Administrator's Record of Decision

BPA

Southern California Edison Contract Formula Rates Proposal

U.S. Department of Energy
Bonneville Power Administration

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ADMINISTRATOR'S RECORD OF DECISION
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Chapter I

INTRODUCTION

A. Bonneville Power Administration's Surplus Marketing

Bonneville Power Administration's (BPA) electric power system has had firm energy and capacity that is surplus to the needs of its Pacific Northwest (PNW) customers since the early 1980's. BPA currently forecasts 1000 average megawatts (MW) of surplus firm energy for at least 5 years and 2000 MW of surplus firm capacity for at least 20 years. However, while costs are incurred for this surplus, the agency has experienced difficulty in recovering these costs. The failure to recover these costs has been largely caused by an inability to negotiate long-term sales. This has forced BPA to rely on short-term surplus firm power sales to recover its costs. However, short-term sales have consistently recovered less than BPA's fully allocated costs due to market forces in the Pacific Southwest (PSW). In addition, BPA has frequently sold surplus firm power at nonfirm energy rates. Sales of surplus firm power at nonfirm energy rates entail revenue losses to BPA in all cases.

BPA has determined that its ability to recover costs would be assisted by long-term sales of its surplus power. In addition, since long-term sales would contribute significantly to a stable BPA revenue stream, such sales would enhance the Administrator's ability to meet the agency's obligations to the U.S. Treasury on an ongoing basis. The clear advantages of long-term sales have prompted BPA to seek long-term marketing arrangements for its surplus firm power in the PNW and PSW. As one facet of BPA's ongoing efforts to market its surplus power on a long-term basis, BPA and the Southern California Edison Company (Edison) have negotiated a proposed 20 year surplus firm power sale and capacity/energy exchange contract.

B. Description of the Proposed BPA-Edison Contract

According to the terms of the proposed contract, Edison would buy 250 MW of surplus firm power from Bonneville on a take-or-pay basis. Edison has an option to increase this amount to 550 MW at the time the contract is signed. Surplus firm power would be delivered to Edison at an average annual load factor of 53.57 percent. These firm sales would continue until BPA's surplus firm energy is depleted or specified conditions make the sale arrangement uneconomical for either party. In either case, the proposed contract then provides for conversion to a capacity/energy exchange. Under the exchange, BPA would deliver power to Edison during summer daytime hours. Edison would return energy associated with the delivery of capacity to BPA during nighttime hours of the same summer period. Edison may purchase nonfirm energy from BPA to meet its peaking replacement energy obligation. In exchange for summer capacity deliveries, Edison would deliver firm energy to BPA in the winter when BPA experiences its highest loads. The determination of whether there will be a power sale or exchange is made on an annual basis.

BPA and Edison seek to execute the contract on October 1, 1986. The effective date of the proposed contract and proposed formula rates is October 1, 1987.

C. Development of the Proposed Southern California Edison Formula Rates

BPA's objectives in negotiating this sale with Edison were to achieve a long-term market for its surplus power at rates that would both recover the fully allocated cost of service and contribute significantly to BPA's revenues. Edison's objectives in negotiating a long-term purchase from BPA were to achieve a firm resource that would permit it to defer or avoid the acquisition of additional resources or the refurbishment of existing resources. In order to justify purchasing from BPA instead of undertaking alternative resource options, Edison required a predictable rate.

The rate formulas that will determine the price Edison will pay for surplus firm power and nonfirm energy were negotiated by BPA and Edison in the contract negotiation process. These rate formulas are the subject of this section 7(i) rate hearing and this Record of Decision. When the power sale portion of the contract is in effect, the surplus firm power rate equals 36.887 mills per kilowatthour (kWh) escalated by the change in BPA's Priority Firm Power (PF) rate plus two percent compounded annually. The rate of 36.887 mills per kWh is based on the SP-85 Contract rate computed at a load factor of 53.57 percent and includes the Intertie Service charge of 1.2 mills per kWh.

When the contract converts to a capacity/energy exchange, Edison may purchase nonfirm energy from BPA to meet its peaking replacement energy obligation. The applicable nonfirm energy rate negotiated by BPA and Edison equals 23.4 mills per kWh escalated by the same factor as the surplus firm power rate -- the rate of increase in BPA's PF rate plus two percent compounded annually. The rate of 23.4 mills per kWh is based on the NF-85 Nonfirm Energy Standard rate and includes the Intertie Service charge of 1.2 mills per kWh. Thus, both the surplus firm power and the nonfirm energy formula rates would escalate annually over the life of the 20-year contract by the factor of 2 percent, and by an additional amount in years when BPA revises its PF rate. These rate formulas were found mutually agreeable in the negotiation process by both BPA and Edison because the formulas achieved BPA's dual goals of cost recovery and revenue enhancement, and Edison's goal of rate predictability.

D. Procedural History of the Rate Proceeding

On March 31, 1986, BPA published in the FEDERAL REGISTER Proposed Southern California Edison Contract Rates And Opportunity For Public Review And Comment. 51 Fed. Reg. 10911. This notice initiated a formal section 7(i) proceeding and also requested public comment on the proposed formula rates.

In accordance with section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act), 16 U.S.C. §839e(i), an evidentiary hearing on the proposed Edison formula rates was conducted by Judge William J. Sweeney, Hearing Officer. Thirteen intervention petitions were filed by BPA's PNW and PSW publicly-owned and investor-owned utility customers, direct-service industrial customers (DSIs), customer groups, and two state regulatory agencies. Judge Sweeney began the hearings

with a prehearing conference on April 8, 1986, at which he granted party status to intervenors and issued a procedural schedule.

BPA's initial proposal included the written testimony and exhibits of its witness. The parties filed direct and rebuttal testimony on April 28, 1986. Additional rebuttal testimony was filed by BPA on May 9, 1986. Both BPA and the parties responded to data requests. BPA responded orally to some data requests at the clarification session held April 11, 1986, to clarify BPA's testimony. Other data requests were answered in writing. By agreement of the parties, no session was held to clarify parties' testimony. Clarification questions of the parties' witnesses were answered along with their responses to data requests.

Cross-examination took place before Judge Sweeney on May 14, 1986. The parties filed initial briefs on May 27, 1986. BPA issued a Draft Record of Decision on June 13, 1986. Following issuance of the Draft Record of Decision, the parties participated in oral argument before the Administrator's designees on June 20, 1986.

This Record of Decision represents the Administrator's decision following the section 7(i) rate hearing. It is different in its format from prior Records of Decision in that comments of parties and participants are addressed together instead of being addressed in different sections. BPA's rule governing rate hearings distinguishes between participants and parties. Parties must formally intervene by written petition. 51 FR 7611 (March 5, 1986) (Rule 1010.4). Parties have the right to submit testimony, seek discovery, and cross-examine all witnesses, and the concurrent obligation to respond to discovery requests and present their witnesses for cross-examination. In contrast, participants may submit written comments on the proposed rate without formally intervening and without being subject to the requirements incumbent upon parties. Rule 1010.4(e).

Participants' comments are not subject to cross-examination, and ordinarily there is no opportunity for any person to rebut or otherwise respond to comments filed by participants. These considerations bear on the weight given comments submitted by participants. Because of this, BPA typically compiles the comments of participants separately in the record, Rule 1010.11(e), and addresses the concerns of the participants in a separate section of the Administrator's Record of Decision. In this case, however, BPA has chosen for purposes of economy to address the concerns of the participants alongside those issues raised by the parties in the formal evidentiary hearing.

This Record of Decision addresses the specific issues identified by the parties to the formal evidentiary proceeding and those comments submitted by participants. The evaluation of each issue is divided into three sections: (1) summary of the positions, which briefly states the BPA proposal and the positions the parties and participants have taken concerning the issue; (2) evaluation of the positions, which discusses the various arguments on each issue and presents BPA's evaluation of the arguments; and (3) the decision of the Administrator on the issue.

This final Record of Decision is being issued on July 10, 1986.

E. Other Public Proceedings Relevant to This Record of Decision

On January 28, 1986, BPA requested public comment by March 14, 1986, on the proposed Edison power sale and exchange contract. BPA received 11 letters of comment on the proposed contract prior to March 14. In response to requests from several customer groups, BPA accepted additional comments on the proposed contract. In total, BPA received 27 letters of comment regarding the contract. Some of these comments addressed issues respecting the formula rates. BPA has chosen to address comments regarding the formula rates in this Record of Decision. BPA anticipates publishing an evaluation of all other comments at the time the contract is executed.

In conjunction with the Department of Energy (DOE), BPA also performed an Environmental Analysis (EA) of the proposed transaction. In the EA, BPA evaluated the effects of the Edison transaction and the cummulative effects of 1350 MW of similar sales on the environment. Copies of the EA were made available to BPA's customers and other interested persons for public comment on May 23, 1986. BPA accepted comment on the EA until June 23, 1986. A Finding Of No Significant Impact was formally approved by DOE on July 9, 1986.

F. Legal Requirements

1. General Rate Guidelines

The Pacific Northwest Power Act, 16 U.S.C. §839e, directs the Administrator to establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Generally, the Administrator must recover, over a reasonable period of years, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs of the Administrator. The Administrator is directed to establish such rates in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. §838), section 5 of the Flood Control Act of 1944 (16 U.S.C. §825s), and the Pacific Northwest Power Act. Section 7(k) of the Pacific Northwest Power Act provides that nonfirm rates for sales outside the PNW region be set in accordance with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Section 7(i) prescribes formal ratesetting procedures for BPA.

The Federal Columbia River Transmission System Act contains three specific guidelines for the establishment of rates by the Administrator. The rates must be set: (1) with a view to encouraging the widest possible diversified use of the electric power at the lowest possible rates to consumers consistent with sound business principles; (2) with regard to the recovery of the cost of producing and transmitting electric power, including the amortization over a reasonable period of years of the capital investment allocated to power; and (3) at levels which produce such additional revenues as may be required to pay when due the bonds issued under the Act, including amounts required to establish and maintain reserve accounts. 16 U.S.C. §838.

The Flood Control Act of 1944 establishes similar guidelines. The Administrator is required to dispose of power and energy in such a manner as to encourage the most widespread use at the lowest possible rates to consumers consistent with sound business principles. The rates are further required to be set having regard for the recovery of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years. 16 U.S.C. §825s.

The Bonneville Project Act provides that rates shall be drawn having regard to the recovery of the cost of producing and transmitting electric energy, including the amortization of the capital investment over a reasonable period of years. 16 U.S.C. §832f. In addition, the rates shall be fixed and established with a view to encouraging the widest possible diversified use of electric energy. 16 U.S.C. §832e.

2. Confirmation and Approval

The Pacific Northwest Power Act specifies in section 7(a)(2) that rates become effective upon final or interim approval by the Federal Energy Regulatory Commission (FERC). 16 U.S.C. §839e(a)(2). The FERC must review the rate proposal to determine that: (1) rates are sufficient to assure repayment of the Federal investment in the FCRPS over a reasonable number of years after first meeting BPA's other costs; (2) rates are based on BPA's total system costs; and (3) transmission rates equitably allocate the costs of the Federal transmission system between Federal and non-Federal power using the system. Pursuant to section 7(k), 16 U.S.C. §839e(k), FERC also reviews nonfirm energy rates for sales outside the PNW region for compliance with the ratemaking standards of the Bonneville Project Act, the Flood Control Act, and the Federal Columbia River Transmission System Act. Pursuant to section 7(i)(6) of the Pacific Northwest Power Act, the FERC has promulgated rules found at 18 C.F.R. ¶300 establishing procedures for the approval of BPA rates.

Chapter II

RATE FORMULATION

A. Rate Design

1. Surplus Firm Power Rate Formula

Issue

Does the proposed formula rate for surplus firm power adequately recover costs and yield sufficient revenues over the term of the contract?

Summary of Positions

Parties

The proposed Edison contract formula rate for surplus firm power is based on the SP-85 Contract rate calculated at an average annual load factor of 53.57 percent and escalated annually by the change in the PF rate plus two percent. Armstrong, BPA, SC-86-E-BPA-01, 3. BPA forecasts that the proposed surplus firm power formula rate will fully recover BPA costs over the contract term. Armstrong, BPA, SC-86-E-BPA-01, Attachment 3.

Puget Sound Power and Light Company (PSP&L) contends that the proposed contract formula rate for surplus firm power should both state and escalate capacity and energy charges separately. Brief, PSP&L, SC-86-B-PS-01, 4. PSP&L also argues that this rate should never be lower than the PF or New Resources (NR) rate. Id., 3; Oral Argument, PSP&L, TR 281.

The California Public Utility Commission (CPUC) argues that the proposed escalator is defective. CPUC claims that "the relationship between Schedule PF-85 and the costs of providing service to SCE appears highly attenuated" and that the 2 percent factor is "inappropriate." Brief, CPUC, SC-86-B-OP-01, 6-7. CPUC also argues that use of the SP-85 Contract rate is inappropriate because this rate is subject to pending litigation. Id., 7.

Participants

Merrill Schultz recommends tying the proposed rate to the New Resource (NR) pool because the "SP rate is ... included in the NR pool." Schultz, Letter, 5. Washington Water Power Company (WWP) recommends tying the rate to the Surplus Firm Power (SP) rate because the PF rate is inappropriate for the purpose of selling surplus firm power to Edison. WWP, Letter, 1.

Pacific Gas and Electric Company (PG&E) contends that the 2 percent factor is unjustified because: (1) it is not cost-based; (2) use of the PF rate escalator alone is adequate; and (3) the rate may lead to regional discrimination. PG&E, Letter, 3-4.

