

BPA Docket No. REP-12

REP-12-E-CL-01-E01

**Errata to Direct Testimony of the Clark Public Utilities
BP-12-E-CL-01**

On pages 1-16, Footer:

Delete: “Western Public Agencies Group”

Replace with: “Clark Public Utilities”

The Direct Testimony of the Clark Public Utilities with the above change included is attached.

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF ENERGY
BEFORE THE
BONNEVILLE POWER ADMINISTRATION

Proposed Residential Exchange Program)
Settlement Agreement Proceeding) BPA Docket No. REP-12

DIRECT TESTIMONY
OF THE
CLARK PUBLIC UTILITIES

WITNESSES:

LYNN LATENDRESSE

GARY SALEBA

STEVE ANDERSEN

Exhibit No. REP-12-E-CL-01

SUBJECT OF TESTIMONY:

Calculation of Preference Customer Exchange Benefits

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Q. On whose behalf are you testifying?

A. We are presenting testimony on behalf of the Public Utility District No.1 of Clark County, Washington (“Clark Public Utilities” or “CPU”).

Q. How is your direct testimony organized?

A. This testimony addresses the topic of how BPA proposes to calculate Residential Exchange Program (“REP”) benefits for preference customers should BPA decide to execute and implement the proposed IOU Residential Exchange Settlement Agreement (“Settlement Agreement” or “Settlement”). It is divided into the following sections:

- The calculation of IOU REP benefits under the Settlement.
- BPA’s proposal for calculating preference customer REP benefits under the Settlement.
- Comparison of the methods for calculating IOU and preference customer REP benefits under the Settlement.
- The ways that BPA’s proposal for calculating preference customer REP benefits under the Settlement diverge from the statutory directives.
- The adverse impacts of BPA’s proposal for calculating preference customer REP benefits.
- Alternatives available to BPA to address this issue.
- A path for BPA for the calculation of preference customer REP benefits under the Settlement.

1 **2. CALCULATION OF REP BENEFITS UNDER THE REGIONAL ACT**

2 **Q. Do you have an understanding of how BPA has historically determined REP**
3 **benefits?**

4 **A.** We have been involved in the calculation of REP benefits in both the BPA rate-setting
5 processes and at the utility level. We have a working understanding, as rate experts, of
6 the manner in which BPA has determined REP benefits and set rates under the provisions
7 of the Pacific Northwest Electric Power Planning and Conservation Act (“Regional
8 Act”).

9 **Q. Can you describe how BPA has determined REP benefits for IOUs and preference**
10 **customers participating in the REP under the Regional Act?**

11 **A.** The Regional Act contains provisions that lay out the steps that BPA is to take to
12 determine benefits for IOU and preference customer participants in the REP. In simple
13 terms, the approach BPA has taken in implementing the REP under the statutory
14 provisions includes the following steps:

- 15 • Determining the Average System Cost (“ASC”) of each participating utility using
16 the Average System Cost Methodology then in effect.
- 17 • Running the §7(b)(2) rate test to determine the amount of REP costs which must be
18 excluded from the PF rate (“trigger amount”).
- 19 • Reallocating pursuant to §7(b)(3) any trigger amount excluded from the PF rate to
20 other rates, including the IP rate, the PF Exchange (“PFx”) rate, the NR rate, the
21 FPS rate and to secondary and surplus sales.
- 22 • Calculating the reduced REP benefits based on the PFX rate.

1 Under the statutory approach, a triggering of the §7(b)(2) rate test tends to reduce the
2 amount of REP benefits available to participating IOU and preference customers by
3 increasing the PFx rate, thereby reducing the difference between each participating
4 utility's ASC and the PFx rate. In general terms, under the statute it is the operation of
5 the §7(b)(2) rate test and the reallocation of costs to the PFx rate that ultimately
6 determine the amount of REP benefits available.

