

Residential Exchange Program

**ADMINISTRATOR'S
RECORD OF DECISION**

**2026 RESIDENTIAL PURCHASE AND
SALE AGREEMENT**

March 2026



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ATTACHMENT 1 TEMPLATE 2026 RESIDENTIAL PURCHASE AND SALE AGREEMENT

COMMONLY USED ACRONYMS AND SHORT FORMS

aMW	average megawatt(s)
ASC	Average System Cost
ASCM	Average System Cost Methodology
BAA	Balancing Authority Area
BPA	Bonneville Power Administration
BPAP	Bonneville Power Administration Power
BPAT	Bonneville Power Administration Transmission
CGS	Columbia Generating Station
Commission	Federal Energy Regulatory Commission
Corps	U.S. Army Corps of Engineers
Council	Northwest Power and Conservation Council (see also "NPCC")
CRAC	Cost Recovery Adjustment Clause
CY	calendar year (January through December)
DOE	Department of Energy
DOI	Department of Interior
DSI	direct-service industrial customer or direct-service industry
FBS	Federal Base System
FCRPS	Federal Columbia River Power System
FCRTS	Federal Columbia River Transmission System
FERC	Federal Energy Regulatory Commission
FY	fiscal year (October through September)
GRSPs	General Rate Schedule Provisions
GWh	gigawatthour
IOU	investor-owned utility
IP	Industrial Firm Power
kW	kilowatt
kWh	kilowatthour
MW	megawatt
MWh	megawatthour
NEPA	National Environmental Policy Act
NLSL	New Large Single Load
NWPA	Northwest Power Act/Pacific Northwest Electric Power Planning and Conservation Act
NPCC	Northwest Power and Conservation Council
NR	New Resource Firm Power
NRU	Northwest Requirements Utilities
OATT	Open Access Transmission Tariff
PF	Priority Firm Power
PFp	Priority Firm Public
PFx	Priority Firm Exchange
PNRR	Planned Net Revenues for Risk
POD	Point of Delivery
PUD	public or people's utility district
REC	Renewable Energy Certificate
	RPSA-26 Record of Decision
	Acronyms and Short Forms

REP
REPSIA
ROD
RPSA

Residential Exchange Program
REP Settlement Implementation Agreement
Record of Decision
Residential Purchase and Sale Agreement

1.0 INTRODUCTION

This Record of Decision (ROD) sets forth the Bonneville Power Administration's (BPA) final determinations regarding the terms and conditions of the Residential Purchase and Sale Agreement (RPSA). This agreement administers the purchase and sale provisions of Section 5(c) of the Northwest Power Act, 16 U.S.C. § 839c(c), commonly known as the Residential Exchange Program (REP). The RPSA (referred to as the "2026 RPSA" herein) will govern the contractual relationship between BPA and regional utilities participating in the Residential Exchange Program from October 1, 2028, to September 30, 2044. Following the issuance of this ROD, BPA will promptly provide the 2026 RPSA to regional utilities that have requested such an agreement.¹ Utilities will have 90 days from the date of receipt to sign the 2026 RPSA. The final 2026 RPSA is included as Attachment 1 to this ROD.

¹ Letter from Avista, Idaho Power Co., NorthWestern Energy, PacifiCorp, Portland General Electric, and Puget Sound Energy (IOUs) to BPA regarding request for Post-FY 2028 Contract for the Purchase and Sale of Power Pursuant to Section 5(c)(1) of the Northwest Power Act (May 12, 2025) ("IOU Letter Requesting RPSA") (on file with author). Most of the documents cited in this Record of Decision are or have been available in the public record. Certain documents, such as this letter, are on file with BPA. For convenience, BPA is uploading this, and other documents, to its external website and will link them through the document named "Additional Record Material cited in 2026 RPSA ROD."

2.0 BACKGROUND

2.1 Historical Context for the Residential Exchange Program

The REP was created by Congress to address long-standing regional disputes concerning rate disparities between public and private utilities in the Pacific Northwest. BPA, a power marketing administration, is responsible for selling and transmitting power from 31 federal hydroelectric projects and one non-federal nuclear plant.² BPA sells its power and transmission at cost, without profit. Federal law mandates that BPA prioritize power generated at federally owned and operated projects for not-for-profit public bodies and cooperatives, collectively known as “Public Power” customers.³ Any remaining power, after meeting Public Power customer demands, may be sold to non-preference customers, including regional for-profit utilities (investor-owned utility customers or IOUs) and direct service industries (DSIs).⁴

Until the 1970s, BPA had sufficient power to meet the collective demands of Public Power customers, IOUs, and DSIs throughout the Pacific Northwest.⁵ However, by the early 1970s, regional projections indicated that BPA's supply of federal power would be needed to meet the needs of its Public Power customers. Because of the preference and priority provisions of the Bonneville Project Act, 16 U.S.C. § 832c(a)-(b), BPA would not be able to meet the needs of non-preference entities (IOUs and DSIs) on a long-term basis. In response to this impending shortage, BPA began limiting its commitment to serving non-preference customers' power needs. In 1973, BPA ceased making long-term firm power sales to IOUs.⁶ Subsequently, BPA informed the DSIs that their contracts would not be renewed upon expiration during the 1981-1991 period.⁷

With the loss of BPA power, the IOUs had to invest in alternative, higher-cost thermal resources. These increased costs were passed on to their retail consumers, leading to higher retail rates for customers in IOU-served areas.⁸ Significant cost disparities soon emerged between the rates paid by Public Power end-use consumers and IOU end-use

² 16 U.S.C. §§ 832f, 838g, 839e(a)(1)-(2); *see also* Bonneville Power Administration, BPA Facts (Oct. 2025), available at <https://www.bpa.gov/-/media/Aep/about/publications/general-documents/bpa-facts.pdf>.

³ *See* 16 U.S.C. § 832c(a). The Public Power customers are also sometimes called “preference customers” or “Consumer-Owned Utilities” or COUs because they are largely owned by consumers and afforded preferential rights to the sale of available federal power. In this ROD, they will be referred to as “Public Power customers.”

⁴ The DSIs are large industrial customers that purchased power directly from BPA. These included aluminum plants, steel mills, wood and pulp production, and other large production loads.

⁵ *See* H.R. Rep. No. 96-976, pt. I, at 23–26 (1980).

⁶ *See Aluminum Co. of Am. v. Cent. Lincoln Peoples' Util. Dist. (Alcoa)*, 467 U.S. 380, 385 (1984).

⁷ *Id.*

⁸ H.R. Rep. No. 96-976, pt. II, at 30 (1980) (“However, since 1973, when BPA stopped selling power to IOUs, they have had to rely on (as it has turned out) increasingly expensive thermal power. Preference customers, on the other hand, still rely primarily upon low cost Federal hydro. Consequently, wholesale power costs to IOUs are usually higher than those faced by preference customers in the region. Since Oregon is primarily served by IOUs and Washington is primarily served by preference customers, consumers in Oregon (and Idaho and western Montana), on the average, pay more for their electricity at retail than those in Washington.”).

consumers, with IOU customers sometimes paying up to three times more for power.⁹ To address these disparities, state legislatures passed competing laws aimed at broadening the scope of utilities eligible to purchase BPA's low-cost power as a Public Power customer.¹⁰ This led to litigation and other attempts to expand access to BPA's power.¹¹ The situation escalated to a point where the Northwest was "poised for regional civil war—an interstate battle over the allocation of low-cost federal power."¹²

In 1980, Congress responded by passing the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act or Act).¹³ The Northwest Power Act was intended to provide a "comprehensive solution" to the looming power disputes.¹⁴ Congress' aim was to "avoid the prospect of unproductive and endless litigation" among BPA's customer groups by creating a legislative framework to resolve these numerous issues.¹⁵

A key component of the Northwest Power Act is Section 5(c), which created the Residential Exchange Program or REP.¹⁶ Through the REP, residential and farm¹⁷ consumers of higher-cost Pacific Northwest utilities (primarily IOUs) receive a rate benefit from the low-cost federal power reserved by federal statute to Public Power customers. This rate benefit comes in the form of a power-neutral purchase and sale, where utilities with higher-cost resources sell power to BPA at their average system cost of resources (ASC).¹⁸ BPA, in turn, concurrently sells the same quantity of power back to the utilities at BPA's cost of power (the PF Exchange Rate), modified by certain rate adjustments. Since these sales are equal and offsetting, this "exchange" has always been implemented as a financial transaction, with no actual power transferring between the parties. BPA pays the utility the net

⁹ Post 2028 Residential Exchange Program presentation at 13 (Sept. 27, 2022) (quoting Gov. of Oregon Straub in an article from the Oregonian (Apr. 12, 1978): "People in Portland are paying \$27 for electricity people in Vancouver are paying \$11 for The general public should have equal access."), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/092722-Post-2028-REP-Phase-1-Kickoff-WorkshopV4.pdf>.

¹⁰ H.R. Rep. No. 96-976, pt. II, at 30 (1980) (describing the state of Oregon's development of a Domestic Rural Power Authority, the City of Portland lawsuit, and "efforts . . . being made . . . elsewhere in the region to form new 'public bodies and cooperatives' eligible to receive Federal hydro from BPA").

¹¹ *Id.* ("On November 14, 1977, the City of Portland, Oregon, filed two lawsuits against BPA in Federal District Court in Portland in an attempt to secure Federal hydro from BPA for the city, which is presently served by two investor-owned utilities.").

¹² *Pacific Northwest Electric Power Supply and Conservation: Hearings on H.R. 9020, H.R. 9664, and H.R. 5862 Before the Subcomm. on Water & Power Resources of the H. Comm. on Interior & Insular Affairs, 95th Cong., Pt. I*, 133 (Dec. 5, 1977) (statement of Dixy Lee Ray, Governor of Washington); see also H.R. Rep. No. 96-976, pt. I, at 27 (1980) (noting the legislation would avert a "regional civil war" over low-cost power).

¹³ See 16 U.S.C. § 839 *et seq.*

¹⁴ *Cent. Lincoln Peoples' Util. Dist. v. Johnson*, 735 F.2d 1101, 1107 (9th Cir. 1984).

¹⁵ *Alcoa*, 467 U.S. 380, 386 (1984).

¹⁶ See 16 U.S.C. § 839c(c)(1). The term "residential exchange program" comes from the concept that the utility's residential load was the determining factor for the amount of power "exchanged" under Section 5(c)(1). See H.R. Rep. No. 96-976, pt. II, at 34 (Sep. 16, 1980) (describing a "Residential power 'exchange.'")

¹⁷ Eligible farm load is limited to the first 400 horsepower (222,000 kWh) of irrigation and pumping during any monthly billing period. See 16 U.S.C. § 839a(18).

¹⁸ 16 U.S.C. § 839c(c)(1).

difference between the two sales (ASC-PF Exchange Rate), multiplied by the utility’s qualifying residential and farm load (exchange load).

A simplified example illustrates how the REP benefit has been calculated:

Base Data	
IOU’s average system cost of resources (ASC)	\$85.00/MWh
BPA’s cost of power (PFx Rate)	\$55.00/MWh
IOU’s Residential and Farm Load	100 MWh

Simplified Traditional REP Calculation ¹⁹
(ASC - PFx Rate) x Residential Load = REP benefit (“cost benefits”)
(\$85/MWh - \$55/MWh) x 100MWh = \$3000 (payment by BPA to IOU).

The Act mandates that the “cost benefits” of this energy-neutral exchange (*i.e.*, the REP benefit) be passed on by the utilities to their retail residential and farm consumers, typically as a credit on their retail power bill.²⁰ In this way, “the exchange program is designed to provide rate relief for consumers served by IOUs.”²¹

2.2 Paying for the Costs of the Residential Exchange Program

As Congress was developing the REP as part of the Northwest Power Act, Public Power customers expressed concern that the REP would increase their power costs under the power rate created by the Act (called the Priority Firm or PF rate). Congress included two provisions to alleviate this concern. First, for the initial four years of the Northwest Power Act (1981-1985), the costs of the REP benefit would be paid for by the power rates BPA charged the DSIs.²² At that time, the DSIs accounted for approximately 30 percent of BPA’s load.²³ After July 1, 1985, the cost of the REP could be recovered from BPA’s power rates to other customer classes, including the power rate BPA charges to Public Power customers, (*i.e.*, the PF rate).²⁴

¹⁹ In *Ass’n of Pub. Agency Customers v. Bonneville Power Admin. (APAC)*, 733 F.3d 939, 956 (9th Cir. 2013), the Court calls this calculation the “traditional section 5 formula.”

²⁰ 16 U.S.C. § 839c(c)(3).

²¹ *Alcoa*, 467 U.S. at 398.

²² See 16 U.S.C. § 839e(c)(1)(A); see also H.R. Rep. No. 96-976, pt. II, at 35 (1980) (“Customers of preference utilities will not suffer any adverse economic consequences as a result of this exchange since, as discussed below, the direct-service industrial customers of BPA are required to pay the costs of the exchange during its initial years while a ‘rate ceiling’ protects the customers of preference utilities during later years.”); H.R. Rep. No. 96-976, pt. I, at 61 (1980) (“The cost of the exchange during the first five years is charged to the rates applicable to DSI’s under section 7(c)(1)(A).”).

²³ The DSI load in this period was around 3,300aMW. As of this writing, BPA serves only a single DSI, and its load is around 12aMW.

²⁴ The costs of the REP are also allocated to BPA’s other rates, including the Industrial Firm Power rate (IP) and New Resource (NR) rate. Sales under these rates have in recent years been small, leaving the PF rate as the primary source for recovering these costs.

Second, Congress added a special rate test in the Northwest Power Act in Section 7(b)(2).²⁵ The Section 7(b)(2) rate test requires BPA to test Public Power’s proposed PF rate against a hypothetical rate adjusted for certain assumptions, one of which is to assume no costs of the REP are incurred.²⁶ If the hypothetical rate is lower than the PF rate BPA would have charged Public Power, the rate test “triggers,” meaning BPA must allocate the cost difference to other non-PF rates, including the PF Exchange rate BPA uses to calculate REP benefits. One effect of this reallocation is that the PF Exchange rate increases through a supplemental surcharge, which in turn decreases the difference between the ASC and the PF Exchange rate. Ultimately, when the Section 7(b)(2) rate test triggers, the total amount of REP costs paid for by Public Power through the PF rate decreases, and all else equal, overall REP benefits also decrease.²⁷

Presently, seven regional utilities participate in the REP: six IOU utilities and one Public Power customer. BPA has only one remaining DSI customer, which represents roughly .01 percent of BPA’s load.²⁸ The current agreements implementing the REP expire on September 30, 2028. At the expiration of the current REP agreement, BPA will have paid over \$11 billion to regional utilities in REP payments under Section 5(c) (*i.e.*, 1981-2028).²⁹

2.3 Components to Implement the REP: RPSA, ASCM, and 7(b)(2) Legal Interpretation and Methodology

The REP benefit payment is informed by three primary documents: 1) Residential Purchase and Sale Agreement (RPSA); 2) Average System Cost Methodology (ASCM); and 3) Section 7(b)(2) Legal Interpretation and Implementation Methodology. Each of these component parts are described below.

2.3.1 Residential Purchase and Sale Agreement (RPSA)

The Residential Purchase and Sale Agreement, or RPSA, sets out the contractual terms and conditions for engaging in the energy-neutral purchase and sale called for in Section 5(c). Most importantly, the RPSA contains the provisions that create and calculate the net payment described in Sections 5(c)(1)-(3).³⁰ Once the REP payment is determined, the RPSA requires the participating utility to pass the resulting “cost benefits” to its retail consumers, as required by Section 5(c)(3).³¹ The RPSA also includes terms to implement other features of Section 5(c), such as termination rights (*see* Section 5(c)(4))³² and replacing the energy-neutral exchange with a physical purchase from another source

²⁵ *See* 16 U.S.C. § 839e(b)(2).

²⁶ *Id.* at § 839e(b)(2)(A)-(E).

²⁷ *Id.* at § 839e(b)(3).

²⁸ 2025 Pacific Northwest Loads and Resources Study at 16, Table 2-3 (May 16, 2025) (showing DSI load of 11 aMW), available at <https://www.bpa.gov/-/media/Aep/power/white-book/2025-whitebook.pdf>.

²⁹ Post-2028 Residential Exchange Program Comprehensive Plan - Traditional REP - Phase 2, at 3 (July 17, 2025) (“2025 REP Comprehensive Plan”), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep-comprehensive-plan.pdf>.

³⁰ 16 U.S.C. § 839c(c)(1)-(3).

³¹ 16 U.S.C. § 839c(c)(3).

³² 16 U.S.C. § 839c(c)(4).

(see Section 5(c)(5)).³³ The RPSA also includes audit and compliance provisions to ensure the REP benefits are passed through directly to eligible regional residential and farm consumers.

BPA has developed four versions of the RPSA over the past 45 years: 1981, 1995, 2000, and 2008.³⁴ Additionally, in 2011, BPA developed a special form of the RPSA used in implementing the 2012 REP Settlement (see section 2.5 of this ROD) called a Residential Exchange Program Settlement Implementation Agreement (REPSIA).³⁵ This Record of Decision concludes the public process to address the newest form of the RPSA, the 2026 RPSA.

2.3.2. Average System Cost Methodology (ASCM)

The Average System Cost Methodology or ASCM establishes the rules for determining the utility's average system cost of resources (ASC) used in the REP benefit calculation. Section 5(c)(7) of the Northwest Power Act requires BPA to develop the ASCM, which is reviewed and approved by the Federal Energy Regulatory Commission (FERC).³⁶

BPA has developed three ASC Methodologies over the last 40 years (1981, 1984, and 2008).³⁷ BPA is considering revisions to the ASCM in a separate public process, the 2026 ASCM consultation process.³⁸

2.3.3. Section 7(b)(2) Legal Interpretation and Implementation Methodology

As noted above, the REP involves two offsetting sales of power, one from the utility at their ASC and one from BPA at the PF Exchange rate.³⁹ The PF Exchange rate is BPA's cost of power, modified by certain rate adjustments as provided for in Sections 7(b)(1), 7(b)(2), and 7(b)(3) of the Northwest Power Act.⁴⁰ Only utilities participating in the REP are charged the PF Exchange rate.

³³ 16 U.S.C. § 839c(c)(5).

³⁴ 2025 REP Comprehensive Plan at 11 (noting three of the RPSAs, but omitting the 1995 RPSA which was offered as an alternative during the term of the 1981 RPSA); see also 1981 Template Residential Purchase and Sale Agreement (Aug. 22, 1981) ("1981 RPSA") (on file with author); 1995 Draft Residential Purchase and Sale Agreement Template (July 13, 1995) ("1995 RPSA") (on file with author) (the 1995 RPSA was offered as a replacement for the 1981 RPSA, which was still in effect); 2000 Residential Purchase and Sale Agreement Template (May 2, 2000) ("2000 RPSA") (on file with author); 2008 Residential Purchase and Sale Agreement Template (Sept. 12, 2008) ("2008 RPSA") (on file with author).

³⁵ 2025 REP Comprehensive Plan at 12; see also Residential Exchange Program Settlement Agreement Proceeding, Administrator's Final Record of Decision, REP-12-A-02, Appendix A, Residential Exchange Program Settlement Agreement, Exhibit A, Residential Exchange Program Settlement Implementation Agreement (July 26, 2011) ("REPSIA"), available at: <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/2011-rod/rod-20110726-residential-exchange-program-settlement-agreement-proceeding-rep-12.pdf>.

³⁶ 16 U.S.C. § 839c(c)(7).

³⁷ 2025 REP Comprehensive Plan at 15.

³⁸ *Id.* at 20.

³⁹ See 16 U.S.C. § 839c(a) ("Such sales shall be at rates established pursuant to Section 839e of this title.").

⁴⁰ See 16 U.S.C. § 839e(b)(1), (2), (3).

To calculate the PF Exchange rate, BPA follows the ratemaking steps in Section 7(b). This includes the complex Section 7(b)(2) rate test discussed above. To assist in interpreting the requirements of Section 7(b)(2), BPA has historically developed both a legal interpretation and implementation methodology.⁴¹ The legal interpretation is designed to state BPA's position on certain legal issues relating to the Section 7(b)(2) rate test. These legal interpretations are then used in the Section 7(b)(2) Implementation Methodology, which describes the steps and assumptions BPA uses to produce the rate test results.

Under a settlement agreement (discussed below), BPA withdrew its disputed Section 7(b)(2) Legal Interpretation and Implementation Methodology.⁴² BPA is contractually obligated to commence a process prior to FY 2029, and issue a record of decision on "whether, and if so, how, to modify or replace its legal interpretation of, and methodology for implementing, Sections 7(b)(2) and 7(b)(3)" of the Northwest Power Act.⁴³ BPA plans to commence a separate process in late spring/early summer of 2026 to address the Section 7(b)(2) rate test Legal Interpretation and Implementation Methodology.

2.4 REP Implementation History

The REP has been a source of long-standing controversy among BPA's customers. IOUs and their stakeholders typically advocate for the REP to generate higher payments, leading to greater rate relief for their retail residential and farm consumers. Conversely, Public Power entities and their constituents generally seek lower REP payments to prevent increases in the cost of the program recovered in their power rates and to ensure they receive the protections guaranteed by the Northwest Power Act.

The first 20 years of implementation of the REP (1980-2000) saw multiple disputes over BPA's calculation and determination of the IOUs' ASC under the Average System Cost Methodology.⁴⁴ In the late 1990s, BPA and IOU REP participants attempted to avoid continued litigation by settling the REP through settled payments of REP benefits.⁴⁵ The early success of these agreements led to a broader effort to settle the REP in 2000 (2000 REP Settlement) for the 2001-2011 period. In the 2000 REP Settlement, BPA offered physical power and monetary payments to IOUs in return for a waiver of claims and of their participation in the traditional REP.⁴⁶ BPA classified the costs of the 2000 REP

⁴¹ 2025 REP Comprehensive Plan at 22.

⁴² *Id.*

⁴³ Residential Exchange Program Settlement Agreement Proceeding, Administrator's Final Record of Decision, REP-12-A-02, Appendix A, Residential Exchange Program Settlement Agreement § 11.3 (July 26, 2011) ("2012 REP Settlement"), available at <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/2011-rod/rod-20110726-residential-exchange-program-settlement-agreement-proceeding-rep-12.pdf>.

⁴⁴ Parties first challenged the development and terms of the ASC Methodology. See *Pub. Util. Comm'n of Or. v. Bonneville Power Admin.*, 767 F.2d 622 (9th Cir. 1985); *Pac. Power & Light v. Bonneville Power Admin.*, 795 F.2d 810 (9th Cir. 1986), *PacifiCorp v. FERC*, 795 F.2d 816 (9th Cir. 1986). Later, parties challenged BPA's implementation of the ASC Methodology. See *Wash. Utils. & Transp. Comm'n v. FERC*, 26 F.3d 935 (9th Cir. 1994); *CP Nat'l Corp. v. Bonneville Power Admin.*, 928 F.2d 905 (9th Cir. 1991).

⁴⁵ 2025 REP Comprehensive Plan at 3.

⁴⁶ *Id.*

Settlement as a “settlement cost” and allocated these costs to Public Power customers’ PF rates in their FY 2002-2006 power rates (the WP-02 rate proceeding). Notably, BPA did not perform the Section 7(b)(2) rate test when deciding to enter the 2000 REP Settlement or when recovering those costs from the PF rate charged to Public Power customers.

Public Power customers filed petitions in the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit or Court), challenging BPA’s decision to agree to the 2000 REP Settlement (which included physical sales of power to the IOUs) and to allocate those costs to the PF rate without performing the Section 7(b)(2) rate test. In May 2007, the Ninth Circuit held the 2000 REP Settlement was unlawful and remanded BPA’s WP-02 rates.⁴⁷ By the time the Court had ruled, BPA had already paid out close to \$2.1 billion in settlement payments (inclusive of the value of physical power) to the IOUs.⁴⁸ The IOUs, in turn, distributed these funds and the value of the power to their residential and farm consumers. Following the Court’s remand, BPA ended the settlement payments to the IOUs and commenced a supplemental rate proceeding (WP-07 Supplemental rate case) to reinstate the traditional REP, perform the Section 7(b)(2) rate test, and determine refunds for any overpayments of REP benefits to the IOUs for the FY 2002-2007 period. BPA also commenced separate processes to develop new contracts to implement the REP (2008 Residential Purchase and Sales Agreements (2008 RPSA)) and revise the ASC Methodology (2008 ASC Methodology). In the WP-07 Supplemental rate case, BPA concluded that it had overpaid the IOUs by about \$1 billion and proposed to recover this amount from the IOUs by offsetting future REP payments. BPA explained its reasoning in a 706-page decision document, the WP-07 Supplemental Record of Decision (WP-07S ROD).⁴⁹ IOUs, Public Power, and many other interested parties challenged BPA’s WP-07S ROD and related decisions in court, with the result that at one point 56 petitions for review were pending before the Ninth Circuit in four consolidated cases.⁵⁰

2.5 2012 REP Settlement

The prospect of endless litigation over the REP led many representatives of Public Power customers and IOUs to pause their litigation efforts and participate in mediation of the REP disputes. In 2011, a settlement (2012 REP Settlement)⁵¹ was reached between Public

⁴⁷ See *Portland Gen. Elec. Co. v. Bonneville Power Admin. (PGE)*, 501 F.3d 1009 (9th Cir. 2007) (holding 2000 REP Settlements unlawful); *Golden Nw. Aluminum v. Bonneville Power Admin.*, 501 F.3d 1037 (9th Cir. 2007) (remanding BPA’s WP-02 rates).

⁴⁸ 2025 REP Comprehensive Plan at 4.

⁴⁹ See 2007 Supplemental Wholesale Power Rate Case, Administrator’s Final Record of Decision, WP-07-A-05, (Sept. 2008) (“WP-07S ROD”), available at <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/2008-rod/rod-20080922-2007-supplemental-wholesale-power-rate-case-final-rod.zip>.

⁵⁰ For a complete description of these events, please see Residential Exchange Program Settlement Agreement Proceeding (REP-12), Administrator’s Final Record of Decision, REP-12-A-02, at 8-15 (July 26, 2011) (“REP-12 ROD”), available at <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/2011-rod/rod-20110726-residential-exchange-program-settlement-agreement-proceeding-rep-12.pdf>.

⁵¹ The REP settlement affected rates beginning in FY 2012, and thus, is referred to as the 2012 REP Settlement.

Power and IOU representatives. Under the 2012 REP Settlement, Public Power agreed to pay in their power rates the cost of a fixed schedule of REP payments to IOU participants until September 30, 2028. This fixed schedule included a reduction of REP benefits to account for refunds owed to Public Power customers for past overpayments. To ensure the 2012 REP Settlement was lawful, BPA evaluated the 2012 REP Settlement in a Section 7(i) proceeding for compliance with, among other provisions, the Section 7(b)(2) rate test. BPA concluded that the 2012 REP Settlement passed all statutory requirements and explained its analysis and its decision to adopt the proposal in the 2012 REP Settlement in the final REP-12 Record of Decision (REP-12 ROD).⁵²

A single challenge was made to the REP-12 ROD and 2012 REP Settlement in the Ninth Circuit. In 2013, the Court affirmed the Administrator’s decision to adopt the 2012 REP Settlement and the REP-12 ROD.⁵³

The 2012 REP Settlement expires on September 30, 2028. The 2012 REP settlement did not resolve the “knotty legal and factual questions regarding the Section 7(b)(2) rate test . . . that have plagued BPA’s rate proceedings.”⁵⁴ Instead, BPA “withdrew” its decisions regarding the REP from the WP-07 Supplemental ROD and related decisions, and replaced those decisions with the outcome provided in the 2012 REP Settlement and accompanying REP-12 ROD.⁵⁵ The 2012 REP Settlement expressly reserved all parties’ rights and positions.⁵⁶ It also expressly stated that the terms of the settlement were neither precedential nor an admission of any parties’ position on any issue.⁵⁷ With the expiration of the 2012 REP Settlement in 2028, BPA must be prepared for a return to the traditional REP for the post-2028 period.

2.6 Preparing for the Expiration of the 2012 REP Settlement: The Provider of Choice Concept Paper’s REP Settlement Phase and Traditional REP Preparation Phase

On July 14, 2022, BPA issued its Provider of Choice Concept paper in which BPA “officially launch[e]d the policy development process” to describe and define the principles, goals,

⁵² See REP-12 ROD at 410-17.

⁵³ *APAC*, 733 F.3d 939 (9th Cir. 2013).

⁵⁴ REP-12 ROD at 29.

⁵⁵ *Id.* (“This alternative, embodied in the terms of the Settlement, would replace BPA’s decisions in the WP-07 Supplemental ROD and WP-10 ROD, which have been hotly contested by all parties, with the agreed-upon value established by the Settlement and signed by all of the region’s IOUs, three public utility commissions, and 88 percent of BPA’s [Public] customers (by load).”).

⁵⁶ 2012 REP Settlement § 11.

⁵⁷ *Id.* § 11.2:

No Precedential or Evidentiary Effect. Neither this Settlement Agreement nor its performance will (i) constitute any Party’s agreement to any underlying principle or statutory interpretation in any context, (ii) constitute any Party’s agreement to any methodology other than for purposes of implementing this Settlement Agreement in accordance with its terms for the Payment Period, or (iii) serve as procedural or substantive precedent regarding any matter in any context other than BPA proceedings to implement the terms of this Settlement Agreement.

policies, and components of its post-2028 power sales contracts.⁵⁸ Relevant here, the Provider of Choice Concept Paper also described a two-phase approach for developing the post-2028 implementation of the REP. Specifically, BPA proposed “(1) a regional settlement phase; and (if the settlement phase is unsuccessful), (2) an REP traditional preparation phase.”⁵⁹

The REP Settlement Phase, as its name implies, was a period of time set aside to focus BPA efforts to “facilitate and encourage regional discussions toward a structured settlement of the REP . . .”⁶⁰ BPA tentatively designed the REP Settlement Phase to run from September 2022 through around September 2025. This phase “builds on the foundation established by the 2012 REP Settlement.”⁶¹ The 2012 REP Settlement took almost four years of constant work and negotiation to achieve.⁶² In view of this experience, BPA set aside multiple years for the REP Settlement Phase to permit regional parties time to work toward a negotiated settlement. To provide structure to these discussions, BPA further broke this phase into a number of distinct sub-phases: 1) the REP Dry Run and Preparation sub-phase; 2) REP Contract Negotiation sub-phase; and 3) an REP Settlement Evaluation Process and Decision phase.⁶³

Because settlement was not guaranteed, BPA also described a second phase of REP preparation in the Provider of Choice Concept Paper—the “Traditional REP Preparation Phase.”⁶⁴ The Traditional REP Preparation Phase would begin the earlier of the end of settlement negotiations or the summer of 2025.⁶⁵ During the Traditional REP Preparation Phase, BPA would shift its focus from facilitating and supporting settlement discussions to preparing its positions and policies for a traditional REP implementation. A collection of processes, policies, contracts, and proceedings would need to be completed to ensure that BPA had the necessary components of the REP developed and ready for the post-2028 implementation of the REP.⁶⁶

2.6.1 REP Settlement Phase – Phase 1

The REP Dry Run and Preparation sub-phase commenced in late summer 2022.⁶⁷ This phase began with general education workshops on the REP, its implementation, and an

⁵⁸ Bonneville Power Administration, Provider of Choice Concept Paper at 1 (July 14, 2022) (“POC Concept Paper”), available at <https://www.bpa.gov/-/media/Aep/power/provider-of-choice/bpa-provider-of-choice-concept-paper-final-july-2022.pdf>.

⁵⁹ *Id.* at 59.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 2025 REP Comprehensive Plan at 6.

⁶³ POC Concept Paper at 59-60.

⁶⁴ *Id.* at 61.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See Letter To Customers interested in Post-2028 Residential Exchange Program (Aug. 23, 2022), available at https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/2022_08-REP-letter-to-the-region.pdf.

overview of the areas of dispute.⁶⁸ Following these discussions, BPA prepared “dry run” calculations of REP benefits using data from the BP-22 rate period as inputs. BPA ran numerous scenarios based on various assumptions on key REP issues (*e.g.*, implementation of Section 7(b)(2)) reflecting positions IOU and Public Power customers had taken in the REP-12 ROD and administrative record.⁶⁹ BPA also ran scenarios provided by the IOUs and Public Power customers based on their current “best case” scenario assumptions. These dry runs provided “a working educational model from which regional stakeholders may be able to familiarize themselves with, and get a sense of scale for, the various assumptions and factors that affect the REP benefits levels.”⁷⁰ BPA completed its dry run analysis and the identification of its primary scenarios on May 23, 2023.⁷¹

Following the dry run phase, BPA prepared scenario analysis for the REP Contract Negotiation sub-phase. This phase began with public workshops where both Public Power customers and IOUs prepared settlement principles and perspectives on the REP.⁷² On September 21, 2023, BPA issued a letter to the region, noting that, based on comments to date, BPA believed “additional REP settlement discussions would be best served if respective stakeholder representatives could meet outside of a BPA-hosted workshop environment.”⁷³ Further BPA-sponsored workshops on REP negotiations would not be scheduled, but BPA encouraged IOU and Public Power representatives to continue to meet in private discussions. Additionally, BPA noted that it would hold a workshop in January 2024 with the results of its scenario analysis using data from the BP-24 rate case for the main scenarios developed from the Dry Run and Preparation sub-phase. These results were presented at a public workshop on January 23, 2024.⁷⁴

Discussions between Public Power customers and IOU representatives continued throughout 2024 and into early 2025. During the discussions, representatives from both

⁶⁸ See Post-2028 Residential Exchange Program Workshop presentation (Sept. 27, 2022), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/092722-Post-2028-REP-Phase-1-Kickoff-WorkshopV4.pdf>; Post-2028 Residential Exchange Program Workshop presentation (Oct. 25, 2022), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/102522-Post-2028-REP-Phase-1-Second-Workshop.pdf>.

⁶⁹ See Post-2028 Residential Exchange Program Workshop presentation (Feb. 21, 2023), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/022123-post-2028-rep-sub-phase-1-fourth-workshop.pdf>.

⁷⁰ POC Concept Paper at 59.

⁷¹ See Post-2028 Residential Exchange Program Workshop presentation (May 23, 2023), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/052323-pst-2028-rep-sub-phase-1-sixth-workshop.pdf>.

⁷² See Post-2028 Residential Exchange Program Workshop presentation (June 27, 2023), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/20230627-post-2028-rep-sub-phase-1-customer-workshop.pdf>.

⁷³ See Letter to Regional Stakeholders Participating in the Post-2028 Residential Exchange Program Process (Sept. 21, 2023), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/20230921-residential-exchange-letter-to-the-region.pdf>.

⁷⁴ See Post-2028 Residential Exchange Program Workshop presentation (Jan. 23, 2024), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/012324-Post-2028-REP-Customer-Workshop-Updated-01242024.pdf>.

Public Power and IOU interest groups informed BPA of the status of negotiations. Ultimately, a settlement was not reached among the respective parties.⁷⁵

2.6.2 Traditional REP Preparation Phase – Phase 2

On May 12, 2025, representatives from the IOUs requested BPA offer them a Residential Purchase and Sale Agreement for the post-2028 period by June 30, 2025.⁷⁶ BPA responded in a letter dated June 17, 2025, noting that, given the lack of progress on settlement of the REP, BPA would be issuing a “comprehensive plan for developing the applicable components of the traditional REP for the post-2028 period,” including a public process to develop the post-2028 RPSA terms.⁷⁷

Thereafter, on July 17, 2025, BPA issued the *Post-2028 Residential Exchange Program Comprehensive Plan (2025 REP Comprehensive Plan)*.⁷⁸ In the *2025 REP Comprehensive Plan*, BPA explained that “with the expiration of the 2012 REP Settlement in September 2028, BPA must have policies, methodologies, and contracts in place in order to implement the REP for the post-2028 period.”⁷⁹ To that end, BPA outlined in the *2025 REP Comprehensive Plan* the “processes that BPA expects to engage in to prepare for REP implementation following expiration of the current settlement.”⁸⁰ Specifically, these processes included: 1) the Residential Purchase and Sale Agreement (2026 RPSA) process; 2) ASC Methodology consultation process; and 3) the Section 7(b)(2) Methodology/Legal Interpretation process.⁸¹ The *2025 REP Comprehensive Plan* outlined the essential features of each of these processes, the expected products of those processes, and how those products would inform BPA’s implementation of the REP.⁸² Given the short timeframe for a contract in the IOUs’ May 12, 2025 request, BPA also included two preliminary timelines for each of the processes, with both an expedited process and a longer process.⁸³

After issuing the *2025 REP Comprehensive Plan*, BPA held a public workshop on July 28, 2025, to discuss the timelines for the three REP processes.⁸⁴ BPA requested comments on the REP processes by August 7, 2025.⁸⁵ Comments were received from the representatives

⁷⁵ 2025 REP Comprehensive Plan at 7.

⁷⁶ See generally IOU Letter Requesting RPSA at 1-2.

⁷⁷ See BPA Response to IOU Letter at 1 (June 17, 2025) (on file with author).

⁷⁸ See generally 2025 REP Comprehensive Plan at 1-24.

⁷⁹ *Id.* at 10.

⁸⁰ *Id.* at 1.

⁸¹ *Id.* at 10.

⁸² *Id.* at 11-23.

⁸³ *Id.*; see also *id.* at 24 (showing alternative timelines for the three processes).

⁸⁴ See Post-2028 REP Comprehensive Plan Paper Clarification Workshop presentation (July 28, 2025) (“Post-2028 Comprehensive Plan Workshop PPT”), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/rep-comprehensive-plan-clarification-workshop.pdf>.

⁸⁵ *Id.* at 8.

of Public Power,⁸⁶ the IOUs,⁸⁷ and the Oregon Public Utilities Commission (OPUC).⁸⁸ The IOUs and Public Power supported the longer REP process. The OPUC suggested that BPA delay its processes given the OPUC's workload on other matters. On August 19, 2025, BPA issued a letter stating its intent to use the longer timeline for the REP processes and included a detailed schedule for the RPSA and ASCM processes.⁸⁹

2.7 Procedural History of the 2026 RPSA Process

The 2026 RPSA process officially commenced on September 11, 2025, with an all-day workshop on the history and context of the REP and RPSA.⁹⁰ BPA Staff also presented draft RPSA language, along with policy and legal context for the proposed terms.⁹¹ Initial feedback on Staff's proposals was due September 17, 2025.⁹² A second workshop was held on September 24, 2025, which covered additional provisions of the RPSA and provided an overview of stakeholder comments.⁹³ BPA had initially calendared additional workshops in October 2025 to address issues that needed further discussion from the September workshops, as well as provide opportunities for customer-led topics and open discussion.⁹⁴ BPA later canceled these workshops after completing its presentations on the RPSA and after receiving no requests from stakeholders for use of the workshops.⁹⁵

⁸⁶ Email from Northwest Requirements Utilities re: Post-Comprehensive Plan (Aug. 7, 2025) (on file with author); Western Public Agencies Group Response to REP Timelines (Aug. 5, 2025) (on file with author); Public Power Council Response to REP Timelines (Aug. 6, 2025) (on file with author).

⁸⁷ IOU Joint Comment on Post-2028 Residential Exchange Program Comprehensive Plan (Aug. 7, 2025) ("IOU Joint Comments on REP Comprehensive Plan") (on file with author).

⁸⁸ Oregon Public Utilities Commission Response to Post-2028 REP Process (Aug. 7, 2025) (on file with author).

⁸⁹ See Tech Forum, Bonneville Power Administration, Letter to Regional Parties Engaged in Post-2028 Residential Exchange Program Public Process (Aug. 19, 2025); BPA Letter to Region Regarding Post-2028 REP Process Timelines for Residential Purchase and Sale Agreement and Average System Cost Methodology, Attachment 1 (Aug. 19, 2025) ("BPA Letter to Region Regarding Post-2028 REP Timelines"), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/08182025-bpa-response-letter-rpsa-ascm-timeline.pdf>.

⁹⁰ See Post-2028 Residential Exchange Program Residential Purchase and Sale Agreement Workshop 1 presentation (Sept. 11, 2025) ("RPSA Workshop 1 PPT"), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/20250911-rep-phase-2-post-2028-rpsa-workshop.pdf>.

⁹¹ Workshop 1 RPSA Draft Provisions (Sept. 11, 2025), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/rpsa-provisions-workshop-1.docx>.

⁹² RPSA Workshop 1 PPT at 74.

⁹³ Post-2028 Residential Exchange Program Residential Purchase and Sale Agreement Workshop 2 presentation (Sept. 24, 2025) ("RPSA Workshop 2 PPT"), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/phase-2-post-2028-rep-rpsa-workshop-2-092425.pdf>.

⁹⁴ See BPA Letter to Region Regarding Post-2028 REP Timelines, Attachment 1; Tech Forum, Bonneville Power Administration, Request for Customer-Led Topics (Oct. 14, 2025) (on file with author).

⁹⁵ See Tech Forum, Bonneville Power Administration, Oct. 22, RPSA Workshop Canceled (Oct. 16, 2025) (on file with author).

On October 22, 2025, BPA posted the preliminary draft RPSA for informal comment.⁹⁶ Feedback on the preliminary draft RPSA was initially due November 11, 2025. BPA later extended this deadline until November 25, 2025.⁹⁷

The IOUs and Public Power customers filed informal comments on the preliminary draft 2026 RPSA.⁹⁸ After reviewing these informal comments, BPA posted the draft 2026 RPSA for formal comment on December 9, 2025, along with responses to the initial comments of both Public Power customers and IOUs.⁹⁹ Stakeholders had until January 21, 2026, to submit formal comments on the draft 2026 RPSA. A total of four formal comments on the draft 2026 RPSA were filed from the following entities or groups: IOUs,¹⁰⁰ Public Power customers,¹⁰¹ the Washington Utilities and Transportation Commission,¹⁰² and the Alliance of Western Energy Consumers.¹⁰³ This Record of Decision responds to those comments and provides the basis for the Administrator's final decision on the 2026 RPSA.

⁹⁶ See Preliminary 2026 RPSA (Oct. 22, 2025), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/20251022-2028-rpsa-preliminary-draft.docx>.

⁹⁷ On Nov. 4, 2025, BPA Staff presented a REP Settlement Concept for stakeholders to consider. To ensure stakeholders had time to review this concept, BPA postponed the informal comment deadline on the preliminary draft RPSA until November 25, 2025. If a consensus was reached, BPA Staff indicated an intent to pause the RPSA development process in order to turn to settlement negotiations. BPA Staff requested party's impression on the Settlement Concept by November 18, 2025. BPA Staff later extended the deadline for reacting to the REP Settlement Concept until December 18, 2025. By the December 18, 2025 deadline, BPA Staff received nine responses. While parties were generally appreciative of the BPA Staff's proposal, no consensus was reached on using the REP Settlement Concept as the basis for a broad settlement of the REP.

⁹⁸ IOU Initial Comments in Response to BPA Draft Post-2028 RPSA (Nov. 25, 2025), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/iou-comments-on-preliminary-rpsa-draft.pdf>; Comments of Consumer Owned Utilities Regarding BPA's Preliminary Draft 2028 RPSA (Nov. 25, 2025), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/public-power-comments-on-preiminary-rpsa-raft.pdf>.

⁹⁹ See Draft 2026 RPSA For Formal Comment (Dec. 9, 2025), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/20251209-2028-rpsa-draft-for-formal-comment.docx>; BPA Staff Response to Public Power Comments on Preliminary RPSA Draft (Dec. 9, 2025), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/20251125-bpa-response-cou-rpsa-comments.docx>; see also BPA Staff's Response to IOU Comments on Preliminary RPSA Draft (Dec. 9, 2025), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/20251125-bpa-response-iou-group-final-comments-on-draft-rpsa-ppendices.docx>.

¹⁰⁰ Joint comments were received from six IOUs (Avista Corporation, Idaho Power Company, NorthWestern Energy, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc) (IOU Comment), available at <https://publiccomments.bpa.gov/Category/CategoryDetails?CategoryId=544>.

¹⁰¹ Public Power customers and trade organizations, representing 110 public agency and cooperative utilities across eight Western states, filed joint comments (Public Power Comment), available at <https://publiccomments.bpa.gov/Category/CategoryDetails?CategoryId=544>.

¹⁰² WUTC Comment, available at <https://publiccomments.bpa.gov/Category/CategoryDetails?CategoryId=544>.

¹⁰³ Alliance of Western Energy Consumers (AWEC Comment), available at <https://publiccomments.bpa.gov/Category/CategoryDetails?CategoryId=544>. AWEC is a trade organization representing large energy consumers located within the Region. AWEC Comment at 1.

2.8 Issues

Issue 2.8.1

Whether BPA's 2026 RPSA contract development process was truncated or otherwise arbitrary or capricious.

BPA Staff's Proposal

The 2026 RPSA process was structured following a thorough public engagement plan, which included multiple opportunities for public comment. The process received approval from all parties, including the IOUs.

Parties' Position

The IOUs argue BPA's 2026 RPSA process was faulty. They contend BPA decided the treatment of whether the Section 5(c)(1) exchange was a physical purchase and sale before taking public comment.¹⁰⁴ The IOUs claim BPA failed to consider the IOUs' request for a physical exchange of the Section 5(c)(1) exchange, inclusive of environmental attributes.¹⁰⁵ The IOUs claim BPA denied "multiple requests from the IOUs to initiate the post-2028 development process."¹⁰⁶ The IOUs also criticize the 2026 RPSA process as "truncated."¹⁰⁷ The IOUs also raise concerns that BPA did not provide "meaningful responses" to their comments.¹⁰⁸ The IOUs claim their "good faith" engagement rendered the informal comment process moot, and deprived them of a procedural opportunity to provide feedback to BPA.¹⁰⁹ The IOUs also contrast the RPSA process to other BPA processes.¹¹⁰ The IOUs also object to BPA not issuing a draft ROD¹¹¹ and to the timing of the RPSA process and the parallel process of the Average System Cost Methodology.¹¹²

Evaluation of Positions

As outlined in section 2.6 of this Record of Decision, BPA has collaborated with regional stakeholders over the past three and a half years to prepare for the REP implementation in the post-2028 period. BPA detailed its two-phase strategy in the July 2022 Provider of Choice Concept Paper.¹¹³ Since then, BPA has consistently maintained transparency regarding the timing, content, and focus of the processes involved in forming agreements and making decisions related to the REP, including the 2026 RPSA.

The IOUs raise substantive concerns with BPA's RPSA development process. These concerns roughly fall into four general categories: 1) BPA's 2026 RPSA process was "truncated" and did not provide opportunities for meaningful response or feedback; 2) BPA

¹⁰⁴ IOU Comment at 3, 15.

¹⁰⁵ *Id.* at 15-16.

¹⁰⁶ *Id.* at 16.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 17.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ POC Concept Paper at 55-61.

pre-decided the outcome; 3) BPA did not issue a draft ROD; 4) BPA’s sequencing of the 2026 RPSA process and ASCM process left the IOUs with “incomplete information on average system costs and rate periods.”¹¹⁴ As described below, BPA disagrees with these characterizations and concludes that its process was appropriate and met all applicable legal and due process requirements.

1. *The IOUs supported the timeline for both the 2026 RPSA and ASCM processes.*

Before addressing the IOUs’ substantive claims, BPA notes that the IOUs originally supported the process and schedule for developing the 2026 RPSA. BPA first mentioned the schedule for the 2026 RPSA process in the *2025 REP Comprehensive Plan* BPA issued on July 17, 2025, suggesting two “options” for the RPSA process.¹¹⁵ Indeed, BPA included the expedited option in view of the IOUs having initially requested BPA provide an RPSA with no process within a month and a half after their RPSA request.¹¹⁶

After issuing the *2025 REP Comprehensive Plan*, BPA held a public workshop on July 28, 2025, to discuss the timelines for the RPSA and the ASCM processes and to see which option parties wanted to pursue.¹¹⁷ The IOUs attended this meeting and the parties discussed the two options.¹¹⁸ BPA requested comments on these timelines by August 7, 2025.¹¹⁹ The IOUs submitted comments, expressing support for BPA’s timeline for the 2026 RPSA process, noting “[i]n response to BPA’s request for comments on the timelines in the comprehensive plan, the IOUs as discussed below are generally in support of Option 1 and BPA’s objective to offer final RPSAs for the post-2028 period as soon as practicable.”¹²⁰ The IOUs urged BPA to complete its RPSA process as soon as possible, noting they “assume[] BPA can commit to issuing a Final ROD no later than February 2026. Any delay beyond February 2026 is not in the interest of any customer in the region.”¹²¹

On August 19, 2025, BPA issued a letter to the region outlining in detail the timelines for the RPSA and ASCM processes.¹²² Importantly, this letter identified every workshop, comment deadline, and deliverable for both the RPSA and ASCM processes.¹²³ BPA received *no* objections to these timelines. Workshops for the RPSA began in September 2025. Workshops for the ASCM began in October 2025.¹²⁴ BPA provided an opportunity after *each* workshop to submit comments within a week of the workshop on any matter

¹¹⁴ IOU Comment at 17.

¹¹⁵ 2025 REP Comprehensive Plan at 14-15 (showing timeline of RPSA process from September 2025 to March 2026).

¹¹⁶ See IOU Letter Requesting RPSA.

¹¹⁷ See generally, Post-2028 Comprehensive Plan Workshop PPT.

¹¹⁸ *Id.* at 7.

¹¹⁹ *Id.* at 8.

¹²⁰ IOU Joint Comments on REP Comprehensive Plan at 1.

¹²¹ *Id.*

¹²² BPA Letter to Region Regarding Post-2028 REP Timelines, Attachment 1.

¹²³ *Id.*

¹²⁴ *Id.*; see also Post-2028 Residential Exchange Program Average System Cost Methodology Workshop 1 presentation (Oct. 23, 2025), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/phase-2-post-2028-rep-ascm-workshop-20251023.pdf>.

covered, including the timeline.¹²⁵ The first RPSA workshop in September included an overview of the schedule for the 2026 RPSA process.¹²⁶

After the second workshop in September,¹²⁷ the IOUs did assert the 2026 RPSA process was “truncated” but did not indicate what additional process would be appropriate.¹²⁸ They also sent a letter to BPA’s Administrator, calling for BPA to assert “leadership” on settlement negotiations.¹²⁹

To accommodate an additional settlement effort, BPA revised the timelines in the 2026 RPSA process, extending out the timeline for providing both preliminary and formal comments on the 2026 RPSA.¹³⁰ Consistent with those revisions, on November 25, 2025, the IOUs submitted comments on the preliminary draft 2026 RPSA.¹³¹ In these comments, the IOUs recognized the new deadline for the 2026 RPSA, and made no further objections to the schedule.¹³²

In their formal comments, however, the IOUs again reiterate their claim that the 2026 RPSA process was “truncated.”¹³³ BPA disagrees. BPA provided numerous opportunities for comment on the schedule and RPSA process, and the IOUs raised no substantive concerns regarding the RPSA workshops’ timeline or pace other than to note it was shorter than other processes BPA had conducted (*i.e.*, the Provider of Choice process). Importantly, they do not indicate what additional process would have been required to address their concerns.

Furthermore, as noted in section 2.6.2 of this Record of Decision, the IOUs requested on May 12, 2025, that BPA provide them with a Section 5(c)(1) contract (*i.e.*, an RPSA) without *any* prior process by June 30, 2025. Yet, here, after BPA provided six months of process (September 2025 – March 2026), the IOUs now claim this period was “truncated.” These

¹²⁵ BPA Letter to Region Regarding Post-2028 REP Timelines at 2 (“At the conclusion of each workshop, BPA Staff will provide information on submitting feedback or informal comments on the materials presented. Typically, this feedback will be required within a week of the workshop. These opportunities to provide informal comments on the submitted material are not reflected in the attached schedule but will be discussed at the end of each workshop.”); *see, e.g.*, RPSA Workshop 1 PPT at 75 (“Submit written comments and questions to rep2028@bpa.gov”).

¹²⁶ *See* RPSA Workshop 1 PPT at 11 (showing “RPSA Engagement Timeline – Matrix.”).

¹²⁷ *See* RPSA Workshop 2 PPT.

¹²⁸ *See* Comments of the IOUs on BPA-Led Workshops Addressing Residential Purchase and Sale Agreements for the Post-2028 Residential Exchange Program (Oct. 6, 2025) (“Comments of the IOUs on BPA-Led Workshops”) (on file with author).

¹²⁹ *See* IOU Letter to the Administrator (Oct. 3, 2025) (on file with author).

¹³⁰ *See* Post 2028 Residential Exchange Program Settlement Concept Workshop presentation at 20 (Nov. 4, 2025) (discussing changes to RPSA process timelines), *available at* <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/post-2028-rep/20251104-post-2028-rep-settlement-concept-ws1-3.pdf>

¹³¹ IOU Initial Comments in Response to BPA Draft Post-2028 RPSA.

¹³² *Id.* at 1, n.3 (“Based on correspondence posted by BPA on November 25, we understand that BPA intends to release a full RPSA draft for formal comment on December 9, 2025, with formal comments due by January 21, 2026.”).

¹³³ IOU Comment at 16.

arguments are contradictory. The IOUs' objection and their inconsistent stances on the need for a BPA public process undermine their claims of a faulty process.

