedule and instead allow BPA to displace them under the Oversupply Management Protocol if those generators knew that submitting a schedule would subject them to cost allocation. Fairness dictates that BPA honor this expectation and exempt these generators from FY 2012 oversupply costs.

The oversupply cost that would otherwise be recovered from these generators is approximately $415,000 of the total $2.7 million displacement cost.

3.2.4 Time Period for Calculating and Charging the Oversupply Rate

Powerex testified that, if BPA charges oversupply costs to transmission users, the oversupply rate should be calculated on an hourly basis rather than a monthly basis, so that costs are allocated precisely to those parties that schedule generation on the hours of oversupply events. MacDougall, OS-14-E-PX-01, at 16-17. Powerex did not raise this issue in its initial brief.

BPA Staff proposed that the rate be calculated on a monthly basis, stating that any inequity in cost allocation is likely to be small and would not outweigh the increased workload and risks of errors attendant with hourly rate computations. Metcalf *et al.*, OS-14-E-BPA-03, at 15.

The amount of oversupply costs and the transmission schedules of generation in BPA's balancing authority area may vary on an hourly basis. Therefore, Powerex argues, oversupply costs should be recovered on an hourly basis; that is, total payments under the OMP for each hour should be recovered from the generators that scheduled energy during that oversupply event hour. MacDougall, OS-14-E-PX-01, at 17. Powerex also argues that charging on a monthly basis would violate comparability. *Id.*

Charging on a monthly basis would not violate comparability. BPA would be charged the same rate and on the same basis as other customers based on the aggregate costs for the month. *See* Parker *et al.*, OS-14-E-BPA-02, at 9-10; Metcalf *et al.*, OS-14-E-BPA-03, at 4-5, 12.

Although charging on an hourly basis might provide a slightly better match between the costs incurred and the transmission schedules that contribute to that cost, it would entail increased workload and risks of errors associated with hourly rate computations and billing. Metcalf *et al.*, OS-14-E-BPA-03, at 15. For example, for July 2012, BPA would need to separately calculate and charge 53 rates (one for each of the 53 oversupply event hours in that month; http://www.bpa.gov/Projects/Initiatives/Oversupply/Pages/Retrospective-Reports-2012.aspx) to recover $1.7 million. Fredrickson *et al.*, OS-14-E-BPA-01-E01, Att. 2, at Table 1. In addition, BPA must maintain the confidentiality of wind customers' costs. Charging on a monthly basis would provide much less public transparency regarding their hourly costs. Metcalf *et al.*, OS-14-E-BPA-03, at 15.

4.0 PARTICIPANT COMMENTS

Introduction

This chapter summarizes and evaluates the comments of participants in BPA's OS-14 rate case. As defined in BPA's procedures for conducting rate proceedings, "participants" are persons that comment on BPA's rate proposal but do not take part in the formal hearing process with the responsibilities of "parties." Parties to the case file testimony and briefs and thus are not allowed to submit comments as participants. Participant comments are part of the official record of the rate proceeding and are considered when the Administrator makes his final decisions.

On November 8, 2012, BPA published in the Federal Register a "Notice of Proposed 2014 Oversupply Rates." 77 Fed. Reg. 66,963 (2012). The Federal Register notice set a deadline of February 15, 2013, for participant comments. In an order dated March 4, 2013, the hearing officer adopted an amended schedule for the OS-14 proceeding that changed the deadline for participant comments to May 22, 2013. Order Granting BPA's Motion and Amending Procedural Schedule, OS-14-HOO-22.

BPA received five participant comments. One of the comments was filed by Springfield Utility Board (Springfield) (comment number ORP120007). Springfield is a BPA customer and is a member of the Public Power Council (PPC), which represents publicly owned utilities in the OS-14 rate case both as a party and as a member of Joint Party 3. As stated in the Federal Register notice, "BPA customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments." 77 Fed. Reg. 66,963, 66,965 (2012).

Moreover, Springfield did not file general comments. Instead, it addressed the merits of BPA's rate proposal. If Springfield were allowed to use the participant comment process to address substantive issues, rate case parties with opposing views would be placed at a disadvantage, as they would have no opportunity to question the utility's positions and offer rebuttal and refutation. Therefore, Springfield Utility Board may not file participant comments, and its comments will not be addressed.