7 **3. CALCULATION OF REP BENEFITS FOR IOUs UNDER THE SETTLEMENT**

8 **Q. How does BPA propose to calculate REP benefits for IOUs under the proposed**
9 **Settlement?**

10 **A.** The REP benefit calculation proposed by BPA for the IOUs has some similarities to the
11 calculation performed under the statutory provisions, but differs from it in a number of
12 material respects.

13 **Q. How does the REP benefit calculation under the Settlement resemble the statutory**
14 **calculation?**

15 **A.** Under the Settlement approach, BPA calculates an ASC for each participating utility
16 using the applicable Average System Cost Methodology. BPA also calculates gross REP
17 benefits by subtracting the base PF exchange rate from the ASC of each participating
18 utility, and multiplying the difference by its forecast load that qualifies for REP benefits
19 (small farm and residential load). However, at this juncture the Settlement REP benefit
20 calculation departs from the statutory calculation.

21 **Q. Please explain how the Settlement REP benefit calculation diverges from the**
22 **statutory approach?**

1 **A.** At this stage of the REP benefit calculation under the statute, BPA would conduct the
2 §7(b)(2) rate test to determine the trigger amount to be excluded from the PF rate. The
3 trigger amount would then be reallocated to other BPA rates, including the PFx rate,
4 pursuant to §7(b)(3), and the PFx rate would be used to determine the level of REP
5 benefits available to participating utilities. In contrast, under the Settlement BPA will not
6 perform the §7(b)(2) rate test, will not determine a trigger amount and will not make a
7 reallocation of the trigger amount to other rates, such as the PFx rate, pursuant to
8 §7(b)(3). Because the REP benefits available to the IOUs are fixed amounts contained in
9 the Settlement, under the Settlement approach the PFx rate is not used in conjunction
10 with the §7(b)(2) rate test and §7(b)(3) to determine the amount of REP benefits
11 available, but is set at a level to ensure that the REP benefits paid the IOUs will equal the
12 amounts contained in the Settlement. REP-12-E-BPA-01, p. 43.

13 **Q.** **In general, how would you describe the difference between the statutory and**
14 **Settlement approaches for determining the REP benefits available to the IOUs?**

15 **A.** Under the statutory approach, the amount of REP cost protection is determined in each
16 rate period by operation of the §7(b)(2) rate test. Once that amount of protection is fixed,
17 and the resulting PFx rate is set, the amount of REP benefits available is varied to provide
18 that amount of cost protection to preference customers. Under the Settlement, the REP
19 benefits are fixed by the Settlement Agreement, and BPA's other rates (including the PF
20 rate and the PFx rate) are varied to deliver the amount of REP benefits to the IOUs
21 contained in the Settlement. REP-12-E-BPA-01, pp. 43-44.

1 **4. CALCULATION OF PREFERENCE CUSTOMER REP BENEFITS UNDER THE**
2 **SETTLEMENT**

3 **Q. How does the Settlement Agreement direct BPA to calculate REP benefits for**
4 **participating preference customers?**

5 **A.** In contrast to the calculation of IOU REP benefits, the Settlement is silent regarding the
6 method to be used by BPA to calculate preference customer REP benefits. Even if BPA
7 decides to sign the Settlement Agreement, it will have no obligation to calculate
8 preference customer REP benefits in any particular manner under the Settlement
9 Agreement. The Settlement Agreement is not a limiting factor in this regard.

10 **Q. How is BPA proposing to calculate preference customer REP benefits under the**
11 **Settlement?**

12 **A.** BPA's proposed calculation of preference customer REP benefits resembles the IOU
13 REP benefit calculation under the Settlement in a number of ways. It starts with the
14 calculation of utility specific ASCs using the applicable Average System Cost
15 Methodology. The gross REP benefits are then calculated by subtracting the base PF
16 exchange rate from the ASC of each participating preference customer, and multiplying
17 the difference by its forecast load that qualifies for REP benefits (small farm and
18 residential load). REP-12-E-BPA-06, p. 2. At this juncture the preference customer REP
19 benefit calculation diverges from the approach BPA uses to calculate REP benefits for
20 the IOUs under the Settlement.

