

**Bonneville Power Administration  
Long-Term Regional Dialogue  
Record of Decision**

**July 2007**



**LONG-TERM REGIONAL DIALOGUE RECORD OF DECISION  
TABLE OF CONTENTS**

<b>I. INTRODUCTION – BPA’S LONG-TERM REGIONAL DIALOGUE POLICY .....</b>	<b>6</b>
<b>II. BPA LOADS AND RESOURCES POST-FY 2011 .....</b>	<b>15</b>
<b>III. SERVICE TO PUBLIC UTILITIES.....</b>	<b>17</b>
A. ACCESS TO POWER AT LOWEST COST-BASED RATE .....	17
C. PRODUCTS AVAILABLE TO REQUIREMENTS CUSTOMERS .....	87
D. PRICING AND RATES FOR PF SERVICE .....	102
E. OTHER ISSUES.....	122
<b>IV. SLICE PRODUCT .....</b>	<b>143</b>
<b>V. BENEFITS TO THE RESIDENTIAL AND SMALL-FARM CONSUMERS OF THE INVESTOR-OWNED UTILITIES AND PUBLIC AGENCIES .....</b>	<b>184</b>
<b>VI. SERVICE TO DIRECT-SERVICE INDUSTRIES .....</b>	<b>185</b>
<b>VII. CONSERVATION .....</b>	<b>186</b>
<b>VIII. RENEWABLE RESOURCES.....</b>	<b>196</b>
<b>IX. TRANSFER SERVICE.....</b>	<b>210</b>
<b>X. RESOURCE ADEQUACY.....</b>	<b>250</b>
<b>XI. LONG-TERM COST CONTROL.....</b>	<b>253</b>
<b>XII. DISPUTE RESOLUTION .....</b>	<b>262</b>
<b>XIII. NEW LONG-TERM CONTRACTS .....</b>	<b>290</b>
<b>XIV. FALLBACK POLICY PROPOSAL, IN THE ABSENCE OF REGIONAL CONSENSUS .....</b>	<b>295</b>
<b>XV. ENVIRONMENTAL ANALYSIS .....</b>	<b>297</b>

## COMMONLY USED ACRONYMS

7(i)	Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be set according to certain procedures
5(b)/9(c)	BPA's Policy on Determining Net Requirements of the Pacific Northwest Utility Customers under Sections 5(b)(1) and 9(c) of the Northwest Power Act
Administrator	Administrator of Bonneville Power Administration
ADR	Alternative Dispute Resolution
AE	Account Executive
aMW	Average Megawatt
ARTS	Agreement Regarding Transfer Service
ASC	Average System Cost
BPA	Bonneville Power Administration
BP EIS	Business Plan Environmental Impact Statement
Centralia	Centralia Coal Plant
CF/CT	Contracted For/Committed To
CGS	Columbia Generating Station
CMG	Cost Management Group
Council	Northwest Power and Conservation Council
CSE	Customer Service Engineers
CY	Calendar Year
DOE Richland	United States Department of Energy, Hanford, Washington site
DSIs	Direct-Service Industrial Customers
EIS	Environmental Impact Statement
Energy Northwest	(Formerly) Washington Public Power Supply System
Exhibit C	Exhibit C of the Subscription Contracts, determines customers' net requirements
FBS	Federal Base System
FCRPS	Federal Columbia River Power System
FCRTS	Federal Columbia River Transmission System
FERC	Federal Energy Regulatory Commission
Fifth Power Plan	Council's Fifth Northwest Conservation and Electric Power Plan
Forum	Pacific Northwest Resource Adequacy Forum
Fourmile Hill	Fourmile Hill Geothermal Project
FPS	Firm Power Products and Services (rate)
FY	Fiscal Year
GE	Green Exception
GRSPs	General Rate Schedule Provisions
GTA	General Transfer Agreement
HLH	Heavy Load Hour
HWM	High Water Mark
I-937	Washington State Renewable Portfolio Standard Initiative 937
IOU	Investor-Owned Utility

IRM	Irrigation Rate Mitigation
IRMP	Irrigation Rate Mitigation Product
JOE	Joint Operating Entity
kV	Kilovolt
kWh	Kilowatt Hour
LDD	Low Density Discount
LLH	Light Load Hour
LSE	Load Serving Entity
MW	Megawatt
MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NERC	North American Electric Reliability Corporation
NLSL	New Large Single Load
Northwest Power Act	Pacific Northwest Electric Power Planning and Conservation Act
NR	New Resource
NR rate	New Resource Firm Power (rate)
NT	Network Transmission
OATT	Open-Access Transmission Tariff
PF	Priority Firm Preference Power (rate)
PFR	Power Function Review
PIR	Transmission Service's Programs in Review
PMA	Power Marketing Agency
PNCA	Pacific Northwest Coordination Agreement
POD	Point of Delivery
Policy Proposal	Bonneville Power Administration's July 2006 Long-Term Regional Dialogue Policy Proposal
POR	Point of Receipt
Project Act	Bonneville Project Act
PPC	Public Power Council
PTP	Point to Point Transmission
Publics	Public Utilities
PUD	Public Utility District
PURPA	Public Utility Regulatory Policies Act of 1978
RD	Regional Dialogue
RD&D	Research, Development, and Demonstration
Regional Act	Pacific Northwest Regional Power Preference Act (Pub. L. 88- 552) 1964
REP	Residential Exchange Program
Resource Agencies	Corps of Engineers, Bureau of Reclamation, Energy Northwest
ROD	Record of Decision
RPS	Renewable Portfolio Standard
SA	Supplement Analysis
SSP	Summer Seasonal Product
Supplemental Guidelines	The Supplemental Direct Assignment Guidelines
TAC	Targeted Adjustment Charge
TBL	Bonneville Power Administration's Transmission Business Line

TRG  
TRM

Technical Review Group  
Tiered Rate Methodology

## **I. INTRODUCTION – BPA’S LONG-TERM REGIONAL DIALOGUE POLICY**

The Bonneville Power Administration (BPA) is adopting a Long-Term Regional Dialogue Policy on the agency’s regional power marketing role for Fiscal Years 2012 and beyond. Since embarking upon development of the “Regional Dialogue” Policy over 5 years ago, BPA and its regional customers and stakeholders have addressed matters of critical importance that pertain to the long-term sale of Federal power marketed by BPA. The Policy lays the directional foundation necessary to move forward to develop the power sale contracts, products, services, and rates that will establish the business relationship between BPA and its customers for the 20-year Regional Dialogue period.

The timing of this Policy is important; current power sales contracts expire in 2011 and utilities need to decide what power service they will purchase from BPA now so that they will have sufficient lead time to develop or otherwise secure additional resources needed for 2011 and beyond. When implemented, this Policy is intended to give BPA’s customers greater clarity about their Federal power supply so they can effectively plan for the future and make capital investments in long-term electricity infrastructure if they so choose. It is also intended to give guidance on certain policy matters BPA expects will be addressed in the next phase of the Regional Dialogue.

While this Policy sets the parameters for moving forward into the next phase of the Regional Dialogue process, there are significant steps that must still be taken for BPA’s decision making process, which will culminate in the offering of new contracts and the establishment of new rates, to be concluded. For example, new contracts and products will be negotiated and drafted, released for public comment, and ultimately executed. A net requirements determination process will be conducted and BPA will review and reconsider some aspects of its Section 5(b)(9)(c) Policy. A section 7(i) rate process must be conducted to establish the long-term rate methodology, followed by a separate 7(i) process to set the rates that will be effective for the commencement of power sales under the Regional Dialogue contracts in FY 2012. The Policy makes clear that while it informs contract negotiations, it is not a contract and does not create contractual rights and obligations. The same is true of this Record of Decision.

Consequently, the majority of decisions described in the Policy and Record of Decision (ROD) pertaining to these subjects are not final actions for purposes of legal challenge under Section 9 of the Northwest Power Act, 16 U.S.C. §839f(e)(5). The U.S. Court of Appeals for the Ninth Circuit has explained that, “the fact that a statement may be definitive on some issue is insufficient to create a final action subject to judicial review.” Industrial Customers of Northwest Utilities v. Bonneville Power Administration, 408 F.3d 638, 646 (9th Cir. 2005). These decisions, while perhaps definitive on some issues, form important milestones in an on-going decision making process and provide the basis for future discussions and negotiations between BPA, its customers, and interested stakeholder that will lead to final contracts, products, and rates consistent with this Regional Dialogue Policy. But given that the decision making processes have not concluded with the issuance of this Policy or ROD,

the majority of these decisions are not final actions. To the extent BPA believes that any decisions in this Policy *are* final actions for purposes of judicial review, BPA will expressly say so in the appropriate section of the Policy or ROD. These limited final decisions either constrain, affirm, or clarify existing policy or practices.

This ROD is organized by section in the same order as the Regional Dialogue Policy. This ROD addresses the issues raised by commenters who responded during the public comment period to BPA's Regional Dialogue Policy Proposal dated July 13, 2006. The list of commenters, including abbreviations, is shown in Appendix A.

## **PUBLIC PROCESS**

Since the mid-1990s, BPA, its customers, and stakeholders have discussed BPA's future power supply role in the Pacific Northwest. These discussions reach back to the 1996 Comprehensive Review of the Northwest Energy System, the 1997 Cost Review, the 2002 Joint Customer Proposal and 2005 recommendations by the Northwest Power and Conservation Council regarding BPA's future power supply role.

During the same period, the Pacific Northwest utility industry experienced significant events, including deregulation of wholesale transmission service, development of a competitive wholesale power market and the 2000-2001 West Coast energy crisis. Throughout these events, BPA and regional interests have struggled to define the optimal future role for BPA in terms of its power supply obligations, resources, and rates in a way that provides greatest value to BPA's firm power customers and non-power stakeholders.

The "Regional Dialogue" process is the most recent phase of this long consideration of BPA's future role. It began in April 2002 when a group of BPA's Pacific Northwest electric utility customers submitted a "joint customer proposal" to BPA. This proposal focused on settling outstanding litigation on the Residential Exchange Program Settlement Agreements signed in 2000, as well as on determining how BPA would market Federal power and distribute the costs and benefits of the Federal Columbia River Power System for 20 years.

In August 2004, the Public Power Council (PPC), which represents most of BPA's public utility customers, proposed an approach that had BPA allocating power from the Federal power system and raised many issues with regard to BPA's future power supply role. The PPC drafted a subsequent paper in February 2005 that clarified its proposal. Both of these documents were approved by the PPC Executive Committee and forwarded to BPA.

Discussions on BPA's future role in power supply reached a significant milestone in February 2005, when BPA published its Policy and Administrator's ROD for Power Supply Role for Fiscal Year 2007-2011. BPA reviewed the final policy for environmental consideration under the National Environmental Policy Act (NEPA) in a NEPA ROD prepared separately from the Administrator's ROD and issued on the same date. In the FY 2007-2011 Policy BPA announced its intent to pursue its policy direction to limit its sales of firm power to its Pacific Northwest firm requirements loads at its lowest-cost rates to an amount approximately equal to the firm capability of the existing Federal system and to

charge a higher tiered rate for increments of power service above that. Implementing that policy for Fiscal Years 2012 and beyond would require new long-term contracts and rates for power service after the current contracts expire in 2011.

In May 2005, the Northwest Power and Conservation Council (Council) released its Fifth Power Plan, which included a chapter on the “Future Role of BPA in Power Supply.” The Council noted that now is the time to resolve many issues related to long-term power supply and recommended a fundamental change in how BPA carries out this role. The Council urged BPA to establish a schedule for making the necessary policy decisions that would permit the offering of new 20-year contracts by October 2007.

For the 6 months leading up to May 2005, BPA met frequently with groups of customers, stakeholders, tribes, and other interested parties to discuss and develop a long-term regional dialogue policy proposal that would reflect the region’s interests. On May 11, 2005, BPA released a letter updating the region on the Long-Term Regional Dialogue Process and issues. The letter served to open the comment period for those parties wishing to send specific proposals as to what BPA’s Long-Term Regional Dialogue Policy Proposal should contain. The June 13, 2005, deadline for interested parties to submit proposals for BPA’s long-term Regional Dialogue Policy Proposal yielded 18 comments.

The May 11, 2005, letter also announced an all-day workshop on Wednesday, June 8, 2005, to give an opportunity for all interested parties to share their points of view on what should be included in BPA’s Policy Proposal. The letter outlined the issues that BPA planned to include in its Policy Proposal as: service to public utilities, benefits to residential and small-farm consumers of investor-owned utilities, service to the DSIs, resource adequacy standards, cost controls and dispute resolution, conservation and renewables, and transfer service.

On June 1, 2005, BPA released a Draft Slice Report for public review. The report contained BPA’s draft evaluation of the performance of the Slice product compared to the original principles of Slice and draft conclusions about the future of Slice. BPA welcomed comments on the Draft Slice Report until June 20, 2005. The June 20, 2005, deadline for submitting feedback on BPA’s Draft Slice Report yielded 7 comments.

In response to comments received at the June 8, 2005, Regional Dialogue Public Workshop, BPA updated its schedule for the release of the Long-Term Regional Dialogue Policy Proposal. At the request of its customers and regional stakeholders, BPA agreed to prepare a “Concept Paper” that outlined BPA’s “thinking” on what a Long-Term Regional Dialogue policy would look like. BPA set a target Policy Proposal release date for December 2005.

BPA kicked off a Slice Product Review Process in September 2005 as an effort to identify issues that would need to be addressed in relation to the Slice product portion of the Long-Term Regional Dialogue Policy Proposal. Technical working groups were formed to analyze and develop proposals concerning key questions surrounding the future of the Slice product. A kickoff meeting was held on September 15 and the first meeting of technical staff and principals was held September 22, 2005.

In September 2005, BPA released its Concept Paper which served as a springboard for intense collaborative discussions between BPA and its customers and other regional interests on the policy issues that must be resolved before new contracts and rates can be put in place.

Release of the Concept Paper marked the beginning of a 3-month series of public workshops on BPA's future role in power supply. The process, and Principals Management Group that formed, used the Concept Paper as a starting point for 3 months of intense regional discussions that followed. The first Principals Management Group Meeting was held on September 19, 2005. A separate Regional Dialogue Technical Group formed and held its first meeting on September 23, 2006.

The Regional Dialogue Principals Management and Technical Groups, along with the Slice Subgroups met from September through December 2005. Closeout meetings of the Regional Dialogue Technical Group and Principals Management Group were held in February 2006.

A separate technical group, focusing exclusively on Transfer Service was formed and met from October through December 2005 and January and February 2006 to discuss outstanding issues related to the Agreement Regarding Transfer Service that was signed in April 2005.

In March 2006, the PPC submitted "PPC Additional Allocation Recommendations," which they had adopted March 7, 2006. Questions and concerns were raised by both BPA and its customers. In response, on April 10, 2006, the PPC Executive Committee met and developed a proposal that simplified and clarified the steps necessary to determine High Water Marks (HWM) and address resource-removal to bring more transparency to that process, and to maintain or improve upon the balance of equity, fairness, practicality, and durability of their proposal.

On March 30, 2006, BPA issued a letter to interested parties, asking the region to submit economic papers and studies that would help BPA better understand the positive and negative impacts to the Pacific Northwest economy that could potentially result from the agency providing benefits to BPA's direct service industrial customers (DSIs) during the post-2011 period. A deadline was set for May 31, 2006. Four studies were submitted by the May 31, 2006, deadline.

## **RELEASE OF THE LONG-TERM REGIONAL DIALOGUE POLICY PROPOSAL**

On July 13, 2006, BPA released the Long-Term Regional Dialogue Policy Proposal. The release formally initiated a public comment period during which BPA would continue to work with regional parties to reach consensus on the major policy issues addressed in the Policy Proposal. The Policy Proposal was published in the Federal Register on August 10, 2006. The close of comment was set for September 29, 2006.

Between August 1 and August 23, 2006, BPA held a series of five public meetings in Seattle, Washington; Portland, Oregon; Pasco, Washington; Missoula, Montana; and, Idaho Falls, Idaho. In those meetings the Agency presented its Long-Term Regional Dialogue Policy Proposal and took public comment. Aside from clarification on the proposal, topics

addressed by commenters included most topics addressed in the Policy Proposal, such as the tiered rates methodology, establishment of High Water Marks, product development, transfer service, new public utilities, conservation and renewables, IOU residential exchange benefits, DSI benefits, cost control and contract term. A separate public meeting on benefits to DSIs was held on September 8, 2006.

In mid-September 2006, BPA's Vice President of Requirements Marketing released a letter announcing extension of the Regional Dialogue comment period to October 31, 2006. BPA urged that all parties use this time to continue to work toward regional consensus on remaining outstanding issues in the Long-Term Regional Dialogue. At the close of comment, BPA received 148 comments. BPA also received 1239 identical written comments and 98 telephone comments respectively through letter writing and telephone campaigns. The content of all the written comment was focused on a single issue and substantially was the same. BPA has consolidated those written comments and the telephone comments received for the same reason. For purposes of addressing this volume of comments, BPA will treat those written comments and the telephone comments as consolidated into two comments.

On October 24, 2006, BPA began a series of Implementation Workshops. One purpose of the workshops is to work collaboratively with customers and interested stakeholders on issues regarding the development of a Tiered Rate Methodology that will complement the Long-Term Regional Dialogue power sales contracts. These meetings are also covering topics such as BPA power products offered under Regional Dialogue contracts, net requirements, High Water Marks, and potential revisions to BPA's section 5(b)9(c) Policy. Other topics may be covered as the need arises.

On December 4, 2006, BPA hosted a public meeting in collaboration with Department of Energy representatives. BPA invited panelists to comment on the proposed policy. BPA also accepted written comments by the panelists and interested parties attending this public meeting.

In February 2007, BPA's Transmission Services kicked off a series of Regional Dialogue meetings in response to customer comments regarding the business practices of Transmission Services operations. These issues include: the requirement to have a signed or contingent power agreement prior to requesting to add a resource to the Network Transmission (NT) Service contract, understanding when an application for service is needed and when it is not, and Transmission Services' intention to phase out customer-served load post-2011. BPA formed a transmission issues team to clarify current practices and to determine if there is a better or alternative approach to current practices. The recommendations will be taken through the Business Practice revision process and/or the OATT revision process. Transmission Services will complete the process in a timely fashion to assist Power Services and its customers as they develop power products for inclusion in the Long-Term Regional Dialogue power sales contracts.

Following adoption of this Policy and ROD by the Administrator, BPA must still take significant steps to facilitate the implementation of this Policy. New contracts must be

developed, negotiated and drafted, released for public comment, and finalized. Additional policy review will be conducted in a net requirements determination process and BPA will review certain issues identified in this Policy regarding its Section 5(b)9(c) Policy. A section 7(i) rate process must be conducted to establish the long-term Tiered Rate Methodology, followed by a separate 7(i) process to set the rates that will be effective for the commencement of power sales under the Regional Dialogue contract in FY 2012.

In the Policy Proposal, BPA stated that a sustainable cost allocation of the benefits of the FCRPS requires the region to agree on an appropriate level of Residential Exchange Program (REP) settlement benefits to residential and small farm consumers of investor-owned utilities and public agencies, and put forth a specific settlement proposal. BPA went on to say that if no settlement of residential exchange rights for either IOUs or public utilities occurred, BPA would reinstate the exchange programs for both starting in FY 2012. At BPA's urging, IOUs and public utilities engaged in discussions in an attempt to agree on a long-term settlement of the residential exchange, based on BPA's Policy Proposal.

Providing benefits to the residential and small farm consumers of the investor-owned utilities (IOUs) and public agencies has long been the subject of ongoing discussions and negotiations. In light of recent decisions by the U. S. Court of Appeals for the Ninth Circuit, this section of this document has been omitted. BPA will not offer Regional Dialogue contracts to public utility customers before it can also offer the IOUs contracts that reasonably resolve the issue of residential exchange benefits. This is a continuation of what was outlined in the Regional Dialogue Proposal, which also linked together the resolution of these issues.

The Policy Proposal also invited comment on alternatives for DSI service. BPA has not yet finalized its decision on providing service to DSIs and the DSI section has been omitted at this time. Discussions with the DSIs were delayed to provide the agency a better change of understanding the implications of the Ninth Circuit Court ruling.

## **SUMMARY OF KEY ISSUES AND CONCERNS**

BPA is adopting a Long-Term Regional Dialogue Policy after review and consideration of the public comment it received on its July 13, 2006, Policy Proposal. BPA considered information received from customers, tribes, constituents, industries, and the general public during the public comment period that closed October 31, 2006, and from a December 4, 2006, public meeting in Seattle, Washington, with BPA and Department of Energy representatives.

Altogether, BPA received over 148 written comments and those separate comments have been organized by subject, to reflect the organization of the Policy itself.

## **SCOPE**

As described above, BPA's public involvement on the Regional Dialogue was extensive. Along with weekly workshops on the Concept Paper, BPA held five formal public meetings

in August 2006, to discuss the Long-Term Regional Dialogue Policy Proposal. The public meetings were held in Seattle, Washington; Portland, Oregon; Idaho Falls, Idaho; Pasco, Washington; and in Missoula, Montana. An additional opportunity for public comment arose in December 2006, when BPA hosted a public meeting that included representatives from the Department of Energy. The ROD addresses issue-by-issue the comments received from the six public meetings, as well as comments BPA received by telephone, mail, e-mail, and fax. A complete list of commenters is shown in Appendices A(i), A(ii), and A(iii).

A small percentage of the individual comments were on matters outside the scope of this process. The majority of comments outside the scope of this process addressed BPA's fish and wildlife program. Many who provided these comments urged BPA to do more to further the recovery of listed fish under the Endangered Species Act, while others questioned whether the money being spent on the effort was a good use of ratepayer funds. Some comments expressed concerns that BPA was pitting salmon recovery against renewable energy, and proposed the removal of the four Lower Snake Dams as a solution.

Other comments addressed issues such as the importance of regional transmission adequacy. A limited number addressed BPA's internal operations. Another group of comments centered on BPA's unique government-to-government responsibilities relating to the region's Indian tribes. Again, all of these comments are outside the scope of the issues BPA identified for this public process.

All comments received that were within the scope of the present process have been reviewed and considered. Due to the unique nature of the Regional Dialogue, some comments will be forwarded and considered within the Regional Dialogue Implementation process that will follow publication of this Record of Decision. These include comments on BPA's products catalog, the long-term tiered rates methodology and potential changes to BPA's Section 5(b)9(c) Policy.

BPA has prepared a NEPA ROD for the Long-Term Regional Dialogue Policy that is separate from this Administrator's ROD. Comments received regarding the potential environmental impacts of the Long-Term Regional Dialogue Policy and BPA's compliance with NEPA are addressed in the NEPA ROD for the Policy.

## **BPA'S REGIONAL DIALOGUE POLICY**

This Policy is based on BPA's strategic direction that calls on BPA to be an engine of the Northwest's economic prosperity and environmental sustainability. BPA's actions advance a Northwest power system that is a national leader in providing:

1. High reliability;
2. Low rates consistent with sound business principles;
3. Responsible environmental stewardship; and,
4. Accountability to the Region.

This Policy will form the basis for a new set of long-term BPA power sales contracts and rates which in turn will advance very significant national and regional policy goals. These goals include ensuring adequate electric infrastructure for the Pacific Northwest, reducing BPA's need to acquire new generation, enhancing the private non-Federal role in generation development, reducing BPA's future costs and stabilizing BPA's financial performance, enhancing BPA's assurance of making its payments to Treasury, sending appropriate price signals for the cost of serving load growth, advancing renewable resource development and energy conservation, and securing BPA's financial ability to meet its fish and wildlife obligations.

BPA will accomplish these goals by implementing this Policy which will limit its sales of firm power to its Pacific Northwest preference customer's firm requirements loads at its lowest cost-based rates to approximately the firm capability of the existing Federal system and to charge a higher tiered rate for increments of power service above that amount. BPA, through limited augmentation and tiered rates, will provide incentives for its customers to achieve cost-effective conservation and renewables, while maintaining its commitment to meet its share of the Council's conservation and renewables targets. Ultimately the issue of BPA's rate design for all components of a rate and the rate's conformance to statutory requirements will be in a general rate case conducted under section 7(i) of the Northwest Power Act.

Some commenters expressed concern that some issues will need to be addressed in other processes that will be guided by this Policy. As noted, following the release of this Policy and ROD significant steps must still be taken to facilitate its implementation. New contracts must be negotiated and drafted, released for public comment, and finalized, and the products and services that will be provided under the contracts must be specified. A net requirements determination process will be conducted and BPA will review its Section 5(b)9(c) Policy to address certain issues identified herein. A section 7(i) rate process must be conducted to establish the long-term rate methodology, followed by a separate 7(i) process to set the rates that will be effective for the commencement of power sales under the Regional Dialogue contract in FY 2012.

## **RELATIONSHIP TO THE PRESIDENT'S BUDGET PROPOSAL**

As part of the Regional Dialogue Policy Proposal, BPA sought and received numerous comments on the President's FY 2007 Budget which proposes to use any surplus power sales (net secondary) revenues BPA earns in any given year above its historic high level of \$500 million to make early payments on its Federal bond debt to the U.S. Treasury in order to provide BPA with needed financial flexibility to invest back into energy infrastructure, conservation, and fish and wildlife protection programs. In the Policy Proposal, BPA stated that long-term power and transmission customers would benefit from this action through lower long-term power rates than would otherwise be the case, and through improved and upgraded capital facilities.

Concerns expressed by the Pacific Northwest Congressional Delegation and BPA's customers were reflected in the President's Budget for Fiscal Year 2008. While the 2008

budget proposal continued to seek means to extend BPA's limited access to capital for infrastructure investment, the budget explicitly encouraged a dialogue in the Pacific Northwest to address how the proposal will improve BPA's ability to meet its long-term capital investment needs with minimal rate impact.

BPA has been planning to complete an update to its long-term financial plan in FY 2008. BPA concludes that rather than engage in a decision process focused narrowly on the budget proposal, it would be preferable to look broadly at long-term financial policy issues in its financial plan update, including the need for and sources of capital, BPA's overall debt structure, the appropriate Treasury Payment Probability standard for rate-setting, and the best uses of high net secondary revenues when they occur. BPA intends to complete this financial plan update before the end of FY 2008, and will provide for public involvement in it consistent with the approach detailed in the long-term cost control section of the Policy. This timing will allow the policy to be updated before the deadline for signing new long-term contracts.

## **II. BPA LOADS AND RESOURCES POST-FY 2011**

BPA's Regional Dialogue Policy is premised on attempting to create a level playing field for customer choice to have their load growth served by BPA, by non-Federal resources or a combination of the two. The amount of the Federal resources and power, as well as the amount of non-Federal power available to serve those loads, are the linchpins in defining BPA future service. BPA prepares several loads and resource studies projecting future amounts of Federal resource and power over time, which inform different BPA processes and the decisions made by BPA.

### **Issue 1:**

**Why is there a difference in the amount of firm Federal resources projected in the Policy Proposal compared to BPA's Loads and Resources Study ("White Book")?**

#### **Policy Proposal**

BPA estimated the firm output of the FCRPS for FY 2012, net of all pre-existing firm system obligations, at approximately 7,100 aMW.

#### **Public Comments**

Canby Utility Board commented that "the numbers in the Regional Dialogue proposal show the output of the Federal system is significantly smaller than the numbers in the Pacific Northwest Loads and Resources study ("White Book")", specifically mentioning the total Federal resources for 2006 of 9,575 aMW. (Canby, REG-064)

#### **Evaluation and Decision**

Canby asks for an explanation about why there is a difference between the Policy Proposal projection of firm output of the FCRPS in FY 2012 (at about 7,100 aMW) and the 2005 White Book forecast for out years. BPA's studies are used for different purposes and do not always use the same set of assumptions. Some are performed for a specific task. There are several factors which explain the difference between the Policy Proposal's projections and the White Book. First, BPA's projections done at a particular time are subject to change. The projections of many of the components in these two studies have changed between the November 2005 update of the 2004 White Book and the projection displayed in Table 1 of BPA's Policy Proposal. In addition, the White Book figure is an Operating Year estimate (August 2005 – July 2006) while the Policy Proposal's figure is expressed in Fiscal Year (October 2011 – September 2012). There is the time difference of 6 years between the White Book and the Policy Proposal which separates the two figures. However, the primary source for the difference is that the Policy Proposal reflects a resource estimate after subtracting projected "other firm obligations" while the White Book value cited is the estimate of the total Federal resource stack. The total of Federal resources in the Policy Proposal comparable to that stated in the White Book is 8,276 aMW. The differences include lower amounts for the Policy Proposal from the White Book in three major areas: Independent Hydro of about 40 aMW, Imports of about 75 aMW, and Intra-Regional Transfers (In) of over 1,200 aMW. From this 8,276 aMW figure are subtracted 233 aMW for Federal Transmission losses, 586 aMW for Exports and 184 aMW for Intra-Regional Transfers (Out)

to derive the value in Table 1 referred to as Resources (Net of Other Firm Obligations) totaling 7,111 aMW for FY 2012.

BPA believes it will be necessary to use a rigorous method to determine the approximate amount of existing FBS that will comprise the Tier 1 rate resource pool. The annual White Book Study is not a dispositive methodology for purposes of understanding the amount of FBS power and augmentation available for Tier 1 rate treatment. Accordingly, BPA will as part of the Tiered Rates Methodology development process endeavor to define a methodology that determines the amount of power that is expected to be available from the FBS to support the Tier 1 rate.

### **III. SERVICE TO PUBLIC UTILITIES**

#### **A. ACCESS TO POWER AT LOWEST COST-BASED RATE**

A key component to BPA's Regional Dialogue Policy is the Federal power service that BPA will provide for the period after its current requirement power sales contracts expire. This power service under new contracts will commence in FY 2012. Together with issues regarding BPA's proposed tiering of its Priority Firm power rates and its methodology for implementing the rates, the types of power service and possible changes to BPA policies affecting BPA's provision of power to its Pacific Northwest utility customers engendered numerous issues and questions. This section analyzes and responds to comments related to these Service to Publics issues.

##### **Issue 1:**

**Will BPA establish a rate construct that limits the amount of power available at its lowest-cost-based PF rates?**

##### **Policy Proposal**

BPA proposed a framework that would allow BPA and its customers to implement the region's desire to limit the dilution of the value of the Federal Base System (FBS) by limiting access to power from the existing Federal system at the lowest-cost-based rate. This was proposed to be accomplished via a High Water Mark (HWM) that would set the maximum power amount available to a customer at a Tier 1 rate, reflecting the lowest-cost-based power of the existing Federal system. Amounts a customer chooses to purchase from BPA to meet its net requirements beyond its HWM would be priced at a Tier 2 rate

##### **Public Comments**

BPA received a number of comments about the general direction framework that BPA proposed. The majority of those commenting offered their support for BPA's Policy Proposal to tier rates and to limit the amount of power available at lowest-cost-based PF rates. Some commenters offered general support. (United, REG-056; Grant, REG-059; IDEA & ICUA, REG-096; Mason 1, REG-145; Benton PUD, REG-114; Idaho Falls, REG-098; WMG&T, REG-106); Cow Creek, REG-093; PNGC, REG-133; ATNI, REG-111; SCL, REG-128; Snohomish, REG-131) Some went a bit further and expressed strong support. (WPUDA, REG-080; Cowlitz, REG-118; Whatcom, REG-121; SUB, REG-126) The Northwest and Intermountain Power Producers Coalition (NIPPC) commended BPA on "proposing a new paradigm in the way we sell and price power (NIPPC, REG 130) and Canby noted their support for the goals of the Policy Proposal (Canby, REG-064).

NRU expressed support but looked forward to further definition of BPA's responsibility and rate treatment for meeting both its current load and the load growth that will be placed on the Agency. (NRU, REG-103) WPAG commented that its continued support would depend on BPA "continuing to respond with positive solutions to the issues and concerns raised by preference customers" and called on BPA to be willing to accept change. (WPAG, REG-109) Sumas qualified its support with a note of some trepidation. (Sumas, REG-068)

Not all comments were supportive of the tiered rates construct. Clark PUD's comments reflected acquiescence to the construct and noted that it would continue to work constructively to implement "BPA's desire" to implement the tiered rate structure. (Clark, REG-108) Reservations about the overall construct were expressed by Benton REA and Lower Valley which called for BPA to aggregate loads and provide melded rates instead. (Benton REA, REG-094; LVE, REG-141) Other parties not supporting the construct were Kittitas which simply stated that they did not support tiered rates and the Northwest Energy Coalition which noted several "fundamental" problems that caused it to withhold support, further suggesting that it believed that the letter and intent of the Northwest Power Act is in jeopardy. (Kittitas, REG-87; NWECC & SOS, REG-110)

### **Evaluation and Decision**

The majority of the comments received were supportive of the overall framework BPA is proposing. BPA and many customers believe that a buy and meld approach to rate setting has not encouraged but inhibited infrastructure development in the region by greatly diminishing customers' incentives to invest. It has contributed to BPA financial crises and rate increases by increasing BPA's needs to buy higher-cost power. In addition, BPA believes this new Policy provides the necessary safeguards to make sure that the resource priorities expressed in the Northwest Power Act will continue to be applied when BPA does make long-term purchase or acquires long-term resources, which means the fundamental concerns of the Northwest Energy Coalition (NEC) are addressed. BPA notes that the Washington Public Utility District Association (WPUDA) specifically commented that the proposed tiered rates structure will provide the necessary incentives to customers to invest in conservation and renewable resources.

Generally, the comments support BPA's policy and identify no fatal flaws. BPA has decided to proceed with the development of a tiered rates construct that limits the amount of power available at its lowest-cost-based PF rates. BPA will accomplish this by setting a HWM for each utility that defines and limits the amount of power available to buy at the lowest-cost Tier 1 rates. Amounts of power a utility chooses to buy from BPA beyond its HWM will be priced at a Tier 2 rate designed to recover the marginal cost of serving the additional load. BPA wants to emphasize that this rate construct and methodology will not limit the amount of power service a customer can purchase for its load from BPA, but it does affect the price of that service. BPA appreciates the general support and looks forward to working through the next phases to develop the overall construct and work out the details that several of the comments noted are not yet complete. This Policy implements the regional interest in limiting the dilution of the value of the Federal Base System (FBS) and removes a financial disincentive for developers and BPA customers to develop regional infrastructure.

## **Issue 2:**

### **Will BPA provide additional clarity on the nomenclature around HWMs?**

#### **Policy Proposal**

BPA introduced the concept of the HWM as both a permanent number established in the contract and as an amount that would be changed based on calculations in each rate case. BPA stated that the amount would be stated in average megawatts.

#### **Public Comment**

Several commenters suggested that additional clarity was needed to further refine the concept of the HWM. PNGC noted that BPA could add significant clarity to its Policy Proposal if more care was taken on the nomenclature around HWMs, noting that BPA uses the term to describe a couple of different ideas. (PNGC, REG-133) Underscoring the need for clarity, comments were made on the need to set up an appropriate process to make changes to the HWM. (WPAG, REG-109; NRU REG-103; Tacoma REG-135) Cowlitz commented that once the HWM number is established it should not change. (Cowlitz REG-118)

Both WPAG and Tacoma asked that it be clear that HWMs are a percentage of the available resources for the Tier 1 rate and not an average megawatt amount. WPAG suggest that to simplify this process, the HWM of each preference customer should be stated in its contract, and should be set out as a percentage of the output of FBS. If it is done in this manner, changes in the amount of power at the Tier 1 rate available to a preference customer under its HWM due to changes in the size of the FBS will be a simple mathematical computation. (WPAG, REG-109)

#### **Evaluation and Decision**

BPA agrees that additional clarity needs to be provided about specific uses of the term HWM. The major function of the HWM is that it is a rate construct that serves to mark or delineate the point at which a customer's purchases of Federal power are subject to a Tier 1 rate. Purchases of Federal power up to the customer's HWM will be under the Tier 1 rate, whereas any Federal power sold above the HWM will be under the Tier 2 rate. The HWM amount is determined for each public utility through a six-step process discussed later in this ROD and will be established as a number in the customer's contract. Consequently, BPA has decided to call this initial HWM, the Contract HWM. This Contract HWM addresses the request for permanence expressed by Cowlitz directly and indirectly by both WPAG and Tacoma in asking that BPA set HWMs as a percentage of the FBS that will not change.

Another aspect of the HWM concept is that it needs to be adjustable proportionally each rate period based on updated calculations of the amount of augmentation and FBS power available. The HWM amount that will be calculated each rate case is now referred to as a Rate Period HWM. The Rate Period HWM will determine the maximum amount of power at the Tier 1 rate that will be available to the utility during the rate period. BPA will establish the approach and process that will be used to determine the Rate Period HWM in the Methodology (TRM) which will be developed in a formal, public process.

BPA believes the interplay of the Contract HWM and the Rate Period HWM will create, as a general matter, the percentage approach that both Tacoma and WPAG suggested because the amount of power available at the Tier 1 rate to the individual utility goes up and down proportionally to changes in the amounts of firm power available from the resources that are included in the calculation of Tier 1 rates. It is worth noting, however, that a true fixed percentage is not practicable since the percentage of the available power at the Tier 1 rate for each utility will vary for circumstances such as additions of new publics discussed later in this ROD, additional Contract HWMs are likely to be created.

### **Issue 3:**

#### **Will BPA base each utility's HWM on historic, current or future loads?**

#### **Policy Proposal**

BPA proposed that each utility's Contract HWM would be based on the actual loads it experiences in FY 2010 with only limited adjustments.

#### **Public Comment**

Most of the comments were supportive of BPA's proposal to determine Contract HWMs based on actual, measured FY 2010 loads. (WPUDA, REG-080; Franklin, REG-100; Cowlitz, REG-118; Tacoma, REG-135; PPC, REG-132; NWasco, REG-055; Sumas, REG-068; Kittitas, REG-087; Richland, REG-091; IDEA & ICUA, REG-096; WMG&T, REG-106; NRU, REG-103; SUB, REG-126)

Two comments disagreed with the use of FY 2010 load data since it would mean that customers will not know their Contract HWM for quite some time. They urged BPA to move more quickly to establish the Contract HWMs using current or known loads. Canby suggested basing the number on FY 2003-2007 and having the calculation done by FY 2008. (Canby, REG-064) NIPPC suggested a quicker approach using the last 5 years of load data and underscored their concern that BPA's proposed approach would defer utility decisions on future market purchases until 2011 when utilities would receive their Contract HWM. (NIPPC, REG-130) While not expressly disagreeing with the use of FY 2010 loads, Northwest Energy Coalition expressed concern that waiting to set HWMs would produce an unintended consequence of giving an incentive to utilities to increase their loads between now and 2011. (NWECC & SOS; REG-110)

#### **Evaluation and Decision**

BPA shares the concerns raised by both Canby and NIPPC on the length of time until customers know their Contract HWM and how that may affect their future resource decisions. In response to this concern BPA will remain open to ideas for transition mechanisms that might mitigate the timing issue for the early years of the Regional Dialogue contract. BPA believes that the Northwest Energy Coalition comment is being addressed through the conservation adjustments being provided for in the formula for setting HWMs.

BPA acknowledges the support expressed in the comments that FY 2010 metered load data should be used as the basis for the Contract HWMs. BPA believes FY 2010 is reasonable because the use of this information will provide the region the most up-to-date information

available on customer loads as the basis for the Contract HWM. It should also be noted that the FY 2010 load amounts are only one of the variables for the Contract HWM calculation and that customer loads will be reduced by each customer's non-Federal resource amounts, under the six-step HWM process, which is addressed elsewhere in this ROD. In addition, BPA will weather normalize the loads and adjust the amounts for one-time force majeure events but specific details for these adjustments will be worked out through the TRM.

**Issue 4:**

**How will BPA treat “Contracted For/Committed To” (CF/CT) Loads for purposes of the HWM Construct?**

**Policy Proposal**

The Policy Proposal did not propose any special treatment for CF/CT loads.

**Public Comment**

Industrial Customers of Northwest Utilities (ICNU) and Weyerhaeuser recommended that BPA provide a special HWM treatment that allows an addition to HWM amounts for CF/CT loads not taking power in FY 2010. (ICNU, REG-125; Weyerhaeuser, REG-072) ICNU noted that this could be accomplished by either adjusting other customers' HWMs and/or augmenting the Federal system with additional power purchases. Cowlitz noted that they were also concerned about the CF/CT issue but that they were more concerned about how BPA ultimately decides to treat a customer's non-Federal resource amount in determining the HWMs. (Cowlitz; REG-118)

Weyerhaeuser expressed its belief that not providing this adjustment would not be consistent with their entitlement to receive PF power for their CF/CT load amounts and ICNU stated that such actions were necessary so that the CF/CT loads would not lose their statutory right to place load on their public utilities and obtain power at the Tier 1 rate.

**Evaluation and Decision**

Under section 3(13) of the Northwest Power Act, the Administrator may determine that certain large loads are “contracted for or committed to” or “CF/CT.” CF/CT load must have existed prior to September 1, 1979, and is served as part of the customer's general requirements with Federal power sold at the PF rate. BPA determines whether a load is CF/CT under section 3(13)(A) of the Northwest Power Act by reviewing the contemporaneous information on the service provided to the load by the local utility and the planned amount of service. Many determinations show that even current operating levels of the load at the consumer's facility are not equal to the amount of service planned in 1979. Other CF/CT loads have already exceeded their CF/CT amounts in current operations. BPA's proposal is consistent with the Act.

BPA assumes that the comment, while not expressly stated, concerns a CF/CT load that is not presently taking electric service up to the full CF/CT amount planned in 1979. BPA is aware that there are CF/CT determined amounts of Weyerhaeuser's load that have not been reached for the past 25 years. BPA suspects it is these amounts that Weyerhaeuser and ICNU would like to have included in a CF/CT serving utility's HWM.

As stated above, a utility's HWM will be based on the actual load a utility experiences in FY 2010 and the HWM creates a delineation for rate purposes between Tier 1 and Tier 2 of the PF rate. The HWM in no way changes the amount of a BPA customer's net requirements load for which the utility may receive service from BPA at the PF rate. The HWM is not a reservation of power to serve load and to have BPA increase its costs through augmentation--buying power--for loads that do not exist and may not exist in the future. The HWM concept is not designed to single out and include amounts of CF/CT load that is not consuming electricity as of FY 2010. BPA will not reserve power or increase HWMs for CF/CT loads when the FY 2010 load of the consumer is less than its CF/CT amount.

BPA utility customers that have retail load beyond their HWM will have an opportunity under the new contracts to either purchase additional Federal power for their load growth from BPA to serve such load at the applicable PF Tier 2 rate, or to acquire power for the load from a non-Federal source. If a consumer's CF/CT load actually increases after FY 2010, then the utility's net requirements load will also increase and its right to purchase PF power at Tier 1 or Tier 2 will increase accordingly under BPA's policies, unless the utility decides to provide non-Federal power to serve the load growth.

The HWM and the TRM will be based on actual load as of FY 2010. It will not include non-existent loads denominated as part of a CF/CT for a utility's consumer load. Therefore, it will be immaterial if the load growth that a utility has that causes it to exceed its HWM is due to general increases in load, or to an increase in consumption by a CF/CT load.

Contrary to ICNU's arguments that the HWM proposal is inconsistent with "a right" of a consumer to buy power at the PF rate, section 3(13) affords no such direct right to the consumer. BPA does not serve a CF/CT load directly but provides power at the PF rate to the local serving utility. In fact BPA is prohibited from directly serving the large load of a consumer since such service would be inconsistent with section 5(d)(2) of the Northwest Power Act prohibiting BPA from serving new direct service industries in the region. BPA's HWM proposal will afford the utility the option of providing power to a CF/CT load at a PF power rate which reflects the cost of that service. If, as in Weyerhauser's circumstance, such load were to be added under the CF/CT amount after FY 2010, then the utility could buy service at the applicable PF rate. While a BPA utility customer will be billed in accordance with BPA's applicable wholesale power rates, the local utility will control and determine its retail rate design under which the CF/CT load is actually served and charged. Thus it remains within the discretion of the serving utility ultimately to set the price for service to the consumer's load and not BPA.

#### **Issue 5:**

**Will BPA establish the HWM as an annual energy amount?**

#### **Policy Proposal**

BPA explained the HWM as an annual energy number but did not preclude establishing HWMs for other periods such as monthly.

### **Public Comment**

A number of comments encouraged BPA to make the HWM an annual energy amount and not monthly since monthly amounts would be unnecessarily complex. (Richland, REG-091; Franklin, REG-100; WMG&T, REG-106; WPAG, REG-109; NRU, REG-103; PPC, REG-132) One comment noted that the annual approach seemed preferable but reserved judgment until more details are known. (Tacoma, REG-135) Finally, NRU expressed a view that a change to a monthly HWM would be a big enough shift in direction that before BPA adopted such a policy additional comment should be provided. (NRU, REG-103)

### **Evaluation and Decision**

BPA agrees that a monthly HWM construct would be significantly more complex to develop and administer than the annual HWM approach proposed. BPA is convinced that working through the complexity would put additional pressure on the schedule that it will take to work through the implementation details of the HWM construct, Tiered Rates Methodology, and contracts. Based on these concerns about complexity and timing, BPA has decided to establish HWMs as annual energy amounts.

A further consideration in this decision is that the HWM includes an amount of planned power purchases over a year or a rate period and will result in an assignment of specific costs to a rate pool for those power purchases. BPA establishes these costs on the basis of recovery of those costs over the period and not on a month-by-month basis. Although actual billing charges for a customer's power service received in a month may differ month-to-month, the HWM is based on an average annual energy number over which those costs will be apportioned, and is only one component of the monthly charge. BPA does not see any benefit in creating a monthly differentiation for this base charge for energy each month since BPA plans its costs on annual operations of the system and annual purchases or rate period. Monthly variation are generally included and recovered as part of a load variation or load shaping charge as a further service BPA provides its customer. Specific rate methodology treatment will be the subject of discussion in the TRM and future rate cases.

### **Issue 6:**

**What process will BPA use to establish the Contract HWM amounts?**

### **Policy Proposal**

BPA proposed a six-step process that would be used to establish the HWM for each public utility.

### **Public Comment**

BPA received very little comment specifically on whether to adopt the six-step process. Wells specifically noted that they are in agreement with the six-step approach of setting HWMs. (Wells; REG-089) SUB also noted their strong support for BPA's proposal regarding the calculation of HWMs. (SUB; REG-126)

### **Evaluation and Decision**

The specific comments on the process are supportive and are closely related to comments already discussed on whether or not BPA should adopt a tiered rate construct. The general

support noted under that issue by logical extension fits here as well. BPA has decided to generally adopt the six-step process proposed in BPA's Policy Proposal to establish each utility's Contract HWM in FY 2011. This six-step HWM process will be distinct, and conducted separately from BPA's annual net requirement load calculations under its power sales contracts. A number of modifications to the individual steps were proposed in the comments. Those comments and BPA's response to those comments will be addressed and evaluated in the next several issues.

**Issue 7:**

**How will BPA clarify the details of the HWM calculation?**

**Policy Proposal**

As Step 1, prior to signing new Regional Dialogue contracts BPA would conduct a public process that establishes a consistent, simple and transparent approach that would be used to establish the HWMs, after BPA has performed the net requirements calculations for the proposed contracts, and consistent with BPA's 5(b)9(c) Policy.

**Public Comment**

Customers noted that Step 1 of the HWM calculation process is critical and should be transparent. (WVG&T, REG-106; NRU, REG-103) In addition a number of comments were also received on detailed issues such as how loads would be normalized, what would constitute a force majeure, and how to treat specific loads.

**Evaluation and Decision**

The HWM calculations establish the dividing line between the Tier 1 and Tier 2 pricing for a customer's BPA power service. BPA agrees with customers that continued work to create a transparent, understandable process is critical. Since the HWM construct is designed to create clarity on what each customer can purchase at a Tier 1 rate from BPA for a 20-year period, BPA understands that making the details understandable and clear is important. BPA's Policy is to tier the PF rate and make proposals for the broad parameters of the HWM calculation, but many details will need to be worked out in future processes before the customer-specific calculations can be done.

BPA will make proposals on the details needed for the HWMs as a part of the TRM which will occur before Regional Dialogue contracts are signed. The decisions on how HWMs are set belong in the TRM because the HWM is the foundation of the rate treatment that will implement the tiered rate construct. The TRM process will show each customer how its and the other public utility HWMs will be calculated, and will address detailed issues like weather normalization of loads, how to deal with one-time anomalies that reduce or increase loads when they are measured in FY 2010, such as fairly treating irrigation loads, agricultural set asides, and other important details. A key goal for the process will be to identify and establish treatments for the potential issues that could arise in 2011 when BPA and the customers look at the data that measures FY 2010 loads. Addressing such issues up front will allow the HWMs to be set as expeditiously as possible. While BPA intends to continue calculating net requirements on an annual basis as it does now, as a part of the overall

Regional Dialogue implementation process BPA will also explain and clarify the net requirements process.

**Issue 8:**

**Will BPA do a forecast of HWMs to provide an indication of what they may turn out to be?**

**Policy Proposal**

As Step 2, sometime in FY 2007-2008 BPA would forecast each customer's net requirement for FY 2010. It further noted that the calculation would use the customer's firm resource amounts that are dedicated to serve the customer's total retail load in FY 2010 under its Subscription contract. For purposes of calculating the HWM, BPA would use that data except for distinct and specific adjustments.

**Public Comment**

PNGC agreed that BPA should take an early look at net requirements and true up to actual FY 2010 loads. (PNGC, REG-133) PNGC and others provided specific suggestions about the process for developing the HWM forecasts. (IDEA & ICUA, REG-096; Tacoma, REG-135) In addition several of the comments addressed the timing of HWMs where customers suggested providing HWM amounts as soon as possible.

**Evaluation and Decision**

BPA understands customers will benefit by receiving as early an indication of what their Contract HWM will be, therefore, BPA will forecast Contract HWMs for each public utility before Regional Dialogue contracts are signed. This initial calculation will use a forecast of FY 2010 loads since actual loads would not yet be available. The firm resource amounts, however, are already generally known since resource amounts are currently identified for FY 2010 in each customer's Subscription contracts. However, this forecast will only be a preliminary HWM number because BPA is proposing to use actual load data from FY 2010. Specific adjustments to FY 2010 resources for Contract HWM purposes are discussed later in this ROD. To increase transparency of its decisions BPA intends for all individual Contract HWM amounts, including these forecast amounts, to be publicly available. Customers may need to exercise caution if they decide to make resource investments early on because the initial forecast of the Contract HWM is only an early indication of what their ultimate Contract HWM could be. The actual amounts can vary based on many factors including changes to its load, regional load growth, conservation achievement and other factors.

**Issue 9:**

**When and how will the actual loads that will be used to set HWMs be calculated?**

**Policy Proposal**

As Step 3, BPA would replace the FY 2007 forecast of FY 2010 loads used to establish the preliminary HWMs with actual measured FY 2010 loads. The calculation would occur in FY 2011 and loads would be normalized for weather and in rare instances, adjusted for significant one-time force-majeure events.

### **Public Comment**

Comments related to this section were discussed above in BPA's decision on whether to base HWMs on existing, current or future load data.

### **Evaluation and Decision**

Based on BPA's earlier discussion and decision to use FY 2010 loads to establish HWMs, the forecasted loads developed in Step 2 in FY 2007-2008 as preliminary estimates of a customer's HWM will be replaced in FY 2011 with final calculated amounts based on the customer's actual retail loads experienced and measured in FY 2010. Actual FY 2010 retail loads will be normalized for weather and other anomalies such as force majeure events consistent with the TRM. The detailed HWM approach established during the process described in Step 1 will establish the specific methodology and requirements to be used for these adjustments.

### **Issue 10:**

#### **How much power will be available for the HWMs of utilities?**

### **Policy Proposal**

BPA proposed that HWMs would be based on the firm output of the existing Federal Base System resources under critical 1937 water, as it has traditionally been defined for regional resource planning purposes, plus a limited amount of augmentation. BPA proposed that Step 4 for HWMs would be to determine the total amount of Federal power available for the initial Contract HWMs. BPA proposed that total BPA power supply used to determine Contract HWMs will be equal to the total of BPA's public utility net requirements loads as calculated in Step 3 except for three limitations: (1) total Contract HWMs would not be augmented above a total of 7,400 aMW; (2) BPA would not augment the existing FBS by more than 300 aMW; and, (3) if the existing FBS without augmentation equals or exceeds the total of BPA's net requirement loads as calculated in Step 3, the Contract HWMs will be based on the available BPA power supply without augmentation. The number would set the aggregate Contract HWM amount.

### **Public Comment**

BPA's proposal to base the Contract HWMs on the firm output of the existing Federal system did not receive specific comment but customers generally supported BPA's proposal to base the Contract HWMs and Tier 1 on the existing FBS resources with some augmentation. A number of comments were provided about the amount of augmentation BPA should add, which will be addressed later in this ROD.

### **Evaluation and Decision**

BPA has decided to base the total Contract HWM amounts on the size of the FBS firm resource forecast for FY 2012 in FY 2011 (using critical 1937 water to calculate the firm power, as it has traditionally been defined for regional planning purposes) plus up to 300 aMW of augmentation. Power BPA has obtained from long-term resource acquisitions after FY 2006 will be considered part of the augmentation and those costs will be included in the Tier 1 rate. Total BPA firm power used in this step to determine HWMs will be equal to the total of the firm power amounts calculated in Step 3 subject to three limitations: (1) total

HWMs will not be augmented above a total of 7,400 aMW; (2) no more than 300 aMW of augmentation will be added for this purpose; and, (3) if the existing FBS without augmentation equals or exceeds the amount calculated in Step 3, then the Contract HWMs will be based on the available BPA firm power supply with no augmentation other than long-term resources acquired between FY 2006-2011. Further details of FBS size determination will be proposed and established in the TRM.

**Issue 11:**

**How will BPA distribute HWM amounts when the total HWM available based on the calculation in Issue 10, exceeds or is lower than the total of all public customers' eligible net requirements loads?**

**Policy Proposal**

The HWM amount for each public utility calculated in Step 3 would be adjusted proportionally up or down so that in total, for all then current public utility customers, equals the amount available for the Contract HWMs established in Step 4.

**Public Comment**

There were no comments specifically on this section.

**Evaluation and Decision**

There were no comments on this section. The step involves a simple mathematical adjustment to balance the BPA decisions on the available resource amounts and the eligible loads. This step is needed to make sure that the formulas for calculating Contract HWMs work in conditions where the resources and loads are not in perfect balance. BPA has decided that the Contract HWM amount for each utility calculated in Step 3 will be adjusted proportionally up or down so the total Contract HWMs for all then current public customers equals the amount of Contract HWMs established in Step 4.

**Issue 12:**

**How will BPA account for conservation in the calculation of Contract HWMs?**

**Policy Proposal**

BPA proposed an approach that would result in the same total amount of Contract HWMs but accounted for conservation by adding amounts to HWMs for the conservation each utility achieved from FY 2007-2010. BPA further proposed that such conservation amounts would need to be cost-effective and verified by BPA and that BPA funded megawatts (i.e., through rate discount and bilateral contracts) would be reduced by 50 percent for this purpose. To finish the calculation the conservation adjusted HWMs were to be reduced on a pro rata basis so that they equaled the original total.

**Public Comment**

Most comments on this step of the HWM calculation focused on the specific amounts of conservation that would count for the adjustment, particularly whether the 50 percent reduction for BPA-funded conservation was reasonable and which years to count.

Comments on those specific issues are addressed separately in the next two issues of the ROD.

WPAG offered an alternative treatment for conservation from what BPA's proposal. WPAG stated that "by crediting the conservation savings at Step 4 of the HWM the calculation, the Policy Proposal does not provide a full credit for conservation savings achieved because it merely reshuffles the capped HWM amount between preference customers. This is not equivalent to the treatment of generating resources, and inappropriately penalizes preference customers that have engaged in conservation." WPAG suggested that the ROD should modify the proposed HWM calculation to recognize 100 percent of verifiable conservation savings achieved by preference customers, and should do so in Steps 2 and 3 of the HWM calculation. (WPAG, REG-109)

### **Evaluation and Decision**

First, BPA cannot agree to follow WPAG's suggestion to put the credit into the calculation in Steps 2 and 3, as discussed above. This would indeed provide more incentive to pursue conservation, but it would also add conservation to the utility's net requirements load, when, by its nature and the statutory definition in section 3(3) of the Northwest Power Act, conservation is a load reduction and therefore it reduces BPA's net requirements load obligation to a customer. So it is not appropriate to include conservation in the net requirements step of the HWM calculation. It might also result in additional augmentation.

WPAG also pointed out that adding conservation achievements earlier in the calculation could cause a different result. BPA agrees, although the amount of the difference is not likely to be large since BPA has limited the total amount of Contract HWMs to the size of the FBS plus up to 300 aMW of augmentation, if needed. If Step 4 of the formula results in the full amount of allowable augmentation, WPAG's approach produces the same result as BPA's proposal. However, if BPA's augmentation amounts are below the 300 MW cap, then in most circumstances the result of changing this step, as suggested by WPAG, would be an increase in the amount of augmentation that BPA would have to undertake. As BPA noted in the Policy Proposal it is concerned about limiting the amount of augmentation to what is absolutely necessary since the practical result of augmentation is to add cost to the low-cost PF rates.

BPA believes that WPAG's characterization of the proposed conservation treatment as a penalty is incorrect and mischaracterizes the issue. The first issue is one of what level of incentive for conservation by a customer is appropriate because under either approach the result is that customers are rewarded for some level of the conservation they achieve. The second issue takes into account the adjustment for the conservation level in the HWM formula. BPA is not convinced that changing the formula to add in conservation earlier in the HWM formula is needed or will result in a large enough benefit that justifies the increased likelihood of higher amounts of augmentation for FY 2012.

BPA has decided that as a Step 6 to the formula for setting Contract HWMs BPA will account for the conservation that each utility achieves from FY 2007 through FY 2010. BPA's reason to use this time-period is discussed below. Such conservation must be cost-

effective and must be verified by BPA. For calculation purposes, each utility's HWM amount from Step 5 will be increased by 100 percent of the conservation amounts it self-funded and 75 percent of the amounts BPA has funded through the conservation rate credit and bilateral contracts, as explained below in Issue 15. Then all of these conservation-enhanced utility HWMs will be reduced on a pro rata basis so that they again sum to the total HWM amount established in Step 5. BPA will establish the details of the customer specific calculations of this adjustment in Step 1 of the HWM setting process.

### **Issue 13:**

**Whether BPA should change the start date for counting individual utility conservation achievements from FY 2007 to FY 2002 for purposes of calculating utility HWMs?**

#### **Policy Proposal**

BPA's HWM approach counts all BPA verified, cost-effective conservation achieved by the customers from FY 2007 through FY 2010. FY 2007 is the proposed starting point because historic data have no impact on future decisions to make conservation investments.

#### **Public Comments**

PPC suggested that BPA credit utility-funded conservation from FY 2002-2010. PPC claimed it is inequitable for utilities that funded conservation from FY 2002 to FY 2007 to be penalized for doing so, via a reduction in their HWMs arising from the conservation. (PPC, REG-132) Several others agree with PPC. (WPUA, REG-080, SCL, REG-128 and REG-149-03; Tacoma, REG-135; Franklin, REG-100; Snohomish, REG-131) These commenters state that BPA should not penalize proactive utilities for having completed a lot of conservation in the period beginning after FY 2001 by moving away from the PPC proposal to provide retroactive credit back to FY 2002 for the savings achieved. Washington's Governor Gregoire also supports that position. (Gov. Gregoire; REG-147)

Other commenters expressed support for BPA's proposal. (Cowlitz, REG-118; Whatcom, REG-121; SUB, REG-126; PNGC, REG-133) NRU commented that because the purpose of the add back is to encourage utilities to continue to undertake new conservation, BPA's FY 2007 to FY 2010 conservation proposal is more appropriate. (NRU, REG-103)

#### **Evaluation and Decision**

Several commenters contend that utility self-funded conservation achieved in the time period between FY 2002 and FY 2007 should be included for purposes of calculating individual utility HWMs. These parties state that to not consider such conservation is to penalize them for having done the conservation. BPA acknowledges the individual utility achievements; however, BPA does not agree that those conservation achievements should be counted towards the calculation of the utility HWMs.

First, utilities that self-funded conservation during the period FY 2002 through FY 2005 did so because it made sense to them at the time. The concern raised by parties during the Concept Paper technical workshops that led to the Policy Proposal was that customers going forward should not face a disincentive for achieving conservation if it would result in a lower net requirement. Parties encouraged BPA to recognize individual utility self-funded

conservation achievements by increasing the HWM. Indeed, the proposal reflects that concern because it gives 100 percent credit toward self-funded conservation as an incentive to continue conservation going forward. In other words, giving this credit should lead conservation conscious utilities to continue proactively funding conservation. In contrast, BPA believes it is unreasonable to give utilities credit for old conservation achieved before FY 2007 since such conservation was not done in anticipation of receiving a higher HWM. BPA does not agree that this somehow “penalizes” the customer.

Second, BPA believes there would be undue administrative burden to verify aging claims of customers’ for achieving cost-effective conservation. There is now a developed system in place for tracking customer self-funded accomplishment of cost-effective conservation on a voluntary basis. That system was not in place for the FY 2002-2006 period, so retroactively determining what those accomplishments were would be challenging. BPA understands that many utilities that self-funded conservation did not necessarily achieve cost-effective conservation. Consequently, BPA does not wish to expand the effort, time and costs of verifying older utility self-funded conservation.

In light of the above, BPA will not change the start date for counting individual utility conservation achievements from FY 2007 to FY 2002 for purposes of calculating utility HWM.

**Issue 14:**

**Whether BPA should change its proposal for providing 50 percent credit in the calculation of HWMs for utility conservation accomplished with BPA funds between 2007 and 2010.**

**Policy Proposal:**

BPA proposed to only count 50 percent of BPA-funded conservation from FY 2007 through FY 2010 for purposes of calculating HWMs

**Public Comments**

BPA received comments that fall into basically two categories: (1) those that express support for the draft proposal, and (2) those that request BPA to provide more credit for BPA-funded conservation.

Some customer groups and several customers have suggested that BPA should go to 75 percent. (NRU, REG-103; SUB, REG-126; Cowlitz, REG-118; SCL, REG-128; Richland, REG-091)

Other commenters urged BPA to increase the amount of credit even further. (NPCC, REG-033; CRITFC, REG- 138 and REG-149-13; SOS, REG-110; Gov. Gregoire, REG-147) Some commented that BPA should provide 100 percent credit. (ODOE, REG-062; WPAG, REG-109; Gov. Kulongoski, REG-149-17) WPAG also suggested that the credit be given in Steps 2 and 3 of the proposed calculation of the HWM, rather than after Step 5.

On the other hand, several parties supported the conservation crediting at the 50 percent level the policy has proposed. (WPUDA, REG-080; IDEA & ICUA, REG-096; Snohomish, REG-131; Emerald, REG-136; SRA, REG-032; MT Trout, REG-085)

Finally, PNGC suggests that credit for both self-funded and BPA-funded conservation should be set at 50 percent. (PNGC, REG-133)

### **Evaluation and Decision**

If BPA were to follow the recommendations to increase the credit for BPA-funded conservation to 100 percent, there would be no difference in the HWM credit gained by a utility that invests its own money in conservation versus a utility that only uses funds from BPA. BPA believes this would be inequitable and would remove an incentive to utilities to make such investments with their own funds.

BPA views the difference between 50 percent and 75 percent as a matter of how much cost versus benefit will go to differently situated customers. While the differences in the calculated HWM may be slight, BPA believes those differences could keep conservation from being achieved.

BPA believes that raising the credit given to BPA-funded conservation to 75 percent will reinforce BPA's commitment to achieving all cost-effective conservation. It should also reduce any reward for not doing BPA conservation and benefiting from that conservation done by others, while still sharing the benefits between those who do the BPA conservation and those who help pay for it. If additional self-funded conservation occurs because the credit is 75 percent rather than 100 percent, BPA is benefited because the conservation is accomplished at a lower cost to all ratepayers.

For these reasons, the Contract HWM credit from BPA-funded conservation from FY 2007 through FY 2010 will be increased from 50 percent to 75 percent.

## **C. CHANGES TO HWMs**

BPA's HWM proposal will determine a customer's eligibility to purchase power for its net requirements loads at a Tier 1 rate. Over time a customer's service area may grow and expand, new utilities may be formed, including tribal utilities, or other changes may take place such as annexations or mergers of utilities.

### **Issue 1:**

#### **How will BPA treat annexed loads for purposes of Contract HWMs?**

### **Policy Proposal**

BPA proposed that a new public that forms out of an existing public customer would receive a share of that customer's HWM. The amount was proposed as a percentage of the HWM equal to the proportion of the existing utility's total retail load that is annexed.

### **Public Comment**

A couple of comments supported BPA's proposal on annexations of load between publics. Cowlitz noted that annexation or similar action that only redistributes HWM between the two affected utilities is acceptable, to the extent it does not affect the rest of the customers' HWMs. (Cowlitz, REG-118) Northern Wasco expressed general support for BPA's approach to new publics and reiterated the policy that BPA had expressed in the Policy Proposal. (NWasco, REG-056)

Other comments suggested adding some restrictions to the proposal. WPAG expressed a concern that BPA take care not to create an incentive for annexations of load between customers in the way HWM amounts are allocated between the customers. To accomplish this WPAG suggested that when a customer has unused HWM amounts, any unused HWM amounts be retained by the existing utility rather than having that excess amount allocated between the two utilities. In addition WPAG suggested that BPA further reduce the HWM amount that is transferred by a further 50 percent. (WPAG, REG-109) Along this line SUB suggested that BPA restrict the annexed load to amounts that were actually in existence in FY 2010 when the loads used to establish the HWM were measured. (SUB, REG-126)

### **Evaluation and Decision**

First, BPA recognizes that annexation of load by one public utility customer from another public utility customer can occur between existing customers and without the requirement that a new public utility customer form out of an existing public utility.

WPAG's proposed HWM reduction to create a disincentive for annexation creates a situation where the existing public would end up with a significantly higher percentage of its remaining load eligible for BPA's Tier 1 rates. BPA believes WPAG's proposed modifications could result in situations where a customer losing load could go from having part of its net requirement served at Tier 2 rates to actually having unused HWM amounts that it could grow into. The customer acquiring the load would face the opposite situation of not having the HWM follow existing load. BPA's proposal would allow the consumers in each utility to face the same BPA wholesale power costs regardless of which customer serves them.

SUB's suggestion to revisit the amount based on the actual loads that existed in FY 2010 would add complications and uncertainty for calculations of the split of the HWM amounts. Once the Contract HWM amounts are set a utility's Contract HWM would not change. Trying to dissect load amounts that were established on an aggregate basis in FY 2010 to specific service territory or consumers would be impossible without cataloging the then current load of each retail consumer. This would be administratively burdensome. It could quickly become a computational nightmare, potentially fraught with uncertainties over changes to loads that could lead to protracted disagreements. BPA is not interested in adding more layers of detailed complexity which are not needed.

The comments in general reflect that the parties understand the Policy Proposal and how it would be implemented. BPA is unconvinced that adding additional complications are necessary and believes that allocating the HWM as a percentage of the load annexed provides

a fair resolution because it balances the needs of each public utility customer and their ability to distribute the benefit of Federal power. It also provides a straightforward and predictable approach that BPA believes will neither encourage nor discourage annexation between public customers. Consequently, BPA has decided that amounts of load that are annexed by one public utility from another public utility customer will receive part of the existing public's HWM, proportional to the percentage of the customer's load they have annexed.

## **Issue 2:**

**Whether BPA should reserve 40 aMW of power at the Tier 1 rate specifically for new tribal utilities.**

### **Policy Proposal**

The Policy Proposal provides no unique provisions or exceptions for tribal utilities. Under the proposal, a tribe that establishes a non-profit utility falls within the category of "new publics," as does any newly formed public utility customer. Consequently, the same provisions apply to tribes as apply to other new public customers. The Policy Proposal provides that BPA would earmark 250 aMW of power at the Tier 1 rate for new publics over the 20-year contract period. HWM additions for new publics would be further limited to an aggregate total of 50 aMW each rate period. A new public that qualifies for BPA service must request service from BPA through a 3-year binding notice before it may buy Federal power with a HWM. Utilities larger than 10 aMW would have their HWM amounts over 10 aMW phased-in in 3-year increments.

### **Public Comments**

Several comments generally recommended that BPA support growth of tribal utilities. (NWECC & SOS, REG-110; Gov. Gregoire, REG-147 & 149-16; Cow Creek, REG-093; CTUIR, REG-117; CRITFC, REG-149-13) Some commenters stated that the proposal does not provide enough flexibility to allow tribal utilities to form and serve customers. (NWECC & SOS, REG-110; Gov. Gregoire, REG-147 & 149-16; Cow Creek, REG-093; CTUIR, REG-117; PPC, REG-149-01) One specific issue raised is that tribal utilities are likely to be small when they first form and will grow slowly over time as they absorb more service territory within the reservation. This process of slow growth over time does not work well with the Policy Proposal's approach of setting HWMs for new publics based on the size of the utility when it first forms. (NWECC & SOS, REG-110) Some commenters made the general statement that new tribal utility loads should have access to Tier 1. (NWECC & SOS, REG-110; CTUIR, REG-117; Cow Creek, REG-093; ATNI, REG-111)

Several commenters requested exceptions specifically for the Yakama Power utility based on Yakama Power's expectation to eventually grow to 42 MW of load. (ATNI, REG-010-01; ATNI, REG-111, Yakama Nation, REG-148; Yakama Power, REG-149-12) CRITFC stated that low cost power should be allocated to Yakama Power. (CRITFC, REG-138 & REG-149-13) Yakama commented that the draft proposal would block expansion of Yakama Power by increasing the cost of its power supply from BPA. When Yakama Power signed its current contract in 2000 it was based on the assurance that it would be eligible for up to 42 MWs of low-cost PF power. (Yakama Nation, REG-148) Accordingly, several parties asked that Yakama's HWM be raised to accommodate its expected load growth. (ATNI,

REG-010-01; ATNI, REG-111, Yakama Nation, REG-148) Some commenters specified that the amount of Tier 1 rate power set aside for Yakama Power should be 25 aMW. (Grant, REG-059, Yakama Nation, REG-148, CRITFC, REG-138, and ATNI, REG-111) Commenters note that this request is made to support the potential settlement between Grant and Yakama Nation regarding Grant's Priest Rapid's Project hydro-relicensing. (Grant, REG-059)

### **Evaluation and Decision**

Some parties recommended that BPA set aside 25 aMW of Tier 1 rate power specifically for the Yakama Power utility for the purpose of serving Yakama's load as it grows over time. BPA recognizes that Grant and the Yakama Nation are attempting to settle an outstanding legal dispute and that the 25 aMW of power may provide the parties a solution that will allow them to reach a settlement. BPA also understands that Yakama Power and the Yakama Nation desire to extend tribal utility service to all consumers within the geographic boundaries of the Yakama Nation reservation, which has been estimated to be around 42 aMW.

First, BPA's practice is not to reserve specific amounts of power for a specific customer on the basis that its loads might grow in the future and will not do so under this Policy. However, BPA does recognize that new tribal utilities are confronted with unique barriers that slow their ability to grow their load within Indian reservation boundaries. Therefore, BPA will designate 40 aMW as an amount of Tier 1 rate power available to meet new or future tribal utilities whose loads grow beyond their HWMs. New tribal utilities are those which commenced taking service from BPA under the Subscription power sales contracts or after.

For several reasons BPA is not persuaded by comment that it should reserve 25 aMW specifically for Yakama Power. It is uncertain whether Yakama Power will ever supply electricity to all consumers within the Yakama reservation. BPA is aware that within the Yakama reservation boundaries, like most other Indian reservations, there are non-tribal lands that are owned in fee by non-tribal persons. BPA is also aware that Yakama Power and other tribal utilities face significant legal barriers (i.e., the interplay between state, local and tribal law) that must be overcome to replace the existing electric utilities that already provide service within reservation boundaries. For example, tribal utilities cannot form or annex service territory by the vote of the people in an election. In experience gained from serving various types of utilities, BPA sees that tribal utilities can be limited in the exercise of their governmental powers within their reservation boundaries due to the checkerboard of land ownership between tribal and non-tribal persons. Unlike other utilities, tribal utilities face unique issues as they annex or acquire distribution facilities/systems from existing utilities. As a result, the expansion of service to load within Indian reservation boundaries by a tribal utility may occur slowly over a long period of time.

Second, because Yakama Power is an existing power customer and would not fall into the small (less than 10 aMW) new public category since it is already taking service and expects to have a HWM of about 7 aMW in 2010, BPA's proposal did not accommodate Yakama Power. However, given the above described known barriers (and others that BPA is not

presently aware of) facing tribal utilities, BPA believes it is reasonable to add and designate 40 aMW as an amount of power at the Tier 1 rate available to meet existing new or future tribal utilities whose loads grow beyond their HWMs. BPA believes 40 aMW is a reasonable amount on which to base the exception considering the possible amount of load that could be served by tribal utilities across Indian reservations in the Pacific Northwest and the difficulties in forming and expanding service. Therefore, under this exception, on a first-come-first-served basis, a tribal utility's HWM may be increased by the amount of its load growth as limited by the amount available of the 40 aMW. This exception will expire at the earlier of (1) the end of FY 2021, or (2) when the overall 250 aMW limit for new publics is reached. However, if the 250 aMW has not been reached, BPA is not precluding reconsidering the FY 2021 time period. BPA believes this approach strikes a fair balance to support the needs of new tribal utilities as they establish their service to load within their respective reservations and the barriers they may face.

This 40 aMW will count toward the 250 aMW overall limit for new publics. BPA believes it is reasonable to categorize load growth of existing new tribal utilities with future new public utilities because of the unique challenges tribal utilities face gaining service territory. Given the checkerboard layout of many reservations and other unique challenges described above, growth of an existing tribal utility is similar to the formation of a new public utility.

While this policy acknowledges challenges facing tribes, the sunset provision provides a firm limit as to the amount of Tier 1 rate power involved and time for which this opportunity is available to tribes. The sunset provision provides certainty as to BPA's commitment with respect to the 40 aMW. Any portion of the 40 aMW that remains after the sunset will be available to new publics as part of the 250 aMW new public total.

### **Issue 3:**

**Whether BPA should treat tribal utility customers differently than other customers.**

### **Policy Proposal:**

The Policy Proposal does not provide for unique treatment of tribal utilities, as explained above.

### **Public Comments**

Commenters asserted that BPA has tribal trust responsibilities that require extra consideration for tribes. (NVEC & SOS, REG-110) Commenters request various exceptions for tribes. CTUIR argues that tribes should be exempt from any limits on new small utilities. Similarly, CTUIR, Cow Creek, and ATNI stated that a tribe's HWM should not be limited to the tribe's initial load. (CTUIR, REG-117, Cow Creek, REG-093, ATNI, REG-111)

Yakama Power stated that BPA has a Federal legal mandate to promote tribal utility development and cites several laws and policies to support its position. Yakama asserted (1) that BPA has not implemented the Indian Energy Resource Act of 1992 to promote new tribal utilities; (2) that the Energy Policy Act of 2005, Title V, directs BPA and other Federal PMAs to encourage Indian tribal energy development; and, (3) that BPA's policies require

Yakama to secure the approval of other governments and/or private corporations for public service activities on its reservation, which restricts tribal sovereignty and must be changed to recognize tribal sovereignty. (Yakama Nation, REG-148; Yakama Power, REG-149-12) Other commenters also emphasized that BPA's trust responsibility and the Energy Policy Act of 2005 require BPA to support and encourage formation of tribal utilities. (NWECC & SOS, REG-110; ATNI, REG-111 & REG-149-11) ATNI stated that BPA should adopt policies to truly encourage tribal utility growth and formation. (ATNI, REG-111)

CTUIR stated that new tribal utilities should not be required to seek state PUC approval or be forced into costly buyout agreements by utilities currently serving tribal lands. CTUIR commented that State PUCs do not have jurisdiction over tribal lands and asserts that requiring a tribe to purchase existing poorly degraded local distribution systems from the servicing utility and then have that utility receive approval from the PUC for the sale, extends state jurisdiction onto tribal lands. (CTUIR, REG-117)

### **Evaluation and Decision**

The Regional Dialogue Policy contains provisions that will assist tribal utilities as they form and expand service. One such provision is the limitation on the amount of HWM any single new public utility may be assigned. This provision addresses the risk that a single large new public utility might absorb all of the 250 aMW HWM available for new public utilities and leave none for new tribal utilities. Another provision is designed specifically to assist tribal utilities is the 40 aMW set-aside of HWM to cover growth of new tribal utilities after they are initially formed. Although BPA has chosen to provide such assistance, it is important to note that no substantive requirements obligate BPA to conduct or change its power marketing with regard to Indian tribes imposed by the Energy Policy Acts of 1992 and 2005.

Consistent with the policies enunciated in the Energy Policy Acts of 1992 and 2005, BPA's power marketing policies—the Power Subscription Strategy and the Regional Dialogue Policy—have included provisions that encourage and support the formation of non-profit electric utilities by tribes to access low cost Federal power marketed by BPA. While BPA recognizes tribal governments are different than state and local governments, once qualified, formed, and operating BPA serves tribal utility customers just as it does public body, cooperative, and Federal agency customers. The one exception noted in this Policy is the addition of 40 aMW of power for purposes of determining new and future tribal utility Contract HWMs.

As part of the Energy Policy Act of 1992, Congress included two sections that specifically authorize the Secretary of Energy to grant financial assistance to Indian tribal governments for energy purposes. Section 3503 requires the Secretary to (1) provide development grants to Indian tribes or joint ventures (51 percent or more controlled by an Indian tribe) seeking to develop energy resources on Indian reservations; (2) provide grants for vertical integration projects, i.e., to promote the vertical integration of using or processing energy resources on Indian reservations; and, (3) provide technical assistance to tribes. This Act does not impose any duty on BPA to acquire an Indian energy resource nor does it direct BPA to sell Federal power to tribes. Further, the purchase of Federal power by Yakama Power is not the development of a tribal energy resource on an Indian reservation.

Similarly, Section 2605 of Energy Policy Act requires Federal power marketing administrators to encourage Indian tribal energy development.

Each Administrator shall encourage Indian tribal energy development by taking such actions as the Administrators determine to be appropriate, including administration of programs of the power marketing administration in accordance with this section.

The provision continues that action by Administrators is to be in accordance with laws in existence on the date of enactment of the Act in 2005.

These statutes do not impose new obligations on BPA nor do they repeal or amend the Administrator's existing obligation to offer and sell Federal power under the Bonneville Project Act or Section 5(b) of the Northwest Power Act. While there is a "distinctive obligation of trust incumbent upon the Government in its dealings with [Indian tribes]. . . . That alone, however, does not impose a duty on the government to take action beyond complying with generally applicable statutes and regulations." Gros Ventre Tribe v. United States, 469 F.3d 801.810 (9<sup>th</sup> Cir. 2006). Therefore, BPA will serve qualified tribal utilities the same as it does its other public body and cooperative utilities requesting service under Section 5(b) of the Northwest Power Act, with the exception of the 40 aMW addition.

BPA recognizes that there are barriers that exist that make it difficult for tribes to form a new public utility and expand service. As discussed above, BPA understands that tribal utilities can be limited in the exercise of their governmental powers within their reservation boundaries due to the checkerboard of land ownership between tribal and non-tribal persons. BPA policy seeks to be flexible to accommodate the longer time period tribes may experience as they proceed to establish new non-profit utilities or expand existing tribal utility load service. It is reasonable to expect that tribal utilities will encounter resistance from utilities that already serve load within the reservation. It is also reasonable and consistent with prudent utility practice that BPA not supply Federal power until disputes over service to load between a new tribal utility and a utility that currently provides service are resolved, even if it means both parties must receive the approval of other governments, such as a State PUC, or a court of competent jurisdiction, and/or private corporations.

Additionally, BPA does not agree that its policy restricts tribal sovereignty and must be changed to recognize tribal corporations for public service activities on its reservation. BPA must also recognize existing laws and jurisdictions and work within those limitations. BPA's existing Standards for Service Policy requires that a requesting new public utility have the legal obligation to serve the load it seeks to serve, and it must own the distribution system that will be used to serve that load. Just how a new utility succeeds in complying with that standard is up to the utility. BPA will continue to work with tribes on issues concerning the development of tribal utilities.

**Issue 4:**

**Whether BPA should offer contingent contracts so that forming utilities can be assured a source Federal power while they are going through the steps of meeting the standards for service.**

**Policy Proposal**

BPA did not make this proposal.

**Public Comments**

ATNI requested that the proposal create a process for contingent contracts so that forming utilities can be assured a source of Federal power while they are going through steps trying to meet standards for service. (ATNI, REG-111 & REG-149-11)

**Evaluation and Decision**

BPA did not propose to offer contingent contracts as part of this policy and will not do so now. While BPA did include an offer of contingent contracts under the Subscription policy, BPA structured the Regional Dialogue policy differently which eliminated the need to use contingent contracts. The allowance of 250 aMW in HWMs for new public utilities to purchase at the Tier 1 rate applies for the 20 years of the Regional Dialogue contracts. The 250 aMW is based on the past 20 years' experience of new public customers forming and requesting about 300 aMW in power service from BPA. Therefore, entities thinking of forming a new public utility can be assured of having 250 aMW (as opposed to 75 aMW in Subscription) available at the Tier 1 rate if they form a qualified utility and request service from BPA.

**Issue 5:**

**Whether tribal utilities should be exempt from the 3-year notice period.**

**Policy Proposal:**

No unique treatment for tribes was proposed. Accordingly, tribes must provide the same 3-year notice of new loads that other customers provide before BPA is required to serve that load.

**Public Comments**

Umatilla asked whether tribal utilities should be exempt from the 3-year notice provision applicable to new public customers. (CTUIR, REG-117)

ATNI requested that there be no 3-year notice requirement for tribal utilities. Instead of a notice period or deadline, forming tribal utilities should be given contingent contracts so that the forming utilities will be assured a source of Federal power while they are going through the steps of meeting standards for service. (ATNI, REG-111)

**Evaluation and Decision:**

The 3-year notice provision exists to provide some load planning certainty to BPA and allows sufficient time to acquire power to serve the new load. Formation of a new utility

takes a significant length of time, so providing advanced notice should not impose significant hardship on the tribal utility.

Additionally, in a scenario in which BPA is required to serve load without reasonable notice, BPA would inevitably not be able to obtain power to serve that load in the most cost-effective manner and would lead to an increase of Tier 1 costs. Consequently, the notice provision indirectly benefits all customers. Balancing the interest of maintaining low Tier 1 rates with other commenters' interests of minimizing notice requirements, BPA believes it is reasonable to maintain a 3-year notice requirement. During the interim period the utility may purchase power from BPA at rates that are established for that purpose, such as the power service BPA has made available during the subscription contracts through a targeted adjustment charge (TAC). Details for this approach will be worked out in the applicable rate cases.

#### **Issue 6:**

#### **Will BPA allow DOE Richland to have an increase in its Contract HWM?**

#### **Policy Proposal**

Access to power at the lowest-cost-based rates for public customers, including Federal agency customers, is limited by an individual customer's HWM.

#### **Public Comments**

The U.S. Department of Energy, Richland Operations Office (DOE-RL), on behalf of the Office of River Protection (DOE-ORP), commented that the proposed process to determine a customer's HWM needs to address the Hanford nuclear reservation site's mission priorities and associated known electric load requirements that will occur at the site after FY 2010. Currently, DOE is constructing the Waste Treatment and Immobilization Plant complex. This facility and other treatment technologies will cause the electric load at the Hanford site to increase by up to 70 aMW after the FY 2010 timeframe. DOE has a legal obligation to perform this nuclear waste clean up from the former defense materials production and, most importantly, it is essential for protecting the Columbia River and its communities and the economic future of the region. (DOE Richland, REG-124)

#### **Evaluation and Decision**

One of the U.S. Department of Energy's Strategic Themes is "protecting the environment by providing a responsible resolution to the environmental legacy of nuclear weapons production." The strategic plan includes a goal to achieve "complete cleanup of the contaminated nuclear weapons manufacturing and testing sites across the United States." As part of DOE, BPA supports the ongoing, high priority program for clean up and for defense materials production and waste processing/disposal activities at the U.S. Department of Energy, Hanford, Washington, site (DOE-RL and DOE-ORP). DOE already has a number of waste treatment-related facilities currently under construction at the site. Construction slowed in 2005 and was eventually halted temporarily on the two primary power use facilities (High Level Waste Facility and Pretreatment Facility) due to seismic and budget concerns. Today those two facilities remain in a construction delay until certain seismic review/re-engineering work is completed. Construction activities on other facilities have

continued. Based on DOE-RL and DOE-ORP's current schedule, the loads are estimated to increase from about 22 aMW in FY 2010 to a peak of about 92 aMW in FY 2018.

As part of its ongoing regional support of environmental clean up efforts that affect the Columbia River Basin, BPA supports DOE-RL and DOE-ORP's efforts. Therefore, BPA intends to serve DOE-RL and DOE-ORP's new on-site defense materials production and waste processing/disposal loads when they are operational. BPA will allow increases in DOE-RL and DOE-ORP initial Contract HWM, as needed, up to a total of 92 aMW for increases in this load for on-site defense materials production and waste processing/disposal loads when they become operational. BPA will augment its Tier 1 resources as necessary and include the costs of purchased power or acquired resources in the Tier 1 Rate.

#### **Issue 7:**

#### **How will changes to the Federal Base System (FBS) capability affect HWMs?**

#### **Policy Proposal**

BPA proposed that the existing FBS and necessary augmentation amounts, discussed earlier in the ROD, will establish the Contract HWM and the amount of power available to customers at BPA's Tier 1 rate. As part of each rate case, BPA will recalculate the annual firm power capability of the FBS. A factor will be calculated by dividing the available amount of power by the total of the Contract HWMs and the factor will then be multiplied by each customer's contract HWM to establish a Rate Period HWM for each customer.

#### **Public Comment**

For the most part, public comments were focused on establishing a clear process in which Rate Period HWMs would be calculated. Tacoma emphasized the importance of having HWM changes done in a transparent and objective manner based on an established process. (Tacoma, REG-135) Likewise, NRU, WMG&T, and Richland expressed concerns about HWM changes and noted that BPA should only revise HWMs based on clearly established contract provisions and in a formal rate case process. (NRU, REG-103; WMG&T, REG-106; Richland, REG-091) PNGC made a further distinction in which disputes over HWMs should go to dispute resolution prior to, and outside of, the formal 7(i) rate process. (PNGC, REG-133)

WPAG's comment did not support updating HWMs via rate cases and stated that HWMs and revisions to HWMs should be clearly indicated in the new power sales contracts and should not be overridden by the rate case process. (WPAG, REG-109) PNGC supported Rate Period HWMs; however, PNGC was unconvinced that BPA had fully considered the implications of an increased FBS capability during the contract period. (PNGC, REG-133)

#### **Evaluation and Decision**

One of the basic principles of the Regional Dialogue is to limit the dilution of the value of the Federal system. To accomplish this, BPA has decided that changes in the FBS during the contract period should be reflected in the HWM amounts. BPA understands that customers are concerned about BPA making changes to HWMs outside of contracts and formal processes in which customers can comment and participate. It is reasonable to expect over

the term of the Regional Dialogue contract the FBS will experience changes in its firm power capability. Thus, if the firm power capability of the FBS increases, customers should be able to purchase more Federal power at Tier 1 rates. Likewise, if the FBS decreases customers should have the right to the lowest cost-based rates without having to pay for additional augmentation costs. To provide customers greater certainty about the timing in which Contract HWMs will be adjusted to account for changes in the FBS, BPA will forecast FBS capabilities and perform a HWM adjustment at the onset of each new rate period as part of the formal section 7(i) rate case process.

Decreases in the firm capability of the FBS that occur during the rate period will be absorbed by BPA and will be managed by BPA through balancing purchases and secondary sales to meet the BPA's contractual obligations to supply power at a Tier 1 rate. This method of managing decreases in firm capability for a rate period will not be applied to the Slice product. Customers buying Slice will absorb any changes in power available from the FBS as in the current product, through reductions in power deliveries under the Slice product. The costs attributed in BPA rates to the Slice product would likewise not include the balancing purchases.

PNGC's comment on the need for HWM dispute resolution outside of the 7(i) process is addressed in the Dispute Resolution Section of this ROD.

#### **D. HWM POOLING**

##### **Issue 1:**

**Whether BPA should allow the pooling of HWMs among customers.**

##### **Policy Proposal**

BPA proposed that Contract HWMs would be an individual amount differentiating Tier 1 from Tier 2 for each individual utility and could not be pooled between customers.

##### **Public Comments**

Northern Wasco PUD was the sole commenting party that agreed with BPA's proposed policy to not allow the pooling of HWMs among customers. (NWasco, REG-055) However, Northern Wasco also urged BPA to allow the pooling of its net requirements load obligations amongst customers.

Several other commenters expressed disagreement with the Policy Proposal, either explicitly or by inference through suggesting alternatives. Several disagreed with BPA's stated view that to allow HWM pooling would work against the goal of reducing regional conflict and would become administratively burdensome. (ICL&P, REG-073; IDEA & ICUA, REG-096; LVE, REG-141) They believe that allowing HWM pooling would have the opposite effect and would lead to greater regional cooperation or enable utilities to operate more efficiently and serve their customers more effectively.

Several commenters urged BPA to allow a Joint Operating Entity (JOE) to pool the HWMs of its member-utilities. (ICL&P, REG-073; Raft, REG-081; NRU, REG-103 a JOE should be able to provide operational pooling services for its members. (PNGC, REG-133) BPA should allow the combining of HWMs for planning and operations to occur on a pooled basis. (Blachly-Lane, REG-140; PNGC, REG-150) These comments also suggested that BPA allow a JOE to pool the net requirements of its members.

Northern Wasco suggested further, as did several others, that BPA should allow utilities to pool their net requirements loads generally, without regard to their status as a member of a JOE. (ICL&P, REG-073; IDEA & ICUA, REG-096; NRU, REG-103; WMG&T, REG-106; Cowlitz, REG-118; SUB, REG-126; Emerald, REG-137) Two parties asserted their current ability or right to pool net requirements and resources with other customers. (Sumas, REG-068; Whatcom, REG-121)

Several commenters requested that BPA allow “operational pooling,” the “pooling of loads and/or resources,” or “Tier 1 pooling.” (Sumas, REG-068; WPUA, REG-080; Richland, REG-091; Franklin, REG-100; NRU, REG-103; Cowlitz, REG-118; Whatcom, REG-121; SUB, REG-126; PPC, REG-132; LVE, REG-141) WMG&T expressed at a public meeting its understanding that BPA does not object to “operational pooling.” (WMG&T, REG-010-06)

### **Evaluation and Decision**

Since publication of its initial Concept Paper in September 2005 and continuing through the publication of its Policy Proposal, BPA has consistently expressed the point that the HWM is a rate construct that establishes and gives certainty about the amount of Federal power a customer may purchase at the Tier 1 rate. The Policy Proposal gave specific reasons why BPA did not propose to allow the pooling of HWMs, including its concerns that pooling of HWMs would work against the goal of reducing regional conflict and, moreover, that the tracking of HWMs would become administratively burdensome.

While acknowledging that many customer comments expressed a desire to pool their HWMs with other customers, BPA received no rationale or compelling arguments why HWM pooling is needed and should be allowed. The comments provided no evidence to show that allowing HWM pooling would further the attainment of any Regional Dialogue goals such as infrastructure development. To the contrary, participants in BPA’s technical group meetings leading up to the development and publication of the Policy Proposal stated that HWM “grouping” would allow utilities to “buy a little time” before they would be subject to either BPA’s Tier 2 rate or purchasing power from a non-Federal resource. BPA is concerned that any such time delays could translate into imprudent deferrals of necessary resource investment. Pooling HWMs would thus serve to defeat a foundational purpose of the general tiering construct, to send a pricing signal that spurs timely infrastructure development.

BPA concludes pooling would add undue complexity to an already complex service package, in contradiction to a Regional Dialogue goal of simplicity. BPA is concerned about increased administrative costs to monitor the combining or trading of HWMs. A further concern is the recognition that allowing HWM pooling will increase the need for

augmentation in rate cases because any power priced at the Tier 1 rate that is effectively tied up in pooling arrangements will drive the need for an equal amount of augmentation, up to the ultimate 300 aMW proposed for that purpose.

Also, BPA believes HWM pooling would increase Tier 1 rates because any gain in value by a select group of customers who pooled would be at the expense of the other customers by reducing secondary power sales credits to them. Such outcomes would serve to increase regional discord and dilute attainment of the Regional Dialogue goals of lowest Tier 1 costs and rates and securing regional support and equity.

Customer comments on operational pooling did not present a common definition of what was meant. NRU commented about the “operational pooling” of non-Federal resources in the context of BPA’s provision of transmission or transfer services to alleviate congestion on the transmission system. (NRU, REG-103) Others commented more generally on “operational pooling,” urging BPA to allow the practice, whatever its definition. Sumas stated that BPA should offer operational pooling for those publics that want the arrangement. (Sumas, REG-068) WPUDA, Franklin, WMG&T, Whatcom, SUB, and PPC stated that owing to the inherent flexibility of the FBS, BPA should allow operational pooling by utilities for purposes of taking Tier 1 rate power. (WPUDA, REG-080; Franklin, REG-100; WMG&T, REG-106; Whatcom, REG-121; SUB, REG-126; PPC, REG-132) The only decision on pooling that BPA is making in this ROD is whether to allow the pooling of HWMs. BPA is not deciding which other types of pooling arrangements it will allow or even consider. It is not entirely clear what commenters intended by the phrase “operational pooling,” and BPA will not make any decision on the issue here. BPA is, however, interested in providing flexibility where workable arrangements would help reduce transmission constraints or otherwise assist customers who wish to join together to acquire and manage resources to meet their load needs beyond their BPA HWM. BPA intends to engage in further discussions with interested customers to better understand the implications and intent behind the term “operational pooling.” If BPA finds there are arrangements that are reasonable and do not adversely impact other BPA policies or goals, BPA may seek ways to implement them.

Regarding the pooling of net requirements, BPA policy has been that customers cannot pool their net requirements load or dedicated resources except as provided under section 5(b)(7) of the Northwest Power Act. BPA acknowledges under statute a JOE is conferred special status as a class of preference customer that allows it to purchase requirements power from BPA on behalf of and in an amount equaling the sum of the net requirements load of its constituent member-utilities. However, to date, BPA has formally determined only one entity – PNGC Power – has met both the statutory requirements of a JOE and BPA’s standards for service under which it may purchase requirements power. BPA’s position at this time is that only an entity meeting these dual criteria of a JOE may contract with BPA to purchase a pooled amount of requirements power for its utility members.

Finding no convincing arguments in favor of HWM pooling, while recognizing the several significant downsides to the concept, BPA concludes that it will adopt its proposed policy to

not allow the pooling of HWMs among customers. BPA is not adopting any change in its current policy on pooling individual utility net requirements loads or resources.

## **E. NET REQUIREMENTS CALCULATIONS**

### **Issue 1:**

#### **How will BPA establish its net requirements determination?**

##### **Policy Proposal**

BPA proposes to calculate net requirement loads each year to determine the amount of power each customer is eligible to purchase from BPA in that year. The policy noted that for many customers the importance of net requirements calculation increases under the HWM construct, since it would determine where their loads are relative to their HWM and how much of their BPA load service is subject to Tier 2 rates. Power amounts available for Block and Slice customers are based on a BPA-produced annual forecast of their net requirements loads. Load-following customers would continue to be provided their full power needs less their non-Federal resources.

##### **Public Comment**

BPA received numerous comments regarding the net requirements determination. Many customers expressed support for the development of standardized rules for the calculation of net requirements. (Sumas, REG-068; WPUA, REG-080; Richland, REG-091; WPAG, REG-109; Whatcom, REG-121; PNGC, REG-133)

Some commenters emphasized the need for a transparent approach to calculating net requirements. (Wasco, REG-055; NRU, REG-103; Cowlitz, REG-118; PNGC, REG-133)

WPAG stated that the net requirements methodology should specify rights of the customers to participate in other customer's calculation and be attached as an exhibit to all of the new power contracts. WPAG believes that this will help reduce disputes. (WPAG, REG-109)

##### **Evaluation and Decision**

BPA agrees with parties that a standardized, transparent approach to calculation of net requirements is necessary, especially in a tiered rates environment where the net requirements will determine a utility's Tier 1 and Tier 2 rates obligation. BPA has an existing methodology on determining customer net requirements, adopted in May 2000 as the 5(b)9(c) Policy. BPA intends that the current policy will continue to apply to its determinations of net requirements load for each utility customer with only specific modifications identified in the next section. BPA is willing to review other specific aspects of its policy if BPA determines that such review is needed to address a specific issue raised by its Regional Dialogue Policy.

Additionally BPA has been requested by several customers and groups to make its net requirements determinations more open. WPAG suggested that BPA adopt specific rights for the participation of other customers in BPA's calculation process for each customer.

BPA will explore ways to develop a transparent public process for BPA's determination of customer net requirements. BPA cannot yet state the exact form or type of process and participation for its net requirements determinations but will explore alternatives in implementation workshops on the section 5(b) net requirements process and calculations. Customers should appreciate that their individual utility loads and resource information will be made public in some format in the process, since that information creates the fundamental basis for transparency. BPA will explore ways to make its final calculations publicly available. These enhancements to the current net requirements process will be discussed in implementation workshop discussions that will follow the release of this ROD.