2. *BPA's decision to follow its two-phased approach to addressing REP issues was reasonable.*

The IOUs claim that they “requested” BPA evaluate a physical exchange that includes environmental attributes and other inherent benefits in June of 2022.¹³⁴ In fact, the IOUs' June 2, 2022, comment does not mention “physical exchange” at all. Instead, their comment focuses on “sharing” carbon and environmental attribute benefits with participants in the REP.¹³⁵ To that request, BPA responded with the July 2022, Provider of Choice Concept paper and the two-phased approach to implementing the REP: Phase 1 – REP Settlement Phase; Phase 2 – Traditional REP Preparation Phase.¹³⁶

The IOUs also claim that BPA “repeatedly deferred consideration of” whether to implement the REP as a physical exchange, and that BPA committed to have a “meaningful discussion” during Phase 2.¹³⁷ The IOUs are correct that during the Phase 1 – REP Settlement Phase, which was designed to run from September 2022 through September 2025, BPA did not take any formal positions on *any* substantive REP issue to ensure parties had room to negotiate and settle issues.¹³⁸ BPA was transparent about this approach, notifying parties that “[d]uring the settlement phase, Bonneville’s focus would be to facilitate and encourage regional discussions toward a structured settlement of the REP consistent with the cases discussed in Section 10.2.3.”¹³⁹ Thus, to the extent the IOUs or Public Power customers requested BPA take substantive positions on the REP, BPA deferred those decisions to Phase 2 to enable parties an opportunity to reach settlement. Indeed, BPA was consistent with this approach for both Public Power customers and IOUs.

For instance, on June 27, 2023, both IOUs and Public Power customers presented their respective views on the operation of the REP.¹⁴⁰ BPA did not issue a response to either position, allowing the parties to engage in open dialogue to promote settlement discussions. Later, in the Provider of Choice Policy ROD issued in March of 2024, Public Power customers requested BPA take a formal position that renewable energy certificates (RECs) were not allowed under the REP. Again, BPA refused to do so.¹⁴¹

¹³⁴ *Id.* at 15-16.

¹³⁵ *Id.*, Attachment J.

¹³⁶ POC Concept Paper at 59.

¹³⁷ IOU Comment at 16.

¹³⁸ POC Concept Paper at 59.

¹³⁹ *Id.*

¹⁴⁰ Post-2028 Residential Exchange Program Workshop presentation at 9 (Public Power), 20 (WPAG), 32 (IOUs) (June 27, 2023), available at <https://www.bpa.gov/-/media/Aep/power/residential-exchange-program/20230627-post-2028-rep-sub-phase-1-customer-workshop.pdf>.

¹⁴¹ Bonneville Power Administration, Provider of Choice Policy, Administrator's Record of Decision at 281 (Mar. 21, 2024) (“POC Policy ROD”) (responding to comments that oppose allocation of RECs/environmental attributes under Section 5(c) and noting such comments are “outside the scope of the Provider of Choice process.”), available at <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/2024-rod/rod-20240321-bonneville-power-administration-provider-of-choice.pdf>.

The IOUs are also correct that BPA directed the IOUs' substantive issues with the REP to Phase 2 – Traditional REP Preparation Phase, which was designed to begin in the summer of 2025.¹⁴² During the Phase 2 – Traditional REP Preparation Phase, BPA would “shift its focus from facilitating and supporting settlement discussions to preparing its positions and policies for traditional REP implementation.”¹⁴³

BPA's decision to structure its Post-2028 REP process into two distinct phases was reasonable. It is a well-accepted principle of law that “it is generally up to the Agency to select among the myriad available techniques to accomplish the goal of public understanding and participation.”¹⁴⁴ BPA had sound reasons to structure its REP process through these distinct phases. The 2012 REP Settlement took almost 4 years of constant work and negotiation to achieve.¹⁴⁵ The two-phased approach allowed parties and BPA to first “work toward a negotiated settlement.”¹⁴⁶ For settlement to have a chance, BPA could not be simultaneously issuing formal decisions on the substantive REP issues in dispute. BPA's approach was not to avoid these issues, but to defer them to the proper time. That time would come during Phase 2 – Traditional REP Preparation Phase, where BPA would “shift its focus from facilitating and supporting settlement discussions to preparing its positions and policies for a traditional REP implementation.”¹⁴⁷ BPA outlined its two-phased approach to making a post-2028 REP decision in July 2022, and adhered to that approach for the ensuing three and a half years, all without objection from the IOUs. There is nothing unlawful with BPA's decision to follow through with its publicly noticed process plan.

3. *The IOUs' assertion that they made “multiple” requests for BPA to commence the Phase 2-Traditional REP Preparation Phase is incorrect.*

The IOUs claim BPA “declined” multiple requests from the IOUs to initiate Phase 2 – Traditional REP Preparation Phase for the post-2028 RPSA period.¹⁴⁸ This is incorrect. The IOUs never requested BPA to pause settlement efforts and commence the Traditional REP Preparation Phase. Instead, as noted above, on May 12, 2025, the IOUs sent a letter to BPA in which they formally requested a Section 5(c)(1) contract.¹⁴⁹ This is the only formal communication from the IOUs regarding their request that BPA turn from settlement discussions to making binding determinations on the operation of Section 5(c)(1). The IOUs cite no other. Specifically, they requested BPA structure the Section 5(c)(1) contract

¹⁴² POC Concept Paper at 61.

¹⁴³ *Id.*

¹⁴⁴ *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1028 (D.C. Cir. 1978); *see also Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 543 (1978) (“Absent constitutional constraints or extremely compelling circumstances the ‘administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.’”) (citation modified).

¹⁴⁵ 2025 REP Comprehensive Plan at 6.

¹⁴⁶ *Id.*

¹⁴⁷ POC Concept Paper at 61.

¹⁴⁸ IOU Comment at 16.

¹⁴⁹ IOU Letter Requesting RPSA.

as a physical exchange—something BPA had never done before—and demanded this contract be offered to them by June 30, 2025—just six weeks after making this request.¹⁵⁰ Importantly, the IOUs did not request *any* public process be conducted in development of this contract.

BPA's response came on June 17, 2025, in which BPA explained it would be issuing a “comprehensive plan for developing the applicable components of the REP for the post-2028 period.”¹⁵¹ Among other processes to be addressed in that plan, was the “timeline and process for developing the purchase and sale agreement described in Section 5(c)(1) (referred to as a Residential Purchase and Sale Agreement or RPSA).”¹⁵² BPA followed up with the *2025 REP Comprehensive Plan* discussed above, issued in July 2025, a public workshop, and then a formal letter identifying the schedule for the 2026 RPSA, which the IOUs did not object to.¹⁵³ The IOUs assertion that they requested BPA to commence this RPSA process “multiple times” is not supported by the record.

4. *BPA did not pre-decide the outcome of the 2026 RPSA process and engaged in meaningful and appropriate feedback with participants.*

The IOUs claim BPA “predetermined the outcome of its evaluation” in the 2026 RPSA.¹⁵⁴ The IOUs claim “at the very first Phase 2 workshop addressing the post-2028 RPSA in September 2025,” BPA provided a “one-sided overview expressing BPA's position that the exchange of environmental attributes is outside of the scope of the Act and that any physical exchange of power under the RPSA would be impractical.”¹⁵⁵ The IOUs also claim that BPA had “taken a position regarding the treatment of purchases and sales of BPA system power to IOUs” before taking public comment.¹⁵⁶

The IOUs' comment is unsubstantiated. As early as March 2024, BPA clearly stated it would not take a position on whether the Section 5(c)(1) included any of the “non-cost benefits” the IOUs sought.¹⁵⁷ Instead, as discussed in the *2025 REP Comprehensive Plan* issued in July 2025, BPA explained that the question of whether the REP could be implemented as a physical exchange or whether to include “non-costs benefits” would be addressed in the 2026 RPSA process.¹⁵⁸

¹⁵⁰ *Id.* at 2 (“Each IOU respectfully requests BPA to offer for such IOU's consideration a draft post-FY2028 contract for purchases and sales of physical power pursuant to Section 5(c)(1) of the Northwest Power Act no later than June 30, 2025.”).

¹⁵¹ BPA Response to IOU Letter at 1-2.

¹⁵² *Id.* at 2.

¹⁵³ See *generally*, 2025 REP Comprehensive Plan; IOU Joint Comments on REP Comprehensive Plan at 1; BPA Letter to Region Regarding Post-2028 REP Timelines, Attachment 1.

¹⁵⁴ IOU Comment at 15.

¹⁵⁵ *Id.* at 16.

¹⁵⁶ *Id.* at 3.

¹⁵⁷ See POC Policy ROD at 281.

¹⁵⁸ 2025 REP Comprehensive Plan at 11 (“For the post-2028 REP implementation, BPA will need to determine whether this historic treatment should continue. BPA is aware that some utilities participating in the REP have requested implementing the section 5(c)(1) exchange as a physical sale and return of power between the utility and BPA. Additionally, BPA is informed that some utilities request that certain unidentified non-

During the first 2026 RPSA workshop in September 2025, BPA presented its interpretation and viewpoint on this issue.¹⁵⁹ The IOUs characterize BPA's presentation as "one-sided[.]"¹⁶⁰ While BPA provided its perspective on the relevant issues, BPA needed to in order to explain its reasoning for the proposed structure of the draft 2026 RPSA. In any event, this overview was *not* BPA's final decision. The presentation outlining BPA's perspective on the statutory provisions clearly stated that the position was "BPA's proposal[.]"¹⁶¹

Moreover, the IOUs' position on this issue is inconsistent. On the one hand they claim BPA's engagement on this issue has been too little, as BPA "deferred consideration of this issue" multiple times, and faults BPA for failing to respond to the IOUs' request that "BPA evaluate a physical exchange that include environmental attributes."¹⁶² On the other hand, though, when BPA outlines its proposed position at the September 11, 2025, workshop, they claim BPA has gone too far, amounting to a predetermined decision.¹⁶³

The IOUs also argue that the 2026 RPSA process "contrasts starkly" with BPA's development of the Provider of Choice contract which provided "years for public utilities to outline their concerns and advocate for their preferred outcomes."¹⁶⁴ The IOUs' argument ignores the record. As noted earlier, BPA's two-phase approach to post-REP implementation allowed the IOUs to do just that.

In addition, the IOUs did not fully avail themselves of the process BPA provided. For instance, BPA scheduled multi-day workshops throughout the 2026 RPSA process, but many were canceled due to a lack of public participation after BPA completed its prepared materials.¹⁶⁵ BPA even allocated an entire workshop on October 22, 2025, for stakeholders to present their perspectives on the 2026 RPSA.¹⁶⁶ BPA requested topics for this workshop and stated it would be canceled if none were provided.¹⁶⁷ No party, including the IOUs, utilized this opportunity.¹⁶⁸

When the IOUs did provide comments on the terms of the draft 2026 RPSA, BPA's response to their comments was swift and comprehensive. For instance, the IOUs submitted

cost benefits should be provided as part of the purchase and sale exchange. BPA will evaluate and decide these issues in the RPSA development process.").

¹⁵⁹ RPSA Workshop 1 PPT at 44.

¹⁶⁰ IOU Comment at 16.

¹⁶¹ RPSA Workshop 1 PPT at 44.

¹⁶² IOU Comment at 15-16.

¹⁶³ *Id.* at 3, 15.

¹⁶⁴ *Id.* at 17.

¹⁶⁵ BPA Letter to Region Regarding Post-2028 REP Timelines, Attachment 1; *see, e.g.*, Tech Forum, Bonneville Power Administration, Oct. 22, RPSA Workshop Canceled (noting "BPA has no additional material to present at the Oct. 22 Residential Exchange Program Residential Purchase and Sale Agreement (RPSA) workshop.").

¹⁶⁶ *See* Tech Forum, Bonneville Power Administration, Request for Customer-Led Topics at 1 (Oct. 14, 2025) ("BPA requests customer-led topics be submitted via email at rep2028@bpa.gov by close-of-business on Oct. 15. If no additional topics are requested, the RPSA workshop on Oct. 22 will be cancelled.").

¹⁶⁷ Tech Forum, Bonneville Power Administration, Request for Customer-Led Topics.

¹⁶⁸ Tech Forum, Bonneville Power Administration, Oct. 22, RPSA Workshop Canceled ("BPA received no requests for customer-led topics").

informal comments on the draft preliminary 2026 RPSA on November 25, 2025.¹⁶⁹ In those comments, the IOUs provided multiple pages of legal arguments and a redlined version of the RPSA. The IOUs requested BPA to respond to their “revisions and comments” to the RPSA.¹⁷⁰ BPA responded to the IOUs’ (and Public Power customers’) suggested changes to the draft preliminary 2026 RPSA on December 9, 2025.¹⁷¹ BPA reviewed both the legal comments and the redline edits made to the draft 2026 RPSA by the IOUs. BPA accepted many of the IOUs’ edits to the RPSA, and asked questions on others. BPA did not, however, provide a substantive response to the IOUs’ legal arguments, noting instead that the IOUs should raise their legal arguments in the formal comment process.¹⁷²

The IOUs claim that BPA’s decision not to engage with their legal arguments meant BPA “did not provide any meaningful response” to their “extensive and specific comments.”¹⁷³ BPA disagrees. BPA’s decision to not engage in a mid-process legal briefing exercise was proper. The issues the IOUs raised were fundamentally legal and, by their own admission, incomplete.¹⁷⁴ Other commenters would likely have different legal views, making the formal comment process the appropriate time and place for BPA to consider and address all commenters’ legal concerns.¹⁷⁵

5. *The IOUs did not request BPA revise its stated process to issue a draft ROD and, in any event, BPA has never issued a draft ROD in connection with the development of the RPSA.*

The IOUs claim that BPA’s decision to “decline[]” to issue a draft Record of Decision for the 2026 RPSA, and instead move directly to the final ROD, prevents stakeholders from “engaging with BPA on BPA’s reasoning supporting its contractual offering.”¹⁷⁶ The IOUs also assert BPA “in prior RPSA development proceedings” has provided a draft ROD in addition to a draft contract, which provided a “more transparent process with additional opportunities for stakeholder engagement.”¹⁷⁷

The IOUs misstate the record. BPA did not “decline” to issue a draft ROD in the 2026 RPSA process, as no party ever requested a draft ROD be added to the 2026 RPSA process. As discussed above, BPA 1) shared its plan for 2026 RPSA process on July 17, 2025; 2) held a workshop outlining the process on July 28, 2025, which the IOUs attended; 3) received positive feedback from the IOUs on August 7, 2025, regarding this schedule; 4) issued a letter explaining the entire 2026 RPSA process on August 19, 2025 (which showed that

¹⁶⁹ See IOU Initial Comments in Response to BPA Draft Post-2028 RPSA.

¹⁷⁰ *Id.* at 1.

¹⁷¹ See BPA Staff Response to Public Power Comments on preliminary Draft RPSA; BPA Staff’s Response to IOU Comments on preliminary Draft RPSA.

¹⁷² BPA Staff’s Response to IOU Comments on Preliminary RPSA Draft at 4.

¹⁷³ IOU Comment at 16.

¹⁷⁴ IOU Initial Comments in Response to BPA Draft Post-2028 RPSA at 1, n.2 (“The IOUs reserve their right to modify or supplement these comments and to address additional issues during the formal comment period.”).

¹⁷⁵ Other commenters *did* have a different legal perspective and provided those during the formal comment process. See *generally* Public Power Comments.

¹⁷⁶ IOU Comment at 16.

¹⁷⁷ *Id.* at 17.

there was only a final ROD), to which the IOUs did not object; and 5) reiterated this schedule (with only a final ROD), in the September 11, 2025, workshop. Had the IOUs believed a draft ROD was required or otherwise appropriate, they had multiple opportunities to raise that issue with BPA both *before* the commencement of this process and in its early stages. They did not, and their claim *now* that BPA “declined” to issue a draft ROD lacks any record support.¹⁷⁸

The IOUs are also factually incorrect in asserting that BPA has routinely included a draft ROD in its development of any prior RPSA. The 1981 RPSA, 1995 RPSA, 2000 RPSA, 2008 RPSA all were decided through a single, final ROD (if a ROD was even issued).¹⁷⁹ The only support the IOUs cite to is a reference to the 2012 REP Settlement which, as noted earlier, is *not* an RPSA.¹⁸⁰ Instead, the 2012 REP Settlement was a broad settlement of a number of issues in litigation, including BPA’s implementation of the Section 7(b)(2) rate test.¹⁸¹ Because the 2012 REP Settlement implicated BPA’s ratemaking authorities under Section 7(b)(2), BPA chose to evaluate the 2012 REP Settlement within a Section 7(i) rate proceeding.¹⁸² As such, the full panoply of BPA’s formal rate hearing procedures—including the publication of a draft ROD—were imposed on the review and approval of the 2012 REP Settlement.

Here, however, BPA’s development of the 2026 RPSA does not settle the performance of the Section 7(b)(2) rate test. Thus, BPA had no reason to impose the rigors of the Section 7(i)

¹⁷⁸ Indeed, if a draft ROD was essential, the IOUs should have made that clear in their comments. *See, e.g.*, Comments of the IOUs on BPA-Led Workshops at 1-2 (Oct. 6, 2025) (describing the RPSA process as “truncated” but not requesting a draft ROD or suggesting any other process elements).

¹⁷⁹ The 1981 RPSA had a single ROD. *See Final Action Concerning Power Sales and Residential Exchange Contracts Required by Pacific Northwest Electric Power Planning and Conservation Act*, 46 Fed. Reg. 44,340 (Sept. 3, 1981) (“1981 RPSA FRN”). BPA notes that it also issued a Staff Evaluation of Public Comments on the Prototype Power Sales and Exchange Contracts on August 28, 1981. *See Staff Evaluation of Public Comments in Response to BPA’s Prototype Power Sales Contracts and Residential Purchase and Sale Agreement*, Aug. 28, 1981 (on file with author). It is identical to the ROD issued in the Federal Register Notice. The 1995 RPSA included *no* ROD. The 2000 RPSA concluded in only a final ROD. *See Residential Purchase and Sale Agreements with Pacific Northwest Investor-Owned Utilities, Administrator’s Record of Decision* (Oct. 4, 2000) (“2000 RPSA ROD”), available at, <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/2000-rod/rod-20001004-residential-purchase-and-sale-agreements-with-pacific-northwest-iou.pdf>. The 2008 RPSA also concluded in only a final ROD. *See Short-Term Bridge Residential Purchase and Sale Agreement for the Period Fiscal Years 2009-2011 And Regional Dialogue Long-Term Residential Purchase and Sale Agreement For The Period Fiscal Years 2012-2028, Administrator’s Record of Decision* (Sept. 4, 2008) (“2008 RPSA ROD”), available at <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/2008-rod/rod-20080904-rpsa-record-of-decision.pdf>.

¹⁸⁰ IOU Comment at 17, n.72. Attached to the 2012 REP Settlement, was a “Residential Exchange Program Settlement Implementation Agreement” or REPSIA. While the REPSIA had features similar to the RPSA, *see* REP-12 ROD at 35, “[t]he RPSA and REPSIA differ in some respects” including that “RPSAs between BPA and IOUs are separate standalone agreement and not dependent upon or connected to any other arrangement BPA has with the IOUs or any other customer group. The REPSIA, by contrast is dependent upon and inextricably linked to the Settlement and, therefore, must be viewed in light of the larger context presented by the Settlement.” *Id.* at 36.

¹⁸¹ REP-12 ROD at 11-13.

¹⁸² *Id.* at 19.

procedures, including the requirement that a draft ROD be issued, on this process. In any event, had the IOUs believed that BPA should have applied its Section 7(i) procedures to the development of the 2026 RPSA, they had multiple opportunities to make this request. They did not. Their comparison of the 2026 RPSA to the 2012 REP Settlement is, once again, inapposite and their request that BPA revamp this process now is untimely.

Even if BPA could have anticipated the IOUs' desire for a draft ROD, it is unclear how BPA could have added that document given the already compressed timeline the IOUs requested BPA follow to reach a decision on the 2026 RPSA. As noted, in their August 7, 2025, comment, the IOUs provided support to the extended, Option 1 schedule, noting BPA needed to commit to issue the ROD "no later than February 2026" and that any delay beyond February was "not in the interest of any customer in the region."¹⁸³ Although the IOUs later agreed to a small delay to consider a last-minute settlement approach developed by BPA Staff, the IOUs gave no indication that further delays would be acceptable. Adding a draft ROD to the 2026 RPSA process would have added months of additional time, as each iteration of comments would have required months of BPA Staff time to review and respond.

In sum, the IOUs' arguments regarding a draft ROD are unsupported by the record. They misunderstand BPA's past practices, fail to avail themselves of numerous opportunities to raise concerns, and do not acknowledge the inconsistency of their request within the timeline they agreed to. BPA's process for the 2026 RPSA has been transparent and consistent with historical RPSA development, and the IOUs' belated demands lack merit and record support.

6. *The IOUs' objections to the sequencing of the RPSA process with the ASCM process and the Section 7(b)(2) processes lack merit.*

Finally, the IOUs raise concerns with the parallel process under way for the ASCM and, presumably, BPA's future development of its legal interpretation and implementation methodology for the Section 7(b)(2) rate test.¹⁸⁴ They assert that they "cannot effectively evaluate potential impacts associated with environmental compliance requirements or other utility-specific costs without considering how these issues align with rate periods and ASC submittals" and are being required to review these issues "in a vacuum."¹⁸⁵

The IOUs' objections to sequencing of these other processes fail for the same reasons discussed above. BPA explained it would need to conduct all three of these processes in its July 2022 two-phased description to implement the traditional REP,¹⁸⁶ and provided a

¹⁸³ IOU Joint Comments on REP Comprehensive Plan; *see also id.* ("BPA's timely resolution of the RPSA is necessary to ensure those benefits are available to all customers in the region.")

¹⁸⁴ *See* IOU Comment at 17. It is not clear to BPA what the IOUs mean by "rate determination process" or "rate periods." BPA's next rate case, BP-29, will begin in the fall of 2027. BPA presumes the IOUs' reference to "rate determination process" means the process scheduled to begin this summer regarding the interpretation and implementation of Section 7(b)(2). *See* 2025 REP Comprehensive Plan at 21-23.

¹⁸⁵ IOU Comment at 17.

¹⁸⁶ POC Concept Paper at 59-61.

deeper discussion on the sequencing of these three processes in the *2025 REP Comprehensive Plan*.¹⁸⁷ BPA held a workshop on *all three* of these processes on July 28, 2025, and requested comments on the timing and sequencing of the processes. The IOUs voiced no objection to the sequencing or timing of these other processes.¹⁸⁸

Furthermore, the IOUs have not clearly articulated which of the three interconnected processes should have been prioritized. The IOUs had numerous opportunities to propose an alternative sequence to BPA. Now, with BPA having completed one process (RPSA), well into another (ASCM), and poised to commence the third (Section 7(b)(2)), the IOUs assert that BPA's approach is flawed and hinders their ability to evaluate the impacts of related issues.¹⁸⁹ This claim is made despite their prior silence on this process order. BPA has approached the development of the REP components from a logical, process-oriented standpoint. Ultimately, BPA must determine which tasks to complete first and has chosen an order that positions BPA to be prepared for REP implementation for the post-2028 period. The IOUs' general objection to this approach—without even articulating what the proper order should have been—does not undermine the reasonableness of BPA's REP processes.

Decision

BPA's 2026 RPSA contract development process was reasonable and lawful.

¹⁸⁷ See 2025 REP Comprehensive Plan at 14-15 (RPSA), 20 (ASCM), 23 (7(b)(2)); see also the Appendix to the 2025 REP Comprehensive Plan, which shows how these three processes would interplay with one another.

¹⁸⁸ See IOU Joint Comments on REP Comprehensive Plan, at 1 (“The IOUs appreciate BPA recognizing the importance of resolving issues surrounding the Residential Purchase and Sales Agreement (‘RPSA’), Average System Costs (‘ASC’) Methodology, and Section 7(b)(2) legal Interpretation in a timely manner.”)

¹⁸⁹ IOU Comment at 17.

3.0 2026 RESIDENTIAL PURCHASE AND SALE AGREEMENT STRUCTURE AND PRIMARY ELEMENTS

3.1 Overview

Most of the comments concerning the 2026 RPSA address the structure of the RPSA and the REP in general. Given that focus, BPA provides here a brief overview of the statutory and historical practice and operation of the REP.

3.1.1 Section 5(c) and the REP's Purpose

The Supreme Court succinctly described the purpose of Section 5(c): “The exchange program is designed to provide **rate relief** for consumers served by IOUs.”¹⁹⁰

This rate relief is accomplished through a “money-losing” purchase and sale transaction between a participating utility (primarily IOUs) and BPA mandated by Section 5(c).¹⁹¹ Under Section 5(c)(1), a Pacific Northwest electric utility can offer to sell power to the Administrator at its average system cost of resources.¹⁹² The Administrator must purchase this power and sell an equivalent amount back to the utility for resale to its residential users within the region.¹⁹³ Section 5(c)(2) further defines the quantity of power a utility can sell, limiting it to 50 percent of its regional residential load in 1980, gradually increasing to 100 percent by 1985 and thereafter.¹⁹⁴

The purchases and sales by and between the utility and BPA are equal and offsetting, and create the “cost benefits,” that Section 5(c)(3) says must be passed through directly to the utility's residential loads within the state.¹⁹⁵ These “cost benefits” are calculated within the contract that implements the purchase and sale between the IOU and BPA, the Residential Purchase and Sale Agreement (RPSA).

3.1.2 Section 5(c) and the RPSA in Practice: Financial Transaction

The Section 5(c)(1) purchase and sale is distinct among BPA's statutory obligations. As previously noted, the exchange between BPA and the IOU is equal and offsetting, resulting in an energy-neutral transaction; neither party gains nor loses energy. These two transactions—the utility's sale and purchase, and BPA's purchase and sale—are concurrent and interdependent. One does not occur without the other. Congress required BPA to

¹⁹⁰ *Alcoa*, 467 U.S. 380, 398 (1984) (emphasis added).

¹⁹¹ *Id.* at 399. The REP is technically available to all utilities, including Public Power customers, but its primary users were intended to be IOUs. See H.R. Rep. No. 96-976, pt. II, at 35 (1980) (“Although this exchange is technically available for use by any utility in the region, including preference utilities, it is anticipated that the region's investor-owned utilities will make primary use of it.”)

¹⁹² 16 U.S.C. § 839c(c)(1).

¹⁹³ *Id.*

¹⁹⁴ 16 U.S.C. § 839c(c)(2). For context, 60 percent of the IOUs' residential load in 1981 was approximately 1,800 average megawatts (aMW) growing to 4500 average megawatts (aMW) by 1985. See S. Rep. No. 96-272, App. B at 70 (1979) (showing IOU (residential and irrigation) load of 1,868 aMW in 1980-1981, growing to 4,598 aMW by 1985).

¹⁹⁵ 16 U.S.C. § 839c(c)(3).

implement the REP within a rigid timeline—10 months from the Northwest Power Act's passage.¹⁹⁶ Even with the “ramp-in” provision of Section 5(c)(2), the REP would have entailed a purchase and sale of 1800 average megawatts (aMW) in 1981 (almost two nuclear power plants’ worth of energy) within this timeframe.¹⁹⁷ Congress also required BPA to ensure the “timely” and “businesslike” implementation” of the Northwest Power Act, including Section 5(c).¹⁹⁸

Given the REP's energy-neutral nature and Congress’ objective to swiftly implement the REP, BPA has always structured the RPSA as a “financial transaction.” That is, BPA structured the Section 5(c) exchange sales as equal and offsetting, with the operative terms of the transaction being the difference between the utility's cost of power (Average System Cost or ASC) and BPA's cost of power (PF Exchange rate).¹⁹⁹ No physical power deliveries move between BPA and the utility to create the “cost benefits.” BPA pays the utility for the net difference between the two offsetting sales (*i.e.*, the “cost benefits”), and the utility, in turn, must apply this payment as a credit to its eligible consumers' retail rates consistent with Section 5(c)(3).

The example below illustrates how the two transactions operated in the first RPSA (1981).

Utility’s Sale/Purchase to BPA		BPA’s Purchase/Sale to Utility	
Utility’s ASC	\$85/MWh	BPA’s PFx Rate	\$55/MWh
Utility’s Residential Load	100 MWh	BPA’s Exchange Load	100 MWh
Utility’s Sale to BPA (at ASC)	\$8500	BPA’s Purchase from Utility (at ASC)	- \$8500
Utility’s Purchase from BPA (at PFx rate)	- \$5500	BPA’s Sale to Utility (at PFx rate)	\$5500
Cost Benefits (passed through to consumer)	\$3000	Cost Benefits (cost in BPA power rates)	- \$3000

Over the past 45 years, BPA has issued four RPSAs, and all have been structured on the premise that Section 5(c) is a non-physical, financial transaction.²⁰⁰ To streamline the transaction even further, since at least 2000, BPA has simplified the “cost benefits”

¹⁹⁶ 16 U.S.C. § 839c(g)(1) (“As soon as practicable within nine months after December 5, 1980, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts”); *see also* 16 U.S.C. § 839c(g)(1)(C) (“electric utility customers under subsection (c) of this section”). Utilities participating in the section 5(c)(1) exchange could start participation within 10 months of the Act. *See* 16 U.S.C. § 839c(g)(4) (“An initial contract with an electric utility customer pursuant to subsection (c) of this section shall be effective on the date executed by such customer, but no earlier than the first day of the tenth month after December 5, 1980.”).

¹⁹⁷ *See* S. Rep. No. 96-272, App. B at 70 (1979) (showing IOU (residential and irrigation) load of 1,868 aMW in 1980-1981, growing to 4,598 aMW by 1985). The average nuclear reactor produces about 1000 aMW (1 gigawatt (GW) of power). *See* Department of Energy, *INFOGRAPHIC: How Much Power Does A Nuclear Reactor Produce?* (Mar. 31, 2021), available at <https://www.energy.gov/ne/articles/infographic-how-much-power-does-nuclear-reactor-produce>.

¹⁹⁸ 16 U.S.C. § 839f(b); *see however*, the limitations of this authority in Issue 3.4.1.

¹⁹⁹ *See* RPSA Workshop 1 PPT at 41-43 (describing prior implementation of RPSA from 1981-2008).

²⁰⁰ *Id.*

calculation by comparing the utility’s ASC with the BPA PF Exchange rate and multiplying the difference by the utility’s residential load.²⁰¹ Mathematically, this yields the same answer:

Simplified Traditional REP Calculation
(ASC - PFx Rate) x Residential Load = REP benefit (“cost benefits”) (\$85/MWh - \$55/MWh) x 100MWh = \$3000 (payment by BPA to IOU).

BPA has also implemented the REP as a financial transaction under two settlements. The first, the 2000 REP Settlement, was overturned for reasons unrelated to the financial nature of the REP.²⁰² The second, the 2012 REP Settlement, was affirmed by the Ninth Circuit.²⁰³ In affirming the 2012 REP Settlement, the Court called the calculation above the “traditional section 5 formula.”²⁰⁴

Historically, structuring the RPSA as a financial transaction has not been controversial. While many aspects of the REP have faced challenges in BPA's rate cases and the courts, no party has ever disputed the RPSA's structure as a financial transaction.²⁰⁵ The financial nature of the RPSA structure has allowed all eligible loads to be included in the REP benefit calculation, ensuring none are excluded due to “physical” limitations. Consequently, regional utilities participating in the REP have reaped the benefits of the financial transaction framework, receiving over \$11 billion in REP benefits over the past 45 years.²⁰⁶

3.2 Structure of the 2026 Residential Purchase and Sale Agreement

The 2026 RPSA, included with this ROD as Attachment 1, follows the same structure BPA has used in all prior RPSAs: it has been designed as a financial/paper transaction. A utility may “sell” power equal to its residential load to BPA at its ASC, which is established by BPA pursuant to the applicable ASC Methodology.²⁰⁷ Concurrently, BPA will sell power to the

²⁰¹ See 2000 RPSA § 4 (noting the “purchase and sale transactions . . . are for the purpose of determining monetary benefits, if any, to be paid by BPA to [customer].”); 2008 RPSA § 8.1.1 (describing an “accounting invoice” for the difference between exchanging utility and BPA sales).

²⁰² See *PGE*, 501 F.3d 1009 (9th Cir. 2007). The 2000 REP Settlement included a physical purchase element, but this was also converted for most utilities to a financial payment.

²⁰³ See *APAC*, 733 F.3d 939 (9th Cir. 2013).

²⁰⁴ *Id.* at 956.

²⁰⁵ See REP-12 ROD at 5-13, 56-58 (describing past cases on REP and then-current issues in litigation, but none challenging financial structure of REP); see also WP-07S ROD (listing 103 separate “issues” but none addressing financial structure of the Section 5(c)(1) exchange); 1981 RPSA FRN (noting major issues raised, but not mentioning financial structure to Section 5(c)(1)); 2000 RPSA ROD (noting 19 issues, but none related to financial structure of Section 5(c)(1)); 2008 RPSA ROD (noting 20 issues, but none related to financial structure of Section 5(c)(1)).

²⁰⁶ 2025 REP Comprehensive Plan at 3; see also Bonneville Power Administration, Residential Exchange Program Overview presentation to State Commissions at 31 (June 20, 2025) (“State PUC REP Overview”) (on file with author).

²⁰⁷ See 2026 RPSA § 4.

utility at the applicable PF Exchange rate.²⁰⁸ The respective sales of power will be netted out, and a cost benefit will be calculated as the difference between the utility's ASC and BPA PF Exchange rate.²⁰⁹ To make the calculation of the "cost benefits" more clear, BPA has included the formula in the contract.²¹⁰ The 2026 RPSA also reiterates the long-standing practice that the purchases and sales occur without any actual deliveries of physical energy.²¹¹ Through this approach, all IOUs with eligible residential loads may receive REP benefits for their residential and farm loads, regardless of the utility's resource or transmission limitations.

3.3 Overview of Comments

BPA received comments both supporting and opposing its proposed structure of the 2026 RPSA as a financial/paper transaction.

IOUs and WUTC

The IOUs oppose structuring the 2026 RPSA as a financial/paper transaction, arguing that Section 5(c)(1) "requires BPA to implement the REP as a physical exchange."²¹² They assert BPA's proposal to structure the REP as a financial/paper transaction "read[s] out the physical aspect of purchase and exchange sales altogether."²¹³ At the same time, the IOUs argue BPA has flexibility to implement Section 5(c)(1) through means other than physical sales, at the discretion and direction of each IOU.²¹⁴ Thus, the IOUs assert BPA must design the 2026 RPSA such that each IOU is entitled to elect whether it wants to exchange physical power with BPA or to "effectuate" the results of a physical exchange with BPA.²¹⁵ The IOUs contend this approach ensures that both the "cost benefits" and "non-cost benefits" of the federal system are shared with the IOUs through the REP.²¹⁶ Importantly for the IOUs, they seek the "non-cost" benefits of the federal power system—such as the relatively low-carbon attributes of the federal hydroelectric dams, as compared to the IOUs' system mix—to help the IOUs "meet [their] states' ambitious greenhouse gas reduction requirements while preserving affordability for IOU customers."²¹⁷ The Washington Utilities Transportation and Commission (WUTC) filed similar comments.²¹⁸

²⁰⁸ *Id.* § 3.

²⁰⁹ *Id.* § 5.

²¹⁰ *Id.* § 5.3.

²¹¹ *Id.*

²¹² IOU Comment at 2.

²¹³ *Id.* at 7.

²¹⁴ *Id.* at 8 ("Each utility should have the ability to elect whether to engage in a physical exchange to account for these state-specific requirements, and this approach would fulfill BPA's statutory obligations for effectuating a physical transaction, while preventing unnecessary administrative issues.").

²¹⁵ *Id.* at 2, 7.

²¹⁶ *Id.* at 2-3, 9-10.

²¹⁷ IOU Comment at 2.

²¹⁸ WUTC Comment at 1-3.

Public Power and AWEC

Public Power customers support structuring the 2026 RPSA as a financial transaction.²¹⁹ Public Power customers contend that structuring the 2026 RPSA as a financial transaction is consistent with the Northwest Power Act.²²⁰ Public Power customers also argue that Congress did not intend, and BPA does not have the authority, to implement the REP as a physical transaction.²²¹

Additionally, Public Power customers assert that implementing Section 5(c)(1) as a physical transaction would violate multiple other provisions of the Northwest Power Act.²²² Significantly, they claim that allowing physical sales under Section 5(c)(1) would violate Congress' express preservation of the Federal Base System (FBS) resources to Public Power customers.²²³ Public Power customers also contend that effectuating a physical exchange through sharing the "non-cost benefits"—such as the environmental attributes of the federal system—expands the benefits of the REP beyond the "cost benefits" expressly identified in Section 5(c)(3), which would violate the Northwest Power Act and Ninth Circuit precedent.²²⁴ Public Power customers also argue that BPA cannot "effectuate" the Section 5(c)(1) as a physical exchange as requested by the IOUs because mixing their resources with federal resources, even if in a paper form, violates the Northwest Power Act, and improperly shifts carbon compliance costs from the IOUs to Public Power customers.²²⁵

Alliance of Western Electric Consumers (AWEC) supports the draft 2026 RPSA and the comments provided by the Public Power customers.²²⁶

3.4 Issues

In establishing the terms of the final 2026 RPSA, *see* Attachment 1, BPA considered the statutory language, the context of the REP within the Northwest Power Act, legislative history, Congress' overall purpose in designing the REP, BPA's historic implementation, and the parties' respective arguments. Additionally, BPA's approach to the structure of the 2026 RPSA is guided by the Supreme Court's direction that BPA's Administrator is responsible for "manag[ing] the complex relationship among the[] various aspects of the [Northwest Power Act], and, absent an express statutory statement requiring particular terms in the contracts, it is appropriate that we give him broad discretion to determine them."²²⁷

²¹⁹ Public Power Comment at 3.

²²⁰ *Id.* at 5.

²²¹ *Id.* at 6.

²²² *Id.* at 3-4

²²³ *Id.* at 4.

²²⁴ *Id.* at 15.

²²⁵ *Id.* at 16-17.

²²⁶ AWEC Comment at 1.

²²⁷ *Alcoa*, 467 U.S. 380, 400 (1984). This direction was given by the Supreme Court in relation to BPA's design of the DSI contracts and their interaction with the REP ("exchange program"). It is even more applicable to the RPSA and its implementation of the "exchange program" itself.

As BPA considers those statutory requirements, BPA is mindful of the admonition of Rep. Swift, one of the architects of the Northwest Power Act, who said, in regards to the Section 5(c) exchange that “[i]f you take one section of this bill and read it without things that relate to it, you can make it read anything you want.”²²⁸ To effectuate Congressional intent, BPA evaluated the parties' arguments by examining them through a series of related and interconnected issues:

- 1. Assuming for the sake of argument Congress required the Section 5(c)(1) exchange to be physical, could BPA nonetheless implement it as a partial physical exchange under Section 9(b)?** This issue addresses the IOUs' argument that (1) Congress ordered the Section 5(c)(1) exchange to be a physical purchase and sale, but (2) BPA can nonetheless implement the section 5(c)(1) exchange in a manner that is non-physical (that “effectuates” a physical exchange) by using the alleged flexibilities offered by Section 9(b) of the Northwest Power Act when requested by the IOUs.
- 2. Is the Section 5(c)(1) exchange required to be implemented as a physical exchange?** This issue addresses the crucial question of whether Congress required BPA to implement the Section 5(c)(1) exchange as a physical purchase and sale, rather than as a financial/paper transaction.
- 3. Is BPA's interpretation of the Section 5(c)(1) exchange inconsistent with BPA's position concerning Section 5(c)(5) and the In Lieu Provisions?** This issue addresses the IOUs' argument that BPA's interpretation of the Section 5(c)(1) exchange as a financial/paper transaction contradicts BPA's approach to Section 5(c)(5), the *in lieu* power sale, which BPA proposes to implement as a physical sale in the 2026 RPSA.
- 4. Must BPA Account for Non-Cost Benefits in the Section 5(c)(1) exchange?** If a financial/paper transaction structure is legally appropriate for the Section 5(c)(1) exchange, this issue considers whether BPA is directed to account for alleged “non-cost” benefits within the 2026 RPSA.
- 5. Should BPA provide an option for a “partial” physical exchange, even though not required by Section 5(c)(1).** This issue considers whether BPA, as a matter of its discretion, could include an option for an IOU to elect a partial physical exchange in the 2026 RPSA, even if not required by law.

BPA evaluates each of these issues, which are slightly reframed for clarity, in the following sections.

²²⁸ 126 Cong. Rec. 27855 (Sep. 29, 1980) (statement of Rep. Al Swift).

Issue 3.4.1

Whether BPA may use its authority under Section 9(b) of the Northwest Power Act to implement the Section 5(c)(1) exchange as a non-physical or partially physical transaction even if, assuming arguendo, Congress directed the REP to be implemented as a physical transaction.

BPA Staff's Proposal

The 2026 RPSA should be structured as an energy-neutral, simultaneous, purchase and sale between a participating IOU and BPA. No physical sales of power by or between the utility and BPA occur. All of the utility's eligible residential load will be able to participate in the REP, and no physical delivery is required to calculate the "cost benefits" that will be distributed to residential consumers.

Parties' Positions

The IOUs contend that the Northwest Power Act requires BPA to implement the Section 5(c)(1) exchange as a physical transaction, but that BPA has discretion to implement the REP in manner that "effectuates" a physical exchange by using BPA's authority under Section 9(b), which requires BPA to implement the REP in a "sound and business-like manner."²²⁹

Evaluation of Positions

In *Issue 3.4.2*, the next issue, BPA will address the IOUs' contention that the Northwest Power Act requires BPA to implement the REP as a physical purchase and sale by and between the participating utilities and BPA. If Congress' direction on this matter is unequivocal and clear, then BPA must give effect to Congress' intent.²³⁰ That means, if Congress directed BPA to implement the REP as a physical purchase and sale, then BPA would have to design the 2026 RPSA as a physical purchase and sale. This would also necessarily mean the REP would be limited to the physical resource and transmission capabilities of both the participating utilities and BPA.

The IOUs object to BPA's "all or nothing" approach to interpreting its obligations under Section 5(c)(1) and the 2026 RPSA.²³¹ The IOUs contend that BPA has "flexibility" through Section 9(b) of the Act to implement Section 5(c)(1) as *either* a physical sale *or* as in a manner to "effectuate[] the results of a physical exchange," at the discretion of each IOU.²³² Specifically, the IOUs contend that Section 9(b) "directs" that BPA "'assure the timely implementation of this chapter in a sound and business-like manner'" and then assert the purpose of this language in the Act is "to provide BPA with additional flexibility to

²²⁹ IOU Comment at 7.

²³⁰ *PGE*, 501 F.3d 1009, 1031 (9th Cir. 2007) ("Our judgment rested upon the absence of contrary congressional directive and BPA's general 'authority to run BPA like a business.' By contrast, where Congress has spoken to an issue and BPA acts inconsistent with Congress's directions, we will not defer to BPA's judgment." (quoting *Assn. of Pub. Agency Customers, Inc. v. Bonneville Power Admin.*, 126 F.3d 1158, 1171 (9th Cir. 1997))).

²³¹ IOU Comment at 9.

²³² *Id.* at 7.

determine how to effectuate the physical exchange requirement—*i.e.*, with an actual physical exchange”²³³ Importantly, the IOUs claim the election of whether to implement the REP as a physical or in some other manner lies with the utility, not BPA.²³⁴

BPA disagrees with the IOUs’ view that *if*, for the sake of argument, Section 5(c)(1) *required* BPA to implement the REP as a physical exchange, that Section 9(b) would allow BPA to ignore Congress’ express intent and implement the exchange in some other way that “effectuates” a physical exchange. Contrary to the IOUs’ contention, Section 9(b) does not modify the Administrator’s express obligations under Section 5(c)(1).²³⁵ Section 9(b) is a general provision, included at the end of the Northwest Power Act, and reads in relevant part “[t]he Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of **this chapter** in a sound and businesslike manner.”²³⁶

Section 9(b)’s directive applies to “this chapter,” referring to the entire Northwest Power Act rather than specifically modifying the Section 5(c)(1) exchange.²³⁷ Furthermore, Section 9(b) addresses not just BPA, but also “the Secretary [of Energy], [and] the Council.”²³⁸ The IOUs also claim that this “directive” provides “BPA and the parties with flexibility.”²³⁹ That is incorrect. The provision does not apply to the IOUs at all. More importantly, the general language in Section 9(b) does not override plain statutory language.²⁴⁰ To the extent Congress has directed a specific method of implementing the REP, a point BPA will address in the next issue,²⁴¹ BPA must follow it and Section 9(b)’s language does not modify it.

The Court’s opinion in *PGE* regarding limitations on BPA’s use of its authority under Section 2(f) of the Bonneville Project Act is directly on point.²⁴² Section 9(b) is similar to BPA’s settlement authority under Section 2(f) of the Bonneville Project Act in that it is properly viewed as a “facilitative power” rather than a “substantive power.”²⁴³ That is, Section 9(b) allows BPA to implement the requirements that Congress identified, not alter

²³³ *Id.* at 6.

²³⁴ *Id.* at 9; *see also id.* at 2 (“Congress provided BPA with flexibility in surrounding provisions to determine how to effectuate the physical exchange requirement, such as through ‘deemed’ delivery at the election of an exchanging utility.”).

²³⁵ *See* IOU Comment at 7, n.30 (describing section 9(b) as “requiring that BPA implement the REP ‘in a sound and businesslike manner.’”).

²³⁶ 16 U.S.C. § 839f(b) (emphasis added).

²³⁷ *See, e.g.*, 16 U.S.C. § 839 referring to the entirety of the Northwest Power Act as “this chapter.”

²³⁸ 16 U.S.C. § 839f(b).

²³⁹ IOU Comment at 7-8.

²⁴⁰ *See Idaho Conservation League v. Bonneville Power Admin. (ICL I)*, 83 F.4th 1182, 1193 (9th Cir. 2023) (“But this general cross-reference hardly establishes the stable connection to § 4(h)(11)(A) on which petitioners’ argument depends. The general language referencing the entirety of the NWPA does not resolve *which* provisions of the NWPA a ratemaking must be ‘in accordance with.’”).

²⁴¹ *See* Issue 3.4.2.

²⁴² *PGE*, 501 F.3d 1009, 1030 (9th Cir. 2007).

²⁴³ *Id.*

them or supplant them to meet BPA’s (or the IOUs’) ends.²⁴⁴ This contrasts with “Sections 5(c) and 7(b),” which are described as “part and parcel of more traditional regulatory powers, and are substantive grants of authority that both enable and restrict BPA.”²⁴⁵ In this regard, Section 5(c) along with Section 7(b), are “restrictive in that they establish the conditions upon which BPA may exercise that newfound § 5(c) authority.”²⁴⁶ Therefore, while Section 9(b) might authorize BPA to *facilitate* the implementation of a physical exchange in a sound and business-like manner, (if, assuming *arguendo*, such was required under Section 5(c)(1)), it cannot authorize BPA to fundamentally alter its statutory obligations by transforming a physical exchange into a non-physical one.²⁴⁷

In sum, BPA concludes that Section 9(b) does not authorize the agency to deviate from Congress’ explicit directives regarding the implementation of the Section 5(c)(1) exchange. If Section 5(c)(1)’s plain language mandates a physical exchange (as the IOUs argue), then BPA must follow what Congress said. Section 9(b) does not permit BPA to undermine this congressional intent by designing the 2026 RPSA with a hybrid approach that allows each IOU to elect physical exchanges in some instances and non-physical exchanges in others. BPA’s contracting authority is rooted in its substantive statutory powers; if Congress unambiguously directed BPA to conduct physical power exchanges with the IOUs via the REP, BPA must structure the RPSA accordingly, along with the attendant limitations of that approach. As noted in *PGE*, “[w]e think it obvious, as a matter of general administrative law, that the contracts into which BPA may enter must be grounded in the authority, express or implied, that Congress has granted BPA.”²⁴⁸

BPA will address the statutory question of whether Congress mandated a physical exchange in the following issues.

Decision

Section 9(b) of the Northwest Power Act does not grant BPA authority to implement the Section 5(c)(1) exchange as a non-physical transaction if, assuming arguendo, Congress directed the REP to be implemented as a physical transaction.

²⁴⁴ *Id.* (noting that “BPA may not provide power under the REP program on whatever terms—whether good business or not—that BPA likes.”).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Similarly, if implementing the Section 5(c)(1) exchange as a financial/paper transaction is lawful, Section 9(b) would be available to “facilitate” that implementation as well.

²⁴⁸ *PGE*, 501 F.3d at 1030.

Issue 3.4.2

Whether Section 5(c) of the Northwest Power Act requires a physical purchase and sale transaction.

BPA Staff's Proposal

The 2026 RPSA should be structured as an energy-neutral, simultaneous, purchase and sale between a participating IOU and BPA. No physical sales of power by or between the utility and BPA occur. All of the utility's eligible residential load will be able to participate in the REP, and no physical delivery is required to calculate the "cost benefits" that will be distributed to residential consumers.

Parties' Positions

IOUs argue that the plain language of Section 5(c)(1) requires BPA to implement the REP as a physical exchange.²⁴⁹ The IOUs contend structuring the 2026 RPSA as a pure financial transaction is contrary to the plain language of Section 5(c)(1).²⁵⁰ At the same time, the IOUs argue BPA has "flexibility" to implement the RPSA as either a physical exchange or a transaction that "effectuates" a physical exchange, at the election of the IOUs.²⁵¹ The IOUs assert that giving the IOUs this election is required by Section 9(b), which requires BPA to implement the Northwest Power Act in a "timely . . . [and] sound and business-like manner."²⁵² The WUTC supports the IOUs' arguments.²⁵³

Public Power customers comment that BPA's structure of the RPSA as a financial transaction is consistent with Section 5(c)(1).²⁵⁴ Public Power customers contend nothing in Section 5(c)(1) contemplates receipt or delivery of physical power.²⁵⁵ These commenters further argue that Congress intended a "bookout" transaction between utilities and BPA, which net to zero, with the only difference being the prices, and BPA lacks the authority to take physical delivery of such power.²⁵⁶ Public Power customers also assert that other provisions of the Northwest Power Act make clear that the REP is intended to be implemented as a financial transaction.²⁵⁷ AWEC supports the comments provided by Public Power.²⁵⁸

Evaluation of Positions

1. Overview of BPA's interpretation.

BPA summarizes here its overarching conclusions on whether the Section 5(c)(1) exchange must be implemented through a physical exchange.

²⁴⁹ IOU Comment at 2.

²⁵⁰ *Id.* at 4.

²⁵¹ *Id.* at 2, 6.

²⁵² *Id.* at 6, citing 16 U.S.C. § 839f(b).

²⁵³ WUTC Comment at 1-2.

²⁵⁴ Public Power Comment at 5.

²⁵⁵ *Id.* at 6.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 7, 9-10.

²⁵⁸ AWEC Comment at 1.

Congress included the Section 5(c)(1) exchange in the Act to address a specific issue: rate disparities between public and private utility retail consumers.²⁵⁹ The Section 5(c)(1) exchange addresses this issue by creating an energy-neutral purchase and sale, that functions as a “bookout”/bookkeeping transaction rather than a physical exchange of power.²⁶⁰ Structuring the Section 5(c)(1) exchange in this way was intentional, as it allowed for immediate and full implementation of the exchange, while preserving the preference and priority provisions of existing law. Congress’ inclusion of the terms “purchase” and “sale” were not included to require a physical power transaction between the utility and BPA, but to create a cost differential between the utility’s cost of resources (its average system cost or ASC), and BPA’s cost of power (the PF Exchange rate).²⁶¹ This cost differential represents the “cost benefit[]” described in Section 5(c)(3), which is distributed to retail residential and farm consumers as rate relief, and is, ultimately, what BPA is required to solve for in the REP.²⁶² The calculation of this cost benefit is determined in contracts with BPA and is not (nor has it ever been) contingent on the RPSA being implemented as a physical sale.

The broader context of the Northwest Power Act confirms BPA’s view that Congress did not intend the Section 5(c)(1) exchange to operate as a physical sale of power. Specifically:

- Congress expected the REP to be fully operational for all eligible loads within 10 months of the Act's passage, imposing a tight statutory timeline without considering physical factors like resource, transmission, or other limitations associated with a sale of 1800 aMW that would grow to over 4500 aMW in four years. The absence of any discussion or direction regarding physical issues demonstrates Congress' intent for rapid implementation of the REP without requiring construction or system upgrades, thereby confirming a financial rather than physical exchange.²⁶³
- Congress exempted the Section 5(c)(1) exchange from the normal features of the Northwest Power Act that applied to physical purchases and sales, including rigid Section 6 resource acquisition requirements and the preference and insufficiency provisions usually applied to BPA physical sales.²⁶⁴
- Congress omitted terms from Section 5(c)(1) that would have indicated that the purchases and sales were for physical power. Thus, for instance, Congress did not require the Section 5(c)(1) exchange to comply with statutory standards of service, which are a prerequisite for other long-term physical power sales.²⁶⁵
- Congress permitted Public Power customers, as “a Pacific Northwest electric utility” to participate in the REP under Section 5(c)(1). A physical exchange would

²⁵⁹ See Issue 3.4.2. – part 3.

²⁶⁰ Issue 3.4.2. – part 4.

²⁶¹ Issue 3.4.2. – part 5.

²⁶² Issue 3.4.2. – part 6.

²⁶³ Issue 3.4.2. – part 7.a.

²⁶⁴ Issue 3.4.2. – part 7.b.

