

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
BEFORE THE
BONNEVILLE POWER ADMINISTRATION

2012 Tiered Rate Methodology)
Proceeding)
)
)

BPA File No. TRM-12

BRIEF OF PUBLIC POWER GROUP

Filed jointly by:

**Public Power Council,
The City of Seattle, City Light Department,
Cowlitz PUD,
Northwest Requirements Utilities,
Public Utility District No. 1 of Snohomish County,
PNGC Group,
and
City of Tacoma, d/b/a Tacoma Power**

September 18, 2008

TABLE OF CONTENTS

INTRODUCTION 1

I. RELATIONSHIP BETWEEN THE TRM AND THE RATE DIRECTIVES OF THE NORTHWEST POWER ACT, AND EARLY DEVELOPMENT OF RATE MODEL 2

 a. The TRM Must Comply with Northwest Power Act Rate Directives and Address How Costs Included in Tiered Rates Relate to BPA’s Overall Power Costs. 2

 b. BPA Must Develop a Workable Rate Model Well Before the FY 2012 Rate Case 5

II. ACCOUNTING FOR SECONDARY REVENUES 7

III. CONTRACT DEMAND QUANTITY LIMITS 11

IV. SECTION 7(B)(2) RATE TEST AND PF EXCHANGE RATE 12

 a. PF Exchange Rate for CHWM Contract Signers 14

 b. PF Exchange Rate for Customers Without a CHWM Contract 15

V. COST VERIFICATION PROCESS FOR SLICE TRUE-UP ADJUSTMENT CHARGE 16

VI. DETERMINATION OF FIRM CRITICAL OUTPUT AND CRITICAL PERIOD 19

VII. DETERMINATION OF SYSTEM OBLIGATIONS 21

VIII. TREATMENT OF CF/CTs IN THE TRM 26

IX. REMARKETING OF RESOURCES BETWEEN COST POOLS 27

X. FINALITY OF THE TRM 29

CONCLUSION 31

INTRODUCTION

In accordance with section 1010.13 of the Bonneville Power Administration's (BPA's) Rules of Procedure Governing Rate Hearings,¹ and the Hearing Officer's *Order Adopting Modified Schedule*,² the Public Power Council,³ The City of Seattle, City Light Department, Cowlitz PUD, Northwest Requirements Utilities, Public Utility District No. 1 of Snohomish County, PNGC Power Group,⁴ and City of Tacoma, d/b/a Tacoma Power (referred to collectively as the "Public Power Group" for purposes of this filing) file this Brief in the above-captioned proceeding. Additionally, the Slice Customer Group joins in section 5 of this Brief, relating to the cost verification process for the Slice True-Up adjustment charge. As allowed by the schedule in this proceeding,⁵ each party to this brief preserves its right to submit a joinder of arguments contained in other parties' briefing in this proceeding. Any issues raised or errors claimed in those briefs would therefore not be waived under BPA's rate case procedures, and would be preserved for further appeal.

¹ 51 Fed. Reg. 7,611 (March 5, 1986).

² TRM-12-HOO-20.

³ In submitting testimony and briefing in this proceeding, the Public Power Council acts on behalf of itself as an organization and not its individual member utilities. Accordingly, this testimony is by no means made on behalf of Clatskanie PUD, which is a party to this proceeding and submitted separate filings.

⁴ PNGC Group joins in the Brief of Public Power Group except Sections IV and VIII. PNGC Group does not individually state a position in this brief on the issues addressed in Section IV. PNGC Group is filing with NRU a separate brief addressing issues in Section VIII

⁵ TRM-12-HOO-20.

I. RELATIONSHIP BETWEEN THE TRM AND THE RATE DIRECTIVES IN THE NORTHWEST POWER ACT, AND EARLY DEVELOPMENT OF RATE MODEL (TRM Section 1)

a. The TRM Must Comply with Northwest Power Act Rate Directives and Address How Costs Included in Tiered Rates Relate to BPA's Overall Power Costs

The TRM⁶ provides a methodology to tier PF Preference rates to further a number of policy goals. The TRM cannot, however, override or conflict with the rate directives in section 7 of the Northwest Power Act. Thus, the resource costs included in the revenue requirement allocated to the tiered PF Preference rates must be established consistent with, and limited as required by, the section 7 rate directives independent of any tiering of the PF Preference rates.

In the comments the Public Power Group submitted in our direct case filing, we pointed out that the TRM, while purporting to deal exclusively with the design of the PF Preference rates applicable to purchases under CHWM Contracts, describes in a number of places how BPA's total power costs (or elements of BPA's power costs that are not to be recovered solely through PF Preference rates) will be treated. We urged that the TRM distinguish, with greater rigor, between provisions that are intended to describe what happens to BPA's power costs generally (before the portion to be recovered from Public customers has been separately identified) and those that are intended to describe steps or rules that apply to the portion of BPA's total power function costs to be recovered from Public customers through Tier 1 and Tier 2 Rates. TRM-12-E-PPG-01 at 25, lines 12-19.

We had anticipated, based on conversations with BPA staff during TRM settlement discussions, that the revised TRM BPA provided with its rebuttal testimony (TRM-12-E-BPA-20) would include new language to resolve the conceptual confusion resulting from the mixture

⁶ References to the TRM in this document are intended to refer to the version of the TRM filed by BPA in rebuttal, document TRM-12-E-BPA-20, except when specifically stated otherwise (*e.g.* when reference is to language subsequently developed in settlement discussions).

of TRM discussions concerning BPA power costs generally and discussions dealing with costs to be recovered through tiered PF Preference rates specifically. We understand that BPA did not have sufficient time to undertake this task before the deadline for filing rebuttal testimony, and that a comprehensive explanation of the relationship between the section 7 rate directives and the TRM's application to PF Preference rates might require significant additional work.

Nevertheless, we believe it is important, before the TRM is finalized, that there be at least some language to reconcile disparate discussions concerning costs included in the Cost Allocation Table and attributable to the various Cost Pools. We therefore propose to add a new subsection to the *Background and Purpose* section of the TRM (section 1) to accomplish this goal. Specifically, we propose the following:

Proposed Language:

1.2 Scope of TRM References and Descriptions

In general, the provisions of the TRM are limited to the design and implementation of the PF tiered rates. This is not universally the case, however. Throughout the TRM, there are references to BPA's power costs in aggregate, or to elements of BPA's power costs that are not recovered solely through PF Preference Rates. For example, in section 2.2, the TRM states that all costs BPA functionalizes to power will be included in the Cost Allocation Table, even though most references to the Cost Allocation Table, or to the Cost Pools into which all entries in the Cost Allocation Table are divided, address treatment of costs to be recovered either through Tier 1 Rates or Tier 2 Rates (and not BPA power costs that are to be recovered through other rates, such as the PF Exchange rate, the NR rate, or the IP rate).

To the extent the TRM makes reference to costs that reach beyond those to be recovered through tiered PF rates, this is not intended to imply that Publics purchasing requirements power from BPA at tiered rates will be responsible for these costs. Rather, these statements should be understood in the context of the sequential process through which BPA will first determine its power costs, and the portions of BPA's power costs to be allocated to the applicable customer rate classes, all in accordance with the rate directives of section 7 of the Northwest Power Act, and then apply the provisions of the TRM to tier the portions of its total power costs to be recovered through its PF Preference Rates.