BPA is not currently deciding customer rights to participate in the process of calculation of other customers' net requirements. BPA is committed to exploring ways to increase the transparency of the determination and is inclined to believe there is the need for some level of public comment in advance of making final net requirements determinations. WPAG's suggestion regarding dispute resolution is discussed in the Dispute Resolution Section of this ROD.

## **Issue 2:**

### **Will BPA perform the net requirements determination on an annual basis?**

#### **Policy Proposal**

As stated above, BPA proposed to calculate its net requirements load obligations each year. BPA emphasized that the annual approach is consistent with current practice and noted that in conjunction with a limited resource removal right for load loss, annual determinations provide the certainty intended by parties' request that BPA perform net requirements load calculations for the rate period only.

#### **Public Comment**

Some commenters asserted that the net requirements determination used to determine a utility's right to Tier 1 rate power should be for the rate period rather than annually to provide resource and rate planning certainty for BPA and its customers. (Wells, REG-089; NRU, REG-103; WPAG, REG-109)

WPAG expressed concern that if BPA is proposing to perform the net requirements determination annually and it forms the source of the forecast on which removal rights for existing non-Federal resource will be based, it will create a mismatch between the annual utility load forecast generated by the net requirements determination and the 2-year rate period during which the removal right for existing non-Federal resources would be available. WPAG suggested that the net requirements determination used to forecast the utility's retail load for purposes of determining resource removal rights be done for each 2-year rate period, making those periods correspond so that it provides some degree of planning certainty to customers. (WPAG, REG-109)

NRU stated that an annual net requirements determination would be burdensome for both BPA and its customers. NRU also stated that because rate periods are expected to be for 2 or

more years, a net requirement determination that is done for the rate period will work better “from a ratemaking standpoint.” (NRU, REG-103)

### **Evaluation and Decision**

Regarding WPAG’s concern that the resource removal right would be on a different timeframe for application than would BPA’s net requirements determination, BPA acknowledges the differences. BPA has always performed an annual net requirements determination under its contracts and intends to do so in the future. The precise coordination between the net requirements calculation and the removal right for loss of load at the start of a rate period has not been worked out and will not be resolved here. The net requirements calculation does form the basis for the right to remove resources under the current contracts. However, many details will need to be worked out for the new contracts given the tiering of the rates by the HWM and the proposed changes to resource removal rights that will be a part of a limited review of BPA’s 5(b)9(c) Policy. Those details will have to be decided in future BPA public processes because BPA is not ready to decide that issue now.

BPA does not agree with WPAG that a “mismatch” between forecasts and removal rights will be created. For clarification, BPA is proposing to limit resource removal rights to an annual basis within the rate period *except* for the initial year of the rate period. This annual removal right will be in synch with the annual load forecasts that the net requirements determination will be based on.

BPA does not agree with NRU’s argument that annual determinations would be burdensome for BPA and customers. This annual approach to net requirements is consistent with current BPA practice and historical utility practice. BPA believes that annual calculations serve as important checks on the load calculations that are used in rate cases. The annual calculation will also serve to avoid surprises as loads change and will reinforce transparency. An annual determination is consistent with BPA’s obligations under the Northwest Power Act to determine its total load service obligation and in determining surplus power available to BPA for the operating or contract year.

BPA does not believe that a net requirements calculation for the rate period will work better for rate making purposes. Annual net requirements determinations will provide BPA with better information and more up-to-date information about how its total Pacific Northwest load obligations are changing under the 20-year contract and what cost impacts BPA may be facing in meeting those obligations. The net requirements calculation will be done annually to determine BPA’s load service obligations under its power sales contracts as stated in section 5(b)(1) of the Northwest Power Act.

### **Issue 3:**

#### **When will the net requirements determination be performed?**

### **Policy Proposal**

The “Annual Net Requirements Calculation” section of the Policy Proposal was silent on when the determination would be performed. In the “Mechanics of High Water Mark” section the Policy Proposal noted that prior to signing Regional Dialogue contracts BPA

would work with parties in implementation discussions to establish a transparent approach determine net requirements for and during the contracts.

### **Public Comment**

PNGC commented that having the process to determine a utility's Tier 1 amounts, which includes the net requirements calculation, outside of the formal 7(i) proceedings would simplify the process. PNGC further stated that having the determination prior to the rate case would free it from procedural requirements of the 7(i) and give customers and BPA time to plan and acquire necessary resources for the next rate period.

### **Evaluation and Decision**

Under the current contracts BPA does an annual review of net requirements obligations starting in late July of a Contract Year. Those determinations will continue for the current contract. The HWM calculations will not be simply a net requirements load forecast but will include other adjustments per the decisions made and direction given in this Policy.

PNGC commented that by having the initial HWM process in a section 7(i) rate case process, it subjects that calculation to the rigorous processes and data requirements of the rate case. BPA believes that a net requirements calculation can be conducted in an open manner in a non-rate case setting. Also, by not having the net requirements calculation tied to a rate case, it will give customers more time to plan for resources they may need to acquire in the upcoming rate period. BPA believes that the calculation of net requirements is an administrative function and is not required to take place in a section 7(i) rate case. The net requirements loads will be calculated prior to the beginning of each fiscal year. The net requirements will be compared against a utility's HWM to determine a customer's access to Tier 1 and Tier 2 rate power. However, the timing and details of both the net requirements determination and HWM calculation are under development and will be discussed further in implementation meetings following the release of the ROD. At that time, BPA will discuss alternatives with customers to develop the details of both processes.

## **F. CHANGES TO BPA's 5(b)9(c) POLICY**

### **Issue 1:**

**Whether BPA will consider reviewing its current section 5(b)9(c) Policy to accommodate the proposed 20-year Regional Dialogue power sales contracts.**

### **Policy Proposal**

In its Policy Proposal regarding customer rights to add and remove non-Federal resources, BPA noted that it would need to review and modify the current section 5(b)9(c) Policy to reflect the changes in the treatment of customer resources.

### **Public Comments**

PNGC commented that the 5(b)9(c) Policy would impact a customer's resource removal both short and long term, and that a review should be undertaken as soon as possible so that customers know the framework they are working in to acquire non-Federal resource for

service to non-Tier 1 loads. (PNGC, REG-133) PNGC added that the 5(b)9(c) Policy must be developed in concert with the TRM and products and well before Regional Dialogue contracts are offered, suggesting that BPA revise its 5(b)9(c) Policy in time for the initial setting of HWMs.

Franklin and PPC recommended that BPA “rethink” its interpretation of section 9(c) in light of the new allocated world. They recommend a policy that will allow utilities to better manage their complex relationship with BPA and other power suppliers as well as balance their power sales and purchases without undue restriction. (Franklin, REG-100; PPC, REG-132) Northern Wasco supported the review and modification of BPA’s current 5(b)9(c) Policy and emphasized the need for equitable treatment for adding and removing non-Federal resources. (NWasco, REG-055)

### **Evaluation and Decision**

BPA’s current Section 5(b)9(c) Policy allows customers, for reasons of load loss, to remove non-Federal resources which are dedicated to serve their consumer load upon 60 days notice before the start of the next Contract Year and for the duration of that year. The customer must have the resource(s) available the following year and must apply that resource(s) if its consumer load increases in the next year. Under Subscription contracts, customers set their initial non-Federal resource amounts they are obligated to apply and use to serve their load based on the resources they showed in their 1998 Firm Resource Exhibit, and their choices to apply additional non-Federal power purchases or resources they would use under the contract. Consistent with the 5(b) Policy, the Subscription contracts provide for the customer a right to remove those resources on an annual basis to adjust for any load loss in the Contract Year. The customer’s firm resource commitments define its obligation to serve its load, which is load BPA does not have to serve. Generally the non-Federal resource obligations a customer has, do not change under the contract, unless an extraordinary circumstance arises that BPA determines warrants a change.

The proposed approach for power sales contracts and customer resources under Regional Dialogue creates a distinction between those non-Federal resources that currently exist and are used to serve existing consumer load, and those “new Tier 2” non-Federal resources that a customer decides to use to serve its retail load above its HWM. PNGC believes it is reasonable to review and consider whether to modify the Section 5(b)9(c) Policy as soon as possible but at least in coordination with BPA’s other implementing steps for Regional Dialogue particularly any TRM that BPA adopts. PPC and Franklin believe BPA should “rethink” its 9(c) Policy as well since they do not find the current policy conducive to the “complex relationships” that an “allocated world” will create.

BPA understands PNGC’s interest in undertaking a timely review of BPA policy in order to coordinate it with the potential changes to contracts and rates. However, BPA does not believe that all aspects of the current 5(b)9(c) Policy need to be reviewed for modification. Most but not all of the policy should remain as it is. However, BPA will review the policy regarding application of a customer’s non-Federal resources to load served above a customer’s HWM.

Regarding PPC's and Franklin's comments that the 9(c) Policy covering BPA review of a customer's sale of non-Federal thermal, renewable, or hydro power outside the region, BPA is not proposing any changes at this time. In 2003, BPA provided clarifications as part of a litigation settlement over its 5(b)9(c) Policy, and those clarifications are still in effect. The clarifications concern the customer's use and application of resources constructed after May 2000 and were designed to encourage new resource development in the region. While BPA is not contemplating any specific changes around the 9(c) Policy, BPA remains willing to listen to customer's specific concerns and will consider specific additional clarifications to address new issues on how the current policy will work under Regional Dialogue contracts. BPA recognizes that the HWM construct is likely to result in additional utilities participating in resource development and that those utilities may have questions.

Presently, BPA will review the 5(b)9(c) Policy to account for three specific matters that are raised by the Policy Proposal: (1) a customer's disposition of "new" non-Federal resources that are being used to serve a customer's load above its HWM – the so-called Tier 2 non-Federal firm resource additions a customer may make; (2) a customer's ability to remove its existing non-Federal resources that are dedicated to serve existing load under the current contract – the so-called Tier 1 non-Federal firm resources; and, (3) given current state law trends the possible elimination of the customer's ability to add non-Federal renewable resources in any year and for any duration.

- Limiting Resource Removal. BPA's current policy and contracts allow a customer to remove resources on an annual basis to maintain the net requirement that is established in its contract. BPA will propose to modify resource removal rights as follows for Regional Dialogue contracts:

1. Allow Customers to Remove Resources Built to Serve Load Above HWM.

Regional Dialogue contracts will provide an annual right for a customer to remove new resources (new customer resource amounts applied after the Subscription contract) applied to serve the load beyond its HWM. Without this right, a customer that develops resources to meet its load beyond its HWM would be at risk of losing access to BPA's lowest-cost PF power if the load growth did not materialize, creating a disincentive for infrastructure development. This right is applicable to Slice, Block and Load-Following products.

2. With-in Rate Period Removal for Existing Resources. Each rate case BPA will establish a customer's purchase rights for that entire rate period based on then current forecasts of its net requirement. BPA will only allow a customer to remove existing resources (customer resource amounts applied under Subscription contract) for purposes of calculating a customer's net requirements within a rate period and not ahead of the rate period, and then only in order to maintain the purchase amounts established for that rate period. This right only applies to Block and Slice customers. This removal right will only affect Tier 1 loads. The load-following customers will not have this right because their product automatically adjusts to changes in their load.

*3. Eliminating Renewables Exception.* BPA will propose to eliminate the 200 MW (in aggregate) exception of renewable resource additions established under the Subscription contracts and BPA's 5(b)9(c) Policy.

As BPA considers the Section 5(b)9(c) Policy and possibly adopts modifications to it, the new Regional Dialogue contracts will equally have to reflect the terms and conditions which are consistent with the 5(b)9(c) Policy. As long as the rights and subsequent treatment of resources in the contract do not change, and are in accord with the Section 5(b)9(c) Policy, there is no need to modify the policy or contract terms. The policy applies to power service under any section 5(b) contract, and for purposes of section 9(c) to any section 5 power sale for a customer's electric power requirements. See Policy on Determining Net Requirements of Pacific Northwest Utility Customers under Section 5(b)(1) and 9(c) of the Northwest Power Act, Record of Decision (May 2000) at 17. BPA will include discussion of these proposed modifications in the public meetings and workshops that work out details on how the Policy will be implemented. Such a discussion will be used to answer any questions persons may have and to help inform BPA's decision whether it needs to make revisions to the 5(b)9(c) Policy.

#### **Issue 2:**

**Whether BPA will include a contract provision for a limited resource removal right for existing non-Federal resources for load loss within a rate period?**

#### **Policy Proposal**

BPA proposed to include in the Regional Dialogue contract a limited resource removal right for a customer's existing non-Federal resources applied to its current loads, but only for load loss a customer experiences within a rate period. Qualifying load loss would only be the difference from the forecasted amount of load and resource measured from the start of each rate period. This would ease a customer's take-or-pay risk.

#### **Public Comment**

Several commenters support the proposal to offer a limited resource removal right for load loss a customer may experience within a rate period. (Richland, REG-091; NRU, REG-103; Cowlitz, REG-118; PNGC, REG-133; Tacoma, REG-135) PNGC commented that allowing customers to remove existing resources could result in significantly lower HWM than expected. WPAG suggested that removal rights for new non-Federal resources not be linked to retail load loss and that the removal right should be available (after reasonable notice to BPA) without regard to the reasons prompting such action. WPAG stated that having unconditional resource removal rights would provide flexibility and would help overcome the challenges of new resource development. (WPAG REG-109)

#### **Evaluation and Decision**

BPA does not agree with WPAG's comments that the right to remove a non-Federal resource, whether it serves current load or load growth, should be unlimited. First, BPA's obligation is to serve the utility's load net of the firm resources the utility has committed to serve the load. The utility's obligation to supply a resource under its contract must be on the same basis as BPA's obligation to serve or BPA's obligation becomes open-ended, which is

contrary to the Regional Dialogue Proposal. Second, other customers are not stepping up to a proposal that has BPA backstopping any change in resource for all the utilities in the region even at Tier 2 rates. The ability of any or all utilities to remove any resource for any reason would place BPA back into a position of not knowing its load obligations. Third, Congress intended and BPA expects that once a customer commits a resource to serve its own load, the resource will continue to be so used except in very specific, limited circumstances.

Under the Subscription contracts BPA agreed to a limited removal of non-Federal resources for a Contract Year if there had been a loss of load but only to the extent of the load loss. Customers are required to return that resource to load in the event their load is higher in the next or following years. The removal of the resource is thus for only 1 year at a time. Several customers believe that given the changes in rates and service proposed by BPA, a more workable horizon would be to allow resource removal for the rate period, nominally 2 years. The theory seems to be that since the utility will have had to commit to cover its load above its HWM for the rate period or have asked BPA to supply power at a Tier 2 rate for that load, then allowing removal for load loss for a rate period would not cause cost risks to BPA.

Generally, BPA agrees with this expectation once the rate period begins and sees merit in proposing a limited right to remove non-Federal resources from a customer's Firm Resource Exhibit, if the customer's loads expected to be served during the rate period do not materialize. If the service obligations are clearly defined on a rate period basis under the contract such that BPA would not have an obligation to supply power to serve the consumer load or replace resource amounts for that rate period, then allowing removal of non-Federal resources within a rate period basis will not impose costs and balances reciprocal obligations between BPA and the customer, to the extent of a planned load loss.

However BPA does not believe that this logic holds at the beginning of a rate period when a customer's net requirement is below its Rate Period HWM. Allowing resource removal in this situation results in a greater amount of power being sold at lowest-cost Tier 1 rates than would otherwise be the case, and increases the need for augmentation because the increase in Tier 1 power amounts will drive the need for an equal amount of augmentation. Even if augmentation is not required then secondary power amounts would be reduced. The augmentation costs or reduction in secondary credits available due to serving the additional load would increase Tier 1 rates overall because any gain in value by the utility removing resources would be at the expense of the other customers.

This reality is underscored by what has transpired during the Subscription contracts. A number of utilities received their power based on forecasts done before power deliveries began under the contract. The projected high load growth turned out to be optimistic but customers with resources have been able to remove resource amounts and maintain a purchase amount significantly above the amount they would receive with an updated net requirement, absent the resource removal right. Those customers will have received several hundred million dollars in value from the removal rights, value that would otherwise have resulted in lower PF rates for the other customers. This loss of value, concerns about minimizing augmentation and our interest in keeping Tier 1 rates as low as possible are why

BPA will propose to change the 5(b)9(c) Policy to limit resource removal rights for existing resources.

### **Issue 3:**

**Whether BPA will include a limited resource removal right for new non-Federal resources serving a customer's net requirements load in excess of their Contract HWM?**

### **Policy Proposal**

BPA proposed to include in the Regional Dialogue contract a resource removal right for new resources serving a customer's net requirements load in excess of their HWM.

### **Public Comments**

PNGC commented that rights to remove Tier 2 resources should parallel notice provisions for Tier 2 purchases, and that it should have the right to remove these resources on a short-term basis so as to not reduce the Tier 1 purchase amount. (PNGC REG-133) WPAG commented that the removal right for new non-Federal resource should not be linked to retail load loss. WPAG also suggested that the removal right should be available (after reasonable notice to BPA) without regard to the reasons prompting such action. (WPAG, REG-109)

WPAG suggested that removal rights for new non-Federal resources not be linked to retail load loss and should be available to preference customers (after reasonable notice) without regard to the reason prompting the action. WPAG stated that having unconditional resource removal rights would provide flexibility and would help overcome the challenges of new resource development. WPAG stated that BPA's Policy Proposal was silent on how the removal rights for new and existing non-Federal resources will differ. (WPAG, REG-109)

NRU emphasized the need for removal rights to help customers balance their ability to develop new resources without sacrificing their portion of Tier 1 power. (NRU, REG-103) PNGC supports the right to remove new non-Federal resources on a short term basis in order to maintain Tier 1 purchase amounts. (PNGC, REG-133)

### **Evaluation and Decision**

BPA recognizes that there may be a need to remove "new" or so called Tier 2 non-Federal resources that a customer has added to its Firm Resource Exhibit to serve its load beyond the amount available through its Contract HWM. This need would be particularly apparent in the circumstance when the planned amount of load growth did not occur as anticipated. Other circumstances which may need to be addressed are not as apparent. Certain flexibilities are necessary to help provide for resource and rate planning certainty to both the customer and BPA. In a tiered rate environment it is crucial that a balance be struck that achieves certainty for both parties. Customers may need flexibility to manage their resource additions, but at the same time BPA must be assured that customer's resource decisions do not place additional service or cost burdens on BPA and adversely impact BPA or its other customers.

Establishing a resource removal right will help ease those challenges. Without such a right, a customer that develops resources to meet its load beyond the amount available through its Contract HWM would be at risk of losing access to power at the Tier 1 rate if that load growth did not materialize. This would create a disincentive for utilities to develop needed infrastructure, which is in direct conflict with the goals of Regional Dialogue. BPA will propose to allow utility customers an annual right to remove new resources built to cover a utility's load growth. Regarding WPAG's concern that BPA has not explained how the resource removal rights for new resources may differ from those rights applicable to existing resources, while BPA acknowledges that details are not yet fully addressed BPA believes the intended distinctions are adequately explained in the Policy Proposal and this ROD under Issues 1 and 2 above. Additional details will have to be addressed in the implementation steps of rate and product development, and contract negotiation.

One of the goals of Regional Dialogue is to promote infrastructure development. BPA acknowledges NRU's comments and understands the impediment customers developing resources face in regard to the uncertainty of how much low-cost power they are able to buy from BPA. Having a resource removal right that removes this impediment will help encourage infrastructure development. BPA and customers that use non-Federal resources to serve load must have some understanding, basis, or event that triggers a customer's right to remove its resource(s). A loss of load that can be factually demonstrated is a reasonable event upon which to base this right (as is loss of resource, obsolescence, and retirement). BPA does not understand what purpose a notice provision serves for removing a resource if the removal can be done for any reason, particularly if the customer load has not decreased and must still be served. In that case, BPA assumes the customer would seek to substitute an existing non-Federal resource with another non-Federal resource and not Federal power. If so, BPA is indifferent as long as there is no adverse impact on BPA. However, BPA also agrees with PNGC that granting unlimited resource removal rights could threaten the stability of other customer's access to Tier 1 power. For reasons stated in previous sections, BPA will not allow for unconditional resource removal right.

In response to PNGC's comment on parallel notices, BPA intends to design notice provisions for removal of resources that a customer dedicates to load above its HWM so that the notice parallels notices to change Tier 2 purchase amounts from BPA. Regarding both NRU's and PNGC's comment on the impact of new resources and removal rights upon a utility's Tier 1 purchases, BPA also understands that customers with new resources will want the flexibility to manage those resources without having to risk losing access to BPA's lowest cost PF Tier 1 rate power. BPA intends to maintain the annual removal right for these new resources so that a customer's choice to dedicate new resources does not reduce the amount of Tier 1 rate power available to it in a contract year. A final decision on this and associated details will be worked out in the contract, product and rate development processes.

#### **Issue 4:**

**Will BPA require Block and Slice/Block customers to make resource declarations for non-Federal resources?**

### **Policy Proposal**

The amount of Federal power a public utility customer is actually eligible to purchase in any particular year is determined by its net firm power load requirement, which is the amount of the customer's regional retail consumer load that is not being served by the customer's non-Federal resources applied to its load. BPA will calculate net requirements loads each year to determine the amount of power each customer is eligible to purchase from the BPA that year.

### **Public Comments**

Tacoma commented that customers should not be obligated to declare resources in the new contract except when a customer is purchasing under a Partial Requirements contract, or changing its service (shifting) from Full Requirements to Partial Requirements service. Tacoma further stated that BPA's obligation to serve will not be affected by customers' individual choices regarding the use of non-Federal resources and power supplies, either owned by customers or purchased from third parties. Tacoma asserted that BPA or other BPA customers will bear no economic consequences for changes in Block and Slice/Block's non-Federal resource decisions. (Tacoma, REG-135)

### **Evaluation and Decision**

In the public review of BPA's May 2000 5(b)9(c) Policy, Tacoma raised a similar issue that BPA did not need to know load or resource information from BPA's public customers or do a net requirements calculation until BPA was in an insufficiency status under section 5(b)(5) and (6) of the Northwest Power Act. Tacoma also stated that BPA did not have a right to review Tacoma's load forecast and had to accept the utility's forecast for purposes of calculating net requirements. Now Tacoma argues the similar points on BPA's net requirements determinations using an economic rationale. They argue that for Slice Block purchasers there is no risk to BPA, and net requirements is not relevant to them but only to full requirements customers or to partial requirements customers.

BPA is obligated under section 5(b)(1) of the Northwest Power Act to offer power to meet a customer's firm regional consumer load less the non-Federal resources the customer applies to the load. This obligation is determined by BPA's net requirements determination. Tacoma's logic is unpersuasive and unsupportable. BPA will apply its 5(b)9(c) Policy uniformly to all customers regardless of their type of power purchase. As BPA stated in its May 2000 Record of Decision, "BPA alone holds the statutory responsibility to provide electric power to meet not only the retail firm load of one utility customer less its applicable resources, but the total net firm requirements load of all eligible customers." BPA accomplishes this task by obtaining information and reviewing data on each individual utility customer's firm consumer load in the region and the utility's firm resources applied to those loads. These net requirement load determination define BPA's obligation to provide power under its power sales contracts which in turn affects BPA's resource expenditure, its revenues, and ultimately its ability to repay the U.S. Treasury. An annual review of those obligations to review for changes to a customer's loads and resources, if any, is consistent with prudent and sound business practices. BPA disagrees that it can avoid this duty and not review and refine its obligation based on Tacoma's assertions of one economic future. Therefore, BPA will require that all of its regional utility customers, including those who purchase Block products or Slice and Block products, and who are buying power for their

firm consumer loads continue to provide information on their both their regional firm consumer loads and their non-Federal resources, in adequate detail and quality to allow BPA to make revisions annually to its net firm requirements load obligations to its customers.

## **G. Centralia**

### **Issue 1:**

**What should BPA's disposition be on the Centralia replacement resources currently included as a Section 5(b)(1)(B) firm resource in Seattle's, Snohomish's, Tacoma's and Grays Harbor's (Four Publics) power sales contract post-2011?**

- (1) Should the amount of the Centralia replacement resources of the Four Publics be subtracted from total retail load in calculating the utilities' HWM calculations?
- (2) Should the Centralia replacement resources be removed from the dedicated firm resources of the Four Publics for the post-2011 power sales contract?
- (3) If removed, what should BPA's determination be on the sale of the Centralia resource, based on 9(c) criteria?

### **Policy Proposal**

BPA proposed to conduct a review of the Centralia coal plant sale under its 5(b)9(c) Policy as part of an overall package for service under Regional Dialogue contracts. This proposal responded to the PPC "allocation" proposal that requested BPA "not include a utility's prior ownership share for a generating resource no longer owned by the utility," for purposes of calculating the Four Publics' net requirements or HWM for Regional Dialogue contracts. The Centralia Replacement resource was the only resource identified by PPC.

### **Public Comments**

Several customer groups' comments supported removal of Centralia as a 5(b) resource, but only as part of an overall package. For example, NRU stated, "in the context of the overall Policy Proposal, we continue to believe that it is acceptable to remove Centralia from the firm resource exhibits of the affected BPA customers, even if this has a negative consequence for the HWM amounts received by the Agency's load-following customers. However, our support for Centralia is predicated upon other key aspects of the Policy Proposal being adopted that are important to NRU members. If the package cannot hold together, then all aspects of any future power supply approach, including the treatment of Centralia, will need to be re-assessed." (NRU, REG-103; PNW IOUs, REG-142)

In addition, other comments stated BPA should consider removal of Centralia as a 5(b) resource based on the merits of this action apart from any consideration in the Regional Dialogue. WPAG believed that the utilities had provided sufficient power under the Four Publics' current Subscription contract obligations to allow removal of the resource, recognizing that they no longer owned the plant. Washington's Governor Gregoire stated, "The Regional Dialogue links favorable treatment of this issue to the general success for the overall proposal. However, if BPA finds that there is a fair and legal way to resolve the

Centralia issue, then it should be just as fair even if other conditions are not met. I encourage you to consider this issue on its own merits.” (Gov. Gregoire, REG-147; WPAG, REG-109)

BPA stated that it would need to collect, analyze, and review information on the sale of Centralia in conducting any review and could not state what result that review might produce. As part of their comments in this Regional Dialogue process, the Four Publics submitted information to BPA on September 26, 2006, that detailed the arguments for their position and then supplemented that information on January 7, 2007, in response to BPA questions. The Four Publics stated that Centralia should be removed from Exhibit C for the following reasons:

- A. Fulfillment of a Prior Contractual Notice Period for Removing Resources: “As of October 1, 2009, each of the Utilities will have satisfied the waiting period set out in Section 12(b)(8) of the 1981 PSC for the permanent removal of their ownership shares of Centralia from retail load service.”
  
- B. Removal Due to Obsolescence or Loss of Resource
  - i. Obsolescence. “At the time of the sale, Centralia had been in operation for nearly thirty (30) years, and could not continue to be operated in its then current configuration because it did not comply with applicable emissions standard. In short SWAPCA would not permit the continued operation of Centralia in its then current configuration. (Exhibit 1, pp. 24-27; Exhibit 3, pp. 36-37) As minority interest owners, the Utilities could neither force the other Centralia owners to make the capital investment to install the emission control equipment required by the regulator, nor could they consistent with Washington law shoulder the entire expense of installing this equipment on their own.”
  
  - ii. Loss of Resource. “Prior to the Centralia sale, SWAPCA had issued an order requiring the installation of technology to materially reduce emissions from Centralia, and indicated that continued operation of Centralia would not be permitted if such equipment were not installed. (Exhibit 3, pp. 36-37) And the Utilities could neither force the other Centralia owners to make the capital investments necessary to install scrubbers, nor could they consistent with Washington law shoulder the entire expense of installing scrubbers on their own.”

“Under these circumstances, Centralia was unavailable to the Utilities due to a combination of state regulatory action by SWAPCA and the inability of the Utilities on their own to bring Centralia into compliance with the regulatory requirements of SWAPCA for continued operation. This constitutes permanent loss of Centralia due to regulator action, thereby permitting permanent removal of each Utility’s ownership share of from (sic) Exhibit C in accordance with 5(b) of the Regional Act.”

- C. Request for Removal on Consent of the Administrator: The Four Publics claim that implementation of tiered rates eliminates the possibility of utilities disposing of non-Federal resources and placing the load on BPA at a melded rate, thereby imposing the costs of this additional supply on all preference customers, and therefore the application of Centralia as a dedicated resource makes little sense. Second, the Four Publics stated that “the basic tenet of tiered rates is that all customers will enter the tiered rates environment on an essentially equal footing, and with a power supply relationship with BPA that is more rational and business-like. These objectives will not be advanced by reducing the access of the Utilities to Tier 1 power based on the involuntary disposition of a resource that took place ten (10) years ago.” Third, the Four Publics suggested that “it is fundamentally inequitable to permanently reduce the amount of Tier 1 power that will be available to the Utilities based on a generating resource that they will not have owned for nearly ten (10) years, and which is no longer available to them due to circumstances that were beyond their control.”

As an elaboration of the arguments to remove Centralia separate from the Regional Dialogue, a number of comments reiterated prior specific arguments for the removal of Centralia. These arguments state that the Centralia resource is obsolete, retired or lost due to increased emissions regulations and the inability of the individual public utilities as minority owners to either fund upgrades or control the sale of the plant. Further, the utilities argue that they have not owned the plant since 2000 and HWM determinations should not include a resource the utilities do not own.

### **Evaluation and Decision**

Regarding the first issue, comments received generally support the removal of Centralia for the purpose of implementing the BPA proposal on HWMs and new contracts which was BPA’s alternative to the PPC’s power allocation proposal. Because the calculation of a customer HWM is effectively the determination of whether a Tier 1 rate or a Tier 2 rate is applicable to the power service that a customer may take from BPA, the HWM is a rate matter in which BPA has discretion of design. The HWM will set the amount of power purchases to which either Tier 1 or Tier 2 rates will apply. BPA finds that given the equity arguments made by the Four Publics over the Centralia resource disposition, the general support stated in comments, and an adjustment to each of the Four Publics’ HWMs which removes the Centralia replacement power purchase is appropriate. This means that each of the Four Publics will receive a higher HWM amount than would be the case if BPA were to keep the Centralia replacement power amounts in the equation for these customers when computing their HWMs. However, their exclusion of the Centralia replacement from the calculation of their HWM will affect only their PF rates.

Regarding the power service issue of removing the Centralia resource from each of the Four Publics’ Firm Resource Exhibit (FRE), their current Exhibit C of their BPA power sales contract, BPA has reviewed the materials and arguments presented. Each argument presented was considered. For several reasons most of these arguments fail to persuade BPA that removal of the Centralia replacement resource is warranted. Only in one circumstance, which is conditional, would BPA find the removal of the Centralia replacement resource obligation appropriate.

Regarding the argument of fulfillment of the section 12(b) 1981 power sales contract's 7-year notice to remove a resource for any reason, BPA does not find this argument persuasive. In 1996, BPA changed the basis for additions and removals of customer resources when it executed contract revisions with customers. For Snohomish, Tacoma, Seattle and Grays Harbor, they all executed an Amendatory Agreement No.7 to their power sales contracts which, for the first three, included Centralia as part of their non-Federal resources that the customer applied to load. For Grays Harbor, BPA consented to the removal of the resource but only for the remainder of the 1981 contract, with a BPA surplus power sale making up the difference in power for the Centralia power removed. BPA did not agree to permanent removal of Centralia and only supplied surplus power as a replacement for the resource.

Amendatory Agreement No. 7 only allowed changes in the FRE by either the addition of renewable resources or by the Administrator granting consent. Any notice, which would be effective only after the term of the contract, does not have legal effect after the termination of the contract unless the parties have agreed it would have post-termination effect. Although Grays Harbor argues its notice of removal should apply after the 1981 contract expired, there simply was no such agreement. In the May 2000 ROD, BPA specifically considered and decided against the arguments posed by Grays Harbor PUD that the temporary removal due to a surplus sale did constitute a permanent removal of the resource from service to Gray's Harbor's load as a dedicated firm resource beyond the term of the 1981 contract. Moreover, all four customers executed contracts with BPA that included their Centralia replacement resource and expressly gave their consent to continued application of these resources. They can hardly argue now that they have a contractual right to remove these resources based on a terminated contract.

Regarding the removal of the Centralia resource due to obsolescence, BPA recognizes the severe problems confronting the Centralia owners in late 1996 and beyond regarding compliance with the SWAPCA regulatory standards. BPA understands this led to the resource owners' decision to dispose of the generation plant and the Centralia mine. BPA further understands that the mine and the plant were in fact sold to TransAlta of Canada and that TransAlta continued to operate the plant successfully. In the May 2000 ROD the term "obsolescence" is defined as causing permanent discontinuance of a non-Federal resource under Section 5(b)(1) of the Northwest Power Act. "BPA interprets resource obsolescence as being worn out such that the design or the mechanism producing the electricity is no longer operable." BPA cannot reasonably find that the Centralia resource, since it continues to operate, has become obsolete. BPA notes that similar comments on Centralia were addressed in the May 2000 ROD. BPA stated, "Indeed, the Centralia resource and the decision of the owners to sell the resource on the market demonstrates that the resource is neither obsolete, retired, nor lost."

Regarding the comments of the Four Publics that their Centralia resource was permanently discontinued due to loss from regulatory action beyond their control, BPA would need to see additional information on the alternatives available to the customers at the time. BPA understands that the Four Publics as Centralia owners were minority interests in both the

project and the mine, and that alone one owner could not force action on any of the others. However, BPA will not at this time conclude that no actions could have been taken to keep the project operating since the owners followed a decidedly different course, the successful sale of the Centralia project and mine.

Finally, in their submission the Four Publics commented that even if BPA could not find a basis for removal of the Centralia resource replacement obligation for the forgoing reasons, the Administrator should grant consent for the removal of their Centralia replacement obligations. They recommend that the implementation of tiered rates under BPA's proposal eliminates the possibility of their utilities disposing of non-Federal resources and HWM placing the load on BPA at a melded rate, thereby imposing the costs of this additional Federal supply on all preference customers. They suggest that any incentive to impose the costs of Centralia on other customers is removed once BPA is no longer melding its resource acquisition costs into its power rates and that tiering will put all customers on an equal footing regarding the cost of their Tier 1 service. They see little reason to continue the obligation to provide Centralia replacement resource in such a rate environment since it doesn't protect any other customers from incurring the next increment of BPA costs; i.e., those costs would be charged in Tier 2. They further commented that the equities of their being minority owners unable to affect the actions on Centralia and their current 10-year commitment to supply replacement supports their argument for Administrator consent to removal.

BPA is inclined to agree that there is a basis for the Administrator to grant consent based on the public policy benefits of achieving a tiered rate pricing construct. It should be noted that the argument that there is no impact on other customers is nullified by the fact that BPA is deciding to provide access through a HWM for the Centralia resource amount of the Four Publics. Since the total HWM amount is limited, providing the Four Publics with the access they are requesting necessarily affects the remaining amounts available to other customers and their overall costs for power. While BPA is not persuaded by the "no impact" argument, BPA finds that most, if not all, public utility customers appear to support the removal of the Centralia resource replacement from these customers' firm resource obligations under a Tiered Rate Methodology and new contracts. Under such a future, BPA consent to the removal of the Centralia replacement resource furthers the overall public purposes that BPA has presented for the adoption of tiered rates and new contracts in the post 2011 period. Therefore, the Administrator will exercise his discretion to allow the removal of the Centralia replacement resource from each of the Four Publics' Firm Resource Exhibit starting in FY 2012, on a conditional basis. That condition is the successful completion of new contracts and tiered rates substantially as described in this Policy. BPA accepts the comments voiced that other customers' support for removal makes sense in a tiered rate, HWM environment but does not in a melded one. BPA also is convinced by the comments that without including removal of the Centralia replacement resource, support of this Policy and the signing of Regional Dialogue contracts could be at risk. BPA believes that the HWM rate construct establishes public policy benefits discussed in other sections of this ROD and, in that context, the consent is a prudent decision.

However, the decision to allow removal of the Centralia replacement resource is specifically conditioned on tiered rates and new long-term contracts being implemented by BPA and its customers. This consent would not be granted outside of the context of the new public policy and its benefits that justify the decision. In the event that BPA is required to meld its rates, then a harmful consequence which the Four Publics argue will not happen, that is imposition of costs on other public customers, would occur and BPA will then not give consent to removal and would require the continuation of the Centralia replacement obligation for the Four Publics in next contract. In this situation, the decision on Centralia would be based solely on other issues previously discussed and BPA may have no compelling reason to further review its prior decision on Centralia.

BPA's consent to removal of the Centralia replacement resource would be effective as of October 1, 2011, and not prior to that date. The Four Publics' obligations under their current contract will continue for the duration of their Subscription contract. Because this decision is conditional, BPA will not presently address the other issue of whether any decrement to its firm power obligations under section 9(c) is necessary. If tiered rates and new contracts are developed for execution, and the Centralia resource is removed as a 5(b) resource, then BPA would determine subject to additional review of relevant facts that the status of Centralia disposition under 9(c) provisions will not require a decrement.

BPA has received helpful information on the Four Publics' sale of Centralia that indicated opportunities were available for Pacific Northwest customers to acquire the resource and the mine. BPA will more fully consider that and other information as it may relate to the Four Publics' sale of the resource under section 9(c) but BPA will not complete that analysis at this time. BPA will conclude its review regarding a section 9(c) determination after additional steps are taken as needed for implementation of the HWM contract and tiered rates.

## **H. 2010 CUSTOMER RESOURCE AMOUNTS**

### **Issue 1:**

**What year should be used to establish customer resource amounts for HWM determinations?**

### **Policy Proposal**

The Policy Proposal was to use customers' FY 2010 non-Federal resource amounts to set HWMs rather than FY 2012 as suggested in the PPC Proposal.

### **Public Comments**

BPA received comments ranging from, BPA should use loads and resources known at the time of contract signing (either historical average loads and resources or FY 2007 loads and resources assuming contracts are signed in FY 2008), to BPA should use FY 2010 loads and (a reasonable estimate of) FY 2012 resource amounts. A number of comments supported use of FY 2010 resources. Some of these suggested using FY 2010 resources with no

adjustments. Others expressed or implied that HWMs should be based on FY 2010 resources, but with some specific exceptions.

A number of comments addressed specific customer resource issues that are likely to affect a customer's HWM determinations. These comments raised questions concerning the sale of ownership interests by several public utility customers in the Centralia coal plant, Grant PUD's marketing of the Priest Rapids Hydroelectric Project, the treatment of qualifying facility (QF) resources required to be purchased by a customer under the Public Utilities Regulatory Policies Act (PURPA), consumer-owned resources, and changes in hydro resource operations consistent with the Pacific Northwest Coordination Agreement (PNCA) and the critical year used to determine the firm capability of hydro resources. The Centralia issue is addressed in the immediately preceding section in this ROD. The other issues are addressed below.

The Northwest and Intermountain Power Producers Coalition (NIPPC) expressed concern that BPA has developed a complicated "allocation" formula that appears to give incentives for public agency customers to delay non-Federal resource decisions and rely on BPA for Tier 2 service for at least the early years of the new contract. Basing HWMs on FY 2010 loads and resources increases BPA's need to augment its system. NIPPC supports an "allocation" of the Federal power system without any augmentation and sees value in certainty sooner rather than later. The (presumably preferable) "alternative is to allocate the system *now* based on the historic average of 5-year resources and loads for the Subscription contracts ending (2001-2006)." (NIPPC, REG-130)

Canby commented that BPA's proposed schedule would have utilities receive their Federal power allocation in 2011, 3 years after they sign 20-year contracts. Instead of using FY 2010 loads and resources, BPA should assign shares of the Federal power system, based on current and/or historic loads, before the contract-signing deadline of 2008. Canby expressed concern that the delay in certainty would not allow it and other utilities sufficient time to conduct due diligence on post-2011 resource decisions. It also expressed that "in the absence of an early allocation, we fear a repeat of the 'let BPA buy for me' syndrome that contributed in part to BPA's supply problems during the West Coast energy crisis in 2001." Canby acknowledges that the "early" assigning of HWMs may create some inequity and that there is no clean, easy solution, but expressed that "on balance, Canby believes that it will create more predictability for utilities *and* BPA if the allocation occurs prior to contract signing." (Canby, REG-064)

Springfield Utility Board (SUB) supports BPA's proposal regarding the calculation of HWMs, stating that BPA's proposal to use FY 2010 resources dedicated to load as specified in current contracts provides certainty. SUB notes that "despite PPC staff's efforts, repeated attempts by SUB and others to get clarity on utility-owned resources (and resources dedicated to load not owned by utilities) resulted in little success in arriving at a mutual understanding of the impact of using 2012 resources . . ." 2012 resource issues would, in SUB's view, create confusion, result in uncertainty, skew the benefits of BPA's low-cost system, and disrupt the viability of allocation. (SUB, REG-126)

Northern Wasco supports use of FY 2010 resources, stating, "we believe BPA's proposed modification to the PPC Proposal of establishing a high water mark (HWM) for each

preference customer based on the calculation of the difference between its actual 2010 firm regional consumer loads and the amount of resources serving its consumer load during that year is prudent and equitable.” (NWasco, REG-055)

IDEA and ICUA also support the use of the FY 2010 date for both resources and loads, stating, “it will produce viable data for use in calculating the high water marks for BPA’s customers.” (IDEA & ICUA, REG-096) Idaho Falls Power specifically endorsed the joint comments of IDEA & ICUA. (Idaho Falls, REG-098)

Richland stated that it agrees with BPA's selection of FY 2010 for determination of customer HWMs. The use of forecasted FY 2010 net requirements subsequently trued up to actual during 2011 seems reasonable. (Richland, REG-091) Kittitas stated that it supported the use of FY 2010 HWM. (Kittitas, REG-087)

Western Montana Electric Generating and Transmission Cooperative (WMG&T) supports BPA’s proposed method for determining HWMs, including the proposed changes from the PPC proposal; however, WMG&T is concerned about the expiration of existing non-Federal power purchase contracts after the FY 2010 date for establishing the HWMs. In several cases, WMG&T members have non-Federal contracts that expire after the FY 2010 date and that are outside their control. These two factors could lead to a situation where these utilities find their HWMs do not reflect the loss of resources that will not be serving their load under the Regional Dialogue contract. (WMG&T, REG-106) WMG&T also expressed this concern about expiring resources in its comments at the August 21, 2006, Regional Dialogue public meeting in Missoula, Montana. (WMG&T, REG-010-06)

Sumas supported an allocation for purposes of Tier 1 pricing, based on actual net requirements load on BPA in FY 2010. (Sumas, REG-068)

Northwest Requirements Utilities (NRU) commented that it is appropriate to use FY 2010 firm resources dedicated to serve firm load, but certain limited adjustments will need to be made to reflect such circumstances as the Grant PUD arrangement. Use of the 2010 date will help to limit or remove some of the potential variance and uncertainty in the net requirements determinations of the utilities with significant customer owned resources. This in turn should result in a more stable and predictable HWM for the NRU members. (NRU, REG-103)

Pacific Northwest Generating Cooperative (PNGC) suggests that for purposes of calculating initial HWMs, BPA should use existing resource declarations for FY 2010 modified for statutorily allowed resource removal as provided in Section 5 of the Regional Act. (PNGC, REG-133)

Public Power Council (PPC) recommends and supports the use of FY 2012 resource declarations. “If a utility is being asked to commit itself to declaring a set of resources for several decades, the utility should know at the time that the decision is made that it is making a multi-decade commitment. The utilities who made resource declarations in 1998 and 1999 did not know that they were making a multi-decade commitment, yet BPA's proposal would so commit them.” PPC noted that its April 10, 2006, allocation proposal proposed that the

firm capability of non-Federal resources that the utility has dedicated to retail load service and which is actually available to such utility in FY 2012 be included in a utility's resource declaration. (PPC, REG-132)

Washington Public Utility Districts Association (WPUDA) commented that its members participated in the development of PPC's comments regarding HWMs and generally supports PPC's comments. WPUDA supports PPC's position that FY 2012 be used to determine customer load and resources to establish a utility's HWM, and opposes BPA's proposal. (WPUDA, REG-080) Likewise, Cowlitz supports the use of FY 2012 and commented that by proposing to use FY 2010 resource amounts, BPA is in effect causing the resource decisions utilities made in the year 2000 to be in effect for approximately 26 years. Cowlitz asserts that BPA clearly told Cowlitz in 2000 that we were making a 10-year commitment to resource performance. Cowlitz asserts this statement applied not only to Cowlitz's resources but also to the resources owned by Cowlitz end-use consumers. Cowlitz added that whether these consumer-owned resources are currently displacing load or being sold on the market, the disposition of these resources under the current contract should not dictate future use during the upcoming contract period. Use of FY 2012 resource amounts would allow the customers and consumer-owners to re-evaluate and refine resource operations and commitments, all within existing statutory requirements. (Cowlitz, REG-118)

Tacoma supported using FY 2010 actual customer retail loads and a reasonable estimate of FY 2012 customer resources for determining HWMs. Resources that are not available at the start of the FY 2012 contract period should not be included in the determination of HWMs. Tacoma does not agree that using FY 2012 projected resources introduces a significant amount of uncertainty into the allocation process. Tacoma suggested that in order to minimize disputes, the process for determining initial HWMs should be as transparent as possible. "This implicates methodologies, data sources, confidentiality (especially of end-user information), and consistency in application across utilities. Any exceptions should follow a standardized procedure that all can review." Tacoma also suggests that the establishment of initial HWMs should reflect as accurately as possible the loads and resources of individual utilities "at that point in time." Tacoma states that actual FY 2010 loads will be known in early 2011 and, in 2011, reasonable estimates can be made of FY 2012 non-Federal resources available to meet utility loads in the new contract period, especially if the methodology for making such estimates is established before FY 2011. In effect, Tacoma argues that both determinations can be made at the same time. Tacoma states that utility resources used to calculate HWMs should not be tied to decisions made (or required) under existing contracts. BPA required current contracts to rely on 1998-1999 Firm Resource Exhibits (in then current Power Sales Contracts), which was unreasonable at the time, and there is no reason to require decisions made under current contracts to have spill-over effects into new contracts. If customers can plan for the uncertainty surrounding over 300 aMW of projected load growth, they should be able to manage around the uncertainty associated with specific resource changes from 2011 to 2012. (Tacoma, REG-135)

### **Evaluation and Decision**

Before addressing the primary issue of which fiscal year should form the basis for BPA's HWM calculation, BPA needs to address what the HWM calculation is. As stated in other sections of this ROD, the HWM calculation is a rate design issue that concerns what price, Tier 1 or Tier 2, will be applicable to the power purchased by the utility. The HWM is the demarcation line between power service charged at the lower Tier 1 rate and power service at the Tier 2 rate. In effect a utility may buy net requirements power at the Tier 1 rate up to the amount of its HWM and may buy power above that amount only at a Tier 2 rate.

Importantly, BPA is not "allocating power" from the Federal system to its utility customers by the Contract HWMs as some comments mistakenly assume. BPA's sale of power to a utility will continue to be based on BPA's calculation of the utility's net requirements firm power load in the region as required by section 5(b)(1) of the Northwest Power Act and consistent with BPA's 5(b) and 9(c) Policy for such determinations. No utility will be able to buy more firm power than its net requirements load and all utilities will be able to buy firm power equal to their net requirements load at Tier 1 and Tier 2 rates. The amount of firm power a customer can buy from BPA is determined by its net requirements load and not the HWM which along with other factors determines the rate that a utility will pay for the power. The comments that suggest the HWM is an allocation of power are incorrect about BPA's proposal and the comments are misleading. BPA is not allocating power based on the HWM. The following analysis addresses the HWM as a calculation affecting what rate will apply to a customer's power purchase and not the amount of power that may be purchased.

The purpose in establishing a HWM for each individual utility customer is to delineate a cost allocation between the Tier 1 and Tier 2 PF rates applicable to public customers' load service. Much of the concerns expressed appear to confuse the difference between a customer's net requirements and the HWM. BPA understands that customers wish to maximize the amount of Federal power they can purchase at the Tier 1 rate during the 20-year Regional Dialogue contract. Therefore, BPA is attempting to balance that concern with other concerns expressed by customers, such as obtaining certainty as early as possible in order to make resource decisions. BPA has developed a reasonable method to determine individual HWMs because it balances these concerns so that customers receive a fair consideration by BPA of their loads and resources in establishing the HWMs far enough in advance so that customers can make reasonable decisions regarding the use and/or development of non-Federal resources.

The comments also underscore the point that, as Canby observed, there is no clean, easy solution to the issue of what year to use for non-Federal resources for determining HWMs. Using a historical or current year, as suggested by the Northwest and Intermountain Power Producers Coalition and Canby, has the significant advantage of providing certainty sooner rather than later, but does nothing to address the concerns raised by WPAG, PPC, WPUA, Cowlitz, ICNU and Tacoma against using FY 2010 resources. Literally applied, BPA's method as proposed would preclude consideration of the disposition of large non-Federal generating resources, such as Centralia and the mid-Columbia non-Federal projects, including the Priest Rapids project, which must be accounted for as part of the methodology on HWMs and may be very important in gaining regional support for the Regional Dialogue.

While BPA places high value on the certainty of power supply obligations between itself and its customers and supports establishing certainty sooner rather than later, certainty of obligations must be balanced against durability, customer/regional support and equity, and the other regional interests and goals set forth in the Policy Proposal.

Some commenters urged BPA to use FY 2012 to determine customer non-Federal resource use. Use of FY 2012 would have the benefit of answering a number of questions raised in comments critical of BPA's proposed use of FY 2010 resources, such as whether certain customer resources will continue to be used to serve their load beyond FY 2012. Since this is not a net requirements determination and there is no disagreement over whether customers will have their net requirements loads met, BPA does not believe that it is reasonable or necessary to consider customer resource decisions regarding resources applied to load in FY 2012 and beyond for purposes of the HWM calculation. Doing so would increase HWM uncertainty on the resource side of the HWM determination and delays yet another issue into the future. BPA shares SUB's concerns that the region has not succeeded in arriving at a mutual understanding of the likely impacts on HWMs of using FY 2012 resources despite significant effort to do so. BPA believes that a decision to use FY 2012 resources, which are not specified in current contracts, will likely result in a heightened debate among affected parties regarding what those resource amounts should be. It will almost certainly cause conflict between utilities with resources (who would benefit by reduced non-Federal amounts used in HWMs) and those utilities with little or no non-Federal resources.

Tacoma, a utility that uses large non-Federal resources to serve its load, commented extensively regarding the use of FY 2012 to determine resources, which it believes would not introduce uncertainty into the HWM process. On the other hand, SUB and NRU which would be disadvantaged by allowing for reductions in resource amounts for the relatively few large utilities that have significant non-Federal resources, expressed concerns that moving to FY 2012 resources would introduce just such uncertainty. BPA would face an increased administrative burden and increased power obligation uncertainty by waiting until FY 2011 to include FY 2012 customer resources; instead of gaining some planning certainty to prepare, if needed, to acquire additional power, (i.e., up to 300 aMW in augmentation). BPA would have reduced certainty over its acquisition amounts and would be required to: (1) determine whether augmentation was required, and (2) commence power service under the new contract and rates, within the same year. That approach defeats cost-effective resource planning, is not reasonable, and could expose BPA and its customers to significantly more risk of unexpected costs.

PPC, Cowlitz, ICNU, and Tacoma also argue that using FY 2010 resources is unfair or otherwise flawed because utilities did not know at the time they made the FY 2010 resource commitments, these commitments would extend beyond FY 2011. BPA acknowledges that utilities did not know their resource decisions under current Subscription contracts would relate to establishing an individual utility HWM since the HWM concept did not exist prior to the Policy Proposal. Customers made a similar argument regarding BPA's use of the 1998 Firm Resource Exhibit for its initial net requirements determinations for the Subscription contracts, which BPA addressed in its May 2000 5(b)9(c) Policy. This argument is not persuasive because the HWM does not set the amount of firm power a customer can buy

from BPA for its load, it only determines availability of a lower Tier 1 price. The 5(b)9(c) Policy addresses the issue of use of customer resources for load beyond the term of a BPA contract and concluded that unless a resource was lost, obsolete, or retired, the customer was contractually and statutorily obligated to apply its resource to its load.

However, using FY 2012 resources on a blanket basis would introduce increased uncertainty, potential controversy and additional work, making such a blanket approach on balance not the best way forward. Therefore, BPA believes it is reasonable to address this problem by identifying the specific resources that are the subject of this concern now and treating them as exceptions to the use of FY 2010 resources. These exceptions will address what BPA finds to be the most significant concerns associated with using FY 2010 resources without incurring the extended uncertainty and other potential negative impacts that would result from using FY 2012 resources, strikes a reasonable balance among the varied interests, and allows the region to focus its efforts on the critical and substantial work remaining to be done prior to FY 2012.

WMTG refers to a general concern that in several cases, WMTG members have non-Federal contracts that expire after FY 2010 which are outside their control. BPA's review of WMTG member power contracts with BPA do not indicate any non-Federal contracts that expire after FY 2010 but before FY 2012. BPA is aware that at least two WMTG members have non-BPA resources that potentially could be lost (or the amount of resource available reduced) to the utilities at some time during the term of the Regional Dialogue contracts. BPA believes that other customers in addition to WMTG members likely have non-Federal resource contracts that may expire or be subject to termination after FY 2010 or have non-Federal resources that will be subject to relicensing or other regulatory actions that may impact the availability or amount of capability for such resources. BPA concludes that leaving open the question of adjusting FY 2010 resources for any circumstances, other than those specific exceptions discussed below, would introduce too much uncertainty into the HWM calculations. BPA will not make adjustments other than those identified below.

HWMs will be based on the customer's FY 2010 non-Federal resource obligations identified in their current Subscription power sales contracts as of September 30, 2006, without application of any annual adjustments permitted under Section 4(g) of Exhibit C to the contract. Any changes in resource amounts after this date would affect the customer's net requirements but would have no effect on the utility's HWM. HWMs for the BPA customers in Montana that have pre-subscription contracts through September 30, 2011, will likewise be based on FY 2010 non-Federal resource obligations as of the above date. Specific exceptions to the use of FY 2010 resources are identified below and in the case of Centralia replacement resources, elsewhere in this ROD.

## **Issue 2:**

**Should FY 2010 resource amounts used to determine HWMs be adjusted to reflect the expected changes in rights to Priest Rapids Project power as proposed by Grant PUD?**

### **Policy Proposal**

BPA proposed one exception to use of FY 2010 customer and consumer resources listed in Subscription contracts: a customer's hydroelectric resources used prior to 1980 that BPA expects would be returned to a customer by its withdrawal of the resources from other customers for the post-2011 period. BPA's proposal assumed the returned hydro resources would be used to serve the customer's firm load and a corresponding reduction to the other customer's resources for the withdrawal would also be made.

### **Public Comments**

In its comments, Grant County PUD made the following proposal: (1) Grant would declare 100 percent of the Priest Rapids Project as its resource for Regional Dialogue contract purposes, eliminating its "net requirement;" (2) Grant would not buy Federal power under a Regional Dialogue contract except for a minimal supply to serve the City of Grand Coulee which is currently served via a full requirements purchase as shown in Exhibit D to Grant's Subscription contract; (3) Grant would not have an obligation to sell a Supplemental Displacement Product as defined in Section 3(b) of the Priest Rapids Product Sales contract to Tacoma, Seattle City Light, Eugene Water and Electric Board, and Cowlitz PUD; (4) Tacoma, Seattle City Light, Eugene Water and Electric Board, and Cowlitz will ask BPA to determine a loss of resource and allow these customers to undeclare their Priest Rapids Project and allow them to increase their HWMs by an amount equal to their respective losses of the Priest Rapids Project; (5) BPA would reserve 25 aMW at the Tier 1 rate to be made available to the Yakama Power consistent with a potential Priest Rapids Project re-licensing legal settlement with the Yakama Nation to grow their utility during the next contract period; (6) this proposal would have no impact on and would not involve Grant's Priest Rapids Project Exchange Agreement purchasers including the Cities of Milton-Freewater, Forest Grove, McMinnville, Kittitas PUD, and the Idaho cooperative participants; and, (7) Grant will retain a priority to transmission as a load serving entity similar to that of any other preference customer of BPA. (Grant, REG- 059)

Tacoma and PPC support the comments (1) through (4) and (6) and (7) submitted by Grant. (Tacoma, REG-135; PPC, REG-132) Seattle City Light comments that the power that was historically purchased from Grant should be removed as a non-Federal resource prior to computing Seattle's HWM due to the FERC mandated removal of that resource from their portfolio. (SCL, REG-128) Cowlitz agrees with BPA's proposal to adjust HWMs for hydro resources that are returned to a customer during the new contract period. (Cowlitz, REG-118) NRU supports certain limited adjustments (to FY 2010 resource amounts to determine HWMs) to reflect such circumstances as the Grant PUD arrangement. (NRU, REG-103)

IDEA, ICUA, and Idaho Falls commented they understood that BPA's proposed pre-1980 hydroelectric exception to use of FY 2010 resource amounts did not apply to them. (IDEA & ICUA, REG-096; Idaho Falls, REG-098)

### **Evaluation and Decision**

A number of commenters, including three of the four utilities that are expected to lose rights to purchase output from the Priest Rapids Project in the future, support BPA's proposed

HWM exception for pre-1980 hydroelectric resources and support Grant's specific proposal for addressing the use of the Priest Rapids Project. No comments were received that objected to BPA's proposal. As proposed by Grant, except for the 25 aMWs asked to be set aside for Yakama Power, there would be roughly a 50 aMW reduction in the sum of the customers' FY 2010 net requirements loads. That reduction would benefit all BPA utility customers by either increasing their Contract HWMs or reducing the amount of firm power BPA would need to acquire to augment the FBS and decreasing Tier 1 rates. In addition to the benefits to customers in general, adopting this proposal should reduce administrative and other transaction costs and complexity for Grant, Seattle City Light, Tacoma, Eugene Water and Electric Board, Cowlitz PUD and BPA.

Adjusting the other customers' FY 2010 resource amounts and Grant's resource amount as proposed by Grant would appear to benefit all and harm none. BPA agrees that if Grant discontinues purchasing from BPA by declaring and using all of its Priest Rapids Project output to serve its load and reduces its net requirement on BPA to zero for the next power sales contract, then an equal adjustment would be made to the Priest Rapids resource amounts for the other public utilities that purchase power from Grant's Priest Rapids project. That action will shift approximately 162 aMW of additional HWM from Grant for other utilities in the region. Accordingly, at such time as Grant actually recalls the amounts of Priest Rapids Project power sold under contracts to Tacoma, Seattle, EWEB, and Cowlitz, BPA would expect these four utilities to request that the Administrator determine a loss of resource for them based on Grant's withdrawal, consistent with BPA's Section 5(b)9(c) Policy. However, such a request would apply to the customers' net requirements load determination. For calculating the HWMs, and assuming these actions occur as described, BPA will allow an exception to the use of these FY 2010 resources, for the change in the disposition of the Priest Rapids Project amounts for Tacoma, Seattle, EWEB, and Cowlitz by setting their Priest Rapids amounts equal to zero for calculating their individual HWMs.

Grant also proposed that 25 aMW of HWM to be set aside for the Yakama Indian Nation to use to grow their utility, Yakama Power. BPA has discussed this aspect of Grant's comment and BPA has adjusted its proposal with a different treatment which is addressed in Section III B (Access to power at lowest cost-based rate) portion of the ROD.

IDEA and ICUA and Idaho Falls are correct in their understanding that the above adjustment to FY 2010 resource amounts (and thus HWMs) does not apply to them.

**Issue 3:**

**Should HWMs be adjusted to account for the amounts of PURPA resources included as a FY 2010 resource?**

**Policy Proposal**

BPA did not propose any specific treatment for PURPA resources in calculating the HWMs of customers.

### **Public Comment**

Mason PUD No. 1 commented that it is important for BPA to consider that Mason 1 has no control over the O&M of the PURPA projects which it buys and included as an FY 2010 resource in its BPA power contract. Mason 1 stated it is required to purchase power amounts from these PURPA resources that are not especially certain, and that the long-term availability of the output of that resource for the next 20 years is problematic at best. Therefore, Mason 1 believes it would be unfair to its ratepayers for BPA to require Mason 1 to purchase power at the Tier 2 rate if it were to lose the PURPA power during the life of the contract. (Mason 1, REG-069, REG-145)

WPAG commented that HWM calculations should exclude from the HWM calculations in FY 2008 and FY 2010 the output of small PURPA resources (less than 3 MW of nameplate capacity). WPAG noted that at the present time there are only two PURPA resources that are being used to serve preference customer load, and that their total nameplate capacity is less than 3 MW. (WPAG, REG-109)

Kittitas commented that if a utility is required by law to take another entity's resource into its system, that resource should not be included in the utility's HWM. (Kittitas, REG-087)

WPUDA commented that a provision should be added to the HWM determination which provides that resources a utility is required by Federal law, such as PURPA, to acquire, or that is required or funded by state appropriation for economic development purposes should not be counted against a utility in its HWM calculation. It noted that acquisition of a resource under such circumstances is not by choice of the utility and that if a utility is required to acquire the output from a PURPA facility that is a declared resource under a current Subscription contract, that utility's HWM would be adjusted downward for that resource. WPUDA suggests that any resource that a utility is or has been required to acquire under Federal or state law prior to FY 2011, not be included in the HWM calculation, but instead be included only in the net requirements calculation (similar to the proposal's treatment of renewable resources). If the facility terminates operation, then the utility has access to Tier 1 rate power in its net requirements calculation to replace that facility up to its HWM. (WPUDA, REG-080)

### **Evaluation and Decision**

The comment regarding the use of PURPA resources by utility customers highlights the uncertainty customers, who are required to purchase such output, such as Mason 1, have experienced. BPA also verified the amount of PURPA resources customers are presently obligated to purchase and the amount is minimal. BPA agrees with comments expressed by Mason 1, WPAG, and WPUDA that the individual customer resources in FY 2010 should be adjusted to take into account a customer's under 3 MWs PURPA resource amounts in calculating a customer's HWM. BPA understands that under PURPA prior to the Energy Policy Act of 2005, a utility could be required to purchase the output of a qualifying facility over which the utility has no control of operations. Customer's current Subscription contracts list customers' non-Federal resources that include such PURPA resources. Because PURPA resource owners are no longer obligated to sell to the local utility and local utilities

are no longer obligated to purchase such resources except in limited circumstances, BPA's assessment is that the aMW impact to other customers that will result from removal of the less than 3 MW PURPA resources from the HWM calculations is small, in total less than 1 aMW. For HWM purposes, BPA will set the FY 2010 resource amounts for PURPA resource purchases under 3 MWs listed in and dedicated to load in Subscription contracts equal to zero. However, both Kittitas's and WPUA's broader suggestions regarding resources could result in much larger obligations for BPA and are not adopted.

#### **Issue 4:**

**Should FY 2010 resource amounts be adjusted for the amount of non-utility consumer-owned generation applied to serve load BPA would otherwise be obligated to serve?**

#### **Policy Proposal**

BPA proposed that each utility HWM would be based in part on resource amounts, including consumer-owned resource amounts, established under Subscription contracts for FY 2010.

#### **Public Comments**

ICNU commented that BPA should not penalize end-use consumers for the decisions they made on the application of their own resources based on the reasonable assumption that BPA would continue to offer melded rates. Nor should BPA take away customers' statutory rights to cost-based power. They suggested that BPA's proposal to use FY 2010 loads and resources could be a major and very harmful change in BPA policy for end-use consumers that are currently using their own generation resources to serve load. An end-use consumer that uses its own generation resources to serve its load in FY 2010 would potentially reduce the amount of power at the Tier 1 rate available to the public utility for its entire load for the next 20 years. They commented that BPA's selection of FY 2010 resources for HWM purposes arbitrarily locks in a consumer's cogeneration resource decision in FY 2010 or earlier for the next 20 years. End-use consumers that use their generation resources to serve load in FY 2010 should not be required to continue using their generation resources to serve load for the next 20 years, or pay higher, market-based rates. ICNU suggested that BPA, at a minimum, provide consumers with cogeneration reasonable opportunities to decide whether to directly apply their resources to serve their end-use consumptive needs and hence reduce their local public utility's HWM. Using FY 2012 resources to determine the HWMs would be a good first step that would at least allow such consumers to decide whether to commit their resources to load after knowing that tiered rates will be in place. (ICNU, REG-125)

The economic decisions that led to a consumer's decision to commit its cogeneration to load in a single year or rate period should not decide that consumer's rights to cost-based power for the next 20 years. (ICNU, REG-125) ICNU also briefly referenced cogeneration in its comments at the December 6, 2006, Regional Dialogue meeting in Seattle, stating that BPA should not establish a HWM that unfairly punishes customers who have cogeneration. (ICNU, REG-149-05)

SUB commented that it believes there is a significant amount of non-utility, consumer-owned resources declared to serve loads in Subscription contracts and that BPA should not increase

a customer's HWM amount to account for the removal of these resources when determining a utility's HWM as doing so would lower the HWMs for the remaining utilities. (SUB, REG-126)

Tacoma stated that its arguments in support of using FY 2012 rather than FY 2010 resources (summarized above) apply to both customer and consumer-owned resources. (Tacoma, REG-135).

As summarized above, Cowlitz commented that disposition of consumer resources under the current contract should not dictate future use during the upcoming contract period. (Cowlitz, REG-118).

### **Evaluation and Decision**

SUB's concern regarding the impact of removing non-utility, consumer-owned generation resources for HWM purposes is understandable, but BPA believes the magnitude of the impact would be relatively small for two reasons. First, while there is a substantial amount of consumer-owned generation within public utility systems, less than 30 percent is contractually applied to load in FY 2010. BPA, in consultation with ICNU, identified 264 MWs nameplate of consumer-owned generation on public utility systems. Of that amount, only 79 MWs nameplate is applied to serve PF load in FY 2010. For HWM purposes, annual energy amounts, not nameplate amounts, are what BPA will use for the calculation. In FY 2006, the total consumer-owned generation in public utility service areas for which BPA had information was approximately 116 aMWs and the corresponding amount serving PF load was 29 aMWs.

The second reason BPA believes that the impact of removing consumer-owned resources from the calculation of HWMs would be small, stems from the unique treatment of consumer-owned generation in the BPA power sales contracts. With regard to consumer-owned generation, current contracts and policy treat non-utility, consumer-owned generation differently than utility resources. For consumer-owned generation, the Subscription power contract indicates a nameplate amount and establishes whether the generation is used to serve load or must be sold to market, but the amount of operating generation is determined by the consumer generation owner and no direct charge is applied to the consumer through the BPA rate. As implied in Weyerhaeuser's and ICNU's comments, the generation owner determines the amount of generation that is provided to the load even when BPA's power sales contract with the utility requires the generation be used to serve load. However, BPA's contracts or rates for the utility establish financial charges applied to on the utility if loads or consumer generation changes from what is established in the contract.

The consumer's determination on the amount of output produced by its own generating resource leads BPA to conclude that it is highly likely that consumers with their own generation will follow an economic choice. They may decide to minimize the amount of generation in FY 2010 if such generation will reduce the serving utility's HWM for the term of the Regional Dialogue contract. Even if there is a short-term economic cost associated with generating less and purchasing more power from the local utility, this cost is almost certain to be viewed as less than the long-term cost of establishing a lower HWM.

For the HWM calculations it is reasonable to recognize that the 29 aMWs generated in FY 2006 will most likely not be generated and applied to load in FY 2010. BPA does not want to foster the disincentive for this resource to generate and, therefore, will not reduce the HWM by the amount of the consumer-owned generation in FY 2010 shown in the customers Exhibit C. BPA will review its contract provisions and policy regarding the operation of consumer generation applied to load under its proposed new contracts and rate methodology so that other customers are not affected by the failure of a consumer to apply its generation to load.

BPA recognizes that since wholesale power markets deregulated, consumers owning their own generation have sought flexibility to alternate between selling their power into the market or applying it to their own load. If that is what consumers owning generation mean when their comments discuss an assumption of melded rates into the future, it is BPA's policy that those kinds of consumer resource decisions should include a discussion with customers of the economic impacts of those decisions. Many of ICNU's comments are posited as if the consumer were a customer or a direct purchaser of Federal power from BPA, which is legally precluded, particularly in the context of industrial or commercial loads in the region. BPA does not agree with these comments that suggest any regional consumer can buy Federal power from BPA as a customer, unless that consumer is a direct service industrial customer. BPA's power sales contracts exclude third-party benefits or beneficiaries.

ICNU's comments included a number of statements against including the use of FY 2010 consumer resource amounts in utility HWM determinations. ICNU stated that BPA should not base customer HWMs on FY 2010 resources, including consumer-owned generation amounts, because end-use consumers' decisions of whether or not to apply their generation to load was based on the reasonable assumption that BPA would continue to offer melded rates. BPA is not persuaded by ICNU's comment. Not only has the region been considering the concept of tiered rates for many years, BPA had proposed tiered rates in 1995 and the region went some distance down the road to implementing tiered rates before deciding on a different course. Given the long running regional discussion regarding BPA's long-term power supply role, BPA questions whether it was reasonable to assume that BPA would not again propose tiered rates as opposed to continue to offer melded rates. It is equally unclear that BPA would avoid rate tiering whether or not end-use consumers elected to apply their generation to load in 2000 or not.

ICNU states that BPA should not take away consumers' statutory rights to cost-based Federal power. Consumers have no such direct right since BPA does not contract with them for power or serve them directly. BPA's proposal does not infringe, or take away, a utility consumers' right to purchase Federal power from its local utility. ICNU implies that by including FY 2010 consumer-owned generation resource amounts in the utility HWMs that BPA would be taking away a consumer's statutory rights to cost-based power. To the contrary, a more reasonable assumption is that consumer-owned generation that has been serving load which BPA would otherwise be obligated to serve, should be considered as continuing to serve, particularly since, historically, regional power planning assumptions

have included the use of consumer-owned generation as serving load. As proposed by BPA and as discussed elsewhere in this ROD, HWMs are one element of a rates construct that will determine the rates applicable to the Federal power purchased by a utility and not the utility customer's net requirements load. The HWM will not determine the utility's retail rate to any consumer. BPA will offer to serve a utility's net requirements load with cost-based power, albeit at power priced under a tiered rate construct to be developed in a Long-Term Tiered Rate Methodology section 7(i) process.

ICNU expressed concern that basing HWMs on FY 2010 resources could undermine BPA and the region's goals of encouraging the development of consumer-owned generation resources. BPA does not agree that BPA's decisions regarding existing consumer-owned generation will be a disincentive to develop new consumer-owned generation. New consumer-owned generation decisions will be based on the prospective economic merits of such resource development for the consumer at the time the decision is made. BPA's decision to tier rather than meld resource costs should incent new resources including consumer-owned generation.

Only if the serving utility's net requirements loads exceeds its HWM, would ICNU's characterization that consumer-owned generation amounts used to serve load in FY 2010 reduce the amount of power priced at the Tier 1 rate available to the public utility for the next 20 years be correct. By removing a reduction for these resources from the HWM calculation as described above, the utility's HWM is no longer affected. The actual economic consequences to any consumer owning generation due to changes in its generation amounts will be determined by local utility retail rate structure and terms of service, not BPA's HWM.

BPA agrees with Cowlitz's representation regarding the parties' understanding at the time Cowlitz and its consumers that own generation made the decisions to apply that generation to load or sell it into the market under the Subscription contract. The parties expected they would be able to revisit those decisions for the post-2011 contract period. BPA's decision to use FY 2010 resource amounts for calculation of HWMs does not remove this choice regarding post-2011 application of consumer generation to load, but to the extent generation occurs in FY 2010, it would result in a lower HWM.

Given the above considerations, BPA believes it is reasonable, for HWM purposes, to treat non-utility, consumer-owned generation as applied to serve load in FY 2010 differently than utility resources. When Regional Dialogue contracts are signed a utility customer that serves consumers that own and operate generation resources (i.e., cogeneration) will have a one-time right to establish how existing consumer-owned resources in its service territory will be used during the term of the contract. For HWM purposes, BPA will count the FY 2010 consumer-owned generation amounts serving load equal to the amount of consumer-owned generation the utility is obligated to purchase and apply to load in FY 2012, based on the established amount in its Regional Dialogue contract.

## **Issue 5:**

**Should consumers owning generation retain flexibilities they currently have as a result of BPA’s existing contracts and policies to determine (1) the use of their generation to serve load and (2) the amount of power generated by their resources?**

### **Policy Proposal**

BPA did not propose any specific treatment for contract flexibilities to be retained under new contracts or policies.

### **Public Comments**

ICNU commented that consumer-owned generation is an environmentally beneficial resource that the Northwest Power Act has prioritized over all non-renewable resources. Under BPA’s past and current policies, a consumer owning generation can choose to use its own generation to serve its load and hence reduce load demand that otherwise could met by a BPA-served public utility. Such a consumer could also place its load on the public utility and either shut down its generation or sell its output to third parties. ICNU states that the different economic options available to end-use consumers serve as an incentive to develop generation resources. ICNU commented that elimination of this flexibility will increase consumer owning generators’ business costs and may reduce the possibility that additional generation resources will be built by consumers in the region. ICNU recommends that BPA maintain the existing flexibilities end-use consumers currently experience and allow them to remove or add their resources from its public utility’s net firm requirements in each rate period. (ICNU, REG-125)

Weyerhaeuser commented that it has power generation that it installed at its cost and that it runs at its cost. “The proposed method of allocating power to the utilities appears to treat our generation as if it was owned and operated by the serving utilities — which it is not. We believe that we should retain the right to run or not run our generators and to sell or use the power from these generators according to our needs; and not have it impact the serving utility’s allocation of BPA power. To ensure that short-term ‘gaming’ does not occur, we agree that reasonable restrictions should be placed on the frequency with which we can change the status of the generators.” (Weyerhaeuser, REG-072)

### **Evaluation and Decision**

First, Weyerhaeuser and ICNU ask BPA to retain certain flexibilities which create benefits they perceive but they do not address the question of costs which may be imposed on BPA customers by that flexibility. Like some comments from customers, ICNU and Weyerhaeuser mistakenly use the term “allocation” of power. BPA’s proposal is to allocate costs to two different rate tiers for PF service.

Second, the type of consumer-owned generating resources at the heart of this issue tend to be large, commercial scale co-generating projects that are often part of pulp and paper production facilities. These consumer-owned resources are not associated with small residential or commercial direct application renewable resources, such as solar or small wind projects that are net metered. The issues raised by ICNU and Weyerhaeuser regard their perception of rights under the current contracts and policies and do not regard the HWM

calculations. Specifically they wish to know whether BPA will continue to afford them similar flexibilities in the future. In response, BPA notes that it does not contract directly with any consumer of a Pacific Northwest utility customer and any “flexibilities” in the BPA contracts are rights solely of the utility and not its consumers. BPA contracts expressly exclude any third party beneficiary under its power sales contracts.

Further, BPA is not deciding in this Policy and ROD what terms and conditions will comprise its contract offer to its customers. Those issues will be addressed in later BPA processes. BPA believes the general approach used in current contracts with regard to the application of consumer generation to load versus selling the generation into the market provides valuable certainty. At the time Regional Dialogue contracts are signed, BPA intends for utilities to establish whether existing consumer resource output, in whole or in part, is applied to serve load or sold into the market. BPA further intends that contracts not allow the designation on the consumer load application to change during the term of the contract.

#### **Issue 6:**

**Should BPA adjust Raft River Rural Electric Cooperative’s HWM amount in FY 2010 to account for a power purchase contract Raft added to serve load it annexed (Western Division) that expires September 30, 2011?**

#### **Policy Proposal**

BPA did not make any proposal regarding an adjustment to HWMs due to the expiration of power purchase agreements that serve annexed loads of a customer.

#### **Public Comments**

PNGC commented that BPA has already made commitments to supply power at the lowest-cost-based rate to certain new customers or to certain utilities who have acquired new service territory. BPA should include a list of its existing but not yet served commitments and clarify that these commitments do not count against any HWM cap contained in the Regional Dialogue document. PNGC is particularly interested in the commitment that BPA has made to Raft River for service to Raft River’s Western Division with lowest-cost-based Federal power starting October 2011. (PNGC, REG-150)

#### **Evaluation and Decision**

Under the Regional Dialogue tiered rates construct, technically, whether the Western Division Load will receive lowest-cost Federal power depends on whether Raft River’s HWM exceeds its then current net requirements load. BPA, PNGC, and Raft have had ongoing discussions over the last several years regarding the circumstances surrounding service to Raft’s Western Division load. Raft, a PNGC member, annexed approximately 6 aMWs of Idaho Power load in Nevada (Western Division) after the close of Subscription contract offers. The PNGC JOE Slice/Block contract requires that annexed loads of PNGC members be served by PNGC for the term of the Subscription contract. Raft River/PNGC added a 6 aMW Unspecified Resource to serve the annexed load through September 30, 2011.

Under the terms of the PNGC Slice/Block power sales contract, Raft's Western Division load is considered to be annexed load that obligates PNGC and Raft to supply the power needed to meet the resulting increase in Raft's load. PNGC and Raft have done so. BPA notes that BPA will be obligated to serve the Western Division load as part of Raft's net requirements load upon the expiration of the existing power sales contract, if requested to serve such load under a new contract beginning October 1, 2011. However, BPA is not determining its net requirements load obligation for either Raft or PNGC in this Policy and ROD.

For purposes of calculating Raft's HWM, PNGC and Raft want BPA to exclude the Idaho Power system power purchase that is listed as a firm resource in Raft's power sales contract for FY 2010 but will expire on September 1, 2011. Both parties argue that since the power purchase from Idaho was of a specific term and cannot be renewed it should not be counted as part of Raft's FY 2010 resources. BPA understands that this arrangement was unique to the annexation of load from Idaho Power by Raft and that the purchase was part of the consideration for the annexation. BPA acknowledges that the current power purchase will not continue and agrees to make an exception for the amount of the Unspecified Resource committed to serving Raft's Western Division load which will result in a HWM treatment equal to the treatment Raft would have received if it had been taking service under a load-following contract.

**Issue 7:**

**Should BPA make a HWM adjustment for a customer's FY 2010 resource amounts to except out of the HWM, New Renewable Resources added by the customer consistent with the Subscription power sales contract?**

**Policy Proposal**

None

**Public Comment**

None

**Evaluation and Decision**

Under Subscription contracts customers have an annual right to add New Renewable Resources (Exhibit C, Section 4). When a resource is added, the customer also indicates a date of resource removal. Exhibit C, Section 4 provides that the customer has the right to resume purchasing Contracted Power under the contract when its commitment to apply the renewable resource ends (resource removal date). The rate treatment for the Federal power to replace the renewable resource is the same rate the customer would have received for such power if the customer had not chosen to apply a renewable resource under the provision.

Three load-following customers, Cowlitz PUD, Lewis PUD and Mason PUD No 3, dedicated a total of 5 MWs nameplate, approximately 1.5 aMWs annual energy, of Nine Canyon Wind to serve their respective loads under the New Renewables provision, with a date of resource removal of September 30, 2011.

The intent of the New Renewables provision was to encourage the development of New Renewables and their use to serve load; a customer may remove its New Renewable resource within the Subscription power sales contract period and not be charged the targeted adjustment charge (TAC) for the Contract Power amounts to serve the load formerly served by the New Renewable. BPA does not desire to impose a negative result on these customers for adding renewable resources since it would be inconsistent with the purpose of the provision. BPA understands that the three utilities could have elected to apply the generation to load on a rolling 1-year basis, which would have given them the contractual right to remove the resource from service to load prior to FY 2010, they did not. BPA believes an adjustment in the FY 2010 resource amounts for the amounts of New Renewables applied to load pursuant to Exhibit C, Section 4, should be made because the incentive under Subscription was to avoid the application of a higher, incremental rate for resumption of service to load. Therefore for HWM purposes, BPA will make this adjustment to FY 2010 resource amounts for Cowlitz PUD, Lewis PUD, and Mason PUD No. 3.

**Issue 8:**

**In calculating a customer's HWM should BPA allow adjustment in FY 2010 hydro resource amounts to reflect a utility's use of different critical water years due to its own hydro resource operations planning, changes in critical years used by parties to the PNCA or different PNCA regulations from those used to establish the FY 2010 resource amounts currently in contracts?**

**Policy Proposal**

BPA did not make any proposal regarding an adjustment to HWMs due to use of different critical water years or PNCA regulations for hydro resources.

**Public Comments**

SUB commented that it understands that under the Subscription contracts the determination of firm hydro resource amounts used in declarations for PNCA resources was based on 2001 regulations. In order to preserve certainty with the Regional Dialogue proposal, SUB recommends that BPA not change the firm resource capability of PNCA resources in the FY 2010 resources to reflect any changes in PNCA regulations (i.e., FY 2010 resources should use 2001 PNCA regulations – or whatever regulations were used in at the time the Subscription contracts were signed). SUB is concerned that leaving an open question about the firm resource capability of PNCA resources will dilute HWMs of non-generating utilities. SUB requests that should BPA move forward with changing firm resource capability of PNCA resources that non-generators not be impacted from this approach. This would require that non-generating utilities be walled off from the calculation of HWMs for generating utilities and any changes to HWMs due to adoption of different PNCA regulations would only result in adjustments for HWMs for generating utilities. (SUB, REG-126)

Cowlitz commented that it is important that net requirements calculations use true critical water flows to determine both the HWM and the amount of power at the Tier 1 rate power that can be purchased. True critical water for a Westside hydro resource should not automatically be based on the same year as the Columbia River critical water year of 1936/1937. The net requirements process should recognize this and only require customers

to declare actual firm resource capability, not the amount of generation that could have been produced during the 1936/1937 water year. Cowlitz's Westside resource has a 1976/1977 critical water year, which is substantially less than the regional critical water year used under the PNCA. In fact, the 1936/1937 water year ranks the thirteenth lowest water year on record for this Westside resource. Use of 1936/1937 water no longer makes sense for Westside resources, largely due to changes made in 1997 to the PNCA, which significantly modified the terms of interchange energy. (Cowlitz, REG-118)

### **Evaluation and Decision**

BPA recognizes that requiring the use of 1936/1937 water for hydro projects included in PNCA planning will likely result in somewhat higher firm critical capability for non-Columbia mainstem hydro resources than would result if those resources' firm capability was based on a different critical year for each project. This may be somewhat more pronounced for west of Cascades hydro resources such as Cowlitz's project, but is likely also the case for some non-west-side hydro resources as well.

Moving away from use of 1936/1937 hydro for HWM purposes would result in lower critical firm capability for some hydroelectric projects and would have the result over which SUB expresses its concern. HWMs would be somewhat higher for utilities that substitute a different critical year and somewhat lower for all other utilities. BPA understands that changes to the PNCA regulations in 1997 materially reduced the economic value of interchange energy which is the primary benefit of coordinating hydro resources outside of the Columbia River Basin. However, BPA is concerned that allowing substitution of different critical years would introduce additional uncertainty and potentially significant changes in current FY 2010 resource amounts. More problematic is identification of what a substitute standard would be and gaining regional agreement on it.

With regard to use of a different PNCA regulation for resources included in PNCA, PNCA changes for a particular project are determined in part by the non-power constraints, plant data, rule curves, and forced outage rates on a project provided to PNCA annually by the project owner. BPA understands that the PNCA planning process incorporates this data, but has no independent verification process. Adjusting HWMs for different PNCA regulations could create an incentive on the part of resource owners to provide information that would result in a reduced critical capability under PNCA. A uniform and known standard like the PNCA could avoid that incentive.

BPA has not yet been able to determine the magnitude of the uncertainty or impact on HWMs of either allowing a different critical year or allowing use of a different PNCA regulation, but is concerned it could be significant. Additionally, a change in critical water years does not change the average amount of energy production from hydro projects. Instead, use of a different critical year would reclassify some of that average energy from firm to secondary (non-firm). The energy so reclassified would have to be replaced by BPA with Federal firm power at the Tier 1 rate, which could mean BPA would need to acquire additional firm power to meet the resulting changes in firm power capability of customer hydro resources. The amount of what was formerly considered "firm power" generation would be subsequently considered "secondary or non-firm" and would not be required to be

used to serve the customer's load. The utility would retain this reclassified energy, which would still have substantial market value. To support Regional Dialogue interests, BPA believes it is better to use the FY 2010 hydro resource amounts as currently established in Subscription contracts. Therefore, BPA does not find it reasonable to adjust for HWM purposes the FY 2010 hydro resource amounts by allowing use of different critical water years or different PNCA regulations.

**Issue 9:**

**Whether BPA should modify its proposal to reserve 250 aMW at the Tier 1 rate for new public customers over the 20-year contract period.**

**Policy Proposal**

The Policy Proposal provides that BPA would earmark a HWM of up to 250 aMW for power at the Tier 1 rate for new publics over the 20-year contract period. HWM additions for new publics would be limited to a total HWM aggregate of 50 aMW each rate period. A new public that qualifies for BPA service must request service from BPA with a 3-year binding notice before it may obtain power service at the Tier 1 rate with a HWM. Utilities with total loads larger than 10 aMW would have their HWM amounts over 10 aMW phased-in in 3-year increments, which means that some amount of their net requirements load service could be at the Tier 2 rate during that period.

**Public Comments:**

Several commenters generally support BPA's Policy Proposal as to new public customers. (NRU, REG-103; Richland, REG-091; Emerald, REG-137; NWasco, REG-055) The City of Richland notes that reserving a limited amount of Tier 1 power for them is appropriate because it helps protect Tier 1 customers from uncontrolled cost increases. (Richland, REG-091) Cowlitz believes that BPA has reached a fair balance and notes that an unlimited open invitation to new public power loads at a Tier 1 rate would place significant cost and resource risk on the existing customers. (Cowlitz, REG-118)

Commenters recognize the divergent interests at stake and support BPA's approach as a balanced compromise. Some commenters believe that BPA's proposed 250 aMW is a realistic amount of power to set aside because it is based on the history of preference customer formation. (WPAG, REG-109; Cowlitz, REG-118) WPAG acknowledges that while making this power available to new preference customers will increase the Tier 1 revenue requirement, doing so is a reasonable accommodation for new preference utilities and will minimize collateral legal attacks on the tiered rate construct by newly formed preference customers. (WPAG, REG-109) Northern Wasco finds BPA's new publics proposal reasonable and equitable. (NWasco, REG-055) Similarly, NRU supports BPA's new public utilities proposal as a measured and fair approach. (NRU, REG-103)

Others expressed general criticism of the proposal for new public utilities. Some comments claim that the Policy Proposal would deter new publics from forming, for reasons such as augmentation, notice deadlines, and that the HWM can't grow with the utility. (ATNI, REG-010-01; MPP, REG-074) Wahkiakum PUD suggests that the proposal places challenges on small utilities because it prohibits them from speculating on new resources.

(Wahkiakum, REG-090) Citizens' Utility Board of Oregon states that it has been a longstanding right of IOU utility customers to choose to form a public utility and access PF rates from BPA and the Regional Dialogue proposal removes that right. (CUB, REG-149-15)

Positions in comments on the appropriate amount of power to be reserved for new publics are widely varied. While many commenters believe the proposed 250 aMWs is reasonable as stated above (NWasco, REG-055; WPAG, REG-109; Cowlitz, REG-118; Emerald, REG-137), some disagree. Some believe 250 aMW is an excessive amount. (Raft, REG-005; CTUIR, REG-117; PNGC, REG-133) PNGC believes that reserving too much power at the Tier 1 rate will dilute the value of Tier 1 rate power to existing customers and, therefore, believes augmentation at the Tier 1 rate for new publics should be limited to 75 aMW. PNGC further states that there should be no complex phasing in process and the power at the Tier 1 rate should be distributed on a first-come-first-served basis. (PNGC, REG-133) Tacoma believes that there should be no augmentation for new public utilities once the contracts have been signed. (Tacoma, REG-135)

Some commenters are concerned with the risk of new public utilities having a greater percentage of their load served at the Tier 1 rate than existing customers. WPAG states that the policy should limit the percentage of net requirements load of newly formed preference utilities served at the Tier 1 rate so that it does not exceed the average percentage of net requirements load served at the Tier 1 rate for existing preference customers who purchase power under the same product. (WPAG, REG-109) SUB raises similar concerns. (SUB, REG-126) Canby Utility does not believe there should be any augmentation for new public utilities. Canby recommends that BPA "shrink" the allocation of others to provide power from the exiting system to the new publics. (Canby, REG-064)

Others believe 250 aMW is insufficient. (MPP, REG-074; ATNI, REG-111) Governor Schweitzer states that new or annexed loads should qualify for service from the existing Federal system on the same basis as existing public utilities, emphasizing equal treatment for new publics and existing publics. (Gov. Schweitzer, REG-063) ATNI commented that there should be no limit to the amount of power available for the establishment of new utilities and that HWMs should not be limited to initial loads. (ATNI, REG-111) Highland Winds recommends that new public utilities be included in "Tier one allocation base lines." (Highland, REG-088)

PNGC suggests that BPA include a list of the commitments it has already made to serve new customers or new loads and clarify that these loads will not count against the cap of Tier 1 rate power available for new publics. (PNGC, REG-133)

#### **Evaluation and Decision:**

The purpose of earmarking 250 aMW of HWMs for service to the net requirements loads of new public customers is to make Federal power at the Tier 1 rate more widely available, while providing planning certainty for the amount of power that BPA may need to acquire to serve load in the future. The divergent interests of customer are evidenced by the variety of comments made. Some believe 250 aMW is too low and some believe it is too high, and

others believe that the Tier 1 rate should not be applied to Federal power for net requirements loads of new public customers at all.

BPA does not believe that a policy which applies its lowest cost Tier 1 rate to only one group of public customers is appropriate. Section 5(b)(1) of the Northwest Power Act requires that BPA provide service to a public body or cooperative utility whenever requested for its net requirements load, even if it means BPA must acquire power to serve a new request. At the same time, one of BPA's ratesetting requirements is to encourage the widest possible diversified use of electric power. 16 U.S.C. §838g. BPA believes that excluding new publics from an opportunity to obtain power at the Tier 1 rate would place them in an unfavorable position and would not promote the widest possible use of Federal power; however, BPA also wishes to ensure utilities receive price signals that more directly signal the true incremental costs of load growth. The 250 aMW strikes a reasonable balance in achieving these objectives.

Contrary to CUB's comment, BPA has not and cannot remove the right of local bodies to form public utilities and receive power from BPA at the PF rate. Indeed, entities that wish to form utilities must do so in accordance with state laws. BPA's statutes under which BPA markets Federal power require that prospective customers meet BPA's standards of service but they do not govern the formation of public utilities. While a tiered rate construct may signal a price to persons contemplating the formation of a utility, it in no way removes the right to form a utility. It is the economics of power supply that generally motivate persons to form a utility, whether the supply of electricity comes from the Federal power system or non-Federal sources. Therefore, this policy provides a reasonable opportunity for persons to form new public utilities and to receive some Federal service power at the lowest PF rate.

BPA does not believe that an open-ended HWM amount is reasonable under a tiered rate structure. BPA needs a reasonable benchmark for cost of service to new publics under the next contract and rates. The reality is that it is impossible to predict the number of new public customers that may form and request service and the amount of power they will need over the 20-year contract period. BPA's proposal to set aside 250 aMW at the Tier 1 rate is based on the experience that over the last 25 years about 300 aMW of new public customer load formed and took priority firm service. 250 aMW over 20 years is approximately equivalent to the 300 aMW.

BPA will first serve the new publics' net requirements load to which the HWM applies with any existing low-cost power that is not being purchased by other public utilities. If additional amounts of power are needed to meet a new publics' net requirements load to which the HWM applies according to this Policy, BPA will purchase power or acquire resources and recover costs of that augmentation through the Tier 1 rates. Providing some augmentation to meet new public loads achieves a reasonable balance of providing power at Tier 1 rates to new publics as specified in this Policy and in limited amounts that do not dilute the value of the Federal Base System.

PNGC commented that BPA should include a list of the commitments to serve new customers or new loads it has already made and clarify that these loads will not count against

the amount of Tier 1 rate power available for new publics. BPA has no commitments to serve any specific new public utility that it is not already serving. Any public utility that has formed, met standards for service, and signs a Regional Dialogue contract before the contract deadline will be considered an existing customer under Regional Dialogue. Any utility that forms after that date will be considered a new customer.

In choosing 250 aMW, BPA is balancing the various interests raised in comments to achieve a middle ground. As noted, several customers acknowledge that 250 aMW is a reasonable amount because it is based on a historical trend in new service requests. BPA will retain its proposed policy that 250 aMW of power at the Tier 1 rate will be reserved for new public customers. This decision provides a reasonable way to supply some power at Tier 1 rates to new publics while gaining the benefit of being able to plan for their power needs in advance.

#### **Issue 10:**

**Whether BPA should modify its proposal to limit the total aggregate of HWM additions for new public customers to 50 aMW each rate period?**

#### **Policy Proposal**

The Policy Proposal provides that HWM additions for new publics would be limited to a total aggregate of 50 aMW for each rate period.

#### **Public Comments**

BPA received comments both supporting and opposing the 50 aMW HWM limit per rate period. Supporters state that the 50 aMW limit per year is reasonable. (NWasco, REG-055; Cowlitz, REG-118) Opponents claim that a 50 aMW per year limit is unreasonable and should be removed. (MPP, REG-074; ATNI, REG-111) Kittitas PUD stated that new publics should not receive up to 50 aMWs at Tier 1 rates; rather, the rate should be comprised of the appropriate percentage of Tier 1 and Tier 2 power as compared to existing BPA customers. (Kittitas, REG-087) Montana Public Power stated that the 50 aMW limit serves no purpose but to deprive new large public utilities from opportunities received by others. (MPP, REG-074)

#### **Evaluation and Decision**

Some commenters question the purpose and reasonableness of the 50 aMW per rate period limit. The 50 aMW limit is designed to provide assurance that a reasonable amount of power service at the Tier 1 rate is available from rate period to rate period and will not all be taken up within a single rate period. Thus a new public utility which was not quite able to qualify in the first rate period would have an opportunity in the next after it had qualified. A variety of new public customers over the life of the contracts can be accommodated in this manner. BPA believes the 50 aMW limit is a reasonable limit for total aggregate HWM additions per rate period because the majority of its new public customers over the past 25 years have had smaller loads. It strikes a balance between providing new publics significant access to lowest cost-based BPA power and setting a limit on the costs that would dilute benefits to existing purchasers at Tier 1 rates. In addition, the Policy contains an exception to the rate case limit for small new utilities with net requirements of 10 aMW or less. If new public requests exceed the 50 aMW rate period limit, BPA will not prorate down the HWM additions for

new publics with net requirements load of 10 aMW or less. This exception will be limited to the first five such utilities that would have otherwise seen a HWM reduction and would have otherwise counted toward the overall 250 aMW limit for new publics. Any additional amounts provided to these utilities will be added to the 50 aMW limit. However, when this exception is applied, it is possible that the total amount of power at a Tier 1 rate earmarked for new public utilities (the 250 aMW) may increase slightly. BPA believes this exception for small utilities with total net requirements load under 10 aMWs is reasonable because it accommodates unique needs of small customers while limiting the impact on Tier 1 rates.

If there are multiple requests for power from new public utilities within the same rate period that exceed the 50 aMW cap, a phase-in process will apply to those new utilities with total net requirements loads larger than 10 aMW. Each new utility larger than 10 aMW will receive 10 aMW of power at the Tier 1 rate in the first rate period, and the remaining amount of its HWM request will be phased-in over subsequent rate periods. The phase-in process is designed to ensure that the 250 aMW intended for new publics is shared among various new utilities rather than consumed entirely by one large utility.

BPA will adopt a limit to total aggregate HWM additions for new public utilities to 50 aMW per rate period.

#### **Issue 11:**

**Whether power at the Tier 1 rate should be available to new public customers only for load that exists in FY 2010?**

#### **Policy Proposal**

The Policy Proposal contains no distinction based on when a load comes into existence and when it is to be served by a new public utility or other temporal limitation. Within the 250 aMW contract period limit, the Tier 1 rate would be available to new publics for load that exists in FY 2010 and loads that come on to the utility distribution system during the contract period.

A new public customer that forms out of an existing public would receive a share of that existing public's Contract HWM equal to the proportion of its total retail load to that of the existing utility's total retail load prior to the new utility's operation. Any additional Contract HWM amounts the new public customer is eligible for as a new public would be provided through the treatment discussed above, but the HWM amounts provided from the existing public would not count towards the HWM 250 aMW aggregate limit or a rate period limit since the transfer of load does not result in new service at the Tier 1 rate.

New public customers that form out of an existing IOU would be eligible for HWMs only through the above 250 aMW standard.

#### **Public Comments**

SUB notes that the amount of power reserved for new public utilities at a Tier 1 rate may put the new publics on an uneven playing field, giving new publics an advantage over existing utilities. SUB is concerned that once a HWM is set for an existing public that new load

growth may occur in a geographic area outside of its existing service. If a new public is formed within the geographic area where load growth is occurring and receives a portion of the existing utility's HWM, SUB argues the remaining customers of the existing utilities are harmed (particularly those that existed in FY 2010). To avoid this situation, SUB asks that BPA modify its proposal to allow new publics access to net requirements load service at a Tier 1 rate only for loads that existed in FY 2010. Other loads would have to be served at the Tier 2 rate. In addition, SUB is asking for a more definitive policy statement from BPA that BPA will make sure that the percentage of a new customer's load served at Tier 1 rates will not exceed the percentage of existing customers' loads served at Tier 1 rates. (SUB, REG-126)

### **Evaluation and Decision**

BPA recognizes the concern expressed by SUB that it would be unfair for a new public utility to receive a greater percentage of their net requirements load service at a Tier 1 rate than an existing public, or an average of existing publics. A new public customer and the load it will serve will not be advantaged over existing customers; rather the new customer will be provided a reasonable benefit. SUB's concern is addressed by the limit on a new public customer's HWM so that the percentage of its load served at a Tier 1 rate will not exceed an average percentage of public utility customers' net requirements load served at the Tier 1 rate. The Policy language will be strengthened in this respect. The Policy Proposal originally stated that there was a "potential" to make adjustments if the percentage of a new public customer's load served at the Tier 1 rate exceeds the percentage of the existing public customer's load served at the Tier 1 rate. In the Policy, the word "potential" has been deleted, providing clear language that in such circumstances the adjustment will be made. The only exception will be those small utilities with total retail loads under 10 aMWs as described above in Issue 2. BPA intends that amounts of load that are annexed by one public utility from another public utility will receive part of the existing public utility's HWM, proportional to the percentage of the customer's load they have annexed.

