



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

**VIA E-FILING**

August 13, 2008

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street N.W.  
Washington, D.C. 20426

**RE: Docket No. EF08-2011-000  
Bonneville Power Administration 2008 Average System Cost Methodology**

Dear Secretary Bose:

Pursuant the Commission's Notice of Filing issued July 23, 2008, the Idaho Public Utilities Commission ("Idaho PUC") submits its Notice of Intervention, Protest and Comments in the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald L. Howell, II".

Donald L. Howell, II  
Deputy Attorney General

bls/N:FERC EF08-2011-000\_Bose\_dh

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**IN THE MATTER OF** )  
 ) **Docket No. EF08-2011-000**  
**BONNEVILLE POWER ADMINISTRATION** )  
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**NOTICE OF INTERVENTION, PROTEST, AND COMMENTS  
OF THE IDAHO PUBLIC UTILITIES COMMISSION**

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The Idaho Public Utilities Commission (“Idaho PUC”) files this Notice of Intervention, Partial Protest and Supporting Comments in response to the Federal Energy Regulatory Commission’s (“Commission”) July 23, 2008 Notice of Filing of Bonneville Power Administration’s (“BPA”) proposed Average System Cost Methodology (2008 ASCM), Docket No. EF08-2011-000. Section 5(c)(7) of the Pacific Northwest Electric Power Planning and Conservation Act (“Northwest Power Act” or “NPA”) authorizes the Commission to review and approve the proposed 2008 ASCM. 16 U.S.C. § 839c(c)(7).

**I. COMMUNICATIONS**

All pleadings, correspondence or communications related to this proceeding should be addressed to the following persons:

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## II. NOTICE OF INTERVENTION

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(a)(2), the Idaho PUC hereby intervenes in the above-entitled matter. In addition to our statutory consultation with BPA on March 27, 2008, the Idaho PUC submitted initial comments in the BPA proceeding, and submitted additional comments in response to BPA's Draft Record of Decision in the underlying ASCM proceeding. BPA Final Record of Decision (FROD)<sup>1</sup> at 15-16. The Idaho PUC also regulates the Idaho retail electric rates of Avista, Idaho Power Company and PacifiCorp – all participating utilities in the ASCM and the Residential Exchange Program.

## III. PROTEST

### *A. Background*

Section 5(c) of the Northwest Power Act allows regional electric utilities (including the three investor-owned utilities (IOUs) of Avista, Idaho Power and PacifiCorp) to participate in the Residential Exchange Program (REP). 16 U.S.C. § 839c(c). When it enacted the REP, Congress intended to provide rate parity between the generally lower rates of BPA's preference customers and the higher rates paid by residential and small farm customers of the IOUs. H.R. Report No. 96-976(I) § 5 at 60, 1980 U.S.C.C.A.N. 5989; FROD at 2-3. Congress recognized that the exchange mechanism may not result in parity between BPA's PF Exchange rate and the retail rates of eligible IOU customers, "but it should equalize the wholesale costs of the electric power with a resulting benefit [to] the investor-owned utilities' customers." *Id.*

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<sup>1</sup> Hereinafter, BPA's Final Record of Decision will be denoted as FROD.

“The REP is the mechanism used to calculate the level of monetary benefits for the exchanging utilities,”<sup>2</sup> e.g., the six regional IOUs in the Pacific Northwest: Avista, Idaho Power, Northwestern, PacifiCorp, Portland General Electric Company, and Puget Sound Energy. In its transmittal letter, BPA explained that there are three components to the REP mechanism. First, there is the calculation of each utility’s average system cost (ASC) using the approved ASC methodology. The proposed 2008 ASCM is the subject matter of this docket (EF08-2011-000). Second, is the establishment of the PF Exchange rate in BPA’s Section 7(i) rate proceeding (WP-07 Supp.).<sup>3</sup> Third, BPA and the exchanging utilities must negotiate new Residential Purchase and Sales Agreements (RPSAs) containing the calculations for new REP benefits in BPA Docket No. PS-6.<sup>4</sup> Each of these three components are the subject of separate but concurrent BPA dockets. BPA intends to implement the new REP on October 1, 2008. Transmittal Letter at 4-5.