Except as described above, ~~T~~he TRM does not address issues relating to other BPA rates, including but not limited to the PF rate applicable to customers that do not sign CHWM Contracts. Power products are determined in CHWM contracts, not in this TRM.

We have also suggested modest clarifying edits in other sections of the TRM (sections 2.2, 2.2.1, and 2.2.3) to carry through in more specific terms the conceptual consistency articulated in section 1.2.

Proposed Language:

2.2 Cost Allocation Method and Cost Allocation Table

In each 7(i) Process during the term of the CHWM Contracts, BPA will allocate Tier 1 Costs among three Tier 1 Cost Pools for determining Tier 1 Rates, and Tier 2 Costs to one or more Tier 2 Cost Pools corresponding to each Tier 2 Rate Alternative. The Tier 1 Cost Pools are the Composite Cost Pool, Slice Cost Pool, and Non-Slice Cost Pool. The allocation of costs into Cost Pools is a ratemaking exercise that is performed in a 7(i) Process according to the directives in section 7 of the Northwest Power Act.

The Cost Allocation Table, Table 2, sets out the cost allocations that will be used for allocating costs in future 7(i) Processes. Any changes to the Cost Allocation Table to accommodate New Expenses or New Credits will be pursuant to section 2.3. Any changes to the Cost Allocation Table to accommodate a need to allocate a Tier 2 Cost to a Tier 1 Cost Pool will be pursuant to section 2.6. All other changes to the Cost Allocation Table will be pursuant to sections 12 and 13. All BPA costs functionalized by BPA to power will be included in the Cost Allocation Table, but Tier 1 Rates and Tier 2 Rates will reflect only those portions of BPA's power costs that, in accordance with section 7 of the Northwest Power Act and the TRM, are to be recovered from Publics that have executed CHWM Contracts. The addition of new Tier 2 Cost Pools will not be considered changes to the Cost Allocation Table for purposes of sections 12 and 13.

BPA will conform the description or grouping of costs in the Cost Allocation Table to the grouping of costs in the Power Services Statement of Revenues and Expenses, but changes to cost groupings or descriptions in BPA's Power Services Statement of Revenues and Expenses will not change the Cost Pools to which the underlying costs are assigned. If modifications to BPA's Power Services Statement of Revenues and Expenses change the categorization of costs, then the manner of maintaining the separation of costs for purposes of the TRM will be addressed in the next 7(i) Process following the modification. Such modifications will not change the underlying allocation of costs to the respective Cost Pools, which form the basis for setting Tier 1 and Tier 2 Rates.

2.2.1 The Composite Cost Pool

Table 2, Section B, sets out the [categories of](#) costs that are allocated to the Composite Cost Pool, including all Tier 1 Costs and Tier 1 Credits functionalized by BPA to power, except for any Tier 1 Costs or Tier 1 Credits that BPA has determined meet the specified criteria for inclusion in either the Slice Cost Pool or the Non-Slice Cost Pool, as set forth in sections 2.2.2 and 2.2.3. The administrative costs (primarily staffing costs) of surplus marketing and administering all CHWM Contracts and rates will be allocated to the Composite Cost Pool. Allocation of costs between the Composite Cost Pool and Non-Slice Cost Pool is shown on Table 2, Section A, with the resulting allocation reflected in the relevant Cost Pools, sections B and D.

2.2.3 The Non-Slice Cost Pool

Table 2, Section D, sets out the [categories of](#) costs that are allocated to the Non-Slice Cost Pool, including all Tier 1 Costs and Tier 1 Credits that are specifically and uniquely attributable to the Load Following or Block products, including the Block portion of the Slice/Block product. The Non-Slice Cost Pool includes the costs and credits of converting resource output into load service (e.g., Balancing Power Purchases); the costs of Tier 1 risk mitigation not recovered through rates for the Slice product; and the costs or credits arising from capacity resource purchases. The Non-Slice Cost Pool also includes the Tier 1 Secondary Energy Credit, which includes any costs or credits specifically attributable to BPA's marketing of Tier 1 Secondary Energy.

b. BPA Must Develop a Workable Rate Model Well Before the FY 2012 Rate Case

BPA's existing rate model, the RAM, is extremely complex, and, as parties have found in the WP-07 rate case, produces what are often counter intuitive and arguably incorrect results. Many issues that potentially can swing hundreds of millions of dollars are buried deep within poorly understood modules within the RAM.

Tiering the PF Preference rate will undoubtedly result in more complexity in BPA's rate models. We believe it to be of critical importance that customers not first be exposed to BPA's new rate model during the formal stage of the first rate case in which that model will be used. BPA should roll out the model adequately in advance of the FY 2012 rate case so that customers can thoroughly explore and understand the model and gain confidence that the model faithfully

and correctly carries out both the section 7 rate directives and the explicit arrangement negotiated in the TRM.

We think it is important that customers have complete confidence in the models themselves before BPA starts populating the model with the actual data that will produce the FY 2012 rates. We would like to assure ourselves that the model robustly produces correct results over a range of reasonable scenarios. To that end, the Public Power Group recommends that BPA complete all of its modeling work and initiate workshops with customers on the models no later than September 2009. We also propose language to be included in a new section 1.3 of the TRM expressing BPA's commitment to provide to customers by September 2009 electronic copies of the rate models together with thorough documentation of such models explaining what each module within the model does. We believe this documentation should cross reference the section 7 rate directives and/or TRM sections that the module implements. We would also appreciate the opportunity to work with BPA on the model development even before these dates to the extent that would be possible.

The language we propose for the TRM regarding such model(s) is as follows:

Proposed Language:

1.3 Development of Rate Models Reflecting Tiered Rates

BPA recognizes that, as complex as the process of setting power rates in accordance with section 7 of the Northwest Power Act has proven to be without tiered rates, the tiering of PF Preference Rates for FY 2012 and beyond will add even greater complexity. BPA believes all parties will benefit from early development and testing of the rate models to be used in setting tiered rates – well before the start of the 7(i) Process to establish FY 2012. BPA intends to initiate its tiered rates model development process as promptly as feasible, and, in any case, will make available to all Publics and other interested parties, no later than September 2009, electronic copies of the rate model BPA proposes to use in setting FY 2012 rates, together with thorough documentation explaining what each module of the model does and how the modules relate to and implement the rate directives of section 7 and the tiering of the costs applicable to the PF Preference Rates. Beginning in September 2009, BPA will also convene a series

[of workshops to explain and answer questions about the rate model and to allow Publics and other interested parties to provide feedback about the model and associated documentation.](#)

II. ACCOUNTING FOR SECONDARY REVENUES (TRM Sections 2.1, 2.4)

The Contract High Water Mark Contracts (“CHWM Contracts”) proposed by BPA are 20-year, take-or-pay contracts that prohibit BPA’s customers from displacing under any circumstances power purchased from BPA to serve loads below their Rate Period High Water Marks (RHWM) at Tier 1 Rates. Additionally, to the extent that a customer elects to serve its above-RHWM load with purchases at a Tier 2 rate, such purchases are also take-or-pay. BPA has also included in the TRM terms that allow it to recover through Tier 1 rates costs that would otherwise be Tier 2 costs if, and to the extent that, such costs would otherwise not be recovered. These provisions are intended to provide BPA with assurance that it will recover 100% of its costs from customers for the duration of the CHWM Contracts under any circumstances, including if BPA’s costs far exceed the market value of the power it sells.

