

**Bonneville Power Administration
Regional Dialogue Technical Group
Summary of December 15, 2005 Meeting**

Randy Roach, BPA, walked utility and interest-group representatives through a handout “Tiered Rates, Certainty and Dispute Resolution.” Topics included a synopsis of BPA’s basic service obligation and the need for a rational economic allocation, as well as criteria to determine when and how disputes should be resolved. Roach asserted that no single type of process necessarily fits all situations.

The discussion concluded with a number of questions to be explored in the future:

1. What processes of customer and constituent involvement in decision-making should be considered as an alternative to dispute resolution, a means of avoiding it, or a precursor to it?
2. What are factual determinations and what are policy determinations, or a mixture of both?
3. What is it that ends up in a rate methodology and what is referenced in the methodology for determination or identification elsewhere?
4. For those situations where some form of ADR is brought into play, what are the criteria or bases that should apply for that review?

Kim Leathley, BPA, presented a handout “Long-Term Cost Control,” which presented an array of approaches ranging from formation of a cost management group and creation of contract off-ramps, to formalized debate within the 7(i) rate process.

Leathley indicated the agency was favoring Alternative A – “no formal avenue for contested costs, off ramp instead, under which a CMG would be constituted to make recommendations to BPA on funding decisions. Alternative B would give customers the right to contest [costs] with non-binding arbitration. Alternative C would enable cost challenges in a mini-trial before the administrator, and Alternative D would contemplate resolution of disputed costs as part of the rate case. Attendees voiced a preference for some combination of all choices as the best way to monitor agency spending.

Helen Goodwin, BPA, discussed the need to hold two or three more technical meetings in January and no principals’ sessions until mid-February.

See below for the following handouts distributed at the meeting:

- Tiered Rates, Certainty, and Dispute Resolution
[Note: This handout was originally posted on BPA's web site as a PDF on December 15, 2005. It was later posted without any changes to the content of the document.]

- Draft Long Term Cost Control
[Note: This handout was originally posted on BPA's web site as a Word document on December 15, 2005. It was later converted to PDF without any changes to the content of the document.]

Title of document: **Tiered Rates, Certainty and Dispute Resolution**

Author / Submitter (Organization): **Randy Roach (BPA)**

Date document created or revised: **December 14, 2005**

For meeting on (date): **December 15, 2005**

TIERED RATES, CERTAINTY AND DISPUTE RESOLUTION

One of the Regional Dialogue meetings ended with a request that BPA's speaker write up in summary form what had been presented at that meeting concerning BPA's Tiered Rates construct, areas where greater certainty might be afforded than would be possible if the matters at play were "rate implementation" matters, and preferred dispute resolution approaches to elements of the construct. This document does that, reflects further thinking, and also discusses other issues of relevance to the subject.

BPA's Basic Service Obligation & The Need for A Rational Economic Allocation

Prior to passage of the Northwest Power Act, BPA was simply the marketing agent for the power output of the Federal dams in the Pacific Northwest. The Northwest Power Act was passed in order to avoid the need for an administrative allocation of that power, and ensuing litigation, when it appeared that demand would far outstrip the low-cost supply from the dams. The Act expanded BPA's load-serving responsibility substantially by placing a duty to serve on BPA, and gave BPA the means to meet that load service obligation by acquiring resources, including conservation. The Act does not permit BPA to "allocate" power, except in the extreme circumstance of a power insufficiency. Rather, BPA is obligated when requested to serve the loads of its utility customers not served by the utility's own resources used to meet its load.

BPA's open-ended supply obligation and current pricing structure create significant risks of cost increases and price hikes for BPA's power. BPA's Concept Paper addresses these risks, and proposes a much more certain and predictable construct, not by trying to change BPA's statutory power supply responsibilities, but by focusing on a more rational pricing structure. The pricing structure would lessen utilities' dependence on BPA, and encourage regional actions that ensure adequate, efficient and reliable power service.

Central to BPA's construct is a future rate determination by the Administrator that costs of the existing Federal Base System (FBS) resources will be allocated for recovery solely through the rates for power from the existing FBS (Tier 1), and a determination of who is eligible to purchase at those rates; other power supply costs (such as those of incremental resources) would be allocated to the revenue requirement that would be recovered through the rates for power sold in excess of the Tier 1 amount. Stated differently, BPA would limit its sales of firm power at its lowest cost-based rates to approximately the firm capability of the existing Federal system, and determine eligibility for that power based on specified criteria; it would provide additional load service to a customer at a higher rate that reflects the marginal cost of purchasing power to meet loads not eligible to be served at the lowest cost-based rates.

