

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

Tiered Rate Methodology Rate Case            )  
  )  
  )        BPA Docket TRM-12-E-AT-01

DIRECT CASE  
OF THE  
AFFILIATED TRIBES OF NORTHWEST INDIANS  
ECONOMIC DEVELOPMENT CORPORATION

Pursuant to Rule 1010.11 of the Bonneville Power Administration (“BPA”) Rules of Procedure Governing Rate Hearings, the Special Rule of Practice to Govern These Proceedings filed by Order TRM-12-HOO-07, and the verbal Orders of the Hearing Officer at the July 9, 2008 Prehearing Conference, the Affiliated Tribes of NW Indians Economic Development Corporation (ATNI-EDC) presents the following Direct Case and Testimony in the Tiered Rate Methodology Rate Case (TRM).

RESPECTFULLY SUBMITTED:

*Margaret M. Schaff*

Margaret M. Schaff  
Energy Director  
ATNI-EDC

1 INDEX OF TESTIMONY OF MARGARET M. SCHAFF

2 Witness for the Affiliated Tribes of Northwest Indians

3 Economic Development Corporation

4  
5 Section 1: Margaret M. Schaff Qualifications to Testify

6 Section 2: New Public Utilities

7 Section 3: Criteria and Conditions for Revising the TRM and

8 Processes for TRM Revision

9 Section 4: Editorial Matters

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11 **Section 1: Margaret M. Schaff Qualifications to Testify**

12 *Q: Please provide your qualifications to testify in this matter:*

13 A. I am currently the Energy Director for the Affiliated Tribes of Northwest Indians Economic  
14 Development Corporation, and the parent organization the Affiliated Tribes of Northwest Indians  
15 (ATNI). I have held a position doing energy policy analysis for these organizations since  
16 approximately 1996 and through this work have become familiar on a first hand basis with the  
17 energy related needs of the Indian Tribes in Washington, Oregon, Montana, Idaho, Alaska, and  
18 Northern California that are members of these organizations. I have a Bachelor of Arts from Quincy  
19 University in Quincy Illinois, and a Juris Doctorate from the University of Denver. I have been a  
20 member of the Colorado Bar Association since 1988. I have been an energy attorney for various  
21 clients including the U.S. Department of Energy, Western Area Power Administration, and a number  
22 of Indian tribes and tribal utilities, including the Umpqua Indian Utility Cooperative, a current full  
23 requirements customer of BPA, and I have been an energy policy analyst or consultant for many

1 Indian tribal organizations across the United States and other organizations such as the National  
2 Renewable Energy Laboratories. I have personal knowledge of the issues reflected in this testimony.

3

4 **Section 2: New Public Utilities**

5 *Q: Please summarize ATNI-EDC's interest in new public utilities:*

6 A: ATNI-EDC and its parent company ATNI have fifty-four member Indian tribes from the states  
7 of Washington, Oregon, Idaho, Montana, and a few member tribes from Alaska and Northern  
8 California. These Indian tribes have diverse cultures, backgrounds, and interests. Many have small  
9 reservations, and many have very large reservations. The ATNI-EDC member tribes have many  
10 issues and concerns in common. For example, tribal populations are growing faster than that of  
11 the general public, and along with population growth many tribal governments are developing  
12 social, educational, and business opportunities to service their people. Indian reservations had  
13 long been lacking in many basic infrastructure necessities. Where infrastructure exists, it is  
14 sometimes of poor quality or inadequate to meet needs of growth. Expensive line extension  
15 policies leave many reservation residents and tribal governments underserved, or delay projects.  
16 When infrastructure is built, it is often paid for by the tribes, but owned by third parties. In spite of  
17 some recent business and social developments, most Indian reservations have much higher rates of  
18 poverty and much higher rates of unemployment than non-Indians, making issues of increasing  
19 energy costs for average consumers of much greater impact. Indian tribal governments rarely can  
20 tax their people, therefore, tribal governments are having difficulty meeting higher energy cost  
21 budgets on fixed and generally inadequate budgets. Despite these challenges, Indian tribal  
22 governments fiercely protect their rights as sovereign governments: the rights to set their own

1 destinies and rule themselves honoring their cultures and traditions. Tribes recognize that self-  
2 sufficiency is a key to meeting their goals and protecting the interests of their members.