Customers expressed willingness to accept these terms based on their individual judgments of what they expected BPA’s costs to be over the term of the contracts and how BPA would set rates to recover those costs. With respect to costs, customers requested some degree of real control over BPA’s spending. Although BPA has promised to keep customers informed regarding its spending plans and to provide transparency about its costs, customers have been provided no meaningful control over BPA’s spending.

With respect to rates, customers expected that the TRM would provide them with assurance that the rates established during the term of the CHWM Contracts would not be excessive, if coupled with BPA cost controls that would be required by the TRM or contracts. A key element of this rate assurance was the expectation that BPA would continue to allocate the

revenues from the sale of secondary energy as an offset to the costs of the associated resources, consistent with its historic practices.

Under current and reasonably foreseeable circumstances, secondary revenues contribute approximately 25 to 30 percent of BPA's power revenue requirement. Thus, if BPA were to alter its historical practice regarding secondary revenues, BPA's Tier1 Non-Slice rate could be between 30 to 40 percent higher than it would be under the traditional use of secondary revenues as a partial offset of the costs of the resources used for ratemaking purposes to serve regional loads.

Inasmuch as the fundamental purpose of the TRM is to provide customers assurance on how their rates are to be established for the term of the CHWM Contracts, it would be imprudent to be silent on an issue, such as secondary revenue crediting, that has such a significant effect on rates. Therefore, the Public Power Group recommends that BPA adopt terms in the TRM to assure that BPA will continue to credit secondary revenues to offset the costs of the resources that produce the secondary energy. To that end, the Public Power Group has proposed two new "Cost Allocation Principles" in section 2.1 of the TRM, and some additional language to section 2.4, "Tier 1 Secondary Energy Credit".

Proposed principle 8 would state explicitly that all of the forecast revenues from the sale of secondary energy will, for rate making purposes, be applied as an offset to costs that are properly allocable to rates for BPA sales of power for use within the region. This principle is wholly consistent with BPA's longstanding ratemaking practices, which customers rightfully expect BPA to follow during the entire term of the CHWM Contracts and the TRM.

Proposed principle 9 is also fully consistent with BPA's longstanding practices. This principle simply provides that the costs and benefits of the ability or inability to sell excess

power allocated under section 7(g) of the Northwest Power Act will be allocated to the Cost Pools to which the cost of the resources generating such excess power are allocated. Inasmuch as this proposed principle 9 is both equitable and consistent with generally accepted ratemaking practices, the result of principle 9 is probably required by section 7(g) of the Northwest Power Act in any event. Whether they are required by section 7(g) or not, however, principles 9 and 8 are both necessary to give customers reasonable assurances that BPA will adhere to longstanding ratemaking principles, and will in fact secure the benefits of the FCRPS for the region for the duration of the CHWM Contracts and the TRM. It would be imprudent for customers to ignore an issue that has such a significant effect on their rates and to simply sign 20-year contracts on the hope that, once they are irrevocably committed to purchase on a take-or-pay basis, no one will alter the price to their detriment.

It has been suggested that the Bonneville Power Administration Refinancing Act, 16 U.S.C. § 8381, (“Refinancing Act”) provides adequate assurances that secondary revenues will not be siphoned away for uses inconsistent with traditional ratemaking principles. However, the Refinancing Act does not directly address the allocation of secondary revenues. Thus, although customers appreciate the guarantees of the Refinancing Act being secured in their contract, the incorporation of those terms is simply not a sufficient substitute for principles 8 and 9.

In addition to the proposed principles 8 and 9, the Public Power Group proposes that BPA add language to section 2.4, Tier 1 Secondary Energy Credit, to make clear that the secondary energy credit allocated to the Non-Slice Cost Pool is to be the equivalent of the advance sale of surplus energy under the Slice Product. This recognizes that the energy credit and the advance sale of surplus serve equivalent purposes, and that on a forecast basis the credit should have a per kilowatt hour value equal to the surplus sale.

The Public Power Group's proposed language would prevent BPA from singling out forecast secondary revenues as the source of funds for initiatives such as accelerating BPA's repayment of Treasury, unless the TRM is changed in accordance with sections 12 and 13. It would not, however, prohibit BPA from carrying out any prepayment plan if the costs of such prepayment were appropriately allocated as costs that are to be recovered through rates. Although BPA may be motivated to accelerate repayment by the expectation of substantial secondary sales, there is no necessary correlation between forecast secondary revenues and BPA's repayment plans. BPA should implement its repayment policy independent of secondary revenues, both forecast and actual. Doing so would avoid creating equity issues between Slice and non-Slice Customers. If BPA were reasonably to determine, in consultation with its customers, that accelerated repayment was a prudent measure, then BPA could incorporate such a plan into its repayment study wholly independent of how it allocates secondary revenue credits.

In short, BPA has identified no reasonable policy basis for staying silent on the allocation of secondary revenues in the TRM. Because the issue is so significant to customers, it would be unreasonable not to address the issue in the TRM by setting out a rate treatment that reflects BPA's current and historical practices regarding secondary revenues.

Proposed Language:

Section 2.1:

- 8) All forecast revenues from the sale by BPA of secondary energy produced by FBS and new resources will be, for rate making purposes, applied as an offset to costs that are properly allocable to rates for BPA sales of power for use within the region.
- 9) Costs or benefits associated with the sales of or inability to sell excess power allocated under section 7(g) of the Northwest Power Act will be allocated to the Cost Pools to which the costs of the resources generating such excess power are allocated.

Section 2.4:

The Slice Product includes an advance sale of surplus energy, which is delivered when and if available. As a consequence, the Composite Cost Pool and Slice Cost Pools do not contain any ~~revenue~~ cost or credit associated with ~~the~~ Tier 1 Secondary Energy ~~Credit~~. The Load Following and Block Products do not receive any Tier 1 Secondary Energy. Therefore, the Non-Slice Cost Pool will be allocated a Tier 1 Secondary Energy Credit equivalent to the advance sale of surplus power included as part of the Slice Product.

III. CONTRACT DEMAND QUANTITY LIMITS (TRM section 5.3.5.2)

In its direct case, the Public Power Group proposed language to modify section 5.3.5.2 of the TRM as contained in the BPA Supplemental Proposal. In summary, the Public Power Group proposed language to achieve the general result that we understood BPA to have intended, but that also was a more complete and precise articulation of the proposal to avoid a situation in which individual customers may bear unduly large demand charges or bear none at all.