It is important to note that when a new public utility forms and acquires a distribution system, it can only serve that amount of load that it is obligated to and able to serve under state law. SUB asks that BPA only serve a new public's net requirements load that existed in FY 2010 at Tier 1 rates. BPA believes it would be technically difficult and imprudent to track and measure which specific load constitutes a utility's retail load in FY 2010 for purposes of determining existing load and future load. At the wholesale level, BPA does not now find it necessary to have specific individual consumer load data for purposes of calculating a utility customer's HWM. The HWM calculation is intended to be simple and not involve detailed layers of data and information on customer loads and resources. Moreover, because the rate of the region's load growth is around 1.2 percent annually, it is likely that most new public utility customers will form out of existing utilities and will commence service to load that will have existed in FY 2010. Therefore, while a new public utility customer may indeed receive some service at a PF Tier 2 rate (after considering application of the 50 aMW phased-in amounts and the 250 aMW limit for new public customers), BPA believes that it is unreasonable to preclude a new public utility customer from any opportunity to receive the benefit of BPA's Tier 1 rate load based on the temporal existence of load it is obligated to serve.

**Issue 12:****Whether BPA should shorten the notice period for new public customers.****Policy Proposal**

Under the Policy Proposal, a new public customer that qualifies for BPA service must request service from BPA through a 3-year binding notice before it may buy power service at the Tier 1 rate from BPA with a HWM.

**Public Comments**

Several commenters believe that the notice period for new publics should be less than 3 years. (NWasco, REG-055, ATNI, REG-111)

Northern Wasco stated that if it is possible for a new public to form and provide all documentation necessary to BPA in a period of time whereby there is no real substantive reason to wait 3 years to be served, BPA should consider doing so. (NWasco, REG-055)

**Evaluation and Decision**

BPA understands that some new utility formations and acquisition of a distribution system may take less than 3 years after they first inquire about service with BPA. In BPA's experience, the process for new public utilities to form and begin operation has taken longer than 3 years. Moreover, the purpose of a notice period is to provide BPA sufficient time to plan for and obtain power to supply the load that the new customer will be asking BPA to serve. Notice periods provide some certainty as to both when service might begin and the amount of power BPA will be responsible to provide. A reasonable notice period allows BPA a reasonable amount of time to obtain cost-effective power to serve that customer's load. If BPA is required to serve new customers at the Tier 1 rate without prior notice or on short notice, BPA may not have adequate time to plan its purchases or acquisitions for serving such loads and consequently, the cost of providing power to all customers would increase unreasonably.

Formation of a utility takes a significant length of time, so providing notice should not impose significant hardship on the new utility. BPA considers this notice period reasonable based on our prior experience with new public utility formation. To maintain a level of certainty of BPA's responsibilities and avoid risk of increased customer costs, BPA will retain the proposed notice requirement. A new public that qualifies for BPA service must provide 3-year notice before it may buy for requirements load power with a HWM, except for HWM amounts that are provided from another existing public, due annexation of that public's service territory as discussed earlier in this ROD. During the interim period the new public utility may purchase power from BPA at other PF rates, such as BPA has made available during the Subscription contracts through a PF TAC. Details for this approach would be worked out in the applicable rate cases.

## **I. CGS Bonds**

### **Issue 1:**

**How should the potential issue of losing tax-exempt status on Columbia Generating Station (CGS) bonds be handled?**

### **Policy Proposal**

The Policy Proposal gives a brief explanation of the CGS bonds and emphasizes the necessity of maintaining the bonds' tax-exempt status. Unless the new Regional Dialogue agreements are structured carefully, if a customer's HWM is reduced due to a reduction or loss of CGS, the Federal income-tax exemption on CGS, Project 1 and Project 3 bonds could be threatened. A possible solution provided in the Policy Proposal is that certain customers (generally cooperatives) may be required to replace all or a portion of the related HWM reduction with power from BPA at Tier 2 rates. The proposal noted that other solutions may be possible.

### **Public Comments**

PNGC generally supported BPA's goal of securing the lowest-cost available financing, but also commented that it is important to acknowledge that all of BPA's statutory preference customers stand on an equal footing and are entitled to equal access to all BPA power sales products offered to preference customers. As a result, PNGC recommends that BPA not try to lock down a specific solution to the issue in the final ROD but acknowledge the need for ongoing discussions on this matter. PNGC added that it is also important that any solution not put BPA's cooperative customers, including those purchasing under Northwest Power Act Section 5(b)(7), at a disadvantage. BPA has had success collaborating with affected customers to address such tax issues in the past and this practice should be observed in the future. (PNGC, REG-133)

NRU agreed that an equitable solution must be found that does not impair the tax-exempt status of the CGS bonds in an event that a reduction in HWMs is due to the reduction or loss of CGS. NRU noted that the potential solution provided by BPA, requiring only rural electric cooperatives to replace their reduced HWM with Tier 2 rate service should be "market neutral" and urges BPA and the customers to look for other solutions to this problem. (NRU, REG-103)

### **Evaluation and Decision**

BPA meets the debt service costs of about \$6 billion in tax-exempt bonds for Energy Northwest's Project 1, Project 3, and the CGS. The tax-exemption is predicated on a tax law analysis that is in part based on existing agreements and arrangements relating to the use of the output of CGS and the payment and costs of the CGS. Unless the new agreements are structured carefully, a reduction in a customer's HWM caused by a reduction or loss of CGS could jeopardize the tax-exempt status of the bonds. This is a risk because, in summary, the Tax Code limits the amount of tax-exempt bonds for a project to the extent that the facility is deemed to be "used" by "private persons." "Private persons" include cooperatives and other entities that are not qualifying state or local governments.

BPA agrees with commenters that it is important to operate the FBS in a way that allows the BPA-back Energy Northwest bonds to remain tax-exempt. BPA will continue to work with customers as it has in the past to try to achieve a reasonable solution to these tax issues. BPA will structure the Regional Dialogue agreements so that the tax exempt status of the Energy Northwest bonds is preserved.

## **J. PRODUCTS AVAILABLE TO REQUIREMENTS CUSTOMERS**

### **Issue 1:**

#### **What products should BPA offer to customers beyond FY 2011?**

##### **Policy Proposal**

BPA proposes to continue to make an array of products available that would meet its customers' diverse needs, offering comparable products to those currently available. The proposal states that transmission products are not covered; however, for load-following customers that do not have in-house expertise, BPA would offer a transmission management product at its cost of providing the service.

BPA proposes to continue to offer products that follow a customer's retail loads, such as the current Full and Partial Service load-following products. The Regional Dialogue contracts would not maintain a purchasing distinction between load-following for Full and Partial service. Instead, the contract would provide a single load-following product with terms and conditions specified for a customer's use of their existing resources or adding new resources to ensure they are operated in a way that does not create costs that must be borne by other BPA customers.

BPA also proposes to continue to offer products that would allow customers to supply their own load-following service such as the Block product. The Slice product proposal included modifications to that product which are addressed later in this document. Non-load-following purchasers would receive an amount of power based on a forecast of their net requirements load and are responsible for integrating their BPA power purchase with their own resources to follow their actual consumer loads throughout the year.

For load service beyond a utility's HWM, BPA proposes to offer (at a minimum) the following alternatives at Tier 2 rates: New Renewables, Default Alternative, Long-Term Purchases, and Full Load Growth.

##### **Public Comments**

The comments received on this issue are extensive and quite varied. A large number of comments involve implementation details not specifically addressed in the Policy Proposal.

Comments from several parties reflected the sentiment that BPA should continue to offer the same products it currently offers. (PPC, REG-132; Kittitas, REG-087) Northern Wasco stated it is generally satisfied with the product choices BPA plans to have available in future power supply contract negotiations. (NWasco, REG-055)

PNGC and Tacoma stress the importance that the products offered provide equal value among customers. (PNGC, REG-133; Tacoma, REG-135) By way of example, Tacoma explains “a full service customer should not be expected to pay more or less, on a unit basis, for a given amount of shaping services than what a partial requirements customer would pay for that same amount of shaping services.” (Tacoma, REG-135)

Several parties encourage BPA to develop a set of usable products to replace the current product options and designed to meet the diverse needs of preference customers. (ICNU, REG-125; SCL, REG-128) A number of parties commented that BPA should work with customers to develop effective load-following and resource integration products. (Franklin, REG-100; PPC, REG-132; Clark, REG-108; WPUA, REG-080; Clearwater, REG-134; Benton PUD, REG-114; Emerald, REG-137; Cowlitz, REG-118; WPAG, REG-109; PNGC, REG-133; SUB, REG-126; Richland, REG-091; NRU, REG-103).

Several parties stated that they need more product detail, especially regarding Tier 2 rate service options, if they are to decide whether to commit to purchase power from BPA at a Tier 2 rate or power from non-Federal resources. (Whatcom, REG-121; Canby, REG-64; NIPPC, REG-130; WMG&T, REG-106) More specifically, NRU urges BPA to offer “vintaging or layering” of multiple Tier 2 rate purchase/pricing alternatives. (NRU, REG-103) PNGC suggests that BPA should allow for flexibility over time to develop new Tier 2 rate products as need arises, and that BPA’s Tier 2 rate products should be under the same notice requirements for addition or removal as non-Federal resources. (PNGC, REG-133)

A number of parties stress the importance of keeping product detail out of the Policy and leaving such detail to future public processes focused on implementation. (Snohomish, REG-131; PNGC, REG-133; Clearwater, REG-134) PNGC cautions, “if the Regional Dialogue final document is too detailed in some products, it may unintentionally create an unworkable product” and that the “TRM (Tiered Rates Methodology) and product development should occur simultaneously so that the rates and products work together as a package.” (PNGC, REG-133)

Beyond the comments noted above, BPA received a large number of very specific comments related to various product details ranging from resource output requirements to the sorts of resources BPA should include in Tier 2 rate service alternatives.

### **Evaluation and Decision**

BPA agrees with comments that urge BPA to continue to offer to utility customers an array of products comparable to those currently available. BPA believes that BPA and its customers should take advantage of the opportunity to refine the current products and services so that they comport with a Tiered Rates Methodology. Looking forward, BPA agrees with PNGC and others that circumstances can change. BPA will explore with customers ways to incorporate a limited amount of flexibility in the products and Tier 2 rate design. BPA will attempt to rein in the degree to which its products and Tier 2 rate

alternatives can be changed so that customers will still have confidence in the durability of the contract they sign.

BPA will offer at least the following requirements load service product types: Load-Following, Block, and Slice. Each of these product types should allow customers the ability to acquire and integrate new resources and utilize their existing resources for their load. Details regarding potential limitations on certain resource shapes or operations, and additional resource support services that may be required will be developed in the contract product development process and TRM process. BPA intends to design its requirements load service products to accommodate customer resource development and integration.

BPA's requirements load service product offerings reflect the principle that a customer's product choice can be viewed as a decision on the additional services the customer wants BPA to provide to take the FBS shape and convert it into energy deliveries that meet the customer's net requirements. As advocated by various parties including Tacoma and PNGC, BPA intends that customers who require additional shaping services will be charged the additional cost incurred to meet those needs. Those who take their power from BPA in shapes that are cheaper to serve would likely pay lower rates. BPA intends to create a framework wherein a single customer (or a group of customers requesting a similar service) is held financially responsible for the load serving obligations it creates for BPA, thereby insulating other customers from the decisions of that one customer (or group of customers).

For service beyond a customer's HWM BPA intends to offer Tier 2 rate power based on a New Renewables alternative and a Default Alternative. The New Renewables alternative will be priced at the cost of purchasing and integrating new renewable resources, and is intended to have a term of at least 10 years. The 10-year minimum commitment term is necessary to ensure an adequate resource planning and acquisition horizon.

The Default Alternative will be applied to any customer who does not affirmatively choose a different Tier 2 rate alternative or commit to non-Federal resources. The minimum commitment period and required notice period for switching to another Tier 2 rate or applying a non-Federal resource will be determined in subsequent public processes, but will need to be long enough to ensure that new resources can be effectively and efficiently acquired if necessary to comply with Regional Resource Adequacy Standards. To allow for an adequate resource planning horizon when transitioning to the post-2011 era, BPA will require that at contract signing customers commit to how their load will be served through FY 2016.

As advocated by NRU, BPA agrees there is some merit to "vintaged-based" pricing options for customers who commit to pay a Tier 2 rate equal to the costs of a specific resource or group of resources for as many as 10 years or more. As proposed by NRU, a "vintaged-based" rate or set of rates means that a customer would be subject to pay a Tier 2 rate equal to the costs of a specific resource or group of resources for as many as 10 years or more. BPA will explore the development of a "vintaged" Tier 2 rate or rates in the contract and product development and TRM process and hopes such a pricing option could encourage long-term commitments and accordingly aid in resource planning and compliance with

Regional Resource Adequacy Standards. While BPA is willing to explore the concept of “vintaging” BPA is concerned about the potential for administrative burdens and costs from having numerous such rates.

In all Tier 2 rate service alternatives, BPA will endeavor to maintain comparable notice provisions and commitment requirements between BPA’s Tier 2 rate alternatives and non-Federal options wherever possible. Such details will be further developed in the subsequent contract product development process and TRM process.

In response to parties requesting that BPA provide integration services for a customer applying a non-Federal renewable resource to serve its load, BPA does intend to offer such services for resources applied to meet a customer’s retail load. The ongoing regional Wind Integration initiative, BPA’s contract product development, and TRM process will work out the details of how to structure these services. Integration services for other types of resources will also be discussed in those forums. To avoid biasing customers’ choices, BPA’s charges for non-transmission integration services for non-Federal resources will be the same as those included in Tier 2 rates based on similar resources.

BPA understands that a significant number of product implementation details remain and acknowledges the need for customers to understand product details and options as they begin their own planning processes. At this time, however, BPA must defer decisions on such matters to the appropriate future forums where all related issues can be addressed as part of a cohesive package.

## **Issue 2:**

**Will BPA allow customers to change contracts/product types with proper notice?**

### **Policy Proposal**

The Policy Proposal did not propose to offer customers the ability to change their contract and product types after giving proper notice.

### **Public Comments**

WPAG and Tacoma specifically requested that BPA allow customers to change products upon giving BPA proper notice, so that the customers’ relationship with BPA may evolve with customers’ changing circumstances. (WPAG, REG-109; Tacoma, REG-135) Other comments were received requesting that BPA design its Load-Following product to give customers the ability to integrate non-Federal resources, and related to this request, to enable a Full Requirements customer to transition easily to a Partial Requirements customer if it so chooses. (Clark, REG-107; Emerald, REG-137; PPC, REG-131)

### **Evaluation and Decision**

BPA recognizes that its customers’ circumstances may change over the course of the 20-year contract; however, BPA also needs to ensure cost recovery, limit risk exposure, and have certainty about its load service obligations. Tacoma and WPAG both suggest that if customers give BPA appropriate notice, they should have a right to change the products they purchase from BPA (i.e., between Load-Following, Block, and Slice products). BPA

believes that the simple act of giving notice to change products is not enough of a preventative measure against possible cost shifts and unreasonable, unmitigated risk exposure for the rest of BPA's customers. Consequently, BPA does not intend to include in its contracts a provision allowing a customer to change products upon giving notice. BPA is concerned that such a provision may lead to stranded costs and may shift risks between its customers in a way that may compromise the durability of the 20-year contracts.

However, BPA believes that its proposed, preliminary structure for the Load-Following product will be sufficiently flexible so that a customer choosing that product will be able to add non-Federal resources to its power supply portfolio over time, allowing it to transition from a customer having all of its load met by BPA to one that has its load served by both BPA and non-Federal resources. By doing this, BPA is effectively allowing for a customer to switch from what was traditionally considered a "full service" to a "partial service" contract.

### **Issue 3:**

**Should a customer's power service at the Tier 2 rate be in the form of a flat annual block of energy?**

### **Policy Proposal**

The Policy Proposal states that "[w]hen the Tier 2 rate applies, the amount of power provided at that rate would be predefined as a planned amount of power purchases at the time the net requirements load is established. BPA is not making a specific proposal since the rules for establishing the annual predefined shape of the purchases subject to the Tier 2 rate will be the subject of additional discussions. However to encourage and foster discussion this is illustrated below as a flat annual block."

### **Public Comments**

BPA received only a few comments on the proposed shape of a Tier 2 rate power purchase from BPA. The comments generally recommended that BPA consider other shapes than the flat block, with specific recommendations for seasonal shapes.

NRU stated that although Tier 2 rate power is illustrated as a flat annual block in the Policy Proposal, other shapes should be allowed on a cost neutral basis because the flat block may not be viable or available over the long run. NRU acknowledges in its comments the simplifying nature of the flat block concept and notes the added rate-making and administrative complications that may result from implementing other shapes while ensuring cost neutrality. (NRU, REG-103)

PNGC stated "BPA should not limit Tier 2 purchases to flat blocks, even for those customers choosing load-following service. The further product development process, as well as changing needs over time, should define the way in which Tier 2 is offered." PNGC also suggests that BPA should offer possibly even a seasonal Tier 2 rate product. (PNGC, REG-133)

IDEA and ICUA explained “effective energy management also requires that BPA’s customers have access to seasonal products and the ability to shape when Tier 2 products are brought to load. For example a utility may want to take all of its Tier 2 product in the four winter months rather than flat over the year.” (IDEA & ICUA, REG-096)

### **Evaluation and Decision**

NRU, PNGC, IDEA and ICUA all advocated more complicated alternatives, which, as NRU acknowledges, may create rate-making and administrative challenges. The future implementation discussions should help BPA focus on what the customers and other stakeholders believe is the necessary degree of complexity/simplicity in designing the tiered rates structure, while still creating a system that achieves the dual goals of allowing BPA to comply with its statutory mandates and giving the region’s utilities meaningful power supply options.

BPA is not making a final decision in this Policy regarding the shape of power service available at Tier 2 rates. BPA will continue to discuss in the implementation phase alternative benchmark shapes for both Tier 2 rate service and new non-Federal resources applied to meet customers’ loads above their HWMs. BPA will also explore with customers ways to ensure there is sufficient flexibility within the TRM to accommodate a changing marketplace and Federal power and transmission system.

The comments focus on important implementation aspects of the tiered rates framework that will continue to be refined over the coming months as the TRM is developed: cost-neutrality, flexibility in design, and striking the appropriate balance between simplicity and complexity. For illustrative purposes, BPA proposed to shape power service at the Tier 2 rate in the form of a flat block of energy and to portray the tiered structure in the simplest way possible. BPA will continue to illustrate Tier 2 as a flat block of energy and currently expects that this will become the benchmark shape for purchases of power at Tier 2 due to its implementation advantages. BPA intends to propose this shape in future processes where decisions will ultimately be made.

### **Issue 4:**

**What service costs will the Tier 2 rate cover for load-following service in excess of a customer’s HWM?**

### **Policy Proposal**

BPA proposes that it will offer load-following products that reshape the firm power of the FBS into the variable shape of the customer’s net requirements load and that include the cost of deploying system flexibility and balancing purchases/sales to meet the hour-to-hour swings in customer loads. BPA does not make a specific proposal as to whether it will offer such a service as a Tier 2 rate alternative, instead stating that load-following customers would pay an opportunity-cost-of-service-based adjustments charge for the cost and risks BPA faces serving their actual loads rather than their forecast load.

The HWM construct would address variations in a customer’s net requirements load on an annual basis. BPA proposes that when a net requirements load is below the HWM, all power

would be priced at the costs of the Tier 1 rate. If the net requirements load exceeds the HWM, Federal power service above the HWM limit would be priced at a Tier 2 rate. When the Tier 2 rate applies, the amount of power provided at that rate would be predefined as a planned amount of power purchases at the time the net requirements load is established. To ensure obligations to the U.S. Treasury are met, Regional Dialogue contracts would be take-or-pay for the amount of power that the customer is obligated to purchase from BPA. To mitigate a customer's take-or-pay obligation, BPA would remarket Tier 2 rate power to cover any loss in the customer's load that would otherwise be served with such power. Proceeds from that remarketing would be used to off-set the customer's take-or-pay amounts owed to BPA.

### **Public Comments**

NRU agreed with the basic approach as it pertains to the initial design of load-following products, but expressed confusion with the specifics of service at Tier 1 and Tier 2 rates when a customer experiences load loss. NRU considers BPA's proposal to remarket Tier 2 rate power via contractually defined take-or-pay provisions a "reasonable approach" to address customer load loss. NRU, however, expressed difficulty equating this to the concept of power at the Tier 2 rate as a flat block at the bottom of a customer's load shape, stating "the load loss would have to be so significant as to be greater than the Tier 1 purchases of the customer." Put another way, NRU stated that it appears that power at the Tier 1 rate would take the load swings. NRU acknowledged BPA's intent that the load variance product will likely take the load swings and that the value of power at the Tier 1 rate will stay with the customer up to its net requirements. As an alternative to that approach, NRU proposes that BPA could offer a "Tier 2 market based product that would take the load swings on top of Tier 1". (NRU, REG-103)

WMG&T shares a similar concern that the Policy Proposal appears to "unfairly punish a utility by decrementing its cheapest (Tier 1) power source first" when a utility experiences load loss. As an alternative, WMG&T proposes a short-term Tier 2 rate product that would be decremented first in the event of a load loss. If the load loss were greater than the short-term Tier 2 rate purchase, Tier 1 rate purchases could be subsequently decremented. (WMG&T, REG-106)

### **Evaluation and Decision**

The NRU and WMG&T proposals to essentially include a Tier 2 rate load-following product are built on a shared misconception that under BPA's Policy Proposal the value of power at the Tier 1 rate will be decremented prior to power at the Tier 2 rate if a utility experiences load loss. To the contrary, BPA is proposing to both remarket on an annual basis "unused" power at the Tier 2 rate associated with load loss (compared to rate case forecasts) and also allow the load variance service to cover within-year hour-to-hour load differences from rate case forecasts for a load-following customer. BPA will recalculate annually each customer's net requirements load and compare it to the customer's rate case HWM for the upcoming fiscal year. When the load-following customer's net requirements load forecast is less than what was calculated for the rate case (as a result of load loss, for example), BPA intends to remarket the customer's excess power at the Tier 2 rate on a forecast basis (rather than decrement the customer's power service at the Tier 1 rate) and the customer will either be

credited the proceeds from remarketing or charged any revenue shortfall. Because the customer's HWM is not affected by the load loss, the customer will maintain its power service at the Tier 1 rate up to the utility's net requirements load (on a forecast basis). Within-year load differences from the annual net requirements forecast will continue to be covered by the load variance service, purchased by load-following customers.

BPA's approach to lock down the Tier 2 rate amounts of energy as flat annual blocks (with the remarketing provision described above for forecast load loss) and handle load variation within the year via the load-following service also better parallels the mechanism where a load-following customer would meet its load above its HWM with non-Federal resources. This approach is intended to mimic the resource removal rights BPA is proposing to give those customers with non-Federal resources who have experienced load loss. If BPA were to expand its Tier 2 rate offering to have load-following associated with "Tier 1 and Tier 2 rate loads," as opposed to service to net requirements load below and above a customer's HWM, the construct would become more complicated from a rates and contract administration standpoint. BPA will continue to work with customers to explore implementation details associated with load-following service in the contract and product development process and TRM process. At this point, BPA is deciding not to propose a load-following Tier 2 rate construct, but instead is deciding to move forward with its proposal to keep the load-following service associated with a customer's power service at the Tier 1 rate.

#### **Issue 5:**

#### **What should be BPA's role as a Tier 2 rate power supplier?**

#### **Policy Proposal**

When offering service at Tier 2 rates, BPA intends to offer various service alternatives that reflect the full underlying costs of the new resources or market purchases used to provide the service. The costs of power acquired to serve load subject to a Tier 2 rate would be kept as low as possible, but BPA proposes that it will not subsidize Tier 2 rates to create a financial advantage for a customer to make a choice to buy from BPA instead of the market.

#### **Public Comments**

BPA received comments from Northern Wasco that stress the importance for BPA to continue to play a central role as an aggressive and competitive resource acquirer for preference utilities. (NWasco, REG-055) NRU commented similarly that it would "strongly urge BPA to be competitive and aggressive on behalf of customers in the Tier 2 power supply business." NRU stresses the importance of a diversified supply portfolio provided by a number of alternate suppliers, and that includes thermal in addition to renewables. NRU also urges BPA to consider geographical diversification and the capabilities of the transmission system to deliver generation to load. (NRU, REG-103)

#### **Evaluation and Decision**

BPA's statutory obligation is to serve the regional net requirements load of its utility customers. BPA's offering of Regional Dialogue contracts will provide customers the ability to select among products and services that are designed to meet their various needs, including the ability to purchase all of their power supply from BPA to meet their full requirements

load. For that portion of power that is for service above a customer's HWM, BPA will endeavor to provide Tier 2 rate service options at the lowest feasible cost; however, BPA will not subsidize Tier 2 rates to create a financial advantage for a customer to make a choice to buy from BPA instead of power from a non-Federal resource. If customers want to purchase power to meet their load above their HWM from BPA that power will be priced at a Tier 2 rate based on the marginal cost of BPA acquiring or purchasing such power for their load. BPA will offer several Tier 2 rate alternatives that reflect the full costs of the new resources or power purchase costs incurred to provide them. To keep the cost of Tier 2 rate alternatives low, BPA will work to maintain a diversified supply portfolio, as NRU advocates but is not making any commitment to acquire thermal resources as part of this decision.

#### **Issue 6:**

**Should BPA expand its Tier 2 rate alternatives to include one that reflects a shorter commitment period and shorter notice provisions than those required in the Tier 2 rate default alternative?**

#### **Policy Proposal**

BPA proposed to offer customers a number of alternatives for Tier 2 rate pricing. At a minimum, BPA proposed the following service options subject to Tier 2 rates: New Renewables, Default Pricing Construct, Long-Term Purchases, and Full Load Growth Coverage. BPA proposed to structure the default Tier 2 rate to have a minimum 5-year purchase commitment and a minimum notice of 3 years to switch either to a different Tier 2 rate alternative or to add non-Federal power to serve load above their HWM. The other proposed Tier 2 rate alternatives required a commitment to purchase for greater than 5 years.

#### **Public Comments**

Most of the comments received on the proposed minimum commitment and notice requirements for BPA's default Tier 2 rate were in favor of BPA offering a market-based Tier 2 rate alternative with shorter duration and notice provision to change than the 5-year commitment and 3-year notice associated with the proposed default Tier 2 rate. The reasoning offered by the comments in favor of a shorter commitment all shared a common theme: a shorter minimum commitment would better position customers (in particular smaller, traditionally full service customers of BPA) wishing to evaluate their power supply options and possibly diversify from BPA as their power supplier. (IDEA & ICUA, REG-096; PNGC, REG-133; NRU, REG-103) BPA received one comment opposed to BPA offering a market-based, short-term Tier 2 rate alternative, because providing this type of service could turn BPA into a power broker instead of a power supplier. (NVEC, REG-110)

#### **Evaluation and Decision:**

BPA proposed a number of Tier 2 rate alternatives in its Policy Proposal, including a Default Tier 2 rate alternative, with a minimum 5-year commitment and 3-year notice provision to start or change service. BPA proposed these requirements to ensure that BPA has sufficient notice from customers to make the necessary power supply preparations to serve load above the customer's HWM at a Tier 2 rate. If new resources need to be built to serve this load, then BPA needs to have some certainty regarding the amount of load it must serve, and a commitment term of sufficient duration to induce resource development.

BPA understands and recognizes the possible desirability among certain customers for a Tier 2 rate purchase with a shorter commitment period, as noted in both PNGC's, IDEA, and ICUA's comments. However, BPA is concerned that if it offers a Tier 2 rate with a commitment term and notice provision as proposed by these comments, BPA will not be able to ensure that it is meeting resource adequacy standards for the purchasers of power at these Tier 2 rates. Either BPA, or its customers, need to clearly have the burden of meeting the standards. Blurring this responsibility could confuse and overly complicate the region's development of an adequate resource infrastructure.

If a customer finds itself short of power on less than 3 years' notice and BPA is not otherwise obligated to supply the customer with firm power, then it is possible the customer could buy surplus firm power, if available, from BPA. If BPA is obligated to provide firm power on a shorter notice before the planned power service is available, BPA is considering the application of a TAC to cover the marginal cost of such power.

Since proposing the 5-year minimum commitment and 3-year notice provision to start or change service for the Default Tier 2 rate, BPA realized that even these terms may not be sufficiently long to ensure that its default Tier 2 rate alternative complies with Regional Resource Adequacy standards. The reason for this conclusion is that after the minimum 5-year commitment is satisfied, BPA only has a rolling 3-year commitment from those customers purchasing power at this Tier 2 rate. BPA needs to have a sufficiently long commitment from its customers purchasing at this rate to induce the development of new resources (including regulatory authorizing processes), if needed, to serve load. Consequently, BPA is not going to specify in this ROD and Policy the necessary minimum commitment and notice provisions for the new default rate construct, but will leave that decision to future implementation forums, after having the benefit of additional time to analyze the subject and discuss it with customers.

BPA will also consider in future implementation discussions the possible need and desired structure for a transition Tier 2 rate or rates for at least the first rate period of power deliveries under the new contracts because BPA agrees with the concern about timing challenges raised by NRU in its comments.

**Issue 7:**

**Should customers be obligated to purchase amounts of power at the Tier 2 rate if they have load forecast above their forecast Contract HWM when they sign their Regional Dialogue contracts and have committed to a particular Tier 2 rate alternative?**

**Policy Proposal**

The Policy Proposal provides for a forecast HWM in 2007, which could lead to a forecast of load above a customer's HWM that must be met with either Federal power at a Tier 2 rate or power from non-Federal resources. This forecast HWM would be trued up in FY 2011, and then the resulting HWM would be included in customers' contracts. In addition, the Policy Proposal states that the Regional Dialogue contracts will be structured to have a default Tier 2 rate apply unless customers "affirmatively choose a different Tier 2 rate pricing

approach or commit to meet their future load growth with non-Federal resources.” The Policy Proposal goes on to elaborate the minimum commitment term and required notice provisions to take and change rate options, when the default Tier 2 rate applies, beginning at contract signing. The Policy Proposal does not, however, explicitly address whether the forecast Tier 2 rate amount resulting from the forecast Contract HWM will be binding at the time of contract signing.

### **Public Comments**

In its comments, NRU suggested that due to the various changes in HWMs and load forecasts that are likely to occur between when BPA calculates the forecast HWMs prior to contract signing and when the trued up HWMs are determined, the initial commitment to a Tier 2 rate alternative that customers make when they sign their contracts should not be binding for an amount of energy for service beginning in FY 2012. Instead, NRU proposes “that the commitment as to amount of Tier 2 purchase be made the year before the beginning of the FY 2012 contract commencement.” (NRU, REG-103)

### **Evaluation and Decision**

In the Policy Proposal, BPA did not explicitly state that when customers make their commitment to a Tier 2 rate alternative at contract signing they would also be committing to the amount of forecasted load at Tier 2 rates resulting from their forecast HWM calculation. BPA’s intent was to work out this detail in the implementation phase of the Regional Dialogue. The conclusion drawn by NRU, however, is an understandable one.

To some extent, BPA shares NRU’s concern about locking down customers’ load amounts at Tier 2 based on the forecast HWMs and the forecast of net requirements load that will be several years out of date by the time power deliveries are to begin. However, because BPA must have resources developed for when those power deliveries begin, it will have to base that need off of a load forecast at some point. At the same time, BPA will want to minimize the amount of forecast error risk purchasers subject to the Tier 2 rate must bear. BPA will work with customers to determine what commitment is required for each Tier 2 rate alternative.

In general, BPA does not intend for customers’ Tier 2 rate amounts to be defined at contract signing (currently assumed to occur in 2008). In fact, the timing for setting Tier 2 commitments may vary by contract type, in that load-following customers will not likely commit to an amount of BPA Tier 2, unless they specifically request to do so in an effort to pre-establish the shared commitment for future load service between an amount of BPA Tier 2 and some amount of new non-Federal resources. A non-load-following customer will likely have to commit to an amount of Tier 2 service from BPA, but the timing of that commitment has not yet been developed. Additional work on the necessary timelines for making these decisions will be accomplished through the product development and TRM processes. During the course of those processes, BPA may also explore Tier 2 rate alternatives that would require customers (including load-following contract holders) committing to an amount of Tier 2 service when declaring a commitment to the Tier 2 rate alternative.

**Issue 8:**

**Will customers have an ability to serve their load above their Rate Period HWM with a combination of Tier 2 rate power and non-Federal power?**

**Policy Proposal**

The Policy Proposal does not propose the option of combining Tier 2 rate power and service with non-Federal power to meet customers' load above their Rate Period HWM. The Proposal offers customers the choice of only Tier 2 rate power or only non-Federal power to meet future load service obligations beyond the Rate Period HWM.

**Public Comments**

PNGC and NRU both commented that BPA should allow customers the option of combining Federal Tier 2 rate service with new non-Federal resources or purchases. (PNGC, REG-133; NRU, REG-103) Wells goes further in its advocacy of combining Federal and non-Federal resources to serve load above its HWM by describing the specific circumstance it faces. It argues that the circumstance illustrates why such a combination would be beneficial. Wells has a large industrial load, a gold mine, served from a unique point of delivery (POD) with somewhat unpredictable load variations that it would like to serve with non-Federal resources, and at the same time take BPA service at the Tier 2 rate for the remaining 30 percent of its load. (Wells, REG-089)

**Evaluation and Decision**

BPA is willing to discuss further with customers the circumstances and conditions which they are thinking might be encountered that would benefit from such a combination of Federal service and non-Federal power. BPA agrees that it is reasonable to provide some flexibility for customers on how they might serve their load above their HWMs. There is good reason to consider how to structure a relationship between BPA and its customers where they share future resource acquisition obligations.

The example Wells offers is just the type of situation BPA is most familiar with. Instead of BPA including in the Tier 2 rate options an alternative designed to handle the intermittent industrial load that Wells must serve, Wells would be able to pursue service for that load from a non-Federal resource and combine that with a BPA Tier 2 rate alternative to serve its remaining future residential, commercial, and farm load growth. In its Subscription Strategy BPA included a proposal of whether there should be "walled-off" loads, i.e., specific load separately metered on an hourly basis that would not be served with power purchased from BPA. While this type of service arrangement was not developed, BPA believes it is reasonable to again reconsider such concepts to determine the feasibility of developing this kind of service arrangement. Similarly, customers that have new large single loads (NLSLs) may service such load with non-Federal resources as separately metered load.

**Issue 9:**

**Should BPA acquire "major resources" as defined in the Northwest Power Act to meet firm contractual load obligations to supply power at the Tier 1 and Tier 2 rates?**

### **Policy Proposal**

The Policy Proposal does not address the specifics of BPA's resource acquisition strategy or plan to supply power service at the Tier 1 or Tier 2 rate and accordingly does not address whether BPA would pursue major resource acquisitions as defined in the Northwest Power Act and subject to the Act's section 6(c) requirements. Some of BPA's proposed Tier 2 rate service alternatives may be long-term in nature and could involve large quantities of power, therefore suggesting that BPA's power supply strategy for Tier 2 rate service would not preclude major resource acquisitions subject to 6(c) requirements.

### **Public Comments**

Comments on this issue reflect concern that "major resource" acquisitions subject to section 6(c) requirements could have implications for supplying power at the Tier 2 rate by BPA. Canby urges BPA to address the question of whether BPA will acquire major resources, as defined by the Northwest Power Act, for the first 5 years of the contract period, or whether BPA intends to go to the market for Tier 2 supply. Canby suggests that BPA's list of Tier 2 products could vary depending on where BPA acquires Tier 2 supply. (Canby, REG-64)

The Northwest Power and Conservation Council comments that "it seems reasonable to expect that if BPA plans to develop or otherwise secure a major generation resource, it will need to notice the region under section 6(c)(3) of the Northwest Power Act," and suggests that such a process would present commercial implications for customers. (NPCC, REG-033) Alternatively, if BPA is planning to purchase power from the market, "it should make those plans known since that option presents commercial implications as well." (NIPPC, REG-130)

### **Evaluation and Decision**

BPA has several tools available for meeting any of its obligations to supply power sold under the Tier 2 rates. These range from short-term purchases up to a long-term major resource acquisition. BPA recognizes that if it seeks to acquire a "major resource," i.e., a resource having a planned capability greater than 50 aMW acquired for a period longer than 5 years, it must comply with the requirements of the Northwest Power Act, such as conducting a section 6(c) hearing. The Council also provides review of the proposed acquisition. BPA has not yet developed its firm load obligations under long-term Regional Dialogue contracts, and thus does not yet know what its total load obligation will be. At this time BPA cannot determine whether it will need to acquire a major resource.

If BPA determines it needs to acquire a major resource it will conduct a section 6(c) hearing. As part of BPA's contract and product development process and TRM process, BPA will work with customers to refine product details, if any, which could be affected if BPA decides it will engage in major resource acquisitions and related contingencies.

### **Issue 10:**

**Should BPA acquire power for Tier 2 rate service prior to having contractual purchase commitments at the Tier 2 rate from customers?**

### **Policy Proposal**

BPA intends to offer various service alternatives at the Tier 2 rate that reflect the full underlying costs of the new resources or market purchases used to provide the service. Like service at the Tier 1 rate, service at the Tier 2 rate will be take-or-pay. The costs of power acquired to serve load subject to a Tier 2 rate would not be melded with costs of the existing Federal system, unless those costs are otherwise unrecoverable under Tier 2 rates. Accordingly, customers served at the Tier 2 rates would pay for all resource acquisition costs used to provide the Tier 2 service to which they have committed, including potential costs of resources acquired for which BPA may not have a pre-established power sale commitment.

### **Public Comments**

Whatcom commented that when acquiring resources to support service sold at the Tier 2 rate, “BPA should not prospect or enter into any new ventures with only the hope of securing revenues later.” Whatcom’s comment reflects concern over BPA making speculative power or resource purchases for Tier 2 rate service and the potential for Tier 2 rate cost migration to the Tier 1 rate, given cost recovery requirements under Section 7(a) of the Northwest Power Act. Whatcom urges BPA to have power service commitments at Tier 2 rates with customers in place prior to BPA purchasing resources or providing services at Tier 2 so as to not allow for under-recovery of Tier 2 costs. (Whatcom, REG-121).

### **Evaluation and Decision**

BPA is committed to maintaining low costs for service at both the Tier 1 and Tier 2 rates, and to maintaining cost and risk separation between Tier 1 and Tier 2 rates. BPA acknowledges that risks associated with procuring resources ahead of purchase commitments, as identified by Whatcom, could impose a risk that threatens those objectives.

BPA intends to include measures to mitigate the risks Whatcom has identified. In particular, BPA will work to match its acquisitions to power supply needs, whether doing so for service under the Tier 1 or Tier 2 rates. Regarding service at the Tier 2 rate specifically, BPA’s Tier 2 rate alternatives will include minimum notice and commitment terms that will assist BPA with resource planning and acquisition activities. For the two alternatives BPA will offer at a minimum, *New Renewables* and the *Default Alternative*, initial purchase obligations will be at least 10 years and through 2016, respectively.

BPA anticipates that there may be circumstances where BPA cannot perfectly match resource procurement with pre-established purchase commitments, particularly given BPA’s obligation to serve load and to support resource adequacy standards. The parameters around BPA’s power purchase approach, including the extent to which BPA may acquire resources beyond purchase commitments from customers, will be further developed in contract negotiations and the cost risks considered in the product development and TRM process.

### **Issue 11:**

**Should BPA adopt creditworthiness standards for customers who purchase power service at the Tier 2 rate?**

### **Policy Proposal**

The Policy Proposal does not specifically address creditworthiness standards for customers who wish to purchase service at the Tier 2 rate. BPA proposed that power sales will be take-or-pay and that the costs of power acquired to serve load under a Tier 2 rate would be not be melded with the Tier 1 rate which includes costs of the existing Federal system, unless Tier 2 costs are otherwise unrecoverable under Tier 2 rates and BPA must assign such unrecoverable costs to Tier 1 consistent with Section 7(a) of the Northwest Power Act. The costs assigned to Tier 2 would accordingly also include the costs of counterparty defaults on Tier 2 rate power obligations.

### **Public Comments**

The comments received on this issue reflect the concern shared by many customers of Tier 2 costs migrating to the Tier 1 rate. Canby cites customer non-payment or default on Tier 2 rate service obligations as a circumstance where BPA might have to collect Tier 2 costs from customers under the Tier 1 rate. (Canby, REG-064) WPAG states a similar concern of Tier 2 cost migration to the Tier 1 rate due to “bad Tier 2 deals” that include “sales to counterparties that are not credit-worthy.” To alleviate this concern, WPAG states that BPA should make a commitment in the ROD to include Tier 2 rate contract provisions that will provide BPA with the authority and ability to collect from Tier 2 customers all of the costs of providing power service at the Tier 2 rate, including the costs of credit failures. (WPAG, REG-109)

Springfield Utility Board shares the same concern as Canby and WPAG, and believes that a key element to protecting against cost migration would be for BPA to “adopt robust creditworthiness standards for customers that wish to participate in buying a Tier II product.” SUB advocates a process where BPA would predetermine requirements for participating in Tier 2 purchases including the possibility of requiring letters of credit or collateral. SUB also “strongly advocates” that a utility’s Tier 1 HWM be reduced in the event that they do not pay for their Tier 2 obligations. (SUB, REG-126)

### **Evaluation and Decision**

As stated in the Policy Proposal, costs associated with power at the Tier 2 rate will not be melded with costs of the existing Federal system, unless otherwise unrecoverable under Tier 2 rates consistent with Section 7(a) of the Northwest Power Act. In an effort to mitigate such costs and reduce the possibility of Tier 2 cost migration to Tier 1, BPA will explore the feasibility and need to include credit requirements in Regional Dialogue contracts.

Power service at the Tier 2 rate will maintain all benefits and costs associated with that service, including costs related to counter party default on power obligations at the Tier 2 rate. If a customer fails to pay its bill for its service at the Tier 2 rate, it will put its right to purchase power at the Tier 1 rate at risk since service at the Tier 1 and Tier 2 rates will be a part of the same contract and requirements business relationship. BPA is aware that its utility customers establish their own retail rate structures which may not differentiate the pricing of BPA’s wholesale-level tiered rates. In other words, the utility may simply decide to meld all of its wholesale power costs into an average rate and fully collect the revenue needed to pay its BPA wholesale power bills. To address the concern over the financial capability of

customers to pay their bills under tiered rates, BPA intends to assess the credit status of all customers that request power service to meet net requirements load beyond their HWM that will be subject to Tier 2 rates. BPA will explore the feasibility of additional creditworthiness requirements during the contract product development process and TRM process.

## **K. PRICING AND RATES FOR PF SERVICE**

### **Issue 1:**

#### **Is tiering of BPA rates allowed under the Northwest Power Act?**

##### **Policy Proposal**

As a cornerstone of the Policy Proposal, and to give customers long-term predictability and certainty, BPA proposes to establish a long-term Tiered Rates Methodology that would limit the amount of power sold at our lowest-cost-based rate to approximately the firm capability of the existing FBS under 20-year contracts. At the outset it is important to note that any rate proposal would require a Northwest Power Act section 7(i) rate setting proceeding and specific decisions on rates would be made in each rate case, consistent with the long-term methodology. Beyond this, the Policy Proposal did not address this issue.

##### **Public Comments**

ICNU had significant concerns with BPA's proposal to provide service to public utilities under a tiered rates structure. Based on explanations that BPA has provided to date in its Policy Proposal, ICNU cannot determine if BPA's proposals violate the Northwest Power Act or otherwise dilute or reduce preference customers' rights to cost-based power. WPAG also called changing from melded rates a departure from the Northwest Power Act. (ICNU, REG-125, WPAG, REG-080)

Regardless of the merits of the public policy objectives associated with the tiered rates proposal, ICNU believes that the Regional Dialogue does not incorporate a compelling argument as to why tiered rates are legally sustainable. ICNU comments that because BPA's proposal asked customers to waive any legal challenges to the tiered rates proposal in the new power contracts, BPA is concerned about the legal sustainability of the proposal. ICNU believes BPA is obligated to fully explain to the region why its proposal is lawful and should abandon its efforts to require customers to waive their right to challenge the proposal in court. (ICNU, REG-125)

CRITFC maintains that Congress intended that preference customers' current and future loads would be served by the regional rate described in section 7(b)(1) which would meld the cost of the Federal Base System resources and, as needed, IOU exchange power, and future resource additions. CRITFC asserts that the language of the Northwest Power Act, the relevant committee reports, and the Appendix prepared by BPA, collectively demonstrate that Congress considered a tiered-rate provision but rejected the proposal. Based upon this, CRITFC believes that significant questions exist as to whether BPA can implement this proposal without new legislation. (CRITFC, REG-138)

## Evaluation and Decision

While this issue will be finally decided when BPA establishes the TRM, BPA is confident in the legality of tiered rates. The basis for that confidence is as follows. BPA has broad authority under the Northwest Power Act to design and set rates. ICNU believes that the Regional Dialogue proposal to tier the rates does not incorporate a compelling argument as to why this rate design is legally sustainable. ICNU takes a rather narrow view of the discretion afforded the Administrator in the design of BPA's rates. WPAG argues that changing to tiered rates is a departure from the Act. However, section 7(e) of the Act states:

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

16 U.S.C. §839e(e). The reference to "this chapter" means the entire Northwest Power Act. Congress addressed this provision in the legislative history to the Act, and made clear that the Administrator retained the discretion to determine rate design, including rate designs that addressed the issue of load growth. For example:

Section 7(e) clarifies that BPA may continue, as it does under existing law, to charge uniform rates for the sale of electric peaking capacity. This subsection also clarifies that the rate directives contained in this bill only govern the amount of money BPA is to collect from each class of customer and not the form of the rate used to collect that sum of money. For example, time-of-day rates, seasonal rates, *rate structures designed to give BPA customers particular price signals, and other rate forms would be permissible.*

H.R. Rep. No. 976, 96th Cong., 2nd Sess., pt. 2, at 53 (1980) (emphasis added). See also, H.R. Rep. No. 976, 96th Cong., 2nd Sess., pt. 1, at 69 (1980) (Section 7(e) makes clear that rate directives in the Northwest Power Act do not apply to "rate form.")

During the legislative deliberations leading to passage of the Northwest Power Act, the then-proposed version of the Act was interpreted by the Comptroller General of the United States as giving the Administrator broad discretion in the area of rate design. In a letter to Chairman Dingell, the Comptroller General stated, in part, that:

Under the melded pricing approach used by Bonneville, the high costs of new thermal power plants are merged with the low costs of older hydropower plants and its customers are charged average rates which tend to understate the costs of new power supplies. *While H.R. 8157 does not direct . . . Bonneville or its customer utilities to use specific rate structures or billing practices to show consumers the cost of new power supplies, it does include many provisions which could ultimately lead to rate reforms. Section 7(e) provides that nothing in the bill prohibits Bonneville's Administrator from establishing peak power rates, time-of-day or seasonal rates, or other rate forms.*

Letter dated October 29, 1980, from Comptroller General to Representative John Dingell, Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce (emphasis added), 88 Cong. Rec. H10685 (daily ed. Nov. 17, 1980).

As evidenced by section 7(e) of the Northwest Power Act and its legislative history, Congress intended that the Administrator retain authority to design rates, including rates designed to give price signals to customers. Such design, including the design of tiered rates, is to be done within the framework of the basic cost allocation provisions set out in the other provisions of section 7.

CRITFC contends that Congress considered a tiered-rate provision but rejected such a proposal. This claim is apparently in reference to former Congressman Jim Weaver's attempt to include a tiered rates mandate in the Northwest Power Act. Congressman Weaver stated that improper price signals would be sent to consumers if BPA continued to market energy to its preference customers at a single, uniform rate based on total system costs. Proponents for the tiered rate stated that melding the higher priced thermal resources of the future with BPA's low-cost hydropower resources would serve as a disincentive to conservation. 85 Cong. Rec. H9850 (daily ed. Sep. 29, 1980).

CRITFC is correct that the various Weaver proposals were rejected by Congress. However, CRITFC goes too far when it claims that Congress rejected any tiered rate proposal. Congress did not reject the concept of tiered rates, but rather Weaver's proposals that would have mandated tiered rates. Congress included language in the Northwest Power Act which clearly gives the Administrator the authority, but not the obligation, to establish tiered rates, assuming they are consistent with the cost allocation directives of section 7 of the Northwest Power Act.

Each of the Weaver proposals contained inflexible pricing directives. Some of them entailed complex allocation methodologies that required the Administrator to allocate first tier (or lowest cost) power based on residential consumption, projections of the load growth of Bonneville's wholesale preference customers, or differences in population growth, employment, and irrigated acreage. In one proposal, a Board established by legislation was to determine a "conservation percentage" to be applied against the allotment of power for each first tier customer. In making this determination, the Board was to:

select a per centum great enough to provide sufficient electric energy to meet the essential life needs of residents after strict conservation practices and improvements have been applied to residential housing and low enough to maximize the incentive to conserve electric energy . . .;

Cong. Rec. H9850-85 (daily ed. Sept. 29, 1980). In another version, the Administrator was to perform an annual allocation of rates within the tiers to preference customers, and such allocation was to:

be in proportion to general requirements of each such customer, except that the allocation shall be adjusted to give equitable consideration to differing rates of population growth, employment, and irrigated acreage.

Cong. Rec. H10519-27 (daily ed. Nov. 12, 1980).

It was these legislatively mandated and often complex schemes for the allocation of the existing Federal power supply that were rejected, not the discretion of the Administrator to design rates.

CRITFC's conclusion that Congress legislatively rejected tiered rates as a viable concept is overbroad. Congress rejected the Weaver proposals that would have legislatively mandated tiered rates, some of which incorporated complex allocation schemes. Instead Congress opted for language in the statute that gave the Administrator broad discretion to adopt various rate designs, including tiered rates. As discussed above, the Northwest Power Act enables, but does not require, tiered rates. BPA's tiered rates proposal is grounded in the rate design discretion afforded the Administrator by section 7(e) of the Northwest Power Act.

#### **Issue 2:**

**Does tiering deprive some end-use consumers of their statutory right to place load on their utilities and be charged at a cost-based power rate?**

#### **Policy Proposal**

The Policy Proposal did not address this issue.

#### **Public Comments**

ICNU noted that the tiered rate proposal is a significant departure from BPA's historic melded rate approach, and it believes that BPA has not demonstrated that tiered rates are consistent with the statutory requirements contained in the Northwest Power Act. As currently drafted, the tiered rates proposal appears to deprive some end-use consumers of their statutory right to place load on their utilities and be charged at the cost-based BPA power rate.

ICNU understands that BPA's tiered rate construct is intended, in part, to limit BPA's open ended resource procurement obligation as well as limit its costs and risks. While ICNU acknowledges the merit behind these goals, it nevertheless is concerned that BPA should not penalize end-use consumers for the decisions made based on the assumption that BPA would continue to offer melded rates. (ICNU, REG-029)

#### **Evaluation and Decision**

ICNU is concerned that the decision to tier the rates will result in depriving some end-use consumers of their statutory right to place load on their utilities and be charged a cost-based power rate. Any right of a consumer to place load on a retail utility is governed by state law, applicable state regulations, and not by any BPA statutes. A retail utility sets its own rates for sales to consumers and BPA does not set those rates. BPA's rates apply to the retail

utility's Federal power purchases, but BPA's rates and contracts afford no "statutory right" to a consumer on what a retail utility will ultimately charge the consumer for service.

ICNU's concern makes basic mistaken assumptions about the impact of BPA's tiered rates proposal on a retail utility's rates and its impact on the rights of some end-use consumers. First, ICNU contends, without explanation, that tiering the rates will impact the statutory right of these end-use consumers to place load on their local utilities. It is difficult to fully evaluate ICNU's contention because it provides no explanation of why the proposal might interfere with some end-use consumer's ability to place its load on the local utility. However, BPA's Policy Proposal is not intended to impact an end-use consumer's ability to place load on its local utility. On the contrary, BPA's standards for service require that a retail utility customer of BPA must have a general utility responsibility to serve consumers. This means they cannot refuse to provide electric service to the general public. End-use consumers are not prohibited by BPA's proposal from taking their utility service from their local public utility.

It is possible that ICNU's comment is, in part, motivated by BPA's proposal to use FY 2010 loads and resource amounts to set individual utility HWMs, which would effectively lock-in some consumers' decisions to apply their cogeneration to serve their own loads in the FY 2002-2011 contract period. This concern is addressed above in the consumer-owned resources section of the final Policy.

The second aspect of ICNU's concern is an alleged interference with an end-use consumer's ability to be charged a cost-based rate. BPA is not aware of any consumer right to be charged a cost-based rate. Such a consumer right doesn't exist for BPA's power rates charged to its requirements load customer utilities. While there is no obligation, statutory or otherwise, that requires BPA to ensure that end-use consumers are charged a cost-based rate by their local utility, Section 5(a) of the Bonneville Project Act states that BPA's contracts should insure that resale of Federal power by utilities to ultimate consumers are at rates which are reasonable and nondiscriminatory. That direction, however, does not mandate BPA to set, review, or establish the retail rate designs of its utility customers to ensure a cost-based rate for their consumers. If a serving utility tiers its rate in order to provide price signals, devoting the cost of resources to meet load growth, BPA does not believe that is unreasonable.

If ICNU is implying that tiered rates are not cost-based, it is mistaken. As a class, preference customers will pay no more under tiered rates than without. BPA is statutorily obligated to provide cost-based rates for the energy sold to its preference customers and the tiered rates proposal does not interfere with that obligation. How BPA recovers those costs within the class is a matter of rate design discretion, such that customers will face different price signals under the Tier 1 rate than under the Tier 2 rate.

### **Issue 3:**

**Will BPA use secondary revenues as a credit against Tier 1 costs?**

### **Policy Proposal**

BPA did not include a specific proposal regarding use of secondary revenues.

### **Public Comments**

Both ATNI and CTUIR suggest that sales of secondary energy should not be used to lower Tier 1 rates, but instead be set aside to lower the cost of service to new preference utilities that form during the Regional Dialogue contract period. (ATNI, REG-111; CTUIR, REG 117)

Canby contends that the proposal does not clearly explain how BPA intends to treat revenues from the sale of surplus firm or non-firm power. Canby states that the proposal implies that BPA will “credit back” these secondary revenues to the Tier 1 rate. Canby endorses this approach but contends that BPA needs to unequivocally state that it will not use secondary revenues to underwrite or subsidize the costs of products and services subject to a Tier 2 rate. (Canby, REG-064)

### **Evaluation and Decision**

Treatment of secondary revenues will become a topic for consideration in the TRM process. Presently, BPA believes it is reasonable that such revenues would be used to lower the Tier 1 rate since service at the Tier 2 rate is intended to reflect the marginal cost of power acquired to serve a utility customer’s load above its HWM. Crediting the Tier 2 rate with secondary revenues associated with sales from the existing system would blunt the price signal intended by tiered pricing.

ATNI and CTUIR both suggest that sales of secondary energy should be used to lower Tier 1 rates for newly formed preference utilities and not used to benefit the whole Tier 1 rate. It should be noted that historically (with the limited exception of the Slice product), BPA has credited secondary revenues against the cost of service for all its preference products. The suggestion to pool secondary revenues to specifically offset the cost of power sold to newly formed preference utilities at Tier 1 rates is a rate design proposal that would not benefit a broad range of preference customers. Limiting the benefits of the secondary revenues to such a small class of customers is inconsistent with BPA’s objective of equitably spreading the benefits of the FCRPS. By directly assigning the secondary revenues to such a limited class of customers, BPA would effectively have one set of preference customers subsidizing the power rates of a different set. While such a rate design issue would ultimately need to be resolved in the TRM proceeding, BPA intends on including in its initial tiered rates proposal a rate design that credits all secondary revenues against its Tier 1 costs.

Canby endorses an approach that would credit secondary revenues against the Tier 1 rate for all eligible customers, but contends that the Policy Proposal is not clear on this point. The Policy Proposal on this matter is not particularly direct. To clarify BPA’s policy on this issue, BPA intends to allocate secondary sales revenues as a credit against the Tier 1 rate and would include such a design in the TRM proposal.

#### **Issue 4:**

#### **Will BPA sell power at the Tier 2 rate at less than its actual cost to BPA?**

##### **Policy Proposal**

If customers want to purchase Federal power from BPA to serve their requirements load above their HWM, such power will be priced at the marginal cost of BPA acquiring or purchasing such power. BPA is proposing to offer several service alternatives that reflect the full underlying costs of additional power acquired to provide them priced at a Tier 2 rate. BPA will not subsidize Tier 2 rates with cost benefits associated with the Tier 1 rate to create a financial advantage for a customer to choose to buy from BPA instead of the power from a non-Federal resource. BPA will structure its rates and contracts to recover the cost of power purchased for Tier 2 within the year such power is delivered.

##### **Public Comments**

Canby commented that BPA needs to unequivocally state that it will not use secondary revenues to underwrite or subsidize Tier 2 products and services. If BPA used secondary revenues to lower the price of Tier 2 products offered by BPA, it would give BPA an unfair advantage over other suppliers competing to serve customer needs not served at the Tier 1 rate. Canby believes that it is important to create a level playing field for Tier 2 products and services. (Canby, REG-064)

NRU notes that the Tier 2 rate(s) will not necessarily reflect the “marginal cost” of serving load, but rather the fully allocated costs to BPA of the Tier 2 product chosen. The price of these products will vary by the term and type of the product selected. Pure marginal cost pricing for Tier 2 may be an overstatement of the approach BPA intends to follow for Tier 2 rate pricing, and would raise significant new issues. (NRU, REG-103)

Given the variety of Tier 2 rate products under discussion, BPA should consider the possibility of Tier 2 pricing and rates that are specific for each Tier 2 product. (PNGC, REG-133)

##### **Evaluation and Decision**

BPA is not proposing in this Policy to offer service at the Tier 2 rate that is either benefited or subsidized. BPA has proposed to offer several service alternatives subject to a Tier 2 rate that reflect the full underlying costs of the new resources or market purchases. BPA also stated that it would not subsidize Tier 2 rates to create a financial advantage for a customer to make a choice to buy from BPA instead of the other market alternatives.

NRU may be technically correct that BPA’s proposal to have service at the Tier 2 rate reflect the full underlying cost of a new resource is not true “marginal pricing.” In real-time markets (like the one operated by the California Independent System Operator) the marginal price often reflects the generation costs for the most expensive unit operating during a particular time period. BPA’s concept of the pricing for service at the Tier 2 rate is not intended to reflect this concept. Rather, BPA’s proposal is intended to convey the idea that customers purchasing power at the Tier 2 rate from BPA can expect to pay the fully allocated costs associated with providing power to a customer for whichever service alternative the

customer elects at the Tier 2 rate. The rate is marginal in the sense that it reflects the cost of resources acquired to serve that load or resources that are not otherwise sold into the market in order to meet the load.

Under this Tier 2 rate concept, it is anticipated that each service alternative will have a different rate. However, the actual rates and the rate design for the various Tier 2 rate service alternatives will ultimately be established through a combination of the upcoming TRM rate case as well as subsequent rate cases implementing the TRM. All these matters are decisions that must be made within the context of a section 7(i) proceeding and cannot be made in this ROD.

#### **Issue 5:**

#### **Will BPA keep Tier 2 costs from being recovered by Tier 1 rates?**

#### **Policy Proposal**

The costs of power acquired to serve load subject to a Tier 2 rate would be kept as low as possible and would not be melded with costs of the existing Federal system, unless otherwise unrecoverable under Tier 2 rates consistent with section 7(a) of the Northwest Power Act.

#### **Public Comments**

Sumas encouraged BPA to develop and offer viable power products and services at Tier 2 rates to cover load growth exposure. However, Sumas believes that if tiered rates are to function as intended, Tier 2 rate costs must be contained and not allowed to migrate into the Tier 1 rate resource cost pool. Using the Tier 1 rate as a backstop for Tier 2 rate under-recovery of costs should not be allowed. Tier 2 rate resource acquisitions and other services should be covered by Tier 2 rate customers, who backstop the risks through separate contractual obligations. These commitments should be in place prior to BPA developing or acquiring resources. (Sumas, REG-068)

SUB believes BPA must adopt robust creditworthiness standards for customers that wish to buy service at the Tier 2 rate to avoid the possibility of Tier 2 rate costs rolling into Tier 1 rates. BPA should require letters of credit or collateral from customers taking service at the Tier 2 rate to ensure cost recovery. If a Tier 2 rate customer fails to pay its Tier 2 rate obligation, that utility's HWM should be reduced. (SUB, REG-126)

Tacoma contends BPA should not rely on arguments that joint costs cannot be separately assigned to individual products, and that fixed costs (such as certain overheads) would be incurred in any event and so should all be assigned to the Tier 1 rate. Specifically, development and implementation costs for products at the Tier 2 rate must be borne by those customers who agree up front that they are sufficiently interested to support the development of the individual products and/or agree that they are willing to bear the full cost of actually implementing the product. (Tacoma, REG-135)

#### **Evaluation and Decision**

Sumas, SUB, and Tacoma all argue for the strict separation of cost recovery between power service at the Tier 1 and Tier 2 rates. Although each of the utilities presents the argument in

a slightly different fashion, all want to ensure that all costs associated with service at the Tier 2 rate do not migrate into the Tier 1 rate cost pool. The risk of under-recovery of Tier 2 rate costs as the result of a default by a customer purchasing power service at the Tier 2 rate presents a possible avenue for such costs to be allocated to the Tier 1 rate for purposes of cost recovery.

In the Policy Proposal, BPA stated that it was BPA's intent to "ensure Tier 2 costs stay separate from the Tier 1 rate." Even if BPA develops various contract requirements, such as letters of credit, take-or-pay provisions, or remarketing rights that could reduce the credit risk to BPA, these provisions will not entirely eliminate the possibility that some Tier 2 rate costs could flow back to BPA. BPA is committed to working with customers to develop contractual provisions for the product offerings at the Tier 2 rate that help minimize the credit risk. However, in the event of a default by a customer that leaves Tier 2 rate costs unrecovered, BPA remains obligated to recover the cost, even through the Tier 1 rate, consistent with section 7(a) of the Northwest Power Act.

Tier 2 rate costs that flow back to BPA would be considered an unrecovered cost and may be treated as a "bad debt" expense that would be allocated consistent with any other bad debt expenses. While the specifics of the allocation of costs between Tier 1 and Tier 2 will be worked out in upcoming rate cases as well as in the contract development process, these costs will be equitably allocated.

The general identification of cost categories and their association with Tier 1 or Tier 2 are rate case matters. Notwithstanding that, BPA believes that the rate or methodology could provide that the cost categories would not change. This means there would be no allocation of Tier 2 costs to Tier 1 for recovery or the reverse, except in such limited circumstances as where there is a court order requiring the allocation or as is necessary to ensure cost recovery.

BPA will work with its customers and other interested parties to make the likelihood of Tier 2 rate costs being recovered in the Tier 1 rate as low as possible, but cannot agree to rule out that possibility.

#### **Issue 6:**

**Will BPA give customers a choice of reducing power purchased under either the Tier 1 or Tier 2 rates in the event of customer load loss?**

#### **Policy Proposal**

BPA proposes to calculate net requirements loads each year to determine the amount of power each customer is eligible to purchase from BPA that year. However, to provide resource and rate planning certainty, customers would be provided short-term mechanisms for load loss within the rate period that maintain both BPA and the customer's risks and benefits in that rate period, such as limited resource removal rights for purchases at Tier 1 rates. This annual approach is consistent with BPA's historical utility practice and its obligations under the Northwest Power Act to determine its total load service obligation. In conjunction with a limited resource removal right for load loss, it provides the certainty

intended by the PPC suggestion that BPA perform net requirements calculations only once each rate period.

In order to provide resource and rate planning certainty for BPA and our public utility customers, BPA proposes to offer a limited resource removal right but only for load loss a customer experiences within a rate period. BPA intends that the qualifying load loss only be the difference from the forecasted amount measured from the start of each rate period. This contract mechanism is intended to ease a customer's take-or-pay risk, while assuring the recovery of BPA's expected revenue under the contract. This right is in addition to resource removal rights BPA provides for new resources as discussed in the next section.

Customers would have a right to add non-Federal resources, upon a specified notice to BPA, to serve their retail load in excess of their HWM, and subject to rules yet-to-be-developed on the resource shape and consistent with any obligations the customer has made to purchase BPA power at a Tier 2 rate. If a customer does add a new resource to serve its retail load above its HWM, then in addition to load loss amounts within a rate period, the customer would have a right to remove those new resources that are used to serve that load above the HWM. This right to remove non-Federal resources should ensure that the acquisition of such resources does not reduce the amount of firm power BPA provides at the Tier 1 rate. To accomplish this type of resource removal and the limited resource removal rights for loads eligible for Tier 1 rates, BPA would need to review and modify the current Section 5(b)9(c) Policy to reflect these changes in the treatment of customer resources.

To ensure obligations to the U.S. Treasury are met, Regional Dialogue contracts would be take-or-pay for the amount of power that the customer is obligated to purchase from BPA. Customers would generally not have rights to add resources to reduce their Tier 1 rate purchases. BPA proposes to include a provision, as in the current Subscription contract, that would address the circumstance when a customer's net requirements load falls below its HWM and the customer chooses not to exercise the within-rate-period load loss resource removal rights available for its power purchases at the Tier 1 rate. In that circumstance the customer would face charges that ensure their choice does not shift financial costs to other Tier 1 rate customers. Purchases at Tier 2 rates would also be take-or-pay, subject to specific yet-to-be-developed terms for those products. BPA would design those terms so that the benefits as well as the costs of those purchases are retained by the customer or customer group making the commitment, mimicking the cost and benefits of a comparable purchase from the market. A fundamental principle for Tier 2 rates would be that, to the extent possible, the customers retain all risks, costs and benefits for these marginal cost-based purchases.

Requirements contracts would include provisions which permit a customer to increase its Federal power purchase amounts consistent with its net requirements load and subject to notice. Such rights would likely differ substantially between load-following and non-load-following contracts but would be subject to take-or-pay provisions. BPA recognizes, however, that customers with load-following contracts may experience load loss from one annual net requirements load calculation to another. Although there are many details to work out, in such circumstances BPA intends to establish a contractual approach that returns any

proceeds to the customer that BPA receives from remarketing power at the Tier 2 rate that the customer does not purchase from BPA. Just as with power purchased from the market, this remarketing could be a benefit or a cost depending on market prices.

### **Public Comments**

WPAG asserts that if a utility is purchasing power only at the Tier 1 rate, and its forecast load is less than its HWM, the utility should only pay for power at the Tier 1 rate equal to its forecast load and the excess power should be sold and the revenues used to reduce the Tier 1 rate revenue requirement. WPAG notes that if the utility is purchasing power at both Tier 1 and Tier 2 rates, and its forecast load is less than the sum of its HWM and its Tier 2 rate purchase obligation, it should have the choice of reducing either its Tier 1 or its Tier 2 rate purchases to fit its purchases to its loads. WPAG states that if the utility elects to reduce its Tier 1 purchases and to take its full purchase at the Tier 2 rate, then the utility should pay only for the reduced Tier 1 amount and the excess power at the Tier 1 should be sold and the revenues used to reduce the Tier 1 revenue requirement. WPAG states that if the utility elects to reduce its Tier 2 purchase amount, then the utility would continue to pay for the full Tier 2 purchase amount, and the excess power at the Tier 2 rate should be sold with the revenues being credited back to the utility. WPAG notes that such an approach will provide each preference customer with some choice in how to manage purchase obligations in excess of load without imposing any financial risk on BPA. (WPAG, REG-109)

### **Evaluation and Decision**

BPA believes that customers should not be impeded from making either Tier 2 rate or non-Federal resource commitments because of fear that by doing so they could be jeopardizing their access to power at the Tier 1 rate. However, BPA also believes that allowing customers the ability to simply reduce their Tier 2 rate power purchase in the event of load loss will result in either costs stranded in the Tier 2 rate cost pools or in an inordinate amount of risk in Tier 2. Both situations would result in a Tier 2 rate that is significantly above what other suppliers would be offering. Because of the need to contain Tier 2 rate costs into the Tier 2 rate cost pool and not allow them to leak into the Tier 1 rate (a position advocated by WPAG), BPA will not allow purchase amounts subject to the Tier 2 rate to be reduced after the commitment date. BPA will, however, remarket excess power sold at the Tier 2 rate with any revenue being applied to reduce the amount the customer owes on its power bill. The financial risk for the power sold at the Tier 2 rate will remain with the customer. This will allow a customer access to its purchases of power at the Tier 1 rate up to its HWM on a forecasted basis.

### **Issue 7:**

**Will the Tiered Rates Methodology (TRM) be approved by FERC prior to offering the Regional Dialogue contracts?**

### **Policy Proposal**

A separate section 7(i) process to establish the long-term Tiered Rates Methodology for the Regional Dialogue contracts will be conducted. BPA proposes to conduct public workshops to develop the methodology which would be followed by a formal 7(i) process that would be

completed prior to the signing deadline for the contracts under the schedule proposed earlier in the Policy Proposal.

### **Public Comments**

The TRM should be put in place and approved by FERC prior to the offering of Regional Dialogue contracts. (PNGC, REG-133)

### **Evaluation and Decision**

PNGC stated that the TRM should be in place and approved by FERC prior to offering contracts. BPA agrees that greater certainty is provided by FERC approval of the TRM. However, the establishment of the TRM should provide sufficient certainty for contracting purposes, with the contracts specifying the consequences of FERC disapproval of the TRM.

### **Issue 8:**

**Will BPA use available FBS firm power to serve a utility customer's net requirements load beyond its HWM at the Tier 2 rate?**

### **Policy Proposal**

To the extent that FBS power is provided to serve net requirements load beyond a customer's HWM, it would be priced at BPA's marginal cost of power with the excess value above the average FBS cost being credited back to Tier 1 rates.

### **Public Comments**

WPAG commented it should be a matter of indifference to Tier 1 purchasers whether FBS power not needed to serve Tier 1 loads is used to serve Tier 2 net requirements loads or sold on the market, so long as the same price is received in both instances. In reality, employing unused Tier 1 power to serve net requirements loads at Tier 2 presents a number of problems. On balance, it is probably better to obtain power for Tier 2 solely from the market, and to sell excess Tier 1 power into the market, with the revenues generated from such sales being used to reduce the Tier 1 revenue requirement. This approach will be less divisive, will generate less controversy, and will reduce the pressure brought to bear on BPA. (WPAG, REG-109)

NRU proposes that, from a ratemaking standpoint, if the sum of all utilities' loads is less than the sum of the HWMs, BPA should sell the power and the revenues generated should be credited back to Tier 1 load-following customers. Individual utilities would be allowed to grow back into their HWMs at the Tier 1 rate. On a real-time basis the financial proceeds from BPA's sale of excess HWM power would be added to BPA's financial reserves. (NRU, REG-103)

Tacoma Power proposed that when or if this scenario occurs, a share of the net revenues of the resold power be credited back to the Tier 1 pool. (Tacoma, REG-135)

### **Evaluation and Decision**

The comments raise two separate but related issues regarding the sale of any amount of available FBS as "unused" because a utility's net requirements load is being served below its HWM. WPAG and others commented that this energy can be sold in the wholesale market

or alternatively to those utilities requesting BPA service to meet their load needs beyond their HWM at the Tier 2 rate. The related issue involves how BPA will allocate the revenues generated from the use of available FBS to serve load at a Tier 2 rate.

WPAG noted BPA should be indifferent whether the FBS power not needed to serve load at the Tier 1 rate is sold into the wholesale market or alternatively to those utilities requesting Tier 2 service from BPA. To the contrary, BPA cannot be indifferent to the cost of power generated by the FBS and its availability to serve a customer's load that is beyond its HWM. If BPA has system power available and there is an existing obligation to serve net requirement load, even if it is load that exceeds a customer's HWM, BPA must use and sell such power to a preference customer to meet its requirements load before selling any of the power as surplus to the market. When BPA makes that type of sale for net requirements loads above a HWM under the Regional Dialogue contract and TRM, it will do so at a Tier 2 rate.

WPAG points out that any decision to sell FBS power for Tier 2 rate service will present a number of problems. In particular, WPAG notes that there will be no way to reliably determine whether the price charged for the Tier 2 sale is comparable to what BPA would have received in the open market. Additionally WPAG believes there will be some pressure on BPA to keep the Tier 2 rate low. WPAG also thinks that any customer's Tier 2 purchase being served under such an arrangement would potentially develop a sense of entitlement to this power, which may be needed to serve Tier 1 loads in the future.

While WPAG's concerns may be valid, they do not override BPA's statutory obligations to meet its net requirements load obligation first, before it makes market sales, under sections 5(b) and 7(b) of the Northwest Power Act. BPA will work with its customers to develop the TRM in a way that provides the appropriate pricing signals, while ameliorating concerns like those expressed by WPAG.

The second issue raised by the comments involves the allocation of revenues from unused Tier 1 energy. As noted in response to Issue 4, BPA intends to propose in the TRM rate case that all secondary revenue sale be credited to the Tier 1 cost pool.

#### **Issue 9:**

#### **How will take-or-pay provisions be applied?**

#### **Policy Proposal**

To ensure obligations to the U.S. Treasury are met, Regional Dialogue contracts would be take-or-pay for the amount of power that the customer is obligated to purchase from BPA. Purchases at Tier 2 rates would also be take-or-pay, subject to specific yet-to-be developed terms for those products. BPA would design those terms so that the benefits as well as the costs of those purchases are retained by the customer or customer group making the commitment, mimicking the cost and benefits of a comparable purchase from the market. A fundamental principle for Tier 2 rates would be that, to the extent possible, the customers retain all risks, costs and benefits for these marginal cost-based purchases.

## **Public Comments**

Northern Wasco supports the basic concept of Tier 1 (for net requirements load below the HWM) and Tier 2 being on a take-or-pay basis. It acknowledges that the specific contractual terms are yet to be resolved, including any provisions under which a utility can effectively avoid the take-or-pay obligation or mitigate any cost penalties imposed as a result of load loss. (NWasco, REG-055)

NRU notes that BPA proposes that both Tier 1 and Tier 2 purchases be “take-or-pay.” The use of the concept “take-or-pay” in this context needs clarification for load-following customers without resources. Take-or-pay suggests that a customer must take the power as specified in the contract and pay for the amount of power contracted for whether or not there is load available to take the power. Customers owning generation resources can remove those resources in order to accommodate the contracted for BPA purchases. Customers without resources cannot do this. For these load-following customers, where the net requirements load of the customer is below the HWM, the take-or-pay obligation should be clearly stated to apply only to that net requirement. Any excess power at Tier 1 power above that would be sold by BPA and the revenues credited to the cost of Tier 1 for load-following customers. (NRU, REG-103)

Making Tier 1 and Tier 2 “take-or-pay” helps preserve the integrity of the pricing construct. (PNGC, REG-133)

Tacoma Power generally agrees with BPA’s proposal to offer power at both Tier 1 and Tier 2 rates on a take-or-pay basis. They believe this proposal will help ensure both repayment of BPA’s debts to the U.S. Treasury and limit cross-subsidies between Tier 1 and Tier 2 products. (Tacoma, REG-135)

## **Evaluation and Decision**

NRU is concerned that the take-or-pay provisions particularly for the load-following provisions need to be further discussed and developed. They note that load-following customers have considerably less flexibility than those utilities with their own generation. PNGC, Tacoma, and Northern Wasco all generally support the notion that the power sales contracts would be on a take-or-pay basis.

Take-or-pay is a cornerstone of this Regional Dialogue Policy because it provides assurance to the U.S. Treasury that BPA will be able to meet its repayment obligations. In addition, the take-or-pay provisions will help limit any costs associated with service at either Tier 1 or Tier 2 rates migrating into the respective cost pools. Power purchases under Regional Dialogue contracts will be take-or-pay for the amount of power that the customer is obligated to purchase from BPA whether the power is purchased at Tier 1 or Tier 2 rates. The specific details will continue to be refined and will reflect the inherent differences between the various types of customers. For example, BPA agrees with NRU that load-following contracts (where a customer commits to take all its power from BPA beyond specified resource amounts) and non-load-following contracts (where a customer commits to specific amounts of power) present very different credit risk issues for BPA and will work with customers in future processes to work out these details.

**Issue 10:****Will BPA require customers to waive their rights to legally challenge the Tiered Rates Methodology (TRM) prior to being offered a power sales contract?****Policy Proposal**

Customers accepting the contract would ultimately need to agree not to challenge the final Tiered Rate Methodology.

**Public Comments**

Customer comments on this issue were nearly uniform in their expression of concern that individual utilities would be required to waive their legal rights to challenge the TRM in court. Many requested BPA remove this “penalty” which some believed would be punitive and counterproductive. (Canby, REG-064; Richland, REG-091; Benton REA, REG-094; Franklin, REG-100; NRU, REG-103; Clark, REG-108; WPAG, REG-109; SUB, REG-126; NIPPC, REG-130; PPC, REG-132; Tacoma, REG-135) Canby also noted that if BPA retains this provision BPA should clearly explain what happens to a utility that does not agree to waive its legal rights. (Canby; REG-064)

**Evaluation and Decision**

The Policy Proposal, including the decision to tier the rates, is the result of extensive discussion with BPA’s customers and constituents. The tiered rates proposal is in large part the consequence of proposals made by various customer groups regarding how BPA should allocate the benefits of the FBS. BPA has and will continue to work collaboratively with customers and other interested parties to develop the TRM which will establish the specifics of any tiered rate proposal. BPA does not intend for parties to waive their legal rights as a condition of executing contracts with BPA. BPA is not going to require a waiver by customers of their rights to legally challenge the TRM, as a condition of receiving power service. Rather, BPA will attempt to work collaboratively with customers and other interested parties to settle all or most of the issues in the TRM rate case. This effort will hopefully minimize the uncertainty and scope of the 7(i) process. Such settlements typically include an agreement not to challenge the result in some legal forum. If settlement is reached in the TRM rate case, BPA will ask parties as part of the settlement not to challenge the resolution of these issues at FERC or in the courts.

**Issue 11:****Will BPA use marginal or opportunity cost pricing in Tier 1 rate design?****Policy Proposal**

For each rate case, BPA proposes to design the rates for shaping services so that BPA’s projected reshaping costs are borne by the customers that use the services. To do this, BPA would compare the costs of the shape of the FBS under critical water with the cost to provide the same amount of energy in the shape required by the customers for their service product. Customers purchasing products that have shaping services would be required to pay a charge to reshape the FBS energy into the projected shape of their product. This charge would reflect those costs incurred by BPA for shaping. In addition, customers that purchase load-

following products would pay a charge for the cost and risks BPA faces serving their actual loads rather than their forecast load.

BPA proposed that charging reasonable opportunity-cost-of-service-based adjustments for shaping services is an important element of the overall proposal to equitably provide access to BPA's lowest cost-based rates. It is also the approach discussed in earlier versions of the PPC Proposal. Charging less than BPA's projected opportunity cost of service would allow a customer's use of system flexibility to reduce the value from the existing Federal system to the remaining customers. BPA's proposal is designed to ensure that a customer's use of FBS flexibility is provided equitably to all customers. By charging the opportunity cost for buying and selling energy to shape amounts of FBS power into the shape for the product a customer actually purchases, that customer's use of these services does not erode the value of BPA's secondary energy, which maintains the rate-reduction benefits of the credits for this secondary revenue. Any Slice product purchaser would not be affected by this reshaping because a Slice purchaser does not buy any load shaping or load-following from BPA and can use the Slice product flexibility they've purchased, within its contractually established limits, to manage their Federal power purchase with the customer's other non-Federal resources for its own loads.

#### **Public Comments**

BPA received 17 comments related to the use of marginal or opportunity cost pricing for some Tier 1 services. Of those, only Ziegler advocated for using marginal cost pricing. Rather than agreeing with BPA's proposal to limit marginal cost pricing to certain components of the Tier 1 charges, Ziegler called for pricing all power at market rates. (Ziegler, REG-036)

Northern Wasco stated they were unclear as to what BPA meant by the marginal cost pricing and how it would be applied. Northern Wasco stated that it may not be opposed to this approach, but would first need to understand the term and how it would be applied either through discussions in Regional Dialogue or in the upcoming 7(i) proceeding. (NWasco, REG-055)

The other comments that BPA received regarding marginal or opportunity cost pricing generally opposed the application of the concept beyond Tier 2 products. Sumas believes that BPA should price its power products and attendant services at rates based on cost of service. Sumas believes that changing the rate structure would create winners and losers among BPA's customers. (Sumas, REG-068) Kittitas stated that ancillary services and capacity should be provided at cost rather than at some market-based price. (Kittitas, REG-087)

Richland believes that load-following products must be offered at an acceptable cost, including the cost of resources to ensure adequate shaping and variance service. Richland further explained that the cost of load-following should reflect embedded FBS costs; anything required beyond FBS resources should be differentiated. (Richland, REG-091)

Benton REA believes that BPA is statutorily required to provide ancillary services including shaping at cost. Benton REA contends the first priority for the FBS is to use its considerable flexibility to meet preference loads placed upon it. Benton REA disagrees with BPA that marginal cost pricing is appropriate. Benton REA maintains that any price signal based upon the cost of capacity to serve requirements load should not be distorted from an embedded cost approach. (Benton REA, REG-094)

Franklin commented that all current products offered by BPA should be offered entirely for the post-2011 period in their entirety at cost-based rates. (Franklin, REG-100)

NRU proposed that for a load shaping product offered by BPA, it should clearly delineate through ratemaking the cost of those resources that form the FBS and those resources or purchases that are needed beyond the capability of the existing system. NRU believes that to the extent the existing FBS provides load-following and or shaping services, the cost of this service should be provided and priced at the embedded cost of the FBS. NRU asserted that the overall costing/pricing concepts beings discussed must be part of the Long-Term Tiered Rates Methodology. (NRU, REG-103)

WMG&T stated that BPA must assure that any sales of shaping to preference customers must be made on cost-of-service, not opportunity cost. WMG&T strongly supports a regional discussion of existing FBS flexibility, including delineation of all demands placed on that flexibility and a greater understanding of exactly how BPA intends to prioritize the flexibility to meet its obligations. (WMG&T, REG-106)

Clark disagreed with the proposal to charge market prices for the load shaping components of the Tier 1 rate. Preference customers should be able to buy Tier 1 power at cost. This applies to energy, capacity, load-following and any other product supplied from the Federal system. (Clark, REG-108)

WPAG characterizes BPA's proposal as suggesting that for Tier 1 load-following power products, energy will be priced at the cost of production from the FBS, while capacity and load variance charges would be based on opportunity or market costs. WPAG postulates that support for a tiered rate approach by preference customers is based on the principle that all power products at the Tier 1 rate (including energy, capacity and load variance) will be initially based on the cost of producing them from the FBS. WPAG acknowledges that when the FBS is incapable of supplying all of a product that is required by Tier 1 purchasers that market costs come into play in the form of purchases to supplement the capability of the FBS to supply that product. WPAG notes that pricing capacity and load variance charges at market results in the sale of energy at a price below BPA's embedded cost of service. WPAG believes that this is not a rate design issue that can be resolved at a later date. Rather, it is a pricing issue raised by the Policy Proposal that goes to the heart of the tiered rate construct, and whether it will deliver to all preference customers all of the power products Tier 1 rate at the cost of producing them from the FBS. (WPAG, REG-109)

Cowlitz stated that any pricing or valuation of output of the Federal System for PF Tier 1 loads should be cost-based, not market or opportunity cost-based. (Cowlitz, REG-118)

Snohomish suggested BPA should not use marginal cost pricing because it is at odds with the premise that the benefits of the Federal system should be allocated to public utilities to produce the lowest possible cost-based rates. In addition Snohomish believes that BPA's influence on market prices due to timing and volume of transactions moves the market prices, making them unreliable for valuing BPA's services. However, Snohomish agrees that BPA should offer price signals that encourage resource development and minimize the dilution of the existing Federal system. Snohomish suggests that BPA should leave open all avenues of inquiry and give both BPA staff and customers the flexibility to explore creative solutions. (Snohomish, REG-131)

PPC stated that they are opposed to opportunity-cost pricing for specific components of Tier 1 rate net requirements service (such as ancillary services and capacity). PPC holds that Tier 1 should consist of cost-based products, and all components of Tier 1 service should be cost-based. (PPC, REG-132)

Tacoma urged BPA to find a way to establish HWMs for capacity and then introduce tiering of demand rates. Tacoma Power recognizes that many details of these options have not been worked out, but suggests again that care be taken in the development of the HWM determination methodology. With regard to shaping charges, Tacoma stated that it makes no sense to send "price signals" when customers are not able to respond to them. Further, Tacoma holds that BPA should not distinguish its shaping charges among customers who take different products. Tacoma stated that a full service customer should not be expected to pay more or less, on a unit basis, for a given amount of shaping services than what a partial requirements customer would pay for that same amount of shaping services. (Tacoma, REG-135)

Whatcom PUD believes BPA should price its power products and attendant services at rates based on cost of service. There has been discussion that BPA might "tinker" with its rate structure, such that products and ancillary services derived from the flexibility of the hydro system will be opportunity or market priced. (Whatcom, REG-121)

SUB is concerned that the proposal may result in the flexibility of the system being used to meet the needs of the first generation resources being brought on line, while the last generation resource may face higher shaping costs. SUB would like some ability to conduct long-term resource planning and not have to be concerned about its "share" of the shaping benefits of the FBS being jeopardized by resource decisions made by other utilities. SUB would like its HWM to carry with it some pre-defined access to the benefit of the shaping capability of the FBS. (SUB, REG-126)

Emerald is concerned that even given BPA's statement that revenues from these opportunity cost sales will be credited to Tier 1, opportunity cost or market pricing creates the risk that some preference customers would have to pay far above BPA's actual costs for capacity and load variance services at the Tier 1 rate. Emerald further stated that using market pricing for products to preference customers could expose BPA to unjustified market risk. Emerald, like

Tacoma, requested that BPA should also specify the capacity that preference customers get with their Tier 1 rate allocation. (Emerald, REG-137)

### **Evaluation and Decision**

The variety of comments demonstrate that BPA was less than clear in the Policy Proposal what its intent and purposes were regarding marginal and opportunity cost pricing as applied to reshaping and load-following for BPA products.

First, BPA wishes to clarify that although the terms “marginal cost” and “opportunity cost” were both used in the Policy Proposal, BPA tended to use them synonymously. Therefore, the one subsection where the term “opportunity cost” was used can be replaced with “marginal cost.”

As an example of a statement that BPA perceives was unclear, WPAG spoke of BPA’s proposal as pricing energy at the cost of production, and capacity and load variance at marginal or opportunity cost. To the extent WPAG’s characterization would lead to a conclusion that BPA would over collect its cost, this was not BPA’s intent. BPA is clarifying that its Tier 1 charges, in aggregate, will recover the revenue requirement allocated to Tier 1 and not more.

Sumas spoke of “changing the rate structure.” Whatcom characterizes the use of marginal cost pricing as “tinker[ing] with the rate structure.” BPA is not proposing to change its rate structure by the use of marginal cost pricing of the type spoken of in this discussion. Such pricing is not a new concept. The use of marginal cost pricing has been a feature of BPA’s rates since 1996. Benton REA suggests that “BPA is statutorily required to provide ancillary services including shaping at cost.” WPAG suggests “statutory preference rights to cost based power” must be individually applied to energy, capacity and load variance.

BPA has not interpreted its rate directives to include such a requirement. Section 7(a) of the Northwest Power Act provides that BPA’s

rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the cost associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this chapter and other provisions of law.

16 U.S.C. 839e(a)(1).

The directive is that BPA is to establish “the lowest possible rates to consumers consistent with sound business principles.” See 16 U.S.C. 838g. Section 7(b) provides for rate or rates to preference customers to recover costs of specified resources, but Section 7(e) provides BPA discretion on how to design rates to recover those costs. The statutes regard BPA’s rates in the aggregate, as not recovering more than cost but say nothing of the individual component parts of BPA rates. BPA has in the past 10 years had two rate cases, covering

service for the existing 10-year contracts where certain components of the PF rate, namely capacity and load variance, are based on market prices, while the PF rate in aggregate conformed to the statutory cost recovery requirements. Ultimately the issue of BPA's rate design for all components of a rate and the rate's conformance to statutory requirements will be decided in a general rate case conducted under section 7(i) of the Northwest Power Act.

Mr. Ziegler proposed that BPA charge market prices for all of its sales. This concept has received much discussion with the region and has been uniformly rejected by almost all regional parties engaged in those discussions. BPA's directive noted above would not admit of charging market rates on a general basis as Mr. Zeigler proposes and BPA is statutorily prohibited from even studying moving to market-based rates.

BPA disagrees with Snohomish that marginal cost pricing conflicts with the lowest possible cost-based rates. As noted above, BPA was not proposing to use marginal cost pricing for all components of its PF rate. Positioning BPA to offer the lowest possible cost-based rates is one of the major reasons BPA is proposing marginal cost pricing. Rather than looking at each of the individual rate components, BPA is working towards offering customers overall the lowest cost power service it can achieve. Under tiered rates, BPA is limiting only the amount of energy available at the Tier 1 rate. Other services are not limited, such as capacity, shaping, and load variance. If these services are not priced appropriately, the cost to provide those services will increase throughout the term of the contract, exposing all customers to increased costs. Therefore, limiting BPA's pricing mechanisms to embedded cost-based pricing for all services or rate components would produce a set of winners and losers just as Sumas notes in its comment. The rate design discretion afforded BPA by the Northwest Power Act section 7(e) clearly signals that Congress did not intend to constrain BPA to providing embedded cost-based pricing for each rate component.

With respect to Tacoma's comment that it makes no sense to send price signals when customers are not able to respond to them, BPA proposed to use marginal cost pricing for those services where customers will be able to respond over time. For example, certain elements of BPA's ability to supply capacity from the existing system to meet customer demands are already limited. A properly implemented demand charge would either: (1) prompt a customer to take action to reduce that demand, or (2) appropriately charge that customer for the increased costs it is placing on the Federal system and in a way that does not inappropriately penalize BPA's other customers who are not putting as high a cost burden on BPA.

BPA does agree with Tacoma, SUB, and Emerald that an alternate solution would be to develop HWMs for capacity and shaping, or to introduce tiering into other charges. However, BPA did not include these concepts in its proposal. BPA has yet to discover a workable mechanism for making the suggested differentiation in capacity or for shaping that would achieve the desired outcome of containing increased cost exposures for capacity and shaping into Tier 2 rates. Parties should explore this in developing the TRM.

BPA accepts the calls of NRU, WMG&T, and Snohomish to continue discussions on these issues with customers and other stakeholders. BPA will do so in advance of the TRM 7(i)

proceedings. The Policy does state that BPA will propose using marginal cost as the basis for pricing BPA's shaping and variance services. These discussions will discuss how BPA will implement the Policy statement.

BPA does not agree with WPAG that it must make the final determination on this rate treatments now in this Policy without having conducted a section 7(i) proceeding. We believe that these and other rate issues will benefit from more extended discussions and do not see the need to resolve these issues now. Those proceedings are currently timed to coordinate with BPA's asking customers to sign new power sales contracts. Therefore, BPA believes that the TRM development process is a better place to resolve these issues. It is BPA's goal and expectation that the methodology will be completed with all issues resolved before power sales contracts are offered. BPA believes that this will meet WPAG's concerns.

A number of comments asked that BPA not use marginal cost pricing. BPA will in the near future make a proposal on a TRM in a section 7(i) process which will address more specifically the possible rate designs for service, but BPA will not decide now in this Policy whether it will or will not use marginal cost pricing.

## **E. OTHER ISSUES**

### **1. Low Density Discount**

The Low Density Discount (LDD) is a discount applied to the rates charged to BPA customers with low system densities. The LDD was established in section 7(d)(1) of the Northwest Power Act, 16 U.S.C. § 839e(d)(1), which provides:

In order to avoid adverse impacts on retail rates of the Administrator's customers with low system densities, the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.

In the Policy Proposal, BPA proposed to continue to review and possibly revise the LDD in future Northwest Power Act section 7(i) general rate case proceedings, including implementation details relating to eligibility, the discount level, and applicable rate.

#### **Issue 1:**

**Whether the LDD is properly designed (e.g., correctly applies to all costs recovered by the PF rate, correctly defines "consumers" for use in the "consumers per mile of line" ratio, correctly applies to the Slice rate, etc.).**

#### **Policy Proposal**

LDD rate design issues would be addressed in future section 7(i) rate case proceedings.

#### **Public Comments**

Northern Wasco stated that it may not be appropriate today for BPA to provide an LDD on all component costs included in the PF rate, especially costs for fish and wildlife programs,

conservation and renewable resources and programs, debt service, and payments to IOUs and DSIs. Northern Wasco stated that some of these costs go beyond purely operating the FBS and are an increasing financial obligation/burden that should be shared without a discount. (NWasco, REG-055)

IDEA and ICUA stated that their members are directly affected by the LDD and the irrigation rate mitigation program and these programs should be fairly and evenly applied to all customers by using the number of meters and not other methods for allocation of benefits. (IDEA & ICUA, REG-096)

PNGC recommended the LDD should “provide a discount that is fair and equitable, and that BPA not distinguish between the type of Tier 1 product that a utility takes.” PNGC claimed BPA has created an overly complicated approach for calculating LDD benefits for customers purchasing the Slice Product that perpetuates unnecessary distinctions between benefits for full service customers. PNGC suggested BPA should seek to eliminate distinctions on benefits like the LDD based on contract selection and rate treatment. (PNGC, REG-133)

### **Evaluation and Decision**

As noted in BPA’s Policy Proposal, the establishment of a methodology to determine LDD benefit levels can only be made in BPA’s general rate case proceedings under Section 7(i) of the Northwest Power Act. As noted above, however, parties raised a number of issues regarding the design and implementation of the LDD in their Regional Dialogue comments. This is not a good forum to resolve LDD issues in any event. For example, only a limited number of LDD issues have been identified by the parties in their Regional Dialogue comments. Addressing such limited arguments would lead to only piecemeal LDD solutions. Similarly, LDD discussions require an opportunity for informal discussions of technical subject matter. BPA seeks an effective means of discussing and resolving all LDD concerns. BPA has identified a proper forum. In BPA’s WP-07 rate proceeding, BPA and rate case parties reached a Partial Resolution of Issues. The Partial Resolution of Issues included the establishment of a special forum for BPA to discuss issues regarding the application of the LDD to the Slice rate. The Partial Resolution provides:

BPA shall schedule meetings with the Pacific Northwest Generating Cooperative and other interested BPA customers to discuss and attempt to achieve mutual agreement on the proper application of the LDD to the Slice Product. These discussions shall be based on the principle that Slice customers will not be advantaged or disadvantaged in the implementation of the LDD compared to BPA’s non-Slice customers receiving the LDD. These meetings shall be scheduled well before the preparation of BPA’s initial proposal for its FY 2010-2011 wholesale power rate case. Any successful agreement on the resolution of the Slice LDD issue shall be included in BPA’s Initial Proposal for its FY 2010-2011 wholesale power rate case.

Evans, et al., WP-07-E-BPA-31, Attachment A.

The Special Forum will allow BPA and interested parties an opportunity to fully discuss LDD issues and attempt to reach a consensus or extensive agreement on such design prior to BPA's wholesale power rate proceeding for FY 2010-2011. BPA will reflect any such consensus or agreement in BPA's next Initial Rate Proposal. Also, as noted in Issue 3 below, BPA is interested in providing long-term stability for the LDD over multiple rate periods and will consider ways to provide stability in the TRM.

## **Issue 2:**

**Whether BPA should increase the LDD benefits applied to purchases under Tier 1 rates to accommodate purchases made under Tier 2 rates.**

### **Policy Proposal**

Application of the LDD to tiered rates would be addressed in future section 7(i) rate case proceedings.

