

Department of Energy

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

EXECUTIVE OFFICE

February 17, 2010

In reply refer to: D-7

To regional customers, stakeholders and other interested parties:

On June 10, 2009, we sent a letter to you concerning the plans of the Bonneville Power Administration (“BPA”) to respond to the remand from the United States Court of Appeals for the Ninth Circuit (the “Court”) in *Pacific Northwest Generating Cooperative v. United States Department of Energy*, 580 F.3d 792 (9th Cir. 2009) (“*PNGC I*”). By letter dated July 24, 2009, we notified you that in light of the circumstances then facing us “it would be prudent to delay issuing the draft record of decision until no earlier than 30 days after the mandate issues in *PNGC* or December 1, 2009.” However, on August 28, 2009, circumstances changed considerably when the Court issued its opinion in *Pacific Northwest Generating Cooperative v. BPA*, 580 F.3d 828 (9th Cir. 2009) (“*PNGC II*”). *PNGC II* invalidated an amended version of the provision found invalid in *PNGC I*; the amended provision would have governed the nine-month period ending September 30, 2009.

In so doing, the *PNGC II* opinion not only expanded the potential refund period that would be covered by any lookback, addressing costs arising from service to DSIs, but it also raised issues that may have to be considered in such a DSI remand process. On January 12, 2010, BPA sought panel rehearing of *PNGC II*, and on January 7, 2010, Alcoa Inc. sought panel rehearing and suggested rehearing *en banc*. Consequently, we now find ourselves much in the position we did on July 24, 2009. It would be prudent to delay issuing a draft record of decision regarding the remand until after the Court rules on the rehearing requests in *PNGC II*. This approach will avoid the possibility of having to re-open the DSI remand proceedings for yet another determination.

If you have additional questions about this issue, please call Jon Wright at (503) 230-7596 or Heidi Helwig of the Public Affairs Office at (503) 230-3458.

Sincerely,

/s/ Allen Burns

Allen Burns
Acting Deputy Administrator

