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REBUTTAL TESTIMONY of  
PETER B. STIFFLER, RAYMOND D. BLIVEN,  
CHARLES W. FORMAN, JR., and ELIZABETH A. EVANS  
Witnesses for Bonneville Power Administration

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2 PETER B. STIFFLER, RAYMOND D. BLIVEN, CHARLES W. FORMAN, JR.,  
3 and ELIZABETH A. EVANS

4 Witnesses for Bonneville Power Administration

5  
6 **SUBJECT: ANALYSIS OF THE 2012 RESIDENTIAL EXCHANGE PROGRAM (REP)**  
7 **SETTLEMENT AGREEMENT**

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

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

10 A. My name is Peter B. Stiffler, and my qualifications are contained in REP-12-Q-BPA-13.

11 A. My name is Raymond D. Bliven, and my qualifications are contained in  
12 REP-12-Q-BPA-01.

13 A. My name is Charles W. Forman, Jr., and my qualifications are contained in  
14 REP-12-Q-BPA-07.

15 A. My name is Elizabeth A. Evans, and my qualifications are contained in  
16 REP-12-Q-BPA-06.

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

18 A. The purpose of our testimony is to respond to the arguments and issues the parties raised  
19 in their direct cases that challenge the analysis we performed to support our  
20 recommendation that the Administrator adopt the 2012 Residential Exchange Program  
21 Settlement Agreement (“REP Settlement,” “Settlement,” or “Agreement”).  
22

23 **Section 2: Overall Evaluation Parameters Used to Analyze the Settlement**

24 *Q. The Association of Public Agency Customers (APAC) states that the “testimony and*  
25 *studies presented by BPA staff are intended to provide support for the decision of the*  
26 *BPA Administrator to accept a settlement between certain Preference Customers and*

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Witnesses: Peter B. Stiffler, Raymond D. Bliven, Charles W. Forman, Jr.,  
and Elizabeth A. Evans

1 *IOUs [investor-owned utilities].” Wolverton, REP-12-E-AP-01, at 4. Is this the intent of*  
2 *your analysis?*

3 A. APAC’s statement of the underlying “intent” of our analysis is misleading. We  
4 constructed the analysis without presupposing whether or not the results of projected REP  
5 benefits under the alternative scenarios would support the Settlement. We did, however,  
6 structure the scenarios to incorporate what we believe to be a comprehensive set of  
7 expected variations associated with uncertainty in key variables, both those affecting the  
8 underlying 7(b)(2) methodology and those contributing to uncertainty in IOU Average  
9 System Costs (ASCs) and BPA’s revenues and costs.

10 The implied notion that we had already decided to support the Settlement at the  
11 outset of analysis presumes that the final outcomes of the analyses were already known  
12 before analysis began. While it is true that we participated with the negotiating parties in  
13 early drafting of the Agreement, we also recognize that we serve a constituency broader  
14 than the negotiating parties. We approach the analysis of the Settlement in a manner that  
15 openly and honestly examines the Settlement in light of BPA’s policy goals and our  
16 understanding of the statutory framework that governs ratesetting and the REP. We  
17 continue to build a record for the Administrator based on fact, such that the final decision  
18 by the Administrator will be fully informed and legally defensible. Part of the building of  
19 the record for the Administrator is to rebut ill-informed or unsubstantiated statements and  
20 misconceptions of parties whether or not they support the Settlement. In the event that  
21 valid criticisms of the analysis are presented, we will appropriately include any changes  
22 to the analysis that are necessary to present a well-founded record for the Administrator’s  
23 decision.

24 Finally, we disagree with APAC’s use of “accept” in characterizing the decision  
25 to adopt (or not adopt) the Settlement. We infer from APAC’s wording it believes that

1 the Administrator is doing nothing more than passively receiving the Settlement without  
2 any examination or consideration. This is incorrect. At issue in this case is the question  
3 of whether the Administrator should sign the Settlement Agreement and thereby make the  
4 Agreement *his* new decision and approach to responding to the Court’s opinions in *PGE*  
5 and *Golden NW*. Gendron, *et al.*, REP-12-E-BPA-04, at 3–4. Should the Administrator  
6 elect to sign, the action of adopting would “commit BPA to the settlement, and BPA  
7 would set rates in accordance with its specifications.” *Id.* at 2. This can be done only if  
8 the Administrator finds that the Settlement complies with BPA’s statutes, is consistent  
9 with the Court’s prior rulings, and is in the best interest of regional ratepayers.

10 *Q.* APAC contends “that BPA has no basis in fact for supporting the 17-year settlement but  
11 relies instead on the sufficiency of the Settlement payment schedule over time lying in the  
12 middle of a number of scenario outcomes that are estimated but not justified.”  
13 *Wolverton*, REP-12-E-AP-01, at 2. APAC states that BPA’s analytical basis of  
14 comparing a projection of REP benefits with REP Recovery Amounts under the  
15 Settlement is an insufficient basis to judge the Settlement because it amounts to “saying  
16 that the Settlement is just right” rather than performing the 7(b)(2) rate test. *Id.* Do you  
17 agree?