### **Public Comments**

NRU stated that the question of whether the LDD should apply to Tier 2 rates as well as Tier 1 rate purchases is complex. NRU noted that if the LDD does not apply to Tier 2 rates and a utility grows at 1.25 percent per year, then after 10 years, about 20 percent of its power would not be eligible for the LDD, which is a significant reduction. On the other hand, NRU noted that applying the LDD to Tier 2 rates tends to favor a Tier 2 BPA purchase versus a non-BPA purchase and creates difficulties for the common pricing of the Tier 2 product. NRU suggested that a possible solution to this would be to take what would otherwise be the likely values of the LDD, post-2011, for the utility's total power purchases, and increase them by a predetermined prorated amount over the term of the contract, but only applied to Tier 1 purchases. NRU noted that this could be a fixed number based on all load growth, or perhaps a proxy for the proportion of load growth likely to be placed on BPA, regardless of the resource choice of each utility. For example, a utility with 80 percent Tier 1 plus 20 percent Tier 2 on average would see an increase in its LDD of 25 percent applied to Tier 1 only. NRU stated that in this manner the value of the LDD is preserved for utilities, but BPA is not sending a price signal that encourages selection of its own Tier 2 product over market alternatives. Rather than nailing down a specific proposal at this time, NRU would like the opportunity to work with BPA to see what can be done to provide greater certainty regarding the expected value of the LDD program. NRU noted that the amount of money is not great, but the effect on impacted communities is extremely important. (NRU, REG-103)

Benton REA urged BPA to carefully consider increasing the LDD benefits applied to Tier 1 to accommodate for purchases made under Tier 2. (Benton REA, REG-094)

### **Evaluation and Decision**

BPA's Policy Proposal indicated the costs of acquiring and providing power service to meet customer load above HWMs will be under a PF Tier 2 rate. BPA does not intend to meld and collect PF Tier 2 costs into PF Tier 1 rates except to the extent required by law to ensure BPA recovers all its costs. NRU and Benton REA's recommendations to increase Tier 1 LDD benefits by the amount estimated for load growth purchases (either from BPA at Tier 2 or a third party provider) creates an additional revenue requirement for Tier 1. Although the

customers' proposal does not transfer costs between Tier 1 and Tier 2, the increased revenue requirement has the same effect – slightly increasing Tier 1 rates. The customers' proposal is one approach to applying the LDD to tiered rates.

In order to avoid biasing a customer's resource choices, BPA believes the level of a customer's LDD benefits should not be affected by its choice between BPA Tier 2 and non-Federal resources. As noted above, the LDD methodology, including whether or not the LDD will apply to power sold at Tier 2 rates or power from non-Federal resources for load growth, can only be revised in BPA's general rate case proceedings under section 7(i) of the Northwest Power Act. Further discussion of this issue will occur in the Special Forum to review LDD issues prior to BPA's section 7(i) proceeding for FY 2010-2011. In the Special Forum and rate proposals, BPA will seek LDD treatments that avoid biasing customers' choices between buying Tier 2 from BPA and developing non-Federal resources.

### **Issue 3:**

**Whether BPA should provide greater stability for LDD qualification criteria and benefit levels, particularly given the stability and limited growth proposed for IOUs' residential and small farm consumers under an REP settlement.**

### **Policy Proposal**

LDD stability issues would be addressed in future section 7(i) rate case proceedings.

### **Public Comments**

NRU and Benton REA believe there is a relationship between the LDD and the financial benefits provided to investor-owned utilities' residential and small farm consumers through the REP. (NRU, REG-103; Benton REA, REG-094) NRU noted that a number of its members in low density and rural areas have service territories adjacent to one or more IOUs. Although wholesale power rates from BPA are generally equivalent, NRU members receiving the LDD have proportionately greater distribution costs than higher density systems. NRU members' concerns about REP benefits usually hinge on whether the IOU can offer lower rates for residential and small farm consumers where REP benefits are a significant offset to the retail cost. NRU noted that BPA is currently providing over \$300 million annually on REP benefits and there are members receiving the LDD with residential monthly rates that are significantly higher than residential rates of the neighboring IOU. Although NRU is not asserting that residential and small farm rates need to be comparable between public power systems and IOUs, a large number of public power customers receiving the LDD believe that their LDD benefits are either unduly constrained or shrinking, and exposed to future uncertainty in BPA rate cases, while proposed IOU benefits are generous and secured by a methodology that will provide benefit growth in the long term. (NRU, REG-103)

Benton REA stated that the financial value of the LDD should be enhanced and the financial benefit of the LDD memorialized in a manner that reflects equity in comparison to the proposal to lock in the IOU residential and small farm exchange benefits. Benton REA stated that future increases in the financial value of the LDD should also be commensurate with those anticipated for the IOU exchange. Benton REA noted that it is adjacent to, and

competes directly with, PacifiCorp, which receives a reduction on its power bills from the REP. Benton REA noted that this causes its residential rate to be 20 percent above PacifiCorp's rate, causing Benton REA's members to question why their rates include paying money to the IOUs when the IOUs' retail rates are less than the cooperatives. Benton REA also stated that BPA's provision of over \$300 million in financial benefits to IOUs while BPA is paying \$20 million to public power through the LDD creates an unfair competitive advantage for the IOUs. (Benton REA, REG-094)

Emerald PUD stated that revising the LDD in a manner that reduces LDD benefits would exacerbate the problem of public agencies paying for the current REP settlement when such benefits lower the rates of BPA's investor-owned utility customers. (Emerald PUD, REG-137)

WPAG suggested that BPA should reconsider reserving the right to redefine the qualifications for and the benefits provided by the LDD over the term of the new contracts. WPAG noted that BPA's changes to the LDD in each rate case have provoked consternation and controversy, also requiring the time and resources of BPA and its customers. WPAG noted that perpetuating such uncertainty is not a good policy choice and compares unfavorably with the certainty BPA seeks to establish for IOU residential and small farm consumers. WPAG suggested that BPA should reaffirm existing qualification standards and benefits levels of the LDD and establish periodic re-openers, such as every 6 years, to examine in a predictable manner whether the qualification criteria or benefit levels need to be revised, thereby providing some stability to LDD benefits. (WPAG, REG-109)

### **Evaluation and Decision**

BPA understands the public agencies' comparison of the LDD and the REP; however, significant differences exist between the two programs. The LDD is a rate discount applied, to the extent appropriate, to eligible BPA utility customers' rates. The REP, in contrast, is a BPA program that provides benefits to regional utilities' residential and small farm consumers. The LDD is established and revised only in BPA's section 7(i) ratemaking hearings. The REP, in contrast, is implemented through negotiated Residential Purchase and Sale Agreements, an ASC Methodology, ASC determinations, and the use of the PF Exchange rate in benefit calculations. The LDD is available to public agencies through the PF Preference rate, and to the IOUs through the PF Exchange rate, although public agencies have been the only recipients of LDD benefits for many years. The REP is available to both public agencies and IOUs. For these reasons, there is not a strict "public agencies versus IOUs" comparison based on the LDD versus the REP. Furthermore, there is no legal requirement to make a change to the REP or REP settlements if the LDD changes, and vice versa.

Regardless of the significant differences between the LDD and the REP, the public agencies correctly note BPA's rates for public agencies recover REP costs. The public agencies also are correct that REP benefits may reduce REP participants' effective retail rate below those of a neighboring public agency, including those receiving the LDD, and may create a competitive disadvantage for some public agencies. As noted previously, the level of LDD benefits can only be established in BPA's section 7(i) rate hearings. BPA can, however,

generally address the public agencies' concern that LDD benefits are either unduly constrained or shrinking, and exposed to future uncertainty in BPA rate cases, while proposed IOU benefits are secured by a methodology that will provide long-term stability.

BPA has been considering how to stabilize the LDD. BPA has committed to meeting with all interested parties in a Special Forum to focus solely on the LDD. The forum provides a much better means than the Regional Dialogue to resolve any problems with LDD design by allowing for frank, informal, and detailed discussions about all LDD issues. BPA hopes this forum will lead to consensus, or extensive agreement, as to the establishment of a stable LDD design. The product of such discussions could then be included by BPA in the Initial Proposal of BPA's wholesale power rate proceeding for FY 2010-2011.

With specific regard to stability, BPA could commit to including the same LDD design in each BPA Initial Proposal for a specified period of time. For example, BPA could seek FERC approval of an LDD methodology for the term of the Regional Dialogue contracts, during which time BPA would include the same LDD design in its Initial Proposals. BPA and interested parties also could determine conditions that would allow BPA to revise the LDD if parties identified problems during the long-term implementation. Other stability options also could be discussed.

BPA believes that stabilizing the LDD methodology will substantially reduce or eliminate much of the consternation and controversy past LDD revisions have created. This also should reduce the time and resources BPA and its customers expend on this issue. Therefore, BPA will advance proposals that create LDD stability in subsequent forums.

## **2. Irrigation Rate Mitigation**

BPA has long provided some form of assistance applicable to qualifying irrigation loads either through surplus firm power sales or rate mitigation. The Policy Proposal states: "Beginning with the FY 2012 rate period, BPA proposes to make available irrigation rate mitigation in the form of a fixed mills-per-kWh discount limited to the Tier 1 rate in the PF rate schedule, and not as a separate product."

BPA received several comments on issues regarding Irrigation Rate Mitigation (IRM) in the Policy Proposal. Those comments are addressed below.

### **Issue 1:**

#### **Should Irrigation Rate Mitigation (IRM) be phased out completely?**

#### **Policy Proposal**

The Policy Proposal states: "Beginning with the FY 2012 rate period, BPA proposes to make available irrigation rate mitigation in the form of a fixed mills-per-kWh discount limited to the Tier 1 rate in the PF rate schedule, and not as a separate product."

#### **Public Comments**

Of the ten parties that commented on IRM, nine of the ten supported BPA's proposal to continue to offer an IRM program (NIU, REG-031; NWasco, REG-055; Raft, REG-081;

Benton REA, REG-094; IDEA & ICUA, REG-096; NRU, REG-103; Benton PUD, REG-114; PNGC, REG-133; LVE, REG-141) with one party (Cowlitz, REG-118) suggesting the program be eliminated.

Cowlitz PUD stated, “We believe money spent on irrigation discount would be far better spent for the entire region on lowering the overall Tier 1 Priority firm rate . . . .” (Cowlitz, REG-118)

### **Evaluation and Decision**

Irrigation for the agricultural industry was one of the primary historical reasons for constructing the Federal dams in the Northwest, along with flood control, navigation, recreation, and power production. Early in its history, BPA began providing discounts to the agricultural industry and instituting caps on certain charges to encourage the cultivation and irrigation of more farm land. (*See*, Department of the Interior, Bonneville Power Administration, 1942 Wholesale Power Rate Schedules and General Rate Schedule Provisions, Prime Power Optional Wholesale Power Rate Schedule F-2, at 6-7; Department of the Interior, Bonneville Power Administration, Wholesale Power Rate Schedules and General Rate Schedule Provisions, 1954 Wholesale Power Rate Schedule E-4 at 6-7.) Such discounts provide direct assistance to farmers and, because agriculture is the dominant –if not the sole– economic driver in many rural Northwest communities, the discount also provides indirect assistance to supporting industries such as irrigation equipment sales, fertilizer companies, food processors, and trucking. This supports BPA’s statutory objective to “encourage the widest possible diversified use of electric energy.” 16 U.S.C. § 832e; 838g.

BPA believes there is more to lose than there is to be gained through elimination of the IRM. Although BPA is authorized to establish a variety of rate forms to send price signals, elimination of IRM would not result in a useful signal. Elimination is likely to lower the overall PF Tier 1 rate by only about \$0.20 per MWh. Yet elimination could severely impact the entire economy of some rural Northwest communities where irrigated agricultural is the dominant industry. Additionally, unlike other industries that may have the ability to switch fuels between electric power and natural gas, or the ability to co-generate electric power on site, the irrigation of agricultural crops is solely dependent on electric power as a source of energy and cannot rely on self generation due to the geographically dispersed nature of irrigation pumping. BPA will not phase out IRM.

### **Issue 2:**

**Should IRM eligibility be expanded to allow participation by customers who were not participants in either BPA’s Irrigation Rate Mitigation Product (IRMP) between FY 2002-2011 or in BPA’s Summer Seasonal Product (SSP) during FY 1997-2001?**

### **Policy Proposal**

The Policy Proposal states: “The irrigation discount would apply only to eligible irrigation loads of customers participating in BPA’s irrigation rate mitigation product during FY 2007-2011 or in BPA’s FY 1997-2001 summer seasonal product.”

### **Public Comments**

Lower Valley opposes limiting utility participation to current IRMP participants or past participants in SSP. Lower Valley stated: “[T]he irrigation discount should be available to all irrigators regardless of which utility serves them.” (LVE, REG-141)

### **Evaluation and Decision**

The Policy Proposal makes irrigation rate mitigation available in the form of a fixed mills-per-kWh discount, applicable to the eligible irrigation loads of customers participating in the current IRMP or past SSP programs. Eligibility in the SSP (and later the IRMP) was limited to public utilities who met either of two criteria: (1) irrigation load was at least 5 percent of total retail load, or (2) total irrigation load was at least 7,500 MWh. Utilities with relatively small irrigation loads would not be as adversely affected by changes in BPA’s wholesale PF rates as utilities with a significant amount of irrigation load. That is, the effective annual rate of such a utility with a small irrigation sector would not be much affected and so the utility may be able to ameliorate BPA’s rate design change through its retail rates.

As proposed, the IRM would limit program costs by limiting the eligibility of the program to customers with substantial irrigation load demands. The program would lose its efficacy were it made available to all measurable amounts of irrigation load, as suggested by Lower Valley.

Nevertheless, the proposed eligibility language in the Policy Proposal has been modified in the Policy to include: “Irrigation load eligible for the proposed Irrigation Rate Mitigation will be based on qualifications that will be established in BPA’s wholesale power General Rate Schedule Provisions (GRSP). Customers who are participating in BPA’s Irrigation Rate Mitigation Product during FY 2007-2011 or participated in BPA’s FY 1997-2001 Summer Seasonal Product will not be excluded.” Establishing eligibility qualifications in GRSPs will provide a standard for participation based on updated utility sector and load data. The rationale for the current eligibility criteria (stated above) relating to small amounts of irrigation load, program cost control, and administrative manageability should be contributing factors in determining the qualifications.

### **Issue 3:**

**Should the proposed conservation requirement be modified or removed from the IRM section of the Policy Proposal?**

### **Policy Proposal**

The Policy Proposal states: “BPA also proposes requiring participating customers to implement cost-effective conservation measures on irrigation systems in their service territories.”

### **Public Comments**

The comments received on this issue were mixed. Some comments suggested modifications but supported BPA's Policy Proposal overall, while another comment suggested the conservation requirement be removed.

Northwest Irrigation Utilities wants any conservation rate credit to be comparable between irrigation and non-irrigation loads. (NIU, REG-031) Northern Wasco County PUD suggested grants or zero-interest revolving loans to assist in the acquisition and installation of effective irrigation conservation activities and practices. (NWasco, REG-055) Benton PUD wants the conservation requirement removed. (Benton PUD, REG-114)

### **Evaluation and Decision**

First, with regard to comparability between irrigation and non-irrigation loads, BPA's Policy Proposal does not exclude the irrigation load from qualifying for a conservation rate credit as the Irrigation Rate Mitigation Product did. Second, concerning Northern Wasco's suggestion, standard BPA conservation programs should facilitate the promotion, tracking and implementation of conservation activities on irrigation systems and afford utility customers the opportunity to access BPA funding for their conservation efforts. Finally, as to Benton PUD's request, the proposed conservation requirement for irrigation systems is not heavily prescriptive. Benton is the only party that has suggested removing it. The requirement is intended to promote the efficient use of electricity on irrigation systems in return for receiving an IRM benefit. Therefore, the proposed conservation requirement for participating customers to implement cost-effective conservation measures on irrigation systems in their service territories will remain in the final Policy.

### **Issue 4:**

**Should IRM eligibility be expanded to include Slice customer loads above their block amounts?**

### **Policy Proposal**

The Policy Proposal states: "[T]he amount of mitigation the Block product would be eligible for is the lesser of the Block energy purchases for the May-September period or the FY 2002-2004 eligible irrigation MWh."

### **Public Comments**

Several comments suggested that the energy eligible for the IRM discount not be capped at the utility's Block amounts.

Raft River commented that the eligible MWh should not be limited by the amount of Block power contracted. (Raft, REG-081) Benton PUD commented that the amount of irrigation mitigation available to an existing Slice/Block customer should be based on 100 percent of their eligible irrigation load (FY 2002-2004, 3- year average). (Benton PUD, REG-114) PNGC commented that the Regional Dialogue approach should provide benefits in a fair and equitable manner regardless of the product selected by the utility. The discrimination in benefits based on product type that existed under the IRMP approach should not reoccur in

the future Irrigation Rate Mitigation approach. Utilities eligible for IRM should get the benefit for the entire amount of their qualifying FY 2002-2004, 3-year average energy amounts. Eligible MWh should not be limited by the amount of Block power contracted. The rate discount approach should not discriminate in the amount of benefit based on the type of BPA Tier 1 rate product that a utility selects. (PNGC, REG-133)

### **Evaluation and Decision**

Customers did not agree with the proposed limit on the irrigation mitigation which BPA proposed. They are concerned that not all of the eligible irrigation load will receive a benefit when their Block purchases in a month are less than their irrigation load. All of the customers commenting are current Slice/Block contract holders who believe that BPA should provide a benefit based on load or the total amount of power sold.

BPA disagrees that the Slice portion of the customers' purchase should be eligible for IRM benefits for a very simple reason. The Slice product is not a load-following product and does not guarantee that the purchaser's load will be met on any given hour, since it is a sale in which scheduling rights are indexed to the generation of the FBS. (*See*, DOE/BP-3130, April 2000 BPA Power Products Catalog, at 42)

PNGC is concerned that no discrimination in benefit will result from the product choice made by the customers. However, the Slice product is indexed to the Federal system generation and the product provides both firm and secondary power, not all of which is committed or used to serve a customer's requirements load. It is not discriminatory to exclude power that was not used for retail irrigation load, the purpose the IRM is provided. In contrast, the Full and Partial requirements products provide power based solely on the loads being served as the net requirements of a customer, and the Block purchase amounts are also based solely on load and provided in monthly fixed amounts in the power contract; therefore, these products are only used for load and are eligible for IRM.

Secondly, customers are concerned about getting the full amount of benefit from the FY 2002-2004 period, and that the benefit be based on the full amount of their irrigation load. Customers are also concerned over increasing BPA costs. BPA is interested in providing a reasonable amount of benefits but is not interested in increasing the costs of this program beyond the Policy Proposal. Some BPA customers who have eligible irrigation loads purchase the Slice product and an amount of Block product. In new post-2011 contracts customers may need to establish Block purchase amounts to sufficiently cover most if not all of their qualifying irrigation load.

Additionally, during FY 2002-2006, only 50 percent of the eligible irrigation load or the Block power purchase, whichever was less, was eligible for the IRMP benefit. The criterion in the Policy Proposal allows 100 percent of the eligible irrigation load or the Block power purchase, whichever is less, to be eligible. IRM, as proposed, is consistent with current practice and does not expand the program cost.

BPA will, however, make the following change to its proposal in response to comments. The Policy Proposal added September loads to existing May through August amounts. In the

final Policy BPA will state an intent to extend irrigation load energy amounts from May through August into September. This change should reduce the risk of irrigation loads being limited by summer block amounts.

**Issue 5:**

**Should formulaic boundaries be established in contracts for determining the degree of change in the financial value of IRM from rate period to rate period?**

**Policy Proposal**

The Policy Proposal states: “A Section 7(i) rate proceeding would establish the need for, and amount of, an irrigation discount applied to qualifying irrigation loads starting with the FY 2012 rate period.” The Policy Proposal establishes a framework for limiting “overall program costs to a fixed percentage of the summer rate, times a fixed number of eligible MWh,” and a methodology for determining the “fixed percentage” of the summer rates. The Policy Proposal also states: “Regional Dialogue contracts would include a provision acknowledging the irrigation discount program, the terms of which would be determined in rate proceedings and subject to BPA’s general rate schedule provisions.”

**Public Comments**

Northwest Irrigation Utilities commented that the underlying program design, as set forth in contracts, would establish the formulaic boundaries for the degree of change. The “*amount of*” Irrigation Mitigation should be determined in a rate case as long as it is a mechanical implementation of program design that is decided during the Regional Dialogue process. (NIU, REG-031, Emphasis in original)

**Evaluation and Decision**

The final Policy will propose a formulaic approach in BPA’s section 7(i) proceeding on the Tiered Rate Methodology. This provides a proposed framework for determining an IRM fixed mills-per-kWh discount that can be implemented in future rate cases. A rate discount must be determined in a rate case which will ensure that the required notice and comment procedures (including necessary workshops) are followed. *See* 16 U.S.C. § 839e(i).

**3. New Large Single Loads**

**Issue 1:**

**Whether BPA should adopt its Policy Proposal that discontinues the off-site renewables option?**

**Policy Proposal**

In its short-term Regional Dialogue Policy, BPA encouraged the application and use of renewable and on-site cogeneration resources by consumers whose loads are New Large Single Loads. BPA provided an option to a consumer to reduce its new load behind the meter by purchasing and delivering sufficient on- or off-site renewable resources or on-site cogeneration, to reduce the single large load served by the utility to less than 10 aMW. If the consumer reduced that load with on- or off-site renewables or on-site cogeneration to less than 10 aMWs, BPA would provide the utility up to 9.9 aMWs of Federal power at the PF

rate. BPA has considered its policy and in light of the issues raised and minimal response to use of on- or off-site renewables, and the other efforts to promote renewable resources in the region, BPA proposed a time limit for the application of off-site renewable resources in the current NLSL policy. BPA proposed to sunset its off-site renewables option effective December 31, 2006, for consumers who had not finalized arrangements to use the option by that time.

### **Public Comments**

Flathead Electric Cooperative and Plum Creek both commented that BPA should not sunset the off-site renewables portion of its renewables and on-site cogeneration option. (Flathead, REG-101; Plum, REG-120)

Flathead commented that BPA's strategic direction includes facilitation of regional renewable resources and it is statutorily mandated to promote the development of renewable resources. Continuation of the off-site renewables as qualifying resources would help BPA comply with these mandates. BPA's proposal to eliminate the off-site option is contrary to Congressional directive. They further state that market-based incentives are not sufficient to ensure development of the type and quantity of renewable resource that will help the Northwest gain some level of independence from conventional generation resources.

Plum Creek suggests that if BPA decides to sunset the off-site option, entities such as Plum Creek should be grandfathered so that the expertise they have already gained in developing and acquiring renewable resources under that option are not lost in the region. Flathead's comments are similar in that they ask if BPA does eliminate the off-site option, BPA should clarify its policy statement to reflect their present understanding and ensure that those customer and consumers that have made arrangements to qualify by December 31, 2006, will continue to qualify even if their contractual arrangement must be replaced, extended, or renewed to obtain new qualifying renewable power purchases. Flathead is also seeking reassurance that BPA will continue to offer the Green Exception (GE) beyond FY 2011 to customers and their consumers who have implemented the GE prior to December 31, 2006, and who have continued to meet the terms and conditions of the GE.

### **Evaluation and Decision**

A purpose of the Regional Act is to encourage the development of renewable resources within the Pacific Northwest. However, the form of that encouragement primarily for utilities to develop renewable resources is left to BPA to decide. There has been much success in the development of renewable resources in recent years. This past November, Washington State passed Initiative 937 which requires utilities to add renewable resources to their power portfolios in increasing amounts. During the next 2-3 years, an expected 1,000 megawatts (MW) or more of new wind capacity will be integrated into the Northwest grid from committed projects with committed capital and the addition of new variable output resources like wind will not require this BPA incentive. As described in the Renewables section of the Policy, BPA has a number of more effective tools for facilitating renewable resource development. Therefore, BPA still believes it is most important to sunset the off-site renewable option at this time. The off-site renewable resource option will continue only for those consumers who have completed purchase contracts and transmission arrangements

by December 31, 2006, for the duration of the current BPA contract with their utility. BPA is aware of only one consumer, Plum Creek, that has completed and applied an off-site renewable to their NLSL.

Having qualified for the Green Exception (GE) by December 31, 2006, Plum Creek's NLSL will receive the benefit of the GE for the term of Flathead's contract, as long as it continues to meet the terms and conditions applicable to the GE in Flathead's power sales contract with BPA. Plum Creek must deliver a renewable resource to its NLSL behind the meter and continuously apply a qualifying on-site cogeneration or renewable resource or have an off-site renewable contractual arrangement that is renewed, extended, or replaced.

#### **Issue 2:**

**Should those customers/end-use consumers that qualify to use the off-site renewable resource GE before the cut off date of December 31, 2006, receive an increase in their HWM?**

#### **Policy Proposal**

BPA has proposed that as long as the *remaining load* placed by the consumer on the utility stays below 10 aMW on a 12-consecutive-month basis, that *remaining load* would be eligible for Tier 1 service provided the utility customer's net requirement is below its HWM. If the amount exceeds 10 aMW in any consecutive 12-month period, the entire load would be billed at the applicable NR rate for that year and thereafter.

#### **Public Comments**

Springfield Utility Board questions whether a handful of long-term GE contracts have been properly vetted through a public process. They state that those utilities poised to take advantage of the GE now are the only ones who will benefit; that other utilities will not get a benefit and be exposed to market price or NR rate for their NLSL loads. SUB suggests that any extension of the GE for a utility beyond FY 2011 should only occur if the customer's HWM is commensurately reduced. A reduction prevents other customer's HWMs from being harmed by the limited time to qualify for a GE. (SUB, REG-126)

#### **Evaluation and Decision**

BPA had only one utility consumer load qualify for the off-site renewable GE, Flathead Electric Cooperative's (Flathead) Plum Creek Timber Company (Plum Creek). BPA intends to include the Plum Creek NLSL in the calculation of Flathead's HWM as long as it qualifies for the GE. This treatment is equivalent status to being served at the PF rate under previous rate schedules. Assuming the GE applies, then whether the 9.9 aMW load is served at the Tier 1 rate depends on Flathead's HWM in relation to its total net requirement. However, BPA will remove the NLSL from Flathead's HWM calculation should Plum Creek become disqualified from the GE. This is consistent with the Northwest Power Act provision to apply a 7(f) or NR rate for service to a NLSL.

#### **4. Transmission Considerations**

##### **Issue 1:**

**How and when will BPA Transmission Services address customer concerns with regard to transmission access and policy for non-Federal resources?**

##### **Policy Proposal**

The Policy Proposal did not include a policy on or discussion of transmission issues other than to state, at page 34, that:

[t]he earlier that customers apply for transmission to move new resources to load, the better equipped BPA will be to respond to the request. To improve its ability to develop transmission when needed, BPA recommends an integrated planning process that establishes a coordinated planning cycle that links individual utility resource planning with a transmission open season.

BPA will be working with its transmission customers prior to offering Regional Dialogue contracts to ensure the requirements for requesting modifications to OATT service are met and customers understand the transmission implications of their resource choices.

##### **Public Comments**

The public comments raise issues about the availability of transmission services, BPA's Open-Access Transmission Tariff (OATT), Transmission Service's business practices and the way that BPA plans and finances additions to the transmission network. Snohomish asserts generally that "[f]or the Proposal to succeed, public utilities must be able to move power to load centers. From discussions that have occurred since the Policy Proposal was issued, it has become clear that BPA's current processes for selling transmission rights are not well aligned with Regional Dialogue concepts." (Snohomish, REG-131)

Some customers expressed more specific concerns about customers' ability to obtain transmission services to deliver power purchased under the new Regional Dialogue contracts. WPAG notes that Network Transmission (NT) customers must submit an application to add the new Regional Dialogue power contracts as new Network Resources and must "get into the transmission queue behind any other pre-existing service application. This approach will create a rush to the queue, and means that there is some likelihood that some preference customers will not be able to obtain access to the Federal transmission capacity they are currently using. The likelihood of this outcome for any particular preference customer is increased if they select under the new power contract a power product that is different from the one under which they currently purchase power from Bonneville." (WPAG, REG-109) Similarly, PPC asserts that the need to queue to add Regional Dialogue contracts to Network Resource exhibits "places an unnecessary burden on NT customers that are continuing to take service from BPA. It can take months or years for a new service request to move through the queue. This delay and uncertainty will be compounded by the fact that several dozen NT customers may be seeking to comply with the tariff requirements for adding their

new contracts as resources in their exhibits at the same time. The new power contracts, taken together or singly, are unlikely to make greater use of the system than the current power contracts.” (PPC, REG-133)

As a result of these concerns, a number of customers asked that BPA take steps to mitigate the impact of the applications requirement. “Bonneville should recognize that the renewal of over one-hundred preference customer power contracts is not a business as usual event, and may require the adoption of special procedures and approaches to ensure orderly and fair access to the Federal transmission system under the new power contracts.” (WPAG, REG-109) “PPC strongly encourages BPA to explore ways to move the new Tier 1 contracts through its queue and application process that are more efficient for both BPA and its preference customers. . . .” (PPC, REG-133) Tacoma requests a plan “that describes how BPA intends to handle customers transitioning into the new power purchase contracts with BPA Power Services.” (Tacoma, REG-135) PNGC asks for “a logical, non-risky, non-burdensome way for . . . [NT] customers to retain the transmission rights they have when they sign new contracts for Federal power. For example, if the source of power remains Federal but is simply provided under a different contractual mechanism, there should be absolutely no change to transmission rights, nor any need to get in a queue for transmission capacity.” (PNGC, REG-133)

PPC proposes that any resolution of the above transmission services applications issues comply with two principles:

- (1) there will be no diminution of current transmission service or rights for preference load service; and,
- (2) preference customers executing new BPA power contracts will not be required to get in the queue behind other requests for transmission service. (PPC, REG-133)

PNGC suggests that “if a utility is under its HWM and retains Federal power as a source regardless of product, there should be neither a diminution of NT rights nor any burdensome process to retain the rights currently enjoyed by a customer.” (PNGC, REG-133) Emerald PUD urges BPA to “resolve the NT and PTP transmission issues raised by the execution of power contracts such that: there will be no diminution of current transmission service or rights for Preference load service; and Preference Customers executing new BPA power contracts will not be required to get in the queue behind other requests for transmission service.” (Emerald PUD, REG-137) WPAG requests that this ROD provide “firm assurances that . . . [BPA] will, in consultation with its customers, implement approaches to ensure that preference customer will not have to get in the queue to obtain access to Federal transmission system capacity needed to serve their loads under the new power contracts regardless of the power product they select. . . .” (WPAG, REG-109)

In addition to concerns about transmission services applications for new Regional Dialogue contracts, customers expressed similar concerns about the process for obtaining transmission services to integrate non-Federal resources to serve NT customers’ loads above their HWMs. WGM&T notes that “[i]f a customer with an NT contract wants to obtain a non-Federal resource, depending on the size of the resource and the system impact, it may require the

customer to seek additional ATC or even face the inability to receive Bonneville service for the load. Since the majority of Bonneville's preference customers are served via NT contracts, this is a huge issue." (WVG&T, REG-106) NRU asserts that additional work is needed regarding "the integration and delivery of power over the network from new non-Federal resources to serve Tier 2 power. . ." and that "[i]f BPA's goal is to bring non-Federal resources to serve Tier 2 on an impartial basis, then the transmission issues are paramount." (NRU, REG-103) WPAG notes generally that Transmission Services' application process for transmission services has "raised questions by preference customers about their ability . . . to receive power from non-Federal Tier 2 resources." (WPAG, REG-109)

For some customers, the concern is expressed as one of time and timing in securing firm transmission, regardless of the type of transmission being requested; Seattle City Light states that "BPA will need to develop processes for utilities to make meaningful elections between self-acquired new resources and Tier 2 resources that fit with the timelines or securing firm transmission." (SCL, REG-128) Benton REA describes its experience of making a request for 50 MW of Network Transmission service being denied because it "did not demonstrate a resource that would begin on January 1, 2006. Although BPA has said that they are encouraging the development of non-Federal resources to serve load, the Agency does not have a process that allows for the integration of . . . non-Federal resources into the system." (Benton REA, REG-094)

Commenters also note the linkage between the availability of transmission services and the development of non-Federal generation. Tacoma asserts that "[t]ransmission service for preference customers' loads must be reasonably available, or customer development of new resources will be thwarted." (Tacoma, REG-135) Similarly, Renewables Northwest Project (RNP) states that "[t]he July 13, 2006, proposal does not deal specifically with transmission issues, but they are critical to the achievement of BPA's renewable energy goals." (RNP, REG-113)

Pertinent to the integration of new generation resources, some comments speak to the need to plan and construct Network facilities for the integration of new resources and to serve load growth. Some customers encourage BPA to build additions to its transmission system to integrate new resources. RNP "urge[s] Bonneville to continue to identify and implement products, services and investments that will make more efficient use of the existing transmission system (thereby avoiding the expense of new additions), participate actively in planning for new transmission with an eye toward areas that have good renewable energy potential, and finally, build new transmission where it is needed. The region will not achieve the Council's plan of 6,000 MW of new renewables without a focus on transmission, and BPA is poised to lead in this effort." (RNP, REG-113) Emphasizing regional aspects, Blachly-Lane and PNGC encourage BPA "to find ways to achieve region wide transmission expansion planning (and enforceable cost allocation for such expansions), re-integration of resource and transmission planning, common queues and study processes for new requests, and single region wide available transmission capacity calculations to name a few." (Blachly-Lane, REG-140; PNGC, REG-133) Similarly, PNGC asserts a shortage of available transfer capability in the transmission system and admonishes BPA to "actively work to put some margin back in the system and create capacity on the most constrained

paths. The region-wide transmission problems that spurred IndeGO, RTO West, GridWest, and ColumbiaGrid have not gone away.” (PNGC, REG-133)

PPC raises specific issues about the Transmission Services’ assumptions in planning the transmission system to meet NT load growth. “Transmission Services has stated that it will plan to expand the system to meet load growth based on the assumption that the NT customers continue to take power from their current declared NT resources to meet that load growth. Transmission Services should plan to meet preference customers’ load growth from new resources, as well as from existing resources. Transmission Services and its preference customers should discuss and resolve how to accomplish this planning.” (PPC, REG-133) NRU states that “BPA needs to serve as a backstop if a utility is left short due to lack of transmission access or unreasonably priced transmission.” (NRU, REG-103)

In addition to transmission system planning, two commenters raised issues of financing and ownership of transmission additions. PPC notes that “BPA and its customers should discuss mechanisms by which needed network transmission investments can be made by BPA and its customers; facilitations of transmission investment is a crucial activity. . . .” (PPC, REG-133) Northern Wasco PUD encourages BPA to facilitate ownership of new transmission facilities. “The integration of new generation resources is dependent on the availability of adequate transmission facilities. We hope and encourage BPA to help organize and facilitate all interested public power utilities to become investors and, therefore, owners in transmission infrastructure. Transmission in the future will become more valuable and precious; continuing to allow only existing owners to make the investments and all decisions surrounding its development, use and deployment is arcane and in need of major philosophical improvement/change.” (NWasco, REG-055)

Commenters raised issues with specific provisions of the BPA’s OATT. In regard to the acquisition and use of non-Federal generation to serve load, NRU questioned retention of Sections 1.7.1 and 31.7 of the OATT, regarding Customer-Served Load. (NRU, REG-103) NRU identifies “BPA’s proposal to change the way the agency charges transmission rates for customer-served load after 2011 . . .” as an area of concern (NRU, REG-103), as does WMG&T: “The proposed changes to the customer-served load (CSL) policy will also have a chilling effect on resource acquisition by customers. Although this issue has yet to be resolved, it could force NT customers to pay transmission costs for load that is served from a non-Bonneville source and never touches a Bonneville transmission facility. The point is that this issue is as yet unresolved and at least one of the potential outcomes could be to double-charge on transmission for non-BPA resources a customer may pursue.” (WMG&T, REG-106) In regard to the Policy Proposal’s use of Transfer Agreements for wheeling non-Federal power, the Pacific Northwest Investor-Owned Utilities identify as a contingent issue “the retention of Section 36 of the OATT (Transmission Provider Payment for the use of Third Party Facilities) in the event that BPA decides to fund some portion of transfer service for non-Federal resources used to serve the loads of GTA customers.” (PNW IOUs, REG-142)

Even though the Policy Proposal did not address Power Services’ use of the MOA or allocation of Federal Power System flexibilities, a subset of customers commented that

actions taken by Power Services could result in an economic advantage for BPA's Tier 2 rate product.

The PPC states that "Federal Tier 2 resources may have an advantage over non-Federal resources in that PBL will be able to integrate those resources into the Federal power system and make system sales to existing PTP and NT points of receipt on the Federal system." This ability Power Services has could "ease, if not avoid, the problems with acquisition of needed transmission capacity and designation of new resources." (PPC, REG-132) Springfield Utility Board's (SUB) and Snohomish PUD's comments also expressed concern with Power Services having some advantage to integrate resources serving Tier 2 compared to utilities wishing to acquire non-Federal resources. Snohomish PUD believes BPA should include an affirmation in the ROD that "Tier 2 resources should not, by virtue of BPA's ownership of transmission, enjoy a competitive advantage over resources developed by others." (Snohomish, REG-131)

A few customers commented that they would like BPA to incorporate non-Federal resources under the MOA or provide customers with comparable flexibilities that Power Services may have resulting from the operation of a large diverse power system. (PNGC, REG-133; SUB, REG-126)

PNGC and SUB both commented that the MOA is a good concept and should be retained but it should be extended to include the addition of non-Federal resources when there is not transmission capability to support adding a non-Federal resource to a customer's NT Service Contract in a timely manner. PNGC stated that "NT customers ought to be able to bring in non-Federal resources when there is no ATC available using the NT limits and the flexibilities which exist in the Memorandum of Agreement (MOA) between BPA's Power Business Line and its Transmission Business Line so long as the customer is willing to have the non-Federal resource re-dispatched." PNGC went on to say that "we need only extend its benefits to all NT non-Federal resources that cannot otherwise obtain ATC to equalize the options between Federal Tier 2 and non-Federal resources. (PNGC, REG-133) SUB requested that if BPA continues to re-dispatch to integrate resources for meeting BPA system sales "that re-dispatch benefits be given to public utilities based on their High Water Mark." SUB reasons that this "allows utilities the same or similar flexibility to integrate resources" as BPA Power Services has. (SUB, REG-126)

PPC's comments recommended that issues relating to transmission access be resolved outside of the formal Regional Dialogue process and only after discussions with customers. (PPC, REG-132).

Commenters identify various other areas of transmission operational, reliability, and business requirements that are of concern. NRU asserts the need for more work regarding congestion management and the provision of ancillary services. (NRU, REG-103) Seattle City Light identifies "potential issues, such as nodal scheduling on the grid, which could have impacts on transmission service for Tier 1[.]" and admonishes BPA to "work with their preference customers to ensure that FBS is also delivered in a reliable manner given the transmission system capabilities in the future." (SCL, REG-128)

In regard to new small utilities, ATNI asks for “[c]larification of the transmission proposal for new utilities: we understand that new utilities will be treated the same as existing customers. (The current transmission provider does not have a veto over utility formation, which is unacceptable.) Transmission for new utilities should not be different than transmission/transfer service for existing utilities.” (ATNI, REG-111) Similarly, the Yakama Nation asserts that “[t]here are other problems related to transmission and annexing loads that could make it more difficult to form new tribal utilities.” (Yakama Nation, REG-148)

A number of customers directly or implicitly assert a preference or priority to access to, and use of, the Federal Columbia River Transmission System. NRU stated that “[t]ransmission access must be addressed with priority given to load service.” (NRU, REG-103) WPUDA expresses its strong support for “making preference transmission services for preference customers to serve load in the future an element of the Regional Dialogue ROD and subsequent 20 year contracts. We urge BPA to make transmission service to serve both Federal and non-Federal Tier 2 resource acquisitions on behalf of customers a preference service on par with preference power.” (WPUDA, REG-080) In line with WPUDA, Grant County PUD asserts that “[t]he District will retain a priority to transmission as a Load Serving Entity (LSE) similar to that of any other preference customer of BPA as a LSE would have to transmission. This specific comment relates to the District’s ability to rollover BPA transmission rights in 2011 in order to transmit power from the [Priest Rapids Project].” (Grant, REG-059) Tacoma opines that “[t]here should not be any discrimination among NT, PTP, Federal, non-Federal, Tier 1, and Tier 2 customers in access to transmission for Load Serving Entities. Load Serving Entities within the Northwest serving Northwest loads should be given preferential access to transmission in contrast to entities using Northwest transmission for purposes of wheeling through or exporting power.” (Tacoma, REG-135) Snohomish expresses its encouragement at BPA’s commitment to address transmission issues but states its belief that it is “important at this juncture for BPA to outline its overarching policy objectives with respect to its transmission assets. Those objectives should include an affirmation that access to an allocated share of the Federal power system carries with it equivalent access to Federal transmission capacity.” (Snohomish, REG-131) Kittitas PUD asserts simply that “[p]reference customers of BPA should have priority rights to transmission capacity over other transmission users such as Powerx [sic.]” (Kittitas, REG-087)

The need to gain clarity on these transmission issues is of high importance for some customers. WMG&T lists “the need to get greater clarity and coordination on transmission issues. . .” as one of its highest priorities. (WMG&T, REG-106) Many customers state the need for a timely process to address their transmission issues so that they can make decisions regarding long-term power contracts. Blachly-Lane urges that transmission issues “be addressed quickly; otherwise it will be impossible for customers to make informed choices about future load service without the pressing transmission issues being answered.” (Blachly-Lane, REG-140) Similar sentiments are expressed by NRU: “It is important for utilities to have sufficient and timely information regarding both BPA power and BPA

transmission policies, products, practices and other matters in order to make informed and coordinated decisions.” (NRU, REG-103)

Several customers encourage Transmission Services to address these issues, not in this Record of Decision, but in a process with its customers. PPC “suggest[s] these issues be resolved rapidly but resolved outside of the formal regional dialogue process.” (PPC, REG-1335) Franklin PUD and Cowlitz PUD express their agreement with this statement. (Franklin, REG-100; Cowlitz, REG-118) WPAG requests firm assurance in this ROD that BPA will “undertake the process with its customers to find such solutions promptly so they can be implemented well before the new power contracts are to be signed.” (WPAG, REG-109) Snohomish “encourage[s] BPA to continue to work with its customers, in an open fashion, to ensure that adequate transmission capacity is available to serve northwest loads.” (Snohomish, REG-131) WMG&T opines that “all transmission issues affecting the Regional Dialogue and customer development of non-Federal resources must be addressed concurrently with the Regional Dialogue policy development.” (WMG&T, REG-106)

Several customers identify the need for resolution of these transmission issues prior to the offer of new Regional Dialogue power contracts. Emerald requests resolution “well before [BPA] offer[s] new power contracts to Preference Customers[.]” (Emerald, REG-137) PNGC asserts that “[i]t will be impossible for customers to make informed choices about future load service without the pressing transmission issues being answered.” (PNGC, REG-133) “PPC requests that, through discussions with its preference customers, BPA commit to resolve all of these issues as soon as possible but no later than July 1, 2007.” (PPC, REG-133)

### **Evaluation and Decision**

The Regional Dialogue has primarily focused on power issues, with BPA’s Power Services leading the effort. The public comments raise questions and concerns about Transmission Services’ OATT, business practices and rates, and how Transmission Services implements them. Transmission Services will address these transmission issues with its customers in a separate, public forum.

BPA Transmission Services has begun a public process to address these transmission issues with its transmission customers. The process will provide education and clarity on transmission business practices in order to support BPA’s regional power customers’ timely post -2011 resource choices. Transmission Services may determine that changes to its Open-Access Transmission Tariff, Business Practices, rates, or policies are required or desirable to address customers’ issues. Transmission Services intends that the process will ensure comparable treatment of transmission services or resource acquisition whether the resource is acquired directly by the customer or by Power Services. Transmission Services will complete its process well in advance of the date on which Power Services offers contracts to its customers. Transmission Services will complete the process in a timely fashion to assist Power Services and its customers as they develop power products for inclusion in the long-term power contracts.

Transmission Services has convened an executive-level steering group that will guide three technical groups. The first technical group will address integrated planning issues; the transmission system planning issues raised in Regional Dialogue will be addressed by this group. This group will also discuss the role ColumbiaGrid would play in addressing integrated planning issues at the regional level. The second technical group will address Transmission Services' proposed Commercial Infrastructure Policy, and the transmission investment financing issues raised in the comments and questions. The third technical group will address the remaining Regional Dialogue transmission issues and questions.

With its customers, Transmission Services will develop guidance for discussions and the development of recommendations for input to Transmission Services' consideration of whether to propose changes to the OATT, business practices, rates or policies, as applicable. Transmission Services expects to develop guidance that reiterates BPA's role as an open-access transmission provider, support the development of reasonable procedures governing applications for new Network Integration transmission service, support the comparable pricing of transmission to wheel Federal and non-Federal resources to customers' loads, and support the efficient use of the transmission system.

Transmission Services will consider proposals and recommendations resulting from the process. Transmission Services will decide whether to implement any such proposal or recommendation after taking the proposal or recommendation through Transmission Services' existing processes used to propose changes to its OATT, business practices, rates or policies, as applicable. Persons wishing to comment formally on a proposal or recommendation will make their comments in those processes and at that time.

## IV. SLICE PRODUCT

### INTRODUCTION:

BPA's Policy Proposal included 10 principles and an outline of proposed modifications to the Slice product for post-2011 that were designed to address issues and concerns related to the current Slice product as described in BPA's May 2005 Draft Slice Report. In response to that report and subsequent customer requests to comment on the report, and as part of the Regional Dialogue process, a Slice Product Review Team (Team) was formed that included representatives from BPA, Slice customers, NRU (representing 52 non-Slice customers), and non-Slice customers. The goal of the Team was to establish broad alignment on a preferred Slice alternative for post-2011 after considering the modifications needed to address the issues and concerns.

The Team identified four potential alternatives for a future Slice design. The four alternatives were described as follows:

***Alternative 1:*** Replace the Slice product with flexible power and capacity products at appropriate cost-based rates.

***Alternative 2:*** Continue sales of the Slice product at approximately the current amount, with modest reductions in the current level of operating flexibility and/or clarification of the nature of the capacity rights and flexibility.

***Alternative 3:*** Offer an expanded quantity of the Slice product, but with sharply scaled-back operational flexibility. For example, increase the lead-time for hourly pre-scheduling, with no rights to change.

***Alternative 4:*** Offer an expanded quantity of the Slice product, leaving the operational flexibility similar to current practice and addressing administrative terms and issues that are perceived to cause customer dissatisfaction.

After much discussion, the Team agreed to focus their effort on better defining Alternative 2 as the preferred alternative. Partial consensus was reached regarding overarching principles as well as a conceptual design of Alternative 2.

The Team concluded that there were several broad issues to be discussed in the larger Regional Dialogue process, which would need to be factored into the final design of the Slice product. The Team also concluded that complete consensus had not been reached on the proposed design, that the product design was not comprehensive, and that there would need to be further discussion and negotiation regarding the ultimate product design of the post-2011 Slice product.

The modifications to the Slice product cover two main areas: (1) a recognition that certain issues need to be resolved in order to have fewer disputes, more certainty regarding the product terms and conditions for service, and clarity over what the customer has purchased; i.e., requirements power and surplus power indexed to the variable energy output of the applicable FCRPS resources with defined hourly scheduling limits indexed to the operating constraints of the applicable FCRPS resources, rather than a sale of resource capability; and, (2) a need to ensure the product better fits with a tiered rates construct and the differentiation in service that will be needed to implement tiered rates. This leads to a need to more precisely define the Slice product and its components and to coordinate Slice product design with other product designs for load service, all of which will have to fit within the tiered rate decisions that BPA will be making.

Numerous comments were submitted to BPA with regard to the Slice proposal outlined in the Policy Proposal. After considering those comments and other factors, BPA has decided to offer a Slice product for the post-2011 period. BPA will offer an amount of Slice up to 25 percent of the FY 2011 planned firm Federal Base System (FBS) resources. This represents a modest increase above the amount of Slice currently contracted. The design of the Slice product will be guided by the 10 principles and will be based upon the concepts described in the Policy Proposal as Alternative 2. Under the Alternative 2 design, Slice will maintain its core value as a highly flexible power product that includes the right to adjust schedules up to 30 minutes prior to each hour (as long as this remains the standard scheduling practice) within defined hourly scheduling limits. This scheduling flexibility will allow Slice customers to integrate resources, follow hourly load variations, meet their firm consumer load, and effectively market their portion of surplus power.

For purposes of the Slice section of this ROD, BPA defines “resource integration” as managing hour-to-hour variations in non-Federal resource output. BPA is not referring to within-hour variations in non-Federal resource output or the ancillary services needed to integrate non-Federal resources into the transmission grid or AGC system of a Control Area. Those services are not sold under or included in the Slice product.

For purposes of the Slice section of this ROD, the term “FBS” or Federal Base System has the meaning given under section 3(10) of the Northwest Power Act. The term “FCRPS” is generally used to describe those Federal system resources applicable to the indexed power service calculated and provided by the Slice product. The FCRPS resources that are applicable to the post-2011 Slice product and contract will be specified in the contract.

The decision to offer Slice in the form of Alternative 2, and up to 25 percent of the planned firm power from the FBS, balances regional interests, and allows BPA to supply reliable service to all its customers.

**Issue 1:**

**Whether BPA will offer a Slice product for post-2011.**

## **Policy Proposal**

In the Policy Proposal, BPA summarized the substantial process that had taken place to study and review the Slice product implementation for the purpose of determining if modifications were warranted. These processes were performed under the assumption that some form of Slice would likely be offered in the future. The main goal was to develop principles and alternative proposals for design concepts that would guide the future Slice product, and to achieve general alignment among BPA and the interested parties on a preferred alternative. The result of this process was significant alignment and development of 10 overarching principles and a proposed alternative for the post-2011 Slice product known as Alternative 2.

The Policy Proposal was clear that the future offering of a Slice product would also depend upon a successful resolution of the Slice litigation on the Contract Year (CY) 2002 True-up Adjustment Charge, which was unresolved at the time of the Policy Proposal. BPA also stated that while regional discussions relating to numerous outstanding operational issues were continuing, a successful settlement of the Slice litigation would remove some of the concern that Slice presents an unacceptable risk to BPA of cost shifts to other customers, and would positively influence the future offering of the product.

## **Public Comments**

Comments received on this issue were mixed, and for the most part were supportive of the continuation of a Slice product. Several comments suggested that BPA should offer Slice, or that Slice should be among BPA's product choices. (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002; Franklin, REG-012-01; Benton PUD, REG-012-02; Grays Harbor, REG-013-15; WPUDA, REG-080; Kittitas, REG-087; Okanogan, REG-112; Grays Harbor, REG-116; Snohomish, REG-131; PPC, REG-132; PNGC, REG-133; Tacoma, REG-135; SCL, REG-149-03; Grays Harbor, REG-149-23) Many comments support the continuation of Slice based on the benefits the product provides to BPA, BPA's customers, or the region, such as mitigating BPA's hydro and Treasury payment risks, enhancing the customers' ability to integrate non-Federal resources, and providing flexibility needed to meet customer loads. (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002; Raft, REG-005; Benton PUD, REG-012-04; PNGC, REG-013-05; Grays Harbor, REG-013-015; Idaho Falls, REG-022-13; Franklin, REG-100; Benton PUD, REG-114; Grays Harbor, REG-116; SCL, REG-128; Snohomish, REG-131; PNGC, REG-133; Clearwater, REG-134; Blachly-Lane, REG-140; Slice, REG-144; SCL, REG-149-03; Grays Harbor, REG-149-23) Some comments indicate support of continuing Slice because it has provided the benefit of either creating a more robust working relationship with BPA, or an increased knowledge and appreciation of BPA issues. (NWasco, REG-055; Franklin, REG-100; Grays Harbor, REG-116) Benton PUD stated that since the true-up settlement is complete, Slice should be re-offered. (Benton PUD, REG-114) Northern Wasco commented that they supported Slice in 2001, and to the extent BPA is satisfied that necessary changes are made, they support Slice for the future. They also stated, however, that if the necessary changes are not made, they support discontinuing Slice with post-2011 contracts. (NWasco, REG-055) Some entities offered support of a Slice product, but only if the Alternative 2 framework is adopted as the basis for the product design. (Richland, REG-091; NRU, REG-103)

Richland Energy Services indicated some opposition to Slice stating, “Slice has been exceedingly contentious.” (Richland, REG-091) Benton REA stated that they are “not a proponent of Slice.” (Benton REA, REG-094)

### **Evaluation and Decision**

Comments from current Slice customers expressed support for the continuation of the Slice product due to the numerous benefits the product provides, including assistance in integrating non-Federal resources via scheduling flexibility. Some customers who may consider purchasing the Slice product for the next contract period also support the continued offer of a Slice product. However, not all customers favor or support Slice and some customers, such as Northern Wasco reservedly support Slice, and only if it is consistent with and based on BPA’s design concepts. NRU, an entity representing 52 regional load-following utilities, only supports the continued offering of the product if it is modified consistent with the Policy Proposal principles, the Alternative 2 proposal, and is limited to 25 percent of the system.

BPA agrees the Slice product provides potential benefits to its customers and the region, and is in line with regional goals, including advancing renewable resource development by enabling more customers to integrate non-Federal resources as needed for their own load growth, reducing BPA’s need to acquire new generation, and enhancing BPA’s assurance of meeting its payments to Treasury in any given year. Slice customer use of a portion of the FCRPS flexibility for resource integration, however, raises additional issues concerning all customer access to, and use of, FCRPS flexibility for load and resource support or integration.

Some comments raised issues regarding Slice and questioned the continued offering of the product. As Richland commented, Slice has been exceedingly contentious and has caused friction between customer groups as well as between customers and BPA. As the Slice customers point out, BPA and the Slice customers have demonstrated an ability to work together to resolve very contentious issues. As NRU noted, assistance from other parties is helpful as Slice customers and BPA work together to resolve contentious issues. As an example, NRU participated in discussions regarding the return of Excess Requirements Energy for CY 2007 on behalf of some of BPA’s load-following requirements customers.

One of BPA’s founding principles for the Slice product was that it would recover its costs and not shift costs to other customers. The Slice litigation on the CY 2002 True-Up Adjustment Charge raised the concern of cost shifts to other customers, but was ultimately resolved by a settlement agreement that was acceptable to all parties involved. As Benton suggested, resolution of this issue was a factor in BPA’s decision to continue Slice.

BPA understands that the Slice product sparks significant interest among some of BPA’s requirements customers who would like the opportunity to consider Slice as an option among BPA’s product offerings. BPA has considered the Slice product as a customized product selling both firm power for the customer’s net requirements load and surplus power. BPA’s overall goal is to offer a range of products that are responsive to customer needs and are within the principles and parameters BPA sets for its products.

BPA fully understands that the Slice product is an intriguing option for providing power and services to meet customers' load needs while allowing a purchaser to obtain and use a portion of the Federal system surplus power. BPA believes the Slice product provides a balance to BPA's secondary power marketing risk created by variable water and market conditions. BPA has concluded that it will offer a Slice product for the post-2011 period.

## **Issue 2:**

### **Whether BPA has selected a set of overarching principles to guide development of the post-2011 Slice product?**

#### **Policy Proposal**

BPA stated that in 2001, in response to customers' request that BPA develop and offer a Slice of the System product, BPA determined five overarching principles that the product would have to meet and not transgress. They were:

1. No risk or cost shift to non-Slice ratepayers.
2. No risk or cost shift to taxpayers.
3. Slice must recover its share of fish-related costs.
4. No interference in Federal Columbia River Power System (FCRPS) operating decisions.
5. No change in Federal law.

BPA proposed a revised set of overarching principles that the Slice product must meet that are key to the post-2011 Slice product design. These principles will set the boundaries or sideboards for contract negotiations, product design, and the amount of Slice product offered. Any future Slice product offering will need to conform to all other applicable decisions arising from the Regional Dialogue process.

The following principles were discussed and refined during a coordinated Slice Product Review process that included representatives from BPA, Slice customers, NRU, and non-Slice customers between the fall of 2005 and early 2006. Consensus among the participants and BPA was not reached on all of the proposed principles and BPA added the italicized words for clarification of its Policy.

NOTE: Italicized portions of principles 3, 6, and 8 are clarifications made by BPA subsequent to submittal of the July 13 Policy Proposal.

1. There are no unintended shifts of costs, risks or benefits between power products and all power products bear a share of the costs and risks.
2. There is no risk or cost shift to Federal taxpayers.
3. Slice purchasers bear an allocation of FCRPS costs and risks and receive a *commensurate amount* of FCRPS energy, hourly scheduling flexibility and specific BPA power revenues.

4. To the maximum extent possible, the rate adjustment mechanisms for common cost components in the Slice and other PF power products are the same.
5. FCRPS operating decisions are solely Federal decisions, and there will be no interference in those decisions.
6. BPA estimates of *applicable* FCRPS *resource* capability, after reducing such capability for system obligations, determine Slice delivery limits for pre-schedule.
7. BPA will establish a forecast system operation that accommodates Slice and non-Slice customer pre-schedules.
8. Delivery limits established for real-time will reflect BPA's determination of the updated flexibility of the *applicable* FCRPS *resources*, as determined by FCRPS operating decisions establishing actual system configuration.
9. The Slice product will not include within-hour load-following, dynamic scheduling or ancillary services. Generating capacity and energy provided from the FCRPS to TBL for Interconnected Operating Services will come "off the top," and revenues PBL receives from TBL for those generating inputs will be shared on a proportional basis.
10. The Slice product offering will require no changes in Federal law.

### **Public Comments**

Only a few comments submitted through Regional Dialogue specifically addressed the proposed principles. The Slice customers indicated strong opposition to the principles that exclude from the Slice product, provisions that allow for self-supply of ancillary services using the Slice resource (Principle 9). The comments also pointed out the current Slice customers did not agree, in the Slice Product Review, on all the new directions BPA had proposed. (Benton PUD, REG-114; Slice, REG-144) Slice customers and several other customers expressed general opposition to the Slice proposal, including changes and additions to the above proposed principles. (Raft, REG-005; WPUDA, REG-080; Benton PUD, REG-114; Grays Harbor, REG-116; SCL, REG-128; PPC, REG-132; Clearwater, REG-134; Slice, REG-144; Grays Harbor, REG-149-23; PNGC, REG-150) NRU voiced support for the 10 principles characterizing them as an improvement over the original five principles. NRU believed the original principles were too general and reflected a lack of experience in operating under the product. (NRU, REG-103) Renewables Northwest Project (RNP) expressed concern that the Slice product would impede service from BPA's system to other users and indicated support for Principle 9. That principle states the Slice product will no longer include within-hour flexibility and RNP stated "that flexibility should be retained for the system as a whole". (RNP, REG-013-02)

### **Evaluation and Decision**

BPA's Slice Product Review process was an open discussion of issues on the product with a goal of reaching consensus on those issues prior to BPA's publication of its proposal.

Participants understood that although consensus was a goal, it also was not a requirement for adoption of BPA's proposal on Slice. BPA understands that consensus was not reached on all issues or on all the principles and that some Slice customers oppose some aspects of BPA's proposal. BPA also understands that some customers who do not buy Slice requested that BPA drop the product and not offer it again. As stated above, BPA will offer a Slice product, but it will incorporate some changes relative to the current product. BPA and all of its customers need a set of principles that will guide BPA's offer of the next Slice product, whether or not all parties agree on the specifics of those principles.

NRU, Northern Wasco, and other non-Slice customers voiced support for the proposed principles, finding that they more specifically stated the goals and limitations needed for the product. They do not oppose BPA offering the product as long as it does not impact their service and they do not bear the costs of the product or its risks. On the other hand, Slice customers agree with some of the principles but object to others as too constraining or as changing the product's features in a basic way. For example, they agree the sharing of revenues provides value, while they object to the loss of "flexibility" available in the current product as proposed in Principle 9. Other principles are also viewed as a potential "take-away." BPA understands the Slice customers' resistance to modifying aspects of the current product that in their view do not need to be changed. However, BPA is making significant changes overall to its power rates and power service contracts as part of this Regional Dialogue Policy. BPA must balance change to the terms and conditions of the Slice product against changes in its other products and service obligations to its other requirements customers. BPA also must balance the Slice product rights and obligations against its other general obligations, including its non-power obligations. BPA views these principles as a necessary element of achieving that balance and as enhancements to the five principles that guided the design of the original Slice contract.

The objective of the Policy Proposal was to define Slice as a system sale of requirements power and surplus power indexed to the variable energy output of the applicable FCRPS resources with defined hourly scheduling limits indexed to the operating constraints of the applicable FCRPS resources rather than a sale of resource capability. Principle 3 is critical to the goal of clearly defining the product in this manner with no room for interpretation that the product is a sale of capability. Principle 9 further clarifies this same key issue of product definition, by stating the Slice product is not a load-following product, it will not include dynamic scheduling or within-hour flexibility, and it will not include the ability to self-supply ancillary services using the Slice resource. Slice customers will continue to have access to ancillary services through BPA Transmission Services (or other Control Areas) on the same terms as other customers. Also, Slice customers that own non-Federal resources will be able to dynamically schedule from those non-Federal resources under BPA Transmission Services' business practices.

The proposed principles retain for the next Slice product the core interests BPA had to address when it initially offered the Slice product and provide the needed refinement based on the Regional Dialogue context and experience with the product. The principles offer the same protections to taxpayers, our customers, and ensure BPA can meet its responsibilities and obligations of the Federal system. The principles continue to provide the vast majority

of the core flexibility and value of the present Slice product. Slice is an unusually flexible and innovative product that allows customers to state how much Federal power they plan to take each hour of the next day, and then modify that amount for each hour all the way up to 30 minutes before the hour begins, 7 days per week, 24 hours per day. This huge degree of flexibility allows Slice customers to actively match their hourly schedule of Federal power to their hourly retail load changes. It also allows them to manage their volatile non-Federal resource purchases, such as wind, all the way up to 30 minutes before the hour when forecasts are quite accurate, and then adjust their schedule of Federal power to integrate the output of that resource smoothly into their system. Finally, the Slice product flexibility allows the Slice customers to watch the competitive wholesale power market, and move in and out of buying and selling the surplus Federal power depending on the changing conditions of the market.

It would be very difficult to find a product similar to the Slice product that allows as much scheduling flexibility at a rate based on the low cost of the Federal Base System elsewhere in the market. The basic value and core scheduling flexibility remain virtually unchanged by the principles that have been modified from or added to the original five principles.

Even though complete consensus was not achieved with regard to the principles and Slice product design, comments indicate that BPA needs to reach a balance between those who would prefer BPA not offer a Slice product and those who prefer a continuation of the current product with no changes. A sufficient degree of consensus was reached during discussion and given the changes that BPA intends for other requirements power products and rates for the post-2011 contracts, a change in these principles is not only desirable but needed. BPA believes these principles represent a sound, fundamental direction for the Slice product that will provide mutual benefit while ensuring BPA can maintain and meet all of its regional responsibilities. Therefore, the principles listed above will be used as guidance for the design of the post-2011 Slice product.

### **Issue 3:**

**Whether BPA should use Alternative 2 as described in the Policy Proposal for the design concepts that guide development of the post-2011 Slice product?**

### **Policy Proposal**

The Policy Proposal summarized the significant process that led to four alternatives that were under consideration as the basis for the design of the post-2011 Slice product. Given discussions among the Team, BPA proposed using Alternative 2 for its Slice product offering under the Regional Dialogue contracts for the post-2011 period. Alternative 2 was described as: Continued sales of the Slice product at approximately the current amount, with modest reductions in the current level of operating flexibility and/or clarification of the nature of the capacity rights and flexibility. The Policy Proposal included a detailed outline of Alternative 2, including numerous product design concepts that had been developed through the effort of the Team.

As discussed above, although there was not complete consensus on every aspect of Alternative 2, there was sufficient support for certain specific changes to the Slice product

under this design and the Team decided to move forward with further discussion of the alternative. Therefore, BPA identified it as the preferred alternative in its Policy Proposal.

### **Public Comments**

Comments regarding Alternative 2 were numerous and varied with some in favor and others opposed to the proposal. Several current Slice customers and others expressed concern that the proposed design appears to move the Slice product away from their view of the two fundamental principles that make Slice successful. Their first principle is that Slice purchasers pay a fixed percentage of system cost and in return receive the same pro rata percentage of Federal system power output and services. Their second principle is that Slice purchasers take on the risk of variable hydro conditions while accepting the responsibility to manage their percentage share of Federal system output to meet their load, and in return receive access to the same system flexibility that is available to BPA. (Raft, REG-005; WPUDA, REG-080; Benton PUD, REG-114; Grays Harbor, REG-116; SCL, REG-128; PPC, REG-132; Clearwater, REG-134; Slice, REG-144; Grays Harbor, REG-149-23; PNGC, REG-150) There were several comments indicating general opposition to the proposed product design, suggesting the product should be kept as is (Alternative 4). (Raft, REG-005; Franklin, REG-012-01; Benton PUD, REG-012-02; PNGC, REG-013-05; Franklin, REG-100; WPAG, REG-109; Okanogan, REG-112; Benton PUD, REG-114; Grays Harbor, REG-116; SCL, REG-149-03) Several comments were in opposition to specific proposed design concepts related to Alternative 2, including the removal of the ability to self-supply ancillary services using the Slice resource, the inclusion of operational buffers in the off-the-top obligations, the reduction of flexibility or capacity rights, and limiting the quantity available. (Benton PUD, REG-012-04; PNGC, REG-013-05; Fall River, REG-076; Benton PUD, REG-114; Grays Harbor, REG-116; Tacoma, REG-135; Slice, REG-144) Okanogan CEA suggested BPA is attempting to limit the appeal of Slice by cutting back on its benefits. (Okanogan, REG-112)

Several comments suggested that the Slice product design should not diminish its positive benefits, such as assisting with integration of resources and following variable loads. (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002; WPUDA, REG-080; Snohomish, REG-131) Snohomish stated BPA's power products should be developed cooperatively with the customers. (Snohomish, REG-131) Tacoma, a current Block product purchaser, commented that BPA should not diminish Slice capacity for the benefit of BPA's marketing purposes, create advantages for BPA in the market for resource integration, or remove capacity rights and replace them with revenue credits. (Tacoma, REG-135) The Slice customers pointed out in their joint comments that the Slice Product Review process did not provide consensus on all new directions and principles BPA proposed, and voiced concern that the off-the-top buffer proposals appeared to allow BPA to reserve capacity on a subjective basis. (Benton PUD, REG-114; Slice, REG-144) PNGC also stated that the Policy Proposal appeared to be trying to fix elements of the product that are not broken. (PNGC: REG-133)

BPA also received comments favoring the design aspects of Alternative 2. Northern Wasco stated they are relying upon BPA to "make the call" on necessary changes and if BPA is not satisfied with those changes they support discontinuing Slice for post-2011. (NWasco,

REG-105) Benton REA and others stated BPA should limit Slice flexibility and retain the benefit for BPA's ability to efficiently manage the FBS for all of its customers. (Benton REA, REG-094; NWECC & SOS, REG-110) NRU (representing 52 non-Slice customers) stated that if Slice customers are not satisfied with Alternative 2, then they recommend Alternative 1, which was to "Replace the Slice product with flexible power and capacity products at appropriate cost-based rates." NRU participated in the Slice Product Review, and their written comments reflect their belief that under Alternative 2 Slice customers will retain sufficient flexibility for purposes of both meeting load needs, for integration of resources and for their own marketing. They support the 10 Slice principles as an improvement over the original five. They suggest that BPA's list of off-the-top capacity and energy obligations removed prior to calculating Slice amounts, may need to be expanded; and, they agree the Slice product needs to be clearly defined as a system sale of requirements power indexed to FCRPS capability, rather than a sale of capability. (NRU, REG-103) RNP and NRU stated that they agree with the proposed elimination of self-supply or intra-hour flexibility. (RNP, REG-013-02; NRU, REG-103) PNGC commented that it could be clearer that integration of renewables is an off-the-top obligation, and agreed minor changes could be made to improve the Slice product. (PNGC, REG-013-05; PNGC, REG-133)

### **Evaluation and Decision**

BPA received comments, primarily from current Slice customers, indicating concern or disapproval of the proposed Alternative 2 design concepts, mostly in terms of the perception that Slice is moving away from its current pro rata concepts as stated in the comment section above. These comments illustrate one of the fundamental issues regarding Slice. There is a significant lack of alignment between the Slice customers and BPA with regard to the fundamental nature of the Slice product, or what was sold under Slice. BPA will clarify the nature of the post-2011 Slice product. For example, Issue 6 addresses the nature of the Slice product, and Issue 7 addresses the pro rata concept.

There were numerous comments indicating a desire to keep Slice unchanged, as described in Alternative 4. The original Slice product was designed as a pilot, with the understanding that BPA would review its implementation and decide whether the product should be modified or discontinued. BPA's review of the product in 2005 and the ensuing meetings of the Team determined there are several significant issues related to the Slice product that warranted refinement of the product, especially given that the product is being proposed for a duration of 20 years. In addition, BPA and its customers will be facing a different mix of products and services within a tiered rates environment in FY 2012 than today. BPA is proposing to tier the PF rate, to segregate costs of additional load service from existing load, and to apply a different treatment of a customer's non-Federal resources which are applied to its load growth after 2011. Slice is already a complex product and BPA is concerned about the increasing complexity that tiering may impose on the Slice product. In addition customers are requesting, as part of BPA's Regional Dialogue process, that there be strict cost accounting and separation of costs between Tier 1 rates and Tier 2 rates and that the cost of service under either not be mixed.

BPA has yet to fully develop its rate or product proposals for post-2011 and the present proposal on products will provide direction for the next steps. During rate design and

contract negotiation it is possible that the Slice product will face additional changes beyond those described herein. The proposed modifications to the product and principles make needed clarifications to the service provided and define the product in a way that will reduce contentious disputes and conflicts over services that BPA has had with Slice purchasers in the past. These modifications should also reduce the particular challenges the Slice product presents in terms of BPA tiering rates and the costs of additional service.

Okanogan REA suggested BPA is attempting to limit interest in the Slice product by “cutting back on its benefits.” (Okanogan, REG-112) BPA is not attempting to limit interest in Slice by making the product less attractive. BPA is attempting to clarify the nature and content of the Slice product and remove ambiguity and potential for misinterpretation of what services the product provides. Okanogan’s assertion reflects a position that explains why BPA needs to make clarifications in the product. The Slice product offered by BPA will provide power and services to a purchaser at a Tier 1 rate based on costs allocated to that rate. Slice purchasers are able to buy firm power for their firm load and to buy surplus power at a rate likely far below market. Purchasers also have hourly scheduling flexibility and are able to vary the amount of energy they take based on BPA’s standard scheduling procedures. As discussed previously, Alternative 2 is a refinement to some aspects of the current product—it is not a wholesale redesign of the product. BPA’s expectation is that applying the design concepts of Alternative 2 will result in modest reductions to scheduling flexibility since scheduling limits will more accurately reflect actual system capabilities and operations. Slice will still retain an extensive amount of value and hourly scheduling flexibility and will continue to be a unique and innovative product.

With regard to comments indicating concern over the ability of Slice customers to use the Slice product to integrate non-Federal resources, BPA’s proposed Alternative 2 does not prevent a customer from utilizing some of the product’s scheduling flexibility for this purpose. However, as is the case with the current Slice product, the post-2011 Slice product will specify a priority use of the firm power for meeting the customer’s net requirements load, so the scheduling flexibility must be used for that purpose ahead of other uses, including resource integration.

Other comments suggested BPA should not “lock in” product design at this stage, arguing that BPA is not defining other products in as much detail, and suggested BPA should instead develop this detail during the product development and contract negotiation phase. BPA had undertaken a review of the Slice product earlier and is addressing those discussions. BPA has decided to follow the adopted principles as well as the concepts of the proposed Alternative 2, as developed in conjunction with Slice customer and non-Slice customer representatives, as the basis for the design of the future contract.

Given the extensive technical and policy level review and discussions that were held as part of the Slice product review that preceding the development of the Policy Proposal, it would be counter-productive to return to ground zero and debate these same issues again. BPA would rather turn to the development of the product and contract language. This proposal has not fully developed or locked in every design aspect of the post-2011 Slice product. However, BPA is deciding to (1) offer a Slice product for the next contract period, and (2) to

adopt the above principles and Alternative 2 concepts as the basis for further work on the Slice product for the post-2011 contract offer.

Tacoma expressed that BPA had not “demonstrated that reductions in capacity rights for Slice purchasers will yield comparable flexibility to Slice purchasers and [BPA] Power Services as the marketer of the remaining Tier 1 capability,” and that “BPA should not create advantages for Power Services in the market for resource integration.” Tacoma also stated BPA should not replace the Slice purchaser’s capacity with revenue credits. (Tacoma, REG-135) Tacoma does not buy Slice but appears to believe that the Slice customer is in competition with BPA for capacity from the Federal system. Regarding Tacoma’s comment on comparable flexibility to Slice purchasers and Power Services when marketing Tier 1 capability, Slice purchasers simply do not stand in the same shoes as BPA when it markets power under Federal statutes, and the Slice product is not intended to do so. The Slice product is a sale of power from BPA to the Slice customer and is not a right to Federal generating capability. BPA is offering scheduling flexibility to the Slice customer to meet its load and assist in its integration of resources for load.

Slice customers also voiced concern that the off-the-top buffer proposals appeared to allow BPA to reserve capacity on a subjective basis. An “off-the-top buffer” is basically an operating margin that ensures the Federal system can meet all of its obligations even in the event of a contingent occurrence that reduces Federal system capability. A basic principle of the Slice product is that the product gives no rights to the purchaser to determine system operations. The product must not, in any way, allow interference with BPA’s other system obligations including operations in support of fish and wildlife programs, system reliability, and system emergencies. Changes to the system’s generating capability can occur unexpectedly and in large magnitudes. BPA, along with other Federal agencies—the Corps of Engineers and the Bureau of Reclamation—is responsible for operating the Federal system in a prudent and reliable manner. The Slice customers have no such similar responsibility either individually or as a group. BPA must exercise its judgment when setting up system power delivery limitations, including the amount of system capacity BPA keeps in reserve to meet any contingencies that may occur. To the extent those operating limits reflect the professional judgment of BPA trained staff, it is appropriate that they do so. Congress placed that responsibility on BPA and other Federal agencies.

BPA recognizes that further steps are needed before any final product design or final contract offer is ready. BPA will continue to review and develop the post-2011 Slice product in coordination with interested parties through the product development process. This process will be open to the public and to customers. The design will be based on the adopted principles and the concepts described in the outline of Alternative 2 in the Policy Proposal.

**Issue 4:**

**Whether BPA should limit the availability of the post-2011 Slice product to a specific percentage of the FBS firm capability?**

### **Policy Proposal**

BPA proposed limiting the amount of Slice offered to 25 percent of the existing FBS firm capability for FY 2011, which is expected to be roughly 7,100 aMW, provided this amount of Slice does not violate private use restrictions on Energy Northwest debt. This represents a potential increase of about 160 aMW above the firm amount of Slice sold for CY 2006 under the current Slice contract. This modest increase is consistent with all parties' perspective that little, if any, new interest in Slice is expected.

### **Public Comments**

This specific question of a limited amount of Slice product for post-2011 was raised by the Slice customers through their joint comments, and was reiterated through other comments. (Benton PUD, REG-114; Slice, REG-144) Congressmen Hastings, Simpson, Walden, and Otter asked why such a limit is necessary. (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002) Several comments support a limit on Slice availability, though some thought the timing may be premature for determining what the limit should be. (NWasco, REG-055; Kittitas, REG-087; Benton REA, REG-094; SUB, REG-126) NRU indicated they would support Alternative 2, but not beyond 25 percent of the FBS. (NRU, REG-103)

Numerous comments from Slice customers were in opposition to the limit for various reasons. Benton PUD and the Slice customers stated BPA should not restrict the volume of the Slice product as doing so could undermine its positive impacts, such as serving customers well, meeting key objective of the agency, and providing benefits to the region. They stated that Slice was no longer a new product and that BPA and customers have had several years of experience with the product and did not need to limit the amount sold. They also raised concern that limiting the quantity could make the product less viable if Slice becomes a smaller portion of the customers' power portfolio. (Benton PUD, REG-114; Slice, REG-144) Several customers suggested that setting a limit was either premature, arbitrary, or unreasonable. (WPUDA, REG-080; SUB, REG-126; PPC, REG-132; PNGC, REG-133; Clearwater, REG-134; PNGC, REG-150) Tacoma stated that the proposed limit on Slice sales was too low. (Tacoma, REG-135) Several comments state opposition to a limit if the limit results in the inability to meet load fluctuations. (WPUDA, REG-080; SUB, REG-126; PPC, REG-132; Emerald, REG-137) Other comments stated that enough Slice should be available to meet customer requests. (WPAG, REG-109; Benton PUD, REG-114; Grays Harbor, REG-149-23) Cowlitz stated opposition to limiting Slice if Slice is the only load-following product that allows integration of resources. (Cowlitz, REG-118) Springfield suggested that limiting Slice would likely limit interest in the product, since the limit on the original offer was part of the reason they decided on an alternative product. (SUB, REG-126) Two Slice customers suggested that they had not yet decided to buy the Slice product and may not choose Slice in the future. (Umatilla, REG-012-08; Snohomish, REG-131)

### **Evaluation and Decision**

There are several reasons BPA believes it is prudent to limit the amount of Slice to roughly the current amount. BPA has successfully managed Slice at 22.6 percent of the FBS for over 5 years, so BPA is fairly confident it can manage a similar amount into the future. However,

BPA is not confident it can manage an amount that is significantly greater than the current amount, given unforeseen electric utility industry changes and complexities that may occur over the next 20 years. Slice is extremely complex and raises many concerns. For example, Slice introduces load uncertainty into BPA's operational goals, raises concerns of cost shifts between customers, and raises concerns regarding the equitable use of capacity for all of BPA's requirements customers. The non-Slice customers, represented by NRU, are very concerned about these and other issues, and prefer BPA offer Slice in an amount similar to the current 22.6 percent level. Slice customers, on the other hand, would prefer that BPA place no limit on Slice. The 25 percent limit reduces some of the concern over these issues and balances the opposing views of BPA's customers regarding how much Slice should be offered.

BPA's proposal to limit Slice to 25 percent of the FBS resource reflects a potential increase in the amount of the Slice product BPA will offer to qualified customers under its post-2011 contract. In 2000, BPA proposed a limit of 2000 aMW to be sold as Slice and customers ultimately signed up for about 1600 aMW of the product. Several customers who had considered buying the product decided not to do so very late in the process. The representations made by Slice customers in Regional Dialogue discussions were that they did not expect any great change in the amount of Slice they or others would buy. Further, some customers are considering buying Slice for the first time while others who are currently buying Slice are considering alternative product options.

Regarding the suggestion that the Slice product is no longer new and BPA should be willing to offer more of it, BPA has faced disputes and novel issues each year of the Slice contract. After nearly 6 years of Slice implementation, there continues to be significant disputes and issues that must be resolved regarding the intent and implementation of the Slice product. An example is the ongoing discussion regarding provisions related to Excess Requirements Energy that BPA can call upon due to loss of requirement loads on the part of the customer (Exhibit N of the Slice contract). Like many Slice provisions, many issues and disputes arise which require significant time and attention to resolve, once implementation of a provision is needed. BPA will face additional issues with its tiering and changes to products that will have to be worked out.

BPA also disagrees that generally successful implementation of the current contract means there are not issues to address or that it eliminates justification for a limit on the amount of Slice offered for the future contract. One of the reasons the Slice product has been successfully implemented has been the ability for BPA to utilize the rest of the FCRPS flexibility to absorb and manage discrepancies between the Slice customer scheduling limits (as determined by BPA) and actual system operational limits. If the Slice product percentage were to increase, then the magnitude of these potential discrepancies would also increase and the ability to manage them would be reduced as the amount of remaining FCRPS flexibility is reduced.

Some customers have expressed that they will support BPA's offer of Slice only if it is in approximately the same amount as currently sold. (NRU, REG-103) Still other customers are comfortable with BPA's proposed amount and will leave it to BPA discretion to

determine the amount and if the Slice product should be offered. (NWasco, REG- 055) As BPA has pointed out, many issues have been raised that are unresolved. If the current issues are resolved through improved product definition and design, there is a high probability the proposed increase (from 22.6 percent to 25.0 percent) in Slice will be manageable and without major problems for the long term. BPA agrees with NRU, who speaking on behalf of 52 non-Slice requirements utilities, stated the proposed limit is prudent given the future of increased wind integration needs of both Slice and non-Slice customers, the uncertain priority uses of ever-shrinking system capacity, and the potential that selling large amounts of additional Slice could compound already difficult service issues, such as recalling Excess Requirements Energy (Exhibit N of the Slice contract). NRU made it very clear that they will not support Slice, in the form of the proposed Alternative 2, beyond 25 percent. In determining an appropriate amount of Slice to offer, BPA must consider the needs of all of its customers. BPA cannot focus upon one group desiring one product from the Federal system.

Several comments suggested a limit is premature, since BPA cannot know what level of customer interest there will be for Slice. Though BPA does not know how much future interest there will be in the Slice product, only one non-Slice customer has indicated a serious interest in Slice to BPA. On the other hand Umatilla stated they are “not as well off as if they had stayed a full service customer” and Snohomish said they “may or may not continue to purchase the Slice product.” Interest in Slice may actually drop from the current level. (Umatilla, REG-012-08; Snohomish, REG-131)

Several comments indicate customers are concerned that limiting the quantity of Slice may render the product less useful in following hourly load changes or changes in non-Federal resource output because of a reduced level of Slice within their individual Slice/Block mix. The Slice product is not designed or sold as a load-following product. Instead, a fundamental design of Slice is that it provides power in the shape of the Federal generation as opposed to the shape of a customer’s load. Slice customers must use their other resources or purchase energy in order to meet the retail load Slice does not cover. As the Slice customers acknowledge, there is no guarantee that Slice will be sufficient to meet a customer’s retail load from hour-to-hour or for any hour, and Slice purchasers take on the responsibility of meeting any shortfalls. This disconnect between the shape of Federal generation and the shape of a customer’s retail load, plus the responsibility of the customer to meet any shortfalls, would be attributes of the product regardless of the quantity BPA makes available.

Moreover, all current Slice customers purchase Slice in a blend with shaped Block PF products. Based on BPA’s observation of the current Slice customers’ present Slice/Block blend percentages, a 50/50 percent blend would be very comparable to blends being successfully implemented by Slice customers. For CY 2007, the aggregate mix of the current Slice customers’ Slice to Block product purchases is roughly 55/45 percent. At least one customer, Snohomish PUD, has successfully implemented a Slice and Block mix of 50/50 percent.

BPA can demonstrate that the amount of Slice it is proposing to offer post-2011 would support the current Slice customer load plus nearly 800 aMW of additional Slice customer

load at the 50/50 percent mix of Slice and Block, assuming 7,100 aMW of firm FBS resource. With 25 percent of the FBS allocated to Slice, the product would support 1,775 aMW of firm requirements load service with an FBS of 7,100 aMW. With a mix of 50 percent Slice and 50 percent Block, the combined Slice and Block product would support 3,550 aMW of aggregate customer load. In total, this represents an increase of 790 aMW (nearly 30 percent) over the roughly 2,760 aMW of aggregate firm load represented by the current Slice customers' Slice and Block purchases for CY 2007. For post-2011, depending upon the interest in Slice and the size of the FBS resource, each customer may need to consider whether a combined Slice and Block product with less than 50 percent Slice would be viable for their needs.

Limiting Slice to 25 percent of the FBS firm resource, which is an increase from the current 22.6 percent level, is not arbitrary or unreasonable, and is fundamentally consistent with BPA's initial proposal for this product presented to Congress.

#### **Issue 5:**

**Whether BPA has determined how the limited amount of Slice will be allocated to qualified purchasers?**

#### **Policy Proposal**

The Policy Proposal did not propose a method for allocating the limited amount of Slice offered, whether or not requests for the product are in excess of the limit. The issue was raised through the public comment.

#### **Public Comments**

Kootenai Electric Cooperative asked how the Slice megawatts would be allocated in the event more purchasers sign up than are planned. (Kootenai, REG-012-06) Congressmen Hastings, Simpson, Walden, and Otter also asked why a limit is necessary and how the agency will address the needs of new Slice customers. (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002)

#### **Evaluation and Decision**

BPA recognizes that some customers who have not bought the Slice product in the current contract period, FY 2002-2011, may be interested in the product in the post-2011 period. BPA also recognizes that customers will not decide what product options they may take until BPA has concluded both its future product development process that will include alternative products to Slice and its power sales contract negotiation process. Only then will customers make a choice as to the product they will buy from BPA. However, three facts are clear from the Subscription process on Slice. First, given the variability of the Slice product over time, customers are not likely to purchase only Slice, but will purchase a combination of Slice and a Block product to meet load. Second, customers are most likely to request that they be allowed to determine amongst the potential Slice customers how much Slice each is able to purchase from BPA, instead of having BPA determine the amount through a formula. Third, the amount of Slice that a customer actually contracts for may be less than the total amount offered given final decisions by the customer and their respective governing board before they execute a BPA contract.

For the post-2011 period, BPA could follow a similar protocol of allowing customers to determine amongst themselves what amount they might take of the Slice product within the available amount. Alternatively BPA could prorate the limited Slice energy among the qualified public customers based on defined criteria such as the relative size of their net requirements load or other criteria that a customer would agree upon. However, BPA will not decide this issue in this ROD because most parties have not had an opportunity to consider the issue. BPA will address the issue as part of the product development process.

**Issue 6:**

**Whether the post-2011 Slice product will be defined as a sale of resource capability?**

**Policy Proposal**

Throughout the Policy Proposal BPA stated one of the objectives was to clearly define the post-2011 Slice product as a system sale of requirements power and surplus power indexed to the variable FCRPS energy and storage capability within defined delivery limits, rather than a sale of resource capability. This reflects BPA’s desire to simplify the product offering, avoid disputes, and address issues raised in the areas of capacity and product definition.

BPA also stated that the removal of the right to dynamically schedule FCRPS energy and to self-supply ancillary services makes it clear that this product does not provide the purchaser with any ownership type, operational right to a percentage share of the system.

Proposed Principles 3 and 9 are designed to reach this objective. They state:

3. Slice purchasers bear an allocation of FCRPS costs and risks and receive a *commensurate amount* of FCRPS energy, hourly scheduling flexibility, and specific BPA power revenues.
  
9. The Slice product will not include within-hour load-following, dynamic scheduling or ancillary services. Generating capacity and energy provided from the FCRPS to TBL for Interconnected Operating Services will come “off the top,” and revenues PBL receives from TBL for those generating inputs will be shared on a proportional basis.

**Public Comments**

Congressmen Hastings, Simpson, Walden, and Otter raised the following, similar question. Will the Slice product continue to offer customers access to a percentage share of capacity, storage and other capabilities of the Federal system in a manner similar to that enjoyed by BPA? (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002) The Slice customers assert that Slice provides “access to the same flexibilities as BPA”, and “inherent in the product is the need for Slice customers to have contractual, operational access to their share of system capability . . . .” (Benton PUD, REG-114; Slice, REG-144) Some customers commented that since Slice customers pay a percentage of the system cost, they should obtain a share of system capability in return. (Raft, REG-005; SCL, REG-128) NRU supports BPA’s proposal that Slice should be clearly defined as a system sale of

requirements power indexed to FCRPS energy and storage capability, rather than a sale of resource capability. (NRU, REG-103)

### **Evaluation and Decision**

Regarding the question posed by Congressmen Hastings, Simpson, Walden, and Otter, BPA cannot offer to place its public customers in the same position as BPA when selling any power product, including the Slice product. BPA is the marketing agent for Federal power from 31 Federal dams and other contracted resources in the Pacific Northwest by act of Congress, including the Bonneville Project Act, the Northwest Preference Act (the Act of August 31, 1964), P.L. 88-552, and the Pacific Northwest Electric Power Planning and Conservation Act of 1980, PL. 96-501 (the Northwest Power Act). BPA's responsibilities, obligations and rights under that and other legislation cannot be delegated or conveyed to customers. Under those Acts, BPA's customers are entitled to purchase power from BPA to meet their load needs but cannot have the same rights and do not have the same responsibilities as BPA in regard to the Federal system.

Based on comments from the Slice customers, it is apparent they believe they have "contractual, operational access to their share of system capability". (Benton PUD, REG-114; Slice, REG-144) BPA disagrees with this characterization. Slice is a system sale of requirements power and surplus power indexed to the variable energy output of the applicable FCRPS resources. Slice shall be made available for delivery within defined hourly scheduling limits that are indexed to the operating constraints of the applicable FCRPS resources. Slice is not a sale of resource capability. This is a fundamental concept BPA needs to maintain in order to assure adequate operational control is available for regional reliability and operational needs. Section 4(b) of the current Block and Slice Power Sales Agreement clearly states, "Slice is a Power sale, and is not under any circumstances to be construed as a sale of Slice System resources."

The commodity a Slice purchaser receives under Slice is power, and in amounts which are subject to adjustment by BPA for other obligations or changed conditions. Power is a combination of energy and the capacity associated with that energy. Slice customers have certain rights to pre-schedule this power, to change their schedules within specified scheduling limits and to store power within specified storage limits. The power can be shaped for optimal use in meeting loads, or for maximizing revenue through coordinating their use of other non-Federal resources and by the scheduling flexibility that is allowed under Slice. This scheduling flexibility is specified and limited but is indexed to the operating constraints of the applicable FCRPS resources. This distinction is extremely important in defining the nature of the Slice product. It is imperative that the definition, nature, and intent of the future Slice contract maintain and build off of this fundamental concept in a manner that is clear and succinct as possible.

For its post-2011 power service contracts, BPA needs to be more precise about the nature and service provided in the Slice product. Particularly in a tiered rates environment, power and service distinctions and cost causations will be of critical interest to BPA and all its customers. BPA's Slice product and other proposed power products need to account for and

consider the changes for the post-2011 period, including the potential addition of generating resource capability to the Federal system that would not be part of Slice.

The post-2011 Slice product will not be a sale of resource capability, but rather a system sale of requirements power and surplus power as described above. From BPA's perspective, the need to clarify the fundamental nature of the Slice product is extremely important in a tiered rates environment and in achieving BPA's obligation to manage the FCRPS resource for all customers and for meeting its obligations in the region.

#### **Issue 7:**

#### **Whether BPA's post-2011 Slice proposal will depart from the product's fundamental pro rata concept?**

#### **Policy Proposal**

This specific topic was not directly addressed within the Policy Proposal. Instead this issue was raised within public comment. However, similar to Issue 6 above, Principle 3 has a bearing on BPA's response to the issue.

#### **Public Comments**

This specific question was raised by Benton PUD and reiterated by the Slice customers within their joint comments. They said their most significant concern about the Slice proposal is "BPA's departure from the two fundamental principles that make the Slice product viable and successful," and that "these fundamental principles involve true access to the same Federal system flexibilities available to BPA in exchange for the payment of actual cost of that system and acceptance of the risk inherent in that system." (Benton PUD, REG-114; Slice, REG-144) Several other comments included statements indicating Slice reflects one or more pro rata share concepts. (Raft, REG-005; WPUA, REG-080; Grays Harbor, REG-116; SCL, REG-128; PPC, REG-132; Clearwater, REG-134; Grays Harbor, REG-149-23; PNGC, REG-150)

#### **Evaluation and Decision**

Fundamentally, as customers of a non-profit Federal power marketing agency, all Federal power customers (Slice and non-Slice) pay for a share of the costs applicable to the FCRPS through their respective requirements product rates and receive a share of the benefits. This should be considered a pro rata concept.

In the current Slice contract, the fundamental concept is that the Slice customers pay a fixed percentage of specific BPA costs applicable to the FBS and have rights to power and scheduling flexibility based on that same percentage as applied to "Slice System output." Specifically, Principle 2 from Exhibit J of the Slice contract states Slice purchasers "shall have the same rights, on a proportional basis, to the Slice System output that the PBL does," with specific exceptions. BPA believes this principle is the source of the Slice customer comments regarding the fundamental nature of the Slice product. However, it is necessary to be absolutely clear that the term "Slice System output" denotes contractual rights to a specific, limited set of FCRPS flexibilities including system energy, peaking and storage capability, and that access to these flexibilities is through scheduling limits which are

indexed to those capabilities. This right does not place the Slice customers in the same position as BPA in regard to use of Federal resources, and that was never the intent of the Slice product. Although Slice customers cannot make operating decisions, and do not have direct responsibility for meeting non-power constraints, they are able to make independent decisions regarding use of the product's scheduling flexibility to meet load and market their surplus power component of the product in order to optimize the value, and then return this value directly to their utility rather than sharing it as a revenue credit with all other Federal power customers.

Contrary to the beliefs some customers reflected in the general Slice comments and specific comments by Raft, Benton PUD, Seattle, and the Joint Slice Customers, BPA did not sell a pro rata share of the system resources to Slice customers, nor a pro rata share of the Federal system's resource capability, and this will also not be the case for the post-2011 Slice product. This idea suggests that BPA would be unable to adjust the power and services sold to Slice customers when such sale conflicted with BPA's other system obligations, purposes or needs. That is simply not the case. The customers' power purchase and their rights to schedule and change their power take is expressly conditioned upon BPA meeting its other obligations in all circumstances and conditions. Although some Slice purchasers may like to characterize their contract as buying a piece of the Federal system resource output, similar to their Mid-Columbia sale, they have not done so nor could they because any BPA sale is conditioned upon BPA meeting all system and other non-power sales obligations. Those obligations are both different from and more extensive than those of the Mid-Columbia operators.

The argument that because the Slice customers pay a percentage of system cost, they should receive a percentage of system capability is not correct for reasons previously stated. The Slice contract or payment method, should not carry any connotation of transferring to Slice customers the right to directly or indirectly control, operate, or dispatch a pro rata share of the FCRPS.

BPA's proposal for the post-2011 Slice contract does not change the fundamental concept that the customers would receive a pro rata portion of firm power and surplus power, based on a percentage of the applicable Federal system resource output, subject to the operating agencies' determination of system obligations, capability and operations at any given time.

**Issue 8:**

**Whether the post-2011 Slice product will include within-hour use of capacity (load-following and dynamic scheduling)?**

**Policy Proposal**

BPA proposal stated the post-2011 Slice product would be clearly defined as a sale of requirements power and surplus power and that the post-2011 Slice product would not include within-hour load-following, dynamic scheduling, or ancillary services.

Principle 9 states:

9. The Slice product will not include within-hour load-following, dynamic scheduling or ancillary services. Generating capacity and energy provided from the FCRPS to TBL for Interconnected Operating Services will come “off the top,” and revenues PBL receives from TBL for those generating inputs will be shared on a proportional basis.

The proposal also pointed out that the Team agreed that dynamic scheduling would not be a feature of the Slice product. BPA desires to simplify the Slice product by addressing issues raised in the areas of capacity and product definition.

### **Public Comments**

Comments made by current Slice customers support the position that Slice is not a load-following product and indicate the Slice customers have agreed to exclude dynamic scheduling provisions from the future design. (Benton PUD, REG-114; Slice, REG-144) On the other hand, one of the PNGC members, Umatilla, suggested Slice customers have to meet what they termed as “instantaneous capacity.” (Umatilla, REG-012-08) Snohomish, referring to products in general, may be indicating that products should include features that allow load-following and resource integration. (Snohomish, REG-131) The Renewable Northwest Project voiced strong support for Principle 9, which states that the Slice product will no longer include intra-hour flexibility, and that this flexibility should be retained for the system as a whole. (RNP, REG-013-02) NRU stated support for the exclusion of within-hour load-following and dynamic scheduling and noted that BPA has not determined a process to allocate ancillary service capability to the highest priority needs. They stated that the issue is complicated by the fact that the service is provided by BPA Transmission while the FBS capability is transferred to BPA Transmission from BPA Power. (NRU, REG-103)

### **Evaluation and Decision**

As part of the Slice Product Review process BPA provided the Slice customers and others with analysis indicating the FCRPS dynamic capability is highly volatile, unavailable at times, and difficult to forecast and allocate. Dynamic scheduling was not implemented under the Slice contract, and BPA’s 1998 Power Subscription ROD regarding Slice expressed concerns about its feasibility. Based on the Slice Customer Joint Comments, the Slice Product Review Team participants, including the current Slice customers, agree that excluding dynamic scheduling provisions from the post-2011 Slice contract is reasonable. BPA will not include dynamic scheduling a part of the Slice product design for post-2011.

Umatilla Electric Cooperative, who is a member of PNGC’s Joint Operating Entity, which provides services to Umatilla for their load, stated they “need to meet instantaneous capacity.” BPA assumes this statement was a general statement indicating that the utilities need instantaneous capacity in order to meet peak load and follow load. Load-following, in this context, means altering generation from second-to-second to meet instantaneous fluctuations in load, which is a service described as load regulation. Slice customers agree that they bear the responsibility to follow both hour-to-hour and intra-hour load when they purchase Slice. As explained above, the Slice product design is different from that of load-

following products that BPA offers. If Umatilla needs load-following service from BPA, a different product, other than the Slice product, should be considered. To be clear, hour-to-hour load-following service is not provided by BPA under the Slice contract, but the scheduling flexibility that is included with the Slice product provides customers with some capability to follow hourly load fluctuations.

As is clearly indicated through Principle 9, the post-2011 Slice product will not include provisions that allow the use of within-hour capacity.

#### **Issue 9:**

**Whether the post-2011 Slice product includes the ability to self-supply ancillary services such as operating reserve and energy imbalance using the FCRPS resource?**

#### **Policy Proposal**

As part of Principle 9, BPA proposed that the post-2011 Slice product will not include rights to self-supply energy imbalance or operating reserves (ancillary services) using the Slice resource. BPA proposes that removing the ability to self-supply ancillary services from the Slice resource will clarify the nature of the Slice product and avoid disputes over any issue of ownership or operational rights to Federal system resources through the “percentage share” sold in Slice. Within the conceptual design of Alternative 2, BPA has reiterated that the Slice product is a sale of power, not of resource ownership or capability, and would not include within-hour load-following, dynamic scheduling, or ancillary services.