All power sales by BPA are to be at rates established pursuant to section 7 of the Northwest Power Act. Section 7 provides detailed substantive and procedural guidelines and requirements. These apply to the initial establishment of rates, as well as to the periodic review and, if necessary, revision of them to assure recovery of BPA's costs and repayment to the U.S. Treasury. While BPA believes it can establish, and obtain approval of, a Tiered Rates Methodology for twenty years, concern exists that key elements of the construct be secured in a fashion that is durable and predictable (*i.e.*, long-term), and thus subject to change only when necessary, based on pre-specified criteria. Regional parties have been involved in discussions regarding the appropriate processes for determination and enforcement of those criteria.

CRITERIA FOR CONSIDERING APPROPRIATE DISPUTE RESOLUTION

While the discussions are still very preliminary, BPA representatives have shared BPA's thinking that numerous considerations should be taken into account in determining how disputes should be resolved, and that no single type of process necessarily fits all disputes. Disputes should be identified for resolution in a particular process only when the implications and consequences of that approach are thoroughly thought out, both for issue areas individually and as part of the entire structure of issues that could be at play.

Based on Department of Justice and other literature, some of the major, generic considerations that should be taken into account are as follows:

- Important policy judgments necessary to interpret and administer Federal statutes and regulations must be retained by the Administrator as an executive official, and not turned over to a third party for final resolution.
- Arbitration, mini-trials, and determination by a hearing officer (hereafter all referred to as ADR) can be most useful in disputes which are highly fact specific, and in which the decision is likely to be single issue and quantitative.
- ADR may also be attractive when the dispute is highly factual or technical and the parties can pick a decision maker with mutually accepted expertise, thus obviating the need to educate him or her and to reduce technical arguments.
- Arbitration is also useful when finality is a desired result and there is little concern over the risks or costs of remedies impacting other parties (for example, resolving a small dollar figure dispute that has been ongoing for a long period), or where the parties need a decision made for them by a third party, but wish to avoid the cost and delay of a trial.
- ADR should be seriously questioned when
 - A definitive or authoritative resolution of the matter is required for precedential value, and a binding third-party determination is not likely to be accepted by all interested parties generally as an authoritative precedent;
 - The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and a binding third-party determination would not likely serve to develop a recommended policy for the agency;

- Maintaining established policies is of special importance, so that variations among individual decisions are not increased, and a binding third-party determination would not likely reach consistent results among individual decisions;
- The matter significantly affects persons or organizations who are not parties to the proceeding; or
- A full public record of the proceeding is important, and a binding arbitration proceeding cannot provide such a record.

In the context of BPA's currently proposed construct, certain more specific considerations are particularly important:

First, BPA must ensure that it maintains the ability to fully recover its costs and repay Treasury; it must also retain the ability to demonstrate that over time its rates and cost allocations are consistent with statute.

Second, there will be many instances where a determination is common to all Tier 1 or Tier 2 customers, or impacts all or many of them in some fashion. In the past, BPA's practice of melding all costs had the effect of dampening the effects of many BPA actions. That will no longer be the case since Tier 1 will essentially be a zero sum game. For example, resource removal, net requirements determinations, and FBS capability determinations are decisions that will potentially affect all customers but have different impacts and consequences for each customer eligible to purchase at Tier 1.

Third, determinations regarding system and operational characteristics are highly technical, often changing, and judgmental. These are not the kind of decisions lawyers should be making or arguing. The fact that in America we can argue over anything does not mean that we should.

Fourth, process should not be allowed to unduly delay efficient, economical and reliable operation of the system. Process paralysis should be avoided.

Fifth, BPA, customers and constituents should not be forced to repeatedly expend significant resources in arbitrations and other proceedings. Some mechanism should be developed to achieve a consensus on the type of process to be pursued, and when it should be pursued.

Sixth, the consequences of a decision must be such that BPA continues to fully recover costs (*i.e.*, the taxpayer must continue to be fully protected), and there is no inequitable shifting of costs to customers not party to the dispute resolution process.

Seventh, the process for resolving disputes should not present additional risks for BPA's stewardship obligations (*e.g.*, fish and wildlife, Tribal Trust; Treaty).

CERTAINTY, DISPUTE RESOLUTION & BPA'S CURRENT CONSTRUCT

Apart from the very construct of tiered rates itself, there are a number of elements to the construct that, if changed, could cause the overall construct to fail and, with it, the predictability and certainty that parties are seeking. Each of these is identified below, with an indication of how greater certainty might be achieved.

The overall construct: First, in order to address the concern that BPA can and, in certain situations, must change its rates, BPA could in the rate itself state that the overall construct of tiered rates will not be abandoned or changed for a period of twenty years, that each customer's contract would include a guarantee against identified changes, and that the contract would provide for a binding process to ensure that the guarantee was enforceable. The protection would be subject to very narrow qualifications that notwithstanding the contractual guarantee, the identified changes could be made if and to the extent (a) BPA were effectively required by court order to make them, or (b) the Administrator determined he could not reasonably recover BPA's costs without the change. The contract would not address the situation of subsequently enacted legislation; rather, the legal effect of subsequently enacted legislation would be for the courts to ultimately decide.

