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TESTIMONY of

DANIEL H. FISHER and GARTH T. BEAVON

Witnesses for Bonneville Power Administration

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4
5 **SUBJECT: PRDM Chapter 9—Revision Processes and Dispute Resolution**

6 **Section 1: Introduction and Purpose of Testimony**

7 *Q. Please state your names and qualifications.*

8 A. My name is Daniel H. Fisher, and my qualifications are contained in PRDM-26-
9 Q-BPA-03.

10 A. My name is Garth T. Beavon, and my qualifications are contained in
11 PRDM-26-Q-BPA-01.

12 *Q. What is the purpose of your testimony?*

13 A. The purpose of our testimony is to explain Chapter 9 of the PRDM, PRDM-26-
14 E-BPA-01.

15
16 **Section 2: Overview of Chapter 9 and Comparison to TRM**

17 *Q. Please provide an overview of Chapter 9 of the PRDM.*

18 A. Chapter 9 of the PRDM describes the criteria and processes that apply when BPA (or
19 a customer) seeks to revise the terms of the PRDM. This chapter also discusses
20 dispute resolution processes for determining whether an action by BPA violates or
21 is otherwise inconsistent with the PRDM.

22 *Q. Why does the PRDM have these provisions?*

23 A. As discussed in Fisher *et al.*, PRDM-26-E-BPA-02 (Policy Testimony), the PRDM, at
24 its core, is a pre-defined rate design methodology applicable to PF Public Customers
25 with a CHWM Contract paying the Section 7(b) rate. This methodology is intended
26 to be employed in future Rate Periods for at least the life of the Provider of Choice

1 Contract. While it is our expectation that the PRDM will be implementable without
2 issue, there is always the chance that future circumstances present an opportunity
3 for improvement or cause a provision of the PRDM to no longer operate properly.
4 Additionally, there may be actions outside of BPA's control—such as a Court
5 decision—that require BPA to make adjustments to ensure it recovers its total costs.
6 In view of these uncertainties, the PRDM includes criteria and processes that allow
7 BPA and customers to adapt the terms of the PRDM to different circumstances.

8 *Q. How does including change and dispute provisions fit in with the PRDM's paradigm of*
9 *maintaining long-term certainty and predictability from rate period to rate period?*

10 *A.* We recognize that the PRDM reflects a compromise on issues relating to how BPA
11 will develop the Section 7(b) rates among a diverse set of customers and interests.
12 We also acknowledge that allowing future rate cases to change the PRDM could
13 upend the delicate balance of interests that led to its construction. To that end, the
14 change and modification provisions of the PRDM are tailored to the *type* of revision
15 being considered.

16 One category of potential revisions is those designed to improve upon the
17 compromise delimited in the PRDM. These changes are referred to as
18 “improvements and enhancements” and require substantial PF Public Customer
19 support and approval to bring forward. The idea here is that, unless a significant
20 majority of the PF Public Customers *want* to “improve” the PRDM, BPA should not
21 propose such changes.

22 Another category of potential revisions is those that BPA determines are
23 needed to ensure that BPA can recover its costs or respond to a court ruling.
24 Proposals for such revisions can be brought into a 7(i) Process regardless of PF
25 Public Customer approval. Even here, though, PF Public Customers may still

1 challenge whether BPA's proposal is necessary, as well as whether it is reasonably
2 tailored to address the particular cost recovery issue or court ruling.

3 A third category of potential revisions deals with anomalous situations,
4 potential inter-cost pool inequities, or other impairments that have led to
5 unintended outcomes under the PRDM. Such revisions may be proposed unless
6 opposed by a significant contingent of PF Public Customers. The idea here is that
7 there is a lower barrier to entry—as compared to discretionary “improvements”—
8 for revisions to address unintended consequences that put at risk the underlying
9 principles and goals of the PRDM. Under this category of changes, the proposed
10 change could be considered in the rate case *unless* a substantial segment of PF
11 Public Customers expressly oppose the change and wish for BPA to leave the PRDM
12 as is.

13 We discuss each of these types of revisions in more detail below.

14 *Q. How do these provisions compare to the provisions in the TRM?*

15 *A.* Chapter 9 of the PRDM was built largely from the revision process and dispute
16 resolution used by the TRM. The PRDM keeps the primary categories used by the
17 TRM to describe different types of changes and how those changes are proposed.
18 Specifically, the PRDM retains three types of revisions under the categories of
19 1) improvements and enhancements, 2) unintended consequences, and 3) cost
20 recovery or court ruling. The PRDM also retains a distinction between dispute
21 resolution 1) within a 7(i) Process, or 2) outside a 7(i) Process, regarding whether
22 BPA has violated the PRDM.

