

signatories to the settlement agreement agree not to present evidence or argument that either rate should be higher than the existing rates.

The Partial Settlement Agreement recognizes the possibility that parties to the BP-12 rate proceeding that have not signed the Partial Settlement Agreement may object to the Settlement Proposal. If any party objects to the Settlement Proposal, BPA has the right to submit a revised proposal. If BPA submits a revised proposal, signatories to the Partial Settlement Agreement may contest any aspect of the revised proposal. If BPA does not revise the Settlement Proposal, and the Administrator establishes transmission rates consistent with the Settlement Proposal, the signatories may not challenge approval of the rates by the Commission or in any judicial forum.

#### B. Transmission Rates

BPA is proposing four different rates for the use of its Integrated Network segment, four different rates for use of intertie segments, and several other rates for various purposes.

The four rates for use of the Integrated Network segment are:

**Formula Power Transmission (FPT-12) rate**—The FPT rate is based on the cost of using specific types of facilities, including a distance component for the use of transmission lines, and is charged on a contract demand basis.

**Integration of Resources (IR-12) rate**—The IR rate is a postage stamp, contract demand rate for the use of the Integrated Network, similar to Point-to-Point (PTP) service.

**Network Integration Transmission (NT-12) rate**—The NT rate applies to customers taking network integration service under the Open Access Transmission Tariff (OATT) and allows customers to flexibly serve their retail load.

**Point-to-Point (PTP-12) rate**—The PTP rate is a contract demand rate that applies to customers taking point-to-point service on BPA's network facilities under the OATT. It provides customers with flexible service from identified Points of Receipt to identified Points of Delivery. There are separate PTP rates for: Long-term firm service; daily firm and non-firm service; and hourly firm and non-firm service.

In addition to the four rates for network use, other proposed transmission rates include the following:

The Southern Intertie (IS-12) and the Montana Intertie (IM-12) rates are contract demand rates that apply to customers taking point-to-point service under the OATT on the Southern

Intertie and Montana Intertie. These rates are structured similarly to the rate for point-to-point service on network facilities.

The Townsend-Garrison Transmission (TGT-12) and the Eastern Intertie (IE-12) rates are developed pursuant to the Montana Intertie agreement.

The Use-of-Facilities (UFT-12) rate establishes a formula for charging for the use of a specific facility based on the annual cost of that facility.

The Advance Funding (AF-12) rate allows Transmission Services to collect the capital and related costs of specific facilities through an advance-funding mechanism.

Other charges that may apply include: A Delivery Charge for the use of low-voltage delivery substations; a Power Factor Penalty Charge; a Reservation Fee for customers that postpone their service commencement dates; incremental rates for transmission requests that require new facilities; a penalty charge for failure to comply with dispatch, curtailment, redispatch, or load shedding orders; and an Unauthorized Increase Charge for customers that exceed their contracted amounts.

#### C. Ancillary Services Rates

In this **Federal Register** notice BPA is proposing rates for two ancillary services: Scheduling, System Control, and Dispatch Service, and Reactive Supply and Voltage Control from Generation Sources Service.

### 3. Changes to Transmission Rates and Rate Schedules

#### a. Network Integration Transmission (NT-12) rate

The NT rate applies to customers taking network integration service under the OATT and allows customers to flexibly serve their retail load. Transmission Services is proposing to delete CSL and add a Short Distance Discount (SDD) to the NT rate, applied to the NT Base Charge. The SDD would apply when a Customer has a resource that: (i) Is designated as a Network Resource in the customer's NT Service Agreement for at least 12 months; and (ii) uses FCRTS facilities for less than 75 circuit miles for delivery to the Customer's Network Load. A designated network resource that is a system sale (the designated resource is not associated with a specific generating resource) would not qualify for the SDD. Additionally, any designated resource that is eligible for the SDD must be noted as such in the NT Service Agreement to receive the billing credit.

#### b. Failure To Comply Penalty Charge

BPA proposes to change the rate for the Failure to Comply Penalty Charge from 1000 mills per kilowatthour to the greater of 500 mills per kilowatthour or 150% of an hourly energy index in the Pacific Northwest.

#### c. Integration of Resources (IR-12)—Ratchet Demand Relief

BPA proposes to add language to the section on Ratchet Demand Relief providing that relief from the Ratchet Demand is not available in the month in which the Ratchet Demand was established. For that month, the customer will be assessed charges based upon the highest hourly Scheduled Demand Billing Factor.

#### d. Changes to Definitions

BPA proposes to modify the definitions of *Dynamic Schedule*, *Dynamic Transfer*, *Daily Service*, *Monthly Service*, and *Weekly Service*.

### Part V—Proposed 2012 Rate Schedules

BPA's proposed 2012 Transmission Rate Schedules are a part of this notice and are available for viewing and downloading on BPA's Web site at <http://www.bpa.gov/corporate/ratecase/2012/>. Copies of the proposed rate schedules also are available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE 11th Avenue, Portland, OR 97232.

Issued this 7th day of December, 2010.

**Stephen J. Wright,**

*Administrator and Chief Executive Officer.*

[FR Doc. 2010-31621 Filed 12-15-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

[BPA File No.: REP-12]

#### Proposed Residential Exchange Program Settlement Agreement Proceeding (REP-12); Public Hearing and Opportunities for Public Review and Comment

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of Residential Exchange Program Settlement Agreement Proceeding (REP-12).

**SUMMARY:** BPA is conducting the 2012 Residential Exchange Program Settlement Agreement Proceeding (REP-12) to review the terms and conditions of a proposed 17-year settlement of issues regarding the implementation of

the Residential Exchange Program (REP). The REP is a statutory power exchange program established by section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). The proposed settlement under review is the 2012 REP Settlement Agreement (2012 REP Settlement). If adopted, BPA will include in its power rates for FY 2012–2028 the REP benefits stated in the proposed 2012 REP Settlement.

In addition to reviewing the terms of the proposed 2012 REP Settlement, BPA's REP–12 initial proposal will describe BPA's proposed implementation of the REP for its FY 2012–2013 rates in the event the 2012 REP Settlement is not adopted. The REP–12 initial proposal will include studies and testimony supporting BPA's proposed implementation of the section 7(b)(2) rate test for the FY 2012–2013 rate period, the section 7(b)(3) surcharge allocation, Average System Cost (ASC) forecasts, and the amount of refunds to be provided to BPA customers overcharged during the FY 2002–2006 rate period, (*i.e.*, Lookback repayments). If, at the conclusion of the REP–12 proceeding the Administrator decides not to adopt the 2012 REP Settlement, BPA will incorporate into the BP–12 rate proceeding the studies, testimony, and documentation associated with the section 7(b)(2) rate test, the section 7(b)(3) surcharge allocation, ASC forecasts, and Lookback repayment and use such studies and documentation in establishing the BP–12 rates.

**DATES:** Anyone wishing to become a party to the REP–12 proceeding must provide written notice, via U.S. Mail or electronic mail, which must be received by BPA no later than 3 p.m. on December 23, 2010.