Summaries of the other participant comments, and BPA's responses, are provided below.

Participant Comments

Comment. Participant Charles Pace states that setting February 15, 2013, as a final date for participants to submit written comments and placing "extraordinary" limits on the scope of the OS-14 proceeding violate the procedural requirements in the Northwest Power Act and limit BPA's ability to develop a full and complete record. Dr. Pace comments that limits on participant opportunities in the rate proceeding are "repugnant on their face to the declaration of purpose by the 96th Congress to allow the public at large" to participate in developing "regional plans and programs related to energy conservation, renewable resources, other resource, and protecting, mitigation, and enhancing fish and wildlife resources." Dr. Pace implies that, because participants are not able to "address the propriety, e.g., of costs and methodologies"

deemed to be outside the scope of the rate case, the Record of Decision "will not meet the requirements of the Administrative Procedure Act, 5 U.S.C. 701-06." Comment ORP120004.

Response. First, it should be noted that Dr. Pace submitted his comments prior to the original February 15, 2013, deadline for participant comments. In an order dated March 4, 2013, the hearing officer adopted an amended schedule for the OS-14 proceeding that changed the close of participant comments to May 22, 2013. Order Granting BPA's Motion and Amending Procedural Schedule, OS-14-HOO-22. Although he had the opportunity to do so, Dr. Pace did not submit additional comments prior to the May 22 close of participant comments.

In any case, setting a reasonable limit on the time for submitting participant comments (as the Federal Register notice and the hearing officer's order did) does not violate the procedural requirements of the Northwest Power Act. Dr. Pace's underlying concern appears to be that BPA denied participants procedural protections when it set the date for public comment after the filing of parties' direct cases but before filing of rebuttal cases, cross-examination, and filing of briefs. The Northwest Power Act requires the Administrator to publish notice of the "proposed rates" in the Federal Register. 16 U.S.C. § 8393(i)(1). The Act requires the hearing officer to conduct a hearing to "receive public comment in the form of written and oral presentation of views, data, questions and argument related to *such proposed rates*." 16 USC § 8393(i)(2) (emphasis added). That is, the public has the right to respond to BPA's initial rate proposal.

BPA filed its initial proposal on November 8, 2012, more than three months before the original February 15, 2013, deadline for public comments. This is more time than the parties had to respond to BPA's proposal and ample time for the public to comment. The revised deadline of May 22, 2013, was after the filing of the parties' direct cases. Therefore, participants not only had an additional three months to respond to BPA's proposal, but had the ability to review and comment on the parties' proposals as well.

Dr. Pace also states that the limitation on the scope of the rate proceeding denied both parties and participants their rights under the Northwest Power Act to comment on "the development of regional plans and programs related to energy conservation, renewable resources, other resource, and protecting, mitigation, and enhancing fish and wildlife resources." 16 U.S.C. § 839(3). In addition, Dr. Pace states, "the restrictions on participants' ability to develop the record, and the limitations on all parties' ability to address the propriety, e.g., of costs and methodologies" violates the Administrative Procedure Act. As stated in the Federal Register notice, however, these programs are not addressed in the rate case, which is the forum where BPA's rates are established. BPA conducts separate public processes to address the issues Dr. Pace raises. Dr. Pace has ample opportunity to comment on these programs in the proper forum.

Comment. Participant James Adcock states that BPA is trying to obscure the real nature of the overgeneration problem: "The real problem is that BPA is not willing to invest in the necessary controls over their own dam generation equipment that would allow them to stop generating power in excess of what their customers are willing to pay a price for (including negative) that BPA is willing to accept. BPA could implement the technical means to actually control their dam power, …[b]ut BPA … wants to … pass costs onto other operators, rather than acknowledge

their own culpability for their own voluntary limits on their own investments in their own technical abilities." Mr. Adcock states that whatever costs BPA incurs due to oversupply should be allocated to generation customers, not transmission customers. Comment ORP120005.