Given the rates nature of the construct, any BPA proposed change to it of any sort would have to be done through a rate case. Therefore, BPA's contract could provide that the hearing officer would be empowered to make a determination as to whether any proposed change was a contractually prohibited change, and that the determination would be binding on the Administrator except where the Administrator determined, after a mini-trial directly to the Administrator within the rate case, that the change was necessary because the Administrator could not reasonably recover BPA's costs or comply with court order without the change. This qualification is grounded in the requirement of Northwest Power Act section 7(a) that the Administrator periodically review and, if necessary, revise rates to assure recovery of BPA's costs and repayment of the U.S. Treasury over a reasonable number of years. The agency should not lock itself into any pricing scheme that precludes full and timely cost recovery.

Eligibility and allocation: BPA's ratesetting directives identify rate pools, generally specifying which customers may be allocated which costs. Section 7(e) of the Act affords the Administrator latitude in the design of the rate or rates to recover the costs from the class or a subclass of it. Hence, under BPA's current construct, Tier 1 rates would be available for customers with a high water mark (HWM) and, within that, their net requirements. Tier 2 would be available for net requirements in excess of a customer's HWM. BPA could in the rate itself state what each customer's HWM is and that it would be included in the customer's contract and not subject to change except in identified ways. It could also refer to net requirements, as determined in a separate process. These eligibility features—HWM and net requirements—would be subject to the qualifications, and process for determining whether BPA is changing them, as identified above with respect to the overall construct.

Apart from those kind of fundamental changes to the very construct of HWM and net requirements as eligibility and cost allocation determinants, however, HWM and net requirements are subject to many possible year-to-year variations.

Net Requirement Determination

Customers have asked for an open and transparent process for BPA determinations of net requirements. Net requirements defines BPA's service obligation and is based on statutory requirements. A method similar but not necessarily identical to that contained in the current contracts could be utilized to make a periodic net requirement determination. Under that or probably any other assumption, the net requirement determination involve at least the following elements:

- 1) A utility's current retail load and its forecasted load.
- 2) Non-federal resource declarations – This includes the annual and monthly energy amounts and any changes to non-federal resource amounts (plus or minus).
- 3) Consumer-owned resources – This includes the listing of consumer owned utilities, changes to such information, and consequences of the listing and changes.
- 4) Decrements to net requirements under section 9(c) of the Northwest Power Act.
- 5) Non-federal resource changes under contract and any pursuant to section 5(b)(1) of the Northwest Power Act.

Each of these areas involve substantial policy and factual determinations. The contracts need to clearly identify the particular processes for resolving each, but now in a manner that ensures transparency and inclusion of all interested, affected customers since Tier 1 is affected and will be a zero sum game. The process for determining individual utility load and resource changes should continue for the most part to be an administrative determination by BPA.

High Water Mark (HWM)

As indicated above, it is anticipated that the rate will refer to each customer's contract for an initial value that establishes the HWM. Using this assumption, the contract is likely to have the following provisions for changing the HWM that would necessitate a process to resolve disputes:

- 1) Factual circumstances that permit the HWM to be either increased or decreased.
- 2) Based on such factual circumstances, a method for calculating the amount of any increase or decrease for the HWM.

- 3) A simple and readily calculable method for determining when the HWM has been exceeded.

As with net requirements determinations, the contracts need to clearly lay out the process for resolving each in a manner that ensures transparency and inclusion of all interested, affected customers since Tier 1 will be a zero sum game.

Cost migration: BPA's construct depends on the allocation of identified costs to Tier 1 and other identified costs to Tier 2. This is fundamental to tiering, and to providing the certainty and predictability customers seek. The general identification of cost categories, and their association with Tier 1 or Tier 2, are rate case matters. Notwithstanding that, the rate could provide that the cost categories and their association would not change—*i.e.*, there would be no allocation of Tier 2 costs to Tier 1 for recovery, or vice versa—except in the same circumstances (court order or cost recovery), and subject to the same process, as identified above for the overall construct.

Even with that, however, there will be many issues that arise as to whether a cost fits within this or that category. Joint costs, such as overhead and labor, are a good example. Efforts to allocate them, such as through direction of effort studies or labor ratios or whatever, should be subject to ordinary rate case procedures and subject to no special ADR processes.

Tier 1 Resource Size: Under the current concept, customers with HWM will be eligible to purchase at the Tier 1 rate that portion of their net requirements equal to or below their HWM. The amount of power available at the Tier 1 rate, and the customers' yearly HWM, will be constrained to the output of the Federal Base System Resources. This conceptual construct should be afforded the same contractual lock, and follow-on process, as is identified above with regard to the overall construct.