Evaluation of Positions

PSP&L contends that the proposed surplus firm power rate will not track costs as closely as a rate separated into capacity and energy charges that could be escalated independently. The utility argues that the proposed rate will not track costs because BPA capacity and energy costs vary independently, and because Edison's monthly load factor is allowed to vary. Brief, PSP&L, SC-86-B-PS-01, 4.

Although Edison's monthly load factor can vary, the proposed surplus firm power formula rate will recover similar revenues on an annual basis compared to a rate with separate capacity and energy charges. Armstrong, BPA, TR 215. BPA is more concerned with recovering the full cost of providing power to Edison over the term of the contract than it is with exactly tracking monthly fluctuations in the costs of capacity and energy. Armstrong, BPA, TR 159. BPA has demonstrated that the rate will achieve BPA's goal of recovering all costs of serving Edison under most load growth conditions. Armstrong, BPA, SC-86-E-BPA-01, Attachment 3. Moreover, the SP-85 rate, which is the basis for the surplus firm power formula rate, is not time differentiated. BPA does not time differentiate this rate because price signals developed for the PNW may not be appropriate for the PSW and would likely interfere with marketing surplus firm power to the PSW. Administrator's Record of Decision, WP-85-A-02, 269-270.

PSP&L also argues that the formula rate should never be lower than the PF or NR rate because it would be unfair and adversely affect regional cooperation in the long run. Brief, PSP&L, B-PS-01, 3. As a practical matter, however, PSP&L's concerns are remote. The formula rate will always be higher than the PF rate since it starts at an appreciably higher level than the PF rate and is escalated by a factor equal to the increase in the PF rate, plus an additional 2 percent per year. Also, BPA has shown that the proposed formula rate will recover the full cost of surplus firm power under most conditions. Armstrong, BPA, E-BPA-01, Attachment 3. Consequently, the formula rate is projected to be at least as high as BPA's SP rate, which is the approximate level of the NR rate. Finally, any risk that the formula rate may be below the NR rate is offset by substantial revenue stability and revenue recovery benefits that a long-term sale of Federal surplus firm power at full cost would provide.

BPA's alternative to long-term sales is short-term spot market sales of surplus firm power. Historically, BPA often has been forced to sell its surplus firm power at rates well below fully allocated cost due to the nature of the short-term market which can be dramatically affected by a number of factors. Administrator's Record of Decision, FD-85-A-02, 5-6. These factors include short-term changes in gas and oil prices, weather, and availability of California hydro. Id., 8. Long-term arrangements allow capital deferment opportunities which allow higher prices than short-term economy energy purchases. Id. The proposed Edison contract allows long-term revenue recovery by ensuring a market for surplus firm power through a take-or-pay provision. Armstrong, BPA, SC-86-E-BPA-01, 8. Therefore, it appears that regional cooperation would be improved by the revenue stability and benefits offered by this proposed contractual arrangement. Indeed, regional parties

support this bilateral contract. Oral Argument, PPC, TR 229; Oral Argument, DSI, TR 252-253; Brief, DSI, SC-86-B-DS-01, 1; Oral Argument, PP&L, TR 269; Schultz, et al., NP, SC-86-E-NP-01, 2.

The CPUC argues that BPA has not explained how the proposed escalator relates to the cost of serving Edison. Brief, CPUC, SC-86-B-CP-01, 7. The basis of CPUC's argument seems to be that BPA is required to follow a customer cost-of-service approach to these rates. As discussed in Chapter 3, Sections D and E, BPA is not required to adopt cost-of-service rate methodologies for each customer class. However, BPA has testified that although the proposed formula rate does not mimic current rate design methodology, it is designed both to recover costs and to provide Edison the rate predictability it requires. Armstrong, BPA, SC-86-E-BPA-02R, 4. Thus, the rates must reflect competing requirements of overall cost recovery and rate predictability. For this reason, BPA does not anticipate that the factor of the change in the PF rate plus 2 percent compounded annually will track costs exactly, but rather that it would allow BPA to recover overall costs. Armstrong, BPA, TR 159. Forecasts show that the rate will recover costs over the contract period. Armstrong, BPA, SC-86-E-BPA-01, Attachment 3.

The CPUC also argues that use of the SP-85 Contract rate is inappropriate because this rate is subject to pending litigation. Brief, CPUC, SC-86-B-CP-01, 6-7. The CPUC concludes that until such litigation is resolved, the rates cannot accurately be said to reflect BPA's cost of serving Edison. These concerns are discussed in Chapter 3, Section D.

The suggestions of participants Schultz and WWP to tie the proposed rate to the NR pool or the SP rate were not shown to recover costs more effectively than the rate BPA has negotiated with Edison. Use of the PF rate rather than the NR pool or SP rate has the advantage of giving the formula rate the predictability it needs to be commercially attractive to Edison. Edison strongly desired rate predictability in its contract with BPA and viewed the PF rate as the most stable and predictable BPA rate. Armstrong, BPA, SC-86-E-BPA-01, 8. For this reason, and because BPA was satisfied that full costs would be recovered, BPA and Edison elected to tie the contract rate to the PF rate and not to the NR pool or SP rate.

Another participant, PG&E, contends that the 2 percent factor is unjustified because it is not cost-based and because use of the PF rate escalator alone is sufficient to track costs. PG&E, Letter, 3-4. As discussed in Chapter 3, Sections D and E, BPA is not required to set surplus firm power and nonfirm energy rates based on customer cost-of-service methodology. However, even if BPA were required to adopt a cost-of-service methodology, use of the proposed formula escalators has been demonstrated to be a reasonable method of tracking and recovering BPA's costs. The proposed Edison formula rates are set initially at levels that reflect BPA's cost. Armstrong, BPA, SE-86-E-BPA-01, 3-4. Then the initial rates are escalated annually by factors that BPA projects will recover the full cost of service. Id., Attachment 3. In addition to recovering the cost of surplus power, the proposed rates offer Edison a measure of rate predictability that it requires. Thus, use of the change of the PF rate is designed both to provide Edison rate predictability and to reflect BPA's cost increases, while the

2 percent factor is intended to capture not only the projected greater increase in the SP rate compared to the PF rate, but also to allow for higher than expected increases in the SP rate. Armstrong, BPA, SC-86-E-BPA-01, 8.

Regarding PG&E's argument that the 2 percent factor may be discriminatory, see Chapter 3, Section H.

Decision

The proposed formula rate for surplus firm power will recover fully allocated costs under most conditions. The recommendations of the parties to separately charge for capacity and energy or to alter the escalation factor would detract from the predictability of the rate without appreciably enhancing cost recovery. The surplus firm power formula rate will be retained as proposed.

2. Nonfirm Energy Rate Formula

Issue

Does the proposed formula rate for nonfirm energy adequately recover BPA's cost over the term of the contract?

Summary of Positions

Parties

BPA's proposed nonfirm energy formula rate would apply when BPA makes nonfirm energy available to Edison to fulfill its peaking replacement obligation. The proposed rate is based on the NF-85 Nonfirm Energy Standard rate which includes the Intertie Service charge and is escalated by the percentage change in the PF rate plus 2 percent compounded annually. Armstrong, BPA, SC-86-E-BPA-01, 3. BPA testified that the proposed nonfirm energy rate is adequate to fully recover costs over the 20-year contract term. Armstrong, BPA, SC-86-E-BPA-01, Attachment 3.

The Northwest Parties object to the proposed nonfirm energy formula rate if their contract proposal concerning nonfirm energy marketing is not adopted by BPA. Specifically, the Northwest Parties contend that the proposed nonfirm energy rate provides inadequate assurance of full cost recovery due to the uncertainty of future nonfirm energy rate forms and cost allocations. Schultz, et al., NP, SC-86-E-NP-01, 10-11.

In joint testimony, the Association of Public Agency Customers (APAC), Seattle City Light (SCL), and Portland General Electric (PGE) (NF Group) argue that the nonfirm energy formula rate should be based on BPA's average system cost, or as a proxy, the weighted average of the change in all BPA's rates. Cook & Opatrny, NF, SC-86-E-NF-01, 2.

The CPUC argues as it did in Section A.1., claiming that the relationship of the escalation factor to the cost of serving Edison is not clear and that

use of the NF-85 Standard rate is inappropriate because this rate is subject to pending litigation. Brief, CPUC, SC-86-B-CP-01, 6-7.

Participants

Merrill Schultz concurs with the position of APAC, et al., above. Schultz, Letter, 5-6.

PG&E argues that the 2 percent factor is unjustified for the same reasons enumerated in Section A.1. PG&E, Letter, 3-4.

Evaluation of Positions

The Northwest Parties argue that BPA's nonfirm energy rate is less predictable than its other rates and, thus, the formula rate is inadequate. Schultz, et al., NP, SC-86-E-NP-01, 10-11. However, BPA has demonstrated that the nonfirm energy rate formula provides adequate assurance of recovering the full cost of serving Edison under most load growth conditions. The formula rate is designed to recover costs and allow a margin for the uncertainty of future conditions. This uncertainty could result from changes in rate design or cost allocation. Similar uncertainties exist for all future rates and are not peculiar to the nonfirm energy rate. Armstrong, BPA, SC-86-E-BPA-02R, 3. The Northwest Parties, although objecting to the nonfirm energy formula rate, have presented no evidence that the nonfirm energy formula rate will not recover costs adequately.

The NF Group argue that the contract nonfirm energy rate should be based on BPA's average system cost. Cook & Opatrny, SC-86-E-NF-01, 2. APAC further asserts that "BPA's speculation that the escalator will allow BPA to recover its costs is ... [not] based on any quantitative analysis." Brief, APAC, SC-86-B-PA-01, 9. APAC's assertion is incorrect. BPA has analyzed the proposed nonfirm energy formula rate and demonstrated that it would fully recover costs under most conditions for the duration of the contract. Armstrong, BPA, SC-86-E-BPA-01, Attachment 3. BPA also has testified that the escalation factor would likely recover full costs each year over the life of the contract. Armstrong, BPA, TR 165. APAC has not provided any quantitative analysis showing that a rate formula based on its proposal would recover costs or that BPA's proposed rate would not recover full cost.

CPUC's concerns with the nonfirm energy rate formula are identical to the concerns it raised respecting the surplus firm power rate formula. CPUC's claims that the 2 percent factor and the PF rate are inappropriate have been addressed in Section A.1., above. CPUC's claims that the rate should be dependent on the resolution of litigation respecting BPA's nonfirm energy rate is addressed in Chapter 3, Section D. The contention of participant PG&E that the 2 percent escalation factor is inappropriate is addressed in Section A.1., above, and in Chapter 3, Section H.

Decision

The proposed nonfirm energy formula rate will fully recover costs over the 20-year life of the Edison contract. No evidence has been presented that the

rate will not recover BPA's costs. The nonfirm energy rate will be retained as proposed.

3. Intertie Service Charge

Issue

Should the Intertie Service charge be separate from the formula rate?

Summary of Positions

Parties

The proposed surplus firm power and nonfirm energy formula rates include a charge of 1.2 mills per kWh which is the level of the current Intertie Service charge. The total rate is then escalated at the change in the PF rate plus 2 percent compounded annually. Armstrong, BPA, SC-86-E-BPA-01, 3-4.

The Northwest Parties and the DSIs propose that the Intertie Service charge should be separate from the formula rates; i.e., the charge for Pacific Northwest-Pacific Southwest Intertie (Intertie) service would be the charge in effect at the time of the transaction. These parties argue that the formula would not recover Intertie costs if Intertie capability, and, therefore, capital costs, increased or usage declined. Schultz, et al., NP, SC-86-E-NP-01, 2. Pacific Power and Light Company (PP&L), APAC, and the Public Power Council (PPC) argue that it would be very difficult to separate generation and transmission revenues if the Intertie Service charge is not assessed separately. Brief, PP&L, SC-86-B-PL-01, 5-8; Brief, APAC, SC-86-B-PA-01, 5; Brief, PPC, SC-86-B-PP-01, 5.

Participants

Merrill Schultz recommends that BPA charge the Intertie Service charge in effect at the time of the transaction. Schultz, Letter, 6. Tacoma City Light also recommends a separate charge for Intertie service in order to track cost and avoid revenue underrecoveries. TCL, Letter, 1-2.

Evaluation of Positions

The Northwest Parties and the DSIs argue that the formula rates may not be compensatory if the unit cost of Intertie service increases as a result of an increase in Intertie capacity or a decline in usage. Schultz, et al., NP, SC-86-E-NP-01, 8-9; Statement of Position, DSI, SC-86-E-DS-01, 2; Schultz, Letter, 6. PPC contends that the proposed contract rates will recover the full cost of transmission only "by coincidence." Brief, PPC, SC-86-B-PP-01, 4. APAC argues that the proposed escalator is not designed to resemble transmission cost projections. Brief, APAC, SC-86-B-PA-01, 5.

Intertie costs, however, are no different from other costs which, together, constitute the fully allocated cost of surplus firm power and nonfirm energy. Although BPA traditionally has rolled into power rates all transmission costs that have been allocated to these power rates, a separate

Intertie Service charge was designed for the first time in the 1985 rate filing, in part to avoid charging regional purchasers of surplus power for services not used. Armstrong, BPA, SC-86-E-BPA-02R, 1-2.