#### **Public Comments**

This question was raised by Benton PUD and reiterated by the Slice customers within the comments they submitted jointly to BPA. They asked, “Should BPA remove the ability to self-supply ancillary services such as operating reserves and energy imbalance in the future Slice product as proposed under Regional Dialogue?” (Benton PUD, REG-114; Slice, REG-144) Several Congressmen questioned whether the self-supply of ancillary and reserve services will be available through the Slice product and if not, asked what BPA will do to compensate customers. (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002)

Customer comments range from strong opposition to strong support. The Slice customers oppose the proposal’s change in ancillary services, asserting that because the current Slice contract includes the ability to self-supply reserves, the needed transmission service business practices and implementation procedures have been developed, and the implementation has been successful and gone smoothly, they believe the next contract should include the same concept. They also state that BPA has not provided a compelling argument to withdraw self-supply rights from the next contract. (Benton PUD, REG-114; Slice, REG-144) On the other hand, NRU (representing 52 non-Slice requirements customers) strongly supports the proposal to eliminate self-supply provisions from the Slice product. NRU wrote: “BPA has not developed a process to allocate ancillary service capability to the highest priority needs of net requirements customers, and the importance of these services is becoming increasingly clear. Further, the system capability to provide such services is probably limited. Matters are also complicated by the fact that such services are provided through BPA’s transmission

organization, after transfer of necessary FBS capability from Power Services. Inclusion of such services through Slice would create a de facto distribution that may or may not resemble actual need.” (NRU, REG-103) Other non-Slice customers either specifically support BPA’s Alternative 2 in whole, including this change, if BPA is going to offer Slice. (NWasco, REG-055; Richland, REG-091)

With regard to energy imbalance, Slice customers have stated that “PBL provides this service to load-following customers and essentially self supplies this service as it does not face charges/credits from TBL.” The Slice customers go on to argue that Slice customers should have access to the same capability. (Benton PUD, REG-114; Slice, REG-144)

Grays Harbor is concerned that, as a result of not allowing self-supply of ancillary services the Slice product will be less useful because “hour-ahead scheduling, operating reserves and energy imbalance all provide necessary tools for managing load variability.” (Grays Harbor, REG-116)

### **Evaluation and Decision**

Because there were a number of concerns raised by Slice customers about the loss of the ability to meet load and integrate generation, BPA would like to clarify that this ROD has no bearing on the continued offering of energy imbalance or operating reserve ancillary services from BPA Transmission Services at established rates. Since the transmission provider is mandated to provide these services there will be no inability to meet loads or integrate generation. In addition, the removal of these services from the Slice product would not prevent customers from self-providing from owned resources or acquiring third-party provision of ancillary services. The issue is, therefore, a question of how customers will receive these services from BPA, not whether they can receive them. BPA proposes that all scheduling customers within the BPA Control Area who purchase ancillary services from BPA do so under the BPA Transmission Open Access Tariff.

BPA disagrees with the characterization that Power Services provides energy imbalance to load-following customers. The product they purchased includes load-following and, therefore, no energy imbalance occurs; instead the FCRPS matches generation to loads instantaneously and automatically. In particular, Full Service customers pay for demand (peaking and capacity) and intra-hour load variation related to their total retail load. Slice customers do not face these costs. Whether a customer is subject to energy imbalance is dictated by the nature of the power sales relationship. Because BPA Transmission has an Open Access Tariff, the parameters applied to make the determination are those of FERC. Energy imbalance applies only to scheduled loads, which Slice customers acknowledge in their own definition: “Energy imbalance is a TBL product provided to all scheduling customers (i.e., non-load-following customers) within the TBL Control Area . . .” (Slice, REG-144)

BPA network loads within the BPA Control Area are unscheduled and are not subject to imbalance charges under the tariff. Power Services understands this exemption as being both practical (since there is no schedule to calculate the imbalance) and principled (to allow integrated utilities to continue to serve load-following customers under Open Access). If

these customers were subject to energy imbalance, or are required to procure the service in the future, these services would need to be purchased from the Transmission Services organization. This is one of the equity issues raised in the Slice Product Review that supported the removal of ancillary service self-provision from the Slice product.

For operating reserves BPA Power does not, and by FERC rule cannot, provide this product to meet obligations to BPA Transmission. This raises equity issues with this ancillary service, because load-following customers do not have the option to acquire the service from BPA Power, yet self-provision under Slice allows the Slice customers to avoid a BPA transmission tariff rate. During the Slice Product Review, BPA demonstrated that the transition to purchasing operating reserves through BPA Transmission Services would be neutral to the Slice customer. The analysis relied on the same parameters and justifications that originally permitted BPA to justify that self-provision was not a cost shift to the non-Slice customers. Slice customers have not demonstrated they would suffer harm from acquiring the service from BPA Transmission rather than using the Slice self-supply provision for operating reserves. The customers would be compensated not only by the sharing of ancillary service revenues, but also by retaining additional hourly scheduling flexibility that would otherwise be set aside for self-supply.

BPA disagrees with the assertion that the existing implementation is justification for the continuation of ancillary service self-provision. The comments of NRU indicate that customers are divided over whether the existing implementation has been successful, or could be successful for 20 years into the future. The existing implementation has a number of features that bring into question their durability. These issues (described below) were raised as part of the Slice Product Review and BPA finds them particularly concerning in the context of a 20-year product offering.

Slice self-supply is not a physical service; instead it is a contractual provision that requires the Slice customer set aside a portion of their potential hourly scheduling flexibility. This has no physical impact to system operation and relies upon the existing processes that BPA Power uses to provide generation inputs to the BPA Control Area. Therefore, it is BPA, not the Slice customer, who is ultimately responsible for failures of self-supply. In other cases of self-supply the resource owner/operator is responsible, as is required under the tariff.

By definition, self-supply means an entity is using their own resource to meet an obligation, such as energy imbalance or operating reserves. This requires that the entity provide AGC access to that resource. The Slice customers acknowledge that they have no implicit or explicit ownership rights to the FCRPS resources, yet they suggest this argument does not require the removal of provisions that allow self-supply from the FCRPS resource to sustain the assertion. BPA does not agree that even though the Slice customers don't own or operate the FCRPS resource, they should be allowed to self-supply using the FCRPS resource. This is a contradictory concept.

The existing implementations for energy imbalance and operating reserves for Slice customers are already non-standard. They rely upon special procedures tailored for the Slice

product. These procedures are unlike any that BPA is aware of under other utilities' Open Access Tariffs, and are often significantly more complex than those for actual self-provision.

The existing implementations are unlikely to be compatible with planned changes that are underway in the industry – a prime example is the shift from Spinning Reserves to Frequency Response Reserves. This issue alone may invalidate a large portion of the existing implementation.

In implementation of self-supply the Slice customer sets aside a portion of their hourly scheduling limit. There is no tool in the existing implementation that assures that this methodology is actually providing the intended service. Instead, the applicability of the set-aside scheduling limit to the self-provision service need is presumed by the Slice customer and the transmission provider, placing the burden of setting aside the physical resource capability on the BPA system operator.

BPA finds these issues in support of Principle 9 compelling. The self-provision of ancillary services raises serious equity issues between customer classes, as well as issue under the Open Access Tariff, and is difficult to maintain and adapt though time without significant commitment of resources and friction with customers. The removal of self-provision would release additional hourly scheduling flexibility to Slice customers, and BPA is proposing that in future rate cases it would provide value to Slice customers by a credit on ancillary service revenues to customers. The balance of value and simplicity are better achieved with the removal of self-supply services from the product. The proposed change to tiered rates and new product differentiations for all of BPA's requirements power sales in the post-2011 period makes simplification of Slice necessary.

BPA concludes that the post-2011 Slice product will not include provisions that allow self-supply of ancillary services using the FCRPS resource.

#### **Issue 10:**

**Whether BPA will substitute revenue sharing as a means of replacing the value of self-supply of ancillary service?**

#### **Policy Proposal**

BPA's Alternative 2 eliminates provisions that allow self-supply of ancillary services from the Slice product and provides on a proportional basis, by means of a credit to the customers, a share in the revenue that BPA Power receives from BPA Transmission for the generation inputs BPA Power supplies to BPA Transmission in support of those services.

Principle 9 states:

9. The Slice product will not include within-hour load-following, dynamic scheduling or ancillary services. Generating capacity and energy provided from the FCRPS to TBL for Interconnected Operating Services will come "off the top," and revenues PBL receives from TBL for those generating inputs will be shared on a proportional basis.

## **Public Comments**

Several Congressmen questioned whether the self-supply of ancillary and reserve services will be available through the Slice product and if not, asked what BPA will do to compensate customers. (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002) Tacoma stated that BPA should not remove capacity rights from the contract and replace them with revenue credits. (Tacoma, REG-135) Slice customers assert that BPA Transmission views self-supply (of energy imbalance) as revenue neutral so there are no revenues received by BPA Power to “be shared on a proportional basis.” (Benton PUD, REG-114; Slice, REG-144) NRU said, “We concur that generating capacity and energy provided to the Transmission Business Line for Interconnected Operating Services would come “off the top” of the FBS, but the revenues from these generation inputs should be shared proportionately with the Slice customers.” (NRU, REG-103)

## **Evaluation and Decision**

BPA proposed that customers share the revenue BPA Power receives from BPA Transmission for supplying generating inputs for those services. The proposal is consistent with the current System Obligation principle whereby an obligation is shared by the Slice customers and the revenues or costs associated with contracts or services BPA provides in order to meet operational obligations are also shared with the Slice customers

BPA Transmission may view energy imbalance as a revenue-neutral service since transmission customers pay or are paid for imbalance on an hourly basis. At times these payments are roughly neutral (payments made are equal to payments received) and at other times, they are not. BPA Transmission Services pays Power Services for the use of FCRPS generators that provide generation inputs to meet imbalance demands. This is the revenue that will be shared proportionally with the Slice customers.

This is the position Slice customers would be in as they receive energy imbalance services from BPA Transmission. To the extent they are reasonably accurate in scheduling, at times having errors both over- and under-estimating schedules, their payments made will be roughly offset by the payments received. If they schedule inaccurately they will experience a net cost.

The principle of substituting revenue sharing is consistent with the principles for the Slice product. BPA will share the revenue BPA Power receives from BPA Transmission for supplying generating inputs for ancillary services provided to the BPA Control Area. This will provide a uniform treatment for all products, which will be applied in the future Slice contract.

## **Issue 11:**

**Whether BPA’s proposal, following the Slice Product review, provides a basis to modify aspects of the Slice product for post-2011 rather than leaving it unchanged?**

## **Policy Proposal**

In its Slice product review, BPA established a Team to discuss alignment on preferred post-2011 Slice product alternative(s) to inform BPA’s Policy Proposal. The Team included

representatives of Slice customers, NRU, non-Slice customers and BPA staff. The Team discussed both the operational and financial aspects of the Slice product, with the existing Slice product used as the starting point for the review. The Team proposed changes to the current Slice product to resolve existing concerns and to promote alignment around a set of overarching principles to guide decisions on the future Slice product; a preferred product design alternative; and, an amount of Slice to be offered.

BPA also stated that discussions focused on questions regarding what changes, if any, should be made to the originating principles and what new overarching principles should be considered or added based on BPA's May 2005 Draft Slice Report and ensuing customer comments. These discussions ranged from desires for increased clarity among the principles, equity among customers, operational control, and new concerns such as resource integration.

### **Public Comments**

Several comments provided justification and support for BPA's proposed modifications. Benton REA and NRU suggested Slice contributes to constrained system capacity and warrants careful review; the product complexity creates opportunity for cost shifts; and, the operational flexibility results in non-optimal use of the system and increases reliability risks. (Benton REA, REG-094; NRU, REG-103) NRU also stated the proposed product changes should help simplify product implementation and address issues that have been raised. (NRU, REG-103) NRU and Northern Wasco pointed out BPA's review of Slice were necessary and changes were warranted by that review. (NWasco, REG-055; NRU, REG-103) Several entities commented that minor changes are reasonable, but major changes or arbitrary reductions in capacity were not warranted. (Clearwater, REG-134; Slice REG-144) Several comments suggested BPA did not provide justification for the proposed changes. (Benton PUD, REG-012-04; PNGC, REG-013-05; WPAG, REG-109; Benton PUD, REG-114; Tacoma, REG-135; Slice, REG-144) Several comments suggest the modifications are premature, that Slice should not be singled out for changes at this time, or that changes are not warranted given the success of the product. (WPAG, REG-109; Benton PUD, REG-114; Grays Harbor, REG-116; Snohomish, REG-131; PNGC, REG-133; Slice, REG-144) Grays Harbor and Emerald PUD voiced concern that changes may render the product useless in following load variations. (Grays Harbor, REG-116; Emerald, REG-137) Benton PUD and the Slice customers pointed out BPA's original intent was to renew the current contract on the same terms and conditions as the original contract. (Benton PUD, REG-114; Slice, REG-144)

### **Evaluation and Decision**

BPA is proposing a significant change in the treatment of costs in the products and services that it offers for the post-2011 period. BPA is proposing a tiered rates approach described previously in the ROD and commensurate modification of its products. The products and services must fit within the tiered rates paradigm. The products BPA offers for post-2011 will accommodate the tiered rates approach and will not be exactly the same as current products.

Because Slice was a new and untested pilot product, combining both requirements power and the advanced sale of surplus power, BPA committed to reviewing the product's historical

implementation against the product's design principles, and to evaluate whether Slice was working as intended, and determining what changes or refinements were warranted. BPA performed this review after 3 years of Slice implementation and summarized the results in the May 2005 Draft Slice Report. In that report, BPA indicated there were several issues regarding both the implementation and nature of the Slice product that needed to be addressed through changes or modifications to the product. One of the main purposes of the Slice section of this ROD is to provide justification and reasoning for the proposed changes to the Slice product.

As mentioned previously, a Slice Product Review Team was established to discuss and address these and other issues in an attempt to reach alignment around the post-2011 Slice product design. NRU was represented on this Team and based on their participation provided comments to the Policy Proposal stating that BPA's review of the product was necessary, that the proposed changes resulting from the review are warranted, and that the changes should help simplify the product implementation and address issues that had been raised. This is consistent with BPA's objective in reviewing the product.

Benton REA and NRU asserted that Slice contributes to constrained capacity, creates the opportunity for cost shifts, results in non-optimal use of the system and raises issues regarding reliability, therefore warranting careful review. BPA indicated similar concerns based on its review and analysis of the first 3 years of the product implementation, and has determined changes and refinements to the product are needed to address these and other issues. Comments from NRU and Northern Wasco state that BPA's review of the Slice product was necessary and changes were warranted by that review.

Clearwater and the Slice customers commented that minor changes to the product are reasonable, but that major changes are not warranted, though they did not specify what they meant by "major changes." BPA assumes the elimination of self-supply provisions would be considered a major change. The reason for this change described in great detail in Issue 9 of this Slice section. The Slice customers also indicate a concern that BPA is attempting to move Slice away from their view of the product's fundamental pro rata share concepts. BPA does not agree this is the case, and addresses this issue in Issue 7 of this Slice section. BPA considers the proposed changes as modest refinements needed to clarify the nature of the product or address issues, and that the proposal is not a wholesale reconstruction effort.

Several customer comments contend that the changes proposed are unreasonable or arbitrary, and that BPA did not provide analysis to justify the issues that led to BPA's proposed changes. BPA has explained the basis for its proposal and believes the proposed changes are both reasonable and justified based on the analysis and findings related to the Draft Slice Report. Shortly after BPA posted the Draft Slice Report, the Slice customers specifically requested a meeting to discuss BPA's findings. At that meeting (June 7, 2005) BPA supplied and reviewed with the customers an assortment of analytical material that included eight separate documents to back up the results of the Draft Slice Report. The Slice customers were not completely satisfied with the material and requested additional analysis, but BPA felt the benefit of further analysis was marginal.

As stated above, BPA disagrees with comments asserting the proposed changes are premature, or that the success of the current Slice product negates justifications for proposed changes. BPA and the Team were well ahead of other Regional Dialogue forums with regard to the design of BPA power products and were able to discuss and address some of these issues. BPA believes it reached partial alignment on a proposed Slice product design, including the 10 overarching principles and the Alternative 2 design concepts. Given this effort and the level of alignment reached, BPA's Policy reflects those decisions. BPA acknowledges that many details of the Slice product design are yet to be determined. BPA agrees there has been success regarding implementation of Slice, but would also contend there are many significant issues to be addressed before the new product can be developed.

With regard to the comments indicating a concern that the proposed changes may render the product useless in following load variations, BPA does not feel the proposed changes in scheduling flexibilities will have a significant impact. The current Slice product is not designed as a load following product, but use of scheduling allows hour-to-hour load changes, and not intra-hour load changes. The ability to follow hourly load variations lies primarily within the 30-minute scheduling change rights, which will remain a feature of the product. The scheduling flexibility will also remain, but may be slightly constrained relative to the current product. BPA designed the Alternative 2 operational concepts to bring the Slice customers' scheduling flexibility more in line with actual FCRPS operating constraints, which is consistent with fundamental Slice concepts.

Regarding Benton and the Slice customers' assertions that BPA originally intended to renew the Slice contract on the same terms and conditions as the current contract, those customers refer to a recital in the current Slice contract that states that intent. The recitals in a contract are statements of the context and conditions at the time of the development of the contract and are not binding commitments on the part of the parties. Neither BPA nor the Slice customers are required by the recital to either offer or accept the same terms and conditions as the current contract. Simply the passage of time may make that intent obsolete regarding any future agreement. At the time of the execution of the current Slice contract, neither BPA nor the customers anticipated the need for BPA's Regional Dialogue Proposal, particularly the rate tiering and changes to services that would be needed to accompany that change. Therefore, the recital does not form a basis for BPA to refrain from making those changes that BPA finds are needed to coordinate the product with BPA's proposal or to align it with other products and services in the next contract period. Many details of the Slice product's terms and conditions will remain the same but others will change.

#### **Issue 12:**

**Whether BPA has determined how to manage capacity constraints and competing uses of system flexibility under the Alternative 2 Slice proposal?**

#### **Policy Proposal**

This specific issue was not directly addressed in the Policy Proposal, but was raised in the public comments BPA received. The issue is closely related to one of the five core issues the Operations Subgroup Team decided to focus on, based on the findings of BPA's Draft Slice Report. The underlying question states, "How does BPA maintain the ability to meet its total

requirements load obligation when a subset of requirements customers has long-term rights (under Slice) to energy that is potentially surplus to their requirements load, but not surplus to BPA's total requirements load obligation?"

It was noted that this issue would be addressed in the larger Regional Dialogue forum and applied to Slice as needed to ensure conformity to the Policy.

### **Public Comments**

NRU expressed concern regarding how capacity constraints will be equitably addressed and how system flexibility will be used to serve the net requirements of preference customers, adding that committing capacity to other uses, including surplus capacity to Slice customers, could affect system reliability and increase costs to load-following customers. (NRU, REG-103)

### **Evaluation and Decision**

BPA knows that there will be competing demand for the system flexibility which customers will want to utilize for several purposes including resource integration and meeting load. BPA intends to provide for the capacity needs of all of its customers by putting customers, to the extent possible, on an equal footing for those services to meet their firm consumer loads in the region, and for services needed to integrate non-Federal resources, should the customer choose to do so. BPA will do so by clarifying the products and services it offers customers as including use of capacity or flexibility for specific purposes and by maximizing the efficiency and availability of capacity from the system. Additionally, BPA rate tiering design treats capacity as a uniform service for Tier 1.

The Slice contract assigns peaking rights (what NRU termed as capacity) to Slice customers through maximum hourly scheduling limits. Because the scheduling limits are based upon system operating constraints, and not a customer's load, it is expected that on any given hour the amount of power that can be taken within the scheduling limits of the Slice product might exceed the customer's actual requirements load on that hour. These scheduling limits enable the Slice customer to meet their hourly requirements load and sell surplus energy on the same hour. Conversely, it is also possible, given that the Slice scheduling limits are based on system operating constraints, that the amount of power available on a given hour may not be sufficient to meet the customers' requirements load for that hour such that the customer would have to meet the shortfall using its other resources. BPA provides peaking services as part of all of its power sold as requirements products. To the extent that there have been hourly scheduling limits supplied in certain time periods in excess of the Slice customers' requirements load, BPA has not faced to date a capacity shortage. However, NRU raises the question of whether the same assumption is reasonable going forward in design of the next Slice contract and other requirements products. BPA understands this concern and views it as one of the future product design issues that will need to be addressed. At the same time, BPA recognizes that the Slice product is designed to provide scheduling limits that are indexed to system operating constraints rather than a customer's load.

The post-2011 Alternative 2 design minimizes the risk of overstating peaking capability to Slice customers through their scheduling limits by tightening the estimated system peaking

capability through two avenues. First, the proposed design would determine system peaking capability as a function of sustainable capacity over a number of hours, rather than 60-minute capacity. Secondly, the proposed design will apply a simplified approach to lower Columbia and Snake peaking capability that is closely linked to the expected operation, rather than offer scheduling limits as if these projects can peak at any time without regard for system configuration.

BPA is working on measurement tools to better understand and evaluate the availability of capacity on the Federal system and will continue to discuss how capacity will be treated for all products with its customers. At this time, BPA can only continue to assess this issue through the product development and contract implementation process.

### **Issue 13:**

**Whether the proposed post-2011 Slice product design addresses operational uncertainty and sharing of system capability among Slice and non-Slice customers?**

### **Policy Proposal**

This issue is closely related to one of the five core issues the Operations Subgroup Team decided to focus on, based on the findings of BPA's Draft Slice Report. The underlying question states, "How should the risks associated with the ongoing operations uncertainty and imperfect definition of Slice capabilities be shared among Slice and non-Slice customers?"

Within the conceptual design framework of Alternative 2, BPA proposes to expand off-the-top obligations to include operational buffers that reflect operational uncertainty and prudent system operations. In addition, the Alternative 2 proposal suggests developing tools to more accurately reflect system capability, such that Slice customers are receiving scheduling limits that are indexed to real system capability.

It was noted that this issue would be addressed in the larger Regional Dialogue forum and applied to Slice as needed to ensure conformity to the Policy.

### **Public Comments**

NRU suggested new off-the-top obligations may be necessary for wind integration, system optimization, generation redispatch, and operational uncertainty, but that revenues relating to them should be proportionally shared with Slice customers. (NRU, REG-103) The Slice customers indicated concern over the proposal to include buffers in the off-the-top obligation because doing so appears to allow BPA to reserve capacity on a subjective basis, without demonstrating that the need for capacity is equally shared between Slice customers and BPA. (Benton PUD, REG-114; Slice, REG-144) Other customers stated they were relying upon BPA to make the call as to whether proposed modifications are appropriate and allow BPA to fully meet its regional obligations. (NWasco, REG-055) Some customers urged BPA to limit the flexibility offered in Slice and reserve that flexibility so that BPA could optimize the use of the Federal system resources for the benefit of all customers. (NRU, REG-103; Benton REA, REG-094; RNP, REG-013-02)

### **Evaluation and Decision**

BPA's proposal is that the Federal agencies, including BPA, retain their discretion and exercise of judgment when operating the Federal system including setting limits such as buffers to assure operations meet expected system requirements. Slice customers are concerned the proposal to include off-the-top buffers would allow BPA to reserve capacity in a subjective manner, and without demonstrating that the need for capacity is equally shared between Slice and non-Slice customers. As discussed above, BPA and other Federal operators are required to use their judgment in setting limits, anticipating contingencies and balancing the system. Some of that judgment is subjective and necessarily so, based on prior experience. Slice customers do not have a right to an "objective" criteria for any Federal agency's operational decisions. Federal operating agencies are free to exercise their discretion and best judgment. The Slice contract grants no rights to the customer to affect operational control of the system in any way, and Slice customers have understood this from the initial Slice product discussions in 1997. The Slice customers will have no such right in the next contract, whether directly or indirectly, by seeking to impose an "objective" standard upon the Federal agencies in the contracts.

BPA agrees with NRU's suggestion that any buffers are to be equally applied to Slice and non-Slice limits or constraints, which is consistent with the current concept regarding off-the-top obligations. The purpose for the buffers is to provide a mechanism where the impacts of actual operational uncertainty and prudent operating practices that are applied within system operations can also be applied to the Slice customers' scheduling limits. The demonstration for appropriate application of these buffers is whether Slice and non-Slice customers have an equal share in the impact of the buffers. BPA intends to apply buffers to Slice and BPA Power (non-Slice) constraints equally.

As is the case with the current Slice product, BPA public purpose and reliability obligations will be treated as off-the-top obligations when determining Slice scheduling flexibility limits. To the extent new or increased commitments are established, the impact will be applied equitably to Slice and other BPA products. BPA will maintain the concept of determining Slice scheduling limits based on system operating constraints as adjusted for obligations.

With regard to limiting the flexibility offered in Slice, BPA's objective is to offer scheduling flexibility that reflects actual system configuration, operating constraints, and operational decisions determined by the Federal agencies as stated above. BPA believes application of these concepts will alleviate some of the concern that currently exists regarding the inability to apply necessary real-time operational buffers to Slice scheduling limits and will bring those limits more in line with limits BPA Power applies to its marketing function.

### **Issue 14:**

**Whether the proposed post-2011 Slice product design supports the ability for individual customers to integrate resources?**

### **Policy Proposal**

This specific issue was not directly addressed in the Policy Proposal, but was raised in public comment. The issue is closely related to one of the five core issues the Operations Subgroup

Team decided to focus on, based on the findings of BPA’s Draft Slice Report. The underlying question states, “Should a centralized entity (BPA) be responsible for offering a product to integrate resources utilizing the limited FCRPS capability or should individual customers be required to procure these services from the market?”

It was noted that this issue would be addressed in the larger Regional Dialogue forum and applied to Slice as needed to ensure conformity to the Policy.

### **Public Comments**

Numerous comments suggest one positive characteristic of Slice flexibility is that it enables customers to assume the responsibility of meeting load growth through the integration of non-Federal resources, and that this is a very important feature of the Slice product. (Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002; Raft, REG-005; Benton PUD, REG-012-04; PNGC, REG-013-05; Grays Harbor, REG-013-15; Idaho Falls, REG-022-13; Franklin, REG-100; Benton PUD, REG-114; Grays Harbor, REG-116; Snohomish, REG-131; Slice, REG-144; SCL, REG-149-03; Grays Harbor, REG-149-23)

### **Evaluation and Decision**

BPA has to balance the services it provides to both Slice and non-Slice customers who are equally entitled to have their requirements met even though they buy different products. In the post-2011 period, non-Slice customers will have needs to have their load served and to have non-Federal resources integrated for load service, as will the Slice customers. BPA would not be able to supply such services only to a single group of customers as part of its products. An equitable distribution of service to integrate resources of both sets of customers must be made.

Integration of non-Federal resources is a key element necessary for attaining the future goal of adequate infrastructure development, including the enabling of resource development by BPA all customers for meeting load growth. The Alternative 2 proposal suggests expanding off-the-top obligations to include system resources needed to support additional resource integration. The purpose of this suggestion is to assure that BPA’s customers share equitably in the impact resource integration obligations may have on Federal system operational flexibility.

The proposed post-2011 Slice product design provides hourly scheduling flexibility, up to 30 minutes prior to the start of each hour (as long as the current industry scheduling practices remain in place), as the source of flexibility the customers need in order to absorb changes in intermittent resource generation levels, such as wind resources. Within-hour services, such as regulation or generation imbalance, will not be provided as part of the Slice product. Similar to today’s Slice product, scheduling change rights for the future Slice product design should allow customers to manage their Federal purchases with the variable nature of resources and integrate them into their portfolios. Additional details of the terms affecting resource integration for both Slice and other requirements contracts will be addressed in the product development process and in unified contract negotiations with both groups of customers.

**Issue 15:****Whether the proposed post-2011 Slice product design addresses the contentious nature of the Slice product?****Policy Proposal**

BPA's statement in the Policy Proposal regarding this issue was related to the financial aspects of Slice, and stated: The Slice Financial Team also agreed that whatever (risk mitigation) method is selected should be simple, easy to implement and avoid audits and contentious dispute resolution processes. BPA recognized at the time that one contentious area associated with the Slice product resulted from financial issues related to the litigation on the CY 2002 Slice True-Up Adjustment Charge.

**Public Comments**

The only comments that pertain to this specific issue were from Richland Energy Services, stating that the Slice product has been exceedingly contentious, and United Electric Cooperative, who urged BPA to develop a rate to "do away with all the in-fighting". (Richland, REG-091; United, REG-022-23)

**Evaluation and Decision**

BPA views the main source of the contentious nature of the Slice product to be the difference of opinion between Slice customers and BPA regarding the fundamental nature of Slice. In the simplest terms, BPA views Slice as a power product and Slice customers view Slice as a share of Federal resource capability. In more detail, BPA views Slice as a system sale of requirements power and surplus power indexed to the variable energy output of the applicable FCRPS resources with defined hourly scheduling limits indexed to the operating constraints of the applicable FCRPS resources, rather than a sale of resource capability, which is supported by Section 4(b) of the current Slice contract that states Slice is "under no circumstances to be construed as a sale of Slice System resources." The Slice customers, through their Joint Comments indicate a different view of Slice by stating, "... inherent in the product is a need for Slice customers to have contractual, operational access to their share of system capability . . ." (Slice, REG-144) It is clear that the customers believe they purchased capability in addition to power under Slice.

Slice is a very complex product which has experienced a nearly continual series of implementation issues and disputes since its inception. One of BPA's key objectives in refining the Slice product is to clarify aspects of the product that have led to contentious issues and to build upon the practical experience and knowledge gained about the product since it was initially offered. The refinements and clarifications for the product should lead to fewer disputes in the future.

By clearly defining the Slice product and developing clear guiding principles for contract development, as BPA proposes, BPA hopes to alleviate a significant source of contention with the Slice customers in the future.

**Issue 16:****Whether the proposed post-2011 Slice product design conforms to other decisions in the Policy and the ROD?****Policy Proposal**

The Slice Product Review Team's Operational Subgroup determined that several issues were being discussed in the overall Regional Dialogue process that would ultimately affect the Slice product. These include, but are not limited to Net Requirements, Operational Uncertainty, Resource Integration, Control Area Services, and Transmission Redispatch. The Team concluded that the future Slice product would need to conform to decisions made in the overall Regional Dialogue process regarding these issues.

**Public Comments**

NRU brought forth several outstanding issues that needed to be addressed through the Regional Dialogue process because they could impact the Slice product. These issues include how capacity constraints will be equitably addressed; how system flexibility will be used to serve the net requirements of preference customers; the potential for cost shifts if BPA does not maximize the operational benefit of the FBS; and, the potential for cost shifts as a result of committing capacity to uses such as surplus sales, or the advance sale of surplus to Slice customers. (NRU, REG-103)

**Evaluation and Decision**

NRU raised valid concerns over several broad issues. Some of these issues have been addressed in the prior discussions above, but others have yet to be fully addressed and could ultimately affect the Slice product, or conversely, could be affected by the Slice product. That is why BPA characterizes the Slice product Alternative 2 as only an outline for further development of the product.

Many other issues have been identified during the public process and Regional Dialogue, including issues associated with the Tiered Rates Methodology, High Water Marks, priority use of capacity, product switching, combining products, zonal scheduling, and the development of a new load-following product, whose ultimate resolution or policy decision could potentially affect the Slice product. Some of these issues could potentially have significant effects on either the relative merits of the Slice product versus other products or the complexity or feasibility of the Slice product implementation. BPA is only taking the first step with this Policy and ROD on Regional Dialogue and many of these issues will be further addressed in the implementing processes that are in the next step in completing Regional Dialogue.

The 10 proposed overarching principles partially address the issue of aligning Slice with other ROD policies. The first two principles clearly guide the product design away from potential cost shifts, while Principle 7 addresses the equitable use of the FCRPS for both Slice and non-Slice customers.

BPA is committed to continued coordination and application of these broad Regional Dialogue issues to Slice within the broader development of the other requirements products and the Slice product.

**Issue 17:**

**Whether BPA has decided what risk mitigation method will be used for Slice and non-Slice PF rates?**

**Policy Proposal**

BPA Principle 4 for the Slice product proposed to use the same risk mitigation method for Slice and non-Slice rates for commonly shared expenses included in both the Slice and non-Slice revenue requirements. BPA's discussion stated that the risk mitigation method should be simple, easy to implement, avoid audits and contentious dispute resolution processes. In the Policy Proposal, BPA stated a preference for a true-up approach, and that the agency would consider other risk mitigation methods that are consistent with statutory and policy needs in the 2012 rate case.

**Public Comments**

Comments received on this issue were divided. Slice customers were either indifferent, supportive of either a true-up approach or an approach similar to the Cost Recovery Adjustment Clauses that have applied to rates for non-Slice products in the past and current rate periods. (PNGC, REG-133) Non-Slice customers generally were opposed to a true-up approach because it creates too much wholesale rate uncertainty in a rate period, which in turn, they think will lead to continual changes of rates for their retail customers. (NRU, REG-103; WPAG, REG-109) Non-Slice customers also believe that the true-up approach does not provide the proper incentives for BPA to control its costs. (WPAG, REG-109; NRU, REG-103; Emerald, REG-137) Non-Slice customers also stated that the goal for customers and BPA was to use the same risk mitigation method for Slice and non-Slice rates, but cautioned that this should not be used as an opportunity to change the risk mitigation method for the rates for non-Slice products, and that BPA should not "impose a true-up to actual costs approach" for the non-Slice customer products. (WPAG, REG-109) One non-Slice customer supported the true-up approach if a "Slice-like" approach to pricing is used for Tier 1 power. (Tacoma, REG-135) Non-Slice customers advised BPA to not reach any conclusions on a risk mitigation method as part of the Regional Dialogue ROD; rather, it should be an issue that is resolved in the 2012 rate case. (NRU, REG-103; Tacoma, REG-135)

Franklin PUD observed that the Contract Year (CY) 2002 True-Up issues required mediation for resolution, but that the process was beneficial in that it helped Slice customers and NRU gain a better understanding of BPA's Debt Optimization Program. (Franklin, REG-100) Several customers commented on the fact that the Slice product has been an "exceedingly contentious" product, with issues that required mediation to resolve. (Richland, REG-091, Franklin, REG-100) Customers also commented that BPA should develop a rate that would "do away with all the in-fighting," (United, REG-022-23) and that BPA should restructure the product in order to eliminate sources of disagreement and cost shifts. (Richland, REG-091)

### **Evaluation and Decision**

Non-Slice customers strongly urged BPA to not use the true-up approach as the common risk mitigation method for various reasons that are stated above in the public comments. BPA recognizes the fact that if the risk mitigation methods for the rates for Slice and non-Slice products are to be aligned or to be made similar, then either there will be changes to the Slice rate to make it similar to the non-Slice rates, or there will be changes to the non-Slice rates to make them similar to the Slice rate. Furthermore, BPA recognizes that any such proposed changes and the issues regarding such changes must be addressed within a rate case proceeding under Section 7(i) of the Northwest Power Act and cannot be addressed finally in this ROD. BPA will conduct both a Tiered Rates Methodology rate case as identified in other sections of this ROD and a 2012 rate case for all of its products.

Through its Slice Product Review Financial Subcommittee meetings with Slice customer and non-Slice customer representatives, BPA developed a matrix of options that could result in the same risk mitigation methods for Slice and non-Slice rates for commonly shared expenses included in both the Slice and non-Slice revenue requirements. BPA options addressed non-secondary sales risks that are common to the rates of both Slice and non-Slice customers. BPA options could address the risk associated with BPA's secondary marketing (for non-Slice products). However, BPA will not determine issues of rate design and risk mitigation until it makes its proposal for the rate cases. Additional time for consideration could lead to improvements that are better for at least some parties and not worse for others. Although BPA stated a preference for the true-up approach in its Policy Proposal, BPA will consider other risk mitigation methods that are consistent with statutory and policy needs in its proposal for the Tiered Rates Methodology and as may be needed for its 2012 rate case.

As stated above, BPA has adopted a set of overarching principles that are key to the post-2011 Slice product design. Principle 4 states:

4. To the maximum extent possible, the rate adjustment mechanisms for common cost components in the Slice and other PF power products are the same.

BPA will attempt to design rate adjustment mechanisms or risk mitigation methods that are similar or the same for common cost components in the Slice and other PF power products. BPA will make its proposal on these matters in either the Tiered Rates Methodology or the 2012 rate cases.

### **Issue 18:**

**Whether BPA will avoid cost shifts from the post-2011 Slice product to rates for non-Slice products?**

### **Policy Proposal**

BPA proposed a set of overarching principles that are key to the post-2011 product design. These principles will set the context for contract negotiations, product design and the amount of Slice product offered. Any future Slice product offering will need to conform to other decisions arising out of the Regional Dialogue process. The Slice product principles were

developed in a coordinated effort including BPA, Slice customers and NRU during the Slice Product Review process from mid-September through mid-December 2005. Two of the principles are:

1. There are no unintended shifts of costs, risks or benefits between power products and all power products bear a share of the costs and risks.
2. There is no risk or cost shift to Federal taxpayers.

### **Public Comments**

Comments on this issue were received from Slice and non-Slice customers. Non-Slice customers advised BPA to design a Slice product that did not result in cost shifts to other products or customers. (Kittitas, REG-087, Richland, REG-091) Other non-Slice customers stated that the complexity of the Slice product creates opportunities for cost shifts. It also creates a perception and a reality for “financial winners and losers” between Slice and other customer groups over a range of issues. (NRU, REG-103, Benton REA, REG-094) One non-Slice customer believes that the existence of the Slice product has politically fractured the Northwest public utility customers of BPA, creating a weaker political shield against future attacks on BPA. (Benton REA, REG-094) In contrast, two Slice customers believe that currently, Slice offers an option that does not disadvantage other non-Slice customers. (Snohomish, REG-131, PNGC, REG-133)

NRU raised more specific cost shift issues. NRU stated that it strongly supports the sharing of BPA’s Debt Optimization Program costs and the President’s Budget Proposal impacts among Slice customers and others in PF rates. (NRU, REG-103)

### **Evaluation and Decision**

Ultimately the question of costs and cost shift are ones of cost recovery for all the products sold to all customers and thus are rate case issues. BPA will conduct both a Tiered Rates Methodology rate case as discussed in other sections of the ROD and a 2012 rate case prior to implementation of the post-2011 contract. Principle 1 adopted for the next Slice product offering will guide BPA’s rate design. BPA has been conscientious in its application of the original Slice product principle of “no cost shifts (from the Slice product) to other customers.” During the Slice Product Review process, at the request of Slice customers, this principle was slightly revised from the original principle to ensure that all customers bear their appropriate share of costs and risks:

1. There are no unintended shifts of costs, risks or benefits between power products and all power products bear a share of the costs and risks.

Another principle adopted by BPA ensures that there are no shifts of costs or risks to Federal taxpayers:

2. There is no risk or cost shift to Federal taxpayers.

BPA will make its specific proposals for treatment of costs in its Tiered Rate Methodology rate case that implements this principle and others for the Slice and non-Slice rates. BPA intends to design rates and rate adjustment mechanisms that will recover all costs and be fair and equitable for both Slice and non-Slice products.

With respect to the sharing of BPA's Debt Optimization Program costs and the President's Budget Proposal impacts through Slice and other PF rates, any specific proposals will be discussed in the Tiered Rates Methodology rate case or the 2012 rate case.

Benefits with respect to the operational aspects of the Slice product also have been addressed. In particular, aspects of the product involving the self-supply of ancillary services (see Issue 9), within-hour use of capacity (see Issue 8), operational uncertainty and sharing of system capability (see Issue 13) have been clarified in this ROD, so that any such benefits associated with the Slice product are equitable with respect to benefits associated with other PF products.

#### **Issue 19:**

**Whether BPA will continue to use a “percentage of system costs” approach for the post-2011 Slice rate?**

#### **Policy Proposal**

BPA proposed a set of product principles that are key to the post-2011 product design. These principles will set the context for contract negotiations, product design and the amount of Slice product offered. Any future Slice product offering will require implementation steps for both contracts and rates that would need to conform to other decisions arising out of the Regional Dialogue process. The Slice product principles were developed in a coordinated effort including BPA, Slice customers and NRU during the Slice Product Review process from September 2005 through early 2006. One of the principles states:

3. Slice purchasers bear an **allocation of FCRPS costs and risks** and receive a *commensurate amount* of FCRPS energy, hourly scheduling flexibility and specific BPA power revenues (emphasis added).

#### **Public Comments**

The comments received on this issue were mostly from Slice customers, who wanted to emphasize that they currently pay for the Slice product under the present Slice rate methodology by paying a “percentage of system costs.” Slice customers feel that this is a basic concept that BPA should not depart from. (Benton PUD, REG-114; SCL, REG-128; Slice, REG-144)

Slice customers also emphasized that this “percentage of the system costs” approach for the Slice rate reduces BPA's financial and hydro risks in that BPA receives a steady revenue stream, regardless of variable hydro conditions. (Franklin, REG-100; Benton PUD, REG-114; Grays Harbor, REG-116; Snohomish, REG-131; Slice, REG-144; Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002; Grays Harbor, REG-013-15; PNGC, REG-133; Clearwater, REG-134; Blachly-Lane, REG-140; SCL, REG-149-03; Grays

Harbor, REG-149-23) The stable and steady revenue stream that results from the “percentage of the system costs” approach for the Slice rate is beneficial in that it helps BPA make its Treasury payments on time. (Grays Harbor, REG-116; Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter, REG-002) Another important benefit is long-term fish program funding stability. (Slice, REG-144; Benton PUD, REG-114)

Slice customers also believe that another benefit of the “percentage of the system costs” approach for the Slice rate is that it provides “the most accurate price signals possible,” because it is based on BPA’s actual costs for the product.” (Benton PUD, REG-114; Slice, REG-144)

Several non-Slice customers stated that the “Slice-like approach to pricing” (percentage of system costs approach) also might work for pricing Tier 1 power. (Tacoma, REG-135; WPAG, REG-109)

### **Evaluation and Decision**

BPA received comments from Slice customers who pointed out the benefits of a “percentage of system cost” approach for the Slice rate, which is currently in place for the Slice product. Customers believe that this approach conveyed benefits of reducing financial and hydro risk for BPA and providing accurate price signals to customers. In addition, customers believe that the “percentage of the system costs” approach should be tied to the purchase of a percentage of Federal system capability, services, and output.

BPA stated a principle in its Policy:

3. Slice purchasers bear an **allocation of FCRPS costs and risks** and receive a *commensurate amount* of FCRPS energy, hourly scheduling flexibility and specific BPA power revenues (emphasis added).

This principle must be consistent with the other principles, and will guide the setting of the Slice rate and the rates for other products rates under an **allocation** of system costs and risks as appropriate to the product. To the extent that all Federal system costs and risks that are applicable to the Slice product are allocated on a percentage basis, then this principle allows for a continuation of a “percentage of the system cost” approach. This principle also allows for consideration of other innovative Slice rate designs that result in an appropriate allocation of all Federal system costs and risks that are applicable to the Slice product. The costs and risks that are applicable to the Slice product will also include any unrecoverable costs from Tier 2 rates, consistent with BPA’s Tiered Rate Methodology and section 7(a) of the Northwest Power Act.

In regard to customer comments on the risk reduction benefits of the Slice product, BPA offers some clarification. Since the inception of the current Slice product, financial risks (including those risks associated with variable hydro conditions) have been addressed in a different manner for the Slice product, as compared to other PF products. The current Slice product addresses BPA’s financial risks by: (1) placing the FCRPS power supply and market price risks directly on the Slice customer; and, (2) incorporating an annual True-Up

Adjustment Charge for differences between planned and actual costs (and credits) of the Slice Revenue Requirement. These mechanisms ensure that the Slice customers pay a proportionate share of BPA's Power Services costs. It is important to note that BPA still bears the entire fiduciary responsibility for making its payments to Treasury. None of this responsibility has shifted to other customers with the inception of the Slice product, nor has the magnitude of risk associated with making this payment to Treasury been reduced. While the sale of the Slice product has resulted in a different manner in which BPA's financial risks have been covered, in the absence of Slice, those risks would be fully covered by other rates and other risk mitigation mechanisms.

Slice customers commented that because they are charged for BPA's actual costs for the product they purchase, these charges send the "most accurate price signal possible." If by "most accurate price signal possible" they mean that the Slice rate reflects the market value of the Slice product, then BPA does not agree. The Slice rate does not reflect the market value of the products and services being purchased. Slice customers' payments are the same each month, with the exception of when any True-Up Adjustment Charge or Credit is included in Slice Expedited Bills after the end of each Contract Year. However, BPA recognizes that the Slice customers do face some market price signals. This is because the Slice product is shaped to BPA's generation from the Federal system resources, and there is no assurance that the Slice customer's net requirements load will be met during all hours by the Slice product. The Slice customer must turn to the market to make power purchases (and/or power sales) or to develop and integrate non-Federal resources to follow its load or to meet its load growth.

## **V. BENEFITS TO THE RESIDENTIAL AND SMALL-FARM CONSUMERS OF THE INVESTOR-OWNED UTILITIES AND PUBLIC AGENCIES**

Providing benefits to the residential and small-farm consumers of the investor-owned utilities (IOUs) and public agencies has long been the subject of ongoing discussions and negotiations. In light of recent decisions by the U. S. Court of Appeals for the Ninth Circuit, this section of this document has been omitted.

## **VI. SERVICE TO DIRECT-SERVICE INDUSTRIES**

BPA has not yet finalized its decision on providing service to the DSIs. Therefore, the DSI sections of this document have been omitted at this time. Discussions with the DSIs were delayed to provide the agency a better chance of understanding the implications of the Ninth Circuit Court ruling.

## **VII. CONSERVATION**

### **Issue 1:**

#### **Whether BPA should offer bi-lateral conservation contracts post-2012?**

##### **Policy Proposal**

BPA proposed to continue pursuing an amount of conservation equivalent to all cost-effective conservation in the load BPA serves at Tier 1 rates at the lowest cost to BPA. BPA proposed a portfolio of approaches similar to that developed by a collaborative workgroup in 2005, that consists of four components: (1) a rate credit that provides steady funding for local programs and targets the conservation that is reasonably evenly distributed throughout the region; (2) bilateral contracts that provide the means to acquire additional cost-effective conservation where available in specific utility service territories; (3) third-party contracts and market transformation activities that can be used in conjunction with local programs where a coordinated regional effort is needed either to reduce costs or to move market players that do not respond at a local level; and, (4) regional infrastructure support by BPA.

##### **Public Comments**

While most commenters were silent on the issue of how BPA would design its conservation effort after 2012, several utilities and utility groups were specifically concerned about the possibility that the cost of bi-lateral conservation contracts would be included in the Tier 1 rate. WMG&T suggested three alternatives: eliminate all bilateral contracts; decrement utility Tier 1 power if they accomplish conservation at a cost to others; or only allowing bilateral contracts as a Tier 2 product. (WMG&T, REG-106) Snohomish commented that Tier 1 should not include the costs of acquiring new conservation since that is the responsibility of individual utilities whether they choose to do so through their own actions or through BPA Tier 2 purchases. (Snohomish, REG-131) NRU does not support BPA's using Tier 1 funds to target conservation by utilities through bilateral contracts. (NRU, REG-103) NRU suggests that if Tier 1 is used to pay for bilateral agreements then the financial benefit that accrues should flow back to all Tier 1 customers. SUB commented that bilateral agreements should require a reduction in a utility's HWM in an amount equal to the conservation energy savings achieved to avoid Tier 2 resource acquisitions being paid for with Tier 1 rates. (SUB, REG-126)

##### **Evaluation and Decision**

The appropriateness of collecting conservation costs in the Tier 1 rate is addressed in another issue below. None of the comments questioned the efficacy and reasonableness of using bilateral contracts as a means to capture conservation. BPA understands the concerns expressed by some that they would not directly benefit in the same way as the conserving utility from expenditures through bi-lateral contracts. BPA believes that its approach responds well to these concerns, first by clarifying that BPA expects its conservation goals to be met to a significant extent through programs initiated and funded by its public utility customers with BPA supplementing and facilitating utility initiatives. BPA believes that the economic incentives provided by the tiered rate and HWM construct, combined with state initiatives such as portfolio standards should result in substantial utility investment in conservation. BPA has provided further economic incentive for utility-funded conservation

in the near term by providing the 100 percent HWM credit for utility-funded conservation in the 2007-2010 period. Second the Policy clarifies that BPA will count savings achieved by its customers towards its conservation goal, thereby reducing the need for BPA funding. Third, bilateral contracts are only one part of a portfolio approach to achieving conservation goals. Specifically what role bilateral contracts will play in BPA's future portfolio will be determined later and will be defined as BPA develops its contracts, products and the TRM.

## **Issue 2:**

**Whether BPA should offer only renewable resource(s) and conservation based Tier 2 products.**

### **Policy Proposal**

A utility with a HWM below its firm net requirements load may request BPA to serve its load in excess of the HWM at a Tier 2 rate. The opportunities to provide conservation to customers in lieu of more expensive Tier 2 purchases may not always be feasible, but providing these opportunities is a legitimate response to customer needs. BPA could potentially help a utility develop conservation to offset its need to buy power in excess of its HWM. BPA proposed the following service alternatives or options subject to Tier 2 rates: New Renewables, Default, and Long-Term.

### **Public Comments**

Several commenters suggested that BPA create an all-conservation and renewable resources package for utilities that choose to have BPA meet their additional Tier 2 power needs. (Jose, REG-001; NWEC, REG-009; NWEC, REG-011-14; Tassoni, REG-016; RNP, REG-113; LWV WA, REG-086; EP, REG-045; OEC, REG-105; Audubon, REG-066; Ciancibelli, REG-024; Mountaineers, REG-115)

### **Evaluation and Decision**

BPA is guided in its resource acquisitions by a statutory framework that requires BPA to consider conservation, renewable resources, waste heat and high efficiency fuel generation, and all other resources. 16 U.S.C. §839b(e)(1). These resources must be cost-effective as defined in the Northwest Power Act. 16 U.S.C. §839a(4)(A). If customers request BPA to serve their net requirements load needs beyond their HWMs, BPA intends to offer at least one renewable resources-based Tier 2 rate service alternative.

To meet its load obligations, BPA is committing to ensure the development of conservation equivalent to all cost-effective conservation in the service territories of those public utilities served by BPA, and to recover the costs of doing so in the Tier 1 rate. This will leave little or no cost-effective conservation available for Tier 2.

Further, it is not clear how load reductions created by conservation can be converted to Tier 2 power deliveries without using power from the existing system to serve load, subject to the Tier 2 rate, which would be inconsistent with the tiered rates construct. BPA is willing to continue discussing the practicality of using conservation as the basis for Tier 2 rate service, but absent finding a way to reconcile the dilemmas described above, does not intend to pursue a conservation-based Tier 2 rate option.

### **Issue 3:**

**Whether BPA should condition its Regional Dialogue contracts for the purchase of low-cost Tier 1 rate power on customers agreeing to achieve all cost-effective conservation.**

#### **Policy Proposal**

The Policy Proposal did not include such a condition.

#### **Public Comments**

Many comments expressed a concern that the contracts require utilities to meet their power needs “cleanly” by requiring local utilities to rely on conservation and renewables like wind and solar, not coal and other fossil fuels. (OR/WA Citizens, REG-014) Other commenters raised a similar concern regarding inclusion of a contract commitment as a *quid pro quo* for the economic benefit of 20 years of enough low-cost Federal power to meet a share of their current needs. (NWECC, REG-009; NWECC, REG-149-14; NEEC, REG-078; MT Trout, REG-085; Audubon, REG-066; CRITFC, REG-138; CRITFC, REG-149-13; Jose, REG-001; Lougheed, REG-009; NWECC, REG-011-14; Tassoni, REG-016; Phone Log, REG-028; SRA, REG-032; Nelson, REG-039; EP, REG-045; OEC, REG-105; NWECC & SOS, REG-110; Mountaineers, REG-115; OIGWC, REG-129)

#### **Evaluation and Decision**

These commenters indicated that they were motivated to suggest this requirement by their view of the importance of accomplishment of all cost effective conservation. BPA shares the view of the importance of accomplishing all cost effective conservation and believes this Policy contains a robust set of measures that will provide a high degree of assurance that it will be accomplished. These include:

- BPA’s policy commitment, consistent with its load serving obligations, to ensuring achievement of conservation equivalent to all cost effective conservation in the service territories of those public utilities served by BPA to meet its load obligation;
- a tiered rate and HWM construct that will greatly enhance each utility’s economic incentive to conserve;
- a commitment to recovering the costs of BPA’s conservation program in the Tier 1 rate;
- the effect of the adoption of state renewable portfolio standard, combined with BPA’s conservation policy decision for the post-2011 period to drop the requirement that the rate credit expenditures be incremental above what is required by state law or Commission order;
- the credit of 100 percent for self-funded conservation and 75 percent credit for BPA funded conservation accomplished from 2007-2010 in the calculation of the HWM; and,
- the new contractual requirement for each utility to provide BPA with a resource plan that addresses consistency with the Council’s conservation targets.

Even if a contractual requirement to meet conservation targets were otherwise feasible and desirable, BPA believes it would be superfluous in light of the strong level of assurance provided by this package of actions.

Secondarily, there are serious questions about BPA's authority to condition its service to requirements customers on conservation achievement. BPA also is taking care not to interfere with either the resource choices that its customers are responsible for or the development of state legislation to that effect.

For these reasons, BPA will not condition its Regional Dialogue contracts for the purchase of low cost Tier 1 rate power on customers agreeing to achieve all cost-effective conservation.

**Issue 4:**

**Whether BPA's policy for conservation development is consistent with its regional dialogue goals and its legal authorities for resource acquisition and development.**

**Policy Proposal**

BPA proposed to continue pursuing an amount of conservation equivalent to all cost-effective conservation in the load it serves at Tier 1 rates, at the lowest cost to BPA. BPA proposed to continue its current practice of using a diverse portfolio of actions to meet this goal, including acquiring conservation by paying a share of the cost of conservation measures and by facilitating conservation done by others at lesser cost to BPA.

**Public Comments.**

No public comments were received on BPA's legal authority to adopt its proposed conservation policy.

**Evaluation and Decision**

BPA has a statutory obligation to offer contracts to supply power to meet the net requirements of its regional utility customers under section 5 of the Northwest Power Act. In meeting its obligation under contract, BPA may be required to acquire resources under section 6 of the Act which provides direction with respect to determining the cost effectiveness of those resource acquisitions and their consistency with the Council's Power Plan. Under section 6, BPA is required to take into account any planned amounts of conservation that can be achieved before it acquires power from other resources. Thus, BPA's obligation to pursue conservation is based on BPA's obligation to serve the load of its regional customers.

In principle, any conservation in utility service territories reduces BPA's potential need to acquire additional resources, since those utilities have a statutory right to ask BPA to serve their remaining load or so-called net requirement needs. Conservation reduces a utility's net requirements. In practice, there is uncertainty about rates of load growth and about whether utilities will in fact ask BPA to meet their net requirements, and thus whether conservation reduces a BPA acquisition need that would otherwise have existed. BPA's Regional Dialogue Policy and subsequent contracts and tiered rates methodology will reduce but not eliminate the inherent uncertainty about BPA's future need to acquire resources.

BPA's most recent estimates of the amount of power it will need to acquire by 2012 to "augment" the existing system to meet its public utility customers' loads within their HWMs

range from a high of 300 aMW if load growth is relatively high between now and 2010 to a low of zero if load growth is relatively low. The mid-range estimate is 107 aMW. These estimates do not allow for any augmentation to meet future new public utility loads. This augmentation could be up to 250 aMW. These estimates also do not include up to 70 aMW of augmentation for the Department of Energy loads on the Hanford reservation.

What amount of additional power BPA will be required to acquire to meet customer loads in excess of their HWMs at the Tier 2 rate is less certain, since that depends heavily on customer choice as well as load growth and changes in firm capability of the Federal system. BPA's best current estimate is that these "Tier 2" loads will total 177 aMW in 2012, growing to 795 aMW by 2020. But the actual need to acquire power to meet Tier 2 loads could be substantially higher or lower. The low-end estimates are 39 aMW in 2012 and 364 aMW in 2020. The high-end estimates are 527 aMW in 2012 and 2735 aMW in 2020. These high-end estimates assume BPA serves Tier 2 load of Slice and Block customers.

In summary, the estimates of BPA's acquisition needs in 2012 to cover the combination of augmentation to cover HWM loads and acquisitions to serve Tier 2 loads range from a low of 39 aMW to a high of 576 aMW, with a midrange of 277 aMW. By 2020 the low estimate is 364 aMW, the high is 3035 aMW and the midrange is 925 aMW.

The Council's Fifth Power Plan estimates of achievable cost-effective conservation in the service territories of BPA's public utility customers are 65 aMW per year for the 2011 to 2020 period. Over the last 20 years, BPA's own economic analysis has consistently confirmed the Council's assessment of the cost effectiveness of conservation relative to other available resources. Since BPA and other regional parties participate in the Council's Plan development, and since BPA has historically found that analysis to be reasonable, and since BPA's view is that it streamlines regional efforts to have a single consistent point of reference for the amount of cost-effective conservation, BPA believes that adopting the Council's estimates of cost effective conservation is reasonable.

At an average rate of 65 aMW per year, conservation development would total 448 aMW from 2011 to 2020. However, some of this conservation is already embedded in the load forecasts used to develop the above-described range of BPA acquisition needs. Precise estimates of how much of the 65 aMW/year is already embedded in load forecasts are not available, but BPA believes that an assumption of approximately 55 percent is reasonable. This means that BPA's acquisition needs would be reduced by approximately 45 percent (293 aMW) of the conservation total of 650 aMW, by 2020. By comparison, the midrange estimate of BPA's total acquisition needs by 2020 is 902 aMW, with a low of 302 aMW and a high range estimate of 3032 aMW. The fact that the incremental load reductions created by cost-effective conservation are less than the low range of potential acquisition need indicates that it is highly likely that this amount of conservation will be needed to cost-effectively meet BPA's needs to acquire resources.

However, since there is uncertainty about BPA's acquisition needs, BPA considered three alternative policy approaches to manage this uncertainty:

1. Hold off on pursuing conservation until the need to acquire becomes clear.
2. The final policy – pursue conservation at the lowest cost to BPA.
3. Acquire all cost effective conservation now.

BPA rejected the first approach because BPA’s experience over the last 25 years has been that a steady approach to conservation development rather than rapid ramp-ups and ramp-downs provides a much higher likelihood of meeting aMW targets at the lowest cost. Hence, this approach would put at risk BPA’s assurance of getting the cost-effective conservation accomplished without a major increase in cost.

The second approach leaves conservation on the steady path it has been on for the last seven years, but does not commit BPA to pay for all of it. Instead, BPA commits to pursuing cost-effective conservation through a diverse portfolio of efforts designed to ensure accomplishment of conservation at least cost to BPA. Some of these efforts involve payments to acquire conservation, but others involve facilitation of efforts by others at much lower cost to BPA than required for direct acquisition. Many utilities accomplish conservation through their own programs at their own cost and the savings from these programs likewise count toward the goal.

The third approach – direct acquisition of all cost-effective conservation – would provide somewhat greater assurance that the conservation will be developed, but at the highest cost to BPA since BPA would be obligating itself to pay for all of it.

The second approach is preferable because it provides high assurance that the cost-effective conservation will be developed while keeping BPA costs and rates as low as possible.

However the second approach leaves open the possibility that BPA will pay for some conservation – either through direct acquisition or through facilitation activities such as its funding of NEEA – that BPA does not need for some period of time because some customers whose loads are reduced decide to take responsibility for meeting their own load growth with nonfederal resources. BPA views this as a risk that is reasonable to take in part because customers’ decisions to meet their own load growth are of limited duration and BPA’s has a continuing statutory obligation to meet their net requirements if requested. Thus, load reductions that do not immediately reduce BPA’s acquisition needs may do so later in time. Secondly, the obvious way of addressing this risk – stipulating that BPA will stop paying for conservation in a utility’s service territory as soon as it chooses to meet its own load growth – would create a strong incentive for utilities to place their “Tier 2” loads on BPA to avoid losing financial support for conservation, thereby disinciting utilities from developing their own resources. Such a policy choice would thus have the perverse effect of increasing BPA’s need to acquire resources. It would also be counter to the fundamental policy goal of inciting infrastructure development.

Based on the foregoing, BPA concludes that the second approach of pursuing conservation equivalent to all cost effective conservation in the service territories of those public utilities served by BPA, and doing so at the lowest cost to BPA, is consistent with BPA’s statutory mandates to meet its acquisition needs with cost effective resources, and to keep its rates as

low as possible consistent with sound business practice. It also advances the regional dialogue goals of low and stable Tier 1 rates and accomplishment of conservation.

**Issue 5:**

**Whether BPA should offer to IOUs a conservation rate credit for the post-2012 period.**

**Policy Proposal**

BPA is not proposing to serve IOU residential and small-farm loads with firm power, therefore, the Policy Proposal did not include those loads in determining BPA's conservation target. Similarly, DSI eligibility for benefits would be limited and their loads, if any, would not be factored into BPA's conservation target.

**Public Comments**

Several IOUs commented on this aspect of the proposal and expressed the view that the IOUs should receive the conservation credit regardless of whether they receive the Residential Exchange or have settled the exchange – without decrement. They indicated that they viewed it as unfair and inequitable for BPA to deny such funding to the IOUs. (PNW IOUs, REG-142) Save Our Wild Salmon also commented that it believed it is unfair to the consumers of IOUs to not make conservation funding available to them. (SOS, REG-110)

**Evaluation and Decision**

Because BPA does not expect to serve firm power load needs of the IOUs, it did not propose to make them eligible to receive a future conservation rate credit. BPA's goal is to ensure that all cost-effective conservation is accomplished equivalent to all public loads that we serve. BPA is not committing to financially secure this level of energy efficiency, but will work cooperatively with entities in the region to ensure the conservation is accomplished. If there is no IOU load served by BPA, then BPA payment to IOUs for conservation would not be an efficient means of pursuing the goal. BPA's conservation program spending is designed to meet a clear goal at least cost, not as a financial benefit to be doled out equitably. Consequently, BPA will not offer to IOUs a conservation rate credit for the post-2012 period.

**Issue 6:**

**Whether the cost of conservation should be included in the Tier 1 rate.**

**Policy Proposal**

BPA proposed to continue pursuing an amount of conservation equivalent to all cost-effective conservation in the load it serves, the cost of which will be included in the Tier 1 rate.

**Public Comments**

Some environmental and constituent groups specifically emphasized their support for the proposal. These include NWEAC, the Snake River Alliance, the Oregon Department of Energy, Northwest Energy Efficiency Council, Oregon Environmental Council, and Oregon Energy Coordinators Association. (NWEAC, REG-009; NWEAC, REG-011-14; SRA, REG-032; ODOE, REG-062; NEEC; REG-076; NEEC, REG-011-06; OEC, REG-105; OECA, REG-104) They are joined in support for at least most conservation costs as being

Tier 1 by some of the region's utilities. (SCL, REG-128; NRU, REG-103; SUB, REG-126; WMG&T, REG-106; Kittitas, REG-087; ICUA, REG-096; NWasco, REG-055) The Northwest Power and Conservation Council strongly supported the proposal on this issue. (NPCC, REG-033)

Utility opposition to including conservation costs in the Tier 1 rate focuses on the possibility of I-937 passing, the presumed sufficiency of the economic incentive built into tiered rates, and concern about the general spillover of utility costs to Tier 1 from utilities' avoidance of Tier 2 costs. (WMG&T, REG-010-06) Some suggested a surcharge alternative be developed and applied to non-performing utilities. (Tacoma, REG-135; Snohomish, REG-131; Franklin, REG-100; Cowlitz, REG-118; Benton PUD, REG-114) These concerns are reiterated by WPAG, which suggested sun-setting costs after 3 years, and PNGC which suggests a ramp down of BPA conservation by 2011. (WPAG, REG-109; PNGC, REG-133) Several utilities and utility groups were specifically concerned about the possibility that the cost of bi-lateral conservation contracts would be included in the Tier 1 rate. WMG&T suggested three alternatives: eliminate all bilateral contracts; decrement utility Tier 1 power if they accomplish conservation at a cost to others; or only allowing bilateral contracts as a Tier 2 product. (WMG&T, REG-106) Snohomish commented that Tier 1 should not include the costs of acquiring new conservation since that is the responsibility of individual utilities whether they choose to do so through their own actions or through BPA Tier 2 purchases. (Snohomish, REG-131) NRU does not support BPA's using Tier 1 funds to target conservation by utilities through bi-lateral contracts. (NRU, REG-103) NRU suggests that if Tier 1 is used to pay for bi-lateral agreements then the financial benefit that accrues should flow back to all Tier 1 customers. SUB commented that bi-lateral agreements should require a reduction in a utility's HWM in an amount equal to the conservation energy savings achieved to avoid Tier 2 resource acquisitions being paid for with Tier 1 rates. (SUB, REG-126)

### **Evaluation and Decision**

The concern expressed by certain commenters is that utilities may be required to spend their own ratepayer money on conservation as a result of state imposed Renewable Portfolio Standard (RPS) requirements. For example, some expressed concern that if Washington's Initiative 937 were to become law they felt they should not be required to pay twice for conservation—first, for requirements under the initiative over and above BPA contract requirements and, second, for conservation undertaken by others under Tier 1 rates. (Franklin, REG-100; Cowlitz, REG-118) BPA agrees that these are legitimate equity concerns, mostly in connection with bilateral conservation contracts. These equity concerns must be addressed in a way that does not jeopardize achievement of the cost-effective conservation goal. BPA believes these concerns are substantially mitigated, first by clarifying that BPA expects its conservation goals to be met to a significant extent through programs initiated and funded by its public utility customers with BPA supplementing and facilitating utility initiatives. BPA believes that the economic incentives provided by the tiered rate and HWM construct, combined with state initiatives such as portfolio standards should result in substantial utility investment in conservation. BPA has provided further economic incentive for utility-funded conservation in the near term by providing the 100 percent HWM credit for utility-funded conservation in the 2007-2010 period. Second,

the Policy clarifies that BPA will count savings achieved by its customers towards its conservation goal, thereby reducing the need for BPA funding. Third, bilateral contracts are only one part of a portfolio approach to achieving conservation goals. Specifically what role bilateral contracts will play in BPA's future portfolio will be determined later.

Remaining equity concerns after these mitigating actions must be appropriately managed, but BPA believes that these concerns are not enough to overcome the importance of setting and meeting the all-cost-effective-conservation goal. Stipulating that the cost of BPA's conservation actions cannot be recovered in Tier 1 rates would jeopardize accomplishment of this goal. BPA will also work with customers and other parties to minimize equity issues in design of its programs. With these stipulations, BPA will propose to recover the costs of its conservation programs in Tier 1 rates.

Some comments suggested use of a surcharge applied to non-performing utilities. BPA is cognizant of the ability under section 4 of the Northwest Power Act to establish a surcharge upon recommendation by the Council to recover additional costs incurred by BPA if forecasted energy savings are not achieved. 16 U.S.C. §839b(f)(2). At this time BPA does not believe a surcharge is necessary or needs to be developed, but would consider developing a surcharge if the Council were to recommend one. Assuming the Council did find that utility customers of BPA are not achieving their forecasted energy savings, the Council could recommend a surcharge be established. Because BPA is committing to ensure, consistent with its load serving obligations, the achievement of all cost effective conservation by its public utility customers, the ability to establish the surcharge may become a tool that BPA could rely upon to fulfill its commitment.

#### **Issue 7:**

**Whether BPA should include in the final Regional Dialogue Policy a strategy to help its customers meet state conservation and renewables requirements.**

#### **Policy Proposal:**

The Policy Proposal did not address this issue.

#### **Public Comments**

Washington's Governor Gregoire noted that with the passage of Initiative 937, the demand for BPA's help in meeting those requirements may be expected to grow. She specifically suggested that, "BPA should include in the final Regional Dialogue Record of Decision a strategy to help its customers meet state conservation and renewables requirements." (Gov. Gregoire, REG-147)

Some customers and customer groups also were interested in the way that the Initiative and BPA's programs would interact, but they generally did not believe that BPA should continue to pay for the conservation if the initiative passed. Franklin said that utilities should not be forced to pay for conservation in their Tier 1 rates for other utilities if they were already paying for their own conservation as a result of the initiative. (Franklin, REG-012; Franklin, REG-100) They would be paying twice. This view is shared in the comments from WPUDA. (WPUDA, REG-080). WPAG believes that it would be hard to justify the

continuation of BPA programs if RPS are passed in Oregon and Washington. (WPAG, REG-109)

### **Evaluation and Decision**

It would be premature for BPA to include a detailed strategy as part of the final Policy. BPA understands that the residents of the State of Washington recently voted in favor of Initiative 937, which will require certain sized utilities to acquire and use conservation and renewable resources to serve their consumptive load, and that other states, such as Oregon, are considering legislative RPS mandates. BPA recognizes that such state laws will likely have an affect on the amount of Federal power that utilities covered by the mandates may buy from BPA since, as in the case of Washington, utilities must serve a percentage of their load with conservation and renewable resources.

As a regional Federal marketer of Federal power at wholesale, BPA will endeavor to develop products and services that will assist its customers to comply with state law RPS requirements. BPA will revise its current Conservation Policy (dated June 2005) to eliminate the requirement that any conservation BPA pays for must be incremental to legislation or commission requirements in order to allow potential opportunities for working with BPA customers. This will allow BPA to work with customers who might otherwise believe that they could pay twice for the same conservation.

## VIII. RENEWABLE RESOURCES

### Issue 1:

#### Whether BPA should increase its renewable resource target.

#### Policy Proposal

BPA proposed to base its renewable program goal on the Council's forecasted renewable generation and public power's share of regional load growth. The Council's Fifth Power Plan predicts that 5000 MW of incremental wind generation will be energized over the next 20 years. BPA assumed for illustrative purposes that total public power load growth would equal 40 percent of regional load growth. Forty percent of 5000 MW over 20 years equates to a BPA renewable target of roughly 100MW/year.

#### Public Comments

Many comments were supportive of the 100 MW target. (Jose, REG-001; NVEC, REG-13-11, NVEC, REG-011-14; SRA, REG-032; CADO, REG-104, Horizon, REG-048; RNP, REG-013-02; Tossoni, REG 016; Gov. Gregoire, REG 149-18) Governor Gregoire noted that conservation and renewables should remain a priority for BPA. "It is my belief that the region must continue to make prudent investments that benefit the environment and be accountable for these investments." (Gov. Gregoire, REG-004) The Northwest Power and Conservation Council supported BPA's proposal "to acquire its share of renewable resources called for in the Council's Plan" and did not object to BPA's calculation of that share. (NWPPCC, REG-033)

Several comments stated BPA should strengthen the renewable program and devote more resources to direct acquisition and promotion of renewable resources. (Sierra, REG-011-05; Highland, REG-088; CUB, REG-095; Yakima, REG-138) Others commented that BPA should expand the target and acquire all cost-effective renewable resources as forecasted in the Council's Fifth Power Plan, i.e., IOU load growth should be included in the target. (RNP, REG-113; NVEC, REG-009; NVEC, 011-14; NVEC & SOS, REG-110)

Most public utility customers were silent on the renewable target; however, some questioned the need for BPA to facilitate renewables. (See Issue 3 for a more thorough discussion of customer comments on renewable facilitation as a Tier 1 expense.)

A few customers commented that the proposal was too "wind-centric" and that BPA should focus on all renewable technologies to diversify the system and bring other technologies to the market. (SCL, REG -149-03; SUB, REG-126; PGE, REG-149-07) Klickitat commented that BPA should facilitate DSI renewable development. (Klickitat, REG-046)

#### Evaluation and Decision

BPA is not persuaded that it needs to increase its renewable resource target. BPA's target is based on a reasonable formulation linked to the amount of public utility load growth over the Regional Dialogue contract period. BPA will assess public power's renewable acquisitions and acquisition plans, load growth and revisions to the Council's Plan to determine if the

target is being met. Progress toward the target will guide BPA's level of facilitation. Facilitating the development of renewables by BPA's customers rather than relying solely on direct BPA acquisitions will enhance the likelihood that public power customers will assume responsibility for developing new cost-effective resources instead of leaving that responsibility with BPA. Facilitation also has the potential to be less costly than direct BPA acquisition because other parties assume a portion, or all fiscal responsibility.

Finally, in response to comment that the proposal is "wind-centric," BPA emphasizes that the proposal provides clearly that the target covers all renewable resources, not just wind.

## **Issue 2:**

**Whether BPA should include a contract provision that requires customers to acquire renewable resources consistent with BPA's statutory obligations under the Northwest Power Act.**

## **Policy Proposal**

This issue was not discussed in the Policy Proposal, but was raised in public comments.

## **Public Comments**

Many comments expressed a concern about BPA's statutory obligations under the Northwest Power Act to encourage the development of renewable resources in the region if utilities assume the responsibility to develop and/or acquire resources to meet their future needs. Such comments noted that BPA's customers are not subject to the same renewable obligations under the Act and suggested that BPA should require contractual commitment from customers to consider conservation and renewables first when acquiring resources to meet load growth. Many comments noted that this obligation would be reasonable in consideration for receiving the benefits of Tier 1 power. (RNP, REG-013-02; RNP, REG-113; LWV WA, REG-011-10; LWV WA, REG-086; Ciancibelli, REG-024; NWEA, REG-009; NWEA, REG-011-14; NWEA & SOS, REG-110; NWEA, REG 149-14; CUB, REG-013-08; CUB, REG-095; Nelson, REG-039; SRA, REG-032; MEIC, REG-065; MT Trout, REG-085; Audubon, REG-066; Phone Log, REG-028 -- 23 individual statements; OR/WA Citizens, REG-014 -- 413 signatures; Jose, REG-001; NEEC, REG-078; CRITFC, REG-138; MPIRG, REG-107; ATNI, REG-111; ATNI, REG-149-11; Loughheed, REG-008; Tassoni, REG-016; EP, REG-045; CAPA ID, REG-084; CADO, REG-104; OEC, REG-105; Mountaineers, REG-115; OIGWC, REG-129; LCHCS, REG-143)

Oregon Interfaith Global Warming Campaign commented that BPA should not transfer load serving responsibility without finding a way to monitor and enforce the requirements of conservation first and renewables second when meeting load growth. (OWIGC, REG-129) Washington's Governor Gregoire noted that BPA and Washington should coordinate policies and rules. (Gov. Gregoire, REG-149-18)

## **Evaluation and Decision**

The fundamental principle advocated by many commenters was the importance of developing all cost-effective renewables. BPA shares this fundamental interest. BPA believes that the policy decisions it is making, combined with other initiatives at the utility,

state, and regional level, will provide a very high level of assurance that this basic goal will be met. These include:

- BPA’s decision to ensure the development of its share of cost-effective renewable resources, as defined by the public utilities’ share of regional load growth;
- BPA’s commitment to use a flexible set of facilitation initiatives to meet this goal;
- BPA’s decision to spend up to \$21 million per year on facilitation activities, and to revisit this spending level if renewables accomplishment is falling short;
- BPA’s decision to propose recovery of these facilitation costs in its Tier 1 rate, where they will be insulated from competitive pressures to reduce costs;
- BPA’s decision to require customers that decide to meet their own load growth to provide a 10-year resource plan that addresses the consistency of that plan with the Council’s power plan;
- BPA’s decision to offer a renewables-based Tier 2 rate alternative option to its customers to meet their load growth;
- BPA’s decision to offer integration services to customers to assist them to use renewables to serve their retail loads, and to charge the same for those services whether they are part of a Tier 2 rate option or provided in support of customers’ development of their own renewables;
- BPA’s ongoing commitment to R&D funding for renewables; and,
- BPA’s participation in the regional wind integration initiative.

BPA believes this set of actions provides a high level of assurance that the all-cost-effective-renewables goal will be met. This is reinforced by the fact that renewables development in the region as a whole and by BPA’s public utility customers is currently outpacing Council targets. In view of this, BPA does not believe that a contractual requirement that BPA customers develop certain levels of renewables is necessary in order to meet the goal. However, BPA does believe that it is reasonable to require that customers share their plans for meeting their loads in excess of their HWMs, and explain the consistency of those plans with the Council’s power plan. This requirement will assist BPA in monitoring progress towards the all-cost-effective-renewables goal, and will provide a basis for decision making on the adequacy of the \$21 million facilitation spending level.

BPA is taking care not to interfere with either the resource decisions/choices that its customers are responsible for or the development of state legislation to that effect. To the extent BPA’s customers pursue the development of non-Federal resources to meet their loads, BPA believes that conservation and renewables will play a valuable part in serving customer loads. Certainly, for example, the passage of Initiative 937 in Washington imposes these kinds of considerations on the utilities that are subject to it. BPA will not condition its Regional Dialogue contracts for the purchase of low cost Tier 1 rate power on customers agreeing to consider conservation first and renewables second when meeting load growth.

### **Issue 3:**

**Whether BPA should change the \$21 million facilitation program level from a cap on annual spending to a floor for spending above \$21 million annually, and whether those facilitation costs should be recovered in the Tier 1 rate.**

### **Policy Proposal**

BPA proposed to initially cap renewable facilitation expenses at a level of funding consistent with that budgeted for the FY 2007-2011 period: BPA proposed an initial cap of net \$21 million/year (plus annual escalation for the post-2012 timeframe). BPA stated in the Policy Proposal that this cap did not include the cost of existing BPA renewable generation, but did include costs which may be associated with the Fourmile Hill geothermal project. BPA proposed to recover these costs in Tier 1 rates and stated that it will not use this money to advantage BPA Tier 2 renewable products over market.

### **Public Comments**

Several commenters supported the \$21 million as a Tier 1 cost but suggested that it should be a floor and not a spending cap. (Jose, REG-001; NWEC, REG-009; NWEC, REG-011-14; NWEC & SOS, REG-101; RNP, REG-013-02; RNP, REG-113; Tossoni, REG-016; MT Trout, REG-085; Highland, REG-088; CADO, REG-104; MPRIG, REG-107; SRA, REG-032; Horizon, REG-048; EP, REG-045; ANTI, REG-111; Mountaineers, REG-115) The Renewables Northwest Project commented that the \$21 million represents a 1996 spending cap and is actually a reduction from 1996 levels considering inflation. (RNP, REG-013-02) The Bonneville Environmental Foundation stated that while the target is commendable it should not be limited to \$21 million. Rather, BPA should aim for an outcome, not to stay below some dollar amount. (BEF, REG-013) The Energy Project concurred with BEF's comment. (EP, REG-045) The Northwest Power and Conservation Council agreed that \$21 million should be reviewed each rate period. (NWPPCC, REG-033) The Snake River Alliance commented that the \$21 million/year spending cap should be firm. They added that revisiting this amount every rate period could be disastrous for the renewable industry and noted that BPA intends to minimize these expenditures. (SRA, REG-032)

Many public customers questioned the need for and placement of the \$21 million as a Tier 1 rate cost given the incentives that will be sent through tiered rates and state renewable portfolio standards. (WVG&T, REG-010-06; Canby, REG-064; Snohomish, REG-0131; Benton, REG-114; Cowlitz, REG-118; Whatcom, REG-121) Many were also worried that the \$21 million would subsidize activities that would otherwise incur costs to be recovered through Tier 2 rates. For this reason, they do not support including the \$21 million renewable facilitation cost as part of a Tier 1 rate. (WVG&T, REG-106; WPAG, REG-109) WPUA noted that the \$21 million should be a Tier 2 expense because it will not fund Tier 1 activities. (WPUA, REG-080) Benton PUD commented that, "...in the area of renewables, BPA needs to exercise cost control measures." (Benton PUD, REG-012-07)

Northern Wasco and Seattle City Light commented that the \$21 million is a reasonable amount from BPA and that renewable facilitation is an appropriate Tier 1 expense. (NWasco, REG-055; SCL, REG-128) Springfield Utility Board commented that if BPA is going to use a "net" \$21 million, BPA should continue to provide cost and revenue information, otherwise the spending cap is too loose. (SUB REG-126)

NRU noted that they did not object to funding renewable facilitation by \$21 million annually as part of Tier 1 costs. (NRU, REG-103)

### **Evaluation and Decision**

BPA believes there is not enough information at this time to eliminate or expand the \$21 million spending cap. As market prices increase, renewable generation will become more attractive relative to conventional resources and BPA may not need to fund facilitation measures. The passing of Washington's renewable portfolio standard and the potential for an Oregon renewable portfolio standard will also affect public customer renewable acquisitions.

BPA will not eliminate the \$21 million/year renewable facilitation spending level as suggested by some public utilities in their comments. One of the purposes of the Northwest Power Act is "to encourage, through the unique opportunity provided by the Federal Columbia River Power System – the development of renewable resources within the Pacific Northwest." 16 U.S.C §839(1)(B). Despite the increase in the development of renewable resources recently, BPA remains guided by the purposes of the Northwest Power Act. Therefore, notwithstanding state initiatives to require utilities to acquire their own conservation and renewable resources, it is reasonable for BPA to complement those initiatives by facilitating the actions of its customers to develop renewable resources. By providing assistance to its customers, BPA will help in eliminating barriers to portfolio standard compliance. Therefore, BPA believes some level of funding is appropriate. For these reasons BPA believes it is prudent at this point in time to choose a level of funding that is based on historical experience and to commit to reevaluate the spending cap each rate period.

BPA will recover renewables facilitation costs in Tier 1 rates. The spending limit of net \$21 million per year (plus annual escalation for the post-2012 timeframe) is above and beyond the energy costs of BPA's existing renewable projects (not including the Fourmile Hill geothermal project) that are, and would continue to be, included in existing rates. The cost of the Fourmile Hill project, net of the market value of its output, would count against this cap if that project comes on line and BPA is purchasing the power. BPA will include Fourmile Hill as an expense under the \$21 million facilitation budget unless and until new circumstances or information indicate the project should be removed from both the FBS calculation and the renewable budget.

BPA will not use Tier 1 facilitation funds to subsidize Tier 2 rate products. It is possible that if BPA acquires renewable resources within the remaining Subscription contract period those resources, if acquired on a long term basis, will be counted towards meeting the 300 aMW augmentation amount for public utility customers' HWMs.

#### **Issue 4:**

**Whether IOUs should be eligible for renewable resource credits or other facilitation programs.**

#### **Policy Proposal**

BPA proposed not to include IOUs in its facilitation efforts.

### **Public Comment**

IOUs commented that IOUs should be eligible for the Rate Credit program and other renewable facilitation programs. (PNW IOU, REG-142) The Northwest Energy Coalition (NWECC) and Save Our Wild Salmon (SOS) specifically pointed out that not allowing IOUs to benefit is unfair to residential and small farm consumers and is not consistent with the Act. (NWECC & SOS, REG-110)

### **Evaluation and Decision**

The Policy Proposal did not include eligibility for the IOUs to receive rate credit or facilitation payments. The reason is that the IOUs do not currently purchase their firm power needs from BPA and are not expected to under the Regional Dialogue contract. Because BPA's renewable target is dependant on the amount of load that BPA is serving there is no basis for extending the renewable credit or facilitation to the IOUs. IOUs do receive benefits for their renewable resource costs through the residential exchange program.

NWECC and SOS commented that not allowing IOUs to benefit is unfair to residential and small farm consumers and is not consistent with the Act. BPA disagrees with this sentiment. To the contrary, it is not reasonable for IOUs to receive an economic benefit for conservation and renewable resource activities if they do not share in paying the cost of those programs, through their purchase of power from BPA to meet their net requirements, particularly if IOU loads are not being supplied with Federal power under contract with BPA. Because BPA's goal is to ensure development of its share of all cost effective renewables based on BPA's regional public utility customers' load growth, and consistent with BPA's load serving obligations, paying for facilitation of IOU renewables would not advance accomplishment of the goal.

BPA notes that the commenters fail to explain why it is they believe excluding the IOUs from receiving conservation or renewable credits is inconsistent with the Act. BPA's proposal is consistent with its direction under section 6 of the Northwest Power Act to acquire resources to serve regional firm power load of its customers obligated under contract. To the extent BPA is not selling firm power to the IOUs, BPA will not assume any resource supply obligation for them.

### **Issue 5:**

**Whether BPA should purchase renewable resources in advance of firm contractual need to be sold at the Tier 2 rate.**

### **Policy Proposal**

BPA proposed to acquire renewables to meet firm power needs that will be subject to Tier 2 rates. The proposal stated that BPA would acquire renewables in small increments. BPA noted there may be significant financial risk associated with purchasing ahead of firm contractual need but reserved the option to do so and recover the costs (energy costs in excess of market and predevelopment costs) from the Tier 1 renewable facilitation budget (\$21 million/year plus inflation).

The proposal was silent on the treatment of acquiring renewable resources as part of Tier 1 rate augmentation.

### **Public Comments**

Several comments expressed concern over Tier 2 rate costs creeping into the Tier 1 rate and stated that the Tier 1 rate should not subsidize the costs of the Tier 2 rate. Some commented the \$21 million proposed for facilitation should not go towards programs/projects supporting renewables subject to the Tier 2 rate. Many of the comments urged BPA to provide clean, clear specific mechanisms for separating Tier 2 costs and risks from Tier 1. (NWPPC, REG-033; WMG&T, REG-010-06; Snohomish, REG-131; Franklin, REG-012-04; PPC, REG-132; Canby, REG-064; Cowlitz, REG-118; NIPPC, REG-130; PNGC, REG 133; Tacoma, REG-135). Whatcom PUD commented that BPA should only buy power generated by renewable resources at the time of contracted need. (Whatcom, REG-121; Emerald, REG-137)

The Renewables Northwest Project (RNP) commented that BPA should acquire renewables early to secure the best sites. (RNP, REG-013-02) The Northwest Power and Conservation Council supports BPA acquisition in advance of need if significant economies result and if appropriate acquisition strategies are developed. (NWPPC, REG-033) NRU suggested that BPA could buy renewables ahead of contractual need using Tier 1 revenues if such cost is later reimbursed by the Tier 2 rate. (NRU, REG-103)

### **Evaluation and Decision**

BPA recognizes that acquiring resources in advance of need may not be an economical or practical approach in all circumstances considering the uncertainty of the amount and shape of future load. Therefore, BPA will only acquire power from renewable resources in advance of contractual need when BPA determines there is a reasonable forecasted need for such power. Because BPA must act prudently to meet its projected contractual firm power obligations it may acquire renewable resources when BPA determines such acquisitions are consistent with forecasted requirements loads. Under the Regional Dialogue contracts and TRM, BPA will acquire resources to meet its obligation to serve customer loads that exceed HWMs on a forecasted basis. BPA may also acquire renewable resources in response to customer demand for renewable resources to assist them in meeting state mandated renewable portfolio standards, but only if consistent with BPA's forecasted need for power to supply its firm power supply obligations.

If BPA buys power from renewable resources in advance, the costs associated with these advance purchases will count against the proposed annual cap on renewables facilitation costs included in the Tier 1 rate. BPA is considering a mechanism, to be developed as part of the TRM, which would ensure the reimbursement of such costs (i.e., Tier 1 rate costs) incurred to acquire power from renewable resources for service at the Tier 2 rate. The mechanism would identify such costs as reimbursable costs to be paid through the Tier 2 rate.

### **Issue 6:**

**Should BPA acquire renewable resources for Tier 1 augmentation?**

### **Policy Proposal**

The Policy Proposal did not expressly address renewable acquisition for Tier 1 augmentation.

### **Public Comments**

Several comments noted that BPA should retain the right to augment Tier 1 with renewable resources. (Ogden, REG-018; NRU, REG-103; RNP, REG-113; NWEC & SOS, REG-110)

### **Evaluation and Decision**

Acquiring renewable resources as part of Tier 1 augmentation could prove to be part of the least-cost approach to meeting BPA's renewable resource goal. Therefore, cost effective renewables could play a role in BPA's Tier 1 augmentation strategy to the extent they meet this test. Any above market costs of renewable resources acquired for Tier 1 augmentation (as part of the 300aMW) will be counted against the facilitation budget.

### **Issue 7:**

**Should BPA provide only renewable Tier 2 products?**

### **Policy Proposal**

The Policy Proposal contemplated renewable Tier 2 products as one aspect of a suite of Tier 2 products.

### **Public Comments**

Many comments asked BPA to provide *only* renewable and conservation Tier 2 products as called for in the Council's Fifth Power Plan. (Jose, REG-001; NWEC, REG-009; NWEC, REG-011-14; NWEC, REG-013-11; NWEC & SOS, REG-110; NWEC, REG-149-14; RNP, REG-013-02; RNP, REG-113; OEC, REG-105; LWV AW, REG-086; Audubon, REG-066; EP, REG-045; SRA, REG-032; Ciancibelli, REG-024; Tassoni, REG-016; Gov. Kulongoski, REG-149-17; Mountaineers, REG-115) Ogden commented that BPA should remain the primary purchaser and shaper of renewable energy rather than having utilities trying to acquire and shape on their own to meet renewable portfolio standards. (Ogden, REG-018) Apollo stated that BPA's central role is valuable. (Apollo, REG-011-13)

### **Evaluation and Decision**

Under section 4 of the Northwest Power Act, BPA is directed to acquire resources to meet its firm load obligations under contract with cost effective conservation and renewable resources given the first and second priority consideration. BPA will not depart from this statutory framework and will act consistently with the Council's Plan when acquiring resources. However, service subject to the Tier 2 rate will not be limited to only renewable and conservation resources. BPA plans to develop service alternatives that are based upon a renewable resources portfolio and a Default Service based on shorter-term power purchases. Conservation will be supported and pursued by BPA and treated as Tier 1 rate service. While renewable resources will be given priority consideration, it is inappropriate to rule out all other resources, as that could eliminate options that might be lower cost and/or better meet regional resource adequacy standards.

### **Issue 8:**

**Whether BPA will modify its proposal to enable the implementation of state enacted renewable portfolio standards such as Initiative 937.**

## **Policy Proposal**

The Policy Proposal did not include a provision related to enactment of State RPS laws.

## **Public Comment**

NRU suggested that BPA offer a short-term RPS service so that customers that are developing renewable resources on their own can turn to BPA to meet their RPS requirements for a period of limited duration. They also stressed that renewable Tier 2 products should be developed to meet the various state renewable portfolio standards. (NRU, REG-103) Washington's Governor Gregoire commented that BPA should provide a policy statement disclosing plans to help Washington state customers meet Washington's Initiative 937. (Gov. Gregoire, REG-147) Mike Grainey with the Oregon Department of Energy stated he would like BPA to help Oregon utilities meet an eventual renewable portfolio standard and to include renewables in a Tier 2 base-product. (Grainey, REG-62) Northern Wasco also noted that renewables should be available to meet renewable portfolio standards and that BPA should provide a minimum level of renewables in a Tier 2 base product. (NWasco, REG-055) The Northwest Power and Conservation Council commented that BPA should consider the potential effects of state renewable portfolio standards on utilities' ability to access HWM. (NWPPC, REG-033)

## **Evaluation and Decision**

BPA understands that the citizens of the State of Washington recently voted in favor of Initiative 937, which will require certain sized utilities to acquire and use conservation and renewable resources to serve their consumptive load, and that other states, such as Oregon, are considering legislative RPS mandates. BPA recognizes that such state laws will likely have an effect on the amount of Federal power subject utilities may buy from BPA since, as in the case of Washington, utilities must serve a percentage of their load with conservation and renewable resources. As a regional Federal marketer of Federal power at wholesale, BPA will endeavor to develop products and services that will assist its customers to comply with state law RPS requirements; however, BPA should not be looked upon by the region as the default source of renewable resource generated power.

States that pass RPS requirements should be cognizant that BPA is a Federal agency and markets Federal power to meet the firm contractual obligations of its customers based on their net requirements firm power loads. If BPA must acquire resources to meet obligations, it must do so in accordance with the Northwest Power Act. The priorities in the Act governing BPA resource acquisitions are generally consistent with the intent of the portfolio standards.

In response to NRU and Northern Wasco's comments that BPA should have some level of renewable resources based service that assists customers in meeting state RPS requirements, including a temporary short term service, BPA will offer a renewables-based Tier 2 option. BPA is not confident that it will be practical to offer a renewables-based shorter-term Tier 2 option, but will consider the development of such service or product in the development of BPA's products and TRM.

**Issue 9:**

**Whether BPA will buy output from a group of its customers for resale to the same customers.**

**Policy Proposal**

BPA did not propose such a transaction.

**Public Comment**

NRU suggested that BPA “federalize” resources, for a contractually agreed upon time period, that are developed or purchased by individual utilities or groups of utilities. Utilities would retain long term ownership rights and financial obligations attached to the resources, but BPA would purchase the output and resell it to the same customers in a manner that is cost neutral to other customers but allows the utility to more closely align their own resource with their Tier 1 service and any other product selection. A utility could choose to combine a Tier 2 product from BPA to be used in conjunction with a customer-owned but contractually “federalized” thermal resource to serve their load growth. (NRU REG-103)

**Evaluation and Decision**

At this point in time, BPA does not intend to broadly offer a service to its public customers where BPA “federalizes” a customer’s non-Federal resource. Doing so could impact BPA’s ability to serve load and may place redispatch costs onto other Tier 1 ratepayers. However, BPA may on a case-by-case basis agree to offer a service and exchange arrangement. BPA is open to discussing this concept as part of future contract, products and services issues.

**Issue 10:**

**Whether BPA will make integration products available for wind and other renewable resources.**

**Policy Proposal**

BPA proposed to use the flexibility of the FCRPS to provide cost-based wind integration products for wind projects serving requirements load, provided there is adequate capacity in the system to do so.

**Public Comments**

Several commenters noted that BPA is uniquely suited to integrate wind and that BPA should provide long-term integration products to public and investor-owned utilities at a fixed/specified price. (Jose, REG-001; RNP, REG-013-02; RNP,-REG 113; BEF, REG-013-03; NWECC, REG-009; SRA, REG-032; Horizon, REG-048; Tossoni, REG-016; Cow Creek, REG-093; CADO, REG-104; PNW IOUs, REG-142) Others noted that integration of renewables should be an off-the-top obligation (PNGC, REG-013-05; Weyerhaeuser REG-013-09) Others applauded BPA for reserving capacity for wind integration and asked BPA not to degrade the capacity of the FBS and suggested that BPA allocate capacity first to renewable integration and then to Slice customers (BEF, REG-013-03; NWECC, REG-149-14). ATNI commented that integration should not be limited to wind, that biomass and other intermittent renewables also need integration services. (ATNI, REG-111) The Northwest Power and Conservation Council commented

that BPA should continue to aggressively develop and market renewable integration services. (NWPPC, REG-033) By stating in the Policy Proposal that BPA is limiting its sale of integration services because of uncertainty about FCRPS flexibility due to ongoing Biological Opinion litigation, some commenters felt that BPA was “pitting” renewable energy against salmon recovery efforts. (Jose, REG-001; SOS, REG-003; NWECC, REG-009; SOS, REG-011-01; Ciancibelli, REG-025; SRA, REG-032; MEIC, REG-065; MT Trout, REG-085; NWECC & SOS, REG-110; Mountaineers, REG-115; CTUIR, REG-117)

Other comments suggested that requirements load should have priority access to FBS capacity at cost and that the FBS should not be used to subsidize integration of customer’s new renewable resources at the expense of providing firm power at the Tier 1 rate. They noted that preference means preference to energy, supply and capacity, and requested that renewable integration not be offered if such action increases the cost or reduces the availability of capacity associated with power used to supply Tier 1 rate service. Several customers asked BPA to not sell wind integration until such effects are understood and reported. (NWasco, REG-055; NRU, REG-103; Richland, REG-091; Benton REA, REG-094; Raft, REG-005; SUB, REG-126; Snohomish, REG-131; WMG&T, REG-010-06) Idaho’s Governor and Lieutenant Governor added that integration should not be included in residential exchange program benefits. (Lt. Gov. Ricks, REG-006; Gov. Risch, REG-007) WMG&T suggested that BPA should adopt recall provisions to safeguard the flexibility of the FBS. (WMG&T, REG-010-06) Grays Harbor requested enough flexibility in the Slice product to integrate renewables. (Grays Harbor, REG-013-15)

### **Evaluation and Decision**

Two of BPA’s most important goals in the Regional Dialogue are to make it feasible for public power customers to choose to develop their own resources to meet their load growth, and to facilitate development of renewables resources. Therefore, BPA will provide integration service for a public power utility customer’s renewable resource that is committed to serve the customer’s retail firm load as part of its firm power service from BPA. This commitment may require BPA to purchase additional capacity. Rates for this service will be examined as part of the tiered rates methodology development. The price BPA charges non-Federal renewable resources for this service will be the same as the cost BPA assigns to Tier 2 renewable-based products.

In response to comment that IOUs should receive the same integration service for their renewable resources, if BPA determines there is an availability of capacity in excess of what is needed to meet BPA’s public agency customers’ need, then BPA will offer renewable resource integration services to IOUs and others on an as-available basis. BPA has discretion, but not an obligation to sell integration services to IOUs. BPA may offer renewable integration products to intermittent renewable resources serving non-requirements load if BPA determines surplus capacity is available. Such services will reflect the market cost of the service.

Grays Harbor’s Slice product query is addressed in the responses to the Slice product.

**Issue 11:****Whether BPA should include a contract provision to require customers to submit renewable acquisition plans to BPA.****Policy Proposal**

BPA proposed to work with the Northwest Power and Conservation Council, utilities, developers and others to promote long-term resource planning. BPA also proposed that customers share with BPA, prior to each rate period, their renewable acquisition plans for the next 5-10 years.

**Public Comment**

Tacoma Power commented that it generally supports BPA's proposal that public power customers share with BPA their renewable resource acquisition plans for the next 5-10 years prior to each rate case, but this requirement should be rolled into the resource adequacy reporting requirements. Additionally, the information reported should only be used as a means for reporting and not for any other purposes or decisions. (Tacoma, REG-135)

**Evaluation and Decision**

BPA believes it is reasonable to request customers to submit information on their renewable resource acquisition plans because it will allow BPA to assess whether BPA's renewable target is being met and will gauge the necessity for appropriate facilitation measures. Without this information, it will be difficult to judge progress towards the target, which could result in overspending or inefficient measures. For this reason, a provision will be included in the power sales contracts requiring public power to submit resource plans to BPA.