Beyond that, however, resource determinations are subject to considerable year-to-year variations due to a number of factors, including water and fish and wildlife measures. Resource determination will likely include the following elements:

- 1) Specific Resource Output/Capability – many sources of information, standards and determinations will be involved.
- 2) Adjustments to Resource Output/Capabilities – many sources of information, standards and determinations will be involved.
- 3) Federal Operating Decisions – sources of information and process for establishing what constitutes a Federal operating decision, their impacts on the availability of FBS power, both prospective and during the year, need to be established.

- 4) Resource Additions and Removals – sources of information and process for establishing circumstances when an FBS resource can be permanently removed, and when a resource can be added for Tier 1 purposes, and in what amounts, need to be established.
- 5) Issues concerning the integration or separation of Tier 2 and Tier 1 resources need to be identified.

Each of these areas involve substantial policy and factual determinations that need to be identified before agreement can be reached concerning the appropriate resolution process applicable to each.

Unanticipated Resource Costs: BPA currently, and under the construct under discussion, establishes its power rates to recover costs of the service provided. The Bonneville Refinancing Act protection against provision of additional returns of or on old capital investments must be included in the contracts, and would provide customers substantial protection against imposition of an unrelated “tax” that would deprive them of the economic certainty that BPA seeks to provide under its construct.

Implementation of the Rate Methodology A topic that was discussed at some length was what happens when the Administrator proposes a change to the rate methodology or some element of it. A more likely event that was identified but not thoroughly discussed is what will occur when the Administrator proposes to take an action, such as proposing to adopt a rate, which one or more customers believe is contrary to the rate methodology. In such a case, there is no proposed change to the methodology, but rather a difference in interpretation regarding what the methodology permits or requires.

The most likely circumstance in which such an event would occur would be in a rate proceeding, and could occur at any stage of the proceeding from initial proposal to final decision. In such a case, it would be the desire of the customers that an objective, neutral third party be employed to resolve the matter. The rate case hearing officer could serve in this role, but BPA does not believe that final resolution of the matter should rest with the hearing officer. Implementation of the methodology is a matter affecting all customers, and that should be done in an open administrative process, subject to appeal by any party. While some have suggested that it would not be acceptable for the Administrator to be the final decision-maker regarding his/her compliance with the rate methodology since this would place one of the “contending parties” in the role of judge, BPA disagrees with that characterization. The Administrator in this context is not in the position of an ordinary party to “gain” by another’s “loss.” Rather, he is acting in his statutory role of being an administrator of the laws, and is doing so on behalf of all parties. That being said, however, it could be possible to specify that if some substantial majority of customers and constituents opted for a nonbinding determination of the matter by a third party, the Administrator would follow that process.

DRAFT

Title of document: **Draft Long Term Cost Control**

Author/Submitter (Organization): **Kim Leathley (BPA)**

Date document created or revised: **December 15, 2005**

For meeting on (date): **December 15, 2005**

Long-Term Cost Control

Proposals:

- **Alternative A: no formal avenue for contested costs, off ramp instead**

Customers and our stakeholders will form a Cost Management Group (CMG). As a matter of policy, BPA will provide information and seek input on cost policies and decisions that affect rates. While there is no formal avenue to contest disputed costs, BPA would provide customers the right to remove some percentage of load (e.g., 15%) if power rate exceeds a specified rate level.

- **Alternative B: contest with non-binding arbitration**

In the case of contested costs, those costs would be subject to non-binding arbitration prior to such costs being included in BPA rates.

- **Alternative C: contest with mini-trial**

In the case of contested costs, those costs would be subject to an administrative hearing (mini-trial) before the Administrator prior to such costs being included in BPA rates.

- **Alternative D: contest with rate case**

In the case of contested costs, those costs would be subject to inclusion in the 7(i) rate proceeding.

DRAFT
Long-Term Cost Control

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Scope				
BPA staff assessment of: Scope of discussion with the CMG	*All capital and expense costs *Policy choices/Settlements (excluding confidentiality agreements) *Internal policies	Same as alternative A	Same as alternative A	Same as alternative A

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Customers input on: Scope				

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>BPA staff assessment of:</p> <p>Items that cannot be formally contested</p>	<p>N/A</p> <p>Customers and our stakeholders will form a Cost Management Group (CMG). As a matter of policy, BPA will provide information and seek input on cost policies and decisions that affect rates.</p>	<p>Items determined to be fundamental to BPA’s operations, in which BPA has limited or no ability to influence, would require a high workload associated with a limited amount of value, or would risk a clean audit opinion cannot be contested.</p> <p>Suggested items that cannot be contested:</p> <ul style="list-style-type: none"> *accounting policy and procedures in accordance with GAAP *federal mandates *debt management practices *TBL program levels because TBL’s customers are not represented at these meetings and therefore would not have the opportunity to comment or defend the costs they feel are appropriate for the Transmission Rate case. *rate case issues (including risk mitigation, and functionalization) *court ordered legal judgments <p>BPA may not be able to discuss and arbitrate all of its costs, as some are tied to potential litigation, legal settlements, and other matters which must be kept private.</p>	<p>Items determined to be fundamental to BPA’s operations, in which BPA has limited or no ability to influence, would require a high workload associated with a limited amount of value, or would risk a clean audit opinion cannot be contested.</p> <p>Same as alternative B</p>	<p>Suggested items that cannot be contested:</p> <ul style="list-style-type: none"> *accounting policy and procedures in accordance with GAAP *federal mandates *debt management practices *TBL program levels (same as alternative B) *court ordered legal judgments <p>Timing may be an issue if the most recent forecasts were included in an OMB budget and, thus, embargoed until release of the President’s budget.</p>

