

# Post 2028 Residential Exchange Program

## May 23, 2023

9:00 - 10:30am

Join the WebEx Meeting

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Join by Meeting Number: 1-415-527-5035; Access Code: 2760 825 9075#

Meeting Password: WApvNfvk358



# Agenda for May 23, 2023

Time	Topic	Presenter(s)
9:00 – 9:05	Introduction	Scott Winner
9:05 – 9:35	REP Settlement – Legal Considerations	Rich Greene
9:35 – 9:45	Questions Submitted and BPA's Response	Jonathan Ramse
9:45 – 10:00	Sub-Phase 2 Scenario List, Inputs and Assumptions	Jonathan Ramse
10:00 – 10:15	Sub-Phase 2: Settlement Negotiations – Objectives and Process	Paulina Cornejo
10:15 – 10:30	Next Steps, Feedback and Questions	Michael Edwards



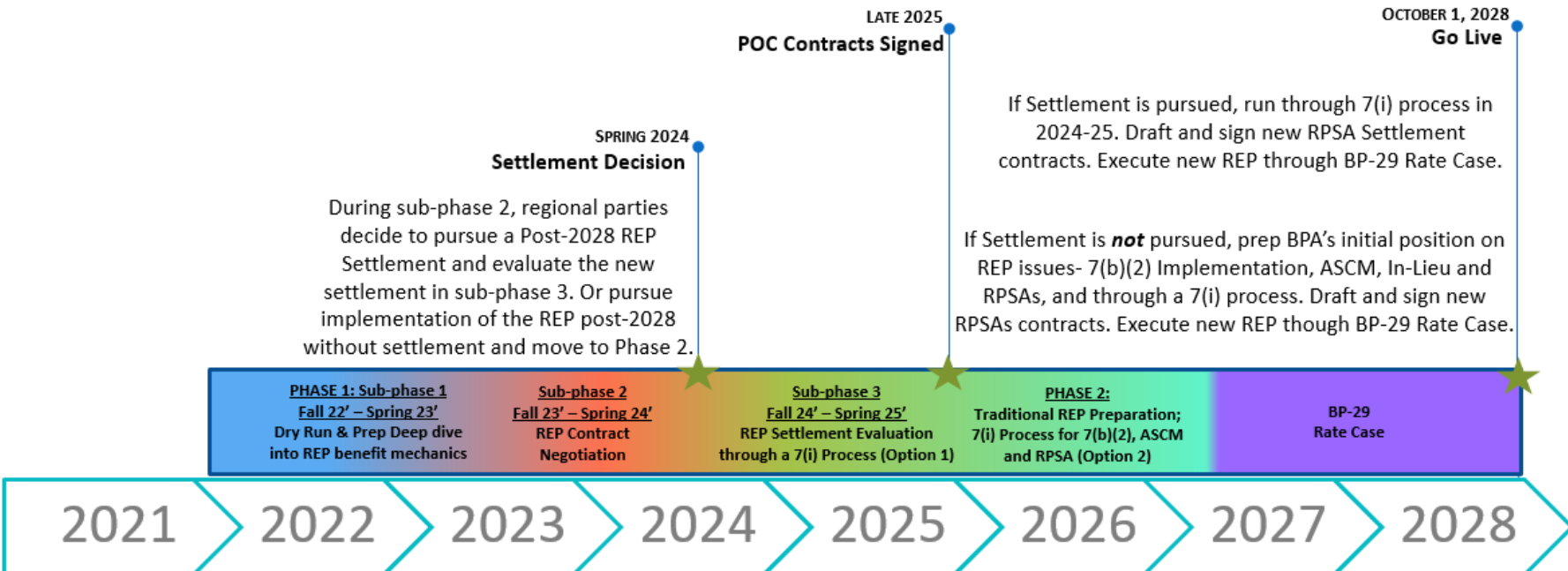


# Introduction





# Post 2028 Two-Phase Approach Timeline



If Settlement is pursued, run through 7(i) process in 2024-25. Draft and sign new RPSA Settlement contracts. Execute new REP through BP-29 Rate Case.

If Settlement is **not** pursued, prep BPA's initial position on REP issues- 7(b)(2) Implementation, ASCM, In-Lieu and RPSAs, and through a 7(i) process. Draft and sign new RPSAs contracts. Execute new REP through BP-29 Rate Case.

