**9: PRDM REVISION PROCESSES AND DISPUTE RESOLUTION**

In this Chapter 9:

**Customer** means a Public that purchases power from BPA at a Tier 1 Rate under a CHWM Contract.

**Customer Group** means a group comprised of not less than 45 percent of the Customers (utility count).

**9.1: General Provisions**

**9.1.1: Preliminary Revisions**

It will be BPA’s policy to revise the PRDM as little as possible. BPA reserves the right to revise the PRDM after February 1, 2009, but only in accordance with the criteria, conditions, and applicable processes set forth in this Section 9. Any revisions identified before February 1, 2009, must be agreed to by BPA and preference customer representatives designated by the Public Power Council, and will be proposed by BPA after that date in a future section 7(i) rate proceeding, with the revisions not subject to the procedural requirements of this Section 9.

**9.1.2: Process Generally Applicable to Any PRDM Revision**

No revision to the PRDM may be made without the introduction, consideration, and adoption of such revision in a 7(i) Process. BPA will comply with the applicable requirements of this Section 9 when proposing revisions to the PRDM. In the event that a proposed revision to the PRDM has not satisfied the requirements for introduction in a 7(i) Process set out herein, then BPA shall neither propose nor adopt such proposed revision in a 7(i) Process until the applicable requirements of Section 9 are satisfied.

Except as provided in Section 9.2 (Improvements/Enhancements) and 9.3.2 (Unintended Consequences that affect only Customers), nothing in this Chapter 9 limits the positions that a customer may advocate in a 7(i) Process regarding the PRDM. Nothing in Chapter 9 either 1) precludes any party to a BPA 7(i) Process, other than a customer, from making any proposal or offering any testimony or other evidence on any matter that may otherwise be raised in a BPA 7(i) Process or 2) constrains any person or entity from taking any position with BPA on any issue outside of a 7(i) Process.

**9.1.3: Core Provisions of the PRDM that May be Revised Only to Ensure Cost Recovery or Comply with Court Ruling**

The provisions of the PRDM identified below cannot be revised except and unless the Administrator determines in accordance with the applicable procedures set forth in this Section that BPA cannot otherwise timely recover its costs or that the change is necessary to effectively comply with a court ruling:

2) The basic Tier 1 Rate design described in Section 5, consisting of the concept of three Tier 1 Cost Allocator (TOCA) customer Charges (Composite, Slice, and Non-Slice); the development of a Load-Shaping Charge for customers purchasing Block or Load-Following products; and Demand Charge Billing Determinants, which include a Contract Demand Quantity, as set forth in Section 5.3.

3) The establishment of Tier 2 Rates, as set forth in Chapter 6, that reflect the costs of resource acquisitions and purchases BPA must make to serve Above-RHWM Load.

4) Cost allocation principles set forth in Section 2.1.

**9.1.4: Actions Not Considered to be a Revision to the TRM**

The Administrator reserves the discretion he or she otherwise possesses under law to establish, undertake, or otherwise address the following, including through implementation of the PRDM consistent with the terms thereof for those matters governed by the PRDM, in appropriate cases:

1) Calculation of actual rate levels.

2) Any rate issues identified in this PRDM that are specifically reserved for determination in a future 7(i) Process. These include, but are not limited to:

a) Allocation of costs consistent with Sections 2.1, 2.2, and 2.3 and the Allocated Tiered Cost Table, Table 2

b) The determination whether a line item in the Composite Cost Pool is subject to true-up (see Chapter 2).

c) The addition of new Tier 2 cost pools (see Section 2.2).

d) Methods used to solve for Tier 1 and Tier 2 Rates (see Section 2.2.1)

e) Modifications to BPA’s Power Services Statement of Revenues and Expenses (see Section 2.2.2)

f) Allocations of New Expenses and New Credits (see Sections 2.3 and 2.7.3)

g) Proposals to reallocate portions of the Tier 1 Secondary Energy Credit to Composite Cost Pool (see Section 2.4)

h) Proposals for an alternative cost recovery mechanism (see Section 2.6)

i) True-up of rate revenue credits (see Section 2.7.1.2.2)

j) Revisions to MRNR treatment (see Section 2.7.1.2.2)

k) Expenses and revenue credits (see Section 2.7.3)

l) Resources considered Tier 1 System Resources and respective firm power (see Section 3.1)

m) Adding Designated System Obligations and related issues (see Sections 3.2.2 and 3.2.3)

n) Forecasts of Rate Period P Augmentation (see Section 3.3)

o) The determination whether forecast costs of augmentation are subject to the Slice True-Up (see Section 3.3.2).