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Administrative Process				
BPA staff assessment of: Time of General Managers, constituent leaders and tribes (actual managers, not consultants)	Long term commitment to CMG by general managers and their staff	Long term commitment to CMG by general managers and their staff Disputes raised by the CMG will likely need to be as fully developed and documented as BPA’s response is expected to be, which will likely require significant time by the general managers and technical staff.	Long term commitment to CMG by general managers and their staff Same as alternative B	Long term commitment to CMG by general managers and their staff Disputes raised by the CMG will be required to meet legal criteria. This process is likely to be more rigorous and time consuming than either alternative B and C.
BPA staff assessment of: General Staffing levels	Could require both staff time and program manager’s time to provide thorough explanation and presentation of program costs, similar to the Power Function Review. It may be necessary for both groups to permanently staff a knowledgeable working group to support this policy and facilitate discussion with the CMG and BPA	Same as alternative A <u>plus</u> any legal representation needed if any of the costs go to arbitration. While somewhat similar to the Power Function Review, BPA’s burden to demonstrate reasonableness of cost could increase as well as the level of review and clearance of all information we provide. Arbitrations may span many months – from selecting the arbitrator, making payment arrangements, stating the issues, putting on testimony, conducting discovery, briefing the arbitrator, to finalizing the award.	Same as alternative A <u>plus</u> time for the hearing which will be used to inform the Administrator’s decision regarding the reasonableness of the cost level prior to its inclusion in BPA’s initial rate proposal. The hearing could span one day to one week. Allows the CMG an audience directly with the BPA Administrator thereby requiring potentially substantial time by the Administrator.	Same as alternative A <u>plus</u> could require much greater staff time in the 7(i) process in order to document and present testimony. This option would likely require a similar process for the Transmission rate case.

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p align="right">EF&W</p> <p>Note: This may not be an issue if fish mitigation costs and other treaty obligations are not part of the CMG review. Tribal representatives at the LTRD technical meeting requested that these costs be taken out of the LTRD discussion and, specifically, the CMG review of BPA costs.</p>	<p>EF&W does not have a dedicated FTE to support this working group and it is estimated that one could be needed, although it may not require 100% of the FTE’s time. +1 FTE</p> <p>In addition, there is an expectation that new or modified reports could be required and support from the IT organization could be needed.</p>	<p>To be able to address detailed cost questions could require the capability to track the integrated costs of work processes. The current cost accounting system provides costs by departmental organization rather than work activity.</p> <p>(Could require the same +1 FTE identified in alternative A.)</p>	<p>Same as alternative B</p>	<p>Could require +1.5 FTE, although it could practically be a composite total from the work required of multiple people.</p>
<p align="right">TBL</p>	<p>Depending on the level of detail, TBL may need a ½ FTE staff to provide support to this group.</p>	<p>Same as alternative A, plus ½ legal FTE</p>	<p>Same as alternative B</p>	<p>Same as alternative B plus ½ FTE in TBL rates.</p>
<p align="right">PBL</p>	<p>More than likely, this work could be absorbed by the current staff assuming we have one consistent forum. However, if several forums exist to address these issues, FTE might need to be increased (1/2 FTE might be needed).</p>	<p>1 extra FTE might be needed to support this alternative</p>	<p>Same as alternative B</p>	<p>2 extra FTE might be needed to support this alternative</p>