23 We discuss below the more specific changes we made to the processes
24 associated with these revisions and disputes, but here we note one overall
25 organizational change. The TRM divided this material into two chapters: Chapter 12
26 addressed the criteria and conditions for revising the TRM, while Chapter 13

1 discussed the processes for making those revisions. In the PRDM, we have
2 combined those concepts into a single chapter (Chapter 9) to make the connections
3 between the criteria and processes clearer.

4 Q. *What do you mean by a "significant contingent of PF Public Customers?"*

5 A. Chapter 9 measures customer support using a House and Senate approach. Support
6 is measured by *both* utility count *and* load. More specifically, support or opposition
7 is measured as a group totaling 1) at least 70 percent of customers (utility count)
8 and 2) at least 50 percent of the sum of the CHWMs.

9 Q. *Why are the terms "Customer" and "Customer Group" defined only for Chapter 9?*

10 A. The term "Customer" and "Customer Group" have a specific meaning within
11 Chapter 9. Simply put, a Customer is a utility that has a CHWM Contract. A
12 Customer Group is a group of Customers that are made up of 45 percent or more of
13 all Customers (by utility count). These terms are used specifically, and solely, for
14 Chapter 9. A Customer Group, rather than a single Customer, may propose a
15 revision for "improvement or enhancement" or "unintended consequences."
16 However, such proposals are subject to House and Senate requirements discussed
17 above.

18 Q. *How is a JOE treated for purposes of the Customer and Customer Group count?*

19 A. As we explained in Reed *et al.*, PRDM-26-E-BPA-05 (Tier 1 Rate Design), a Joint
20 Operating Entity (JOE) is an entity that is made up of public bodies or cooperatives,
21 each of which was a BPA customer on or before January 1, 1999. Contractually, the
22 JOE has a single CHWM Contract. Each member of the JOE, however, has a separate
23 CHWM. For purposes of the Customer Group count, and for measuring House and
24 Senate support, the JOE will have votes equal to the number of its members. Thus,
25 for instance, if the JOE has 15 members, the JOE's vote will be considered to be
26 worth 15 by utility count.

1 **Section 3: General Provisions (PRDM Section 9.1)**

2 *Q. Please provide a general overview of Section 9.1.*

3 A. Section 9.1 makes clear that the PRDM may only be revised within a Section 7(i)
4 Process. This means that, while Chapter 9 sets up procedural barriers to
5 introducing certain revision proposals into a 7(i) Process, the BPA Administrator
6 will only decide whether to adopt the proposal after reviewing the full record
7 developed by BPA and parties over the course of the 7(i) Process.

8 Section 9.1 also identifies certain provisions that are so core to the balance
9 struck in the PRDM that they cannot be revised as an “improvement or
10 enhancement” or “unintended consequence,” but only to ensure cost recover or
11 comply with Court ruling. On the other extreme, Section 9.1 also identifies actions
12 that are explicitly not considered a revision to the PRDM, and therefore can be
13 proposed in a 7(i) Process regardless of customer support.

14 *Q. Did you remove any language from Section 9.1 that was previously included in the*
15 *TRM?*

16 A. Yes. The TRM included a general provision that would have allowed BPA to propose
17 changes to the TRM within a defined time period if agreed to by BPA and certain
18 customer representatives. We have opted to remove this provision, in view of the
19 expectation that any revisions to the PRDM would follow one of the multiple paths
20 for revision described in Chapter 9.

21
22 **Section 4: Improvements and Enhancements (PRDM Section 9.2)**

23 *Q. Please provide an overview of the criteria and process for revisions to improve or*
24 *enhance the PRDM.*

25 A. If a proposal is not needed to ensure cost recovery or comply with a court ruling,
26 and is not in response to unintended consequences, then the proposal is considered

1 an improvement or enhancement of the PRDM. While there is a path for such
2 revisions, given the PRDM's interest in maintaining long-term certainty and
3 predictability, such proposals cannot be made unless a House and Senate of
4 Customers approve it being introduced in a 7(i) Process. Notably, even after
5 achieving this level of customer support, Customers in the minority that oppose the
6 revision would still have the 7(i) Process to present evidence and arguments. The
7 BPA Administrator would only decide whether to adopt the proposal in the Final
8 ROD after reviewing the full record developed in the 7(i) Process.