p) Forecasts of Balancing Power Purchases and adjustments (see Section 3.4)

q) Updates to Table 3.3, 3.4, and 3.5 (see Section 3.5, 3.6, and 3.7)

r) Tier 1 Energy Charges (see Section 4.1)

s) Composite Tier 1 Energy Rates (see Section 4.1.2)

t) Non-Slice Tier 1 Energy Rate (see Section 4.1.3)

u) Slice Tier 1 Energy Rate (see Section 4.1.4)

v) Marginal Energy True-Up Rate (see Section 4.2.3)

w) Adjustments to Marginal Capacity Resource and shape of monthly Demand Rates (see Section 4.3.4)

x) Capacity Credit (see Section 4.3.6)

y) Capacity planning standards, PLVC billing determinants, and market-based energy rate (see Section 4.4)

z) RICc recalculations (see Section 4.5.1.1)

aa) Rates for New Publics (see Sections 4.5.1.2 and 4.5.1.2)

ab) RICm phase-out schedule (see Section 4.5.2)

ac) Recovery of conservation costs and rates for product and service switching (see Section 4.6)

ad) Sub-allocation of risk in Tier 1 Rates (see Section 4.7)

ae) Forecast costs for RSS (see Section 5.2.2)

af) Determination of the Overhead Cost Adder to Tier 2 Cost Pools (see Section 5.2.3)

ag) Calculations for remarketed energy (see Section 5.3.1)

ah) Tier 2 Change Fee (see Section 5.4)

ai) Design, pricing, and application of the RSS rates (see Section 6)

aj) FORS-based fee (see Section 6.2)

ak) Risk mitigation (consistent with Chapter 7)

al) Rates for Unanticipated Load (see Section 8.1)

am)Applicable of Low Density Discount (see Section 8.1)

an) Irrigation Rate Discount (see Section 8.2)

ao) Rate treatment for customers that execute non-CHWM contracts (see Section 8.3.2)

ap) Application of Sections 7(b)(2) and 7(b)(3) of the Northwest Power Act (see Section 8.3.3)

aq) Preliminary revisions (see Section 9.1.1)

3) PRDM Exhibits will be filled in and revised consistent with the terms of the PRDM.

4) Such other actions described in the PRDM that are to be determined in a Section 7(i) Process.

The actions described in this Section 9.4 do not constitute a “revision” to the PRDM.

**9.2.1: Improvements and Enhancements**

**9.2.1: Criteria and Conditions for Improvements and Enhancements**

Revisions to the PRDM not covered by Section 9.4 (Cost Recovery/Court Ruling), 9.1.4 (Core Provisions), or 9.3 (Unintended Consequences) and that are proposed by BPA or a Customer Group to improve and enhance the PRDM (“Improvement Proposal”) must be made consistent with this Section 9.5.

**9.2.2: Process for Improvements and Enhancements**

BPA or a Customer Group may propose a revision to the PRDM as provided for in Section 9.2.1 only after complying with the requirements of this Section 9.2.2.

**9.2.2.1: Notice**

Before BPA or a Customer Group proposes in a 7(i) Process an Improvement Proposal, BPA or the Customer Group will notify all customers of the Improvement Proposal in advance of the 7(i) Process and the proponent’s reasons 1) why the Improvement Proposal will improve or enhance implementation of the PRDM in a way that will continue to effectuate its purposes but be more cost-effective and efficient, customer responsive, readily implementable, or capable of fulfilling the PRDM’s purposes and 2) how the value of the Improvement Proposal outweighs any harm created by it. The notice will specify the date by which each customer may express its support for the Improvement Proposal, and the means for registering its support.