**Issue 12:****Whether BPA should fund Renewable Research Development & Demonstration (RD&D) projects as a cost in the Tier 1 rate.****Public Proposal**

BPA proposed to continue providing a limited amount of financial support for RD&D focusing on those projects and technologies benefiting multiple regional needs or which are embarking on commercial demonstration. Rather than using facilitation dollars, BPA proposed to use Green Energy Premiums to fund this activity.

**Public Comments:**

Northern Wasco commented that BPA should fund RD&D as a cost in the Tier 1 rate. (NWasco, REG-055)

**Evaluation and Decision**

BPA will continue its existing practice of reinvesting Green Energy Premiums from currently existing Federal renewable resources in renewable RD&D projects and education programs. BPA will revisit the efficacy of this spending prior to each rate period. Green Energy Premiums derived from the sale of attributes generated by renewable resources acquired after April 1, 2007, that are part of FBS augmentation will be used to offset the Tier 1 rate impacts of these purchases.

**Issue 13:****Whether BPA should provide more specificity or call out mechanisms to reach the facilitation target.****Public Proposal**

BPA proposed to "...use the facilitation dollars in multi-year increments targeted at various elements of the cost structure of renewables projects, including development costs, physical infrastructure costs (substations and generating equipment), integration services and commodity risks. BPA also indicated that the facilitation dollars may also be used to continue a rate credit program or other incentive program(s) that narrow the spread between the cost of renewable energy and the market."

**Public Comment**

Several comments noted that BPA did not provide enough specificity or call out mechanisms to reach the facilitation target. (NWEC & SOS, REG-110, Yakima, REG-148; CUB, REG-149-15)

**Evaluation and Decision**

BPA did not propose specific facilitation mechanisms because it is too early to determine exactly which mechanisms will most effectively achieve the target. BPA will evaluate specific measures/programs each rate period as we determine public power's progress towards the renewable target.

**Issue 14:****Whether BPA should eliminate the 200 aMW renewable exemption to BPA's 5(b)9(c) Policy.****Public Proposal**

BPA proposed to eliminate the 200 aMW (in aggregate) renewable exemption to BPA's 5(b)9(c) policy. This exemption gave customers the right to add and remove renewable resources from their subscription contracts (as resources dedicated to serve firm requirements load). If renewable resources were removed and no longer dedicated to load, these customers could return that load to BPA at lowest cost PF without penalty.

**Public Comments**

No public comments on this issue.

**Evaluation and Decision**

BPA originally implemented this policy under the Subscription Strategy to encourage customers to support the development of renewable resources. The Subscription contract gave customers the right to identify and add new renewable resources to serve their firm retail load. Customers could also define the duration of applying and removing the renewable resource, returning the retail load to PF rate service without application of the targeted adjustment charge (TAC).

BPA intends to establish tiered rates and offer renewable resource facilitation assistance to its customers, therefore, BPA no longer sees the need or the appropriateness of the 200aMW renewable exemption.

**Issue 15:**

**Whether BPA should exempt renewable resources dedicated under requirements contract from HWM calculations.**

**Public Proposal**

BPA proposed to exclude new renewable resource acquisitions dedicated to 5(b) requirements load from 2010 resource amounts used to calculate individual customer HWM.

**Public Comments**

Several comments supported BPA's proposal. (Cowlitz REG-118, RNP REG-113, NRU, REG-103)

**Evaluation and Decision**

This issue is addressed earlier in the ROD in the section titled Issues Related to 2010 Customer Resources. Under issue 1 of that section BPA decided to base HWMs on FY 2010 resources in Subscription power sales contracts as of September 30, 2006. Under issue 7 of that same section BPA established an exception to the 2010 resource approach for the three customers with new renewables resources already included under Subscription contracts to remove what could have been a penalty for these customers' early actions to develop renewable resources.

## IX. TRANSFER SERVICE

### Item 1: Direct Assignment

#### Issue 1:

**How should Bonneville recover cost incurred procuring transfer service from third-parties over facilities that would likely be designated as Direct Assignment Facilities if they were owned by BPA Transmission Services?**

#### Policy Proposal

BPA proposed to use the supplemental guidelines, in conjunction with the transmission direct assignment guidelines, for customers served via transfer over non-Federal transmission facilities.

The supplemental guidelines are intended to help determine cost responsibility between BPA and the transfer customer in cases where BPA, in its role as a transmission customer, is subject to another provider's tariff provisions for direct assignment of costs. The following are the supplemental guidelines and additional guidelines that were included in the Policy Proposal:

**Bonneville Power Administration  
Supplemental Guidelines for Direct Assignment of Facilities Costs Incurred Under  
Transfer Agreements**

This set of Supplemental Guidelines augments the BPA Transmission Business Line's (TBL's) "Guidelines for Direct Assignment Facilities," as amended or superseded (TBL Guidelines), currently posted at:

[http://www.transmission.bpa.gov/Business/Business\\_Practices/default.cfm](http://www.transmission.bpa.gov/Business/Business_Practices/default.cfm)

In determining whether to directly assign to Transfer Customers, costs incurred by BPA in providing transfer service to the customer, BPA will apply the current TBL Guidelines for Direct Assignment Facilities, and these Supplemental Guidelines. The Supplemental Guidelines apply only to transfer service acquired by BPA from third party transmission providers for service to Preference Customers. The Supplemental Guidelines use some terms defined in the 20-year Agreement Regarding Transfer Service. Also, Direct Assignment Facilities, as defined in most pro forma Open-Access Transmission Tariffs, are:

Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer. . . .

These Supplemental Guidelines are designed to supplement, not replace, the TBL Guidelines, and to assist in predicting how BPA, as the default transmission customer for transfer arrangements, will recover costs for Direct Assignment Facilities assessed by third party transmission providers. Unless otherwise specifically excluded in the TBL Guidelines or below, the cost of Direct Assignment Facilities will be passed through to the customer.

#### Supplemental Guideline Regarding Voltages below 34.5 kV

For new facilities or new service over existing third-party transmission provider facilities at voltages below 34.5 kV that meet the definition of Direct Assignment Facilities, metered quantities for customer deliveries will be adjusted for losses to the point where the voltage is at or above 34.5 kV, such that BPA is not responsible for losses across such facilities. Loss calculations should be similar whether the customer or the transmission provider owns the delivery facilities. The cut-off voltage of 34.5 kV is used in the TBL guidelines. If this voltage level is changed in the TBL guidelines, these Supplemental Guidelines will be modified accordingly.

#### Supplemental Guidelines Regarding Replacement with Higher Capacity Facility or Addition of a Transformer in Parallel

Pursuant to the TBL guidelines, for a new transmission provider-owned facility that also adds capacity, the costs that exceed the cost of replacing the previous capacity may be directly assigned to the benefiting customer. Alternatively, BPA and the Customer may agree to full Direct Assignment in lieu of payment of the GTA Delivery Charge. Similarly, when a parallel transformer is added, BPA and the customer may agree to a simplified direct assignment of all delivery costs in lieu of some combination of Delivery Charge and direct assignment.

#### Supplemental Guidelines Regarding Construction Options

The customer may work directly with the third party transmission provider to develop and select among options regarding construction, cost sharing and ownership. BPA will work with the customer and the transmission provider to arrive at the best one-utility plan, workable cost sharing options and equitable ownership and interconnection arrangements. Due to regulatory issues, it is PBL's current policy to not own facilities.

### **Additional Guidelines**

#### 1. Rolled-in Rate Treatment by Transmission Provider

If a customer receives new transfer service below 34.5 kV offered by the transfer provider under a rolled-in rate or revenue requirement, BPA reserves the right to assess the GTA Delivery Charge. BPA will not charge the GTA Delivery Charge for a new POD if specific facilities' costs are not rolled in but are directly assigned to BPA and in turn passed through to the customer.

#### 2. Wholesale Distribution Facilities Beyond the Step-Down Substation

On any new arrangement for delivery below 34.5 kV, the incremental cost for use of any facilities (other than potential transformers or current transformers for revenue metering)

beyond the fence of the corresponding step-down transformer substation (or beyond a 20-foot radius of the step-down, for pole-top substations) shall be passed through to the customer, whether such costs are directly assigned to BPA or are imposed pursuant to a discrete wholesale distribution rate or Load Ratio Share of a discrete wholesale distribution revenue requirement.

### 3. Customer Arrangements Directly with the Third-Party Transmission Provider

A customer may choose to contract directly with the third-party transmission provider for delivery below 34.5 kV, but must then do so for all such PODs with that transmission provider, and must take delivery from BPA at or above 34.5 kV for these PODs, such that the customer is responsible for losses through the delivery facilities.

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### **Public Comments**

Northern Wasco County PUD and several others commented that transfer service policy should be applied as if customers were directly connected.<sup>1</sup> (NWasco, REG-055)

### **Evaluation and Decision**

It remains BPA's desire to lay out clear policy on transfer service, but it is neither possible to anticipate every circumstance, nor is it desirable to tie the parties' hands if flexibility will yield more economical or reliable solutions. Therefore, when new service is required, and the type, size, location, ownership, and method of cost recovery may be at issue, both BPA Power Services, as acquirer of transfer service, and Transmission Services should come together with the customer and the transfer provider to discuss the best over-all plan of service, one that is analogous to being directly connected to the Federal grid, where practical, but which also represents a fair compromise when that analogy breaks down. That being said, for purposes of determining cost allocation for facilities that may be directly assigned, BPA will use the Supplemental Direct Assignment Guidelines as a starting point.

### **Issue 2:**

**What is the appropriate effective date for implementing these direct assignment guidelines?**

### **Policy Proposal**

In the Policy Proposal, BPA stated that, to the extent possible, it would implement the proposed direct assignment guidelines upon "finalization of the Regional Dialogue policy."

### **Public Comments**

UIUC commented that the requirement that the customer pay for wholesale distribution facilities beyond the step-down substation, as noted above in Additional Guideline #2, should not be applied prior to 2011. (Umpqua, REG-019)

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<sup>1</sup> Note: In this section, the term "directly connected customers" means Federal power customers that are served from the contiguous portion of the FCRTS in Oregon, Washington, northern Idaho and western Montana.

### **Evaluation and Decision**

The Supplemental Direct Assignment Guidelines are a clarification of existing policy and as such will be effective when the ROD is signed, notwithstanding arrangements already in place for which cost allocation will not change unless the arrangement changes. For purposes of determining cost allocation for new wholesale distribution facilities, the policy will be effective when the ROD is signed.

### **Issue 3:**

**For purposes of the direct assignment policy, what qualifies as new facilities or new service?**

### **Policy Proposal**

In the Policy Proposal, BPA referred to both “new facilities” and “new service” in various sections of the Supplemental Direct Assignment Guidelines. However, BPA did not specifically define what constituted a “new” facility or service.

### **Public Comments**

UIUC and ATNI asked what is meant by the phrases “new facilities” or “new service.” They note that the Supplemental Guidelines refer to both. The comments seek further clarification and reflect the concern that reworking of an existing arrangement, due to some minor physical change, would result in a direct assignment. (Umpqua, REG-019; ATNI, REG-050)

### **Evaluation and Decision**

“New” means a new service arrangement, which is determined by whether the “new” service was previously provided by Bonneville. If not, then the service is new. For example, if new equipment must be procured in order to merely continue with a service level already provided, then that is not new service. On the other hand, if the customer’s service level requires a substantial capacity improvement, then that constitutes new service, whether it is provided over new equipment or not. Replacement of a failed transformer with one of similar capacity, or a larger transformer but where the incremental capacity is needed by the transfer provider—not the customer—is not new service. Whenever major construction and/or equipment purchase is required, it is important that BPA, the customer and the transfer provider coordinate to be sure everyone understands what is to be built, who will own it, and how its cost will be recovered. The Supplemental Direct Assignment Guidelines are not meant to apply to facility replacements that are necessary to maintain the existing service, so it is necessary to define new facilities.

### **Issue 4:**

**If the cost of a Point of Delivery (POD) is directly assigned, will the customer still be responsible for the GTA Delivery Charge associated with that POD?**

### **Policy Proposal**

BPA’s proposed policy did not address this issue in a general manner. It only discussed this issue in the particular circumstance where an existing facility is replaced with higher capacity equipment or parallel transformers. (See Proposed RD Policy at 65) In these instances, BPA

proposed that “BPA and the Customer may agree to full Direct Assignment in lieu of payment of the GTA Delivery Charge.” (*Id.*)

### **Public Comments**

UIUC was concerned that the Supplemental Guidelines might result in duplication of charges, if, for example, a Delivery Charge is applied at a location where some new piece of equipment is added that results in Direct Assignment of costs. (Cow Creek, REG-093)

### **Evaluation and Decision**

Costs for new facilities and new service over existing third-party facilities will generally be directly assigned; exceptions can be made depending on the cost of the new facilities or arrangements, and other factors such as administrative burden. Bonneville has some flexibility with regard to whether to drop the GTA Delivery Charge in favor of full Direct Assignment, or to merely pass on incremental costs and continue to assess that charge. In general, in a new arrangement, the customer will be responsible for any distribution facilities beyond the step-down substation fence. The economics of the best plan of service for each direct assignment will be different with different transfer providers, pre-existing agreements and other factors. BPA needs to retain the flexibility to work these out on a case-by-case basis, with fairness and comparability being the underlying principles. BPA has no intention of applying a GTA Delivery Charge and making a direct assignment for service over the same facilities.

### **Issue 5:**

**What should BPA’s policy be regarding Power Service’s ownership of transmission and distribution facilities?**

### **Policy Proposal**

The Policy Proposal stated that because of “regulatory issues . . . [Power Services] current policy is to not own facilities.”

### **Public Comments**

PNGC recommended that the following language be included in BPA’s final policy: “To the extent that the best plan of service calls for BPA ownership or construction of facilities, BPA will work with the transferor and the customer to find options to accommodate the best plan of service including TBL ownership of facilities or construction/lease/O&M arrangements with the transferor or the customer.” (PNGC, REG-133)

### **Evaluation and Decision**

To the extent Power Services is requested to make arrangements to meet its transfer service obligations, it will do so with the express objective of not owning any facilities. BPA’s function as a transmission provider is performed by Transmission Services, which administers the Open Access Transmission Tariff for the agency. BPA ownership of facilities will need to be negotiated with the corresponding Transmission Services Account Executive.

**Issue 6:**

**Should BPA adopt a policy that allows the customer to contract directly with a third-party provider for low voltage service over a new POD?**

**Policy Proposal**

In the Additional Guidelines section of the Policy Proposal, BPA proposed to allow customers to contract directly with third-party transmission providers to obtain service for delivery of power below 34.5 kV. If a transfer customer chose to take this action, however, it “must then do so for all such PODs with that transmission provider, and must take delivery from BPA at or above 34.5 kV for these PODs such that the customer is responsible for losses through the delivery facilities.”

**Public Comments**

PNGC desires clarification to indicate that a customer may contract directly with a third party for the low voltage facilities portion of a new POD without having to contract for all its pre-existing low voltage PODs. (PNGC, REG-133)

**Evaluation and Decision**

A customer may contract directly with a third party for the low voltage portion of a *new* point of delivery (POD) without having to contract for all its pre-existing low voltage PODs with that same third party. The customer has the option to arrange and pay for its own low voltage service, rather than have BPA obtain the service and directly assign the cost, but may not pick and choose among existing transfer PODs to convert some inexpensive PODs to its own contract while leaving BPA to pay for the more expensive ones.

**Issue 7:**

**Should BPA require customers to submit up-front payments for construction costs?**

**Policy Proposal**

BPA did not state in the Policy Proposal whether it would use or require a particular method of payment for construction costs.

**Public Comments**

Tacoma Power suggested that the guidelines could be strengthened by requiring customers to submit up-front payments for construction. (Tacoma, REG-135)

**Evaluation and Decision**

Up-front payment of construction costs will remain an option, but BPA sees no reason to make it a requirement, provided other options that do not expose BPA to unreasonable risk are available. BPA will preserve the flexibility of service options including how projects are financed.

**Issue 8:**

**How should BPA treat the below 34.5 kV low voltage designation in the future?**

### **Policy Proposal**

In the Supplemental Guideline Regarding Voltages below 34.5 kV, BPA stated the following: “The cut-off voltage of 34.5 kV is used in the TBL guidelines. If this voltage level is changed in the TBL guidelines, these Supplemental Guidelines will be modified accordingly.”

### **Public Comments**

The Pacific NW IOU’s commented that the 34.5 kV voltage level is an artifact of settlement and could change, and recommends raising that voltage level. (PNW IOUs, REG-142)

### **Evaluation and Decision**

If the low-voltage level is changed in the Transmission Services guidelines to something other than 34.5 kV, the Supplemental Guidelines will be modified accordingly. In fact these Supplemental Guidelines may also be modified in other areas to be consistent with changes in Transmission Services Direct Assignment Guidelines. Whether the cut-off remains at 34.5 kV is beyond the scope of this document and should be addressed in a more general transmission forum other than the Regional Dialogue. This policy is consistent with the terms of the Agreement Regarding Transfer Service (ARTS) which define the main grid based on Transmission Service’s most recent facilities study.

**Based on the comments received and the discussion above, the final Supplemental Guidelines have been modified as follows:**

## **Final Supplemental Guidelines – Red-line Version**

### **Bonneville Power Administration Supplemental Guidelines for Direct Assignment of Facilities Costs Incurred Under Transfer Agreements**

This set of Supplemental Guidelines augments the BPA Transmission Services (currently referred to as Transmission Business Line’s (TBL’s)) “Guidelines for Direct Assignment Facilities,” as amended or superseded (TBL Guidelines), currently posted at:

[http://www.transmission.bpa.gov/Business/Business\\_Practices/default.cfm](http://www.transmission.bpa.gov/Business/Business_Practices/default.cfm)

In determining whether to directly assign to Transfer Customers, costs incurred by BPA in providing transfer service to the customer, BPA will apply the current TBL Guidelines for Direct Assignment Facilities, and these Supplemental Guidelines. The Supplemental Guidelines apply only to transfer service acquired by BPA from third party transmission providers for service to Preference Customers. The Supplemental Guidelines use some terms defined in the 20-year Agreement Regarding Transfer Service (ARTS). Also, Direct Assignment Facilities, as defined in most pro forma Open-Access Transmission Tariffs (OATT), are:

Facilities or portions of facilities that are constructed by the Transmission

Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer. . . .

These Supplemental Guidelines are designed to supplement, not replace, the TBL Guidelines, and to assist in predicting how BPA, as the default transmission customer for transfer arrangements, will recover costs for Direct Assignment Facilities assessed by third party transmission providers. Unless otherwise specifically excluded in the TBL Guidelines or below, the cost of Direct Assignment Facilities will be passed through to the customer.

#### Supplemental Guideline Regarding Voltages below 34.5 kV

For new facilities or new service over existing third-party transmission provider facilities at voltages below 34.5 kV that meet the definition of Direct Assignment Facilities, metered quantities for customer deliveries will be adjusted for losses to the point where the voltage is at or above 34.5 kV, such that BPA is not responsible for losses across such facilities. Loss calculations should be similar whether the customer or the transmission provider owns the delivery facilities. **Note:** The cut-off voltage of 34.5 kV is used in the TBL guidelines. If this voltage level is changed in the TBL guidelines, these Supplemental Guidelines will be modified accordingly.

#### Supplemental Guidelines Regarding Replacement with Higher Capacity Facility or Addition of a Transformer in Parallel

Pursuant to the TBL guidelines, for a new transmission provider-owned facility that also adds capacity, the costs that exceed the cost of replacing the previous capacity may be directly assigned to the benefiting customer. Alternatively, BPA and the Customer may agree to full Direct Assignment in lieu of payment of the GTA Delivery Charge. Similarly, when a parallel transformer is added, BPA and the customer may agree to a simplified direct assignment of all delivery costs in lieu of some combination of Delivery Charge and direct assignment.

#### Supplemental Guidelines Regarding Construction Options

The customer may work directly with the third party transmission provider to develop and select among options regarding construction, cost sharing and ownership. BPA will work with the customer and the transmission provider to arrive at the best one-utility plan, workable cost sharing options and equitable ownership and interconnection arrangements. Due to regulatory issues, it is ~~PBL's current~~ Power Services' policy to not own facilities.

#### Additional Guidelines

##### 1. Rolled-in Rate Treatment by Transmission Provider

If a customer receives new transfer service over new or pre-existing facilities, below 34.5 kV offered by the transfer provider under a rolled-in rate or revenue requirement, BPA reserves the right to assess the GTA Delivery Charge. BPA will not charge the GTA Delivery Charge for a new POD if specific facilities' costs are not rolled in but are directly assigned to BPA and in turn passed through to the customer.

## 2. Wholesale Distribution Facilities Beyond the Step-Down Substation

On any new arrangement for delivery below 34.5 kV, (new or pre-existing facilities) the incremental cost for use of any facilities (other than potential transformers or current transformers for revenue metering) beyond the fence of the corresponding step-down transformer substation (or beyond a 20-foot radius of the step-down, for pole-top substations) shall be passed through to the customer, whether such costs are directly assigned to BPA or are imposed pursuant to a discrete wholesale distribution rate or Load Ratio Share of a discrete wholesale distribution revenue requirement.

## 3. Customer Arrangements Directly with the Third-Party Transmission Provider

A customer may, in lieu of paying the GTA Delivery Charge, choose to contract directly with the third-party transmission provider for delivery below 34.5 kV for an existing point of delivery, but must then do so for all ~~such~~ similar PODs with that transmission provider, and must take delivery from BPA at or above 34.5 kV for these PODs such that the customer is responsible for costs of and losses through the delivery facilities. A customer contracting with the third-party for a new POD does not create a requirement that the customer contract with the third-party for its pre-existing low voltage PODs.

## **Item 2: Quality of Service**

### **Issue 1:**

**What is BPA's plan for maintaining or improving the Quality of Service received by transfer customers?**

### **Policy Proposal**

BPA proposed to continue to act on behalf of transfer customers to ensure service fulfills established contracts and tariffs. When appropriate, BPA commits to document communication standards (or protocols), and take a proactive role in working with third-party transmission providers during the planning of local transmission facilities, new metering or changes to existing metering, and seek to allow transferee participation. BPA will encourage, and facilitate when appropriate, the implementation of Interconnection Agreements between Transfer Providers and customers to enable communications directly between the two parties. BPA will also assist by applying the technical expertise needed to appropriately evaluate and pursue the implementation of the best plans of service on behalf of transfer customers.

In order to maintain or improve the Quality of Service for transfer customers, BPA requires the commitment from transfer customers to cooperate with BPA in assessing actions that may be undertaken to minimize costs incurred by BPA in meeting its obligations pursuant to the Agreement Regarding Transfer Service (ARTS). Commitments from transfer customers include providing timely planning information to BPA to include annual peak and energy load forecasts, system expansion and upgrade needs, load loss or additions.

To the extent possible, BPA will implement proposed resolutions to Quality of Service upon finalization of the Regional Dialogue policy rather than waiting until service begins under new Regional Dialogue contracts.

### **Public Comments**

The comments received on this issue support BPA's proposal and suggest additional clarity to BPA's approach. PNGC Power's comment stated: "We strongly support the concept of using Transmission Services Customer Service Engineers (CSE) to technically support the GTAs." Further, they urge BPA to work to improve Quality of Service immediately, and not wait for new or follow-on contracts to be implemented. PNGC stated that mutually-agreed to protocols for communication among BPA, the transferor, and the customer can be put in place informally or through extra-contractual mechanisms such as letter agreements, without needing to be formalized in Power Sales contracts. (PNGC, REG-133)

Northern Wasco County PUD stated it is imperative that transfer customers have reliable transmission service. Such service should include effective and meaningful communications between the transmission provider and customer; well maintained facilities, including timely restoration following maintenance or forced outages; and accurate metering. They feel that if the transmission provider cannot, or will not, provide acceptable transmission services, then BPA should buy the facilities from the provider or build new facilities where possible. (NWasco, REG-055)

### **Evaluation and Decision**

BPA recognizes that the quality of transmission service received by customers is a vital component to their overall needs, regardless of whether they are directly connected to the BPA system or served via Transfer Service across a third party transmission system. BPA will continue to act on behalf of transfer customers to ensure that quality service is provided consistent with established contracts and tariffs. Due to the complex relationships that arise from the transfer service construct, it is imperative that all affected parties work cooperatively to help ensure that the quality of service is maintained and improved where needed. BPA will seek to include formalized communications standards in transfer agreements, commit to take a more proactive role in working with third-party transmission providers during the process of planning local transmission facilities, and seek to allow transferee participation as well. BPA expects transfer customers to cooperate in these efforts to ensure that service quality is achieved while costs are controlled. Since BPA has an obligation to acquire third party transmission service for requirement customers not directly connected to the FCRTS, it is a logical choice for BPA to commit to maintain the quality of this service and improve it where feasible. To achieve quality of service, BPA will bring its technical expertise to the discussion whenever the opportunity arises to ensure that solutions to service quality issues are fairly evaluated by all parties.

### **Item 3: Administrative Roles and Responsibilities**

#### **Issue 1:**

**Should BPA allow transfer customers to contract directly with the third-party transmission providers for service to their transfer served loads, and then reimburse these customers for the cost of obtaining transfer service? Or should BPA continue to be the contract holder for all transfer service?**

#### **Policy Proposal**

BPA recognizes that in some instances it may be desirable for customers to hold their own transfer contracts. To accommodate this possibility assignment language should be included in transfer contracts if and when they are renewed or converted to OATT service, if it is practical to do so. BPA would need a process to reimburse customers holding their own transfer agreements for Federal power and qualifying non-Federal power. Arrangements would have to provide a strict limitation on BPA's cost exposure and clearly allocate risks and responsibilities associated with the service to the customer. BPA is not making a decision at this time whether the customer should be the contract holder.

#### **Public Comment**

PNGC Power commented that it is a "weird rule" that BPA insists on holding a transfer contract and suggested rewording the language to make it clear that in some cases, BPA may not want to hold the contract. PNGC also commented that the Regional Dialogue contracts will require BPA to adopt a posture of flexibility and a "can do" attitude towards these issues. In some instances, it will make sense for BPA to continue to be the transfer contract holder and do forecasting and scheduling. If a utility is bringing in non-Federal resources, however, it may be better if the customer is the transfer contract holder. PNGC urged BPA to take up these issues as soon as possible so BPA's customers can expeditiously investigate new non-Federal generation with confidence. PNGC also recommended that BPA act as the Designated Agent (a defined term in the OATT) of utilities needing transfer service when it holds the transfer contract across a third-party transmission system. PNGC suggests that a clear agreement with BPA regarding costs and liabilities could easily address cost responsibility issues. (PNGC, REG-050-02; PNGC, REG-133)

Tacoma Power commented that it prefers that BPA hold the transfer contract(s) rather than the utility benefiting from transfer service. In situations such as Tacoma Power's territory with multiple small GTA customers, BPA and the transmission provider gain efficiency through BPA dealing with the transmission provider directly. Tacoma Power agrees that BPA needs to carefully define the reimbursement process in cases where the customer holds the contract. (Tacoma, REG-135) Northern Wasco PUD stated that it did not have strong inclinations one way or the other as to who holds the transfer contracts. (NWasco, REG-055) NRU commented that they agree the Agency should not make decisions in the Policy regarding who should hold the transfer contract with a third-party transmission provider. That issue should be addressed in other forums. (NRU, REG-103) WPAG commented that giving transfer service customers the opportunity to hold their own transfer agreements is a

good option and could materially reduce the administrative burden on BPA. (WPAG, REG-109)

### **Evaluation and Decision**

The comments are generally supportive of BPA's Policy Proposal, that BPA should not make a "one-size-fits-all" broad policy statement regarding who may hold the transfer agreements. As noted in the comments on this issue, allowing customers to hold the transfer contracts raises complex issues, such as how BPA will reimburse these customers for their transmission costs while maintaining cost controls. BPA believes these issues should be addressed in a separate forum where BPA staff and interested customers can discuss the details. There are many questions that will have to be addressed to evaluate the concerns raised by the customers. Most notably, criteria would need to be established for determining "who may hold the transfer agreement." Additionally, the parties will need to develop a contractual mechanism in which BPA is able to reimburse the customer for its transmission costs. Therefore, these issues will be dealt with in a separate forum that will commence within 6 months following the adoption of this policy by the Administrator.

### **Issue 2:**

**Should loads traditionally served across third party transmission systems be shifted to directly connected points if or when the opportunities arise?**

### **Policy Proposal**

In some locations, there is a potential for shifting all or a portion of a customer's load from transfer service to directly connected service. In the interest of lowering transfer costs and improving reliability, BPA would work with the customer on a case-by-case basis to investigate the potential, feasibility, and economics of the customer making system additions that would allow for shifting load from transfer to directly connected service. Any plan for shifting load that involves an interconnection to BPA facilities must comply with the tariff requirements for new interconnections. BPA would retain discretion to participate in any plan for shifting load, and the customer may be responsible for any stranded cost caused by the load shift. Also, in the interest of cost control for transfer service, BPA would avoid plans of service or other arrangements that would change existing directly connected PODs to transfer service PODs, except in extreme circumstances.

### **Public Comment**

Northern Wasco County PUD stated "BPA's comment to work with customers on a case-by-case basis to investigate the potential, feasibility and economics of the customer making system additions that would allow for shifting load from transfer to directly connected service is a great idea and think it sounds promising." (NWasco, REG-055) Tacoma Power's comment encouraged BPA to actively pursue situations in which it may be more cost effective to directly connect individual customers to BPA instead of relying on transfer service as a means of receiving power. (Tacoma, REG-135) PPC stated "BPA asserts simultaneously the exclusive right to decide to shift load currently served by GTA to BPA main grid service (where that is feasible) and the allocation to the transfer customer of stranded costs incurred by that shift. To do so is inherently inequitable. If BPA wishes to

make the decision to switch a transfer customer to main grid service, BPA must accept the risk of stranded investments and take that risk into account in its decision.” (PPC, REG-132)

### **Evaluation and Decision**

Comments received supported BPA’s Policy Proposal to consider shifting customer loads from transfer service to direct connections with the FCRTS where it is feasible. BPA is adopting this Policy Proposal as part of the final policy. These shifts may require the customer to build additional facilities and each instance will be evaluated on a case-by-case basis with input from Transmission Services. The potential for shifting load will likely arise when new plans of service are evaluated, which will consider the economics of the load shift related to such things as the necessary facilities to be constructed by the customer and potential stranded cost on the transfer provider’s system. This evaluation will be shared with the customer, and issues arising from the load shift, including stranded cost responsibilities, will have to be resolved by BPA and the customer. In addition, recognizing that in general BPA’s policy is to not expand transfer service, BPA will not choose a plan of service which shifts load from being directly connected to the FCRTS to transfer service, except in extreme circumstances.

### **Item 4: Ancillary Service Costs**

#### **Issue 1:**

**How will the costs of required Ancillary Services, not including Regulation and Frequency Response, assessed by non-BPA Transmission Providers be recovered?**

#### **Policy Proposal**

On a general basis, BPA will continue to be responsible for the costs of required Ancillary Services assessed by a transferor for wheeling Federal power. Transfer customers would pay for required Ancillary Services that are not provided under their BPA transmission contract. The FERC, NERC, or WECC<sup>2</sup> requirements pertaining to which Ancillary Services must be purchased within the control area that the load or generation is located in may change in the future. If this occurs and the transfer customer is no longer subject to certain Ancillary Service cost under its transmission contract with TS, BPA reserves the right to pass through these Ancillary Service costs charged by the Transfer Provider.

#### **Public Comments**

The comments received on this issue support BPA’s Policy Proposal. Specific comments reflect the opinion that ancillary service costs should be collected from or paid on behalf of the transfer customer in a manner that provides the most consistent treatment between Transmission Services directly connected customers and transfer customers. (NWAsco, REG-055; PNGC, REG-133)

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<sup>2</sup> FERC is the Federal Energy Regulatory Commission; NERC is the North American Electric Reliability Council; and WECC is the Western Electricity Coordinating Council.

### **Evaluation and Decision**

Transfer customers not in BPA's control area will pay the BPA Transmission Services for Ancillary Services as part of their contract for Network Transmission with BPA, in the same manner as those customers directly connected to the Federal base system. BPA will be responsible for the costs of required Ancillary Services assessed by a transferor for wheeling Federal power. In the event that FERC, NERC, or WECC establishes different standards and/or performance obligations on transmission customers or Transmission Providers than those in place at the time this policy is adopted, BPA will consider passing through charges for required Ancillary Services acquired on behalf of transfer customers.

### **Issue 2:**

**What costs will transfer customers be charged for Regulation and Frequency Response Service?**

### **Policy Proposal**

Transfer customers are responsible for costs associated with Regulation and Frequency Response Service. BPA will continue to compensate third-party transmission providers, directly or indirectly for Regulation and Frequency Response. BPA proposes that the customer reimburse BPA at the Regulation and Frequency Response Service rate as posted in the BPA Transmission and Ancillary Service Rate Schedules.

### **Public Comments**

Specific comments received from PNGC and Northern Wasco County PUD reflect the opinion that required Ancillary Service costs should be (1) paid on behalf of the transfer customer to non-BPA Transmission Providers, and (2) collected from transfer customers in a manner that provides the most consistent treatment between Transmission Services directly connected customers and transfer customers, and they, therefore, support BPA's proposal. (PNGC, REG-133; NWasco, REG-055)

### **Evaluation and Decision**

For transmission agreements under an OATT, Regulation and Frequency response is a separate required Ancillary Service that BPA pays to the third-party transmission transfer provider. Under the pre-OATT GTAs, this cost is not explicitly mentioned and is rolled into the overall rates paid by BPA. To be comparable to directly connected customers, transfer customers should pay the cost of load regulation as if they were directly connected to the BPA control area. Charging the BPA Transmission Regulation and Frequency Response Service rate allows BPA Power Services to collect load regulation revenues from all transfer customers, thereby putting transfer customers in a similar economic position as directly connected customers. The difference in costs paid by BPA and revenues received by BPA, if any, will be included in the BPA Power Services revenue requirement, and will be proposed to be recovered in the Tier 1 rates. This will ensure that revenues will be available to help offset the Transfer Service expense. Any difference between expense and revenue will be borne by all power customers. This approach will simplify billing and treats the transfer customers as if they were in the BPA control area.

## **Item 5: Payment for Delivery of Non-Federal Power**

### **Issue 1:**

**Should BPA financially assist customers for the transmission of non-Federal power deliveries?**

#### **Policy Proposal**

BPA proposed in the Policy Proposal to provide some level of financial assistance to transfer service customers who acquire power from non-Federal resources to meet net requirement loads above their High Water Mark (HWM). In those instances, BPA proposed to pay for a portion of the cost associated with transmission service to deliver the non-Federal power to the customer's loads. BPA stated that it was proposing to provide this service in order to avoid unduly biasing customers to buy only Federal power.

#### **Public Comments**

A large majority of the comments BPA received supported the concept of BPA paying the cost of transfer service for non-Federal power deliveries. These comments generally agreed with BPA's characterization that transfer service issues should not unduly bias a customer's decision to purchase Federal power at the Tier 2 rate over power from a non-Federal resource. (Fall River, REG-076; Wells, REG-089; Kittitas, REG-087; Cow Creek, REG-093; NRU, REG-103; WPAG, REG-109; PNGC, REG-133; LVE, REG-141) The comments generally diverged from the Policy Proposal on the grounds that the limitations proposed by BPA are too restrictive to meet the stated objective.

Joint comments submitted by the Pacific Northwest IOUs opposed BPA's proposal to support non-Federal power deliveries. These parties argued that BPA had not provided any legal or other rationale for paying for the transmission of non-Federal power. Moreover, the Pacific Northwest IOUs stated that if BPA is concerned with biasing one customer class for taking service at the Tier 2 rate, then it had a ready made solution that did not require BPA to take on any additional expenses: it could quit paying for transfer service for all power sold at the Tier 2 rate. That way, transfer customers would be truly indifferent from a cost perspective as to whether they purchase a Federal or non-Federal resource. The Pacific Northwest IOUs also take issue with BPA's statement that it is going to pay for non-Federal deliveries to enable transfer customers a level of "comparability." To the Pacific Northwest IOUs, "comparability" has a very specific meaning, which is derived from their interpretation of the Open Access Transmission Tariff. Using their definition, the Pacific Northwest IOUs contend that BPA has not met "comparability" by merely comparing transfer customers and directly connected customers. Rather, BPA would have to consider the Pacific Northwest IOUs also. By agreeing to pay for the non-Federal deliveries of its transfer customers, BPA then discriminates against other customers, like the Pacific Northwest IOUs. (PNW IOUs, REG-142)

#### **Evaluation and Decision**

BPA believes that providing a limited amount of support for the delivery of non-Federal power is key to achieving BPA's desire to not influence power customers into purchasing Federal power sold at the Tier 2 rate. BPA intends that a customer's decision to purchase

from a non-Federal resource or from BPA for service at the Tier 2 rate should be as economically neutral as possible. Transfer service should only be one factor in a customer's resource acquisition decision. Without some level of commitment from BPA, the lack of any transfer service assistance from BPA will often be the deciding factor for most customers. This outcome is contrary to BPA's stated intent in the Regional Dialogue Proposal of providing BPA customers with viable alternatives to BPA power. BPA's overall policy objective is therefore best met if BPA provides some financial support to its transfer customers for the provision of non-Federal power deliveries.

BPA does not agree with the Pacific Northwest IOUs proposed "solution" to the comparability issue. BPA cannot simply ignore requests to provide transfer service for power in excess of the customer's HWM. First, BPA made a commitment as part of the Agreement Regarding Transfer Service (ARTS) to provide transfer service for Federal power to transfer customers for the term of that Agreement. Transfer of Federal power above the customer's HWM would ostensibly be included as part of the general commitments BPA made in that agreement. Thus, BPA cannot ignore its long-standing decision to provide transfer service for its customers.

Second, Pacific Northwest IOUs misconstrue the meaning of "comparability" as used by BPA in the Policy Proposal. BPA's objective in providing "comparability" in the policy is to bring a level of parity between its directly connected power customers and its transfer service power customers. In other words, BPA is attempting to level the playing field for service to its public utility customers. With this policy it is not BPA's intent, however, to provide absolute balance between every customer. Thus, the Pacific Northwest IOUs request that they be afforded "comparable" treatment is out of place. Moreover, the Pacific Northwest IOUs are not in a similar situation as BPA's power customers. The Pacific Northwest IOUs will not be offered Regional Dialogue preference power sales contracts, and therefore, they will not be eligible for transfer service. BPA also notes that its decision to limit the amount of support to transfer customers for non-Federal power deliveries, as noted below, should assuage the concerns expressed by the Pacific Northwest IOUs that BPA is providing an undue financial benefit to its transfer service customers.

## **Issue 2:**

**Should BPA adopt the five criteria proposed in the Policy Proposal as a prerequisite to receive funding for non-Federal transfer costs?**

### **Policy Proposal**

BPA proposed five criteria in the Policy Proposal that customers would be required to meet to become eligible for payments of transfer service for non-Federal power. These requirements included the following: (a) the transfer customer has historically been served under arrangements between BPA and a third-party transmission owner; (b) the transfer customer must use the Federal Columbia River Transmission System (FCRTS) in combination with third-party transmission service; (c) the third-party transmission service is from the FCRTS to the transfer customer's native loads; (d) the third-party transmission service delivers power only to Points of Delivery of the transfer customer's service territory that existed as of October 1, 1996; and, (e) the third-party transmission service is over

facilities equivalent in function and voltage level of the FCRTS Integrated Network Segment.

### **Public Comments**

A majority of the comments BPA received on this issue requested that four of the five criteria be removed, (i.e., a-d). Joint comments from IDEA and ICUA suggested that BPA remove the first requirement because it was “ambiguous and discriminatory.” These comments state that the Policy Proposal lacks a definition of what it means for a customer to have been “historically” served with transfer service. Further, these customers claim BPA has not provided enough justification in its proposal for this requirement. (IDEA & ICUA, REG-096)

Several customers noted that the “b” and “c” requirements (which require the customer to deliver the non-Federal power using the FCRTS) would unduly discriminate against customers located in constrained or isolated areas. These customers claim that they are currently being served through a variety of exchanges between BPA and various investor owned utilities, which were entered into because of transmission limitations associated with obtaining service directly from the FCRTS. They claim that it would be unfair to now require a customer to obtain direct access to the FCRTS as a prerequisite to obtaining non-Federal transfer service support. (United, REG-056; Sumas, REG-068; Salmon, REG-070; Fall River, REG-076; Wells, REG-089; IDEA & ICUA, REG-096; Idaho Falls, REG-098; NRU, REG-103; Rupert, REG-123; PNGC, REG-133; Clearwater, REG-134; Emerald, REG-137; LVE, REG-141) Moreover, a number of customers commented that the “b” and “c” requirements effectively eliminate any incentive for them to acquire non-Federal resources due to the significant difficulty and cost in obtaining transmission access from the FCRTS to their loads. These comments suggest that this would result in most of the customers having no alternative but to buy Federal power directly from BPA at the Tier 2 rate, which is contrary to BPA’s stated intent in the policy proposal to not unnecessarily bias customers to buy only Federal power. (Ralph Williams, REG-022-23; United, REG-056; NRU, REG-103; Rupert, REG-123; Clearwater, REG-134)

As an alternative, a number of customers suggested that BPA remove the second and third requirement from the Policy Proposal, and replace them with the single requirement that the customer get the non-Federal power to the edge of the Control Area in which the customer’s load resides. In other words, if the customer can get the non-Federal power to a point-of-receipt (POR) in its Control Area, BPA should be willing to support the transmission of the non-Federal power from that POR to the customer’s POD in the same Control Area. (Idaho Falls, REG-015; Rick Knori, REG-050-05; Salmon, REG-070; United, REG-071; Kootenai, REG-075; Fall River, REG-076; Raft, REG-081; Wells, REG-089; Cow Creek, REG-093; IDEA & ICUA, REG-096; Idaho Falls, REG-098; NRU, REG-103; Rupert, REG-122; PPC, REG-132; PNGC, REG-133; Clearwater, REG-134; PNGC, REG-150)

Several customers requested that BPA remove requirement “d”, which requires that the non-Federal power be delivered to PODs that existed prior to October 1, 1996. (Wells, REG-089; NRU, REG-103; WMG&T, REG-106; PNGC, REG-133)

Wells Rural Electric Company (Wells) contends that had BPA built transmission to its

customers, BPA could not deny providing transmission services for non-Federal power to new PODs. The fourth requirement, in Wells' view, is thus arbitrary and inconsistent with BPA's stated intent to treat transfer service customer comparable to directly connected customers. (Wells, REG-089) Western Montana G&T suggested that the date should be October 1, 2011. (WMG&T, REG-106)

PNGC commented that most of the requirements identified in the Policy Proposal come from criteria set forth in BPA's Open Access Transmission Tariff (OATT), Section 36. PNGC noted that while the criteria may be pertinent for purposes of BPA's OATT, it is not appropriate for determining a power customer's eligibility for payment assistance related to non-Federal transfer service. PNGC recommended removing the requirement that the third-party transmission service is over facilities equivalent in function and voltage level of the FCRTS Integrated Network Segment, because it was already substantially covered in BPA's direct assignment policy. (PNGC, REG-133) IDEA-ICUA, however, considered requirement "e" appropriate. (IDEA & ICUA, REG-096)

### **Evaluation and Decision**

BPA included the original five criteria in the Policy Proposal in an effort to limit the applicability of the non-Federal transfer service Policy to customers that have been traditionally served by transfer service. When formulating the criteria, BPA drew upon existing requirements as the starting point for defining the class of customers who would be eligible for the new non-Federal transfer service. Thus, BPA looked at its own internal policies for transfer service as well as the published criteria for receiving non-Federal transfer service in Section 36 of BPA's OATT.

A vast majority of the comments BPA received requested that BPA either modify or eliminate four of the five requirements identified in the Policy Proposal. After reviewing the comments submitted, BPA has determined that certain modifications of the original criteria are warranted.

First, BPA will eliminate criteria "a" which requires that the customer be "historically" served by transfer service. Instead, BPA will only require that the participant be a BPA preference power customer that is served by transfer service. This will eliminate the ambiguity noted by WREC in its comment, and avoid disputes over what constitutes "historical" service. It will also make clear that BPA's support for non-Federal power deliveries is limited to the class of customers that are recognized as transfer service customers. This change, thus, provides the originally intended limitation, i.e., customers that are directly connected to the FCRTS would not be eligible to receive non-Federal transfer support.

Second, BPA will remove criterion "b" and "c" which require that the customer use the FCRTS when obtaining non-Federal power. BPA will replace these provisions with the requirement that the customer must deliver the non-Federal power to a POR in the host control area in which the customer's load resides. In other words, if the customer can deliver the power to the POR in its control area, BPA will then provide the financial support (subject to certain limitations) to move the non-Federal power from the POR to the customer's POD

within the same control area. BPA recognizes that the use of control area or control area boundaries as defining criteria for assignment of responsibility between BPA and a customer may be problematic. In referring to “control area,” BPA means the last third-party transmission system that the non-Federal power must be transmitted over before reaching the customer’s system. In most cases, this will be the control area of the third-party transmission provider in which the customer’s load resides. However, BPA recognizes that there may be situations where the control area may not be the appropriate boundary. For example, some of BPA’s customers are telemetered into BPA’s control area. In these, and other similar situations, BPA would view the last third-party transmission system that the non-Federal power must be delivered over before the transfer customers’ system as the point at which BPA would begin to provide non-Federal transfer service.

BPA also clarifies that the customer will be fully responsible for all costs associated with delivering the non-Federal power to the POR, such as obtaining transmission services from other intervening control areas or transmission systems. In addition, the customer will also be responsible for any costs of system expansions or upgrades associated with adding the POR to an existing BPA transmission arrangement.

BPA is making this modification in response to the concerns raised by a number of customers that the original requirements would severely restrict their ability to purchase power from non-Federal resources. Specifically, these parties contend that they have practically no way of meeting the proposed requirement because of the transmission constraints and limitations that exist between their systems and the FCRTS. If this requirement were to remain a component of receiving support for non-Federal deliveries, then most of these customers claim they would have no choice but to purchase power at BPA’s Tier 2 rate. BPA concurs that because of the unique transmission situation of each customer, requiring non-Federal deliveries to use the FCRTS is counter to BPA’s overall policy goals. As noted in the Regional Dialogue Policy Proposal, one of the stated principles BPA relied on in deciding to offer transfer service for non-Federal power deliveries was the intent to “not use transfer service as leverage to induce customers to buy Tier 2 power from BPA. . .” Consistent with this approach, BPA agrees that requiring a customer to use the FCRTS when delivering a non-Federal resource to its load may leave the customer with no viable alternative other than Tier 2 Federal power. As such, BPA will eliminate the “b” and “c” requirements from the eligibility criteria in order to better advance BPA’s stated intent to not bias customers’ choice between Federal power at the Tier 2 rate and non-Federal power.

BPA recognizes that the modification of this criteria may increase BPA’s overall cost exposure to non-Federal power deliveries. To mitigate this risk, BPA has clarified that the customer will be responsible for all other costs associated with delivering the non-Federal power to the POR. This includes, as noted above, the cost of transmitting the non-Federal power over any other intervening control areas. It also means that the customer will be responsible for any additional upgrade or system expansion costs that BPA may be required to pay in order to add or upgrade a POR to receive the non-Federal deliveries.

While BPA is removing criterion “b” and “c” from the policy, BPA is going to retain the requirement that the customer use the non-Federal power for service to its requirements load located in the third-party transmission provider’s control area. BPA also clarifies that by

referring to “requirements” BPA means that its obligation to provide non-Federal transfer service is limited to meet the transfer service customer’s requirement loads above its High Water Mark (HWM), and only to the extent that non-Federal resources do not displace Tier 1 purchases. BPA is agreeing to support non-Federal power deliveries only because such power is displacing BPA Tier 2 rate purchases. Any other uses of non-Federal power will not be supported by BPA Transfer Agreements.

BPA has also decided to remove the fourth criteria, “d”, which requires that non-Federal deliveries must be to a POD of the transfer customer’s service territory that existed as of October 1, 1996. A number of comments suggested that this provision was arbitrary and contrary to BPA’s overall intent of comparable treatment for directly connected customers and transfer customers. BPA does not agree that including the October 1, 1996, date was arbitrary, and, in fact, the inclusion of the date was part of BPA’s overall policy strategy to ensure that non-Federal power delivery costs are controlled. Nevertheless, sufficient cost controls exist in the policy to mitigate the minor incremental costs BPA may experience through allowing additional PODs to be used for non-Federal power deliveries. Therefore, BPA will remove criteria “d” from the final Policy.

Finally, BPA is going to retain criteria “e” as part of its eligibility requirements for non-Federal service. This requirement is that “the third-party transmission service is over facilities equivalent in function and voltage level of the FCRTS Integrated Network Segment.” PNGC requested that BPA remove this requirement because, in PNGC’s view, issues related to low voltage and distribution charges were already being addressed in BPA Supplemental Direct Assignment Guidelines policy. Contrary to PNGC’s suggestion, however, the inclusion of this requirement is not duplicative of BPA’s direct assignment policy efforts. The Supplemental Direct Assignment Guidelines are designed to work in concert with the existing Transmission Services Direct Assignment Guidelines to provide guidance on how BPA intends to assign costs associated with low voltage and distribution facilities. It does not speak to the requirement that the customer obtain service over facilities that are equivalent to the FCRTS Integrated Network Segment. The inclusion of this requirement, then, makes clear that BPA expects that main grid transmission facilities will be used in the delivery of the non-Federal power.

### **Issue 3:**

**Should BPA retain the proposed megawatt cap and cost cap for deliveries of non-Federal power?**

### **Policy Proposal**

BPA proposed to limit its commitment to deliver non-Federal power through both a yearly cap and a maximum cap. The yearly cap was the lesser of \$800,000 or 30 MW annually, whichever came first. The overall cap was the lesser of \$16 million or 600 MW. These numbers were established using forecasted load growth for all transfer customers over the next 20-years, and were intended to apply for the duration of the Regional Dialogue contracts.

## **Public Comments**

BPA received a wide array of comments on the proposed caps. These comments can be generally categorized into four groups: (1) comments that oppose the caps; (2) comments that request certain modifications or clarifications to the caps; (3) comments that suggest alternatives to the caps; and, (4) comments that support the caps.

BPA received several comments opposing any form of a cap on the amount of support BPA should provide for non-Federal power deliveries. These parties generally argued that having any form of megawatt or dollar cap on the amount of non-Federal transfer service would be discriminatory to transfer service customers. (Wells, REG-089; Cow Creek, REG-093; IDEA & ICUA, REG-096; WMG&T, REG-106; Emerald, REG-137; LVE, REG-141) Others noted that the caps would act as a disincentive to customers who attempt to obtain non-Federal resources instead of purchasing from BPA at the Tier 2 rate. (PNGC, REG-050-02; PPC, REG-132) Other customers questioned the logic behind the caps. WPAG suggested that BPA “reconsider” whether caps are actually needed. (WPAG, REG-109) Still other customers discussed whether the caps proposed by BPA would work as intended. Several customers commented that the dollar cap was not workable because it was not indexed to inflation, and therefore, would diminish in value every year. (Raft, REG-005; NRU, REG-103; WMG&T, REG-106; PPC, REG-132) Joint comments from IDEA and ICUA also contend that BPA has already committed to provide transfer customers “equivalent” service in the Agreement Regarding Transfer Service (ARTS), and the issue of non-Federal deliveries is “well documented” in that agreement. (IDEA & ICUA, REG-096)

A few comments requested that BPA make adjustments or clarifications to the caps. NRU was not opposed to the idea of caps, but recommended that BPA make certain adjustments to make the caps more effective. NRU suggested that BPA include an inflation adjustment in the cap to ensure that the value of the \$800,000 does not diminish simply because of inflation. NRU also suggested that BPA should consider periodically adjustments to the cap to ensure that it remains reasonable in light of increases in the cost of transfer service. (NRU, REG-103) Idaho Falls requested additional clarity on how BPA intends to calculate the dollar cap. It suggested that BPA only start to count against the dollar cap in 2011 since most customers will not take advantage of new resources for at least a few more years. (Idaho Falls, REG-022-13)

Cow Creek Band of Umpqua Tribe of Indians, PNGC and PPC suggested alternatives to the set annual and overall caps detailed in the Proposal. These comments recommended the cap for non-Federal deliveries be equal to what BPA “would have paid” had BPA delivered Federal power to the customer. In other words, BPA would pay for non-Federal power deliveries up to BPA’s avoided transmission expense for the customer’s firm power service above its HWM. Any costs above BPA’s avoided transmission expense would be the responsibility of the customer. (Cow Creek, REG-093; PNGC, REG-133; PPC, REG-132)

Tacoma Power supported BPA’s original proposal to include caps as a means of controlling costs. Tacoma also supported the suggested levels of the caps. (Tacoma, REG-135)

## **Evaluation and Decision**

BPA is cognizant of the unique risks it is facing with the initiation of its new policy to pay for a portion of third party transmission costs for non-Federal power deliveries. To allay some of these risks, BPA included caps on non-Federal power deliveries in the Policy Proposal. These caps are intended to mitigate the potential cost exposure associated with providing non-Federal transfer service for the term of the Regional Dialogue contracts. As noted by Tacoma Power's comment, without caps, BPA would be subject to an unlimited amount of transfer service costs for non-Federal deliveries. Such a result is unacceptable to BPA and its customers. BPA must have some limitations on its obligation to provide transfer service for non-Federal power. The proposed caps provide that limitation. BPA, therefore, has decided to retain a megawatt and dollar cap in the final policy proposal.

BPA will, however, make certain adjustments to the caps to reflect changes that have occurred since the original proposal was issued and to address some of the issues raised in the comments. To begin, BPA will adjust the overall dollar and megawatt caps. BPA relied on certain 20-year load growth and cost assumptions when it originally calculated the \$16 million cap and 600 MW caps. Since the issuance of the original proposal, BPA has been able to generate more refined forecast of transfer service load growth and transfer service costs for this period. BPA will use these more recent figures to adjust the caps as described below.

In the original proposal, BPA generated the yearly caps by taking the total overall caps (\$16 million and 600 MW) and divide them by the proposed 20-year term of the Regional Dialogue contracts. This yielded the annual \$800,000 cost cap and the annual 30 MW cap. In the final policy, BPA stated that the Regional Dialogue contracts will be executed sometime in 2008, but service under these contracts will not commence until FY 2012. While the actual term of the Regional Dialogue contract remains 20-years, energy deliveries are expected to be provided for 17 years. BPA has always intended that its policy on paying for non-Federal transmission service be coterminous with the term of service for power deliveries under the Regional Dialogue contract. Because that length is 17 years, and not 20 years, adjustments need to be made to the caps to account for the duration of the Regional Dialogue contract.

To calculate the new megawatt cap, BPA used the same methodology as it used in the original proposal. BPA looked at projections for transfer service load over the 17-year period. This resulted in total megawatt cap of 697 MW. BPA then divided this projection by the proposed 17 years of power deliveries under the Regional Dialogue contracts, which yielded an annual cap of 41 MW.

For the dollar cap, BPA will be using a slightly modified methodology to address some of the comments raised by customers. Several customers were concerned that BPA's yearly cap of \$800,000 was fixed for the next 20 years. They contend that without some sort of escalator, the dollar cap would inhibit more and more customers from taking advantage of non-Federal transfer service simply because of inflation. (*See* Raft, REG-005; NRU, REG-103; WMG&T, REG-106; PPC, REG-132) A related concern was raised by IDEA as to the timing of the dollar cap. IDEA questioned whether any customer would be ready or able to

take advantage of the non-Federal transfer service by 2011. IDEA suggested that BPA consider applying the dollar cap to a later time when more of BPA's customers can make use of it. To address both of these concerns, BPA has modified the calculation for the yearly dollar cap by starting it at \$650,000, and then gradually increasing it by 3.0 percent annually. Using this escalator for the 17 years of deliveries under the Regional Dialogue contract generates a total dollar cap of \$17.7 million. This method of calculating the cap addresses the concerns in the comments. First, it provides an escalator for the dollar cap that should keep-up with inflation. Second, it addresses IDEA's concern about the timing of the dollar cap. The dollar cap begins lower, when fewer customers are likely to apply for non-Federal transfer service, and gradually increases in the out years when more customers may make use of it.

BPA also clarifies that the annual caps are intended to be cumulative. For example, the dollar cap is reached when BPA spends more than \$650,000 the first year, or that amount escalated by 3.0 percent in later years, on additional non-Federal transmission costs. The annual megawatt cap operates in a similar way. The cap is reached when BPA acquires more than 41 MW of additional transmission service for non-Federal power deliveries needed to serve retail load above HWMs when compared to the previous year. If either cap is reached during a fiscal year, BPA intends not to pay for any further transfer service for non-Federal deliveries that exceed the cap for the remainder of that year. Any non-Federal deliveries that exceed the cap will be applied to the cap the following fiscal year.

BPA does not agree with the comments that suggest a cap on non-Federal transfer service is discriminatory against transfer service customers. Covering the cost of transfer service within the prescribed limits is a reasonable compromise that balances the interests of all of BPA's power customers. First, BPA has designed these limits with the intent that an acceptable cushion exists between the customers' load growth and the caps. It is expected that so long as transfer customers' loads grow at a normal rate, the established caps should be sufficient to meet the non-Federal power deliveries. Thus, transfer customers will be in a comparable position with directly connected customers so long as they remain within the pre-determined limits. Second, even if the present policy proposal does not bring directly connected and transfer customers into direct alignment, BPA believes that it has still fulfilled its stated intention to transfer customers. BPA's goal is to provide transfer service customers with comparable service within the bounds of prudent decision-making. Providing non-Federal power service within the caps meets that objective. Committing to service without caps would expose BPA and BPA's other power customers to incalculable cost risk.

BPA received a number of comments that stated that the proposed caps were likely to steer more customers away from obtaining non-Federal resources and directly back to purchasing Federal power at the Tier 2 rate. BPA cannot speak to the intentions behind the decision of a customer to acquire or not acquire a particular resource. What it can say is that a customer's decision to acquire or not acquire a non-Federal resource is dependent on a host of factors, one of which is transmission costs. Whether BPA's support will be enough for a customer to ultimately decide to buy non-Federal power instead of Federal power at the Tier 2 rate is not the issue BPA is attempting to address. Rather, BPA wishes to provide sufficient incentives so that customers are not compelled to purchase Federal power at the Tier 2 rate, because of

the transfer service issues. In this respect, BPA believes that it has provided an adequate promise of support within the defined caps to enable the customer to make its resource decision on factors other than just transmission concerns.

The joint comments of IDEA and ICUA contend that BPA has, in effect, already agreed to provide transfer service for non-Federal power deliveries through BPA's commitments made in the ARTS. Specifically, IDEA claims that BPA promised to provide "equivalent" service to transfer service customers for the provision of non-Federal power deliveries. BPA agreed in the ARTS to work cooperatively with the transfer customers in order to reach a level of "comparability" on a number of issues identified in Exhibit A. (*See* ARTS at § 7(a), Exhibit A.) Notably absent from this list is any mention of non-Federal power deliveries. In fact, the parties agreed that issues related to the delivery of non-Federal power would be specifically excluded from Exhibit A. Instead, the non-Federal power issue was placed in Exhibit B, which obligates BPA and the customers to discuss the issues, but does not otherwise require BPA to provide absolute comparability. (*See* ARTS at § 7(b).) Thus, BPA was given, and still retains, the ability to consider a multitude of alternatives for servicing non-Federal power deliveries.

Several comments requested that BPA include a provision to allow the caps to adjust in accordance with inflation. As described above, BPA has decided to increase the caps by 3 percent. This yearly increase should allay the concerns about inflation raised in the comments. BPA will begin to calculate the caps concurrent with the development and implementation of a Tier 2 rate structure as contained in the Regional Dialogue contracts.

BPA is intrigued by the suggestion of PNGC and PPC to limit BPA's commitment to non-Federal power deliveries to the costs BPA "would have paid" had it delivered Federal power to its customers. BPA understands this proposal to mean that BPA would provide financial support for non-Federal deliveries in an amount that is equal to what BPA would have expended on transfer service for the delivery of Federal power at the Tier 2 rate to the customer. The import of this recommendation is that it sends a price signal to transfer service customers who are contemplating the acquisition of a non-Federal resource. BPA believes that this price signal should be sent to transfer customers as they consider acquiring non-Federal resources. Moreover, this price signal will help insulate BPA's other power customers from transfer customers' resource decisions. In effect, BPA's overall transfer service obligation is not increasing under this arrangement because BPA is merely paying what it "would have paid" had BPA directly served the transfer customer with Tier 2 rate power. This provision can also work in concert with BPA's proposed caps. BPA does not agree that it must eliminate the caps in order to adopt this alternative. Rather, BPA believes this recommendation can work as another measure to control BPA's overall cost exposure. BPA therefore will pay either what BPA would have paid for delivery of Federal power at the Tier 2 rate, or the cost of the transmission procured by the transfer customer, whichever is less. To implement this proposal, BPA intends to calculate its cost of delivering Federal power in each general rate case.

**Issue 4:**

**Should BPA identify which tiered rate will be assigned the costs to recover the payment of Transfer Service for non-Federal power?**

**Policy Proposal**

In the Policy Proposal, BPA did not indicate what rate treatment BPA would propose to use to recover the costs associated with non-Federal deliveries. Rather, BPA indicated that “the decision to cover future costs of non-Federal deliveries under Section 36, or another form of rate treatment, is not part of this policy proposal and is an issue for future rate cases.”

**Public Comments**

Tacoma commented that transfer service should only be used to meet “requirements loads” as defined in statute; however, the costs of transmitting power products beyond Tier 1 obligations should be the responsibility of the individual transfer customers. Only transfer service associated with serving Tier 1 loads should be included in the Tier 1 costs. (Tacoma, REG-135) Conversely, NRU commented that non-Federal Transfer costs should be rolled into the Tier 1 rate, and Kittitas PUD commented that BPA should continue to include GTA costs in its power rates for existing customers. (NRU, REG-103; Kittitas, REG-087)

**Evaluation and Decision**

In the Policy Proposal, BPA proposed to address the rate treatment issues associated with non-Federal transfer services in its general rate proceeding. BPA’s rationale was that these issues were left to the rate case processes. Having reviewed the parties’ comments, BPA believes that it is prudent to provide customers with prior notification of BPA’s proposed placement of non-Federal transmission costs. Specifically, when BPA proposes a Tiered rate structure, it will propose to include the costs associated with transferring non-Federal power deliveries in Tier 1. Recovering the costs of non-Federal deliveries in this tier is a central aspect of BPA’s commitment to provide non-Federal transfer service. BPA’s decision to support non-Federal power deliveries is founded, in part, on the paradigm that an unbiased price environment exists between Tier 2 rate for Federal power and non-Federal power purchases. For this environment to be created, BPA must consider cost allocations that will not unduly advantage or disadvantage either non-Federal power deliveries or Federal power purchases at the Tier 2 rate. Proposing to collect these costs in Tier 1 should assist BPA in meeting this objective. Collecting the costs of non-Federal in this manner ensures that BPA recovers all of its costs while at the same time not unduly burdening BPA’s Tier 2 rate customers. Thus, BPA will propose to recover the cost of non-Federal transfer service in Tier 1 in the initial proposal of the first general rate case that proposes BPA’s Tiered Rate Methodology.

**Issue 5:**

**Whether BPA should consider “operational pooling” in the context of financially assisting in the cost of delivery of non-Federal resources used to serve a customers net requirements beyond the customer’s HWM.**

### **Policy Proposal**

BPA did not make a proposal regarding “operational pooling.” BPA did propose that it would not allow the pooling of individual HWM by customers.

### **Public Comments**

NRU commented there may be a conflict in situations where utilities decide to pursue pooling, operationally, within the guidelines that BPA appears willing to establish. Each utility in an eligible pooling group will have a HWM set by BPA annually. They would then have the ability to assign amounts of both Federal and non-Federal power between the utilities during the year, for the purpose of reducing transmission constraints. In these situations there is the potential for some customers to be receiving non-Federal power in amounts that are greater than the difference between the customer’s HWM and net requirement load. BPA needs to provide sufficient flexibility in paying for non-Federal resource delivery to allow eligible customers to pool their resources. (NRU, REG-103)

### **Evaluation and Decision**

NRU commented about “operational pooling” of non-Federal resources in the context of HWMs and BPA’s provision of transmission or transfer services to alleviate congestion on the transmission system. The only decision on pooling BPA is making in this ROD is that pooling of HWMs will not be allowed. Further, in this ROD, BPA will not consider pooling of any customer utility’s net requirement load with another customer unless they are members of a JOE with which BPA has a power sales contract. Apart from its current policy and interpretation on pooling of net requirement obligations by customers who are not part of a JOE, BPA is not deciding which other types of pooling arrangements BPA may allow or even consider. BPA is unclear specifically what is intended by the phrase “operational pooling” and will not make any decision on this issue here. BPA is, however, interested in providing flexibility where workable arrangements would help reduce transmission constraints. BPA intends to engage in further discussions with interested customers to better understand the implications and intent behind the term “operational pooling.” But BPA does not intend to change its current policy on customer’s pooling net requirement load. If, however, BPA finds there are arrangements which are reasonable and do not adversely impact BPA, BPA will consider ways to implement them.

### **Issue 6:**

**Whether BPA should agree to pay for losses associated with non-Federal power deliveries.**

### **Policy Proposal**

BPA stated in the Policy Proposal that it would not cover the cost of losses associated with non-Federal power deliveries.

### **Public Comments**

Raft River commented that BPA should cover the costs of providing non-Federal losses. Raft River contends that BPA should cover these costs in order to make non-Federal power comparable to purchases of Federal power subject to the Tier 2 rate. (Raft, REG-005)

Tacoma Power supported BPA's decision to not support non-Federal losses. Tacoma noted that losses can greatly increase the cost of transfer service, and therefore, should not be the responsibility of customers that purchase power from BPA at the Tier 1 rate. (Tacoma, REG-135)

### **Evaluation and Decision**

In the Policy Proposal, BPA proposed to continue its current practice of not paying for losses associated with non-Federal power deliveries. Raft River requests that BPA change this approach in order to make purchases of Federal power subject to the Tier 2 rate and non-Federal power acquisitions more comparable. BPA, however, does not believe that this change is necessary or warranted. First, as noted by Tacoma, losses can become a significant cost contributor to BPA's overall non-Federal transmission exposure. BPA believes that removing the risk of this expense is a prudent business decision that protects all of BPA's power customers. Second, requiring customers to pay for losses will send an appropriate price signal to customers as they consider purchasing non-Federal resources. If BPA were to pay for all non-Federal losses for transfer customers, transfer customers would receive a benefit not provided to customers directly connected to the FCRTS who purchase non-Federal power. This is not comparable treatment.

### **Issue 7:**

**Whether BPA should consider other transmission arrangements (such as exchanges), on a case-by-case basis, with third-party transmission providers to provide transfer service customers with access to non-Federal power deliveries.**

### **Policy Proposal**

In the Policy Proposal, BPA left open the possibility of considering other transmission arrangements with third-party providers on a case-by-case basis if system constraints or transmission capacity was unavailable to deliver the non-Federal power to the transfer customers.

### **Public Comments**

BPA received a number of comments requesting BPA to consider special arrangements for customers located in and around southern Idaho. These customers requested that BPA consider using its existing arrangements or enter into new agreements with third-party transmission providers to deliver non-Federal power. Moreover, these customers note that BPA's policy proposal will not provide the requisite incentives for customer to have a real choice between using non-Federal power or Federal power sold at the Tier 2 rate. BPA should consider other arrangements, such as exchanges, to make the availability of non-Federal power to these customers more competitive with Tier 2 rate power. (Idaho Falls, REG-50-03; Idaho Falls, REG-051-01; United, REG-56; Salmon, REG-70; United, REG-71; Idaho Falls, REG-98; Rupert, REG-122; Clearwater, REG-134)

The Pacific Northwest IOUs recommend that BPA delete this sentence from the Policy Proposal. Specifically, they state that the sentence is indefinite, open-ended and fails to justify and explain what is contemplated. (PNW IOUs, REG-142)

### **Evaluation and Decision**

To a large extent, BPA believes that it has addressed the concerns of the majority of the comments submitted by removing the requirement that customers use the FCRTS when delivering non-Federal power. Thus, the need for definitive arrangements between BPA and third-party transmission providers is no longer as pressing. However, BPA recognizes that over the 20-year term of the Regional Dialogue contracts, circumstances may warrant creative solutions which could require new arrangements with third-party providers. As such, BPA is not going to foreclose the possibility that such case-by-case arrangements may be needed in the future. This is not to suggest that BPA intends to consider other alternatives frequently. Rather, BPA intends to only consider other alternatives if BPA determines that all other avenues have been exhausted and the policy objectives described in the final proposal may be realized through a particular arrangement. The customer would be fully expected to pay any costs beyond what BPA would have paid if the power was Federal in such alternative agreements.

### **Item 6: Transfer Service for New and Annexed Load**

#### **Issue 1:**

**Should BPA obtain transfer service for annexed and new loads?**

#### **Policy Proposal**

BPA proposed to arrange and pay for the network component for Federal power deliveries under transfer service contracts to serve a new public load, or an existing transfer customer's annexed load, acquired after execution of the Regional Dialogue power sales contract when the party losing the load consents in writing or the right to serve the load has been legally decided without a chance for appeal.

#### **Public Comments**

The Pacific Northwest IOUs commented that BPA should not provide transfer service to annexed loads and new publics. They claim that BPA's proposed policy would be an unjustified and unwarranted subsidy that will provide a financial incentive for annexation of investor owned utilities' service territories. (PNW IOUs, REG-142) Other comments were supportive of BPA obtaining transfer service for new and annexed loads and the comments were focused on the details discussed below.

#### **Evaluation and Decision**

As noted in the Policy Proposal, it is BPA's stated objective to remain neutral in the event of an annexation or formation of a new public utility. In defining that neutrality, BPA's role should be to neither unduly encourage nor unduly prejudice either the acquiring or relinquishing utilities. The Policy Proposal of providing transfer service to annexations and new public load, subject to the noted limitations and restrictions, meets that goal. BPA will not be influencing the outcome of an annexation dispute because the limitations described in the Policy Proposal require all issues surrounding the parties' rights and responsibilities to be legally resolved and final before BPA will commit to provide transfer service. This

undisputed right to serve the load will result either from consent by the party losing the load or a completed legal action that gives the customer the right to serve the load. As such, BPA will not become involved in disputes over the right to serve. Once that right is clearly established, BPA sees no reason to prohibit the customer from receiving transfer service within the limitations identified in the Policy Proposal.

#### **Issue 2:**

**Should BPA retain the requirement that before BPA will provide transfer service for annexed or new customer loads either (1) the relinquishing utility must agree to the change of ownership; or (2) if they do not agree, then a state agency or court action must affirm which customer has the right to serve the load?**

#### **Policy Proposal**

The Policy Proposal states that utilities losing load to an existing or new customer through annexation must agree to the change of server or a state or court action must affirm who has the right to serve the load prior to BPA providing Transfer Service.

#### **Public Comments**

Several comments recommended that BPA eliminate the above two criteria from the Policy Proposal. To begin with, Affiliated Tribes of Northwest Indians (ATNI, REG-050) commented that BPA should not concern itself with how or where a customer obtains additional load. Rather, BPA should focus on providing the same rights and benefits to new customers that existing customers enjoy. *Id.* ATNI also notes that if the proposal is implemented as stated, it effectively gives existing service providers “veto power” on the formation of new utilities. (ATNI, REG-050) Other parties commented on BPA’s requirement that a final determination be made by a state agency or court on the service rights of the involved utilities before BPA would agree to provide transfer service undermines tribal sovereignty. These comments request that BPA revise the Policy Proposal to recognize tribal sovereignty. (UIUC, REG-019; ATNI, REG-050-01; CTUIR, REG-117; Yakama Nation, REG-148)

The Pacific Northwest IOU’s commented that if BPA is committed to acquire and pay for Transfer Service under an annexation situation, then BPA should only provide transfer service in situations where the gaining and losing utilities mutually agree to the annexation. In the absence of this agreement, the Pacific Northwest IOUs recommend that BPA not provide any transfer service. (PNW IOUs, REG-142)

#### **Evaluation and Decision**

The majority of the comments on this section expressed interest in having further clarification regarding the circumstances under which BPA would acquire Transfer Service for annexed load. If the annexation is not disputed and the utility losing load and service territory provides written consent to the annexation and transfers any rights and ownership interest in the distribution facilities and properties in the annexed territory, BPA will acquire Transfer Service for the gaining utility. In situations where a utility opposes the annexation and has not transferred its rights and ownership interest in the distribution facilities and properties in the territory sought to be annexed, BPA would not acquire Transfer Service

until a state agency or court makes a final binding determination giving the annexing or new customer the undisputed right to take ownership in and control of the annexed territory required to serve the load. By taking this approach, BPA will avoid becoming involved in service territory disputes.

BPA does not agree with comments that this approach gives existing utilities a “veto” over the annexation of load or formation of a new public. If the existing utility is unwilling to mutually agree to the proposed annexation, the customer can still pursue whatever means it can take to obtain the legal right to annex property and facilities that are required to serve the desired load. It has always been the case that utilities could form and obtain load from an existing utility. Accordingly, the proposed policy only states that BPA will not provide transfer service until those issues have been fully resolved by the appropriate governmental entities. Once those issues have been determined with finality, BPA will provide transfer service in accordance with the limits of the Policy Proposal.

BPA recognizes the tribal sovereignty concerns raised by a number of comments. Indeed, it is not BPA’s intention to have this policy infringe upon that sovereignty. It is not clear to BPA, though, how the requirement that a final determination over which utility has the legal right to serve a particular load would violate that sovereignty. BPA believes that tribes may encounter some resistance from utilities currently providing service within Indian reservations. In light of this potential, BPA will take no actions toward acquiring additional transmission services until any and all disputes between utilities surrounding the legal right to serve have been finally resolved. BPA views such a condition as only prudent when considering the significant expense involved in procuring additional transmission services. This requirement, thus, is reasonable and necessary because BPA cannot acquire Transfer Service without first having a clear understanding of whether or not the customer has the legal right to serve the new or annexed load.

BPA does not agree with the comments submitted by the Pacific Northwest IOUs suggesting that BPA should limit its commitment to only mutually agreeable annexations. If BPA were to restrict its policy to such a narrow field, the policy would disregard the fact that many public utilities can annex load from an IOU under applicable laws. BPA will not ignore this fact. By not acting until a dispute is resolved, BPA is taking a neutral position on the outcome of the annexations and, at the same time, transfer customers are being afforded comparable treatment to directly connected customers.

### **Issue 3:**

**Should BPA establish a \$7/MWh cap on transfer service costs for annexed and new customer loads?**

#### **Policy Proposal**

The Policy Proposal stated the following: “transfer service costs related to annexed loads or new public loads that are \$7/MWh, or above, would be arranged and paid for by the transfer customer. Existing subscription customers may request BPA to arrange for service that is \$7/MWh or above, however all costs would be assigned to the customer.” The \$7/MWh limitation would also apply to small annexed load or new public additions of less than

1aMW, and annexations of loads that were previously served by BPA under transfer service, even though these loads would not be applied to the 50 aMW/250 aMW cap.

### **Public Comments**

The Western Montana G&T commented that the \$7/MWh cap should be eliminated, because the customers have no control over the cost of their transfer service, the cap is illogical and inequitable, and it imposes a “death penalty” on any customer that is located in a higher cost transmission system. (WMG&T, REG-106; Bill Drummond, REG-010-06) Additionally, customers recommended that, to the extent the cap was retained, BPA should modify the policy to state that it will pay “up to” the cap and only assign those costs that exceed the cap to the annexed load or new public customer. Some of these comments also questioned how the \$7/MWh was derived. In addition, PNGC suggested that if BPA implements a cap, it should be increased over time and indexed to the rate of inflation or utility costs. (PNGC, REG-050-02; NRU, REG-103; PPC, REG-132; PNGC, REG-133)

The Pacific Northwest IOUs commented BPA should not pay up to the \$7/MWh. They claimed that having any support for annexed or new public transfer service is an unjustified and unwarranted subsidy and a financial incentive for annexation of investor-owned service territories. (PNW IOUs, REG-142)

### **Evaluation and Decision**

BPA included the \$7/MWh cap as a mechanism to prudently control BPA’s cost exposure to high cost transfer service areas. BPA considers such a measure necessary to mitigate the cost impacts from expanding its transfer service obligation to areas traditionally not served. As such, the \$7/MWh cap was designed to provide a reasonable level of benefits to customers, but within certain well defined cost parameters. Those parameters were determined by doubling the average cost transfer service charge BPA currently pays for transmission today. BPA believed that this approach provided the all-important balance between having adequate cost controls on BPA’s transfer service commitments and meaningful support for new customer or customers with annexed loads. BPA continues to believe that a dollar per MWh cap is congruous to BPA’s overall policy objectives, and therefore, should be retained. Moreover, as discussed above, paying for transfer service for annexed and new loads up to a dollar per MWh cap is not an unjustified and unwarranted subsidy or financial incentive, because it will put transfer customers closer to an equal footing with directly connected customers.

However, BPA recognizes the need to modify certain aspects of the cap to ensure that it properly reflects the principles BPA is attempting to employ. Several comments press BPA to remove from the proposal the provision that requires the customers to pay for transmission of the entire annexed load or new public load if the costs of the service exceed the dollar per MWh cap. BPA agrees with these comments that this requirement would not be placing transfer customers and directly connected customers on a comparable footing. While the dollar per MWh limitation was designed to be a protection against excessive costs, BPA did not intend for it to be a punitive measure. BPA therefore clarifies that it will pay “up to” the dollar per MWh cap for transfer service to annexed and new loads. Any costs above the cap, however, will be the responsibility of the customer. BPA also elucidates that the cap is for

the network transmission portion of the transfer service and does not include ancillary services costs. The annexing or new customer will be responsible for those costs consistent with the treatment of ancillary service described elsewhere in this section of the ROD. Also, BPA notes that, consistent with the Supplemental Direct Assignment Guidelines, low voltage costs associated with annexed or new customer loads are new arrangements to which the Guidelines apply.

Based on the comments received regarding the amount of the cap and requests for an adjustment for inflation during the term of the contracts, BPA reevaluated the level of the dollar per MWh cap and reviewed the mechanism for implementing the dollar per MWh cap. The proposed cap was determined by estimating the current average cost of transfer service and doubling it. As a number of comments point out, though, the cost of some existing transfer service loads are already very close to the proposed \$7/MWh cap. Because this cap will apply for 20-years, BPA considers it appropriate to increase the dollar per MWh cap to \$10/MWh to account for potential future rate increases. This higher cap will allow for a reasonable amount of service for annexations and new customer loads, while at the same time setting a limit on BPA's exposure to excessively expensive transfer service costs. This will also provide a price signal to customers considering annexations or developing new utilities in high transfer service cost areas.

In order to consistently implement the \$10/MWh, BPA will evaluate the cost of transfer service by looking at the transmission cost for the annexed or new customer load over a 12-month period and divide this cost by the amount of MWh delivered to the annexed or new load during that 12-month period. The 12-month period will be based on the previous fiscal year and the dollar per MWh cost will be adjusted at the beginning of each fiscal year for billing the customer any amount above the \$10/MWh cap for the upcoming fiscal year. Before BPA obtains transfer service for an annexed or new customer load, BPA will provide a projection of the estimated dollar per MWh cost of the transmission portion of the transfer service, based on the known or projected characteristics of the load, to determine if the cost will exceed the \$10/MWh cap. During the first year of service this projection will be used to bill the customer if the cost is projected to exceed the cap and these bills will be true-up based on actual transfer cost when the cost is reevaluated at the beginning of the fiscal year following the first 12 months of service. This implementation of the \$10/MWh cap will allow for consistent treatment of annexed and new customer loads that may be served by different types of transfer service contracts.

**Issue 4:**

**Should BPA establish megawatt caps on the amount of Transfer Service it will secure for annexations and new public utility customer load acquired during the 20-year Regional Dialogue Contract? If so, how should BPA define what service will count towards the cap?**

**Policy Proposal**

The Policy Proposal establishes a 50 aMW cap for each rate period not to exceed 250 aMW over the 20-year term of the Regional Dialogue contracts for new Transfer Service. The cap would be implemented on a first come basis. Once the cap is reached BPA would not

arrange or pay for additional Transfer Service. The cap would cover both annexations and new public utility formation.

### **Public Comments**

NRU commented that it is willing to support a cap, but that such cap should be no lower than the 50 aMW per rate period and 250 aMW for the term of the Regional Dialogue contract. (NRU, REG-103) UIUC commented that BPA should not adopt any caps. (Cow Creek, REG-093) Other customers commented that BPA needed to clarify which service counts against the cap. These customers suggested that existing customers that have acquired Transfer Service on their own should not count against the megawatt cap, provided that they elect to assign their transmission contracts to BPA after 2011 and BPA adopts a Policy allowing them to do so. Also, other customers requested that existing Transfer customer's load or load growth should not apply to the cap. (Ron Williams, REG-050-06; IDEA & ICUA, REG-096; PNGC, REG-133; Weiser, REG-139)

### **Evaluation and Decision**

BPA is willing to provide transfer service for annexed load and load served by new public utility customers, but only within the proposed 50 aMW per rate period and 250 aMW Regional Dialogue contract period caps. These caps are necessary to mirror the power available to new public utilities at Tier 1 rates during the Regional Dialogue contract period. In response to comments regarding clarification on the cap, load annexed or load from newly formed public utilities after October 1, 2009 that are eligible for Federal power on October 1, 2011 will count towards the 50 aMW per rate period and 250 aMW Regional Dialogue contract period caps. BPA does not intend to count existing customer load or normal load growth against the cap. The cap will apply to annexed loads and new public utility formations that occur after October 1, 2009. The October 1, 2009 date was determined because that is the start of the last rate period prior to the expected start of the power deliveries under the Regional Dialogue power sales contract.

### **Issue 5:**

**Should BPA deviate from the existing Subscription Strategy policy, which does not provide for BPA obtaining Transfer Service for newly formed publics and annexations that have occurred after October 1, 2001, by implementing the Policy Proposal's treatment for Annexation and New Publics policy prior to October 1, 2011?**

### **Policy Proposal**

The Policy Proposal would allow existing Subscription customers who have arranged and are paying for Transfer Service to request BPA to take over these responsibilities and cost starting October 1, 2011. Existing Subscription customers that are currently arranging and paying for transfer service may request that BPA arrange and pay for transfer service for the post-Subscription period. BPA would need to hold the agreement to be eligible for this new service, post-2012, unless both the customer and BPA agree to other arrangements.

### **Public Comments**

ATNI commented that new customers should not be treated differently than existing customers. (ATNI, REG-050; ATNI, REG-111) Similarly, UIUC contend in their comments

that any Bonneville customer that is not on the Federal transmission system should be afforded the same rights as all other transfer service customers, regardless of when they were formed. UIUC concludes that BPA has provided “no justification for creating different categories of customers based on their historical status.” (Cow Creek, REG-093)

IDEA and ICUA provided joint comments stating that BPA provided no justification for delaying implementation of this policy, while moving forward to implement other transfer issues upon finalization of the Regional Dialogue policy. These comments also described the situation of one of IDEA and ICUA’s members, the City of Weiser, as being “materially and adversely impacted by this apparent arbitrary delay in permitting rolled-in transfer service[.]” They further recommend that BPA end its practice of not providing transfer service to customers formed after October 1, 2001, and allow these customers to sign the ARTS agreement. Finally, IDEA and ICUA request that BPA begin providing transfer service for annexations and new publics upon the completion of the final Regional Dialogue Policy. (IDEA & ICUA, REG-096; Weiser, REG-139)

Commenters urged BPA to treat “new” public customers comparably with “existing” customers served by transfer service. The City of Weiser also contends that BPA’s current position of deferring Weiser’s right to the proposed transfer service benefits and withholding ARTS benefits from Weiser until 2011 violates the core principles of “equity” and “comparability” which they state are the underpinnings of the ARTS. Their comments also take issue with BPA’s decision to delay the implementation of the Annexation and New Public portion of the Policy Proposal. The City of Weiser describes this postponing of the policy as “arbitrary” and not supported by any rationale. (Weiser, REG-139)

### **Evaluation and Decision**

The Subscription Strategy policy on annexed and new loads provided transfer service to a limited amount of known new loads, but did not allow for transfer service to any annexed loads. Portions of the Regional Dialogue policy, however, modify that policy by providing transfer service for public customers that meet the criteria described below. During the Regional Dialogue power sales contract period, BPA will use the caps described above for cost control purposes and intends to provide transfer service for annexed loads and new customers.

Since the treatment regarding annexed and new loads will be changed for purposes of the Policy Proposal, BPA is reconsidering its existing Subscription Strategy policy treatment regarding annexed and new loads as it applies during the last 2-years of the Subscription power sales contracts, which expire September 30, 2011. A number of customers have purchased power under Subscription contracts, but are still responsible for obtaining their own transfer service and are not signatories to the ARTS. BPA believes it is reasonable that these customers be placed on equal footing with other transfer service customers beginning October 1, 2009. This date is reasonable since it will allow BPA time to identify the costs associated with expanding the treatment and include those costs for inclusion in the last 2-year rate period under Subscription contracts. Consequently, BPA and applicable customers will need to consider amendments to the Subscription power sales contracts to provide for the transfer service coverage and offer the ARTS. This variance from the

Subscription policy will only apply to customers that meet the below criteria. It will not apply in any way to annexed loads until October 1, 2011.

BPA intends to offer transfer service to customers that fall into one of the following groups: (1) Subscription customers that have had to secure and/or pay for Transfer service for Federal power deliveries on their own; or (2) any new customers that have met BPA's Standards for Service and that notify BPA prior to the start of the 2010 power rate proceeding that they will be ready to take delivery of Federal power before October 1, 2009. BPA intends to offer this service to the above groups of customers beginning on October 1, 2009. Some comments requested that BPA begin to offer this service upon execution of the Regional Dialogue Record of Decision. BPA, however, has decided not to accommodate this request. BPA has already established its rates using its forecasted transfer service budget for the 2007 through 2009 rate period. The most appropriate time, then, for BPA to incur additional transfer expense is at the start of the next rate period, which begins on October 1, 2009. Additionally, customers that fall into either of the above two categories will also be offered the ARTS effective October 1, 2009. At present, BPA recognizes that the City of Weiser, Port of Seattle and Whatcom County PUD meet these criteria.

#### **Issue 6**

#### **Should BPA obtain and pay for transfer service to Raft River's Western Division annexed load located in Nevada?**

#### **Policy Proposal**

Existing Subscription customers that are currently arranging and paying for transfer service may request that BPA arrange and pay for transfer service for the post-Subscription period. BPA would need to hold the agreement to be eligible for this new service, post-2012, unless both the customer and BPA agree to other arrangements.

#### **Public Comments**

PNGC commented that "BPA should recognize the commitments that it has already made and make clear that those commitments do not count towards the caps contained in this section." PNGC went on to state that it is referring specifically to City of Weiser, Port of Seattle, and service to Raft River's Western Division load in Nevada. (PNGC, REG-133)

#### **Evaluation and Decision:**

While Raft River's annexed load was acquired prior to October 1, 2009, and Raft currently obtains the transmission service from Idaho Power to serve this load, it is served with non-Federal power. BPA's policy proposal on the acquisition of transfer service for non-Federal is provided in detail elsewhere in this Record of Decision. Consistent with that policy, BPA will not offer to obtain or pay for transfer service for non-Federal power to Raft River's Western Division load in Nevada until October 1, 2011, or the implementation of a Tier 2 rate methodology. BPA notes that this is different from how BPA will treat the City of Weiser, Whatcom County PUD and the Port of Seattle because these customers are currently serving their transfer loads with Federal power.

**Issue 7:  
Should BPA change the name of this section to “Acquired” Load instead of Annexed Load?**

**Policy Proposal**

The Policy Proposal identified this section as Annexed Load.

**Public Comments**

PNGC commented that “annexation” is too narrowly defined and it only reflects the ability of municipal utilities to annex load and should be changed to “acquired”. This would better reflect all BPA customers that acquire load by purchase, trade, or judicial decisions. (PNGC, REG-133)

**Evaluation and Decision**

BPA understands the limitations of not defining annexations given the various means by which customers acquire load. For purposes of this section of the policy annexed load is consumer load that is connected to and served from a distribution system acquired by the customer and annexation means the acquisition of existing load, existing distribution, and service territory by means of annexation, purchase, trade, or a judicial decision. BPA recognizes that annexation includes more than just a municipal annexation; there is no need to change the name of this section.

**Item 7: Transfer Service for Block and Slice Power Sales Agreements**

**Issue 1:**

**Will BPA provide transfer service for the delivery of surplus energy, to include hourly generation in excess of hourly load under Block and Slice Power Sales Agreements to Transfer customer loads?**

**Policy Proposal**

Transfer services were, and continue to be, load service arrangements for delivering Federal energy (firm energy) to serve the retail load of customers not directly connected to the BPA transmission system. The services acquired by BPA to provide electric power to customers do not include deliveries that exceed a customer’s total retail load on an hourly basis. Therefore, acquiring and paying for transmission service to deliver energy in excess of a customer’s net requirements is beyond the scope of transfer service.

**Public Comments**

PNGC Power commented that it agrees with BPA “that this transfer service section should apply regardless of what product a requirements customer is purchasing.” (PNGC, REG-133)

### **Evaluation and Decision**

It is unclear what PNGC's comment means since the proposal does not apply regardless of what product a requirements customer is purchasing. BPA stated it does not cover transmission service for power deliveries to customers that exceed a customer's total retail load on an hourly basis. Under Section 2(b) of the Agreement Regarding Transfer Service (ARTS), Firm Power is described as follows: "Electric power (capacity and energy) that BPA makes available on a continuous basis to meet the firm power requirements of the transfer customer's load as defined in Section 5(b)(1) of the Northwest Power Act. Firm Power does not include power sold as surplus power, including, but not limited to, surplus power under the Block and Slice Power Sales Agreements." BPA has an obligation to acquire third party transmission service for customers not directly connected to the FCRTS in order to serve the customers net requirement loads. Expanding this service to include surplus power is clearly outside the parameters of transfer service, and would provide transfer customers with superior service as compared to what directly connected customers receive.

### **Item 8: Additional Staffing and Projected Costs to Implement ARTS**

#### **Issue 1:**

**Should BPA include an assessment of anticipated increased costs in order to implement changes proposed under the Policy Proposal related to Transfer Service?**

#### **Policy Proposal**

To implement the ARTS and increase the quality of service customers seek under transfer service, BPA proposed to increase staffing. BPA's anticipated increased staffing needs with incremental projected costs over the 20-year contract term are approximately \$500,000 annually at today's cost. The following areas of service identified for improvement include: (a) customer engineering services for improved quality of service/best utility practices/review of transfer projects; (b) implementation and ongoing administration of cost reimbursement if and when a customer holds the transfer agreement; (c) scheduling and tracking non-Federal and Federal power purchased at the Tier 2 rate and HWM compliance; and, (d) implementation and administration of Supplemental Direct Assignment Guidelines and billing.

#### **Public Comments**

Comments received from NRU, and Tacoma Power reflects support of BPA's need to increase staff in order to implement the changes indicated in the proposal. (NRU, REG-103; Tacoma, REG-135) Comments also reflect some confusion as to why the Transfer Service section of the proposal was the only section indicating the need to increase staffing costs necessary to implement proposed changes. Comments received from Western Montana G&T state: "We find the discussion on the additional staffing requirement and cost to implement the agreement on transfer service to be both unnecessary and gratuitous. No other part of the Regional Dialogue paper contains such a discussion, although it is difficult to believe that the multitude of other changes proposed by Bonneville in the paper will not require changes in staffing or budgets. We find it gratuitously insightful to single out the costs of implementing

this particular agreement as opposed to all the other changes the Regional Dialogue will undoubtedly occasion at Bonneville.” (WMG&T, REG-106) Also, PNGC Power commented: “We appreciate BPA’s level of detail in the proposed Regional Dialogue document as information about implementation of the ARTS. However, this sort of information is not appropriate in the final Regional Dialogue document.” (PNGC, REG-133) Tacoma Power commented as follows: “While Tacoma Power recognizes BPA’s need for additional staffing for transfer service, that additional cost should be the responsibility of the transfer customers receiving the benefit of such staffing and not the responsibility of Tier 1 customers.” (Tacoma, REG-135)

### **Evaluation and Decision**

BPA believed that it was necessary to provide an assessment of staffing needs in the proposal to provide some level of understanding the increased commitment would require. BPA agrees with customer comments regarding the inclusion of this issue in the final policy and therefore will not include the additional staffing assessment in the Regional Dialogue Policy.

## **Item 9: Implementation of Policy**

### **Issue: 1**

#### **When should BPA implement the transfer service policy?**

### **Policy Proposal**

BPA proposed to implement six of the eight policy proposals upon adoption of the Policy and Record of Decision by the Administrator. Specifically, BPA stated that it would consider implementing the (1) Supplement Direct Assignment Guidelines; (2) Quality of Service; (3) Administrative Roles and Responsibilities; (4) Ancillary Service Costs; (7) Transfer Service for Block and Slice Power Sales Agreements; and, (8) Additional Staffing and Projected Costs to Implement the ARTS.

### **Public Comments**

Several Tribal interests indicated they were unaware of BPA’s intent to implement some of the resolutions earlier than October 1, 2011. They stated that had they been aware of this proposal the discussions in the public meetings would have been different. They are concerned that early implementation will create hardships for Tribes wanting to form new utilities and could make utility operation financially infeasible. (ATNI, REG-010-01; Shoshone, REG-022-10) ICUA, IDEA, and the City of Weiser commented they would like to see BPA’s proposed policy for transfer service for Annexed Load and New Publics be implemented upon finalization of the Regional Dialogue ROD and not wait until October 1, 2011. (Umpqua, REG-019; Shoshone, REG-022-10; IDEA & ICUA, REG-096; Cow Creek, REG-093; ATNI, REG-111; Weiser, REG-139)

PNGC commented they support the schedule to implement some of the resolutions upon finalization of the ROD and look forward to working out the details. (PNGC, REG-133)

### **Evaluation and Decision**

In deciding “which” policies would be implemented upon execution of the Regional Dialogue Record of Decision, BPA examined two criteria. First, BPA considered whether the proposed policy could be accommodated within BPA’s existing contractual arrangements. That is, policies that could be implemented without significant amendments or modifications to BPA’s contractual relationships were eligible for immediate implementation. If, however, the policy would require BPA to amend current agreements with customers or with other parties, BPA considered delaying the policy until the expiration of the subject agreement or the implementation of the new Regional Dialogue contracts. Second, BPA evaluated whether implementation of the policy could be arranged within BPA’s current rates and rate structure. BPA has already established its rates for the current rate period based on certain financial assumptions about the transfer service budget. While minor implementation costs could be absorbed, it would be imprudent to enact policies that would demand undue alterations of that budget. With these two criteria in mind, BPA will begin implementing five of the eight policies upon execution of this Record of Decision. The first two of these, as noted earlier, are final decisions.

First, BPA will implement the Supplemental Direct Assignment Guidelines upon execution of the Record of Decision. Contrary to some views expressed by certain customers, BPA was clear in the Policy Proposal that “to the extent possible” the direct assignment policy would be implemented upon “finalization of the Regional Dialogue policy.” Thus, BPA’s decision to adopt this proposal before FY2012 is not a new concept in the policy. Moreover, BPA views these guidelines as a clarification of BPA’s already existing policies to its customers. Having this policy in place in the near-term will help transfer service customers understand how BPA intends to handle system expansions and upgrades costs on third-party transmission systems. BPA plans to revisit the Guidelines, and make any necessary adjustments, in its initial proposal in the 2010 power rate proceeding.

Second, the policy regarding Transfer Service for Block and Slice Power Sales Agreements is consistent with current policy and will not change upon the issuance of the ROD. The current contractual language in both the Slice and Block Agreements and the ARTS do not accommodate transfer service for surplus power deliveries, and BPA sees no reason to change this policy.

Third, BPA will continue to assist customers with their service quality needs as identified in the Quality of Service section of this ROD. This policy is, in effect, a continuation of BPA’s existing efforts to encourage cooperative relationships between customers and third-party transmission providers in order to achieve reasonable levels of service quality.

Fourth, BPA will initiate the process identified in the Administrative Roles and Responsibilities section upon execution of the ROD. Implementing this process now will give BPA and the customers’ time to develop and discuss many of the intricate details related to the Roles and Responsibilities policy. While the output of this process may be additional agreements, BPA believes that these arrangements should be able to be accommodated with BPA’s existing contractual relationships. Additionally, the groundwork laid in these

discussions should assist the parties as the design appropriate provisions for the Regional Dialogue contracts.

Finally, BPA will implement the Additional Staffing and Projected Costs to Implement the ARTS policy. This policy will require some additional costs to be incurred by BPA. However, BPA believes these costs will not be significant, and incurring them now is a reasonable and prudent business decision. With the expansion of BPA's role in transfer service issues, BPA sees an immediate need for additional staffing to develop the expertise required to meet the commitments made in the policies. Phasing in the increase in staff upon execution of the ROD will help make certain that the pledges made in these policies are properly implemented and are meaningfully fulfilled.

