

March 3, 2025

Via email:

finance@bpa.gov

U.S. Department of Energy
Bonneville Power Administration

Re: Comments of Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. Regarding New Information or Changed Circumstances Arising After the Date of BP-26 Federal Register Notice That Affect BPA’s Cost Projections

Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. (“Commenting Parties”) submit the following comments on new information or changed circumstances arising after the date of the BP-26 Federal Register notice issued on November 13, 2024,¹ that affect BPA’s cost projections.

- I. New information and changed circumstances have arisen after the date of the BP-26 Federal Register notice that impact BPA’s cost projections in developing BP-26 rates.**
 - A. The BP-26 Federal Register notice stated that comments regarding any new information or changed circumstances arising after the date of this notice that affect BPA’s cost projections should be emailed to BPA.**

The BP-26 Federal Register notice included the following:

B. BP-26 Integrated Program Review

Bonneville’s Integrated Program Review (IPR) process is designed to allow the public an opportunity to review and comment on Bonneville’s expense and capital cost forecasts before the forecast costs are used to set rates. Bonneville’s BP-26 IPR process, which addressed the expense and capital program level cost forecasts for FY 2026–2028, began on June 25, 2024, with the publication of the BP-26 IPR Initial Publication. The process concluded on October 24, 2024, with the issuance of the BP-26 IPR Close-Out Report. Comments regarding any new information or changed circumstances arising after the date of this notice that affect BPA’s cost projections should be directed to finance@bpa.gov and be

¹ Department of Energy, Bonneville Power Administration, Fiscal Year (FY) 2026-2028 Proposed Power and Transmission Rate Adjustments; Public Hearing and Opportunities for Public Review and Comment, 89 Fed. Reg. 89626, 89626 (Nov. 13, 2024) (“BP-26 Federal Register notice”), available at <https://www.bpa.gov/-/media/Aep/rates-tariff/bp-26/FRN/BP-26/20241113BP26-FRN.pdf>.

submitted no later than March 3, 2025. At the discretion of the Administrator, Bonneville may hold additional processes to review these forecasts outside of the BP-26 rate proceeding. If Bonneville decides to update any cost information, such updates will be reflected in the final proposed rates.²

These Comments are submitted in response to this notice.

B. Substantial new information and significant changed circumstances have arisen after the date of the BP-26 Federal Register notice that must affect BPA’s cost projections in developing BP-26 rates.

There has been substantial new information and changed circumstances arising after the date of the BP-26 Federal Register notice that must affect BPA’s cost projections in developing BP-26 rates. “BPA must ‘develop a realistic projection of . . . costs that accurately reflect[s] the information available at the time the rates were set’”³ Some evidence of this new information and changed circumstances are as follows:

- On January 20, 2025, President Trump signed an Executive Order implementing a federal hiring freeze.⁴
- On January 28, 2025, the Office of Personnel Management provided an email to employees of multiple agencies within the U.S. Government offering a deferred resignation program: “If you resign under this program, you will retain all pay and benefits regardless of your daily workload and will be exempted from all applicable in-person work requirements until September 30, 2025 (or earlier if you choose to accelerate your resignation for any reason).”⁵
- On February 11, 2025, President Trump signed an Executive Order to remake America’s federal workforce. The White House Fact Sheet⁶ describing the Order included the following:
 - The Order will significantly reduce the size of government.
 - Upon expiration of the Day 1 hiring freeze and implementation of the hiring plan, agencies will be able to hire no more than one employee for every four

² *Id.*

³ *Idaho Conservation League v. Bonneville Power Admin.*, 83 F.4th 1182, 1186 (9th Cir. 2023) (citing *Golden Nw. Aluminum, Inc. v. Bonneville Power Admin.*, 501 F.3d 1037, 1049 (9th Cir. 2007)).

⁴ The White House, Hiring Freeze (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/>.

⁵ U.S. Office of Personnel Management, Deferred Resignation Email to Federal Employees (Jan. 28, 2025), <https://www.opm.gov/fork/original-email-to-employees/>.

⁶ The White House, Fact Sheet: President Donald J. Trump Works To Remake America’s Federal Workforce (Feb. 11, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-works-to-remake-americas-federal-workforce/>.

employees that depart from federal service (with appropriate immigration, law enforcement, and public safety exceptions).