**9.2.2.2: Customer Approval**

BPA or the Customer Group may propose in a 7(i) Process the Improvement Proposal only if it is approved by customers totaling both 1) at least 70 percent of customers (utility count) and 2) at least 50 percent of the sum of the CHWMs, with both of the foregoing measured by the individual vote of each customer. In determining the total, BPA shall count each abstention and absence of a vote as a vote that the customer does not approve the Improvement Proposal.

In the event that the customers approving the Improvement Proposal are less than the voting requirements of the preceding paragraph, then the Improvement Proposal will not be proposed in any 7(i) Process by BPA, the Customer Group, or any customer until the voting requirements in this Section 9.2.2 above are satisfied.

In the event that the customers approving the Improvement Proposal are equal to or more than the voting requirements of this Section 9.2.2, then BPA or the Customer Group may propose the Improvement Proposal in a 7(i) Process. The Improvement Proposal will be considered in the normal course through the 7(i) Process with a decision in the Administrator’s Record of Decision.

**9.3: Revision for Unintended Consequences**

**9.3.1: Criteria and Conditions for Revisions for Unintended Consequences**

With the exception of PRDM changes that are constrained by Section 9.1.4 (Core Provisions) or implementation of the PRDM reserved by Section 9.1.5 (Expressly Not Revisions), BPA may, in accordance with the applicable procedures of this Section 9, propose revisions in the PRDM to address or avoid unintended consequences that put at risk the Principles and Goals underlying the PRDM as set forth in Section 1.1 of the Provider of Choice Policy.

**9.3.2: Process for Revisions for Unintended Consequences that *Do Not* Affect Others or General Policies**

**9.3.2.1: Procedures Not Applicable if Unintended Consequences Affect Others or General Policies**

The procedures set forth in this Section 9.6.2 apply only to revisions to the PRDM as provided for in Section 9.6.1 that address or rectify unintended consequences of the PRDM that affect only customers with CHWM Contracts, or that do not affect or affect only in a *de minimis* manner the IOU or DSI customers of BPA or BPA customers that are not eligible for or do not take service under CHWM Contracts (“Unintended Consequence Proposal”). Such procedures do not apply to, and an Unintended Consequence Proposal does not encompass, proposed revisions to the PRDM that are necessary to address or rectify unintended consequences of the PRDM that affect BPA programs or policies of general application (e.g., the unintended consequence affects programmatic responsibilities such as fish and wildlife, conservation, or transmission).

BPA or a Customer Group may propose an Unintended Consequence Proposal in a 7(i) Process only after complying with the requirements of this Section 9.6.2.

**9.3.2.2: Notice**

Before such an Unintended Consequence Proposal is introduced in a 7(i) Process by BPA or a Customer Group, BPA will notify all customers in advance of the 7(i) Process of the Unintended Consequence Proposal and the proponent’s reasons 1) why the Unintended Consequence Proposal will address or rectify the unintended consequence that puts at risk the Principles and Goals underlying the PRDM as set forth in Section 1.1 of the Provider of Choice Policy and 2) how the value of the Unintended Consequence Proposal outweighs any detriment created by it. The notice will specify the date by which each customer may object to the Unintended Consequence Proposal and the means for registering its objection.

**9.3.2.3: Customer Objection**

BPA or the Customer Group may propose in a 7(i) Process the Unintended Consequence Proposal unless it is objected to by customers totaling both 1) at least 70 percent of customers (utility count) and 2) at least 50 percent of the sum of the CHWMs, with both of the foregoing measured by the individual vote of each customer. In determining the total, BPA shall count each abstention and absence of a vote as a vote that the customer does not object to the proposed change.

In the event that the customers objecting to the Unintended Consequence Proposal equal or exceed the voting requirements of the preceding paragraph, then BPA, the Customer Group, or any customer shall not propose in any 7(i) Process the Unintended Consequence Proposal until the voting requirements of this Section 9.3.2 are satisfied.

In the event that the customers objecting to the Unintended Consequence Proposal are less than the voting requirements of this Section 9.3.2, BPA or the Customer Group may propose in a 7(i) Process the Unintended Consequence Proposal. The Unintended Consequence Proposal will be considered in the normal course through the 7(i) Process with a decision in the Administrator’s Record of Decision.