Three of the proposed transfer service policies will not be implemented upon execution of the ROD. The Ancillary Services policy will not be implemented upon execution of this Record of Decision. The current Subscription contracts specify that the transfer customer shall pay the lesser of the TS rate or the third-party transmission provider's rate for load regulation. At this time, BPA will not seek to modify the Subscription contracts. However, BPA intends to make appropriate adjustments in the Regional Dialogue contracts to implement the Load Regulation and Frequency Response policy.

The Payment for Delivery of non-Federal Power and Transfer Service for New and Annexed Load will also not be implemented in the tear-term. Both of these policies would require significant contractual modifications on all of BPA's current power sales customers' contracts as well as have major implications on BPA's rates and rate structure. BPA believes that these policies are more properly adopted and implemented in the Regional Dialogue contracts with a Tiered rate methodology.

One point of clarification needs to be mentioned in relation to Transfer Service for New and Annexed Loads. As discussed in Item 6 above, BPA intends to offer transfer service for existing and new Subscription customers beginning on October 1, 2009, provided they request service from BPA prior to the start of the 2010 rate case proceeding. This modification will not apply to annexations.

## X. RESOURCE ADEQUACY

### Issue 1:

**Should BPA include contract provisions mandating compliance with resource adequacy (RA) standards in the long-term power sales contracts?**

### Policy Proposal

The Policy Proposal states, “BPA is not including a proposal for a mandatory standard compliance provision in the power sales contract now but would revisit this if the adequacy standard development effort fails to reach consensus on sustainable RA standard and implementation approach by the publication date of the Long-Term Regional Dialogue Policy and ROD.”

### Public Comments

Comments provided on this issue represent the gamut of positions from advocating for mandatory resource adequacy compliance contract provisions to supporting BPA’s position to rely on the Northwest Power and Conservation Council’s (Council) adopted standards and implementation plan, as recommended by the Pacific Northwest Resource Adequacy Forum (Forum), to assure regional resource adequacy to advocating against any possibility of contract provisions dealing with resource adequacy.

The Northwest Energy Coalition, Save our Wild Salmon, Columbia River Inter-Tribal Fish Commission and Citizens’ Utility Board of Oregon all expressed doubts whether voluntary resource adequacy standards are sufficient to assure regional resource adequacy going forward. (NWECC, REG-009; NWECC, REG-013-11; NWECC, REG-149-14; NWECC & SOS, REG-110; CRITFC, REG-149-13; CUB, REG-013-08; CUB, REG-095; CUB, REG-149-15) A number of these commenters suggested that the long-term power sales contracts include provisions mandating compliance with regional resource adequacy standards.

A number of commenters including Northern Wasco PUD, Daniel Ogden, Jr., the Northwest Power and Conservation Council, Northwest Requirements Utilities, and Tacoma Power supported the Forum’s voluntary approach to assuring regional resource adequacy but split on the means to generate participation. (NWasco, REG-055; Ogden, REG-018; NPCC, REG-033; NRU, REG-103; Tacoma, REG-135) Northern Wasco indicated support for mandatory resource adequacy compliance provisions in the long-term power sales contracts should the voluntary Forum approach prove unworkable. However, Northwest Requirements Utilities and Tacoma Power opposed mandatory contractual resource adequacy provisions.

Western Public Agencies Group and Pacific Northwest Investor-Owned Utilities commented that the tiered rate structure is sufficient to assure resource adequacy. (WPAG, REG-109; PNW IOUs, REG-142) Western Public Agencies Group did not want BPA to assume the role of regional resource development policeman by imposing mandatory resource adequacy compliance provisions. Longview Fibre, Paper and Packaging, Inc. did not voice an opinion as to how regional resource adequacy should be achieved, but did support the goal of certainty and system flexibility implicit in a framework where utilities procure sufficient power to maintain the regional economy and achieve a level playing field without cost shift.

(Longview, REG-013-07) Citizens' Utility Board of Oregon expressed the concern that the proposed approach to resource adequacy implementation may result in a cost shift between IOUs and publics in that publics may procure insufficient resources. (CUB, REG-149-15)

### **Evaluation and Decision**

As BPA sets the stage for greater utility independence in meeting their load growth, BPA has a fundamental interest in being assured that utilities will procure sufficient resources to reliably meet load. BPA's assessment is that this assurance can be achieved without attempting to make compliance with adequacy standards a term of the new contracts. This assessment is based on the following:

- The Regional Adequacy Forum has made good progress toward putting regional capacity and energy standards in place, and is on track to complete those standards and the implementation system for them before the new contracts are completed.
- New BPA contracts will require customer utilities to provide the load, resource and power purchase data and resource plans necessary to monitor regional resource adequacy. See Section XII of the Regional Dialogue Policy for reporting requirements.
- The implementation mechanism includes provisions that will create transparency about adequacy at the regional level in time for action to be taken, if adequacy is at risk.
- The implementation mechanism also includes provisions that will allow utilities to understand the consistency of their own resource plans with the regional standard.
- BPA's customer utilities are governed by elected bodies with strong mandates for maintaining reliable electric service.

The Regional Resource Adequacy Forum's implementation approach includes the development of guidance for translating the regional standards down to the utility level. However, turning these guidelines into enforceable contract provisions that are reconcilable with BPA's other statutory obligations would be very difficult and would substantially complicate the effort to put those contracts into place.

Because BPA's assessment is that regional adequacy standards are likely to be met for the reasons cited above, and because an enforceable contract requirement would be difficult to achieve, BPA does not plan to include such a requirement in the new contracts. However, this conclusion is predicated on the assumption of successful completion of the Adequacy Forum's work, including adoption of final standards by the Regional Council, development of utility-specific guidance for translating the regional standards, and institution of the implementation approach. If this assumption does not prove out before contracts are signed, BPA will have to develop such a contractual requirement, despite the difficulty of doing so.

**Issue 2:**

**Despite the establishment of a regional resource adequacy framework with adopted energy and pilot capacity standards and an implementation plan, which will create certainty with respect to the magnitude of resources each utility needs to procure to reliably serve load, should BPA act as a backstop supplier of last resort if preference utilities fail to procure adequate resources?**

**Policy Proposal**

The Policy Proposal describes BPA's proposed power products both at Tier 1 and 2 rates. With respect to Tier 2 products, the Policy Proposal specifies, "a customer commits to at least a 5-year purchase and a minimum notice of 3 years to switch to another product or apply their own non-Federal resource."

**Public Comments**

The City of Richland and the Northwest Requirements Utilities advocated that BPA serve as a "backstop," or supplier of last resort, in case utilities fail to procure sufficient resources to reliably meet load despite their best efforts to abide by regional resource adequacy standards. (Richland, REG-091; NRU, REG-103)

**Evaluation and Decision**

As stated above, a key principle of the Regional Dialogue Policy is the premise that BPA's customers should decide how to meet their load needs above their HWMs. Therefore, BPA will expect utilities that decide to purchase power from non-Federal resources or develop their own resources to follow through with their commitment. An integral part of taking on the responsibility for meeting load growth is managing the risk if new resources fail to materialize. This includes an expectation that utilities will have risk mitigation tools in place, such as insurance or market purchases, in the event a resource does not meet output expectations or come on-line as expected.

Customers will have the right to service at the Tier 2 rate for load they had planned to meet with their own failed or delayed resource, if they meet the established Tier 2 notice and commitment period requirements. On a shorter timeframe, surplus firm power may be available to serve a customer's load needs if its expected non-Federal resource fails to materialize or service may be provided at a targeted adjustment charge. However, there would be no assurance that BPA would be able to acquire enough power if customers do not meet the established notice requirements for Tier 2 service. Such service and applicable rate will be discussed and developed during development of BPA's contracts, products, and TRM.

## **XI. LONG-TERM COST CONTROL**

### **Issue 1:**

**Whether BPA should use the regional cost review model for its long-term cost control process?**

### **Policy Proposal**

BPA proposed to use the regional cost review as its preferred cost control process among three alternatives being considered. This would address all agency capital and expense costs and would replace the existing Power Function Review and Programs in Review. As a public process it would be open to all interested parties and would be structured to facilitate both technical and manager-level input. While the process would permit debate over matters of disagreement, final decision-making authority would reside with BPA and the other Federal agencies. BPA also considered a more formal review process called the Cost Management Group (CMG). It too would replace the existing separate cost review processes. The CMG would limit membership to a defined number of representatives of customer and non-customer interest groups, selected by the customer and interest groups or by BPA if necessary. In the event of a disagreement between the CMG and BPA, the dispute could be reviewed by an independent panel of knowledgeable persons who would provide a recommendation to the Administrator. BPA also considered including review of costs in rate case proceedings, making them subject to testimony, clarification, cross-examination, rebuttal, oral argument and a final BPA decision.

### **Public Comments**

The comments received on long-term cost control were generally supportive of BPA's current efforts at enhancing the transparency of the agency's cost structure. They varied widely in regard to the model that should be used for cost control in the future.

Some comments called on BPA to generally do more than it identifies in the draft policy, but provided no specificity as to what should be done. Raft River Rural Electric Cooperative called for strengthening of the cost control section of the draft ROD. (Raft, REG-005) WPUDA stated that BPA needed to go further by providing "a real, durable, and effective method by which customers can exert tangible input on BPA's costs." (WPUDA, REG-080) The City of Sumas and Whatcom County PUD noted that cost control is the only way to mitigate the future take-or-pay power sales contracts. (Sumas, REG-068; Whatcom County, REG-121) Industrial Customers of Northwest Utilities recommended that BPA adopt a more rigorous review of its costs through a formal cost management process. (ICNU, REG-125) Blachly-Lane Electric Cooperative said that the process described in the draft policy may not be adequate over the life of the 20-year contracts envisioned after FY 2011. (Blachly-Lane, REG-140) Lewis County PUD noted that BPA must have an effective cost control process that allows customers to provide tangible input. (Lewis, REG-151)

Some comments supported the use of the regional cost review as proposed in the draft policy. Daniel Ogden noted that the draft policy is well conceived. (Ogden, REG-018) The Northwest Power and Conservation Council said the draft policy is a good faith effort to seek

customer input while maintaining BPA's authority. (NPCC, REG-033) Northern Wasco PUD said that the regional cost review is the best alternative. (NWasco, REG-055) Franklin PUD agreed that the regional cost review is the best of the options presented in the draft policy. (Franklin, REG-100) Northwest Requirements Utilities said that it is willing to work within the regional cost review framework assuming that other forums such as the Customer Collaborative continue. It noted that while including costs in rate cases is not an effective way to control costs, a structured forum for discussing cost control is needed to fully explore cost factors. (NRU, REG-103) Benton PUD supported the use of the regional cost review. (Benton, REG-114) The Public Power Council would like the current efforts to review costs to continue under the umbrella of the regional cost review. (PPC, REG-132) Washington's Governor Gregoire stated that the regional cost review provides an open and meaningful process for regional discussion of BPA business practices. (Gov. Gregoire, REG-147) Finally, Washington PUD Association agreed that the regional cost review should be preferred over the other alternatives presented in the draft policy but also expresses skepticism that BPA has gone as far as it can. (WPUDA, REG-080)

There were mixed comments about the CMG. Kittitas PUD argued in favor of a cost review board made up of a cross-section of customers. (Kittitas, REG-087) Western Public Agencies Group said that, of the alternatives described in the draft policy, the CMG is the superior choice. The CMG would allow for the selection of a core group, committed to participating in a cost review process, which can quickly respond to BPA cost issues before decisions are made. The regional cost review, in comparison, would be too large, slow to react to financial issues, and focused on after-the-fact review. (WPAG, REG-109) ICNU found the use of a third-party panel review of disagreements between BPA and the CMG desirable if it were independent of BPA. (ICNU, REG-125) Other comments opposed the CMG. Affiliated Tribes of Northwest Indians stated that it would be too expensive for tribal members to participate. (ATNI, REG-010-01; REG-111) Columbia River Inter-Tribal Fish Commission opposed the CMG because it was not clear who would appoint the tribal representatives nor was it clear how they could adequately represent the diverse interests and views of Northwest tribes. Moreover, tribal governments would be unwilling to participate in a process that could limit their rights. (CRITFC, REG-138)

WPAG suggested that BPA also consider a fusion of the regional cost review with some of the features of the CMG. Three changes would be made to the regional cost review architecture. First, stakeholders would be permitted to appoint spokespersons. Second, stakeholders would be permitted to make recommendations to BPA. Third, the regional cost review would also have an appointed standing committee, similar to the CMG, which would be able to respond quickly to issues that required prompt input. The changes were recommended to clearly identify who is committed to the cost review process and to ensure that knowledgeable people who regularly attend meetings would be able to offer quick input before decisions are made by BPA. (WPAG, REG-109)

Some comments supported the inclusion of BPA costs in rate case processes. ICNU argued that the regional cost review does not provide customers assurance that BPA will continue to develop effective cost controls or provide customers with any meaningful rights, that BPA must provide an opportunity for comprehensive review of agency costs before a final

decision, and that spending levels should be reviewed in rate cases and the decision maker should be isolated from the advocacy staff. They argued that the disadvantages of this approach that are listed in the draft policy are actually advantages because they promote increased BPA accountability. (ICNU, REG-029; Davison, REG-125) Pacific Northwest Generating Cooperative stated that one way to promote more direct customer involvement would be to place program levels in the rate case. (PNGC, REG-133) Tacoma Power said that the regional cost review alone would be insufficient and that BPA costs should be subject to review in rate cases. (Tacoma, REG-135)

Two comments suggested that BPA should use different cost control approaches for different types of costs. NRU suggested that one approach might not work well for all types of costs. Fish and wildlife expenses, for example, might call for a different type of customer involvement than costs that are passed on by other Federal agencies. (NRU, REG-103) The Pacific Northwest Investor-Owned Utilities suggested that four major categories of cost should be addressed in different manner. Fish and wildlife costs should be reviewed in a broad forum that includes customers and other stakeholders. Augmentation costs should be controlled through the tiered rates methodology. Controlling internal operating costs should include things such as employee incentives. Other external costs should be controlled by including customers in the decision processes of the external groups. For example, customer representatives should be included in the Corps/Bureau joint operating committees. (PNW IOUs, REG-142)

A few comments expressed a desire to either limit participation of non-customers in the long-term cost control process or provide expanded opportunities for BPA customers. The City of Richland noted that non-customer stakeholder influence should be reduced and that the draft policy minimizes customer influence. (Richland, REG-091) Snohomish County PUD said that customers should have their own forum to provide input on cost control that “reflects their responsibility as rate payers.” (Snohomish, REG-131) Blachly-Lane asked for more opportunity for direct customer input. (Blachly-Lane, REG-140)

Several comments argued against the use of true-up mechanisms as a cost control tool. WMG&T and Emerald PUD argued that true-up mechanisms are ineffective cost control tools. (WMG&T, REG-010-06 and REG-106; Emerald, REG-137)

Finally, several comments highlighted the desire to keep costs as low as possible by reducing the costs allocated to Tier 1 rate service or by minimizing the risk of cost shifts from Tier 2 to Tier 1. Raft River argued that costs loaded in Tier 1 are too high. (Raft, REG-005) Norpac Newsprint urged BPA to keep costs from further escalating. (Norpac, REG-013-06) Kittitas PUD said that there should be no cross-subsidization between tiers as well as between Slice and non-Slice products. (Kittitas, REG-087) The PPC had concern about Tier 2 costs leaking into Tier 1. (PPC, REG-132)

### **Evaluation and Decision**

Long-term cost control is an issue of great interest to most BPA stakeholders, both customers and non-customers. Many comments expressed a strong interest to influence BPA cost decisions before they are made. For example, a number of comments urge BPA to do more

in the area of cost control. Some commented that meaningful cost control is needed. Without recommending anything specific, comments that simply seek “more” meaningful cost control unfortunately fail to suggest what “more” is necessary.

Of the three alternatives discussed in the proposal, the regional cost review is the only process that allows any interested party to participate free of administrative hurdles. Customers and non-customers would have an equal voice. It allows for on-going review of BPA spending and long-term trends. In the event of disagreement, it would allow for informal debate before the Administrator. As discussed in greater depth below, BPA will use the regional cost review as the long-term cost control process.

The other alternatives, the CMG and including costs in rate cases, have significant drawbacks. One of the CMG’s major stumbling blocks is it would represent a limited membership. While there are groups of stakeholders with similar relationships with BPA, they may have widely divergent interests and views of BPA costs. Moreover, as noted in comments by CRITFC, sovereign entities such as Tribal governments are unwilling or unable to be represented by another entity in a group such as the CMG. The cost of participating in the CMG may also be a factor of concern for some entities. WPAG believes that it is possible to overcome the problem of selecting a limited group of representatives, arguing that stakeholders have demonstrated the ability to select a limited number of representatives when circumstances require it. While this may have occurred in the past, experience creating ad hoc groups does not speak to the problem of creating a group that would meet regularly with BPA. As NRU notes, “based on previous discussion and experience, it would likely be impossible to reach a broad based regional agreement regarding the size of the CMG and the proportionate representation between various stakeholder groups.” (NRU, REG-103) Finally, while the CMG would allow for third-party review of cost disputes, BPA cannot delegate or agree to give a third party binding authority over BPA’s final cost decisions. Cost decisions are ultimately the responsibility of BPA. Third-party review does not eliminate that responsibility. It only introduces one more opinion into the process and delays the final decision.

PNGC and Tacoma commented that a means for cost control would be to include BPA’s program cost levels in the rate case. They believe this would increase customer involvement in BPA cost decisions and make BPA more accountable by exposing agency cost decisions to litigation. For several reasons, BPA is not persuaded by these comments that the rate case should be a forum to determine cost levels. This is an issue that has been repeatedly addressed in rate case records of decisions. BPA decisions there were to not make budgets and revenue requirements rate case issues. That decision has not changed. The following summarizes the basis for the prior decisions.

First, there is no assurance that including cost decisions in rate cases would serve as an efficient and viable method for cost control. For example, in past rate cases, some parties have argued that spending levels were inadequate and needed to be increased significantly, while other parties argued the opposite. It is certainly not in BPA’s or the region’s interest to become mired in intractable legal debate over BPA’s costs and budget in a formal *ex parte* bound process like the rate case. Indeed, the rate case process is a highly structured

environment with specific rules of evidence which can cut both ways. Subjecting an expected cost to the rate case process would make it cumbersome for BPA to reach a final cost decision and it would make it more difficult and expensive for interested parties to participate. Second, budgets involve many programmatic and business decisions that are simply not appropriate topics of a rate case. Including costs in rate cases would complicate the administrator's ability to make spending decisions because the decisions would be open to delay and judicial scrutiny. Finally, including costs in rate cases is the most restrictive public process with the lowest public visibility. Only rate case parties have full access to the process.

WPAG suggests an option of merging some features of the CMG with the regional cost review process. It would allow stakeholders to appoint spokespersons and to make recommendations on cost decisions to BPA. It would also create a standing committee of stakeholder representatives that would be committed to the cost review process and which would allow for quick reaction to issues that emerge between scheduled meetings. While none of these changes are explicit in BPA's proposal, the design of the regional cost review public process is broad enough to include the intent of the WPAG suggestions. BPA shares the interests of encouraging continuity in participation in the process, of allowing for quick input on issues that are evolving rapidly, and of facilitating joint expressions by the regional cost review participants. As the details of the regional FCRPS strategy and cost review public process structure are developed, BPA will seek a structure that helps meet those interests. Stakeholders are free to use spokespersons and to make recommendations, as they are free to do so today. However, as is evident in the discussion on the feasibility of the CMG, creating a formal "standing committee" would likely be extremely difficult. BPA will not include such a group as part of the cost review public process.

Several commenters suggested that different processes may be necessary for different types of costs. NRU, for example, suggested that fish and wildlife costs may require a distinct process and the IOUs suggested different forums for addressing specific classes of costs, such as augmentation and internal costs. While the BPA proposal does not preclude the eventual modification of the regional FCRPS strategy and cost review public process or the creation of other processes, it is not evident that multiple processes are needed at this time. Under the regional cost review proposal, BPA expects these types of costs will be covered and do not need a separate process. BPA understands that some cost issues, like fish and wildlife, are a constant; however, it is administratively more efficient and reasonable to publicly review such costs within the single regional cost review public process. Similarly, BPA believes it is not necessary to create separate augmentation and internal cost reviews, since the regional cost review is intended to cover such costs. The last suggestion of customer participation in joint operating committees to control BPA's externally imposed Federal generation costs under direct funding agreements is not viable for at least two reasons. First, the unique relationships between BPA and the Corps of Engineers and BPA and the Bureau of Reclamation under the direct funding agreements were enabled through congressional legislation and are applicable only to them. Such costs involve inherently governmental exercises of authority that are not shared with non-governmental parties, i.e., control rests with the Federal entities involved. Second, the recommendation is limited to only customers. BPA seeks a process that provides the broadest public participation. While

the regional cost review will not give non-governmental parties cost decision making authority, it provides access to all interested persons to review and provide input on all costs.

Some customers ask that the cost control process be focused on customers and that non-customer involvement be reduced. These comments express a point of view that as customers they have a certain vested interest that the public at large does not possess. It is difficult to weigh such comment since the public at large represents the vast number of consumers that ultimately receive the benefit of low-cost Federal power marketed by BPA. Excluding non-customers from the agency's primary cost review process is contrary to BPA's stewardship obligations because it would go a long way toward silencing non-customers. BPA needs to have the ability to receive input from constituent groups directly affected by cost decisions. These organizations can provide valuable input on the effect of spending increases and reductions. It is likely that the majority of the issues addressed in the cost control process will be customer focused. Relatively few categories, such as renewables, conservation, and fish and wildlife spending, receive much non-customer attention because they affect or involve those who are doing the on the ground work in these areas. Creating separate forums for non-customers would result in a much more cumbersome and costly process and with little communication between the different interests. It is better, and more conducive to creating a collaborative process if all groups communicate with each other and with BPA, rather than just with BPA.

Some comments, such as those on cost allocation in Tier 1, cross-subsidization and cost shifting, and true-up mechanisms raise important issues which are better addressed in rate design and implementation. These issues are beyond the broader policy on cost control.

#### **Issue 2:**

#### **Should the cost control process be reviewed periodically and modified as needed?**

#### **Policy Proposal**

BPA proposed the use of the regional cost review as the long-term cost control process. The draft policy, however, was silent on whether this process will be fixed for the duration of the contracts. One could infer either that the process will be fixed or that it could be reviewed and revised in the future as circumstances change.

#### **Public Comments**

There were two comments on this issue. The PPC recommended that BPA review the cost control process every 5 years and make adjustments as necessary. It noted that "as we gain more experience with an allocation approach to BPA's requirements service, we may discover that some other cost control approach works better." (PPC, REG-132) Franklin PUD supported the PPC comments. (Franklin, REG-100)

#### **Evaluation and Decision**

The PPC's recommendation is a reasonable one. BPA did not intend for the long-term cost control process to function in the future without any review. A major, on-going process should be reviewed periodically to determine whether it is meeting the needs of the participants, BPA and its stakeholders. Periodic review may reveal that the process is

working well or that it requires some modification. Moreover, business, political, and economic circumstances will certainly change over the duration of the long-term contracts which may lead to modification of the cost control process.

PPC recommended a 5-year review cycle. Some may perceive this as being too limiting, excluding the possibility of review prior to the 5 year mark. More frequent review may be desirable, particularly early in the life of the regional FCRPS strategy and cost review public process as BPA and stakeholders become accustomed to the process. Therefore, BPA's long-term cost control policy will include periodic review at a minimum of every 5 years.

### **Issue 3:**

#### **Should BPA commit to a specific cost control process in the new contracts?**

#### **Policy Proposal**

The regional cost review will be the process for long-term public participation in reviewing BPA's costs. The proposal was silent on whether this process would be included in the new power sales contracts.

#### **Public Comments**

Three comments mentioned including the cost control process in the new long-term contracts. Snohomish urged "institutionalized and enforceable contract provisions for cost control." (Snohomish, REG-131) Franklin merely stated that the cost control process "should be included in the long term contracts." (Franklin, REG-100) WPAG said that BPA must memorialize its commitment to cost control in the new power contracts. (WPAG, REG-109)

#### **Evaluation and Decision**

These parties would like to institutionalize the process to ensure a means to have input on BPA's costs. While BPA shares the desire to ensure long-term cost control, it believes that institutionalizing a cost control method in the long term contract will limit the flexibility to adapt cost control over the contract period. Rather, BPA believes a process that is facile and flexible over the contract period is better suited and a more reasonable measure so it can be easily adapted to changes in the future. In contrast, a contract mechanism is not appropriate because it would invite more dispute, which the regional cost review is intended to avoid, and could serve to preclude non-customer interests. Customers would individually be able to use the contract as a means to dispute nearly any cost decision and thus stymie decision making by BPA. Creating an individual customer right of action would threaten BPA's ability to determine the best cost decision as it may broadly affect the region. Therefore, BPA will not include a provision in the future power sales contract that spell out the cost control process to be used over the life of the contract. Making the process a matter of contract also runs the risk that parties will seek to delay or thwart budget and other cost decisions on procedural grounds when the focus should be on the substance of the decisions.

**Issue 4:**

**Should BPA include an off-ramp provision in its contract to allow customers to reduce the amount of Federal power they are obligated to buy as means to exert cost control on BPA or, in the alternative, offer a shorter term contract to those customers interested in off-ramps?**

**Policy Proposal**

BPA proposed to drop the contract off-ramp feature that was a part of the Concept Paper. The Concept Paper provision would have allowed customers to remove 15 percent of their load service if BPA failed to contain its costs. However, as was noted in the draft policy, “this was not viewed as a sufficient deterrent to BPA to affect cost control, and it may lead to higher Tier 1 rates. Ensuing discussions made it clear that most customers did not place a high value on off-ramps as proposed in the Concept Paper.” As a result, off-ramps were dropped from the policy proposal

**Public Comments**

There were few comments on whether off-ramps should be included in the new power sales contracts. Kittitas commented that customers should be able to terminate their contracts if BPA has the ability to raise its rates at its discretion. (Kittitas, REG-087) WPUDA noted that an off-ramp provision should be included if there is no effective cost control mechanism. (WPUDA, REG-080) An alternative to off-ramps was offered by WPAG, which suggested a shorter term contract for those customers interested in off-ramps. (WPAG, REG-109)

**Evaluation and Decision**

There is a strong interest among Regional Dialogue commenters for long-term certainty about rights and obligations. BPA understands why some customers might find off-ramps appealing if an effective cost control mechanism is not created. BPA believes that the regional cost review public process will be an effective and valuable forum for long-term cost control. Including off-ramps or shorter contracts would introduce uncertainty and instability into a process that is seeking certainty and stability. Off-ramps would appear to give customers all the benefits when BPA rates are below market, but then allow them to avoid BPA system costs that exceed market costs, despite the efforts of the regional FCRPS strategy and cost review public process. This skewed rights and responsibilities approach is not businesslike and could compromise BPA’s assurance of cost recovery. In addition, off-ramps were not included in the draft policy because few customers find off-ramps to be of much value. Given the limited number of comments, this perspective appears to be correct.

**Issue 5:**

**Should BPA issue formal RODs as part of the cost control process?**

**Policy Proposal:**

BPA’s Policy Proposal did not discuss this issue.

**Public Comments**

PNGC said that the cost control process would be “stronger if BPA would commit to issuing a formal record of decision on matters considered in that [*cost control*] process.” (PNGC, REG-150)

**Evaluation and Decision**

Some of the decisions that will be discussed in the regional cost review are ones that require RODs, but others are not. BPA’s spending decisions cover the gamut, are innumerable, and involve sums ranging from small to huge. BPA will, as it has in the past, continue to document and justify its decisions as appropriate to the issue at hand. There is no assurance that the publication of RODs would facilitate efficient cost control. While some parties might see this approach as a tool for limiting BPA’s spending, other parties would likely view the threat of litigation as a tool for increasing BPA spending. It is certainly not in BPA’s or the region’s interest to become mired in intractable legal debate over BPA’s costs. Therefore, BPA will not issue formal RODs as part of the cost control process nor include its program level costs in section 7(i) hearings.

## XII. DISPUTE RESOLUTION

### Issue 1:

**Should BPA leave the Policy Proposal on dispute resolution as is, be more specific, adopt or consider a Slice Settlement type model for dispute resolution, or abandon the principles it enunciated for later application once the contractual and rate issues are identified more clearly and instead decide now what will and will not be subject to ADR and what the precise form of ADR for each will be?**

### Policy Proposal

BPA introduced its discussion of dispute resolution by observing that, notwithstanding its goal to obtain certainty, stability, and durability over the 20-year contract period, we are still very much at the broad, conceptual level. Many details cannot be understood and determined until rates and power sales contracts are further developed and understood. Given these unknowns, BPA stated that it would be wrong to suggest that a specific and effective dispute resolution process that applies uniformly is possible at this point or that a single process can be used to resolve all disputes.

In this regard, BPA cautioned: “Disputes vary in nature ranging from debates over interpretation of facts to disputes of judgment or interpretation of intent. Some involve policy judgments, issues of law or factual or technical determinations. The scope can range from narrow and discrete issues affecting a small set of parties to hugely complex and judgmental issues affecting many parties. Some issues will create precedent, while others will not. Subjects are as varied as the application of tiered rates and high water mark methodologies, cost migration between the rate tiers, Federal resource size, matters of cost recovery, reliability, resource operation, environmental significance and more. Because of these huge variations, a one-size-fits-all dispute resolution process would not be workable or likely legally enforceable. If it is to be effective and equitable, dispute resolution should be tailored to the type of dispute, the issues, and parties involved.”

BPA expressed its intent to approach disputes in good faith and to engage in resolution processes that provide the maximum simplicity, clarity and equity while still respecting BPA’s statutes and the Administrator’s legal responsibilities. BPA expressed a willingness to develop and implement expedient, efficient and fair dispute resolution mechanisms in consultation with parties, but cautioned that this does not mean that any or all disputes would be subject to one means of resolution, such as arbitration.

As to those matters that it could not specifically address at this point, BPA proposed principles, criteria and factors that BPA and parties should consider when negotiating the specific form of dispute resolution to apply to a specific type or category of dispute.

BPA then addressed how to provide certainty, stability, and durability, through dispute resolution and other means, as to the major elements of the policy that it was proposing and that the parties actually had before them. With regard to the overall tiered rates construct being proposed, BPA proposed that the rate refer to contracts for key elements and that the

contract could agree to authorize the rate case hearing officer, in specified cases, to make a determination as to whether any BPA-proposed rate change is a contractually prohibited change.

The determination would be binding on the Administrator except in matters where the change was necessary because the Administrator could not otherwise reasonably recover BPA's costs or comply with a court order. For certain issues of a narrow and purely factual nature, BPA proposed resolution by a neutral third party. For other identified issues, BPA proposed to continue the current practice of administrative determination by BPA, with the possible exception of identifying certain neutral sources of information that BPA must rely upon.

### **Public Comments**

A number of parties filed general comments on BPA's proposed approach to dispute resolution, with the comments falling into various camps, ranging from full support to skepticism to outright opposition. The camps, which are at odds with each other, raise the basic issue whether BPA should leave the July Proposal on dispute resolution as is, be more specific, adopt or consider a Slice Settlement type model for dispute resolution, or abandon the principles it enunciated for later application once the contractual and rate issues are identified more clearly and instead decide now what will and will not be subject to ADR and what the precise form of ADR for each will be.

A number of commenters supported BPA's approach as just right or very close. Daniel Ogden, Jr. stated the proposal is well conceived (Ogden, REG-018), while the Northwest Power and Conservation Council expressed support for BPA's efforts to provide opportunities for customers, stakeholders and the public to resolve disputes. (NPPC, REG-033) Northern Wasco agreed that disputes will invariably occur, and that no single process can resolve all disputes since they are multi-faceted and varying. (NWasco, REG-055) From its perspective, the eight policy goals BPA identified at pages 82-83 of its July Proposal as "particularly important" are actually "absolutes" or "must haves" "in order for BPA to retain its decision-making authority with accountability." *Id.* It suggested a proviso that all parties affected have the opportunity to be heard and their concerns fully considered. (NWasco, REG-055)

NRU stated that it supports the approach presented by BPA in Chapter XII, and identified two key NRU interests: (1) achieving stability in BPA's policy approach, and (2) avoiding inter-customer contentiousness caused by poorly designed dispute provisions (the Slice Settlement approach holds promise on this). As to the former, NRU stated that stability depends on the transparency and legal sustainability of BPA's contracts, rates and policies, and that clear and viable dispute resolution is key to enforcing the deal. NRU suggested that negotiation of dispute resolution provisions must be done with substantial customer input, and BPA should convene a group of attorneys to develop the appropriate language. (NRU, REG-103)

A number of other supportive comments suggest that BPA provide additional detail. Seattle City Light expressed support for BPA's recommendation for increased use of ADR, but

posited that procedures should be clear and leave no ambiguity regarding whether a dispute is subject to litigation or ADR. (SCL, REG-128) Tacoma commented that BPA's three-part approach demonstrates considerable thought and attention to customer interests and BPA statutory obligations. It agrees that a "one size fits all" approach does not work; commercial reliability and viability are critical; the construct of rates and contracts should be immutable over time (with narrowly defined and tailored exceptions for court orders, cost recovery and subsequently enacted legislation); "barriers to and conditions precedent to change should be established in contracts, subject to understanding that parties can agree to amend the contracts;" and the hearing officer and mini-trial proposal is positive, but facts should be referred to neutral third party determination to the greatest extent possible. (Tacoma, REG-135)

A number of commenters made general observations or raised questions. Western Montana Electric Generation and Transmission Co-Op indicated that further legal review and discussion are necessary to clarify what is a policy change versus an interpretation, and what are available remedies. (WMTG&T, REG-010-06, REG-106) The Oregon Department of Energy posited that transparency is important with regard to BPA's final decision making authority, as is the ability of parties to provide input in a structured manner and to have an avenue available for mediation. (ODOE, REG-062) Emerald stated that BPA should agree to arbitrate matters of contract interpretation, even if arbitration is non-binding (Emerald, REG-137), and Lewis stated BPA needs to have a clear and fair dispute resolution process (Lewis, REG-151).

A number of other commenters argued for BPA to adopt a dispute resolution process more akin to what was agreed to in a recent Slice Settlement Agreement. WPUDA, seconded by Cowlitz, commented that BPA and the region should agree on a robust dispute resolution process in which both parties cede some of their discretion. WPUDA further commented that contract provisions subject to dispute resolution should be clearly identified in the contract along with the specific type of ADR process (arbitration, mediation, ALJ, other). WPUDA indicated support for an ADR provision similar to that adopted in the Slice Settlement Agreement, including a staged process of discussion, draft report, and then non-binding arbitration.. (WPUDA, REG-080; Cowlitz, REG-118)

The PPC also suggested that the Slice Settlement provides a model, albeit a limited one, for resolution of some disputes by third parties. In this regard, it stated that BPA should continue to work with customers to fashion the appropriate process, noting that ideally the policy would clearly outline the types of disputes subject to a formal dispute resolution process so that corresponding contractual provisions can be negotiated during the contract development process. (PPC, REG-133, REG-150) NRU, which expressed support for the approach presented by BPA in Section XII, also stated that the Slice Settlement approach holds promise to avoid inter-customer contentiousness caused by poorly designed ADR provisions. (NRU, REG-103) Snohomish echoed similar sentiments, stating that a good starting point for fashioning dispute resolution procedures may be resolutions reached in Slice mediation. (Snohomish, REG-131) Kittitas was unequivocal that the process should be the same as BPA has negotiated with the Slice Contracts. (Kittitas, REG-087)

On the other hand, since the Slice Settlement provided for non-binding arbitration of disputes, Benton argued that BPA should use a Slice Settlement process approach only in areas where it is crystal clear that there is a constitutional prohibition on binding third-party arbitration. (Benton PUD, REG-114)

Certain commenters argued for additional design criteria. Tacoma suggested that a design criteria should include the potential for accelerated dispute resolution, and that cost migration should be addressed in the TRM and resolved in a way that provides commercial reliability. (Tacoma, REG-135) Franklin commented that it is vital that fair and understandable dispute resolution procedures should be developed before contract signing (Franklin, REG-100), while the PPC stated that dispute resolution should be quick. (PPC, REG-132, REG 149-01)

Finally, a number of commenters pushed for more stronger, definitive or declarative language now. PPC commented that dispute resolution should be efficient, fair and understandable, and that it should also be objective, timely and informed. PPC's perspective is that BPA's proposal is not specific enough and BPA should commit in the ROD to specific dispute resolution processes for each major type of dispute likely to arise under the contract and tiered rates methodology. To that end, PPC states BPA should use third party neutrals wherever possible on a binding basis, and on a non-binding basis when BPA must make a decision. (PPC, REG-132, REG 149-01).

Similarly, Franklin favors objective and fair dispute resolution, and agrees with PPC that BPA should commit in the ROD to specific processes for each of the major types of disputes likely to arise under contracts and rates design, and agrees with use of a neutral third-party approach. (Franklin, REG-100) WPAG states that contract, rate methodologies and related policies must be subject to objective and timely enforcement, and that BPA must make an unambiguous commitment in the ROD to utilizing specific non-judicial processes, presided over by objective third parties to enforce key elements of tiered rates. (WPAG, REG-109)

In a similar vein, Raft River Rural Electric Cooperative stated the proposal needs to be strengthened and they are prepared to work with BPA to that end. (Raft, REG-005) Snohomish declared that BPA and customers need to devote specific time to this issue since, in its view, the proposal falls short of a specific proposal. (Snohomish, REG-131) Benton argued that BPA should allow binding third party arbitration in as many areas as it can. (Benton PUD, REG-114)

### **Evaluation and Decision**

As detailed in connection with this and the other dispute resolution issues discussed below, BPA is making a number of specific changes in its dispute resolution policy, all calculated to provide parties greater certainty at this point in time. These changes are being made within the context of the general dispute resolution construct BPA proposed in the Policy Proposal, not as a wholesale substitution for that proposal (except in the instance of disputes over interpretation of the tiered rates methodology). BPA's basic construct, as summarized earlier, is one of (a) specifying what dispute resolution process will apply to major elements of BPA's policy as currently articulated, and (b) specifying the generic considerations and specific principles that must be considered in determining what dispute resolution should

apply to specific disputes or categories of disputes once they have been clearly identified through contract negotiation and development of the tiered rates methodology. Snohomish and other commenters are correct that BPA and customers need to devote more time to this issue since there are still many matters not covered. And BPA agrees with NRU that negotiation of dispute resolution contract provisions must be done with substantial customer input. BPA cannot overemphasize that much of this is simply a matter of timing: at some point during or near the end of contract negotiations, we will have a clear roadmap that will allow parties to clearly understand what specific type of dispute resolution procedure applies to a specific dispute or category of dispute.

BPA continues to believe that the reasoning it articulated in the Introduction to its Policy Proposal is correct. There are many types of possible disputes, many of which cannot be fully known or appreciated until BPA is well beyond the current policy stage and well into the process of drafting its contracts and developing its Tiered Rates Methodology. As a number of commenters recognize, it would be unreasonable of BPA to suggest that a specific dispute resolution process that applies uniformly is possible at this point or that a single process can be used to resolve all disputes.

Certain disputes must be decided by the Administrator, subject to appropriate judicial review, while others can be determined in a variety of alternative fashions. If it is to be effective and equitable, dispute resolution should be tailored to the type of dispute, the issues, and parties involved, taking into consideration the generic considerations and specific principles BPA articulates in its policy. Consequently, BPA rejects Benton PUD's argument that BPA engage in binding arbitration in every instance except where it is crystal clear that there is a constitutional prohibition on binding third-party arbitration. (Benton PUD, REG-114) BPA's goal is to develop expedient, efficient and fair dispute resolution mechanisms in consultation with parties. In so doing, BPA intends to take into consideration and adhere to the generic considerations and specific principles that BPA's policy articulates for consideration when the parties are negotiating the specific form of dispute resolution process that is to apply to a specific type or category of dispute.

In that regard, BPA agrees with Northern Wasco that these principles are actually "absolutes" or "must haves" in order for BPA to retain its decision-making authority with accountability." (NWasco, REG-055) Instead of simply saying, as did the Policy Proposal, that the principles are particularly important to BPA, the Policy will state unequivocally that "[i]n determining the specific dispute resolution process that will apply to particular disputes or types of disputes that BPA and its customers may encounter during the 20-year course of the Regional Dialogue contracts and rates, BPA will factor in the following considerations: . . ."

NRU, Seattle, Lewis and others are correct that the parties need to clearly understand the dispute resolution mechanism that applies to a particular type of dispute, including when litigation is the process to be followed. (NRU, REG-103; SCL, REG-128; Lewis, REG-151; ODOE, REG-062) WPUDA, seconded by Cowlitz, commented that contract provisions subject to dispute resolution should be identified in the contract, and also by type of process (arbitration, for example, or administrative law judge or third party neutral). BPA agrees,

and will approach the upcoming contract negotiations with those goals in mind. That should also serve to satisfy the concern of Western Montana Electric Generation and Transmission Co-Op that customers understand what remedies are available (WMTG&T, REG-010-06, REG-106), as well as Tacoma's concern that "barriers to and conditions precedent to change should be established in contracts, subject to understanding that parties can agree to amend the contracts; . . . ." (Tacoma, REG-135)

The PPC stated that, ideally, the policy would clearly outline the types of disputes subject to a formal dispute resolution process so that corresponding contractual provisions can be clearly identified during the creation of contracts. (PPC, REG-133; REG-150) As indicated, BPA believes it is necessary to wait until the types of disputes subject to a particular dispute resolution process can be culled out from the contracts and rates under development. Otherwise, the necessary judgments reflected in the generic considerations and specific principles BPA articulates cannot or will not be made. When all is concluded, the end result of clearly articulating the applicable dispute resolution process for a particular dispute will be achieved.

Emerald stated that BPA should agree to arbitrate matters of contract interpretation, even if arbitration is non-binding. (Emerald, REG-137) While that was not a matter discussed in BPA's July Policy, BPA agrees that, consistent with specific principles articulated in BPA's policy, it is a matter that should be considered in contract negotiations.

As noted, a number of commenters argued for BPA to either adopt now or consider later in the contract negotiation process, a dispute resolution process similar to that adopted in the recent Slice Settlement Agreement. (WPUA, REG-080; Cowlitz, REG-118; PPC, REG-133, REG-150; NRU, REG-103; Snohomish, REG-131; Kittitas, REG-087) The Slice Settlement Agreement was the product of intense and lengthy negotiations by the parties to the litigation, and specifically tailored to apply to disputes over Slice True-Up Matters. It provides for a detailed Executive Slice Facilitation Process, with fixed timelines, as a condition to any permissible dispute resolution regarding a True-Up Matter, and it thoroughly addresses the scope, conduct and effect of arbitration. *See* <http://www.bpa.gov/Power/PSP/products/slice/announcements.shtml> and [http://www.bpa.gov/corporate/pubs/RODS/2006/Settlement%20Agreement\\_with\\_no.pdf](http://www.bpa.gov/corporate/pubs/RODS/2006/Settlement%20Agreement_with_no.pdf) As a matter of settlement, the procedures for arbitration referenced provisions of the underlying contract dealing with conduct of the arbitration by the International Institute for Conflict Prevention and Resolution (formerly known as the CPR Institute for Dispute Resolution).

Application of the ADR processes described in the Slice Settlement Agreement raises real questions as to the speed, efficiency, fit and cost of these procedures in other contexts. In this Policy process, many customers, including those suggesting the Slice Settlement as a model, have argued for accelerated dispute resolution (Tacoma, REG-135), efficient and timely resolutions (PPC, REG-132, REG 149-01), and that at least for certain disputes, the process be appellate-like (no depositions, discovery, cross-examination) and be accomplished in a month or less (WPAG, REG-109). Inasmuch as the procedures called for by the Slice Settlement Agreement would likely frustrate those goals, and given the precisely negotiated terms of the Slice Settlement Agreement, BPA does not believe it would be appropriate to

attempt in this Policy to adopt the Slice Settlement procedures to apply to other disputes, and certainly not all disputes. At the same time, a great deal of thought and effort went in to crafting of the ADR process in the Slice Settlement structure. BPA believes it would be fruitful for the parties to discuss and test what, if any, portions of the ADR procedures in the Slice Settlement Agreement might be adapted and applied to the various types or categories of disputes identified by the parties. This would be done in conjunction with applying the generic considerations and specific principles that BPA's policy articulates for deciding the appropriate form of dispute resolution.

Finally, a number of commenters pushed for stronger and more definitive language now, with WPAG stating that BPA must make an unambiguous commitment in the ROD to utilize specific non-judicial processes presided over by objective third parties to enforce key elements of tiered rates. (WPAG, REG-109) As discussed earlier, BPA continues to believe it is appropriate to adhere to the basic approach articulated in the July Proposal. At the same time, BPA has attempted to be more definitive as to those items we are specifically addressing now.

Thus, while the Policy Proposal, as a proposal, in many cases used the words "could" or "should," they have been replaced with the word "will." BPA cautions that while the word "will" is in many cases now used in connection with rate matters, any final rate decisions must be made through the section 7(i) rate setting process. For those matters, the word "will" is intended to convey a sense of commitment that this is what BPA will propose and defend in the rate case, but the Administrator must still make his or her final decision based on the complete rate case record.

In addition, more detail has been provided in a number of other areas, including the processes attendant to BPA changes or interpretations of the tiered rates methodology. Several of these are discussed in more detail below, in connection with the various specific suggestions made by parties.

## **Issue 2:**

**Should BPA add additional principles to its list of principles to be considered in evaluating the appropriate form of dispute resolution?**

### **Policy Proposal**

BPA discussed that it is still at the preliminary policy stage, and that it would not know the full range of potential disputes and what they might involve until the contracts and tiered rate methodology were substantially developed and understood. Consequently, BPA articulated generic considerations and specific principles that should be taken into account in determining how disputes should be handled. More specifically, BPA proposed as follows:

Based on Department of Justice and other literature, major, generic considerations that should be taken into account are as follows:

- a. Important policy judgments necessary to interpret and administer Federal statutes and regulations must be retained by the Administrator and not turned over to a third party for final resolution.
- b. Alternative dispute resolution (ADR) can be most useful in disputes which are highly fact specific, and in which the decision is likely to be single issue and quantitative. Arbitration, mini-trials and determination by a hearing officer are examples of ADR.
- c. ADR may also be attractive when the dispute is highly factual or technical and the parties can pick a decision maker with mutually accepted expertise, thus obviating the need to educate the decision maker to reduce technical arguments.
- d. Arbitration is also useful when finality is a desired result, and there is little concern over the risks or costs of remedies impacting other parties (for example, resolving a small dollar figure dispute that has been ongoing for a long period).
- e. ADR should be seriously questioned when:
  - a definitive or authoritative resolution of the matter is required for precedential value, and a binding third-party determination is not likely to be accepted by all interested parties generally as an authoritative precedent;
  - the matter involves or may bear upon significant questions of government policy that require additional procedures before a final resolution may be made, and a binding third-party determination would not likely serve to develop a recommended policy for the agency;
  - maintaining established policies is of special importance, so that variations among individual decisions are not increased, and a binding third-party determination would not likely reach consistent results among individual decisions;
  - the matter significantly affects persons or organizations who are not parties to the proceeding; or
  - a full public record of the proceeding is important, and a binding arbitration proceeding cannot provide such a record.

In the context of BPA's proposed policy, certain more specific principles are particularly important to BPA:

***First***, BPA must ensure that it maintains the ability to, and does, fully recover its costs and repay Treasury; it must also retain the ability to demonstrate that over time its rates and cost allocations are consistent with statute.

**Second**, there will be many instances where a determination is common to all Tier 1 or Tier 2 customers, or affects all or many of them in some fashion. BPA's past practice of melding all costs had the effect of dampening the effects of many BPA actions. That will no longer be the case since Tier 1 will essentially be a zero sum game. For example, resource removal, net requirements determinations and FBS capability determinations are decisions that will potentially affect all customers but have different impacts and consequences for each customer eligible to purchase at Tier 1.

**Third**, determinations regarding system and operational characteristics are highly technical, often changing, and judgmental. These are not the kind of decisions that should be entrusted to an adversarial process.

**Fourth**, process should not unduly delay efficient, economical, and reliable operation of the system. Timely decision making needs to be preserved, particularly in the areas of emergencies, operating decisions, and cost recovery. Process paralysis must be avoided.

**Fifth**, BPA, its customers and constituents should not be forced to repeatedly expend significant resources in arbitrations and other proceedings. Efforts should continue to be devoted to seeking consensus on the type of process to be pursued, and when.

**Sixth**, the consequences of a decision must be such that there is no inequitable shifting of costs to customers not party to the dispute resolution process.

**Seventh**, BPA must ensure that its stewardship obligations (e.g., fish and wildlife, tribal trust, treaty) are not frustrated or compromised by processes for resolving disputes.

**Eighth**, the need for dispute resolution by third parties is stronger where BPA is acting in its business interest (e.g., say it wants to be the preferred supplier for a Tier 2 product), rather than in the public interest.

One-size dispute resolution does not fit all disputes. The criteria and considerations above should be flexibly applied so that the dispute resolution process fits the particular issue. Also, the criteria and considerations should not only be considered and applied at or around the time the parties are deciding what should be said in the 20-year contracts and the Tiered Rates Methodology regarding dispute resolution, but should also be considered when unanticipated disputes arise and a decision is needed regarding how they should be resolved.

### **Public Comments**

Northern Wasco suggested a proviso that all parties affected have the opportunity to be heard and their concerns fully considered. (NWasco, REG-055) ICNU similarly states that all

customers, including end-use customers, should be allowed to participate. (ICNU, REG-029, REG-125)

Tacoma suggested that a design criteria should be the potential for accelerated dispute resolution, and that cost migration should be addressed in the TRM and resolved in a way that provides commercial reliability. (Tacoma, REG-135) Franklin commented that it is vital that fair and understandable dispute resolution procedures be developed before contract signing (Franklin, REG-100), while the PPC stated that dispute resolution should be quick. (PPC, REG-132, REG 149-01)

PPC commented that dispute resolution should be efficient, fair and understandable, and that it should also be objective, timely and informed. (PPC, REG-132, REG 149-01) Franklin also favors objective and fair dispute resolution. (Franklin, REG-100) WPAG states that contract, rate methodologies and related policies must be subject to objective and timely enforcement. (WPAG, REG-109)

Tacoma comments that facts should be referred to third party determination to the greatest extent possible. (Tacoma, REG-135) ICNU comments that BPA should allow independent, third-party determination of or recommendation on as many disputes as possible. (ICNU, REG-029, REG-125)

### **Evaluation and Decision**

Northern Wasco suggested a proviso that all parties affected have the opportunity to be heard and their concerns fully considered. (NWasco, REG-055) ICNU commented to similar effect. While this suggestion has a great deal of facial appeal and simplicity, and while BPA generally supports it, this actually is a very complicated matter. Since BPA is self-financing and must recovery its costs, it could be generally said that everything BPA does affects its customers. That, in combination with customer demands that it do so, has driven BPA to be more collaborative and transparent in its decision making.

At the same time, when it comes to their contracts with BPA, many customers do not want other customers, particularly those who may be competitors, involved in what they see as purely commercial disputes, which may involve commercially sensitive or proprietary information. Others have expressed a concern with the amount of process that attends doing business with BPA. In light of those considerations, BPA is revising its second principle to start out as follows: “**Second**, for issues of wide impact, all parties affected should have the opportunity to be heard and their concerns fully considered.” We believe this responds to Northern Wasco’s concern, and provides parties the further opportunity to discuss and determine whether there are certain matters that should, for dispute resolution purposes, be handled more as a private matter.

BPA agrees that that speed and cost-effectiveness should be taken into consideration. The fifth principle has been restated as follows: “**Fifth**, BPA, its customers and constituents should not be forced to repeatedly expend significant resources in arbitrations and other proceedings; alternative dispute resolution should be cost-effective compared to the alternative. Conversely, for issues that are amenable to quick resolution, there should be the

potential for accelerated dispute resolution.” Speed and cost-effectiveness were also at play in BPA’s fourth principle, quoted earlier. BPA has added “reliability” as something that deserves particular attention, so re-worded the second sentence to state, “Timely decision making needs to be preserved, particularly in the areas of emergencies, operating decisions, reliability, and cost recovery.”

BPA is also sympathetic to the suggestion that facts should be referred to third party determination to the greatest extent possible. Here, again, however, this cannot be the only or the overriding consideration. The other principles should also be considered to ensure that it truly makes sense to reference a factual dispute to a third party.

For example, certain facts, such as the size of BPA’s system are of such critical and widespread importance and complexity that it would not be reasonable to entrust that determination to a third party. At the same time, purely factual disputes of lesser significance are certainly more amendable to third-party resolution than policy disputes. In light of this, we have added a new eighth to state as follows: “*Eighth*, there will be a presumption in favor of third-party resolution of factual disputes, tempered however by considerations of significance (i.e., there should be a threshold), speed, efficiency, cost, consistency of process, timely decision making, and the other factors identified above.”

Rather than adding this as a ninth principle, we believe it is appropriate to substitute this for the previously-proposed eighth principle for a number of reasons. That proposed principle provided that “the need for dispute resolution by third parties is stronger where BPA is acting in its business interest (e.g., say it wants to be the preferred supplier for a Tier 2 product), rather than in the public interest.” The new principle will cover many of the situations covered by the prior one. It is also clearer, easier to apply, and less subject to argument. Inasmuch as BPA, as a public entity, exists to carry out its statutory responsibilities, it would be very difficult to determine, and likely argued at some length, whether and when BPA is acting in its business interest. While it is true that BPA is to fulfill implement many of its statutory responsibilities consistent with sound business principles, and to act in a businesslike fashion in the absence of statutory direction, that does not change the fundamental public purpose of BPA’s undertakings. At the same time, since at least BPA believes it always acts in the public interest, a false test is set up by the phrasing “rather than in the public interest,” since it conveys the misimpression that BPA believes there are situations where it does not act in the public interest.

ICNU’s comment that BPA should allow independent, third-party determination of or recommendation on as many disputes as possible is addressed in connection with the first issue above. Since ICNU’s approach extends beyond purely factual matters, but into matters of policy, law or questions of mixed fact and law, it is of much more substantial reach than Tacoma’s suggestion that facts should be referred to third party determination to the greatest extent possible.

Under the statutory scheme governing BPA, the Administrator is responsible for determining policy issues and application of the laws governing BPA. The Administrator is publicly accountable for those decisions, and they are reviewable by the courts which, generally

afford deference to the Administrator’s statutory interpretations and related policy judgments. The Administrator is unwilling to cede that authority to third parties. In identified cases where the parties agree that third-party recommendation would assist reasoned and informed decision making, the Administrator will abide by that agreement. Because of the depth and breadth of the issues that could be covered by ICNU’s comment, a presumption in favor of third-party dispute resolution could threaten to overwhelm reasoned application of the generic considerations and specific principles, and will not be adopted.

BPA believes that the notions of efficient, fair and understandable dispute resolution are captured in the generic considerations and specific principles it has articulated. At the same time, as discussed in connection with the first issue, BPA’s Policy commits that “once the tiered rate methodology and contracts are developed with greater certainty, BPA will negotiate contractual procedures that clearly specify when ADR is the process and when litigation is the process.”

### **Issue 3:**

**Should BPA commit to some sort of issues identification process that would seek to collaboratively deal with issues and problems before they become formal disputes?**

### **Policy Proposal**

As a preliminary matter before addressing the subject of alternative dispute resolution, BPA posited that BPA and the parties should first focus on efficient and effective processes for customer, constituent and stakeholder input into decision making so that there is less need for and focus on alternative forms of dispute resolution.

### **Public Comments**

WPUDA suggested that BPA establish an issues identification process that would seek to collaboratively deal with issues and problems before they become formal disputes. (WPUDA, REG-080) Cowlitz and Franklin supported this suggestion. (Cowlitz, REG-118) (Franklin, REG-100) In addition, the Oregon Department of Energy commented that with regard to BPA’s final decision making authority, transparency is important, as is the ability of parties to provide input in a structured manner, with an avenue available to mediate differences. (ODOE, REG-062)

### **Evaluation and Decision**

BPA agrees with these comments. Issue identification processes designed to collaboratively deal with issues and problems before they become formal disputes will be established. Collaborative communication is essential to ensuring that BPA is providing, and the customers are receiving, what they bargained for, and that there is basic alignment between all parties as we move forward on and implement this very complex and unique undertaking. This holds the greatest promise of minimizing disputes between parties, and avoiding resort to the various formal methods of dispute resolution. BPA will work with customers and others in upcoming contract negotiations and other forums to fashion issue identification processes that are fair, efficient, transparent, and meaningful—meaning that they are thoughtfully tailored to types or categories of disputes that the parties have identified, are carefully structured, and involve the right representatives of the parties.

BPA will modify its Policy to provide as follows: “Issue identification processes designed to collaboratively deal with issues and problems before they become formal disputes will be established. Efficient and effective processes for customer, constituent and stakeholder input into BPA decision making lessen the likelihood of unresolved disputes and the need for formal dispute resolution. Such issue identification processes also serve to clarify the exact nature of the disputes that do remain. Issue identification processes will precede any formal dispute resolution. During the contract negotiation process, BPA will determine and establish what those issue identification processes will entail.”

**Issue 4:**

**Should BPA more clearly identify the “construct,” the exceptions for changing it, and the process for considering when revisions are necessary due to changed circumstances and the need to avoid unintended consequences?**

**Policy Proposal**

To address the concern that BPA statutorily can and, in certain situations, must change its rates, BPA stated that it could in the rate itself state that the overall construct of tiered rates would not be abandoned or changed for a period of 20 years, that each customer’s contract would include a guarantee against identified changes, and that the contract would provide for a binding process to ensure that the guarantee was enforceable. The protection would be subject to very narrow qualifications that, notwithstanding the contractual guarantee, the identified changes could be made if and to the extent (a) BPA were effectively required by court order to make them, or (b) the Administrator determined he/she could not timely and reasonably recover BPA’s costs without the change. Criteria should be specified for actions that the Administrator should or must pursue before resorting to a change in the tiered rates construct, or an element of it, to ensure cost recovery. These criteria or disputes over them should not be allowed to frustrate the Administrator’s responsibility to recover costs and timely repay the U.S. Treasury.

Given the rates nature of the construct, BPA observed that any BPA proposed change to the construct would have to be done through a rate case. Therefore, BPA’s contract could provide that the hearing officer would be authorized to make a determination as to whether any proposed change was a contractually prohibited change. The determination would be binding on the Administrator except where the Administrator has determined, after a mini-trial directly to the Administrator within the rate case, that the change was necessary because BPA could not reasonably recover costs or comply with court order without the change. BPA cannot lock itself into any pricing scheme that precludes full and timely cost recovery.

**Public Comments**

ICNU states that it is unclear what, and to what extent, BPA is saying it won’t change, since the notion of the tiered rates “construct” is still undefined. (ICNU, REG-029, REG-125) ICNU also states that BPA’s proposed two exceptions for changing the construct, and the second—cost recovery—could be huge. (ICNU, REG-029, REG-125) It believes there must be a limitation or meaningful review of that exception. WPAG commented that BPA and the customers should work to determine TRM values that will be determined outside the rate

case and that won't be altered in the rate case, and should contract that they will be used in the rate case without change. (WPAG, REG-109) WPAG and PPC also stated that BPA should abandon words like "could" and "should" and instead be more declarative, with the ROD stating that the contract "will" protect the TRM from change, and the hearing officer "will" resolve disputes over proposed changes. (WPAG, PPC) There is an issue of the process for considering when revisions are necessary due to changed circumstances/unintended consequences (WPAG, PPC), but that can wait for later (WPAG, REG-109) or BPA should work with customers to address that. (PPC, REG-132: REG-149-01)

### **Evaluation and Decision**

BPA has, in its Policy, attempted to lay out the basic architecture, or construct, of tiered rates and accompanying contracts that it is proposing. The construct includes the central fact of tiered rates and the various constituent elements or building blocks that, taken together, will add up to a workable tiered rates construct, including but not limited to the basis and requirements for initial and subsequent determinations of high water marks and net requirements; rights to remove resources; the resources, including augmentation, that Tier 1 costs will be based on; identification of costs includable in Tier 1 or Tier 2; and protections against cost migration between Tier 1 and Tier 2.

While BPA has attempted to be clear in its Policy, we understand that from ICNU's vantage point, the notion of the tiered rates "construct" may still be insufficiently defined. However, inasmuch as BPA's Policy commits it to contractually agree against identified changes, that just means that ICNU and the other parties have the opportunity and challenge to more clearly identify and define what constitutes the construct. BPA will not try to further define it in its Policy for purposes of dispute resolution. What constitutes the "construct" will be determined collaboratively with customers, with a view to ensuring that commercial certainty and predictability is maximized.

ICNU also states that BPA's proposed two exceptions for changing the construct, and the second—cost recovery—could be huge. Since the two exceptions are founded on overarching requirements applicable to BPA—assurance of full cost recovery, and the need to adhere to court orders and decisions as to what is required of BPA under the law—BPA finds truth to ICNU's comment only if BPA, its customers, and other parties pursue and implement this policy in a fashion that precludes full cost recovery or runs afoul of the law. To the extent that we are successful in implementing this policy in a fashion that assures full cost recovery and comports with the law, then the exceptions should not be huge. On the contrary, total success would mean that these exceptions are never (or rarely) needed. Our job—and the challenge ICNU raises—is to ensure we are successful.

ICNU also states its belief that there must be a limitation or meaningful review of the cost recovery exception. BPA disagrees that there must be a limitation or additional review of the exception. BPA is unwilling to and, in fact, cannot limit its obligation under law to establish rates so as to assure total cost recovery. BPA has committed to exploring with customers actions BPA must take to lessen the likelihood of having to invoke the cost recovery exception, but it is unwilling to limit the exception itself. Inasmuch as cost recovery is a rate

matter, and a matter that must be assured in a rate case, BPA's Policy provides for significant new and, we think, meaningful opportunities for parties to have the hearing officer hear and decide whether the exception is properly invoked and, if BPA disagrees, for a mini-trial on the matter before the Administrator.

WPAG commented that BPA and the customers should work to determine tiered rate methodology values that will be determined outside the rate case and that won't be altered in the rate case, and should contract that they will be used in the rate case without change. BPA's July Policy proposed this approach, and it is retained in BPA's final Policy.

WPAG and PPC also stated that BPA should abandon words like "could" and "should" and instead be more declarative, with the ROD stating that the contract "will" protect the TRM from change, and the hearing officer "will" resolve disputes over proposed changes. As indicated in connection with the first dispute resolution issue addressed above, the Policy has been re-worded to do this.

WPAG and PPC comment that there is an issue of the process for considering when revisions are necessary due to changed circumstances/unintended consequences, with WPAG stating that can wait for later and PPC stating BPA should work with customers to address that issue. BPA agrees. Underlying the comments is a recognition that notwithstanding parties' best efforts, foresight can be imperfect and the world will change in fundamental ways not anticipated. This is an issue that was not addressed in BPA's proposal, but merits future discussion.

#### **Issue 5:**

**Should the hearing officer decide if a matter is a change or interpretation of the tiered rates methodology, and determine both on a binding basis subject to BPA's two exceptions for court order and cost recovery?**

#### **Policy Proposal**

BPA proposed that the rate reference contracts for key elements and that its contract could agree to authorize the rate case hearing officer in specified cases to make a determination as to whether any BPA-proposed rate change is a contractually prohibited change. The determination would be binding on the Administrator except where the Administrator has determined, after a mini-trial directly to the Administrator within the rate case, that the change was necessary because BPA could not reasonably recover costs or comply with court order without the change.

#### **Public Comments**

WPAG and the PPC commented that there is an initial issue whether a matter is a change or interpretation, and that if the matter is being pursued in a rate case, the hearing officer should decide it, though WPAG expressed openness to collaborative exploration of alternatives. (WPAG, REG-109; PPC, REG-132, REG 149-01) Western Montana indicated that the proposal raised questions of what is a policy change versus interpretation, such that further legal review and discussion is needed. (WMT, REG-010-06, REG-106) WPAG also commented that the process of resolving what are truly interpretative disputes in rate cases

should be the same as in the case of proposed changes—the hearing officer should decide, with the Administrator able to override the hearing officer under the two exceptions (court order, cost recovery) articulated by BPA. (WPAG, REG-109)

In terms of process, WPAG commented that the process should be appellate-like (no depositions, discovery, cross-examination), and quickly done. (WPAG, REG-109) It suggested that the parties should collaboratively address various procedural issues such as timing, burden of proof, presumptions, and standards the hearing officer would use. (WPAG, REG-109)

### **Evaluation and Decision**

It is reasonable that the hearing will be authorized to determine if a matter is a change or interpretation. Otherwise, the substantive and procedural protection that BPA is attempting to provide against changes would be difficult to enforce.

A “change” will be defined in a way not to include what a party believes is an erroneous or improper interpretation or determination of tiered rate methodology language, but to cover change to the actual language of the methodology, whether that change occurs through substitution of language, override of existing language, or ignoring existing language. Filling in “gaps” is not a change, and is something that a section 7(i) hearing is suited to determine in the ordinary course. This will put the onus on BPA and the parties to ensure that the language of the methodology is comprehensive, and fully captures what parties are intending on locking in for 20 years. At the same time, if “gaps” are discovered, they should, if possible, be filled through the same type of advance collaborative process as will precede the tiered rates methodology 7(i) hearing.

Interpretative disputes bear upon the meaning of the language of what has been previously established. Interpretative disputes by their nature mean that there is a question as to what BPA’s rate or rate methodology calls for. While a party may disagree with BPA’s interpretation, or BPA may disagree with a party’s interpretation, that does not mean that one or the other’s erroneous interpretation is a change of the methodology; it simply means that if BPA’s interpretation is not a reasonable one, it should not be sustained.

BPA will not empower the hearing officer to determine interpretative disputes in the rate case. Just as the rate and rate methodology must in the first instance be established by the Administrator in a section 7(i) hearing, it is appropriate that when interpretative issues arise in a rate case context they be decided by the Administrator. The rate case affords parties ample opportunity to fully develop their cases why the Administrator’s proposed interpretation is reasonable or unreasonable. With the hearing officer having the added powers of determining what is a change to the methodology, and whether it satisfies either of the two exceptions, the rate case will take on an added level of complexity. If experience indicates that rate cases can reasonably accommodate extra hearing officer duties such as this, then BPA would be willing to explore how interpretative disputes might be subject to additional scrutiny as well.

The process attendant to the hearing officer's determinations received little comment from parties other than WPAG. While BPA is generally supportive of WPAG's suggestion of an appellate-like process due to its speed and efficiency, particularly within the context of a long and highly structured rate case process, we feel this warrants further discussion among the parties. Many procedural details, such as timing, burden of proof, deference, presumptions, standards the hearing officer would use, and other procedural matters, need to be established by BPA. BPA will collaboratively explore these in advance with customers and other rate case parties.

In light of the foregoing, BPA will re-state its proposed Policy as follows:

Given the rates nature of the construct, any BPA proposed change to the construct will have to be done through a rate case. The hearing officer will be empowered to determine if a matter is a change or interpretation. A "change" will be defined in a way not to include what a party believes is an erroneous or improper interpretation or determination, but to cover change to the actual language of what the parties have agreed is the construct. While interpretations will be subject to regular rate case procedures, the hearing officer will be empowered to make a determination as to whether any proposed change is a contractually prohibited change. The determination will be binding on the Administrator except where the Administrator has determined, after a mini-trial directly to the Administrator within the rate case, that the change is necessary because BPA cannot reasonably recover costs or comply with a court decision without the change. BPA cannot and will not lock itself into any pricing scheme that precludes full and timely cost recovery. Many procedural details, such as timing, burden of proof, deference, presumptions, standards the hearing officer would use, and other procedural matters, need to be established by BPA, and BPA will collaboratively explore these in advance with customers and other rate case parties.

#### **Issue 6:**

#### **What process should apply to disputes over high water mark determinations?**

#### **Policy Proposal**

BPA recognized that its rate setting directives identify rate pools, generally specifying which customers may be allocated which costs, but that section 7(e) of the Northwest Power Act affords the Administrator latitude in the rates design to recover the costs from a class or one or more subclasses. Hence, under BPA's proposed construct, Tier 1 rates would be available for customers with a high water mark (HWM) and, within that, their net requirements. Tier 2 would be available for net requirements in excess of a customer's HWM.

BPA proposed that it could in the rate itself state what each customer's HWM is, and that the HWM would be included in the customer's contract and not subject to change except in contractually identified ways. BPA stated that the rate could also refer to net requirements as determined in a separate process. These eligibility features and the design of the rate methodology around these features—HWM and net requirements—would be subject to the qualifications and process for determining whether BPA is changing them, the same as BPA

identified with respect to the overall construct. Apart from these kinds of fundamental changes to the construct of HWM and net requirements as eligibility and cost allocation determinants, BPA recognized that HWM and net requirements are subject to many possible year-to-year variations and that a process for determining these would have to be developed.

As indicated, BPA anticipated that the rate would refer to each customer's contract for an initial value that establishes the HWM, and that that HWM and the HWM construct would be contractually locked in, and subject to change for two specified circumstances. Consequently, BPA anticipated that the rate and the contract are also likely to have the following provisions for changing the HWM that would require a process to resolve disputes:

- a. Factual circumstances that permit the HWM to either be increased or decreased (e.g., based on changes in the "size" of the FBS).
- b. Based on such factual circumstances, a method for calculating the amount of any increase or decrease for the HWM.
- c. A simple and readily calculable method for determining when the HWM has been exceeded.
- d. Changes in HWM based on new preference customers and other factors discussed in this proposal.

BPA proposed that the contracts need to clearly lay out the process for resolving each in a manner that ensures transparency and inclusion of all interested, affected customers since Tier 1 would be a zero sum game. In the case of disputes of a mathematical nature, BPA suggested that third-party resolution would be appropriate, and that the generic considerations and specific principles for evaluating dispute resolution alternatives need to be applied to determine how these matters should be resolved and by whom. It observed that Tier 1, or FBS resource, size is an important determinant of the total of HWMs and discussed it separately.

### **Public Comments**

Tacoma commented that HWMs should be determined in a formal process outside the rate case. (Tacoma, REG-135) WPAG commented that disputes that arise over calculations should be resolved in the same fashion as it has proposed to be applied in the case of disputes outside the rate case over interpretations of the tiered rates methodology (see Issue 11 below). (WPAG, REG-109) PPC commented that disputes over HWM calculations should be subject to binding arbitration (PPC, REG-132, REG, 149-01)

### **Evaluation and Decision**

Determination of the first or initial HWM will be determined outside the rate case. There has been little discussion of the process itself, so BPA will work with customers to develop and define the process that should be used to making that determination.

As to subsequent, appropriate changes to HWMs (not to the construct itself, which is subject to the process and exceptions against change), the contracts will clearly lay out the process for resolving each in a manner that ensures transparency and inclusion of all interested, affected customers. In the case of disputes of a mathematical or similar calculation nature, BPA agrees that binding third-party resolution would be appropriate. For other matters, BPA does not believe it is reasonable at this time to commit to the type of processes that should apply. For example, there is a close interrelationship between HWM and permanent changes in the capability of BPA's power system, a matter that involves substantial policy, judgmental and factual determinations. The criteria and considerations for dispute resolution alternatives need to be applied to determine how those matters should be resolved and by whom.

**Issue 7:**

**Should BPA adopt a standard net requirements methodology, and make it a matter of contract?**

**Policy Proposal**

A customer's initial net requirements and the construct of relying on net requirements as an eligibility factor would be contractually locked in, subject to change for two specified circumstances. BPA observed that there is a need to focus on BPA's determination of subsequent changes in a customer's net requirements, and that customers have asked for an open and transparent process for determinations of net requirements. BPA proposed that a similar but not necessarily identical method to that contained in the current contracts would be used to make a periodic net requirement determination. The net requirement determination would involve at least the following elements:

- a. A utility's current retail load and its forecast load.
- b. Non-Federal resource declarations. This includes the annual and monthly energy amounts and any changes to non-Federal resource amounts (plus or minus).
- c. Consumer-owned resources. This includes the listing of consumer-owned utilities, changes to such information, and consequences of the listing and changes.
- d. Decrements to net requirements under section 9(c) of the Northwest Power Act.
- e. Non-Federal resource changes under contract and any pursuant to section 5(b)(1) of the Northwest Power Act (e.g., consent of Administrator, obsolescence, retirement, loss of resource or loss of contract rights).

**Public Comments**

WPAG observed that net requirements determinations will drive how much power a customer must purchase from BPA at Tier 2, rather than Tier 1, and commented that there should be a standardized net requirements methodology, attached to contracts, and specifying rights of customers to participate in other preference customer net requirements

determinations. It acknowledged that these determinations involve facts, policy, application of policy to facts or application of policy that is ambiguous or has gaps. (WPAG, REG-109)

### **Evaluation and Decision**

BPA agrees with much of what WPAG proposes. Net requirement determinations are critical to customers both as a matter of supply and, under the tiered rates construct, to providing pricing certainty and stability to customers. BPA will develop a methodology that lays out how net requirements will be determined, and will commit in contract not to change the methodology or elements of it, depending on what the methodology covers. Beyond that, however, BPA but will not make the methodology a matter of contract since that would result in arguments whether all administrative determinations and any associated policy judgments are contract matters. As indicated in the next issue, that is not to say that alternative forms of dispute resolution should not apply to such determinations.

### **Issue 8:**

#### **What dispute resolution process should apply to net requirements matters?**

### **Policy Proposal**

BPA observed that the various matters involved in determining a net requirements number involve substantial policy and factual determinations. Consequently, BPA expressed its belief that more discussion should occur before any particular mode of dispute resolution is specified. It stated: “The contracts need to clearly identify the particular processes for resolving each, and where possible the sources of data, such as the utility’s financial forecasts. This should be done in a manner that ensures transparency and inclusion of all interested, affected customers. While the process for determining individual utility load and resource changes should for the most part be an administrative determination by BPA, BPA is open to review of the whole area to determine factual determinations that might well be referred to a third-party neutral for resolution in an open and transparent setting. It is important that disputes be resolved in a way that the same results or approach can then be applied to all customers. It would be unworkable and unacceptable for separate dispute resolution processes to result in varying ways to determine net requirements.”

### **Public Comments**

PPC commented that disputes over net requirements should be finally determined by a third party neutral, with the process open to affected customers. (PPC, REG-132; REG-149-01) WPAG acknowledged that net requirements determinations involve facts, policy, application of policy to facts or application of policy that is ambiguous or has gaps. (WPAG, REG-109) WPAG believes that (a) when disputes involve strictly issues of fact or application of clear and unambiguous policy to facts (such as load forecast, resource declarations, consumer owned utility declaration), there should be a binding neutral third-party decision on the matters, and (b) when disputes involve issues of fact and application of policy with gaps or ambiguity, the dispute should be reviewed by a third-party neutral, but with only the decision on facts binding. If the nonbinding decision is accepted by BPA, WPAG states it would become BPA’s decision and applicable to all customers, though appealable to the Ninth Circuit Court of Appeals. The process WPAG proposes would be the same as is discussed in Issue 11 below regarding disputes over rates interpretation. (WPAG, REG-109) Finally,

WPAG proposes that individual net requirement determinations not disputed by BPA and a utility should include only them, though posted for all preference customers to review. (WPAG, REG-109)

### **Evaluation and Decision**

BPA finds much merit in WPAG's proposal. Net requirements determinations are matters that BPA has a long history of deciding, so BPA does not believe it is necessary to wait to apply the generic considerations and specific principles to all issue categories associated with this matter. While the process for determining individual utility load and resource changes will for the most part be an administrative determination by BPA, BPA is open to discussion of the issue and review of the whole area to determine factual determinations that might well be referred to a third-party neutral for resolution in an open and transparent setting. What is or is not a matter of fact needs further discussion and review. It is important that disputes be resolved in a way that the same results or approach can then be applied to all customers. It would be unworkable and unacceptable for separate dispute resolution processes to result in varying ways to determine net requirements.

BPA agrees for now that when the parties are in agreement that strictly issues of fact or application of clear and unambiguous policy to facts is involved, those matters may be determined through a binding neutral third-party decision, subject to a threshold level of significance that will be negotiated with customers. When issues of fact and application of policy with gaps or ambiguity are involved, BPA agrees that subject to a threshold level of significance that will be negotiated with customers, such matters will be referred to a neutral, but with only the decision on facts binding. If the decision is accepted by BPA, it becomes BPA's decision and applicable to all customers, though appealable to the Ninth Circuit Court of Appeals. In all cases, as the PPC states, the process should be open to affected customers.

This approach does not accept the PPC's position that all disputes over net requirements be referred to a third-party neutral for a binding determination. While many disputes will be subject to such a binding determination, BPA does not believe that disputes over policy, law or interpretative matters are appropriately determined in the last instance by a third-party neutral. These are matters that the Administrator is best positioned to determine, and that he is statutorily responsible for determining. They are also the kind of final decisions that, under the review scheme of the Northwest Power Act, are reviewable by the Ninth Circuit Court of Appeals, not by a third party neutral.

### **Issue 9:**

#### **How should joint costs be addressed?**

### **Policy Proposal**

BPA observed that its construct depends on the allocation of identified costs to Tier 1 and other identified costs to Tier 2, and that this is fundamental to tiering and to providing the certainty and predictability customers seek. BPA expressed its belief that the general identification of cost categories and their association with Tier 1 or Tier 2 are rate case matters. Notwithstanding that, it stated that the rate could provide that the cost categories and their association would not change—i.e., there would be no allocation of Tier 2 costs to

Tier 1 for recovery, or vice versa—except in the same circumstances (court order or cost recovery) and subject to the same process as identified above for the overall construct.” BPA then observed: “However, many issues may arise as to whether a cost fits within this or that category. Joint costs, such as overhead and labor, are a good example. Efforts to allocate these costs, such as through direction-of-effort studies, labor ratios, or some other method, should be subject to ordinary rate case procedures and not to special ADR processes.”

### **Public Comments**

Tacoma states that joint cost allocation should be addressed through direction of effort study, rather than a “but for” test. (Tacoma, REG-135)

### **Evaluation and Decision**

This matter received little attention from parties. That is not surprising, since this is the kind of issue historically dealt with in a rate case. Given this, BPA believes it would be premature to accept or reject Tacoma’s position. Rather, the matter should be reserved for later discussion by parties and final determination in a rate case.

### **Issue 10:**

#### **What should the source of data be for determining the size of BPA resources?**

### **Policy Proposal**

Under BPA’s proposal, the amount of power available at the Tier 1 rate, and the customers’ yearly HWM, would be constrained to the output of the Federal Base System resources. BPA observed that resource determinations are subject to considerable year-to-year variations due to a number of factors, including water and fish and wildlife measures, and would likely include the following elements:

- a. Specific Resource Output/Capability – many sources of information, standards, and determinations would be involved.
- b. Adjustments to Resource Output/Capabilities – many sources of information, standards and determinations would be involved.
- c. Federal Operating Decisions – sources of information and process for establishing what constitutes a Federal operating decision, the impacts on the availability of FBS power, both prospective and during the year, need to be established.
- d. Resource Additions and Removals – sources of information and process for establishing circumstances when an FBS resource can be permanently removed, and when a resource can be added for Tier 1 purposes, and in what amounts, need to be established.
- e. Issues concerning the integration or separation of Tier 2 and Tier 1 resources need to be identified.

BPA expressed its belief that these matters should continue to be determined administratively by BPA, but indicated it was open to further discussion of the matter. Each of these areas involves substantial policy and factual determinations that must be identified before agreement could be reached concerning the appropriate alternative resolution process or processes. BPA proposed to work with regional parties to determine if there is a resource, such as the PNCA process or otherwise, that could serve as a neutral, trustworthy source of information.

### **Public Comments**

PPC stated BPA should obtain data from an independent source. (PPC, REG-132, REG-149-01) WPAG was in agreement, stating that as is the case with the Slice product, BPA should obtain data from an independent source such as the PNCA that is used for regional planning and recognized as accurate, objective and up-to-date. (WPAG, REG-109) Tacoma stated individual rate cases should determine the forecasted capability of the Tier 1 resource pool. (Tacoma, REG-135)

### **Evaluation and Decision**

As indicated in BPA's Proposal, there are many elements that make up the final determination of the size of the Federal Base System in a particular year or years. While BPA believes it is important to avoid having the size of BPA's system "declared" by some third party, it nevertheless understands that this resource determination is a key determinant of service at lower Tier 1 rates and will therefore assume new and significant economic importance under BPA's tiered rates construct. BPA will work with regional parties to determine if there is an entity, such as the PNCA process or otherwise, that could serve as a neutral, trustworthy source of information. To the degree that such materials are timely available through the PNCA process or some equivalent independent source, BPA will rely upon them.

Tacoma's comment warrants further discussion by the parties. While the rate case would provide a process for everyone to be involved in determination of the forecasted capability of the Tier 1 resource pool, the rate case is also a cumbersome, *ex parte* bound process that may not afford the speed and flexibility needed in making the necessary resource size determinations.

### **Issue 11:**

**Should interpretative issues involving the tiered rates methodology be administratively determined or referred to a third-party neutral for decision, either on a binding or non-binding basis?**

### **Policy Proposal**

This issue involves the situation where the Administrator proposes to take an action pursuant to the methodology and one or more customers assert it is contrary to the rate methodology. In such a case, there is no proposed change to the methodology, but rather a difference in interpretation regarding what the methodology permits or requires. BPA proposed that because implementation of the methodology affects all customers, resolution should be done in an open administrative process, subject to appeal by any party. It rejected suggestions that

it was unacceptable for BPA to have the final say on BPA compliance with the rate methodology, stating that the Administrator in this context is not in the position of an ordinary party to “gain” by another’s “loss,” but is acting in his statutory role as Administrator of the laws on behalf of all parties. That being said, BPA indicated it could be possible to specify that if a substantial majority of customers and constituents opted for a non-binding determination of the matter by a third party, the Administrator would participate in that process.

### **Public Comments**

WPAG expressed concern that retaining this as a matter of the Administrator’s interpretation does not inspire confidence of objective enforcement free of political pressure or policy shifts. (WPAG, REG-109) It, along with PPC, provided detailed comments for an alternative form of dispute resolution.

As a preliminary matter, WPAG would have a neutral review and decide if a matter is a change or interpretation, though it expressed openness to collaborative exploration of alternatives. (WPAG, REG-109) The PPC agrees that if the issue arises outside a rate case, the neutral should decide, and decide quickly, but adds that the determination should be binding, subject to the two exceptions for cost recovery and court order that BPA proposed. (PPC, REG-132, REG 149-01)

WPAG then posits a process under which a third-party neutral would review contested interpretations of the Administrator on a non-binding basis. A list should be maintained of pre-approved individuals to serve as neutrals. (WPAG, REG-109) The neutral’s decision would be accepted or rejected by BPA, with the Administrator’s final decision appealable. (WPAG, REG-109; PPC, REG-132; REG 149-01) PPC proposes that like in the case of the Slice Settlement, all affected parties could participate, have the opportunity to file briefs and present oral argument. (PPC, REG-132, REG 149-01) PPC would include the record in BPA’s administrative record. (PPC, REG-132, REG 149-01) WPAG, on the other hand, proposes that the process should be appellate-like (no depositions, discovery, cross-examination), and quickly done. WPAG would have the process take a month or less, with the result that, in its view, proposed BPA interpretations should not take effect until the process is completed. (WPAG, REG-109)

### **Evaluation and Decision**

This area of rate interpretation is another area where BPA and customers have a substantial history and understanding of what is involved in such determinations. Consequently, BPA does not believe it is necessary to wait to apply the generic considerations and specific principles to this matter.

Since BPA must change a rate through a section 7(i) process, and therefore did not (and does not) believe it would be proposing a change between rate cases, it did not say anything in its Policy Proposal regarding how to address a dispute over whether BPA is changing the tiered rates methodology. While BPA would assure customers that it will not make a change that way, BPA understands the desire to enforce that assurance. Consequently, BPA will agree to having a third-party neutral determine on a binding basis whether BPA is changing the tiered

rates methodology outside the rate case. Changes to the tiered rates methodology should only be made through a rate case.

In this context, where an issue arises between rate cases whether a matter is a change or interpretation, the approach BPA discussed earlier regarding the definition of a “change” takes on added significance. BPA believes it is important that BPA not change the methodology between rate cases, and will commit not to change the methodology outside a rate case, but does not want to find itself in the position where a customer argues that because, in its view, BPA’s interpretation is unreasonable, implementation of that interpretation would be tantamount to a change in the methodology and must be preceded by a rate case. To avoid this catch-22 situation, a “change” will be defined in a way not to include what a party believes is an erroneous or improper interpretation or determination of tiered rate methodology language, but to cover change to the actual language of the methodology, whether that change occurs through substitution of language, override of existing language, or ignoring existing language. Filling in “gaps” is not a change, and is sometimes necessary between rate cases to ensure that the rate works properly. At the same time, as indicated earlier, if “gaps” are discovered, they should if possible be filled through the same type of advance collaborative process as will precede the tiered rates methodology 7(i) hearing.

As also indicated earlier, interpretative disputes bear upon the meaning of the language of what has been previously established. Interpretative disputes by their nature mean that there is a question as to what BPA’s rate or rate methodology calls for. While BPA continues to believe that these interpretative matters must be reserved for the Administrator to be the final decision-maker, subject to judicial review, we wish to be responsive to the requests that there be some avenue, short of litigation, for third party-review of the interpretative disputes. For disputes over the Administrator’s interpretations outside the rate case regarding what the rate methodology permits or requires, BPA will agree to non-binding, neutral third-party determination of such disputes, subject to a pre-agreed upon threshold. A list of pre-approved individuals available to serve as neutrals would be maintained for this purpose.

The process will be designed in a way so that, if reasonably possible, the process is appellate-like (no depositions, discovery, cross-examination), and reasonably quick, lasting a month or less if possible. All affected parties could participate, have the opportunity to file briefs, and present oral argument. However, this may be too limiting for issues that are complicated and complex, so this needs to be discussed. At the conclusion, the neutral’s decision could be accepted or rejected by the Administrator, with the Administrator’s final decision appealable. The record of the proceeding would be included in BPA’s administrative record filed with the court.

BPA will explore criteria with customers concerning whether the Administrator’s interpretations will be effective during the pendency of the process with the third-party neutral. Inasmuch as many interpretations may bear upon BPA’s ability to timely and effectively recover its costs, BPA wishes to ensure that such interpretations are timely implemented.

**Issue 12:**

**When matters are referred to the hearing officer or neutral, what process should apply, and how should parties address such issues such as burden of proof, presumptions, and standards the hearing officer and neutral would use?**

**Policy Proposal**

BPA did not address this in its Policy Proposal.

**Public Comments**

WPAG suggested that the parties should collaboratively address various procedural issues such as timing, burden of proof, presumptions, and standards the hearing officer would use. (WPAG, REG-109) In this regard, ICNU commented that the burden of proof for parties must not be so high as to eliminate any possibility of prevailing, and that all customers, including end-use customers, should be allowed to participate. (ICNU, REG-029, REG-125) ICNU also wanted to ensure that third-party neutrals are truly independent. (ICNU, REG-029, REG-125)

Finally, WPAG suggested a need for discussion to ensure that “material and consequential issues” are resolved through this process and we avoid getting tied up in process over frivolous issues or claims. (WPAG, REG-109)

**Evaluation and Decision**

The issues raised by the commenters are all good ones to consider. Many procedural details, such as timing, burden of proof, deference, presumptions, standards the hearing officer would use, and other procedural matters, need to be established by BPA, and BPA will collaboratively explore these in advance with customers and other rate case parties.

**Issue 13:**

**What, if any, expression should BPA make as to not precluding matters from consideration in a rate case?**

**Policy Proposal**

BPA did not address this in its Policy Proposal.

**Public Comments**

PPC comments that BPA should state in the ROD that it will not limit customers’ ability to introduce in the rate case evidence of their contractual or statutory entitlement to power or services. (PPC, REG-132, REG 149-01) Emerald states that BPA should not preclude discussion of tiered rates in rate cases simply because they are included in a Federal Register notice. (Emerald, REG-137) PNGC comments that BPA should place its revenue requirement into the rate case process. (PNGC, REG-133) Finally, WPAG comments that BPA should contract that the ability of customers to address tiered rate matters will not be proscribed. (WPAG, REG-109)

## **Evaluation and Decision**

BPA certainly agrees that rate matters should be subject to a rate case, and that rate matters, including matters such as Treasury repayment, cost allocation and rate design, should be decided in a rate case. The difficulty with this issue, though, as with many issues, is the matter of definition. Northwest Power Act Section 7(i) provides parties significant, formal procedural rights and opportunities when it comes to matters of BPA's establishment, review and revision of rates. That formal process does not, however, apply to non-rate matters. BPA and rate case parties have on occasion disagreed over what is or is not a rate case issue subject to the section 7(i) requirements, with the most fundamental disagreement being over inclusion of budget/revenue requirement issues in rate cases. BPA has repeatedly addressed budget/revenue requirement issues in previous rate case Records of Decision and, based on the logic there stated, reaffirms its decision not to include revenue requirements in the rate case. The many programmatic and policy determinations involved in establishing BPA's budget are simply inappropriate for the formal, *ex parte* bound constraints of a rate case.

While the PPC comment about evidence of contractual or statutory entitlement to power or services sounds benign enough, the question that must always be asked is, to what end? The rate case is not the forum for deciding contract or statutory disputes unrelated to the development of rates, but if the material does relevantly bear upon the legality or reasonableness of the rates being established, then it should be allowed into the rate case. BPA takes Emerald's comment to mean that BPA should not arbitrarily preclude tiered rates from a rate cases, and here too agrees that if the material is relevant to the legality or reasonableness of the rates being established, then it should be allowed into the rate case. BPA and parties should discuss these issues more to determine if greater clarity can be brought to this subject.

So, too, deserving of further discussion is WPAG's comment that BPA should contract that the ability of customers to address tiered rate matters will not be proscribed. A flat out agreement in a contract that "tiered rate matters will not be proscribed" then might make the definitional issue of what is a rate matter or a tiered rate matter a matter of contract, subject to judicial intervention to determine if there is a breach of contract. This would run contrary to the notion of section 7(i) as an administrative matter, with the Ninth Circuit having final reviewing authority over final decisions establishing and implementing rates. In so doing, both as a matter of substance and timing, it would run the serious risk of bifurcating rates related issues, when the appropriate course is to have them considered together and not piecemeal. All that is not to say that BPA is dismissive of WPAG's concern that BPA not proscribe their right to have tiered rates matters determined in a rate case. Rather, it is to say that BPA and parties should work to identify with more definition and precision what it is that the customers are concerned about and, if there is agreement that the matter is a rate matter, then make the necessary commitment to ensure the matter remains a rate matter.

### **Issue 14:**

**Should BPA explain in detail the degree to which it intends to provide protection from Congressional and administrative action?**

**Policy Proposal**

BPA's Policy Proposal stated that the "contract should clarify that it is the parties' intent to structure a durable commercial relationship based on existing statutory requirements, and to provide customers as much protection against change in those requirements as possible. However, BPA would not warrant or represent that the contract is immune from subsequently enacted legislation."

**Public Comments**

BPA should explain in detail the degree to which it intends to provide protection from Congressional and administrative action. (WPAG, REG-109)

**Evaluation and Decision**

BPA's contracts and rates will be developed to implement, and be consistent with, existing law. One source of those laws is the BPA Refinancing Section of the Omnibus Consolidated Revisions and Appropriations Act of 1996 (The BPA Refinancing Act), P.L. No. 104-134, 110 Stat 1321, 1350, which provides specific protections against future legislative changes. Once the contracts and rates are developed, BPA's Policy Proposal essentially says that it will be up to the courts to determine what impact, if any, future legislation has on those contracts and rates. It is appropriate that parties make their own assessments of risks from future legislative action, knowing that the courts will have the final say on the issue.

BPA's Policy addresses the certainty it will provide customers from inconsistent BPA administrative action. At the same time, BPA's Policy makes clear that BPA cost recovery remains paramount and that BPA retains the ability to assure cost recovery. In conjunction with that, BPA will not warrant or represent that the contract is immune from costs imposed by court order or agency regulations of a general and public nature.

### **XIII. NEW LONG-TERM CONTRACTS**

#### **Issue 1:**

**Whether BPA should modify its proposal to offer contracts of less than 20-years (e.g., 10-year contracts or staggered contracts).**

#### **Policy Proposal**

The Policy Proposal advocates 20-year contracts.

#### **Public Comments**

Many comments expressed support for 20-year contracts, with the most vocal support coming from public customers and one DSI. (Gov. Gregoire, REG-004; Raft, REG-022-21; NPCC, REG-033; NWasco, REG-055; Canby, REG-064; Sumas, REG-068; Richland, REG-091; NRU, REG-103; CFAC, REG-119) The IOUs did not oppose 20-year contracts per se, but did state that long-term contracts should not be executed without a long-term settlement of the Residential Exchange Program. Scott Levy of Bluefish suggested that 6-year contracts may be more appropriate in light of BPA's obligation to support salmon recovery. (Bluefish, REG-022-08)

BPA received three comments regarding staggered contracts (contract with varying lengths such as 10-year and 20-year contracts.) WPAG supported staggered contracts as a method to provide a useful cost-control mechanism. (WPAG, REG-109) The City of Richland does not support staggered contracts because it would create "unnecessary confusion, complication, and cost." (Richland, REG-091) NRU expressed similar concerns, stating that staggered contract terms would create a "cliff", making effective regional planning more difficult. (NRU, REG-103)

#### **Evaluation and Decision**

BPA is not persuaded there is a need to change its proposal offering 20-year contracts. One of BPA's stated purposes for 20-year contracts is to provide certainty to customers over the next 20 years regarding their Federal power supply from BPA. Comments reflect broad-based support of BPA's proposal and the planning certainty created by 20-year contracts for both customers and BPA. This certainty is also needed to promote electric infrastructure development, a primary objective of the Policy. Contracts of a shorter duration would decrease that certainty.

Regarding staggered contracts, BPA does not agree that staggered contracts would create an effective cost-control mechanism, as suggested by WPAG. (WPAG, REG-109) See Section XI, Cost Control, for the evaluation of this issue. Staggered contracts do not create a mechanism that a customer may elect to trigger if dissatisfied with the costs of Federal power. A mechanism that would be appropriate in such a situation is an off-ramp right that may be exercised to reduce a customer's obligation to purchase by a defined amount of power. Having contracts of varying or staggered duration will not create cost control. If anything staggered contracts will likely lead to greater cost uncertainty because it cannot be assumed customers will continue to buy Federal power if the expiration of the contract

occurs when BPA's rates are above market. Staggered contracts would make effective regional planning more difficult and contracts as short as 10 years would not encourage infrastructure development to the extent of 20-year contracts. The region's recent experience under Subscription in which a small number of customers opted for 5-year contracts created complication and added costs when the 5-year contracts were nearing expiration.

**Issue 2:**

**Whether BPA will increase the number of years power will be provided under the 20-year contract.**

**Policy Proposal**

BPA's Policy Proposal noted that the number of years power would be provided was 16 even though the contracts will be 20 years in duration.

**Public Comments**

Only two comments were received on this issue. The City of Richland and NRU asked that BPA continue to seek ways to extend the contracts to encompass a full 20 years. (Richland, REG-091; NRU, REG-103) NRU noted that they were not proposing a change in legislation to do so.

**Evaluation and Decision**

BPA can enter into contracts for the sale of power, including amendments and renewals, for up to 20 years. See 16 U.S.C. §832d(a). Contracts are effective on the date executed. BPA has concluded that the contract duration can be increased from 16 to 17 years by timing contract execution to be October 1, 2008, or as close as possible thereafter. This will still provide customers with 3 years of planning certainty.

**Issue 3:**

**Whether the contract will include a take-or-pay provision.**

**Policy Proposal**

To ensure obligations to the U.S. Treasury are met, Regional Dialogue contracts would be take-or-pay for the amount of power that the customer is obligated to purchase from BPA. Purchases at Tier 2 rates would also be take-or-pay, subject to specific yet-to-be developed terms for those products. BPA would design those terms so that the benefits as well as the costs of those purchases are retained by the customer or customer group making the commitment, mimicking the cost and benefits of a comparable purchase from the market. A fundamental principle for Tier 2 rates would be that, to the extent possible, the customers retain all risks, costs and benefits for these marginal cost based purchases.

**Public Comments**

Northern Wasco supports the basic concept of Tier 1 (for net requirements below the HWM) and Tier 2 rates being on a take-or-pay basis. It acknowledges that the specific contractual terms are yet to be resolved, including any provisions under which a utility can effectively avoid the take-or-pay obligation or mitigate any costs penalties imposed as a result of load loss. (NWasco, REG-055)

NRU notes that BPA proposes that both Tier 1 and Tier 2 rate purchases be “take-or-pay.” The use of the concept “take or pay” in this context needs clarification for load following customers without resources. Take or pay suggests that a customer must take the power as specified in the contract and pay for the amount of power contracted for whether or not there is load available to take the power. Customers owning generation resources can remove those resources in order to accommodate the contracted for BPA purchases. Customers without resources cannot do this. For these load following customers, where the net requirement of the customer is below the HWM, the take or pay obligation should be clearly stated to apply only to that net requirement. Any excess Tier 1 power above that would be sold by BPA and the revenues credited to the cost of Tier 1 for load following customers. (NRU, REG-103) Making Tier 1 and Tier 2 “take-or-pay” helps preserve the integrity of the pricing construct. (PNGC, REG-133)

Tacoma Power generally agrees with BPA’s proposal to offer both Tier 1 and Tier 2 rate power on a take-or-pay basis. They believe this proposal will help ensure both repayment of BPA’s debts to the U.S. Treasury and limit cross-subsidies between Tier 1 and Tier 2 products. (Tacoma, REG-135)

#### **Evaluation and Decision**

NRU is concerned that the take-or-pay provision, particularly for the load following customers, needs to be further discussed and developed. NRU notes that load following customers have considerably less flexibility than those utilities with their own generation. BPA agrees and will further refine this aspect of the contract and the manner in which liquidated damages will be calculated. PNGC, Tacoma and Northern Wasco all generally support the notion that the power sales contract would be on a take-or-pay basis for service at both Tier 1 and Tier 2 rates.