POC Contract Delivery Readiness  
2026 - 2028

# Public Process Plan – Two-Phase Approach

- Phase 1 is comprised of three sub-phases designed to support and facilitate regional efforts towards a new REP settlement. If successful, implementation of the REP under new settlement agreements will commence BP-29 (October 1, 2028).
- Phase 2 focuses on positioning on REP issues and policies to implement the program traditionally, for the BP-29 rate case.

## PHASE 1 – SETTLEMENT (2022-2025)

Sub-Phase 1:  
REP Dry Run and Preparation  
(Fall 2022 – Spring 2023)

Sub-Phase 2:  
REP Contract Negotiation  
(Fall 2023 –  
Spring/Summer 2024)

Sub-Phase 3:  
REP Settlement Evaluation  
Process and Decision (7i)  
(Fall 2024 – Spring 2025)

The settlement phase builds on the foundation established by the 2012 REP Settlement– BPA’s focus and efforts are to facilitate and encourage regional discussions towards a structured settlement of the REP.

## PHASE 2 – TRADITIONAL REP PREPARATION PHASE (2026-2029)

If no settlement is reached in 2025, BPA must shift its focus from facilitating and supporting settlement discussions to preparing its positions and policies for the BP-29 rate.

# Informational Resources and Contact

- We encourage participants to access educational and background information on REP, which can be found on the [Post-2028 REP](#) external webpage.
  - If parties are seeking additional information not posted here, please email us directly with your inquiry.
- The Post-2028 REP team can be contacted directly via email to: [REP2028@bpa.gov](mailto:REP2028@bpa.gov).



# REP Settlement: Legal Factors to Consider



# Objectives and Caveats

## Objectives

- Provide factual overview of the *PGE* and *APAC* Ninth Circuit decisions.
  - *PGE* shows what does not work.
  - *APAC* shows what can work.
- Describe the factors that created problems with prior settlements.
- Describe the factors that led to a successful settlement.

## Caveats

- We are not giving legal advice to any party or advising on positions BPA is taking or may take in any future proceeding regarding the REP or the interpretation of *PGE*, *APAC*, or other cases.
- We understand that parties have differing views of what *PGE* and *APAC* stand for and what their implications are in a future case.



# The 2000 REP Settlements

## Background:

- BPA entered in Residential Purchase and Sales Agreements (RPSAs) in 1981 to implement REP.
- Many of these agreements were difficult to administer, many Average System Cost (ASC) processes.
- In the late 1990s, BPA began settling REP with individual IOUs. Most would expire around 2001, when 1981 power sales contracts expired.
- REP benefits were declining for various reasons, with some related to the 1984 ASC Methodology. Some parties threatened to challenge the 1984 ASC Methodology.
- Public utility commissions suggested a broader sharing of regional benefits from the Federal system among the IOUs.
- BPA developed a method for determining payments to the IOUs as a class and then distributing those benefits among the class.

# The 2000 REP Settlements

## Key Components

- Eligibility for REP Settlement
  - Based on a forecast of ASCs from prior ASCs determination (some dating back to 1980s), and a run of 7(b)(2) from the WP-96 rate case. Those that were “in” based on this were able to participate in the REP Settlement.
  - Notably, the settlement did not use these to determine size or allocation of benefits.
- Size of Benefits
  - BPA proposed to provide IOUs, as a class, 1900aMW of power from 2001-2006, and then 2200aMW from 2007-2011.
  - At least 1000aMW was to be provided as actual power sold at RL rate, which was equal to PF.
  - IOUs would receive the financial benefits as the difference between RL rate and market.
  - Benefits under 2000 REP Settlement were 3x the amount BPA forecast in the WP-02 rate case.
- Allocation of Benefits
  - Allocation was determined from recommendations by public utility commissions, considering size of residential loads, historical REP benefits, rate impacts, and individual needs for each state.
- BPA would waive its right to use *in lieu*.