Response. Mr. Adcock argues that oversupply costs derive from "BPA not being willing to invest sufficiently in technical controls on their own generation capabilities." This comment is not related to setting rates, and is outside the scope of the rate case as set forth in the Federal Register notice. To respond briefly, however, for several years BPA has been implementing tools to manage oversupply conditions. At every Spring operations conference call, BPA asks customers and interested parties for suggestions. The Oversupply Management Protocol itself lists 12 actions that BPA will take when available if they will reduce or avoid the need for displacement. BPA and others in the region have invested in features at the dams and "smart spill" design to improve generation efficiency and fish survival rates in all water conditions.

Like certain rate case parties, Mr. Adcock argues that oversupply cost is a generation cost that should be allocated to generation customers. BPA's draft decision is to charge oversupply cost to generators in the BPA balancing authority area based on their transmission schedules during oversupply event hours. Chapter 2 includes a full discussion of this issue.

Comment. Participant Linda Probstfeld states that she objects to "paying to use electricity and not use electricity." She asks, "Why pay a private company [a wind generator] to shut down when we could reduce over-supply by diverting water from our dams for the environment, thereby reducing the amount of power our dams produce? We would not have to pay $10 million or more for the over-supply." Comment ORP120006.

Response. As an initial matter, the issue of diverting water is not a rates issue, and is beyond the scope of the rate case as set forth in the Federal Register notice. To respond briefly, however, although diverting water from dams for the environment seems like a reasonable solution to the challenge of oversupply, the details are many and complex. The Columbia River is operated for multiple purposes, including flood control, fish and wildlife, navigation, irrigation, recreation, water supply and water quality, and preservation of cultural resources, as well as power generation. Any diversions of water from the hydro system must take into account how they would affect operations for all of these purposes. Timing is crucial, especially related to the timing of fish migrations. In addition, facilities need to be in place to allow water diversions, such as pumps, intakes, and fish screens, and those facilities can be expensive to construct and maintain. BPA funds and conducts an extensive environmental and fish and wildlife program, and Ms. Probstfeld and other interested persons are encouraged to learn about it at http://www.efw.bpa.gov/.

Comment. Participant Richard van Dijk states that he is "adamantly opposed to any rate surcharges that will be passed on to the end user in SW Washington when there is an oversupply of power …. [V]ery little if any of the wind power will benefit the ratepayers of SW WA and now you expect the SW WA rate payers to have the added burden of subsidizing private wind entities for their bad business decisions." He states that most of the wind power is delivered to

California and that "any rate surcharges must be solely applied to those entities that have a Point of Delivery (POD) for their power that does not serve local needs." Comment ORP120010.

Response. BPA's draft decision is to charge oversupply cost to generators in the BPA balancing authority area based on their transmission schedules during oversupply event hours. Chapter 2 includes a full discussion of this issue. Although wind generation is delivered to California, it is also delivered to consumers in the Pacific Northwest. Washington and Oregon utilities have developed or purchased wind generation in accordance with the states' Renewable Portfolio Standards. These utilities utilize significant amounts of wind generation.

5.0 NATIONAL ENVIRONMENTAL POLICY ACT ANALYSIS

BPA is in the process of assessing the potential environmental effects that could result from implementing the proposed rate to recover costs attributable to BPA's Oversupply Management Protocol, consistent with the National Environmental Policy Act (NEPA). The NEPA analysis is conducted separately from the formal rate process. No comments concerning NEPA compliance or potential environmental effects of the proposal were received during the participant comment period. As discussed in the Federal Register notice for the OS-14 rate proposal, 77 Fed. Reg. 66,963, 66,964 (2012), BPA previously prepared an Environmental Clearance Memorandum, dated March 23, 2012, for the Oversupply Management Protocol. The memorandum considered environmental implications of the protocol and documented the categorical exclusion of the protocol from further NEPA review. BPA is evaluating whether the OS-14 rate proposal is covered within the scope of this previous NEPA documentation or whether additional NEPA documentation is necessary for any aspects of the OS-14 rate proposal. A preliminary review of the OS-14 rate proposal indicates that it involves primarily administrative and financial matters that appear to fall within a class of actions that are also categorically excluded from further NEPA review pursuant to applicable NEPA regulations. BPA will complete its NEPA process and issue any appropriate additional NEPA documentation concerning the proposal when it issues its Final Record of Decision for the OS-14 rate proceeding.

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BONNEVILLE POWER ADMINISTRATION

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