18 *A.* No. APAC mischaracterizes our analysis of the Settlement as a singular finding that the  
19 REP Recovery Amounts are acceptable because they simply fall in the “middle” of a  
20 range of possible future outcomes. APAC misses the point that our analysis is built upon  
21 performing the 7(b)(2) rate test using first BPA’s current implementation and then a  
22 number of alternative implementations, some that modify specific issues that are the  
23 subject of litigation and others that modify key inputs that are likely to change throughout  
24 the term of the Settlement. Rather than a simple declaration that the REP Recovery  
25 Amounts are “neither too high nor too low,” but “just right,” as APAC asserts, our

1 analysis was highly structured to examine many variables and allow BPA Staff to  
2 evaluate a number of potential outcomes in order to come to a recommendation to the  
3 Administrator.

4 We believe that we have provided far-reaching and unbiased analysis showing  
5 that the proposed Settlement is consistent with the provisions in the Northwest Power Act  
6 on a projected basis, and that the results of the analysis are clearly reasonable.

7 *Q. Beyond mischaracterizing your rationale for recommending that the Administrator adopt*  
8 *the Settlement, are there any other aspects of this case that the opponents have simply*  
9 *missed?*

10 *A.* Yes. Many of the parties gloss over the fact that this case involves a Settlement  
11 Agreement that would resolve outstanding litigation that challenges, in one way or  
12 another, BPA's implementation of the REP for the past 10 years or more. While we do  
13 not think this fact alone justifies the Settlement, we nevertheless believe it should be a  
14 factor in the Administrator's deliberations regarding whether to supplant his existing  
15 decisions with the resolutions proposed in the Settlement. On this point, it is important to  
16 note the extent of the uncertainty created by the pending cases.

17 As the parties note, there are 56 pending petitions before the Court that challenge  
18 virtually every aspect of BPA's Lookback and section 7(b)(2) decisions. Murphy and  
19 Kallstrom, REP-12-E-JP01-02, at 3. The scope of these challenges spans a decade of  
20 BPA ratemaking, from FY 2002–2011. A remand by the Court in any of the cases on a  
21 substantive issue could, in our view, result in BPA having to once again revise rates from  
22 prior periods to conform to the Court's opinion. The uncertainty that these cases pose to  
23 BPA and the region cannot be overstated. As things stand now, not a single consumer-  
24 owned utility (COU) or IOU ratepayer of BPA knows whether or not the rates it has paid,  
25 the REP benefits it has distributed, or the refunds it has received are lawful. And the

1 problem only grows with time. With each new attempt by BPA to “fix” the latest set of  
2 problems with its implementation of the REP, a new wave of litigation will likely be  
3 filed. The end result is that, until the Court finally rules on almost every bone of  
4 contention among the many parties, the region will face continuing uncertainty in both  
5 the level of the Priority Firm Power (PF) rate and the amount of REP benefits payable to  
6 the IOUs. We are already in the second generation of litigation; how many more  
7 generations need to occur before matters are finally consummated? We fear that this  
8 generation would not be the last.

9 Although the Settlement may not eliminate all of this uncertainty, it does present  
10 an opportunity, in a single dispositive case, to resolve both the past decade of disputes  
11 over the REP and the implementation of the REP for the ensuing 17 years.

12 *Q. You mention that the Settlement may not eliminate all uncertainty. What other*  
13 *considerations do you think the parties should be aware of as they deliberate over*  
14 *whether or not to sign the Settlement?*

15 *A.* We think it is very important that parties understand that by not signing the Settlement,  
16 they are effectively aligning themselves with parties that choose to actively oppose the  
17 Settlement in litigation (assuming that such challenges are filed). This result occurs by  
18 operation of section 3.6 of the Agreement. This provision, as we understand it, provides  
19 that if BPA’s decision to adopt the Settlement is not upheld in all material respects by the  
20 Court (particularly as such decision relates to non-signing parties) then BPA would set  
21 rates and provide credits for non-settling entities (and pay the IOUs REP benefits) in a  
22 manner consistent with the Court’s decision. Thus, even if a non-settling entity did not  
23 actively challenge the Settlement in litigation, it would be treated as a “non-settling”  
24 entity for purposes of section 3.6. Their rates would be set to collect REP benefits

1 consistent with the Court's decision, which could mean overall higher or lower rates for  
2 these customers.

3 To use BPA's no-settlement Reference Case assumptions as one example, BPA  
4 proposes to pay the IOUs in FY 2012-2013 under the traditional implementation of the  
5 REP approximately \$39 million a year more in REP benefits than under the scheduled  
6 payments in the Settlement. If the Court directed BPA to set rates for non-settling  
7 entities under the traditional REP methods, then rates for non-settling customers would  
8 include a proportional share of these additional REP costs. In this example, non-settling  
9 entities would pay overall higher rates when compared to settling parties. In the out years  
10 of the Settlement term, again assuming BPA's no-settlement Reference Case  
11 assumptions, the additional costs of REP benefits in the rates of non-settling parties is  
12 expected to increase substantially beyond the current \$39 million difference.