21 **Q. How does the preference customer REP benefit calculation diverge for the IOU REP**
22 **benefit calculation under the Settlement?**

1 **A.** Since BPA has no contractually established REP benefits for preference customers under
2 the Settlement Agreement, it needs to determine a net REP benefit amount for preference
3 customer REP participants. It does so by constructing a ratio, the numerator of which is
4 the applicable IOU REP benefits under the Settlement plus any Refund Amount included
5 in the PF rate pursuant to the Settlement Agreement, and the denominator of which is the
6 gross IOU REP benefits. REP-12-E-BPA-05, pp. 2-3. This ratio is then applied to the
7 gross REP benefits of each participating preference customer to determine their net REP
8 benefits. This results in the preference customer gross REP benefits being reduced by the
9 same proportion that the IOU's Settlement REP benefits are to their gross REP IOU
10 benefits.

11 **Q.** **What is the consequence of the method used by BPA to calculate preference**
12 **customer REP benefits?**

13 **A.** The calculation proposed by BPA makes preference customer REP benefits essentially
14 derivative of the amounts that the IOUs have taken in settlement of the outstanding
15 claims lodged by preference customers against BPA, and ultimately the IOUs, regarding
16 determinations made by BPA in the WP-07S and WP-10 proceedings. In essence, the
17 REP benefits afforded to preference customers under the proposed BPA calculation are
18 reduced as if they faced the same litigation risks, and agreed to make the same settlement
19 concessions, as the IOUs did.

20 **Q.** **What is the nature of the litigation risks that the IOUs seek to avoid by settling their**
21 **REP benefits with BPA?**

22 **A.** The IOUs face outstanding Lookback repayment obligations of about \$500 million and
23 repayment of past deemer account balances and interest of over \$200 million. In

1 addition, they face pending claims by preference customers for additional Lookback
2 repayment amounts, and challenges to BPA's implementation of §7(b)(2) and (3) that if
3 successful will materially reduce the REP benefits available to them in the future. The
4 IOUs seek to resolve all of these liabilities by accepting the REP benefit payment stream
5 contained in the Settlement.

6 **Q. Did the preference customers participating in the REP reach the same compromises**
7 **with BPA?**

8 **A.** The preference costumer participants in the REP do not face the same risks as the IOUs,
9 and as of the date this testimony was filed have not made compromises with BPA similar
10 to those of the IOUs. The preference customer REP participants were not signatories to
11 the 2000 IOU REP Settlement Agreement that was found unlawful by the 9th Circuit. As
12 a consequence, they have no current Lookback repayment obligation, no pending claims
13 that they owe additional Lookback amounts, and they do not owe BPA any deemer
14 account repayments. And while they would face reductions to their REP benefits if the
15 pending preference customer challenges to BPA's implementation of §7(b)(2) and (3) are
16 successful, unlike the IOUs they will benefit from a lower PF rate for their BPA power
17 purchases if those challenges succeed. In short, they are situated completely different
18 than the IOUs regarding all of these issues, and have not compromised their REP benefits
19 in the manner that the IOUs have done.

20 **Q. How substantial a compromise did the IOUs accept in order to eliminate these**
21 **liabilities associated with their REP benefits?**

22 **A.** The documentation filed by BPA in this proceeding provides one view of the REP benefit
23 discount the IOUs appear willing to accept to settle these claims. According to BPA,

1 under the statutory REP as interpreted and implemented by BPA, the IOUs as a group
2 would have been entitled to REP benefits in this rate period (absent any reduction for
3 Lookback Amounts) of about \$331 million per year, and with those REP benefits rising
4 to about \$640 million by 2028. REP-12-E-BPA-01A, pp. 133-24. Under the Settlement,
5 the IOU REP benefits start at \$182 million per year in this rate period and end at \$286
6 million in 2028. REP-12-E-BPA-01, pp. 189-90. Under BPA's proposal, preference
7 customer participants in the REP would have to accept a decrease of comparable
8 proportions to their REP benefits, even though these preference customers do not face the
9 same litigation risks as the IOUs and even though such an outcome is not required by the
10 Settlement.