Specifically, the Public Power Group proposed that CDQs be set such that in no case would a customer's monthly demand billing determinant for FY 2010 exceed 200% of its CSP, and in no case would the CDQ be at a level such that the customer could increase its above average HLH demand without incurring demand charges. This proposed language eliminated a serious element of ambiguity in the draft TRM.

In its rebuttal, BPA has adopted the language proposed by the Public Power Group with some minor editorial changes. The Public Power Group appreciates BPA's response on this issue, and strongly supports the incorporation of language proposed by BPA in its rebuttal in the final TRM.

Proposed Language:

Section 5.3.5.2

Before the CDQs are finalized, BPA will determine whether the Demand Charge Billing Determinant for any Customer for each month of FY 2010, using the actual CSP for each such month and the monthly CDQ calculated in accordance with this section 5.3.5.2, is

equal to zero or will exceed two times the average of all Customers' Demand Charge Billing Determinants as a percentage of their CSP for such month. If so, BPA will determine whether 1) there was a discrete event beyond the control of the customer that increased of the Demand Charge Billing Determinant; 2) the size of the Billing Determinant is likely to recur in the future; and 3) the recalculation of the adjusted HLH load factor and CDQ will not materially frustrate BPA's policy objective of having all customers with HLH load factors that are less than 100 percent face the marginal cost of capacity. If BPA concludes that the calculated Demand Charge Billing Determinant is not an anomaly and is likely to recur, then BPA will adjust the CDQ for such month as follows. If the initially calculated CDQ produced a calculated Demand Charge Billing Determinant that exceeds two times the average of all Customers' Demand Charge Billing Determinants as a percentage of their CSPs for such month, then BPA will establish the CDQ for such month for such Customer so that the calculated Demand Charge Billing Determinant equals two times the average of all Customers' Demand Charge Billing Determinants as a percentage of their CSPs for such month. If the initially calculated CDQ produced a calculated Demand Charge Billing Determinant equal to zero percent of the Customer's CSP for such month, BPA will establish the CDQ for such month at the highest number that will produce a calculated Demand Charge Billing Determinant of zero. That is, BPA will remove excess CDQ headroom only without establishing the CDQ so as to expose the Customer to a Demand Charge in such month.

IV. SECTION 7(B)(2) RATE TEST AND PF EXCHANGE RATE (TRM Section 10.5)

In its direct case, the Public Power Group proposed language to address three specific issues related to the impact BPA's tiered rates proposal could have on the Priority Firm (PF) Exchange rate. The Public Power Group testimony included suggested language to clarify how the PF Exchange Rate for customers with and without CHWM Contracts would be constructed under the TRM, as well as how any §7(b)(3) surcharge would be applied to PF Exchange Rates established under the TRM. In its rebuttal case, BPA declined to adopt the Public Power Group proposed language dealing with the PF Exchange Rate for customers without CHWM Contracts and the application of the §7(b)(3) surcharge to the PF Exchange Rates established under the TRM. However, BPA did include in its rebuttal case language intended to address how the PF Exchange Rate for customers with CHWM Contracts would be established under the TRM. It is

unclear from the BPA rebuttal testimony why BPA accepted only portions of the Public Power Group proposed language on this topic. TRM-12-E-BPA-10, pp. 8-9.

It may be that BPA considers these topics beyond the scope of this proceeding, as suggested by the Northwest Investor Owned Utilities (“IOUs”). TRM-12-E-JP-1, pp. 2-4. Clearly that is not the case. The scope of this proceeding, as established in the Federal Register Notice commenced this proceeding, is not limited to the PF *Preference Rate*, as suggested by the IOUs. Pursuant to the Federal Register Notice, the scope of this proceeding encompasses any issues that need to be dealt with to establish “. . . a predictable and durable means by which to tier and calculate BPA’s Priority Firm (PF) power rate.” 73 Fed. Reg. 24961 (2008). The only two issues specifically excluded from this proceeding by the Federal Register Notice were matters relating to benefits that may be provide by BPA to its direct service industrial customers, and attempts to revise or renegotiate the terms of the Regional Dialogue power sales contracts. *Id.* This is consistent with the scope of the proceeding as described by BPA in its direct testimony. See, TRM-12-E-BPA-02, p, 2, lines 15-17.

The PF Exchange Rate is without question a Priority Firm rate as contemplated in the Federal Register Notice. It is also the case that the tiering of the costs used to set the PF power rate, and establishing two separate PF power rates based on that tiering, presents issues that do not otherwise exist with regard to the PF Exchange Rate. Under the melded cost rate construct that has been in place since the passage of the Northwest Power Act, there has been only one Priority Firm preference rate (PF Preference Rate), and only one PF Exchange Rate. As a consequence, it has always been clear that this was the rate to which the Average System Costs (“ASCs”) of utilities participating in the Residential Exchange Program (“REP”) were compared to determine their REP benefits. Additionally, it was also obvious that this was the rate to which

any surcharge amount required by sections 7(b)(2) and (3) was added to produce the Priority Firm Exchange Rate.

The introduction of the tiering of the PF Preference Rate into a low-cost Tier 1 and a higher cost Tier 2 creates new questions regarding how the PF Exchange Rate will be established under tiered rates. Specifically, the tiering of the PF Preference Rate raises questions about what will be the appropriate PF Rate to use when establishing the PF Exchange Rate(s) used in determining the REP benefits, especially in light of the fact that BPA is proposing to have two differing cost bases for calculating the ASCs for customers with and without CHWM Contracts.

All of these questions arise from BPA's proposal to tier the PF power rate, and all of them deal with how one of the PF rates, in this case the PF Exchange Rate(s), will be established under the TRM. These issues clearly fall within the scope of this proceeding as established by the Federal Register Notice. These are also issues of substantial importance, including the questions of how the PF Exchange Rate for preference customers that sign CHWM Contracts and agree to waive their right to include all resource costs in their ASCs will be calculated, and how that will impact the level of their REP benefits.

a. PF Exchange Rate for CHWM Contract Signers

In its rebuttal, BPA included revisions to section 10.5 of the redlined TRM to address the issue of how the PF Exchange Rate should be established for customers that signed CHWM Contracts. Conceptually, the Public Power Group supports the approach proposed by BPA that preference customers that sign a CHWM Contract and agree to exclude from their ASCs the costs of new resources should have REP benefits determined using a PF Exchange Rate based on Tier 1 costs. However, the language proposed in BPA's rebuttal raised significant ambiguities

regarding the cost basis of the proposed Tier 1 PF Exchange Rate, as well as to whom the proposed Tier 1 PF Exchange Rate should apply.

BPA then offered alternative language after a settlement meeting with customers. The language proposed by BPA can be improved, however, by incorporating the language changes below:

Proposed Language:

For customers that have a signed CHWM Contract and a RPS Agreement, and ~~that~~ have agreed they will not seek and will not receive residential exchange benefits pursuant to section 5(c) of the Northwest Power Act other than pursuant to Section IV(G) of BPA's 2008 Average System Cost Methodology or its successor, BPA will establish a Priority Firm (PF) Exchange Rate or rates in each rate case, consistent with the Northwest Power Act, based on the costs and credits allocated in such rate case to the Tier 1 Cost Pools, and appropriate transmission costs, and excluding costs and credits allocated in such case to the Tier 2 Cost Pools and appropriate transmission costs.