### 14 **Section 3: General Methodological Challenges to Settlement Evaluation**

#### 15 **Section 3.1: Length of Forecast**

16 *Q. APAC questions whether any projection made today of the "amounts to be charged" for*  
17 *17-plus years from now can be assessed with any confidence. Wolverton,*  
18 *REP-12-E-AP-01, at 5. APAC argues that it is "difficult enough to make economic*  
19 *projections one year out, let alone 17 years (and the ensuing four years) from now." Id.*  
20 *The Western Public Agencies Group (WPAG) also questions the nature of any 17-year*  
21 *forecast and states that such a forecast "do[es] not provide a reliable basis for drawing*  
22 *precise conclusions about a future that spans 17 years." Saleba, et al.,*  
23 *REP-12-E-WG-01, at 19. Please respond.*

24 *A. Both APAC and WPAG imply that we offer just one static projection and make a general*  
25 *claim that forecasting is inherently not based in fact. We agree that there is a great deal*



1 of uncertainly in forecasting the future; forecasts rarely are “precise.” Yet BPA continues  
2 to set rates based upon projections of future loads, resources, costs, and revenues, all of  
3 which vary significantly from year to year and forecast to forecast. In fact, this approach  
4 is statutorily mandated by the Northwest Power Act, and as such, ratesetting on a forecast  
5 basis is inherently unavoidable.

6         Given our recognition that forecasting is inherently uncertain, we provide a  
7 structured and interconnected set of scenarios that we believe accurately reflects a  
8 reasonable range of potential outcomes. The modeling assumptions are extremely  
9 conservative in establishing differing forecasts for ASCs that reflect a reasonable range of  
10 outcomes throughout the 17-year period. Such forecasts are based upon resource cost  
11 expectations expressed in individual IOU integrated resource plans (IRPs), combined  
12 with both high and low cost estimates for resource additions (based on market-priced  
13 purchases on the low end, and complete sets of IRP renewable resource additions on the  
14 high end). We believe that these cost assumptions are an adequate proxy for the many  
15 cost variations that can be reasonably expected to occur through the next 17 years.

16         In addition, both high and low BPA revenue requirement scenarios are tested and  
17 combined with the low and high ASC scenarios to produce a reasonable set of projections  
18 with upper and lower REP benefit bounds around the Reference Case. The entire set of  
19 known and currently briefed legal issues regarding 7(b)(2) rate test and Lookback  
20 implementations are included as a further test of the robustness of the projections. The  
21 results of these analyses show that expected variation around the Reference Case forecast  
22 produces higher REP benefits, except in the lowest possible case, than the REP Recovery  
23 Amounts incorporated into the Settlement.

24 *Q. APAC questions the “validity of a projection of power prices made in 1996 for the year*  
25 *2001, for example; or even the projection made in FY2000 for one year out,” implying*

1        *that this demonstrates an inadequacy in using forecasts to analyze the Settlement.*  
2        *Wolverton, REP-12-E-AP-01, at 7. WPAG likewise recites a litany of past events that*  
3        *were not forecast, including the effect of the Three Mile Island accident on nuclear power*  
4        *plant construction, electric industry restructuring, the West Coast power market*  
5        *“melt-down,” the rapid growth of wind generation in the Northwest, the current*  
6        *economic recession, and regulatory changes leading to ASC Methodology revisions.*  
7        *Saleba, et al., REP-12-E-WG-01, at 25-27. Do you agree with these criticisms?*

8        A. No. In general, this line of reasoning would suggest that any effort to inform  
9        forward-looking decisionmaking is unwarranted. We believe such reasoning is  
10       unfounded, rather like one sticking his head in the sand when faced with decisions with  
11       long-term implications. We would be surprised if any of APAC’s or WPAG’s members  
12       took this approach to long-term decisionmaking for its respective company. When faced  
13       with the need to make decisions to position a company to face the future, long-term  
14       forecasting is an accepted practice. WPAG itself acknowledges this: “long-term forecasts  
15       are a tool commonly used in the industry for a variety of purposes, and we routinely  
16       prepare such forecasts on a variety of variables.” *Id.* at 19. However, WPAG questions  
17       the applicability of the forecasts that we present, stating that they are “not capable of  
18       providing reliable predictions of precise future outcomes.” *Id.*

19       Although an implied rate forecast is embedded in our analysis, we have targeted  
20       the chosen scenarios (particularly risk scenarios) to incorporate a reasonable range of  
21       effects of future conditions on the 7(b)(2) rate test in particular (and thereby resulting  
22       effects on the level of anticipated REP benefits), without direct regard to particular  
23       impacts on rate levels. The question is not whether we have accurately predicted rate  
24       levels over the next 17 years, but whether we have tested the effects of future conditions  
25       on the results of the rate test. Nowhere do we propose to set *rates* for the full 17-year

1 term of the Regional Dialogue contracts. Rather, future rates to be charged will be in full  
2 accordance with section 7(a) and established in each rate case going forward into the  
3 future.

