

2007 Wholesale Power Rate Case Initial Proposal

REBUTTAL TESTIMONY
FIRM POWER PRODUCTS AND SERVICES
(FPS) RATE SCHEDULE

March 2006

WP-07-E-BPA-36

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ELLIOT E. MAINZER, GERY BOLDEN, CAROL A. MILLER,
AND PHILLIP W. MCLEOD

Witnesses for Bonneville Power Administration

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7 **SERVICES (FPS) RATE SCHEDULE**

8 **Section 1. Introduction and Purpose of Testimony**

9 *Q. Would you state your names and qualifications?*

10 A. My name is Elliot E. Mainzer. My qualifications are contained in WP-07-Q-BPA-34.

11 A. My name is Gery Bolden. My qualifications are contained in WP-07-Q-BPA-05.

12 A. My name is Carol A. Miller. My qualifications are contained in WP-07-Q-BPA-40.

13 A. My name is Phillip W. McLeod. My qualifications are contained in WP-07-Q-BPA-38.

14 *Q. Have you previously submitted testimony in this proceeding?*

15 A. Yes. We previously submitted direct testimony on the Firm Power Products and
16 Services (FPS) Rate Schedule. *See, Mainzer, et al., WP-07-E-BPA-26.* Our direct
17 testimony, as well as this rebuttal testimony, is submitted on behalf of BPA.

18 *Q. What is the purpose of this testimony?*

19 A. The purpose of this testimony is to rebut certain arguments and assertions contained in
20 the direct testimony filed by the Surplus Market Coalition (SMC) regarding BPA's
21 Market Power Analysis. *See, Peters, WP-07-E-JP4-01.* SMC also raised issues
22 regarding inserting language in the General Rate Schedule Provisions and posting FPS
23 transaction data; see the testimony of Evans *et al., WP-07-E-BPA-31*, for BPA's
24 response to those matters.

25 *Q. How is your testimony organized?*

26 A. This testimony is organized in two sections. The first section outlines the purpose of the

1 testimony. Section 2 responds to the SMC's arguments regarding the Market Power
2 Analysis

3 **Section 2. Market Power Analysis**

4 *Q. The SMC has taken a position that it agrees "with the greater degree of pricing flexibility*
5 *in the FPS rate schedule as proposed by BPA." (Peters, WP-07-E-JP4-01, at 1.)*
6 *Notwithstanding that fact, the SMC has indicated that it does not agree with the entire*
7 *proposal regarding the FPS rate schedule. (Peters, WP-07-E-JP4-01, at 2.) SMC*
8 *indicates that it has concerns regarding the Market Power Study (hereafter, referred to*
9 *as the "Study"). Specifically, SMC indicates that its most important concern is that*
10 *submission of any market power study to FERC will yield the appearance, if not the*
11 *reality, of a concession of jurisdiction by FERC over BPA's pricing flexibility under the*
12 *FPS-07 rate schedule. (Peters, WP-07-E-JP4-01, at 3 (emphasis added).) Do you*
13 *agree?*

14 *A. No. We included the Study in our Initial Proposal only as a demonstration of BPA's*
15 *general good faith as a market participant. See, e.g., WP-07-E-BPA-26, at 9-10. BPA*
16 *recognizes that FERC's market power test applies only to FERC-jurisdictional utilities.*
17 *Id. However, FERC's test was the most effective method available for BPA to gauge*
18 *whether BPA lacked market power. BPA therefore used the test merely as a*
19 *demonstrative indicator that BPA lacked market power, which was one of several*
20 *reasons why BPA concluded it would be appropriate for BPA to sell surplus firm power*
21 *at a market-based rate.*

22 *Moreover, from a procedural standpoint it would be inappropriate to withdraw*
23 *the Study at this stage in BPA's formal rate-making proceeding. BPA included the*
24 *Study in its Initial Proposal, in part, to allay potential concerns of rate case parties who*
25 *have taken issue with BPA's market-based rate proposals in the past. At this point, all*
26 *parties have had their opportunity to react to the Study and to the market-based nature of*

1 BPA's proposed FPS-07 rate. Only SMC has opted to do so. However, others may
2 have based their silence on the existence and soundness of BPA's Study. To withdraw
3 the Study now would unfairly remove support for BPA's FPS-07 proposal that parties
4 may have relied upon in evaluating that proposal.