In determining REP benefits, BPA first determines the ASC for each IOU. BPA then compares the IOU’s ASC with BPA’s PF Exchange rate as established in BPA’s Section 7(i) rate proceeding. Generally, if the IOU’s ASC is greater than the PF Exchange rate, then REP benefits are paid to the IOU. The benefit amount is calculated by multiplying the difference between the IOU’s higher ASC and BPA’s lower PF Exchange rate, by the IOU’s residential and small farm load. “For example, if a Utility had an ASC of \$50/MWh and BPA’s PF Exchange rate was \$30/MWh, then the Utility would receive REP payments equal to the difference

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<sup>2</sup> FROD at 2.

<sup>3</sup> In its transmittal letter dated July 7, 2008, BPA states that it “has developed a revised PF Exchange rate that BPA will submit for interim approval effective October 1, 2008.” Transmittal Letter at 4 (emphasis added). However, BPA is not scheduled to issue its Final ROD in its rate proceeding (and establishing the new PF Exchange rate) until September 22, 2008. BPA Scheduling Order WP-07-H00-102 issued July 8, 2008.

<sup>4</sup> Again, BPA states in its transmittal letter that it “has recently negotiated new RPSAs to be effective October 1, 2008.” Transmittal Letter at 4 (emphasis added). As of this date, BPA has not issued its Record of Decision in its RPSA docket (No. PS-6) or executed any new RPSAs.

(\$20/MWh) multiplied by the Utility's residential and small farm load." FROD at 3. "The exchange actually transfers no power to or from BPA because the 'exchange' is simply an accounting transaction: 'In practice, only dollars are exchanged, not electric power.'" FROD at 2 citing *CP National Corp. v. BPA*, 928 F.2d 905, 907 (9<sup>th</sup> Cir. 1991), quoting *Public Utility Commissioner of Oregon v. BPA*, 583 F.Supp. 752, 754 (D.Or. 1984).

### ***B. The "Deemer" Mechanism***

In addition to the three factors mentioned above, there is a fourth factor which determines whether an IOU is eligible to receive benefits under the REP. The fourth factor is whether the exchanging utility has a negative "deemer" balance. The deemer mechanism is a remnant of the 1981 RPSAs between BPA and three of the IOUs. Section 10 ("Election to Equalize Rates") of the respective RPSA for Avista, Idaho Power and Northwestern provided that when the IOU's ASC was lower than the BPA PF Exchange rate, the IOU may elect to have its ASC "deemed equal" to the PF rate.<sup>5</sup> In the Final ROD, BPA explains the deemer mechanism in the following manner:

When the BPA PF Exchange rate is lower than a participating utility's ASC, BPA pays the net cost to that Utility. However, when the PF Exchange rate is higher than the [utility's] ASC, i.e., when the net cost of the exchange is negative, BPA has previously provided the utility a unilateral right to "deem" its ASC equal to the PF rate, so that no payment flows from the utility to BPA.

FROD at 3-4 (emphasis added).

BPA's characterization that an IOU may "'deem' its ASC equal to the PF rate" is misleading. If read literally, an ASC (e.g., \$30/MWh) that is "equal" to the PF Exchange rate (e.g., \$30/MWh) would result in no difference and no REP benefits. However, in practice, the deemer mechanism calculates the actual difference between a utility's lower ASC and the higher

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<sup>5</sup> The phrase "deemed equal" appears to be the source of the term "deemer."

PF rate, and results in a “negative” deemer balance. For example, if an IOU’s ASC is \$25/MWh and BPA’s PF Exchange rate is \$35/MWh, the utility would accumulate a negative balance of \$10/MWh, multiplied by the utility’s residential and small farm load. As BPA stated in its Federal Register notice and in its Final ROD, the accumulated (negative) deemer balances “must be paid [to BPA] before the Utility can receive positive REP benefits.” FROD at 4, 167; 73 Fed.Reg. at 7270, 7271 at n.4 (Feb. 7, 2008). BPA asserts that as of October 1, 2007, Avista’s alleged deemer balance was \$99.3 million and Idaho Power’s alleged deemer balance was \$245.36 million.