4 Rather than rely on a single estimate of future events, we have made considerable  
5 effort to examine a reasonable range of the impacts of future conditions on REP benefits  
6 into the future. For example, we include High-ASC/Low-PF and Low-ASC/High-PF rate  
7 scenarios in the analysis, since ultimately the differences between ASCs and PF rates will  
8 determine the total net REP benefits resulting from the ratesetting process. A  
9 High-ASC/High-PF or Low-ASC/Low-PF scenario would be less instructive, so we  
10 chose not to examine those cases. Moreover, we augmented the chosen scenarios with  
11 additional uncertainty in terms of market prices and revenue requirement expectations to  
12 further stress test the permissible set of REP benefits that can be expected over the  
13 17-year term of the Settlement. While these analyses result in an extreme range of  
14 possible REP benefits circumscribing the Reference Case values (ranging from as low as  
15 \$400 million to over \$1 billion in 2028, compared to just under \$300 million under the  
16 Settlement), risk analysis results still strongly favor settlement as a “good deal” for  
17 ratepayers. Settlement certainly provides greater rate protection to preference customers  
18 than is required under the 7(b)(2) statutory provisions of the Northwest Power Act.

19 *Q. WPAG offers four specific reasons why it questions “the reliability of the 17 year*  
20 *forecasts and the way they are being used in this proceeding.” Id. at 19-28. The first*  
21 *reason is the analysis “appear[s] to be very sensitive to small changes in key variables,*  
22 *reducing the robustness of the results.” Id. at 19. Please respond to WPAG’s reasoning.*

23 *A. WPAG cites the interest rate forecast used in the discounting of the two rate streams in*  
24 *the rate test comparison of costs, one stream without 7(b)(2) protections and the other*  
25 *stream with 7(b)(2) protections. Id. at 20. WPAG appropriately notes that the analysis*

1 uses a Reference Case-level interest rate of 6.82 percent. *Id.* (Actually, the long-term  
2 analysis uses an interest rate that varies from 6.49 percent to 6.94 percent, averaging  
3 6.82 percent over the 17-year period.) WPAG claims that if the assumed interest rate  
4 drops to 4 percent, then REP benefits allowed by the rate test would drop to  
5 \$3,995 million over the 17-year period. *Id.* Conversely, WPAG claims that if the  
6 assumed interest rate rises to 9 percent, the REP benefits allowed by the rate test would  
7 rise to \$4,270 million. *Id.* Assuming that WPAG is specifying the net present value  
8 (NPV) of the REP benefits, then their reasoning proves our analysis—testing the  
9 Settlement against the variability of 7(b)(2) rate test outcomes, even given the sensitivity  
10 of some input variables, demonstrates that the Settlement still produces REP benefits that  
11 are allowed by the rate test. The NPV of the Settlement stream of REP benefits is \$2,050  
12 million, which is much less than the 4 percent interest scenario WPAG posits. This  
13 provides further evidence that under a wide range of interest rate projections, the level of  
14 REP benefits provided under the Settlement still allows for equal or greater rate  
15 protection than would otherwise be granted under application of the 7(b)(2) rate test.

16 *Q. WPAG's second reason is that "key variables change over time, meaning that the same*  
17 *forecasts performed two years ago or two years hence will likely produce materially*  
18 *different results." Id. at 19-20. Please respond.*

19 *A.* Invariably, projections performed at different times will produce different results. We do  
20 not dispute that a projection of inputs to the 7(b)(2) rate test that might be performed two  
21 years hence may be considerably different than we are using in our analysis. However,  
22 we reiterate the point that we are projecting amounts to be considered for the term of the  
23 Settlement at this point in time. WPAG does not criticize the current projections; rather,  
24 WPAG posits that the projections might be—we would substitute “would be”—different  
25 if performed two years from now. However, the question is not whether the projections

1 may or may not be different, but whether new projections would *materially alter the*  
2 *conclusions being drawn at this time*. We do not believe that they would. If anything,  
3 based on our knowledge of the workings of the rate test, absent a court decision altering  
4 our implementation of the rate test, we would expect that a rate test two years hence  
5 would allow more REP benefits than the rate test allows at this time. This conclusion is  
6 based on the conservative nature of the forecasts being used, especially our unmodeled  
7 supposition that ASCs will increase more toward the high side of our projections rather  
8 than the low side. Thus, given the conservative nature of the forecasts, we believe that  
9 WPAG's reasoning once again proves our analysis—testing the Settlement against the  
10 temporal nature of rate projections, the Settlement still produces REP benefits that are  
11 allowed by the rate test.