²⁶⁵ Issue 3.4.2. – part 7.c.

contradict Congressional intent by functionally disallowing these utilities to participate, while a non-physical approach would be consistent.²⁶⁶

- Treating the Section 5(c)(1) exchange as non-physical is also consistent with BPA’s long-standing implementation of the REP (since 1981).²⁶⁷
- Finally, if the REP were changed into a physical exchange today, its implementation would face significant practical limitations, potentially rendering it impossible to perform or leading to minimal utility participation. Imposing this unprecedented feature now, amidst unparalleled operational strains, would likely significantly constrain the REP, depriving millions of regional consumers the “cost benefits” Congress expressly intended through the REP.²⁶⁸

Given the foregoing considerations, BPA finds that the Northwest Power Act does not require a physical purchase and sale in the Section 5(c)(1) exchange. BPA’s decision to structure the 2026 RPSA as a financial/paper transaction is lawful.

2. *The IOUs’ comment admits that Section 5(c)(1) does not require a physical exchange.*

Before addressing specific statutory issues, BPA notes that the IOUs appear to agree that Section 5(c)(1) does not mandate a physical exchange.²⁶⁹ The IOUs admit that “an actual physical delivery of power may not be necessary and appropriate in all instances to implement the residential exchange for each utility”²⁷⁰ BPA makes this observation with some hesitancy due to the IOUs’ inconsistent stance throughout their comment.

At times, the IOUs unequivocally state that Section 5(c)(1) is required to be implemented as a physical exchange: “the NWPA requires BPA to implement the REP as a physical exchange.”²⁷¹ Yet, elsewhere, they seem to temper this definitive position. They state “an actual physical delivery of power may not be necessary and appropriate in all instances to implement the residential exchange for each utility, depending on state-specific requirements for meeting compliance obligations.”²⁷² The IOUs also argue that BPA has “flexibility to determine how to effectuate these physical transactions,”²⁷³ but then immediately retract this flexibility by stating it is not a “license to disregard Section 5(c)’s physical exchange requirement based on convenience”²⁷⁴ Furthermore, the IOUs contend that the Section 5(c) exchange does not “preclude” a physical exchange,²⁷⁵ and in

²⁶⁶ Issue 3.4.2. – part 7.d.

²⁶⁷ Issue 3.4.2. – part 8.

²⁶⁸ Issue 3.4.2 – part 9.

²⁶⁹ IOU Comment at 2, 8, 9.

²⁷⁰ *Id.* at 8.

²⁷¹ *Id.* at 2; *see also id.* at 8 (“unexplained general assertions (i) do not trump the statutory requirement that Section 5(c)(1) provides for a physical exchange”).

²⁷² *Id.* at 9, *see also id.* at 8 (noting that BPA has failed to explain why “a physical exchange should not be an option for an exchanging utility if and to the extent the exchanging utility chooses to pursue a physical exchange.”).

²⁷³ *Id.* at 4.

²⁷⁴ *Id.* at 7.

²⁷⁵ *Id.* at 6.

other instances, they do not specify which approach is lawful, only asserting that the REP does not have to be implemented as a bookkeeping transaction.²⁷⁶ This shifting interpretation underscores the lack of a clear, consistent argument from the IOUs regarding the necessity of a physical exchange.

BPA's responsibility is to implement the Section 5(c)(1) exchange in alignment with Congressional intent, as expressed in the statutory language, and confirmed in its statutory context and legislative history.²⁷⁷ In forming its interpretation, BPA is guided by the Supreme Court pronouncements, which state that “[i]n the business of statutory interpretation, if it is not the best, it is not permissible.”²⁷⁸ BPA also recognizes its unique responsibilities in this area, particularly the Supreme Court's specific directive to “manag[e] the complex relationship among the[] various aspects of the [Northwest Power Act].”²⁷⁹

3. *The purpose of the Residential Exchange Program is to address retail rate disparities between the retail consumers of Public Power customers and IOUs.*

A foundational principle of statutory interpretation directs that the text be read in context and in view of the overall statutory scheme and design Congress had in mind.²⁸⁰ To that end, it is crucial to understand the problem Congress intended to solve with Section 5(c) when the Northwest Power Act was passed. Congress aimed to design a program that would extend the low-cost economic value of the federal power system to residential consumers of regional private utilities.²⁸¹ This extension would come in the form of a retail rate credit, achieved through the structure of the Section 5(c)(1) exchange, and limited by other provisions of the law.²⁸² This economic sharing was Congress' solution to the allocation problem the region faced:

²⁷⁶ *Id.*

²⁷⁷ See *Cent. Mont. Elec. Power Coop., Inc. v. Adm'r of Bonneville Power Admin.*, 840 F.2d 1472, 1477 (9th Cir. 1988) (“Absent a clearly expressed legislative intent to the contrary, the plain language must ordinarily be regarded as conclusive.”).

²⁷⁸ *Loper Bright Enters. v. Raimondo (Loper)*, 603 U.S. 369, 400 (2024).

²⁷⁹ *Alcoa*, 467 U.S. 380, 400 (1984).

²⁸⁰ *ICL I*, 83 F.4th 1182, 1192 (9th Cir. 2023) (“When interpreting a statutory provision, we consider not only its ordinary meaning, but also its place within the broader statutory scheme of which it is a part.”) (citation omitted); *Idaho Conservation League v. Bonneville Power Admin. (ICL II)*, 142 F.4th 636, 642 (9th Cir. 2025) (“In resolving that dispute, we do not read the words of section 4(h)(11)(A) in a vacuum. To the contrary, “[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” (alternation in original) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989))).

²⁸¹ H.R. Rep. No. 96-976, pt. I, at 27 (1980) (describing purpose as including “a share in the economic benefits of the lower-cost Federal system for the residential customers of the non-preference customers”); see also S. Rep. No. 96-272, at 14 (1979) (describing purpose of the Act as including “[t]o extend the benefits of the Federal Columbia River Power System to the residential and farming consumers of investor-owned utilities.”).

²⁸² H.R. Rep. No. 96-976, pt. II, at 35 (1980) (“This exchange will allow the residential and small farm consumers of the region's IOUs to share in the economic benefits of the lower-cost Federal resources marketed by BPA and will provide these consumers wholesale rate parity with residential consumers or preference utilities in the region. Customers of preference utilities will not suffer any adverse economic

By providing these residential customers wholesale rate parity with residential customers of preference utilities, the amendment serves in a substantial way to cure a major part of the allocation problem.²⁸³

Legislators described the operation of Section 5(c)(1) in various ways, with some calling it “shar[ing]”²⁸⁴ federal power with IOUs, and others a “formula for equalizing rates among customers utilizing federal and non-federal power.”²⁸⁵ The IOUs point to some of these references to support their notion that Congress’ intent for the REP was much broader than simply the cost differences in BPA’s and the IOUs’ rates.²⁸⁶ In addition, the IOUs dispute that the REP’s purpose is limited to “rate relief.”²⁸⁷ In any event, BPA finds particularly compelling the conclusion reached by the Supreme Court when reviewing this same legislative record: “[t]he exchange program is designed to provide *rate relief* for consumers served by IOUs.”²⁸⁸

With this statutory purpose in mind, BPA begins with the text of Section 5(c).

4. *The Section 5(c)(1) exchange establishes an energy-neutral bookkeeping transaction.*

Section 5(c)(1) begins with an affirmative obligation of BPA to purchase power “offer[ed]” by a regional utility which is, in turn, followed by a concurrent return sale from BPA to that utility of the same amount of power:

Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region.²⁸⁹

consequences as a result of this exchange since, as discussed below, the direct-service industrial customers of BPA are required to pay the costs of the exchange during its initial years while a ‘rate ceiling’ protects the customers of preference utilities during later years.”).

²⁸³ H.R. Rep. No. 96-976, pt. I, at 29 (1980).

²⁸⁴ 125 Cong. Rec. 22568 (Aug. 3, 1979) (statement of Sen. Mark Hatfield) (“Residential and farm customers of the [IOUs] will share in the benefits of the federal hydropower system in the Northwest.”).

²⁸⁵ 126 Cong. Rec. 27813 (Sep. 29, 1980) (statement by Rep. Don Clausen); *see also* 126 Cong. Rec. 30180 (Nov. 19, 1980) (statement by Sen. Henry M. Jackson) (describes the Northwest Power Act as “expand[ing] the resource pool through BPA purchase authority and to legislatively allocate its costs among customer groups.”); *Id.* (“The rate provisions of this bill make it possible to immediately extend the economic benefits of the low-cost Federal power to consumers served by investor-owned utilities; this is accomplished by raising rates to the aluminum companies.”); 126 Cong. Rec. 26678 (Sep. 22, 1980) (statement by Rep. John Dingell) (“Permits power exchange and power sales whereby rate relief will be provided residential customers of investor-owned utilities. Benefits of exchange must be passed directly through to residential customers”); *See also* 126 Cong. Rec. 29805 (Nov. 17, 1980) (statement by Rep. Tom Foley) (“The purpose of the bill is to solve an allocation problem, not a shortage problem.”).

²⁸⁶ IOU Comment at 7, n.29.

²⁸⁷ *Id.* at 12.

²⁸⁸ *Alcoa*, 467 U.S. 380, 398 (1984) (emphasis added).

²⁸⁹ 16 U.S.C. § 839c(c)(1).

The price of the power the utility sells power to BPA is at the “average system cost of that utility’s resources[.]”²⁹⁰ BPA’s “exchange” sale is at rates “established pursuant to section [7] of this title.”²⁹¹

The plain language of Section 5(c)(1) is clear that this transaction is intended to be energy-neutral: the power sold by the utility to BPA is precisely offset by the power BPA sells back to the utility.²⁹²

Notwithstanding the energy-neutral feature of Section 5(c)(1), the IOUs comment that Congress “contemplates” a physical sale of power between each utility and BPA because Congress used the words “purchase,” “sale,” and “exchange sales.”²⁹³ The IOUs’ arguments are not persuasive.

Section 5(c)(1)’s use of the terms “purchase” and “sale” does not establish that those purchases and sales were meant to be implemented as *physical* purchases and sales, with actual deliveries. While the IOUs reference dictionary definitions to argue that “sale” necessitates power delivery,²⁹⁴ the energy industry is quite familiar with power transactions that do not involve actual physical delivery. These transactions are known as “bookouts.” A bookout occurs when there are “offsetting [and] opposing buy-sell transactions at the same time and place.”²⁹⁵ FERC clarifies this: “For example, if A sells 50MW of power to B, and for the same time period and location B sells 50MW of power back to A, the transactions would be booked out in their entirety and no transmission would be required.”²⁹⁶ In such cases, despite power being “contractually committed,” no power is “actually delivered due to some offsetting or countervailing trade.”²⁹⁷ This type of energy-neutral transaction, as defined by FERC, is akin to the “purchase” and “sale” Congress describes in Section 5(c)(1).²⁹⁸

²⁹⁰ *Id.*

²⁹¹ 16 U.S.C. § 839c(a). This rate is known as the “PF Exchange rate.”

²⁹² While the statute says “equivalent power” that term is used to mean “equal”; *see* 16 U.S.C. § 839d(c)(1) (using “equivalent” to mean “equal”); *see also* 16 U.S.C. § 839c(c)(5) (same); H.R. Rep. No. 96-976, pt. I, at 60 (1980) (noting the Administrator shall “offer to sell **the same amount of power back** to the utility at the rate charged preference customers . . .” (emphasis added)).

²⁹³ IOU Comment at 4-5.

²⁹⁴ *Id.* at 4, n.11-12.

²⁹⁵ FERC, *Frequently Asked Question Electric Quarterly Reports, Q.22 What is the definition of Booked out power?* (last visited Feb. 21, 2026), available at, <https://www.ferc.gov/about/what-ferc/frequently-asked-questions-faqs/frequently-asked-questions-electric-quarterly>.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ FERC’s concept of a “bookout” transaction offers a useful modern description of the Section 5(c)(1) exchange; however, BPA recognizes it is not an exact match. In a typical bookout, each party is prepared to deliver actual physical energy but does not, due to an offsetting physical sale from the same counterparty. This implies a physical limitation element – i.e., both parties must have actual power to deliver. Bookouts are also generally discretionary, meaning parties can choose which of many offsetting trades to bookout and which not to. Section 5(c)(1), however, lacks both these elements. The utility is not required to demonstrate readiness to deliver power to BPA and can sell an amount equivalent to its entire residential load. Furthermore, once the offer is made, neither side has discretion to not engage in the bookout; both sides of the transaction are offset by the other’s sale. Therefore, BPA considers the Section 5(c)(1) exchange to be

While the specific definition of "bookout" cited above is from 2013, and relates to commercial-based transactions, the underlying concept of netting out two offsetting sales has long been a recognized "bookkeeping" practice in the energy industry. The idea of offsetting power sales as a "bookkeeping" transaction was well-established and existed concurrently with the development of the Northwest Power Act and Section 5(c)(1). Indeed, during early hearings on the bill that would later become the Northwest Power Act, BPA's Administrator, Sterling Munro, testified to Congress that the exchange was "merely a bookkeeping exchange, not the creation of any new electric resource."²⁹⁹ Administrator Munro further clarified that "the intent of the bill obviously is that bookkeeping exchange and the benefits from a rate standpoint are to occur at a date certain in the bill."³⁰⁰ This demonstrates that the REP, in its earliest forms, was contemplated as a non-physical, "obviously . . . bookkeeping" transaction.

Given this context, terms like "purchase," and "sale," in Section 5(c)(1) could be used without Congress needing to expressly state that no physical flow would occur, as the offsetting power transaction would be "obviously" netted out.³⁰¹ Indeed, other contemporaneous legislative discussions confirm that the Section 5(c)(1) exchange would not impose additional power duties on BPA.³⁰² Therefore, Congress' use of power transaction terms in Section 5(c)(1) ("purchase," "sale," "electric energy," "acquire") is consistent with the concept of an energy-neutral "bookout"-type or "bookkeeping" transaction.³⁰³

Another indication that Congress intended something other than a traditional physical power sale in Section 5(c)(1) is the use of the term "exchange sale."³⁰⁴ This term is exclusively found in Section 5(c) of the Northwest Power Act. It is distinctive because it combines two separate transactions—exchanges and sales—into a single, amalgamated

"akin" to a bookout, recognizing that Congress designed the exchange transaction to fulfill a specific regulatory purpose, rather than a typical commercial-based one.

²⁹⁹ *Pacific Northwest Electric Power Issues: Hearings on H.R. 13931 Before the Subcomm. on Energy & Power of the H. Comm. on Interstate & Foreign Com.*, 95th Cong. 159 (1978) (statement by Sterling Munro, Administrator, Bonneville Power Admin.).

³⁰⁰ *Id.*

³⁰¹ *Id.*; The IOUs categorization of BPA's Administrator's statements as among "individual legislators" whose statements BPA has taken "out of context" is unpersuasive. The Ninth Circuit has recognized BPA expertise in implementing the Northwest Power Act, specifically because "BPA was intimately involved in drafting much of that legislation." *Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 442 (9th Cir. 1989).

³⁰² See 126 Cong. Rec. 30183 (Nov. 19, 1980) (statement by Sen. Mark Hatfield) (stating just two weeks before the passage of the Act that "[s]ince BPA does not have an energy supply, the private utilities supply the energy needed" for the exchange); see also 126 Cong. Rec. 28550 (Sep. 30, 1980) (statement by Rep. Al Swift) (describing § 5(c) in the near-final bill as resulting in "no net BPA power sales to investor-owned utilities under S. 885; the power these utilities receive is the power they supply to BPA themselves").

³⁰³ 16 U.S.C. § 839c(c)(1); see also 16 U.S.C. §§ 839d(a)(2), 839e(b)(1).

³⁰⁴ See 16 U.S.C. §§ 839c(c)(2), 839c(c)(3) ("The cost benefits, as specified in contracts with the Administrator, of any purchase and **exchange sale** referred to in paragraph (1) . . ."), 839c(c)(5) ("to replace power sold to such utility as part of an **exchange sale** . . .") (emphasis added), 839c(c)(6) ("**Exchange sales** to a utility pursuant to this subsection . . .") (emphasis added).

term.³⁰⁵ Congress' unique use of the term "exchange sale" is purposeful, signaling that BPA's side of the sale is not a traditional power sale. That is, it is not a simple, independent sale of BPA power, but rather a sale made "in exchange" for another.³⁰⁶ In this way, the exchange sale is inextricably linked to the utility's sale to BPA. No other power arrangement under the Northwest Power Act includes a similar dependency. The creation of the "exchange sale" concept in Section 5(c), then, highlights Congress' intent to tie the purchases and sales in the Section 5(c)(1) exchange together—further confirming a bookout/bookkeeping concept.

More broadly, the energy-neutral and bookout nature of the REP serves a larger statutory purpose—it protects Public Power's preference rights. Without energy-neutrality and a bookout, the REP would have become a net physical sale to the IOUs, which would undermine the established preference and priority to federal power accorded public bodies and cooperatives. Senator Jackson (WA), the original author of the Northwest Power Act, was emphatic that the exchange would not affect preference. He explained that the equitable adjustment to *retail consumer rates* for IOUs could be done without compromising the preference and priority provisions, and agreed to add additional language to the bill to "make clear" the continued application of those provisions:

Mr. Hulbert [Snohomish County PUD GM], I want to thank you for your statement because you have raised a number of points that are of obvious concern to me and the committee, especially and specifically the point on preference and the need to clarify any possible misunderstandings that might occur in connection with our effort to try to bring about an equitable adjustment in the residential rates. And we will certainly have additional language that will make clear the continuity of the preference provision in the law. We will be working with your people on these matters.³⁰⁷

Subsequently, Sections 5(a) and 10(c) were added to the Northwest Power Act to reaffirm the preference and priority to federal power to public bodies and cooperatives. Section 5(a) states:

All power sales under this chapter 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 [16 U.S.C. 832c and 832d].³⁰⁸

³⁰⁵ BPA exchange authority is derived from the Bonneville Project Act, § 5(b), 16 U.S.C. § 832d(b). BPA sale authority is codified at 16 U.S.C. §§ 832c(a)-(b), 832d.

³⁰⁶ 16 U.S.C. § 839c(c)(1) ("... the Administrator shall acquire by purchase such power and shall offer, **in exchange**, to sell an equivalent amount of electric power...") (emphasis added).

³⁰⁷ *Pacific Northwest Electric Power Supply and Conservation Act: Hearings on S. 2080 and S. 3418 Before the S. Comm. on Energy & Natural Res.*, 95th Cong., Pt. II, 1062 (1978) (statement of Sen. Henry M. Jackson, Chairman, S Comm. on Energy & Natural Resources).

³⁰⁸ 16 U.S.C. § 839c(a); *see also* S. Rep. No. 96-272, at 15 (1979) ("The preamble of section 5 makes all Bonneville power sales subject to the preference and priority provisions of the existing Bonneville Project Act. Public bodies and cooperatives entitled to preference and priority under that Act may not be subjected to

Section 10(c) states:

Nothing in this chapter shall alter, diminish, abridge, or otherwise affect the provisions of other federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.³⁰⁹

The IOUs argue that a physical exchange would not infringe upon Public Power's Section 5(a) preference rights because the utility is simply “exchanging BPA system power for an equivalent amount of utility power. . . .”³¹⁰ Their argument, however, does not explain how preference is preserved under a physical implementation of the Section 5(c)(1) exchange.

Importantly, when physical power is involved in an exchange, Congress gives express directions on how BPA can engage in that type of transactions consistent with BPA’s existing authorities, including preference. For instance, Section 5(b) of the 1937 Bonneville Project Act authorizes the Administrator to “enter into contracts with public or private power systems 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.”³¹¹ In this type of physical exchange Congress identified three key components: first, BPA must have the option to decide whether or not to enter the physical exchange (“mutual exchange . . . upon suitable exchange terms”); second, it must involve “unused excess power” meaning the exchange involves power on BPA's system that is unused or otherwise in excess of BPA’s other statutory needs; and third, it needs to be done for “economic operations or [for] providing emergency or break-down relief[.]”³¹²

The Section 5(c)(1) exchange, however, lacks these features. BPA has no discretion to enter this exchange, the amount exchanged bears no relation to the “unused” portion of BPA's system, and the exchange is designed to be uneconomic, offering no emergency or break-down relief. Nonetheless, Congress believed that such a transaction could operate in a manner consistent with Public Power’s existing preference rights.³¹³ Indeed, to that point, Congress specifically “deemed” BPA to have sufficient resources to engage in the section 5(c)(1) exchange, irrespective of whether BPA actually had any “unused” excess

restriction on the amount of power sold them unless and until their loads exceed the amount of Federal base system resources. Section 7(b) provides that rates charged such public bodies and cooperatives may not exceed a limit designed to reflect the power costs such public bodies and cooperatives would have experienced in the absence of this legislation. Section 10(d) preserves the general preference and priority to which public bodies and cooperatives are entitled under other statutes governing the sale of power from federally-owned generating facilities.”).

³⁰⁹ 16 U.S.C. § 839g(c).

³¹⁰ IOU Comment at 6.

³¹¹ 16 U.S.C. § 832d(b).

³¹² *Id.*

³¹³ See 126 Cong. Rec. 27855 (Sep. 29, 1980) (“Subsection (c) says that when Bonneville enters into that contract, it first of all cannot sell power to private utilities that would in any way take from the preference clause.”) (statement of Rep. Al Swift).

power to support the exchange.³¹⁴ Given these stark differences, it must be that the purchase and exchange sale Congress envisioned under Section 5(c)(1) was designed around a different framework than that of BPA's typical physical exchange authority. A "money-losing" energy-neutral transaction that does not require the physical delivery of actual energy and functionally operates as a "bookkeeping" transaction does just that.

Even if the Section 5(c)(1) exchange were interpreted as requiring two physical sales, the "businesslike" way to do that, and comply with preference, would be to design the transaction as two perfectly offsetting sales that never become unbalanced – *e.g.*, a bookout.³¹⁵ Structuring this exchange as an actual physical transaction could never fully guarantee the preservation of preference rights. There would always be a risk of a counterparty failing to deliver or return exchange energy due to market disruptions or other issues, a problem that has frequently led to litigation in past BPA energy exchange cases.³¹⁶

In sum, the fact Congress used terms like "purchase" and "sale" does not mean the Section 5(c)(1) exchange transaction was intended to function as a physical sale. Instead, the structure of the provision is akin to a "bookout"—a common energy industry practice where offsetting buy-sell transactions eliminate the need for actual transmission or resource deployment. This interpretation further aligns with the energy-neutral structure of the Section 5(c)(1) exchange and the protections Congress afforded Public Power's preference rights, as reaffirmed by Sections 5(a) and 10(c) of the Northwest Power Act.³¹⁷ As explained next, this approach also conforms to the other objectives Congress intended for the REP, solidifying that the Section 5(c)(1) exchange was designed as a financial mechanism to achieve specific policy goals.

5. *The purchase and sale terms are included in Section 5(c)(1) to generate a cost differential, not to implement a physical exchange.*

The IOUs further contend that BPA's interpretation of "purchase" and "sale" in Section 5(c)(1) of the Northwest Power Act "read[s] out" the physical exchange

³¹⁴ 16 U.S.C. § 839c(g)(7) (noting that the Administrator is deemed to have "sufficient resources for purpose of entering into the initial contracts specified in paragraph (1)(A) through (D)").

³¹⁵ 16 U.S.C. § 839f(b).

³¹⁶ See *S. Cal. Edison v. United States*, 58 Fed. Cl. 313 (2003) (disputing BPA's implementation of a sale and exchange agreement during the energy crisis of 2000/2001); *In re Cities of Burbank*, EBCA C-0303364, 05-1 BCA ¶ 32,952 (same).

³¹⁷ Public Power customers assert that FBS resources are preserved by preference for Public Power customers, as detailed in their comments. Public Power Comment at 9-11. This ROD does not address whether the FBS is reserved exclusively for Public Power's use through preference. Given that the structure of the REP has consistently maintained perfect energy parity between the IOUs' purchases and BPA sales, there has never been a scenario where BPA's supply of power diminished the energy from federal projects to the point of implicating preference. If the Section 5(c)(1) exchange were to involve physical power, BPA would need to determine if any of that power originated from FBS resources. At that point, BPA would then decide whether Public Power's argument, concerning the use of FBS resources to serve the IOUs constitutes a violation of preference. Additionally, from a cost perspective, the FBS is not exclusively limited to Public Power, as provided for by Section 7(b)(1). See 16 U.S.C. § 839e(b)(1) as limited by § 839e(b)(2).

requirement Congress intended.³¹⁸ They also assert that the “operative term” of Section 5(c)(1) is the “acquisition of utility power and equivalent sale of BPA system power” not the “exchange of money.”³¹⁹

BPA finds that the “purchase” and “sale” terms were included in Section 5(c)(1) to serve the distinct purpose of establishing the *cost differential* between the utility's resource costs and BPA's power costs, which results in the “cost benefits” that is then used in multiple provisions of the Northwest Power Act.³²⁰

Section 5(c)(1) is clear that the power at issue in the “exchange” is being bought and sold.³²¹ These terms do not, as the IOUs assert, carry an implied requirement to physically exchange power with certain attributes. The statute identifies that the relevant attribute is the *cost* of power. Indeed, while the IOUs label the power sold between BPA and the utility as “utility power” and “equivalent BPA system power” neither of those terms occur in the statute.³²² (This is likely because it was understood at the time of the Act's final development that the IOUs would be the source of the power to serve their own loads.)³²³ What the statute *does* identify is the relative costs of power for both the utility and BPA. The utility's average system cost (ASC) of its resources and BPA's costs as expressed in its rates.³²⁴

The pivotal component of Section 5(c)(1), then, is its requirement that BPA *pay* utilities for the power they “offer.” This mandate—compelling BPA to incur costs for power it does not need and at a loss—is the operative term of the Section 5(c)(1) exchange. This term is distinct from BPA's other statutory obligations. Typically, BPA is expected to operate “like a business on a sound financial basis,”³²⁵ ensuring its power rates “recover . . . [BPA's]

³¹⁸ IOU Comment at 4.

³¹⁹ *Id.* at 5. The IOUs also argue BPA “suggested” that defining “‘acquire’ in Section 3 to exclude BPA's ‘ownership of any electric generating facility’ removes any physical aspect to the exchange defies basic principles of statutory construction.” IOU Comment at 5. The IOUs then proceed to discuss the definition of “acquire” and its relation to BPA's inability to own generation. *Id.* Although the IOUs cite no document as the source of their comment, they are apparently responding to a slide from BPA's September 11, 2025, RPSA workshop presentation. *See* RPSA Workshop 1 PPT at 29. The reference to “acquire” in that presentation is to a general reference to the definition in the Northwest Power Act. *See* 16 U.S.C. § 839a(1). Beyond that, it is not clear what point the IOUs are making or responding to.

³²⁰ *see also* Issue 3.4.4. – parts 3, 4 (describing how the “cost benefit” calculated from the Section 5(c)(1) exchange is used in Sections 5(c)(3), 7(b)(2), 7(b)(3), and 7(c)(1)).

³²¹ *See* 16 U.S.C. § 839c(c)(1) (“offer to sell,” “shall acquire by purchase,” “shall offer, in exchange, to sell”).

³²² IOU Comment at 5; *see* 16 U.S.C. § 839c(c)(1).

³²³ *See* 126 Cong. Rec. 30183 (Nov. 19, 1980) (statement by Sen. Mark Hatfield) (stating just two weeks before the passage of the Act that “[s]ince BPA does not have an energy supply, the private utilities supply the energy needed” for the exchange); *see also* 126 Cong. Rec. 28550 (Sep. 30, 1980) (statement of Rep. Al Swift) (describing § 5(c) in the near-final bill as resulting in “no net BPA power sales to investor-owned utilities under S. 885; the power these utilities receive is the power they supply to BPA themselves”).

³²⁴ The price of the power the utility sells BPA is set at the “average system cost of that utility's resources . . .” 16 U.S.C. § 839c(c)(1). BPA's “exchange” sale is at rates “established pursuant to section [7] of this title.” 16 U.S.C. § 839c(a).

³²⁵ *Assn. of Pub. Agency Customers, Inc. v. Bonneville Power Admin.*, 126 F.3d 1158, 1170-71 (9th Cir. 1997).

costs,”³²⁶ and purchase power that is cost-effective and needed to meet contractual demands.³²⁷ Here, however, Section 5(c)(1) reverses these principles, obligating BPA to buy and sell power to a utility that does not need the energy, with the explicit aim of incurring a financial loss. As the Court has observed, “[i]n the case of the exchange program, Congress specifically directed BPA to conduct its operations in a manner that does not conform with the ‘sound business principles’ that the agency is generally required to follow.”³²⁸

Congress had a specific objective in mind in requiring BPA to “purchase” and “sell” power under Section 5(c)(1) in a manner so contrary to its other statutory duties. That objective was not to force BPA and the utility to physically move the same amount of energy between themselves – an exercise that would have been both pointless and operationally complex.³²⁹ Rather, Congress used the terms “purchase” and “sell” to instruct BPA to calculate the cost differential between BPA’s and the utility’s resource costs for the benefit of the participating utility’s retail consumers. As will be explained next, this cost differential, known as the “cost benefit[]”³³⁰ is what Congress intended BPA to determine when implementing the Section 5(c)(1) exchange.

6. Congress designed the Section 5(c)(1) exchange to solve for “cost benefits.”

Moving beyond Section 5(c)(1), we are left with a transaction that is energy-neutral, involves two offsetting sales, and whose operative term is the cost difference in the resource cost (average system cost of resources) of the utility and BPA. Taking these features together, the REP’s core purpose becomes clear: to generate a rate benefit that will be used for “rate relief” to residential loads of participating utilities.³³¹ This objective is made plain in both Section 5(c)(1) and, later, in Section 5(c)(3), where Congress mandates that “the cost benefits” derived from Section 5(c)(1)’s offsetting sales be passed directly to eligible residential consumers.³³²

In Section 5(c)(1), the utilities are directed to ‘resell’ the power under the exchange to their residential consumers.³³³ This requirement is a rate making construct designed to ensure that the economic benefits of BPA’s return exchange sale flow to the “residential users” through retail ratemaking, and not to other users (commercial or industrial loads) or to the

³²⁶ See 16 U.S.C. § 839e(a)(1).

³²⁷ See 16 U.S.C. § 839d(a)(2)(A) (requiring Administrator to acquire resources to “meet his contractual obligations . . .”)

³²⁸ See also *Pac. Nw. Generating Coop. v. Dep’t of Energy*, 580 F.3d 792, 822 (9th Cir. 2009); see also *Alcoa*, 467 U.S. at 399 (describing exchange as a “money-losing program for BPA.”)

³²⁹ See Issue 3.4.2 – parts 7.a. and 9, for a discussion of these limitations.

³³⁰ 16 U.S.C. § 839c(c)(3).

³³¹ *Alcoa*, 467 U.S. at 398.

³³² 16 U.S.C. § 839c(c)(3).

³³³ 16 U.S.C. § 839c(c)(1). (“ . . . to sell an equivalent amount of electric power to such utility for resale to that utility’s residential users within the region.”)

utility itself. While this was self-evident from Section 5(c)(1),³³⁴ Congress made this pass through express through the addition of Section 5(c)(3).³³⁵

Section 5(c)(3) provides that the “cost benefits, as specified in contracts with the Administrator, of any purchase and exchange sale referred to in [Section 5(c)(1)] . . . attributable to any electric utility's residential load within a State will be passed through directly to such utility's residential loads within such State”³³⁶ This provision was specifically added to the Northwest Power Act to codify that the “full cost benefit of the exchange power sales authorized by Section [5(c)] are passed on to residential ratepayers in the region.”³³⁷ That cost benefit was to be expressed in the retail rates of residential consumers.

Section 5(c)(3) stands out as yet another unique provision among BPA statutory obligations. It is the only instance where BPA is mandated to ensure that a utility customer, assumedly an IOU, distributes a specific benefit to its retail consumers. This distribution requirement is not limited only to the utility but also extends to state regulators responsible for setting utility rates. While Congress generally protected the states' authority to determine retail electric rates in the Act, *see* Section 10(a) of the Act,³³⁸ it made an explicit exception for Section 5(c)(3). Section 10(a)(1) states: “Nothing in this chapter shall be construed to affect or modify any right of any State or political subdivision thereof or electric utility to-- determine retail electric rates, **except as provided by section [5](c)(3) of this title** [.]”³³⁹ Thus, Congress required state regulators to account for Section 5(c)(3)'s “cost benefit[.]” in retail rates. This regulatory involvement in state retail ratemaking further underscores that the Section 5(c)(1) exchange is not a typical power transaction, but rather the exercise of a more “traditional regulatory power.”³⁴⁰

The calculation and distribution of this “cost benefit [.]” to residential users were details explicitly left to the exchange contract, as indicated by the phrase “as specified in contracts with the Administrator.”³⁴¹ Thus, Congress empowered BPA, through its contract

³³⁴ Early versions of the Northwest Power Act did not contain a mandatory pass-through of the cost benefit to residential users because, as it was explained to Congress by IOU executives, under utility ratemaking “power purchased from BPA [are] to be treated as an expense item of the utility. No profit is added to expenses in setting rates. Therefore, the lower the expenses, the lower the customer's bill.” *Pacific Northwest Electric Power Issues: Hearing on H.R. 13931, Before the Subcomm. on Energy and Power of the Comm. on Interstate & Foreign Commerce, 95th Cong., 378 (1978)* (statement of John Ellis, President of Puget Sound Energy).

³³⁵ *See Pacific Northwest Electric Power Supply and Conservation Act: Hearing on S. 2080 and S. 3418, Before the Comm. on Energy and Natural Res. of the U.S. Senate, 95th Cong., Pt. II, 1002 (1978)* (statement of Sen. Bob Packwood (Or.)) (“The direct economic benefits of this bill, should go to ultimate consumers. While I believe this is the clear intention of all persons involved in the drafting of this bill, I see no reason why we should not include actual language in its text to that effect. The Administrator of BPA should be required to insure, by contract or otherwise, that rates charged ultimate consumers reflect the wholesale rate benefits received by the utilities under this act.”)

³³⁶ 16 U.S.C. § 839c(c)(3).

³³⁷ S. Rep. No. 96-272, at 27 (1979).

³³⁸ 16 U.S.C. § 839g(a).

³³⁹ 16 U.S.C. § 839g(a)(1) (emphasis added).

³⁴⁰ *PGE*, 501 F.3d 1009, 1030 (9th Cir. 2007).

³⁴¹ 16 U.S.C. § 839c(c)(3).

development process, to determine how the exchange sale would generate the “cost benefit[.]” Congress outlined the fundamental parameters of the transaction in Sections 5(c)(1) and (2)—energy neutral sale in an amount up to the total residential load of the participating utility, inextricably linked purchases and sales, and the calculation of a cost difference from the utility’s ASC of its resources and BPA’s offsetting rate—and entrusted BPA to, as noted by the Supreme Court, “manage the complex relationship among these various aspects of the statute[.]”³⁴²

Importantly, Congress did not require that this “cost benefit[.]” be contingent on BPA implementing the REP as a physical sale. This was intentional. Imposing a physical sale requirement would reduce the size of the “cost benefit[.]” (aka the REP payment) to the utility. The “cost benefit[.]” is directly impacted by the size of the utility’s residential load. Recalling the formula that BPA uses to determine the REP payment:

Simplified Traditional REP Calculation ³⁴³
(ASC - PFx Rate) x Residential Load = REP benefit (“cost benefits”) (\$85/MWh - \$55/MWh) x 100MWh = \$3000 (payment by BPA to IOU).

As this formula shows, the smaller the amount of residential load, the smaller the payment.

If BPA introduced a physical requirement in the RPSA, it would be adding limitations to the REP not expressly required by Congress. Congress is well adept at identifying restrictions on REP costs, expressing those limits using both mandatory terms (as seen in the ramp-in provision of Section 5(c)(2)³⁴⁴ and cost limits of Section 7(b)(2))³⁴⁵ and discretionary terms (as in Section 5(c)(5)).³⁴⁶ Introducing a physical requirement into the RPSA would limit the REP to only those utilities that could physically deliver power to BPA, and exclude (or severely limit) those that could not.³⁴⁷ Such an outcome would exceed the express terms of the Northwest Power Act and create new, unstated barriers to a utility’s statutory right to participate with its full residential load in the REP. The IOUs themselves seem to agree that such a barrier would be undesirable, and suggest that BPA should employ a flexible, “state-specific” approach to its design of the RPSA.³⁴⁸ The IOUs’ admission that “actual physical delivery of power may not be necessary and appropriate in all instances” demonstrates that even they see imposing a physical requirement as problematic.³⁴⁹

³⁴² *Alcoa*, 467 U.S. 380, 400 (1984).

³⁴³ The Ninth Circuit has also cited with approval the above description of the REP calculation, calling it the “traditional section 5 formula.” *APAC*, 733 F.3d 939, 956 (9th Cir. 2013).

³⁴⁴ See 16 U.S.C. § 839c(c)(2); see also Issue 3.4.2 – part 7.a.

³⁴⁵ See 16 U.S.C. § 839e(b)(2); see also Issue 3.4.4 – part 4 for a discussion on how this limitation operates on the REP.

³⁴⁶ See 16 U.S.C. § 839c(c)(5); see also Issues 3.4.3, 9.5.1.

³⁴⁷ The IOUs also assert BPA has the authority to restrict the REP under section 5(c)(6), in the event BPA is experiencing a resource “insufficiency.” IOU Comment at 5-6. BPA will address the IOUs’ misreading of Section 5(c)(6) in *part 7.b* below.

³⁴⁸ IOU Comment at 9.

³⁴⁹ *Id.*

The paramount importance of the “cost benefits” in the Section 5(c)(1) exchange is made even more evident from the sole express reason Congress provided for a utility to exit the REP—if the exchange becomes uneconomic. Section 5(c)(4) states:

An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in Section 839e(b)(3) of this title is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.³⁵⁰

Notably, physical limitations are entirely absent from the factors allowing a utility to terminate its RPSA. Had Congress intended the physical implementation of the Section 5(c)(1) exchange to be as crucial as generating the “cost benefits,” it would logically have included a parallel provision enabling termination if physical implementation became unduly burdensome. The complete absence of any termination option based on physical limits, coupled with Congress' exclusive focus on economics, further demonstrates that the Section 5(c)(1) exchange is financial in nature, not physical.

In summary, the IOUs' contention that Section 5(c)(1) mandates a physical power exchange is unpersuasive. The Section 5(c)(1) exchange was introduced in the Act to address a specific issue: rate disparities between public and private utilities. Section 5(c)(1) addresses that issue by creating an energy-neutral financial “bookout”-type transaction, which is specifically designed to protect Public Power's preference rights. Furthermore, the “purchase” and “sale” terminology in Section 5(c)(1) functions to establish a cost differential between BPA and utility resource costs, thereby creating the “cost benefits” for residential ratepayers. This is the objective Congress aimed to achieve through the REP. Congress did not condition or restrict a retail consumer's access to these “cost benefits” by imposing a physical delivery requirement on either the utility or BPA. Finally, the exclusive focus on economic factors for terminating the Section 5(c)(1) exchange, as outlined in Section 5(c)(4), underscores its intended financial rather than physical nature, as physical limitations are entirely absent from the termination criteria.

7. *Treatment of the Section 5(c)(1) exchange in the statutory context of the Northwest Power Act shows it is not a physical exchange.*

The language and context of Sections 5(c)(1), 5(c)(2), 5(c)(3), and 5(c)(4) as described above form the primary basis for BPA's conclusion that Congress did not mandate the REP to be implemented as a physical sale of power but intended a structure akin to a bookout/bookkeeping transaction. BPA's determination on this issue is further confirmed by the treatment of the Section 5(c)(1) exchange sale in the broader context of the

³⁵⁰ 16 U.S.C. § 839c(c)(4).

Northwest Power Act, reinforcing BPA's understanding that Congress did not intend the REP to be a physical transaction.³⁵¹

- a. *The presumption of full participation by the residential loads of participating utilities within 10 months of the Act shows Congress intended the REP to not be physical.*

Section 5(c)(2) of the Northwest Power Act reinforces BPA's interpretation that Congress did not envision implementing the Section 5(c)(1) exchange as a physical transaction, as it presumes the exchange could be immediately implementable by all eligible utilities.³⁵² Section 5(c)(2), commonly known as the “ramp-in” provision, initially limited the exchange to 50 percent of a utility’s residential load³⁵³ in 1980, gradually increasing this limit in equal annual increments until 100 percent of a utility’s residential load by July 1985. Notably, the provision makes no allowance for the lead time needed to address potential transmission or generation limitations.³⁵⁴ Instead, it is simply presumed that the exchange could commence at 60 percent of the utilities’ residential load in 1981 (approximately 1800 aMW for the IOUs), increasing by 10 percent annually until reaching 100 percent by 1985 (approximately 4500aMW for the IOUs).³⁵⁵ The legislative record is clear that Congress thought the entirety of the IOUs’ residential load would participate in the REP upon commencement of the Section 5(c)(1) exchange.³⁵⁶

Structuring a physical purchase and sale of 1800 aMW of power, which did not previously exist between multiple utilities across six states, while also adhering to the hydrological constraints of the BPA system, would have been a formidable undertaking.³⁵⁷

³⁵¹ See *ICL I*, 83 F.4th 1182, 1192 (9th Cir. 2023) (“When interpreting a statutory provision, we consider not only its ordinary meaning, but also its place within the broader statutory scheme of which it is a part.”).

³⁵² 16 U.S.C. § 839c(c)(2).

³⁵³ The Act defines “residential load” to mean “all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.” 16 U.S.C. § 839a(18).

³⁵⁴ The scarcity of federal generation at the time of the Act is well documented. See H.R. Rep. No. 96-976, pt. II, at 30–31 (1980) (describing steps BPA took to reduce selling federal power); *Id.* at 31 (“Unfortunately, current forecasts already show that the Pacific Northwest could experience serious power shortages during any critical water year in the 1980’s. The delays associated with the above-mentioned power planning uncertainties will only exacerbate this existing power supply problem.”).

³⁵⁵ See S. Rep. No. 96-272, App. B at 70 (1979) (showing IOU (residential and irrigation) load of 1,868 aMW in 1980-1981, growing to 4,598 aMW by 1985).

³⁵⁶ *Id.*; see also *id.* at 71-79 (showing 18 different scenarios of loads and resources, all of which indicate that the IOUs’ (residential and irrigation) load would fully participate).

³⁵⁷ The Northwest Power Act imposed new fish and wildlife obligations on BPA and other managers of the FCRPS. See 16 U.S.C. § 839b(h)(11)(A)-(B); *ICL I*, 83 F.4th 1182, 1186 (9th Cir. 2023) (describing the new environmental responsibilities “impose[d]” on BPA). Due in part to those restrictions, BPA noted in contracts with Public Power customers that the firm capability of the federal Columbia River hydroelectric projects would be “constrain[ed] by fish and wildlife operations” and that “the firm capability of utility hydroelectric resources may be reduced to meet such utility’s fish and wildlife obligations.” *Draft Prototype Power Sales Contracts Interpreting Policy Provisions of Pacific Northwest Electric Power Planning and Conservation Act: Publication of Summary of BPA’s Proposed Contract Provisions and Request for Public Comment*, 46 Fed. Reg. 31,238, at 31,239 (June 12, 1981).

Compounding these complexities was the exceptionally tight deadline Congress imposed on BPA for commencing this exchange. Section 5(g) of the Northwest Power Act required BPA to design, negotiate, and offer contracts for the REP “within nine months after December 5, 1980”³⁵⁸ The Section 5(c) contract was intended to commence upon execution by regional utilities, but no earlier than the tenth month after the Act's passage (*i.e.*, October 1981).³⁵⁹ Congress made clear in the legislative history that the design of Section 5(g) was intended to get the benefits of the exchange into the hands of regional ratepayers as soon as possible:

Section 5(g)(3)-(5) concern the acceptance and effective date of power sales contracts under the Act and in particular, ensure that the benefits of the 5(c) exchange begin on a specified date even if the DSI contracts are not executed until later.³⁶⁰

Any notion that BPA could delay implementing the exchange to allow for physical resource development was also negated by statute. Section 5(g)(7) of the Northwest Power Act “deemed” the Administrator to have “sufficient resources for purpose of entering into the initial contracts specified in paragraph (1)(A) through (D)”, which included the Section 5(c)(1) exchange.³⁶¹

BPA also had to “take such steps” as were necessary to ensure the “timely implementation” of the entirety of the Northwest Power Act, inclusive of the Section 5(c)(1) exchange, in a “sound and business-like manner.”³⁶²

In short, upon passage of the Act, BPA faced the daunting task of structuring the RPSA to 1) meet mandatory statutory deadlines; 2) fulfill the requirements of Section 5(c)(1); 3) allow all residential loads of regional utilities (1800 aMW) to participate in the REP calculation; and 4) do all this in a “timely” and “sound and business-like manner.”

BPA’s answer to this timeline, and implementing the REP consistent with Congressional intent, was to structure the 1981 RPSA as a financial/paper transaction.³⁶³ To that point, BPA did not keep its position a secret. BPA made known its view of the REP both before and after enactment of the Northwest Power Act. For instance, on December 1, 1980, four days before the Act passed, BPA issued a “Summary of the Pacific Northwest Electric Power Planning & Conservation Act” in which BPA described the Section 5(c)(1) exchange as “essentially a bookkeeping transaction[.]”³⁶⁴ Later, days after the passage of the Act, BPA

³⁵⁸ 16 U.S.C. § 839c(g)(1), (g)(1)(C).

³⁵⁹ 16 U.S.C. 839c(g)(4) (“An initial contract with an electric utility customer pursuant to subsection (c) of this section shall be effective on the date executed by such customer, but no earlier than the first day of the tenth month after December 5, 1980.”).

³⁶⁰ H.R. Rep. No. 96-976, pt. I, at 64 (1980).

³⁶¹ 16 U.S.C. § 839c(g)(7).

³⁶² 16 U.S.C. § 839f(b).

³⁶³ See 1981 RPSA § 5 (noting that the utility “shall submit to Bonneville . . . an accounting invoice with supporting documentation for the Utility’s Residential Load billed during the billing period selected by the Utility. . . . This accounting invoice shall be deemed to be the receipt for the purchase and sale of power under this agreement.”).

³⁶⁴ Administrator Letter to the Region and Summary of the Northwest Power Act at 10 (Dec. 1, 1980) (on file

held a public meeting where an executive of BPA again explained that under the Section 5(c)(1) exchange, “[t]echnically, I suppose money alone exchanges hands”³⁶⁵

BPA's formal approach to the REP was solidified with the issuance of the 1981 RPSA in August of 1981.³⁶⁶ At that time, BPA reiterated its view that to achieve Congress' objectives, the REP would be implemented through a simple invoice. The 1981 RPSA described this as an “accounting invoice” that functions as the “deemed . . . receipt” of the purchase and sale for both BPA and the utility.³⁶⁷ This term was not used to circumvent “physical exchange” requirements, as suggested by the IOUs,³⁶⁸ but to articulate how the energy-neutral, financial transaction would operate through invoices. This purpose was clarified in the Federal Register Notice announcing the 1981 RPSA prototype, where BPA explained that “the exchange agreement is not a power supply arrangement, but rather a rate arrangement and puts no constraints on a utility’s resource operations.”³⁶⁹ The environmental analysis accompanying the 1981 RPSA further supports this, noting that “the residential exchange contracts basically amount to an exchange of costs, rather than a physical exchange of energy.”³⁷⁰

BPA made similar statements regarding the 1981 Average System Cost Methodology, describing “the residential exchange program as a purchase and sale of power. The ‘exchange’ is one of power costs and not one of a physical flow of power. There is no physical impact on power generation, transmission, or system operation.”³⁷¹ These contemporaneous documents demonstrate that the 1981 RPSA established a financial, not physical, exchange. This operational structure was BPA's solution to Congress' express directive to implement the exchange within 10 months, consistent with statutory terms, and in a way that allowed all regional utilities' residential load to participate.

The IOUs claim the statutory timeline was not an impediment to BPA structuring a physical exchange, as it gave BPA “sufficient time to assess any practical implementation challenges associated with a physical transaction.”³⁷² The WUTC contends that while BPA’s original approach may have been borne out of “necessity,” that necessity has passed, and BPA is now approaching this issue as a matter of convenience.³⁷³

with author).

³⁶⁵ RPSA Workshop 1 PPT at 40 (*citing* 1981 Contract Hearing (Dec. 10, 1980)).

³⁶⁶ 1981 RPSA FRN.

³⁶⁷ 1981 RPSA § 5. (“This accounting invoice shall be deemed to be the receipt for the purchase and sale of power under this agreement.”)

³⁶⁸ 1981 RPSA § 5; *see* IOU Comment at 2 (noting “BPA has historically utilized deemed delivery to limit administration challenges associated with physical delivery.”).

³⁶⁹ 1981 RPSA FRN at 44,347.

³⁷⁰ Environmental Review of the Issues and Alternative Associated with the Offering of the Power Sales and Residential Exchange Contracts Required Under the Pacific Northwest Electric Power Planning and Conservation Act at 5-1 (Sept. 1981) (“1981 RPSA Environmental Review”) (on file with author).

³⁷¹ *Id.* at 5-9.

³⁷² IOU Comment at 5.

³⁷³ WUTC Comment at 2.

BPA views the historic record as an answer to these comments. Had a physical exchange been *required* and possible, then there is no basis to assume BPA (along with the IOUs) would have structured the RPSA in any other way. The fact that the 1981 RPSA was *not* structured as a physical exchange is conclusive proof that the *only* way to implement the REP consistent with Congress' express intent and these timelines was to structure the REP as a non-physical, paper transaction.

To that point, it is important to note that the IOUs did not disagree with this approach when offered the 1981 RPSA. The 1981 RPSA was not a settlement agreement. Nonetheless, the IOUs all signed the 1981 RPSA, without raising any substantive concerns with BPA's structure for the RPSA as a paper transaction.³⁷⁴ As such, under the 1981 RPSA, these utilities offered to "sell" to BPA an amount of power equal to the full, statutorily permitted amount (roughly 1800 aMW). This approach enabled the IOUs to reap for their consumers enormous financial value from the REP. By 1982 alone, the IOUs (along with some Public Power customer participants) were paid upwards of \$200 million (in nominal 1982 dollars) in benefits for their residential loads (and at the expense of the DSIs).³⁷⁵ The IOUs fully ramped in their residential loads by 1985 as intended by Congress and have been paid by BPA for their *entire* residential load under the traditional 5(c) formula ever since.

Even here, the only reason the IOUs did not exchange their *entire* residential load with BPA upon the commencement of the 1981 RPSA (and receive even *more* REP payments) was because Congress imposed a limit to minimize the rate impacts of the REP on the DSIs.³⁷⁶ As noted above, the DSIs were statutorily required to pay for the "net costs" of the REP in their power rates for the first five years of the Act.³⁷⁷ The DSIs, however, objected to paying for the entirety of the REP from the commencement of the Act, and negotiated the "ramp in" provision of Section 5(c)(3) to "minimize the *dramatic rate increases* to the Administrator's direct service industries."³⁷⁸ Thus, even the ramp-in provision itself confirms a legislative focus on cost management over physical limitations for the exchange.

The conclusion to be drawn from Section 5(c)(2) of the Northwest Power Act, particularly its "ramp in" provision, is that it once again demonstrates that Congress intended the REP to be implemented in a financial, rather than physical, manner. The tight congressional

³⁷⁴ See 1981 RPSA FRN (noting substantive issues raised by parties and not mentioning structure of RPSA as financial transaction). BPA offered 1981 RPSAs to eight IOUs. See *Interpretation Governing Power Sales Contract Offers*, 46 Fed. Reg. 21,409, at 21,411 (Apr. 10, 1981) (this notice omitted Utah Power & Light). BPA signed a 1981 RPSA with each. See BPA Record of 1981 RPSAs (Feb. 18, 2026) (on file with author).

³⁷⁵ State PUC REP Overview at 31.

³⁷⁶ See 16 U.S.C. § 839c(c)(2).

³⁷⁷ See 16 U.S.C. § 839e(c)(1)(A) (requiring BPA to set the DSI rate "for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 839c(c) of this title. . ."); H.R. Rep. No. 96-976, pt. I, at 61 (1980) ("The cost of the exchange during the first five years is charged to the rates applicable to DSI's under section 7(c)(1)(A).").

³⁷⁸ H.R. Rep. No. 96-976, pt. I, at 61 (1980); see also *id.* ("Testimony given to the Committee indicated that it was necessary to phase in the exchange in order to minimize the dramatic rate increases to the Administrator's direct service industries.").

timeline, mandating contract development within nine months and implementation within ten, would have made a physical exchange of thousands of megawatts across multiple states logistically improbable, especially given the hydrological constraints of the BPA system. The expectation that the REP would be immediately implemented, coupled with the absence of any consideration for physical limitations in the ramp-in schedule (which was a cost protection, not a physical limitation, provision), is further evidence supporting BPA's conclusion that Congress designed the REP as a non-physical, paper transaction to rapidly deliver financial benefits to regional ratepayers. It is also telling that this interpretation was unchallenged by the IOUs and utility commissions whose residential loads benefited from this structure.

b. The purchase and sale features of the Section 5(c)(1) exchange are exempt from provisions that apply to physical resource acquisitions and sales.

