

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
BEFORE THE
BONNEVILLE POWER ADMINISTRATION**

In the Matter of:) BPA File No. PRDM-26
FISCAL YEAR (FY) 2029 PUBLIC RATE)
DESIGN METHODOLOGY) MOTION TO SUPPLEMENT THE RECORD
) IN RESPONSE TO *EX PARTE*
) *COMMUNICATION*
)
)

Motion to Supplement the Record

The Western Public Agencies Group (WPAG)¹ reluctantly brings this motion pursuant to section 1010.5(g) of the Bonneville Power Administration's (BPA) Rules of Procedure Governing Rate Hearings (Rules of Procedure) and section 7(i)(2)(A) of the Northwest Power Act² in defense of the integrity of this 7(i) proceeding as well as the integrity of future 7(i) proceedings. Specifically, we hereby move to supplement the record with the information below in response to the *ex parte* communication made by PNGC Power (PNGC) to the Administrator on May 13, 2025, a copy of which is attached hereto as Attachment 1.

We respectfully request that the Hearing Officer grant this motion notwithstanding that it is brought out of time under section 1010.5(g) of the Rules of Procedure. The supplemental information below highlights the long-term implications of the decision currently before the Administrator in this proceeding. As further discussed below, this motion and the Administrator's pending decision are about more than a run-of-the-mill rate dispute about how

¹ WPAG member Benton Rural Electric Association does not join this motion.

² 16 U.S.C. § 839e(i)(2)(A).

the demand charge will be applied under the PRDM. It is about the long-term integrity of the 7(i) process itself, and how it is very much at risk.

Background on WPAG and its Participation in the PRDM Process

WPAG is comprised of 27 public utilities³ located in Oregon and Washington, both east and west of the Cascades, each of whom is a preference customer of BPA. Our membership ranges from some of BPA's smallest Load Following customers to some of its largest and most sophisticated Slice/Block customers. Some WPAG utilities are BPA full requirements customers, while others own their own resources that they either use to serve their loads or sell to third parties. The WPAG utilities collectively make up more than 33% of BPA's Tier 1 load. WPAG's membership includes small rural electric utilities and electric cooperatives.

Given the diversity of our group and the varied environments we each operate in, there are very few (if any) (i) BPA programs that at least one WPAG utility does not participate in or touch upon, and (ii) BPA power or transmission rates that at least one WPAG utility does not pay. In a real sense, we are a microcosm of BPA's larger preference customer base. Our success as a group depends on transparency, collaboration, and an emphasis on seeking equitable outcomes.

WPAG was an active participant in the pre-case workshops and workgroups that BPA held with customers and stakeholders to develop the PRDM. WPAG has also participated in this

³ The utilities comprising WPAG include Benton Rural Electric Association, Eugene Water and Electric Board, Umatilla Electric Cooperative, Hood River Electric Cooperative, the Cities of Port Angeles, Ellensburg and Milton, Washington, the Towns of Eatonville and Steilacoom, Washington, Elmhurst Mutual Power and Light Company, Lakeview Light & Power, Ohop Mutual Light Company, Parkland Light and Water Company, Peninsula Light Company, Central Lincoln People's Utility District, Public Utility Districts No. 1 of Clallam, Clark, Cowlitz, Franklin, Grays Harbor, Jefferson, Kittitas, Lewis, Mason and Skamania Counties, Washington, Public Utility District No. 3 of Mason County, Washington and Public Utility District No. 2 of Pacific County, Washington. As mentioned under footnote 1 above, Benton Rural Electric Association does not join this motion.