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Corporate	Currently corporate does not have dedicated FTE to support this working group on a full-time basis. This effort is complicated by the disparity of groups included in corporate. We would likely need representation from the Corporate budget team and Financial management. Corporate Finance might need an additional 0.5 FTE, particularly if multiple CMG forums are created.	The additional detail and review of information could likely require ¼ to ½ additional FTE for the corporate budget team. Financial management, legal and public affairs may also need additional resources. Corporate Finance might need 0.5 to 1 additional FTE.	Same as alternative B	The additional detail, review of information, data requests and preparation of testimony could likely require ½ to 1 additional FTE for the corporate budget team. Financial management, legal and public affairs may also need additional resources. The additional work in the production of the revenue requirement study and testimony, handling of data requests, and information gathering could likely require 1 additional FTE in Corporate Finance.
BPA staff assessment of: Estimated increase in BPA costs	Possible salary and benefits of permanent staff of working group	Alternative A <u>plus</u> any legal costs for arbitration Same as comments in general staffing levels section	Same as alternative A Same as comments in general staffing levels section	Alternative A <u>plus</u> any additional overtime or staff to handle possible increased workload and legal representation. Same as comments in general staffing levels section
BPA staff assessment of: Estimated increase in customer/constituent costs	Possible salary and benefits of permanent staff of working group	Hiring arbitrator If the CMG plans to advance a high quality case then their costs could increase.	Same as alternative A (possibly greater costs than alternative A) If the CMG plans to advance a high quality case then their costs could increase. Legal costs	Alternative A <u>plus</u> any additional overtime or staff to handle possible increased workload and legal representation. Stakeholders who are not currently parties to the rate case would need to be in order for their interests to be represented.

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Customers input on: Estimated increase in customer/constituent costs				
BPA staff assessment of: Decision Maker	The Administrator	The Administrator with appeal to the 9 th Circuit Court	The Administrator with appeal to the 9 th Circuit Court	The Administrator with appeal to the 9 th Circuit Court or possibly FERC
BPA staff assessment of: Negative Consequences to Administrator disagreeing with CMG	Political pressure – Administrator has to justify to political entities why the choice was made to go against a united regional proposal	Administrator’s decision could be challenged by parties in the 9 th Circuit Court Increase in costs and efforts required for documentation and preparation of materials for arbitration. Must assume a 568-type review of all materials. Also increased time and effort required to educate the arbitrator so informed decisions are made.	Administrator’s decision could be challenged by parties in the 9 th Circuit Court Increase in costs and effort required for documentation and preparation of materials for the “mini-trial”, including 568-type review for all materials, since they may appear in a subsequent court case.	Policy may be influenced by court rulings Costs are open to litigation as part of the rate case record. Removes flexibility of review process since ex-parte requirements would be in place.
BPA staff assessment of: Customer/Regional Support	“Consensus” within scope on costs is primary goal	“Consensus” within scope is primary goal with contested costs only going to non-binding arbitration	“Consensus” within scope is primary goal with contested costs only going to mini-trial	“Consensus” within scope is primary goal with contested costs only becoming part of the rate case

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Customer input on: Customer/Regional Support				

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>BPA staff assessment of:</p> <p>Legality</p>	<p>Works consistent within current legal framework and BPA business model.</p> <p>Recognize that this is a Federal system in which Federal officials must ultimately be accountable for decisions</p> <p>BPA cannot limit the dispute process to the CMG alone since it would not be a body that can legally bind any of the interests it represents. The CMG interested parties will more than likely want their own individual right to participate in a dispute resolution process.</p> <p>Today, BPA does not have a "formal" policy and procedure for making cost decisions. As such BPA has not faced the threat that customers/stakeholders will "dispute" costs in the available forum, i.e., arbitration or court. If BPA moves toward a formal structure that concludes with <i>(continued on next page)</i></p>	<p>Creates more formal cost decision record which may increase the risk parties will challenge the reasonable/appropriateness of Administrator's cost decisions. Permits parties to dispute/contest cost levels as if they have a contract right where none exists. May lead to the court (9th Circuit) being asked to judge whether the Administrator's cost decisions are arbitrary and or capricious. May adversely impact BPA's ability to respond to Executive branch direction to set costs and budget. There are also implications for being able to proceed with programs if they are tied up in arbitration or court.</p>	<p>Same as alternative B</p> <p>Ex parte rule states that no party or participant in the proceeding shall submit ex parte communications to the Administrator, or any BPA employee, regarding any matter pending before BPA in the section 7(i) proceeding, and that neither the Administrator or any BPA employee may request or entertain such communications. The assumption is that the mini-trial is occurring outside the 7(i) process; however, if not then ex parte would apply.</p>	<p>This alternative substantially increases the scope of NWPA section 7. This alternative implies that this section requires BPA to negotiate contracts, make policy decisions, and determine legal responsibilities in rate cases. This would result in no limit to the issues that can be raised in a rate case.</p> <p>A rate case is the forum for determining what rates will recover BPA's costs, consistent with BPA's statutory and regulatory ratemaking obligations.</p> <p>Spending is part of the Federal budget process, subject only to Executive and Congressional review. If the object of including a budget issue in a rate case is to subject the Administrator's policy decisions on budget to judicial review that raises serious separation of power issues. This option subjects BPA program level costs in our rates and introduces a new standard for supporting those costs (substantial evidence on the record). <i>(continued on next page)</i></p>