11 **5. IMPACT OF BPA's REP BENEFIT CALCULATION ON CPU RESIDENTIAL**
12 **CUSTOMERS**

13 **Q. What is the basis for the REP benefits paid to CPU?**

14 **A.** It should first be noted that the REP benefits paid to preference customers do not flow to
15 the participating utility, in this case CPU. Rather, by statute and by contract, the REP
16 benefits that are paid to CPU must be flowed through to their qualifying residential and
17 small farm customers. The purpose of these payments is to offset power costs incurred
18 by CPU that exceed the PFx rate. In the case of CPU, these costs stem primarily from the
19 cost of natural gas used to fire its combined cycle combustion turbine that serves CPU's
20 retail load. By dedicating this resource to serving its retail load, CPU made about 225
21 aMW of low cost Tier 1 power available for use by other preference customers.

22 **Q. Can you determine the impact of the BPA approach compared to the REP benefits**
23 **that would be available under the statutory calculation?**

1 **A.** Based on documentation filed in this proceeding by BPA, it appears that under the
2 statutory approach, the residential and small farm customers of CPU would receive REP
3 benefits of about \$18.1 million in FY2012, and \$15.5 million in FY2013.
4 LTRM_REP2010_Rev model posted on BPA's REP-12 Website (1-24-2011); REP-12-E-
5 BPA-07, pp. 2-6. While the REP benefits available to CPU's residential and small farm
6 customers under the statutory approach over the term of the Settlement are more difficult
7 to estimate due to fluctuating gas prices and the operation of the deemer account, it
8 appears that a reasonable estimate of the statutory REP benefits would result in CPU's
9 residential and small farm customers receiving REP payments of about \$209 million
10 (NPV calculated at 8%). In contrast, it appears that under BPA's proposed Settlement
11 calculation, CPU's residential and small farm customers would receive REP benefits of
12 \$14.4 million and \$13.5 million in FY2012 and FY2013 respectively, and that the REP
13 payments during the term of the Settlement would amount to about \$172 million (NPV
14 calculated at 8%). *Id.*

15 **Q.** **Does it appear that BPA agrees with the general relationship you have set out above**
16 **regarding the level of REP benefits available under the statutory calculation and the**
17 **Settlement calculation proposed by BPA?**

18 **A.** It would appear so. BPA states in its study that the Settlement provides preference
19 customers more REP cost protection than would be available to them by application of
20 the statutory provisions, including §7(b)(2) and (3). REP-12-E-BPA-04, p. 27.
21 Accepting, for purposes of argument only, the veracity of this statement, the corollary of
22 increased REP cost protection for preference customers through a lower PF rate is the
23 payment of reduced REP benefits for program participants. Or said another way, BPA's

1 statement indicates that under the Settlement, less REP benefits are expected to be paid
2 REP participants than under the statutory calculation.

3 **Q. Why is it that BPA is proposing to calculate preference customer REP benefits in**
4 **this manner, even though the Settlement does not require BPA to do so?**

5 **A.** While the reasons behind the BPA proposal are not clear from the Initial Rate Proposal,
6 there appear to be at least two. The first is the likely desire on the part of BPA to
7 calculate all REP benefits, whether paid to the IOUs or to preference customers, in
8 essentially the same manner in order to simplify the rate case. The second is BPA's
9 likely desire to eliminate the §7(b)(2) rate test, and its implementation steps, from the rate
10 case. The manner in which BPA proposes to calculate preference customer REP benefits
11 will, in conjunction with the Settlement implementation, eliminate the §7(b)(2) rate test
12 from the BPA rate case for the term of the Settlement.