BPA has demonstrated that the forecasted proposed Edison rates will recover the full cost of generating and transmitting surplus power under most circumstances. The escalation formula, the change in the PF rate plus 2 percent compounded annually, provides for full cost recovery including the possibility of greater than expected rate increases. Therefore, greater than expected increases in any SP or NF cost component, including Intertie cost, are accounted for in the formula rates. Armstrong, BPA, SC-86-E-BPA-01, 5-8, Attachment 3; SC-86-E-BPA-02R, 2.

The Northwest Parties contend that a separate Intertie charge is consistent with BPA's proposal in the Firm Displacement (FD) rate case. Schultz, et al., NP, SC-86-E-NP-01, 8. This is not persuasive. The FD rate is available only to Pacific Northwest (PNW) purchasers for use within the PNW. The Intertie Service charge is not included in the FD rate proposal because the Intertie will not be used to deliver FD power to PNW purchasers. In contrast, the Intertie would be used for delivery of surplus power to Edison. Armstrong, BPA, SC-86-E-BPA-02R, 2.

The Northwest Parties argue that the separation of the Intertie Service charge from the proposed formula rate should not significantly decrease Edison's rate certainty given the relative size of the Intertie adder compared to the total rate. Schultz, et al., NP, SC-86-E-NP-01, 9. However, the separation of charges would tend to reduce the rate predictability which Edison views as significant, just as the Northwest Parties found this issue significant enough to raise in testimony, regardless of the relative size of the charge. Also, if this issue is not significant to Edison, as the Northwest Parties argue, this implies that any uncertainty concerning the Intertie adder is within the range of the uncertainty allowed for in the formula rate, as discussed above, and requires no independent treatment. Armstrong, BPA, SC-86-E-BPA-02R, 3.

The Northwest Parties also argue that the Intertie Service charge should be separate from the formula rate due to possible separate accounting difficulties. APAC alleges that it will be impossible to satisfy FERC's requirement of separate accounting in the future since BPA has made it "virtually impossible" to separately calculate the generation and transmission revenue by including the Intertie charge in the formula rate. Brief, APAC, SC-86-B-PA-01, 5. PPC and PP&L argue that the process of separating transmission from generation revenues will be more difficult and contentious if the formula rate includes the Intertie Service charge. Brief, PPC, SC-86-B-PP-01, 5; Brief, PP&L, SC-86-B-PL-01, 5-8; Oral Argument, PP&L, TR 274-276.

FERC requires BPA to account separately for Federal Columbia River Transmission System (FCRTS) revenues and other revenues. United States Department of Energy, Bonneville Power Administration, 28 FERC ¶61,325 (1984). Because BPA rolls transmission costs into power rates, revenues from power rates must be disaggregated into FCRTS and generation categories to

comply with FERC requirements. BPA maintains that the proposed formula rates are no different from other power rates; FCRTS costs are embedded in all BPA power rates. Although the Intertie costs are assessed under a separate charge within the SP-85 and NF-85 rate schedules, there are other FCRTS costs embedded in the SP-85 Contract rate and NF-85 Standard rate. Armstrong, BPA, TR 218; SC-86-E-BPA-02R, 1-2. Therefore, even if the Intertie charge was separate from the formula rates, BPA would still have to separate the non-Intertie FCRTS revenues from generation revenues, since the formula rates would still include both categories of costs. Id. APAC does not provide any basis for its allegation that separating the revenues from the proposed contract rates would be impossible. BPA considers a reasonable separation of revenue from the proposed Edison contract rates possible and not overly difficult. Any issues concerning this separation of revenues would be resolved in the relevant rate case. Armstrong, BPA, TR 218.

Decision

The Intertie Service charge will not be separated from the proposed formula rates. This cost will continue to be included as part of the proposed formula rates. Greater than expected increases in any SP or NF cost component, including Intertie cost, are accounted for in the formula rates. Issues that arise in future rate cases concerning the separation of revenues will be resolved at that time. BPA anticipates no significant problems in separating FCRTS revenue from generation revenue for the formula rates.

4. Formula Rate

Issue

Will the proposed contract rates increase the volatility of other rates?

Summary of Positions

BPA contends that the proposed rates are not fixed but formula rates, escalated at a rate of 2 percent compounded annually plus the variable rate of increase in the PF rate. Armstrong, BPA, SC-86-E-BPA-02R, 5.

The PPC contends that the formula rate escalator is fixed and thus, increases the volatility of other rates. Drummond & Opatrny, PPC, SC-86-E-PP-01, 2-3.

Evaluation of Positions

The PPC writes that "the history of unforeseen rate increases makes fixed escalators particularly uncertain mechanisms for cost recovery over extended periods of time." They also note that fixed escalators for one rate may increase the volatility of other rates which are not fixed. Drummond & Opatrny, PPC, SC-86-E-PP-01, 2-3. The PPC does not oppose the use of the surplus firm power rate formula, but is concerned that any underrecoveries resulting from the 20-year fixed relationship could be allocated to the PF rate. Oral Argument, PPC, TR 229-230.

BPA disagrees that the proposed rate escalator is fixed. The proposed rates increase in response to the variable changes in the PF rate as well as at a fixed rate of 2 percent compounded annually. The rate of escalation in the Edison contract rates will thus vary with the rate of escalation in the PF rate, and not at a single fixed rate of escalation. Also, the 2 percent factor is designed to capture higher than expected increases in the SP rate. The variable escalation formula differs significantly from a fixed formula, in which the risk of cost underrecovery would be higher. This variable formula largely mitigates the risk of cost underrecovery caused by the possibility that actual conditions will differ from forecasted conditions. Armstrong, BPA, SC-86-E-BPA-01, 5, 7-8. Since the proposed rates are projected to recover costs, they do not unduly increase the volatility of other rates.

In addition, the risk of an underrecovery caused by the proposed formula rates is balanced by the probability of an overrecovery. Significant benefits accrue to BPA's PNW customers from the take-or-pay sale of surplus firm power at full cost in the early years of the contract. These factors will contribute to a steady revenue stream that will in turn contribute to rate stability for all BPA's customers. See Section A.1 for a discussion of the benefits of long-term sales of Federal power.

Decision

The formula escalator varies with the rate of change in the PF rate. This variable escalator helps assure recovery of BPA's costs. Thus, the proposed contract formula rates will not unduly increase the volatility of other BPA rates.

B. Nonfirm Energy Pricing Flexibility

Issue

Should BPA retain more pricing flexibility when selling peaking replacement energy to Edison?

Summary of Positions

BPA's proposed nonfirm energy formula rate would apply when Edison purchases nonfirm energy from BPA to satisfy its peaking replacement obligation. The proposed contract description requires Edison to purchase peaking replacement energy from BPA before purchasing such energy from other PNW or Canadian utilities. Armstrong, BPA, SC-86-BPA-01, 2, Attachment 1.

The Northwest Parties propose that BPA should charge either the proposed formula rate or any higher market rate. However, Edison would be free to purchase from any utility when the higher market rate option is in effect. Schultz, et al., SC-86-E-NP-01, 10; Brief, APAC, SC-86-B-PA-01, 9-10. PPC further proposes that the higher market rate be a share-the-savings rate. Drummond & Opatrny, PPC, SC-86-E-PP-01, 3; Brief, PPC, SC-86-B-PP-01, 5-7. PP&L recommends that BPA should retain the flexibility to charge rates lower than the formula rate in addition to charging higher rates. Brief, PP&L, SC-86-B-PL-01, 8; Oral Argument, PP&L, TR 272-274.

Evaluation of Positions

BPA and Edison negotiated mutually agreeable terms for the sale and purchase of nonfirm energy for peaking replacement energy. When the capacity/energy exchange is in effect, the proposed contract allows BPA to capture a portion of the nonfirm energy market in the PNW that would be lost if Edison were to purchase its peaking replacement energy from another seller. In effect, BPA was proposing to provide predictably priced energy in exchange for reasonable assurance that a market would exist for its energy. This middle ground benefitted both BPA and Edison: Edison would receive priority over other extraregional investor-owned utilities to BPA nonfirm energy, when available, at predicatable prices, and BPA would receive market assurance that allows full cost recovery. Armstrong, BPA, SC-86-E-BPA-01, 4. The proposed marketing arrangement would apply only to transactions under this contract for peaking replacement sales and would not affect other nonfirm energy sales by PNW utilities to Edison.

The Northwest Parties support upward flexibility above the formula rate and argue that BPA would reap more benefits with their proposal. If the market price is higher than the formula rate, BPA could sell its nonfirm energy in the higher priced market and maximize benefits. Their proposal for upward flexibility is tied to opening the market to all sellers. Brief, APAC, SC-86-B-PA-01, 9-10; Brief, PPC, SC-86-B-PP-01, 5-6; Brief, PP&L, SC-86-B-PL-01, 9.

The Northwest Parties, however, have not provided evidence that upward flexibility is beneficial to BPA in light of the requirement that BPA give up its assured market. In addition, even if BPA would benefit with the Northwest Parties' proposal, this proposal appears to offer little to Edison. Although Edison would still retain priority, as pointed out by PP&L (Brief, PP&L, SC-86-B-PL-01, 9), there remains only the possibility of paying more for the nonfirm energy than under the proposed contract terms.

The PPC recommends that BPA adopt a share-the-savings rate as the higher market rate. Drummond & Opatrny, PPC, SC-86-E-PP-01, 3; Brief, PPC, SC-86-B-PP-01, 5-7. Share-the-savings rates generally have merit, and BPA adopted an experimental share-the-savings rate in its 1985 rate filing. Administrator's Record of Decision, WP-85-A-02, 270-272. However, the PPC's proposal in this case is recommended only as the floor-constrained, upwardly-flexible market rate advocated by the Northwest Parties. Brief, PPC, SC-86-B-PP-01, 5-6. As previously discussed, an upwardly flexible rate appears to offer little to either BPA or Edison.

PP&L also recommends that downward as well as upward rate flexibility should be maintained in the contract since both BPA and Edison would benefit from complete flexibility. Brief, PP&L, SC-86-B-PL-01, 9-10; Oral Argument, PP&L, TR 272-274. However, complete upward and downward flexibility changes the essential nature of the negotiated agreement, since this provides neither rate predictability to Edison, nor market assurance to BPA. Because PP&L's proposal of complete rate flexibility includes upward flexibility, it has the same drawbacks as those of the Northwest Parties' proposal, discussed above. However, situations could exist in which downward flexibility would be

beneficial. Armstrong, BPA, TR 184-185. This would be particularly true when the market rate is lower than the formula rate. PP&L noted that when gas and oil prices are low, the formula nonfirm energy rate may be higher than the market rate. Given that Edison will purchase from BPA prior to purchasing from the PNW or Canada, failure to sell below the formula rate in this instance would preclude both BPA and the PNW from the Edison peaking replacement energy market. Oral Argument, PP&L, TR 273. Under this condition, neither BPA nor its PNW customers benefit from the formula nonfirm energy rate. In this situation, it would be reasonable to have the flexibility to charge Edison a lower available BPA nonfirm energy rate than have Edison generate the energy or purchase it from another PSW seller to deliver to BPA when BPA may be surplus. Armstrong, BPA, TR 184-185. For this reason, while BPA disagrees that complete flexibility would be beneficial, BPA agrees with PP&L's conclusion that downward flexibility in the nonfirm energy formula rate could have financial benefit for BPA. Id.

The parties' proposals for upward-only or complete rate flexibility, in general, detract from the interest of BPA and Edison in providing mutually advantageous price and market predictability. In the case of the proposal for upward flexibility, it is not clear that BPA would benefit from such a provision in light of the companion recommendation that Edison be allowed to buy from all sellers. Armstrong, BPA, TR 182-186. Additionally, it would appear that the upward flexibility proposal would have little benefit for Edison. While downward flexibility could be advantageous to both BPA and Edison under certain circumstances, the recommendation of complete flexibility would change the nature of the negotiated agreement by eliminating price and market assurance negotiated by BPA and Edison.

Decision

The provisions of the proposed contract relating to the sale of BPA nonfirm energy to Edison allow for a mutually beneficial arrangement in which Edison receives rate predictability while BPA secures a market for its nonfirm energy. No evidence has been presented that the proposed nonfirm energy rate would be inadequate in the context of the proposed contract description, or that the parties' proposals for upward-only or total rate flexibility would be in the interests of either BPA or Edison.

C. Contract-Related

1. Capacity-Only Sales

Issue

Should a rate be established to provide for capacity-only sales?

Summary of Positions

The proposed contract description does not provide for capacity-only sales or a rate for those sales. Armstrong, BPA, SC-86-E-BPA-01, Attachment 1.

The Northwest Parties, DSIs, and the Oregon Public Utility Commission (OPUC) contend that the proposed contract should be modified to give BPA the option to charge Edison for capacity. Schultz, et al., NP, SC-86-E-NP-01, 4-7; Brief, PP&L, SC-86-B-PL-01, 3; Oral Argument, PP&L, TR 270-272; Brief, DSI, SC-86-B-DS-01, 1-3; Oral Argument, DSI, TR 253; Brief, PPC, SC-86-B-PP-01, 2-4; Brief, APAC, SC-86-B-PA-01, 6-7; Oral Argument, APAC, TR 259-260; OPUC, Letter. The Northwest Parties also recommend that BPA establish a specific rate for capacity-only sales. Schultz, et al., NP, SC-86-E-NP-01, 4-5.