The language proposed by BPA, and modified as shown above, coordinates the operation of the CHWM Contract, the Average System Cost Methodology and the ASCs to be filed by preference customers that sign a CHWM Contract. It also addresses in the TRM how the PF Exchange Rate for such customers should be established, removing a large ambiguity, and a major uncertainty, from that document. In addition, it eliminates a potential legal challenge that BPA is establishing utility average system costs outside of the methodology required by section 5(c)(7) of the Northwest Power Act. 16 U.S.C. § 839c(c)(7).

b. PF Exchange Rate for Customers Without a CHWM Contract

In its rebuttal case, BPA did not adopt language to clarify how the PF Exchange Rate for customers without a CHWM Contract would be established under the TRM. The tiering of BPA's power costs, and the creation of two PF Rates with differing costs bases, presents the same issues for customers that do not sign a CHWM Contract as it does for those customers that

do sign a CHWM Contract. As with the prior issue, this issue is well within the ambit of matters that can, and should, be dealt with in this proceeding.

Customers that do not sign a CHWM Contract will be able to fully participate in the REP, and under the proposed ASCM include in their ASC calculation all resource costs, subject to the appropriate statutory exclusions. The appropriate PF Exchange Rate used by BPA to determine REP benefits for such customers should similarly include all of the costs that BPA incurs without regard to whether they are categorized as Tier 1 or Tier 2 costs. Because this issue is created by the proposal to tier the PF Rate, it is appropriate to establish design of the PF Exchange Rate for customers that do not sign a CHWM Contract in the TRM.

The following language should be included in section 10.5 of the TRM in order to rectify this omission:

Proposed Language:

For customers that have a signed a RPS Agreement but have not signed a CHWM Contract, BPA will establish a Priority Firm (PF) Exchange Rate or rates in each rate case, consistent with the Northwest Power Act, based on the costs and credits allocated in such rate case to the Tier 1 and Tier 2 Cost Pools.

The proposed language will ensure that all participants in the REP, as well as those that pay the costs of the REP, will have a clear understanding of the design of the PF Exchange Rate that will be used during the term of the TRM to determine their REP benefits.

V. COST VERIFICATION PROCESS FOR SLICE TRUE-UP ADJUSTMENT CHARGE (TRM Attachment A)

The Public Power Group proposed in its direct case a number of revisions to Attachment A of the TRM, which specifies the procedures for auditing the Slice True-Up Adjustment and for resolving disputes concerning the results of the audit process. Many of these changes were for consistency and to clarify the timing and sequence of the steps to be followed. Two sets of

revisions, however, were to make Attachment A more workable from a business perspective for Slice customers and BPA, as well as other customers and interested parties. These revisions were contained in paragraphs 1c and 4d of the TRM.

BPA responded to the Public Power Group proposals in its rebuttal by adopting most of the revisions suggested. However, in two areas BPA added new language that appeared to perpetuate the problems that the Public Power Group had attempted to resolve in its direct case. In particular, the following language in the BPA rebuttal proposal was cause for concern:

Section 1c

BPA will finalize the AUPs, which will include all proposed tasks included in BPA’s initial posting and any additional tasks requested by customers; *however, BPA may exclude any requested additional task that BPA reasonably determines is* without merit or would be immaterial to the calculation of the Slice True-Up Adjustment or matters outside the scope of the Slice True-Up calculations as provided in section 1a or *matters that concern an issue that should be finally determined in a 7(i) Process because it regards the appropriate allocation between Slice and non-Slice customers.*

Section 4d

Any issue raised pursuant to section 4b above will be forwarded to the neutral third party for non-binding review unless BPA reasonably determines that such issue is inappropriate for third-party non-binding review because it concerns: (1) the allocation of a New Expense; (2) matters that are immaterial to the calculation of the Slice True-Up Adjustment; or (3) matters that are outside the scope of the cost verification process for the Slice True-Up Adjustment. (Emphasis supplied.)

The fundamental problem with BPA’s proposed language was that it appeared to confer on BPA unlimited discretion to determine which matters are to be included in the tasks to be completed through the Agreed Upon Procedures (“AUPs”) and which issues related to the results of the AUPs could be submitted to non-binding review by a neutral third-party expert.

The Public Power Group now understands that it was not the intention of BPA to reserve to itself such unlimited discretion with regard to the issues that would be included in the AUPs,

or with regard to the issues that could be submitted to non-binding review by a neutral third-party expert. Rather, the Public Power Group now understands that with regard to the AUPs, BPA intended to exclude from the AUPs issues challenging cost allocations BPA had previously made in a 7(i) process. And with regard to non-binding review by a neutral third-party expert, BPA intended to ensure that matters outside the scope of the verification process were not submitted to such review.

Based on the foregoing understanding of the underlying intent of the BPA language, the Public Power Group has crafted language that implements more clearly the intent of BPA in these two sections. In particular, the Public Power Group has proposed language that clarifies that BPA has the discretion to exclude from the AUPs issues that challenge allocations that BPA has made in a prior 7(i) proceeding. In addition, the Public Power Group has also proposed language that clarifies that BPA has the discretion to exclude from non-binding review by a neutral third-party expert issues that are beyond the scope of the cost verification process by citing to the section of Attachment A that establishes the scope of that process. Adoption of the Public Power Group proposed language will resolve the issues that sections 1c and 4d have presented in this proceeding.

Proposed Language:

Paragraph 1c, Attachment A

however, BPA may exclude any requested additional task that BPA reasonably determines: 1) is without merit; 2) ~~or~~ would be immaterial to the calculation of the Slice True-Up Adjustment; 3) ~~or is a~~ matters outside the scope of the Slice True-Up calculations as provided in section 1a; or 4) ~~matters that concern challenges~~ an ~~issue that should be finally determined in a 7(i) Process because it regards the appropriate~~ allocation between Slice and non-Slice customers previously determined in a 7(i) Process.

Proposed Language:

Paragraph 4d, Attachment A

Any issue raised pursuant to section 4b above will be forwarded to the neutral third party for non-binding review unless BPA reasonably determines that such issue is inappropriate for third-party non-binding review because it concerns: (1) the allocation of a New Expense; (2) matters that are immaterial to the calculation of the Slice True-Up Adjustment; or (3) matters that are outside the scope of the cost verification process for the Slice True-Up Adjustment [as set forth in section 1a above](#).

VI. DETERMINATION OF FIRM CRITICAL OUTPUT AND CRITICAL PERIOD

In its direct case, the Public Power Group described that one of the major objectives of tiering rates is to ensure preference customers a power supply from existing Federal resources at the cost of producing such power. The Public Power Group also explained that if preference customers are to provide a 20-year assurance of payment of these resource costs, they require in return that BPA's determination of the output of these resources will continue to be made in the manner that has been historically used by BPA. The Public Power Group proposed language that was intended to give customers the assurance they need that the resource capability for which they are going to pay will provide them a predictable and reasonable amount of power, subject to external events that can affect these resources. The language also recognized that over the course of the next 20 years, planning standards are likely to change.