12 *Q. WPAG's third reason is that "the longer the forecast period, the less likely it is that the*  
13 *forecast will accurately predict future outcomes." Id. at 20. Do you agree?*

14 *A.* Yes. We believe, just as WPAG states, that the longer the duration of the forecast, the  
15 less accurate the forecast is likely to be. However, we are testing a stream of payments  
16 against our forecasts, and our forecasts are not a single set of annual forecasts of REP  
17 benefits. Rather, we have included a wide range of effects of potential uncertainties on  
18 our forecasts.

19 WPAG presents a probability distribution chart of an inflation forecast that shows  
20 a distribution of inflation outcomes at different forecast horizons. *Id.* at 24. WPAG  
21 posits that "[a]s the forecast horizon extends, the uncertainty increases, thus creating the  
22 fan shape." *Id.* Once again, WPAG's reasoning proves our analysis—testing the  
23 Settlement against a likely range of results, the Settlement still produces REP benefits  
24 that are allowed by the rate test. Our analysis does not rely on a single forecast, but a  
25 "fan shape" of forecasts that demonstrate that under different cost projections, REP

benefits are likely to be between an NPV of \$3,897 million on the high side and \$2,524 million on the low side (assuming Reference Case for litigated scenarios). Evaluation Study, REP-12-E-BPA-01-E07, at 5, Table 10.4, last two lines, scenario column. The \$2,050 million NPV of the Settlement falls below this expected distribution. The fan shape of our analysis is displayed on the chart of REP Benefits Risk Scenarios. Evaluation Study, REP-12-E-BPA-01, at 195, Figure 4.

*Q. WPAG's fourth reason is that "long-term forecasts rarely predict the major events that will materially change the actual outcomes in the future, resulting in a false sense of confidence about the reliability of forecasts of future outcomes." Saleba, et al., REP-12-E-WG-01, at 20. Please respond.*

*A. WPAG argues that "[n]o matter how sophisticated the forecasting tools are, they rarely if ever predict major events that materially change the environment in which we do business, and which alter base assumptions upon which forecasts rely. This is not an indictment of forecasting tools, but merely recognition that models are not clairvoyant." Id. at 25. We agree. As forecasters, we certainly expect discontinuities to occur in the future that would materially affect the forecasts. This raises two pertinent questions: (1) whether future discontinuities would materially alter the differences between ASCs and BPA rates, which are the prime components of the REP benefit levels, both before and after the 7(b)(2) rate test; and (2) whether we even need to consider discontinuities, because the generally accepted purpose of the statutory provision to include "... any year ... plus the ensuing four years" is to remove the effect of discontinuities on the results of the rate test. See, for example, Wolverton, REP-12-E-AP-01, at 36, statement on lines 14-16.*

1           As to the first question, it is unknown how a future discontinuity might affect the  
2 results of the rate test. For example, one much-talked-about potential discontinuity is the  
3 effects of global warming and possible legislative actions attempting to forestall such  
4 future events such as, for example, the institution of carbon costs on thermal generating  
5 resources. Such events can be predicted; it is the timing of such actions that is less  
6 predictable. However, the effects on REP benefits can be reasoned to, even if they  
7 cannot be precisely predicted. It is generally expected that because IOUs are more reliant  
8 on thermal generation and market purchases, while BPA is more reliant on hydro  
9 generation and is a net seller in power markets, ASCs would increase and BPA rates  
10 would decrease under most outcomes of this discontinuity. This type of event would  
11 result in rate effects similar to the High-ASC/Low-PF scenario we included in our  
12 analysis, which shows that REP benefits would increase substantially due to these types  
13 of events, resulting in greater advantages to COUs from the Settlement.

14           Another possible type of discontinuity might be higher costs on BPA, perhaps due  
15 to Endangered Species Act compliance, as an example. This type of event would result  
16 upward pressure on the PF rate, ultimately decreasing the total level of benefits by  
17 reducing the spread between ASCs and the PF rate. This effect is captured in our  
18 Low-ASC/High-PF scenario. Our analysis shows that although REP benefits would  
19 decrease substantially due to these types of events, Settlement would still be  
20 advantageous to PF customers. Even though there might be fewer advantages from the  
21 Settlement than expected in the Reference Case, the analysis shows that the REP benefits  
22 under the Settlement do not exceed levels allowed by the 7(b)(2) rate test under these  
23 scenarios. Put differently, even though the advantages to COUs are reduced, advantages  
24 to COUs still remain compared to a no-settlement world.

1           While we cannot say with certainty that our scenarios have analyzed the effects of  
2 all possible future events, especially when allowing for discontinuities, we are satisfied  
3 that the scenarios reflect a reasonable set of possible future events. Our scenarios  
4 encompass the effects of many of the discontinuities that could possibly change the  
5 magnitude of the perceived advantages to the settling parties. Notwithstanding an  
6 unlikely combination of adverse (to BPA) litigation scenarios, we are unaware of any  
7 future events that would call into question the advantages of the Settlement to COUs in  
8 particular.