Evaluation of Positions

The proposed Edison contract allows BPA to sell surplus firm power at the formula rate, or under certain conditions, if either BPA or Edison wishes to end the power sale, they may initiate the capacity/energy exchange. Armstrong, BPA, SC-86-E-BPA-01, 2. In making their argument that BPA should have the option of taking exchange energy from Edison or charging Edison for capacity, the parties allege that BPA and the PNW could be hurt by the exchange-only arrangement. The parties claim that if Edison were to elect to exercise the exchange option while BPA was in surplus, BPA would be obligated to accept the return energy from Edison even though BPA might not be able to market it elsewhere. Brief, APAC, SC-86-B-PA-01, 6; Oral Argument, APAC, TR 259-260; Schultz, et al., NP, SC-86-E-NP-01, 5-7; Brief, PP&L, SC-86-B-PL-01, 2-5; Oral Argument, PP&L, TR 270; Brief, PPC, SC-86-B-PP-01, 2-4; Brief, DSI, SC-86-B-DS-01, 1-3.

The Northwest Parties also argue that their proposed capacity-only rate would be useful to BPA if it exercised the 60-day call-back provision for curtailment of energy deliveries to Edison. With a capacity rate, the parties argue that BPA could continue to provide Edison with capacity without energy during temporary energy shortfalls. Schultz, et al., NP, SC-86-E-NP-01, 6-7; Brief, PP&L, SC-86-E-PL-01, 4. In support of the capacity sale option, PP&L contends that Edison is primarily interested in purchasing capacity from BPA. Brief, PP&L, SC-86-B-PL-01, 4; Oral Argument, PP&L, 271-272.

Parties also made specific recommendations for the capacity rate. The Northwest Parties and the DSIs recommend that the rate should be no lower than the FD capacity rate. Schultz, et al., NP, SC-86-E-NP-01, 4-5; Statement of Position, DSI, SC-86-E-DS-01, 2. The FD rate is based on BPA's surplus firm power cost as embodied by the SP-85 Contract rate. In the current rate period, sales of surplus capacity to extraregional customers would be made at the SP-85 Contract rate. Thus, the parties' recommendation has merit if a long-term capacity rate were to be set for the Edison contract.

APAC argues that a capacity rate should be set at BPA's unit fixed cost, or lower, depending on the market. Brief, APAC, SC-86-B-PA-01, 7 and Attachment 1. This is the same proposal that APAC made for the FD rate proposal. In the FD rate case, BPA rejected APAC's proposal on the basis that: (1) it would result in a set of extremely inconsistent rates contrary to BPA's general rate design goals; (2) APAC has not provided a practical and easily implemented rate method for a market responsive rate; and (3) it would impose unnecessary uncertainty on purchasers of FD power. Administrator's

Record of Decision, FD-85-A-02, 22-24. BPA's evaluation does not change for the Edison formula rates.

BPA agrees with the parties that capacity-only sales can be advantageous to BPA. However, since the contract description does not contain provisions for capacity-only sales, the proposed capacity sale option would require a new contractual provision. BPA is interested in pursuing this contractual option in negotiations with Edison. Given the uncertainty of the occurrence of the circumstances under which capacity sales would be beneficial to BPA and Edison and the lack of an existing contract provision for capacity-only sales, establishing a long-term formula capacity rate would not be appropriate. If circumstances arise where a capacity-only sale would be mutually beneficial, BPA will rely on applicable rate schedules effective at the time of the capacity sale transaction. In the case of capacity sales, sufficient predictability can be assured through means other than a formula rate. For example, the SP-85 rate includes 5-year escalation factors that could provide predictability. Another example is a contract provision allowing Edison to decline to purchase capacity if BPA's generally applicable capacity rates become commercially unattractive to Edison could provide adequate predictability.

Decision

The parties' recommended option for capacity sales is not part of the proposed Edison contract. However, BPA is interested in pursuing this option in negotiations with Edison. If BPA and Edison negotiate such an option to each parties' satisfaction, BPA capacity rates of general applicability can be used, and contract provisions that provide Edison with rate predictability can be negotiated.

2. Nonfirm Energy Purchase Commitment

Issue

Should provisions relating to the obligation to purchase nonfirm energy for peaking replacement obligation be altered?

Summary of Positions

As proposed in the contract description, the nonfirm energy formula rate would be applied to sales of nonfirm energy that Edison purchases to fulfill its peaking replacement obligation. Armstrong, BPA, SC-86-E-BPA-01, Attachment 1.

The NF Group submits that a long-term commitment by Edison to purchase only BPA nonfirm energy, when available, to fulfill its peaking replacement obligation should be a condition to adopting the proposed nonfirm energy formula rate. Cook & Opatrny, NF, SC-86-E-NF-01, 2; Brief, APAC, SC-86-B-PA-01, 8; Oral Argument, APAC, TR 260-262.

Evaluation of Positions

The NF Group argues that BPA should secure a long-term purchase commitment from Edison. APAC claims that the certainty provided by the proposed nonfirm energy formula rate should be given to Edison only in exchange for a commitment to purchase nonfirm energy from BPA to fulfill its peaking replacement obligation. Cook & Opatrny, NF, SC-86-E-NF-01, 2; Brief, APAC, SC-86-B-PA-01, 8; Oral Argument, APAC, TR 260-262.

APAC argues that the Record of Decision "should state that the offer of a nonfirm rate formula is conditioned upon the inclusion of such a commitment in any contract to which the nonfirm formula rate will be applied." Brief, APAC, SC-86-B-PA-01, 8. BPA considers a long-term purchase commitment to be a contract issue. Armstrong, BPA, TR 167. BPA has shown that the proposed rate is capable of fully recovering costs. Armstrong, BPA, SC-86-E-BPA-01, Attachment 3. APAC has not demonstrated how a long-term commitment to purchase nonfirm energy bears on the ability of the proposed rate to recover costs whenever Edison does make a nonfirm energy purchase.

Decision

APAC has not shown that the nonfirm rate will not recover costs in the absence of a long-term purchase commitment from Edison. Negotiating a long-term purchase commitment is an issue appropriately resolved in the contract negotiation process.

Chapter III

OTHER ISSUES

A. Scope of 7(i) Hearing

Issue

Was the scope of this hearing under section 7(i) of the Pacific Northwest Power Act properly limited to issues regarding the Edison formula rates?

Summary of Positions

BPA considers this section 7(i) hearing to be limited to the evaluation of issues relevant to the rate formulas contained in the proposed contract for the sale of surplus firm power and nonfirm energy to Edison. 51 Fed. Reg. 10911, 10915 (March 31, 1986); TR 37-40.

PPC, SCL, and the CPUC argue that the scope of this proceeding has been inappropriately limited. Brief, PPC, SC-86-B-PP-01, 7; Brief, SCL, SC-86-B-SL-01, 4-7; Oral Argument, SCL, TR 243-245. Brief, CPUC, SC-86-B-CP-01, 3-6.

Evaluation of Positions

SCL argues that BPA improperly excluded matters concerning contract terms from the hearing process conducted on the proposed Edison formula rates. Thus, SCL contends that such exclusion precluded the hearing officer from developing a full and complete record, limited parties' refutation and rebuttal of BPA, and denied parties discovery and cross-examination. Brief, SCL, SC-86-B-SL-01, 5-7; Oral Argument, SCL, TR 243-245, 248-252. SCL argues that this is a violation of section 7(i). Brief, SCL, Id. at 2. While the CPUC and the PPC do not allege a violation of section 7(i), they also argue that the scope of this proceeding has been unduly limited. Brief, CPUC, SC-86-B-CP-01, 3; Brief, PPC, SC-86-B-PP-01, 7-8.

The arguments of SCL, PPC and the CPUC raise essentially two questions: whether section 7(i) requires that contracts be established or evaluated in a section 7(i) rate hearing, and whether the parties have had an adequate opportunity to evaluate the proposed Edison rate formulas absent a section 7(i) hearing on the proposed contract.

First, it is clear that the Pacific Northwest Power Act does not require that contracts be established or even evaluated in a section 7(i) rate hearing. BPA ratemaking is conducted pursuant to section 7(i) of the Act, 16 U.S.C. §839e(i). Section 7(i) provides that "[i]n establishing rates under this section, the Administrator shall use the following procedures[.]" Id. (emphasis added). By its terms, the procedural requirements of section 7(i) apply only to establishment of rates, not to the establishment of contract provisions. This conclusion is supported by the legislative history of the Pacific Northwest Power Act. The report of the House Committee on Interior and Insular Affairs states that "[s]section 7(i) sets forth detailed

procedures BPA must follow in establishing rates." H.R. Rep. 96-976, Part II, 96th Cong. 2d Sess. 53 (1980). Similarly, the report of the House Committee on Interstate and Foreign Commerce states that "[s]section 7(i) establishes rather detailed procedures for ratemaking." H.R. Rep. 96-976, Part I, 96th Cong. 2d Sess. 69 (1980).

Distinct from provisions governing establishment of BPA rates, Congress established separate provisions governing BPA's power sale contracts. Section 5(g) provides that "[a]s soon as practicable within 9 months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts." 16 U.S.C. §839c(g) (emphasis added). Moreover, Section 5 of the Pacific Northwest Power Act expressly distinguishes between sales of power pursuant to contract and the rates at which such sales are made. Section 5(a) of the Act, 16 U.S.C. §839c(a), provides that "[a]ll power sales under this Act shall be subject at all times to the preference and priority provision of the Bonneville Project Act of 1937 .... Such sales shall be at rates established pursuant to section 7." Congress recognized that contracts would be negotiated. Rates, on the other hand, would be established according to section 7.

Thus, the Pacific Northwest Power Act does not require that ratemaking procedures apply to the development of contracts. This has been affirmed by the U.S. Court of Appeals for the Ninth Circuit. In California Energy Resources Conservation and Development Commission v. Johnson, No. 81-7809 (9th Cir. February 24, 1986)(CEC), the California Energy Commission challenged a provision of a BPA power sale contract, alleging that the contract provision should have been established in a section 7(i) ratemaking proceeding. The court noted that "[s]section 7(i) does not require that contract provisions be adopted after full ratemaking proceedings. Rather, it requires that rates be set according to certain procedures." Id., slip op. at 15.

The second question is whether the parties have had an adequate opportunity to evaluate the proposed Edison formula rates in this section 7(i) hearing. BPA stated at the prehearing conference in this case that the contract would provide a context for the evaluation of the rates, but that testimony regarding the merits of non-rate contractual terms would be inappropriate. TR 37-42. Thus, the Draft Record of Decision stated that although contract terms would provide a context for the section 7(i) rate proceeding, the contract would not be negotiated or renegotiated in the rate hearing. SC-86-A-01, 18. SCL argues that BPA misinterpreted its argument in the Draft Record of Decision. Oral Argument, SCL, TR 244. SCL argues that limiting the hearing to issues respecting the rate formulas prevented SCL from being able to evaluate that rate in the context in which BPA negotiated it, and that consequently, SCL was not given a meaningful hearing. Id., 244-5, 250.

It appears that SCL did in fact evaluate the rate in the context of the proposed contract, submitting two pieces of direct testimony criticizing the formula rates as inadequate because of the peculiarities of the proposed contract. For example, the NF Group submitted testimony that the nonfirm energy rate formula was inadequate because the contract as proposed contained insufficient commitment on Edison's part to purchase nonfirm energy when BPA

had it available. Cook & Opatrny, NF, SC-86-E-NF-01, 2-3. In addition, the Northwest Parties, which includes SCL, cited the proposed contract principles and testified that BPA could receive insufficient revenues under the terms of the proposed contract because of the contractual option permitting Edison to convert the contract from a power sale to a capacity/energy exchange if gas and oil prices are low. Schultz, et al., NP, SC-86-E-NP-01, 5-7. The Northwest Parties argued that this could cause BPA to receive insufficient benefits and proposed that BPA adopt a stand-alone capacity rate to permit sales of capacity. Id. BPA did not object to the submission of this testimony because it related to the adequacy of the formula rates in the context of the proposed contract. BPA evaluated this testimony in this Record of Decision.

Moreover, SCL has evaluated many BPA rates in prior rate cases where the rates are developed without the availability of contracts necessary to implement the rates. For example, although the Administrator determined that contracts would be necessary to implement the SS-85 rate, the rate was adopted without a contract. Administrator's Record of Decision, WP-85-A-BPA-02, 272, 316. In addition, BPA's SP-85 rate is available for contract purchase for five years, but contracts were not established in the 1985 rate case to implement SP-85. TR 250. SCL acknowledged that it was able to effectively evaluate the SP-85 rate without the availability of a contract, yet argues that in this case it does not know what BPA negotiated and thus cannot evaluate the rate. Id. If SCL was not handicapped in its ability to evaluate SP-85 without as much as a contract proposal, it is difficult to see how it was handicapped in this proceeding where the proposed contract principles were made public three months prior to the start of the rate hearing and were attached to the testimony of BPA's witness. Armstrong, BPA, SC-86-E-BPA-01, Attachment 1; TR 41.

Decision

Contract terms and conditions are not required to be set according to the procedures in section 7(i) for establishment of rates. The scope of this hearing was thus properly limited to issues relating to the rate formulas for the sale of surplus firm power and nonfirm energy to Edison. Limiting the scope of the hearing to issues respecting rates in the context of the proposed contract does not deny the parties a fair hearing or make the record deficient.

B. Applicability of Section 7(k)

Issue

Are terms of the proposed Edison contract subject to the ratemaking standards of section 7(k) of the Pacific Northwest Power Act?

Summary of Positions

The CPUC states that many issues not addressed in the evidentiary hearing have a relationship to the formula rates and to the overall reasonableness of the contract. Thus, the CPUC concludes that each of these issues is subject

to the requirements of section 7(k) of the Pacific Northwest Power Act. Brief, CPUC, SC-86-B-CP-01, 5-6.

