

Financial Plan Refresh
February 23, 2022
Public Workshop Comments

March 9, 2022

Via email:

communications@bpa.gov

U.S. Department of Energy

Bonneville Power Administration

Re: Comments of Avista Corporation; M-S-R Public Power Agency; Portland General Electric Company; and Puget Sound Energy, Inc., Regarding February 23, 2022, BPA Financial Plan Refresh: Public Workshop (Depreciation and Revenue Financed Assets) Avista Corporation; M-S-R Public Power Agency; Portland General Electric Company; and Puget Sound Energy, Inc. (“Commenting Parties”), submit the following comments on topics arising out of the February 23, 2022, BPA Financial Plan Refresh: Public Workshop (Depreciation and Revenue Financed Assets) (“February 23 Presentation”).¹ Commenting Parties appreciate the opportunity to discuss with BPA and its customers the BPA Financial Plan Refresh. The information provided by BPA and the resulting discussions are very helpful, and Commenting Parties appreciate the opportunity to provide additional comments and feedback after each workshop.

As discussed below,

- A. The February 23 Presentation did not provide an adequate opportunity for informed discussion of comments submitted prior to the workshop that directly relate to topics raised in the February 23 Presentation, inasmuch as those comments were not posted prior to the presentation. BPA should provide a forum for informed discussion of those comments after posting them.
- B. The “reasonable period” established by statute for amortization of the Federal investment represents a period of years that is neither unreasonably long nor unreasonably short. Establishing BPA rates based on an amortization of the Federal investment over an unreasonably short period of years violates the statutory requirement.
- C. BPA should provide adequate rationale and support for the “Goals” and “Initial Approach” outlined in its January 26, 2022 Financial Plan Refresh Presentation (particularly given the recent substantial increase in BPA’s borrowing authority) and demonstrate that they are consistent with the statutory standards applicable to BPA rates. Regardless, such “Goals” and “Initial Approach” cannot preempt or supplant the requirement for a full and complete justification of BPA rates pursuant to section 7 of the Northwest Power Act.
- D. The accrual of regulatory liabilities where contemplated by the FERC Uniform System of Accounts is not optional to BPA.
- E. BPA’s discussion of “double recovery” during the February 23 Presentation did not address the stated concern that Minimum Required Net Revenue (“MRNR”) leads to an

¹ Available at <https://www.bpa.gov/Finance/FinancialPublicProcesses/Financial-PlanRefresh/Documents/Feb%2023%20Workshop%20Presentation-FINAL.pdf>

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overstatement of revenue requirements over time that result in rates that are set to collect more than BPA's costs.

- F. BPA should abandon its higher of methodology and determine revenue requirements based on forecasted cash requirements; if BPA retains its higher of methodology (which it should not), BPA must accrue a regulatory liability for MRNR and reduce the revenue requirement in subsequent rate period(s) to account for the MRNR. In any event, if the accrual and amortization of such regulatory liability is not effective in eliminating the overstatement of revenue requirement, BPA should abandon the higher of methodology and determine revenue requirement based on forecasted cash requirements.

A. The February 23 Presentation did not provide an adequate opportunity for informed discussion of comments submitted prior to the workshop that directly relate to topics raised in the February 23 Presentation, inasmuch as those comments were not posted prior to the presentation. BPA should provide a forum for informed discussion of those comments after posting them

Attached are the following comments submitted to BPA in advance of the February 23 Presentation: (i) February 9, 2022 Comments and Questions of Avista Corporation; M-S-R Public Power Agency; PacifiCorp; Portland General Electric Company; and Puget Sound Energy, Inc. Regarding BPA Financial Plan Refresh: Higher of Revenue Requirement (the "Higher Of Comments"), and (ii) February 9, 2022 Comments of Avangrid Renewables, LLC, Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc. on Financial Plan Refresh January 26 Workshop: Customer Presentation (the "January 26 Workshop Comments"). The Higher Of Comments and the January 26 Workshop comments are incorporated herein by this reference.