How did the utilities accumulate large deemer balances? As BPA explains in Section 2.3 of its Final ROD, after BPA adopted and the Commission approved the 1984 ASCM, the ASCs for both Avista and Idaho Power became lower than BPA’s PF rate. After the changes to the 1984 ASCM, neither Avista nor Idaho Power received any REP benefits and they subsequently suspended, then terminated their RPSAs. Because their ASCs were lower than BPA’s PF rate, they accumulated negative deemer balances. FROD § 2.3 at 6-11. As mentioned, these two utilities suspended their RPSAs, thereby suspending the accumulation of deemer “principal” in 1987/1988. Since that time, their respective deemer balances have increased for more than 20 years by the application of interest – simple interest for Avista and compound interest for Idaho Power.<sup>6</sup>

### *C. The Idaho PUC’s Deemer Issue*

The Idaho PUC raised the deemer issue during its consultation with BPA on March 27, 2008, in its initial comments on the ASCM, and again in its comments addressing the Draft

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<sup>6</sup> Although BPA acknowledges in the WP-07 rate hearing that it follows the Commission’s Uniform System of Accounts in maintaining its financial books and records, the deemers have never been recorded in BPA’s books and accounts. WP-07 Tr. Vol. I, p. 98, ll.5-7; WP-07-E-ID-ICC-AT3.

ROD. FROD at 16. The Idaho PUC urged BPA to eliminate the deemer mechanism from the ASCM. Idaho PUC comments on the Draft ROD at 3. The Idaho PUC asserted that:

The proposed ASCM changes included in the Draft ROD are related and interconnected to decisions and issues associated with the WP-07 Supplemental Rate Case, as well as the proposed bridge and long-term [RPSA] contracts. We understand the rationale for parallel proceedings on these issues, but are concerned that addressing each matter in separate dockets may fail to recognize the impact of decisions in one proceeding on issues in the other proceedings.

Specifically, the “deemer” issue remains a concern of the IPUC, and one that was raised during the consultation process and in our comments on ASCM, but our concern was not addressed in the Draft ROD. One of the decisions reflected in the Draft ROD illustrates the relationship between this overlapping issue and the decisions in the Draft ROD. In Section 4.1.8 of the Draft ROD, BPA recites a comment filed in response to the appropriate consequences if a utility fails to file an Appendix 1. BPA proposes that a failure to file an Appendix 1 will result in BPA “the utility’s ASC equal to the PF1 exchange rate until the end of the Exchange Period.” Draft ROD Section 4.1.8 (Evaluation of Positions) at p. 33. The commenter noted that suspending REP benefits “creates an alternative to incurring a deemer balance should the utility anticipate that its ASC will drop below the PF exchange rate during that period.” *Id.*

IPUC Comments on the Draft ROD at 3 (emphasis added).

BPA addressed our deemer concerns in Section 4.10.13 (Deemer Mechanism) of the Final ROD. FROD at 67-68. There BPA stated that the “deemer mechanism is not established in the ASCM, but instead is established in the RPSAs. . . . BPA respects the comments of the IPUC on this issue and encourages the [Idaho PUC] to submit its comments on the deemer mechanism in the RPSA forum.” FROD at 168. BPA concluded that it “will not decide issues regarding the deemer mechanism in this ASCM proceeding, but will address such issues in the concurrent proceeding to develop RPSAs for exchanging utilities.” *Id.*

BPA’s decision not to address the deemer issue in the ASCM is unfortunate. As delineated above, the ASC is one of the components necessary to determine whether an IOU is eligible for long-term REP benefits. A change in the ASC or BPA’s PF exchange rate that

results in an ASC lower than the PF rate, may involuntarily place the IOU in deemer status. Thus, the only way to remedy the deemer issue is to address it **consistently** in this proceeding, the upcoming WP-07 Supplemental rate proceeding, and the RPSAs. Otherwise, the deemer issue will remain unresolved.