Evaluation of Positions

The CPUC argues that the substantive ratemaking standards of section 7(k) apply to the establishment of rates for the sale of nonfirm electrical power to California, and that this requirement necessarily applies to terms of availability and any associated conditions of service. Brief, CPUC, SC-86-B-CP-01, 3-4. The CPUC cites three discrete contractual terms as having a relationship to the rates and thus to the overall reasonableness of the contract and concludes that virtually the entire contract is subject to the requirements of section 7(k). Id., 5-6.

Section 7(k) does not establish any new substantive standard that would govern the Edison nonfirm energy formula rate. Section 7(k) requires that rates for the sale of nonfirm energy outside the PNW be established in accordance with the Bonneville Project Act, the Flood Control Act of 1944, and the FCRTS Act. 16 U.S.C. §839e(k). These ratemaking standards of section 7(k) are the same standards BPA applies in establishing all its rates. BPA has determined that the formula rate for sales of nonfirm energy to Edison complies with the substantive statutes mentioned in section 7(k). See Section J. BPA disagrees with the CPUC's apparent conclusion that the terms of the proposed BPA-Edison contract are subject to the substantive ratemaking standards of section 7(k).

Section 7(k), like section 7(i), applies only to establishment of rates; it does not apply to the establishment of contracts. Section 7(k) states that "all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established ... by the Administrator in accordance with ... the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act." 16 U.S.C. §839e(k)(emphasis added). Thus, only nonfirm rates and rate schedules are subject to section 7(k) requirements. The legislative history affirms the clear language of the statute that section 7(k) applies only to establishment of nonfirm rates. The House Report of the Committee on Interior and Insular Affairs states that section 7(k) establishes a "method of determining BPA's rates for the sale of nonfirm electric power to other regions." H.R. Rep. No. 976, 96th Cong., 2d Sess. Part II, 53 (emphasis added). Thus, nothing in the language of section 7(k) or its legislative history supports the conclusion that the entire proposed BPA-Edison contract is subject to the substantive ratemaking requirements of section 7(k).

The CPUC, however, cites two cases in support of its contention: Portland General Electric Co. v. Johnson, 754 F. 2d 1475, 1484 (9th Cir. 1985) (hereafter PGE) and Associated Electric Cooperative, Inc. v. Morton, 507 F. 2d 1167, 1176 (D.C. Cir. 1974), cert. denied 423 U.S. 830 (1975). The CPUC's reliance upon PGE and Associated Electric is misplaced.

In PGE, petitioner challenged BPA's decision to market power to BPA's DSIs on a short term basis at the NF-2 Nonfirm Energy rate, rather than at the IP-2 Industrial Firm Power rate, as provided in BPA's rate schedule. The NF-2 rate

schedule effectively prohibited such a sale because NF-2 was "not available for the purchase of energy which BPA ha[d] a firm obligation to supply." PGE, 754 F.2d at 1479. BPA had a firm obligation to serve the DSI load. The court held that "a change in the availability provisions of the rate schedules constitutes ratemaking" which, absent unusual circumstances, would require compliance with section 7(i) of the Pacific Northwest Power Act. Id., 754 F. 2d at 1479 (emphasis added). The CPUC relies on this language and concludes that the overall reasonableness of the contract is subject to ratemaking requirements of sections 7(i) and 7(k).

The CPUC reads the Court's opinion in PGE too broadly; PGE does not support the CPUC's assertion that terms and conditions of power sales are subject to any ratemaking requirements of section 7(k). The PGE decision held only that a change in the availability provision of a rate schedule is a change in rates. Availability provisions of rates merely establish to whom the rate formulas for a power sale apply. There is no question to whom the rates developed in this case are available: the rates are available to Edison for purchase under a proposed power sale contract. Armstrong, BPA, SC-86-E-BPA-01, 1-3. This case, in contrast to PGE, has nothing to do with changing the availability provision of a rate schedule. CPUC's argument that the requirements of section 7(k) apply to the entire contract is unsupported by PGE.

Associated Electric, supra, is even less persuasive. In Associated Electric, the court held that the imposition of a transmission service charge by the Southwestern Power Administration (SWPA) was a valid exercise of SWPA's contractual and statutory ratemaking authority. Although the imposition of this charge was a change in the condition of service provided by SWPA, the court did not hold, as the CPUC suggests, that any condition of service associated with the establishment of the transmission rate was also ratemaking.

Decision

The substantive ratemaking statutes contained in of section 7(k) of the Pacific Northwest Power Act apply to the establishment of the nonfirm energy formula rate, but these statutes do not apply to other terms and conditions of the proposed Edison contract. BPA has determined that the Edison nonfirm energy formula rate complies with the requirements of Section 7(k). See Section J, intra.

C. Establishment of Formula Rates for 20 Years

Issue

Does establishment of rate formulas for the 20-year term of the proposed contract violate BPA's statutory requirements?

Summary of Positions

SCL argues that the proposed formula rates violate section 7(a)(1) of the Pacific Northwest Power Act which requires that the Administrator periodically review and revise rates. Brief, SCL, SC-86-B-SL-01, 2-3. SCL also argues

that the rate conflicts with FERC regulation 18 C.F.R. §300.1(6). While the CPUC does not appear to take a position on this issue, the CPUC cites section 5 of the Bonneville Project Act, 16 U.S.C. 832d, and states that BPA must explain on what basis it would be able to establish rates for a period of 20 years. Brief, CPUC, SC-86-B-CP-01, 8.

Evaluation of Positions

SCL and the CPUC raise the question of whether BPA's governing statutes or FERC regulations preclude the establishment of a rate formula for a period of 20 years. Neither BPA's organic statutes nor FERC regulations, however, preclude establishment of a rate formula for 20 years.

The Northwest Power Act

SCL argues that establishment of a rate for longer than five years violates section 7 of the Pacific Northwest Power Act. Brief, SCL, SC-86-B-SL-01, 2-3. However, it is clear that the Pacific Northwest Power Act does not prohibit the Administrator from establishing rate formulas effective longer than five years. Section 5 of the Act authorizes the Administrator to enter into power sale contracts. The Administrator is authorized specifically under section 5(f) of the Pacific Northwest Power Act, 16 U.S.C. §839c, to sell surplus electric power. Thus, the Edison agreement is a sale under the Pacific Northwest Power Act. Section 5(a) of the Pacific Northwest Power Act provides:

> All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

16 U.S.C. §839c(a)(emphasis added). Rates for sales under the Pacific Northwest Power Act are specifically established in section 7. Section 7(a)(1) provides only that the Administrator shall "periodically review and revise" rates. 16 U.S.C. §839e(a)(1). There is no limitation in section 7 of the term of BPA's rates. Such rates are simply reviewed and revised periodically. This broad language gives great discretion to the Administrator in establishing the term of the rate. Aluminum Company of America v. Central Lincoln Peoples' Utility District, 104 S.Ct. 2472 (1984).

SCL, however, argues that the legislative history of section 7 of the Pacific Northwest Power Act clarifies that rates must be revised no less often than once in every five years. Brief, SCL, SC-86-B-SL-01, 3. In particular, SCL cites Appendix B of Senate Report 96-272 of the Committee on Energy and Natural Resources. Id. SCL's argument is misplaced. First, section 7(a)(1) does not reference any time frame for establishment or revision of rates. Where the language of a statute is plain, legislative history will not be used to create an ambiguity. Ex Parte Collett, 337 U.S. 55, 61 (1949). Second, the Senate Report cited by SCL is ambiguous on the issue of time required for

rate adjustments. This report also provides that section 7(a) "restates the Administrator's obligation periodically to establish and modify electric power and transmission rates." S. Rep. No. 272, 96th Cong., 1st Sess. 31 (1979).

At oral argument, SCL argued that BPA misinterprets section 7(a)(1). Oral Argument, SCL, TR 245. SCL contends that the language of section 7(a)(1) is mandatory that the Administrator "review and revise" rates, and argues that the definition of review requires that BPA do no less than perform some type of proceeding to review whether or not the formula rates are producing the revenues they were intended to produce. Id. SCL concludes that the rate formulas preclude the Administrator from reviewing the Edison rates.

SCL is correct that section 7(a)(1) requires the Administrator to review and revise rates periodically. However, BPA disagrees that the Edison rates fail to satisfy this requirement. The Edison formula rates will be reviewed in all general rate cases in two ways. First, revenues received from sales to Edison at the rates determined by application of the rate formulas will be factored into BPA's revenue requirement determination in each rate case. Armstrong, BPA, SC-86-E-BPA-01, 9; TR 199-200. These rates will thus be reviewed in the context of BPA's overall revenue requirement in each general rate case. Second, the Edison rates must adjust by the same rate of change of BPA's PF rate. Armstrong, BPA, SC-86-E-BPA-01, 7. BPA adjusts its PF rate on a nearly biennial basis after formal evidentiary proceedings pursuant to section 7(i) of the Pacific Northwest Power Act. 16 U.S.C. §839e. Inasmuch as the PF rate is reviewed and revised, the Edison rate is reviewed and revised to reflect any BPA cost increases. Id., 7-9. This provision of the Edison formula rates ensures that the rates Edison will pay will recover a fair share of any BPA cost increases and satisfies the requirement of section 7(a)(1) that rates be "periodically reviewed and revised."

The Bonneville Project Act

The CPUC states that under applicable law, any contract entered into by BPA is required to provide for the equitable adjustment of rates at intervals not less often than every five years. Brief, CPUC, SC-86-B-CP-01, 8. The CPUC relies on section 5 of the Bonneville Project Act (Project Act), and argues that BPA must explain its authority to establish 20-year rates. Id. Establishment of a 20-year rate formula, however, does not conflict with section 5 of the Project Act for two reasons.

First, Section 5 of the Project Act, 16 U.S.C. §832d, which authorizes the Administrator to enter into power sale contracts, provides in part that the contracts must include provisions relating to resale, term, rate adjustment, preference and priority. Regarding rates, the fourth sentence of section 5(a) states that:

> Contracts entered into under this subsection shall contain (1) such provisions as the administrator and purchaser agree upon for the equitable adjustment of rates at appropriate intervals, not less frequently than once in every five years[.]

16 U.S.C. §832d. This provision requiring adjustment of rates every five years, however, is inapplicable to sales under the Pacific Northwest Power Act. As discussed above, BPA's surplus sales are made pursuant to section 5(f) of the Pacific Northwest Power Act, 16 U.S.C §839c(f). While section 5(f) provides that power sales are to be in accordance with the Project Act, section 5(a) of the Pacific Northwest Power Act specifically provides that such sales "shall be at rates established pursuant to section 7." 16 U.S.C. §839c(a). Section 7 requires only that the Administrator "periodically review and revise" rates. Thus, the 5-year limitation prescribed by section 5 of the Project Act does not apply here.

Second, assuming that the 5-year limitation of section 5 of the Project Act does apply, the rate formulas comply with the requirements of that section. Section 5 provides that contracts shall contain "such provisions as the administrator and purchaser agree upon for the equitable adjustment of rates at appropriate intervals, not less frequently than once in every 5 years." 16 U.S.C. §832d. The formulas that will determine the rate Edison will pay for purchases under the contract automatically satisfy this criteria. These formulas contemplate revision in two instances. First, the formula adjusts the rate level annually by 2 percent. Armstrong, BPA, SC-86-E-BPA-01, 4. Second, since the formulas require that the rate level reflect the change in BPA's PF rate, the rates will adjust each time BPA revises its PF rate. Id. BPA adjusts its PF rate with every general rate case, which occurs at least every five years. Id., 7. Thus, consistent with the requirement of section 5 of the Project Act, the proposed Edison contract contains provisions to provide for the equitable adjustment of rates not less frequently than once in every five years.

FERC Regulations

SCL argues that establishment of a rate formula for 20 years violates FERC regulation 18 C.F.R. §300.1(b)(6). FERC has established regulations governing the confirmation and approval of rates of the Federal power marketing administrations. Id. These regulations define the term "proposed rate approval period" as follows:

> Proposed rate approval period means the period for which confirmation and approval of the rate schedule is requested. This period must not exceed 5 years.

18 C.F.R. §300.1(b)(6). This provision was designed to preclude the establishment of a fixed rate for an extended rate approval period. When a fixed rate is established, costs may increase over time that cannot be recovered from the fixed rate. The requirement of 5-year review is a practical solution to this potential underrecovery of costs. This provision, however, does not address formula rates which are designed to recover costs over time.

First, the proposed Edison formula rates are designed to ensure the recovery of BPA's costs over the term of the sale and thus effectively address

the concerns raised in FERC's regulations. While BPA will request a 20-year rate approval period for the formula, the formula rates are revised by 2 percent no less frequently than once a year and are also subject to additional revision since the rates increase with each increase in BPA's PF rate. These special features of the proposed Edison formula rates ensure the recovery of BPA's costs and support approval for a 20-year period.

Second, FERC has recognized that contract or formula rates present special cases where its regulations may not be appropriate. In establishing its regulations governing confirmation and approval of the rates of Federal power marketing administrations, 49 Fed. Reg. 25,230, 25,232 (June 20, 1984), FERC stated:

> Most PMA rates are developed to repay the cost of a federal investment and these new filing requirements are appropriate for all such rates. However, the Commission recognizes that, on rare occasions, e.g., a special contract rate or unit sale rate, it may be appropriate for a PMA to file its rates using support data different from that required by this rule. The Commission does not, however, believe it should establish a different set of filing requirements for these rates because of the difficulty of anticipating the precise nature of these rate filings. The Commission prefers to address the appropriateness of these filing requirements when these rates are filed.