5 Additionally, SMC's perceived jurisdictional issue is substantively unfounded.
6 As we pointed out in our direct testimony, the pricing flexibility, or, market-based,
7 nature of the proposed FPS-07 rate is an aspect of the rate's design and FERC has
8 acknowledged that it does not have jurisdiction over BPA's rate design.

9 *See*, WP-07-E-BPA-26, at 9.

10 *Q. The SMC raises five "substantive concerns" with the Market Power Analysis. (See,*
11 *Peters, WP-07-E-JP4-01, at 3-5.) In general, do you agree with these concerns?*

12 *A.* [Witness McLeod] No. SMC's concerns can be grouped into two categories. The first
13 category includes three criticisms that find fault with FERC's methodology for assessing
14 market power. These criticisms disregard the lengthy procedure FERC used to arrive at
15 the prescribed methodology that involved significant input from participants in the
16 western electricity market. Moreover, in the context of this BPA rate proceeding,
17 concerns regarding the underlying FERC methodology are not relevant to whether or not
18 BPA was able to pass the screens as adopted. The FERC market power screens provide
19 clear instructions about hydroelectric capacity assumptions, definitions of relevant
20 geographic markets, and timeframes of concern. In performing the Study, my staff and I
21 objectively conducted the test for BPA the same way the test would have been conducted
22 for any utility that is FERC-jurisdictional.

23 SMC's second category of concerns consists of two criticisms that fault
24 assumptions used in the Study.

25 *Q. The SMC's first substantive concern is that the capacity analysis required by FERC does*
26 *not actually reflect the realities of system operations in the Northwest which, SMC*

1 *argues, is constrained by water conditions and derated capacity. (Peters, WP-07-E-JP4-*
2 *01, at 3.) Do you agree?*

3 A. [Witness McLeod] No. This concern falls into the category of a criticism of FERC's
4 methodology. As such, it is irrelevant. Moreover, it is substantively invalid. The
5 FERC-mandated adjustments take into consideration the fact that hydro facilities'
6 nameplate ratings do not accurately reflect their power generation capacity. As a
7 remedy, FERC allows applicants to adjust the capacity rating of their hydro facilities
8 based on the facilities' average generation over the prior five years.¹ This adjustment
9 implicitly takes into consideration any of the facilities' constraints such as water
10 availability and operational restrictions. FERC specifically targeted this adjustment to
11 address criticisms of its methodology similar to those being leveled by SMC.

12 Q. *The SMC states that its second substantive concern with the Study is that "FERC's*
13 *approach to market power analysis is essentially 'non-economic': megawatts are added*
14 *and subtracted without any consideration for the underlying costs of individual suppliers*
15 *or the incentives and opportunities to create or take advantage of market power."*
16 *(Peters, WP-07-E-JP4-01, at 3.) Do you agree?*

17 A. [Witness McLeod] No. First, this is another irrelevant criticism of the FERC
18 methodology. Second, the basis for this criticism is that underlying costs of individual
19 suppliers were not taken into consideration. However, SMC has not explained what, if
20 any, correlation exists between a supplier's cost and its ability to exert market power. A
21 supplier has market power when it has the ability to increase price substantially above
22 the market-clearing price by withholding some amount of its supplies from the market.
23 Implicit in this definition is the assumption that a supplier's marginal cost is below the
24 market clearing price since withholding means the supplier could have sold its supplies
25 into the market. What presumably constrains any supplier from exerting market power

¹ The adjustment requires that hydro-facility's nameplate capacity be derated to equal the facility average generation over the past five years. This is equivalent to multiplying the nameplate capacity by the facility average capacity factor for the past five years.

1 in an unregulated market is not its cost but, rather, competition from other suppliers that
2 could replace any supplies withheld from the market. As designed, the FERC pivotal
3 supplier screen asks whether other suppliers within PBL's control area and the larger
4 PNW market have sufficient uncommitted supplies to satisfy the market's wholesale
5 loads without reliance on PBL's uncommitted capacity. The underlying costs of
6 competitive suppliers are irrelevant to the results of the FERC tests.