In rebuttal testimony, BPA essentially agreed with the portion of the Public Power Group's request that BPA set out how Firm Critical Output will be determined for each type of resource. Additionally, BPA proposed an alternative response to customers' concerns about BPA switching the years it uses to define Critical Period. Further, after settlement discussions, BPA now proposes the following changes to its definition of Critical Period:

Proposed Language:

Critical Period means the period when the expected regulated and independent hydroelectric power generation from water available from reservoir releases plus historical natural streamflows produces the least amount of power to meet system load requirements while taking into account power and non-power operating constraints, the planned operation of non-hydro resources, and expected net contract obligations. [The Critical Period adopted by BPA as of the effective date of this TRM is October 1936 through September 1937 water conditions, unless modified pursuant to section 3.1.3.2.](#)

The Public Power Group believes that BPA's current proposal may provide adequate certainty regarding the method through which BPA will determine the Critical Period and Firm Critical Output of Tier 1 System Resources, in combination with the following proposed change to section 3.1.3.2:

Proposed Language:

Determination of Critical Period

The Critical Period adopted by BPA as of the effective date of this TRM is September 1936 through April 1937. To be consistent with the corresponding Fiscal Years, BPA will use the historical streamflows from October 1936 through September 1937 in the determination of the Firm Critical Output of the Tier 1 System Resources. BPA may revise the Critical Period after a good faith determination that the proposed Critical Period provides a [more](#) reasonable basis for forecasting the available output of hydroelectric projects after incorporating power and nonpower requirements with which BPA is obligated to comply [than the then current Critical Period](#). Examples of these requirements [that may necessitate such revision](#) include, but are not limited to, biological opinions, court orders, treaties, statutes, regulations, executive orders, changes in thermal operations, changes in forecast loads, and flood control.

The foregoing revisions clarify that any revised Critical Period must be determined by BPA in good faith to be a better method than the one being used, and that the reason for revising the Critical Period is due to circumstances external to BPA.

VII. DETERMINATION OF SYSTEM OBLIGATIONS

TRM section 3 identifies the data sources, procedures, and methods by which BPA will determine the total quantity of Federal power available to be sold at Tier 1 Rates. Table 3.4 identifies the agency's existing Designated BPA System Obligations and Discretionary Contracts that will be netted against firm output in making this important calculation. The TRM appropriately states that Discretionary Contracts will not be renewed when they expire. (TRM, Section 3.1.4.2.). It provides, however, that System Obligations may be updated at BPA's discretion "to include new Designated BPA System Obligations." (TRM, Section 3.1.4.1.)

In its direct case, the Public Power Group argued that this open-ended ability of BPA to add new or different System Obligations is a serious failure of the TRM because, as written, nothing prevents BPA from over-committing the existing Federal system to non-preference services (*e.g.* obligations to provide capacity-related services), which may then require BPA to supplement the existing Federal system with higher cost capacity to meet its CHWM Contract commitments. Nor does the definition of "Discretionary BPA System Obligations" impose any meaningful limit on the types of transactions that could qualify for inclusion in this category. The Public Power Group noted that over time, this would erode the bargain that BPA has committed in the Regional Dialogue discussions to offer public power—preserving the value of the low-cost Federal system for regional preference customer load service during the term of the Regional Dialogue contracts.

The Public Power Group recommended that the TRM specify that in the event BPA wants to offer new services to non-preference customers, BPA should acquire a new resource to enable the service and recover the cost of the acquisition from the parties benefiting from the service. In the Public Power Group's view, the existing Federal system is irreplaceable, and

BPA should not commit the existing Federal system to new non-preference services and claim that customers are made whole simply by replacing the resource with forecast revenues from these future services. We want to make clear, however, that our suggestion does not constrain how BPA manages and markets that portion of any surplus that is not sold as part of the Slice Product. When we discuss “System Obligations” in this section, the Public Power Group is addressing only system obligations that reduce the size of the available Tier 1 System by being treated as Tier 1 System Obligations. The Public Power Group proposed edits to section 3.1.4 of the TRM that were intended to make this distinction, and to clarify that BPA may not undertake new obligations from the existing Federal system except in cases when BPA is required to provide the service from the existing Federal system due to court order, regulatory requirement, executive order, or legislation. This language would not prohibit BPA from offering new services from resources acquired for that purpose and paid for by the beneficiaries of the new service.

The proposed edits were also intended to restore previous language that provides preference customers a forum for input regarding expenses, revenues and treatment of Designated BPA System Obligations. Customers understood from the negotiations surrounding the TRM that BPA management had been open to including such procedural protections for customers on this topic.

In its rebuttal, BPA stated that it will not commit to meeting new System Obligations solely through separate resource acquisitions that pass those costs on to the entities causing the obligations. Instead, BPA stated that it will ensure pricing that prevents a deterioration of the Tier 1 System through cost effective use of existing resources.⁷

⁷ Rebuttal Testimony - Federal System Resources, TRM-12-E-BPA-17, p. 7.

After additional settlement meetings, BPA now proposes to update language in the TRM. BPA's proposed changes do not go far enough to address the important issue of new Designated BPA System Obligations reducing preference customers' access to the Tier 1 System. In general, they represent only procedure, not any substantive protection. The Public Power Group urges the construct outlined in its direct case, under which Table 3.4 would list BPA's current obligations, which BPA could replace on expiration, or add to if required by law or court. Any other changes should be required to be implemented only through a change to the TRM pursuant to sections 12 and 13. Appropriate language was previously proposed by the Public Power Group, and is as follows:

Proposed Language:

Table 3.4 may be updated in a Tier 1 System Firm Critical Output study to include new Designated BPA System Obligations; provided however that no new Designated BPA System Obligation will be added to Table 3.4 except for those obligations that BPA is required by regulatory authority, Executive Order, legislation or court order to provide from the Tier 1 System Firm Critical Output.

To the extent that BPA is determined to offer only protection along the lines of that offered in language sent out to parties after the September 12th settlement meeting, Public Power Group believes the language should at least be improved as follows. (Redlining shows the Public Power Group's recommended changes to BPA's proposed language – *i.e.*, all BPA redlining in its language proposed subsequent to the settlement meeting was accepted before modifying)

Definition:

Designated BPA System Obligations means the set of obligations, (specified in Table 3.4, imposed on BPA by statutes, regulations, court order, treaties, or executive orders, (whether implemented by memoranda of agreement, ~~and~~ contracts, or other means) that require the generation or

delivery of power, forbearance from generating power, or receipt of power, in order to support the operation of the FCRPS, including any obligations to the BPA Balancing Authority (Transmission Services).

The above changes eliminate the ambiguity from the definition of Designated BPA System Obligations in the TRM, which as drafted by BPA can be interpreted as extremely broad, potentially including any contract or memoranda of agreement executed by BPA, regardless of whether the obligation was imposed upon BPA or whether it was undertaken voluntarily by BPA. Through settlement discussions, the Public Power Group understands that BPA intends Designated BPA System Obligations to cover only those obligations lawfully imposed on BPA by other entities. The proposed revisions clarify that the reference to memoranda of agreement and contracts recognizes that these obligations are typically reflected in such documents.