The REP–12 proceeding begins with a prehearing conference at 9:00 a.m. on December 17, 2010, in the BPA Rates Hearing Room, 2nd Floor, 911 NE 11th Avenue, Portland, Oregon 97232.

**ADDRESSES:** 1. Petitions to intervene should be directed to: Hearing Clerk—L–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232, or may be e-mailed to [rateclerk@bpa.gov](mailto:rateclerk@bpa.gov). In addition, copies of the petition must be served concurrently on BPA's General Counsel and directed to Mr. Kurt R. Casad, Office of General Counsel, 905 NE 11th Avenue, Portland, Oregon 97232, or via e-mail to [krcasad@bpa.gov](mailto:krcasad@bpa.gov) (*see* section III.A. for more information regarding interventions).

2. Written comments by participants should be submitted to the Public

Engagement Office, DKE–7, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. Participants may also submit comments by e-mail at: <http://www.bpa.gov/comment>. BPA requests that all comments and documents intended to be part of the Official Record in this rate proceeding contain the designation REP–12 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Heidi Y. Helwig, DKC–7, Public Affairs Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll free at 1–800–622–4520; or via e-mail to [hyhelwig@bpa.gov](mailto:hyhelwig@bpa.gov).

*Responsible Official:* Mr. Raymond D. Bliven, Power Rates Manager, is the official responsible for the development of BPA's power rates.

#### SUPPLEMENTARY INFORMATION:

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Part VI. Proposed 2012 REP Settlement Agreement

#### Part I. Introduction

BPA is conducting an evidentiary hearing, Docket No. REP–12, to review the terms and conditions of a proposed 17-year settlement of issues regarding the implementation of the Residential Exchange Program (REP). The REP is a statutory power exchange program established by section 5(c) of the Northwest Power Act (Act). *See* 16 U.S.C. 839c(c). The proposed settlement under review, the 2012 REP Settlement, reflects the efforts of a broad group of regional parties to resolve litigation over BPA's implementation of the REP through a legally sustainable and equitable settlement agreement. If adopted by the Administrator, BPA will include in its power rates for FY 2012–2028 the REP benefits stated in the proposed 2012 REP Settlement.

In addition to reviewing the terms of the proposed 2012 REP Settlement, BPA's REP–12 initial proposal will describe BPA's proposed implementation of the REP for its FY 2012–2013 rates in the event the 2012 REP Settlement is not adopted. The REP–12 initial proposal will include studies and testimony supporting BPA's proposed implementation of the section 7(b)(2) rate test, the section 7(b)(3) surcharge allocation, ASC forecasts, and Lookback repayments for the FY 2012–2013 rate period. Any party wishing to

contest BPA's proposed implementation of the section 7(b)(2) rate test, allocation of section 7(b)(3) surcharge amounts, development of the ASC forecasts, or determination of Lookback refund amounts must raise such arguments in the REP–12 proceeding. At the same time BPA is reviewing the proposed 2012 REP Settlement in the REP–12 proceeding, BPA is separately conducting a BP–12 rate proceeding to establish power rates for FY 2012–2013. If, at the conclusion of the REP–12 proceeding, the Administrator decides not to adopt the 2012 REP Settlement, BPA will incorporate into the BP–12 rate proceeding the studies, testimony, and documentation associated with the section 7(b)(2) rate test, the section 7(b)(3) surcharge allocation, ASC forecasts, and Lookback repayment, and use such studies and documentation in establishing the BP–12 rates.

#### Part II. Procedures and Scope of Hearing

##### A. Procedures Governing the REP–12 Proceeding

Because the proposed 2012 REP Settlement includes features that are directly related to BPA's rates and ratemaking, the proposed Settlement will be evaluated under the procedural terms of section 7(i) of the Act, 16 U.S.C. 839e(i). These procedures include, among other things: Publication of a notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; public opportunity to provide both oral and written views related to the proposed rates; opportunity to offer refutation or rebuttal of submitted material; and a decision by the Administrator based on the record. This REP–12 proceeding is governed by § 1010 of BPA's Rules of Procedure Governing Rate Hearings, 51 FR 7611 (1986) (BPA Hearing Procedures). These procedures implement the statutory section 7(i) requirements.

Section 1010.7 of BPA's Hearing Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any communications with BPA and/or DOE personnel regarding BPA's rate proceeding by other Executive Branch agencies, Congress, existing or potential BPA customers (including Tribes), and nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The general rule does not apply to communications relating to: (1)

Matters of procedure only (the status of the rate proceeding, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters for which BPA is responsible under statutes other than the ratemaking provisions; or (5) matters which all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final Record of Decision (ROD) is issued.

The Flood Control Act of 1944, 16 U.S.C. 825s, the Federal Columbia River Transmission System Act, 16 U.S.C. 838, and the Northwest Power Act, 16 U.S.C. 839, provide guidance regarding BPA ratemaking. The Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of acquiring, conserving and transmitting electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable period of years, and certain other costs and expenses incurred by the Administrator.

BPA's proposal, study documentation, and the proposed 2012 REP Settlement will be available for examination beginning December 17, 2010, on BPA's Web site at <http://www.bpa.gov/corporate/ratecase/2012/rep-12.cfm>. Hard copies of these documents will be available beginning December 17, 2010, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th Avenue, Portland, Oregon.

A formal evidentiary rate hearing will be conducted that is open to rate proceeding parties. Interested parties that previously intervened in BPA's BP-12 rate proceeding must also file petitions to intervene in order to take part in the REP-12 formal hearing. A proposed schedule for the REP-12 proceeding is stated below. A Hearing Officer will establish a final schedule at the prehearing conference.

Intervention Deadline .....	December 23.
Prehearing/BPA Direct Case	December 17.
Clarification .....	January 4-7.
Motions to Strike .....	January 11.
Data Request Deadline .....	January 11.
Answers to Motions to Strike	January 18.
Data Response Deadline .....	January 18.
Parties File Direct Case .....	February 8.
Clarification .....	February 14-15.
Motions to Strike .....	February 22.
Data Request Deadline .....	February 22.
Answers to Motions to Strike	March 1.
Data Response Deadline .....	March 1.
Close of Participant Comments.	March 8.

Litigants File Rebuttal .....	March 8.
Clarification .....	March 14-15.
Motions to Strike .....	March 17.
Data Request Deadline .....	March 17.
Answers to Motions to Strike	March 25.
Data Response Deadline .....	March 25.
Cross-Examination .....	March 28-April 1.
Initial Briefs Filed .....	April 25.
Oral Argument .....	May 12.
Draft ROD Issued .....	May 23.
Briefs on Exceptions .....	June 6.
Final ROD—Final Studies .....	June 27.

No field hearings will be conducted in this proceeding.

**B. Scope of the REP-12 Proceeding**

This section provides guidance to the Hearing Officer regarding the matters within the scope of the REP-12 proceeding and the matters not within the scope of this proceeding.