7 *Q. The SMC's third substantive concern with the Study is that it makes unreasonable*
8 *assumptions about redirected exports; SMC argues the Study goes beyond the*
9 *parameters of the April 14, 2004 Order. (Peters, WP-07-E-JP4-01, at 3-4.) Do you*
10 *agree?*

11 A. [Witness McLeod] No. This is one of SMC's two concerns that focuses on the actual
12 Study, rather than the methodology of FERC's test. In this instance, SMC criticizes the
13 Study's assumption that energy scheduled for export from the market area could be
14 redirected to a third party within the control area or displaced by a third party importer.²
15 SMC argues that this assumption goes beyond the parameters of FERC's April 14, 2004
16 Order, but SMC gives no indication of which parameter it is referring to. To the
17 contrary, the consideration of redirected exports falls comfortably within the analytical
18 framework of the FERC test.

19 If Bonneville or another Northwest seller enters into an export contract with a
20 purchaser based in California, for example, the purchaser has the option to re-sell that
21 energy as opposed to taking it directly to load. This includes the possibility of re-selling
22 the energy within the Northwest and, thus, "re-directing" the energy (that was originally
23 purchased for export from the Northwest) to meet the demands of buyers within the
24 Northwest. Although utilities do not routinely "redirect exports," the practice is frequent
25 enough that these redirected supplies are appropriately considered a source of potential

² The Study focuses on rescheduling the exports to third parties inside the control area but the same result would occur if a third party importer scheduled imports to displace the scheduled exports. In both cases the net transfer would be zero.

1 competition in the Northwest. Redirected exports are an especially viable source of
2 competition during periods of scarcity (which is, of course, when market power abuses
3 are of the greatest concern).

4 PBL's long-term export contracts have been executed under the FPS Rate
5 schedule and do not contain contract terms that would prohibit counterparties from
6 implementing redirects. Other SMC concerns including "business practices such as
7 scheduling procedures...and/or contract terms such as options for points of delivery" are
8 hypothetical scenarios that do not, in practice, "thwart the ability to redirect exported
9 power." Peters, WP-07-E-JP4-01, at 4.

10 SMC's witness also argues that the availability of transmission capacity for the
11 redirected exports would have to be examined without explaining what transmission
12 capacity he is referring to. The underlying assumption of the FERC methodology is that
13 there are no transmission constraints within the relevant market control area to prevent
14 the free flow of electricity under normal conditions. Notwithstanding this assumption,
15 the very small amount of congestion in evidence across the TBL's system (see cutplane
16 discussion and analysis below), provides little support for SMC's suggestion that
17 "transmission capacity within the TBL control area to reach loads might be
18 unavailable. . . ." *Id.*

19 Finally, with respect to the transmission import assumptions contained in the
20 Study, third parties could export power into the BPA control area up to the amount of
21 scheduled exports out of the BPA control area without degrading the amount of
22 simultaneous import capability. Thus, the consideration of redirected exports contained
23 in the Study does not degrade or undermine our assumptions about simultaneous import
24 capability.

25 *Q. The SMC states that its fourth substantive concern with the Study is that "the definition*
26 *of 'relevant market' ignores transmission constraints internal to the TBL control*

1 *area . . .” and, SMC argues, overstates the extent of the relevant market and understates*
2 *BPA’s potential for market power. (Peters, WP-07-E-JP4-01, at 4.) Do you agree?*

3 A. [Witness McLeod and Witness Bolden] No. First, this is another of SMC’s irrelevant
4 criticisms of FERC’s methodology. Beyond that, the criticism is substantively invalid as
5 well. SMC bases this criticism on TBL’s posted Available Transmission Capacity
6 (ATC) on internal flowpaths or cutplanes, which it claims are congested. SMC then
7 proceeds to argue that congestion on these cutplanes limits competition among suppliers,
8 and that a smaller relevant market is required in order to assess market power. In calling
9 for a smaller geographical market, SMC ignores the fact that FERC’s April 14, 2004
10 Order specifies that the market power study should be based on the applicant’s control
11 area.³

12 In its Order, FERC acknowledges that parties may claim that internal constraints
13 could create a smaller relevant market (i.e. load pocket). However, the Order establishes
14 a presumption that an applicant’s control area, and each of its neighboring first-tier
15 control areas, are the relevant geographic markets. Parties may rebut the control-area
16 presumption only by providing evidence that internal constraints limit the relevant
17 market to a smaller area.⁴ SMC has failed to provide any such evidence.