The Northwest Power Act's treatment of the Section 5(c)(1) exchange, particularly when compared to other resource provisions, further underscores its intended non-physical implementation. Section 6 of the Act introduced new resource acquisition authorities for BPA, along with additional procedural and administrative requirements.³⁷⁹ A key change was the significant increase in oversight over BPA's ability to acquire resources for extended durations without public involvement.³⁸⁰ Congress also reasserted BPA's enduring preference obligations to its Public Power customers.³⁸¹ Thus, when BPA engages in physical power transactions (whether purchasing or selling), the Act commands additional requirements.³⁸² These requirements, however, are conspicuously absent from the Section 5(c)(1) exchange.

For example, Section 6 of the Northwest Power Act, governing BPA's resource acquisition, “assure[s] that BPA does not burden the region with costly projects.”³⁸³ Significantly, Section 6(c) imposes rigid procedural requirements for acquiring any “major resource” exceeding 50 aMW for more than five years, including a cost-effectiveness test.³⁸⁴ Nevertheless, BPA's acquisitions of power from utilities under the Section 5(c)(1) exchange are exempt from these requirements: “[i]n addition to acquiring electric power pursuant to

³⁷⁹ See 16 U.S.C. § 839d(a) *et seq.*; *Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 447 (9th Cir. 1989) (“The purpose of section 839d(c) [Section 6] is to assure that BPA does not burden the region with costly projects.”).

³⁸⁰ 16 U.S.C. § 839d(c)(1); *see also Util. Reform Project*, 869 F.2d at 447 (“The Regional Act requires public hearings and other measures prior to such an acquisition.”).

³⁸¹ *See, e.g.*, 16 U.S.C. §§ 839c(a), 839g(c).

³⁸² *Id.*; *see generally* 16 U.S.C. § 839d *et seq.* (describing requirements for acquisitions); 16 U.S.C. § 839c(a) (limiting sales by preference); 16 U.S.C. § 839f(c) (describing limits of selling power outside of Pacific Northwest); 16 U.S.C. § 839f(i) (describing requirements for BPA acquisition associated with replacing resources used to serve a customer's firm load).

³⁸³ *Util. Reform Project*, 869 F.2d at 447.

³⁸⁴ 16 U.S.C. § 839d(c)(1), (A)-(D) (describing process for acquisitions of major resources). Importantly, in the definition of “major resource” there is *no* mention of the Section 5(c)(1) exchange (*see* 16 U.S.C. § 839a(12)).

Section [5(c)] of this title. . . .³⁸⁵ This exemption allowed BPA to purchase power from utilities under Section 5(c)(1) within a bookout construct without adhering to the cost-effectiveness or other criteria defined by Congress for actual resource acquisitions, further demonstrating the distinct, non-physical nature of the Section 5(c)(1) exchange. This makes sense because the Section 5(c)(1) exchange was not expected to add any *new* resources or change the use of existing resources.³⁸⁶

BPA's return sale was also uniquely exempted from typical legal constraints on selling power to non-preference customers. Section 5(c)(6) stipulates that "exchange sales" (BPA's side of the transaction) "shall not be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection."³⁸⁷ This provision effectively prevents BPA from withdrawing from the energy-neutral exchange due to its own physical power shortages. Since the exchange begins with the utility "selling" power to BPA, BPA (on paper) always has the power available to sell back, netting against that initial sale.³⁸⁸ Section 5(c)(6) closes a legal loophole that could have undermined the energy-neutral exchange: the possibility of BPA reducing the Section 5(c)(1) exchange by claiming it needed to preserve federal resources for public power customers due to preference or a declared resource insufficiency. With Section 5(c)(6), this loophole is eliminated. Whatever amount a utility "offers" to sell to BPA under Section 5(c)(1), BPA must acquire and sell back to that utility. These amounts cannot be reduced due to preference or an insufficiency notice to exit the energy-neutral exchange.

The IOUs point to Section 5(c)(6) as evidence that Congress gave BPA "flexibility" to address periods of where BPA system power supply is insufficient to immediately sell an equivalent amount of power to an exchanging utility.³⁸⁹ The IOUs contend that this provision "only has meaning in the context of amounts of physical power deliveries rather than a purely financial transaction."³⁹⁰

BPA disagrees. First, the IOUs misread Section 5(c)(6). Section 5(c)(6) does *not* permit BPA to pause or otherwise delay the return sale to the utility due to an insufficiency.³⁹¹

³⁸⁵ 16 U.S.C. § 839d(a)(2). By including a reference to "in addition to" the authority BPA has under Section 5(c), Congress exempted the Section 5(c)(1) exchange from the power planning and acquisition requirements of Sections 4 and 6. This is made clear by the *reintroduction* of these terms in Section 5(c)(5). See 16 U.S.C. § 839c(c)(5) ("Subject to the provisions of sections 839b [4] and 839d [6] of this title . . ."). To that point, BPA's implementation of the Section 5(c)(1) exchange has never been subject to Sections 4 or 6 of the Act.

³⁸⁶ See 126 Cong. Rec. 30183 (Nov. 19, 1980) (statement by Sen. Mark Hatfield) (noting "[s]ince BPA does not have an energy supply, the private utilities supply the energy needed" for the exchange); see also 126 Cong. Rec. 28550 (Sep. 30, 1980) (statement of Rep. Al Swift) (describing § 5(c) in the near-final bill as resulting in "no net BPA power sales to investor-owned utilities under S. 885; the power these utilities receive is the power they supply to BPA themselves").

³⁸⁷ 16 U.S.C. § 839c(c)(6).

³⁸⁸ See 16 U.S.C. § 839c(c)(1) ("Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources . . .").

³⁸⁹ IOU Comment at 5-6.

³⁹⁰ *Id.* at 6.

³⁹¹ See *id.* at 5.

Such an interpretation would violate Section 5(c)(1)'s energy neutrality requirement, which ties BPA's acquisition from the utility directly to BPA's sale back to the utility.³⁹² That tie is strengthened, not weakened, by the language of Section 5(c)(6), which expressly *prohibits* an imbalance from occurring within the Section 5(c)(1) energy-neutral exchange sale: "Exchange sales to a utility pursuant to this subsection *shall not* be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection."³⁹³ The House Report confirms that the point of this provision was to *maintain* the exchange during periods of insufficiency, not pause it:

Pursuant to Section 5(c)(6), a utility exchanging power under this section will receive, in the event of insufficiency, an entitlement to the amount of power acquired by the Administrator from, or on behalf of, such utility and the exchange of power *would continue during period of declared insufficiency*.³⁹⁴

Thus, regardless of BPA's physical system status, the Section 5(c)(1) purchase and sale can proceed because BPA's "exchange sale" will never exceed BPA's "purchase" from the utility. Section 5(c)(6) ensures that the Section 5(c)(1) balance is maintained.

Second, Section 5(c)(6) also safeguards the effects of any actual physical power BPA acquires for a utility through the discretionary Section 5(c)(5) *in lieu* power sale.³⁹⁵ While a more detailed discussion of the *in lieu* provision will follow in the next issues in this ROD,³⁹⁶ it is important to note that if BPA acquires physical power for sale to a utility under Section 5(c)(5), the next Section—5(c)(6)—preserves that purchase for that utility: "Exchange sales to a utility pursuant to this subsection *shall not* be restricted below the amounts of electric power acquired by the Administrator from, *or on behalf of*, such utility pursuant to this subsection."³⁹⁷ Thus, under BPA's proposed implementation, Section 5(c)(6) is operative because it prohibits BPA from relying on preference or a notice of insufficiency to withhold *in lieu* power BPA had acquired "on behalf" of a utility under Section 5(c)(5).³⁹⁸

In short, BPA's position that Section 5(c)(1) does not require a physical sale is further confirmed by Section 5(c)(6), not undermined by it. Section 5(c)(6) serves the important twofold purposes of preserving the energy neutrality of the Section 5(c)(1) exchange and protecting actual physical sales under Section 5(c)(5) from being withheld by BPA.

³⁹² See 16 U.S.C. § 839c(c)(1) ("Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator . . . the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility . . .").

³⁹³ 16 U.S.C. § 839c(c)(6) (emphasis added).

³⁹⁴ H.R. Rep. No. 96-976, pt. I, at 61 (1980) (emphasis added).

³⁹⁵ See 16 U.S.C. § 839c(c)(5).

³⁹⁶ See also Issues 3.4.3 (discussing *in lieu* in the context of the Section 5(c)(1) exchange), 9.5.1 (discussing the functionality of *in lieu* in the context of the Section 5(c)(5) and the 2026 RPSA).

³⁹⁷ 16 U.S.C. § 839c(c)(6) (emphasis added).

³⁹⁸ See 2026 RPSA § 15.1.

c. *Congress intentionally omitted terms and provisions that apply to physical power sales (Section 5(b)) in the Section 5(c)(1) exchange.*

When Congress intends for BPA to manage firm physical power sales from actual resources, it employs specific statutory language and requirements to convey that intent. Importantly, those indicators are absent from the Section 5(c)(1) exchange.

Section 5(b) of the Northwest Power Act establishes BPA's obligation to sell firm, physical power to regional Public Power customers, federal agencies, and IOUs.³⁹⁹ By far, Section 5(b) establishes the largest amount of physical power sales BPA engages in under its statutes. It is also BPA's largest source of revenue.

Nonetheless, before BPA is obligated to engage in a long-term physical power sale with a utility under Section 5(b), Congress requires, per Section 5(b)(4), that the utility "compl[y] with the Administrator's standards for service in effect on December 5, 1980, or as subsequently revised."⁴⁰⁰ Congress specifically included this safeguard to ensure that BPA and the utility are operationally prepared for the coordination and management required for high-voltage wholesale power delivery and acceptance.⁴⁰¹ These standards include ensuring the entity has demonstrated "utility responsibilities," such as the "financial ability to pay," the operations and structure to "perform utility functions such as metering, billing, operation and maintenance on utility facilities," as well as be able to transact with BPA "in wholesale amounts."⁴⁰² Today's standards include the requirement that a utility show its capability to "interconnect with BPA's transmission system" consistent with the standards promulgated in BPA's Open Access Transmission Tariff.⁴⁰³ If a utility does not meet these rigorous standards, BPA can refuse to sell them physical power under Section 5(b): "Section 5(b)(4) ensures that the Administrator will not be required to serve any technologically-unprepared customer that cannot meet the necessary technical service criteria."⁴⁰⁴

In contrast, Congress included *no* reference to BPA's standards of service or *any* readiness criteria at all for purchases and sales under Section 5(c)(1). It is illogical to assume Congress would impose rigorous operational standards for physical sales in Section 5(b) but omit those same standards in Section 5(c) (if the latter provision was also intended to be implemented as a physical sale, with potentially thousands of MWs at issue). The reason for this omission is clear: the utility was using its own resources to serve its load under

³⁹⁹ 16 U.S.C. § 839c(b)(1).

⁴⁰⁰ 16 U.S.C. § 839c(b)(4).

⁴⁰¹ See H.R. Rep. No. 96-976, pt. I, at 60 (1980) ("By requiring that preference customers, IOU's and Federal agency customers comply with the Administrator's standards for service, Section 5(b)(4) ensures that the Administrator will not be required to serve any technologically-unprepared customer that cannot meet the necessary technical service criteria. BPA may periodically review and revise these standards.").

⁴⁰² See Policy Decision Regarding Bonneville Power Administration's Standards for Service at 3, 6 (June 13, 2000), available at <https://www.bpa.gov/-/media/Aep/about/tribal-affairs/standards-for-service-policy-document.pdf>. The standards of service were eventually codified to reflect prior versions of these standards, which were previously applied on a customer-by-customer basis.

⁴⁰³ *Id.* at 6-7.

⁴⁰⁴ See H.R. Rep. No. 96-976, pt. I, at 60 (1980).

Section 5(c)(1), so requiring it to comply with the standards of service was unnecessary. This fundamental difference in required standards between physical power sales under 5(b) and sales under 5(c) is strong evidence that Congress did not expect the Section 5(c) exchange to involve physical power.

d. Public Power customers can participate in the Section 5(c)(1) exchange.

The IOUs' interpretation of Section 5(c)(1) as a physical exchange also introduces problems when considering that the REP is *not* limited to only IOU participation. The IOUs recognize that both Public Power customers and IOUs may participate in the REP.⁴⁰⁵ This is correct. Section 5(c)(1) provides that “[w]henver a *Pacific Northwest electric utility* offers to sell electric power to the Administrator”⁴⁰⁶ Historically, many Public Power customers have participated.⁴⁰⁷ Because Congress permitted *both* IOUs *and* Public Power utilities to participate in the Section 5(c)(1) exchange, it must be assumed Congress meant for the REP to be structured in a manner that allowed it to function for both Public Power customer and IOU participation.⁴⁰⁸

Structuring the Section 5(c)(1) exchange as a physical exchange, however, makes it incompatible with Public Power utilities that purchase power from BPA under Section 5(b) of the Act. Two significant barriers emerge under a physical implementation of the REP.

The first is legal. Section 5(b)(1) of the Northwest Power Act limits a utility's entitlement to BPA power to its remaining loads not met by its own resources.⁴⁰⁹ Utilities are legally required to dedicate certain existing resources (prior to December 5, 1980) to serve their own loads first and cannot discontinue this use without the Administrator's express, limited permission.⁴¹⁰ However, if the Section 5(c)(1) exchange were implemented as a physical exchange, some or all of the utility's resources would have to be sold to BPA, nullifying Section 5(b)(1)'s requirement that Public Power customer's resources be first applied to serve the customer's firm power loads. Absent a broad finding that all Public Power resources may be statutorily discontinued from serving load (a finding never contemplated under the statute), an inherent conflict would exist between Sections 5(b)(1)

⁴⁰⁵ IOU Comment at 1.

⁴⁰⁶ 16 U.S.C. § 839c(c)(1) (emphasis added).

⁴⁰⁷ BPA signed 1981 RPSAs with 112 Public Power customers. See BPA Record of 1981 RPSAs.

⁴⁰⁸ BPA notes that Public Power customers have waived their right to participate in the REP during the term of the Provider of Choice (POC) contract (FY 2028-2044). See POC Policy § 10.1 (Mar. 21, 2024), available at <https://www.bpa.gov/-/media/Aep/power/provider-of-choice/provider-of-choice-policy-march-2024.pdf>; POC Policy ROD at 294-301. This waiver, however, does not excuse BPA from designing the RPSA consistent with Congressional intent. As noted, both Public Power customers and IOUs may participate under Section 5(c)(1), and historically, both have. This Record of Decision establishes BPA's formal legal position on the structure of the RPSA. As such, this decision will apply to future implementations of the REP should a Public Power customer seek to exercise its statutory right to reenter the program.

⁴⁰⁹ 16 U.S.C. § 839c(b)(1). BPA frames this issue as applying to Public Power customers because they, historically and currently, are the only parties with contracts under Section 5(b). IOUs, in fact, also have a right to purchase under Section 5(b), and the same “un-dedication” issue would arise for them as well.

⁴¹⁰ 16 U.S.C. § 839c(b)(1)(A)-(B).

and 5(c)(1).⁴¹¹ It is illogical that Congress would design the Section 5(c)(1) energy-neutral exchange to operate in direct tension with Section 5(b) sales—which govern BPA's largest physical power sales. Section 5(c)(1) exchanges were intended to operate concurrently with BPA's physical Section 5(b)(1) physical sales, not in contravention to them.

The second is logistical. During the 2026 RPSA workshops, BPA highlighted the absurd outcome of implementing the REP as a physical exchange for Public Power customers that purchase power from BPA under Section 5(b): “BPA sells power to utility under 5(b); utility sells that power back to BPA under 5(c); BPA then sells power back to utility under 5(c).”⁴¹² Since BPA controls the return schedule in such a physical exchange, it would eventually have to convert Public Power's implementation into a “bookout” or “bookkeeping” transaction for the REP to function.⁴¹³ It is illogical to assume Congress intended IOU participants to receive physical power (without netting and a bookout) while effectively requiring BPA to perform a bookout with participating Public Power customers.

Further, this absurd multiple back and forth outcome would not be limited to Public Power customers under a physical exchange. The same absurd result would occur under a physical exchange if an IOU were to purchase Section 5(b) power from BPA, as allowed by the Northwest Power Act.⁴¹⁴ The IOU would purchase power from BPA, resell that power to BPA, and then repurchase that same power—ultimately resulting in two “booked out” power sales.

Implementing the Section 5(c)(1) exchange as a non-physical “bookout”-like transaction resolves these legal and logistical issues and allows Sections 5(b) and 5(c) to function as intended. Because the Section 5(c)(1) exchange does not involve physical power, Public Power utilities may continue to dedicate their own resources to serve their load as intended by Section 5(b)(1).⁴¹⁵ Additionally, because the Section 5(c)(1) exchange

⁴¹¹ See 16 U.S.C. § 839c(b)(1) (noting that resources must continue to be used to serve firm load, “unless such use is discontinued with the with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.”)

⁴¹² RPSA Workshop 1 PPT at 36.

⁴¹³ Hydrologically, BPA generation dispatchers would never move the federal power system for a transaction that will eventually result in a bookout or bookkeeping transaction. Federal hydroelectric projects are multi-use projects. They do not exist simply to produce energy, but also provide flood control, irrigation, navigation, and recreation. They also must be operated consistent with rigid environmental constraints. BPA “duty schedulers” are tasked with “scheduling” the power from the federal projects to meet for each hour all of these hydrological objectives for that hour. BPA duty schedulers do this by setting “base points” for each generating unit at each project for the hour. These “base points” reflect the level of generation that each unit will produce over the next hour. Importantly, these “base points” are set to meet *physical* power draws on BPA's system. That is, it must result in a *net* power impact to the BPA hydro system. A “bookout” or bookkeeping transaction would not result in the BPA duty scheduler adjusting a “base point” for the federal hydro system.

⁴¹⁴ See 16 U.S.C. § 839c(b)(1) (“Whenever requested, the Administrator shall offer to sell . . . to each requesting **investor-owned utility** electric power to meet the firm power load of such . . . **investor-owned utility** in the Region to the extent that such firm power load exceeds . . . [the utility's own resources].” (emphasis added).

⁴¹⁵ And, in fact, historically, BPA has never required utilities to undedicate their own, non-federal resources to participate in the REP.

operates as a financial “bookout”, and no power flows, the absurd result of BPA and the Public Power customer physically trading their own power back and forth multiple times is eliminated.

The Section 5(c)(1) exchange also allows a Public Power customer to receive the “cost benefits” envisioned by Congress through a “bookout.” The Public Power customer’s cost of resources (which would include the cost the utility incurs for BPA’s power) can be compared to BPA’s cost of power to determine if the utility is entitled to the “cost benefits” payment. If the Public Power customer’s average resource cost is above BPA’s power costs, it would receive an REP payment in the same way as an IOU. In short, structuring the Section 5(c)(1) exchange as a bookkeeping/bookout transaction (as BPA has always done) allows the REP to function for *both* Public Power and IOU participants and gives meaning to “a Pacific Northwest electric utility”.⁴¹⁶ A physical exchange does not.

8. Case law treatment of the REP under the 1981 RPSA, ASCM, and REP Settlements.

The IOUs contend that “no court has held that Section 5(c)(1) does not require a physical exchange” and that the issue of a physical exchange “has not been directly addressed” with most cases “merely” discussing the “history, purpose, and background of the statute in general terms.”⁴¹⁷ Nevertheless, the IOUs are quick to cite with approval one comment from the Supreme Court’s decision in *Alcoa* in which the Court provides a brief overview of the REP as “essentially require[ing] BPA to trade its cheap power for more expensive power.”⁴¹⁸ Notably, even there, the emphasis is on the cost of power.

To date, there have been 11 cases before the Ninth Circuit and one in front of the Supreme Court that have, in some fashion, discussed the REP and Section 5(c)(1).⁴¹⁹ These cases have referred to the REP in varying ways, from a “money-losing” program,⁴²⁰ as a series of “bookkeeping entries only,”⁴²¹ an “accounting transaction,”⁴²² “paper transaction,”⁴²³ a “fictional exchange of power” that is a “subsidy,”⁴²⁴ and a “cash rebate.”⁴²⁵ One case even

⁴¹⁶ See, e.g., *Clinton v. City of New York*, 524 U.S. 417, 429 (1998) (“Acceptance of the Government’s new-found reading of [the disputed statute] ‘would produce an absurd and unjust result which Congress could not have intended.’” (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 574 (1982))).

⁴¹⁷ IOU Comment at 7.

⁴¹⁸ *Id.* at n.29 (citing *Alcoa*, 467 U.S. 380, 398 (1984)).

⁴¹⁹ See *Alcoa*, 467 U.S. 380; *Pub. Util. Comm’n of Or. v. Bonneville Power Admin.*, 767 F.2d 622 (9th Cir. 1985); *Pac. Power & Light Co. v. Bonneville Power Admin.*, 795 F.2d 810 (9th Cir. 1986); *PacifiCorp v. FERC*, 795 F.2d 816 (9th Cir. 1986); *Cent. Elec. Coop. v. Bonneville Power Admin.*, 835 F.2d 199 (9th Cir. 1987); *Aluminum Co. of Am. v. Bonneville Power Admin.*, 903 F.2d 585 (9th Cir. 1990); *CP Nat’l Corp. v. Bonneville Power Admin.*, 928 F.2d 905 (9th Cir. 1991); *Wash. Utils. & Trans. Comm’n v. FERC*, 26 F.3d 935 (9th Cir. 1994); *PGE*, 501 F.3d 1009 (9th Cir. 2007); *Golden Nw. Aluminum v. Bonneville Power Admin.*, 501 F.3d 1037 (9th Cir. 2007); *Pac. Nw. Generating Coop. v. Dep’t of Energy*, 580 F.3d 792 (9th Cir. 2009); *APAC*, 733 F.3d 939 (9th Cir. 2013).

⁴²⁰ *Alcoa*, 467 U.S. at 399.

⁴²¹ *Pub. Util. Comm’n of Or.*, 767 F.2d at 624.

⁴²² *Pac. Power & Light Co.*, 795 F.2d at 812; *CP Nat’l Corp.*, 928 F.2d 905, 907 (9th Cir. 1991).

⁴²³ *PacifiCorp*, 795 F.2d at 818; *PGE*, 501 F.3d at 1015.

⁴²⁴ *Cent. Elec. Coop.*, 835 F.2d at 200.

⁴²⁵ *Golden Nw. Aluminum v. Bonneville Power Admin.*, 501 F.3d 1037, 1047 (9th Cir. 2007).

refers to the Section 5(c)(1) exchange as the only place in the Act that authorizes BPA to “monetize[] [an] energy contract[].”⁴²⁶

BPA does not concede that some or all of these descriptions of the REP are “merely” dicta.⁴²⁷ Indeed, in essentially every case, the Court’s description of the REP aligns with BPA’s historical and current REP implementation and interpretation. In any event, for purposes of this decision, the Court’s prior pronouncements do not alter BPA’s perspective on the clear statutory language, purpose, and intent for the REP.

The Court’s prior descriptions of the REP are important, however, in refuting the IOUs’ revisionist interpretation of the 1981 RPSA. The IOUs argue that BPA adopted a “flexibility” approach in the 1981 RPSA by using the term “deemed” delivery at the “election of an exchanging utility.”⁴²⁸ They claim this approach was intended to “limit administration challenges associated with physical delivery.”⁴²⁹ Implicit in the IOUs’ comment is that BPA and the IOUs *agreed* in the 1981 RPSA that the REP was intended to be physical, and that the parties contracted their way around Congress’ intent through contractual sophistry by claiming that power was “deemed deliver[ed].”⁴³⁰

The IOUs’ claim is unsupported by the record. For one, the 1981 RPSA does not use the term “deemed delivery.” Instead, it states that in the “provision relating to delivery” the “Utility shall submit to Bonneville . . . an *accounting invoice* with supporting documentation for the Utility’s Residential Load billed during the billing period selected by the Utility. . . . This *accounting invoice* will be deemed the receipt for the purchase and sale of power under the agreement.”⁴³¹ This “accounting invoice” was intended to be the sum total of both the utility’s sale to BPA, and BPA’s return sale to the utility. Mechanically the invoicing paradigm described in this portion of the 1981 RPSA is very much akin to a “bookout” invoicing construct. Nothing in section 5 of the 1981 RPSA indicates that these invoicing instructions were intended to effectuate a physical exchange. In contrast, as described earlier, BPA was clear in contemporaneous documents that the 1981 RPSA implementation was built around a non-physical exchange.⁴³²

Second, even if the “deemed receipt” term was meant to convey this intent, the Court in several cases has not understood this to be relevant. The 1981 RPSA was active from 1981 to 2001,⁴³³ meaning any judicial review by the Ninth Circuit or the Supreme Court regarding the REP would have necessarily involved its terms and operation. Nevertheless,

⁴²⁶ *Pac. Nw. Generating Coop. v. Dep’t of Energy*, 580 F.3d 792, 819 (9th Cir. 2009) (“Other than a provision related to the sale of energy to IOUs, *see* § 839c(c), there is no explicit statutory language in the NWPA that either allows or prohibits BPA from monetizing energy contracts.”).

⁴²⁷ IOU Comment at 7.

⁴²⁸ *Id.* at 2.

⁴²⁹ *Id.*

⁴³⁰ *Id.* (arguing that BPA included the “deemed delivery” term to “utilize[] the flexibility conferred by Congress in recognition that physical delivery may not always be practical or necessary to effectuate Section 5(c)’s physical exchange requirement.”).

⁴³¹ 1981 RPSA § 5 (emphasis added).

⁴³² *See* Issue 3.4.2 – part 7.a (discussing BPA’s contemporaneous description of REP).

⁴³³ 1981 RPSA § 1 (noting effective date of September 30, 1981, and termination date of June 30, 2001).

during this time, the Court did not acknowledge the "deemed receipt" term as being of any import. Instead, in full view of the 1981 RPSA's structure, the Court described the Section 5(c)(1) exchange as a "fictional exchange of power,"⁴³⁴ a "subsidy,"⁴³⁵ a "paper transaction,"⁴³⁶ or an "accounting transaction."⁴³⁷ BPA's point is this: while the IOUs may now assert the past significance of the "deemed receipt" term in the 1981 RPSA in preserving the alleged physical nature of the REP, neither BPA, nor apparently the courts, observe this significance.

The IOUs also claim that more recent RPSAs have implemented the "physical exchange requirement by agreement of the parties."⁴³⁸ These agreements, the IOUs claim, "in effect waived certain statutory rights during the applicable agreement period but not outside of the agreement period"⁴³⁹

BPA clarifies that none of the prior agreements (2000 RPSA, 2008 RPSA, REPSIA, 2012 REP Settlement)⁴⁴⁰ mention or explicitly discuss a "physical" exchange. Indeed, *none* of these RPSAs even include a "delivery" provision.⁴⁴¹ Therefore, the IOUs' recharacterization of these agreements as "physical exchanges" agreed to by the parties is a recent development reflecting their current position. Similarly, the IOUs' claim of having "in effect waived" the right to a physical exchange is not substantiated in any previous RPSA.⁴⁴² BPA acknowledges that the parties did waive certain rights in the 2012 REP Settlement, and all parties (including BPA) agreed that this settlement represented "the compromise of disputed issues, claims, and defenses and does not constitute any Party's admission or concession with respect to the merits of any such disputed issues, claims, or defenses."⁴⁴³ Thus, BPA does not dispute the IOUs' right to raise this issue now. However, BPA notes that despite extensive review of REP issues between 2000 and 2011, documented in the 2000 RPSA ROD,⁴⁴⁴ the 706-page WP-07 Supplemental Record of Decision,⁴⁴⁵ and the 2008 RPSA ROD,⁴⁴⁶ the IOUs failed to dedicate any attention to whether Section 5(c)(1) must be

⁴³⁴ *Cent. Elec. Coop. v. Bonneville Power Admin.*, 835 F.2d 199, 200 (9th Cir. 1987).

⁴³⁵ *Id.*

⁴³⁶ *PacifiCorp v. FERC*, 795 F.2d 816, 818 (9th Cir. 1986).

⁴³⁷ *Pac. Power & Light Co. v. Bonneville Power Admin.*, 795 F.2d 810, 812 (9th Cir. 1986); *CP Nat'l Corp. v. Bonneville Power Admin.*, 928 F.2d 905, 907 (9th Cir. 1991).

⁴³⁸ IOU Comment at 8.

⁴³⁹ *Id.*

⁴⁴⁰ See 2000 RPSA; 2008 RPSA; 2012 REP Settlement; 2012 REPSIA. The 1995 RPSA was offered as an alternative to the 1981 RPSA, and consequently, included the same delivery provision as the 1981 RPSA.

⁴⁴¹ See 2000 RPSA, § 4 (noting the "purchase and sale transactions . . . are for the purpose of determining monetary benefits, if any, to be paid by BPA to [customer]."); 2008 RPSA, § 8 (describing an "accounting invoice" for the difference between exchanging utility and BPA sales); REPSIA (no delivery provisions).

⁴⁴² See 1981 RPSA (no waiver mentioned); 1995 RPSA (no waiver mentioned); 2000 RPSA (no waiver mentioned); 2008 RPSA (no waiver mentioned).

⁴⁴³ 2012 REP Settlement § 11.1.

⁴⁴⁴ See 2000 RPSA ROD (noting 19 issues, but none related to financial structure of Section 5(c)(1)).

⁴⁴⁵ See WP-07S ROD (listing 103 separate "issues" but none addressing financial structure of the Section 5(c)(1) exchange).

⁴⁴⁶ 2008 RPSA ROD (noting 20 issues, but none related to financial structure of Section 5(c)(1)).

implemented as a physical exchange to comply with statute. The record does not support the IOUs' assertion that these prior agreements acknowledge the REP as a physical sale.

9. Practical limitations with implementing the Section 5(c)(1) exchange as a physical exchange.

Finally, BPA notes that if it changed its long-standing approach and turned to implementing the REP as a physical exchange, significant practical limitations would likely result in minimal participation in the REP from regional utilities today. While practical limitations would not override a clear directive to implement the Section 5(c)(1) exchange as a physical sale,⁴⁴⁷ (which the statute does not direct), it is nonetheless important to consider the problems that would arise from the physical implementation of the Section 5(c)(1) exchange. As explained below, BPA does not have the systems in place to convey or accept energy in the size of the IOUs' residential load.

As discussed in BPA's September 11, 2025, workshop, a physical implementation of the Section 5(c)(1) exchange would require IOUs to deliver physical energy to BPA.⁴⁴⁸ This would necessitate IOUs having sufficient generating and transmission capacity on their systems. Conversely, BPA would need generation capacity to both reduce (decrement) its federal projects to accept the IOUs' power and to increase (increment) the federal system to generate power for return exchange sales.⁴⁴⁹ BPA's side of the transaction would also require generation capacity.⁴⁵⁰ Under a physical exchange, all limitations associated with an actual power sale would apply, including limiting the exchange to the available power and transmission capacity of both BPA and the utility.

The IOUs' residential load is approximately 4900 aMW.⁴⁵¹ All of this load is currently being served by the IOUs' own resources. In order for the IOUs and BPA to physically "sell" this power to each other, a host of transmission and Open Access Transmission Tariff issues would arise. This would include whether either BPA or the IOU have available transmission to permit these transfers. Whether BPA and the IOU would have to undesignate some or all of its resources from serving their own respective network or native loads to accommodate such a sale. These complexities become even more compounded when considering the overlay of (potentially) multiple organized day-ahead markets. It is more likely than not that the REP would not be implementable until these technical and system issues were addressed.

⁴⁴⁷ See *State of Wis. v. EPA*, 938 F.3d 303, 319 (D.C. Cir. 2019) ("When an agency faces a statutory mandate, a decision to disregard it cannot be grounded in mere infeasibility. Rather, the agency would need to meet the 'heavy burden to demonstrate the existence of an impossibility.'" (quoting *Sierra Club v. EPA*, 719 F.2d 436, 462 (D.C. Cir. 1983))).

⁴⁴⁸ RPSA Workshop 1 PPT at 35.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ See FY 2026 Power Rate Schedules and General Rate Schedule Provisions, BP-26-A-01-AP01, at D-92-93 (showing IOU residential load in kilowatthours), available at, <https://proceedings.bpa.gov/Home/OpenDoc?fileId=8123>.

BPA's generation side faces even larger problems. Active litigation challenging the operations of the hydroelectric system threatens to further constrain BPA's ability to meet its firm power obligations to its own Public Power customers' load.⁴⁵² To accept the IOUs' power under the Section 5(c)(1) exchange, BPA would have to backdown its own hydroelectric power, which presumes BPA has the capability of retaining water behind its projects.⁴⁵³ Yet, this capability is already severely constrained, and is becoming more so with legal challenges to the operation of the hydrological system limiting this flexibility. This means that, even if the transmission availability issues could be resolved, BPA will likely be unable to receive the IOUs' physical sales in any significant quantities.

The IOUs suggest that certain physical deliveries might offer "counterflow" to improve system reliability. Additionally, the IOUs argue that the functionality for implementing physical returns is possible given BPA has developed provisions addressing physical deliveries in the *in lieu* provision of the RPSA. The IOUs also mention that energy returns occur under BPA's Open Access Transmission Tariff, through loss returns.⁴⁵⁴

None of these observations advance the IOUs' point. The IOUs' identification of various ways BPA has facilitated small amounts of physical power flow in other transactions does not address the core issue: if Congress legally requires physical implementation of the Section 5(c)(1) exchange, then BPA must design it to allow all eligible participants' loads to engage physically, in line with Congressional intent.⁴⁵⁵ The IOUs' proposals, however, fail to ensure all eligible loads can participate in the Section 5(c)(1) exchange. None of the IOUs' suggestions above shows that a full, physical exchange is possible. To get around this point, the IOUs propose BPA use general facilitative authorities (Section 9(b)) to achieve the IOUs' desired outcome through contractual work arounds. As discussed in *Issue 3.4.1*, if Section 5(c)(1) mandates a physical exchange, (a point BPA does not concede), BPA must align the REP with that intent. No facilitative power—be it Section 9(b), Section 2(f) of the Bonneville Project Act, or BPA's general authority to operate consistent with "sound business principles"—will grant BPA license to disregard Congress' clear directive.⁴⁵⁶

⁴⁵² See Declaration of Rachel Dibble at 16, Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., No. 01-cv-640 (D. Or. Dec. 16, 2025) (noting that plaintiff's proposed order could reduce power generation by up to "1,400 average megawatts . . . and deplete reserve carrying capacity at all projects in the lower Snake and lower Columbia rivers leading to power and transmission reliability risk that will harm human health and safety.").

⁴⁵³ See *id.* (noting BPA would "[n]eed generating capacity to decrement federal system to accept power from IOUs.").

⁴⁵⁴ IOU Comment at 8, n.32.

⁴⁵⁵ *Cent. Mont. Elec. Power Coop. v. Adm'r of Bonneville Power Admin.*, 840 F.2d 1472, 1477 (9th Cir. 1988) ("Absent a clearly expressed legislative intent to the contrary, the plain language must ordinarily be regarded as conclusive." (citations omitted)); see S. Rep. No. 96-272, App. B at 71-79 (1979) (showing 18 different scenarios of loads and resources, all of which indicate that the IOUs' (residential and irrigation) load would fully participate).

⁴⁵⁶ See *PGE*, 501 F.3d 1009, 1028 (9th Cir. 2007) (9th Cir. 2007) ("BPA's general settlement authority is subject to the constraints of the Bonneville Project Act and the NWPA; whenever BPA exchanges power with a Pacific Northwest utility, it acts pursuant to its § 5(c) power; and when BPA acts under § 5(c), the projected power rates to be charged to BPA's non-preference customers are subject to the constraints of § 7(b) of the NWPA.").

To conclude, given the practical and logistical limitations on BPA's transmission and generation systems, a physical implementation of the Section 5(c)(1) exchange would effectively dismantle the REP and contravene Congress' core objectives for broad utility participation and residential load rate relief. The IOUs' proposals for physical delivery, while offering minor facilitative suggestions, fundamentally ignore the current physical realities and Congress' original intent, which prioritized a functional and accessible REP over a physically constrained one.

Decision

Section 5(c) of the Northwest Power Act does not require BPA to implement the REP as a physical purchase and sale transaction. BPA's decision to implement the Section 5(c)(1) as an energy-neutral "bookkeeping" transaction is lawful.

Issue 3.4.3

Whether BPA's treatment of "in lieu" power as a physical sale in the 2026 RPSA is inconsistent with BPA's legal position that the Section 5(c)(1) exchange sale is not a physical exchange.

BPA Staff's Proposal

Section 5(c)(5) allows BPA to purchase power from another source, to displace the Section 5(c)(1) exchange with physical power. This provision, called the *in lieu* power sale, is included in section 9 of the 2026 RPSA.⁴⁵⁷ Under this provision, BPA may reduce the energy-neutral Section 5(c)(1) exchange sale by purchasing replacement power from "other sources," provided the price is below the utility's Average System Cost (ASC).⁴⁵⁸ If implemented, the purchase and sale to the utility of the *in lieu* power would be for physical power.⁴⁵⁹

Parties' Positions

The IOUs argue that BPA's design of the Section 5(c)(5) *in lieu* power sale shows that physical delivery is feasible under Section 5(c)(1) of the Northwest Power Act.⁴⁶⁰ They criticize BPA for not clarifying why physical deliveries under Section 5(c)(1) are not statutory requirements when BPA allows them in the context of *in lieu* transactions.⁴⁶¹ The IOUs contend that BPA's differentiated treatment of *in lieu* transactions under Section 5(c)(5) when compared to purchase and exchange sales under Section 5(c)(1) is arbitrary and capricious.⁴⁶² The WUTC echoes this sentiment, arguing that claiming physical transactions are unfeasible for the REP contradicts allowing them for *in lieu* power sales.⁴⁶³

⁴⁵⁷ 2026 RPSA § 9.

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.* at Exhibit D.

⁴⁶⁰ IOU Comment at 9.

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ WUTC Comment at 2.

Public Power customers support BPA's proposed treatment of *in lieu* power sales under the 2026 RPSA.⁴⁶⁴

Evaluation of Positions

Section 5(c)(5), colloquially called the *in lieu* provision, is a discretionary provision that allows BPA to replace all or a portion of the energy-neutral exchange sale with the utility under Section 5(c)(1) with physical power produced by "other sources."⁴⁶⁵ The impact of this replacement sale on the REP is twofold. First, it eliminates the 'energy neutrality' feature of the Section 5(c)(1) exchange. Because BPA is acquiring power from "other sources" there is no longer an equal and offsetting transaction just between BPA and the utility. Second, if implemented, *in lieu* reduces the cost of the REP for BPA and its rate payers.⁴⁶⁶

BPA is required to include terms in an RPSA that permits the implementation of the Section 5(c)(5) *in lieu* provision when the REP is not settled.⁴⁶⁷ To meet that requirement, section 9 of the 2026 RPSA contains the terms for implementing the *in lieu* sale.⁴⁶⁸

The IOUs contend that BPA admits that "some amount" of physical delivery of power is feasible and expressly considered under Section 5(c)(5) of the Northwest Power Act.⁴⁶⁹ The IOUs assert that BPA does not explain why "physical deliveries under Section 5(c)(1) are not required under the statute in the absence of in-lieu transactions, nor why the draft RPSA's scheduling flexibility for in-lieu transactions could not be applicable in other physical exchange contexts."⁴⁷⁰ The IOUs argue that BPA's "different treatment of in-lieu transactions and purchase and exchange sales is arbitrary and capricious and inconsistent with the statute."⁴⁷¹ The WUTC makes a similar argument, noting that "a physical transaction of energy is not feasible contradicts the proposal to allow for physical exchanges of energy to fulfill the 'in-lieu of' requirements of the REP."⁴⁷²

BPA disagrees that its interpretation of Section 5(c)(5), or its structure of section 9 of the 2026 RPSA, is inconsistent with its legal position that the Section 5(c)(1) exchange is not a physical sale. The Section 5(c)(1) exchange and the Section 5(c)(5) *in lieu* sale are distinct power transactions under Section 5(c). The Section 5(c)(5) *in lieu* sale is, by definition, *instead of*, the 5(c)(1) exchange. It replaces the Section 5(c)(1) energy-neutral exchange. The provision reads:

Subject to the provisions of Sections [4] and [6] of this title, in lieu of purchasing any amount of electric power offered by a utility under paragraph

⁴⁶⁴ Public Power Comment at 18.

⁴⁶⁵ 16 U.S.C. § 839c(c)(5).

⁴⁶⁶ See *infra* section 9 of this ROD.

⁴⁶⁷ See *CERC*, 807 F.2d 1456, 1462 (9th Cir. 1987) (noting BPA would be abusing its discretion if it "completely precluded itself from ever making in-lieu purchases").

⁴⁶⁸ 2026 RPSA § 9.

⁴⁶⁹ IOU Comment at 9.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² WUTC Comment at 2.

(1) of this subsection, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.⁴⁷³

Under Section 5(c)(5), BPA does not purchase power from the exchanging utility. Instead, BPA may take a different action “in lieu of purchasing any amount . . . offered.”⁴⁷⁴ Then, the “power sold to such utility” component of the exchange is “replace[d]” by power BPA has “acquire[d]...from other sources.”⁴⁷⁵ The Ninth Circuit similarly described this provision as a “substitution” for the exchange under Section 5(c)(1).⁴⁷⁶ Moreover, the Court made clear that there is no tension between Section 5(c)(1)’s “paper transaction” and 5(c)(5)’s “actual sale of power.” As noted in *APAC*:

The *in lieu* provision of Section 5 permits BPA, ‘in its discretion, [to] sell the IOUs actual power purchased from other sources in lieu of participating in the REP so long as BPA’s cost for purchasing such power is less than the IOUs’ cost to produce or secure their own power.’ Thus, in theory, BPA can reduce the costs of the REP by engaging in *in lieu* transactions, which involve the actual sale of power, rather than paper transactions.⁴⁷⁷

The IOUs claim that Sections 5(c)(1) and 5(c)(5) must be treated equally to avoid an inconsistency within Section 5(c).⁴⁷⁸ This assertion is false. Congress intended a very different outcome for Section 5(c)(5) and provided clear indicators of that intent to BPA in the language it used in Section 5(c)(5).

First, Section 5(c)(5) is subject to “sections [4] and [6] of [the Northwest Power Act].”⁴⁷⁹ Section 4 is the resource planning and development portion of the Northwest Power Act.⁴⁸⁰ It contains the elaborate power planning activities by the Northwest Power Planning Council, which includes the development of a power “plan.”⁴⁸¹ Section 6 (as discussed earlier) covers the resource acquisition process provisions.⁴⁸² *Neither* of these provisions applies to purchases under Section 5(c)(1) exchange.⁴⁸³ *Both*, however, apply to *in lieu*

⁴⁷³ 16 U.S.C. § 839c(c)(5).

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

⁴⁷⁶ *CERC*, 807 F.2d at 1461.

⁴⁷⁷ *APAC*, 733 F.3d 939, 960–61 (9th Cir. 2013) (quoting *PGE*, 501 F.3d 1009, 1022 (9th Cir. 2007)).

⁴⁷⁸ IOU Comment at 9.

⁴⁷⁹ 16 U.S.C. § 839c(c)(5).

⁴⁸⁰ *See* 16 U.S.C. § 839b(d) *et seq.*

⁴⁸¹ *Id.*

⁴⁸² *See* 16 U.S.C. § 839d *et seq.*

⁴⁸³ The Section 5(c)(1) exchange is implicitly exempt from the Council’s Plan requirements of Section 4. Since the Council’s Plan guides BPA’s resource acquisitions under Section 6, and the Section 5(c)(1) exchange is expressly exempt from Section 6, the Plan similarly does not apply to the Section 5(c)(1) exchange. This is further supported by *CERC*, which found that Section 4’s “cost effective” provisions do not control BPA’s discretionary *in lieu* authority under Section 5(c)(5). *CERC*, 807 F.2d 1456, 1461 (9th Cir. 1987). Given that Section 5(c)(5) directly refers to Section 4, if Section 4 does not limit the discretion Congress afforded BPA in implementing its Section 5(c)(5) authority, it patently does not apply to Section 5(c)(1), which does not

acquisition under Section 5(c)(5). The reason for this difference is simple—Section 5(c)(5) purchases are an acquisition of *physical* power, and in such case, BPA must follow the intricate and detailed rules Congress set forth for physical power acquisitions. Section 5(c)(1) purchases, in contrast, are *not* physical, and consequently, may be incurred without complying with these provisions. Had Congress applied Sections 4 and 6 to the REP, it is doubtful that the REP would have even existed.⁴⁸⁴

Second, Section 5(c)(5) sales involve a third-party source of power (*i.e.*, “other sources”), which, as noted, introduces *real* megawatt hours into the REP transaction. The nature of the electric system is that the amount of power generated must instantaneously match the amount of power consumed at all times. This is what is known as being in “load and resource balance” – that is, resources *must* match load at all times. Implementing the Section 5(c)(1) exchange as a bookout-like transaction means that neither BPA nor the utility ever get outside of load and resource balance as a result of the exchange. Under Section 5(c)(5), however, a third-party would be supplying power to BPA. In that instance, BPA must do something with these megawatt-hours, and Section 5(c)(5) is clear what that something is: “replace power sold to such utility as part of an exchange sale.”⁴⁸⁵ BPA must sell this power to the utility, otherwise, BPA has more power than load and will be out of load and resource balance.

Third, Section 5(c)(5) is discretionary. This discretion is intentional because the Section 5(c)(5) *in lieu* power sale involves additional requirements constrained by physical reality. For one, BPA must locate an actual resource with a cost below the utility's ACS. If such a resource is found, BPA must then ensure its acquisition aligns with Sections 4 and 6. Additionally, BPA needs to secure the necessary transmission. Should any of these steps fail—be it resource availability, compliance with Sections 4 and 6, exceeding the utility's ASC of resources, or lack of transmission—BPA cannot implement the *in lieu* provision. Congress made the Section 5(c)(5) *in lieu* power sale discretionary precisely because of these “real world” constraints. The fact that in the 45-year history of the REP BPA has never implemented the *in lieu* provision further underscores the impact these constraints have on such a provision.

The Section 5(c)(1) exchange sale faces none of these limitations. Its plain language mandates that a utility can offer its entire residential load to BPA, and BPA must acquire and sell back an equivalent amount of power.⁴⁸⁶ Congress provided no discretion for BPA to limit or reduce this sale based on planning, resource, or transmission constraints.⁴⁸⁷ Consequently, there is a clear distinction between the mandatory and unconstrained nature of the Section 5(c)(1) exchange from the conditional and physically dependent

mention Section 4 at all and provides no ability of BPA to refuse to participate in the Section 5(c)(1) exchange.
⁴⁸⁴ See *CERC*, 807 F.2d at 1461. The Court's rationale for refusing to impose the Section 4 “cost effective” criteria on BPA's *in lieu* discretion is directly on point: “We reject this interpretation of the statute. If 5(c)(5) were applied in this manner, there would be no residential exchange program.” *Id.*

⁴⁸⁵ 16 U.S.C. § 839c(c)(5).

⁴⁸⁶ See 16 U.S.C. § 839c(c)(1).

⁴⁸⁷ See Issue 3.4.2 – part 7.a and 7.b.

implementation of the Section 5(c)(5) *in lieu* power sale.

Fourth, as a practical matter, if the Section 5(c)(5) *in lieu* power acquisition was not physical, the “cost of such acquisition” would not be tethered to reality.⁴⁸⁸ BPA might point to general market prices, or receive nonbinding quotes on hypothetical acquisitions. Given the additional practical requirements of a physical acquisition, the cost of a hypothetical acquisition may be lower than a physical acquisition. If BPA could lower the cost of the exchange by pointing to hypothetical acquisitions, one might expect Congress to have provided guidance or process limiting BPA’s discretion in naming its price. Notably, Section 5(c)(5) does not provide guidance on how to calculate the “cost of such acquisition.” This differs from the utility’s ASC, which is “determined by the Administrator on the basis of a methodology.”⁴⁸⁹ Here, unlike under the Section 5(c)(1) exchange, the “cost of such acquisition” was apparently self-evident to the drafters. This supports BPA’s position that Section 5(c)(5) was intended to apply to the acquisition of actual physical power.

Finally, using Section 5(c)(5) as a contextual basis to interpret Section 5(c)(1) is a flawed approach. As the Ninth Circuit Court has observed, Section 5(c)(5) lacks any legislative history references and is considered a “minor feature” of the exchange program with “only a very limited usefulness.”⁴⁹⁰

In contrast, the language and intent of the Section 5(c)(1) exchange are apparent: it is energy-neutral, designed to generate a cost differential between the utility’s resource costs and BPA’s rates, allows for full utility load participation, aims to provide a cost benefit to consumers, and permits utilities to exit when no longer economic. Just as Congress does not “hide elephants in mouseholes”⁴⁹¹ it is improbable that Congress intended to completely upend the functionality of the mandatory Section 5(c)(1) exchange through a discretionary provision. Section 5(c)(5) describes a transaction BPA *could* engage in *instead of* the Section 5(c)(1) energy-neutral exchange; it does not define how BPA is to conduct the Section 5(c)(1) exchange itself.

Decision

In lieu sales are a sale of physical power and are subject to express statutory requirements applicable to the acquisition of physical power. BPA’s treatment of in lieu power sales under the 2026 RPSA supports BPA’s legal position that the Section 5(c)(1) exchange (which are not subject to these same requirements) is not a physical exchange.

⁴⁸⁸ 16 U.S.C. § 839c(c)(5) (“in lieu of purchasing any amount of electric power offered by a utility under paragraph (1) the Administrator may acquire an equivalent amount of electric power from other sources . . . if the **cost of such acquisition** is less than the cost of purchasing the electric power offered by such utility.”) (emphasis added).

⁴⁸⁹ 16 U.S.C. § 839c(c)(7).

⁴⁹⁰ *CERC*, 807 F.2d at 1461; *see also APAC*, 733 F.3d 939, 961 n.40 (9th Cir. 2013) (same).

⁴⁹¹ *See Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001) (“Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”); *see also City of Redding v. FERC*, 693 F.3d 828, 840 (9th Cir. 2012) (same).

Issue 3.4.4

Whether BPA must convey or otherwise account for the environmental attributes and other alleged “non-cost” benefits of a physical sale as part of the Section 5(c)(1) exchange.

BPA Staff’s Proposal

The 2026 RPSA does not account for “non-cost benefits” in the Section 5(c)(1) exchange. Under the 2026 RPSA, a utility’s “REP Benefits”⁴⁹² are the monetary “cost benefits”⁴⁹³ generated by offsetting the utility’s ASC compared to BPA’s PF Exchange rate.⁴⁹⁴

Parties’ Positions

The IOUs argue that BPA must account for “non-cost benefits” through the Section 5(c)(1) exchange. They contend that the Section 5(c)(1) exchange is not limited to the “cost benefits” identified by Congress in Section 5(c)(3).⁴⁹⁵ Instead, they claim that under a physical exchange of the REP, the IOUs would have received a number of other “non-cost benefits,” including but not limited to, the environmental and carbon benefits of federal hydroelectric projects.⁴⁹⁶ The IOUs argue that these “non-cost benefits” are inherent characteristics of BPA’s power, which should be “equitably shared” with IOU customers.⁴⁹⁷ The WUTC supports the IOUs’ arguments.⁴⁹⁸

Public Power customers oppose any effort to include “non-cost” benefits as part of the Section 5(c)(1) exchange.⁴⁹⁹ Public Power customers argue that including the “environmental attributes” of the IOUs’ resources with FBS resources would violate numerous provisions of the Northwest Power Act and preference.⁵⁰⁰ Public Power customers also argue that power sold to BPA under the Section 5(c)(1) exchange does not become part of the FBS.⁵⁰¹ Public Power customers support BPA’s decision to limit the Section 5(c)(1) exchange to the “cost benefits” identified by statute.⁵⁰²

Evaluation of Positions

As noted in *Issue 3.4.2*, BPA finds that the Section 5(c)(1) exchange is not required to be implemented as a physical exchange. Thus, structuring it as a financial/paper transaction is lawful. Left open by this decision, though, is whether BPA must account for any alleged “non-cost benefits” in the Section 5(c)(1) exchange as part of a financial/paper transaction.

The IOUs argue that BPA must account for “non-cost benefits” through the Section 5(c)(1) exchange. They contend that the Section 5(c)(1) exchange is not limited to the “cost

⁴⁹² 2026 RPSA § 2.31.

⁴⁹³ *Id.* § 2.10.

⁴⁹⁴ *Id.* §§ 5.1-5.3.

⁴⁹⁵ IOU Comment at 12.

⁴⁹⁶ *Id.* at 2.

⁴⁹⁷ *Id.*

⁴⁹⁸ WUTC Comment at 1-2.

⁴⁹⁹ Public Power Comment at 4-5.

⁵⁰⁰ *Id.* at 9-13, 15-17.

⁵⁰¹ *Id.* at 13-14.