7(i) proceeding as a member of Joint Party 1.⁴ Given the varied and diversified interests within WPAG, WPAG's members did not initially agree among themselves on all PRDM issues. However, having gone through the PRDM process, WPAG with the other members of Joint Party 1 came together in this proceeding to support the PRDM as revised in PRDM-26-E-BPA-11-AT01. This is because we saw it then, and continue to see it now, "as a grand compromise between BPA and its diversely situated customer base for how BPA will establish power rates during the term of the Provider of Choice Contracts."⁵ Each utility within WPAG has different views about the PRDM and considers some aspects to be more favorable to its utility than others. But overall, WPAG's members agreed that the PRDM is a negotiated package that represents a lot of work and compromise on all sides. For that reason, we joined the rest of the members of Joint Party 1 to recommend "that BPA: (1) adopt the PRDM as revised in PRDM-26-E-BPA-11-AT01; and (2) faithfully adhere to the words and original intent of the PRDM, as revised, in BPA's interpretation and implementation of the PRDM during the term of the Provider of Choice Contracts."⁶

WPAG's endorsement of the PRDM as revised in PRDM-26-E-BPA-11-AT01 included grudging acceptance of BPA's proposed RICj, which was specifically proposed by BPA at the last pre-case PRDM workshop to address the very issue now raised by PNGC in its *ex parte* communication. At that time, WPAG expressed concerns that the last-minute inclusion of the RICj to the benefit of one party, PNGC, was an unfair subsidy to be paid for by other utilities in the region, including small rural utilities and electric cooperatives who are not members of PNGC. Despite WPAG's protest, BPA kept its RICj proposal in the PRDM. In

⁴ In addition to WPAG, Joint Party 1 includes the Public Power Council, Northwest Requirements Utilities, Clatskanie People's Utility District; Public Utility District No. 2 of Grant County; Public Utility District No. 1 of Snohomish County; City of Tacoma, Department of Public Utilities, Light Division.

⁵ Initial Brief of Joint Party 1, PRDM-26-B-JP01-01 at 4.

⁶ *Id.*

acknowledgement of the greater compromise by all parties encompassed by the PRDM, WPAG offered no further objection to BPA's proposed RICj and supported its inclusion in the PRDM as revised in PRDM-26-E-BPA-11-AT01.

PNGC's *Ex Parte* Communication Implicates Greater Concerns than the Issues at Hand

Although WPAG's members have an interest in the PRDM specific issues raised in PNGC's *ex parte* communication and attached letter from some members of the Northwest Congressional delegation to the Secretary of Energy, we are bound by duty to set those interests aside for purposes of this motion to instead focus on the long-term threat posed by PNGC's *ex parte* communication to the integrity of the 7(i) process and BPA Rules of Procedure.

The provisions of section 7(i) of the Northwest Power Act were carefully crafted by Congress to establish a transparent and fair process that BPA must use to establish its rates. Among other things, the statute requires BPA when setting rates to:

- Provide notice of its proposed rates in the Federal Register with a statement of the justification and reasons supporting such rates;⁷
- Conduct one or more hearings before a neutral hearing officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such rates;⁸
- Provide an adequate opportunity by the hearing officer to rebut any material submitted by any other person or the Administrator;⁹

⁷ 16 U.S.C. § 839e(i)(1).

⁸ 16 U.S.C. § 839e(i)(2).

⁹ 16 U.S.C. § 839e(i)(2)(A).

- Create an administrative record that includes the hearing transcripts, together with exhibits, and such other materials and information as may have been submitted to, or developed by the Administrator;¹⁰
- Make a final decision, by and through the Administrator, to establish a rate or rates based on the record, which decision must include a full and complete justification of the final rates;¹¹ and
- Provide a clear and exclusive remedy to challenge rate determinations made by the Administrator, i.e., by submitting a petition to the 9th Circuit Court of Appeals.¹²

PNGC's solicitation of a letter from the Congressional delegation to the Secretary of Energy and then forwarding that letter directly to the Administrator via an *ex parte* communication is a clear attempt to unduly influence the final decision of the Administrator outside the rate case process. This step was only taken by PNGC after it became clear in the Draft PRDM Record of Decision (ROD) that it could not prevail on the facts or the law. It not only violated the *ex parte* rules in the Rules of Procedure but it has created a shadow docket for the PRDM in the halls of Congress and DOE headquarters. This extraordinary misstep appears to have been for the purpose of compelling the Administrator to make a decision that is not based on the record as required under section 7(i) but instead based on third-party influences made outside the record on PNGC's behalf. Notwithstanding the legal infirmities of such a decision if PNGC is successful, it would also be the source of a dangerous precedent for future 7(i) proceedings for what to do if the facts and law are not on your side.