***D. BPA Relies Upon the Deemer Mechanism to Decide Another Issue***

Although BPA asserted that the deemer mechanism is not part of the ASCM, BPA nevertheless relied upon the deemer mechanism when it resolved another ASCM issue. In Section 4.1.8 of the Final ROD, BPA noted Snohomish's concern that a utility's failure to timely file its Appendix 1, or file a deficient Appendix 1, "creates an alternative to incurring a deemer balance should the utility anticipate that its ASC will drop below the PF Exchange rate during that period." FROD at 34 (emphasis added). Snohomish recommended in its comments that the appropriate consequence for a utility failing to file an Appendix 1 or filing a deficient Appendix 1, should "result in termination of the RPSA for the term of the Agreement, provided that the failure or deficiency is not corrected." *Id.*

In deciding the consequence of a utility failing to file an Appendix 1, BPA stated:

Under the proposed ASCM, a Utility could fail to file an Appendix 1 in order to avoid accumulating a deemer balance. This would be inappropriate. Snohomish's proposed solution, however, may not establish a proper remedy. If a utility were required to terminate its RPSA, there is nothing that requires the termination to be for the full term of the terminated RPSA. The Utility could later offer to sell power to BPA at its ASC pursuant to Section 5(c) of the Northwest Power Act and resume participation in the REP after the period in which it should have accumulated a deemer balance. Therefore, in order to address the problem, a Utility's failure to timely file an Appendix 1 will result in a waiver of the Utility's right to participate in the ASC review proceeding to establish its ASC.

FROD at 34 (emphasis added).<sup>7</sup> Despite BPA's decision in Section 4.10.13 that the Idaho PUC's deemer issues are more properly addressed in the RPSA proceeding, BPA relies upon the deemer

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<sup>7</sup> There is no mention in Section 4.1.8 of Idaho's comments related to this section.

issue to decide the filing issue set out above.<sup>8</sup> It is unreasonable for BPA to decide an ASCM issue based upon the apparent continuation of the deemer issue.

BPA also proposed a different resolution when a utility fails to file its Appendix 1 by June 1 because the utility executed a RPSA after the Review Period or during a subsequent Exchange Period. BPA decided that the remedy is to “set the Utility’s ASC equal to the PF Exchange rate until the end of the Exchange Period.” FROD at 35 (emphasis added). BPA goes on to explain that a utility making a late RPSA filing “will receive no benefits until the following Exchange period begins.” *Id.* The language “set the Utility’s ASC equal to the PF Exchange rate” is nearly identical to the deemer mechanism language used by BPA in this docket (“deem its ASC equal to the PF rate”) and the 1981 RPSA provision (the utility “may elect to have its [ASC] deemed equal to the [PF] rate”). FROD at 4. It is not clear from the Final ROD or the ASCM whether BPA intends for late filing utility’s to accrue negative deemer balances when BPA sets the ASC equal to the PF rate until the end of the Exchange Period. FROD at 35-36, Atch A. § II.D.1 at 5. If BPA intends to continue the deemer mechanism by the use of this language, this too is unreasonable and unlawful.

### *E. Legal Argument*

There is nothing in the Northwest Power Act or its legislative history that authorizes the deemer mechanism, i.e., where benefits flow in the opposite direction – from exchanging utilities to BPA. Congress intended the REP to provide benefits to the regional IOUs by reducing the wholesale rate disparity between BPA’s preference customers and IOU customers. FROD at 2; 1980 U.S.C.C.A.N. 5989 (p. 60). As consistently construed by the Ninth Circuit, the Northwest

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<sup>8</sup> Snohomish also asked BPA to confirm that utilities failing to execute an RPSA for the 2012-2028 period will be precluded from participating in the REP for that period. Snohomish maintained that allowing utilities to exit and enter the REP during 2012-2028 would “effectively eliminate any future deemer accounts.” FROD at 34. BPA responded that the deemer mechanism is to be resolved in the RPSA proceeding. *Id.*