3         As tribes consider self-sufficiency goals, expand existing infrastructure, build businesses  
4 and member services, and seek to create jobs, many tribes are exploring the option of tribal utilities  
5 to meet these needs, and to encourage business development on their lands. Many of the tribes  
6 with cultural histories that depended on the blessings of the Columbia River and its tributaries now  
7 wish to continue to take part in the benefits of the rivers to the region. The Columbia Basin tribes  
8 have experienced devastating reductions in their ability to harvest salmon, steelhead, lamprey and  
9 to protect and manage other important resources. This has adversely affected tribal economies,  
10 cultures and religion. It is important to keep this history in mind in developing policies that will  
11 allow tribes to get some benefit from the Federal Columbia River Power System (FCRPS).

12         Indian Tribes in the Northwest have not benefited from the FCRPS as much as other  
13 communities. Of the fifty-four ATNI-EDC members, three have utilities operated by a tribe or  
14 tribes serving local loads. At least nine others are now actively considering tribal utility formation.  
15 Over the twenty-year period of this TRM, additional tribes will certainly consider formation of  
16 tribal utilities or will grow existing small utilities. At this time, I know of no potential tribal  
17 utilities in the BPA service territory whose initial load is likely to exceed 10 aMW. Tribal utility  
18 formation is generally only economically feasible if a share of the benefit of the FCRPS is  
19 available to them. The TRM will directly impact the ability of ATNI-EDC member tribes to form  
20 utilities and to participate and encourage in other business development and energy development  
21 on their reservations.

22

1 *Q: Please summarize BPA’s statutory and other legal obligations regarding new public utilities*  
2 *and new tribal energy development:*

3 A: Congress has many times consistently required BPA to give preference to public bodies and  
4 cooperatives and other non-profit organizations. See the following examples:

- 5     ▪ Section 4 of the Bonneville Project Act<sup>1</sup>: “In order to insure that the facilities for the  
6       generation of electric energy at the Bonneville project shall be operated for the benefit of the  
7       general public, and particularly of domestic and rural consumers, the Administrator shall at  
8       all times, in disposing of electric energy generated at said project, give preference and  
9       priority to public bodies and cooperatives.”
- 10    ▪ Section 9 of the Reclamation Project Act of 1939<sup>2</sup>: “That in said sales or leases preference  
11     shall be given to municipalities and other public corporations or agencies; and also to  
12     cooperatives and other nonprofit organizations financed in whole or in part by loans made  
13     pursuant to the Rural Electrification Act of 1936<sup>3</sup> and any amendments thereof.
- 14    ▪ Section 5 of Pacific Northwest Electric Power Planning and Conservation Act<sup>4</sup>: “All power  
15     sales under this Act shall be subject at all times to the preference and priority provisions of  
16     the Bonneville Project Act of 1937.”
- 17    ▪ Section 10 of Pacific Northwest Electric Power Planning and Conservation Act<sup>5</sup>: “Nothing  
18     in this Act shall alter, diminish, abridge, or otherwise affect the provisions of other Federal  
19     laws by which public bodies and cooperatives are entitled to preference and priority in the  
20     sale of federally generated electric power.”

21  
22 Congress also consistently required that BPA ensure the “widest possible use” of the benefits of  
23 the federal power system<sup>6</sup>. See the following examples:

- 24     ▪ Section 2 of the Bonneville Project Act<sup>7</sup>: “In order to encourage the widest possible use of  
25     all electric energy that can be generated and marketed and to provide reasonable outlets  
26     therefore, and to prevent the monopolization thereof by limited groups, the Administrator is  
27     authorized and directed to provide, construct, operate, maintain, and improve such electric  
28     transmission lines and substations, and facilities and structures appurtenant thereto, as he  
29     finds necessary, desirable, or appropriate for the purpose of transmitting electric energy,  
30     available for sale from the Bonneville project to existing and potential markets...”

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<sup>1</sup> Bonneville Project Act § 4(a), 16 U.S.C. § 832(a) (1937).

<sup>2</sup> Reclamation Project Act § 9, 43 U.S.C. § 485h(c) (1939).

<sup>3</sup> Rural Electrification Act, 7 U.S.C. § 901 (1936).

<sup>4</sup> Pacific Northwest Electric Power Planning and Conservation Act § 5, 16 U.S.C. § 839c(a) (1980).

