

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

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

SUPPLEMENTAL DIRECT TESTIMONY
OF
CLARK PUBLIC UTILITIES

WITNESSES:

LYNN LATENDRESSE

GARY SALEBA

STEVE ANDERSEN

Exhibit No. REP-12-E-CL-02

SUBJECT OF TESTIMONY:

BPA's Supplemental Testimony Regarding the Final Settlement Agreement

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

In the Matter of:

PROPOSED RESIDENTIAL EXCHANGE
SETTLEMENT AGREEMENT PROCEEDING

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BPA Docket No. REP-12

SUPPLEMENTAL DIRECT
TESTIMONY

**SUPPLEMENTAL DIRECT TESTIMONY
OF CLARK PUBLIC UTILITIES**

1

2 **1. INTRODUCTION**

3 **Q. Would you state your names, employers and positions?**

4 **A.** My name is Lynn Latendresse, and I am employed Clark Public Utilities. My current
5 position is Power Manager. My qualifications and responsibilities are presented in the
6 exhibit entitled Qualifications, REP-12-Q-CL-01.

7 **A.** My name is Gary Saleba, and I am employed by EES Consulting. My current position is
8 President. My qualifications and responsibilities are presented in the exhibit entitled
9 Qualifications, REP-12-Q-CL-02.

10 **A.** My name is Steve Andersen, and I am employed by EES Consulting. My current
11 position is Manager of Project Evaluations. My qualifications and responsibilities are
12 presented in the exhibit entitled Qualifications, REP-12-Q-CL-03.

13 **Q. On whose behalf are you testifying?**

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

1 **Q. Why is this additional testimony necessary?**

2 **A.** This testimony is in response to BPA's Supplemental Testimony, REP-12-E-BPA-10.
3 The BPA Supplemental Testimony ("Supplemental" or "BPA Supplemental") was
4 necessitated by the fact that the draft of the 2012 REP Settlement Agreement
5 ("Settlement Agreement") relied upon by BPA in its Initial Rate Proposal has been
6 superseded by a number of additional drafts, culminating in the final Settlement
7 Agreement filed in this case on March 1, 2011. As a consequence, it was necessary for
8 BPA to address the changes in the final Settlement Agreement that was filed. This
9 testimony addresses the following topics contained in the Supplemental Testimony:

- 10 • BPA's proposal to provide reduced Residential Exchange Program ("REP")
11 benefits to REP participants who are not offered the Settlement Agreement.
- 12 • BPA's proposal to provide CPU REP benefits that are proportional to those of the
13 IOUs in the final Settlement Agreement, but without the other advantages of the
14 final Settlement Agreement.
- 15 • BPA's proposal to depart from the statutory application of §7(b)(2) and (3) in
16 determining REP benefits for CPU.

17
18 **2. BPA'S PROPOSED REP CALCULATION PROVIDES REDUCED BENEFITS TO**
19 **PREFERENCE CUSTOMER REP PARTICIPANTS**
20

21 **Q. What conclusion does BPA reach in comparing the cost protection provided to**
22 **preference customers by the application of §7(b)(2) and (3) to that available under**
23 **the final Settlement Agreement?**

24 **A.** BPA concludes that ". . . the Settlement provides superior rate protection for preference
25 customers . . . than the alternatives." REP-12-E-BPA-10, p. 6, lines 11-13. The

1 alternatives referenced in the Supplemental Testimony include the calculation of REP
2 benefits under the application of the statutory rate directives that have been used by BPA
3 since the passage of the Northwest Power Act to determine REP benefits for both
4 investor owned utilities (“IOUs”) and preference customer participants in the REP.

5 **Q. What does this mean with regard to the level of REP benefits available to**
6 **participants under the Settlement?**

7 **A.** Providing preference customers REP cost protection that is superior to the REP cost
8 protection that BPA would provide under the statutory rate directives, including §7(b)(2)
9 and (3), means that under the final Settlement Agreement BPA is providing the IOUs
10 with less REP benefits than it would provide to them under the REP implemented in
11 accordance with the statutory rate directives.

12 **Q. Why is this important to CPU and its residential/small farm customers?**

13 **A.** We assume that the IOUs have reasons for accepting REP benefits under the final
14 Settlement Agreement that are, according to BPA, less than they would receive under the
15 REP implemented in accordance with the statutory rate directives. However, BPA is also
16 proposing to calculate the REP benefits available to CPU in a fashion that is based on the
17 REP benefits to be provided to the IOUs under the final Settlement Agreement, even
18 though CPU has not settled its REP benefit amounts with BPA. As a consequence, under
19 BPA’s proposal if the final Settlement Agreement is implemented, CPU will receive
20 reduced REP benefits based on the REP benefits provided to the IOUs under the final
21 Settlement Agreement. This will be less than CPU is entitled to receive under the REP if
22 BPA were to implement it in accordance with the statutory rate directives.