13 **6. OPTIONS AVAILABLE TO BPA FOR THE CALCULATION OF REP BENEFITS**

14 **Q. Are there other options available to BPA for the calculation of preference customer**
15 **REP benefits?**

16 **A.** As we understand it, BPA is not required by the Settlement to calculate preference
17 customer REP benefits in any particular manner. As a consequence, BPA appears to
18 have two choices in this regard. BPA can either continue to calculate the preference
19 customer REP benefits under the statutory provisions, including conducting the §7(b)(2)
20 rate test and its implementation steps in each rate case, or calculate those benefits in a
21 manner that tracks the calculation of the IOU REP benefits under the Settlement in a
22 manner that is agreed to by the participating preference customers.

23 **Q. Would you describe the statutory approach referred to above?**

1 **A.** This approach would essentially utilize the REP benefit calculation that BPA has
2 employed since the passage of the Regional Act. It would require BPA to determine
3 ASCs for all participating utilities (IOUs and preference customers), run the §7(b)(2) rate
4 test, determine a trigger amount, reallocate the trigger amount pursuant to §7(b)(3),
5 establish a PFx rate and use it to determine the amount of REP benefits available to
6 preference customer REP participants.

7 **Q.** **Would the information necessary to take all of the implementation steps you have**
8 **described be available?**

9 **A.** It appears so. As we understand it, under the Settlement the IOUs will continue to make
10 ASC filings, and BPA will continue to determine individual utility ASCs. Although it
11 may be administratively cumbersome to do so, the information needed to run the §7(b)(2)
12 rate test, and to take the implementation steps that flow from it, would be available to
13 BPA. Under this approach, BPA would continue to run the rate case as it has in the past
14 with regard to determining REP benefits, it would just be applying the results to a much
15 smaller set of REP participants.

16 **Q.** **What would be the other option available to BPA?**

17 **A.** BPA could fashion a REP benefit calculation patterned after the IOU REP benefit
18 calculation contained in the Settlement, but revised to recognize the different
19 circumstances faced by the IOUs and the preference customers regarding their REP
20 benefits.

21 **Q.** **Are you arguing that BPA can determine REP benefits in a manner that is different**
22 **from that specified in the Regional Act if the parties agree to do so?**

1 **A.** What BPA may or may not do with the agreement of REP participants regarding the
2 calculation of REP benefits is a legal question that we are not addressing here. Rather,
3 we are merely observing that BPA's Initial Rate Proposal is predicated on the view that it
4 can use a REP benefit calculation that differs from the statutory approach if the REP
5 participants agree to it and BPA determines that it is reasonable. If BPA's position in this
6 regard is sustained as it applies to the IOUs, then it can also be applied to preference
7 customer participants in the REP.

8 **Q.** **Please explain what you mean by recognizing the material differences in**
9 **circumstances faced by the IOUs and the preference customers regarding their REP**
10 **benefits?**

11 **A.** As described above, the preference customer participants in the REP were not signatories
12 to the unlawful 2000 IOU REP Settlement Agreement, and do not face the same legal
13 risks that the IOUs confront. Specifically, the preference customers participating in the
14 REP have no Lookback liability, no deemer account liability, and no claims that those
15 liabilities were under-calculated by BPA. The preference customer challenges to BPA's
16 implementation of the §7(b)(2) rate test and the §7(b)(3) reallocation would, if successful,
17 reduce REP benefits available to preference customers and IOUs alike. However, unlike
18 the IOUs, preference customer participants in the REP would benefit from such REP cost
19 reductions by paying a lower PF rate for their requirements service. In sum, the
20 preference customer participants in the REP do not face the same risks as the IOUs do,
21 and should not be asked to make the same concessions regarding the level of their REP
22 benefits if the Settlement agreed to by the IOUs is implemented.