Power Act contemplates that BPA and the exchanging utilities would exchange when a utility's ASC was above BPA's PF rate. *Portland General Electric Co. v. Bonneville Power Admin.* ("PGE"), 501 F.3d 1009, 1015 (9<sup>th</sup> Cir. 2007), *cert. denied*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 2902 (2008); *Golden Northwest Aluminum v. Bonneville Power Admin.* ("Golden Northwest"), 501 F.3d 1037, 1047 (9<sup>th</sup> Cir. 2007), *cert denied sub nom. PGE*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 2902 (2008); *Washington Utilities and Transp. Comm'n v. FERC*, 26 F.3d 935, 936-37 (9<sup>th</sup> Cir. 1994). The exchange program in "Section 5(c) permits IOUs to exchange power they have purchased or generated for lower-cost power generated by BPA." *PGE*, 501 F.3d 1015 (emphasis added). Rather than conferring a benefit and achieving parity between BPA's PF rate and the IOUs retail rates, the operation of the deemer mechanism turns Section 5(c) on its head.

Further, the filing of individual ASCs by the IOUs, the execution of the RPSAs and BPA's calculation of the new PF Exchange rate in its Section 7(i) rate proceeding (WP-07 Supp.) is too compressed. According to BPA's schedule in the rate proceeding, it will not issue a final ROD and PF Exchange rate until September 22, 2008 to be effective October 1, 2008. Thus, a utility filing its ASC on June 1 of each year has no way to ascertain whether its ASC will be above or below the PF Exchange rate until the next BPA Section 7(i) rate proceeding occurs.<sup>9</sup> If, after such a proceeding occurs, the utility finds itself in "deemer" status, not only will it receive no REP benefits during the rate period, but it will owe BPA the deemer balance whenever it becomes eligible again for REP benefits in the future. Deemer balances may also accrue if a utility fails to timely file its Appendix 1 and the utility executes a RPSA after the Review Period or during a subsequent Exchange Period. FROD § 4.1.8 at 34-36, Atch. A, § II.D.1 at 5.

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<sup>9</sup> Given the long-term RPSAs, there is no certainty that the current relationship between an IOU's ASC and the PF Exchange rate will remain the same over time. For example, the PF rate could increase to levels above the IOU's ASC. Such a risk should not be compounded by the accumulation of deemer balances.

Rather than creating “wholesale rate parity,” the “deemer” mechanism creates a subsidy flowing from the lower-ASC IOUs to be BPA. This may, in fact, result in wholesale market manipulation because BPA and the REP recipients all compete in the same bilateral Pacific Northwest and western wholesale markets.

#### **IV. COMMENTS IN SUPPORT OF THE PROPOSED 2008 ASCM**

Except for the aforementioned deemer issues, the Idaho PUC urges the Commission to approve BPA’s proposed 2008 ASCM. We believe the other changes including the 2008 ASCM are improvements over the 1984 ASCM. Specifically, the Idaho PUC supports BPA’s ultimate decision to use FERC Form 1 data as the primary data source for Base ASC determination; allow the yearly adjustment of ASCs to reflect major new resource additions; and the inclusion of transmission costs, federal income taxes, return on equity, and regulatory assets and liabilities (such as power cost adjustments, intervenor funding, AFUDC, and sales of emission allowances). *See* FROD at 26-27, 31-32, 41-50, 102-112, 113-122, 125-142, 145-146.

The Idaho PUC believes that the changes included in BPA’s 2008 ASCM represent a greater appreciation of the actual operational and capital costs that utilities face, and the factors that we, and the other state regulatory commissions, must address when establishing IOU rates for electric services. These changes will enhance the ability of BPA to meet the objective of a broader and more equitable sharing of the benefits of the Columbia River Hydroelectric system with the IOU residential and small farm customers within the region.