18 Table I (below) summarizes analyses of the 10 internal flowgates listed on the
19 TBL website.⁵ *See*, Bonneville Power Administration, Transmission Business Line,
20 <http://www.transmission.bpa.gov/orgs/opi/intertie/index.shtm> (last visited February 28,
21 2006). As Table I shows, four of the 10 paths never exceeded their path rating during
22 the past three years. Of the remaining six paths, three were constrained for only three
23 hours during the three-year period and the remaining paths were congested for between

³ See “Order on rehearing and modifying interim generation market power analysis and mitigation policy” 107 FERC ¶ 61,018 at P 73 (2004).

⁴ See FERC’s April 14, 2004 Order, at P 75.

⁵ SMC contends that there are 12 internal flowgates or cutplanes that are congested but SMC’s witness fails to identify which cutplanes or flowgates he is referring to. TBL has posted loading information on only 10 internal flowgates.

1 nine and 19 hours during the three-year period. However, congestion on any single path
2 for a minimal number of hours (during an entire three-year period) does not limit access
3 to a local market. Also, SMC has provided no evidence that the very limited congestion
4 on any combination of these paths has actually restricted competitive access to any local
5 market in TBL's control area.

6
7 **Table I**

Flowgates	Hours of Congestion in 3 Yrs
Allston-Keeler	3
Monroe-Echo Lake	17
North-of-Hanford	19
North-of-John Day	0
Paul-Allston	3
Raver-Paul	3
West-of-Cascades North	0
West-of-Cascades South	0
West-of-McNary	9
West-of-Slatt	0

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17 *Q. The SMC's final substantive concern with the Study is that the Study's derating of hydro*
18 *capacity does not follow the requirements of FERC's market power test concerning a*
19 *sensitivity analysis. (Peters, WP-07-E-JP4-01, at 4-5.) Do you agree?*

20 *A. [Witness McLeod] No. SMC argues that the Study should have included a sensitivity*
21 *analysis showing the impact of using the lowest capacity factor in the previous five*
22 *years to estimate the energy available from hydroelectric facilities. SMC fails to note*
23 *that the Study pointed out that a sensitivity analysis would have been superfluous.*

24 The purpose of the sensitivity analysis is to evaluate the applicant's ability to
25 exert market power during low hydro conditions. However, as noted in the Study,

1 BPA's supplies are almost entirely dependent on hydroelectric generation.⁶ Therefore,
2 during low hydro conditions, BPA would have even *less* capacity with which to exert
3 any potential market power. Since BPA passed the market screens using a trailing five-
4 year *average* capacity factor, it would be superfluous to conduct the analysis based on
5 the *lowest* capacity factor of that five-year period.

6 *Q. Beyond its five substantive concerns with the Study, the SMC argues that there is "other*
7 *evidence" that should be taken into account in any analysis of BPA's potential market*
8 *power. First, the SMC argues that tying the price of energy to the purchase of operating*
9 *reserves from BPA's Transmission Business Line (TBL) indicates BPA's potential market*
10 *power by encouraging customers to purchase ancillary services from TBL by offering a*
11 *discount on energy. (Peters, WP-07-E-JP4-01, at 5.)*

12 *A. BPA takes no position on whether this issue was a valid concern. However, in light of*
13 *the proposed resolution of issues described in WP-07-E-BPA-31, this issue is now moot.*

14 *Q. The second piece of "other evidence" SMC believes should be taken into account is*
15 *SMC's assertion that, because BPA has argued that there is essentially no elasticity of*
16 *demand for federal power, BPA can increase the price by at least five percent for a year*
17 *and not have to worry about competition. (Peters, WP-07-E-JP4-01, at 5.) Do you*
18 *agree?*