**1. Matters Within the Scope of This Proceeding**

**a. Proposed 2012 REP Settlement**

All issues related to BPA's analysis, methodology, or review of the proposed 2012 REP Settlement, including any issues related to the models developed by BPA to evaluate the 2012 REP Settlement, are expressly within the scope of this proceeding. Parties wishing to challenge any aspect of the proposed 2012 REP Settlement, including but not limited to any term of the proposed Settlement or whether BPA should adopt the Settlement, must raise such arguments in this proceeding.

**b. Section 7(b)(2) Rate Test Implementation**

All issues related to BPA's implementation, interpretation, and forecast of the section 7(b)(2) rate test are within the scope of this proceeding. Parties wishing to challenge any aspect of the implementation of the section 7(b)(2) rate test for either the 2012 REP Settlement implementation period (FY 2012-2028) or the BP-12 rate period (FY 2012-2013) must raise such arguments in this proceeding.

**c. Section 7(b)(3) Surcharge Implementation**

All issues related to BPA's implementation, interpretation, and forecast of the section 7(b)(3) reallocations or surcharges are within the scope of this proceeding. Parties wishing to challenge any aspect of the implementation of section 7(b)(3) for either the 2012 REP Settlement implementation period (FY 2012-2028) or the BP-12 rate period (FY 2012-2013) must raise such arguments in this proceeding.

**d. Lookback Assumptions**

All issues related to BPA's implementation, determination, recovery, and repayment of Lookback Amounts are within the scope of this proceeding. Parties wishing to challenge any aspect of BPA's Lookback recovery or repayment for either the 2012 REP Settlement implementation period (FY 2012-2028) or the BP-12 rate period (FY 2012-2013) must raise such arguments in this proceeding.

**e. ASC Forecasts**

Except as provided below in section II.B.2.h, all issues related to BPA's forecast of utilities' ASCs for the BP-12 rate test period (FY 2014-2017) and the 2012 REP Settlement implementation period (FY 2012-2028) are within the scope of this proceeding. Parties wishing to challenge any aspect of BPA's ASC forecasts for these periods must raise their arguments in this proceeding. Challenges to the ASCs determined in the Draft and Final ASC reports for FY 2012-2013 are expressly excluded from the scope of this proceeding. See Section II.B.2.h.

**2. Matters Not Within the Scope of This Proceeding**

**a. BP-12 Rate Proceeding Issues**

As noted above, BPA is conducting a rate proceeding to establish wholesale power and transmission rates for FY 2012-2013 (BP-12) at the same time BPA is conducting the REP-12 proceeding. Although some of the information developed in the BP-12 rate proceeding will be used in the models in the REP-12 proceeding, parties may not raise arguments or issues with such data in the REP-12 proceeding. Instead, such arguments or issues should be raised in the BP-12 rate proceeding if and to the extent such issues are within the scope of that proceeding. Pursuant to section 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of any issue being addressed in the BP-12 rate proceeding.

**b. Program Cost Estimates**

BPA began its 2010 Integrated Program Review (IPR) process in May 2010. The IPR process is designed to allow people interested in BPA's program levels an opportunity to review and comment on all of BPA's expense and capital spending level estimates in the same forum prior to the use of those estimates in setting rates. Concurrent with the IPR, BPA held regional

conversations about risk mitigation and debt management practices.

The 2010 IPR focused on FY 2012 and 2013 program levels for BPA's Power Services and Transmission Services as well as a review of FY 2011 program levels. BPA held 19 technical workshops and two general manager meetings at which proposed spending levels were presented for each of BPA's programs. BPA carefully reviewed and considered the 26 written comments and numerous oral comments on FY 2012 and 2013 program levels that were provided during this public process.

On October 27, 2010, BPA issued a Final Close-Out Letter and accompanying final report for the IPR, which summarizes the comments received and outlines BPA's responses. The report also summarizes comments and BPA's responses on the regional conversations about risk mitigation and debt management. In the Final Close-Out Letter and report, BPA established the program level cost estimates for both power and transmission rates that are used in the BP-12 and REP-12 Initial Proposals. BPA does not anticipate additional public review of proposed spending levels. However, an abbreviated IPR process may be held if conditions warrant. BPA would conduct this process separately from the REP-12 and BP-12 proceedings to share updates and solicit feedback from customers and constituents before the final program levels are incorporated into BPA's final rates. BPA's spending levels for investments and expenses are not determined or subject to review in the REP-12 or BP-12 proceedings.

Pursuant to section 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any manner to address the appropriateness or reasonableness of the Administrator's decisions on cost and spending levels. If and to the extent that any re-examination of spending levels is necessary, such re-examination will occur outside of the REP-12 and BP-12 proceedings. This exclusion does not extend to portions of BPA's revenue requirements related to REP benefits, Lookback payments, or interest on Lookback payments. The Administrator also directs the Hearing Officer to exclude argument and evidence regarding BPA's debt management practices and policies.

#### c. Regional Dialogue Policy Decisions

BPA's Subscription contracts expire on September 30, 2011, at the end of the current rate period. BPA previously engaged customers and interested

stakeholders in an extensive Regional Dialogue process that led to new power sales contracts. BPA issued its Long-Term Regional Dialogue Final Policy and ROD on July 19, 2007; its Long-Term Regional Dialogue Contract Policy and ROD on October 31, 2008; the Tiered Rate Methodology and ROD on November 10, 2008; and the Tiered Rate Methodology Supplemental ROD on September 2, 2009. On or about December 1, 2008, BPA and its customers signed new power sales contracts under which the customers will purchase Federal power for the FY 2012–2028 period. Several aspects of the Regional Dialogue process are still ongoing, such as establishing customer contract high water marks and contract demand quantities, and these processes and decisions are outside the scope of the REP-12 proceeding.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of BPA's decisions made in the Long-Term Regional Dialogue Final Policy ROD, Long-Term Regional Dialogue Contract Policy ROD, the Tiered Rate Methodology ROD, and the Tiered Rate Methodology Supplemental ROD.

#### d. Tiered Rate Methodology (TRM)

BPA previously established the TRM in a section 7(i) rate hearing. The issues being examined in the REP-12 proceeding are not governed by the TRM. Modifications to the TRM are not within the scope of this proceeding. Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to propose to revise the TRM developed by BPA.

#### e. Service to the Direct Service Industries (DSIs)

The manner and method by which BPA could provide service or financial payments to its DSI customers were evaluated in *Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration*, 580 F.3d 792 (9th Cir. 2008) (*PNGC I*) and *Pacific Northwest Generating Cooperative, et al., v. Bonneville Power Administration*, 590 F.3d 1065 (9th Cir. 2010) (*PNGC II*). In BPA's BP-12 rate proceeding, BPA has assumed that it will continue to serve Alcoa, Inc. (Alcoa) as well as Port Townsend Paper Corporation (Port Townsend) during FY 2012–2013. BPA's decisions to serve the

DSIs, along with the method and level of service to be provided DSIs in the FY 2012–2013 rate period, will not be determined in this proceeding.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to revisit the appropriateness or reasonableness of BPA's decisions regarding the service to the DSIs, including BPA's decision to offer a contract and the method or level of such service.