9           As to the second question, whether we even need to consider discontinuities, we  
10 will leave the answer to this question to the parties' briefs, because it is a legal  
11 determination. This question has been posed in the Staff's supplemental testimony.  
12 Forman, *et al.*, REP-12-E-BPA-10, at 2–7.

13  
14 **Section 3.2: Weighting Likelihood of Success**

15 *Q. APAC states that “[e]xcept in one instance, ... BPA makes no assessment of the merits or*  
16 *likelihood of success of any of the parties’ positions.” Wolverton, REP-12-E-AP-01, at 5.*  
17 *Do you agree?*

18 *A.* We intentionally refrain from making *ad hoc* and unsupportable assumptions as to  
19 subjective probabilities associated with the full set of combinations of both litigation and  
20 risk scenarios. Any assumption made would not be based in fact, would be subject to  
21 undue scrutiny and criticism, and would have served no purpose other than to turn this  
22 proceeding into another forum to debate the merits of the issues pending before the  
23 Court. Further, we believe assessment of the likelihood of each scenario (and  
24 combinations therein) is unnecessary to inform the Administrator. Even in the one  
25 instance cited by APAC, we were not attempting to assess the likelihood of the success of



1 that outcome. Rather, we were underscoring the posterior requirement of multiple  
2 favorable litigation outcomes before REP benefits under the Settlement would fail to be  
3 supported by the 7(b)(2) rate test. If we were asked to speculate on the relative chances  
4 of the litigation issues succeeding, we certainly would not assess them all at 50 percent.

5 *Q. APAC criticizes “staff’s assumption not to assess the likelihood of success of any of the*  
6 *positions taken by the parties.” Wolverton, REP-12-E-AP-01, at 7. “Thus,” APAC*  
7 *argues, “the Preference Customers’ position on the Load Reduction Agreements is given*  
8 *the same probability of success as the IOUs’ position that all conservation is put in the*  
9 *stack and expensed in the first year whether needed or not for §7(b)(2) rate-test loads.”*  
10 *Id. Please respond.*

11 *A.* To restate, we intentionally refrain from making *ad hoc* and unsupportable assumptions  
12 as to subjective probabilities associated with the full set of combinations of litigation and  
13 risk scenarios. Any assumption made would not be based in fact, would be subject to  
14 undue scrutiny, and could derail the case. We are not implying that the COUs’ position  
15 on Load Reduction Agreements (LRAs) has the same probability of success as the IOUs’  
16 position on conservation. We are building scenarios to inform the Administrator of the  
17 relative impacts of each party’s litigation position so that he can draw conclusions based  
18 on the record of this proceeding. We believe that it is more appropriate for him to assess  
19 the relative likelihoods of each litigation position given his familiarity with the issues and  
20 the arguments than to rely on Staff’s, or the parties’, speculation.

21 To add emphasis, we do not put more or less weight on outcomes associated with  
22 the Preference customers’ position on the LRAs compared to the IOUs’ position. We  
23 believe that there is an unknowable probability of any of the parties’ positions being

1 successful. Many observers of the courts have made a shipwreck of predictions of the  
2 outcome of litigation. Few experts have attempted to predict the actions of the courts.<sup>1</sup>

3 To make a case in fact, we need not compute an expected value based upon  
4 contentious and subjective probabilities. The results of our analysis clearly show the  
5 Settlement REP benefit levels far below the 7(b)(2) rate test results under nearly all  
6 chosen scenarios.

### 7 8 **Section 3.3: Scenario Combinations**

9 *Q. APAC contends that in the analysis “the issues are separated into individual silos with no*  
10 *possibility of individual parts combining to form a result different from the raw-scenario*  
11 *input.” Wolverton, REP-12-E-AP-01, at 7. Do you agree?*

12 *A. No. We structure all scenarios relative to the Reference Case, because the Reference*  
13 *Case incorporates BPA’s current set of ratesetting methodologies. As we discuss below,*  
14 *there are over 2,200 scenario combinations that could be analyzed for the litigation*  
15 *scenarios alone. Adding two of the high-low rate scenarios would push the combinations*  
16 *to almost 7,000 combinations. To do so, although intellectually interesting, would result*  
17 *in perhaps more lines on our charts, but no change in the range of expected benefits.*

18 Although intellectually interesting, such an analysis would also not better inform  
19 the Administrator to evaluate the terms of the Settlement. We have provided a 17-year  
20 forecast of expected REP benefits under what we believe are the “most likely” scenarios.  
21 We acknowledge that we have not modeled every issue that is currently in litigation; nor  
22 have we modeled every possible cost change that could alter ASCs or BPA rates. Even

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<sup>1</sup> See, for example, Andrew D. Martin, Kevin M. Quinn, Theodore W. Ruger, and Pauline T. Kim, “Competing Approaches to Predicting Supreme Court Decision Making,” *Perspectives on Politics*, available at <http://wusct.wustl.edu/media/man1.pdf> (accessed on March 12, 2011) (“In other areas of government, for example, presidential elections and congressional decision making, political scientists engage in systematic efforts to predict outcomes, yet few have done this for court decisions.” Internal footnote omitted.)