Thus, the FERC filing requirements cited by SCL are not conclusive of the issue of 20-year establishment of rate formulas. FERC has elected to address the appropriateness of a 5-year approval period upon the filing of proposed rates.

In this case, the 5-year limitation is inappropriate for confirmation and approval of the Edison formula rates. A more flexible approach is warranted. BPA currently has 2,000 megawatts of surplus firm capacity to market for 20 years and 1000 megawatts of surplus firm energy to market for at least 5 years. 51 Fed. Reg. 10911 (March 31, 1986). BPA incurs costs for its surplus firm power. These costs, which form the basis for BPA's SP-85 Surplus Firm Power rate and the Edison surplus firm power formula rate, include costs related to BPA's inability to market its surplus resources at fully allocated costs. See Administrator's Record of Decision, WP-85-A-02, 256-259. When BPA is unable to sell its surplus firm power at fully allocated costs, it impairs BPA's ability to meet its obligations to the Treasury.

For years BPA's inability to negotiate long-term sales of surplus firm power has forced BPA to rely on short-term surplus firm power sales. Short-term sales have consistently recovered less than fully allocated costs due to market forces in the PSW. Administrator's Record of Decision, FD-85-A-02, 8. Furthermore, as a FERC Administrative Law Judge has already determined, surplus firm power often is sold in the nonfirm energy market. U.S. Department of Energy, Bonneville Power Administration, 29 FERC at 65,127,

65,130. Sales of surplus firm power at nonfirm energy rates entail revenue losses in all cases. Administrator's Record of Decision, FD-85-A-02, 8.

BPA's ability to recover its costs would be assisted by long-term sales at rates that are designed to be fully compensatory to BPA. The Edison formula rates are designed to recover BPA's costs over the term of the sale. Armstrong, BPA, SC-86-E-BPA-01, 9. In addition, a long-term bilateral sale on take-or-pay terms gives BPA an assured revenue stream that enhances the Administrator's ability to meet the agency's obligations to the U.S. Treasury on an ongoing basis.

Decision

Establishment in a contract of a 20-year rate formula is consistent with both BPA statutory obligations and FERC regulations. BPA will request FERC to reach the same conclusion when it reviews the rate for conformity with the statutes and FERC regulations.

D. Dependence of Formula Rates on the Outcome of Litigation

Issue

Are the formula rates required to be cost-based as determined by litigation respecting BPA's surplus firm power and nonfirm energy general rate schedules?

Summary of Positions

The formula rates proposed by BPA for sales to Edison of surplus firm power and nonfirm energy begin with a base rate of 36.887 mills per kWh for surplus firm power and 23.4 mills per kWh for nonfirm energy. Armstrong, BPA, SC-86-E-BPA-01, 3. These rates are based on the SP-85 Contract rate and the NF-85 Standard rate, which represent the full cost of generating and transmitting surplus firm power and nonfirm energy, and escalate annually over the term of the contract. Id., 5-6.

The CPUC argues that the proposed formula rates are inappropriate because they are based on rates still subject to litigation before the Ninth Circuit and FERC. Brief, CPUC, SC-86-B-CP-01, 6-7. Until such litigation is concluded, the CPUC argues, the rates cannot be said to reflect accurately the costs of producing surplus firm power and nonfirm energy. Id.

Evaluation of Positions

CPUC argues that use of the SP-85 Contract rate and the NF-85 Standard rate is inappropriate because these rates are the subject of litigation pending before FERC and the Ninth Circuit. Brief, CPUC, SC-86-B-CP-01, 6-7. BPA testified in this case, and demonstrated in this Record of Decision, that the rate formulas were designed both to recover BPA's cost of surplus firm power and nonfirm energy over the duration of the contract and to provide Edison with the rate predictability it needed to evaluate this contract against alternative resource options. See Chapter 2, Sections A.1. and 2., and cites therein. However, the CPUC argues that the rates should be revised so that they are dependent on a conclusive determination by the Ninth Circuit

and FERC of BPA's costs of providing service to Edison. The CPUC is correct that litigation respecting BPA's nonfirm and surplus firm rate schedules is still pending. The fact that such litigation exists, however, is not an appropriate reason to reject the Edison rate formulas.

First, implicit in the argument of the CPUC is the assumption that BPA's rates must be cost-based. BPA's statutes, however, do not require that BPA follow a cost-of-service ratemaking methodology for either surplus firm power or nonfirm energy rates. The argument that BPA's rates for nonfirm energy sales outside the region must be based on cost has already been rejected. In Pacific Power & Light Co. v. Duncan, 499 F. Supp. 672 (D. Or. 1980), the court examined the statutes which the Administrator must apply to setting rates applicable to the sale of nonfirm energy outside the region and found that nothing restricted the Administrator from considering a variety of other factors in addition to cost in ratesetting. Id. at 683.

In addition, the argument that BPA's rates for surplus firm power sold outside the PNW must be based on cost is unsupported by BPA's statutes. Congress specifically authorized the Administrator to sell surplus electric power at rates established pursuant to section 7. 16 U.S.C. §839c(a) and (f). Section 7 of the Pacific Northwest Power Act explicitly requires that certain firm rates be based on specified costs. E.g., 16 U.S.C. §839e(b)(1), 16 U.S.C. §§839e(c) and (f). Thus, Congress knew how to require a cost basis for a specific rate. Congress, although fully capable of requiring cost-based rates, provided no specific rate directive governing rates for sales of surplus firm power outside the PNW. Because of the absence of any specific rate directive regarding these rates, section 7(a)(1) governs the Edison surplus firm power rate formula.

Section 7(a)(1) provides that BPA's "rates shall be established and, as appropriate, revised to recover ... the costs associated with the acquisition, conservation, and transmission of electric power." 16 U.S.C. 839e(a)(1) (emphasis added). When Congress referred to "cost" in this general rate directive, it did not refer to a particular rate methodology or to the cost of serving any single customer class. Rather, Congress' concern was that BPA's overall rates recover BPA's overall costs. This concern is reflected in a report of the House Committee on Interstate and Foreign Commerce, which states that even the individual rate directives of section 7 are "[s]object to the general requirement ... that BPA must continue to set its rates so that its total revenues continue to recover its total costs ... ." H. Rep. No. 976, Part II, 96th Cong., 2d Sess., 36, 52 (1980). Section 7(a)(1) does not mandate a cost-of-service approach.

Second, it is unclear how this pending litigation has significant relevance to the formula rates proposed here. The CPUC argues that, pending the outcome of litigation, rates based on the NF-85 Standard rate and the SP-85 Contract rate are improper because they do not reflect accurately BPA's "costs of providing service to California." Brief, CPUC, SC-86-B-CP-01, 7. However, there are key differences between the rates proposed here and the rates subject to litigation before the FERC and the Ninth Circuit. In a negotiated commercial transaction like this, the buyer is not in the seller's service territory, has no obligation to purchase, and has many resource

alternatives available to it. Both the buyer and the seller, however, negotiate at arms-length because such a transaction has benefits for both. TR 37-38. The rate formulas, and the resulting rate levels, are acceptable to both parties. Thus, while the Edison formula rates take BPA's NF-85 and SP-85 rates into consideration, the formula rates are reasonable regardless of litigation that may affect other BPA rate schedules.

Another key difference between the Edison formula rates and BPA's general rate schedules is the duration of the rate formulas. BPA's witness testified that utilities typically are willing to commit to purchase on a long-term basis only if such a purchase is more economic than its alternatives. Armstrong, BPA, SC-86-E-BPA-01, 8. In order to make such a determination, the utility requires price predictability. Id. The rates Edison will pay for purchases under this contract will be determined by rate formulas effective for the full 20-year term of the contract. Armstrong, BPA, SC-86-E-BPA-01, 5. The rate formulas thus give Edison a degree of long-term rate predictability largely unavailable to customers who purchase under BPA's general rate schedules. The long-term nature of the transaction and the rate predictability provided by the rate formulas support rates different from the general rate schedules pending in the litigation cited by the CPUC.

Third, the CPUC's proposal would require the Administrator to await the outcome of litigation that may take years to conclude. No one can predict what the outcome of that litigation will be. The Administrator, however, is required by law to "establish rates to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment." 16 U.S.C. §839e(a)(1).

The NF-85 Standard rate and the SP-85 Contract rate each represent the Administrator's best judgment regarding the fully allocated cost of those services. This determination was made by the Administrator in the Record of Decision for the 1985 rate filing following an extensive public hearings process in which both the CPUC and Edison participated. Administrator's Record of Decision, WP-85-A-02. Making a mutually acceptable rate dependent upon the uncertain outcome of litigation would be inconsistent with both the directive that the Administrator base his decision on the record and the directive that he set rates consistent with sound business principles.

Last, the CPUC's real concern appears to be that the Edison rates may be excessive. Brief, CPUC, SC-86-B-CP-01, 8. The CPUC, however, submitted nothing for the evidentiary record of this case that demonstrates why these rates may be excessive in light of the long-term nature of the rate formulas and the rate predictability these formulas provide Edison. No party has had an opportunity to rebut or address the CPUC's concerns that the rates may be excessive.

BPA's Rules Governing Rate Hearings were designed expressly to encourage parties to raise all matters at the appropriate time. 51 Fed. Reg. 7611, 7614 and 7617. Rule 1010.13(a) requires that all evidentiary arguments in briefs be based on cited materials contained in the record. In addition, briefs are required to fully raise and develop the parties' positions. Rule 1010.13(b).

To the extent the CPUC states that these rates may be excessive, the CPUC makes an evidentiary argument that is unsupported by evidence in the record. The Administrator is obligated to make his decision based on the record. 16 U.S.C. §839e(i)(5). The CPUC's failure to provide evidentiary support for its arguments precludes the Administrator from effectively evaluating its concerns.

Decision

The rate formulas are not dependent upon the resolution of pending litigation.

E. Escalation Factors

Issue

Are the escalation factors of the Edison formula rates required to be cost-based?

Summary of Positions

BPA's formula rate proposal escalates the Edison rates for surplus firm power and nonfirm energy annually by the rate of change in BPA's PF rate and by an additional 2 percent for the term of the proposed contract. Armstrong, BPA, SC-86-E-BPA-01, 3-4.

The CPUC states that the method for escalating the rates over the life of the contract is defective. The CPUC states that the relationship between BPA's PF rate and the costs of providing service to Edison is highly attenuated. Brief, CPUC, SC-86-B-CP-01, 7. Both the CPUC and participant PG&E argue that the 2 percent escalation factor is inappropriate because it has not been shown to be properly cost-based. Brief, CPUC, SC-86-B-CP-01, 6-8; PG&E, Letter, 2.

Evaluation of Positions

Essentially, both the CPUC and PG&E argue that BPA has failed to demonstrate how these escalation factors are related to BPA's cost of serving Edison. At the outset, the arguments of both the CPUC and PG&E assume that the escalation factors of the proposed Edison formula rates must be cost-based. As previously discussed, however, BPA's ratemaking standards do not require that BPA follow a cost-of-service ratemaking methodology in establishing either surplus firm power or nonfirm energy rates. See section D, supra.

Nevertheless, even if BPA were required to adopt a cost-of-service approach in setting the Edison formula rates, the annual escalation factor of the change in the PF rate plus 2 percent is a reasonable approximation that allows the Edison rates to track BPA's cost increases over the term of the contract. BPA has already demonstrated in this proceeding that the Edison rate formulas will recover the cost of nonfirm energy and surplus firm power

purchased by Edison under most conditions. Armstrong, BPA, SC-86-E-BPA-01, 7, Attachment 3. See also Chapter 2, Sections A.1. and A.2.

Decision

BPA is not required to use a cost-of-service approach in establishing the proposed rate escalators. However, even if BPA were required to adopt a cost-of-service methodology, the Edison escalators reasonably approximate BPA's cost.

F. Exchange Ratios

Issue

Are the exchange ratios for the exchange of surplus firm capacity for energy required to be set in a section 7(i) proceeding?

Summary of Positions

The CPUC argues that the ratios for the exchange of BPA capacity for Edison's energy are subject to the procedural requirements of section 7(i). Brief, CPUC, SC-86-B-CP-01, 4-5. See also Oral Argument, APAC, TR 259; PG&E, Letter, 4.

BPA disagrees that exchange ratios are rates for the purpose of either the ratemaking standards or procedural requirements of section 7 of the Pacific Northwest Power Act. These issues were not set for hearing in this case by the Administrator. 51 Fed. Reg. 10911, 10915 (March 31, 1986).

Evaluation of Positions

The CPUC argues that the exchange ratios form "part of the basis for determining the price which SCE would pay for capacity." Brief, CPUC, SC-86-B-CP-01, 5; see also, Oral Argument, APAC, TR 259. Participant PG&E comments that the exchange ratios should conform to the same ratemaking standards as the formula rates for firm power and nonfirm energy. PG&E, Letter, 4.

Essentially, the CPUC argues that ratios for the exchange of BPA capacity for Edison energy constitute rates that must be established in a section 7(i) hearing. Section 7(a)(1) of the Pacific Northwest Power Act requires BPA to establish rates for the "sale and disposition" of electric energy and capacity. 16 U.S.C. §839e(a)(1). Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), states that in establishing rates under section 7, the Administrator shall follow certain procedures. Thus, the question raised by the CPUC is whether an exchange is a "sale and disposition" within the meaning and intent of section 7(a)(1) such that section 7 ratemaking standards and section 7(i) ratemaking procedures apply.