After a settlement meeting, BPA also proposed to revise section 3.1.4.1 of the TRM regarding the public process BPA is committing to regarding new and changing system obligations. Customers requested a process that provides the opportunity for customer comment before a new system obligation is undertaken by BPA, rather than after. Additionally, customers requested that BPA include language in the TRM along the lines of testimony it included in rebuttal, which stated a BPA commitment to the principle that customers should have as much certainty as possible regarding Designated BPA System Obligations, and that they should be protected against inappropriate new obligations.

BPA's proposed language (with BPA changes accepted) is set forth below, with the Public Power Group's changes shown in redline. The proposed changes more comprehensively include BPA's stated commitment to certainty for customers, and attempt to clarify how the customer request could work in conjunction with the processes committed to. The changes also

make clear that BPA will, to the extent possible, conduct the public process prior to incurring obligations, or as soon thereafter as practicable if not possible before. The changes also clarify that the purpose and content of the public process described applies to all situations in which BPA may conduct the process, not only the process that would result if existing obligations increased. Finally, the changes clarify that customers could request reasonable information about the costs and revenues associated with system obligations—not just the amounts.

Proposed Language:

~~To provide customers~~ Customers with CHWM Contracts should have as much certainty as reasonably ~~practicable~~ possible about Designated BPA System Obligations; that increase the Tier 1 System Obligations, and they should be reasonably protected against new Designated BPA System Obligations that reduce their access to power at the Tier 1 Rates or increase Tier 1 Rates. Therefore, when possible, BPA will hold a public process before entering into a new Designated BPA System Obligation ~~is added to Table 3.4 or.~~ Where holding such a process is not possible before entering into, or becoming subject to a new Designated BPA System Obligation, BPA will hold such process before a new Designated System Obligation is added to Table 3.4.

If the total of existing obligations increases such that BPA's forecast of Tier 1 System Obligations increases, or is expected to increase, by 10 percent over the most recently published forecast of Tier 1 System Obligations. ~~When such a change occurs~~ (even without the addition of any new Designated BPA System Obligation), then BPA shall notify all customers with CHWM Contracts of such change. ~~If as soon as reasonably possible.~~ Upon written request of not less than 25 percent of the customers with CHWM Contracts (by number), BPA cannot will hold a public process prior to implementing a change on the matter.

In the public processes described above, BPA will hold at least one open meeting to: (i) in system obligations, then BPA shall notify all customers with CHWM Contracts of the case of new Designated BPA System Obligation or increase in Tier 1 System Obligations within 60 calendar days, review the need for and the amount of such change. Upon written request of not less than 25 percent of the customers with CHWM Contracts (by number), BPA will hold at least one open meeting to obligation; and (ii) in the case of existing Designated BPA System Obligations, review its Designated BPA System Obligations and forecast Tier 1 System Obligation amounts. BPA will respond to reasonable requests to provide information that is non-confidential and is reasonably related to its determination of the amount of new and existing Designated BPA System Obligations, forecast

Tier 1 System Obligations, and any revenues or costs associated with such obligations. The purpose of such a meeting(s) is to inform parties of ~~revisions~~changes to the Tier 1 System Obligations and to allow comment on such ~~revisions~~changes. In addition to conducting the open meeting(s), BPA will consider written comments submitted in connection with such meeting(s).

In contrast to Designated BPA System Obligations, the Public Power Group understands that Discretionary Contracts consist of transactions entered into by BPA on or before September 30, 2006, and resulting from marketing decisions.⁸ While section 3.1.4.2 of the TRM describes this clearly, the definition of Discretionary Contracts proposed in the TRM does not. Further, the definition of Discretionary Contracts appears to be in conflict with section 3.1.4.2 or, at best, creates an ambiguity.⁹ The Public Power Group proposes the following revisions to the definition of Discretionary Contracts to add clarity and avoid any potential ambiguity or conflict:

Proposed Language:

Discretionary Contracts means those purchases, sales, and exchanges resulting from BPA marketing transactions as of September 30, 2006, and Designated BPA Contract Purchases and Designated BPA System Obligations that have resulted from power marketing decisions by Power Services and are identified ~~on~~in Tables 3.3 and 3.4.

This proposed revision was taken directly from section 3.1.4.2 and thus ensures clarity and consistency between these provisions.

VIII. TREATMENT OF CF/CTs IN THE TRM¹⁰

The Public Power Council's position regarding the treatment of Contract For / Committed To Loads ("CF/CTs") in the TRM is set out in TRM-12-E-PPG-2, pages 9 through 10.

⁸ TRM-12-E-BPA-20, section 3.1.4.2, at 22-23.

⁹ Compare TRM-12-E-BPA-20, section 3.1.4.2, at 22-23 with TRM-12-E-BPA-20, at xii.

¹⁰ Cowlitz PUD takes no position on this issue.

IX. REMARKETING OF RESOURCES BETWEEN COST POOLS (TRM section 3.4)

As a general proposition, the TRM carefully establishes rules to assure that costs are not shifted between Tier1 and Tier 2 Cost Pools or among individual Tier 2 Cost Pools. Preventing such cost shifts is essential to the concept of tiered rates. In section 3.4 of BPA's Initial Proposal, Allocation of Costs for New Federal System Resource Acquisitions, however, BPA proposed a significant deviation from the general rule against cost shifts. Specifically, as drafted by BPA, section 3.4 provides that if the output of new Federal resources exceeds the needs of the Cost Pool(s) for which the resource has been acquired, then the resource may be remarketed to another Cost Pool "at the cost of the resource."

In all other cases, BPA proposes to transfer the use of excess resources from the Cost Pool responsible for the cost to another Cost Pool that needs the related energy or other services at market prices. Transfers at market prices assure that neither Cost Pool is disadvantaged for the benefit of another. Instead, when transfers are made at market prices, each Cost Pool is indifferent between simply buying or selling the service in the market or acquiring it from another Cost Pool.

If one Cost Pool is forced to either buy or sell energy or services from another Cost Pool at the underlying cost that the selling Cost Pool incurred for the resource, and if that cost differs from market value, then one of the Cost Pools is in fact disadvantaged by the need to enter into the transaction with the other Cost Pool. In effect, either costs or benefits are shifted from one Cost Pool to another in a manner generally prohibited for all other inter-Cost Pool transactions. There is no apparent reason for this one exception to the general rule that neither costs nor benefits will be shifted between Cost Pools. Therefore, the Public Power Group proposed an amendment to section 3.4 to specify that if excess power from new Federal resources is

remarketed to a Cost Pool other than the Cost Pools for which the resource was acquired, then such remarketing will be treated for ratemaking purposes as occurring at the forecasted market prices for the energy transacted. This language will assure customers that they will not be disadvantaged by any surplus or deficit of resources in another Cost Pool.