1 **Q. How is it that BPA's REP proposed calculation results in reduced REP benefits for**
2 **CPU?**

3 **A.** While the final Settlement Agreement is silent regarding the method to be used by BPA
4 to calculate preference customer REP benefits, BPA has proposed a calculation to
5 determine those REP benefits that is based on the level of REP benefits available to the
6 IOUs under the final Settlement Agreement. It starts with the calculation of utility
7 specific ASCs using the applicable Average System Cost Methodology. The gross REP
8 benefits are then calculated by subtracting the base PF Exchange rate from the ASC of
9 each participating preference customer, and multiplying the difference by its forecast load
10 that qualifies for REP benefits (small farm and residential load). REP-12-E-BPA-06, p.
11 2. BPA then constructs a ratio, the numerator of which is the applicable IOU REP
12 benefits under the final Settlement Agreement plus any Refund Amount included in the
13 PF rate pursuant to the Settlement Agreement, and the denominator of which is the gross
14 IOU REP benefits. REP-12-E-BPA-05, pp. 2-3. This ratio is then applied to the gross
15 REP benefits of each participating preference customer, such as CPU, to determine their
16 net REP benefits. This results in the preference customer gross REP benefits being
17 reduced by the same proportion that the IOU's REP benefits under the final Settlement
18 Agreement are relative to the gross IOU REP benefits.

19 **Q. What is the result of using this method to calculate preference customer REP**
20 **benefits?**

21 **A.** It makes preference customer REP benefits essentially derivative of the reduced REP
22 benefits the IOUs have accepted under the final Settlement Agreement to dispose of the
23 outstanding claims they face regarding determinations made by BPA in the WP-07S and

1 WP-10 proceedings. In essence, the REP benefits afforded to preference customers under
2 the proposed BPA calculation are reduced as if they faced the same litigation risks, and
3 agreed to make the same settlement concessions, as the IOUs did. In summary, BPA's
4 proposed method for determining preference customer REP benefits provides CPU with
5 less REP benefits than it would be entitled to receive under the REP if it were
6 implemented in accordance with the statutory rate directives.

7 **Q. Are there any other aspects of BPA's proposal for determining preference customer**
8 **REP benefits under the final Settlement Agreement to which you wish to speak?**

9 **A.** As part of the final Settlement Agreement, the IOUs will not be subject to any deemer
10 account accruals, or to the exercise of BPA's statutory *in lieu* authority. REP-12-E-BPA-
11 10, p. 18; p. 20. However, for preference customer participants in the REP, while BPA is
12 proposing to pay them reduced REP benefits based on the IOU REP benefits under the
13 final Settlement Agreement, it is not providing them any protection from deemer account
14 accruals and *in lieu* purchases. In contrast, under the final Settlement Agreement the IOU
15 REP benefits are protected from both the deemer accruals and any *in lieu* purchases. The
16 operation of both the deemer account and the *in lieu* provision are likely to further reduce
17 the REP benefits available to CPU's residential and small farm customers during the final
18 Settlement Agreement term.

19 **Q. Please explain how the deemer account operates?**

20 **A.** The deemer account is basically an accrual of negative REP benefits by a participating
21 utility. In essence, when the average system cost ("ASC") of a participating utility falls
22 below the applicable PF Exchange rate, the difference between those two rates is
23 multiplied by the qualifying retail load of the utility and is accrued in the deemer account.

1 When the ASC of the utility again exceeds the applicable PF Exchange rate, no REP
2 benefits are paid to the utility until the sum of its now positive REP benefits exceed the
3 amount of the negative benefit deemer account accrual.

4 **Q. How is the operation of the deemer account likely to impact REP benefits actually**
5 **received by CPU's residential/small farm retail customers?**

6 **A.** In the case of CPU, its ASC is driven primarily by the price of the natural gas fuel used in
7 the River Road Generating Project. The price of natural gas is likely to vary widely over
8 the term of the Settlement Agreement, and as a consequence it is likely that the ASC of
9 CPU will also have highs and lows as it follows the price of natural gas. During low gas
10 price periods, CPU is likely to accrue substantial negative benefit deemer amounts that
11 will have to be worked off before positive REP benefits will be available to CPU's
12 residential and small farm retail customers. The presence of the deemer account, to which
13 the IOUs are no longer subject under the final Settlement Agreement, will likely result in
14 reductions in the REP benefits actually received by CPU's residential/small farm retail
15 customers during the term of the final Settlement Agreement.