<sup>5</sup> 16 U.S.C. § 839g(c).

<sup>6</sup> 16 U.S.C. § 832a(b).

<sup>7</sup> 16 U.S.C. § 832(a).

- 1       ▪ Section 6 of the Bonneville Project Act<sup>10</sup>: “...Rate schedules...shall be fixed and established  
2 with a view to encouraging the widest possible diversified use of electric energy. The said  
3 rate schedules may provide for uniform rates or rates uniform throughout prescribed  
4 transmission areas in order to extend the benefits of an integrated transmission system and  
5 encourage the equitable distribution of electric energy developed...”
- 6       ▪ Section 5 of Flood Control Act<sup>11</sup>: “Electric power and energy generated at reservoir projects  
7 under the control of the War Department... shall be delivered to the Secretary of the Interior  
8 who shall transmit and dispose of such power and energy in such manner as to encourage  
9 the most widespread use thereof at the lowest possible rates to consumers consistent with  
10 sound business principles...Preference in the sale of such power and energy shall be given  
11 to public bodies and cooperatives.”  
12  
13

14 Congress has authorized BPA’s Administrator to create “standards for service” which must be met  
15 prior to sales of power<sup>12</sup>. In addition to BPA’s trust responsibility to Indian tribes, which is well  
16 documented in case law and federal policy, Congress also specifically establishes policies  
17 encouraging tribal energy development and requires certain actions of the BPA Administrator as  
18 relates to Indian tribal energy development. Section 2605 of Title XXVI of the Energy Policy Act  
19 of 2005<sup>13</sup> obligates the Administrators of the Federal Power Marketing Administrations to use their  
20 authorities to encourage tribal energy development.  
21

22 *Q: How does the Tiered Rate Methodology as proposed comply with the letter and spirit of BPA’s*  
23 *statutory obligations regarding new public utilities?*

24 A: BPA has made certain accommodations for new utilities, and new small utilities in its Regional  
25 Dialogue policy and the TRM; for example:

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<sup>10</sup> 16 U.S.C. § 832e.

<sup>11</sup> Flood Control Act § 5, 16 U.S.C. § 825s (1944).

<sup>12</sup> See § 5(b)(4), 16 U.S.C. § 839(b)(4).

<sup>13</sup> Energy Policy Act of 2005 § 10, Pub. L. No. 109–58, 25 U.S.C. §§ 3501 *et seq.* (2006).

- 1 1. BPA has agreed to augment the federal system to provide new publics up to 250 aMW over  
2 the course of the TRM. There is a 50 aMW limit of augmentation per rate period, with an  
3 exception to the 50 aMW limit for the first five small utilities under 10 aMW.
- 4 2. BPA has also made accommodation for tribal utilities. Yakama Power, a tribal utility that  
5 began taking service from BPA in 2001, qualifies as a “New Tribal Utility” under the  
6 TRM. At the time of its initial service of full requirements BPA power in 2001, Yakama  
7 Power planned to grow to a size of approximately 42 aMW. Yakama Power now buys  
8 approximately 4 aMW from BPA. It was requested that BPA accommodate the growth  
9 plans of Yakama Power, and growth plans of similarly situated new tribal utilities that may  
10 form during the TRM by allowing their CHWMs to grow as their load grows or as they  
11 annex new loads. Because many new tribal utilities intend to grow in phases, establishing a  
12 CHWM under the TRM at one time was not workable for these tribal utilities. BPA  
13 accommodated this request by providing that CHWMs of new tribal utilities would be  
14 allowed to grow up to a total of 40 aMW (which is subject to the 250 aMW limit) until  
15 2012.
- 16 3. BPA has also provided some flexibility in its requirement that a New Public provide a three  
17 year binding notice after meeting the BPA standards for Service by providing that transfers  
18 of CHWM and associated RHWM from existing publics to a New Public may be effective  
19 on the date that the New Public begins service.