As noted by BPA in the February 23 Presentation², BPA received multiple sets of comments in advance of the February 23 Presentation, including the Higher Of Comments and January 26 Workshop Comments which were submitted to BPA on or before February 9, 2022. These comments present important questions and issues that directly relate to topics raised at the February 23 Presentation. However, BPA did not post those comments prior to the February 23 Presentation. This prevented full discussion of the topics and was inconsistent with both BPA past practice and transparency. BPA should provide a forum for informed discussion after those comments have been posted.³

B. The "reasonable period" established by statute for amortization of the Federal investment represents a period of years that is neither unreasonably long nor unreasonably short. Establishing BPA rates based on an amortization of the Federal investment over an unreasonably short period of years violates the statutory requirement

² See February 23 Presentation at 4-5

³ Commenting Parties recognize and welcome BPA's stated intent "to further discuss [the comments] at the next workshop in March," February 23 Presentation at 4; however, that discussion will only be effective if all of the comments have been shared broadly well in advance of the workshop to facilitate informed discussion.

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Each Power Marketing Administration (“PMA”), including BPA, is required statutorily to establish rates to recover its costs (including amortization of the Federal investment over a reasonable period of years) in accordance with sound business principles.⁴ This statutory requirement does not focus only on ensuring repayment of the Federal investment at the earliest opportunity; rather, it balances a number of important factors and objectives, including “encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business practices” and “amortization of the capital investment allocated to power over a reasonable period of years.”⁵

During the February 23 Presentation, BPA staff appeared to suggest that this statutory standard should be interpreted as establishing only an upper bound on the “reasonable period” for amortization of the Federal investment--in essence construing the statutory language “over a reasonable period of years” as meaning “within a reasonable period of years” with no lower bound on the period of years. In other words, BPA staff seemed to argue that the only relevant test is whether the Federal investment is being paid off quickly enough and that the “reasonable period” requirement did not include a test as to whether the Federal investment was being paid off too quickly. Thus, under this view, if the reasonable period for amortization of the Federal investment were ten years, BPA staff’s suggested interpretation would mean that the statutory standard would be met if rates were established to recover BPA’s costs of amortization of the Federal investment over a period of one year or even less.

BPA staff’s suggested interpretation would be unreasonable and lead to an irrational result. Such an interpretation would in essence mean that BPA rates could be set to recover BPA’s costs of amortization of the Federal investment over an unreasonably short period of years. However, the statutory language cannot be read simply to provide a deadline by which the Federal investment must be repaid; rather by its plain terms it establishes a “reasonable period” for amortization of the Federal investment which balances the need to repay debt “within” a certain period of time (or by a certain date) and the need to establish rates that are based on costs that include amortization of the Federal investment “over” a reasonable period of time.⁶

It should be noted that a synonym for “over” in this context is “during,”⁷ which in this context should be construed as “throughout the duration of.”⁸ In other words, the word “over” denotes a period that has both a lower and upper bound. Such a concept is entirely consistent with the principle of amortization of debt for which a “reasonable period” would have a maximum number of years before the period is deemed to be unreasonable and also a minimum number of years before the period is deemed to be unreasonable.

⁴ See section 5 of the Flood Control Act of 1944 (16 U.S.C. §825s); see also generally the discussion and legal citations set forth in Section A of the Higher Of Comments at 2-4.

⁵ Section 9 as amended of the Transmission System Act, 16 U.S.C. §838g.

⁶ This interpretation also stays true to the principle of intergenerational equity in that the BPA customers of today do not shoulder the burden of costs that can and should be amortized “over” a reasonable period of time.

⁷ Available <https://www.merriam-webster.com/thesaurus/over>.

⁸ First definition of “during” available at <https://www.merriam-webster.com/dictionary/during>.