- Agencies will undertake plans for large-scale reductions in force and determine which agency components (or agencies themselves) may be eliminated or combined because their functions aren't required by law.
- The Order exempts personnel and functions critical to national security, public safety, law enforcement, and immigration enforcement.
- On February 13, 2025, at BPA's Quarterly Business Review FY2025 Q1 meeting, BPA Administrator John Hairston indicated that because of the January 20 hiring freeze issued by President Trump, all open positions are now on hold. He indicated that until further notice a similar freeze is in effect for their supplemental labor. Administrator Hairston indicated that a deferred resignation program has now closed and that approximately 200 BPA employees accepted that offer, but that the number could change. BPA will be performing a workplace analysis and staffing plan in preparation for the program implementation. During the meeting, Administrator Hairston was asked to clarify how many offers had been rescinded due to the hiring freeze. Administrator Hairston indicated 90 job offers had been rescinded because of the hiring freeze.
- A February 13, 2025 news report indicated that the Office of Personnel Management met with leaders across the government and told them to start firing employees who were still in a probationary period a year or more after being hired.⁷ BPA has not provided any quantification of the cost impact of probationary employee departures, for example, the cost impact of those departures on BPA's projected capital and operating costs.
- On February 21, 2025, a news article indicated that BPA had lost its Chief Operating Officer Joel Cook and Senior Vice President of Transmission Services Richard Shaheen as part of the Office of Personnel Management's deferred resignation program offer.⁸
- On February 25, 2025, a news article indicated that BPA "expects to lose about 14 percent of its workforce due to the U.S. Office of Personnel Management's (OPM) resignation offer, early retirements and layoffs, according to several sources familiar with the agency."⁹ BPA has not provided any quantification of

⁷ See Ted Oberg and Megan Lebowitz, *Trump Administration Tells Federal Agencies to Fire Probationary Employees*, NBC News (Feb. 13, 2025), <https://www.nbcnews.com/politics/white-house/trump-administration-federal-agencies-fire-probationary-employees-rcna192149>.

⁸ See BPA Loses COO and Head of Transmission Services to Buyouts, NewsData (Feb. 25, 2025), https://www.newsdata.com/california_energy_markets/northwest/bpa-loses-coo-and-head-of-transmission-services-to-buyouts/article_6f673f0e-f2e8-11ef-8226-4b977f7d0f24.html.

⁹ BPA Expects to Lose About 14 Percent of Workforce Due to Layoffs, Early Retirement, Release of Probationary Employees, NewsData (Feb. 13, 2025), https://www.newsdata.com/clearing_up/update-bpa-expects-to-lose-about-14-percent-of-workforce-due-to-layoffs-early-retirement/article_ce23ff5c-ea49-11ef-886b-57ef4fb7db87.html.

the cost impact of the expected workforce loss, for example, the cost impact of that loss on BPA's projected capital and operating costs. However, such a loss is significant and clearly indicates substantial new information or changed circumstances that must "affect BPA's cost projections."¹⁰

C. BPA should provide, but has failed to provide, new information on its significantly reduced workforce and its effect on projected costs for use in developing BP-26 rates.

BPA has failed to date to provide new information on its significantly reduced workforce and its effect on projected costs for use in developing BP-26 rates. BPA is uniquely situated to provide this information. If BPA fails to present information¹¹ on its significantly reduced workforce and its effect on projected costs for use in developing BP-26 rates, BPA will have failed to "develop a realistic projection of . . . costs that accurately reflect[] the information available at the time the rates were set,"¹² thereby failing to develop a full and complete justification of the final rates as required by Northwest Power Act §7(i)(5). It is arbitrary and capricious and contrary to law for BPA (i) to fail to provide information on its significantly reduced workforce and its effect on projected costs for use in developing BP-26 rates, and (ii) fail to provide such information following the ratemaking procedures required by the Northwest Power Act, as described below.

Parties should not be required to continue in the BP-26 proceeding or submit comments in an IPR process without the benefit of BPA's views and unique access to information on the significant changes to its workforce and how those changes will impact BPA's revenue requirement for BP-26.

II. BPA's failure to develop a realistic projection of costs that accurately reflects the information available at the time of rate setting is contrary to the procedural requirements of the Northwest Power Act—and BPA's vague statement regarding the possibility of updating IPR forecasts does not adequately address BPA's failure to develop a realistic projection.

The Northwest Power Act Section 7(i) requires, *inter alia*, the following procedures to be followed in establishing BPA rates:

- One or more hearings conducted by a hearing officer to develop a full and complete record.¹³

¹⁰ BP-26 Federal Register notice at 89626.

¹¹ As discussed below, such new cost information—like the cost information that BPA has already sought to use for development for the capital costs and expenses of the BP-26 proceeding—must be presented and developed using the ratemaking procedural requirements of the Northwest Power Act, such as a hearing, transcript, exhibits, cross examination, and other materials, leading to the development of a full and complete record. Northwest Power Act §§ 7(i)(2)(B), 7(i)(5) ("The Administrator shall make a final decision based on the record, which shall include the hearing transcript, exhibits, and other materials, and shall include a full and complete justification of the final rates.").