16 **Q. Please explain how the *in lieu* provision operates?**

17 **A.** The *in lieu* provision is an authority given to BPA under the Northwest Power Act, and is
18 a mechanism that allows BPA to substitute lower cost power it can obtain from other
19 sources for the power BPA is obliged to purchase from REP participants at their
20 applicable ASCs. In essence it is a cost control mechanism that effectively places a cap
21 on the ASCs at which BPA has to purchase power from the participating utilities, and
22 operates to limit the REP costs that participating utilities can impose on BPA.

1 **Q. How might the operation of the *in lieu* provision impact the REP benefits available**
2 **to CPU's residential/small farm residential customers?**

3 **A.** CPU takes commercially reasonable actions to procure natural gas for the River Road
4 Generating Project at the best available price, balancing between duration of supply
5 commitment and lowest then available price. However, there are occasions when longer
6 term gas purchase commitments turn out to be higher than nearer term markets. Under
7 such circumstances, the cost of power available for purchase by BPA would likely reflect
8 the lower gas prices, making the REP benefits available to CPU subject to the exercise of
9 the *in lieu* provision by BPA. The presence of the *in lieu* provision, to which the IOUs
10 are no longer subject under the final Settlement Agreement, could result in reductions in
11 the REP benefits actually received by CPU's residential/small farm retail customers
12 during the term of the final Settlement Agreement.

13 **Q. Would you please summarize this portion of your testimony regarding the**
14 **calculation of REP benefits for CPU under the final Settlement Agreement as**
15 **proposed by BPA?**

16 **A.** BPA has proposed to pay CPU REP benefits that are proportioned to the IOU REP
17 benefits under the final Settlement Agreement, and which are less than CPU would be
18 entitled to receive under the REP if it were implemented in accordance with the statutory
19 rate directives as interpreted by BPA. BPA is also proposing that CPU's REP benefits be
20 subject to additional potential reductions in the future by the operation of the deemer
21 account and the *in lieu* provision, to which the IOUs are not subject under the final
22 Settlement Agreement. The BPA proposal offers CPU's residential/small farm customers
23 the worst of both worlds: reduced REP benefits calculated as if CPU were settling its

1 REP benefits under the final Settlement Agreement (which it is not), but with none of the
2 protections from deemer account accruals and *in lieu* REP benefit reductions afforded to
3 the IOUs under the final Settlement Agreement.

4 **Q. Is there a possible resolution to this treatment?**

5 **A.** If BPA persists in calculating the REP benefits available to CPU as if it had settled those
6 benefits with BPA in the same manner as the IOUs, BPA should adopt the revision to the
7 numerator we recommended in our direct testimony, and in addition BPA should extend
8 to CPU the same protection from the operation of the deemer account and the *in lieu*
9 provision that it has provided to the IOUs.

10 **Q. What other portions of the Supplemental Testimony do you wish to comment on?**

11 **A.** In the Supplemental Testimony BPA compares how the §7(b)(2) rate protection is
12 provided under the statutory rate directives and under the final Settlement Agreement.
13 REP-12-E-BPA-10, pp. 5-6. BPA concludes in general that the determination of the
14 §7(b)(2) rate protection, as well as the subsequent reallocation pursuant to §7(b)(3) of
15 REP costs excluded from the PF rate, is mostly unchanged by implementation of the final
16 Settlement Agreement. *Id.*

17 **Q. From the viewpoint of a preference customer participating in the REP, do you agree**
18 **with BPA's conclusion?**

19 **A.** No, we do not. Implementation of the final Settlement Agreement, if it is accompanied
20 by the implementation of BPA's proposed calculation of preference customer REP
21 benefits, is a material departure from the calculations laid out in the statutory rate
22 directives.