9
10 **Section 5: Revisions for Unintended Consequences (PRDM Section 9.3)**

11 *Q. Please provide an overview of the criteria and process for revisions for unintended*
12 *consequences.*

13 *A.* These types of revisions apply to proposals to address or avoid unintended
14 consequences that are putting at risk the Policies and Goals underlying the PRDM.
15 Compared to improvement proposals, there is a lower bar for unintended
16 consequence proposals being considered in a 7(i) Process. Here, a House and
17 Senate of Customers that *oppose* the proposal can veto the proposal and prohibit it
18 from being presented in the 7(i) Process. This means the proposed revisions will
19 move forward and be proposed in a 7(i) Process unless a House and Senate of
20 Customers express disapproval of the proposal. Again, the 7(i) Process will allow
21 the issue to be discussed in a robust process by parties in support and opposition.
22 At the same time, given the PRDM's interest in maintaining long-term certainty and
23 predictability, a House and Senate of Customers that prefer the status quo could
24 constrain BPA and prevent the issue from entering the 7(i) Process.

1 Q. *Why are there different processes for an unintended consequence that “affects others?”*

2 A. The PRDM only applies to sub-allocating costs within the PF Public cost pool. *See*
3 PRDM Figure 2-1. The PRDM is a balanced package that provides long-term
4 certainty and predictability on issues among PF Public Customers. The PRDM does
5 not dictate ratemaking regarding other cost pools. Therefore, if an unintended
6 consequence impacts others beyond PF Public Customers with CHWM Contracts,
7 PF Public Customers with a CHWM Contract should not be able to prevent BPA from
8 considering the issue in a 7(i) Process. The PRDM cannot prevent those others—
9 *e.g.*, PF Public Customers without a CHWM Contract, investor-owned utility
10 customers purchasing power at 7(f) rates or participating in the REP under
11 Section 5(c), or direct service industry customers that purchase power under
12 Section 7(c)—who are impacted from presenting evidence and arguments. If a
13 PRDM revision to address an unintended consequence affects others, it can be
14 proposed in a 7(i) Process, regardless of opposition from PF Public Customers with
15 CHWM Contracts. Customers will of course be able to present their evidence and
16 arguments in the 7(i) Process.

17 Q. *Please explain the purpose behind the processes for revisions to accommodate*
18 *participation in a day-ahead market.*

19 A. BPA is considering whether to participate in a day-ahead market. BPA Staff has
20 been closely involved in the development of both the California Independent System
21 Operator’s (CAISO) Extended Day-Ahead Market (EDAM) and the Southwest Power
22 Pool’s (SPP) Markets+. BPA is continuing to evaluate potential participation, and
23 ongoing processes may impact the nature of what the two market offerings may
24 entail. Given significant unknowns, it is not clear that any revisions to the PRDM
25 would be necessary or desirable.

1 We generally assumed that any potential proposals for PRDM revisions
2 related to market participation would fall into the various types of revisions,
3 *e.g.* improvements and enhancements, revisions for unintended consequences, or
4 revisions to ensure cost recovery or comply with court ruling. However, if there
5 was a package of proposed revisions to accommodate participation in a day-ahead
6 market, we want to avoid conflict over whether the individual revisions within the
7 package were improvements or revisions for unintended consequences, and
8 therefore what process—including customer House and Senate approval or
9 objection—would apply. Instead, all revisions related to day-ahead market
10 participation would be included as revisions for unintended consequences. This
11 means that a House and Senate of customers would need to *oppose* the revisions to
12 prevent them from being introduced into a 7(i) Process.

13 However, BPA must be able to propose revisions that are necessary for BPA
14 to ensure cost recovery or respond to a court ruling, regardless of customer support
15 or opposition. Therefore, proposals for such revisions related to day-ahead market
16 participation would still follow the procedures for recovery/response proposals.