C. BPA should provide adequate rationale and support for the “Goals” and “Initial Approach” outlined in its January 26, 2022 Financial Plan Refresh Presentation (particularly given the recent substantial increase in BPA’s borrowing authority) and demonstrate that they are consistent with the statutory standards applicable to BPA rates. Regardless, such “Goals” and “Initial Approach” cannot preempt or supplant the requirement for a full and complete justification of BPA rates pursuant to section 7 of the Northwest Power Act

BPA’s January 26, 2022 Financial Plan Refresh Presentation outlined an “Initial Approach” or “Goals” with respect to (i) revenue financing of 10 to 20 percent of “total capital”, (ii) net neutral borrowing position, and (iii) 60 percent leverage ratio (debt to assets). However, BPA’s presentation did not provide an adequate rationale or support for any of the policy initiatives included in those “Goals” or “Initial Approach.”⁹

The problems created by this lack of rationale and support are further compounded by the fact that the February 23 Presentation did not respond to the related concerns raised in customer presentations and comments made and submitted after BPA’s January 26, 2022 Financial Plan Refresh Presentation.¹⁰ Instead, BPA inappropriately treated many of these “Goals” or “Initial Approach” as established or as a given and ignored the concern that an unyielding focus on aspirational policies can result in the implementation of methods and procedures that may be inconsistent with statutory standards applicable to BPA rates. For example, in its discussion regarding the application of the “higher of” methodology to the transmission revenue requirement, the February 23 Presentation states at page 19:

- Attempting to achieve a specific leverage target and net neutral borrower status means that Test 2 will become the driver.

- The capital financing proposal requires sizeable amounts of revenues to finance capital projects. These amounts are greater than the available cash flow produced by Test 1.

- MRNR will be needed to ensure there is sufficient cash flow. This means that rates will be set to meet cash needs, Test 2.

- Our analysis for the capital financing proposal incorporated our current practice of hardwiring. 11 See, e.g., January 26 Workshop Comments. 10 See, e.g., *Id.* at 1.¹¹

As can be seen from this example and others¹², the “Goals” or “Initial Approach” have become the “driver” for decisions and results (including the acceleration of costs and overstatement of revenue requirements over time resulting from MRNR) that, to date, have not been justified or been shown to be in line with statutory standards of cost recovery in rates. BPA should provide adequate rationale and support for the “Goals” and “Initial Approach” and

⁹ See, e.g., January 26 Workshop Comments.

¹⁰ See, e.g., *Id.* at 1

¹¹ February 23 Presentation at 19 (emphasis added)

¹² For other examples, see *Id.* at 21 (Transmission revenue requirement set to recover cash flow necessary to reduce Transmission leverage to 60% and achieve net neutral borrower status) and *Id.* at 22 (making an offset to depreciation “is self-defeating, taking us away from the goals outlined at the January 26th workshop”).

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demonstrate that they are consistent with the statutory standards applicable to BPA rates. Regardless, such “Goals” and “Initial Approach” cannot preempt or supplant the requirement for a full and complete justification of BPA rates pursuant to section 7 of the Northwest Power Act.

Finally, the “Goals” and “Initial Approach” as outlined also appear to ignore the fact that BPA’s Federal borrowing authority has been substantially increased by statute. It seems rather arbitrary and unreasonable to propose no increase in borrowing when BPA was just given such a substantial increase in borrowing authority. At a minimum, the increased borrowing authority should be addressed by BPA in the context of explaining (i) why it does not appear to be taken into account in establishing the “Goals” and “Initial Approach” and (ii) why it does not permit appropriate adjustments to the “Goals” and “Initial Approach” that would benefit BPA customers and still be consistent with “sound business principles.”