The CPUC's argument is appealing. However, there is no intuitive reason why rate setting standards and procedures should apply to exchange transactions. The nature of an exchange dictates a different conclusion. In

an exchange, the exchange of power is the basis of the transaction. In a sale, cash is received to compensate a seller for costs of making power available. BPA's statutes require that rates for the sale of power are to be set to recover costs, based on BPA's total system costs. 16 U.S.C. §839e(a)(2)(B). Exchanges have a different purpose entirely. Exchanges may contribute to the efficient operation of the FCRPS or to the systems of the regions with which BPA exchanges, but they do not contribute the necessary dollars that enable BPA to recover its costs. Thus, since an exchange cannot enable BPA to comply with the statutory requirement that BPA's rates recover its costs, no purpose is served by applying to exchanges either the ratemaking standards or the ratemaking procedures of section 7.

Moreover, a careful examination of BPA's organic statutes leads to three conclusions inconsistent with the CPUC's argument. First, Congress has repeatedly distinguished between "sales and dispositions" of BPA power and "exchanges" of BPA power; second, Congress has repeatedly required that rates be established for sales and dispositions, but has never required that rates be established for exchanges; and third, Congress has repeatedly authorized exchanges when beneficial to the prudent operation of the FCRPS or when useful as alternative marketing arrangements, but has never indicated how these exchanges are factored into BPA's revenue requirement. Taken together, these statutes evidence a consistent congressional intent that exchanges are separate and distinct from sales and dispositions, and are subject to neither the ratemaking standards of section 7 nor procedural requirements of section 7(i).

The Bonneville Project Act

Section 5 of the Project Act, 16 U.S.C. §832 et seq, draws clear distinctions between "sales and dispositions" of power for which rates must be set, and "mutual exchanges" at suitable exchange terms. Section 5(a) specifically authorizes the Administrator to "negotiate and enter into contracts for the sale at wholesale of electric energy ... to public bodies and cooperatives and to private agencies ... and for the disposition of electric energy to Federal Agencies." 16 U.S.C. §832d(a) (emphasis added). These contracts for sales and dispositions, authorized by subsection 5(a), are specifically directed to contain provisions for the equitable adjustment of rates. Thus, section 5(a) of the Project Act requires that rates be set for sales and dispositions of electric energy.

Section 5(b), in contrast to section 5(a), authorizes the Administrator to enter into contracts for the "mutual exchange of unused excess power upon suitable exchange terms for the purpose of economical operation or of providing emergency or break-down relief." 16 U.S.C. §832d(b) (emphasis added). The Administrator is authorized to conclude mutual exchanges for the purpose of the reliable operation of the FCRPS. These exchanges are to be made upon suitable exchange terms. Noticeably absent from the language of section 5(b) is any reference to the establishment of rates for mutual exchanges. The Project Act thus makes an express statutory distinction between "rates" for the "sale and disposition" of power and "suitable exchange terms" for the "mutual exchange" of power.

The Project Act's rate directives make it clear that exchanges are not ratemaking events. Section 6 of the Project Act, which also concerns the establishment of rates, expressly applies to the sale and disposition of energy, but does not refer to mutual exchanges. Section 6 states that "schedules of rates and charges for electric energy ... sold to purchasers ... shall be prepared by the administrator ... and such rates and charges shall also be applicable to dispositions to Federal agencies." 16 U.S.C. §832e (emphasis added). Section 6, however, does not mention that rates must also be established for mutual exchanges. The omission of any reference to exchanges in section 6 is significant. In the Project Act, Congress provided distinct statutory treatment for sales and dispositions on one hand, and exchanges on the other. Rates must be established for sales of energy to purchasers and for dispositions of electric energy to Federal agencies. Section 6 also requires that these rates established for sales and dispositions must also be confirmed and approved by the FERC. Id.

Similarly, section 7 of the Project Act establishes that BPA's rates must be set to recover costs and amortize the Federal investment over a reasonable number of years for the "sale of electric energy." 16 U.S.C. §832f. Section 7, like section 6, makes no reference to establishing rates that recover costs from power exchanges.

Two significant conclusions are drawn from the language of the Project Act. First, Congress expressly distinguished between (1) sales and dispositions of power, and (2) exchanges of power. Second, the Project Act specifies that rates are to be established for the sale of energy to purchasers and that such rates are also applicable to dispositions of energy to Federal agencies. The Project Act's ratemaking provisions, however, do not apply to section 5(b) power exchanges.

The Preference Act

The Preference Act, 16 U.S.C. §837 et seq, consistent with the Project Act, also distinguishes between sales and exchanges. Section 2 of the Preference Act refers twice to the "sale, delivery, and exchange of electric energy." Section 3 refers to "any contract for the sale or exchange of surplus energy for use outside the Pacific Northwest."

Section 5 of the Preference Act, like section 5(b) of the Project Act, grants the Administrator authority to enter into exchange contracts for exchanges with areas other than the PNW. 16 U.S.C. §837d. The Administrator is authorized to enter into five distinct types of exchanges. Id. The last sentence of section 5 of the Preference Act states that "all benefits from such exchanges, including resulting increases of firm power, shall be shared equitably by the areas involved, having regard to the secondary energy and other contributions made by each." Id.

Noticeably absent from the language of the Preference Act are ratemaking standards applicable to sales and dispositions or any language respecting how the benefits of power exchanges are to be factored into BPA's revenues or directly used to recover costs and repay the Federal Treasury. Under the

Preference Act, power exchanges are marketing transactions, but are not ratemaking events.

Two conclusions can be drawn from the Preference Act. First, Congress retained the distinction drawn in the Project Act between sales and dispositions on one hand, and exchanges on the other. Second, the Preference Act is devoid of ratemaking standards completely, but meticulously authorizes five types of exchanges, the benefits of which are to be equitably shared.

The Pacific Northwest Power Act

The Pacific Northwest Power Act again draws the distinction between "sales and dispositions" for which ratemaking standards apply, and "exchanges of electric power." Section 5(a) of the Pacific Northwest Power Act provides that "power sales under this Act shall be ... at rates established pursuant to section 7." 16 U.S.C. §839c(a)(emphasis added). Section 7, consistent with the Project Act, provides that the Administrator "shall establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity ...." 16 U.S.C. §839e(a)(1) (emphasis added). Rates for sales and dispositions under the Pacific Northwest Power Act are required to be established according to the ratemaking procedures detailed in section 7(i). 16 U.S.C. §839e(i). Section 7, however, contains no reference to rates for exchanges of power.

In contrast to sections 5 and 7 of the Pacific Northwest Power Act, Section 6(1)(2) specifically authorizes and directs the Administrator to investigate "opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in the Pacific Northwest and the regions with which such exchanges may occur." 16 U.S.C. §838d(1)(2) (emphasis added). In stark contrast to the requirement of section 5 that sales under that section be at rates established in section 7, no provision is made in section 6 for the establishment of rates for exchanges.

It is again apparent that Congress retained in the Pacific Northwest Power Act the distinctions it drew in the Project Act and in the Preference Act. Rates are established pursuant to the procedures of section 7(i) for sales and dispositions to recover BPA's total system costs. 16 U.S.C. §839e(a)(2)(B) and (i). Exchanges are separately and distinctly treated, and are authorized as alternative marketing arrangements or for the purpose of enhancing the economical operation of the FCRPS. In sum, an exchange is not a "sale or disposition" which requires the Administrator to apply either the ratemaking standards or the procedural requirements of section 7.

Decision

Exchanges are not "sales or dispositions" of capacity within the meaning of section 7 of the Pacific Northwest Power Act. Exchange ratios contained in the Edison-BPA contract are not rates to which the ratemaking standards of section 7(a)(1) or the procedural requirements of section 7(i) apply.

G. Level of Formula Rates

Issue

Does regional preference require that the Edison rate formulas be no lower at any time than either the PF or NR rate?

Summary of Positions

PSP&L argues that regional preference requires that the Edison formula rates be no lower than either the PF or NR rate. Brief, PSP&L, SC-86-B-PS-01, 2-3.

Evaluation of Positions

PSP&L argues that regional preference ensures that BPA's lowest established rate is available for BPA's PNW customers. Brief, PSP&L, SC-86-B-PS-01, 2. PSP&L thus concludes that the contract formula rates must ensure that the Edison rate is no lower than either the PF or NR rate. Id., 3.

Essentially, PSP&L argues that BPA is constrained by P.L. 88-552 to offer a block of power to a Northwest customer at any of BPA's established rates before such power can be deemed surplus to the needs of the region and thus available for sale outside the region. Oral Argument, PSP&L, TR 285-6. In support of its argument, PSP&L relies on the definition of surplus power found in P.L. 88-552. Id. Section 1(c) of P.L. 88-552 defines "surplus energy" as "electric energy generated at Federal hydroelectric plants in the Pacific Northwest which would otherwise be wasted because of the lack of a market therefor in the Pacific Northwest at any established rate." 16 U.S.C. §837 (emphasis added). However, this definition was made inapplicable by section 9(c) of the Pacific Northwest Power Act.

Section 9(c) provides that the sale or exchange of electric power for use outside the Pacific Northwest is subject to the requirements of sections 2 and 3 of P.L. 88-552. 16 U.S.C. §839f(c). However, in making this determination, section 9(c) specifically directs the Administrator to apply a different definition of surplus energy for sale outside the region:

> In applying [sections 2 and 3 of the Regional Preference Act] for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy[.]

16 U.S.C. §839f(c)(emphasis added). The Pacific Northwest Power Act, being a later-enacted statute, controls the definition of surplus energy. Accordingly, the definition of surplus energy found in section 1(c) of P.L. 88-552, 16 U.S.C. §837(c), is no longer applicable in determining whether the Administrator may make a sale outside the PNW region.

Application of the definition of surplus power found in section 9(c) of the Pacific Northwest Power Act to sales outside the PNW region requires only that BPA may not sell energy and capacity out of the region if there is a market in the PNW for that energy at the rate established for the disposition of such energy and capacity. Section 9(c) thus provides a test by which BPA is to determine whether energy it proposes to sell outside the region is surplus to the needs of PNW utilities. The test is whether a PNW market exists for the energy BPA proposes to export at the price established for the energy. If a present market exists in the PNW at the price established for that energy, it is not "surplus energy" within the meaning of section 9(c), and may not be exported until the PNW market is satisfied. Accordingly, PSP&L's argument that it is entitled to a particular block of energy at any of BPA's established rates is inconsistent with the definition of surplus energy found in section 9(c).

Moreover, the purpose of regional preference was to guarantee electric consumers in the PNW first call on electric energy and capacity generated at Federal hydroelectric plants in the PNW. S. Rep. No. 122, 88th Cong., 1st Sess. 1 (1963). Thus, regional preference refers to the priority BPA must give PNW purchasers in the allocation of energy and capacity generated in the PNW. Regional preference does not give PNW purchasers priority of price. In Central Lincoln Peoples' Utility Dist. v. Johnson, 735 F.2d. 1101 (9th Cir. 1984), the court rejected a similar argument that public preference gave BPA's public body customers a preference in price. In making this determination, the court noted that section 5(a) of the Pacific Northwest Power Act couches the public preference in terms of power sales, not price. Id., 1125. Similarly, section 9(c) of the Act states that regional preference applies to sales. 16 U.S.C. §839f(c). There is no statutory requirement that regional preference applies to price. See also, Greenwood Utilities Commission v. Hodel, 764 F.2d 1459 (11th Cir., 1985) (referring to public preference as preference in allocation).

Decision

Regional preference does not require that the rates paid by Edison be higher than both the PF rate and the NR rate.

H. Discrimination

Issue

Does the 2 percent escalation factor constitute improper discrimination against a non-regional customer?

Summary of Positions

Participant PG&E comments that the 2 percent factor in the proposed formula rates may constitute improper discrimination against a non-regional customer. PG&E, Letter, 3.

Evaluation of Positions

Participant PG&E argues that the 2 percent formula escalator, to the extent it is intended to lower BPA's business risk, may constitute improper discrimination against a non-regional customer. PG&E, Letter, 3. This argument is meritless.

Price discrimination occurs when a seller unjustifiably assigns different rates to similarly situated customers for the same or substantially the same service. Southern California Edison Co., 59 F.P.C. 2167, 2185-86 (1977); aff'd on reh'g 2 FERC ¶61,018 (1978). Here there is one contract, one rate, and one buyer. No other buyer, regional or non-regional, is being offered a long-term rate formula in exchange for this long-term purchase. Consequently, there are no similarly situated customers against which BPA can discriminate in establishing this rate. No facts exist to raise a discrimination issue.

Decision

The 2 percent factor in the proposed formula rates does not discriminate against non-regional customers.

I. Expedited Hearing

Issue

Is BPA's use of its rule governing expedited procedures in this case consistent with section 7(i) of the Pacific Northwest Power Act?

Summary of Positions

PPC states that it is opposed to use of BPA's rule for expedited hearings in this case. Brief, PPC, SC-86-B-PP-01, 9-10. PPC also argues that the rule is legally deficient. Id., 10, n. 8.

Evaluation of Positions

On March 5, 1986, BPA published a new rule of procedure that allowed the Administrator more flexibility to establish rates in procedures less cumbersome than those used in traditional general rate cases. 51 Fed. Reg. 7611. Although the Administrator found this rule to be a procedural rule exempt by section 553(b)(3)(a) of the Administrative Procedure Act from notice and comment requirements, BPA accepted public comments and reply comments on the new rule. 51 Fed. Reg. at 7611. In response to the request, BPA received numerous comments from its customers and interested persons. The PPC filed both comments and reply comments. BPA is aware of the PPC's concerns regarding this rule. BPA is currently evaluating all comments, including the PPC's comments, and may revise these rules at a later time. While BPA considers this procedural rule to be outside the scope of this hearing, the PPC raises one concern that will be addressed here.