20 ATNI-EDC sincerely appreciates BPA’s willingness to support new public utilities.

21  
22 *Q: How could the Tiered Rate Methodology be improved as it relates to new public utilities?*

1 A: There are a number of improvements that could be made to the TRM to meet the letter and the  
2 spirit of the BPA legal obligations described above:

- 3 1. Given the Federal laws and policies supporting the development of tribal utilities and the  
4 historical inequities in the FCRPS-related costs borne by tribal communities and lack of  
5 FCRPS benefits to these communities; the tribes believe that BPA’s methodology should  
6 allow the formation and expansion of any new tribal utility using Tier 1 power. The  
7 impacts of such a policy on other customers would be very small and is clearly warranted  
8 given Federal law and policies and BPA’s Trust obligations to Indian tribes. Without such  
9 a policy, it is unlikely that very many new tribal utilities will form. This will mean that  
10 tribal communities will have to wait at least twenty more years to secure the benefits of the  
11 FCRPS. This change in policy would address our concerns related to tribal utilities below.
- 12 2. The 250 aMW limit for augmentation for new publics will likely be insufficient over the  
13 twenty year course of the TRM to meet the needs of new publics wishing to form and  
14 receive a CHWM. The 250 aMW was chosen since that is approximately the amount of  
15 new public load that occurred in the last 20 years. However, Indian tribes were not  
16 determined to be preference entities by BPA until the “Subscription” process under which  
17 service began in 2001. Further, tribes are only recently becoming interested in utility  
18 formation. Tribal governments are concerned that once the 250 aMW is used up, no further  
19 utilities will be able to form and take power at Tier 1 rates. It is clear from the TRM that  
20 the Federal Columbia River Power System (FCRPS) is entirely dedicated to the Tier 1 rate.  
21 Any other power a new utility may be able to buy from BPA is at Tier 2 rates, which is not  
22 benefited by the FCRPS. Without access to Tier 1 new public utilities, including tribal  
23 utilities may not form because they would face significant rate increases. The 250 aMW

1 limit is not consistent with the spirit of the law by limiting the benefit of the FCRPS to  
2 current customers and whoever is fastest at forming the first new utilities.

- 3 3. The 50 aMW limit per rate period will also limit the formation of new public utilities.

4 Under BPA's phase-in proposal, a small utility would likely need to purchase market-based  
5 power for a significant portion of its load for the first period after its formation; this would  
6 likely result in rates that are higher than existing service and therefore make new utilities  
7 economically infeasible. While we appreciate the exception for the first five small utilities,  
8 it is likely insufficient over the course of the 20 years for new small utilities, including  
9 tribal utilities. As soon as one large utility forms, this exception may become an effective  
10 limit on the number of new tribal utilities that can form. Further, there is no prohibition  
11 from a larger utility breaking itself down into a number of new small utilities and further  
12 limiting the application of the exception. Because the small amount of augmentation that  
13 will be needed for small utilities will not impact BPA's acquisition of power, and will only  
14 impact the other customers' Tier 1 rate in a *de minimis* fashion, we request that the  
15 exception for new small utilities be expanded such that the Administrator have discretion to  
16 accept any new small that will not significantly impact the Tier 1 rates or BPA's ability to  
17 augment the system: at a minimum, the Administrator should have the discretion to  
18 provide Tier 1 power to any new tribal utility. Such a change would not place a limit on  
19 the Administrator's discretion, which is correctly noted by BPA in their Overview to the  
20 Supplemental Testimony on page 6, lines 1-10. "BPA reserves its discretion to, in  
21 appropriate circumstances, work with potential small Tribal utilities to explore ways to  
22 facilitate the development of those utilities."

1 4. The Regional Dialogue Policy and the TRM establish a three year binding notice period for  
2 New Publics forming with loads previously served by an entity other than an Existing  
3 Public, with an exception for small publics under 10 aMW that requires binding notice to  
4 BPA before July 1 of the Forecast Year to be eligible for the CHWM in the next Rate  
5 Period. We understand the need for appropriate notice: however, the notice should not  
6 require that all standards for service be met. A utility can show BPA that it is serious if it is  
7 legally formed, has appropriate bank accounts, and has met other standards, but is still in  
8 the process of acquiring all necessary facilities and infrastructure to provide service. It is  
9 unduly restrictive and expensive to require a utility to form, and acquire all infrastructure  
10 and then wait up to three years to be eligible for Tier 1 power. This requirement will make  
11 new utility formation infeasible and is contrary to BPA’s mandates of widespread use of  
12 the FCRPS and to the federal laws and policies supporting the development of new utilities,  
13 especially tribal utilities<sup>14</sup>.