##### ***A. Use of FERC Form 1***

As BPA acknowledges, the 1984 ASC “jurisdictional” methodology was unduly complex and became an administrative burden for all parties. *See* FROD at 24. The Idaho PUC supports BPA’s decision to simplify this process and primarily rely on information commonly available in

the annual FERC Form 1 filings. *Id.* All of the regional IOUs are required to collect and file FERC Form 1 information every year. *Id.* The procedures and methodology for collecting and assembling this information are well established and relatively consistent throughout the industry. Thus, utilizing the data from the annual FERC Form 1 filing will reduce the administrative burden of and add transparency to the ASCM process. *Id.*

Another advantage of using FERC Form 1 data is that it is updated annually, and the reporting period is the same for all reporting utilities. *Id.* at 25. The 1984 methodology relied upon data from state commission rate cases. For those IOUs with service areas in multiple states, each jurisdiction could have used a different test year. *Id.* The consistency and timeliness of the FERC Form 1 data should reduce disputes about the information and also simplify the resolution of any disputes that do arise. *Id.*

The Form 1 data are publicly available and relatively easy to access, which should enhance the opportunity for all interested parties to review the information reported by the IOUs. *Id.* This transparency should benefit the public review process by making it easier and more efficient for parties to evaluate the data in a shorter time frame. *Id.* The Form 1 is “certified” by the submitting utility, and a certified public accountant must attest that the reported data conform to the FERC Uniform System of Accounts. FERC Form 1 Instructions § 3 at p. i-ii; 18 C.F.R. Part 101. *Id.* FERC may assess penalties for violations of its regulations if data are not submitted. *Id.* at p. vii; 16 U. C. § 825a(a). *Id.*

The proposed methodology for adjusting the Form 1 data for those utilities with service areas outside of the region appears to be a reasonable compromise between complexity and administrative burden and should be sufficiently accurate to minimize any concerns regarding inequitable treatment. *Id.*

### ***B. New Major Resource Adjustments***

“The [2008] ASCM will adopt a materiality threshold of a 2.5 percent change in a Utility’s Base Period ASC for determining when a change in ASC will be made for resource additions or reductions.” *Id.* at 48. Utilities will be permitted to submit individual resources for review so long as each individual resource in the stack is responsible for at least a 0.5 percent increase in the utility’s the base period ASC. *Id.*

Major resource additions and power purchases have significant impacts upon a utility’s ASC, especially for smaller IOUs such as Avista and Idaho Power. Delaying the recognition of such major costs until they appear in the subsequent FERC Form 1 data would inevitably result in significant discrepancies. Consequently, the Idaho PUC supports BPA's decision to allow for changes to a utility’s ASC when new resources meet the 2.5 percent threshold requirement.

### ***C. Transmission Costs***

BPA’s decision to include “major new transmission investments” is also an appropriate and necessary change to the ASC. *Id.* at 50. The cost of transmitting energy from the generating facility to the utility’s load centers is appropriate to include in the ASCM. *Id.* at 126-129. Decisions on the siting of resource facilities involve comparisons of the total costs of the different locations, including transporting generation resources such as the fuel and cooling water to the site, as well as the transmission of the generated electricity from the site. *Id.* at 129. Many utilities have located generating facilities outside of the Pacific Northwest and far from their load centers to be closer to the source of coal. *Id.* These mine-mouth facilities were located outside the region because the companies projected the cost of transporting the coal would exceed the cost of transmission facilities to bring the generated electricity to the load. Failure to

include the cost of such transmission facilities would not conform to industry practices and is detrimental to residential and small farm customers. *Id.*

This will become even more important as the region's utilities add more renewable energy resources to their generation portfolios. *Id.* Renewable generating facilities typically need to be located where the resource is located, without regard to where the load is located. *Id.* at 134. Whether it is wind, geothermal, solar, or hydro, our experience is that these types of facilities are not located near load centers. *Id.* at 129. In fact, renewable wind resources are often not located near existing transmission facilities. The costs of the transmission facilities required to get the electricity to load centers are an important component of the utility's ASC.

In our comments, the Idaho PUC asserted all of the coal-fired generation used in Idaho is transported to Idaho load centers from distant locations. FROD at 129. For example, Avista customers in northern Idaho and eastern Washington are served by electricity generated at the Colstrip mine-mouth facility in central Montana. This generating facility is over 600 miles from Avista's load center. In addition, Idaho Power acquired its coal generating resources by partnering with neighboring utilities. Idaho Power customers receive part of the generation from the Boardman coal facility near Boardman, Oregon, which is nearly 270 miles from the Treasure Valley load center (TVLC); from the Valmy coal plant near Valmy, Nevada, which is almost 300 miles from the TVLC; and from the Jim Bridger mine-mouth coal facilities near Rock Springs, Wyoming, which are almost 500 miles from the TVLC. While the Boardman and Valmy facilities are not mine-mouth facilities Idaho Power is a co-owner in those projects, as well as the Bridger facility.