The PPC argues that section 7(i) gives parties a right to both formal oral argument before the Administrator and written reply briefs. Brief, PPC,

SC-86-B-PP-01, 10 at n. 8. Because the procedural rule for expedited hearings provides that oral argument will not be heard unless the parties elect to substitute oral argument for a reply brief, PPC argues that the rule is legally deficient. Id. PPC's argument that section 7(i) gives parties a procedural right to both oral argument before the Administrator and a reply brief is incorrect.

The PPC cites language of section 7(i)(2) for the proposition that the Pacific Northwest Power Act grants parties a right to oral argument. Brief, PPC, SC-86-B-PP-01, 10, n. 8. Section 7(i)(2), however, states "[o]ne or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates." 16 U.S.C. §839e(i)(2) (emphasis added). The PPC mistakenly attaches specific meaning to unspecific statutory language. "Oral presentation" could as easily refer to oral testimony or oral cross-examination on the witness stand at the hearing. Alternatively, "oral presentation" could mean the opportunity for individual interested citizens, unrepresented by counsel, to comment at legislative-style hearings when conducted in addition to the more formal hearings. It is not intuitively obvious from this section that parties have a right to formal oral argument. This is consistent with BPA's previous procedural rule in which the opportunity for formal oral argument was discretionary. 47 Fed. Reg. 6240 (February 10, 1982) (Rule 1010.3(d)(7)).

PPC also cites section 7(i)(2)(A) for the proposition that parties are entitled to a written reply brief as well as formal oral argument. Opening Brief, PPC, SC-86-B-PP-01, 10, n.8. Section 7(i)(2)(A), however, merely states that [in any such hearing] "any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator[.]" 16 U.S.C. §839e(i)(2)(A). An opportunity to offer refutation or rebuttal means nothing more than the opportunity to offer contrary views and data. This section does not specify that the form of the refutation or rebuttal must be a written legal brief, as PPC implies.

The PPC's concerns regarding the new procedural rule are well-taken, and will be evaluated at the appropriate time. To the extent PPC argues the rule is legally deficient, however, PPC implies that this proceeding is legally deficient. All parties, including the PPC, have had ample opportunity in this case to submit refutation and rebuttal and present written and oral views regarding the proposed rates. While PPC disagrees with BPA regarding the requirements of section 7(i), PPC acknowledged in oral argument that it felt "comfortable that we have, in this case, in this specific instance, had an opportunity to present to you what we were interested in saying." Oral Argument, PPC, TR 242-243. Section 7(i) requires no more.

Decision

Use of the rule governing expedited hearing in this case is consistent with section 7(i) of the Pacific Northwest Power Act.

J. Statutory Requirements

Issue

Are the Edison surplus firm power and nonfirm energy formula rates consistent with BPA's statutory ratemaking requirements?

Summary of Positions

The CPUC argues that until litigation respecting BPA's general nonfirm energy and surplus firm power rate schedules is concluded, the rates charged Edison under the proposed contract cannot be considered in compliance with the statutory requirement that they encourage the most widespread use of electrical power at the lowest possible rates. CPUC, Brief, SC-86-B-CP-01, 7.

BPA designed the Edison surplus firm power and nonfirm energy formula rates to both recover BPA's cost over the term of the contract and provide Edison with the rate predictability it needed to evaluate this proposed purchase against its other alternatives. Armstrong, BPA, SC-86-E-BPA-01, 4. These rates were also designed to recover some amount to compensate BPA for the risk associated with a long-term agreement respecting the Edison formula rates. Id.

Evaluation of Positions

Section 7(a)(1) of the Pacific Northwest Power Act directs the Administrator to establish all BPA rates such that they recover over a reasonable period of years in accordance with sound business principles the overall costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the FCRPS and other costs of the Administrator. 16 U.S.C. §839e(a)(1). Such rates are also required to be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act and section 5 of the Flood Control Act. Id.

Regarding rates for sales of nonfirm energy outside the PNW, section 7(k) requires that these rates be established in accordance with the ratemaking standards contained in the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. 16 U.S.C. §839e(k). FERC has determined that taken together, the three statutes referenced in section 7(k) require BPA to design extra-regional nonfirm energy rates:

1. Having regard to the recovery of the cost of generation and transmission of such electric energy;
2. So as to encourage the most widespread use of Bonneville power;
3. To provide the lowest possible rates to consumers consistent with sound business principles; and

4. In a manner which protects the interests of the United States in amortizing its investments within a reasonable period.

U.S. Secretary of Energy, Bonneville Power Administration, 27 FERC ¶61,251, 61,475-476 (1984). Thus, the ratemaking standards for nonfirm energy rates sold outside the PNW region are essentially those standards applicable to all BPA rates.

The CPUC's concern appears to be that the Edison formula rates may be excessive and thus inconsistent with the requirement that they be the lowest possible. Brief, CPUC, SC-86-B-CP-01, 7-8. BPA's statutory requirements, however, require that BPA's rates be designed to meet all the ratemaking criteria established by Congress. Single standards cannot be read in isolation from the others. The proposed Edison surplus firm power and nonfirm energy formula rates are consistent with all BPA's statutory ratemaking requirements.

The CPUC argues that the rates may not be the lowest possible to consumers. However, the directive that BPA's rates be the lowest possible to consumers is qualified by the requirement that they also be established consistent with sound business principles. 16 U.S.C. §839e(a)(1) and (k); 27 FERC at 61,475-476. The Edison rate formulas provide the lowest possible rates to consumers, allowable by law, consistent with sound business principles. Sound business principles dictate that the Administrator market its surplus to recover the fully allocated cost of surplus firm power and nonfirm energy. Recovery of BPA's cost is enhanced by long-term sales. In order to make this surplus power commercially attractive to potential purchasers on a long-term basis, however, the rates for these sales must both provide the purchaser a degree of rate predictability and enable BPA to recover its costs over the term of the agreement. A risk to BPA of offering a long-term rate formula is that the rates may become noncompensatory. Sound business principles dictate that BPA minimize this risk. Because the rate formulas were designed to recover BPA's cost of providing surplus firm power and nonfirm energy to Edison at predictable rates, these rates are the lowest possible rates consistent with sound business principles.

Moreover, these formula rates must also comply with BPA's other statutory ratemaking requirements. The rates formulas have been designed to encourage the widest possible diversified use of BPA power. The rate predictability that results from the design of these formula rates encourages the widest possible diversified use of BPA power, since it enhances the marketability of BPA power.

The formula rates are also designed to recover, together with BPA's other rates and rate schedules, the costs associated with the production, acquisition, conservation, and transmission of electric energy and capacity, including amortization of the capital investment, interest on this investment, and all other costs incurred by the Administrator. The rates begin at levels determined by the Administrator in the 1985 general rate case to represent the full cost of surplus firm power and nonfirm energy. Administrator's Record of Decision, WP-85-A-02, 375-376. The rate formulas ensure that these rates

adequately recover BPA's costs and cost increases over the term of the proposed transaction. These rates also protect the interests of the United States in amortizing its investment, since the formula rates provide an assured revenue stream that enhances the Administrator's ability to repay the U.S. Treasury on an ongoing basis.

Decision

The Edison surplus firm power and nonfirm energy formula rates meet all applicable statutory ratemaking requirements.

Chapter IV

SUMMARY OF CONCLUSIONS

After considering all comments, testimony, evidence, and arguments received in this proceeding, I have determined that the proposed surplus firm power and nonfirm energy formula rates for sales to Edison are consistent with all statutory criteria for the establishment of rates. The proposed formula rates will have no impact on the human environment, as determined by a Finding of No Significant Impact. Based on the foregoing, I hereby adopt as final the attached Bonneville Power Administration formula rates for the proposed contractual sale of surplus firm power and nonfirm energy to the Southern California Edison Company.

Issued at Portland, Oregon, this 10th day of July, 1986.

Peter T. Johnson
Administrator

Appendix A

SOUTHERN CALIFORNIA EDISON FORMULA RATES

1. Surplus Firm Power

a. During October through December 1987, the rate shall be 36.887 mills/kWh, which is based on the SP-85 Contract rate and includes the Intertie Service charge.

b. For all future calendar years beginning in 1988, the surplus firm power rate is calculated as follows:

$$SP_x = SP_0 * \frac{PF_x}{PF_0} * (1.02)^n$$

where SP_0 = 36.887 mills/kWh, based on the SP-85 Contract rate computed at a load factor of 53.57 percent.

PF_0 = 24.002 mills/kWh, based on the PF-85 rate computed at a load factor of 53.57 percent.

n = Number of years beyond calendar year 1987.

SP_x = The surplus firm power rate in effect on January 1 of the relevant calendar year.

PF_x = The average Priority Firm Power (PF) rate or successor rates(s) (in mills per kilowatthour) effective on January 1 of the relevant calendar year. Such average rate shall be calculated at the load factor of 53.57 percent, and assuming a uniform demand in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

Substituting the known values for SP_0 and PF_0, the equation above becomes:

$$SP_x = 1.537 * PF_x * (1.02)^n$$

2. Nonfirm Energy

a. During October through December 1987, the rate shall be 23.4 mills/kWh, which is based on the NF-85 Standard rate and includes the Intertie Service charge.

b. For all future calendar years beginning in 1988, the rate for nonfirm energy is calculated as follows:

$$NF_x = NF_0 * \frac{PF_x}{PF_0} * (1.02)^n$$

where NF_0 = 23.4 mills/kWh, based on the NF-85 Standard rate and Intertie Service charge.

PF_0 = 24.002 mills/kWh, based on the PF-85 rate computed at a load factor of 53.57 percent.

n = Number of years beyond calendar year 1987.

NF_x = The nonfirm energy rate in effect on January 1 of the relevant calendar year.

PF_x = The average Priority Firm Power (PF) rate or successor rate(s) (in mills per kilowatthour) effective on January 1 of the relevant calendar year. Such average rate shall be calculated at the load factor of 53.57 percent, and assuming a uniform demand in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

Substituting the known values for NF_0 and PF_0, the equation above becomes:

$$NF_x = 0.975 * PF_x * (1.02)^n$$

Appendix B

PARTIES TO THE SOUTHERN CALIFORNIA EDISON CONTRACT RATE HEARING

Parties	Abbreviations
Association of Public Agency Customers	APAC
Bonneville Power Administration	BPA
California Public Utilities Commission	CPUC
Chelan County P.U.D. No. 1	CC
Direct Service Industries	DSIs
Los Angeles Department of Water and Power	LADWP
NF Group (APAC, SCL, PGE)	NF
Northwest Parties (APAC, PP&L, PPC, PSP&L, SCL)	NP
Oregon Public Utility Commissioner	OPUC
Pacific Power and Light Company	PP&L
Portland General Electric Company	PGE
Public Power Council	PPC
Puget Sound Power and Light Company	PSP&L
Sacramento Municipal Utility District	SMUD
Seattle, City of (City Light Department)	SCL

Appendix C

PARTIES' WITNESSES AND REPRESENTATIVES

Name	Party Name
Ackerman, Susan	Bonneville Power Administration
Adler, David	Bonneville Power Administration
Alcantar, Michael P.	Columbia Falls Aluminum Co.
Armstrong, David	Bonneville Power Administration
Bailey, R. G.	Puget Sound Power & Light Co.
Baxendale, James	Portland General Electric Co.
Bearzi, Judith A.	Public Power Council
Braden, Roger	Chelan County PUD No. 1
Brattebo, Scott	Pacific Power & Light Co.
Cameron, John A.	Bonneville Power Administration
Cook, Harold	Association of Public Agency Customers
Crisson, Mark	Direct Service Industries
Drummond, William	Public Power Council
Early, Michael B.	Direct Service Industries
Fairchild, Peter G.	California Public Utilities Commission
Garten, Allan M.	Association of Public Agency Customers
Graham, Paul A.	Oregon Public Utility Commissioner
Hellman, Marc M.	Oregon Public Utility Commissioner
Kaplan, David S.	Sacramento Municipal Utility District
Kari, Donald G.	Puget Sound Power & Light Co.
Kaufman, Paul	Public Power Council
Kellerman, Larry	Portland General Electric Co.
Kerr, Janice E.	California Public Utilities Commission
Lubking, Eugene W.	Chelan County PUD No. 1
Miller, Max M. Jr.	Association of Public Agency Customers
O'Banion, John	Sacramento Municipal Utility District
Opatrny, Carol	Public Power Council
Otero, S. James	Los Angeles Department of Water & Power
Rhoads, Robert R.	Columbia Falls Aluminum Co.
Schultz, Merrill	Northwest Parties
Simpson, J. Calvin	California Public Utilities Commission
Van Nostrand, James M.	Puget Sound Power & Light Co.
Williams, Walter	City of Seattle, City Light Dept.
Wood, Marcus	Pacific Power & Light Co.

Appendix D

PARTICIPANTS

Name	Representing
Caha, D. J.	city utility
Evans, Dale R.	Federal agency
Gardiner, Stuart K.	private utility
Garman, G. R.	public utility
Prekeges, Gregory	private utility
Schultz, Merrill	self
Stewart, Sue	self
Van Curen, G. R.	labor group
Wilkerson, William R.	state fisheries department