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>Legality (cont.)</p>	<p>cost decisions supported by a record, it will create a greater legal risk that such decisions will be challenged as a final action/decision before the 9th circuit</p> <p>There is that risk today; however, because there is no formal public/agency decision making process the legal risk of a challenge to cost decisions is small. BPA needs to be aware of this as it takes steps to be transparent.</p>			<p>Northwest Power Act section 7(i)(5) says the Administrator can't make a final decision on rates until the rate case record has closed, and that rate case decisions must be based on the rate case record. A record is developed subject to ex parte rules.</p> <p>That statutory scheme, together inclusion of a matter in the rate case, sets up a situation where the courts will be asked to review rate case determinations which are really programmatic and budgetary matters that are the subject of executive policymaking and the appropriations process. Thus the concern with judicial interference with Executive and Congressional branch authorities.</p> <p>The timing and delays attendant to rate cases and ensuing FERC and judicial review could seriously disrupt planning and execution of programs.</p> <p><i>(continued on next page)</i></p>

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>Legality <i>(cont.)</i></p>				<p>Parties have the opportunity outside the rate case to make views known and influence decisions on programs. Oftentimes, these processes involve the general public, state representatives, NWPPC, NMFS, tribes, environmental groups, and others. Including program and program level issues in the rate case for decision means, as a practical matter, that substantially more stakeholders/individual customers will have the expense of being a party to the rate case. This is particularly so of the managers, officials and other people. However, it is possible that some stakeholders, who are not financially equipped to participate as a formal party, that we want to engage in these issues will be distant participants in the rate case.</p>

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
BPA staff assessment of: Potential impacts on TBL				
TBL	<p>If customers want to adopt the same process for the TBL:</p> <ol style="list-style-type: none"> 1. Contractual off ramps do not work with transmission contracts since this is covered by the Tariff. 2. If TBL is part of this process, it is recommended that TBL customers should be represented in this process. Currently not all of TBL's customers are part of the CMG group. 3. TBL is concerned that a subset of customers cannot have more say than all customers - this would be considered discriminatory and violates open access. 	TBL would need to open process to all Transmission customers to avoid undue discrimination of Transmission customers.	Same as alternative B	Same as alternative B

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
External Perspective	TO BE DISCUSSED	TO BE DISCUSSED	TO BE DISCUSSED	TO BE DISCUSSED
Congress				
Office of Management and Budget (OMB)				

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Department of Energy (DOE)				
FERC				

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Treasury				
Rating Agencies				

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
External Auditors				
Customers				

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Constituents				
Tribes				

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>BPA staff assessment of:</p> <p>Example – Corporate G&A expenses</p>	<p>Detailed and deliberate presentation of the agency functions and statutory mission supported by the Corporate G&A groups. This could be in support of either Power or Transmission costs or both since the business line cost allocation is just that, an allocation of a whole amount of Corporate costs. Costs would be presented so the CMG could understand the staffing requirements in support of the agency functions and mission, detailed costs by general ledger account in the interests of full disclosure would also be made available so the CMG could better understand the complexity and support needed by BPA. Presentation of expense costs would also include and identify those costs that were more or less fixed in nature (GSA building lease) as well as variable costs (training and travel per specific function)</p> <p><i>(continued on next page)</i></p>	<p>Assumes Corporate G&A costs would be identified and presented by the CMG in sufficient detail to understand where reductions or increases would occur, and in what specific areas without jeopardizing the agency’ mission. Costs would need to be at a department and general ledger account level with a thorough explanation of the expected outcomes. Alternatively, the CMG could cite benchmarks for what Corporate G&A costs should be (e.g., as a percentage of operating expenses, etc.).BPA would make similar presentations.</p> <p>Prior to these presentations, an arbitrator knowledgeable in Federal wholesale market power utility operation and the components of such an enterprise would be selected and hired with the costs split between BPA and the CMG. The process would be limited to 30 days to allow sufficient time to prepare evidentiary-quality materials, hire an arbitrator, present findings and have a ruling delivered.</p> <p><i>(continued on next page)</i></p>	<p>Assumes Corporate G&A costs would be identified and presented by the CMG in sufficient detail to understand where reductions or increases would occur, and in what specific areas without jeopardizing the agency’ mission. This would need to be at a dept and GL account level with a thorough explanation of the expected outcomes. Alternatively, the CMG could cite benchmarks for what Corporate G&A costs should be (e.g., as a percentage of operating expenses, etc.).BPA would make similar presentations.</p> <p>These presentations would be made in the administrative hearing before the Administrator. The process would be limited to 30 days to allow sufficient time to prepare evidentiary-quality materials, present findings and have a ruling delivered. The Administrator’s decision would publicly describe the reasons for the decision.</p>	<p>Would likely require Corporate G&A costs to be fully described to meet the substantial evidence rule. The Corporate G&A costs become part of the rate case record. Both CMG and BPA would need to prepare and document the decisions regarding the Corporate G&A cost levels to meet the applicable rate case standard. The Administrator continues to make the final decision in the formal Record of Decision process. The Corporate G&A cost decision becomes a legal record which can be challenged in the Ninth Circuit Court.</p> <p><i>(continued on next page)</i></p>