1 **Q. Please explain why you think that the implementation of the REP for preference**
2 **customer participants under the final Settlement Agreement as proposed by BPA**
3 **differs from the statutory approach?**

4 **A.** The calculation of REP benefits laid out in the statutory rate directives is based, in large
5 measure, on the operation of §§7(b)(2) and (3). Under these statutory provisions, the
6 §7(b)(2) rate test operates to determine the amount of REP costs that can be included in
7 the PF rate, and the amount of such costs which must be excluded from the PF rate. Once
8 the amount to be excluded from the PF rate has been determined, operation of §7(b)(3)
9 reallocates those excluded REP costs to all other rates, including the PF Exchange rate,
10 which effectively sets the level of REP benefits available to participants. While BPA has
11 entered into many REP settlements since the passage of the Northwest Power Act,
12 including two with CPU, it is our recollection that during the terms of those REP
13 settlements, BPA has continued to perform the §7(b)(2) rate test in every rate proceeding
14 to determine the REP benefits available to participants that have not settled the amount of
15 their REP benefits with BPA. This is the first time of which we are aware that BPA has
16 proposed to dispense with the performance of the §7(b)(2) rate test when determining the
17 REP benefits for non-settling participants, such as CPU.

18 **Q. What is your view of this change?**

19 **A.** We view BPA's proposal to dispense with the performance of the §7(b)(2) rate test to
20 determine the REP benefits of non-settling participants as a material departure from the
21 statutory rate directives as we understand them for calculating these REP benefits. The
22 fact that this is a material departure is underscored by the fact that BPA itself claims that
23 the REP benefits it will pay under its implementation of the final Settlement Agreement

1 will be less than it would otherwise pay under the REP implemented in accordance with
2 the statutory rate directives. REP-12-E-BPA-10, p. 6.

3 **Q. Is this the only instance where BPA's approach to determining REP benefits has**
4 **departed from the statutory rate directives?**

5 **A.** No, it is not. BPA has also diverged from the statutory rate directives as they bear on the
6 calculation of REP benefits in the operation of §7(b)(3) as well. Under the statutory rate
7 directives, §7(b)(3) is a surcharge mechanism that reallocates to rates, other than the PF
8 rate, REP costs that the §7(b)(2) rate test requires to be excluded from the PF rate. This
9 is the so-called §7(b)(3) surcharge. Under the final Settlement Agreement, the §7(b)(3)
10 surcharge is replaced by the Surcharge Amount.

11 **Q. How does the Surcharge Amount differ from the §7(b)(3) surcharge in the**
12 **calculation of REP benefits?**

13 **A.** They are fundamentally different. Under the statutory rate directives, the §7(b)(3)
14 surcharge is added to the PF Exchange rate and operates to reduce the REP benefits
15 available to program participants. Because the §7(b)(3) is based on the REP costs that
16 are *excluded* from the PF rate by operation of the §7(b)(2) rate test, the amount by which
17 it reduces the REP benefits available can (and does) vary from rate case to rate case
18 depending on the amount of REP costs the §7(b)(2) rate test excludes from the PF rate.
19 In contrast, the Surcharge Amount under the Settlement Agreement is based on the REP
20 payments that BPA will be obligated to pay the IOUs each year as specified in the final
21 Settlement Agreement. Simply stated, the Surcharge Amount has nothing to do with the
22 REP cost protection to be provided to preference customers under the §7(b)(2) rate test,

1 but instead is based on the costs of providing REP benefits to the IOUs under the final
2 Settlement Agreement.

3 **Q. Why is this divergence from the statutory rate directives material to CPU?**

4 **A.** It is material for two reasons. First, the fact that the Surcharge Amount is based on the
5 costs of the REP payments to the IOUs, and not the REP costs excluded from the PF rate,
6 is a fundamental change in the character of this charge. It also means that under the final
7 Settlement Agreement there will be a Surcharge Amount each and every year during its
8 term, in contrast to the statutory approach which only imposes a surcharge on the PF
9 Exchange rate if and when REP costs must be excluded from the PF rate by the §7(b)(2)
10 rate test. Second, it means that final Settlement Agreement will result in CPU paying the
11 costs of the REP in the PF rate under which it purchases power from BPA, and again by
12 the reduction to its REP benefits as a result of the Surcharge Amount being allocated to
13 its PF Exchange rate.

14 **Q. Do you have any other observations about this topic?**

15 **A.** Perhaps the most troubling aspect is the implication of BPA's proposal for the calculation
16 of preference customer REP benefits. BPA appears to be taking the position that it can
17 abandon its long-standing practice of calculating REP benefits for non-settling program
18 participants using the method contained in the statutory rate directives (including
19 §§7(b)(2) and (3)), and that by settling with one group of REP participants it can diverge
20 from the statutory calculation of REP benefits over the objections of REP participants
21 who have not entered into a settlement with BPA.

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

23 **A.** Yes.