#### f. Potential Environmental Impacts

Environmental impacts are addressed in a concurrent National Environmental Policy Act (NEPA) process. Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the potential environmental impacts of the rates being developed in this rate proceeding.

#### g. Average System Cost Methodology

Section 5(c) of the Northwest Power Act established the REP, which provides benefits to residential and small-farm consumers of Pacific Northwest utilities based, in part, on a utility's "average system cost" (ASC) of resources. Section 5(c)(7) of the Act requires the Administrator to consult with regional interests to develop an ASC Methodology (ASCM). BPA uses the ASCM to calculate utilities' ASCs. On September 4, 2009, the Federal Energy Regulatory Commission (Commission) granted final approval of BPA's 2008 ASCM. The 2008 ASCM is not subject to challenge or review in a section 7(i) proceeding.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of the 2008 ASCM.

#### h. Average System Cost Review Processes

To receive REP benefits for FY 2012–2013, utilities must file proposed ASCs with BPA pursuant to the terms and conditions of the 2008 ASCM. These filings are reviewed by BPA staff and other interested parties in ASC review processes, which are separate administrative proceedings conducted by BPA under the terms of the 2008 ASCM. In the review processes, BPA staff and other parties evaluate the ASCs

filed by participating utilities for conformance with the requirements of the 2008 ASCM. At the conclusion of the processes, BPA issues ASC Reports, which formally establish the utilities' ASCs for the Exchange Period, which coincides with BPA's rate period.

On June 1, 2010, ten utilities filed proposed ASCs with BPA for FY 2012–2013. One utility subsequently withdrew its ASC filing. BPA staff and other parties are currently reviewing the remaining nine filings in the ASC review processes. Once these ASC review processes are complete, and BPA has issued final ASC Reports, BPA will incorporate the final ASCs into the administrative record of the REP–12 proceeding. Although these ASC determinations provide important information for setting BPA's rates, they are not made in section 7(i) hearings. Parties intending to challenge BPA's draft or final ASC determinations for FY 2012–2013 must raise such issues in the ASC review processes according to the procedures established in the 2008 ASCM.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address BPA's draft or final ASC determinations for FY 2012–2013.

**i. Contract High Water Mark (CHWM) Process**

Under the Tiered Rate Methodology (TRM), BPA will establish both CHWMs and FY 2012–2013 Rate Period High Water Mark (RHWMs) for public agency customers that signed contracts for firm requirements power service at tiered rates, referred to as CHWM contracts. The CHWMs and RHWMs will be established in the CHWM Process, which will occur mainly in Spring 2011. In this process, BPA will establish the maximum planned amount of power a customer is eligible to purchase at Tier 1 rates during the rate period. The CHWM Process provides customers an opportunity to review, comment, and, if necessary, challenge BPA's determinations regarding certain CHWM and RHWM determinations.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address BPA's determination of a customer's CHWM or FY 2012–2013 RHWM.

**C. The National Environmental Policy Act**

BPA is in the process of assessing the potential environmental effects that could result from implementation of the proposed 2012 REP Settlement, consistent with NEPA requirements. BPA is reviewing this proposal for consistency with BPA's Business Plan Environmental Impact Statement (Business Plan EIS), completed in June 1995 (DOE/EIS–0183). This policy-level EIS evaluates the environmental impacts of a range of business plan alternatives for BPA and is intended to support a wide range of subsequent BPA business-related decisions. In the Record of Decision for the Business Plan ROD (Business Plan ROD, August 1995), the BPA Administrator adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts.

In April 2007, BPA completed a Supplement Analysis confirming the Business Plan EIS's environmental analysis in light of current regional conditions and BPA's current business practices. The Business Plan EIS and ROD thus continue to provide a sound basis for making determinations under NEPA concerning BPA's business-related decisions.

BPA will document its environmental evaluation for the proposed 2012 REP Settlement as part of the Administrator's Record of Decision that will be prepared for this proposal. During the public review and comment period for the proposed 2012 REP Settlement, persons interested in submitting comments regarding its potential environmental effects may do so by submitting comments to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE. 11th Avenue, Portland, OR 97232. Any such comments received by the Close of Participant Comments deadline identified in Part II.A will be considered by BPA's NEPA compliance staff in the NEPA evaluation that will be prepared for this proposal.

**Part III. Public Participation in REP–12**

**A. Distinguishing Between “Participants” and “Parties”**

BPA distinguishes between “participants in” and “parties to” the hearings. Apart from the formal hearing process, BPA will receive written

comments, views, opinions, and information from “participants,” who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. BPA customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Members or employees of organizations that have intervened in the rate proceeding may submit general comments as participants but may not use the comment procedures to address specific issues raised by their intervenor organizations.

Written comments by participants will be included in the record if they are received by March 8, 2011. Written views, supporting information, questions, and arguments should be submitted to the address listed in the **ADDRESSES** section of this Notice.

Entities or individuals become parties to the proceeding by filing petitions to intervene, which must state the name and address of the entity or person requesting party status and the entity's or person's interest in the hearing. BPA's customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with BPA's Hearing Procedures. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Hearing Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. The time limit for opposing a timely intervention will be established at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. All petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and received by BPA within two days after service of the petition.

**B. Developing the Record**

The hearing record will include, among other things, the transcripts of the hearing, written evidence and argument entered into the record by BPA and the parties, written comments

from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will then review the record and certify the record to the Administrator.

The Administrator will develop the Final ROD in the REP-12 proceeding based on the record and such other materials and information as may have been submitted to or developed by the Administrator. The Administrator will serve copies of the Final ROD on all parties. BPA will incorporate the Administrator's final decision in this proceeding into its BP-12 Final Rate Proposal.

#### Part IV. Background of REP Litigation

##### A. Background on the REP

###### 1. Section 5(c) of the Northwest Power Act

As noted previously, section 5(c) of the Northwest Power Act established the REP. 16 U.S.C. 839c(c)(1). Under the REP, any Pacific Northwest utility may sell power to BPA at the utility's ASC. A utility's ASC is determined in accordance with an ASC Methodology that BPA develops pursuant to the requirements in the Act. In calculating a utility's ASC, section 5(c)(7) of the Act mandates that BPA exclude from ASC the cost of resources in an amount sufficient to serve a new large single load (NLSL), the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of the Act, and any costs of any generating facility which is terminated prior to initial commercial operation. 16 U.S.C. 839c(c)(7)(A)-(C).