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>Example – Corporate G&A expenses <i>(cont.)</i></p>	<p>At the end of the process, BPA would seek input from the CMG on costs followed by a close-out letter from the Administrator. If the CMG disagrees with cost levels, they are free to lobby the congressional delegation and initiate a media campaign in the region. This could precipitate more rounds of public communications.</p>	<p>In the event the arbitrator rules in favor of the CMG over BPA, the Administrator could choose to use the CMG proposal or stay with the original BPA proposal.</p> <p>In either case, the Administrator would have to publicly describe the reasons for the decision.</p>		<p>Outcome of including costs in ROD:</p> <ol style="list-style-type: none"> 1. The Administrator must justify budgetary decisions in the rate case. 2. These decisions must be based on the rate case record. 3. These decisions are subject to judicial review. 4. The courts can remand the rates and compel the Administrator to adjust BPA's spending levels despite authorization by Congress. 5. Final decisions on programs or operations could be delayed substantially.

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>BPA staff assessment of:</p> <p>Example – Costs that can be influenced</p>	<p>As part of CMG process, budgets for hydro program activities and initiatives are described and supported with detailed information. A specific activity, like the level of proposed funding for extraordinary maintenance items would be presented with supporting information describing why that level of funding was needed. The actual level of funding provided in the budget may be adjusted (down) based on input from the CMG, recognizing the risks and understanding that system reliability or production capability would likely be impacted.</p> <p><i>(continued on next page)</i></p>	<p>The CMG would need to provide information on why the hydro power program level of funding for extraordinary maintenance should be reduced from proposed budgets. This would require the CMG to have detailed knowledge of the design and operating (including safety) requirements of the generating facilities, as well as an understanding of impacts to system reliability and production capability. They could cite industry benchmarks for this type of investment (if available), but again would need specific information like the age of the facilities and how they have been operated in order to put the benchmark data into context. BPA (working with the Corps and Reclamation) would provide this same type of information to support the proposed funding level.</p> <p><i>(continued on next page)</i></p>		

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>Example – Costs that can be influenced <i>(cont.)</i></p>	<p>At the end of the process, BPA would seek input from the CMG on costs followed by a close-out letter from the Administrator. If the CMG disagreed with cost levels, they are free to lobby the congressional delegation and initiate a media campaign in the region.</p>	<p>If the arbitrator supports the CMG on costs that can be influenced (i.e. extraordinary maintenance) and it is determined that funding levels are to be reduced, BPA will need to work with the Corps and Reclamation to try and cut other program areas in order to work within the adjusted program spending levels. This could compromise reliability and production capabilities. Any reduction in program spending levels would need to be explained to the Corps, et. al.</p> <p>Even though alternatives B, C, and D could try and direct the Corps and Reclamation to fund facilities at a certain level, if the Corps and Reclamation feel the funding level would jeopardize the projects they could overrule the decision and operate to a level they feel is prudent. BPA is responsible to fund O&M costs as they occur regardless of regional objections.</p>		

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
<p>BPA staff assessment of:</p> <p>Example – Costs that are mandated by department or a statutory requirement</p>	<p>As part of CMG process, budgets for hydro program activities and initiatives are described and supported with detailed information. A specific mandated activity or statutory requirement, like security costs post 9/11, would be included as costs in proposed budgets. The Corps and/or Reclamation will implement the mandated security activities, and as required, BPA will pay the costs associated with these activities.</p> <p>At the end of the process, BPA would seek input from the CMG on costs followed by a close-out letter from the Administrator. If the CMG disagreed with cost levels, they are free to lobby the congressional delegation and initiate a media campaign in the region.</p>	<p>BPA, the Corps and Reclamation would identify the activity that is mandated and the funding associated with it. Any further consideration of these alternatives (B, C, and D) would require legal review of the authorities and statutes of the departments or agencies.</p> <p>The Corps and Reclamation would implement the mandate regardless of CMG or arbitrator objections since they report to the Department of Interior. BPA is responsible to cover O&M costs.</p>	<p>Same as alternative B</p>	<p>Same as alternative B</p>

DRAFT

	Alternative A – Cost Management Group (BPA concept proposal)	Alternative B – Alternative A PLUS contested cost, decision or issue goes to non-binding arbitration if CMG & BPA disagree	Alternative C – Alternative A PLUS contested cost, decision or issue goes to “mini-trial” if CMG and BPA disagree	Alternative D – Alternative A PLUS contested cost, decision or issue goes to rate case if CMG & BPA disagree
Example – Costs that result from a policy decision	TO BE DISCUSSED	TO BE DISCUSSED	TO BE DISCUSSED	TO BE DISCUSSED