1 **Q. What would be an appropriate revision to BPA's proposed preference customer**
2 **REP benefit calculation to recognize these material differences?**

3 **A.** In constructing the ratio used to pro-rate the preference customer gross REP benefits
4 down to a net REP benefit, BPA uses the IOU REP benefit contained in the Settlement
5 plus the preference customer Refund Amount. The inclusion of the Refund Amount in
6 the numerator during the first 8 years of the Settlement term has the effect of making the
7 numerator roughly track the REP benefits BPA has forecast that the IOUs would receive
8 absent the Settlement – a non-settlement value. In essence, for the first 8 years of the
9 Settlement BPA's inclusion of the Refund Amount in the numerator treats preference
10 customer REP participants as if they had not settled on the same terms as the IOUs.

11 **Q. What happens in the last 9 years of the Settlement term when the Refund Amount is**
12 **no longer included in the numerator of the ratio?**

13 **A.** Once the Refund Amount is not longer included in the numerator, the full impact of the
14 IOU REP benefit concessions is seen in the preference customer REP benefits. Over the
15 entire term of the Settlement, BPA's ratio approach using the IOU REP Settlement values
16 as the numerator reduces REP benefits to CPU's residential and small farm customers by
17 about \$37 million compared to the REP benefits that would be available to them under
18 the statutory calculation over the Settlement term (\$209 million minus \$172 million).
19 LTRM_REP2010_Rev model posted on BPA's REP-12 Website (1-24-2011). A more
20 reasonable approach would be to employ BPA's proposed methodology with one modest
21 revision.

22 **Q. What would you propose to use as a numerator in replacement for the annual IOU**
23 **Settlement value used by BPA?**

1 **A.** The numerator proposed by BPA for the first 8 years of the Settlement term (IOU REP
2 benefits under the Settlement plus the Refund Amount) produces preference customer
3 REP benefits that roughly track those that would have been available under the statutory
4 calculation in the absence of a settlement. Continuing to use that numerator (applicable
5 IOU REP benefits under the Settlement plus the Refund Amount) for the last 9 years of
6 the Settlement term produces preference customer REP benefits that recognize the
7 different position of such customers compared to that of the IOUs. Since the preference
8 customer participants in the REP do not face the same litigation risks as the IOUs, and
9 have not settled their REP benefits as have the IOUs, using a numerator that produces
10 REP benefits for preference customers that more closely approximate REP benefits
11 available to them under the statutory calculation is both fair, and recognizes how their
12 position differs from that of the IOUs.

13 **Q.** **Can you provide an estimate of the REP benefits that would be available to CPU's**
14 **residential and small farm customers under your proposed approach?**

15 **A.** Based on documentation filed by BPA in this proceeding, we calculate that using our
16 proposed revised ratio to determine REP benefits for CPU in this rate period would result
17 in REP payments of \$14.4 million in FY2012 and \$13.5 million in FY2013, and
18 approximately \$193 million (NPV at 8%) over the term of the Settlement. This is more
19 than approximately \$172 million (NPV at 8%) under BPA's proposed calculation, but
20 less than the approximately \$209 million (NPV at 8%) forecast to be available to the
21 residential and small farm customers of CPU under the statutory approach.
22 LTRM_REP2010_Rev model posted on BPA's REP-12 Website (1-24-2011). Our
23 proposal strikes a reasonable balance between administrative ease for BPA and REP

1 benefits that approximately replicate those that would likely be available under the statute
2 for CPU's residential and small farm customers.

3 **Q. Does your suggested approach offer advantages to BPA?**

4 **A.** Yes, it does. BPA would be able to use a relatively uniform approach to the calculation
5 of both IOU and preference customer REP benefits, and would be able to avoid the
6 necessity of running the §7(b)(2) rate test, and related implementation steps. And as
7 opposed to BPA's proposed calculation, it would garner support from preference
8 customers who participate in the REP.

9 **Q. Does this conclude your testimony?**

10 **A.** Yes it does.
11
12
13
14
15
16
17
18
19
20
21
22