# The 2000 REP Settlements – BPA’s Justification

## Legal Authority

- BPA argued that, traditionally, the allocation of REP benefits is limited by section 5(c), and the amount of REP benefits is limited by section 7(b).
- The REP Settlement, however, is exercise of BPA’s settlement authority under section 2(f) of the Bonneville Project Act and section 9(a) of the NWPA.
- When allocating the cost of the REP under settlement in rates (WP-02), section 7(g)—rather than 7(b)—controlled.

# PGE v. BPA, 501 F.3d 1009 (2007)

## Court grant petitions for review

- Settlement Authority Limited
  - Court finds that BPA’s settlement authority (2(f)) is limited by express provisions of NWPA, 5(c) and 7(b). Can’t settle in a way that violates these provisions.
- Determination of Amount of REP Benefits Wrong
  - BPA estimated REP benefits under 7(b)(2) would be around \$48 million. Could not expand beyond this through settlement.
  - Settlement benefits not based on a forecast of ASCs or PFx.
- Allocation of REP Benefits Among IOUs Wrong
  - BPA allocated REP benefits based on PUC recommendation. This was not done in reference to ASCs, as required by 5(c). IOUs not entitled to REP benefits got benefits.
- Allocation of costs of REP to Public Customers benefits Wrong
  - *See Golden NW Alum. v. Bonneville Power Admin., 501 F.3d 1037 (9th Cir. 2007)*, BPA characterized the costs of the REP as “settlement” costs, and allocated these costs to the PF rate as a section 7(g) cost. Court said this was not correct per 7(b).



# Key Take-Aways

- BPA Settlement Authority limited
  - 2(f) authority is “facilitative” to settlement; it cannot trump 5(c) or 7(b).
- Size of REP Benefits
  - Needs to have some reference to “ASC-PFx rate x utility-load.” Cannot contract around 7(b)(2) protection when setting total benefits.
- Allocation among REP participants
  - Needs to have some reference to ASCs.

# The 2012 REP Settlement

## Background

- Rates had expired by the time Court issued *PGE*. BPA had completed WP-07, waiting for FERC approval. After remand, BPA initiated the WP-07 Supplemental case to reopen case, recalculate REP benefits, and restart traditional REP.
- Completed 720-page ROD in September 2008.
- Everyone sued us. 56 petitions for review at Court, consolidated into four cases.

# The 2012 REP Settlement

## Key Components

- Centered on a net present value of REP benefits for IOUs as a group.
- Spread benefits over remaining 17 years. Fixed amount per rate period.
- Allocation of benefits based on a formula that used actual ASCs and a derived PFX rate. (Reference Rate)
- BPA ran litigation scenarios to show how settlement value compared to traditional REP benefits over settlement period, and other outcomes.
- No *in lieu* and no CRAC application.

# *APAC v. BPA*, 733 F.3d 939 (9th Cir. 2007)

## Court Upheld Settlement

- BPA compared output of traditional REP with settlement output, including litigation outputs. In 23 of 26 scenarios, Settlement benefits were lower.
- So long as total amount of REP benefits provided under settlement is below what would otherwise be available under traditional REP (using various scenarios), BPA met protections afforded by section 7(b).
- Allocation among IOUs worked because BPA used ASCs and a BPA rate to distribute benefits, which closely resembles traditional REP allocation under section 5(c).
- (7(g) never came up because we didn't use it!)



# Key Take-Aways

- Court ok with Scenarios
  - A range of scenarios was acceptable. BPA did not need to make a single point estimate and show that it, alone, was below the statutory limits. Total REP benefits.
  - Need to be calculated with reference to Pfx rates, ASCs and loads.
- Allocation of REP benefits
  - Need to incorporate ASCs to “resemble” the traditional REP.