19 *A. No. SMC has provided no citation in support of its assertion that, "in this same docket,*
20 *BPA has argued that there is essentially no elasticity of demand for federal power."*
21 *Peters, WP-07-E-JP4-01, at 5. However, if SMC is referring to the testimony of BPA's*
22 *Load Resource Study panel, see, WP-07-E-BPA-09, at 7, then SMC has*
23 *mischaracterized that testimony. There, the panel was asked "Do your models reflect*
24 *price elasticities?" WP-07-E-BPA-09, at 7 (emphasis added). The panel then proceeded*
25 *to explain why BPA does not reflect the effects of price elasticities in its models.*

⁶ Of the 22,013 MW of capacity controlled by BPA, 20,568 MW, approximately 93%, are hydroelectric facilities. See WPRDS, WP-07-E-BPA-05, at C-18, Table 1 (BPA's Generation Market Power Analysis).

1 Essentially two reasons were given: (1) trying to develop an overall price elasticity to
2 assume is problematic; and (2) there are rather small price elasticity effects, therefore, it
3 was deemed inefficient and impractical to incorporate a complex adjustment to model
4 those effects. *See, Id.* Testifying that, for modeling purposes, there are rather small
5 price elasticity effects is not the same as arguing that there is no elasticity of demand for
6 federal power.

7 Moreover, SMC's argument takes BPA's testimony out of context and makes an
8 "apples to oranges" comparison. The BPA testimony regarding elasticity related only to
9 BPA's contracted load served under the PF rate -- specifically, BPA's forecasting
10 process for modeling changes in demand for the energy sold under that rate schedule.
11 The PF rate is used primarily for BPA's "requirements customers," that is, customers
12 whose energy needs, net of their own resources and other contracts, are required by
13 statute to be met by BPA. That is a very different rate from the proposed FPS-07 rate,
14 which is designed for use in marketing BPA's surplus power.

15 The customers who will be buying under the proposed FPS-07 rate will be doing
16 so in a very competitive pricing environment in which buyers and sellers are constantly
17 weighing market fundamentals, load obligations, and generation resources in deciding at
18 what price to buy or sell. Bilateral and especially screen-traded markets such as the
19 Intercontinental Exchange (ICE) are a transparent reflection of the price sensitivity of
20 buyers and sellers in the wholesale market. BPA participates in these markets like any
21 other seller and has no guarantee that the prices at which it offers to sell energy will be
22 matched by willing buyers. If BPA's price is too high, buyers will turn to other sellers
23 or rely on their own resources. To argue that there is no price elasticity of demand for
24 sales of federal power under the FPS rate is to completely disregard the day-to-day
25 dynamics of the wholesale electricity market. Accordingly, SMC's second piece of
26 "other evidence" regarding price elasticity of demand is invalid.

1 Q. *The final piece of “other evidence” SMC believes should be taken into account is SMC’s*
2 *assertion that BPA’s supply of power is interdependent with supplies of power from*
3 *potential competitors because: (1) some potentially competing suppliers operate*
4 *hydroelectric production facilities that are downstream of federal facilities, and thus*
5 *depend on the supply of federal energy to operate their own systems; and (2) the portion*
6 *of the federal power system that has been sold in the form of the Slice product is*
7 *dependent on determinations by PBL of the flexibilities and capacity available from*
8 *federal resources. (Peters, WP-07-E-JP4-01, at 5.) Do you agree?*

9 A. No. While it is true that there are a number of potentially competing suppliers that are
10 downstream of federal facilities, BPA’s ability to deny these suppliers access to the
11 market is extremely limited. First of all, a number of non-federal facilities are
12 downstream of large federal projects (Hungry Horse, Albeni Falls) that are on largely
13 fixed flows as determined by irrigation and flood control requirements. BPA therefore
14 has limited dispatch flexibility with these projects.

15 Second, there are complex, long-standing agreements in place (Pacific Northwest
16 Coordination Agreement [PNCA] and Mid-C Hourly Coordination) that are used to
17 ensure equitable and efficient co-operation of federal and non-federal facilities. With
18 respect to the Mid-C dams, because BPA has facilities both upstream and downstream
19 from these facilities, the Agency has a positive incentive (and binding requirements) to
20 help ensure an efficient and economic operation of these facilities. While instances can
21 arise when it is difficult to seamlessly implement the PNCA and Mid-C Hourly
22 Coordination agreements, the dependencies of operation among hydro generators within
23 the Columbia River basin are mutual and do not systematically disadvantage one group
24 of sellers over another. Thus, even if BPA were so ill-inclined, it could never
25 commandeer the basin’s water to exert market power as SMC posits.