1 so, we have been forthright in acknowledging a large degree of uncertainty in this  
2 forecast and have shown in a reasonable cross-section of scenario outcomes (with regard  
3 to litigated issues and the inherent uncertainty in forecast loads, revenues, and costs) that  
4 REP Benefits under Settlement offer more than sufficient rate protection to preference  
5 customers.

6 *Q. APAC claims that “[t]here are myriad combined results that can produce very different*  
7 *outcomes.” Wolverson, REP-12-E-AP-01, at 7. Has APAC quantified “myriad”?*

8 *A.* No. APAC did not quantify the number of combinations. But we did: there are more  
9 than 2,200 different combinations possible under the modeled set of litigated issues after  
10 removing illogical combinations (*e.g.*, the issue of a separate repayment study under  
11 either the COU or IOU position on the treatment of conservation). While each of these  
12 2,200 different combinations would produce different results, every one of them would  
13 fall between Scenario 18, the COU Best Case, and Scenario 20, the IOU Alternative  
14 Case. Thus, while the combinations may produce “very different outcomes,” as APAC  
15 claims, they are very different from each other, not different in the sense of being outside  
16 of the bounds established by our analysis.

17 *Q. APAC argues that the “scenarios may be independent, but combinations of them, except*  
18 *in the Best or Brief Cases, are not considered.” Wolverson, REP-12-E-AP-01, at 7.*  
19 *Please respond.*

20 *A.* We strongly disagree that all scenarios are independent. While some of the issues may be  
21 independent, the vast majority of outcomes under the litigated scenarios are likely closely  
22 correlated. We further believe these correlations are heavily weighted toward BPA’s  
23 position on issues. In appeals, rarely does the court take up every litigated issue. In the  
24 current litigation, we have modeled six major issues (Lookback, deemer, 7(b)(3)  
25 allocation to surplus, 7(b)(2) treatment of conservation, Mid-C resources, and discount

1 rate), and three sub-issues relating to the treatment of conservation (separate repayment  
2 studies, financing of conservation resources, and the amount of conservation in the  
3 resource stack). It is unlikely that the court would take up every one of these issues,  
4 leaving the resolutions to BPA's finding. This further argues against the methodological  
5 framework advocated by APAC.

6 Further, we question the efficacy of performing more combinations of possible  
7 outcomes. We have modeled the combination of litigation outcomes that most favors the  
8 COUs and the combination of litigation outcomes that most favors the IOUs. Any other  
9 combination of litigation outcomes will fall between the bounds established by the  
10 combinations that have been modeled. In addition, we have shown the effects of single  
11 issues as a sample of outcomes between the bounds. We do not believe, and APAC has  
12 not demonstrated, that increasing the sample size of the combinations would show any  
13 significant skewing of the total population toward either of the bounds. Because this  
14 analysis is comparing the REP benefits under the Settlement to the results of the 7(b)(2)  
15 rate test under a number of litigation outcomes, we believe that it would be very hard to  
16 demonstrate that the combination of results, even if probability weightings were assigned,  
17 would show a significant number of outcomes that provided fewer REP benefits than set  
18 forth in the Settlement.

19 Finally, BPA Staff went to considerable effort in constructing the LTRM to make  
20 it a model parties to this proceeding could both review in detail and use to do their own  
21 analyses. BPA provided the LTRM model and documentation as part of its Initial  
22 Proposal, and BPA Staff has been willing and available to assist parties in understanding  
23 and using the LTRM. APAC's witness is a very capable and experienced modeler and  
24 analyst. We believe he certainly could have used the LTRM to construct combinations of  
25 scenarios supporting APAC's assertions that BPA's analyses are deficient and BPA's

1 conclusions flawed. APAC could have entered such scenarios as evidence in this  
2 proceeding. APAC has chosen not to do so.

3  
4 **Section 3.4: Use of Statistical Analysis in Recommendation**

5 *Q. APAC contends that “BPA uses misleading statistics to support its conclusion ....”*  
6 *Wolverton, REP-12-E-AP-01, at 7. APAC concludes that this “is a significantly flawed*  
7 *method to assess the validity of the Settlement versus the alternatives.” Id. at 8. Do you*  
8 *agree?*