When a utility offers to sell its power to BPA at its ASC, BPA must purchase such power and, in return, sell an equivalent amount of power to the utility at BPA's rate for purchases under the REP, known as the "PF Exchange rate." The PF Exchange rate is developed in accordance with section 7 of the Northwest Power Act. The amount of power that is bought and sold under the REP is equal to the utility's qualified residential and small farm load (exchange load). Because the purchase and sale between BPA and the utility involves the same amount of power and is simultaneous, in almost all instances no actual power is bought or sold under the REP. Instead, the REP is generally implemented as a paper transaction where the net difference between the utility's ASC and BPA's PF Exchange rate is multiplied by the utility's exchange load and converted into a cash payment to the utility. The utility is required by law to pass these payments onto its residential and small

farm consumers. 16 U.S.C. 839c(c)(3). The REP is implemented through a Residential Purchase and Sale Agreement (RPSA) executed by BPA and the utility. The REP is intended to provide regional residential and small farm consumers a form of access to the power produced by the FCRPS. Although intended primarily for the benefit of consumers located in investor-owned utilities' (IOUs) service areas, any utility within the region may participate.

###### 2. Section 7(b)(2) of the Northwest Power Act and the PF Exchange Rate

The PF Exchange rate is the rate at which BPA "sells" power to utilities participating in the REP. Section 7 of the Act prescribes the manner in which this rate is set. Under section 7(b)(1), BPA establishes the PF Exchange rate in much the same way BPA develops its PF Public rate. *See* 16 U.S.C. 839e(b)(1). Section 7(b)(2) of the Act, however, requires BPA to perform a "rate test" to determine whether the PF Public rate charged to BPA's consumer-owned utility customers (COUs) under the Act would be greater than a rate developed under five specific assumptions stated in section 7(b)(2). These five assumptions are:

(A) The [COUs'] general requirements had included during such five-year period the direct service industrial customer loads which are (i) served by the Administrator, and (ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

(B) [the COUs] were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of December 5, 1980 (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A) of this paragraph;

(C) No purchases or sales by the Administrator as provided in [section 5(c)] of this section were made during such five-year period;

(D) All resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B) of this paragraph) were (i) purchased from such customers by the Administrator pursuant to section 839d of this title, or (ii) not committed to load pursuant to section 839c(b) of this section and were the least expensive resources owned or

purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) The quantifiable monetary savings, during such five-year period, to public body, cooperative and Federal agency customers resulting from (i) reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D) of this paragraph, and (ii) reserve benefits as a result of the Administrator's actions under this chapter were not achieved.

If BPA's proposed rates developed under section 7(b)(1) are greater than the rates calculated under the section 7(b)(2) assumptions, BPA must reduce the costs included in the 7(b)(1) rate charged to COUs by assessing a surcharge pursuant to section 7(b)(3) to "all other power sold by the Administrator to all customers." 16 U.S.C. 839e(b)(3). One of the rates assessed this surcharge is the PF Exchange rate. Application of the 7(b)(3) surcharge to the PF Exchange rate has the effect of increasing the level of the PF Exchange rate and reducing the amount of REP benefits paid by COUs in their PF Public rates.

##### B. History of the REP

The history of BPA's implementation of the REP is marked by controversy and litigation. Shortly after the passage of the Northwest Power Act in 1980, BPA and regional parties negotiated the terms of BPA's first ASC Methodology (1981 ASC Methodology) and the provisions of 20-year RPSAs that would be used to implement the REP. After three years of experience under the 1981 ASC Methodology, BPA's DSI and COU customers requested that a consultation process be held to consider revisions to the 1981 ASC Methodology. BPA granted the requests and commenced a consultation process in 1983. In the consultation, BPA determined that the source of data used in the 1981 ASC Methodology did not include sufficient detail to ensure that BPA was excluding terminated plant costs as required by section 5(c)(7) of the Northwest Power Act. Consequently, BPA proposed to revise the ASC Methodology by expanding the procedures used to review ASCs and excluding certain costs that BPA determined were too difficult to accurately monitor. The revised ASC Methodology was completed in 1984 and received approval from the Commission shortly thereafter.

BPA's IOU customers vigorously opposed the changes to the 1981 ASC Methodology. Eight IOUs and four State regulatory agencies filed petitions with the United States Court of Appeals for the Ninth Circuit challenging the Commission's final approval of the revised ASC Methodology (1984 ASC Methodology). See *PacifiCorp v. FERC*, 795 F.2d 816 (9th Cir. 1986) (*PacifiCorp*). In *PacifiCorp*, the Court affirmed the Commission's approval and BPA's decision to adopt the 1984 ASC Methodology. *Id.* Even though the 1984 ASC Methodology was sustained by the Court, litigation continued over BPA's implementation of the ASC Methodology. Dozens of BPA's ASC determinations were contested before the Commission, several of which were ultimately resolved by the Court. See *Wash. Util. & Transp. Comm'n v. FERC*, 26 F.3d 935 (9th Cir. 1994); *CP Nat. Corp. v. Bonneville Power Admin.*, 928 F.2d 905 (9th Cir. 1991).

Due to the burdensome, expensive and contentious nature of implementing the 1984 ASC Methodology, BPA and regional exchanging utilities began negotiating settlements of the implementation of the REP. Throughout the late 1980s and into the 1990s, BPA and regional exchanging utilities entered into multiple REP settlements. By the late 1990s, BPA and five of the six exchanging IOUs executed REP settlement agreements that resolved the implementation of the REP until June 30, 2001.

### C. The 2000 REP Settlement Agreements

In early 1996, the governors of Idaho, Montana, Oregon and Washington convened the Comprehensive Review of the Northwest Energy System. The goal of the review was to develop recommendations for changes in the region's electric utility industry, focusing on BPA, through an open public process involving a broad cross-section of regional interests. In December 1996, after over a year of intense study, the Comprehensive Review Steering Committee released its Final Report. The Final Report proposed a subscription system for purchasing specified amounts of power from BPA at cost with incentives for customers to take longer-term subscriptions (Subscription). In connection with its Subscription proposal, the Steering Committee encouraged BPA and other parties in the region to explore a settlement of the REP with the region's IOUs for the FY 2002–2011 period.

In response to the Steering Committee's recommendation, BPA and regional IOUs developed the 2000 Residential Exchange Program

Settlement Agreements (2000 REP Settlement Agreements). Under the 2000 REP Settlement Agreements, the IOUs agreed to forgo their participation in the traditional REP for a period of ten years (FY 2002–2011) in return for certain payments and deliveries of firm power from BPA. To recover the costs of the 2000 REP Settlement Agreements for the FY 2002–2006 rate period, BPA proposed in its WP–02 Wholesale Power Rate Proceeding to allocate a significant portion of the costs of the 2000 REP Settlement Agreements to the rates charged to COUs.

### D. Challenges to the 2000 REP Settlements: The Ninth Circuit's Decisions in *Portland General Electric v. BPA*, *Golden Northwest Aluminum v. BPA*, and *Snohomish PUD v. BPA*

In January of 2001, certain parties filed petitions with the Ninth Circuit challenging BPA's statutory authority to implement the REP through the 2000 REP Settlement Agreements. In September of 2003, following final Commission confirmation and approval of BPA's WP–02 rates, parties also filed challenges to BPA's decision to recover the costs of the 2000 REP Settlement Agreements from the PF rates without BPA's traditional manner of implementing the 7(b)(2) rate test.