⁵⁰² *Id.* at 14-15.

benefits” identified by Congress in Section 5(c)(3).⁵⁰³ Instead, they claim that under a physical exchange of the REP, the IOUs would have received a number of other “non-cost benefits”, including but not limited to, the environmental and carbon benefits of federal hydroelectric projects.⁵⁰⁴ The IOUs argue that these “non-cost benefits” are inherent characteristics of BPA’s power, which should be “equitably shared” with IOU customers.⁵⁰⁵

Public Power customers oppose including “non-cost benefits” in the REP.⁵⁰⁶ They argue that including such benefits in the Section 5(c)(1) exchange would “unlawfully evade the REP cost limit established by § 7(b)(2)”⁵⁰⁷ The Public Power customers contend that the REP benefits Congress envisioned are those exclusively addressed by Sections 5(c) and 7(b).⁵⁰⁸

The summary of BPA's position on this issue is as follows:

1. Overview of BPA's interpretation.

BPA's policy on the allocation of “environmental attributes” was established in March 2024 through the Provider of Choice Policy ROD. BPA conveys such attributes in alignment with a customer's power rate elections and physical power deliveries. Because the Section 5(c)(1) exchange is not a physical sale of power, the IOUs' request for “non-cost benefits,” such as “environmental attributes” under the REP, is not eligible under BPA's existing policy on reporting these environmental attributes.⁵⁰⁹

BPA’s decision in the Provider of Choice Policy does not address whether the IOUs are entitled to “non-cost benefits” as a matter of statutory right under Section 5(c). To that point, BPA finds in this ROD that the Northwest Power Act does not support providing “non-cost benefits” to the IOUs under the Section 5(c)(1) exchange. The Act deliberately limits the Section 5(c)(1) exchange to financial “cost benefits” because these benefits serve various other provisions of the Act.⁵¹⁰ There is no contextual basis to suggest Congress intended BPA to add other “non-cost benefits” to the Section 5(c)(1) exchange.

Furthermore, BPA is prohibited from expanding or enhancing the value of the REP beyond the “cost benefits” specified by statute due to limitations in Section 7(b)(2), as further interpreted by the Ninth Circuit.⁵¹¹ Moreover, the Act's established formula for determining the utility's “cost benefits” will accurately reflect the IOUs’ increasing resource and other costs associated with state climate programs through the calculation of the utility's average system cost (ASC). Similarly, BPA will correctly account for any increased

⁵⁰³ IOU Comment at 12.

⁵⁰⁴ *Id.* at 2.

⁵⁰⁵ *Id.*

⁵⁰⁶ Public Power comment at 14-15.

⁵⁰⁷ *Id.* at 14.

⁵⁰⁸ *Id.*

⁵⁰⁹ See Issue 3.4.4 – part 2.

⁵¹⁰ See Issue 3.4.4 – part 3.a-b.

⁵¹¹ See Issue 3.4.4 – part 4.

value of its power by crediting the PF Exchange rates with any additional revenue it receives for surplus power sales.⁵¹²

Additional statutory provisions and contextual arguments support BPA's conclusion that the Section 5(c)(1) exchange does not include "non-cost benefits":

- If Congress intended BPA to enhance the value of the Section 5(c)(1) exchange with "non-cost benefits," it would have provided explicit direction on how to do so. Congress did provide guidance for calculating other "non-cost benefits" in other contexts, such as "environmental costs and benefits" and "reserve" capacity value in other sections of the Northwest Power Act. It referenced neither in the context of Section 5(c)(1).⁵¹³
- BPA's treatment of "environmental attributes" for physical power sales under Section 5(b) is distinguishable from BPA's treatment of the energy-neutral Section 5(c)(1) exchange.⁵¹⁴
- BPA's system sales construct does not affect its conveyance of "environmental attributes."⁵¹⁵
- Contrary to the IOUs' claims, BPA has never included "non-cost benefits" in a prior RPSA.⁵¹⁶
- If BPA must account for the "environmental attributes" of the Section 5(c)(1) exchange, then BPA would reflect the IOUs' own resource mix.⁵¹⁷
- The IOUs' equity arguments are flawed as they likely result in the shift of compliance costs onto Public Power customers while also making it essentially impossible for Public Power customers to meet state compliance requirements.⁵¹⁸

2. BPA's policy decision on the conveyance of environmental attributes.

Before discussing whether the Northwest Power Act directs BPA to account for the "non-cost benefits" of the federal power system in the REP, BPA notes that it established in March of 2024, a final, unchallenged policy on the matter of "environmental attributes" associated with its system.

For context, both IOUs and Public Power commenters spend portions of their comments explaining the intricacies of state mandates related to carbon compliance programs imposed on them by various state legislatures.⁵¹⁹ These programs, which vary by state, require both IOUs and Public Power utilities to acquire resources or intangible certificates

⁵¹² See Issue 3.4.4 – part 5.

⁵¹³ See Issue 3.4.4 – part 6.

⁵¹⁴ See Issue 3.4.4 – part 7.

⁵¹⁵ See Issue 3.4.4 – part 8.

⁵¹⁶ See Issue 3.4.4 – part 9.

⁵¹⁷ See Issue 3.4.4 – part 10.

⁵¹⁸ See Issue 3.4.4 – part 11.

⁵¹⁹ Public Power Comment at 4-5, 16-17; IOU Comment at 11, 13.

to demonstrate the utility is meeting their respective state’s climate goals. Foundationally, these programs are concerned with the “environmental attributes” of the underlying resources the utility uses to serve their load. BPA uses the term “environmental attributes” here in a general sense because the term “has varying definitions and understandings, primarily driven by what must be demonstrated to meet individual state programs applicable to retail utilities” and “there is no federal statute or regulation governing Bonneville’s treatment of these concepts”⁵²⁰ How utilities comply with these state requirements varies by state program but generally includes some combination of the utility acquiring renewable or non-carbon emitting resources, purchasing certificates, paying taxes or fees to offset emitting resources, or paying fines/penalties for failing to meet state specified targets.⁵²¹ Importantly, these regulatory costs are incurred by the *utilities*, not BPA.

“Environmental attributes” is a relatively recent concept and not mentioned in BPA’s statutes.⁵²² The primary resource BPA sells power from to meet its statutory duties is the Federal Columbia River Power System (FCRPS), an interconnected system comprising 31 federal hydroelectric projects.⁵²³ From the perspective of state climate regulatory programs, the FCRPS generally qualifies as a renewable or a non-emitting fuel source and thus can assist utilities in meeting their state climate requirements.

As state policies regarding environmental attributes have continually evolved, BPA has had to adopt policies to address the regulatory framework under which its customers operate. BPA’s approach has been to facilitate its customers’ needs for information about the nature of the power they purchase from BPA. It is important to note, though, that while BPA considers state requirements when feasible, these state mandates do not direct or alter BPA’s federal obligations.

To that end, BPA has agreed to provide information to state regulatory bodies (or customers) about the environmental characteristics of the power BPA sells to these utilities. As the IOUs correctly observe, “once electricity goes to the grid, it is impossible to distinguish one generator’s electricity from another’s.”⁵²⁴ Consequently, the information BPA shares with state regulators (or its customers) regarding the environmental content of BPA supplied power necessarily relies on a policy framework. That policy framework was established in the March 2024 POC Final Policy, where BPA made this decision: “Bonneville will convey the environmental attributes of the power sold, including emissions and any renewable energy credits (RECs), commensurate with a customer’s firm power purchase amount and rate elections.”⁵²⁵ Thus, BPA made its policy clear that, “state-defined

⁵²⁰ POC Policy ROD at 276.

⁵²¹ *Id.* at 276-78 for an overview of the different state approaches.

⁵²² *Id.* at 273; *see however* Issue 3.4.4 – part 6, where Congresses addresses “quantifiable environmental costs and benefits” in the Act.

⁵²³ BPA Facts at 1.

⁵²⁴ IOU Comment at 10.

⁵²⁵ POC Policy § 7.1; *see also* POC Policy ROD at 276. The POC Policy ROD was amended twice, on March 26, 2024, and April 17, 2024, to address minor edits that were documented in a new Appendix D, ROD Revision History. *See* POC Policy ROD at 347. The edits were a result of clarifications that arose during the first policy

characteristics of the power that customers buy from Bonneville will flow to those customers commensurate with the physical amount of power they buy.”⁵²⁶

The question of whether or how the environmental attributes of the FCRPS would be accounted for in the REP was raised in the Provider of Choice policy development process but not decided.⁵²⁷ In deferring the decision, BPA reiterated its policy decision that “environmental attributes associated with Bonneville’s system will follow the physical sale of power.”⁵²⁸ Thus, BPA did not decide through the Provider of Choice Policy whether the REP would receive any “environmental attributes” of the FCRPS *because* BPA had yet to determine whether the Section 5(c)(1) exchange must be implemented as a physical sale. That issue was deferred to this ROD.⁵²⁹ BPA *did* decide, though, in the Provider of Choice Policy and associated ROD that any such “environmental attributes” would follow the actual “physical sale” of power.⁵³⁰

Given that BPA has concluded that the Section 5(c)(1) exchange is *not* required to be implemented as a physical sale, and it is lawful to implement it as a financial/paper transaction, *see Issue 3.4.2*, the IOUs are not entitled to the “environmental attributes” of the FCRPS for the REP under BPA’s Provider of Choice Policy construct.⁵³¹

BPA recognizes that the IOUs’ arguments in this process are not directed at BPA’s Provider of Choice Policy decisions but rather concern their claims for a physical sale of power under the Section 5(c)(1) exchange, *see Issue 3.4.2*, and now the alleged statutory rights to “non-cost benefits” under Section 5(c).⁵³² These are issues not addressed by the Provider of Choice Policy ROD and which are addressed by this Record of Decision. The key point here is that if “environmental attributes” are not statutorily mandated to be accounted for in the REP as a “non-cost benefit,” (which BPA addresses next) then it follows BPA has the discretion to address them in a “sound and business-like manner.”⁵³³ BPA previously made that decision in March 2024, in which BPA decided to link the “environmental attributes” of the FCRPS to actual physical firm power sales.

implementation and contract development workshops.

⁵²⁶ POC Policy ROD at 281.

⁵²⁷ *See id.* (“To the extent that WPAG and Cowlitz’s comments are directed at the REP under Northwest Power Act section 5(c), those comments are outside the scope of the Provider of Choice process. Bonneville will determine how to implement the REP in the separate process that is underway for that program.”).

⁵²⁸ *Id.*

⁵²⁹ This Policy document further demonstrates that BPA had not “pre-decided” the issue of whether the Section 5(c)(1) exchange would be implemented as a financial transaction rather than a physical exchange. *See Issue 2.8.1.*

⁵³⁰ POC Policy ROD at 281. (“As discussed above, Bonneville has explained that preference does not apply to environmental attributes. Bonneville has also explained its decision that the environmental attributes associated with Bonneville’s system will follow the physical sale of power.”).

⁵³¹ The POC Policy ROD became final on March 21, 2024. *See* Bonneville Power Administration, Letter from the Administrator Regarding Provider of Choice Policy (Mar. 21, 2024), available at <https://www.bpa.gov/-/media/Aep/power/provider-of-choice/provider-of-choice-administrator-letter.pdf>.

⁵³² IOU Comment at 2, 3, 9, 10.

⁵³³ 16 U.S.C. § 839f(b).

3. Section 5(c) does not provide a “non-cost” benefit to the IOUs through the REP.

The IOUs claim that the benefits Congress intended to confer on its residential consumers through the Section 5(c)(1) exchange are “not limited to the differences in BPA and IOU costs or prices.”⁵³⁴ Instead, the IOUs claim that BPA’s “system power” provides other “non-cost benefits” including “environmental attributes such as lower carbon intensity and associated carbon regulatory benefits that are derived from the inherent characteristics of this power[.]”⁵³⁵ The IOUs argue these other “non-cost benefits” should be “equitably shared” with IOU customers.⁵³⁶ The IOUs also assert that effectuating the physical exchange by conveying all “costs and non-cost benefits” including environmental attributes, is not an “additive” benefit under the REP but a “characteristic of the power exchanged.”⁵³⁷ The IOUs contend that a “fundamental purpose” of the Section 5(c)(1) exchange was to allow residential and small farm consumers of IOUs to share in the benefits of lower cost federal power.⁵³⁸ The IOUs assert this includes the carbon intensity and other environmental attributes of that lower-cost federal power.⁵³⁹

As noted above in *Issue 3.4.2*, the definitive function of the Section 5(c)(1) exchange is to calculate the “cost benefits” described in Section 5(c)(3), which is then required by law to be distributed to regional consumers.⁵⁴⁰ The concept of a “non-cost benefit” is entirely absent from the text and context of the Section 5(c)(1) exchange.⁵⁴¹ Instead, Congress’ express intent for the Section 5(c)(1) exchange is found in the offsetting purchases and sales in Section 5(c)(1),⁵⁴² which produces the “cost benefits” discussed in Section 5(c)(3).⁵⁴³ There is no contemplation in this language of any *other* benefit to be produced by this transaction. Thus, as a matter of statutory interpretation, the IOUs’ argument that Congress intended to include a host of undefined “non-cost benefits” in the Section 5(c)(1) exchange is unsupported.

More directly, the term “cost benefits” confirms that Congress intended the benefits associated with the Section 5(c)(1) exchange to be limited to *monetarily quantifiable* benefits. That monetary value is clearly quantifiable using the data from Section 5(c)(1), specifically the offsetting costs (utility’s ASC of its resources and BPA’s PFx rate), multiplied by the utility’s residential load. There is no guesswork or disputable assumptions in *what* the value of the Section 5(c)(1) exchange entails. It is a quantifiable dollar amount based on calculated known values (utility’s ASC of its resources and BPA PF Exchange rate). Hence, “the traditional section 5 formula.”⁵⁴⁴

⁵³⁴ IOU Comment at 2.

⁵³⁵ *Id.*

⁵³⁶ *Id.*

⁵³⁷ *Id.* at 9.

⁵³⁸ *Id.* at 10.

⁵³⁹ *Id.*

⁵⁴⁰ See Issue 3.4.2 – part 6.

⁵⁴¹ See generally 16 U.S.C. § 839c(c)(1)-(7).

⁵⁴² 16 U.S.C. § 839c(c)(1); see also Issue 3.4.2 – parts 4-5.

⁵⁴³ 16 U.S.C. § 839c(c)(3); see also Issue 3.4.2 – part 2.

⁵⁴⁴ *APAC*, 733 F.3d 939, 956 (9th Cir. 2013).

Congress' decision to limit the Section 5(c)(1) exchange to the "cost benefits" identified in Section 5(c)(3) is intentional because this "cost benefit[]" is essential to the functionality of other statutory provisions. As explained next, other provisions of the Northwest Power Act can only function if the *totality* of the Section 5(c)(1) exchange produces a readily quantifiable monetary value. Equally, if BPA broadens the Section 5(c)(1) exchange to encompass *other* "non-cost benefits" these dependent provisions break down and cease to function. The following subsections address these dependent provisions.

a. Section 5(c)(3) – distribution of "cost benefits" to residential load.

As noted earlier, the Section 5(c)(1) exchange is the only place in BPA's statutes that contain federal requirements on the distribution of payments associated with a BPA sale to retail residential consumers. Those requirements are found in Section 5(c)(3), the mandatory distribution provision of "cost benefits" to residential loads.⁵⁴⁵ Section 5(c)(3) provides, in relevant part, that the "cost benefits" of "any purchase and exchange sale referred to in [Section 5(c)(1)] of this subsection . . . shall be passed through directly to such utility's residential loads within such State . . ."⁵⁴⁶ This provision establishes a mandatory distribution by the utilities to their "residential loads"⁵⁴⁷ (*e.g.*, residential and farm loads) of the "cost benefits" created pursuant to Section 5(c)(1). By this term, Congress expressly excluded the utility's industrial or commercial loads from receiving this cost benefit. Additionally, this provision ensured the utility did not *retain* the "cost benefits" for itself or its shareholders. BPA has, in turn, developed elaborate programs and oversight procedures to ensure this federally mandated distribution occurs.⁵⁴⁸

Importantly, Section 5(c)(3) says *nothing* about a "non-cost benefit." By the plain terms of the Act, a "non-cost benefit" would *not* be subject to Section 5(c)(3)'s mandatory distribution and could, legally, be given to any customers the utilities choose (including its commercial and industrial loads), or simply retained by the utility for its own profit. Nothing in the Northwest Power Act or its extensive legislative history even remotely suggests this outcome was intended or acceptable.

Anticipating this issue, the IOUs include the "non-cost benefits" they seek within the definition of "REP Benefits" in their draft of the 2026 RPSA, thereby making them subject to distribution to residential loads by contract.⁵⁴⁹ However, this voluntary commitment to distribute these benefits arises solely from the contract, not from a requirement within the Northwest Power Act. Importantly, this voluntary commitment fails to resolve the underlying statutory issue. Congress did not address "non-cost benefits" in Section 5(c)(3). If they were, Section 5(c)(3) would have mentioned them. Since they are not mentioned in Section 5(c)(3), these benefits cannot be made legitimate merely by the IOUs contractually

⁵⁴⁵ 16 U.S.C. § 839c(c)(3) (emphasis added).

⁵⁴⁶ *Id.* (emphasis added).

⁵⁴⁷ *See* 16 U.S.C. § 839a(18) (defining "residential load").

⁵⁴⁸ *See, e.g.*, 2012 REPSIA, Exhibits C (Terms and Conditions of Final Agreed-Upon Procedures Report) & D (Agreed-Upon Procedures).

⁵⁴⁹ IOU Comment, Appendix B at 5.

agreeing to distribute them in a manner consistent with the statute's identified "cost benefits."

Finally, even with the IOUs' contractual commitments, it is unclear how BPA would be able to ensure these "non-cost benefits" are distributed to only "residential loads" as required by Section 5(c)(3). To that point, BPA notes it is highly unlikely the IOUs could demonstrate that "non-cost benefits" are actually "passed through" to residential loads.

b. Section 7(b)(3) and Section 7(c)(1) – net cost of the REP.

Two other provisions of the Northwest Power Act further demonstrate that Congress intended the Section 5(c)(1) exchange to yield only a financial cost benefit. These provisions are tied directly to the output of the exchange. Although both provisions have since expired, they illuminate Congress' original understanding of how the REP would function and be implemented. Importantly, they clearly indicate that Congress anticipated the Section 5(c)(1) exchange would produce only a cost benefit, not a non-cost benefit.

First, under Section 7(b)(3)(A), now an expired provision, Congress prohibited BPA from incorporating certain costs or benefits into rates charged to Public Power customers after 1985.⁵⁵⁰ Specifically, these were costs or benefits resulting from "an overrecovery or underrecovery of the **net costs incurred** by the Administrator under Section [5(c)] of this title as a result of such difference."⁵⁵¹ Here again, Congress distilled the Section 5(c)(1) exchange down to a "net cost" that the Administrator actually "incurred" through the operative terms of the Section 5(c)(1) exchange.

Second, under Section 7(c)(1)(A), Congress required the DSIs to cover the entire "net cost" of the Section 5(c)(1) exchange for the Act's initial five years through the rates the DSIs paid.⁵⁵² This was a foundational element of the statutory framework⁵⁵³ and a central issue in the Supreme Court case, *Alcoa*.⁵⁵⁴ In that ruling, the Court emphasized the crucial point

⁵⁵⁰ 16 U.S.C. § 839e(b)(3)(A).

⁵⁵¹ *Id.*

⁵⁵² 16 U.S.C. § 839e(c)(1).

The rate or rates applicable to direct service industrial customers shall be established--
(A). for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 839c(c) of this title, based upon the Administrator's projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers

⁵⁵³ H.R. Rep. No. 96-976, pt. I, at 29 (1980) ("These industries will also pay significantly higher rates under the new contracts. These higher rates permit the Administrator to enter into contracts with the region's investor-owned utilities for an exchange of power equal to the utilities' residential load. This exchange will permit residential customers of investor-owned utilities to share in the benefits of the lower-cost Federal resources. The power sold to BPA will be sold at the utilities' average system cost and purchased back at the rate paid by the preference customers' utilization their general requirements. The loss in revenue to the Administrator is in effect returned by the higher direct service industry rates. By providing these residential customers wholesale rate parity with residential customers of preference utilities, the amendment serves in a substantial way to cure a major part of the allocation problem.").

⁵⁵⁴ *Alcoa*, 467 U.S. 380, 398–400 (1984).

that “the DSI sales and the power exchange program are integrally related” and that the DSIs were expected to “finance the exchange program.”⁵⁵⁵ Again, these references clearly indicate that Congress (and the Supreme Court) read the Section 5(c)(1) exchange as resulting in a financial payment only, with the “net cost” of the exchange being the responsibility of the DSIs to “finance” through their rates under Section 7(c)(1)(A). There is no indication in either of these provisions that other “non-cost benefits” factored into the REP.

4. Section 7(b)(2) and the Portland General Electric v. Bonneville Power Administration decision prohibit BPA from adding “non-cost benefits” to the REP.

Adding “non-cost benefits” to the Section 5(c)(1) exchange would also violate Section 7(b)(2) of the Northwest Power Act. Under Section 7(b)(2), “BPA’s preferred customers are entitled to rates as if ‘no purchases or sales by the Administrator as provided in Section [5(c), 16 U.S.C. §] 839c(c) of this title were made.’”⁵⁵⁶ “In effect, § 7(b)(2) means that BPA cannot charge preference customers higher rates than BPA would charge in the absence of the REP. This is known as the ‘rate ceiling’ protection, or the ‘Rate Ceiling Test.’”⁵⁵⁷

Congress mandated that BPA perform the Section 7(b)(2) rate ceiling test by comparing the power rates BPA plans to charge Public Power customers against a hypothetical rate.⁵⁵⁸ This hypothetical rate is derived from a set of “power costs” adjusted by five assumptions.⁵⁵⁹ One of these assumptions requires BPA to *remove* the Section 5(c)(1) exchange from the hypothetical rate.⁵⁶⁰ To do that, BPA must be able to distill the Section 5(c)(1) exchange into a set of “power costs.” These costs can then be removed, as required by the third assumption, which posits that no Section 5(c)(1) exchange occurred.⁵⁶¹ Congress specifically included the “rate ceiling” in the Northwest Power Act to protect Public Power customers’ rates from the effects of the Section 5(c)(1) exchange.⁵⁶² The Court’s decision in *PGE* is in accord: “As we have stated above, § 7(b)’s rate ceiling

⁵⁵⁵ *Id.* at 400.

⁵⁵⁶ *PGE*, 501 F.3d 1009, 1015 (9th Cir. 2007) (quoting 16 U.S.C. § 839e(b)(2)(C)).

⁵⁵⁷ *Id.*

⁵⁵⁸ See 16 U.S.C. § 839e(b)(2).

⁵⁵⁹ 16 U.S.C. § 839e(b)(2)(A)-(E); see also 16 U.S.C. § 839e(b)(2) (“the projected amounts to be charged for firm power for the combined general requirements of [Public Power customers] . . . may not exceed in total . . . an amount equal to the **power costs** for general requirements of such customers if, the Administrator assumes that . . .”). (Emphasis added).

⁵⁶⁰ See 16 U.S.C. § 839e(b)(2)(C) (Administrator must assume that “no purchases or sales by the Administrator as provided in section 839c(c) of this section were made during such five-year period[.]”).

⁵⁶¹ *Id.*

⁵⁶² See H.R. Rep. No. 96-976, pt. II, at 35 (1980) (“Although this exchange is technically available for use by any utility in the region, including preference utilities, it is anticipated that the region’s investor-owned utilities will make primary use of it. This exchange will allow the residential and small farm consumers of the region’s IOUs to share in the economic benefits of the lower-cost Federal resources marketed by BPA and will provide these consumers wholesale rate parity with residential consumers or preference utilities in the region. Customers of preference utilities will not suffer any adverse economic consequences as a result of this exchange since, as discussed below, the direct-service industrial customers of BPA are required to pay the costs of the exchange during its initial years **while a ‘rate ceiling’ protects the customers of preference utilities during later years.**” (emphasis added)).

analysis provides a means of determining whether REP benefits will impact the preference customers' power rates and, if so, § 7(b)(3) ensures that the preference customers' power rates are unaffected by the implementation of the REP.”⁵⁶³

Reducing the Section 5(c)(1) exchange to an identifiable, and quantifiable dollar value is essential for determining whether BPA is complying with the Section 7(b)(2) rate test. If BPA agrees to introduce “non-cost benefit” value to the Section 5(c)(1) exchange, it would be allowing value to flow from BPA to the IOUs *without* the limitations of the Section 7(b)(2) rate test. That is because the *only* thing the Section 7(b)(2) rate ceiling tests for are “power costs.”⁵⁶⁴ Unless it can be distilled to a “power cost,” it will not show up in the operation of the Section 7(b)(2) rate test.

BPA is legally prohibited from including *any* “additive” value to the REP that is outside of those expressly permitted by Section 5(c)(1), which in turn, is subject to Section 7(b)(2). The *PGE* decision is dispositive on this point. In *PGE*, BPA attempted to provide the IOUs a combination of power and monetary benefits through a “global” settlement of the REP.⁵⁶⁵ Importantly, instead of “exclusively relying on ASCs” (as required by Section 5(c)(1)), BPA *added* value to the REP program by factoring in certain intangibles, namely “(1) a possible legal challenge to the 1984 methodology; (2) a possible challenge to the PF Exchange Rate; and (3) future fluctuations in the energy market.”⁵⁶⁶ Using these intangible benefits, BPA was able to increase the value of the REP by almost \$500 million over the amount allowed by the traditional statutory formula.⁵⁶⁷

Public Power customers successfully challenged both the underlying REP contract and BPA's power rates.⁵⁶⁸ The Court held that there is no separation between the value that BPA provides utilities under Section 5(c) and those requiring Section 7(b)(2) approval. The Court stated: “Thus, whenever BPA engages in a purchase and exchange of power—whether on a yearly basis, under a REP program, or pursuant to a settlement agreement—BPA acts pursuant to its § 5(c) authority, and is thus subject to the Congressionally imposed limitations on that authority as expressed in § 5(c) and § 7(b).”⁵⁶⁹

The IOUs’ request for BPA redefine “REP benefits” to include a host of “non-cost benefits” simply reframes the efforts from 2000 to expand the value proposition of the REP beyond its statutory moorings. Indeed, the IOUs make this intent plain, suggesting that BPA has broad authority to operate beyond the Act’s plain terms and to apply it to “situations not expressly anticipated by Congress.”⁵⁷⁰

⁵⁶³ *PGE*, 501 F.3d 1009, 1021 (9th Cir. 2007).

⁵⁶⁴ 16 U.S.C. § 839e(b)(2) (Administrator compares projected rates to “an amount equal to the **power costs** for general requirements of such customers if, the Administrator assumes that . . .”) (emphasis added).

⁵⁶⁵ *PGE*, 501 F.3d at 1021–22.

⁵⁶⁶ *Id.* at 1033.

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*; see also *Golden Nw. Aluminum v. Bonneville Power Admin.*, 501 F.3d 1037 (9th Cir. 2007).

⁵⁶⁹ *PGE*, 501 F.3d at 1032.

⁵⁷⁰ IOU Comment at 12.

BPA disagrees that it may operate outside of the clear confines of the law. Indeed, in many respects, IOUs' current request is even broader than that described by the Court in *PGE*. For one, they request BPA assign them the "environmental attributes" of the FCRPS in an amount equal to their residential loads. This, according to the IOUs, would add upwards of \$150 million in additional value to the REP for their consumers.⁵⁷¹ As best as BPA can tell, this \$150 million would come from reduced value from BPA's system or increases in REP costs. But again, under the IOUs' interpretation, because this value is characterized as "non-cost benefit" and an "inherent" part of the Section 5(c)(1) exchange, it would fall outside of Section 7(b)(2)'s "power costs" protections.⁵⁷² Under *PGE*, BPA does not have the statutory authority to provide this additional value.⁵⁷³

Even more troubling is the IOUs' claim to increase REP benefits for "other non-cost benefits."⁵⁷⁴ These benefits are further discussed in the IOUs' revisions to the draft 2026 RPSA:

any additional Cost Benefits or other benefits that arise during the term of this Agreement through federal, state, or local law or regulation or applicable organized wholesale electricity market rules, and that are attributable to BPA's System Power and delivered (or deemed delivered) to «Customer Name» resulting from power deliveries (or deemed power deliveries) pursuant to Section 5.2a or from BPA System Power deliveries for pass-through to «Customer Name»'s Residential Load pursuant to Section 10.⁵⁷⁵

The IOUs' "other non-cost benefit" definition appears to offer an almost unlimited ability to redefine and enhance REP benefits. Indeed, the IOUs' demand that such benefits include those associated with "organized wholesale market rules" broadens the "Cost Benefits" definition to nearly infinite proportions. Even more, because the provision does not specify who determines such value, it seems to grant either BPA or the IOUs unconstrained authority to augment the REP with "additional Cost Benefit or other benefits." BPA cannot agree that Congress designed the REP in such a fashion that constrains BPA's authority in providing one type of defined benefit (cost benefit), but then leaves BPA or the IOUs free reign to define "non-cost benefits" as the parties wish. This appears to BPA to create a

⁵⁷¹ IOU Comment, Attachment H, at 2. It is not clear to BPA how this cost is calculated or what, precisely, the IOUs are asking BPA to do with this number. BPA takes the IOUs' comment as suggesting BPA should either provide the environmental attributes to the IOUs through some regulatory paradigm or make the IOUs' whole through adding this value to the "non-cost benefits" they believe they are entitled to.

⁵⁷² The IOUs do not mention the limitations imposed by Section 7(b)(2) on BPA at all in their comment. Indeed, in their 18-page comment, the IOUs do not cite once to Section 7(b)(2). See IOU Comment at 1-18. BPA takes this omission of an obviously relevant statutory provision to mean the IOUs implicitly argue that Section 7(b)(2) does not apply to their request for "non-cost" benefits.

⁵⁷³ *PGE*, 501 F.3d at 1032 ("Thus, whenever BPA engages in a purchase and exchange of power—whether on a yearly basis, under a REP program, or pursuant to a settlement agreement—BPA acts pursuant to its § 5(c) authority, and is thus subject to the Congressionally imposed limitations on that authority as expressed in § 5(c) and § 7(b).")

⁵⁷⁴ IOU Comment at 2, 11; see also *id.* at 13 ("capacity value or greenhouse gas prices"), 15 ("other inherent benefits of BPA system power").

⁵⁷⁵ *Id.*, Appendix A at 5.

“new residential exchange benefit system”—something the Court in *PGE* expressly prohibited.⁵⁷⁶

Even if the IOUs' request for statutorily unbounded “non-cost” benefits could be considered an indirect effect of the Section 5(c)(1) exchange, BPA is not permitted to provide them. BPA has previously attempted this, and the Court has rejected such efforts.⁵⁷⁷ In *Snohomish County PUD*, the Court rejected BPA's attempt to modify various agreements, including the unlawful 2000 REP Settlement, with specific provisions. One such agreement, the Load Reduction Agreement (LRA), was a separate contract between BPA and certain IOUs where BPA repurchased power the IOUs acquired under the 2000 REP Settlement.⁵⁷⁸ This LRA was among several measures BPA undertook during the 2000/2001 energy crisis to prevent blackouts.⁵⁷⁹ An amendment to the LRAs included a price adjustment for power the IOUs received from BPA if a settlement was not reached between Public Power and the IOUs.⁵⁸⁰ This “litigation penalty” only applied to the LRA and would have reduced, not increased, the price of power the IOUs paid if a settlement was achieved.⁵⁸¹ Nevertheless, the Court deemed this amendment subject to its *PGE* holding, even though it applied to a pricing structure from a different agreement (LRA).⁵⁸² In rejecting the “litigation penalty,” the Court confirmed this provision was “sufficiently related to the 2000 REP Settlement agreements” and required BPA to reconsider it in light of *PGE*.⁵⁸³

The important point raised by *Snohomish PUD* is that BPA could not circumvent the statutory constraints of Section 5(c)(1) and Section 7(b)(2) through clever naming or by structuring separate agreements to offer IOUs additional value. The Court recognized these attempts, “severed” those amendments, and found them still subject to the rigors of Section 5(c)(1) and Section 7(b)(2). Similarly, BPA sees no way to avoid the restrictions of Section 5(c)(1) and Section 7(b)(2) by recharacterizing these benefits as “non-cost benefit” and indirectly providing them to the IOUs through regulatory reporting or other means.⁵⁸⁴ As the Court has noted in another context, BPA “cannot expand its mandate solely through creative use of nomenclature.”⁵⁸⁵

In summary, Congress unequivocally established a rigid and intricate statutory framework, intertwining Section 5(c)(1) and the Section 7(b)(2) rate test, which BPA must rigorously adhere to when determining the value of the REP. That framework depends on the Section 5(c)(1) exchange being distilled to a “cost benefit [].” This “cost benefit[]” is based on the

⁵⁷⁶ *PGE*, 501 F.3d 1009, 1037 (9th Cir. 2007); *Pub. Util. Dist. No. 1 of Snohomish County v. Bonneville Power Admin. (Snohomish PUD)*, 506 F.3d 1145, 1153 (9th Cir. 2007).

⁵⁷⁷ *Snohomish PUD*, 506 F.3d 1145.

⁵⁷⁸ *Id.* at 1148.

⁵⁷⁹ See the WP-07S ROD at 166-68 for a background on the LRAs and their function during the energy crisis of 2000/2001.

⁵⁸⁰ *Snohomish PUD*, 506 F.3d at 1148-49.

⁵⁸¹ *Id.*

⁵⁸² *Id.* at 1154-55.

⁵⁸³ *Id.* at 1155.

⁵⁸⁴ *Id.*

⁵⁸⁵ *Pac. Nw. Generating Coop. v. Dep't of Energy*, 580 F.3d 792, 823 (9th Cir. 2009).

parameters of a utility's ASC and BPA's PF exchange rate, which is then used as an input for the Section 7(b)(2) rate test. The Ninth Circuit properly described the “traditional” scope of REP benefits:

The traditional formula for deciding if an IOU is entitled to a “REP Benefit” is as follows: first, the IOU offers to sell power to BPA at its “average system cost” (“ASC”) for producing power. Second, BPA calculates the “PF Exchange rate,” which is the sum of a base rate for power, plus any supplemental charges triggered by the “rate ceiling[]”. If the PF Exchange rate is lower than the ASC, the IOU is entitled to a REP Benefit, which will be the difference between those two amounts, multiplied by the IOU’s residential load.⁵⁸⁶

Given this framework, it is illogical to assume Congress also intended for BPA to distribute to these utilities a set of unstated “non-cost benefits” that are not bound by any reference to the utility's ASC of its resources or BPA's PF Exchange rate, and that completely bypass the Section 7(b)(2) rate test. That is what the IOUs’ request. BPA cannot agree.

5. *The IOUs will receive appropriate resource costs and benefits, including environmental compliance costs and benefits, through their ASC and BPA’s PF Exchange rate as intended by Congress.*

The IOUs note in their comment the significant rate pressure they are under to meet aggressive carbon reduction and clean energy standards imposed by their respective state legislatures.⁵⁸⁷ They state that including “non-cost benefits” like the value of environmental attributes in exchanges of power under the RPSA would substantially benefit IOU customers and help address this disparity, in a manner consistent with the Northwest Power Act’s requirements and in furtherance of the statute’s equity-enhancing purpose.⁵⁸⁸ The IOUs also contend that while they are “making substantial investment in renewable energy and carbon reduction measures” gaining “equitable access through the REP to BPA’s system power and the inherent environmental attributes and other non-cost benefits is critical for IOUs to meet states’ ambitious greenhouse gas reduction requirements while preserving affordability for IOU customers.”⁵⁸⁹

As noted, BPA has structured the 2026 RPSA to include the Congressionally identified benefits of the REP: the “cost benefit[]” calculated from the offsetting purchase and sale described in Section 5(c)(1). This construct will provide statutory “cost benefits” for the IOUs for the additional resource and carbon compliance costs they incur when meeting state regulatory climate programs. While the IOUs might frame their avoided cost of compliance with state law as a “non-cost benefit” resulting from environmental attributes of the exchange, their actual costs of compliance with state law will be captured in their ASC. A utility’s average system cost of resources (ASC) is established pursuant to a

⁵⁸⁶ APAC, 733 F.3d 939, 945–46 (9th Cir. 2013) (citations omitted).

⁵⁸⁷ IOU Comment at 11.

⁵⁸⁸ *Id.* at 3.

⁵⁸⁹ *Id.* at 2.

methodology developed by BPA.⁵⁹⁰ That methodology (both the current 2008 and the proposed draft 2026 ASCM) permits a utility to include its environmental compliance costs in its ASC.⁵⁹¹ Thus, the costs the IOUs incur to meet their compliance and other goals imposed by state legislature will be included in their ASC.

Additionally, any benefit resulting from state regulatory programs placing a premium on the environmental attributes of BPA's hydropower will be captured in the PF Exchange rate. BPA includes in its sale to the IOUs (at the PF Exchange rate) the value BPA receives for its surplus sales on the open market.⁵⁹² This necessarily includes any additional economic value realized from the environmental attributes of such sales. If BPA sells power on the market and receives a premium due to its low-carbon status, this additional value is incorporated as a credit to BPA's general rates, thereby reducing overall rates. The PF Exchange rate is one of the rates that benefit from these sales.⁵⁹³

Taken together, the 2026 RPSA, then, properly integrates the Congressionally mandated "cost benefits" derived from the offsetting purchase and sale outlined in Section 5(c)(1). The IOUs incorporate their environmental compliance costs, incurred from state climate programs, into their ASC calculation. BPA's sales to IOUs at the PF Exchange rate reflect the additional economic value gained from surplus market sales, including any premium for hydro power, which benefits overall rates. All else equal, the IOUs' ASCs will be higher, and the PF Exchange rate will be lower, resulting in higher REP "cost benefits." Through the combined mechanisms of the utility's ASC of its resources and BPA's PF Exchange rate, the statutory construct of Sections 5(c)(1) and 5(c)(3) effectively accounts for the increased costs associated with carbon markets and climate related legislation, capturing the "economic" sharing the REP is intended to address.

Despite this, the IOUs contend that BPA's inclusion of their environmental compliance costs in ASCs and BPA's incorporation of revenue from federal system power sales is not enough. They argue that providing this statutory defined benefit is no "excuse[]" to deny them the "non-cost benefits of federal system power under the REP statutory physical exchange requirement."⁵⁹⁴

BPA's actions are constrained by the Northwest Power Act and the statutory scheme established by Congress. The IOUs seek to not only receive what the statutory framework provides through their ASC and BPA's PF Exchange rate, but also additional benefits through means not expressly provided for by Congress, and bypassing the express constraints Congress put on the REP (*i.e.*, Section 7(b)(2)). BPA will provide the IOUs the

⁵⁹⁰ 16 U.S.C. § 839c(c)(7); *see also supra* section 2.3.2 (discussing the Average System Cost Methodology).

⁵⁹¹ *See* 18 C.F.R. § 301.2, Contract System Cost: "The Utility's costs for production and transmission resources, including power purchases and conservation measures, which costs are includable in, and subject to, the provision of Appendix 1. Under no circumstances will Contract System Cost include costs excluded from ASC by section 5(c)(7) of the Northwest Power Act."

⁵⁹² RPSA Workshop 1 PPT at 45.

⁵⁹³ *Id.*

⁵⁹⁴ IOU Comment at 2, n.4.

“cost benefits” warranted by law and will not exceed its statutory authority to grant “non-cost” benefits.

6. Congress specified the inclusion of “non-cost”-type benefits in other sections of the Northwest Power Act; their deliberate exclusion of such terms in the Section 5(c)(1) exchange indicates that these benefits were not intended to be independently considered as part of the REP.

The IOUs suggest BPA expand the REP to include “non-cost benefits” in part because they argue Congress “could not have contemplated the issues associated with how to address non-cost benefits, such as environmental attributes, because those benefits have only become relevant based on, for example, state-level carbon compliance programs implemented since the NWPA’s enactment.”⁵⁹⁵

While the advent of “environmental attributes” is a relatively modern concept, introduced by state legislatures, Congress recognized that there were unique “environmental . . . benefits” or “costs” associated with particular types of resources. In those instances where Congress wanted BPA to specifically *account* for those types of environmental considerations, Congress was express about it.

For instance, Congress expressly discusses the concept of “*quantifiable environmental costs and benefits*” in the context of determining the “cost effectiveness” of a resource for purposes of the Council’s power plan.⁵⁹⁶ In identifying “cost-effective” resources, the Council is required to consider the resources’ cost effectiveness, including its “system costs[.]”⁵⁹⁷ The term “system costs” is defined by the Act to include a host of different costs and benefits, and specifically mentions “environmental costs and benefits”:

For purposes of this paragraph, the term “system cost” means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and *such quantifiable environmental costs and benefits* as the Administrator determines, *on the basis of a methodology* developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.⁵⁹⁸

This provision establishes two key points. First, by using the term “quantifiable environmental . . . benefits,” Congress recognized that certain resources might possess additional environmental advantages not yet quantified at the Act’s passage, but which could be measured later.

⁵⁹⁵ *Id.* at 12.

⁵⁹⁶ 16 U.S.C. § 839a(4)(A).

⁵⁹⁷ 16 U.S.C. § 839a(4)(A)(ii) (“to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.”).

⁵⁹⁸ 16 U.S.C. § 839a(4)(B) (emphasis added).

Second, this provision also clearly indicates Congress did not intend for these nascent “environmental . . . benefits” to be subject to BPA’s sole discretion. Instead, Congress imposed two critical restrictions on BPA’s consideration of these non-cost environmental benefits: they had to be “quantifiable” (*e.g.*, measurable) and based on a “methodology developed by the Council as part of the plan.”⁵⁹⁹ These conditions demonstrate Congress’ awareness at the time of the Act that resources might yield additional, non-cost environmental benefits. While BPA could calculate these benefits, Congress expressly limited BPA’s discretion by requiring them to be quantifiable and subject to a Council-developed methodology.

Congress, however, entirely omits any reference to “environmental cost and benefits” within the context of the Section 5(c)(1) exchange.⁶⁰⁰ It is illogical that Congress would impose such specific restrictions and requirements on BPA’s calculation of “environmental benefits” for purposes of the Council’s plan, only to then omit any mention of these requirements when quantifying or distributing similar-type benefits in the context of the REP. Under the statutory interpretation doctrine of *expressio unius est exclusio alterius*, there is a presumption that when a statute designates certain things, all omissions should be understood as exclusions.⁶⁰¹ Congress included “environmental cost and benefits” elsewhere, but not in Section 5(c). Congress included “cost benefits” in Section 5(c), but not “non-cost benefits.” Had Congress truly intended BPA to include the environmental “non-cost” benefits of the hydroelectric power system in the REP, it would have explicitly required BPA to account for those “environmental . . . benefits.” Congress did not do so, and therefore, neither can BPA. The IOUs’ assertion that BPA must read into the statute these “non-cost benefits” for the environmental aspects of the FCRPS is untenable.

The IOUs also request BPA include “other non-cost benefits” such as “capacity” through the Section 5(c)(1) exchange.⁶⁰² They go as far to say that the physical implementation of the REP would have provided BPA operational benefits, and BPA should account for those in the REP.⁶⁰³

While it is not even clear what “capacity” benefit would be achieved by an energy-neutral exchange, BPA finds no indication in the Northwest Power Act that Congress intended such benefits to be accounted for in the Section 5(c)(1) exchange. Again, when Congress wants BPA to account for such “capacity” or other operational benefits associated with a particular sale, it consistently provides direction on how to do so.

⁵⁹⁹ *Id.*

⁶⁰⁰ As noted earlier, the Section 5(c)(1) exchange is exempt from all of the requirements of the Council’s power Plan. See Issue 3.4.3. Moreover, the expansive definition of “system cost” in Section 3(4)(B), which includes “quantifiable environmental costs and benefits,” is specifically limited to the definition of “cost effective” and is not applicable to any other provision of the Act, including Section 5(c)(1). See 16 U.S.C. § 839a(4)(B) (“*For purposes of this paragraph, the term ‘system cost’ means... [.]*”) (Emphasis added).

⁶⁰¹ *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1054 (9th Cir. 2018).

⁶⁰² IOU Comment at 13.

⁶⁰³ *Id.* at 8, n.32.

For example, under Section 7(c)(3), the Administrator is directed to credit the DSIs' power rate "to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers."⁶⁰⁴ In simple terms, the Administrator had the contractual right to curtail the DSI's power service from BPA when that power was needed for operational or other purposes, thereby creating a capacity reserve. In determining the value of this capacity benefit, Congress did not give BPA a free hand. Instead, Congress specifically tied this capacity benefit to the "the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service . . ."⁶⁰⁵ Establishing the value of those reserves is a matter determined in BPA's rate processes, and subject to review and evaluation through the Section 7(i) rate proceeding.⁶⁰⁶

Once again, it would be inconsistent to assume Congress would set specific criteria for determining a non-cost benefit under a power sale to the DSI (*e.g.*, capacity benefits from a curtailment right), yet give BPA unlimited authority and discretion to determine the same type of value in an energy-neutral Section 5(c)(1) exchange (the alleged "capacity" benefits of Section 5(c)(1)). If Congress expected the Section 5(c)(1) exchange to include other "non-cost" benefits, like capacity or operational benefits, Congress would have made that clear and given BPA clear direction on how to calculate and quantify those benefits. The fact Congress did not do so in the context of the Section 5(c)(1) exchange shows that such benefits are not intended to be included.

7. *BPA's treatment of the Provider of Choice contracts under Section 5(b) is distinguishable from the Section 5(c)(1) exchange.*

The IOUs contend that providing the "environmental attributes" is not an additive benefit of the REP, but one that comes inherent with the power as provided under BPA's "system sales" construct.⁶⁰⁷ The IOUs note that under the Provider of Choice Contract with Public Power utilities under Section 5(b), BPA has agreed to provide the environmental attributes of the federal system to those utilities.⁶⁰⁸ The IOUs argue just as BPA is providing the "environmental attributes" to Public Power customers under their Section 5(b) Provider of Choice contracts, BPA should do the same for sales to the IOUs under Section 5(c)(1) to help the IOUs "achieve compliance under many of these climate programs . . ."⁶⁰⁹

BPA disagrees that its treatment for "environmental attributes" under the Section 5(b) Provider of Choice contract is inconsistent with its position on the treatment of the Section 5(c)(1) exchange. As noted above, BPA's policy is to report to its customers or to

⁶⁰⁴ 16 U.S.C. § 839e(c)(3).

⁶⁰⁵ *Id.*

⁶⁰⁶ 16 U.S.C. § 839e(i); *see also, e.g.*, 1985 Wholesale Power Rate and Transmission Rate Adjustment Proceeding Administrator's Final Record of Decision, WP-85-A-02, at 197 (May 1985), *available at* <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/1985-rod/rod-19850426-1985-wholesale-power-rate-and-transmission-rate-adjustment-proceeding.pdf>.

⁶⁰⁷ IOU Comment at 9-10.

⁶⁰⁸ *Id.* at 10.

⁶⁰⁹ *Id.* at 11.

state regulators on the “environmental attributes” based on the utility’s physical purchases from BPA and their power rate election(s) (*i.e.*, informed by the resource associated with their rate election(s)). That policy has been in place since March of 2024.⁶¹⁰ BPA’s sales to Public Power customers under Section 5(b) are unquestionably physical purchases. No party argues otherwise. Were the IOUs to request a contract for the sale of power under Section 5(b), which they are entitled to under the Northwest Power Act, they too would receive the “environmental attributes” associated with their physical power purchases consistent with BPA’s policy.⁶¹¹

As noted in *Issue 3.4.2*, the Section 5(c)(1) exchange is not a sale of physical power to the IOUs. Furthermore, as described in this issue, the Northwest Power Act does not require BPA to include “non-cost benefits” in the energy-neutral, non-physical Section 5(c)(1) exchange. BPA’s policy on “environmental attributes,” then, controls, meaning BPA will not report “environmental attributes” for the Section 5(c)(1) exchange because it is not a physical power delivery from BPA to a participating utility.

8. BPA’s “system sales” construct is inapplicable to this issue.

The IOUs argue that BPA’s sales are “system sales” and under that construct they should also receive the “environmental attributes” and other benefits of BPA system power under the Section 5(c)(1) exchange.⁶¹² The IOUs argue BPA applies the “system sales” construct to BPA’s sales of physical power under Section 5(b) to Public Power customers and must do so also for its sales of power under Section 5(c)(1).⁶¹³

The IOUs’ references to BPA’s “system sales” construct is inapposite. The term “system sales” comes from the general principal that BPA does not sell power from specific resources to serve a customer’s load.⁶¹⁴ Instead, “Bonneville meets its power obligations by using all the electric power produced in aggregate by the FCRPS and acquired from non-federal resources.”⁶¹⁵ This occurs because “[o]perationally, Bonneville neither tracks nor assigns specific purchases or resources for specific needs. The entire federal system (both emitting and not) is used to meet Bonneville’s contractual obligations.”⁶¹⁶

The IOUs’ argument that BPA must include the “environmental attributes” of the federal system within the Section 5(c)(1) exchange due to BPA’s “system sales” construct is incorrect. First, as previously described, no part of the Section 5(c)(1) exchange is physical, meaning there are no resources to co-mingle with federal resources that would even

⁶¹⁰ POC Policy § 7.1.

⁶¹¹ Because the IOUs did *not* request BPA to provide them with a Section 5(b) contract, BPA developed a policy outlining the general principles that would apply *if* the IOUs request such a contract in the future. See Bonneville Power Administration, New Resource Rate Block Policy (Aug. 14, 2025), *available at* <https://www.bpa.gov/-/media/Aep/power/provider-of-choice/nr-block-policy-20250814.pdf>.

⁶¹² IOU Comment at 10.

⁶¹³ *Id.* at 9-10.

⁶¹⁴ Administrator's Record of Decision, Energy Imbalance Market Policy, at 64 (Sept. 26, 2019) (“EIM Policy ROD”), *available at* <https://www.bpa.gov/-/media/Aep/projects/energy-imbalance-market/rod-20190926-energy-imbalance-market-policy.pdf>.

⁶¹⁵ *Id.*

⁶¹⁶ POC Policy ROD at 270.

involve the system sales construct. Second, as noted, BPA decided in March 2024 to associate “environmental attributes” with the physical power sales and rates paid by BPA’s utility customers.⁶¹⁷ Since there are no such physical sales under the Section 5(c)(1) exchange, there is also no policy basis to assign “environmental attributes” through the REP. In summary, BPA’s system sales construct does not mandate that the IOUs receive the “environmental attributes,” and the IOUs’ suggestion otherwise is incorrect.

9. *No prior RPSA accounted for “non-cost” benefits.*

The IOUs claim BPA took “initial steps” to address the environmental attributes of the federal system in the 2012 REP Settlement and that through the 2012 REP Settlement “parties recognized the need to consider how possible future environmental attributes associated with the federal system resources would be shared with the IOUs.”⁶¹⁸ The IOUs contend that the “continued expansion” of carbon regulatory requirements since the 2012 REP Settlement has “heightened the importance” of sharing environmental attributes of BPA system power “equitably among IOU and COU customers.”⁶¹⁹ The IOUs argue that providing the ability of utilities to elect whether to engage in a physical or deemed delivered, with both types of exchanges conveying the inherent cost and non-cost benefits including environmental attributes associated with the low-carbon BPA system, builds on BPA’s historical approach to the REP.⁶²⁰ The IOUs also claim BPA “recognized that these types of environmental attributes existed” when the 2012 REP Settlement was developed, but “largely deferred a comprehensive structure for addressing how possible future environmental attributes associated with the federal system resources would be shared with the IOUs.”⁶²¹

The IOUs are incorrect that BPA (or Public Power Customers) have ever accepted that “environmental attributes” are a component of the Section 5(c)(1) exchange. No prior RPSA contains any reference or provisions related to “environmental attributes” or the term “non-cost benefits.”⁶²² Thus, their assertion fails on the facts.

The IOUs only support for this statement is to a document they identify as the “2012 RPSA Settlement.”⁶²³ No such document exists. BPA did settle the REP under the 2012 *Residential Exchange Program* (REP) settlement agreement, which was a global settlement of numerous issues in active litigation related to the REP.⁶²⁴ While the 2012 REP Settlement did settle issues related to the disputed 2008 RPSA, it also settled a host of other REP issues in litigation at the time.⁶²⁵

⁶¹⁷ POC Policy § 7.1.

⁶¹⁸ IOU Comment at 2.

⁶¹⁹ *Id.*

⁶²⁰ *Id.* at 2-3.

⁶²¹ *Id.* at 10-11.

⁶²² *See* 1981 RPSA; 1995 RPSA; 2000 RPSA; 2008 RPSAs.

⁶²³ IOU Comment at 2.

⁶²⁴ *See* REP-12 ROD at 11-15 (describing issues in litigation).