14  
15 **Section 3: Criteria and Conditions for Revising the TRM and**  
16 **Processes for TRM Revision**

17 *Q: What objections does ATNI-EDC have to Sections 12, Criteria and Conditions for Revising the*  
18 *TRM and Section 13, Processes for TRM Revisions?*

19 A: Sections 12 and 13 of the TRM when read together, give BPA’s existing customers a “veto”  
20 over changes to the TRM during the twenty year term of the TRM to the exclusion of public  
21 bodies who may be eligible to become new publics.

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<sup>14</sup> 25 U.S.C. §§ 3501 *et seq.* (2006).

- 1       1. For example, if a new public utility sought to form and an unintended consequence of the  
2       TRM prevented its formation, it is unclear whether existing customers could exercise their  
3       veto to block the formation. The TRM currently states that the Section 13.2.1 procedures  
4       “apply only to revisions to the TRM as provided for in section 12.3 that address or rectify  
5       unintended consequences of the TRM *that affect only Customers with CHWM Contracts*, or  
6       that do not affect or affect only in a de minimum manner the IOU or DSI customers of  
7       BPA or BPA customers that are not eligible for or do not take service under SCWM  
8       Contracts.” (See Section 13.3, TRM Page 99). It is unclear whether BPA could propose a  
9       change to the TRM for this circumstance through a rate process without these procedures.
- 10      2. For example, if a new public utility sought to form and an improvement or enhancement to  
11      the TRM would allow the formation, or would provide significant cost savings, or would  
12      otherwise be good public policy, current customers could veto this “improvement or  
13      enhancement”. Certain customers, especially ones directly impacted by a new utility,  
14      likely would vote to block the improvement or enhancement if their CHWM(s) would be  
15      impacted or if they simply wished not to share in the benefits of the federal system. (See  
16      Section 13.3 TRM Page 99.)
- 17      3. For example, if a new public utility sought to form and obtained a change in the Regional  
18      Dialogue policy through a court order, and the court order was not specific regarding  
19      needed changes to the TRM, current customers could block formation of the utility, or at  
20      the very least expensively prolong the legal process and delay the new utility formation by  
21      arguing about the scope of the court order. (See Section 13.3 TRM Page 99.)

22   Such “vetos” improperly give existing customers control over the use of the federal system. They  
23   are an improper delegation of the Administrator’s statutory obligations to entities with commercial

1 interests. Additionally, the extensive new procedures found in sections 12 and 13 of the TRM  
2 create expensive and unduly burdensome processes and time lines that are in addition to the  
3 statutory procedures already applicable to BPA rate making. Such expensive and unduly  
4 burdensome processes inappropriately restrict the access of non-customers to the federal system  
5 and to federal processes. They are inappropriately designed to discourage access to statutorily  
6 established rate making procedures.

7

#### 8 **Section 4: Editorial Matters**

9 *Q: What editorial matters may need to be addressed?*

10 A: There are a number of editorial matters related to the above issues that may need to be  
11 clarified, as follows:

- 12 1. Change definition of “Additional CHWM” by adding italicized text: “means the *sum of*  
13 *CHWMs...*”
- 14 2. Definition of “Critical Period” refers to the “period when the expected regulated ...”  
15 ‘Period’ seems like it needs a description of generally how long the period should be.
- 16 3. Should 3.2.1.2 (page 21, line 1-2) be amended as follows: BPA will establish amounts of  
17 Augmentation for Additional CHWM in an amount equal to the Additional CHWMs of  
18 New Publics established pursuant to section 4.1.6 *and any augmentation made for DOE*  
19 *Richland.*
- 20 4. In 4.13.1 (page 33, line 17) the phrase “This augmentation amount established in the  
21 CHWM Process will be the Augmentation Limit” should be combined with the definition  
22 for “Augmentation Limit” to make the meaning clear.

1        5. In 4.1.6.3 (page 37 line 24-25), is DOE Richland subject to the 50 MW Rate Case CHWM  
2            Limit? They are included in the “Additional CHWM” definition.

3        6. The formula in 4.2.1 (page 41, lines 20-15) should contain the exception for the 40 MW of  
4            tribal utility load growth/annexation. Tribal utilities with load growth or annexations using  
5            part of the 40 MW will have additional steps after their RHWM is calculated using the  
6            formula.

7        *Q: Does this conclude your testimony?*

8        A: Yes.