D. The accrual of regulatory liabilities where contemplated by the FERC Uniform System of Accounts is not optional to BPA

During the February 23 Presentation, BPA staff initially appeared to suggest that the principle of regulatory liabilities under the FERC Uniform System of Accounts was not applicable to the “higher of” methodology used by BPA to establish revenue requirements and, thus, rates. Later, they seemed to assert that, even if the principle is applicable, it would only apply if the BPA Administrator (as the regulator of BPA) elected to make such an accrual. The positions taken by BPA staff are misplaced and fail to recognize that each time application of the “higher of” methodology results in the collection of MRNR, a regulatory liability must be accrued by BPA because that MRNR represents a clear acceleration of expenses for ratemaking purposes to a period earlier than when those same expenses would be recognized under the accrual method of accounting.

Order RA6120.2 of the U.S. Department of Energy includes the following: “The PMAs shall maintain their power systems accounts in accordance with the uniform system of accounts prescribed by the Federal Energy Regulatory Commission for public utilities and licensees to the extent practicable.”¹³

As noted in the Higher Of Comments,¹⁴ “Regulatory Assets and Liabilities are assets and liabilities that result from rate actions of regulatory agencies.”¹⁵ Under RA6120.2, BPA is to comply with the Uniform System of Accounts to the extent practicable. This means that BPA must accrue a regulatory liability if BPA rates are adopted and confirmed and approved by FERC

¹³ U.S. Department of Energy, Order RA 6120.2, dated September 20, 1979, at §8.a

¹⁴ See Higher Of Comments at 10

¹⁵ Citing 18 CFR Part 101 -- Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (“Uniform System of Accounts”) (available at <https://www.law.cornell.edu/cfr/text/18/part-101>)

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that accelerate expenses for ratemaking purposes to a period earlier than the period such expenses would be recognized (on an accrual basis) under the Uniform System of Accounts.¹⁶

As explained by BPA in the February 23 Presentation, “MRNR is a cash requirement added to the Income Statement to ensure that revenues will be sufficient to meet cash flow needs.”¹⁷ The practice of using MRNR to generate cash that is otherwise not available in the accrual-based Income Statement in order to repay debts in periods earlier than called for by the Income Statement results in an acceleration of expenses contemplated by the Uniform System of Accounts. The regulatory liability principle is applicable to BPA’s ratemaking process through the FERC Uniform System of Accounts, and BPA cannot simply say that it does not have a regulatory agency that takes rate actions and therefore the requirement to accrue regulatory liabilities does not apply.

Further, BPA’s failure to accrue regulatory liabilities under these circumstances would mean that BPA is failing to track generation and transmission revenues, costs, and resulting surpluses/deficits as required by FERC.¹⁸ Under the Northwest Power Act, FERC reviews BPA’s rates to ensure they comply with specified statutory standards.¹⁹ Under this limited review, FERC has ordered BPA to separately account for power and transmission revenues and deficits, including the tracking of deficiencies or surpluses in transmission revenues and whether they are collected or credited to the appropriate customer class:

By order of August 3, 1982, we approved BPA's 1976 transmission rates on a final basis, but ordered BPA to implement a separate accounting of costs for its transmission system. 20 FERC P 61,142. Specifically, we ordered BPA to maintain a separate accounting of revenues and deficits of the transmission system attributable to the Federal and non-Federal users. We also required BPA to provide an accounting for its transmission system separate and apart from the accounting for its generating system. That order stated:

****4 Bonneville shall be required to provide a readily identifiable accounting of its transmission system costs and the revenues generated from its use, along with the status of repayment of each major segment of investment in transmission facilities. Only by providing such an accounting can the Commission assure that the statutory standards of sections 9 and 10 of the Transmission Act have been met, and that Bonneville's rate schedules will provide a sufficient level of revenues to Bonneville to recover its capital costs**

¹⁶ See Higher of Comments at 10-11.