WPAG's members are deeply protective of BPA, increasingly so given the recent staff reductions at the agency. For this reason, we are stunned by PNGC's mobilization of the

¹⁰ 16 U.S.C. § 839e(i)(3),(5).

¹¹ 16 U.S.C. § 839e(i)(6).

¹² 16 U.S.C. § 839f(e)(G).

Congressional delegation, particularly at this point in time, to circumvent the ongoing 7(i) process for a discrete and otherwise unremarkable rate design dispute regarding whether BPA should apply the demand charge to PNGC's members in the same manner that it proposes to apply it to other utilities in the region or whether it should instead provide PNGC's members special treatment because they belong to a Joint Operating Entity (JOE). This is exactly the type of rate issue that Congress created section 7(i) for the BPA Administrator to address in the first instance. We are baffled and embarrassed that, at PNGC's behest, this arcane rate case issue now involves the Congressional delegation and the Secretary of Energy. If, as PNGC appears to believe, BPA's proposed application of the demand charge to PNGC's members in the same manner as it applies the charge to other utilities violates BPA's obligations under its statutes, then PNGC should follow the statute and appeal the issue to the 9th Circuit Court of Appeals for a final and binding legal determination. That is what the law requires and what Congress intended. This entire episode would be absurd if it were not so dangerous.

At no fault of its own, BPA and the Administrator are now placed in an impossible situation. On the one hand, the Administrator could adopt the positions and arguments set forth in the Draft PRDM ROD in the Final PRDM ROD. This would preserve the sanctity of the 7(i) process as the sole and exclusive forum for BPA ratemaking decisions. On the other hand, BPA could succumb to pressure and the problems identified above would become manifest, which would expose the final decision in this proceeding to legal jeopardy of the worst sort. We are sorry that BPA, the Administrator, and BPA's other preference customers have been placed in this untenable position. Nonetheless, the consequences of the decision before BPA are stark: In the event that BPA adopts the draft ROD without change to the demand charge application, its customers will have proof positive that the attempt to unduly influence this proceeding has

failed. If that portion of the draft ROD is altered as sought by PNGC, only one conclusion can be drawn regarding the integrity of the 7(i) process in this proceeding.

Dated this 30th day of May, 2025.

MARSH MUNDORF PRATT SULLIVAN +
McKENZIE, P.S.C.

/s/ *Ryan S. Neale*

Ryan S. Neale
Attorney for the Western Public
Agencies Group

ATTACHMENT 1
COPY OF EX PARTE COMMUNICATION

PRDM-26-M-WG-02

PRDM-26-M-WG-02

Oral Ex Parte Communication

Pursuant to Section 1010.5(f) of the Rules of Procedures, BPA provides the following summary of an oral communication to the Administrator, John Hairston, by Jessica Matlock of the Pacific Northwest Generating Cooperative (PNGC). Administrator Hairston described the communication to the Office of General Counsel. The substance of the *ex parte* communication is discussed in PNGC's May 13, 2025, *ex parte* email communication to the Administrator, which is provided below.

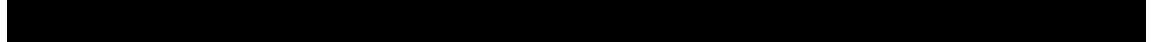
From: Jessica Matlock
Sent: Tuesday, May 13, 2025 4:09 PM
To: John Hairston <jlhairston@bpa.gov>
Subject: Clarification items and JOE

Hi John,

I hope you're doing well. Apologies for the delay in getting back to you. Here's the reference I mentioned earlier:

“The ‘compromise and negotiation’ of the TRM is gone.” PRDM-26-A-01, Chapter 5.0 – Tier 1 Rate Design, p. 57.