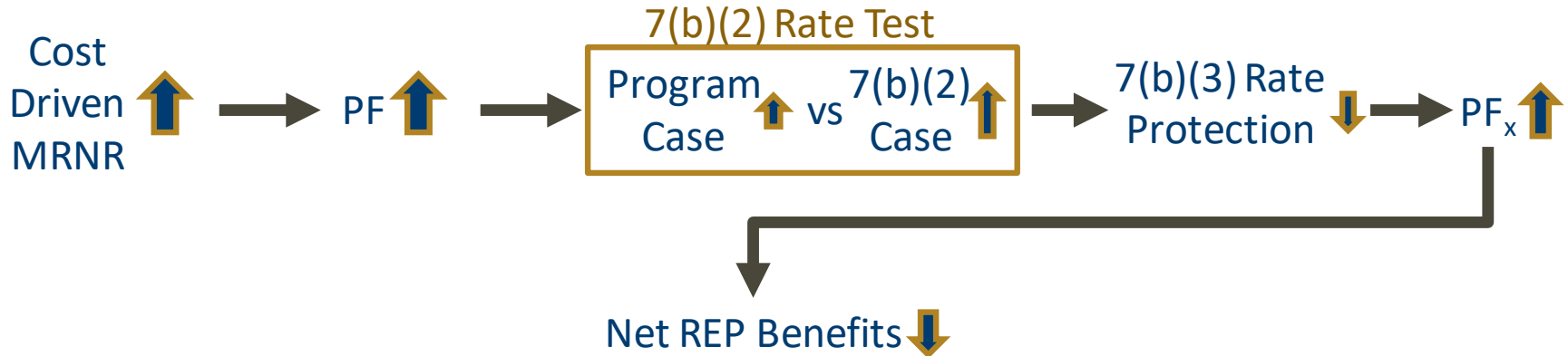
# Question Submitted and BPA's Response



# MRNR and Net REP Benefits

## How do differing levels of minimum required net revenues impact the REP calculation?

- The Minimum Required Net Revenue (MRNR) does not necessarily have a direct impact on Net REP Benefits. Assuming MRNR increases due to an increase in cost, it has an inverse relationship with Net REP Benefits. This means that as MRNR increases (due to a change in costs), net REP benefits will decrease; all else equal.







# Sub-Phase 2 Scenario List, Inputs and Assumptions





# Sub-Phase 1 Scenario List

SCENARIO LIST	
1	Reference Case
2	No TS in ASCs
3	Conservation = Gen Requirement w/out costs
4	Conservation = Gen Requirement with costs
5	Conservation Res. Expensed 1 <sup>st</sup> Year
6	Mid-C in Stack
7	Discount Rate - Not Applied
8	Discount Rate = Inflation
9	Discount Rate = Investment Rate
10	Identical Secondary Credit
11	No 7(b)(3) to Surplus
12	Single Repayment Study
13	In Lieu - Regular
14	In Lieu - Green
15	ASCS - HIGH
16	ASCs - Average of High/Low (V1)
17	ASCs - Average of FY22-25, Hist. Growth (V2)
18	ASCs - Double
19	ASCs – Test Period Equal to Rate Period ASCs
20	ASCs – Test Period decline 10% from Rate Period ASCs
21	BPA Conservation - High (+50%)
22	BPA Conservation - Low (-50%)
23	Loads - PF Decrease (-1000aMW)
24	Loads - PF Rise (+1000aMW)
25	High Loads and High Resources
26	Low Loads and Low Resources
27	Market Prices - High
28	Market Prices - Low
29	Cost Increase (\$100 million)

**SUB-PHASE 2 SCENARIO LIST REFLECTING FEEDBACK FROM SUB-PHASE 1**

1	Reference Case - (reflects new ASC forecast and Mid-C resources dedicated to marketers)
2	Conservation = Gen Requirement w/out costs
3	Conservation = Gen Requirement with costs
4	Conservation Res. Expensed 1 <sup>st</sup> Year
5	Mid-C Resources in Stack – Mid C resources dedicated to IOU Load
6	Discount Rate = Inflation (Low)
7	Discount Rate = Investment Rate (High)
8	Discount Rate = Not applied <i>(Added back into list)</i>
9	Identical Secondary Credit
10	No 7(b)(3) to Surplus
11	ASCs – High (both loads and ASCs)
12	ASCs - Low (both loads and ASCs)
13	Market Prices (high)
14	Market Prices (low)
15	Loads - PF Decrease (-1000aMW)
16	Loads - PF Rise (+1000aMW)
<b>NEW</b>	
17	IOU Scenario
18	COU Scenario
19	Conservation Resource Expensed over 12 years in 7(b)(2) Case vs 5 years.
20	Reserve Benefits associated with Secondary added to Program Case and Removed from 7(b)(2) Case
21	Uncontrollable Event Costs removed from Program Case and included in 7(b)(2) Case (WNP 1&3, PNRR)
<b>REMOVED FROM SUB-PHASE 1</b>	
12	Single Repayment Study

# COU Scenario – *Updated*

## COU Scenario is based on 2012 REP:

- Modeled without conservation adjustment to 7(b)(2) Case loads.
- Uses Program Case repayment study in 7(b)(2) COSA.
- Includes Mid-C resources in 7(b)(2) stack (IOU Loads).
- Does not apply the 7(b)(3) allocation to surplus sales.
- Uses inflation rate to discount rate streams.