¹⁷ February 23 Presentation at 14

¹⁸ In the BPA document at

[https://www.bpa.gov/Finance/FinancialPublicProcesses/ReservesReview/Documents/July%2016%20Responses/7.%20Staff%20Procedures%20re%20BU%20Cash%20Split%20\(20%2009\)_Redacted.pdf](https://www.bpa.gov/Finance/FinancialPublicProcesses/ReservesReview/Documents/July%2016%20Responses/7.%20Staff%20Procedures%20re%20BU%20Cash%20Split%20(20%2009)_Redacted.pdf) the following appears:

In compliance with the Commission order, BPA developed a system that separately tracks generation and transmission revenues, costs, and resulting surpluses/deficits. See 25 FERC ¶ 61,140, at 61,375 (1983). See also 20 FERC ¶61,142 (1982); 26 FERC ¶61,096 (1984); 28 FERC ¶61,325 (1984).

¹⁹ 16 U.S.C. § 839e(a)(2). See also 176 FERC ¶61,220 (2021) at footnote 12 (“Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.”)

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and to repay the U.S. investment in the system over a reasonable period of time. Such an accounting will also allow the Commission to more easily determine whether transmission costs have been equitably allocated between Federal and non-Federal users. *Id.* at p. 61,315.

BPA's refusal to comply with our order precludes any type of tracking system which demonstrates that (1) transmission revenues are only used to repay transmission costs; (2) costs assigned to transmission are only transmission related costs; and (3) any deficiencies or surpluses in transmission revenues are being tracked and collected or credited to the appropriate customer class.⁹ Without this information, we cannot determine whether BPA's transmission rates satisfy the statutory requirements of the Regional Act, as well as similar provisions in sections 9 and 10 of the Federal Columbia River Transmission System Act.²⁰

Accruing regulatory liabilities is an essential element of separately accounting for power and transmission revenues and deficits, including the tracking of deficiencies or surpluses in transmission revenues and whether they are collected or credited to the appropriate customer class. As such, accruing regulatory liabilities where contemplated by the Uniform System of Accounts is not optional to BPA.

E. BPA's discussion of "double recovery" during the February 23 Presentation does not address the stated concern that MRNR leads to an overstatement of revenue requirements over time that result in rates that are set to collect more than BPA's costs

During the February 23 Presentation, BPA spent a significant portion of time discussing "double recovery" and explaining BPA's view that including revenue financing and depreciation of revenue financed assets in rates does not amount to charging its customers twice for the same thing.²¹ This further lead to a discussion of the mechanics of the "higher of" methodology used by BPA to establish its revenue requirements.²² While this information is helpful, it is incomplete and fails to address the stated concerns.

In the Higher Of Comments, the concern is expressed that the "higher of" methodology used by BPA, which includes the depreciation of assets over their service lives in the accrual revenue requirement and then adds MRNR to the accrual revenue requirement in order to satisfy the cash flow test, results in revenue requirements over time that exceed BPA's costs. Nothing in the February 23 Presentation addressed these concerns raised in the Higher Of Comments regarding the overstatement of revenue requirements over time that exceed costs.

F. BPA should abandon its higher of methodology and determine revenue requirements based on forecasted cash requirements; if BPA retains its higher of methodology (which it should not), BPA must accrue a regulatory liability for MRNR and reduce the revenue requirement in subsequent rate period(s) to account for the MRNR. In any event, if the accrual and amortization of such regulatory liability is not effective in eliminating the overstatement of

²⁰ 25 FERC ¶ 61140 at 61,375 (1983) (emphasis added).

²¹ See February 23 Presentation at 7-8.

²² See *Id.* at 12-21.

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revenue requirements, BPA should abandon the higher of methodology and determine revenue requirement based on forecasted cash requirements

As noted above and discussed in more detail in the Higher Of Comments, BPA's higher of methodology generates MRNR that is added to the accrual revenue requirement, which in turn results in an overstatement of revenue requirements over time that exceed costs. The MRNR and resulting overstatement is caused by BPA's attempt to use elements of both cash and accrual accounting in determining revenue requirement. BPA should take steps to avoid the statutorily prohibited overstatement of revenue requirements caused by its higher of methodology.