While these challenges were pending before the Court, BPA commenced a new rate proceeding, the 2007 Wholesale Power Rate Proceeding, to establish rates for the FY 2007–2009 period (WP–07 rates). In the WP–07 rates, BPA again allocated a significant portion of the costs of the 2000 REP Settlement Agreements to the PF rates. The WP–07 rates were filed with the Commission on July 28, 2006, and received interim approval from the Commission on September 21, 2006.

On May 3, 2007, before final Commission approval of BPA's WP–07 rates, the Court issued two decisions in the pending challenges to the 2000 REP Settlement Agreements and the then-expired WP–02 rates. In *Portland General Electric v. Bonneville Power Admin.*, 501 F.3d 1009 (9th Cir. 2007) (*PGE*), the Court found that BPA had exceeded its settlement authority when it entered into the 2000 REP Settlement Agreements. 501 F.3d at 1037. In a companion case, *Golden Northwest Aluminum v. Bonneville Power Admin.*, 501 F.3d 1037 (9th Cir. 2007) (*Golden NW*), the Court also held that BPA had improperly allocated the cost of the 2000 REP Settlement Agreements to rates charged to the COUs in violation of section 7(b)(2). 501 F.3d at 1048. The Court then remanded the WP–02 rates to BPA with the instruction to “set rates in

accordance with this opinion.” *Id.* at 1053.

After issuing the *PGE* and *Golden NW* decisions, the Court also reviewed challenges to certain amendments to the 2000 REP Settlement Agreements signed in 2004. See *Pub. Util. Dist. No. 1 of Snohomish County, Wa. v. Bonneville Power Admin.*, 506 F.3d 1145 (9th Cir. 2007) (*Snohomish*). In *Snohomish*, the Court remanded the 2004 amendments to the 2000 REP Settlement Agreements and a “Reduction of Risk” provision amended by the 2004 amendments to BPA. *Id.* at 1154. The Court explained that it was remanding these amendments to BPA in order to permit BPA to determine “in the first instance” whether these amendments remained valid in light of the Court's opinions in *PGE* and *Golden NW*. *Id.*

### E. BPA's Response to *PGE*, *Golden NW*, and *Snohomish*: The WP–07 Supplemental Hearing and the Development of the 2008 RPSAs

Following the issuance of the *PGE*, *Golden NW*, and *Snohomish* decisions, BPA ceased making payments under the 2000 REP Settlement Agreements. Thereafter, BPA commenced a series of public meetings to discuss with interested parties BPA's response to the Court's opinions. At the conclusion of these meetings, BPA announced that it was commencing a section 7(i) process to determine whether and to what extent the 2000 REP Settlement Agreements caused illegal costs to be included in rates charged to the COUs. This proceeding, referred to as the WP–07 Supplemental Rate Hearing, began in February of 2008. In the WP–07 Supplemental Rate Hearing, BPA proposed to revise its prospective WP–07 rates for FY 2009 (the third year of the rate period), replacing the costs of the 2000 REP Settlement Agreements with REP benefits calculated in accordance with sections 5(c) and 7(b)(2) of the Northwest Power Act. In addition, BPA proposed to perform an analysis, referred to as the “Lookback,” to determine whether BPA had overcharged the COUs during the WP–02 rate period (*i.e.*, FY 2002–2006) and the first two years of the WP–07 rate period (*i.e.*, FY 2007–2008). The Lookback compared the payments the IOUs received or would have received under the 2000 REP Settlement Agreements with the amount of REP benefits the IOUs would have received under a traditional implementation of the REP pursuant to sections 5(c) and 7(b) of the Northwest Power Act. For those IOUs that received more in REP benefits under the 2000 REP Settlement Agreements than allowed by sections

5(c) and 7(b)(2) of the Act, BPA assessed a refund obligation known as a "Lookback Amount." BPA proposed to collect the Lookback Amounts from the IOUs by withholding future benefits owed to the IOUs under the REP and issuing refunds to the injured COUs.

At the conclusion of the WP-07 Supplemental Hearing in September of 2008, BPA presented its final findings in the WP-07 Supplemental Record of Decision (WP-07 Supplemental ROD). In the WP-07 Supplemental ROD, BPA determined that the COUs had been overcharged by approximately \$1 billion during the FY 2002-2008 period. BPA proposed to return these overcharges to the injured COUs with an initial lump-sum cash payment in 2008 and then through future reductions in REP benefit payments to the applicable IOUs.

In addition to determining the refunds and overcharges caused by the 2000 REP Settlement Agreements, the WP-07 Supplemental ROD also addressed BPA's final decisions on the appropriate amount of REP benefits to pay the IOUs, and include in rates, for FY 2009. To make this determination, BPA had to address a host of controversial issues related to the section 7(b)(2) rate test. Over 270 pages of the WP-07 Supplemental ROD were dedicated to addressing the issues and arguments presented by the parties on the section 7(b)(2) rate test.

Because the traditional REP was being implemented for FY 2009, BPA also needed to negotiate and execute new RPSAs with the IOUs intending to participate in the REP. Thus, concurrent with the WP-07 Supplemental Hearing, BPA also engaged in a public process to develop a new RPSA. After taking public comment on a prototype RPSA, BPA published a final RPSA in September of 2008. Among other terms included in the RPSA, BPA adopted a provision that would allow BPA to recover the Lookback Amounts from the IOUs by reducing future REP benefit payments. BPA's justification for including this and other provisions in the RPSA were explained in the 2008 RPSA Record of Decision (2008 RPSA ROD).

*F. Challenges to BPA's WP-07 Supplemental ROD and RPSA Decisions: The Assoc. of Pub. Agency Customers v. Bonneville Power Admin., Idaho Pub. Util. Comm'n v. Bonneville Power Admin., and Avista Corp. v. Bonneville Power Admin*

BPA's decisions in the WP-07 Supplemental ROD and the 2008 RPSA ROD were vigorously opposed by both COUs and IOUs. The COUs and entities supporting the COUs' position claimed

that BPA had grossly underestimated the IOUs' refund obligation and that the actual overcharge to COUs for the FY 2002-2008 period was at least \$2 billion. The IOUs, public utility commissions, and ratepayer advocacy groups, in contrast, argued that no refunds were owed at all because the Court did not direct BPA to provide refunds and because the terms of the 2000 REP Settlement Agreements specifically prohibited BPA from recouping REP benefits paid under those agreements. The IOUs and COUs also opposed BPA's interpretation and implementation of the section 7(b)(2) rate test for both the Lookback period and for setting rates in FY 2009.