¹² *Idaho Conservation League*, 83 F.4th at 1186 (citing *Golden Nw. Aluminum, Inc.*, 501 F.3d at 1049).

¹³ Northwest Power Act § 7(i)(2).

- An adequate opportunity provided by the hearing officer for parties to offer refutation or rebuttal of any material submitted by another party.¹⁴
- A reasonable opportunity as determined by the hearing officer for cross examination to develop information and material relevant to any rate proposed by BPA.¹⁵
- A final decision by the Administrator establishing rates based on the record, which shall include the hearing transcript, exhibits, and other materials submitted to or developed by the Administrator. The final decision shall include a full and complete justification of the final rates.¹⁶

Providing an opportunity for submittal to BPA in the BP-26 IPR of new information or changed circumstances that impact BPA's cost projections does not adequately address BPA's failure to develop a realistic projection of BP-26 costs that accurately reflects the information available at the time of rate setting.

This is not to argue here that BPA is required to set specific funding levels or decide which costs to incur in its ratemaking processes. But BPA must develop a realistic projection of costs that accurately reflects the information available at the time of rate setting. BPA has failed to do so, and its processes provide no assurance that it will do so.

In short, BPA's failure to develop a realistic projection of costs that accurately reflects the information available at the time of rate setting process of developing capital costs and expense amounts for BP-26 transmission rates is flawed and contrary to the procedural requirements of the Northwest Power Act.

BPA's decision as to what or which expense and capital cost forecasts are appropriate and reasonable for use in determining BP-26 rates is by definition a ratemaking determination that must be made following the procedural ratemaking requirements of the Northwest Power Act. However, the BP-26 Federal Register notice states—without any discussion or process—that

the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seek to raise issues with or challenge the appropriateness or reasonableness of: (1) the Administrator's forecasts of cost and spending levels¹⁷

In short, BPA has announced a ratemaking determination at the commencement of the BP-26 proceeding in the Federal Register, and such ratemaking determination has been made without following the procedural ratemaking requirements of the Northwest Power Act.

¹⁴ *Id.* § 7(i)(2)(A).

¹⁵ *Id.* § 7(i)(2)(B).

¹⁶ *Id.* § 7(i)(5).

¹⁷ BP-26 Federal Register notice at 89627.

The BP-26 IPR process included an initial publication released in June 2024, three public workshops and presentations, receipt by BPA of stakeholder comments, response by BPA to written questions, and a “Closeout Report”¹⁸ released in October 2024.

It is not clear when BPA makes a determination of the forecast of capital costs and expenses for BP-26, because the “Closeout Report” itself states that it does not complete BPA’s decision-making process: “This closeout of the IPR process does not complete BPA’s decision-making process on forecast costs. Adjustments to BPA’s cost projections may occur after the conclusion of the IPR.”¹⁹

Moreover, the BP-26 Federal Register notice indicates that the forecast of capital costs and expenses (that was to be developed in the IPR process), may be revised by BPA “to update any cost information” and that “such updates will be reflected in the final proposed rates”:

Comments regarding any new information or changed circumstances arising after the date of this notice that affect BPA’s cost projections should be directed to finance@bpa.gov and be submitted no later than March 3, 2025. At the discretion of the Administrator, Bonneville may hold additional processes to review these forecasts outside of the BP-26 rate proceeding. If Bonneville decides to update any cost information, such updates will be reflected in the final proposed rates.²⁰

Noticeably absent are (i) any process for review of comments regarding new information or changed circumstances, (ii) any assurance that new information or changed circumstances will be reviewed, (iii) any description of when and how updated cost information will be incorporated into BP-26, consistent with the procedural requirements of the Northwest Power Act, described above.

Instead, as indicated above, BPA directed in the BP-26 Federal Register notice the Hearing Officer to exclude from the rate case record all argument and evidence that seek to challenge the appropriateness or reasonableness of the cost forecasts.²¹ This direction is fundamentally contrary to the requirements of the Northwest Power Act as discussed above and prevents the development of a full and complete justification of the rates in the record of decision.

* * *

Nothing contained in these Comments constitutes a waiver or relinquishment of any rights or remedies provided by applicable law or provided under BPA’s Tariff or otherwise under contract. Commenting Parties appreciate BPA’s review of these comments and consideration of the statements contained herein. By return e-mail, please confirm BPA’s receipt of these Comments.

¹⁸ BP-26 Integrated Program Review, Bonneville Power Administration (“BP-26 IPR Closeout Report”), available at <https://www.bpa.gov/-/media/Aep/finance/integrated-program-review/bp-26-ipr/bp-26-ipr-closeout-report.pdf>.

¹⁹ BP-26 IPR Closeout Report at 6.

²⁰ BP-26 Federal Register notice at 89626.

²¹ *Id.* at 89627.