In order to avoid MRNR and the resulting overstatement of revenue requirements over time that exceed costs, BPA should abandon its higher of methodology and determine revenue requirements based on forecasted cash requirements; if BPA retains its higher of methodology (which it should not), BPA must accrue a regulatory liability for MRNR and reduce the revenue requirement in subsequent rate period(s) by amortizing the regulatory liability to account for the MRNR. If the accrual and amortization of such regulatory liability is not effective in eliminating the overstatement of revenue requirements, BPA (as noted above and discussed in more detail in the Higher Of Comments) should abandon its higher of methodology and determine revenue requirement based on forecasted cash requirements.

* * *

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 recommendations contained herein. By return e-mail, please confirm BPA's receipt of these comments.

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March 3, 2022

U.S. Department of Energy

Bonneville Power Administration

RE: Comments of Natural Resources Defense Council and Renewable Northwest on Financial Plan Refresh

We appreciate BPA's willingness and openness in presenting its plans for the Financial Refresh process. It is clear that BPA has put a lot of time and resources into developing this plan.

RNW and NRDC are concerned that BPA's plan for achieving a "net neutral" borrowing position may conflict with the type of investment that is needed to achieve the region's clean energy mandates and goals. BPA's existing system is currently constrained, which leads to limitations on the amount of new renewable generation available to utilities in Washington and Oregon to meet state clean policy requirements. Given BPA's position as a federally-supported public agency and during a time of increased federal spending on infrastructure and decarbonization, we are concerned that BPA is heading in a direction that is contrary to the rest of the nation's investment strategy. BPA recently received increased borrowing authority in the federal Infrastructure Act, which is intended to facilitate transmission improvements. We believe that the borrowing authority should be used as intended, to upgrade and expand BPA's transmission system, and not simply used as a tool to improve BPA's leverage ratio. Studies in both Washington and Oregon show that expanded transmission and regional interconnection will be necessary to meet state clean energy policies.²³ BPA's focus on aggressive debt reduction may conflict with clean energy policies, as it will make investments in new infrastructure in the nearterm more difficult and will increase transmission costs for renewable resources necessary to meet 100% clean energy policies. Given the federal clean energy policy goals, BPA should be working to aid states in their efforts to decarbonize the electricity sector rather than being a roadblock to those efforts.

BPA should provide more details on why it chooses to set its long-term target at 60% for its debt-to-asset ratio. This goal seems rather aggressive, given that BPA is shifting from a three-year debt ratio average of 85%. BPA should evaluate these goals compared to the "industry average" for federally-supported public entities similar to BPA, without the inclusion of other utilities such as co-ops or investor-owned utilities that do not share a similar federal backing as BPA. In a recent workshop, Mr. Oosterveld presented a case for why BPA's "industry average" included entities not comparable to BPA, and offered a suggestion for which utilities should be included in a peer group. We agree that BPA may be comparing itself with the wrong peer group and consequently imposing unnecessary rate impacts through 2040. We request BPA further evaluate the potential rate impacts and revenue financing required for each rate period through 2040 under scenarios ranging from 60% to 80% and consider how each scenario may impact the ability of BPA customers to meet their clean energy mandates.

²³ See Evolved Energy Research, Washington State Clean Energy Strategy Decarbonization Modeling Final Report https://uploadssl.webflow.com/5d8aa5c4ff0274bdbe0c14b9/5febb8918f76059200377570_WA%20SES%20EER%20DDP%20Modeling%20Final%20Report%2012-11-2020.pdf and Oregon Clean Energy Pathways Final Report https://renewablenw.org/sites/default/files/Reports-Fact%20Sheets/OR_CEP_Final%20Report%20.pdf

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We greatly appreciate your efforts at working towards decreasing BPA's debt. We ask that BPA consider the role they play in decarbonization of the electricity grid and work to ensure there is not a conflict between the financial goals and the infrastructure investments needed in the region.

Sincerely,

Nicole Hughes

Executive Director

Renewable Northwest

Ralph Cavanagh

Energy Program Co-Director

Natural Resources Defense Council