In its rebuttal testimony, BPA rejected the Public Power Group's proposed changes. However, after discussing the issue with BPA at a settlement meeting, we understand that BPA may have misunderstood the Public Power Group proposal, and that in fact BPA may be amenable to making the change. The Public Power Group does not suggest that it would be inappropriate for BPA to acquire resources with the intent to allocate the resource costs among two or more Cost Pools. The Public Power Group does not object to such allocation. We object only to any remarketing of surplus resource amounts at other than market value *after the initial cost responsibility has been established*.

For all of the reasons described above, the Public Power Group requests that BPA modify the TRM as provided below.

Proposed Language:

3.4 Allocation of Costs for New Federal System Resource Acquisitions

Costs of a Federal resource acquisition made after September 30, 2006, will be allocated to one or more Cost Pools. Such costs will remain as allocated for the duration of the resource purchase or the CHWM Contract, whichever ends sooner. If the available power from such resources exceeds the loads that pay such costs, however, then the excess may be forecast to be remarketed. ~~Such remarketing may be to another Cost Pool at the cost of the resource. Any revenues resulting from the remarketing of such resource will be credited to the Cost Pool to which the cost of such resource is allocated.~~ For ratemaking purposes, such remarketing will be forecast to occur at the market price of power during the period when the remarketing occurs, as forecast in the applicable 7(i) Process, and the revenues resulting from such remarketing will be credited, in proportion to their contribution of excess power, to the Cost Pool(s) to which the cost of such resource is allocated.

X. FINALITY OF THE TRM

Given the limited time BPA and the customers have had under the Regional Dialogue schedule to work on the latest draft of the Tiered Rate Methodology (TRM), it is critical there be future opportunities to review, refine, and fix any problems with the TRM. In order to provide these opportunities, the Public Power Group requests that BPA commit to allow further meaningful input into the TRM at least through the end of September, 2008. This would allow for needed additional interaction with key BPA rate staff that has been involved in the TRM. Put simply, customers have not had adequate opportunity to ensure that the TRM reflects the intended business arrangement and appropriately correspond to the contracts. If BPA commits to allow meaningful review of and input into the TRM through September, then customers will have greater confidence that the TRM meets the region's expectations. Any agreements reached on the TRM through September could be entered into the record, and incorporated as part of the Record of Decision and TRM. Allowing this opportunity for further work may necessitate future workshops, or at least a commitment by BPA to continue fine tuning TRM language with parties.

The Public Power Group understands that BPA is leaning toward filing the TRM with FERC this year, after the TRM Record of Decision is issued, rather than waiting until rates created pursuant to the TRM are submitted to FERC. The Public Power Group does not believe that BPA has any legal obligation to submit the TRM to FERC until it actually establishes rates under the TRM. FERC's role is to review "rates," and when reviewing power rates to review them for the limited purposes of ensuring that they are "sufficient to assure repayment of the Federal investment" in the system, and are "based upon the Administrator's total system costs."¹¹

¹¹ 16 U.S.C. § 839e(a)(2).

The TRM does not constitute a rate, and there is no requirement that FERC review it. FERC's inquiries will be applicable only once BPA establishes actual PF rates pursuant to the TRM.

Moreover, filing with FERC in the near-term will create unnecessary process and potentially complicate customers' and BPA's efforts to ensure that the TRM properly reflects the Regional Dialogue construct that has been developed and appropriately meshes with the contracts. BPA should not assume that filing the TRM with FERC before CHWM Contracts are signed is necessary to give customers the certainty they desired around the TRM. Either the contracts or the TRM Record of Decision could contain provisions giving customers sufficient certainty that the construct contained in the TRM will not inappropriately change after contracts are signed, and a broad group of public power customers consider this approach superior to submitting the TRM to FERC prematurely.

In addition to the opportunity to continue working on the TRM through September, the Public Power Group believes it would be desirable to allow for opportunities to improve the TRM or correct errors or unintended consequences in the TRM until the Regional Dialogue contracts are signed, without having to go through the processes for change set out in the TRM. In order to accommodate this, the Public Power Group recommends language in the TRM (or perhaps more appropriately the Record of Decision) that would state that changes worked out by BPA and parties prior to the date of contract signing do not have to be run through the processes set out in sections 12 and 13 of the TRM. Instead, those changes (agreed to during the time between the Record of Decision and contract signing) would be collected and formalized, and reflected in the TRM when BPA files its first rates set in accordance with the TRM. The TRM would specify, however, that once the contracts are signed, the only method through which the TRM could be changed would be through the provisions for change contained in the TRM.

Proposed Language:

12 CRITERIA AND CONDITIONS FOR REVISING THE TRM

It will be BPA's policy to revise the TRM as little as possible. BPA reserves the right to revise the TRM, but after the general deadline established by BPA for Publics to sign CHWM Contracts, BPA may revise the TRM only in accordance with the criteria and conditions set forth in this section 12 and the applicable processes set forth in section 13. Reference in this TRM to a "revision" to the TRM means a change in the actual language of the TRM. In this context, revision does not refer to questions of interpretation or implementation of the TRM.

CONCLUSION

For all of the reasons described above, BPA should incorporate the changes to the TRM that are described in this brief.

Respectfully submitted this 18th day of September, 2008.

/s/ Mark R. Thompson

Mark R. Thompson
Public Power Council
825 NE Multnomah St., Ste. 1225
Portland, Oregon 97232
(503) 595-9779
mthompson@ppcpdx.org

Attorney for Public Power Council

/s/ Sarah E. Dennison-Leonard

Sarah E. Dennison-Leonard
Attorney at Law
1509 SW Sunset Boulevard, Suite 2F
Portland, OR 97239
(503) 219-9649
sdleonard@earthlink.net

*Attorney for The City of Seattle
City Light Department*

/s/ Paul M. Murphy

Paul M. Murphy
MURPHY & BUCHAL, LLP
2000 SW First Ave., Suite 420
Portland, Oregon 97201
(503) 227-1011
pmurphy@mblp.com

Attorney for Cowlitz PUD

/s/ Terence L. Mundorf

Marsh Mundorf Pratt Sullivan & McKenzie
16504 9th Avenue SE, Ste. 203
Mill Creek, WA 98012
(425) 742-4545
TerryM@millcreeklaw.com

Attorney for Slice Customer Group

/s/ Susan K. Ackerman
Susan K. Ackerman
9883 NW Nottage Dr.
Portland, Oregon 97220
(503) 297-2392
susan.k.ackerman@comcast.net

Attorney for Northwest Requirements Utilities

/s/ R. Erick Johnson
R. Erick Johnson
R. Erick Johnson PC
5285 SW Meadows Road, Suite 230
Lake Oswego, Oregon 97035
(503) 684-9658
ejohnson@rejpc.com

Attorney for PNGC Group

/s/ Jeffrey R. Kallstrom
Anne L. Spangler
Jeffrey R. Kallstrom
2320 California Street
Everett, WA 98201
(425) 783-8250
JKallstrom@SNOPUD.com

*Attorneys for Public Utility District No. 1
of Snohomish County, Washington*

/s/ William C. Fosbre
William C. Fosbre
City of Tacoma
3628 South 35th Street
Tacoma, WA 98409
(253) 502-8218
bill.fosbre@ci.tacoma.wa.us

*Attorney for the City of Tacoma
d/b/a Tacoma Power*