**9.3.3: Process for Revisions for Unintended Consequences that *Do* Affect Others or General Programs or Policies**

Any proposals to revise the PRDM to address unintended consequences that affect others or general programs or policies (*i.e.,* within the scope of Section 9.5.1, but not within the scope of Section 9.5.2), may be proposed and considered in the normal course through the 7(i) Process, with a decision in the Administrator’s Record of Decision.

**9.3.3.1: Notice**

However, before such a proposal is considered in a 7(i) Process by BPA or a Customer Group, BPA will notify all customers of the proposal and the proponent’s reasons 1) why the proposal will address or rectify the unintended consequence that puts at risk the Principles and Goals underlying the PRDM as set forth in Section 1.1 of the Provider of Choice Policy and 2) how the value of the proposal outweighs any detriment created by it.

**9.4: Revisions to PRDM to Ensure Cost Recovery or Comply with Court Ruling**

**9.4.1: Criteria and Conditions for Revisions for Cost Recovery or Court Ruling**

BPA reserves the right to revise any part of this PRDM if the Administrator has determined in accordance with the applicable procedures set forth in Chapter 9 that: 1) BPA cannot timely and reasonably recover its costs without revising the PRDM; or 2) a revision to the PRDM is necessary to effectively comply with a court ruling. For purposes of this PRDM, reference to a court ruling shall be deemed to include a ruling of the Federal Energy Regulatory Commission that disapproves or remands a BPA rate based on the PRDM.

**9.4.2: Process for Revisions for Cost Recovery or Court Ruling**

BPA will propose only those revisions under Sections 9.4.1 that are necessary to comply with a court ruling or ensure cost recovery (“Recovery/Response Proposal”) and will seek to limit both the number and scope of such revisions.

**9.4.2.1: Preliminary Procedures Specific to Revisions for Cost Recovery**

Before proposing any revision to the PRDM to ensure timely cost recovery, to the extent practicable BPA will take the following steps:

1) BPA will make reasonable efforts to recover the costs from the party(s) that would otherwise be responsible for such costs. Such efforts may include making demand on any available credit support and pursuing legal action when appropriate.

2) BPA will make good faith efforts to reduce BPA power costs so as to offset the cost that would otherwise occasion the need for a change in the PRDM to ensure cost recovery.

3) If the cost recovery problem is occasioned by the design of the PRDM, BPA will convene a public meeting with customers and interested parties to discuss alternatives to a revision of the PRDM.

4) After taking such steps, BPA will issue a report to customers and interested parties regarding the efforts, including those listed (1-3) above, that the Administrator has taken before resorting to a revision to the PRDM, and why the set of safeguards BPA followed when entering identified transactions (e.g., service at a Tier 2 Rate) was not sufficient to avoid the cost recovery problem.

These criteria, or disputes over whether the Administrator has satisfied them, do not override and will not be allowed to frustrate the Administrator’s responsibility to establish rates to recover costs and timely repay the U.S. Treasury.

**9.4.2.2: Customer Petition for Mini-Trial Disputing Response/Recovery Proposal**

Customers that are party to a 7(i) Process may petition for a Mini-Trial alleging the Recovery/Response Proposal is not necessary to ensure cost recovery or respond to court ruling, and/or that the Recovery/Response Proposal is unreasonably disproportionate to what is needed to comply with the court ruling or to ensure cost recovery, compared to the alternative proposal(s), if any, offered by the customer(s).

A written petition so disputing the Response/Recovery Proposal may only be filed with the Hearing Officer within 20 Business Days after submission of BPA’s initial proposal in such 7(i) Process, or within 10 Business Days after an Administrator’s Mini-Trial decision under Section 9.6.4(iii). The petition may be filed only if it is approved by customers who are party to the 7(i) Process in their individual capacity and customers who are members of groups and organizations such as the Pacific Northwest Generating Cooperative or the Public Power Council that are parties to such process totaling both 1) at least 70 percent of such customers (utility count), and 2) at least 50 percent of the sum of the CHWMs, with both of the foregoing measured by the individual vote of each customer.