Finally, PacifiCorp's Idaho customers are served from system resources, the closest of which are the Jim Bridger generation facility near Rock Springs, Wyoming, and the Hunter

facility in Utah. Both of these generation complexes are located near coal mines, and both are more than 200 miles from the center of PacifiCorp's Idaho load center.

At the time each of these resources was acquired by the respective IOUs, this Commission found the cost of the Company's participation in the project, including the costs of the related transmission facilities, to be a reasonable and prudent expenditure. The costs of the transmission facilities required to move the electricity to the companies' load centers were part of the overall project evaluated by the Idaho PUC. These transmission costs are included in the rates customers pay, and BPA has justifiably included them as part of the ASC methodology. FROD at 129.

#### ***D. Return on Equity***

The Idaho PUC strongly supports BPA's decision to include the cost of the return on equity (ROE) in the ASC. "The ASCM will allow return on equity in ASC starting from a Utility's most recent Regulatory Body approved return." FROD at 112. The exclusion of this cost was one of the most deficient aspects of the 1984 ASC methodology because it failed to recognize the very real impact that an IOU's capital structure has upon its operating and capital costs. The cost of common equity in an IOU's capital structure results in a reduction of the company's cost of debt. *Id.* at 102.

In the "1984 ASCM, BPA excluded the cost of equity from ASC primarily because of concern that Regulatory Bodies might increase the allowed ROE to compensate Utilities for the cost of terminated plants." *Id.* at 103. These concerns that led to excluding ROE costs either no longer exist or are adequately addressed by other regulatory bodies. *Id.*

The financial markets recognize that one function of the ROE is to spread risk to shareholders, and the absence of ROE would result in a "significant" increase in an IOU's cost of

debt. *Id.* at 104. The 1984 methodology took advantage of the lower cost of debt in a typical IOU capital structure by failing to include the cost of that equity. *Id.* The final decision to include ROE in the proposed 2008 ASCM corrects this deficiency in the 1984 methodology. Thus, the Idaho PUC supports the proposal to include ROE costs in the new ASCM.

#### ***E. Federal Income Taxes***

The Idaho PUC also supports BPA's decision to include Federal marginal income taxes in the ASCM. FROD at 122. Income taxes are a real, significant, and distinct cost that is incurred by IOUs, and income taxes are widely recognized as one of the costs of conducting business. *Id.* at 114. The failure to include tax costs would deny the residential and small farm customers of IOUs their benefits under the Act. *Id.*

#### **V. CONCLUSION**

The deemer mechanism is contrary to Section 5(c) of the Northwest Power Act. Thus, it is unreasonable for BPA to decide the 2008 ASCM issue of failing to file an Appendix 1 or file a defective Appendix 1 based upon deemer considerations. If BPA intends to continue the deemer mechanism when a utility fails to file an Appendix 1 because of a new RPSA for the commencement of the Review Period or during a subsequent Exchange Period – by setting “the utility’s ASC equal to the PF Exchange rate” – that too is unreasonable and unlawful. The Idaho PUC urges the Commission to eliminate the deemer mechanism from the 2008 ASCM. Finally, with the exceptions noted above, the Idaho PUC supports the proposed 2008 ASCM as set out in greater detail above.

Respectfully submitted this 13<sup>th</sup> day of August 2008.

For the Idaho Public Utilities Commission

A handwritten signature in black ink, appearing to read "Donald L. Howell, II", written over a horizontal line.

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bls/N:EF08-2011-000\_dh\_Intervention

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13<sup>th</sup> day of August 2008, served the foregoing **Notice of Intervention, Protest and Comments**, in FERC Docket No. EF08-2011-000, by e-mailing a copy thereof to the following:

Richard A. Greene  
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Donald L. Howell II  
Deputy Attorney General