We were also disappointed that the draft ROD condescendingly refers to PNGC (JOE) benefits as a “fiction,” (p. 51), providing only “paper aggregation” (p. 52), and no real “diversity benefits” (p. 52). Our staff and members work very hard to bring real benefit to Northwest energy through our cooperative model.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Additionally, As I've shared with you previously, we are deeply disappointed with the direction of the Draft Record of Decision and the significant implications it poses for PNGC Power and our statutory rights as a Joint Operating Entity (JOE). PNGC Power and our member cooperatives have engaged our congressional delegations, and as a result, the attached letter was sent today to Secretary Wright expressing serious concern over BPA's proposed disaggregation of JOEs.

We strongly urge BPA to reconsider this course and work collaboratively with PNGC Power to resolve the issue. Preserving the ability of cooperatives to operate under the JOE structure is essential not only to serving our rural communities reliably and affordably, but also to supporting broader national goals around energy reliability and resource development.

Please don't hesitate to call if you have any questions or would like to speak about a solution going forward.

Thank you,
Jessica

Congress of the United States
Washington, DC 20515

May 13, 2025

The Honorable Chris Wright
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Secretary Wright,

We write to express our continued concern regarding the Bonneville Power Administration's (BPA) proposed policy changes that inhibit the ability of smaller electrical cooperatives to act as one "customer" of BPA through the Joint Operating Entity (JOE) structure. BPA's actions threaten the affordability, resilience, and reliability of power delivery across the rural communities in the Northwest that we represent.

In 2000, Congress unanimously enacted P.L. 106-273, adding Section 5(b)(7) to the Northwest Power Act. This provision gave electric cooperatives the ability to operate as a JOE, a special type of preference power customer that allows multiple electric cooperatives to aggregate their member loads and act as a single customer of BPA. This enabled small, not-for-profit cooperatives in geographically remote and economically challenged communities to achieve economies of scale and ensure access to affordable, reliable federal power. The JOE structure has become an essential vehicle for regional power coordination and assists cooperatives in building out their own non-federal generation. This work will only become more critical as regional energy demand is expected to rapidly increase in the near future.

For over two decades, BPA has recognized the JOE structure and aggregated JOE member loads when assessing demand charges. Yet BPA's April 9, 2025, Draft Record of Decision in the 2029 Public Rate Design Methodology (PRDM-26-A-01) proposes to impose individual demand charges on each member utility, effectively disaggregating JOE membership. This reversal in precedent would directly result in higher energy costs for rural communities that rely on affordable power to support critical infrastructure. Leaving rural America behind will stall energy expansion and go against our shared pursuit of domestic energy dominance and economic resilience.

Under your leadership, the Department of Energy (DOE) has identified the build-out of data centers and dispatchable generation as top national priorities. These goals are heavily dependent on affordable, scalable rural power delivery. Projections show that regional energy demand could double in the next 20 years, with more than 8 GW of new generation needed in the next decade¹.

¹ Northwest Power and Conservation Council https://www.nwcouncil.org/fs/19380/2025_0429_2.pdf

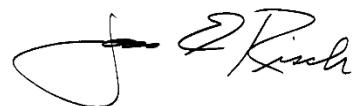
Electric cooperatives in the Northwest serve many of the regions targeted for these investments, and these cooperatives depend on their ability to operate as a JOE.

We therefore request that DOE ensure BPA is following statute and not arbitrarily reversing decades of precedent and burdening our rural communities with higher energy costs in the process. We are committed to working with you to ensure that rural electric cooperatives in the Northwest continue to serve their communities reliably and affordably, and remain full partners in the national energy strategy.

Sincerely,



Mike Simpson
Member of Congress



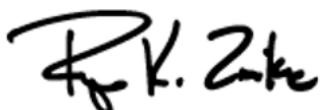
James E. Risch
United States Senator



Russ Fulcher
Member of Congress



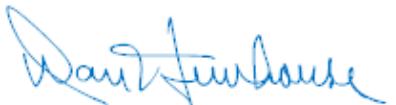
Mike Crapo
United States Senator



Ryan Zinke
Member of Congress



Troy Downing
Member of Congress



Dan Newhouse
Member of Congress



Steve Daines
United States Senator



Cliff Bentz
Member of Congress



Michael Baumgartner
Member of Congress

PRDM-26-M-WG-02

PRDM-26-M-WG-02