In December 2008, fourteen petitions were filed in the Ninth Circuit challenging the Lookback-related findings and decisions BPA reached in the WP-07 Supplemental ROD. These challenges were consolidated into *The Assoc. of Pub. Agency Customers v. Bonneville Power Admin., et al. (APAC)*. Also in December 2008, seven petitions were filed by a number of IOUs and public utility commissions challenging BPA's decision to adopt the final RPSAs. These challenges were consolidated into *Idaho Pub. Util. Comm'n v. Bonneville Power Admin. (IPUC)*. On July 16, 2009, the Commission granted final approval to BPA's WP-07 rates for FY 2009. Shortly thereafter, fifteen more petitions challenging BPA's final WP-07 rates were filed with the Ninth Circuit and consolidated into *Avista Corp., et al. v. Bonneville Power Admin. (Avista)*. Briefing on the issues in the APAC and IPUC cases began in August of 2009 and concluded in March of 2010. Briefing on the rate issues in *Avista* has yet to occur.

Shortly after petitions were filed in the APAC and IPUC cases, BPA commenced a rate proceeding to establish rates for the FY 2010-2011 period (WP-10 Rate Proceeding). In the WP-10 Rate Proceeding, BPA proposed to continue to implement its Lookback remedy by reducing the IOUs' prospective REP benefit payments and paying refunds to the COUs based on the determinations made in the WP-07 Supplemental ROD. BPA also proposed to implement the section 7(b)(2) rate test in the same manner as in the WP-07 Supplemental ROD. On July 21, 2009, BPA issued its final ROD in the WP-10 Rate Proceeding (WP-10 ROD.) In October and November of 2009, five IOUs filed precautionary petitions for review with the Ninth Circuit challenging BPA's decision to continue to implement the Lookback remedy in the WP-10 ROD. These appeals were consolidated in *Portland General Elec.*

*et al. v. Bonneville Power Admin. (PGE II)*. On August 6, 2010, the Commission granted final approval to BPA's WP-10 rates. Subsequently, in November of 2010, fifteen petitions were filed with the Ninth Circuit challenging the ratemaking decisions BPA reached in the WP-10 ROD. The petitions challenging BPA's WP-10 rate making decision have yet to be consolidated.

Following the completion of the briefing in the APAC and IPUC cases, the litigants in APAC, IPUC, Avista, and PGE II agreed to engage in mediation in an attempt to resolve their numerous disputes. Because many of the issues in the mediation would affect the prospective implementation of the REP, the litigants invited regional parties not involved in the litigation to participate in the mediation. The mediation sessions commenced in early April of 2010 and continued through May of 2010. Over fifty litigants and other parties participated in the mediation. Although by the conclusion of the scheduled mediation sessions the litigants and parties had not achieved a settlement, significant progress had been made toward reaching a compromise on all existing claims and the future implementation of the REP. Principals from most of the litigants agreed to continue meeting through August and September in an attempt to achieve a settlement.

In mid-September 2010, with assistance from the mediator, a large contingent of COUs and IOUs agreed to pursue resolution of the outstanding litigation and the future implementation of the REP pursuant to the terms of a non-binding Agreement in Principle (AIP). The AIP committed the negotiated parties to work in good faith on a final settlement of the REP that adhered to certain terms and conditions. From September to December of 2010, the parties worked to transform the AIP into a final settlement document. The final version of the proposed 2012 REP Settlement is expected to be completed by mid-December.

#### *G. Proposed 2012 REP Settlement Agreement*

The proposed 2012 REP Settlement would resolve challenges over BPA's implementation of the REP in return for a stream of REP benefits to the IOUs for a term of 17 years. The COUs' obligation to pay REP benefits in rates would be limited to the COUs' share of the stream of REP benefits as set forth in the agreement. The distribution of these REP payments to the IOUs would depend on each IOU's respective ASC and exchange load. The IOUs would continue to file ASCs with BPA

pursuant to the 2008 ASCM. In addition to the stream of REP benefits, the IOUs would receive a percentage of certain BPA Renewable Energy Credits (RECs) and the payment of certain outstanding interim payments due under the interim REP payment agreements between BPA and the IOUs.

The 2012 REP Settlement reflects a compromise by a substantial majority of BPA's customers and most of the litigants to the litigation on the outstanding REP-related issues. It was developed after extensive negotiations by representatives of COU customers, IOU customers, public utility commissions, and ratepayer advocacy groups. Many of these entities signed the AIP and are expected to sign the 2012 REP Settlement once it is completed. These parties have requested that BPA review the proposed settlement, and, if consistent with law, execute the Agreement and set rates consistent with its terms.

## **Part V. Summary of Proposal and Description of Major Studies**

### *A. Summary of Proposal*

Although BPA firmly believes that settlement of the existing REP litigation is in the interest of all BPA ratepayers, BPA must ensure that the terms and conditions in the 2012 REP Settlement are reasonable and comply with all relevant statutory provisions before executing the Agreement. BPA is conducting a section 7(i) proceeding to provide a forum in which BPA and other interested parties can evaluate the reasonableness and legal sufficiency of the proposed 2012 REP Settlement.

At the conclusion of the REP-12 proceeding, the Administrator will determine, after reviewing all evidence and arguments contained in the record, whether the terms of the proposed 2012 REP Settlement comport with BPA's statutory duties and authorities. If the Administrator determines that the settlement is consistent with applicable law, and is broadly supported by BPA's customers and other interested parties, he will sign the proposed 2012 REP Settlement and set BPA's FY 2012-2013 rates in accordance with the terms of the 2012 REP Settlement. In such case, the 2012 REP Settlement would replace BPA's current construct of withholding REP benefits due the IOUs and paying Lookback refund credits to eligible COUs as described in the WP-07 Supplemental ROD. In addition, the 2012 REP Settlement would settle the amount of rate protection afforded to COUs for the term of the agreement, obviating the need to continue the litigation over the section 7(b)(2)

decisions BPA reached in the WP-07 Supplemental ROD and the WP-10 ROD.

If the Administrator determines the proposed 2012 REP Settlement is not consistent with BPA's statutory duties or is otherwise unreasonable, the Administrator will not sign the 2012 REP Settlement but will instead continue to set rates, recover Lookback Amounts and issue refunds consistent with his decisions in the WP-07 Supplemental ROD and the WP-10 ROD.

### *B. 2012 REP Settlement Analysis Initial Proposal*

To test the reasonableness of the proposed 2012 REP Settlement, BPA will perform an analysis that will develop a range of forecast REP benefits reflecting the likely amount of REP benefits the IOUs would receive (and conversely the amount of rate protection the COUs would likely receive) in the absence of the 2012 REP Settlement. The range of REP benefits will be developed by quantifying the major issues being litigated by BPA, the IOUs, and the COUs in the current and pending litigation. Broadly speaking, the major issues being litigated today are the implementation of the section 7(b)(2) rate test, allocation of rate protection costs under section 7(b)(3), and the development and calculation of the Lookback Amounts. For each of these main issues, BPA will develop a 17-year forecast of REP benefits that is based on the parties' respective legal positions. The amount of REP benefits allowed under these various assumptions will then be compared to the REP benefits afforded to the IOUs under the 2012 REP Settlement to test whether the terms of the 2012 REP Settlement are reasonable and consistent with the protections provided by law.