Upon receipt of such petition

, the Hearing Officer shall expeditiously schedule, consistent with the rate case schedule and the procedural requirements of Section 9.6 (Mini-Trial), a Mini-Trial regarding whether BPA’s Response/Recovery Proposal is necessary to ensure cost recovery or respond to a court ruling as provided for in Section 9.4.1, and/or whether the Response/Recovery Proposal is unreasonably disproportionate to what is needed to comply with the court order or to ensure cost recovery, compared to the alternative proposal(s), if any, offered by the customer(s).

no such petition is timely filed, the Recovery/Response Proposal will be considered in the normal course through the 7(i) Process with a decision in the Administrator’s Record of Decision.

**9.5: Disputes Alleging Irreconcilable Conflict with the PRDM**

**9.5.1: Criteria and Conditions for Determining an Irreconcilable Conflict**

An Irreconcilable Conflict exists only when:

1) The PRDM clearly and unambiguously requires or prohibits an action, and an action or inaction proposed by BPA (the “BPA Position”) is contrary to such requirement or prohibition; or

2) The PRDM is silent, ambiguous, or leaves a gap regarding the matter in question, and the BPA Position cannot be reconciled with any reasonable interpretation of what the PRDM does provide for.

**9.5.2: Customer Petition for Mini-Trial Alleging Irreconcilable Conflict within a 7(i) Process**

Customers that are party to a 7(i) Process may petition for a Mini-Trial alleging that a BPA Position in such 7(i) Process is in Irreconcilable Conflict with the PRDM.

A written petition so alleging may only be filed with the Hearing Officer within 20 Business Days after submission of BPA’s initial proposal in a 7(i) Process. The petition may be filed only if it is approved by customers totaling both 1) at least 70 percent of such customers (utility count) and 2) at least 50 percent of the sum of the CHWMs of all such customers, with both of the foregoing measured by the individual vote of each customer. Such petition must allege that 1) a BPA Position in the 7(i) Process is in Irreconcilable Conflict with the PRDM; 2) BPA has not sought to revise the PRDM to reconcile it with the BPA Position; and 3) such customers oppose the BPA Position.

Upon receipt of such petition, the Hearing Officer shall expeditiously schedule, consistent with the rate case schedule and the procedural requirements of Section 9.6 (Mini-Trial), a Mini-Trial regarding whether the BPA Position is in Irreconcilable Conflict with the PRDM.

If no such petition is timely filed, the BPA Position will be considered in the normal course through the 7(i) Process with a decision in the Administrator’s Record of Decision.

7(i) Process7(i) Process7(i) Process

**9.5.3: Customer Petition for Mini-Trial Alleging Irreconcilable Conflict Outside a 7(i) Process**

Customers may petition for a Mini-Trial alleging that a BPA final action, other than the Administrator’s Record of Decision following a 7(i) Process, is in Irreconcilable Conflict with the PRDM.

A written petition so alleging may only be submitted to the Administrator within 20 Business Days after a BPA final action. The petition may be filed only if it is approved by customers totaling both 1) at least 70 percent of such customers (utility count) and 2) at least 50 percent of the sum of the CHWMs of all such customers, with both of the foregoing measured by the individual vote of each customer. Such petition must allege that 1) a BPA final action is in Irreconcilable Conflict with the PRDM; and 2) such customers oppose the BPA final action.

Upon receipt of such petition, the Administrator shall expeditiously schedule, consistent the procedural requirements of Section 9.6 (Mini-Trial), a Mini-Trial regarding whether the BPA final action is in Irreconcilable Conflict with the PRDM.

**9.6: Mini-Trial Before the Administrator**

If a Mini-Trial is scheduled pursuant to Section 9.4 (Cost Recovery/Court Ruling) or 9.5 (Irreconcilable Conflict), the following procedures will apply. A Mini-Trial pursuant to Section 9.4 (Cost Recovery/Court Ruling) or 9.5.2 (Irreconcilable Conflict Within 7(i) Process) shall be a part of the 7(i) Process, and shall be presided over by the Hearing Officer. A Mini-Trial Pursuant to 9.5.3 (Irreconcilable Conflict Outside 7(i) Process) shall not be part of a 7(i) Process, and shall be presided over by the Administrator. A Mini-Trial shall consist of the following:

1) Parties shall file statements of position that summarize their arguments regarding the issue(s) in the underlying petition. Parties with like positions should attempt to consolidate their submissions.