17
18 **Section 6: Revisions to PRDM To Ensure Cost Recovery or Comply with Court**
19 **Ruling (PRDM Section 9.4)**

20 *Q. Please provide an overview of the criteria and process for revisions to ensure cost*
21 *recovery or comply with a court ruling.*

22 *A. BPA is able to propose PRDM revisions to ensure cost recovery or to comply with*
23 *court rulings. BPA must retain the ability to respond to such issues. While parties*
24 *will be able to support or oppose the proposal in the 7(i) Process, Customer*
25 *opposition cannot prevent the proposal from coming into the 7(i) Process.*
26 *However, given the PRDM’s interest in long-term certainty and predictability, BPA*

1 will seek to limit the number and scope of such revisions, and to the extent
2 practicable, take certain preliminary steps outlined in Section 9.4.2.1. Further, BPA
3 proposals could be subject to a Mini-Trial process. The Mini-Trial process is further
4 discussed below in Section 8.

5 *Q. What purpose does the Mini-Trial serve for proposed revisions related to cost recovery*
6 *and court rulings?*

7 *A.* Under Section 9.4.2, BPA will seek to limit the number and scope of this category of
8 revisions. The Mini-Trial element adds a procedural structure to allow customers to
9 weigh in on whether BPA's proposal is appropriately narrow in scope. That is, a
10 cost recovery issue or court ruling might require *some* sort of PRDM revision in
11 response, but the existence of such an issue does not give BPA free reign to propose
12 *any* PRDM revision. Customers may also disagree with whether any PRDM revision
13 is actually necessary. Ultimately, BPA must be able to respond to cost recovery
14 issues and court rulings as it deems necessary.

15 The Mini-Trial process allows customers to have direct access to the
16 Administrator at a meaningful time that can often lead to early resolution of issues.
17 Customers, with House and Senate support, may petition for a Mini-Trial regarding
18 whether BPA's proposal is necessary and/or reasonably proportionate to ensure
19 cost recovery or to respond to a court ruling. In addition to the show of opposition,
20 the process provides Customers an opportunity to file written statements and make
21 oral presentations directly to the Administrator. This process comes early in the
22 7(i) Process, giving BPA sufficient time to change course in response to Customers'
23 arguments, and allows early direct interaction with the Administrator in addition to
24 the more formal 7(i) Process of submitting written data requests, testimony, and
25 briefs.

**Section 7: Disputes Alleging Irreconcilable Conflict with the PRDM (PRDM
Section 9.5)**

Section 7.1: Overview

Q. What is an irreconcilable conflict?

A. Here, irreconcilable conflicts involve allegations that BPA is violating the terms of the PRDM. That is, BPA's position is in irreconcilable conflict with the terms of the PRDM. The definition originates from the TRM and is a high bar. As the name suggests, the allegation must be that BPA's position is either contrary to a clear and unambiguous requirement or prohibition, or cannot be reconciled with *any* reasonable interpretation of the PRDM.

Section 7.2: Disputes Over Irreconcilable Conflict within a Section 7(i) Process

Q. What purpose does the Mini-Trial serve in disputes over irreconcilable conflict within a 7(i) Process?

A. The Mini-Trial element adds a procedural structure. Without the Mini-Trial, customers would have the full 7(i) Process to present evidence and arguments for why the PRDM requires BPA to deviate from its position. The Administrator would make a decision based on the full record. Customers would be able to challenge that final action. The Mini-Trial element is an additional layer of process to hopefully resolve conflicts early on and at the lowest level possible.

Q. What are BPA's options at the end of a Mini-Trial over irreconcilable conflict within a 7(i) Process?

A. The Administrator is not limited to making a thumbs-up/thumbs-down determination on whether BPA's position is in irreconcilable conflict with the PRDM. Consistent with the processes discussed above, BPA could also propose to

1 revise the PRDM, such that the BPA position would no longer be in irreconcilable
2 conflict with the PRDM.

3 *Q. Why does the PRDM say that if BPA's position is in irreconcilable conflict with the*
4 *PRDM, but BPA is now proposing to revise the PRDM to ensure cost recovery or*
5 *respond to a court ruling—the Administrator's decision will "to the extent practicable"*
6 *be accompanied by the report in Section 9.4.2.1?*

7 *A.* Section 9.4.2.1 lays out steps BPA should take before proposing a revision for cost
8 recovery, but recognizes that such criteria cannot frustrate BPA's ability to recover
9 costs. In the Mini-Trial scenario, BPA likely did not follow these steps before the 7(i)
10 Process began because it did not think its position was in irreconcilable conflict with
11 the PRDM. BPA will still issue the report in Section 9.4.2.1, but given the practical
12 reality of being in a 7(i) Process and needing to set rates to recover costs, it may not
13 be practicable for BPA to meet all criteria in Section 9.4.2.1.