BPA has modified the near-term Rate Analysis Model and has developed a new long-term section 7(b)(2) rate test model to quantify the parties' various litigation positions on rates and forecast REP benefits. The models will be used in tandem to quantify the near-term and long-term financial impacts on REP benefits under a variety of different litigation scenarios. Specifically, the models will evaluate the following contested issues: Rate test treatment of conservation resources and their effect on loads; treatment of conservation costs in the rate test; rate test accounting and financing treatment of conservation resource costs; rate test repayment study; treatment of Mid-Columbia resources; treatment of secondary energy credit; discounting of the stream

of rate projections; elasticity of DSI loads; and allocation of rate protection costs to surplus power sales. Other scenarios may be added during the course of the proceeding. In addition to the rate modeling, the quantitative analysis will include the effect of parties' positions on the amount of Lookback Amounts owed on future REP benefits.

For purposes of the REP-12 Initial Proposal, BPA will use the above-noted issues to produce future REP benefits under different litigation scenarios. These scenarios are presented in the 2012 REP Settlement Agreement Study and Analysis. The models also quantify the impacts of non-litigation issues on future REP benefits, such as future growth in ASCs and BPA program costs.

### *C. Implementation of 2012 REP Settlement in Rates*

In addition to the settling of the various REP issues in litigation, the 2012 REP Settlement also specifies certain ratemaking treatment of REP-related costs. Implementing the 2012 REP Settlement in ratemaking will affect the PF Exchange rate, the Industrial Firm Power rate (IP), and the New Resources rate (NR). While these ratemaking treatments have been already incorporated into the initial rate proposal in the BP-12 proceeding, the REP-12 proceeding will be examining these various ratemaking specifications to test whether the ratemaking treatments of the 2012 REP Settlement are reasonable and consistent with law.

### *D. Initial Proposal for the Section 7(b)(2) Rate Test and Lookback Amount Determinations in the Absence of Settlement*

As noted above, BPA is evaluating the reasonableness and sustainability of the 2012 REP Settlement in the REP-12 proceeding. If the Administrator determines that the 2012 REP Settlement is not reasonable or is otherwise unlawful, the 2012 REP Settlement will not be executed and BPA will set rates assuming no settlement of the REP. Consequently, as an alternative to the 2012 REP Settlement, BPA is also proposing to implement the section 7(b)(2) rate test, the section 7(b)(3) allocations and surcharges, and the Lookback recovery and return for FY 2012-2013 in accordance with the decisions BPA reached in the WP-07 Supplemental ROD and WP-10 ROD, unless otherwise stated. If the 2012 REP Settlement is not adopted, the final decisions BPA reaches on these issues in this case will be incorporated into the BP-12 rate proceeding.

*E. Major Studies*

## 1. 2012 REP Settlement Agreement Study and Analysis

The 2012 REP Settlement Agreement Study and Analysis (REP Study) describes the terms of the 2012 REP Settlement and provides the analytical work BPA staff is performing to test the reasonableness of the 2012 REP Settlement. The REP Study is comprised of two major parts.

Part I of the REP Study reviews the history of the REP and the background underlying the current litigation. This portion of the REP Study also contains an overview of the section 7(b)(2) rate test and a description of how rate protection works in BPA ratemaking. Part I also describes the terms of the proposed 2012 REP Settlement and explains how BPA staff intends to implement the terms of the proposed settlement in BPA's rates.

Part II of the REP Study contains BPA staff's evaluation and analysis of the 2012 REP Settlement. This portion of the REP Study begins with an explanation of the criteria BPA staff is using to evaluate the 2012 REP Settlement. This section is followed by an overview of the models BPA staff developed to create a variety of near- and long-term forecasts of REP benefits under various scenarios. Part II of the REP Study also describes the various factors that will have an effect on REP benefits, such as the current and future issues in litigation and issues related to ASCs and the PF Exchange rate. At the end of Part II of the REP Study, BPA staff presents its scenario analysis. In this section, BPA staff presents near- and long-term REP benefits under different scenarios. These scenario REP benefits are compared to the REP benefits provided under the proposed 2012 REP Settlement to determine, from an analytical perspective, whether the 2012 REP Settlement affords rate protection to COUs and is otherwise reasonable.

## 2. FY 2012–2013 7(b)(2) Rate Test and Documentation

This Study will be used only if the 2012 REP Settlement is not adopted.

BPA has interpreted the Northwest Power Act and described how the section 7(b)(2) rate test will be performed in the *Section 7(b)(2) Legal Interpretation (Legal Interpretation)* and *Section 7(b)(2) Implementation Methodology (Implementation Methodology)* published in August, 2008. The Section 7(b)(2) Rate Test Study explains and documents the results of the rate test.

The 7(b)(2) rate test triggers in this proposal if no REP settlement is assumed, creating rate protection for preference customers and causing test period costs to be reallocated to others. The PF Public rate applied to the general requirements of COUs has been reduced by the rate protection amount and reallocated to other rates pursuant to section 7(b)(3). BPA's other rates, the PF Exchange rate and the NR and IP rates, have been increased by an allocation of the rate protection amount. An allocation of the rate protection amount has also been assigned to surplus power sales.

## 3. FY 2012–2013 Lookback Study

This Study will only be used if the 2012 REP Settlement is not adopted.

This Study explains and documents BPA's proposed modifications to the amounts to be recovered from the IOUs and applied to the Lookback Amounts determined in the final WP–07 Supplemental Proposal. The Study also sets forth the accounting of the Lookback Amounts expected to be recovered from IOUs and repaid to COUs during the FY 2012–2013 rate period. BPA also explains in this Study what amount of Lookback will be recovered from IOUs and returned to applicable COUs for the FY 2012–2013 rate period.

**Part VI—Proposed 2012 REP Settlement Agreement**

On December 17, 2010, a draft of the proposed 2012 REP Settlement will be available for viewing and downloading on BPA's Web site at <http://www.bpa.gov/corporate/ratecase/2012/rep-12.cfm>. Copies of the draft 2012 REP Settlement will also be available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE. 11th Avenue, Portland, OR 97232.

Issued this 7th day of December 2010.

**Stephen J. Wright,**

*Administrator and Chief Executive Officer.*

[FR Doc. 2010–31622 Filed 12–15–10; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. IC10–542–001, FERC–542]

**Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review**

December 9, 2010.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (FERC or the Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 2010 (75 FR 45609) and has notified OMB of this in its submission.

**DATES:** Further comments on this collection of information are due by January 18, 2011.

**ADDRESSES:** Address further comments on this collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov) and include OMB Control Number 1902–0070 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC10–542–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at <http://www.ferc.gov/help/submission-guide.asp>. To file the document