Just as it does today under BPA’s existing power sales contracts, the take-or-pay provision provides assurance to the U.S. Treasury that BPA will be able to meet its repayment obligations. Under the Regional Dialogue contracts it will provide an added benefit by helping to limit any costs associated with either Tier 1 or Tier 2 rate service migrating outside the respective cost pool. The specific details will continue to be refined and will reflect the inherent differences between the various types of customers. For example, load-following contracts (where a customer commits to take all its power from BPA beyond specified resource amounts) and non-load-following contracts (where a customer commits to specific amounts of power) present very different credit risk issues for BPA.

#### **Issue 4:**

**Whether to include a notice provision in the long-term contract regarding continued service in a follow-on contract.**

#### **Policy Proposal**

The Policy Proposal did not address this issue.

### **Public Comments**

Umatilla Electric commented that the Regional Dialogue contracts should address the issue of what happens after the Regional Dialogue contract expires, particularly in light of the fact that customers will be investing in resources that in some cases will represent commitments beyond the 20-year term of the contract. (Umatilla, REG-012-15) Umatilla specifically asked that some continuation rights be included in the contracts to ensure that certain rights be guaranteed in any contracts that follow the Regional Dialogue contracts. NRU suggested that the Regional Dialogue contracts include provisions that roll-over key features to the contracts that replace them, citing as an example the clause that NRU says prohibits the acceleration of BPA debt payments. (NRU, REG-103)

### **Evaluation and Decision**

BPA agrees with Umatilla Electric that it would be helpful to clarify utilities' resource planning obligations during the last few years of the 20-year contract, such as how the notice and purchase commitments will operate during the last 5 years (or beyond) of the contract. Therefore, BPA believes it is reasonable to discuss the type of provision Umatilla and NRU describe in their comments during the development and negotiation of the new long-term contract. This must be consistent with the statutory provision on contract duration. See 16 U.S.C. §832d(a). BPA Refinancing Act provisions will be offered with each contract consistent with the Act's requirements.

### **Issue 4:**

**Whether BPA will offer one single contract for requirements service subject to tiered rates.**

### **Policy Proposal**

The Policy Proposal did not address this issue.

### **Public Comments**

The City of Richland suggested that a single power sales contract be used for both Tier 1 and Tier 2 service. (Richland, REG-091) NRU made the same suggestion, stating that one contract will provide greater recourse to the Agency in the event that there is a problem with a specific customer regarding a Tier 2 financial commitment. (NRU, REG-103)

### **Evaluation and Decision**

BPA agrees with the comments. There will be one contract for requirements service and power sold there under will be subject to tiered rates. The Policy Proposal is based on establishing a tiered rate structure that will distinguish between the cost of the existing FBS (plus augmentation) and the cost of incremental power acquired to meet a customer's net requirements above its HWM, but all service is for the purpose of meeting the customer's net requirements. Consistent with its statutory marketing obligations, it has been BPA's contract practice to offer one contract to supply a customer with Federal power to serve its net requirements. It is administratively easier and more efficient to supply Federal power under a single contract. Having two contracts would be administratively burdensome and potentially lead to conflicts between them. By offering a single contract the service provided is made simpler. In addition, as NRU notes, a single contract affords BPA greater certainty

and recourse in the event a customer defaults on its obligation to pay for power in excess of its HWM.

## **XIV. FALLBACK POLICY PROPOSAL, IN THE ABSENCE OF REGIONAL CONSENSUS**

### **Issue 1:**

#### **Whether or not BPA will implement the Fallback Policy.**

#### **Policy Proposal**

The Policy Proposal stated that if consensus on outstanding key issues cannot be achieved by the end of the comment period on this proposal, BPA would implement a fallback approach that still accomplishes the key goals of limiting its buying and melding practice and providing customers the long-term certainty they need for infrastructure development. This fallback approach would be the same as the Policy Proposal, but with the following modifications:

- No settlement of residential exchange rights for either IOUs or public utilities. BPA would develop an in-lieu policy, revise the ASC methodology, and update the 7(b)(2) methodology.
- Determination of HWMs in 2007 with no later true-up.
- No augmentation of the existing system to serve existing or new public utilities.
- No review of or change in the treatment of the Centralia Coal Plant shares.
- No resource removal rights for load loss within a rate period.
- No special provisions for new public customers.
- Benefits to the DSIs would be based on the outcome of the public process from the Policy Proposal.

#### **Public Comments**

BPA received numerous comments on the Fallback Policy proposal. Many comments suggested that while consensus is desirable, it should not prevent BPA from moving forward with implementing long-term contracts that will provide stability to the region. (PNW SUC, REG-021; NPCC, REG-033; NWasco, REG-055; Gov. Schweitzer, REG-063; Canby, REG-064; NRU, REG-103; Gov. Gregoire, REG-147; Gov. Gregoire, REG-149-18; Gov. Schweitzer, REG-149-19) Many commented they did not support the implementation of the Fallback Proposal. (Richland, REG-012-05; NPCC, REG-033; PNW SUC, REG-021; Shoshone, REG-022-10; Gov. Schweitzer, REG-063; WPAG, REG-109; ATNI, REG-111; Benton PUD, REG-114; ICNU, REG-125; Snohomish, REG-131; PPC, REG-132; PNGC, REG-133; Tacoma, REG-135; Blachly-Lane, REG-140; Gov. Gregoire, REG-147; Gov. Gregoire, REG-149-18; Gov. Schweitzer, REG-149-19; PNGC, REG-150)

Some commenters expressed that the Fallback Proposal, or at least some elements thereof, was sensible either as is or with modifications. (Ogden, REG-018; Canby, REG-064; Alcoa, REG-077; IDEA & ICUA, REG-096; NRU, REG-103; SUB, REG-126; NIPPC, REG-130)

#### **Evaluation and Decision**

BPA believes that consensus is the most desirable outcome to ensure durability and stability in the Long-Term Regional Dialogue Policy and contracts. BPA also agrees it makes no sense to jeopardize the entire process while waiting for customers to come to a settlement agreement on outstanding key issues. Although BPA is not implementing the Fallback as

outlined in the Policy Proposal, the decisions laid out in this Long-Term Regional Dialogue Policy are an interdependent package. Failure to achieve one major component through the upcoming rate and contract processes may, of necessity, affect the action BPA ultimately takes on other components.

**Issue 2:**

**Whether Regional Dialogue contracts should be offered absent a mutually agreed-upon Residential Exchange Program Settlement.**

**Public Comments**

The Pacific Northwest IOUs commented that BPA should not offer Long-Term Regional Dialogue contracts absent a long-term, durable, and equitable residential exchange program settlement. (PNW IOUs, REG-142)

**Evaluation and Decision**

BPA believes it is important for all its customers to have certainty about their contractual relationship with BPA at the same time. Accordingly, BPA will offer contracts to all its customers; public utilities, IOUs, and DSIs, at the same time.

## **XV. ENVIRONMENTAL ANALYSIS**

BPA has reviewed the final Long-Term Regional Dialogue Policy for environmental considerations under the National Environmental Policy Act (NEPA) in a NEPA ROD that has been prepared separately from this Administrator's ROD. The following provides a summary of the environmental review contained in the NEPA ROD.

BPA has reviewed each of the individual policy issues, as well as the potential implications of these issues taken together. For some issues, there are no environmental effects resulting from implementation of the Policy for that issue, and NEPA thus is not implicated. For other issues, the Policy is merely a continuation of the status quo, and NEPA thus is not triggered.

For the remaining policy issues, any environmental effects resulting from these policy issues have already been addressed in the Business Plan Final Environmental Impact Statement, DOE/EIS-0183, June 1995 (Business Plan EIS). The Business Plan EIS was prepared to support a number of BPA decisions including the products and services BPA will market, rates for BPA's products and services, policy direction for BPA's sale of power products to customers, contract terms BPA will offer for power sales, and plans for BPA resource acquisitions and power purchase contracts. Upon a review of the Business Plan EIS, implementation of the remaining policy issues of the final policy would not result in significantly different environmental effects from those described in this EIS. Furthermore, BPA's decisions for these policy issues are adequately covered within the scope of the Market-Driven Alternative identified and evaluated in the Business Plan EIS and adopted by BPA in the August 15, 1995, Business Plan ROD.

Taken as whole, BPA's Long-Term Regional Dialogue Policy could be viewed as representing a change in BPA's overall policy for how it conducts its business. From an environmental standpoint, however, the final Policy does not deviate significantly from BPA's already adopted policies for its power supply role in the region. In fact, the final Policy represents a direct application of BPA's earlier decision to use a Market-Driven approach, consistent with its statutory responsibilities, for participation in the electric power market in the region. Furthermore, this final Policy does not present potential environmental impacts that are substantially different from those already described and analyzed in the Business Plan EIS and other NEPA documentation previously prepared by BPA.

BPA recently completed a review of the Business Plan EIS and ROD through a Supplement Analysis to the Business Plan EIS. The Supplement Analysis, which was issued in March 2007, was prepared to assess whether the Business Plan EIS still provides an adequate evaluation, at a policy level, of environmental impacts that may result from BPA's current business practices, and whether these practices are still consistent with the Market-Driven Alternative adopted in the Business Plan ROD. As part of the preparation of the Supplement Analysis, changes that have occurred in the electric utility market and the existing environment were evaluated, and developments that have occurred in BPA's business practices and policies were considered. The Supplement Analysis found that the Business

Plan EIS's relationship-based and policy-level analysis of potential environmental impacts from BPA's business practices remains valid, and that BPA's current business practices are still consistent with BPA's Market-Driven approach. The Business Plan EIS and ROD thus continue to provide a sound basis for making determinations under NEPA concerning BPA's policy-level decisions, such as BPA's decisions related to the final Long-Term Regional Dialogue Policy.

## **PUBLIC AVAILABILITY**

BPA, therefore, has appropriately decided to tier the NEPA ROD for the final Policy to the Business Plan ROD, as provided for in the Business Plan EIS and Business Plan ROD. The NEPA ROD, this Regional Dialogue ROD and Policy will be available to all interested parties and affected persons and agencies. A Notice of Availability of this ROD will be published in the Federal Register. Copies of these documents are available from BPA's Public Information Center, P.O. Box 12999, Portland, Oregon, 97212. Copies of these documents may also be obtained by using BPA's nationwide toll-free document request line: 1-800-622-4520. This Regional Dialogue ROD may be assessed on [www.bpa.gov/power/regionaldialogue](http://www.bpa.gov/power/regionaldialogue).

## **CONCLUSION**

Based on BPA's public process, the NEPA considerations in the NEPA ROD for the Regional Dialogue Policy, and the evaluations of the issues in this ROD, BPA has decided to adopt and implement this Long-Term Regional Dialogue Policy. The Long-Term Regional Dialogue Policy will provide BPA's customers with greater clarity about their Federal power supply so they can plan effectively for the future and make capital investments in long-term electricity infrastructure if they so choose. This Policy and ROD address BPA's interest to develop a long-term tiered rates methodology to effectively tier firm power rates applicable to firm power sales under new twenty-year contracts. The Policy was developed through sincere regional discussions aimed at creating consensus over BPA's future power supply role. This Policy and ROD are consistent with BPA's Market-Driven approach for participation in the competitive electric power market, and ensure that BPA is strategically positioned to respond to customers' needs while ensuring the financial strength needed to provide the public benefits that are of concern to the people of the Pacific Northwest.

Issued in Portland, Oregon.

*/s/ Stephen J. Wright*

*July 19, 2007*

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Stephen J. Wright  
Administrator and  
Chief Executive Officer

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Date

## APPENDIX A(i)

### LIST OF COMMENTERS

Log No.	Commenter	Affiliation Abbreviation	Affiliation
REG-001	Mialee Jose	Jose	Jose, Mialee
REG-002	U.S. Congressman Doc Hastings, WA; U.S. Congressman Mike Simpson, ID; U.S. Congressman Greg Walden, OR; and U.S. Congressman Butch Otter, ID.	Cong. Hastings, Cong. Simpson, Cong. Walden, and Cong. Otter,	U.S. Congressman Doc Hastings, WA; U.S. Congressman Mike Simpson, ID; U.S. Congressman Greg Walden, OR; and U.S. Congressman Butch Otter, ID.
REG-003	Darcie Larson	SOS	Save Our Wild Salmon
REG-004	Governor Christine O. Gregoire	Gov. Gregoire	Washington, Governor's Office
REG-005	Heber Carpenter	Raft	Raft River Rural Electric Cooperative
REG-006	Lieutenant Governor Mark Ricks	Lt. Gov. Ricks	Idaho, Lt. Governor's Office
REG-007	Governor James Risch	Gov. Risch	Idaho, Governor's Office
REG-008	Clint Lougheed	Lougheed	Lougheed, Clint
REG-009	unsigned	NWEC	Northwest Energy Coalition
<b>REG-010</b>	<b>August 21, 2006 Missoula, MT, Public Meeting</b>		
REG-010-01	Margie Schaff	ATNI	Affiliated Tribes of Northwest Indians
REG-010-02	John Hines	NorthWestern	NorthWestern Energy
REG-010-03	Doug Mood	MT PSC	Montana Public Service Commission
REG-010-04	Stephen J. Knight	CFAC	Columbia Falls Aluminum Company
REG-010-05	Brian Doyle	CFAC	Columbia Falls Aluminum Company
REG-010-06	Bill Drummond	WMG&T	Western Montana Electric Generation and Transmission Coop.
REG-010-07	Vicki Henley	IAMAW	International Association of Machinists and

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
			Aerospace Workers
REG-010-08	Gregg Jones	IAMAW	International Association of Machinists and Aerospace Workers
REG-010-09	Greg Jergenson	MT PSC	Montana Public Service Commission
<b>REG-011</b>	<b>August 1, 2006, Seattle, WA, Public Meeting</b>		
REG-011-01	Darcie Larson	SOS	Save Our Wild Salmon
REG-011-02	Jorge Carrasco	SCL	Seattle City Light
REG-011-03	Alan Meyer	Weyerhaeuser	Weyerhaeuser
REG-011-04	Tom DeBoer	PSE	Puget Sound Energy
REG-011-05	David Kerlick	Sierra	Sierra Club
REG-011-06	Stan Price	NEEC	Northwest Energy Efficiency Council
REG-011-07	Jack Speer	Alcoa	Aluminum Company of America
REG-011-08	Pat Flaherty	IAMAW	International Association of Machinists and Aerospace Workers
REG-011-09	Mike Rousseau	Alcoa	Aluminum Company of America
REG-011-10	Toni Potter	LWV WA	League of Women Voters of Washington
REG-011-11	Vicki Henley	IAMAW	International Association of Machinists and Aerospace Workers
REG-011-12	Pat Flaherty	IAMAW	International Association of Machinists and Aerospace Workers
REG-011-13	Rich Feldman	Apollo	Apollo Alliance
REG-011-14	Marc Krasnowsky	NWEC	Northwest Energy Coalition
REG-012	August 7, 2006 Pasco, WA Public Meeting		
REG-012-01	Jean Ryckman	Franklin	Franklin PUD
REG-012-02	Bob Bertsch	Benton PUD	Benton PUD
REG-012-03	Hank Kosmata	Richland	Richland, City of
REG-012-04	James W. Sanders	Benton PUD	Benton PUD
REG-012-05	Raymon D. Sieler	Richland	Richland, City of
REG-012-06	Robert L. Crump	Kootenai	Kootenai Electric

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
			Cooperative
REG-012-07	Randy Gregg	Benton PUD	Benton PUD
REG-012-08	Steve Eldrige	Umatilla	Umatilla Electric Cooperative
REG-012-09	Jack Speer	Alcoa	Aluminum Company of America
REG-012-10	Robert L. Crump	Kootenai	Kootenai Electric Cooperative
REG-012-11	Jack Speer	Alcoa	Aluminum Company of America
REG-012-12	Robert L. Crump	Kootenai	Kootenai Electric Cooperative
REG-012-13	Larry LaBolle	Avista	Avista Utilities
REG-012-14	Randy Gregg	Benton PUD	Benton PUD
REG-012-15	Steve Eldrige	Umatilla	Umatilla Electric Cooperative
REG-012-16	Robert L. Crump	Kootenai	Kootenai Electric Cooperative
REG-012-17	Vicki Henley	IAMAW	International Association of Machinists and Aerospace Workers
REG-012-18	Raymon D. Sieler	Richland	Richland, City of
REG-012-19	Steve Arneson	Richland	Richland, City of
REG-012-20	Robert L. Crump	Kootenai	Kootenai Electric Cooperative
REG-012-21	Larry Felton	ENW	Energy Northwest
REG-012-22	Steve Eldrige	Umatilla	Umatilla Electric Cooperative
REG-012-23	Lori Sanders	Benton PUD	Benton PUD
REG-012-24	Jean Ryckman	Franklin	Franklin PUD
REG-012-25	Barry Bush	ENW	Energy Northwest
<b>REG-013</b>	<b>August 9, 2006, Portland, OR, Public Meeting</b>		
REG-013-01	Jack Speer	Alcoa	Aluminum Company of America
REG-013-02	Rachel Shimshak	RNP	Renewable Northwest Project
REG-013-03	Angus Duncan	BEF	Bonneville Environmental Foundation
REG-013-04	Alan Meyer	Weyerhaeuser	Weyerhaeuser

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
REG-013-05	Scott Corwin	PNGC	Pacific Northwest Generating Cooperative
REG-013-06	Craig Anneberg	Norpack	Norpack Newsprint
REG-013-07	Rick Parker	Longview	Longview Fibre, Paper and Packaging, Inc.
REG-013-08	Jeff Bissonnette	CUB	Citizens' Utility Board of Oregon
REG-013-09	Edward Bortz	Weyerhaeuser	Weyerhaeuser
REG-013-10	Pat Flaherty	IAMAW	International Association of Machinists and Aerospace Workers
REG-013-11	Steve Weiss	NWEC	Northwest Energy Coalition
REG-013-12	Rhett Lawrence	SOS	Save Our Wild Salmon
REG-013-13	Geoff Carr	NRU	Northwest Requirements Utilities
REG-013-14	Travis Metcalfe	Tacoma	Tacoma Power
REG-013-15	Sue Kuehl	Grays Harbor	Grays Harbor PUD
REG-013-16	Vicki Henley	IAMAW	International Association of Machinists and Aerospace Workers
REG-013-17	Rachel Shimshak	RNP	Renewable Northwest Project
REG-014	Citizens of OR and WA (See Appendix A(ii) for names)	OR/WA Citizens	Citizens of OR and WA
REG-015	unsigned	Idaho Falls	Idaho Falls Power
REG-016	Peter Tassoni	Tassoni	Tassoni, Peter
REG-017	Michael Hanson	NorthWestern	NorthWestern Energy
REG-018	Daniel Ogden, Jr.	Ogden	Ogden, Daniel Jr.
REG-019	unsigned	Umpqua	Umpqua Indian Utility Cooperative
REG-020	Deleted	Deleted	Deleted
REG-021	Jergeson, et al.	PNW SUC	Pacific Northwest State Utility Commissioners
<b>REG-022</b>	<b>August 23, 2006, Idaho Falls, ID, Public Meeting</b>		
REG-022-01	Bill Punkoney	Gov. Risch	Idaho, Governor's Office
REG-022-02	Lee Staker	BCC	Bonneville County Commissioner
REG-022-03	Randy Budge	Monsanto	Monsanto

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
REG-022-04	Rep. Tom Loertscher	Rep. Loertscher	Idaho, State Rep. District 31
REG-022-05	Mark Mickelsen	ID Irrigation	Idaho Irrigation Pumpers Association
REG-022-06	Eric Olsen	ID Irrigation	Idaho Irrigation Pumpers Association
REG-022-07	Rep. Dell Raybould	Rep. Raybould	Idaho, State Rep. District 34
REG-022-08	Scott Levy	Bluefish	Bluefish
REG-022-09	Jerry Rigby	ID Water	Idaho Water Resource Board
REG-022-10	William Adams	Shoshone	Shoshone-Bannock Tribes
REG-022-11	Judy Chestnutt	Alcoa	Aluminum Company of America
REG-022-12	Dar Olberding	ID Grain	Idaho Grain Growers
REG-022-13	Jo Fikstad	Idaho Falls	Idaho Falls Power
REG-022-14	Beatrice Brailsford	SRA	Snake River Alliance
REG-022-15	Rep. Don Burtenshaw	Rep. Burtenshaw	Idaho, State Rep. District 35
REG-022-16	Jeff Raybould	Raybould	Raybould, Jeff
REG-022-17	Jeff Siddoway	Siddoway	Siddoway, Jeff
REG-022-18	Scott Levy	Bluefish	Bluefish
REG-022-19	Dee M. Reynolds	Fall River	Fall River Rural Electric Cooperative
REG-022-20	Valynn Highbarger	BLF	Blaine Larsen Farms
REG-022-21	Heber Carpenter	Raft	Raft River Rural Electric Cooperative
REG-022-22	Russell Westerberg	Westerberg	Westerberg & Associates
REG-022-23	Ralph Williams	United	United Electric Cooperative, Inc.
REG-022-24	Ted Watanabe	Watanabe	Watanabe, Ted
REG-023	Tia Daulph	Daulph	Daulph, Tia
REG-024	Allison Ciancibelli	Ciancibelli	Ciancibelli, Allison
REG-025	Allison Ciancibelli	Ciancibelli	Ciancibelli, Allison
REG-026	U.S. Congressman Rick Larsen	Cong. Larsen	U.S. Congressman Rick Larsen
REG-027	Jack Janda	WPUDA	Washington PUD Association

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
REG-028	unsigned. (See Appendix A(iii) for names)	Phone Log	Phone Log
REG-029	unsigned	ICNU	Industrial Customers of Northwest Utilities
REG-030	Merritt (Buzz) Ketcham	Cowlitz Board	Cowlitz PUD Commissioner District #1
REG-031	John Saven	NIU	Northwest Irrigation Utilities
REG-032	Jeremy Maxand	SRA	Snake River Alliance
REG-033	unsigned	NPCC	Northwest Power and Conservation Council
<b>REG-034</b>	<b>September 8, 2006, Portland, OR, Public Meeting</b>		
REG-034-01	Jack Speer	Alcoa	Aluminum Company of America
REG-034-02	Marilyn Showalter	PPC	Public Power Council
REG-034-03	Melinda J. Davison	ICNU	Industrial Customers of Northwest Utilities
REG-034-04	Luke Loeffler	Cong. Larsen	U.S. Congressman Rick Larsen
REG-034-05	Kevin Scott	Port Townsend	Port Townsend Paper Corporation
REG-034-06	Doug Smith	Grays Harbor	Grays Harbor PUD
REG-034-07	Jim Stromberg	CFAC	Columbia Falls Aluminum Company
REG-034-08	Scott Corwin	PNGC	Pacific Northwest Generating Cooperative
REG-034-09	Bill McMahon	Weyerhaeuser, REG-034-09	Weyerhaeuser
REG-034-10	Ned Piper	Cowlitz	Cowlitz County PUD
REG-034-11	Stephen J. Knight	CFAC	Columbia Falls Aluminum Company
REG-034-12	Robert Young	Alcoa	Aluminum Company of America
REG-034-13	Craig Anneberg	Norpack	Norpack Newsprint
REG-034-14	Terry Smith	CFAC	Columbia Falls Aluminum Company
REG-034-15	Mike Rousseau	Alcoa	Aluminum Company of America
REG-034-16	Alan Meyer	Weyerhaeuser	Weyerhaeuser
REG-034-17	Gregg Jones	USWA 320	United Steelworkers

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
			Local 320
REG-034-18	Greg Erickson	Alcoa	Aluminum Company of America
REG-034-19	Brian Doyle	CFAC	Columbia Falls Aluminum Company
REG-034-20	Vicki Henley	IAMAW	International Association of Machinists and Aerospace Workers
REG-034-21	Irene Ringwood	Alcoa	Aluminum Company of America
REG-034-22	Leif Jensen	Alcoa	Aluminum Company of America
REG-034-23	Mike Dotten	Alcoa	Aluminum Company of America
REG-034-24	Stanley Edwards	Weyerhaeuser	Weyerhaeuser
REG-035	Bruce McComas	Port Townsend	Port Townsend Paper Corporation
REG-036	Richard Ziegler	Ziegler	Ziegler, Richard
REG-037	Walter Johnson	Johnson	Johnson, Walter
REG-038	Vicki Henley	IAMAW	International Association of Machinists and Aerospace Workers
REG-039	Stephen Nelson	Nelson	Nelson, Stephen
REG-040	David Glad	Glad	Glad, David
REG-041	Barry Hullett	Intalco	Alcoa Intalco Works
REG-042	William Baird	Weyerhaeuser	Weyerhaeuser
REG-043	D. G. Green, et al.	Intalco	Alcoa Intalco Works
REG-044	Richard Riazzi	Chelan	Chelan PUD
REG-045	Charles Eberdt and Michael Karp	EP	The Energy Project
REG-046	Tom Svendsen	Klickitat	Klickitat County PUD No. 1
REG-047	Terry Fischer	Fischer	Fischer, Terry
REG-048	Christopher Taylor	Horizon	Horizon Wind Energy
REG-049	Scott Levy	Bluefish	Bluefish
<b>REG-050</b>	<b>September 8, 2006, Portland, OR, Public Meeting</b>		
REG-050-01	Margie Schaff	ATNI	Affiliated Tribes of Northwest Indians

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
REG-050-02	Aleka Scott	PNGC	Pacific Northwest Generating Cooperative
REG-050-03	Jo Fikstad	Idaho Falls	Idaho Falls Power
REG-050-04	Nancy Baker	PPC	Public Power Council
REG-050-05	Rick Knori	LVE	Lower Valley Energy
REG-050-06	Ron Williams	IDEA	Idaho Energy Authority
REG-050-07	Geoff Carr	NRU	Northwest Requirements Utilities
<b>REG-051</b>	<b>August 24, 2006, West Yellowstone, MT, Public Meeting</b>		
REG-051-01	Jo Fikstad	Idaho Falls	Idaho Falls Power
REG-051-02	Jim Webb	LVE	Lower Valley Energy
REG-051-03	Ralph Williams	United	United Electric Cooperative, Inc.
REG-051-04	Bob Boren	Salmon	Salmon River Electric Cooperative, Inc.
REG-051-05	Peter Richardson	IDEA	Idaho Energy Authority
REG-051-06	Jo Fikstad	Idaho Falls	Idaho Falls Power
REG-052	Michael Winger	Winger	Winger, Micheal
REG-053	Citizens from Missoula, MT	MT Citizens	Citizens from Missoula, MT
REG-054	Peggy Erskine	Erskine	Erskine, Peggy
REG-055	Dwight Langer	Nwasco	Northern Wasco PUD
REG-056	unsigned	United	United Electric Cooperative, Inc.
REG-057	Governor Theodore R. Kulongoski	Gov. Kulongoski	Oregon, Governor's Office
<b>REG-058</b>	<b>September 11, 2006, Portland, OR, Public Meeting</b>		
REG-058-01	unsigned	Yakama Power	Yakama Power
REG-058-02	unsigned	SCL	Seattle City Light
REG-059	Tim Culbertson	Grant	Grant County PUD
REG-060	Pete Kremen	Whatcom	Whatcom County PUD
REG-061	Kevin P. Owens	CRPUD	Columbia River PUD
REG-062	Michael W. Graineey	ODOE	Oregon Department of Energy
REG-063	Governor Brian Schweitzer	Gov. Schweitzer	Montana, Governor's Office

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
REG-064	Dan Seligman	Canby	Canby Utility
REG-065	Patrick Judge	MEIC	Montana Environmental Information Center
REG-066	Nina Carter	Audubon	Audubon Washington
REG-067	Bert Bowler	ID Rivers	Idaho Rivers United
REG-068	Bob Bromley	Sumas	Sumas, City of
REG-069	Karl Denison, et al.	Mason 1	Mason County PUD No. 1
REG-070	Ken Dizes	Salmon	Salmon River Electric Cooperative, Inc.
REG-071	Ralph Williams	United	United Electric Cooperative, Inc.
REG-072	Alan Meyer	Weyerhaeuser	Weyerhaeuser
REG-073	Jake Eimers	ICL&P	Idaho County Light & Power Cooperative Association
REG-074	Mike Kadas	MPP	Montana Public Power
REG-075	Robert L. Crump	Kootenai	Kootenai Electric Cooperative
REG-076	Dee M. Reynolds	Fall River	Fall River Rural Electric Cooperative
REG-077	Jack Speer	Alcoa	Aluminum Company of America
REG-078	unsigned	NEEC	Northwest Energy Efficiency Council
REG-079	K.C. Golden	CS	Climate Solutions
REG-080	Steve Johnson	WPUDA	Washington PUD Association
REG-081	unsigned	Raft	Raft River Rural Electric Cooperative
REG-082	Mel Fitzgerald	Fitzgerald	Fitzgerald, Mel
REG-083	Hugh Diehl	IAMAW	International Association of Machinists and Aerospace Workers
REG-084	Christina Zamora	CAPA ID	Commuinty Action Partnership Association of Idaho
REG-085	Bruce Farling	MT Trout	Montana Trout
REG-086	Toni Potter	LWV WA	League of Women Voters of Washington
REG-087	John Hanson	Kittitas	Kittitas PUD

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
REG-088	Peggy Miller	Highland	Highland Winds
REG-089	Clay R. Fitch	Wells	Wells Rural Electric Company
REG-090	David Trambly	Wahkiakum	Wahkiakum PUD
REG-091	Raymon D. Sieler	Richland	Richland, City of
REG-092	David W. Frasher	Grants Pass	Grants Pass, City of
REG-093	Ron Doan	Cow Creek	Cow Creek Band of Umpqua Tribe of Indians
REG-094	Virgil Boyle	Benton REA	Benton REA
REG-095	Jason Eisdorfer	CUB	Citizens' Utility Board of Oregon
REG-096	Nina M. Curtis	IDEA & ICUA	Idaho Energy Authority & Idaho Consumer-Owned Utilities Association
REG-097	Richard Reynolds	Lost River	Lost River Electric Cooperative
REG-098	Jo Fikstad	Idaho Falls	Idaho Falls Power
REG-099	Jim Little	USWA 175	United Steelworkers Local 175
REG-100	Jean Ryckman	Franklin	Franklin PUD
REG-101	Kenneth A. Sugden	Flathead	Flathead Electric Cooperative
REG-102	Pat Flaherty	IAMAW	International Association of Machinists and Aerospace Workers
REG-103	unsigned	NRU	Northwest Requirements Utilities
REG-104	Jim Abrahamson	CADO	Community Action Directors of Oregon
REG-105	Sallie Schullinger-Krause	OEC	Oregon Environmental Council
REG-106	unsigned	WMG&T	Western Montana Electric Generating and Transmission Coop.
REG-107	Matt Leow	MPIRG	Montana Public Interest Research Group
REG-108	Wayne W. Nelson	Clark	Clark Public Utilities
REG-109	unsigned	WPAG	Western Public Agencies Group
REG-110	Steve Weiss and Rhett Lawrence	NWEC & SOS	Northwest Energy Coalition & Save Our

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
			Wild Salmon
REG-111	Ernest L. Stensgar	ATNI	Affiliated Tribes of Northwest Indians
REG-112	Ray Ellis	Okanogan	Okanogan County Electric Cooperative
REG-113	Rachel Shimshak	RNP	Renewable Northwest Project
REG-114	James W. Sanders	Benton PUD	Benton PUD
REG-115	William E. Deters	Mountaineers	The Mountaineers
REG-116	Richard D. Lovely	Grays Harbor	Grays Harbor PUD
REG-117	J.D. Williams	CTUIR	Confederated Tribes of the Umatilla Indian Reservation
REG-118	Brian L. Skeahan	Cowlitz	Cowlitz County PUD
REG-119	Stephen J. Knight	CFAC	Columbia Falls Aluminum Company
REG-120	Ken Benson	Plum	Plum Creek Timber Company
REG-121	Brian Walters and Steve Jilk	Whatcom	Whatcom County PUD
REG-122	Steve Eckles	Rupert	Rupert, City of
REG-123	Steve Eckles	Rupert	Rupert, City of
REG-124	Keith A. Klein	DOE Richland	U.S. Department of Energy, Richland Operations Office
REG-125	Melinda J. Davison	ICNU	Industrial Customers of Northwest Utilities
REG-126	Jeff Nelson	SUB	Springfield Utility Board
REG-127	Keith A. Klein	DOE Richland	U.S. Department of Energy, Richland Operations Office
REG-128	Jorge Carrasco	SCL	Seattle City Light
REG-129	Gary Langewalter	OIGWC	Oregon Interfaith Global Warming Campaign
REG-130	Robert Kahn	NIPPC	Northwest & Intermountain Power Producers Coalition
REG-131	Steven J. Klein	Snohomish	Snohomish County PUD
REG-132	Marilyn Showalter	PPC	Public Power Council
REG-133	Scott Corwin	PNGC	Pacific Northwest Generating Cooperative

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
REG-134	K. David Hagen	Clearwater	Clearwater Power Company
REG-135	William Gaines	Tacoma	Tacoma Power
REG-136	Alan Zelenka	Emerald	Emerald PUD
REG-137	Alan Zelenka	Emerald	Emerald PUD
REG-138	Olney Patt, Jr.	CRITFC	Columbia River Inter-Tribal Fish Commission
REG-139	Steve Patterson, et al	Weiser	Weiser, City of
REG-140	Bud Tracy	Blachly-Lane	Blachly-Lane Electric Cooperative
REG-141	James R. Webb	LVE	Lower Valley Energy
REG-142	unsigned	PNW IOUs	Pacific Northwest Investor-Owned Utilities
REG-143	unsigned	LCHCS	Housing And Community Services Agency of Lane County
REG-144	James W. Sanders, et al.	Slice	Joint Slice Customers
REG-145	Karl Denison	Mason 1	Mason County PUD No. 1
REG-146	Frank Lambe	Emerald	Emerald PUD
REG-147	Governor Christine O. Gregoire	Gov. Gregoire	Washington, Governor's Office
REG-148	Lavina Washines	Yakama Nation	Yakama Nation
<b>REG-149</b>	<b>December 6, 2006, Seattle, WA, Public Meeting</b>		
REG-149-01	Marilyn Showalter	PPC	Public Power Council
REG-149-02	John Saven	NRU	Northwest Requirements Utilities
REG-149-03	Jorge Carrasco	SCL	Seattle City Light
REG-149-04	Bill Drummond	WMG&T	Western Montana Electric Generating and Transmission Coop.
REG-149-05	Melinda J. Davison	ICNU	Industrial Customers of Northwest Utilities
REG-149-06	Kimberly Harris	PSE	Puget Sound Energy
REG-149-07	Jim Lobdell	PGE	Portland General Electric
REG-149-08	Kelly Norwood	Avista	Avista Utilities
REG-149-09	Jack Speer	Alcoa	Aluminum Company of America
REG-149-10	Jim Stromberg	CFAC	Columbia Falls

<b>Log No.</b>	<b>Commenter</b>	<b>Affiliation Abbreviation</b>	<b>Affiliation</b>
			Aluminum Company
REG-149-11	Margie Schaff	ATNI	Affiliated Tribes of Northwest Indians
REG-149-12	Ray Wiseman	Yakama Power	Yakama Power
REG-149-13	Charles Hudson	CRITFC	Columbia River Inter-Tribal Fish Commission
REG-149-14	Sara Patton	NWEC	Northwest Energy Coalition
REG-149-15	Jason Eisdorfer	CUB	Citizens' Utility Board of Oregon
REG-149-16	Paul Kjellander	Gov. Risch	Idaho, Governor's Office
REG-149-17	Mike Carrier	Gov. Kulongoski	Oregon, Governor's Office
REG-149-18	Tom Karier	Gov. Gregoire	Washington, Governor's Office
REG-149-19	Bruce Measure	Gov. Schweitzer	Montana, Governor's Office
REG-149-20	Steve Johnson	WPUDA	Washington PUD Association
REG-149-21	Dan Peterson	Pend Oreille	Pend Oreille PUD
REG-149-22	Bruce McComas	Port Townsend	Port Townsend Paper Corporation
REG-149-23	Tom Casey	Grays Harbor	Grays Harbor PUD
REG-149-24	Terry Mundorf	WPAG	Western Public Agencies Group
REG-150	unsigned	PNGC	Pacific Northwest Generating Cooperative
REG-151	Chuck Tenpas	Lewis	Lewis County PUD
REG-152	Jim Lobdell	PNW IOUs	Pacific Northwest Investor-Owned Utilities

## APPENDIX A(ii)

### WRITE-IN CAMPAIGN LIST OF COMMENTERS UNDER LOG REG-014

Abbott, CJ, Sequim, WA  
Ablao, Susan, Eugene, OR  
Acosta, Amelia, Ashland, OR  
Adams, Martin, Portland, OR  
Adams, Kathleen, Vashion, WA  
Addams, Mary, Eugene, OR  
Agterberg, Felicia, Portland, OR  
Aikens, Sonja, Florence, OR  
Alan, Eric, Portland, OR  
Albietz, Carol, Portland, OR  
Alexander, Alison, Medford, OR  
Allen, Beverly, Enterprise, OR  
Allen, Bronwyn, Kirkland, WA  
Allison, Peder, Bellingham, WA  
Always, Theodore, Orcas, WA  
Amacher, Charles, Seattle, WA  
Amarotico, Diane, Portland, OR  
Ambrosino, Michael, Portland, OR  
Amieux, Paul, Portland, OR  
Anderson, Angela, Vashion, WA  
Anderson, Melanie, Lacey, WA  
Anderson, MaryEllen, Seattle, WA  
Anderson, Liz, Renton, WA  
Andrew, Larry, Portland, OR  
Apgood, Charlotte, Portland, OR  
Aquino, Rachel, Portland, OR  
Archer, Pat, Portland, OR  
Arny, Philip, Beaverton, OR  
Askew, Luke, Garibaldi, OR  
Attwood, Wayne, Coos Bay, OR  
August, Bertie, Salem, OR  
Babcock, Darcie, Seattle, WA  
Backman, Karen, Woodinville, WA  
Bacon, Kristin, Seattle, WA  
Bacon, Keith, Lake Oswego, OR  
Bahl, Suzanne, La Farge, WI  
Baier, Doug, Seattle, WA  
Bailiff, Diane, Renton, WA  
Baker, Donna, Ashland, OR  
Baldwin, PT, Oregon City, OR  
Barber, Kristin, Beaverton, OR  
Barnes, Katharine, Snohomish, WA  
Barnett, Gary, Eugene, OR  
Barrett, Katherine, Redmond, WA  
Barron, Muriel, Portland, OR  
Bartels, Jak, Moses Lake, WA  
Bartholomew, Gabriele, Lopez Island, WA  
Bartlett, Jim, Bainbridge Island, WA  
Barton, Virginia, Portland, OR  
Barton, Chase, Ashland, OR  
Bartuszevige, Anne, Eugene, OR  
Baskerville, Cindy, Shoreline, WA  
Batts, Katherine, Bainbridge Island, WA  
Bauman, James, Talent, OR  
Bayliss, Bonnie, Lummi Island, WA  
Bayly, Edward, Seattle, WA  
Beall, Charlotte, Colville, WA  
Beardsley, Lea, Ashland, OR  
Beauchamp, D A, Gresham, OR  
Beck, Paula, Arroyo Grande, CA  
Becker, Christy, Portland, OR  
Bedford, Brent, Spokane, WA  
Beers, Jennifer, Mercer Island, WA  
Beier, Melody, Cove, OR  
Bell, Merriann, Mukilteo, WA  
Bell-Stalnaker, Samuel, Bend, OR  
Bennett, Erick, Greenbank, WA  
Bennington, Donna, Ashland, OR  
Bennison, Kathleen, Spokane, WA  
Benson, David, Issaquah, WA  
Beran, Sharon, Seattle, WA  
Bering, Stacie, Shoreline, WA  
Berman, Harriet, Dayton, WA  
Bernard, B, Portland, OR  
Berry, Merry, Seattle, WA  
Berry, Suzanne, Olympia, WA  
Berry, Carol, Ashland, OR  
Berwick, Robert, Gresham, OR

Bessolo, John, Brightwood, OR  
Betten, Janis, La Pine, OR  
Bie Gerdes, Jacqueline, Damascus, OR  
Bill, Carroll, Gresham, OR  
Binnewies, Bill, Eagle Creek, OR  
Birchill, James, Vancouver, WA  
Black , Sylvia, Spokane, WA  
Black , Roberta, Snohomish, WA  
Blackley, Jennifer, Everett, WA  
Blackman, Susan, Medford, OR  
Blackmer, Sarah, Olympia, WA  
Blackwell, Elizabeth, Seattle, WA  
Blattenberger, Beth, Sisters, OR  
Blondell, Ruby, Beaverton, OR  
Bloom, Kaaren, Ashland, OR  
Blow, John Michael, Bellingham, WA  
Blumenthal, Felicia, Portland, OR  
Boardman, Randy, Sammamish, WA  
Bolliger, Jean, Olympia, WA  
Bolliger, Erica, Everett, WA  
Bolton, Philip, Portland, OR  
Bondi, Julia, Seattle, WA  
Bondurant, Ross, Portland, OR  
Bondurant, Ellen, Seattle, WA  
Bondy, Elisabeth, Hood River, OR  
Booth, Bill, Medford, OR  
Borer, Vickie, Gresham, OR  
Boutard, Anthony, Portland, OR  
Bowers, Ann, La Center, WA  
Boyett, M, Snohomish, WA  
Boyll, Kathy, Portland, OR  
Boynton, Llory, Eugene, OR  
Bracco, Anne Marie, Spokane, WA  
Bradford, Catherine, West Linn, OR  
Brady, Kevin, Seattle, WA  
Brannon, Wade, Greenbank, WA  
Braun, Philip, Seattle, WA  
Brazil, Elizabeth, Portland, OR  
Brehm, Joyce, Bandon, OR  
Bremer, David, Everett, WA  
Brencick, Mary, Corvallis, OR  
Briand, Roger, Portland, OR  
Bright, Diana, Salem, OR  
Brock, Jill, Hillsboro, OR  
Brooks, Jeanne, Portland, OR  
Brown, William, Seattle, WA

Brown, Kathy, Portland, OR  
Brown, Winifred, Anacortes, WA  
Brown, Barbara, Eugene, OR  
Brown, George, Seattle, WA  
Brown, Christine, Eugene, OR  
Brownstein, Robin, La Grande, OR  
Brubaker, Jill, Ashland, OR  
Buchan, William, Ashland, OR  
Buchanan, James, Williams, OR  
Bucklew, Erin, North Bend, OR  
Budke, Mary, Seattle, WA  
Buer, Gro, Olympia, WA  
Burbank, Brooke, Portland, OR  
Burchart, Marcia, Corvallis, OR  
Burford, Christopher, Tacoma, OR  
Burgess, David, Seattle, WA  
Burgwin, Scott, Spokane, WA  
Burmeister, Heather, Salem, OR  
Burness, Dr. Jessica, Kelso, WA  
Burns, Carl, Salem, OR  
Burns, Carol, Gold Beach, OR  
Burns, Donald, Ashland, OR  
Burns, Nancy, Canby, OR  
Burns, Shelley, Portland, OR  
Burns, John, Portland, OR  
Burr, Eric, Monmouth , OR  
Burt, Darene, Fairview, OR  
Burtchard, Greg, Seattle, WA  
Butler, Beth, Mount Vernon, WA  
Bye, Edrea, Seattle, WA  
Byers, Tony, Seattle, WA  
Byrd, Amy, Lake Froest Park, WA  
c/o Randall Schwab, Jane Klassen, Salem, OR  
Campbell, Angi, Enterprise, OR  
Canfield, Kerry, Edmonds, WA  
Cannon, Laura, Seattle, WA  
Cansler, James, Eugene, OR  
Carder, Cindy, Richland, WA  
Cardiff, Jeanine, Richland, WA  
Cardoza, Tamara, Bellingham, WA  
Carroll, Kim, Anacortes, WA  
Carson, CW, Seattle, WA  
Carter, Janice, Seattle, WA  
Casey, Laura, Seattle, WA  
Cash, Kelly, Tacoma, WA  
Catanzarite, Lisa, Portland, OR

Cerny, Adele, Clinton, WA  
 Cervantes-Gautsch, Barbara, Spokane, WA  
 Chamberlain, Bradford, Clearlake, WA  
 Chamberlain, Martin, Corvallis, OR  
 Chambers, Sydney, Salem, OR  
 Chapman, Tracey, Seattle, WA  
 Chapman, Susan, Seattle, WA  
 Charles, Roehm, Edmonds, WA  
 Chase, Betsy, Ashland, OR  
 Chism, Ted, Spokane, WA  
 Christensen, Madeleine, Pleasant Hill, OR  
 Christensen, Linda, Port Townsend, WA  
 Christensen, Ellen, Lanley, WA  
 Christopherson, A, Salem, OR  
 Clapp, Carolyn, Portland, OR  
 Clark , Elizabeth, Corvallis, OR  
 Clarke, George , Lake Oswego, OR  
 Cleaves, Robyn, Estacada, OR  
 Cleckler, Linda, Portland, OR  
 Clement, Leslie, Spokane, WA  
 Clothier, Burt, Albany, OR  
 Cobie, Helen, Bellingham, WA  
 Cochrane, Andrew, Eugene, OR  
 Coker, Elizabeth, Estacada, OR  
 Colby, HB, Spokane, WA  
 Cole, Theodora, Seattle, WA  
 Colisch, Beverly, Seattle, WA  
 Collet, Corey, Portland, OR  
 Collins-Wright, Beverley, Seattle, WA  
 Colombo, Richard, Coos Bay, OR  
 Colton, David, Issaquah, WA  
 Conklin, James, Portland, OR  
 Conner, Patrick, The Dalles, OR  
 Connie, Guiland, Nyssa, OR  
 Cook, Elaine, Wheeler, OR  
 Cooper, Kate, Cottage Grove, OR  
 Cooper, Gwen, Seattle, WA  
 Copeland, Paul, Veneta, OR  
 Copeland-Malone, Patrick, Seattle, WA  
 Cornell, Arthur, Olympia, WA  
 Corrado, Doris, Seattle, WA  
 Costello, Mary, Forest Grove, OR  
 Cotton, Gary, Bellingham, WA  
 Cotton, Edith, Yoncalla, OR  
 Courtney, Nanci, Seattle, WA  
 Cox, Mildred, Eugene, OR  
 Craig, Marguerite, Ashland, OR  
 Craig, Elise, Arlington, WA  
 Crane, Norman, Seattle, WA  
 Crawford, Carol, Portland, OR  
 Cremer, Steve, Issaquah, WA  
 Crenshaw, Gloria, Junction City, OR  
 Crocker, Wendy, Eugene, OR  
 Croghan, Stuart, Port, WA  
 Croker, Paul, Seattle, WA  
 Cronk, Bruce, Portland, OR  
 Crosby, Tim, Portland, OR  
 Crosta, Caesar, Lafayette, OR  
 Crosswell, Helga, Portland, OR  
 Crosswell, Bill, Portland, OR  
 Crout, David, Beaverton, OR  
 Crow, Tina, Issaquah, WA  
 Crowe, Linda, Spokane, WA  
 Culp, Ardella, Corvallis, OR  
 Cunningham, N, Spokane, OR  
 Cunningham, James, Walton, OR  
 Cunningham, Larry, Olympia, WA  
 Cunningham, Cynthia, Ashland, OR  
 Cunningham, Elinore, Ashland, OR  
 Curtis, Patricia, Portland, OR  
 Dale, Kenneth, Ashland, OR  
 Dalesky, Karin, Salem, OR  
 Dalton, Jack, Ashland, OR  
 Damon-Tollenaere, Matt, Portland, OR  
 Danielson, Darcy, Everett, WA  
 Danielson, Linda, Portland, OR  
 D'Antoni, Nicholas, Portland, OR  
 Darland, Elinore, Portland, OR  
 Daugherty, Jana, Portland, OR  
 Davalos, Kim, Portland, OR  
 Davenport, Scott, Ashland, OR  
 Davidson, Lesli , Yakima, WA  
 Davies, William, Seattle, WA  
 Davis, Galen, Bellingham, WA  
 Davis, Charles, Seattle, WA  
 Davis, T Scott, Seattle, WA  
 Davis, Carmen, Port Angeles, WA  
 Davis, Candy, Seattle, WA  
 Day, Arlene, Sherwood, OR  
 De Miranda, Yvonne, Sherwood, OR  
 De Vargas, Sally, Maple Valley, WA  
 Dealey, Nancy, Bend, OR

Dean B, Carolyn, Canyon City, OR  
 DeBenedictis, Marie, Yacolt, WA  
 Decker, Robert, Portland, OR  
 Dedrick, David, Lummi Island, WA  
 Depner, Ramona, Lummi Island, WA  
 Derrer, Thomas, Seattle, WA  
 Detweiler, Mark, Portland, OR  
 Devine, Patti, Shoreline, WA  
 Devlin, Guy, Seattle, WA  
 Dimock, Donald, Brier, WA  
 Dinolt, Charlotte, Fox Island, WA  
 Dittman, Reidar, Portland, OR  
 Doane, Paul, Shoreline, WA  
 Dodd, Donald, Vancouver, WA  
 Donais, Michael, Vancouver, WA  
 Donaldson, Peter, Seattle, WA  
 Doolan, Margie, Lake Tapps, WA  
 Dormody, Boomer, Clinton, WA  
 Doscher, Laurie, Ashland, OR  
 Doty, Carol, Eugene, OR  
 Douglas, George, Portland, OR  
 Drake, Peter, Portland, OR  
 Drynan, D Adair, Grants Pass, OR  
 Duff Bernacki, Patricia, Spokane Valley, WA  
 Dula, Suzan, Portland, OR  
 Dundalek, Jiri, Anacortes, WA  
 Dunlap, Samuel, Olympia, WA  
 Duquette, Jill, Sherwood, OR  
 Duvall, Marcia, Port Townsend, WA  
 Dyer, Gary, Dufur, OR  
 Dyer, Jeffrey, Portland, OR  
 Eddy, Deborah, Seattle, WA  
 Edwards, Janet, Monmouth, OR  
 Eid, Elizabeth, Monmouth OR  
 Eiselt, Julie, Portland, OR  
 Elder, Stephen, Bellingham, WA  
 Ellis, Patricia, Salem, OR  
 Elms, Carol, Elmira, OR  
 Eloheimo, Marja, Seattle, WA  
 Embrey, Irene, Seattle, WA  
 Emmel, Christine, Vancouver, WA  
 Engebretson, Cathy, Eastsound, WA  
 Engelstad, Dan, Salem, OR  
 Erickson, Arthur, Newport, OR  
 Erickson, Kim, Glide, OR  
 Erwin, Elizabeth, Portland, OR  
 Esler, Charles, Enumclaw, WA  
 Ettel, Roberta, Gig Harbor, WA  
 Evans, Dorothy, Portland, OR  
 Evans, Bill, Tumwater, WA  
 Evans, Mary Lynne, Redondo Beach, CA  
 Evans, William, Springfield, OR  
 Evanson, Donald, Burien, WA  
 Eventyr, Kirstin, Portland, OR  
 Fairchild, Christie, Clackamas, OR  
 Fairfield, Kenneth, Portland, OR  
 Fallat, Tom, Deadwood, OR  
 Fannin, Launie, Portland, OR  
 Farland, Scott, Portland, OR  
 Farrell, Susan, Twisp, WA  
 Farrier, Vasiliki, Salem, OR  
 Feathers, Jesse, Bend, OR  
 Feddersen, Karin, Eugene, OR  
 Felten, Jacob, Seattle, WA  
 Fenton, Janet, Seattle, WA  
 Fequa, Kate, Medford, OR  
 Ferber, Deborah, Bellingham, WA  
 Ferrel, S, Olympia, WA  
 Ferrell, Bill, Portland, OR  
 Fetz, Morgot, Coos Bay, OR  
 Fialkow, Deborah, Tacoma, WA  
 Fidler, Margaret, McMinnville, OR  
 Fields, Gabe, Ashland, OR  
 Filip, Craig, Olympia, WA  
 Fillingim, Virginia, Eugene, OR  
 Filz, Reed, Bainbridge Island, WA  
 Finley, Aimee, Port Angeles, WA  
 Finley, Shannon, Olympia, WA  
 Fioretti, Matthew, Olympia, WA  
 Fisher, Brian, Portland, OR  
 Fitzgerald, Michael, Eugene, OR  
 Flaherty, Janet, Olympia, WA  
 Foley, Duncan, Ashland, OR  
 Follingstad, Joyce, Coos Bay, OR  
 Formick, Maureen, Bandon, OR  
 Foss, Ann, Eastsound, WA  
 Fountain, Andrew, Portland, OR  
 Fox, Sheila, Anacortes, WA  
 Franklin, Nona, Olympia, WA  
 Franklin, Derek, Seattle, WA  
 Frazier, William, Friday Harbor, WA  
 Frederickson, Diana, Grants Pass, OR

Freeland, Mark, Seattle, WA  
 Freeman, Katie, Stanwood, WA  
 Freeman, Derek, Cornelius, OR  
 Friedl, Micheal, Medford, OR  
 Fritz, Daniel , Seattle, WA  
 Frodel, Ed , La Conner, WA  
 Frost, Conrad, Sea Tac, WA  
 Frothingham, Dianne, Eugene, OR  
 Frowert, Sophia, Seattle, WA  
 Froyd, Shirley, Eugene, OR  
 Fuentes, R, Williams, OR  
 Fuller, Pamela, Seattle, WA  
 Gagnon, Sara, Eugene, OR  
 Gaither, Michelle, Portland, OR  
 Gale, Marge, Bend, OR  
 Gallagher, Meg, Bend, OR  
 Gallatin, Ondine, Olympia, WA  
 Gangel, Patricia, Portland, OR  
 Garber, Karen, Eugene, OR  
 Gardener, Lorree, Lebanon, OR  
 Gardner, Daniel, Portland, OR  
 Garland, Sandra, Clackamas, OR  
 Gaughan, Mary, Poulsbo, WA  
 Geath, Scott, Portland, OR  
 Gehring, Wendy Jean, Ashland, OR  
 Gehring, Anita, Mount Vernon, WA  
 Geiger, Bobbi, Portland, OR  
 Gellert, Norma, Bainbridge Island, WA  
 George, Valori, Mountlake Terrace, WA  
 Gerbrandt, Matthew, Portland, OR  
 Gereighty, Deniann, Portland, OR  
 Gerell, Gerell, Monroe, WA  
 Gilham, Charles, Colville, WA  
 Gill, David, Olympia, WA  
 Gilliland, Che', Eugene, OR  
 Gillis, David, Spokane Valley, WA  
 Gillis, Edith, Portland, OR  
 Gimelli, Rebecca, Portland, OR  
 Gleason, Joyce, Seattle, WA  
 Glose, Anne, Newport, WA  
 Glose, Anne, Portland, OR  
 Golden, James, Seattle, WA  
 Goldman, Emerald, Junction City, OR  
 Goldman, Carol, Vashon, WA  
 Goldsmith, Phil, Portland, OR  
 Golman, David, Eugene, OR  
 Gonzales, Kelly, Seattle, WA  
 Goodrich, Elaine, Portland, OR  
 Gorby, Yuri, Shoreline, WA  
 Gorczyca, Dan, Shoreline, WA  
 Gosnell, Katherine, Ellensburg, WA  
 Gowan, Maren, Seattle, WA  
 Graamans, Chris, Beaverton, OR  
 Grace, Anna, Lynnwood, WA  
 Grainger, Alan, Langley, WA  
 Grandey, Rolaine, Seattle, WA  
 Grandi, Renee, Seattle, WA  
 Grant, Malinda, Portland, OR  
 Gray, Kristi, Bremerton, WA  
 Greenberg, Diane, West Linn, OR  
 Greene, Joyce, Seattle, WA  
 Greene-Beloit, Heather, Vashon, WA  
 Grissom, Carolyn, Roseburg, OR  
 Groshans, Marie, Eugene, OR  
 Gross, Robert, Elmira, OR  
 Grossman, Rachel, Honolulu, HI  
 Grundemann, Barbara, Seattle, WA  
 Gualtieri, Jack, Corvallis, OR  
 Gubelman, E, Portland, OR  
 Guidry, C Jean, Sequim, WA  
 Gunckel, Stephanie, Bainbridge Island, WA  
 Gunderson, Julie, Salem, OR  
 Gutman, Kenneth, Seattle, WA  
 Gutsche, Betha, Clackamas, WA  
 Gymowski, Joseph, Friday Harbor, WA  
 Habersetzer, Steven, Seattle, WA  
 Hackett, Shirley, Marcola, OR  
 Hahn-Francini, John, Springfield, OR  
 Haines, Leslie, Beaverton, OR  
 Haley, David, Tacoma, WA  
 Hall, Camille, Portland, OR  
 Hall, Ursula, Winthrop, WA  
 Hallberg, Alyson, Elmira, OR  
 Haller, Ethel, Eugene, OR  
 Haller, Russell, Eugene, OR  
 Hameed, Bridget, Wenatchee, WA  
 Hammond, Ronald, Redmond, OR  
 Hammons, Nan, Portland, OR  
 Hance, Judith, Seattle, WA  
 Hannan, Jo, Federal Way, WA  
 Hansen, Roberta, Eugene, OR  
 Hansen, Patricia, Portland, OR

Hanson, Polly, Olympia, WA  
 Hanson, Lori, Seattle, WA  
 Hanson, Aileen, Ashland, OR  
 Harding, Peter, Rainer, WA  
 Hardman, Jerusha, Mazama, WA  
 Harkness, Linda, Spokane, WA  
 Harmon, Melyssa, Seattle, WA  
 Harper, Rebecca, Williams, OR  
 Harrell, Rosemary, Tillamook, OR  
 Harris, Christopher, Eugene, OR  
 Harris, Victor, Portland, OR  
 Harris, Kathleen, Newport, OR  
 Hart, Bruce, West Linn, OR  
 Hartung, Ross, Seattle, WA  
 Harvey, Sue, Webster, NY  
 Hasse, Carol, Port Angeles, WA  
 Hasslacher, Jacob, Nyssa, OR  
 Hauer, Valerie, Kirkland, WA  
 Hausman, Gail, Newport, OR  
 Hawkins, Ed, Eugene, OR  
 Hawksford, Altwin, Seattle, WA  
 Hayner, Paul, Bellevue, WA  
 Hays, David, Mercer Island, WA  
 Hayward, Deborah, Tumwater, WA  
 Heffernan, Mary, Corvallis, OR  
 Heinlein, Lois, Brier, WA  
 Heinze, Grace, Albany, WA  
 Heller, Dennis, Joseph, OR  
 Henderson, Teresa, Bellingham, WA  
 Henderson, Sarah, Oregon City, OR  
 Hendrickson, Cathy, Carnation, WA  
 Henry-Keller, Piper, Portland, OR  
 Hepworth, Cindy, White Salmon, WA  
 Hershman, Carol, Kirkland, WA  
 Hiatt, Fred, Shoreline, WA  
 Hickenlooper, Nadine, Spokane, WA  
 Hicks, Stephen, Beaverton, OR  
 Hicks, Robert, Veneta, OR  
 Hiebert, Ricky, Eugene, OR  
 Higen, Doug, Port Townsend, WA  
 Higgins, Hollis, Spokane, WA  
 Hill, Michele, White Salmon, WA  
 Hill, Holly, Portland, OR  
 Hillman, Jocelyn, Sammamish, WA  
 Hillyard, Jennimae, Port Ludlow, WA  
 Hillyer, B. Gail, Bend, OR  
 Hites-Clabaugh, David, Portland, OR  
 Hodapp, Paul, Portland, OR  
 Hodge, Kiernan, Olympia, WA  
 Hodges, Valerie, Portland, OR  
 Hoffman, Judith, Port Townsend, WA  
 Hokom, Helen, Portland, OR  
 Holbrook, Tim, Tacoma, WA  
 Holliday, Joseph, Portland, OR  
 Holstine, Stephanie, Talent, OR  
 Hood, Steve, Burns, OR  
 Hope, Carolen, Talent, OR  
 Hopkins, Shannon, Lake Oswego, OR  
 Hopper, Elizabeth, White Salmon, WA  
 Horsfield, Nancy, Redmond, OR  
 Hossain, Asha, Clinton, WA  
 Houghton, Richard, Eugene, OR  
 Houser, Amy, Springfield, OR  
 Houston, Madeleine, Poulsbo, WA  
 Howard, Gary, Bainbridge Island, WA  
 Howard, Teresa, Seattle, WA  
 Howard, Helon, Anacortes, WA  
 Howard, Tony, Kent, WA  
 Howe, Cheri, Blodgett, OR  
 Howell, Jeff, Shoreline, WA  
 Huddleston, Claire, Goldendale, WA  
 Hudson, Lois, Deadwood, OR  
 Hughes, Marya, Junction City, OR  
 Hughes, Rebecca, Eugene, OR  
 Humphreys, JB, Mount Vernon, WA  
 Hungerford, Mark, Sequim, WA  
 Hunter, Kate, Olympia, WA  
 Hutchinson, Raymond, Portland, OR  
 Huth, Karen, Sequim, WA  
 Hyde, Cutty, Olympia, WA  
 Hyman Walsh, Terry, Portland, OR  
 Icovino, Consuelo, Beaverton, OR  
 Israel, Miriam, Lummi Island, WA  
 Iverson, Luanna, Seattle, WA  
 Iverson, Lucille, Corvallis, OR  
 Jackson, Barbara, Talent, OR  
 Jackson, Gayle, Pendleton, OR  
 Jacobson, Zann, Portland, OR  
 Jacquemin, Deborah, Okanogan, WA  
 Jansen, Dawn, Coos Bay, OR  
 Jarach, Audrey, Seattle, WA  
 Jaszowski, Ralph, Roseburg, OR

Jawando-Methe, Leslie, Spokane, WA  
 Jenner, Charles, Spokane, WA  
 Jensen, Elise, Burien, WA  
 Jezorek, Ian, Olympia, WA  
 Joachim, Kristin, Silverton, OR  
 Jobson, Walter, Bainbridge Island, WA  
 Johansen, Mary, Normandy Park, WA  
 Johnson, Todd, Spokane Valley, WA  
 Johnson, Mark, Kirkland, WA  
 Johnson-Duell, Christine, Seattle, WA  
 Johnston, Brenda, Seattle, WA  
 Jones, Stephanie, Hillsboro, OR  
 Jones, Marcus, Hillsboro, OR  
 Jones, Eleanor, Seattle, WA  
 Jones, Dawn, Corvallis, OR  
 Jordan-Cascade, John, Federal Way, WA  
 Judd, Sandra, Granville, OH  
 Judge, Carol, Portland, OR  
 Kamp, Tiffany, Ellensburg, WA  
 Kaplan, Joseph, Portland, OR  
 Kathol, Frank, Eugene, OR  
 Kauffman, Katherine, Goldendale, WA  
 Kecskes, Elizabeth, Eugene, OR  
 Keeble, Claire, Vashon, WA  
 Kehl, Kevin, Edmonds, WA  
 Kelleher, Donna, Ocean Park, WA  
 Keller, Diana, Lynnwood, WA  
 Keller, Jennifer, Lake Oswego, WA  
 Kelley, Linda, Portland, OR  
 Kellogg, Craig, Prineville, OR  
 Kelly, Joann, Ashland, OR  
 Kelly, Corinne, Ashford, WA  
 Kelsey, Lisa, Medford, OR  
 Kennedy, Patricia, Selah, WA  
 Kennedy, Karen, Portland, OR  
 Kennett, Jeanne, Ashland, OR  
 Kernberger, Katherine, Lake Oswego, OR  
 Ketchmark, Corrine, Bingen, WA  
 Ketchum, Deann, Beaverton, OR  
 Keyser, Elizabeth, Vashon, WA  
 Keyt, Barbara, La Conner, WA  
 Khalsa Wyborski, Susan, Cheney, WA  
 Kilmer, Pat, Seattle, WA  
 Kimpton, Jackie, Seattle, WA  
 King, Nadya, Seattle, WA  
 Kirishian, Jeanette, Shoreline, WA  
 Kirk, Geoff, Olympia, WA  
 Klemz, Carol, Klamath Falls, OR  
 Knutson, Maureen, Eugene, OR  
 Koenen, Katy, Bandon, OR  
 Koenig, Steven, San Francisco, CA  
 Koga, Noreen, Port Angeles, WA  
 Kohlenberg, Amber, Walla Walla, WA  
 Kokes, Madeline, Tumwater, WA  
 Koopman, Paul, Seattle, WA  
 Korn, Meryle, Seattle, WA  
 Krause, Dianne, Seattle, WA  
 Kress, Charles, Seattle, WA  
 Kristwald, Elfriede, Ashland, OR  
 Krupa, Lynn, Waldport, OR  
 Kuhn, Martha, Bainbridge Island, WA  
 Kwiatkowski, Michael, Sammamish, WA  
 Kypuros, Katherine, Grants Pass, OR  
 Lafferty, Cynthia, Wenatchee, WA  
 Lagace, Sophie, Seattle, WA  
 Lamar, Eileen, Bend, OR  
 Lamb, Christopher, Olympia, WA  
 Lambrou, Marsha, Bellevue, WA  
 LaMorticella, Tony, Seattle, WA  
 Landschulz, Thomas, Seattle, WA  
 Langer, Jennifer, Portland, OR  
 LaPointe, Mary, Battle Ground, WA  
 Larimore, Anna Lee, Portland, OR  
 Laroche, Mary, Beaverton, OR  
 Larson, Keith, LaGrande, OR  
 Lawler, Martha, Mercer Island, WA  
 Lawrence, Kitty, Spokane, WA  
 Layden, Patricia, Seattle, WA  
 Le Vina, Callie, Vashon, WA  
 Leaman, Nanette, Portland, OR  
 LeBlanc, GL, Portland, OR  
 Lee, Richard, Newport, WA  
 Leeper, Alana, Seattle, WA  
 Lehner, Lora, Eugene, OR  
 Lenker, William, Seattle, WA  
 Lenox, Mary, Stanwood, WA  
 Leon, Richard, Portland, OR  
 Leonard, James, Sammamish, WA  
 Lerman, Nina, Sammamish, WA  
 Leslie, Carol, Eugene, OR  
 Leu, Dorothy, Port Angeles, WA  
 Leverich-Fries, Sherrill, Portland, OR

Levick, Nydia, Seattle, WA  
 Levine, Karen, Friday Harbor, WA  
 Levine, Adam, Olympia, WA  
 Levy, Maureen, Seattle, WA  
 Levy, Richard, Seattle, WA  
 Lewis, Laura, Rento, WA  
 Lewis, Brent, Silverdale, WA  
 Lewison, Thais, McMinnville, OR  
 Lezon, Karen, Burien, WA  
 Lgama, Teofilo, Everett, WA  
 Linderman, Emily, Shoreline, WA  
 Lindsay, Judith, Selma, OR  
 Lindsey, Tui, Toledo, OR  
 Lindsey, Carley, Merlin, OR  
 Lindsey, Cathy, Spokane, WA  
 Lindsley, Robin, Seattle, WA  
 Lipke, Margaret, Portland, OR  
 Lisonbee, Jan, Oak Harbor, WA  
 Littlejohn, Gina, Ashland, OR  
 Lloyd-Jones, Richard, Portland, OR  
 Logan, Susan, Black Diamond, WA  
 Lohman, Jeanne, Ashland, OR  
 Long, Donald, Shelton, WA  
 Lord, Lydia, Seattle, WA  
 Loren, Wendy, Langley, WA  
 Louis, Dorothy, Eugene, OR  
 Lovejoy, Ann, Bellingham, WA  
 Lovett, Wendell, Gates, OR  
 Low Rose, Deborah, Newport, WA  
 Lowe, Forrest, Portland, OR  
 Loynd, Kylie, Seattle, WA  
 Luceno, Liz, Cave Junction, OR  
 Ludwin, Tracey, Otis, OR  
 Lunch, Amber, Portland, OR  
 Lysak, William, Seattle, WA  
 MacAryre, Christian, Seattle, WA  
 Maciejewski, Gail, Marysville, WA  
 MacKinnon, Genevieve, Gresham, OR  
 MacKrow, Paula, spokane, WA  
 Macomber, Judy, Portland, OR  
 Madden, Meigan, Corvallis, OR  
 Madden, Jean, Eugene, OR  
 Magerkurth, Stephanie, Kenmore, WA  
 Maggio, Chloe, Seattle, WA  
 Magnuson, John, Seattle, WA  
 Maier, Shari, Portland, OR  
 Males, Reuben, Seattle, WA  
 Mansfield, Larissa, Seattle, WA  
 Marcus, Martin, Olympia, WA  
 Margoles, Bel Ami, Port Angeles, WA  
 Marie, Ann, Eugene, OR  
 Markholt, Sona, Hermiston, OR  
 Marlia-Stein, Liz, Portland, OR  
 Marquez, Theresa, Portland, OR  
 Marshall, William, Grants Pass, OR  
 Marshall, Kathleen, Seattle, WA  
 Marshall, Leslie, Seattle, WA  
 Martin, Elizabeth, Portland, OR  
 Martin, Deana, Brookings, OR  
 Martin, Chanda, Coos Bay, OR  
 Martin, Patricia, Florence, OR  
 Martinez, Patricia, Seattle, WA  
 Martino, Victor, Seattle, WA  
 Maskin, Alan, Seattle, WA  
 Mason, Anne, Manzanita, OR  
 Mason-Todd, Seth, Salem, OR  
 Massoni, Gary, Roslyn, WA  
 Mathews, Paul, Ashland, OR  
 Matsumura, Jennifer, Seattle, WA  
 Matthias, Catherine, Pendleton, OR  
 Mattson, Dana, Portland, OR  
 Maupin, Lana, Portland, OR  
 Mauthe, Joelle, Eugene, OR  
 Maxwell, Dorothy, Olympia, WA  
 Maxwell, Clare, Seattle, WA  
 May, Dan , Joseph, OR  
 Maynard, Dave, Portland, OR  
 Mayo, Peg, Seattle, WA  
 McAlpin, Janet, Vancouver, WA  
 McBeath, Deborah, Corvallis, OR  
 McCabe, Merrily, Bellevue, WA  
 McCabe, D P, White Salmon, WA  
 McCain, Bruce, Bellingham, WA  
 McCarthy, Laura, Lebanon, OR  
 McCassey, K. Jane, Seattle, WA  
 McClellan, Lois, Pendleton, OR  
 McClelland, D., Seattle, WA  
 McCormick, Perry, Eagle Point, OR  
 McCoy, Melinda, Coupeville, WA  
 McCracken, Philip, Ashland, OR  
 McCulloch, Sue-Del, Seattle, WA  
 McCulloch, Sue-Del, Olympia, WA

McDougal, Carla, Seattle, WA  
 McDowell, Cheryl, Silverton, OR  
 MCDowell, Teresa, Lake Oswego, OR  
 McFarlane, Susan, Bend, OR  
 McGee, Michael, Seattle, WA  
 McGovern, Donlon, Roseburg, OR  
 McHarness, Matthew, Colbert, WA  
 McKain Storey, Shauna, Lummi Island, WA  
 McKay, Barbara, Ashland, OR  
 McKay, Louise, Eugene, OR  
 McKee, Gray, Maple Valley, WA  
 McKenna, Arlene, Centralia, WA  
 McKeown, Dennis, Portland, OR  
 McKinnon, Shayna, Portland, OR  
 McKurphey, Janet, Jacksonville, OR  
 McLean, Kendall, Spokane, WA  
 McLoone, Hugh, Seattle, WA  
 McMahan, Gwen, Lopez Island, WA  
 McNary, J, Bainbridge Island, WA  
 McNaughton, Helen, Okanogan, WA  
 McPherson, James, Eugene, OR  
 McQuesten, Carey, Belfair, WA  
 McQuesten, Kammrella, Portland, OR  
 McRae, Barbara, Seattle, WA  
 Meagher, Mike, Kingston, WA  
 Meagher, Kathleen, Stevenson, WA  
 Medica, Thomas, Steilacoom, WA  
 Meier, Victoria, Seattle, WA  
 Mainz, Vern, Issaquah, WA  
 Melusky, Jon, Twisp, WA  
 Menett, Michele, Bellingham, WA  
 Merz, Chong, Portland, OR  
 Meyer, Robert, Portland, OR  
 Meyr, Lia, Oceanside, OR  
 Midlo, Mike, Sheridan, OR  
 Mikkelsen, Susan, Seattle, WA  
 Miklich, Christy, Grants Pass, OR  
 Miller, Jeffrey, Portland, OR  
 Miller, Peter, Seattle, WA  
 Miller, Lisa, Seattle, WA  
 Miller, Toby, Ashland, OR  
 Miller, Lynn, Corvallis, OR  
 Millhauser, Susan, Sequim, WA  
 Milliken, Elizabeth, Port Townsend, WA  
 Mills, Donald, Eugene, OR  
 Miniszewski, Gary, Hood River, OR  
 Mitchell, Michael, Roseburg, OR  
 Mitchell, Elizabeth, Bandon, OR  
 Mitman, Mark, Portland, OR  
 Mittendorf, Stephen, Seattle, WA  
 Moberg, F. Alden, Lummi Island, WA  
 Moffat, Mary, Portland, OR  
 Molitor, Cindy, Eugene, OR  
 Monahan, Maureen, Portland, OR  
 Moody, Michelle, Beaver Creek, OR  
 Mooney, Dorothy, Portland, OR  
 Moore, James, Sweet Home, OR  
 Moore, Scott, Lopez Island, WA  
 Moore, Belle, Seattle, WA  
 Morando, Anne, Portland, OR  
 Morgan, Micheal, Seattle, WA  
 Morgan, Lori, Friday Harbor, WA  
 Morley, Charles, Portland, OR  
 Morris, Nancy, Portland, OR  
 Morrison, Homer, Corvallis, OR  
 Morrison, Debra, Spokane, WA  
 Moser, John, Beaverton, OR  
 Mott, Richard, Portland, OR  
 Mudri, Sherri, Portland, OR  
 Mueller, Steven, Portland, OR  
 Mullarkey, Patricia, Ashland, OR  
 Mulvihill, Marion, Bellingham, WA  
 Muoio, Geraldine, Portland, OR  
 Murdock, Beth, Port Orchard, WA  
 Murphy, Randy, Spokane, WA  
 Murphy, Kim, Federal Way, WA  
 Murphy, Jeanette, Salem, OR  
 Myers, Karen, Portland, OR  
 Nazzaro, Maria, Portland, OR  
 Nelson, Ronald, Corvallis, OR  
 Nelson, Grace, Eugene, OR  
 Nelson, Lydia, Rogue River, OR  
 Nelson, Sheila, Walla Walla, WA  
 Nelson, Nancy, Portland, OR  
 Nelson, Rebecca, Portland, OR  
 Nepveu, Laura, Portland, OR  
 Nerison M, Rebecca, Seattle, WA  
 Netherton, Linda, Coupeville, WA  
 Neuburger, Lisa, Morrill, ME  
 Newell, Ronda, Portland, OR  
 Newhagen, Mariette, Klamath Falls, OR  
 Nicholl, Sheldon, Arlington, WA

Nichols, Bruce, Portland, OR  
 Nieder, Jillian, Bellingham, WA  
 Nintzel, Greta, Cook, WA  
 Noland, Jean, Anacortes, WA  
 Nordeen, Ronald, Kirkland, WA  
 North, Christine, Seattle, WA  
 Novick, Janet, Portland, OR  
 Nuccio, Theresa, Seattle, WA  
 Oberbillig, Molly, Mercer Island, WA  
 O'Brien, Vana, Eugene, OR  
 Ockert, Roy, Olympia, WA  
 Oertley, Jill, Issaquah, WA  
 Offen, Ruth, Portland, OR  
 O'Halloran, James, Rogue River, OR  
 Oker, Paul, Portland, OR  
 Olds, Lori, Portland, OR  
 Olds-Craig, Kimberly, Sultan, WA  
 Oliver, Jo Ann, Spokane Valley, WA  
 Olson, Cory, Portland, OR  
 Omachi, Elaine, Newcastle, WA  
 Onkka, Molly, Klamath Falls, OR  
 O'Riordan, Colm, Lincoln City, OR  
 Orlandini, Rita, West Linn, OR  
 Orner, Edith, McMinnville, OR  
 Orum, R Marriner, Bremerton, WA  
 Osborne, Donna, Portland, OR  
 Oswalt, Sharon, Lacey, WA  
 Pace, Peggy, Ashland, OR  
 Palakovich, Julie, Eugene, OR  
 Palka, John, Corvallis, OR  
 Palmer, Betty, Siletz, OR  
 Panek, Stacey, Bellevue, WA  
 Parmer, Carlisle, Kirkland, WA  
 Parsons, Anna, Vashon, WA  
 Partlow, Julia, Portland, OR  
 Partridge, Beverly, Corvallis, OR  
 Pascal, Jeanne, Mercer Island, WA  
 Patricia Flood, Olympic Acupuncture,  
 Ashland, OR  
 Patton, Annie, Walla Walla, WA  
 Paul, Hollis, Friday Harbor, WA  
 Paulsen, Connie, Stanwood, WA  
 Paulsen, Steve, Shoreline, WA  
 Payton, Fay, Sequim, WA  
 Pearce, Walt, Portland, OR  
 Pearce, Susan, Albany, OR  
 Pearl, Art, Portland, OR  
 Pedersen, Ann, Ashland, OR  
 Pedersen, Jennifer, Issaquah, WA  
 Pederson, Bonnie, Joseph, OR  
 Pera, Christina, Seattle, WA  
 Perkins, Aimee, Bellevue, WA  
 Peters, Daniel, Kirkland, WA  
 Petersen, Elizabeth, Port Gamble, WA  
 Peterson, Maureen, Portland, OR  
 Phelps, Dean, Bremerton, WA  
 Phillips, Nancy, Marysville, WA  
 Pierini, Katherine, Camano Island, WA  
 Pigott, Judy, Kirkland, WA  
 Pischke, Gary, Olympia, WA  
 Poston, Stuart, Edmonds, WA  
 Potter, Renee, Mount Angel, OR  
 Potter, Nathan, Vancouver, WA  
 Powell, Dorothy, Portland, OR  
 Prestage, Susan, Tualatin, OR  
 Prince, Steven, Olympia, WA  
 Prindle, Kirk, Seattle, WA  
 Provasoli, Judith, Seattle, WA  
 Provasoli, Robert, Bellingham, WA  
 Pryor, Melody, Spokane, WA  
 Pursley, Darene, Seattle, WA  
 Quinn, Francis, Wenatchee, WA  
 Quinn, Jeanne, Seattle, WA  
 Radey, Jack, Portland, OR  
 Radford, Lemoine, Port Townsend, WA  
 Radford, Foster, Portland, OR  
 Rafter, Charlotte, Edmonds, WA  
 Ramsey, Jenifer, Bellevue, WA  
 Range, Don, Corvallis, OR  
 Rapier, Roberta, Olga, WA  
 Rappaport, Jesse, University Place, WA  
 Rasmussen, Linda, Seattle, WA  
 Ratner, March, Spokane, WA  
 Rau, Robert, Lakebay, WA  
 Ray, Deborah, Seattle, WA  
 Reagan, Peter, Vashon, WA  
 Reasner, Ruby, Seattle, WA  
 Redd, Marianna, Seattle, WA  
 Reep, Irene, Ashland, OR  
 Reiss, Shirley, Portland, OR  
 Reiter, Mindee, Spokane, WA  
 Richard, Tim, Burien, WA

Richardson, Kathleen, Blachly, OR  
 Richardson, Judy, Seattle, WA  
 Richter, Joanne, Portland, OR  
 Richter, Joanne, Portland, OR  
 Rinehart, Jan, West Linn, OR  
 Rinehart, Betty, Lummi Island, WA  
 Riordan, Margaret, Eugene, OR  
 Ristagno, Lily, Eugene, OR  
 Robbins, Linda, Eugene, OR  
 Roberts, Brenda, Portland, OR  
 Roberts, Margaret, Forest Grove, OR  
 Roberts, Barbara, Salem, OR  
 Robertson, Kristen, Molalla, OR  
 Rodgers, Sue, Bremerton, WA  
 Rodriguez, Robynn, Spokane, WA  
 Roehm, Charles, Portland, OR  
 Rogers, Maggie, Portland, OR  
 Rogers Bullington, Gayle, Freeland, WA  
 Ronzheimer, Carl, Bellingham, WA  
 Rose, Steve, Portland, OR  
 Rosen, Susan, Corvallis, OR  
 Rosen, Naomi, Roseburg, OR  
 Rosene, Juanita, Seattle, WA  
 Rosenthal, Elizabeth, Eastsound, WA  
 Rosling, Govinda, Portland, OR  
 Ross, Lavinia, Veneta, OR  
 Ross, Janet, Olympia, WA  
 Ross, Janet, Curlew, WA  
 Rotecki, Nancy, Portland, OR  
 Roubidoux, Geri, Portland, OR  
 Roundtree, Maile, Portland, OR  
 Rouslin, Daniel, Portland, OR  
 Royce, Dean, Damascus, OR  
 Rozenbaum, Scott, Bremerton, OR  
 Rucker, J H, Eugene, OR  
 Ruderman, Nancy, Seattle, WA  
 Rueb, Dave, Lopez Island, WA  
 Rummel-Eury, Rose, Salem, OR  
 Ryburn, Rosanne, Bellevue, WA  
 Rymph, David, Sweet Home, OR  
 Saikevych, Irene, Seattle, WA  
 Salazar, Robert, Portland, OR  
 Salome, Margaret, Shoreline, WA  
 San Blise, May Lou, Kirkland, WA  
 Sandow, Anastasia, Mount Vernon, WA  
 Sanger, Rick, Falls City, OR  
 Sanocki, Elizabeth, Corvallis, OR  
 Sargent, Nikki, Seattle, WA  
 Sawyer, Edward, Philomath, OR  
 Scardigli, Wayne, Redmond, WA  
 Schekel, Marcia, Port Orford, OR  
 Schenck, John, Anacortes, WA  
 Scherer, Morgan, Maple Valley, WA  
 Schmidt, Bawn, Seattle, WA  
 Schmitz, Ruth, Freeland, WA  
 Schneider, Dan, Drain, OR  
 Schubert, R G, Portland, OR  
 Schulz, Stephanie, Washougal, WA  
 Schwall, William, Seattle, WA  
 Schwartz, Zak, North Bend, OR  
 Scibinico, Beverly, Friday Harbor, WA  
 Scott, Sylvia, North Bend, OR  
 Scott, Alan, Seattle, WA  
 Sears, Jeanne, Seattle, WA  
 Seeburger, Katherine, Portland, WA  
 Seifert, Marianne, Nehalem, OR  
 Seirawan, Daniel, Clackamas, OR  
 Seither, Thomas, Shelton, OR  
 Selkie, Elena, Portland, OR  
 Sell, Barry, Portland, OR  
 Selmar, Lois, Seattle, WA  
 Setziol-Phillips, Monica, Eugene, OR  
 Severns, Muriel, Mossyrock, WA  
 Seymore, Lee Roy, Milton Freewater, OR  
 Seymour, Malcolm, Portland, OR  
 Seymour, Maggie, Cottage Grove, OR  
 Shaffer, Carolyn, Seattle, WA  
 Sharp, Owen, Waldport, OR  
 Shashai, Jedidah, Portland, OR  
 Shaw, Susan, Everett, WA  
 Shawcross, Karen, Pullman, WA  
 Shayla, Ethan, Seattle, WA  
 Shayla, Heidi, Duvall, WA  
 Sheehan, Tom, Junction City, OR  
 Sheffield, Kate, Bainbridge Island, WA  
 Sheldon, Patricia, Yakima, WA  
 Sheldon, Sam, Bothell, WA  
 Shelley, Jon, Seattle, WA  
 Shelton, Lalani, Seattle, WA  
 Shemeta, Susan, Bend, OR  
 Sherlock, Sharon, Salem, OR  
 Sherman, Loraine, Eugene, OR

Sherman, Frances, Clinton, WA  
 Sheythe, Susan, Vancouver, WA  
 Shoemaker, Catherine, Portland, OR  
 Short, Mari, Salem, OR  
 Sibilla, Brynna, Seattle, WA  
 Simmons, Wendy, Spokane, WA  
 Simpson, Patsy, University Place, WA  
 Simsich, Anna, McMinnville, OR  
 Sinclair, Laura, Bellevue, WA  
 Singh, Ashok, Seattle, WA  
 Sirianni, Lynda, Langley, WA  
 Siverts, Linda, Eugene, OR  
 Skelly, Andrea, Bellingham, WA  
 Slevin, Wanda, La Conner, WA  
 Slonecker, Ann, Walla Walla, WA  
 Smith, Robert, Mosses Lake, WA  
 Smith, Lea, Edmonds, WA  
 Smith, Robert, Corvallis, OR  
 Smith, Eileen, Wilsonville, OR  
 Smith, Paul, Ephrata, WA  
 Smith, Clifford, Ashland, OR  
 Smith, Sheila, Ashland, OR  
 Smith, Alice, Grants Pass, OR  
 Sonenshine, Scott, Eugene, OR  
 Sonnergren, Leslie, Seattle, WA  
 Sorensen, Gail, Seattle, WA  
 Sowell, Jaqueline, Coupeville, WA  
 Spence, Douglas, Vashon, WA  
 Speth, Cecilia, Edmonds, WA  
 Spevak, Jason, Bothell, WA  
 Springer, Paula, Portland, OR  
 Squires, Storey, Vancouver, WA  
 St August, Patricia, Bend, OR  
 St Onge, M, Jacksonville, OR  
 St. James, Lori, Vashon, WA  
 Staab, Darek, Seattle, WA  
 Staley, Cheryle, Portland, OR  
 Stalker, Elizabeth, Tacoma, WA  
 Stanley, Christopher, Beaverton, OR  
 Stanley, Robin, Seattle, WA  
 Stanton, Winifred, Jacksonville, OR  
 Stark, Willy, Port Townsend, WA  
 Starzky, Patricia, Rogue River, OR  
 Stearns, Diane, Chelan, WA  
 Steele, Judith, Williams, OR  
 Steele, Nancy, Tacoma, WA  
 Steenson, John, Cheney, WA  
 Steffan, Lynn, Coos Bay, OR  
 Stein, TB, Port Townsend, WA  
 Stephenson, Ann, Lopez Island, WA  
 Stratton, Jackie, Portland, OR  
 Straub, Mary, Olympia, WA  
 Stromme, Mark, Seattle, WA  
 Stromquist, Mary Lee, Kent, WA  
 Stroud, Eric, Newberg, OR  
 Stuckwisch, Stephanie, Silverton, OR  
 Stumpf K, Christy, Pleasant Hill, OR  
 Sucher, Martha, Friday Harbor, WA  
 Suchert-Jacobson, Robin, Spokane Valley, WA  
 Suter, Alice, Everett, WA  
 Suver, Irene, Stanwood, WA  
 Sveen, Anne-Lise, Medford, OR  
 Swalla, Billie, Ashland, OR  
 Swanson, Kristy, Lake Forest Park, WA  
 Swinnerton, Mary, Seattle, WA  
 Taber, John, Olympia, WA  
 Tally, Linda, Corvallis, OR  
 Tantillo, Traci Ann, Seattle, WA  
 Tate, Kathleen, Seattle, WA  
 Tavernier, Anita, Corvallis, OR  
 Taylor, Aileen, Kent, WA  
 Taylor Albert, Kathy, Ellensburg, WA  
 Telnack, Jennifer, Beaverton, OR  
 Tennity, Pamela, Beaverton, OR  
 Terry, Carol, Portland, OR  
 Teverbaugh, Nina, University Place, WA  
 Thimot, Linda, Seattle, OR  
 Thirloway, Jeff, Shaw Island, WA  
 Thoe, Patricia, Eugene, OR  
 Thomas, Jack, Seattle, WA  
 Thompson, James, Milwaukie, OR  
 Thorpe, David, Portland, OR  
 Thorpe, J Elizabeth, Silver Lake, OR  
 Thorpe, Lawrence, Seattle, WA  
 Tibbets, Kathleen, Joyce, WA  
 Tice, Jennifer, Gaston, OR  
 Timberlake, Sandra, Northport, WA  
 Titlow, Denise, Seattle, WA  
 Tlustos, Margart, Forest Grove, OR  
 Tolbert, John, Vashon, WA  
 Toms-Trend, Zimya, Klamath Falls, OR

Torres, Tatjana, Winthrop, WA  
 Toteff, Sally, Redmond, WA  
 Trainer, Tricia, Klamath Falls, OR  
 Traphagen, Dake, Seattle, WA  
 Traweek, Sophia, Seattle, WA  
 Triggs, Edwin, Freeland, WA  
 Trivisonno, Tia, Olympia, WA  
 Trowbridge, Cynthia Powell, Port Townsend, WA  
 Tsindle, Clove, Seattle, WA  
 Turner, Fredrick, Spokane, WA  
 Turner, Lainie, Seattle, WA  
 Turner, Darlene, Seattle, WA  
 Turner, Jeanne, Hillsboro, OR  
 Turnoy, David, Bainbridge Island, WA  
 Twelves, Murry, Port Townsend, WA  
 Twisdale, March, Eugene, OR  
 Umali, Rodolfo, Portland, OR  
 Unangst, John, Portland, OR  
 Unno, Mark, Peshastin, WA  
 Urashan, , Port Angeles, WA  
 Vaillancourt, Janet, Portland, OR  
 Valentine, Bettylou, Poulsbo, WA  
 Valentine, Amy, Olympia, WA  
 Van Alstyne, Bernice, Port Orchard, WA  
 Van Der Veen, Mary, Poulsbo, WA  
 Van Farowe, Vonda , Philomath, OR  
 Van Riper, Michele, Yakima, WA  
 Van Schravendik, Marie, Rockport, WA  
 VanSandt, Steven, Portland, OR  
 Variel, Jeff, Ashland, OR  
 Vasquez, Pamela, Portland, OR  
 Velez, Martin, Portland, OR  
 Vermillion, Wendie R, Eugene, OR  
 Verschuyt, Sharon, Seattle, WA  
 Versteeg, Linda, Bend, OR  
 Viarengo, Claire, Olympia, WA  
 Vincent, N, Portland, OR  
 Vitells, Aaron, Seattle, WA  
 Vlastelicia, Jean, Brownsville, OR  
 Voeller, Estelle, Seattle, WA  
 Von Michalofski, Olaf, Olympia, WA  
 Von Stein, Jim, Ocean Shores, WA  
 Vossler, Susan, Kirkland, WA  
 Waddell C, Norman, Chemult, OR  
 Waite, Sue, Sherwood, OR  
 Wakefield, Ellen, Bothell, WA  
 Wakeley, Jean, Bellevue, OR  
 Wald, Ansel, Pullman, WA  
 WALD Customer, Leto Integrated Living, Beaverton, OR  
 Walker, John, Dryden, WA  
 Walkling, Nancy, Spokane, WA  
 Walkling, Lee, Albany, OR  
 Wallace, Terese, Florence, OR  
 Waller, Nancy, Portland, OR  
 Wallis, Peter, Eugene, OR  
 Walter, Kim, Seattle, WA  
 Walton, Catherine, Eastsound, WA  
 Walworth, Frieda, Eugene, OR  
 Wanerstrand, Ingela, Portland, OR  
 Ward, Rayner, Port Townsend, WA  
 Warehime, Stephen, Olympia, WA  
 Warner, Emily, Seattle, WA  
 Warnholtz, Albert, Nine Mile Falls, WA  
 Warnock, Alexis, Ashland, OR  
 Warren, Sheila, Lake Tapps, WA  
 Warren, Jean, Portland, OR  
 Way, Lucretia, Seattle, WA  
 Weatherill, Philip, Cottage Grove, OR  
 Weber, Helen, Seattle, WA  
 Webster, Theresa, Ashland, OR  
 Wechsler, Susan, Vancouver, WA  
 Weikal, Rita, Bend, OR  
 Weir, Joyce, Eugene, OR  
 Welch, Kathy, Issaquah, WA  
 Welch, Mary, Bend, OR  
 Weller, Mary, Seattle, WA  
 Wells, Rosemary, Portland, OR  
 Werner, Robin, Portland, OR  
 Wertheimer, Estelle, Seattle, WA  
 Wessels, Stephen, Pleasant Hill, OR  
 Wessler, M. Jenelyn, Philomath, OR  
 Wessler, Daniel, Cottage Grove, OR  
 West, Debra, Seattle, WA  
 Westley, Charlene, Portland, OR  
 Westover, Karen, Olympia, WA  
 Westphal, Jeff, Spokane, WA  
 Weyman, Ruth, Portland, OR  
 Wheeler, Diana, Elmira, OR  
 Whitehall, Christine, Langley, WA  
 Whiteneck, Coral, Bandon, OR

Wickham, Karen, Grants Pass, OR  
 Widenoja, Roger, Welches, OR  
 Wieden, Carolyn, Roslyn, WA  
 Wiegand, Allen, Seattle, WA  
 Wigger Desantis, Linda, Seattle, WA  
 Wilcox, Robin, Seattle, WA  
 Wilder, Samantha, Ashland, OR  
 Wilkins, Emily, Seattle, WA  
 Wilkinson, Pam, Blodgett, OR  
 Willallen, Mary, Ashland, OR  
 Williams, Curtis, Seattle, WA  
 Williams, Rebecca, Spokane Valley, WA  
 Williams, Pamela, Portland, OR  
 Williamson, Lorna, Eugene, OR  
 Wills, Diane, Portland, OR  
 Willson, Ann Marie, Portland, OR  
 Wilson, Megan, Bellevue, WA  
 Wilson, Robert, Portland, OR  
 Winds, Laura, Seattle, WA  
 Windsor, Genevieve, Seattle, WA  
 Winkes, Ben, Seattle, WA  
 Winn, Vicki, Medical Lake, WA  
 Winslett, Charlotte, Seattle, WA  
 Winslow, Joyce, Seattle, WA  
 Winsor, Robert, Portland, OR  
 Winther, Lucille, Olympia, WA  
 Wiseman, Michelle, Battle Ground, WA  
 Wishart, Bruce, Port Angeles, WA  
 Witteman, Gary, Portland, OR  
 Wolfe, Eiya, Tacoma, WA  
 Wolff, Carol, Seattle, WA  
 Wollman, Barbara, Portland, OR  
 Wolpin, David, Portland, OR  
 Wong, Yoshie, Yachats, OR  
 Wong, Suzanne, Ashland, OR  
 Wood, Morton, Langley, WA  
 Woodward, Lynn, Edmonds, WA  
 Woodward, Jennifer, Eugene, OR  
 Worden, Lori, Bellingham, WA  
 Worthington, Ben, Eugene, OR  
 Wright, Earl, Bothell, WA  
 Wright, Elaine, Pacific City, OR  
 Wright, Jocelyn, Seattle, WA  
 Wright, Richard, Portland, OR  
 Wyckoff, Richard, Camas, WA  
 Yager, David, Seattle, WA  
 Yarrow, Lisa, Portland, OR  
 Yates, Pamela, Olympia, WA  
 Yates, Mary, Portland, OR  
 Yeoman, Margaret, Seattle, WA  
 Yoshino, Marion, Hillsboro, OR  
 Young, Linda, Indianola, WA  
 Young Seidemann, Jenny, Olympia, WA  
 Zanger, Sheila, Eugene, OR  
 Zehava, Angela, Seattle, WA  
 Zeiler, Telle, Seattle, WA  
 Zia, Dana, Seattle, WA  
 Zimmerman, Melaine, Zillah, WA  
 Zingeser, Sylvia, Portland, OR  
 Zollinger, B, Seatac, WA

**APPENDIX A(iii)**

**PHONE CAMPAIGN  
LIST OF COMMENTERS UNDER LOG REG-028**

**Commenter Name**

Anonymous (30)	Metcalfe, Matt
Belia, Megan	Michaels, Christopher
Bell, Brooke	Moore, Margaret
Bowcutt, Frederica	Pemble, James
Bowden, Rich	Peno, Linda
Butter, Melanie	Peno, Linda
Cedar, Kim	Perish, Elaine
Chase, Pamela	Peterson, Dorothy
Citizen, Oregon	Poirier, Jean
Citizen, Concerned	Ray, Tonya
Clark, Ken	Ridhlein, Helga
Cox, David	Salus, Penny
Dubay, Jonathan	Sarlos, Charlotte
Estell, Betty	Smith, Shauna
Freeman, Paulie	Taylor, Ann
Gilson, Barbara	Tezz, Sally
Goldstein, Dr.	Thomas, Cathy
Grace, Diane	Thompson, Midlred
Gunderson, Cathy	Tracy, Nancy
Hazard, Rick	Trollin, Cliff
Hertzberg, Nancy	Vail, Barbara
Hilo, Percy	VanCleave, Douglas
Holomon, Alan	Wigger, Linda
Houston, Abigale	Wihtol, Jeff
Hoyt, Brian	Wolf, Esther
Hutton, Barb	Worster, Catherine
in, Anonymous-Participates	Yurgle, Dena
Iverson, Caroline	
Katzenbach, Ann	
Kingston, John	
Krist, Sandra	
Larson, Pamela	
Levine, Joan	
Lovett, Myra	
Maloney, Mimi	
Marian, Maya	
Mather, Betty	
McDebbit, Connie	
Melanie, William	