14
15 **Section 7.3: Disputes Over irreconcilable conflict outside a Section 7(i) Process**

16 *Q. Why is there a different process for irreconcilable conflict outside a 7(i) Process?*

17 *A.* As the name suggests, the PRDM is a methodology applicable to setting rates. We
18 expect that nearly all issues with the PRDM would take place within the 7(i) Process.
19 All PRDM revisions must also be made through a 7(i) Process. Nonetheless, there
20 could be allegations that a BPA action is in irreconcilable conflict with the PRDM.
21 The PRDM leverages the same Mini-Trial structure to resolve conflicts at the lowest
22 level possible before relying on the ability to bring Ninth Circuit Court litigation, and
23 provides an opportunity to speak directly to the Administrator.

Section 8: Mini-Trial Before the Administrator (PRDM 9.6)

Q. What is the Mini-Trial process?

A. As discussed above, the Mini-Trial provides an additional process, including the opportunity to speak directly to the Administrator, in order to resolve conflicts at the lowest level possible. It does not refer to a binding quasi-judicial determination. The Mini-Trial is an additional process within the 7(i) Process, and the Administrator retains the ability to reach a different final decision at the conclusion of the 7(i) Process in the Administrator's ROD. Outside a 7(i) Process, the Mini-Trial provides an opportunity to attempt to resolve conflict without resorting to Ninth Circuit Court litigation.

Q. How is the PRDM's Mini-Trial process different from the TRM's Mini-Trial?

A. The term "Mini-Trial" is retained from the TRM for familiarity, but the process is different. The new process is not a matter of whether "more" or "less" process was preferable. Instead, we thought critically about the process and whether elements were appropriate and added value.

The TRM included a larger role for the 7(i) Process Hearing Officer. Ultimately, the Administrator was able to disagree with the Hearing Officer and choose not to adopt the Hearing Officer's decision. The inclusion of the Hearing Officer process, and tracing out all potential BPA responses, added unnecessary complexity. The Hearing Officer is not likely to be familiar with the intricacies of the PRDM or the balance of interests among PF Public Customers over time. It could be difficult to bring the Hearing Officer up to speed in a meaningful way, and the need for a timely determination would not allow time to fully educate the Hearing Officer. With limited time, the Hearing Officer may not understand the full context of balances being struck within the specialized area of a long-term rates methodology. Under the TRM, the Hearing Officer did not play the role of a neutral looking at a

1 preponderance of the evidence standard, but was to defer to BPA's interpretation.
2 Educating the Hearing Officer and following the TRM's additional processes would
3 have been of limited value given the Administrator's ability to adopt or reject the
4 Hearing Officer's decision. Instead, the PRDM recognizes that early, direct access to
5 the decision-maker provides the most value.

6 The TRM also potentially limited customers from fully exercising their
7 procedural rights within the 7(i) Process. If the Hearing Officer agreed with BPA's
8 position, and the Administrator agreed with the Hearing Officer, then the decision
9 was conclusive for the 7(i) Process. In contrast, the PRDM allows parties to
10 continue making their case even after an unfavorable decision in the Mini-Trial.

11 *Q. Could the TRM's procedural complexity be seen as a feature, rather than a bug, that*
12 *incentivized BPA to not propose revisions or not violate the TRM?*

13 *A.* Under the TRM, the dispute resolution processes were never utilized. There was
14 only one set of revisions made to the TRM, and that during the first rate period. But
15 as a factual matter, we are unaware of any proposed revisions or contemplated
16 actions that BPA considered but dismissed for fear of engaging with the TRM's
17 revision and dispute resolution processes. BPA likely "played it straight," not
18 because of procedural hurdles, but because—in the absence of issues involving cost
19 recovery or court rulings—BPA had no incentive to tweak the stable status quo of a
20 broadly supported methodology.

21 Further, the PRDM retains complexity as a feature. The House and Senate
22 criteria ensure that BPA or a Customer would not consider proposing a revision
23 unless they expect broad Customer support.

24 *Q. Are Mini-Trial decisions final?*

25 *A.* No. Within a 7(i) Process, the Administrator may make a different decision in the
26 Final ROD after considering all the evidence in the record. Outside a 7(i) Process,

1 BPA will take all practicable steps to revoke a BPA final decision that is in
2 irreconcilable conflict, but those steps may involve additional public processes
3 resulting in additional final decisions.

4 Q. *Does this conclude your testimony?*

5 A. Yes.