26 With respect to SMC’s concerns surrounding Slice, as the operator of the

1 FCRPS, the PBL defines the bounds of flexibility that are available to Slice customers.
2 Slice customers' flexibility, or rights to take energy, are defined over time periods of
3 seasons, months, days and hours. PBL endeavors to make these flexibility
4 determinations as accurate as possible. The Slice product is a legally enforced
5 agreement, and as long as Slice customers are operating within the minimum and
6 maximum bounds of their flexibility, the PBL cannot limit their ability to nominate
7 energy for load service and sales into the wholesale market. SMC's assertion implies a
8 degree of bad faith that is wholly inconsistent with BPA's operating philosophy, public
9 purpose, and intent in this rate proceeding.

10 *Q. The SMC argues that the market has become "less liquid" over the last few years, which*
11 *calls into question the relevance of the Study because it was conducted with data from*
12 *2003. (Peters, WP-07-E-JP4-01, at 6.) Do you agree?*

13 *A. No. First, as we stated in our direct testimony, the Study used calendar year 2003 as the*
14 *focus of our analysis because it was the most recent year for which complete data were*
15 *available. See, WP-07-E-BPA-26, at 13. Because there is an unavoidable time lag in*
16 *data availability in conducting such tests, this is essentially a criticism of the FERC*
17 *methodology itself. As such, this criticism is irrelevant for the purposes of this rate case.*

18 Second, BPA strongly disagrees with the assertion that the market has become
19 less liquid since 2003. The Western Systems Power Pool (WSPP), which administers
20 the most popular umbrella agreement governing wholesale energy trading in the
21 Western Electricity Coordinating Council (WECC), has seen a steady increase in
22 membership in recent years. During 2003 – 2005, 39 companies became new members
23 of the WSPP. While not all of these entities have become active wholesale market
24 participants in the west, the growth in WSPP membership is indicative of a broader
25 trend. With the growing utilization of the ICE trading platform and the entry of many
26 financial institutions into the western electricity market (including banks and hedge

1 funds with excellent credit ratings), market liquidity has increased considerably over the
2 past two years, in both the daily and forward markets.

3 Moreover, SMC focuses on too narrow of a time window. BPA's underlying
4 argument supporting sales at market-based rates is focused on the broad increase in
5 liquidity from 1996 to the present, rather than from 2003. Since 1996, 214 marketing
6 entities have become members of the WSPP. Although there were a number of parties
7 who departed the wholesale marketing space following the California power crisis in
8 2000-2001, that has not affected the overall increase in market liquidity from 1996 to the
9 present.

10 *Q. The SMC argues that, if the Market Power Analysis is submitted to FERC it will likely*
11 *draw protests and cause a delay in FERC's grant of interim approval to the FPS-07 rate*
12 *schedule. (Peters, WP-07-E-JP4-01, at 6.) Do you agree?*

13 *A. No. As stated earlier in this testimony, FERC plays a limited role in approving BPA's*
14 *rates. SMC has not pointed to anything about the Study, or anything about FERC's rate*
15 *approval process, that suggests submitting the Study will bring protests or cause a delay*
16 *in FERC's approval of the proposed FPS-07 rate schedule. Nor has SMC specifically*
17 *indicated who it expects would mount such protests, or why. This concern is invalid.*

18 *Q. The SMC, argues "certain aspects of [the Market Power Study], in conjunction with*
19 *BPA's proposal regarding the Operating Reserves Credit, call into question BPA's*
20 *compliance with Orders 888 and 889; we are not interested in having BPA's open-access*
21 *Transmission Tariff challenged at FERC." (Peters, WP-07-E-JP4-01, at 6.)*

22 *A. BPA takes no position on whether this issue was a valid concern. However, as described*
23 *in WP-07-E-BPA-31, BPA has altered its proposal in a way that renders this issue moot.*

24 *Q. Does this conclude your testimony?*

25 *A. Yes.*

26