⁶²⁵ *Id.*

Regarding the actual terms of the 2012 REP Settlement, “environmental attributes” are referenced in a limited fashion for a narrow set of Renewable Energy Certificates (RECs) and Carbon Credits produced under specific conditions.⁶²⁶ Through a negotiated compromise, the 2012 REP Settlement allowed the IOUs to receive 14 percent of “transferrable RECs” from the BPA system.⁶²⁷ This transfer was contingent upon Public Power customers agreeing to the transfer and modifying their contracts accordingly.⁶²⁸ The scope of the RECs and Carbon Credits at issue were very limited. This compromise applied only to RECs and Carbon Credits associated with *incremental* improvements to BPA's existing system. Thus, if an existing (Tier 1) federal hydroelectric generator incrementally increased its production of power through hydro efficiency improvements or BPA purchased output from a new resource, such as a wind farm, and state regulators assigned a REC for those enhancements or resources, the IOUs would be entitled to 14% of this incremental improvement. These provisions explicitly did not apply to RECs and other environmental attributes linked to the *existing* hydroelectric system: “Transferable RECs do not include the RECs associated with existing Tier 1 renewable projects, which are listed in Exhibit C of the Settlement.”⁶²⁹

The IOUs acknowledged the restrictive nature of this compromise, noting that this provision only provided them a “limited number of new wind projects, and does not include RECs associated with existing Tier 1 renewable projects.”⁶³⁰ In fact, this provision provided so little value that its implementation proved cumbersome, leading BPA to defer REC payments to the IOUs until the value reached a minimum of \$100,000.⁶³¹ This provision was a negotiated compromise that required explicit Public Power support and yielded minimal actual value. It was not, as the IOUs claim, the “initial steps to address such environmental attributes” or as “parties [having] recognized the need to consider how possible future environmental attributes associated with the federal system resources would be shared with the IOUs.”⁶³²

In any event, the 2012 REP Settlement expressly stated that nothing in the settlement was an admission or acceptance by any party of the matters within the settlement: “No Admission. This Settlement Agreement reflects the compromise of disputed issues, claims, and defenses and does not constitute any Party’s admission or concession with respect to the merits of any such disputed issues, claims, or defenses.”⁶³³ The settlement further expressly stated it was not “precedential” or of any “evidentiary effect” to “any underlying principle or statutory interpretation in any context” nor could be used to “constitute any

⁶²⁶ 2012 REP Settlement § 5 & Exhibit C.

⁶²⁷ REP-12 ROD at 35.

⁶²⁸ *Id.* (“In order for 14 percent of the RECs and Carbon Credits to be transferred to the IOUs, COU parties to the Settlement agree to replace the current Exhibit H of their Contract High Water Mark (CHWM) contracts with the revised Exhibit H in the Settlement.”).

⁶²⁹ *Id.*; see also 2012 REP Settlement, Exhibit C § 1.10 (defining Transferrable RECs to *exclude* “Current Tier 1 RECs”).

⁶³⁰ IOU Comment at 11, n.42.

⁶³¹ See, e.g., Letter from BPA to Avista Regarding Distribution of RECs (May 1, 2018) (on file with author).

⁶³² IOU Comment at 2.

⁶³³ 2012 REP Settlement § 11.1.

Party's agreement to any methodology other than for purposes of implementing this Settlement Agreement in accordance with its term[.]”⁶³⁴ The treatment of RECs and Carbon Credits in the 2012 REP Settlement does not support the IOUs' argument.

10. *If BPA is required to account for the “environmental attributes” linked to the Section 5(c)(1) exchange, this should be done by reflecting the “environmental attributes” of the IOUs' own power.*

Even if BPA is wrong that Congress intended to limit the REP to only provide “cost benefits” to the IOUs, BPA notes that the IOUs would only be entitled to the attributes of their own power delivered to BPA. Foundationally, the only way BPA can engage in the REP is if the IOUs begin the exchange through the offer of *their* power. Section 5(c)(1) is express on this point: “Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources. . . .”⁶³⁵ The statute does not explicitly discuss in Section 5(c)(1) the *source* of BPA's exchange sale. Instead, logically, it follows that if the IOUs supply BPA with power BPA does not need, that power must be the source of the power BPA returns in its exchange sale. And, indeed, multiple pieces of legislative history confirm that the IOUs were expected to be the source of the 5(c)(1) exchange. Just two weeks before the passage of the Northwest Power Act, Senator Hatfield stated that “[s]ince BPA does not have an energy supply, the private utilities supply the energy needed” for the exchange.⁶³⁶ Thus, if there are any attributes to be accounted for in the exchange, it is only the attributes of the IOUs' own power.

The IOUs disagree with this logical outcome, claiming BPA cites no support for its position.⁶³⁷ BPA finds that the plain language of Section 5(c)(1) contemplates that the transaction would be self-contained. That is, the IOUs' Section 5(c)(1) sale would provide all the MWs needed to effectuate BPA's return exchange sale.

BPA's previous discussion on Section 5(c)(6) also supports this outcome as it made clear there that BPA can never reduce the exchange below the amount of power sold to BPA under Section 5(c)(1).⁶³⁸ While certainly the *costs* of these resources are included with BPA's other resources (to produce the PF Exchange rate used in calculating the “cost benefits”) this is a cost-construct, not a power load-service construct.⁶³⁹ Because the IOUs'

⁶³⁴ *Id.* § 11.2.

⁶³⁵ 16 U.S.C. § 839c(c)(1).

⁶³⁶ 126 Cong. Rec. 30183 (Nov. 19, 1980) (statement by Sen. Mark Hatfield); *see also* 126 Cong. Rec. 28550 (Sep. 30, 1980) (statement of Rep. Al Swift) (describing § 5(c) in the near-final bill as resulting in “no net BPA power sales to investor-owned utilities under S. 885; the power these utilities receive is the power they supply to BPA themselves”).

⁶³⁷ IOU Comment at 7.

⁶³⁸ *See* Issue 3.4.2 – part 7.b.

⁶³⁹ *See* 16 U.S.C. § 839e(b)(1). Indeed, this can be seen from the fact in Section 7(b)(1) the exchange loads and resources of both Publics and IOUs are included in the cost melding exercise, resulting in a resource and load pool that far exceed the size of BPA's actual loads. *See, e.g.*, BP-26 Rate Proceeding, Final Proposal, Power Rates Study Documentation, BP-26-FS-BPA-01A, at 32 (showing both exchange loads and exchange resources from IOUs and Publics to calculate energy allocation factors for PF and PF Exchange rates), *available at* <https://proceedings.bpa.gov/Home/OpenDoc?fileId=8126>.

power is sourced from their own resources, if BPA were required to account for the “environmental attributes” of the Section 5(c)(1) exchange, BPA would do so by attributing to the Section 5(c)(1) exchange the environmental attributes of the IOUs’ own resources.

This approach is further supported by contemporaneous documents that were published with the first 1981 RPSA. For other BPA power sales, BPA included provisions that would have allowed BPA to reduce its obligation to serve firm power to those customers if they “fail[ed] to implement BPA conservation programs or equivalent conservation programs to achieve the same purpose”⁶⁴⁰ BPA expressly *exempted* the 1981 RPSA from this same requirement because “[s]ince under the exchange agreements a utility must provide resources to meet its own load, conservation programs would not reduce any load on the Administrator.”⁶⁴¹ This, again, shows that the *source* of the power for use in the REP was always assumed to be the IOUs’ own resources.

The IOUs also contend that including “non-carbon” benefits in the Section 5(c)(1) exchange will be helpful because it will “avoid[] procurement costs and decarbonization compliance costs including reducing the need to purchase RECs or clean energy that increase power costs for customers.”⁶⁴² The IOUs claim as their state carbon requirements become more stringent, the value of RECs and environmental attributes are expected to grow.⁶⁴³

BPA recognizes the policy concerns arising from state regulatory policies that impose additional burdens on IOUs and their consumers. However, BPA disagrees that it must completely overhaul the Section 5(c)(1) exchange to address these concerns. BPA’s structure of the Section 5(c)(1) exchange has been consistently applied for 45 years without dispute and effectively delivering the statutory “cost benefit[]” within established Congressional limits. As the IOUs themselves acknowledge, climate change legislation is a recent development and remains subject to further change.⁶⁴⁴ If achieving state carbon compliance goals is the primary objective of the IOUs’ desire for the Section 5(c)(1) exchange to count toward such goals, then pursuing relief from those policies seems more judicious than disrupting a program designed nearly 50 years ago for one distinct purpose: “The exchange program is designed to provide **rate relief** for consumers served by IOUs.”⁶⁴⁵ It is not the function of the exchange to help the IOUs’ meet their state regulatory programs.

⁶⁴⁰ Environmental Review of the Issues and Alternatives Associated With the Offering of the Power Sales and Residential Exchange Contracts Requires Under the Pacific Northwest Electric Power Planning and Conservation Act at 2-10 (Sept. 12, 1981) (on file with author).

⁶⁴¹ *Id.* at 2-11.

⁶⁴² IOU Comment at 13.

⁶⁴³ *Id.*

⁶⁴⁴ *Id.* at 11-12 (“The regulatory landscape may yet change more during the proposed extended life of this RPSA, particularly in light of further regionalization and carbon market and resource adequacy development efforts. Accordingly, it is particularly important as this agreement is developed that the inherent cost and non-cost benefits, including environmental attributes, of federal power be included in the sales of federal power under Section 5(c)(1).”).

⁶⁴⁵ *Alcoa*, 467 U.S. 380, 398 (1984) (emphasis added).

11. Equities do not support accounting for “non-cost benefits” like “environmental attributes” in the Section 5(c)(1) exchange.

The IOUs argue that implementing the 2026 RPSA to allow individual utilities to choose how to effectuate the required physical exchange “achieves the statutory purpose of equitable access to inherent cost and non-cost benefits of federal power in a manner that best accords with the statutory text and purpose of the NWPA.”⁶⁴⁶ The IOUs also assert the REP is an “equity focused” measure that is designed to reduce disparities between Public Power customers and IOU customers.⁶⁴⁷ They dispute that its focus is only on “rate relief.” Instead, to meet the “equity” focused measures of the REP, they assert BPA must give IOU customers “equivalent access to the inherent benefits of the BPA system power”, which includes, but is not limited to, “the value of carbon intensity and other environmental attributes.”⁶⁴⁸ The IOUs also note that the amount of REP benefits they may receive are projected to be reduced by 88 percent. The IOUs note that including the value of environmental attributes in the exchange of power under the RPSA would “substantially benefit” IOU consumers and “help address this disparity” in a manner consistent with the Northwest Power Act and the statutes “equity-enhancing purpose.”⁶⁴⁹

BPA appreciates the concerns the IOUs have raised in regard to the “equity” behind the REP. Those equities pertained to the growing “retail rate disparity” between Public Power consumers and IOU consumers at the time of the passage of the Act.⁶⁵⁰ Congress’ answer to addressing these equity issues is the energy-neutral Section 5(c)(1) exchange described herein. BPA cannot augment or enhance the REP beyond what Congress intended in order to effectuate a broader “equity” for regional consumers. Here, “Congress ordained one system” and BPA cannot create another.⁶⁵¹ While it may be “unfortunate that some customer classes” receive greater benefits from BPA than others, “BPA cannot unilaterally change the law[.]”⁶⁵²

Moreover, BPA finds that the equities associated with “environmental attributes” are lacking in the IOUs’ argument. Public Power notes in their comment that the result of the IOUs’ proposal “would be to shift state carbon compliance obligations associated with the REP loads of the IOUs located in states like Oregon and Washington to BPA’s COU customers located in those states as well as COU customers in Idaho, Montana, Wyoming, Nevada, Utah, and California.”⁶⁵³ Public Power customers explain that “carbon accounting is a zero-sum game” and “the compliance costs that the IOU[s] would avoid through a physical exchange would simply be shifted to BPA’s COU customers.”⁶⁵⁴

⁶⁴⁶ IOU Comment at 3.

⁶⁴⁷ *Id.* at 12.

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.* at 3.

⁶⁵⁰ *PacifiCorp v. FERC*, 795 F.2d 816, 818 (9th Cir. 1986) (describing the “rate disparity”).

⁶⁵¹ *PGE*, 501 F.3d 1009, 1036 (9th Cir. 2007).

⁶⁵² *Id.*

⁶⁵³ Public Power Comment at 4.

⁶⁵⁴ *Id.* at 5.

BPA agrees with this assessment. Under the IOUs' proposed structure, Public Power customers of BPA would be severely hampered in their ability to meet their state carbon compliance obligations. This is because, regardless of how much renewable and non-emitting power Public Power customers purchase from other sources, they would always be assigned some of the "environmental attributes" of the IOUs' resource choices through the Section 5(c)(1) exchange. While it is not BPA policy to direct *how* each utility meets its respective carbon compliance requirements, BPA fails to see how this outcome would be either fair or equitable. BPA does not believe it is fair or equitable to use a strained interpretation of the Section 5(c)(1) exchange as the mechanism to effectuate this shift in compliance obligations between public and private utilities within the same state.

Decision

BPA will not account for any alleged "non-cost benefits" in the Section 5(c)(1) exchange.

Issue 3.4.5

Whether BPA must structure the 2026 RPSA to allow for partial exchanges of physical power under the Section 5(c)(1) exchange.

BPA Staff's Proposal

The 2026 RPSA does not provide utilities an "option" to convert the Section 5(c)(1) exchange to a partial physical sale.

Parties' Positions

The IOUs argue that BPA should offer an option for a partial physical exchange, asserting that the choice of implementing the Section 5(c)(1) exchange as a physical sale or an equivalent should rest with them.⁶⁵⁵ They contend that a physical implementation is not precluded by Section 5(c) and that BPA possesses the flexibility under Section 9(b) of the Northwest Power Act to allow this choice.⁶⁵⁶ Consequently, the IOUs believe BPA must use this flexibility to enable them to determine the mode of operation for the Section 5(c)(1) exchange. The WUTC contends BPA should provide the IOUs with an option for a physical exchange as well.⁶⁵⁷

Public Power customers oppose providing the IOUs any option for a physical sale. They argue providing the IOUs any non-cost benefits—such as the "environmental attributes" of the FBS—would violate Section 7(b)(2) of the Northwest Power Act and preference.⁶⁵⁸

Evaluation of Positions

The IOUs assert that BPA *must* provide an option, at each IOUs' discretion, for a *partial* physical exchange if and when BPA does not otherwise engage in a physical exchange.⁶⁵⁹

⁶⁵⁵ IOU Comment at 2, 8.

⁶⁵⁶ *Id.* at 6, 7.

⁶⁵⁷ WUTC Comment at 2.

⁶⁵⁸ Public Power Comment at 4-5; 9-13.

⁶⁵⁹ IOU Comment at 2.

The IOUs claim that the election of whether to implement the Section 5(c)(1) exchange as a physical sale or in a manner that “effectuates” a physical sale should be with the IOU.⁶⁶⁰ The IOUs also note that a physical implementation, even if partial, is not precluded by Section 5(c).⁶⁶¹ The IOUs claim BPA has this “flexibility” through Section 9(b) of the Northwest Power Act, and BPA must utilize that flexibility to allow the IOUs an opportunity to choose the mode of operation for the Section 5(c)(1) exchange.⁶⁶²

As BPA noted in *Issue 3.4.1*, if Congress mandated that BPA implement the Section 5(c)(1) exchange as a physical transaction, then BPA would have to implement the entirety of the REP in that manner. BPA could not modify the clear directives of Congress through the “facilitative” power of a general command to operate in a sound and business-like manner from Section 9(b) as suggested by the IOUs. In *Issue 3.4.2*, BPA concluded that the Section 5(c)(1) exchange is *not* required to be implemented as a physical transaction, and that it is appropriate to implement it as a financial/bookout-like transaction. Further, as noted in *Issue 3.4.4*, BPA is also not able to enhance REP benefits to the IOUs by adding “non-cost benefits” to the REP. Because BPA does not agree that the statute *requires* a physical exchange for the Section 5(c)(1), *see Issue 3.4.2*, nor does BPA agree that it must enhance the REP benefit to include other “non-cost benefits,” *see Issue 3.4.4*, the IOUs’ demand that BPA must provide them with an option for a “partial” physical exchange is rejected.

BPA also has viewed the IOUs’ “partial” physical argument from the perspective of, if BPA has discretion to implement the Section 5(c)(1) exchange as a partial physical exchange, should it do so for the 2026 RPSA. That is, even though not legally required by Section 5(c)(1), BPA assessed whether it could engage in a partial exchange with the IOUs, provided the considerations and limitations identified in *Issues 3.4.1, 3.4.2, 3.4.4, and 3.4.5* are considered and addressed.

BPA has considered this argument and finds that including such an option in the 2026 RPSA is not appropriate. For one, BPA is not certain it has the authority to offer a partial physical exchange under the Northwest Power Act. Congress provided BPA an express method for providing physical power to the IOUs under Section 5(c) in the *in lieu* provisions of Section 5(c)(5).⁶⁶³ Operation of that provision, however, is subject to a number of statutory conditions, including compliance with Sections 4 and 6 of the Northwest Power Act.⁶⁶⁴ This provision expressly contemplates power sales that only meet a part of the utility’s residential load (“in lieu of purchasing *any amount* of electric power offered by a utility under paragraph (1) of this subsection[.]”)⁶⁶⁵ Given that Congress included a specific means of providing partial physical power to the IOUs under a statutory provision, BPA is concerned that providing this additional right as a matter of discretion under Section 5(c)(1) may exceed its statutory authority.

⁶⁶⁰ *Id.* at 8.

⁶⁶¹ *Id.* at 6.

⁶⁶² *Id.* at 7.

⁶⁶³ 16 U.S.C. § 839c(c)(5); *see also* Issue 3.4.2 and section 9 of this ROD.

⁶⁶⁴ *Id.* (“Subject to the provisions of sections 839b and 839d of this title . . .”).

⁶⁶⁵ *Id.*

BPA also has concerns that providing this option would be inconsistent with the express limitations in the Northwest Power Act. The IOUs would only desire a physical “option” for the REP because it offered them additional value beyond the “cost benefit[]” Congress outlined in Section 5(c)(3). It is not clear to BPA how providing a physical exchange that provides this value would comport with the limitations of the Section 7(b)(2) rate test. Even if BPA could determine these issues, the resulting assumptions would likely cause significant controversy in the REP's operation and implementation—adding new and complex issues that are currently nonexistent and have never arisen before.

Additionally, engaging in even a “partial” physical exchange could bring to the forefront the complex carbon compliance cost shift discussed at length in *Issue 3.4.4-part 10* and *3.4.4-part 11*. These complexities will also compound the problems of identifying and ensuring the “cost benefit[]” is properly distributed to the IOUs’ residential and farm consumer loads under Section 5(c)(3).

Further, there is nothing in the statutory text to suggest that Congress intended the *exchanging utility* to direct BPA whether to engage in a partial physical exchange. If Congress intended discretion in choosing a physical or financial exchange, it is more likely that Congress would have directed BPA to make this choice, given that BPA is tasked with administering and implementing the statute. As noted herein, BPA does not view that option as reasonable given the legal, operational, and policy challenges with that approach.

Finally, BPA believes that allowing a “partial physical exchange” would create contradictory incentives for utilities to remain in the REP even when it is no longer economical. Congress’ clear intent in Section 5(c)(4) is to encourage utilities to exit (or at least pause) their participation in the REP when it ceases to be economically beneficial, specifically when their cost of resources falls below BPA's cost of power (adjusted by Section 7(b)(3)).⁶⁶⁶ Allowing a partial physical exchange would incentivize some utilities to stay in the REP, despite it not being financially advantageous, because of perceived non-economic benefits associated with purchasing power from BPA. That outcome does not align with Congress’ intent for the REP.

That approach would also not function under the proposed 2026 RPSA. For the 2026 RPSA, BPA has eliminated the ability of a utility to pay BPA if the REP goes negative.⁶⁶⁷ Under its terms, if the Section 5(c)(1) exchange becomes uneconomical for a utility (*i.e.*, goes negative), it automatically suspends.⁶⁶⁸ The IOUs have not opposed this mechanism.⁶⁶⁹ Given their implicit agreement that the REP should only improve their position, not worsen it, BPA similarly concludes that the RPSA should not be structured to incentivize utilities to remain in the Section 5(c)(1) exchange when they receive no economic benefits. Including a “partial physical exchange” would do just that.

⁶⁶⁶ See 16 U.S.C. § 839c(c)(4).

⁶⁶⁷ See 2026 RPSA § 11; see also Issue 11.3.1.

⁶⁶⁸ See 2026 RPSA § 11.2; see also *supra* section 11.2 of this ROD.

⁶⁶⁹ See generally IOU Comment, Appendix A (IOU Draft revisions to 2026 RPSA, retaining suspension provisions).

Decision

BPA will not revise the structure of the 2026 RPSA to allow for partial exchanges of physical power under the Section 5(c)(1) exchange.

4.0 TERM AND DEFINITIONS (RPSA SECTIONS 1 AND 2)

4.1 Term of the 2026 RPSA (RPSA Section 1)

Section 1 of the 2026 RPSA establishes the term of the RPSA. The term begins upon execution by both parties and expires on September 30, 2044. Section 1 also contains a provision that allows the start date to be later if required by the Federal Regulatory Energy Commission (FERC). Given that the IOUs' sale to BPA is at the utility's ASC, which "is a mechanism for calculating a subsidy, not for establishing a traditional cost of purchased power"⁶⁷⁰ it is unclear whether the IOUs must file the RPSA with FERC.⁶⁷¹ The duration of the 2026 RPSA corresponds to the term BPA adopted for the long-term Provider of Choice contract BPA executed with Public Power customers under Section 5(b) of the Northwest Power Act.⁶⁷²

4.1.1 Timeline for Executing the 2026 RPSA and Relationship to REPSIA

Although the 2026 RPSA is binding upon execution by the parties, the purchase and sale provisions of 2026 RPSA only become operative on October 1, 2028. As such, no payments of REP benefits will be made under the 2026 RPSA until the expiration of the 2012 REP Settlement and related REPSIA. Payments of REP benefits made under the REPSIA will be governed by the REPSIA, including the audit and certification provisions of that agreement.

While no payments will be made by the terms of the 2026 RPSA prior to October 1, 2028, certain provisions of the 2026 RPSA are, nonetheless, operative upon execution and must be complied with to begin participation in the REP on October 1, 2028. For instance, Section 4.1 of the 2026 RPSA establishes a "prerequisite" informational ASC filing requirement that must be complied with by June 1, 2026 (or such other date BPA determines under the ASCM). That informational ASC must be made consistent with the timeline BPA establishes before the utility is permitted to "activate" its RPSA and participate in the REP for the BP-29 rate period (FY 2029-30).

4.2 Definitions (RPSA Section 2)

Section 2 of the 2026 RPSA contains the definitions used throughout the agreement. Terms not specifically defined by the RPSA are defined by the ASCM or BPA's Rate Schedules and General Rate Schedule Provisions (GRSPs).

⁶⁷⁰ *Methodology for Sales of Elec. Power to the Bonneville Power Admin.*, 30 FERC ¶ 61,108, 61,196 (1985).

⁶⁷¹ *See Puget Sound Energy, Inc., et al.*, 125 FERC ¶ 61,245, 62,219 (2008) (Commission declining to decide merits of IOUs' request for Commission to "disclaim[]" jurisdiction over RPSA, and leaving the issue open to be decided "at some future date.").

⁶⁷² 16 U.S.C. § 839c(b)(1); *see also* Bonneville Power Administration, Provider of Choice Contract Record of Decision, at 1, Aug. 14, 2025, ("The term of the POC CHWM Contracts is 19 years with power service commencing October 1, 2028, and ending September 30, 2044.") available at <https://www.bpa.gov/-/media/Aep/about/publications/records-of-decision/2025-rod/rod-20250814-provider-of-choice-contract.pdf>.

5.0 APPLICABLE PF EXCHANGE RATE (RPSA SECTION 3)

5.1 Overview

Section 3 of the 2026 RPSA makes clear that the PF Exchange rate applies to purchases under the agreement. The PF Exchange rate is not established in the 2026 RPSA. Rather, it is a rate established in a formal rate proceeding conducted under Section 7(i) of the Northwest Power Act. The calculation of the PF Exchange rate is determined in BPA's rate cases, which is created pursuant to the rate directives identified in the Northwest Power Act. BPA establishes the PF Exchange rate each time it conducts a general rate case. The PF Exchange rate is also subject to BPA's GRSPs. These provisions are also established in BPA rate cases.

One change of note from the REPSIA is that the 2026 RPSA does not mandate that BPA establish a "utility specific PF Exchange rate." Traditionally, BPA established a single PF Exchange rate for sales under the REP that applied to all participating utilities. In the WP-07S Record of Decision, BPA introduced the idea of creating "utility-specific" PF Exchange rates.⁶⁷³ By creating individual PF Exchange rates, BPA was able to more broadly distribute the REP benefit among the IOUs. The "utility specific" PF Exchange rate did this by allocating more costs to one PF Exchange rate and less to others, thereby ensuring more utilities qualified for REP Benefits. The utility specific PF Exchange rate concept was used in the 2012 REP Settlement and codified in the REPSIA.⁶⁷⁴ For the 2026 RPSA, BPA removed reference to the utility-specific PF Exchange rate. Whether BPA chooses to develop more than one PF Exchange rate will be determined in a rate case.

5.2 No Adjustments to PF Exchange Rate Within the Rate Period

As discussed in Chapter 8 below, the 2026 RPSA will calculate a utility's REP benefits using historical Residential Load data. Using historical Residential Load data removes a significant source of uncertainty and variability within each BPA rate period for both BPA and the participating utilities. Consistent with the policy of removing this uncertainty, BPA will propose in future rate cases to exempt the PF Exchange rate from within-rate period adjustments related to cost and revenue uncertainty. Thus, if BPA's power rates increase within a rate period due to an automatic cost adjustment, such increase will not affect the PF Exchange rate.⁶⁷⁵ The restrictions on changes to the PF Exchange rate are discussed more fully in Chapter 8 below.

⁶⁷³ See WP-07S ROD at 369-81.

⁶⁷⁴ See REPSIA § 3 ("Utility-Specific Exchange Rate").

⁶⁷⁵ See 2026 RPSA § 6.3.

6.0 ESTABLISHMENT OF ASC (RPSA SECTION 4)

6.1 Overview

Section 4 of the 2026 RPSA establishes the utility’s obligation to file an ASC with BPA pursuant to the then-applicable ASCM to activate its participation in the REP. These filings come in two forms—an informational ASC filing and a formal ASC filing—both of which must be complied with to obtain REP benefits in the relevant rate period.

6.2 Informational ASC Filing Requirement (RPSA Section 4.1)

Section 4.1 requires that participating utilities file an informational ASC filing with BPA pursuant to the ASCM in the “calendar year prior to the ASC Review Process . . .”⁶⁷⁶ An Informational Filing is an ASC a utility files in a year when BPA is not formally setting a utility’s ASC. As its name implies, the informational ASC does not set a utility’s ASC but is used for informational purposes by BPA Staff. While the informational ASCs do not affect the utility’s REP benefits, they provide important data points from which BPA can evaluate trends, anomalies, and perform other analysis on the utility’s cost and resource data. Early evaluation of this data better prepares BPA for evaluating the utility’s ASC in a Formal ASC Review Process for compliance with the ASCM.

Section 4.1 requires a utility to make an informational ASC filing *before* it will be permitted to participate in a formal ASC Review Process and receive REP benefits under the 2026 RPSA. If a utility does not participate in the immediately preceding Informational ASC filing, it may not participate in the subsequent formal ASC Review Process and will also not receive REP benefits for that upcoming rate period. Section 4.1 includes an example of the timing of the informational ASC to illustrate the intent of this provision.

Section 4.1 serves two important functions. First, for utilities transitioning from the 2012 REP Settlement and REPSIA to the 2026 RPSA, it makes clear the prerequisite filing requirements necessary to participate in the REP for the BP-29 rate period (FY 2029-2030). Utilities must sign the 2026 RPSA, and comply with section 4.1, to be eligible to participate in the REP for the BP-29 rate period.

Second, section 4.1 also applies to utilities that have terminated their RPSA pursuant to Section 11, and intend to reenter the REP. For these utilities, section 4.1 will ensure BPA has had the opportunity to evaluate at least one informational ASC before the utility re-enters the REP through a formal ASC Review Process and receives REP benefits.

6.3 Formal ASC Filing Requirement (RPSA Section 4.2)

Section 4.2 establishes the utility’s obligation to file ASCs pursuant to the ASCM to receive REP benefits under the 2026 RPSA. Section 4.2 also clarifies that the purchase and sale provisions of the 2026 RPSA will become operative on October 1, 2028. Utilities must make ASC filings unless and until they terminate the 2026 RPSA pursuant to section 11.

⁶⁷⁶ 2026 RPSA § 4.1.

7.0 PURCHASE AND EXCHANGE SALES (RPSA SECTION 5)

7.1 Utility's Sale of Power and BPA's Exchange Sale in Return (RPSA Sections 5.1 and 5.2)

Section 5 of the 2026 RPSA describes the simultaneous purchases and sales between the participating utility and BPA. Section 5.1 establishes the utility's obligation to sell power to BPA (and BPA's obligation to purchase) an amount of power equal to the utility's Residential Load at the cost of the utility's ASC. Section 5.2 establishes BPA's return sale and the utility's purchase obligation. This provision retains previous RPSA terms that made the two sales "simultaneous."⁶⁷⁷ Section 5.2 also establishes the utility's obligation to purchase such power at the PF Exchange rate.

7.2 Calculation of Cost Benefits (RPSA Section 5.3)

Section 5.3 of the 2026 RPSA clarifies that the offsetting purchases and sales in the previous sections are "simultaneous and offsetting." Section 5.3 also makes clear that the transactions are energy-neutral, and specifically notes that "no physical delivery" of electric power shall occur to activate the calculation of the Cost Benefits. Instead, the 2026 RPSA contains the Cost Benefits calculation used to determine the REP Benefit.

Language was also added to Section 5.3 to explain what occurs with the Cost Benefits. If the Cost Benefits are a net positive value to the utility, it becomes a REP payment from BPA to the utility pursuant to Section 6. If the Cost Benefits are a net negative value to the utility, then the RPSA automatically suspends pursuant to Section 11. As noted earlier, this change from prior RPSAs follows from BPA's decision to remove the "deemer" concept from the 2026 RPSA.⁶⁷⁸

⁶⁷⁷ See 2008 RPSA § 6 ("Simultaneous with the offer by [customer name] and purchase by BPA pursuant to section 5 above ...").

⁶⁷⁸ See *supra* Issue 11.3.1.

8.0 RESIDENTIAL LOAD INVOICING, ACCOUNTING AND ADJUSTMENTS FOR COST BENEFITS (RPSA SECTIONS 6, 7, 8)

8.1 Residential Load and Invoicing for Cost Benefits (RPSA Section 6)

8.1.1 Residential Load Billing Determinant (RPSA Section 6.1)

Section 6 of the 2026 RPSA contains the billing determinant and invoicing parameters for calculating the REP benefit. The monthly billing determinant for the 2026 RPSA will be the utility's two-year historical average monthly Residential Load from the Base Period and the year following the Base Period.⁶⁷⁹ By way of example, if the Base Period is calendar year 2026, the utility's monthly load is equal to the average of the utility's monthly load for 2026 and 2027 (*e.g.*, average of January 2026 and January 2027, February 2026 and February 2027, etc.) This feature of the 2026 RPSA is a continuation of a similar feature used in the REPSIA. Using the historical load average to calculate the utility's Residential Load removes forecasting error from the REP benefit calculation. Additionally, because the Residential Load amount is a known value, that component of the REP benefit calculation can be stabilized and not subject to rapid unforeseen changes. This stability ensures both BPA and the utility have certainty as to the Cost Benefits expected under the REP for the rate period. During the workshop process, BPA requested comments on the continuation of this approach and received no objections.⁶⁸⁰

Parties' Comments:

The Public Power customers generally support BPA's proposal to use the "fixed" residential load option based on historical averages for RPSA billing determinant and invoicing purposes.⁶⁸¹ They note that the use of the fixed option will provide 1) the IOUs more certainty as to the amount of REP benefits they will receive during a given rate period; 2) BPA and the Public Power customers more certainty during the same as to the costs of such benefits; and 3) greater administrative ease for all parties in the implementation of the REP.⁶⁸² The IOUs did not oppose or propose revisions to Section 6.1 of the 2026 RPSA.⁶⁸³

8.1.2 Invoicing (RPSA Section 6.2)

Using historical loads will not affect the distribution of REP benefits to end use consumers. Pursuant to section 6.2 of the 2026 RPSA, the utility will still be required to distribute the REP benefits over its actual Residential Loads. Moreover, utilities are also required to

⁶⁷⁹ See 2026 RPSA § 6.1.

⁶⁸⁰ See Bonneville Power Administration, Post-2028 Residential Exchange Program, <https://www.bpa.gov/energy-and-services/power/residential-exchange-program/post-2028-rep> (last visited Feb. 22, 2026).

⁶⁸¹ Public Power Comment at 19.

⁶⁸² *Id.*

⁶⁸³ See IOU Comment, Appendix A at 8.

provide BPA their actual metered Residential Load for that month.⁶⁸⁴ That value will be used as the “historical” value for future REP benefit calculations.

Parties’ Comments:

As quoted in section 8.1.1 of this Record of Decision, Public Power customers support Section 6.2 of the 2026 RPSA.⁶⁸⁵ The IOUs did not oppose or propose revisions to Section 6.2 of the 2026 RPSA.⁶⁸⁶

8.1.3 No Changes to PF Exchange Rate or ASCs within the Rate Period (Section 6.3)

One of the primary reasons the 2026 RPSA uses historical values for Residential Loads is to minimize within-rate-period changes to the REP calculation. By the close of each BPA rate case, BPA should have all of the inputs to calculate each utility’s REP benefit for the rate period. BPA’s general rate case will calculate the PF Exchange rate. Utilities’ formal ASCs are calculated in a process that runs concurrent with BPA’s general rate case, and concludes at the same time as the rate case. The utility’s historical Residential Loads will be on file with BPA under the terms of the RPSA. If nothing changes to these inputs (ASC, PF Exchange rate, Residential Load), then BPA can calculate the exact REP payments each utility will be receiving for the rate period. BPA and the utility can set rates and make payments consistent with BPA’s calculations in the general rate case and not worry about over- or under-paying due to subsequent changes.

This level of certainty can only be achieved if no changes to the PF Exchange rate or the utility’s ASC occur during the rate period. To support this outcome, BPA has included another feature from the REPSIA in the 2026 RPSA: exempting BPA’s PF Exchange rate and the utility’s ASC from within-rate period adjustments. Without this exemption, both BPA’s PF Exchange rate and the utility’s ASC could change after BPA sets its rates due to automatic upward and downward changes that activate when certain conditions are met. For example, BPA rates might include a “Cost Recover Adjustment Clause” or CRAC, that could automatically increase the PF Exchange Rate if BPA’s financial reserves drop below certain defined levels within BPA’s rate period. Similarly, a utility’s ASC might change if a utility has a new major resource come online during the rate period.⁶⁸⁷ These types of changes could affect the REP benefit calculation and cause fluctuations in REP payments, which would impact the cash flow and reserves of both BPA and the utility.

To avoid these fluctuations, section 6.3 of the 2026 RPSA states that neither the PF Exchange rate nor the utility’s ASC will be adjusted during the rate period. The PF Exchange rate will be exempt from uncertainty-related mid-rate period adjustments that increase the PF Exchange rate (such as the CRAC or Financial Reserves Surcharge) as well as uncertainty-related adjustments that decrease the PF Exchange rate (such as the

⁶⁸⁴ See 2026 RPSA § 6.2.3.

⁶⁸⁵ Public Power Comment at 20.

⁶⁸⁶ See IOU Comment, Appendix A at 8.

⁶⁸⁷ See 2008 ASCM, 18 C.F.R. § 301.4(c) (“Major resource additions and reductions and materiality thresholds.”)

Reserves Distribution Clause). A utility's ASC will also not be permitted to change during the rate period for a series of changes identified in section 6.3.

Parties' Comments:

"The COUs generally support BPA's proposal to exclude within-rate period changes to the PF Exchange Rate (e.g., due to CRACs, RDCs, or surcharges from BPA) and the Average System Costs ('ASC') of exchanging utilities (e.g., due to major resource additions or reductions, NLSLs, or changes to service territory). This will provide 1) the IOUs more certainty as to the amount of REP benefits they will receive during a given rate period; 2) BPA and the COUs more certainty during the same as to the costs of such benefits; and 3) greater administrative ease for all parties in the implementation of the REP."⁶⁸⁸

The IOUs did not oppose or propose revisions to section 6.3 of the draft 2026 RPSA.⁶⁸⁹

8.1.4 Late Payments, Residential Loads for In Lieu, and Disputes (RPSA Sections 6.4-6.6)

Sections 6.4 through 6.6 include certain standard provisions regarding late payments and disputed invoices. These provisions largely follow BPA's standard contract terms. Section 6.5 describes adjustments to the Residential Loads in the event BPA exercises its discretionary right to engage in an In-Lieu Power sale with the utility.

Parties' Comments:

The IOUs' only proposed revision was to substitute "BPA System Power" for "In Lieu Power" in the title, but not in the body text, of section 6.5 of the draft 2026 RPSA.⁶⁹⁰ BPA declines to make this change for the reasons explained in section 9 of this Record of Decision.

8.2 Account and Review (RPSA Section 7)

Section 7 of the 2026 RPSA contains the utility's record retention responsibilities and the terms governing BPA's compliance review program. The compliance review program is run by BPA to ensure that the REP benefit paid to the utility is properly distributed to retail consumers, consistent with Section 5(c)(3) of the Northwest Power Act.

8.3 Adjustment to REP Benefits (RPSA Section 8)

Section 8 of the 2026 RPSA permits adjustments to REP benefit payments made during the term of the agreement. Section 8 identifies two broad types of adjustments that may be made under its terms. First, section 8.1 describes adjustments BPA determines are required due to either overpayments or underpayments of REP benefits. These adjustments are, for example, due to ineligible loads or other errors in the implementation of the RPSA. Second, section 8.2 describes a general category of adjustments to REP

⁶⁸⁸ Public Power Comment at 19.

⁶⁸⁹ See IOU Comment, Appendix A at 8-9.

⁶⁹⁰ IOU Comment, Appendix A at 9.

benefits BPA may make in response to a decision from FERC or a court, as described in section 14.2. Section 8.2 makes clear that if a BPA decision is subject to a judicial decision that requires adjustment to REP benefits, BPA may conduct such proceedings to develop remedies and make such adjustments as are needed without violating the terms of the 2026 RPSA.

9.0 *IN LIEU* POWER TRANSACTIONS (RPSA SECTION 9)

9.1 Overview

As noted above, the REP is a “money-losing” transaction, in which BPA pays a participating utility a cost difference when that utility’s ASC is higher than BPA’s own resource costs (modified by certain rate adjustments). Statutorily, Congress placed a mandatory limit on how much BPA can recover from its Public Power customers for the REP through the Section 7(b)(2) rate test.⁶⁹¹ Additionally, Congress added a discretionary feature in Section 5(c) that allowed BPA to reduce the costs of the REP. This discretionary feature is found in Section 5(c)(5).

Section 5(c)(5) provides as follows:

Subject to the provisions of sections 839b and 839d of this title, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1) of this subsection, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.⁶⁹²

Colloquially called the *in lieu* provision, Section 5(c)(5) allows BPA to effectively reduce the cost of the REP by purchasing power from “other sources” at a cost that is less than the utility’s ASC. This substitute purchase takes the place of (or *in lieu* of) BPA purchasing power from the utility through the Section 5(c)(1) exchange. The Section 5(c)(5) *in lieu* sale is distinct from the Section 5(c)(1) exchange sale in a number of ways.

First, it involves actual physical power. This can be seen from Congress’ express requirement that *in lieu* power sales comply with Section 4 (the Council’s regional power plan) and Section 6 (resource acquisitions provisions) of the Act. In contrast, the Section 5(c)(1) energy-neutral purchase and sale is expressly *exempt* from those same requirements.⁶⁹³

Second, because power from a third-party is now being introduced into the REP transaction, the ‘energy neutrality’ feature of the Section 5(c)(1) purchase and sale is eliminated. That is, with an *in lieu* purchase, BPA has more power than its load, and therefore, *must* dispose of the extra energy by selling the *in lieu* physical power to the participating utility.

Third, the purchase of power from “other sources” is not offset by BPA’s sale to the utility. That means BPA must actually *bill* the utility the PF Exchange rate for the power and the utility must actually *pay* BPA. The utility’s Residential Load used in the REP benefit calculation is reduced by the sale of the *in lieu* power, resulting in a reduction in the costs of the REP to BPA and its power customers.

⁶⁹¹ See Issue 3.4.4 – part 4 for a discussion of the limitation imposed by Section 7(b)(2).

⁶⁹² 16 U.S.C. § 839c(c)(5).

⁶⁹³ See Issue 3.4.3.

The below example illustrates the cost savings to BPA from an *in lieu* transaction.

Base Data	
IOU's average cost of resources (ASC)	\$85.00/MWh
BPA's cost of power (PF Exchange Rate)	\$55.00/MWh
IOU's Residential Load	100 MWh

Simplified Traditional REP Calculation (without <i>In lieu</i>)
(ASC - PFx Rate) x Residential Load = REP benefit ("cost benefits") (\$85/MWh - \$55/MWh) x 100MWh = \$3000 (payment by BPA to IOU). BPA's total REP cost = \$3000

<i>In Lieu</i> Transaction	
BPA Purchase from "other sources"	10 MWh @ \$75.00/MWh (cost to BPA = \$750)
Utility Purchases in lieu power from BPA at PF Exchange rate	10 MWh @ \$55.00/MWh (payment to BPA = \$550).
BPA Net <i>in lieu</i> cost	\$550 - \$750 = (\$200)

Simplified Traditional REP Calculation (With <i>In lieu</i>)	
(ASC - PFx Rate) x Residential Load = REP benefit ("cost benefits") (\$85/MWh - \$55/MWh) x 90MWh = \$2700 (payment by BPA to IOU).	
BPA's total cost with In Lieu	REP Benefit = \$2700 Net In Lieu Cost = \$200 Total BPA costs with In Lieu = \$2900 REP Savings = \$100 (\$3000-\$2900)

The *in lieu* transaction is also, in theory, beneficial to the utility. The utility would consume the *in lieu* physical power and reduce its own resources, which would save its retail consumers money because the power BPA sold to the utility costs less than the utility's own resources (*i.e.*, utility's ASC). In practice, though, requiring a utility to take power from another source (which that utility arguably also has access to), creates operational, regulatory, and other challenges. Most utilities engage in extensive resource planning, with the results of those plans informing their long-term investments in resources. Those plans often emphasize certain types of resources for the utility. The *in lieu* provision of Section 5(c)(5) does not contain similar restrictions, and as such, may involve power from a type of resource the utility has no desire to receive.

9.2 *In Lieu* In Practice

While *in lieu* purchases have been a part of the Northwest Power Act since its inception, BPA has never implemented this provision. A number of features from prior RPSAs made implementing the *in lieu* provisions both difficult and undesirable. Under the 1981 RPSA, for instance, BPA had to give utilities seven years' prior notice before BPA could implement

the *in lieu* provision.⁶⁹⁴ In 1995, while the 1981 RPSA was still in place, BPA offered a revised form RPSA with more robust *in lieu* terms.⁶⁹⁵ Later RPSAs such as the 2000 RPSA reduced this to 30 days, but did so without providing much detail on the terms and conditions for the *in lieu* sale.⁶⁹⁶ In the 2008 RPSA, BPA provided few details about the *in lieu* transaction, and punted to a yet-to-be determined policy to address all the complexities with the determining delivery amounts, pricing, and other features for *in lieu* sales.⁶⁹⁷

Under the 2012 REP Settlement and REPSIA, BPA waived its right to engage in *in lieu* sales during the term of the settlement.⁶⁹⁸ BPA's decision to waive this right was affirmed by the Court.⁶⁹⁹ The Court noted, though, that such a waiver was only permissible in the context of a settlement.⁷⁰⁰

9.3 Alternatives to *In Lieu* Power

Because of the administrative and contractual complexities with implementing the *in lieu* provision, since the 1981 RPSA, BPA has also included “opt out” terms for utilities subject to an *in lieu* sale.⁷⁰¹ In effect, instead of taking power from BPA under an *in lieu* transaction, the utility could simply reduce its ASC to the cost of the *in lieu* power.⁷⁰² This contractual feature allowed BPA to achieve Congress' desired end for Section 5(c)(5) (*i.e.*, reduce the cost of the REP) without introducing the complexities of acquiring and delivering physical power to the utilities (who may not want or need the additional power).

9.4 *In Lieu* Power Transactions under the 2026 RPSA (Section 9)

Section 9 of the 2026 RPSA contains the terms and conditions for implementing the discretionary *in lieu* transaction. BPA may purchase power from another source to replace all or a portion of the energy sold by the utility to BPA. The price of this power must be less than the utility's ASC. The cost of the *in lieu* power includes the energy, capacity, and transmission costs BPA incurs to deliver the power to the utility. BPA must give the utility 10 months prior notice before implementing an *in-lieu* transaction. The utility will pay BPA for the *in lieu* power at the PF Exchange rate. Any environmental attributes associated with the physical *in lieu* power will be conveyed to the utility. Terms regarding the scheduling of *in lieu* power to the utility are provided in Exhibit D.

As with prior RPSAs, BPA also included an “opt out” provision in the 2026 RPSA. Section 9.3 provides an option for the utility to elect to lower its ASC to the weighted

⁶⁹⁴ 1981 RPSA § 4(a) (noting that BPA must give utility “not less than seven years prior written notice . . .”).

⁶⁹⁵ See 1995 RPSA § 6.

⁶⁹⁶ See 2000 RPSA § 7(b).

⁶⁹⁷ See 2008 RPSA § 7.

⁶⁹⁸ See 2012 REPSIA § 7 (“In consideration of the mutual benefits afforded by this Agreement and the Settlement Agreement, BPA shall not acquire or make arrangements to acquire In-Lieu Power for sale to «Customer Name» during the Payment Period.”).

⁶⁹⁹ *APAC*, 733 F.3d 939, 960–61 (9th Cir. 2013).

⁷⁰⁰ *Id.*

⁷⁰¹ See 1981 RPSA § 4(b); 2000 RPSA § 7(c).

⁷⁰² *Id.*

average of the *in lieu* power at BPA's acquisition cost and the remaining Residential Load. An example is provided in the 2026 RPSA to demonstrate how the calculation would operate.

9.5 Issues

Issue 9.5.1

Whether the structure of section 9 of the 2026 RPSA (in lieu power) violates the Northwest Power Act or is otherwise unlawful.

BPA Staff's Proposal

Section 9 of the 2026 RPSA implements BPA's statutory obligation to include an option for *in lieu* purchases by BPA pursuant to Section 5(c)(5).

Parties' Positions

The IOUs contend that section 9 of the 2026 RPSA violates Section 5(c)(5) of the Northwest Power Act.⁷⁰³ The IOUs contend that the RPSA erroneously construes this sale as a purchase and sale to the utility, as opposed to a replacement tied to the residential exchange.⁷⁰⁴ The IOUs argue that the 2026 RPSA sidesteps BPA's system and "deprive[s] the receiving utility of any benefits of receiving BPA system power, contrary to the intent of the NWPA."⁷⁰⁵ The IOUs also argue that BPA's sale of a specific resource to the utility violates BPA's system sales construct.⁷⁰⁶

The Public Power customers support BPA's proposed section 9 of the 2026 RPSA.⁷⁰⁷ The Public Power customers contend that BPA cannot mix *in lieu* power sales with FBS resources.⁷⁰⁸ The Public Power customers urge BPA to not accept the IOUs' changes to section 9.⁷⁰⁹

Evaluation of Positions

Section 9 of the 2026 RPSA provides BPA with the right to sell *in lieu* power to the utility. "In Lieu Power" is "firm power acquired by BPA from a source(s) other than «Customer Name» at a cost less than «Customer Name»'s ASC as provided in Section 5(c)(5) of the Northwest Power Act."⁷¹⁰ When BPA sells *in lieu* power to the utility, the utility pays BPA the PF Exchange rate for this power.⁷¹¹ BPA will also provide the "environmental attributes," if any, associated with the *in lieu* power to the receiving IOU.⁷¹²

⁷⁰³ IOU Comment at 14.

⁷⁰⁴ *Id.*

⁷⁰⁵ *Id.* at 15.

⁷⁰⁶ *Id.*

⁷⁰⁷ Public Power Comment at 18.

⁷⁰⁸ *Id.*

⁷⁰⁹ *Id.*

⁷¹⁰ 2026 RPSA § 2.17.

⁷¹¹ *Id.* § 9.4.

⁷¹² *Id.* § 9.6 ("Any Environmental Attributes of physically delivered In-Lieu Power will be conveyed to «Customer Name»."); *see also* 2026 RPSA at Exhibit H.

As the issue the IOUs raise is one of statutory interpretation, BPA begins with the statutory text. Section 5(c)(5) provides as follows:

Subject to the provisions of sections 839b and 839d of this title, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1) of this subsection, the Administrator **may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale** if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.⁷¹³

The crux of the IOUs' argument is the bolded language. The IOUs read this language as allowing BPA to purchase power from an "other source," but such power must then be delivered to the BPA system. This "other source" power would then become part of the BPA system. The IOUs would receive, not the "other source" power, but BPA system power in the form of an "exchange sale."⁷¹⁴ The IOUs object to the structure of section 9 of the 2026 RPSA because it does not specify that the return sale from BPA is from the BPA system, but rather from the *in lieu* source.⁷¹⁵ This, according to the IOUs, "would sidestep the BPA system and deprive the receiving utility of any benefit of receiving BPA system power, contrary to the intent of the NWPA."⁷¹⁶

BPA disagrees that Section 5(c)(5) mandates the sale of "BPA system" power to the IOUs when engaging in *in lieu* sales. The provision explicitly states that the purchase of *in lieu* power is intended to "replace [the] power sold to such utility as part of an exchange sale."⁷¹⁷ That is, the *in lieu* transaction *substitutes* BPA's purchase of energy from the utility (which is followed by an offsetting BPA's return sale under Section 5(c)(1)). BPA's acquisition from other sources is directly sold to the utility to replace the power BPA would have sold to such utility as part of a Section 5(c)(1) exchange sale. This Ninth Circuit case law is in accord:

Section 5(c)(5) provides that BPA 'may' substitute in-lieu sales for exchanges, as long as the power sold to the utility comes at a lower cost than the power the utility offers for exchange. The statute only authorizes substitution; it does not indicate when in-lieu sales are appropriate. . . . We conclude that it is entirely within the discretion of the BPA to determine how and when the substitution of direct sales for exchanges should take place.⁷¹⁸

Consequently, when BPA engages in an *in lieu* power transaction, it nominally sources the power from an "other source," which then forms the basis for delivering actual energy to the utility. This power fulfills the utility's load and generates REP savings, as detailed in

⁷¹³ 16 U.S.C. § 839c(c)(5) (emphasis added).

⁷¹⁴ IOU Comment at 15.

⁷¹⁵ *Id.*

⁷¹⁶ *Id.*

⁷¹⁷ 16 U.S.C. § 839c(c)(5).

⁷¹⁸ *CERC*, 807 F.2d 1456, 1461 (9th Cir. 1987).

section 9.1 of this Record of Decision. The structure of section 9 of the 2026 RPSA is, therefore, lawful.

Additionally, the IOUs' argument that BPA is selling only BPA system power, rather than power associated with an "other source," under Section 5(c)(5) is even more indefensible given other statutory provisions.⁷¹⁹ Section 5(c)(6) conclusively supports BPA's position.

Section 5(c)(6) states that "[e]xchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric power acquired by the Administrator from, *or on behalf of*, such utility pursuant to this subsection."⁷²⁰ This provision prevents BPA from reducing the energy-neutral Section 5(c)(1) exchange during periods of insufficiency or due to claims of preference by Public Power customers.⁷²¹ Furthermore, Section 5(c)(6) also prohibits BPA from withholding power from the IOUs because of an insufficiency or preference claims, when that power is purchased under Section 5(c) "on behalf of" the exchanging utility. The *only* provision within Section 5(c) where BPA purchases power "on behalf of" a utility is Section 5(c)(5), the *in lieu* provision. This demonstrates that power purchased by BPA from "other sources" under Section 5(c)(5) is specifically designated for and preserved for that utility under Section 5(c)(6), because it was bought "on behalf of" that utility. Without this interpretation, the requirement in Section 5(c)(6) that BPA not "restrict" power sales acquired "from, or on behalf of" the utility becomes superfluous. Under the canon against surplusage, it is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."⁷²² Thus, the IOUs argue incorrectly that a Section 5(c)(5) sale is merely a "purchase[]" by BPA to replace power sold by BPA under the residential exchange."⁷²³ As Congress intended, the power BPA purchases under Section 5(c)(5) is expressly for "or on behalf of" that utility.

Further, as discussed in *Issue 3.4.4 – part 10*, the power returned to the utility under the Section 5(c)(1) exchange is the same power provided by the utility. Thus, in neither Section 5(c)(1) nor Section 5(c)(5) does a utility receive "BPA system power." Under the *in lieu* provisions, the utility receives power from "other sources" instead of its own power being returned to it. That is, under Section 5(c)(5), BPA does not "purchas[e] any amount of electric power offered by [the] utility."⁷²⁴ Since BPA does not have the utility's power to sell back to the utility, BPA acquires "electric power from other sources to replace power sold to such utility as part of an exchange sale."⁷²⁵ Instead of receiving its own power, the utility receives power from "other sources."

⁷¹⁹ IOU Comment at 14.

⁷²⁰ 16 U.S.C. § 839c(c)(6) (emphasis added).

⁷²¹ See Issue 3.4.2 – part 7.b.

⁷²² *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (quoting *Market Co. v. Hoffman*, 101 U.S. 112, 115 (1879)); see also *United States v. Menasche*, 348 U.S. 528, 538–39 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'" (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883))).

⁷²³ IOU Comment at 15.

⁷²⁴ 16 U.S.C. § 839c(c)(1).