*\*Removed 7(b)(2) Case conservation resources capitalized over useful life (reference case).*

# Sub-Phase 2 Inputs and Assumptions

- Sub-Phase 2 scenario analysis of REP benefits will use the same variables and assumptions as the Sub-Phase 1 scenario analysis, with a few adjustments and updated input data.
  - The Reference Case will shift from using an ASC forecast based on a historical growth rate of 2% to one informed by the long-term ASC forecast model using IOU Integrated Resource Plans (IRPs).
  - Additionally, the Reference Case will include marketed Mid-C resources.
- The Sub-Phase 2 scenario analysis will use Final BP-24 and updated BP-29 data forecasts.



# Sub-Phase 2: Settlement Negotiations Objectives and Process



# Sub-Phase 2 Objective and Process Plan

- **Sub-phase 2 is framed around supporting discussions between regional partners (IOUs, Publics, PUCs, and other regional stakeholders) towards negotiating a new REP settlement.**
  - BPA will host public workshops from Fall of 2023 through Spring of 2024 intended to 1) facilitate dialogue on settlement alignment; 2) support negotiations of a new agreement.
  - Discussions from the summer workshops with customer-led sessions will serve as primers for the October and November workshops.
  - In the January workshop, BPA will share refreshed REP benefits and will reflect inputs from the BP-24 Final Proposal along with refreshed long-term projections through 2034.
  - If alignment on a new REP settlement is reached, we'll move to Sub-phase 3 where the new agreement will be ran through a 7(i) process.
- **Sub-phase 2 presumes a shared regional interest on settlement alignment; however, if settlement is not desired the process plan will shift to move to Phase 2, which will focus on developing a traditional implementation approach for the post 2028 period.**





# Sub-phase 2 Timeline

Month	Planned Dates	Process
June 2023	Tuesday, June 27, 2023 9am – 3pm	Customer-led sessions: <ul style="list-style-type: none"> <li>• IOUs</li> <li>• PPC and WPAG</li> </ul>
September 2023	Tuesday, September 19, 2023 9am – 3pm	BPA Responses to customer presentations
October 2023	Tuesday, October 17, 2023 9am – 3pm	Sub-phase 2 Kick-off – First Workshop <ul style="list-style-type: none"> <li>• REP Mechanics Recap</li> <li>• Recap of Summer Workshops</li> <li>• Sub-phase 2 Process</li> </ul>
November 2023	Tuesday, November 14, 2023 9am – 3pm	Sub-phase 2 – Second workshop

*\*Workshops dates and may be adjusted as necessary.*

# Sub-phase 2 Timeline (cont'd)

Month	Planned Dates	Process
January 2024	Tuesday, January 23, 2024 9am – 3pm	Sub-phase 2 – Third workshop <ul style="list-style-type: none"> <li>Present REP benefits analysis and scenarios updated with BP-24 inputs</li> </ul>
February 2024	Tuesday, February 20, 2024 9am – 3pm	Sub-phase Public Workshops to be focused on Settlement alignment and negotiations
March 2024	Tuesday, March 19, 2024 9am – 3pm	
April 2024	Tuesday, April 16, 2024 9am – 3pm	
May 2024	Tuesday, May 21, 2024 9am – 3pm	

*\*Workshops dates and times may be adjusted as necessary.*



# Next Steps, Feedback and Questions



# Thank You!

## **Post 2028 REP Lead Sponsor:**

Kim Thompson, Vice President, Northwest Requirements Marketing

## **Post 2028 REP Team:**

Stephanie Adams, Paulina Cornejo, Scott Winner, Daniel Fisher, Rich Greene,  
Neil Gschwend, Kelly Olive, Michael Edwards, Jonathan Ramse