2) Oral presentations, not to exceed two (2) days in total, shall be scheduled before the Administrator, and such other BPA executives designated by the Administrator. The order of presentation shall be 1) the parties in opposition to the BPA Position, Recovery/Response Proposal, or BPA final action; 2) parties, if any, in support of the BPA Position, Recovery/Response Proposal, or BPA final action; and 3) rebuttal by parties in opposition. Parties’ presentations may consist of testimony, oral argument, or a combination of both. The Administrator may ask any questions or engage in any discussion with any of the participating parties that he or she deems appropriate.

3) Within 15 Business Days of the oral presentations, the Administrator shall provide a written statement that BPA maintains, modifies, or withdraws the BPA Position or Recovery/Response Proposal; or whether the BPA final action is in Irreconcilable Conflict with the PRDM. The Administrator shall summarize the basis for his or her decision. In a Mini-Trial pursuant to 9.4 (Cost Recovery/Court Ruling) or 9.5.2 (Irreconcilable Conflict Within 7(i) Process), the Administrator retains the ability to reach a different final decision at the conclusion of the 7(i) Process in the Administrator’s Record of Decision.

4) In a Mini-Trial pursuant to 9.5.2 (Irreconcilable Conflict Within 7(i) Process), the Administrator may decide the BPA Position:

A) is not in Irreconcilable Conflict with the PRDM;

B) is in Irreconcilable Conflict with the PRDM, but BPA is now proposing to revise the PRDM consistent with Section 9.3.3 (Unintended Consequence that affects others); or

C) is in Irreconcilable Conflict with the PRDM, but BPA is now proposing to revise the PRDM consistent with Section 9.4 (Cost Recovery/Court Ruling).

D) is in Irreconcilable Conflict with the PRDM, and BPA is withdrawing the BPA Position or Recovery/Response Proposal.

The Customer petition opposing the BPA Position forecloses revisions under Section 9.2 (Improvement/Enhancement) and revisions under Section 9.3.2 (Unintended Consequences that do not affect others). Under Subsection B), the Administrator’s decision will be accompanied by the notice required in Section 9.3.3.

Under Subsection C), the Administrator’s decision will, to the extent practicable, be accompanied by the report in Section 9.4.2.1. Consistent with Section 9.4.2.2, Customers will have 10 Business Days following the Administrator’s decision to petition for a Mini-Trial regarding whether BPA’s Response/Recovery Proposal is necessary to ensure cost recovery or respond to a court ruling as provided for in Section 9.4.1, and/or whether the Response/Recovery Proposal is unreasonably disproportionate to what is needed to comply with the court order or to ensure cost recovery, compared to the alternative proposal(s), if any, offered by the customer(s).

5) A Mini-Trial pursuant to 9.4 (Cost Recovery/Court Ruling) or 9.5.2 (Irreconcilable Conflict Within 7(i) Process) provides an opportunity for customers to directly address the Administrator early in the 7(i) Process, but does not limit the positions BPA or parties may take during the 7(i) Process. The BPA Position, Recovery/Response Proposal, or Unintended Consequence Proposal resulting from the Mini-Trial will be considered in the normal course through the 7(i) Process with a decision in the Administrator’s Record of Decision.

6) In a Mini-Trial pursuant to 9.5.3 (Irreconcilable Conflict Outside 7(i) Process), if the Administrator determines the BPA final action is in Irreconcilable Conflict with the PRDM, BPA will take all practicable steps to revoke the BPA final action. BPA may seek to revise the PRDM using the procedures in this Chapter 9. In no event shall the BPA final action, any decision made pursuant to this Section 9.6, or any action by BPA pursuant to such decision be construed to provide a basis for a claim of damages; liability for loss of profits; or special, incidental, or consequential damages.

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