⁷²⁵ *Id.*

The IOUs also argue that section 9 of the 2026 RPSA is inconsistent with BPA’s “reasoning and conclusion that its sales of power are system sales.”⁷²⁶ The IOUs argue that “a purported sale of specific power from a third-party, such as an *in-lieu* purchase, would, by definition, not be a system sale.”⁷²⁷

In view of the IOUs’ comment, BPA clarifies here the operation of the *in lieu* power provision. The IOUs are correct that, operationally, BPA will not technically schedule individual resources to serve individual loads. This is because BPA’s entire system stands behind its power sales. Instead, as with other firm power transactions, the “other source” will be incorporated into BPA’s general resource mix and BPA will schedule from BPA’s system to the IOUs for *in-lieu* power. In this respect, the IOUs are correct that BPA’s “system” will be involved in the *in lieu* power transaction. The system sales construct is an operational construct, because “[o]perationally, Bonneville neither tracks nor assigns specific purchases or resources for specific needs. The entire federal system (both emitting and not) is used to meet Bonneville’s contractual obligations.”⁷²⁸

However, BPA’s system sales construct does not direct how BPA intends to report the “environmental attributes” of firm power physical sales. Since March of 2024, BPA has established a formal policy on the reporting of environmental attributes for physical BPA power purchases. That policy provides that “Bonneville will convey the environmental attributes of the power sold, including emissions and any renewable energy credits (RECs), commensurate with a customer’s firm power purchase amount and rate elections.”⁷²⁹ This means the “environmental attributes” of a particular resource will be attached to rate elections. BPA explained that “[t]he basis for this policy is that it follows cost-causation principles. If a cost pool includes the costs of certain physical resources or market purchases, it follows that the customers of that cost pool should be able to account for the emissions or RECs associated with those resources.”⁷³⁰

By assigning the “environmental attributes” associated with the “source” resources that the IOUs will pay for through their *in lieu* power purchase, BPA is following its Provider of Choice Policy. The IOUs are receiving physical power and are paying for that physical power through section 9 of the 2026 RPSA. They, therefore, are entitled to receive the “environmental attributes” of the physical power they purchase from BPA (which is from the *in lieu* source).

The fact that BPA’s “system” supports the *in lieu* sale does not alter this attribution, which is a principle applied across *all BPA power sales*. As discussed in *Issue 3.4.4 –part 2*, the concept of “environmental attribution” is a policy construct. As the IOUs correctly observe, “once electricity goes to the grid, it is impossible to distinguish one generator’s electricity from another’s.”⁷³¹ BPA has developed a rational method to attribute the characteristics of

⁷²⁶ *Id.*

⁷²⁷ *Id.*

⁷²⁸ POC Policy ROD at 270.

⁷²⁹ POC Policy § 7.1; *see also* POC Policy ROD at 276.

⁷³⁰ POC Policy ROD at 271.

⁷³¹ IOU Comment at 10.

power purchases among its customers. Importantly, BPA's treatment of *in lieu* sales in the 2026 RPSA is consistent with its other power sale to specific customer groups. For example, if BPA acquires specific resources for its Public Power customers' future load growth, and BPA allocates the costs of these resources pursuant to BPA's tiered rate structure through PF Tier 2 rates, they will receive the associated environmental attributes.⁷³² Although BPA's "system" technically backs these sales sold at Tier 2 rates, only the customers paying the Tier 2 rates will receive those attributes. BPA's treatment under the *in lieu* power sale for the 2026 RPSA is the same.

Decision

The structure of section 9 of the 2026 RPSA (in lieu power) does not violate the Northwest Power Act and is otherwise lawful.

Issue 9.5.2

Whether BPA should revise Exhibit H of the 2026 RPSA.

BPA Staff's Proposal

Under the 2026 RPSA *in lieu* provision, BPA will convey to the IOUs the environmental attributes associated with an *in lieu* power in the same manner as BPA does for other firm, physical power sales.⁷³³ The 2026 RPSA defines "environmental attributes" in section 2.13, and further provides that such conveyance is subject to additional definition from Exhibit H. In Exhibit H, BPA committed to revise the Exhibit "to convey the Environmental Attributes of the In-Lieu Power to «Customer Name» in a manner comparable to the terms used in the Exhibit H of the Provider of Choice Contract."⁷³⁴

Parties' Positions

The IOUs proposed that BPA include the same Exhibit H used in the Provider of Choice contract under Section 5(b) (with certain additional modifications).⁷³⁵ They contend BPA did not attempt to provide this language, and the IOUs assert BPA should adopt their proposed language or comparable phrasing.⁷³⁶

Evaluation of Positions

As noted above, BPA will provide the environmental attributes associated with physical *in lieu* power sales to the IOUs. This, as explained in the previous issue, is consistent with BPA's current policies on the reporting of the "environmental attributes" associated with the physical delivery of power and resource cost allocations. While the 2026 RPSA has a

⁷³² POC Policy § 7.1.1 ("Bonneville will provide separate REC conveyance for power purchased at PF Tier 1 rates, PF Tier 2 rates, the NR rate, and the IP rate.").

⁷³³ See 2026 RPSA § 9.6.

⁷³⁴ See *id.*, Exhibit H.

⁷³⁵ IOU Comment at 13-14.

⁷³⁶ *Id.* at 14.

definition of “environmental attributes,”⁷³⁷ it also points to Exhibit H for further definition and instructions.⁷³⁸

The IOUs proposed that BPA populate Exhibit H of the 2026 RPSA with the same language as used in the Provider of Choice contract under Section 5(b).⁷³⁹ They contend that BPA failed to provide this language and should instead adopt the IOUs’ proposed language or comparable terms.⁷⁴⁰

While the IOUs’ revisions to Exhibit H largely follow those in the Provider of Choice contract, they do diverge in substantive ways. For instance, the IOUs add to the end of Exhibit H a “catchall” provision that grants them unbounded rights to any future “REP Benefits” as defined by the IOUs.⁷⁴¹ BPA has already explained previously in section 3 of this Record of Decision why those revisions are flawed and will not be adopted.⁷⁴²

The IOUs’ other requested changes are simply a cut-and-paste of Exhibit H from the Provider of Choice contract. BPA does not agree that adopting these revisions wholesale is correct, and proposes instead to wait until “BPA exercises its discretionary right to engage in an In-Lieu transaction pursuant to Section 9 of this Agreement”⁷⁴³ If BPA exercises that right, then BPA’s right to revise Exhibit H is tied directly to the comparable terms BPA uses in the Exhibit H from the Provider of Choice contract: “BPA will revise this Exhibit to convey the Environmental Attributes of the In-Lieu Power to «Customer Name» in a manner comparable to the terms used in the Exhibit H of the Provider of Choice Contract.]”⁷⁴⁴

BPA’s approach to leave the terms of Exhibit H for future development is reasonable. Contrary to the IOUs’ claim, BPA cannot simply adopt the Exhibit H language used in the Section 5(b)(1) contract in the RPSA. The Exhibit H language developed for the Section 5(b)(1) contract is specially designed for that contract. Consequently, its terms apply to a different contract and are not directly relevant to the REP.

For instance, the IOUs request BPA to include Section 4 of Exhibit H, which provides as follows:

All capitalized terms used in this paragraph and the related underlying processes described in this paragraph shall be as defined, determined and calculated under «Customer Name»’s **Regional Dialogue CHWM Contract**. By April 15, 2029, BPA shall transfer to «Customer Name» or manage a pro rata share of Available Tier 1 RECs from calendar year 2028 based on

⁷³⁷ 2026 RPSA § 2.13.

⁷³⁸ *Id.*, Exhibit H.

⁷³⁹ IOU Comment at 13-14.

⁷⁴⁰ *Id.* at 14.

⁷⁴¹ IOU Comment, Appendix A, Exhibit H at 7.

⁷⁴² *See infra* Issue 3.4.4.

⁷⁴³ 2026 RPSA, Exhibit H.

⁷⁴⁴ *Id.*

«Customer Name»’s FY 2028 **RHWM** divided by the total **FY 2028 RHWMs** of all customers with **Regional Dialogue CHWM Contracts**.⁷⁴⁵

None of the bolded terms have any meaning for the IOUs, who do not have a “Regional Dialogue CHWM Contract” or a “RHWM.”

Furthermore, Exhibit H includes detailed procedures for managing a customer’s Western Renewable Energy Generation Information System (WREGIS) account and other technical adjustments, all of which are subject to change as systems for WREGIS (or its predecessor) evolve.⁷⁴⁶ BPA does not find it reasonable to include such terms which, in a few years, may become obsolete. More importantly, while Exhibit H of the Section 5(b)(1) power sales contract becomes active upon the implementation of its sales, Exhibit H of the 2026 RPSA might never be utilized. Its terms are only relevant if BPA chooses to exercise its optional right to engage in *in lieu* power sales—a right BPA has not previously implemented. Therefore, simply transposing terms from a different contract into the RPSA, without evaluating their applicability, would not constitute implementing the RPSA in a “sound and business-like manner.”⁷⁴⁷

Having said that, BPA does agree that the IOUs should be placed in a comparable position as purchasers of power under Section 5(b)(1) *if* BPA decides to implement the *in lieu* power sale features of Section 5(c)(5). Thus, BPA clarifies here that if BPA ever decides to engage in an *in lieu*, it will begin with the Exhibit H contract template used in the Provider of Choice, and then make applicable adjustment to ensure that the conveyance of the environmental attributes to the IOUs associated with *in lieu* power is no better, or worse, than a comparable transaction under the Exhibit H in the Provider of Choice contract.

Decision

BPA will revise Exhibit H when it implements the in lieu provisions of the 2026 RPSA. Such revisions will follow the Exhibit H template used in the Provider of Choice contract, with applicable adjustments.

⁷⁴⁵ IOU Comment, Appendix A, Exhibit H (emphasis added).

⁷⁴⁶ *Id.*, Exhibit H at § 9(1)-(2) (noting that certain adjustments may be by BPA “unilaterally” and noting that other changes must come through mutual agreement.)

⁷⁴⁷ 16 U.S.C. § 839f(b).

10.0 PASS THROUGH OF BENEFITS (RPSA SECTION 10)

Section 10 of the 2026 RPSA implements the statutory requirement that all REP Benefits be passed through to a customer's Residential Load.⁷⁴⁸ As in prior RPSAs, the 2026 RPSA provides flexibility to regulatory bodies to determine the type of distribution (direct credit, monetary payments, or other regulatory body-approved method). The utility must also indicate in each respective consumer's bill that the REP credit is from BPA.

⁷⁴⁸ See 16 U.S.C. § 839c(c)(3).

11.0 TERMINATION AND SUSPENSION (RPSA SECTION 11)

11.1 Termination Rights (RPSA Section 11.1)

11.1.1 Statutory Termination Right (RPSA Section 11.1.1)

Section 5(c)(4) of the Northwest Power Act requires BPA to include in the RPSA a right for the utility to terminate its participation in the REP if two conditions are met: (1) the Section 7(b)(2) rate test triggers, causing the Section 7(b)(3) surcharge to apply to the BPA's PF Exchange rate; and (2) as a result of the Section 7(b)(3) surcharge, the PF Exchange rate exceeds the utility's ASC of its resources.⁷⁴⁹ This termination may occur (at the election of the utility) "upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination."⁷⁵⁰

Section 11.1.1 of the 2026 RPSA implements this statutory right. Utilities may exercise the right to terminate the RPSA within 30 days from BPA's issuance of a rate decision wherein the PF Exchange rate exceeded the utility's ASC of its resources because the Section 7(b)(2) test triggered and the Section 7(b)(3) surcharge was applied. If the utility exercises this right, its termination becomes effective on the date of FERC's interim approval for the PF Exchange rate, which typically occurs just prior to the beginning of the rate period.

11.1.2 Discretionary Termination Right (RPSA Section 11.1.2)

Apart from the statutory basis for terminating the RPSA, the 2026 RPSA also includes a general right for the utility to terminate its participation in the REP for any reason, provided notice is given within 30 days of BPA's final rate proposal.⁷⁵¹ Like the previous provision, the effective date of such a termination is on the day FERC grants interim approval of BPA's rates.

This general right to terminate the RPSA recognizes that the primary purpose of the RPSA is to provide REP cost benefits to participating utilities, to be passed through directly to residential loads.⁷⁵² If participation in the REP is not advantageous to the utility, for whatever reason, there is no need for the utility (and BPA) to incur the administrative expense and effort to implement the RPSA over the rate period. A utility that exercises its right to terminate the RPSA also alleviates itself of filing ASCs and performing the other functions associated with the REP.⁷⁵³

⁷⁴⁹ 16 U.S.C. § 839c(c)(4).

⁷⁵⁰ *Id.*

⁷⁵¹ *See* 2026 RPSA § 11.1.2.

⁷⁵² *See* H.R. Rep. No. 96-976, pt. II, at 34–35 (1980).

⁷⁵³ This general relief from the administrative burdens of the RPSA would not alleviate the utility's duty to ensure that REP benefits previously paid are distributed consistent with the terms of the RPSA. Further, the utility would still be subject to audit and document inspection by BPA for the distribution of any REP benefits paid prior to the utility's termination of its RPSA.

11.1.3 Prerequisites to Re-Activating Utility’s Participation in the REP (Section 11.1.3).

When a utility terminates its participation in the REP, it nonetheless may subsequently initiate participation under Section 5(c)(1).⁷⁵⁴ Reentry into the REP must be consistent with the “reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination,”⁷⁵⁵ and reactivation of purchase and exchange sales under a new contract may include reasonable prerequisites or conditions precedent. Prior RPSAs took varying approaches to the “reasonable terms and conditions” for reentering the REP. The 1981 RPSA required the utility to terminate for at least a year prior to reentry.⁷⁵⁶ The 2000 RPSA required the utility to remain out of the REP for the duration of the then-terminated RPSA (i.e., until 2011).⁷⁵⁷ The 2008 RPSA required the utility to remain out of the REP until the next Exchange Period (i.e., the next rate period).⁷⁵⁸

The 2026 RPSA, Section 11.1.3, adopts an approach similar to the 2008 RPSA, with the added condition that the utility file an “informational” ASC. That is, the utility must execute a new RPSA with BPA and must file an informational ASC under that RPSA in the year prior to the ASC Review Process for the Exchange Period in which the utility would receive REP benefits. BPA already described above in Section 6.1 of this ROD, the need for informational ASC data. Requiring informational ASC data as a prerequisite to reentering the REP ensures utilities do not use the broader termination provisions of the 2026 RPSA to avoid providing BPA with important data concerning its resources and costs. Additionally, while the 2026 RPSA indicates the utility must sign a “new” RPSA, BPA makes clear here that such RPSA will be the 2026 RPSA, unless extenuating circumstances require adjustments to that utility’s RPSA. BPA does not intend to renegotiate the RPSA after a utility terminates its participation. The terms of the RPSA for utilities choosing to participate in the REP until September 30, 2044, are those provided in Attachment 1, and discussed by this ROD.

11.2 Suspension Rights (Section 11.2)

There is no statutory requirement that the RPSA contain provisions to suspend participation in the REP. Nonetheless, BPA has included suspension provisions in prior RPSAs. Under the 1981 RPSA, the right to suspend was conditioned on the utility’s ASC falling below the PF Exchange rate because of the Section 7(b)(2) rate test.⁷⁵⁹ Such suspension applied for “at least” one year. Under the 2008 RPSA, a utility could suspend for any reason, but the suspension would remain in effect until the end of the RPSA (i.e., 2028).⁷⁶⁰

⁷⁵⁴ 16 U.S.C. § 839c(c)(1).

⁷⁵⁵ 16 U.S.C. § 839c(c)(4).

⁷⁵⁶ 1981 RPSA § 9.

⁷⁵⁷ 2000 RPSA § 11(a).

⁷⁵⁸ See 2008 RPSA § 11.1.2.

⁷⁵⁹ 1981 RPSA § 9.

⁷⁶⁰ See 2008 RPSA § 11.2.2.

For the 2026 RPSA, section 11.2 provides for the automatic suspension of certain provisions of the 2026 RPSA if the PF Exchange rate exceeds a utility's ASC of its resources. Through this automatic suspension, a utility will never have to pay BPA for any negative cost benefits if BPA's PF Exchange rate exceeds the utility's ASC of its resources. This provision is new to the RPSA, and with its introduction, significantly simplifies the operation of the REP. Previous RPSAs permitted the REP to continue even when a utility's ASC fell below BPA's PF Exchange rate. In these instances, the utility would not pay BPA, but the negative difference would be tracked in a provision in the RPSA, called a "deemer account" or "balancing account."⁷⁶¹ The negative balance in a deemer account would have to be paid off before the utility could receive positive future REP benefits.

Implementation of the deemer provision has been difficult and administratively burdensome. Consequently, following years of litigation and settlements over those balances, all prior deemer balances were extinguished as part of the 2012 REP Settlement.⁷⁶²

The 2026 RPSA does not contain a deemer account. In its place, BPA has included Section 11.2, which automatically suspends the utility's participation in the REP. Because of this automatic suspension, BPA no longer requires a utility to continue to engage in the energy-neutral Section 5(c)(1) exchange just to incur "negative" cost benefits that must be tracked and paid-off before receiving positive cost benefits. This approach more closely aligns with the primary purpose and intent of the REP, which is to provide residential rate relief in the form of a positive "cost benefit[]" to the utility, subject to statutory limits described above.

11.3 Issues

Issue 11.3.1

Whether BPA's decision to not include a deemer/balancing account in the 2026 RPSA is lawful.

BPA Staff's Proposal

Staff did not include a deemer account in the draft 2026 RPSA. Staff explained that its proposal regarding termination, suspension, and activation was informed by the limited statutory right to terminate in Section 5(c)(4) of the Northwest Power Act, the statutory right to request a purchase and exchange sale in Section 5(c)(1), and the statutory direction for "reasonable terms and conditions" in Section 5(c)(4).

⁷⁶¹ See 1981 RPSA § 10 ("Election to Equalize Rates"); 2000 RPSA § ("Payment Balancing Account"); 2008 RPSA § 12 ("Balancing Account").

⁷⁶² See 2012 REP Settlement Evaluation and Analysis Study, REP-12-FS-BPA-01, at 142-45 (July 26, 2011) (discussing past litigation over deemer balances), available at <https://proceedings.bpa.gov/Home/OpenDoc?fileId=4039>.

Parties' Positions

Public Power customers argue, “[e]liminating the deemer balance could result in BPA providing REP benefits for which an IOU is not eligible under the law.”⁷⁶³ They argue, “Congress created the REP as a ‘two-way’ exchange where benefits could flow both from BPA to the exchanging utility when the utility’s ASC is above the PF Exchange Rate, and from the exchanging utility to BPA when such utility’s ASC is below the PF Exchange Rate.” They note, “the original 1981 RPSA established accounts that accrued ‘deemer’ balances that were required to be worked off once the ASC of the exchanging utility exceeded the PF Exchange Rate before it could receive cost benefits under the REP.”⁷⁶⁴ AWEC also “supports restoring deemer balancing accounts so that the two-way exchange of benefits can flow as intended, and to ensure that the IOUs do not receive benefits that are otherwise legally prohibited.”⁷⁶⁵

The IOUs do not oppose, or propose revisions to, section 11 of the 2026 RPSA.⁷⁶⁶

Evaluation of Positions

1. *BPA’s decision to not include a provision for calculating “negative” REP benefits is reasonable and consistent with law.*

There is no statutory requirement, or evidence of Congressional intent, that a Pacific Northwest electric utility *must* pay negative REP cost benefits to BPA whenever its ASC of its resources is higher than BPA’s PF Exchange rate. As explained in *Issues 3.4.2* and *3.4.4*, Congress structured the REP to calculate “cost benefits” for the residential consumers of participating utilities. There is no evidence that Congress intended the “cost benefits” to become a “cost harm” that residential consumers would have to bear. However, because the Section 5(c)(1) exchange was structured as two offsetting purchases and sales, without further safeguards, the REP structure could allow a scenario where the “cost benefits” could become “negative,” leading to a payment to BPA.

The safeguards Congress included to address this scenario are comprised of three primary areas. First, the IOU chooses whether to initiate the exchange.⁷⁶⁷ Second, the IOU has a limited statutory right to terminate the exchange.⁷⁶⁸ Third, termination is to be “upon reasonable terms and conditions.”⁷⁶⁹ Additionally, BPA has general authority to contract “upon such terms and conditions and in such manner as [the Administrator] may deem necessary[,]” provided those terms are consistent with BPA’s statutory authorities.⁷⁷⁰

In view of these safeguards in a financial-only exchange, BPA does not believe REP cost benefits paid from BPA to an IOU are required to be offset by past amounts that would have

⁷⁶³ Public Power Comment at 20.

⁷⁶⁴ *Id.*

⁷⁶⁵ AWEC Comment at 1-2.

⁷⁶⁶ *See* IOU Comments, Appendix A at 16-17.

⁷⁶⁷ 16 U.S.C. § 839c(c)(1).

⁷⁶⁸ 16 U.S.C. § 839c(c)(4).

⁷⁶⁹ *Id.*

⁷⁷⁰ 16 U.S.C. § 832a(f).

been owed from an IOU to BPA absent termination or suspension. As an example, consider an IOU with an ASC of its resources below the PF Exchange rate when the Northwest Power Act was first enacted. Nothing would have required such an IOU to request an exchange under Section 5(c)(1). No contractual relationship would exist that could require it to pay BPA or to require documentation that could keep track of such amounts. If such utility later requested a contract, the statute does not mandate contractual provisions to “repay” BPA prior to activation. BPA would not violate the statute by paying REP cost benefits to such requesting utility. Contrary to the Public Power customers’ suggestion, BPA’s payment would not result in BPA “providing REP benefits for which an IOU is not eligible under the law.”⁷⁷¹

However, Congress did intend BPA to avoid the disruptive outcome of an IOU unilaterally terminating and requesting a new exchange on demand. Legislative history confirms Congress’ intent that BPA include contractual termination and reactivation provisions in order to minimize disruption.⁷⁷² Such outcomes are restrained by “reasonable terms and conditions.”⁷⁷³ The RPSA is consistent with this framework, particularly under a financial-only exchange.

If Congress intended IOUs to pay BPA under the REP, it would not have given the IOUs discretion to request an exchange sale. Additionally, if Congress intended the IOUs to remain in the exchange when it became uneconomic, they would not have given exchanging utilities a statutory right to unilaterally terminate under Section 5(c)(4). These features of the REP – voluntary participation and statutory rights to terminate when it became uneconomic – established that Congress did not intend the REP to become a forecasting gamble. While a deemer account can be a “reasonable term and condition of termination,” it is not required. BPA’s terms and conditions are reasonable, and do not result in IOUs receiving more REP benefits than are lawfully allowed.

The 2026 RPSA’s termination, suspension, and reactivation provisions are reasonable and give effect to the statutory directives. The provisions as a whole disincentivize disruptive terminations and incentivize continued engagement and information exchange.

That is, IOUs could likely avoid accumulating a deemer balance or paying negative cost benefits to BPA by terminating the RPSA. As BPA has previously stated, “[a]ccumulating a deemer balance after an exchanging utility invokes this statutory termination right appears inconsistent with the right provided by Congress.”⁷⁷⁴ If suspension resulted in a deemer balance, and termination did not, the RPSA would create an incentive for an IOU to terminate rather than suspend. Cycles of terminations and reactivations would add

⁷⁷¹ See Public Power Comment at 20.

⁷⁷² S. Rep. No. 96-272, 96th Cong., at 27 (1979) (“It is intended that the Administrator include in contracts implementing this section provisions governing termination and resumption of any previously-terminated exchange, for the purpose of minimizing disruption of the Administrator’s rate-making or power marketing programs or planning.”).

⁷⁷³ 16 U.S.C. § 839c(c)(4); see 16 U.S.C. § 832a(f).

⁷⁷⁴ 2008 RPSA ROD at 9.

complexity in contract management, and potentially in assumptions about REP participation when BPA sets rates.

Further, under termination, BPA would lose the information required to be provided under the 2026 RPSA. Under the automatic suspension provision, an IOU does not have to pay BPA, but still has to provide annual ASC and load information.⁷⁷⁵

BPA also notes that, while the flexibility and timeframes allowed under the RPSA's termination, suspension, and activation provisions are reasonable in the context of a financial transaction, they may not be under the physical exchange construct put forward by the IOUs. A physical exchange, as discussed in *Issue 3.4.1* and *Issue 3.4.2*, would warrant significantly more robust on- and off-ramp provisions to align with resource and other operational planning timelines as well as to avoid potential stranded costs associated with facilitating a physical exchange. Thus, the decision to omit a deemer/balancing account from the 2026 RPSA may be revisited if the Section 5(c)(1) exchange must be implemented in a physical manner.

2. *The 1981 RPSA deemer account construct should not be continued in the 2026 RPSA.*

Public Power customers argue the REP was designed to be a “two-way” exchange where benefits could flow either to the utility or BPA depending on their respective costs of power.⁷⁷⁶ Public Power customers cite to BPA's decision in the 1981 RPSA as evidence of this “two-way” approach to the REP, and the creation of the “deemer account” concept.⁷⁷⁷ Public Power customers also cite language from BPA's 2008 RPSA ROD for support.⁷⁷⁸

BPA finds that the context in which the 1981 RPSA's “deemer account” was created and the subsequent events surrounding the development of the 2000 RPSA and 2008 RPSA ROD are distinguishable, and do not compel BPA to continue that approach under the 2026 RPSA.

First, there is unique context around the “deemer account” from the 1981 RPSA. As described above in section 11.2 of this ROD, a “deemer account” is a contractual mechanism that tracks the “negative REP benefits” a utility would have paid BPA under the Section 5(c)(1) exchange. The original 1981 RPSA introduced this concept because participating utilities had limited termination and suspension rights. Specifically, the 1981 RPSA limited suspension and termination to only “if the supplemental rate charge provided for in Section 7(b)(3) of the Regional Act is applied by Bonneville and the costs of electric power sold to the Utility under Section 3 of this agreement exceeds the ASC of the power sold to Bonneville under Section 2.”⁷⁷⁹ These terms implemented Section 5(c)(4) of the Northwest Power Act, which permits termination when the Section 7(b)(2) rate test results in a Section 7(b)(3) supplemental rate charge that causes the PF Exchange rate to exceed the

⁷⁷⁵ See 2026 RPSA § 11.2.

⁷⁷⁶ Public Power Comment at 20.

⁷⁷⁷ *Id.*

⁷⁷⁸ *Id.*

⁷⁷⁹ 1981 RPSA § 9.

utility's ASC of its resources.⁷⁸⁰ The issue created by limiting the termination and suspension to this condition, though, was that the Section 7(b)(2) rate test did not apply until "[a]fter July 1, 1985."⁷⁸¹ This followed from the requirement that for the first five years of the Northwest Power Act, the DSIs were to fully pay for the REP.⁷⁸²

Participants in the 1981 RPSA REP faced a dilemma: for the first five years of operation, they could not exercise their statutory right to terminate the exchange, as the Section 7(b)(2) rate test would not take effect until 1985. Consequently, if a utility's ASC dropped below the PF Exchange rate for *other* reasons, it had no means to exit the exchange. This risk was especially significant in 1981 because the methodology for calculating a utility's ASC of its resources was not established, nor had BPA set the PF Exchange rate that would apply to BPA's exchange sale. Utilities, particularly IOUs, were unwilling to sign up for the REP if it could go against them.⁷⁸³

To address this issue, BPA created the "deemer account" concept. This provision allowed utilities to sign the 1981 RPSA, while also protecting them from having to pay BPA for negative benefits during the period in which their statutory termination rights were not in effect. This approach, which was a compromise, was "embraced by all BPA customer groups."⁷⁸⁴

Multiple utilities ended up with balances in their deemer accounts under the 1981 RPSA. These balances proved cumbersome to manage and maintain, particularly as utilities terminated their RPSA contracts. As BPA designed new RPSAs, BPA had to address what was to be done with those balances. Thus, for instance, in the 2000 RPSA, BPA concluded that utilities with existing balances had to repay them to receive positive REP benefits.⁷⁸⁵ BPA also retained a form of the deemer balance (now called balancing account) in the 2000 RPSA.⁷⁸⁶ BPA retained this approach in the 2008 RPSA after the failure of the 2000 REP Settlement.⁷⁸⁷ That is, BPA had to address what to do with existing deemer balances and whether to continue the approach originally provided for in the 1981 RPSA. Ultimately, BPA chose to retain those provisions in the 2008 RPSA.⁷⁸⁸

The 2000 RPSA and 2008 RPSA were both challenged in court, with the 2000 RPSA being subsumed into the resulting 2000 REP Settlement (which was overturned), and the 2008 RPSA and ROD becoming part of the mass of cases settled and replaced by the 2012 REP Settlement.⁷⁸⁹

⁷⁸⁰ See 16 U.S.C. § 839c(c)(4).

⁷⁸¹ 16 U.S.C. § 839e(b)(2).

⁷⁸² 16 U.S.C. § 839e(c)(1)(A).

⁷⁸³ See 1981 RPSA FRN at 44,346.

⁷⁸⁴ *Id.*

⁷⁸⁵ 2000 RPSA ROD at 41-57.

⁷⁸⁶ 2000 RPSA § 12.

⁷⁸⁷ 2008 RPSA ROD at 14-26.

⁷⁸⁸ 2008 RPSA § 12.

⁷⁸⁹ REP-12 ROD at 6-7 (discussing the 2000 RPSA and 2000 REP Settlement, and challenges to it), 11-13 (discussing the 2008 RPSA, and challenges to it).

Importantly, the 2012 REP Settlement eliminated all previous deemer balances.⁷⁹⁰ Therefore, unlike the 2000 RPSA and 2008 RPSA, which both dealt with ongoing negative deemer balances, BPA can approach the 2026 RPSA from a fresh perspective. This new approach is free from the 1981 RPSA's termination limitations (because Section 7(b)(2) is now active) and the need to structure future RPSA provisions to account for past deemer balance accumulations.⁷⁹¹ As described above, BPA has sound reasons to adopt a more straightforward approach to the 2026 RPSA, which does not require BPA to account for negative REP payments.

The termination provisions are also reasonable when viewed in context of other 2026 RPSA provisions that fix REP inputs. Under the 1981 RPSA, the utility's ASC could change throughout the rate period, meaning the amount of REP benefits BPA assumed in rates could significantly diverge from the rate case forecast. The same was true, to a lesser extent, with the ASCs under the 2008 RPSA. In both instances, the utility could make adjustments to its ASCs *after* BPA set its rates that would impact the calculation of REP benefits. In a context where ASCs are constantly changing throughout a rate period (thereby creating differing "cost benefits" than what BPA anticipated when setting rates), it may be appropriate to retain a deemer-like provision to account for these changes.

Under the 2026 RPSA, however, REP inputs (ASCs, PF Exchange rate, and Residential Load) are fixed in each BPA rate case, eliminating variance within the rate period.⁷⁹² Along with these fixed inputs, ASCs and the PF Exchange rate are isolated from BPA's mid-rate-period risk adjustment mechanisms, and IOUs forego mid-rate period adjustments for new major resource additions and reductions, new NLSLs, and changes in service territory.⁷⁹³ Public Power customers support these provisions.⁷⁹⁴ Therefore, BPA and utilities will have certainty at the time BPA sets its rates regarding who is participating in the REP and what BPA's REP costs will be for the rate period. Deemer accounts may have been more appropriate when a utility's ASC and the PF Exchange rate could change mid-rate period.

⁷⁹⁰ See 2012 REP Settlement § 7.4 (noting "each Party agrees, as to each other Party, that the rights and obligations undertaken by the Parties in accordance with this Settlement Agreement fully satisfy, discharge, and extinguish any and all obligations, claims, and liabilities among the Parties with respect to: . . . (v) any Deemer Amount . . .").

⁷⁹¹ Even in the prior ROD cited by the Public Power customers, BPA recognized a "tension between a program that, fundamentally and primarily, is intended to provide benefits to residential consumers of exchanging utilities, but that is structured and limited in a way that anticipates the possibility that the value of an exchange transaction could favor BPA, and providing exchanging utilities with only a limited and conditional means of terminating the exchange transaction." 2008 RPSA ROD at 25-26. BPA stated it "must attempt to accommodate these competing expressions of legislative intent." *Id.* at 26. That is, BPA's basis for including a deemer account in prior contracts was not because such an account was statutorily required. Instead, it was the exercise of statutorily vested discretion to determine "reasonable terms and conditions" to minimize disruption. BPA continues to apply this same understanding of the statutory framework.

⁷⁹² 2026 RPSA § 6.1.

⁷⁹³ *Id.* §§ 6.2, 6.3.

⁷⁹⁴ Public Power Comment at 19.

In sum, the 2026 RPSA complies with and gives effect to the statutory requirements. The terms and conditions regarding termination, suspension, and activation reasonably minimize disruption.

Decision

BPA's decision to not include a deemer/balancing account is reasonable and consistent with the law.

Issue 11.3.2

Whether the 2026 RPSA should require an exchanging utility to forgo participation in the REP once its ASC exceeds the PF Exchange rate for a period equal to the duration of its termination or suspension.

BPA Staff's Proposal

This concept was not in Staff's proposal and was proposed by Public Power customers.

Parties' Positions

Public Power customers argue, "[a]lternatively, the RPSA should at the very least require exchanging utilities to forgo participation in the REP once their ASC exceeds the PF Exchange Rate for a period equal to the duration of its termination or suspension. This, again, is to honor the two-way intent of Congress."⁷⁹⁵

Evaluation of Positions

As discussed above, the REP structure established by Congress could allow, but does not require an exchanging utility to pay BPA when its ASC is below the PF Exchange rate. Public Power customers' proposal is not required to honor Congressional intent.

Instead, BPA believes it is reasonable for an exchanging utility to be required to continue providing information through suspension or risk a delay in reactivation if an exchanging utility terminates and stops providing information.

Decision

The RPSA should not require an exchanging utility to forgo participation in the REP once its ASC exceeds the PF Exchange rate for a period equal to the duration of its termination or suspension.

Issue 11.3.3

Whether BPA should include negative REP benefits for suspended utilities in calculating the total amount of REP benefits available each year.

BPA Staff's Proposal

This is a Section 7(b)(2) issue and is not addressed in the 2026 RPSA.

⁷⁹⁵ Public Power Comment at 20.

Parties' Positions

Public Power customers argue that, “to avoid violating § 7(b)(2), BPA should calculate the total amount of REP benefits available each year as the sum of REP benefits for all utilities, including negative REP benefits for suspended utilities.”⁷⁹⁶ They argue, “[d]oing so will also implement the Congressional intent that the REP benefits (both negative and positive) flow in both directions.”⁷⁹⁷

Evaluation of Positions

This comment is out of scope for the 2026 RPSA contract development process. The Section 7(b)(2) Implementation Methodology and Legal Interpretation will be developed in a separate process, expected to begin later this year.

However, BPA notes that this proposal could create a cost recovery problem. The concept of negative REP benefits assumes the exchanging utility is paying BPA. If BPA sets its rates assuming such revenue, but the exchanging utility will not actually pay BPA because of the RPSA’s suspension provision, then BPA’s rates will not recover its costs. This problem is not alleviated with a deemer account, since the deemer amount would not be received by BPA as revenue during the rate period. Further, since exchanging utilities have the statutory right to terminate under Section 5(c)(4), the likely outcome of negative benefits is not the utility paying BPA, but the utility terminating the RPSA.

Decision

This issue is outside the scope of the 2026 RPSA process.

⁷⁹⁶ *Id.*

⁷⁹⁷ *Id.*

12.0 OTHER PROVISIONS (RPSA SECTIONS 12-18)

RPSA Sections 12-18 contain generic provisions common to BPA contracts. Section 12 includes information on providing notices under the 2026 RPSA. Section 13 describes the conditions of an uncontrollable force. Section 14 describes the terms for disputes and resolutions. As used in other BPA contracts, section 14 makes clear that challenges to matters subject to the exclusive jurisdiction of the Ninth Circuit are not within the scope of the section 14 dispute provisions. Section 15 includes contractual language to implement applicable statutory requirements. Section 16 contains BPA's standard contract provisions. Section 17 addresses information exchanges between BPA and the utility, as well as confidentiality rules. Section 18 is the signature page.

13.0 EXHIBITS (RPSA EXHIBITS A-E)

13.1 Residential Load (Exhibit A)

Exhibit A to the 2026 RPSA identifies the utility’s eligible Residential Load. This load is used in determining REP benefits pursuant to the calculation in Section 5. As noted earlier, the definition of Residential Load under the Act “means all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.”⁷⁹⁸

BPA’s determination of what loads qualify as a Residential Load is guided by BPA’s Customer Load Eligibility Guidelines or CLEG. BPA has included a link to the CLEG in Exhibit A. BPA may modify the CLEG as needed to address new circumstances and loads.

13.2 Committed to and Contracted for Loads and New Large Single Loads (Exhibit B)

Exhibit B includes BPA’s standard provisions for identifying and tracking New Large Single Loads (NLSL). Under the Northwest Power Act, a new large single load is “any load associated with a new facility, an existing facility, or an expansion of an existing facility 1) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or federal agency customer prior to September 1, 1979, and 2) which will result in an increase in power requirements of such customer of ten average megawatts or more in any consecutive 12-month period.”⁷⁹⁹

Under Section 5(c)(7)(A) of the Northwest Power Act, BPA must exclude from a utility’s ASC “the cost of additional resources in an amount sufficient to serve any new large single load of the utility.”⁸⁰⁰ Exhibit B of the 2026 RPSA contains the contractual terms to implement these statutory provisions. Through Exhibit B, BPA tracks a utility’s NLSL(s) or potential NLSL(s).

13.3 Average System Cost Methodology (Exhibit C)

Exhibit C contains a link to the then-current ASCM. This link is provided as a matter of convenience, and is not intended to incorporate the ASCM into the terms of the 2026 RPSA.

13.4 *In Lieu* Power Scheduling and Settlements (Exhibit D)

Exhibit D provides additional details on how BPA would schedule *in lieu* power to the utility, if BPA elects to acquire such power pursuant to Section 9. Exhibit D also makes clear that the deliveries of *in-lieu* power are “take or pay” obligations, meaning, the utility will pay BPA for the power, regardless of whether the utility took delivery of such power. During the 206 RPSA process, BPA received questions about how the *in lieu* power

⁷⁹⁸ 16 U.S.C. § 839a(18).

⁷⁹⁹ 16 U.S.C. § 839a(13).

⁸⁰⁰ 16 U.S.C. § 839c(c)(7).

transaction would operate in a new organized energy market. At this time, there is insufficient information about these markets for BPA to know what adjustments—if any—would be needed to implement the *in-lieu* power transaction in an organized energy market. As such, included in Exhibit D, Section 4, is an acknowledgment by the parties to work together to take such actions that are necessary to ensure BPA could implement *in-lieu* power deliveries in an organized energy market.

13.5 Compliance Program (Exhibit E)

Pursuant to Section 5(c)(3) of the Northwest Power Act, the Cost Benefits produced through the energy-neutral purchase and exchange of Section 5(c)(1) must be passed down to the utility’s residential loads.⁸⁰¹ As discussed above, the 2026 RPSA contains terms that obligate the utility to make these distributions. Utilities, in turn, pass through the REP benefits pursuant to the retail rate provisions approved by state utility commissions. The Northwest Power Act does not specifically direct BPA to ensure these payments are made to appropriate consumers through periodic reviews. Nevertheless, BPA is the source of these federal funds and, as such, has taken on the task of confirming that REP benefits are being distributed consistent with the RPSA and legislative intent.⁸⁰² To that end, BPA has developed a compliance program wherein BPA (or a designated agent) periodically reviews the utility’s accounting and distribution practices to ensure REP benefits are being distributed to residential consumers as intended. Exhibit E of the 2026 RPSA contains the terms of the current compliance program.

13.6 Environmental Attributes (Exhibit H)

As noted in Section 9 of this Record of Decision, BPA has a discretionary right to purchase physical power from other sources and sell that power to the utility under the *in lieu* provisions of the 2026 RPSA. In such case, the utility would be entitled to the environmental attributes of such power. Exhibit H is a placeholder exhibit that will be populated with the terms and conditions for conveying the environmental attributes of an *in lieu* power sale to the utility. BPA currently has a similar Exhibit H in the Provider of Choice contracts it holds with customers that purchase physical power under Section 5(b) of the Northwest Power Act. If BPA engages in an *in lieu* power transaction, BPA will update the Exhibit H in the 2026 RPSA and convey the environmental attributes of such power to the utility using the terms and the general construct adopted in BPA’s Exhibit H for the Provider of Choice contract. Specialized terms may be added to Exhibit H to address the specific sales and resources involved.

Comments regarding this approach are addressed in section 9 of this ROD.⁸⁰³

⁸⁰¹ 16 U.S.C. § 839c(c)(3).

⁸⁰² In 1990, the General Accounting Office issued a report encouraging BPA to take on the role of ensuring that “utilities are passing program benefits through to their residential and small farm customers . . .” GAO RCED-90-34, Federal Electric Power, Bonneville’s Residential Exchange Program at 3 (Feb. 1990), available at <https://www.gao.gov/assets/rced-90-34.pdf>.

⁸⁰³ See Issue 9.5.2.

14.0 NATIONAL ENVIRONMENTAL POLICY ACT ANALYSIS

Consistent with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., BPA has analyzed the potential environmental effects that could result from the development and execution of Residential Purchase and Sale Agreements for the post-2028 Residential Exchange Program. NEPA review of the proposed actions was conducted concurrently with the post-2028 Residential Exchange Program public stakeholder engagement process. BPA NEPA compliance staff reviewed the comments received during this public process for comments related to environmental compliance.

Developing and executing Residential Purchase and Sale Agreements would be an entirely administrative task and would not require any changes to BPA's transmission system, nor any construction of new generation facilities or transmission infrastructure. Existing generation resources would continue to operate within their normal operating limits. Because of the administrative nature of the proposed actions, BPA does not expect that there would be any reasonably foreseeable environmental effects as a result of these actions.

Accordingly, BPA has determined that the proposed development and execution of Residential Purchase and Sale Agreements fall within a class of actions excluded from further NEPA review pursuant to U.S. Department of Energy regulations and NEPA Implementing Procedures, which are applicable to BPA. More specifically, the proposed actions fall within Categorical Exclusions B4.1 and B4.4, found at Appendix B to 10 C.F.R. § 1021, as revised by the U.S. Department of Energy's July 3, 2025, Interim Final Rule published at 90 Fed. Reg. 29,682, which provides for the categorical exclusion from further NEPA review of "contracts, policies, and marketing and allocation plans related to electric power" and "power marketing services and power management activities." BPA has prepared a categorical exclusion determination memorandum that documents this categorical exclusion from further NEPA review, which is available at the BPA website: <https://www.bpa.gov/learn-and-participate/public-involvement-decisions/categorical-exclusions>.

15.0 CONCLUSION

I have reviewed and evaluated the comments received by BPA on the foregoing issues. I have also considered the requirements of the Northwest Power Act and other relevant law. Based upon the record compiled in this proceeding, the discussion expressed herein, and all requirements of law, I hereby adopt the foregoing 2026 RPSA in the form attached hereto as Attachment 1. I also find that the evaluation and decision used in the development of the 2026 RPSA are consistent with the above referenced environmental analysis.

Issued at Portland, Oregon, the 6th day of March, 2026.

Suzanne B. Cooper
Deputy Administrator and Chief Operating
Officer⁸⁰⁴

⁸⁰⁴ Administrator John Hairston was recused from this decision. In the absence of the Administrator, Deputy Administrator Suzanne Cooper is authorized to “perform the duties and exercise the powers of the Administrator” 16 U.S.C. § 832i(a).

ATTACHMENT 1:

Template 2026 Residential Purchase and Sale Agreement

March 2026

2026 RPSA TEMPLATE

Contract No. 26PS-«#####»

RESIDENTIAL PURCHASE AND SALE AGREEMENT

executed by the

BONNEVILLE POWER ADMINISTRATION

and

«FULL NAME OF CUSTOMER»

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Exhibit A	Residential Load Definition
Exhibit B	CF/CT and New Large Single Loads
Exhibit C	Average System Cost Methodology
Exhibit D	In-Lieu Scheduling and Settlements
Exhibit E	Compliance Program
Exhibit F	[Reserved]
Exhibit G	[Reserved]
Exhibit H	Renewable Energy Certificates and Environmental Attributes

This RESIDENTIAL PURCHASE AND SALE AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and «FULL NAME OF CUSTOMER» («Customer Name»), hereinafter individually referred to as “Party” and collectively referred to as the “Parties.” «Customer Name» is an Investor-Owned Utility organized and authorized under the laws of the State of «_____» to purchase and distribute electric power to serve retail consumers from its distribution system within its service area.

RECITALS

Section 5(c) of the Northwest Power Act provides that a Regional electric utility may offer to sell electric power to BPA, and BPA shall purchase such electric power at the Average System Cost (ASC) of that utility’s resources, and in exchange BPA shall offer to sell in return an equivalent amount of electric power to such utility, and such utility shall purchase such electric power at the Priority Firm Power Exchange (PF Exchange) rate. The Cost Benefits of such purchase and exchange sale attributable to a utility’s residential load within a state shall be passed directly through to that utility’s residential load within such state.

The Parties agree:

1. TERM

This Agreement shall take effect on the latter of:

- (1) the date signed by the Parties, or
- (2) if applicable, the Effective Date specified by the Federal Energy Regulatory Commission (FERC) in its acceptance for filing of this Agreement, provided FERC has not conditioned acceptance upon any change or condition unacceptable to either Party.

This Agreement shall expire on September 30, 2044, unless terminated earlier pursuant to Section 11 below. All obligations and liabilities accrued under this Agreement are preserved until satisfied.

2. DEFINITIONS

Capitalized terms below will have the meaning stated. Capitalized terms that are not listed below are either defined within the section or exhibit in which the term is used or, if not so defined, will have the meaning stated in BPA’s applicable Wholesale Power Rate Schedules, including the General Rate Schedule Provisions (GRSPs), or the ASC Methodology.

- 2.1 “Appendix 1” means the electronic form on which «Customer Name» reports its Contract System Costs and other necessary data to BPA for the calculation of «Customer Name»’s Base Period ASC pursuant to the ASC Methodology.

- 2.2 “Average System Cost” or “ASC” means the rate charged by «Customer Name» to BPA for BPA’s purchase of power from «Customer Name» under Section 5(c) of the Northwest Power Act for each Exchange Period and is the quotient obtained by dividing Contract System Costs by Contract System Load, all in accordance with the ASC Methodology.
- 2.3 “ASC Methodology” or “ASCM” means the methodology, as may be amended or superseded, used to determine a utility’s ASC, as developed by BPA pursuant to Section 5(c)(7) of the Northwest Power Act. Exhibit C contains a website link to the current version of the ASC Methodology. This Agreement is subject to the ASC Methodology, but such ASC Methodology is not incorporated as part of this Agreement.
- 2.4 “ASC Review Process” means the administrative proceeding conducted by BPA concurrent with BPA’s rate case proceedings to determine a utility’s ASC, as further defined in the ASCM.
- 2.5 “Base Period” means the calendar year of the most recent FERC Form 1 data at the commencement of the ASC Review Process, as further defined in the ASCM.
- 2.6 “Base Period ASC” means the ASC determined in the ASC Review Process using «Customer Name»’s Base Period data, in accordance with the ASCM.
- 2.7 “Business Day(s)” means every Monday through Friday except federal holidays.
- 2.8 “Contract System Costs” means «Customer Name»’s costs includable in its Appendix 1 and subject to the provisions of the ASCM. Under no circumstances will Contract System Costs include costs excluded from the ASC by Section 5(c)(7) of the Northwest Power Act.
- 2.9 “Contract System Load” means the total Regional retail load included in the FERC Form 1, in accordance with the ASCM.
- 2.10 “Cost Benefits” means monetary benefit payments made to «Customer Name» as determined pursuant to Section 5 of this Agreement for pass-through to «Customer Name»’s Residential Load pursuant to Section 10.
- 2.11 “Due Date” will have the meaning as described in Section 9.8.2.
- 2.12 “Effective Date” means the effective date of this Agreement, as determined pursuant to Section 1 above.
- 2.13 “Environmental Attributes” means the environmental and non-power characteristics of power, however defined or titled and arising under any federal, state, or local law or regulation, including but not limited to current or future certificates, credits, benefits, and avoided emissions attributable to the generation of energy from a resource, as may be further defined in Exhibit H. Environmental Attributes do not include the tax credits associated with such resource. One megawatt hour of energy generation from

a resource is associated with one megawatt hour of Environmental Attributes.

- 2.14 “Exchange Period” means the period during which «Customer Name»’s ASC is effective for the calculation of «Customer Name»’s Cost Benefits under this Agreement. Each Exchange Period will be the period of time concurrent with the duration of each BPA wholesale power rate period.
- 2.15 “Fiscal Year” or “FY” means the period beginning each October 1 and ending the following September 30.
- 2.16 “FERC Form 1” means the annual filing submitted to the Federal Energy Regulatory Commission (FERC) required by 18 CFR §141.1, as specified in the ASCM.
- 2.17 “In-Lieu Power” means firm power acquired by BPA from a source(s) other than «Customer Name» at a cost less than «Customer Name»’s ASC as provided in Section 5(c)(5) of the Northwest Power Act. The In-Lieu Power is then sold by BPA to «Customer Name» in an In-Lieu transaction at the applicable PF Exchange Rate, or its successor.
- 2.18 “Informational ASC Filing” means the ASC filings implemented in the years BPA is not conducting an ASC Review Process, pursuant to the ASCM, which occur after the final published ASC reports for an ASC Review Process and before the start of the subsequent ASC Review Process.
- 2.19 “Issue Date” has the meaning as described in Section 9.8.1.
- 2.20 “Jurisdiction” means the service territory of «Customer Name» within which a particular Regulatory Body has authority to approve «Customer Name»’s retail rates. Jurisdictions must be within the Region.
- 2.21 “New Large Single Load” or “NLSL” has the meaning specified in Section 3(13) of the Northwest Power Act and in BPA’s NLSL Policy.
- 2.22 “Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §839, Public Law No. 96-501, as amended.
- 2.23 “PF Exchange Rate” or “PFx” means the rate for exchange power established by BPA in a proceeding pursuant to Section 7(i) of the Northwest Power Act, or its successor.
- 2.24 “Potential NLSL” means a load at a facility that BPA determines is capable of growing 10 average megawatts or more in a consecutive 12-month monitoring period that may qualify as an NLSL.
- 2.25 “PRDM” means the 2029 Public Rate Design Methodology, PRDM-26-A-03-E01, as amended or revised.
- 2.26 “Purchase and Exchange Sales” has the meaning as described in Sections 5.1 and 5.2 of the body of this Agreement.

- 2.27 “Rate Period” means the period of time during which a specific set of rates established by BPA pursuant to Section 7(i) of the Northwest Power Act and the PRDM is intended to remain in effect.
- 2.28 “Region” or “Regional” means the Pacific Northwest as defined in Section 3(14) of the Northwest Power Act.
- 2.29 “Regulatory Body” means a state commission or consumer-owned utility governing body, or other entity authorized to establish retail electric rates in a Jurisdiction.
- 2.30 “Residential Exchange Program” or “REP” means the program implemented under this Agreement and established by Section 5(c) of the Northwest Power Act.
- 2.31 “REP Benefits” means monetary payments made to «Customer Name» that are Cost Benefits as defined in Definition 2.10 above and benefits resulting from In-Lieu Power deliveries for pass-through to «Customer Name»’s Residential Load pursuant to Section 10.
- 2.32 “Residential Load” means the «Customer Name»’s exchangeable load, as defined in the Northwest Power Act and clarified in Exhibit A.
- 2.33 “Third Party Transmission Provider” means a transmission provider other than BPA that provides transmission service to serve «Customer Name»’s load.
- 2.34 “Uncontrollable Force” has the meaning specified in Section 13.

3. APPLICABLE PF EXCHANGE RATE

Purchases by «Customer Name» under this Agreement are pursuant to the applicable PF Exchange rate and applicable GRSPs, or their successors, established by BPA in a proceeding pursuant to Section 7(i) of the Northwest Power Act, or its successor. Section 5 below establishes purchases subject to the applicable PF Exchange rate schedule.

4. ESTABLISHMENT OF ASC TO ACTIVATE PURCHASE AND EXCHANGE SALES

4.1 Prerequisite

As a prerequisite to activate the Purchase and Exchange Sales under Section 5 of this Agreement, «Customer Name» must file an Informational ASC Filing Appendix 1 pursuant to the ASCM in the calendar year prior to the ASC Review Process for the Exchange Period when the Purchase and Exchange Sales will occur. For example, «Customer Name» must file an Informational ASC Filing by June 1, 2026 (or such other date as determined by BPA pursuant to the ASCM) to (1) participate in the ASC Review Process that begins in 2027, and (2) activate purchase and exchange sales for the Fiscal Years 2029-2030 Exchange Period.

4.2 **Activation of the Purchase and Exchange Sales**

The first Exchange Period, during which «Customer Name» may activate the Purchase and Exchange Sales under Section 5 of this Agreement, will commence on October 1, 2028, for the Fiscal Years 2029-2030 Exchange Period. Once «Customer Name» files an Appendix 1, «Customer Name» shall continue to file a new Appendix 1 pursuant to the effective ASCM, unless and until this Agreement terminates pursuant to Section 11.

5. **PURCHASE AND EXCHANGE SALES BY «CUSTOMER NAME» AND BPA**

5.1 **Offer by «Customer Name» and Purchase by BPA**

Beginning with the first month of the initial Exchange Period established under Section 4 above, «Customer Name» shall offer and BPA shall purchase an amount of electric power up to or equal to «Customer Name»'s Residential Load for each month of the Exchange Period.

«Customer Name» may only sell an amount of electric power under this Section 5 that is up to or equivalent to the Residential Load that «Customer Name» is authorized under state law or by order of the applicable state regulatory authority to serve. The rate for such power sale to BPA will be equal to «Customer Name»'s ASC, as determined by BPA using the ASC Methodology.

5.2 **Offer by BPA and Purchase by «Customer Name»**

Simultaneous with the offer by «Customer Name» and purchase by BPA, BPA shall offer and «Customer Name» shall purchase an amount of electric power equal to the amount that «Customer Name» offers and BPA purchases each month pursuant to Section 5.1 above. The rate for such power sale to «Customer Name» will be equal to BPA's applicable PF Exchange rate.

5.3 **Calculation of Cost Benefits**

The Purchase and Exchange Sales described in Sections 5.1 and 5.2 above will be simultaneous and offsetting. No physical delivery of electric power will occur. The Cost Benefits to «Customer Name» will be determined using the following formula:

$$\begin{aligned} & (\text{«Customer Name»'s Average System Cost (ASC) – BPA's applicable} \\ & \text{PF Exchange rate}) \times \text{«Customer Name»'s Residential Load} = \\ & \text{«Customer Name»'s Cost Benefits.} \end{aligned}$$

If the calculation results in positive Cost Benefits, then «Customer Name» shall receive financial payments pursuant to Section 6. If the calculation results in negative Cost Benefits, then this Agreement will suspend pursuant to Section 11.2.

6. INVOICING FOR COST BENEFITS

6.1 Rate Case Billing Determinant

The rate case billing determinant for the Purchase and Exchange Sales pursuant to Section 5 above for any month of a Rate Period will be equal to the average of «Customer Name»'s Residential Load for two months:

- (1) the first month being the same month in the Base Period applicable to such Rate Period, and
- (2) the second month being the same month in the year following such Base Period.

6.2 Invoicing for Residential Load

6.2.1 Through the customer portal or successor, «Customer Name» shall submit to BPA an invoice no later than the 15th of each month that includes the amount of «Customer Name»'s Residential Load for the prior month pursuant to Section 6.1. Each such invoice will be subject to adjustment pursuant to Sections 7, 8 and 10 below.

6.2.2 Within 30 calendar days following BPA's receipt of each monthly invoice from «Customer Name», and subject to Sections 7, 8 and 10 below, BPA shall verify the invoice and pay such invoice electronically in accordance with instructions on each such invoice. If the 30th calendar day is a Saturday, Sunday, or federal holiday, BPA shall pay such invoice electronically the next Business Day.

6.2.3 Additionally, «Customer Name» shall submit the sum of «Customer Name»'s Residential Load for such month. Each submittal will be subject to adjustment pursuant to Sections 7, 8 and 10 below.

6.3 For purposes of calculating «Customer Name»'s Cost Benefits in Section 5.3, BPA's applicable PF Exchange rate will not be subject to mid-Rate Period risk adjustments (for example, the Power Cost Recovery Adjustment Clause, the Power Reserves Distribution Clause, and the Financial Reserves Policy Surcharge). Additionally, for purposes of calculating «Customer Name»'s Cost Benefits in Section 5.3, «Customer Name»'s ASC will not be subject to mid-Rate Period adjustments, pursuant to the ASCM, for major resource additions or reductions, NLSLs, or changes to service territory.

6.4 Late Payments

If BPA pays an invoice after the due date under Section 6.2.2, BPA shall make such payment with simple interest computed from the due date to the date the payment is made. The daily interest rate will equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

6.5 Residential Load Net of In-Lieu Power

«Customer Name»'s Residential Load will be adjusted to reflect the net amount of Residential Load amount less the In-Lieu Power amount pursuant to Section 9.7.

6.6 Disputed Invoices or Bills

- 6.6.1 If «Customer Name» disputes any portion of a charge or credit on «Customer Name»'s estimated or final bills or invoices, «Customer Name» shall provide written notice to BPA with a copy of the bill or invoice noting the disputed amounts. Notwithstanding whether any portion of the bill or invoice is in dispute, «Customer Name» shall pay the entire bill or invoice by the Due Date. This Section 6.6.1 does not allow «Customer Name» to challenge the validity of any BPA rate or «Customer Name»'s ASC.
- 6.6.2 Unpaid amounts on a bill or invoice (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill or invoice does not constitute BPA's agreement that a valid claim under contract law has been stated.
- 6.6.3 If the Parties agree, or if after a final determination of a dispute pursuant to Section 14, «Customer Name» is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate will equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

7. ACCOUNTING AND REVIEW

7.1 Accounting Records Requirements

«Customer Name» shall keep up-to-date records, accounts, and related documents that pertain to this Agreement. These records, accounts, and documents will contain information that supports:

- (1) «Customer Name»'s ASC as determined pursuant to the ASCM;
- (2) identification of the consumers that comprise «Customer Name»'s Residential Load;
- (3) the amount of Residential Load invoiced to BPA;
- (4) In-Lieu Power delivery schedules and records; and
- (5) evidence that the REP Benefits have been passed through to consumers that comprise «Customer Name»'s Residential Load, as provided for in Section 10 below.

BPA retains the right to review or inspect «Customer Name»'s records, accounts, and related documents pertaining to this Agreement for any Fiscal Year consistent with the provisions of Sections 7, 8, 10, 17 and Exhibit E of this Agreement.

7.2 Duty to Retain Records

«Customer Name»'s shall retain records pursuant to Section 7.1 for any Fiscal Year up to 60 months after the end of such Fiscal Year.

7.3 Compliance Review Program

The REP's Compliance Review Program provides reasonable assurance the REP Benefits, as determined pursuant to Sections 5 and 9 of this Agreement, paid to «Customer Name» are passed-through to «Customer Name»'s Residential Load as required under the Section 5(c) of the Northwest Power Act. The REP Compliance Review Program encompasses three processes to monitor payments of REP Benefits and verify «Customer Name»'s Residential Load.

«Customer Name» shall fully cooperate in good faith with any such reviews or inspections pursuant to this Section 7.3. BPA retains the right to take action to respond to the results of such reviews or inspections to require the pass-through of such benefits to «Customer Name»'s Residential Load.

7.3.1 End-of-Year REP Benefits Certification

Following the conclusion of each Fiscal Year, BPA shall conduct an annual compliance review process to certify the REP Benefits paid to «Customer Name» are passed through to «Customer Name»'s Residential Load in accordance with Section 10 of this Agreement.

7.3.2 Biennial Agreed Upon Procedures Compliance Review

BPA may, at its expense, elect to engage «Customer Name»'s certified public accountant (CPA) pursuant to Exhibit E to assist in performing the requirements of this Section 7.

7.3.3 Residential Load Reviews

BPA may, from time to time, perform an eligibility validation review, consistent with the provisions of Section 17.1 and Exhibit A of this Agreement, of «Customer Name»'s Residential Loads.

8. ADJUSTMENTS TO REP BENEFITS

The REP Benefits provided to «Customer Name» under this Agreement will be subject to adjustments by BPA to account for the overpayment or underpayment of REP Benefits, if any, for the period October 1, 2028, through September 30, 2044, made to «Customer Name» under this Agreement.

8.1 True-Up of Underpayments and Overpayments

If BPA determines that «Customer Name» has received REP Benefits for ineligible load, including an NLSL, or that other errors have occurred in implementing this Agreement that result in an overpayment, then any such overpayment will either be returned to BPA within 30 days of BPA's determination, or BPA may adjust future REP Benefits payments to «Customer Name», as determined by BPA. If BPA determines that «Customer Name» has not received REP Benefits owed to «Customer Name» due to errors in implementing this Agreement that result in an

underpayment, then BPA shall pay «Customer Name» such REP Benefits within 30 days of BPA's determination that such benefits were not received.

8.2 Adjustments to Payments Related to Remedies

If BPA makes an adjustment to REP Benefits pursuant to Section 14.2, any such adjustments will be limited to those established by BPA in its power rate adjustment proceedings or other forums established by BPA for the determination of the amount of underpayment or overpayment to be recovered and the associated recovery period; provided however, that any such adjustment is subject to the resolution of all administrative or judicial review thereof.

9. IN-LIEU TRANSACTIONS

All written notices sent by either Party under this Section 9 will be pursuant to Section 12.

9.1 BPA's Right to In-Lieu

In lieu of purchasing all or a portion of the electric power offered to BPA pursuant to Section 5.1 by «Customer Name» at its ASC, BPA may acquire or make arrangements to acquire In-Lieu Power if the cost of such power as determined in this section, is less than «Customer Name's» ASC.

9.2 In-Lieu Notice(s)

BPA shall provide written notice to «Customer Name» of its election to acquire In-Lieu Power pursuant to Section 9.1 no less than 10 months prior to implementing an In-Lieu Power transaction. Issuance of this notice starts the 30-calendar day opt-out window described in Section 9.3 below. BPA shall, in each written In-Lieu notice, provide the following:

(1) **Amount of In-Lieu Power**

The amount of In-Lieu Power in monthly increments and expressed in megawatts and megawatt hours. The amount of In-Lieu Power will not exceed «Customer Name's» Residential Load determined pursuant to Section 6.1.

(2) **BPA's Cost of Acquiring In-Lieu Power**

The cost of the In-Lieu Power inclusive of any applicable transmission and/or shaping costs to deliver such In-Lieu Power to «Customer Name's» Point of Delivery (POD).

(3) **Duration of the In-Lieu Power Sale**

The anticipated start and end date of the In-Lieu Power sale.

(4) **Source of In-Lieu Power**

The purchasing entity from which BPA will purchase the In-Lieu Power. The In-Lieu Power will be firm power.

(5) **Customer's Point of Delivery of In-Lieu Power**

The scheduling POD to which BPA shall deliver the In-Lieu Power to «Customer Name» as defined in Exhibit D of this Agreement.

9.3 In-Lieu Power Opt-Out Election

«Customer Name» may, within 30 calendar days after receipt of an In-Lieu Power notice, elect to opt out of the In-Lieu Power delivery. Instead of receiving the In-Lieu Power delivery, «Customer Name» may elect to lower «Customer Name»'s ASC pursuant to this section. In such instance, BPA shall reduce «Customer Name»'s ASC to the weighted average of the In-Lieu Power at BPA's acquisition cost for In-Lieu Power and the remaining Residential Load at «Customer Name»'s ASC. Payments will be made pursuant to Section 6.

For example, if «Customer Name»'s Residential Load is 200 MWh and BPA proposes to implement an In-Lieu Power sale for 100 MWh, «Customer Name» would exchange 200 MWhs at the weighted average ASC.

- (1) Residential Load of 200MWh at \$80/MWh ASC,
- (2) In-Lieu Power of 100MWh at \$70/MWh BPA's acquisition cost,
- (3) Under this election, the full 200MWh will be sold to BPA at the weighted average ASC \$75/MWh, and
- (4) BPA will make payments at $(\$75/\text{MWh} - \text{applicable PFx rate}) \times 200 \text{ MWh} = \text{«Customer Name»'s Cost Benefits adjusted for In-Lieu Power.}$

If the resulting Cost Benefits are negative, the Purchase and Exchange Sales would suspend pursuant to Section 11.2.

9.4 Price of In-Lieu Power

BPA shall sell In-Lieu Power to «Customer Name» at the applicable PF Exchange Rate and applicable GRSPs, or their successors, established by BPA in a proceeding pursuant to Section 7(i) of the Northwest Power Act, or its successor.

9.5 In-Lieu Scheduling

BPA shall schedule power in accordance with Exhibit D.

9.6 In-Lieu Conveyance of Environmental Attributes

Any Environmental Attributes of physically delivered In-Lieu Power will be conveyed to «Customer Name».

9.7 Residential Load Net of In-Lieu Power

In the event «Customer Name» has elected to take physical delivery of In-Lieu Power, for purposes of the Cost Benefits calculation in Section 5.3, «Customer Name»'s Residential Load will be adjusted to reflect the net amount of Residential Load amount less the In-Lieu Power amount.

9.8 Billing and Payment for In-Lieu Power

9.8.1 Billing

BPA shall electronically bill «Customer Name» monthly for physical deliveries of In-Lieu Power under this Agreement, and all products and services, including any charges and credits incurred, provided during the preceding month(s). However, if electronic transmittal of the bill is not possible, then BPA shall mail a physical copy of the bill

to «Customer Name». BPA may send «Customer Name» an estimated bill prior to a final bill and may send subsequent revisions if needed. The Issue Date is the date BPA sends the bill to «Customer Name».

9.8.2 Payment

«Customer Name» shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th day after the Issue Date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

If «Customer Name» has made payment on an estimated bill then:

- (1) if the amount of the final bill exceeds the amount of the estimated bill, then «Customer Name» shall pay BPA the difference between the estimated bill and final bill by the final bill's Due Date; or
- (2) if the amount of the final bill is less than the amount of the estimated bill, then BPA shall pay «Customer Name» the difference between the estimated bill and final bill by the 20th day after the final bill's Issue Date. If the 20th day is a Saturday, Sunday, or federal holiday, then BPA shall pay the difference by the next Business Day.

9.9 Late Payments

If «Customer Name» has not paid its bill in full by the Due Date, BPA shall apply a daily interest charge to any unpaid balance equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365.

9.10 Disputed Bills

Disputes of any portion of a charge or credit on «Customer Name»'s estimated or final bills under this section will be addressed pursuant to Section 6.6 above.

10. PASS THROUGH OF REP BENEFITS

10.1 All REP Benefits amounts, pursuant to Sections 5, 6, and 9 above, will be passed through to «Customer Name»'s Residential Load. The form of such pass-through will be: (1) a separately stated credit to applicable retail rates on «Customer Name»'s consumers' monthly electric bills; (2) monetary payments; or (3) another form as directed by the applicable Regulatory Body(ies).

10.2 REP Benefits will be passed through in full by «Customer Name» on a monthly basis. Distributions of REP Benefits for the Residential Load may

be made by «Customer Name» in advance of its receipt of any such REP Benefits from BPA and such REP Benefits may be used to set off distributions to the Residential Load made by «Customer Name» after October 1, 2028.

If the amount of REP Benefits held by «Customer Name» is less than \$1,000,000, then «Customer Name» may distribute REP Benefits on a less frequent basis, provided that distributions are made at least once each Fiscal Year.

Any remaining REP Benefits held will be distributed to «Customer Name»'s Residential Load no later than 12 months following the earlier of: (1) the end of the term of this Agreement; or (2) termination or suspension of this Agreement.

10.3 REP Benefits will be passed through consistent with any procedures developed by «Customer Name»'s Regulatory Body(ies) that are not otherwise inconsistent with this Agreement, the Northwest Power Act, or other applicable federal law. Until «Customer Name» has passed through such REP Benefits pursuant to Section 10.1 above, REP Benefits received by «Customer Name» will be identified on «Customer Name»'s books of account and will accrue interest at the rate(s) established by «Customer Name»'s Regulatory Body(ies).

10.4 **Customer Bill Credit Notice**
«Customer Name» will ensure that any entity that issues customer bills to «Customer Name»'s residential and farm consumers shall provide written notice on such customer bills that the benefits of this Agreement are “BPA REP Credit” or such other as approved by BPA.

11. TERMINATION AND SUSPENSION OF AGREEMENT

All written notices sent by either Party under this Section 11 will be pursuant to Section 12.

11.1 Termination of Agreement

11.1.1 «Customer Name» may terminate this Agreement by providing BPA with written notice within 30 calendar days following BPA's issuance of a power rate proceeding Final Record of Decision in which the supplemental rate charge provided for in Section 7(b)(3) of the Northwest Power Act is applied and causes the PF Exchange rate charged «Customer Name» to exceed «Customer Name»'s ASC. In such instance, termination of this Agreement will become effective on the effective date for the PF Exchange rate as stated in FERC's interim approval.

11.1.2 «Customer Name» may terminate this Agreement for any other reason than stated in Section 11.1.1 by providing BPA with written notice within 30 days following the issuance of a power rate proceeding Final Record of Decision. Such termination of the Agreement will become

effective on the effective date for the PF Exchange Rate as stated in FERC's interim approval.

11.1.3 Upon termination of this Agreement pursuant to Sections 11.1.1 or 11.1.2, «Customer Name» shall not participate in the Residential Exchange Program established in Section 5(c) of the Northwest Power Act until the following two conditions are met:

- (1) «Customer Name» executes a new Residential Purchase and Sale Agreement (RPSA) with BPA; and
- (2) «Customer Name» files an Informational Filing Appendix 1 pursuant to the ASCM in the year prior to the ASC Review Process for the Exchange Period when the Purchase and Exchange Sales will occur.

This Section 11.1.3 will survive termination of this Agreement.

11.2 Suspension of Performance

The Purchase and Exchange Sales under this Agreement will automatically suspend whenever the applicable PF Exchange Rate equals or exceeds «Customer Name»'s ASC. Such suspension will suspend the rights and obligations of both Parties to pay or receive Cost Benefits for the Exchange Period pursuant to Section 5, and to engage in In-Lieu Power sales pursuant to Section 9.

Under such a suspension, all other obligations under this Agreement will remain in effect. «Customer Name» shall continue to participate in all RPSA administrative activities during the suspended Exchange Period, including filing Informational ASC Filing and audits.

12. NOTICES AND CONTACT INFORMATION

Any notice required under this Agreement that requires such notice to be provided under the terms of this section will be provided in writing to the other Party in one of the following ways:

- (1) delivered in person;
- (2) by a nationally recognized delivery service with proof of receipt;
- (3) by United States Certified Mail with return receipt requested;
- (4) electronically with verification of the electronic notice's origin, date, time of transmittal and receipt; or
- (5) by another method agreed to by the Parties.

Notices are effective when received. Either Party shall notify the other Party of changes to their contact information. After such notice, BPA may unilaterally amend this section to reflect such changes to the Parties' contact information.

The Parties shall deliver notices to the following person and address:

If to «Customer Name»:

«Utility Name»
«Street Address»
«PO Box »
«City, State Zip»
Attn: «Contact Name»
«Contact Title»
Phone: «###-###-####»
E-Mail: «E-mail address»

If to BPA:

Bonneville Power Administration
«Street Address»
«PO Box»
«City, State Zip»
Attn: «AE Name - Routing»
Account Executive
Phone: «###-###-####»
E-Mail: «E-mail address»

13. UNCONTROLLABLE FORCES

13.1 A Party shall not be in breach of an obligation under this Agreement to the extent its failure to fulfill the obligation is due to an Uncontrollable Force. “Uncontrollable Force” means an event beyond the reasonable control, and without the fault or negligence, of the Party claiming the Uncontrollable Force, that prevents that Party from performing its obligations under this Agreement and which that Party could not have avoided by the exercise of reasonable care, diligence, and foresight. Uncontrollable Forces include each event listed below, to the extent it satisfies the foregoing criteria, but are not limited to these listed events:

- (1) any curtailment or interruption of firm transmission service on BPA’s or a Third Party Transmission Provider’s system that prevents delivery of In-Lieu Power sold under this Agreement to «Customer Name»;
- (2) any failure of «Customer Name»’s distribution or transmission facilities that prevents «Customer Name» from delivering power to end-users;
- (3) strikes, work stoppage, or terrorist acts;
- (4) floods, earthquakes, other natural disasters, epidemics, or pandemics; and
- (5) final orders or injunctions issued by a court or regulatory body having subject matter jurisdiction that the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court having subject matter jurisdiction.

13.2 Neither the unavailability of funds or financing, nor conditions of national or local economies or markets will be considered an Uncontrollable Force. The economic hardship of either Party will not constitute an Uncontrollable Force. Nothing contained in this provision will be construed to require either Party to settle any strike or labor dispute in which it may be involved.

- 13.3 If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall:
- (1) promptly notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable;
 - (2) use commercially reasonable efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable;
 - (3) keep the other Party apprised of such efforts on an ongoing basis; and
 - (4) provide written notice of the resumption of performance.

Written notices sent under this section must comply with Section 12.

14. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement will be interpreted consistent with and governed by federal law. «Customer Name» and BPA shall identify issue(s) in dispute arising out of this Agreement and make a good faith effort to negotiate a resolution of such disputes before either may initiate litigation or arbitration. Such good faith effort will include discussions or negotiations between the Parties' executives or managers. Pending resolution of a contract dispute or contract issue between the Parties or through formal dispute resolution of a contract dispute arising out of this Agreement, the Parties shall continue performance under this Agreement unless to do so would be impossible or impracticable. Unless the Parties engage in binding arbitration as provided for in this Section 14, the Parties reserve their rights to individually seek judicial resolution of any dispute arising under this Agreement.

14.1 Judicial Resolution

Final actions subject to Section 9(e) of the Northwest Power Act are not subject to arbitration under this Agreement and will remain within the exclusive jurisdiction of the United States Court of Appeals for the Ninth Circuit. Such final actions may include, but are not limited to, (1) the establishment or the implementation of rates and rate methodologies, (2) the establishment or implementation of the ASCM; (3) NLSL calculations and determinations, and (3) the establishment or implementation of a BPA policy.

Any dispute regarding any rights or obligations of «Customer Name» or BPA under such final action will not be subject to arbitration under this Agreement. For purposes of this Section 14, "BPA policy" means any written document adopted by BPA as a final action in a record of decision that establishes a policy of general application or makes a determination under an applicable statute or regulation. If BPA determines that a dispute is excluded from arbitration under this Section 14, then «Customer Name» may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this Section 14.

14.2 Remedies

If FERC or a court of competent jurisdiction remands, reverses, or otherwise finds unlawful a BPA final decision or decisions that affect «Customer Name»'s REP Benefits under this Agreement or the implementation of this Agreement under Section 5(c) of the Northwest Power Act, then BPA will review and determine the rights and obligations of the Parties through additional administrative action(s) as necessary to respond to such regulatory or court decisions.

14.3 Arbitration

Any contract dispute or contract issue between the Parties arising out of this Agreement, which is not excluded by Section 14.1 above, will be subject to arbitration, as set forth below.

«Customer Name» may request that BPA engage in binding arbitration to resolve any dispute. If «Customer Name» requests such binding arbitration and BPA determines in its sole discretion that binding arbitration of the dispute is appropriate under BPA's Binding Arbitration Policy or its successor, then BPA shall engage in such binding arbitration, provided that the remaining requirements of this Section 14.3 and Sections 14.4 and 14.5 are met. BPA may request that «Customer Name» engage in binding arbitration to resolve any dispute. In response to BPA's request, «Customer Name» may agree to binding arbitration of such dispute, provided that the remaining requirements of this Section 14.3 and Sections 14.4 and 14.5 are met. Before initiating binding arbitration, the Parties shall draft and sign an agreement to engage in binding arbitration, which will set forth the precise issue in dispute, the amount in controversy and the maximum monetary award allowed, pursuant to BPA's Binding Arbitration Policy or its successor.

Nonbinding arbitration will be used to resolve any dispute arising out of this contract that is not excluded by Section 14.1 above and is not resolved via binding arbitration, unless «Customer Name» notifies BPA that it does not wish to proceed with nonbinding arbitration.

14.4 Arbitration Procedure

Any arbitration will take place in Portland, Oregon, unless the Parties agree otherwise. The Parties agree that a fundamental purpose for arbitration is the expedient resolution of disputes; therefore, the Parties shall make best efforts to resolve an arbitrable dispute within one year of initiating arbitration. The rules for arbitration will be agreed to by the Parties.

14.5 Arbitration Remedies

The payment of monies will be the exclusive remedy available in any arbitration proceeding pursuant to this Section 14. This shall not be interpreted to preclude the Parties from agreeing to limit the object of arbitration to the determination of facts. Under no circumstances shall specific performance be an available remedy against BPA.

14.6 Finality

14.6.1 In binding arbitration, the arbitration award will be final and binding on the Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

14.6.2 In nonbinding arbitration, the arbitration award is not binding on the Parties. Each Party shall notify the other Party within 30 calendar days, or such other time as the Parties otherwise agreed to, whether it accepts or rejects the arbitration award. Subsequent to nonbinding arbitration, if either Party rejects the arbitration award, either Party may seek judicial resolution of the dispute, provided that such suit is brought no later than 395 calendar days after the date the arbitration award was issued.

14.7 Arbitration Costs

Each Party shall be responsible for its own costs of arbitration, including legal fees. Unless otherwise agreed to by the Parties, the arbitrator(s) may apportion all other costs of arbitration between the Parties in such manner as the arbitrator(s) deem reasonable, taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

15. STATUTORY PROVISIONS

15.1 Restrictions on Exchange Sales

Pursuant to Section 5(c)(6) of the Northwest Power Act, exchange sales to «Customer Name» under this Agreement will not be restricted below the amounts of electric power acquired by BPA from, or on behalf of, «Customer Name».

15.2 New Large Single Loads and CF/CTs

15.2.1 Customer Notice of Large Loads and Determination of an NLSL

«Customer Name» shall provide reasonable notice to BPA of any expected increase in a single load that may qualify as a Potential NLSL or NLSL.

Pursuant to this Section 15.2, BPA shall determine if any load associated with a single facility that is capable of growing 10 Average Megawatts or more in a consecutive 12-month period is a Potential NLSL or an NLSL.

«Customer Name»'s Potential NLSLs and NLSLs shall be subject to monitoring as determined necessary by BPA. For the purposes of this Section 15.2, and Section 1 of Exhibit B, 10 Average Megawatts in a consecutive 12-month monitoring period equates to 87,600,000 kilowatt-hours in any consecutive 12-month period with 365 days and

87,840,000 kilowatt-hours for any consecutive 12-month period with 366 days.

In accordance with BPA's NLSL Policy and the terms of this Section 15.2, BPA may determine that a load is an NLSL as follows:

15.2.1.1 Pursuant to Section 3(13) of the Northwest Power Act, BPA shall determine an increase in production load to be an NLSL if any load associated with a new facility, an existing facility, or an expansion of an existing facility, which is not Contracted For, or Committed To (CF/CT), as determined by the Administrator, by a public body, cooperative, investor-owned utility, or federal agency customer prior to September 1, 1979, and which will result in an increase in power requirements of such customer of 10 Average Megawatts or more in any consecutive 12-month period.

15.2.1.2 For the sole purpose of computing the increase in energy consumption between any two consecutive 12-month periods of comparison under this Section 15.2.1, BPA shall determine if the reductions in the end-use consumer's load associated with a facility during the first 12-month period of comparison are due to unusual events reasonably beyond the control of the end-use consumer, and, if so, BPA shall compute the energy consumption as if such reductions had not occurred.

15.2.1.3 The Parties may agree that the applicable increase in load of installed production equipment at a facility will equal or exceed 10 Average Megawatts consumption over any 12 consecutive months and that such production load constitutes an NLSL. Any such agreement will be a binding NLSL determination, and BPA shall add the NLSL to Section 1 of Exhibit B.

15.2.1.4 Unless the Parties agree pursuant to Section 15.2.1.3 above, BPA shall determine whether a new load or an increase in existing load at a facility is an NLSL. If BPA determines that the load at a facility is an NLSL, then BPA shall notify «Customer Name» and BPA shall add the NLSL to Section 1 of Exhibit B if such is not already in Exhibit B after the facility determination pursuant to Section 15.2.2.

15.2.1.5 BPA shall list «Customer Name»'s CF/CT loads, Potential NLSLs and NLSLs in Section 1 of Exhibit B.

15.2.2 Determination of a Facility

BPA shall make a written determination as to what constitutes a single facility, for the purpose of identifying an NLSL. BPA's determination will be made by applying some or all of the following criteria:

- (1) whether the load is operated by a single end-use consumer;
- (2) whether the load is in a single location;
- (3) whether the load serves a manufacturing process that produces a single product or type of product;
- (4) whether separable portions of the load are interdependent;
- (5) whether the load is separately metered from other loads;
- (6) whether the load is contracted for, served or billed as a single load under «Customer Name»'s customary billing and service policy or practices;
- (7) consideration of the facts from previous similar situations; and
- (8) any other factors the Parties determine to be relevant.

15.2.3 Access and Metering

Upon BPA's request, «Customer Name» shall provide physical access to its substations and other service locations for BPA to perform inspections or gather information for purposes of implementing Section 5(c)(7)(A) of the Northwest Power Act. Such BPA inspections may include but are not limited to those needed to make a facility, final NLSL, or CF/CT determination. «Customer Name» shall coordinate with the end-use consumer to provide BPA, at reasonable times, physical access to inspect a facility for these purposes.

For any load that is monitored by BPA for an NLSL determination, and for any load at any facility that was determined by BPA to be an NLSL, BPA may, in its sole discretion, install BPA-owned meters. If the Parties agree, «Customer Name» may install meters meeting specifications BPA provides to «Customer Name». «Customer Name» and BPA shall enter into a separate agreement for the location, ownership, cost responsibility, access, maintenance, testing, replacement and liability of the Parties with respect to such meters. «Customer Name» shall coordinate with BPA and the end-use consumer to arrange for metering locations that allow accurate measurement of the load at a facility. «Customer Name» shall arrange for BPA to have physical access to such meters and «Customer Name» shall ensure BPA has access to all meter data for loads that are monitored under this Section 15.2 and Section 1 of Exhibit B that BPA determines are necessary to forecast, plan, schedule, and bill for power.

15.2.4 Undetermined NLSLs

If BPA concludes in its sole judgment that «Customer Name» has not fulfilled its obligations, or has not been able to obtain access or information from the end-use consumer under this Section 15.2, then BPA may determine any large load capable of growing 10 Average

Megawatts or more in a consecutive 12-month period or any Potential NLSL subject to monitoring to be an NLSL. Such NLSL determination will be final unless «Customer Name» proves to BPA's satisfaction that the applicable increase in load did not equal or exceed 10 Average Megawatts in any 12-month monitoring period.

15.3 BPA Appropriations Refinancing

The Parties agree that the provisions of Section 3201(i) of the Bonneville Power Administration Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (BPA Refinancing Act), P.L. 104-134, 110 Stat. 1321, 350, as stated in the United States Code on the Effective Date, are incorporated by reference and are a material term of this Agreement.

16. STANDARD PROVISIONS

16.1 Amendments

Except where this Agreement explicitly allows for one Party to unilaterally amend a provision or exhibit, no amendment of this Agreement will be of any force or effect unless set forth in writing and signed by authorized representatives of each Party. Upon «Customer Name»'s request, and to the extent BPA determines it is practicable, BPA shall provide «Customer Name» a reasonable opportunity to review any unilateral provision or exhibit revisions, or the data that will be input into an exhibit revision, prior to BPA making such unilateral revisions.

16.2 Entire Agreement and Order of Precedence

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement. The body of this Agreement will prevail over the exhibits to this Agreement in the event of a conflict.

16.3 Assignment

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent will not be unreasonably withheld. Without limiting the foregoing, BPA's refusal to consent to assignment will not be considered unreasonable if, in BPA's sole discretion, the sale of power by BPA to the assignee would violate any applicable statute. «Customer Name» may not transfer or assign this Agreement to any of its retail consumers.

16.4 No Third-Party Beneficiaries

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

16.5 Waivers

No waiver of any provision or breach of this Agreement will be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver will not be deemed a waiver of any other provision of this Agreement or of any other breach of this Agreement.

16.6 BPA Policies

Any reference in this Agreement to BPA policies, including any revisions, does not constitute agreement of «Customer Name» to such policy by execution of this Agreement, nor will it be construed to be a waiver of the right of «Customer Name» to seek judicial review of any such policy.

17. INFORMATION EXCHANGE AND CONFIDENTIALITY

17.1 Information Exchange

Upon request, each Party shall provide the other Party with any information that is necessary to administer this Agreement. Such information will be provided in a timely manner.

17.2 Confidentiality

Before «Customer Name» provides information to BPA that is confidential, or is otherwise subject to privilege or nondisclosure, «Customer Name» shall clearly designate such information as confidential. BPA shall notify «Customer Name» as soon as practicable of any request received under the Freedom of Information Act (FOIA), or under any other federal law or court or administrative order, for any confidential information. BPA shall release such confidential information consistent with FOIA or if required by any other federal law or court or administrative order. BPA shall limit the use and dissemination of confidential information within BPA to employees who need it for purposes of administering this Agreement.

18. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign. This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Agreement as of the last date indicated below.

«FULL NAME OF CUSTOMER»

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____

By _____

Name _____
(Print/Type)

Name _____
(Print/Type)

Title _____

Title _____

Date _____

Date _____

Exhibit A
RESIDENTIAL LOAD DEFINITION

1. «Customer Name»'s Residential Load is the sum of «Customer Name»'s qualifying residential and small farm load within the Region eligible for the Residential Exchange Program under the tariff schedules described below, as determined pursuant to BPA's Customer Load Eligibility Guidelines (CLEG), or its successor. Such load will be adjusted for distribution losses as determined pursuant to the ASC Methodology, as revised, supplemented, or superseded.
2. Such tariff schedules as presently effective include:
 - 2.1 for all schedules listed below, include the amount, expressed in kilowatt-hours, of Residential Load supplied by «Customer Name» under:
 - 2.1.1 «schedule»
 - 2.1.2 «schedule»
 - 2.1.3 «schedule»
3. See <https://www.bpa.gov/energy-and-services/power/residential-exchange-program> for the current version of BPA's CLEG.
4. BPA may unilaterally revise this exhibit to modify these tariff schedules and/or incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

**Exhibit B
CF/CT AND NEW LARGE SINGLE LOADS**

1. CF/CT AND NEW LARGE SINGLE LOADS

Option 1: Include the following if customer has no CF/CT loads.

1.1 CF/CT Loads

«Customer Name» has no loads identified that were contracted for, or committed to (CF/CT), as of September 1, 1979, as defined in Section 3(13)(A) of the Northwest Power Act.

End Option 1

Option 2: Include the following if customer has CF/CT loads.

Drafter's Note: If customer has more than one CF/CT, number each separately as (1), (2), etc. and indent appropriately.

1.1 CF/CT Loads

The Administrator has determined that the following loads were CF/CTs as of September 1, 1979, as defined in Section 3(13)(A) of the Northwest Power Act.

End Use Consumer's Name	Facility Name	Facility Location	Date of CF/CT Determination	Amount of Firm Energy Contracted for, or Committed to (MW)

Note: Amount of Firm Energy is at 100 percent load factor.

End Option 2

Option 1: Include the following if customer has no POTENTIAL NLSLs.

1.2 Potential NLSLs

«Customer Name» has no identified potential NLSLs.

End Option 1

Option 2: Include the following if customer has POTENTIAL NLSL(s).

Drafter's Note: If customer has more than one potential NLSL, number each separately as (1), (2), etc. and indent appropriately.

1.2 Potential NLSLs

«Customer Name» has the following identified potential NLSL(s):

End Use Consumer's Name	Facility Name	Facility Location	Date of BPA Facility Determination	12-Month Monitoring Period
				«Month Day» through «Month Day»

End Option 2

1.3 Existing NLSLs

Option 1: Include the following if customer has no existing NLSLs.

«Customer Name» has no existing NLSLs.

End Option 1

Option 2: Include the following if customer has an existing NLSL and will serve the NLSL with a non-federal firm resource.

1.3.1 NLSL

«Customer Name» has one or more existing NLSLs and listed below pursuant to Section 15.2 of the body of this Agreement.

Drafter's Note: If customer has more than one NLSL, number each separately as (1), (2), etc. and indent appropriately. Add facility name if there are two NLSLs at same site or as needed.

End Use Consumer's Name	Facility Name	Facility Location	Date of BPA facility determination	12-month Monitoring Period	Date Load Determined to be an NLSL	Manner of Service
				«Month Day» through «Month Day»		«Direct or Transfer»

End Option 2

2. REVISIONS

BPA shall unilaterally revise Section 1 of this Exhibit B, CF/CT and New Large Single Loads, to reflect BPA's determinations made in accordance with Section 15.2 of the body of the Agreement and Section 1 of this Exhibit B. All other changes to this Exhibit B will be made by mutual agreement of the Parties.

Exhibit C
AVERAGE SYSTEM COST METHODOLOGY

See <https://www.bpa.gov/energy-and-services/power/residential-exchange-program> for the current version of BPA's Average System Cost Methodology.

Exhibit D
IN-LIEU POWER SCHEDULING AND SETTLEMENTS

1. DEFINITIONS AND ACRONYMS

- 1.1 “Balancing Authority” (BA) means the responsible entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.
- 1.2 “Balancing Authority Area” (BAA) means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.
- 1.3 “Electronic Tag” or “E-Tag” means an electronic record that contains the details of a transaction to transfer energy from a source point to a sink point where the energy is scheduled for transmission across one or more Balancing Authority Area(s), consistent with all relevant Exhibit E, the Western Electricity Coordinating Council (WECC), North America Energy Standards Board (NAESB), North American Electric Reliability Commission (NERC), or their successors, and FERC requirements.
- 1.4 “Interchange Points” means the points where Balancing Authority Areas interconnect and at which the interchange of energy between Balancing Authority Areas is monitored and measured.
- 1.5 “Prescheduling” means the process (electronic, oral, and written) of establishing and verifying with all scheduling parties, advance hourly Transactions through the following Workday(s). Preschedules apply to the following day or days (if the following day or days are not Workday(s)).
- 1.6 “«Customer Name»’s POD” means the scheduling point of delivery (POD) at which BPA shall deliver the In-Lieu Power to «Customer Name», which will be reflected in the E-Tag. The scheduling POD will be the «Customer Name»’s system, unless BPA and «Customer Name» mutually agree to another POD.
- 1.7 “Real-Time” means the hourly or minute-to-minute operation and scheduling of a power system as opposed to those operations that are prescheduled a day or more in advance.

2. SCHEDULING IN-LIEU POWER

- 2.1 **E-Tags**
BPA shall create any necessary E-Tags for delivery of the In-Lieu Power under Section 9 of the body of this Agreement. When completing the E-Tag, if applicable, BPA shall insert the BPA contract number of this Agreement in the "reference" column of the miscellaneous section of the E-Tag.

3. DELIVERY

3.1 Acquisition of Transmission Service

3.1.1 BPA shall acquire transmission services to deliver the In-Lieu Power to «Customer Name»'s POD.

3.1.2 «Customer Name» shall acquire transmission services for delivery from the «Customer Name»'s POD to load.

3.2 Failure to Deliver

If BPA is unable to deliver In-Lieu Power to «Customer Name»'s POD due to transmission curtailments or other system constraints, the Parties to this Agreement shall arrange to either (1) re-schedule such power at a later date, (insofar as practicable, 168 hours after such power was previously to be delivered), or (2) financially settle the applicable schedule after-the-fact. Such financial settlement will also include either the conveyance of any Environmental Attributes associated with the undelivered In-Lieu Power or the financial value thereof.

3.3 Liability for Delivery

BPA shall not be liable for any claims for non-delivery of power to any points beyond «Customer Name»'s POD. Neither Party shall be liable under this Agreement to the other Party for damage that results from any sudden, unexpected, changed, or abnormal electrical condition occurring in or on any electric system, regardless of ownership.

3.4 Real Power Losses

BPA is responsible for the real power losses necessary to deliver In-Lieu Power to «Customer Name»'s POD.

4. EMERGING ENERGY MARKETS

The Parties to this Agreement agree to work cooperatively together, and to take such actions as are reasonably necessary, to implement the In-Lieu Power deliveries under this Agreement in a sound and businesslike manner in the event BPA, «Customer Name», or any intervening transmission system, enters a new or emerging organized energy market including, but not limited to, a day-ahead energy market.

5. TAKE OR PAY

«Customer Name» shall pay for the In-Lieu Power that BPA makes available to «Customer Name»'s POD pursuant to Section 9.2, at the applicable PF Exchange Rate, pursuant to Section 9.4, whether or not «Customer Name» took delivery of such power.

6. AFTER THE FACT

BPA and «Customer Name» shall reconcile all transactions, schedules and accounts at the end of each month (as early as possible within the first 10 calendar days of the next month). BPA and «Customer Name» shall verify all transactions pursuant to

this Agreement as to product or type of service, hourly amounts, daily and monthly totals, and related charges.

7. REVISIONS

BPA may unilaterally revise this exhibit as necessary:

- (1) to implement changes that BPA determines are reasonably necessary to allow it to meet its power and scheduling obligations under this Agreement, or
- (2) to comply with requirements of WECC, NAESB, NERC, the Western Resource Adequacy Program (WRAP) or their successors or assigns, or
- (3) to comply with requirements of the Parties to this Agreement entering new and emerging markets.

Exhibit E
COMPLIANCE PROGRAM

1. BIENNIAL AGREED-UPON PROCEDURES COMPLIANCE REVIEW

Pursuant to Section 7 of the body of the Agreement, «Customer Name» agrees to cooperate with a Biennial Agreed-Upon Procedures (AUP) Compliance Review (“AUP Review”) initiated by BPA of «Customer Name»’s accounts and financial records concerning this Agreement.

1.1 Final AUP Report

After conclusion of «Customer Name»’s AUP Review, BPA may, and the CPA shall, produce a Final AUP Report documenting the reviewer’s findings and provide the report to «Customer Name».

1.2 Third-Party Engagement of «Customer Name»’s CPA

BPA may, at its expense, elect to engage «Customer Name»’s certified public accountant (CPA) that also prepares its financial accounts and audits to conduct the AUP Review pursuant to Section 7 and this Exhibit E. In such instance, BPA shall request that «Customer Name» contract with its CPA. «Customer Name» shall (1) obtain an engagement letter between «Customer Name» and its CPA, and (2) ensure the CPA provides BPA a letter of acknowledgement of such engagement. The engagement letter and letter of acknowledgement should provide the Parties to this Agreement a detailed statement of the work to be performed to meet the AUP Review included in Exhibit E, the hours, and the fee for such work.

«Customer Name» shall be responsible for ensuring that:

- (1) each AUP Review report provides all information requested by BPA consistent with the AUP Compliance Review procedures in Section 3 of this Exhibit E; and
- (2) «Customer Name»’s CPA is contractually obligated to conduct each AUP Review in accordance with the applicable auditing standards, e.g., General, Field Work, and Reporting Standards for Attestation Engagements as contained in the Government Auditing Standards (the Yellow Book) by the Comptroller General of the United States of America; the Public Company Accounting Oversight Board (PCAOB) Statements of Standards for Attestation Engagements; or, the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements.

1.2.1 Documentation Provided to «Customer Name»’s CPA

To conduct the AUP Review, BPA shall make accessible to «Customer Name» the following documentation to be provided to «Customer Name»’s CPA:

- (1) Two of «Customer Name»’s Final ASC Reports containing the ASCs in effect during the Base Period and the year after the

Base Period applicable to the Exchange Period subject to the AUP Compliance review;

- (2) «Customer Name»'s Residential Load documentation pursuant to Section 6.1, for the Exchange Period subject to the AUP Review, that contains the Residential Load for each month of the Base Period and the year after the Base Period.
- (3) «Customer Name»'s End-of-Year REP Benefits Certification packets for each Fiscal Year of the Exchange Period subject to the AUP Compliance Review;
- (4) BPA's applicable Power Rate Schedules and General Rate Schedule Provisions (GRSPs) for the Exchange Period subject to the AUP Review; and
- (5) the then in-effect Customer Load Eligibility Guidelines (CLEG).

1.3 BPA's Reimbursement Cap and Reimbursement of Invoiced CPA Fees to «Customer Name»

1.3.1 BPA's Reimbursement Cap

At the commencement of the AUP Review, pursuant to Section 1 of this Exhibit E, BPA shall provide «Customer Name» with a letter that includes the maximum amount BPA shall reimburse «Customer Name» for the upcoming final AUP Review report. «Customer Name»'s reimbursement cap will be determined solely by BPA and be based on BPA's overall reporting budget for all parties participating in the Residential Exchange Program. If the estimate in «Customer Name»'s CPA engagement letter exceeds «Customer Name»'s reimbursement cap, BPA may adjust the AUP Review procedures to ensure the CPA's review can be completed at or under the reimbursement cap. If such adjustment is necessary, BPA shall promptly notify «Customer Name» and adjust «Customer Name»'s AUP Review procedures.

1.3.2 Reimbursement of Fees

BPA shall reimburse «Customer Name» for its CPA fees for completing the AUP review pursuant to Section 7 of the body of this Agreement and Section 3 of this Exhibit E.

2. REVISIONS

BPA may, upon not less than 10 business days' prior written notice to «Customer Name», unilaterally revise this Exhibit E to implement changes that BPA determines are reasonably necessary to allow it to conduct reviews of the accounts and financial records concerning BPA customers' participation in the Residential Exchange Program.

BPA shall provide a draft of any material revisions of this exhibit to «Customer Name», with reasonable time for comment, prior to BPA’s written notice of the revision.

3. AUP COMPLIANCE REVIEW PROCEDURES

This Section 3 of Exhibit E outlines the procedures to conduct Biennial AUP Compliance Reviews.

3.1 Definitions

- 3.1.1 “Applicable Exchange Period” means the Exchange Period subject to the Biennial AUP Compliance Review.
- 3.1.2 “Residential Load Worksheet” means the worksheet developed by BPA for validation by «Customer Name», that contains the calculation of «Customer Name’s Exchange Period Residential Load pursuant to Section 6 of the body of this Agreement. The Residential Load Worksheet contains the Residential Load for each month of the Base Period and the year after the Base Period, and the two-year average load by month for the 12-month Applicable Exchange Period
- 3.1.3 “System-sourced Residential Load” means the Residential Load produced by «Customer Name» from its system that contains the monthly retails sales (load) data.

3.2 RESIDENTIAL LOAD SUPPORTED BY LOAD DATA

The objective of this Section 3.2 is to confirm the source data used to calculate «Customer Name’s Residential Load for the Applicable Exchange Period.

- 3.2.1 To complete this review, compare «Customer Name’s Residential Load Worksheet with «Customer Name’s System-sourced Residential Load data for each of the corresponding months of the Base Period and the year following the Base Period of the Applicable Exchange Period. Note any exceptions.
- 3.2.2 **CPA Only:** Using «Customer Name’s System-sourced Residential Load obtained in Section 3.2.1 of this Exhibit E, calculate a two-year average by month of load for a 12-month period. Cross-check against the same data within the Residential Load Worksheet. Note any exceptions.
- 3.2.3 Follow up with «Customer Name» personnel for explanations of any monthly differences greater than 1 percent and document such explanations and differences.

3.3 **ENSURING RESIDENTIAL AND FARM BILLS CONTAIN CORRECT REP BENEFITS**

The objective of this section is to confirm, by random sample review of consumers' electric bills for the Applicable Exchange Period, that the REP Benefits specified by the appropriate tariff is reflected on the consumers' electric bills, and that the REP Benefits have been applied to calculate using (1) the appropriate REP tariff credit and (2) the energy usage on the bill (subject to any kilowatt-hour cap).

3.3.1 «Customer Name» shall provide copies of all tariffs in effect during the Applicable Exchange Period that were eligible for REP Benefits.

3.3.2 «Customer Name» shall make accessible a list of the Residential Load accounts from the Applicable Exchange Period that were recipients of the REP Benefits. If the list is transmitted to BPA, the list shall not contain any consumer personally identifiable information (PII), such as names and addresses; however, stand-alone account numbers may be provided.

3.3.3 From such list of accounts, a random sample of 50 residential and farm accounts will be selected. The total population of the residential and farm accounts does not need to be tied-out for completeness.

3.3.4 For each of the 50 randomly selected accounts, «Customer Name» shall provide copies of the bills. If the bills are transmitted to BPA, none of the bills shall include any consumer PII.

3.3.5 For each of the bills, BPA or «Customer Name»'s CPA shall verify the credits specified on the residential and farm tariff are applied to calculate the REP Benefits (subject to any kilowatt-hour cap imposed by «Customer Name»). The total population of the residential and farm accounts does not need to be tied-out for completeness. Note any exceptions.

3.3.6 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3.4 **CONFIRMING IRRIGATION BILLS CONTAIN CORRECT REP BENEFITS**

The objective of this section is to confirm, by random sample review of consumers' irrigation/pumping bills for the Applicable Exchange Period, that the REP Benefits specified by the appropriate tariff are reflected on the consumer bills and that the REP Benefits have been applied to calculate using (1) the appropriate REP tariff credit and (2) the energy usage of the bill

(not to exceed 222,000 kWh/month). If «Customer Name» does not have any irrigation load, notate and move to Section 3.5 of this Exhibit E.

- 3.4.1 «Customer Name» shall provide copies of all tariffs in effect during the Applicable Exchange Period covering «Customer Name»'s irrigation load that were eligible for the REP Benefits.
- 3.4.2 «Customer Name» shall provide the months during the Applicable Exchange Period that comprised the high irrigation season.
- 3.4.3 «Customer Name» shall provide a list of irrigation load accounts, with single and multiple metered irrigation/pumping loads from «Customer Name»'s high irrigation season that were recipients of REP Benefits during the Applicable Exchange Period. If the list is transmitted to BPA, the list shall not contain any consumer PII such as names and addresses; however, stand-alone account numbers may be provided.
- 3.4.4 From such list of accounts, a random sample of 25 irrigation account bills will be selected. The total population of the irrigation accounts does not need to be tied-out for completeness.
- 3.4.5 For each of the 25 randomly selected irrigation accounts, «Customer Name» shall provide copies of the bills. If the bills are transmitted to BPA, none of the bills will include any consumer PII.
- 3.4.6 For each of the bills, BPA or «Customer Name»'s CPA shall verify the credits specified in an irrigation/pumping tariff are applied to the REP Benefits. The total population of the irrigation accounts does not need to be tied-out for completeness. Furthermore, BPA or «Customer Name»'s CPA shall verify the REP Benefits applied are not calculated on any (combined/aggregated) monthly irrigation/pumping load in excess of 222,000 kWh/month per farm (as defined in the CLEG). Note any exceptions.
- 3.4.7 Follow up with «Customer Name» personnel for explanations of any differences and document such explanations and differences.

3.5 **ENSURING «CUSTOMER NAME»'S END-OF-YEAR REP BENEFITS CERTIFICATION IS SUPPORTED BY BOOKS AND RECORDS**

The objective of this section is to confirm the information contained in the End-of-Year (EOY) REP Benefits Certifications for each of the applicable Fiscal Years of the Exchange Period subject to the AUP Review ties with «Customer Name»'s accounts, exclusive of benefits from In-Lieu Power deliveries.

- 3.5.1 For each of the Fiscal Years of the Exchange Period, agree beginning balances of REP Pass-Through account as reported in the respective «Customer Name»'s EOY REP Benefits Certifications with «Customer

Name»'s general ledger accounts or subsidiary accounting records for the same time period. If not in agreement, note any exceptions.

- 3.5.2 For each of the Fiscal Years of an Exchange Period, agree the total amount of Cost Benefits payments made by BPA as reported in the **«Customer Name»**'s EOY REP Benefits Certifications with **«Customer Name»**'s general ledger accounts or subsidiary accounting records for the same periods of time. If not in agreement, note any exceptions.
- 3.5.3 For each of the Fiscal Years of an Exchange Period, agree the total Cost Benefits **«Customer Name»** disbursed to its Residential Load as reported in the respective **«Customer Name»**'s EOY REP Benefits Certifications with **«Customer Name»**'s general ledger accounts or subsidiary accounting records for the same period of time. If not in agreement, note any exceptions.
- 3.5.4 For each of the Fiscal Years of an Exchange Period, confirm the method reported to compute interest expense accrued on under-distributed Cost Benefits in the "Notes" section of **«Customer Name»**'s EOY REP Benefits Certifications matches with the method used to compute interest expense on the **«Customer Name»**'s general ledger accounts or subsidiary accounting records for the same periods of time. Note any exceptions.
- 3.5.5 For each of the Fiscal Years of an Exchange Period, confirm the amounts of interest accrued on under-distribution of Cost Benefits as reported in the respective **«Customer Name»**'s EOY REP Benefits Certifications match with the amounts recorded on the utility's general ledger accounts or subsidiary accounting records for the same period. Note any exceptions.
- 3.5.6 For each of the Fiscal Years of an Exchange Period, compare the year-end balances of REP Pass-Through accounts as reported in the respective **«Customer Name»**'s EOY REP Benefits Certifications with **«Customer Name»**'s general ledger account or subsidiary accounting records for the same period of time. Note any exceptions
- 3.5.7 Follow up with **«Customer Name»** personnel for explanations of any differences and document such explanations and differences.

3.6 FEDERAL COLUMBIA RIVER BENEFIT BILL NOTICE

Confirm that all of the sampled residential, farm, and irrigation **«Customer Name»** bills include a statement or a reference to "BPA REP Credit," or such other reference as approved by BPA.

3.7 REVISIONS

- 3.7.1 BPA may, upon not less than 10 business days' prior written notice to **«Customer Name»**, unilaterally revise this exhibit's biennial AUP

Compliance Review procedures to implement changes that BPA determines are reasonably necessary to allow it to conduct reviews of the accounts and financial records concerning BPA customers' participation in the Residential Exchange Program.

- 3.7.2 BPA shall provide a draft of any material revisions of these AUP Review procedures to «Customer Name», with reasonable time for comment, prior to BPA's written notice of the revision.

Exhibit F [Reserved]

Exhibit G [Reserved]

Exhibit H
RENEWABLE ENERGY CERTIFICATES AND ENVIRONMENTAL ATTRIBUTES

If BPA exercises its discretionary right to engage in an In-Lieu transaction pursuant to Section 9 of this Agreement, BPA will revise this Exhibit to convey the Environmental Attributes of the In-Lieu Power to «Customer Name» in a manner comparable to the terms used in the Exhibit H of the Provider of Choice Contract.