9 *A. No. APAC offers an alternative method: “The correct method is to assess the expected*  
10 *value of the outcome of each of the alternatives and sum those expected values.” Id. at 8.*  
11 *We strongly disagree with this method on the grounds that it imposes strong assumptions*  
12 *of independence among the litigated scenarios. The issues currently being litigated are*  
13 *interrelated in complicated ways, including temporal interactions, which highlights the*  
14 *fact that events are not independent. For example, assuming the COUs are successful in*  
15 *their argument regarding the treatment of conservation in the 7(b)(2) Case such that*  
16 *general requirements in the 7(b)(2) Case are unchanged from the Program Case by*  
17 *accumulated conservation procured pursuant to the Northwest Power Act, the likelihood*  
18 *of BPA retaining the current implementation methodology of excluding conservation*  
19 *costs in the 7(b)(2) Case, as the IOUs have argued, is unknown and untested. What is*  
20 *known at this time is that BPA has rejected the COUs’ and IOUs’ argument in favor of*  
21 *adjusting the general requirements; if BPA is unable to adjust general requirements, BPA*  
22 *would take a fresh look at each side’s arguments regarding the treatment of conservation*  
23 *costs in the 7(b)(2) Case. Indeed, it would be hard to argue that absent the Northwest*  
24 *Power Act, 7(b)(2) Case loads should be reduced by conservation acquired under*

1 section 6 of the Act, *and* that Public customers should benefit from those programs at a  
2 zero cost.

3 To speculate on how scenario outcomes are interrelated shows the subjective  
4 influence that would be required to model an expected value of the outcomes as  
5 advocated by APAC. To properly model an “expected value” in a mathematical sense, an  
6 analyst would have to be fully informed on a jointly distributed multivariate probability  
7 density function (of unknown type). We believe such an analysis would be neither  
8 tenable nor legally defensible.

9 *Q. APAC argues that “it is untrue that the Preference Customers would have to prevail on*  
10 *five issues to produce a better result than the Settlement.” Wolverton, REP-12-E-AP-01,*  
11 *at 8. Please respond.*

12 *A.* We maintain our assessment of the COU Brief Case. APAC indicates that the  
13 combination of the “conservation augmentation issue” with the COU position on Load  
14 Reduction Agreements would produce substantially lower benefits than under Settlement.  
15 *Id.* While this conclusion is numerically true, it assumes that no IOU positions on other  
16 litigated issues manifest. If one assigns zero probability to all adverse positions on the  
17 issues and subjectively assigns high probabilities to the scenarios that most align with  
18 one’s interests, it would be fairly easy to show that Settlement is good, bad, or  
19 indifferent, depending on one’s alignment to the Settlement. Should the COUs be  
20 successful with their argument to include accumulated conservation in the 7(b)(2) Case,  
21 such that loads in the 7(b)(2) Case are lowered to Program Case levels by accumulated  
22 conservation procured pursuant to the Northwest Power Act, we can reasonably assume  
23 that the cost of such load “augmentation” would be included in the 7(b)(2) Case rate.  
24 When these costs are included, rate protection is substantially lower and benefits higher  
25 (see Scenario 6).

1           This example highlights the misguided analysis that is possible when a  
2 non-structured approach is taken to analyzing the range of possible outcomes.

3 *Q. APAC contends that “the Settlement proposal is in the middle of the range of those*  
4 *alternatives.” Wolverton, REP-12-E-AP-01, at 9. Do you agree?*

5 *A. No. While the REP benefits under the Settlement are between the upper and lower*  
6 *bounds established by the modeled scenarios, we would not characterize the Settlement*  
7 *as being “in the middle” of the results. When looking at the results of the analysis, it is*  
8 *apparent that the vast majority of scenarios result in expected REP benefits greatly*  
9 *exceeding the schedule of REP benefits under Settlement. (We believe this distribution*  
10 *would also be borne out if we analyzed all 2,200 combinations.) Thus, we place the*  
11 *Settlement near the lower bounds of the analysis. Characterizing this location as “in the*  
12 *middle” is like saying that a ball on the five-yard-line of a football field is “in the middle”*  
13 *of the field. True, it would be between the goal lines, but not many football fans would*  
14 *declare such a ball position as being in the middle of the field.*

15  
16 **Section 4: Specific Issues with Scenario Analysis**

17 **Section 4.1: Scenario 1 – Assumptions on Source of Funds for IOU Refunds**

18 *Q. APAC charges that “BPA assumes that a victory by the IOUs concerning past Lookback*  
19 *payments made to Preference Customers results in charges to those Preference*  
20 *Customers.” Wolverton, REP-12-E-AP-01, at 8. APAC argues that “BPA’s [Scenario 1]*  
21 *results are misleading in assuming the Preference Customers who have recovered part of*  
22 *the illegal overpayments that they made will be obligated to return the illegal*  
23 *overpayments to the parties that benefited from them.” Id. at 8-9. Please respond.*

24 *A. We find it curious that APAC is objecting to our construct of a scenario in which the*  
25 *court finds for the IOU position on the Lookback. As explained in the Evaluation Study,*

1 the IOUs argue that the invalidity clause in the 2000 REP settlements is severable from  
2 the agreements and prohibits BPA from engaging in reclaiming Lookback Amounts by  
3 withholding otherwise entitled REP benefits. Evaluation Study, REP-12-E-BPA-01,  
4 at 54. The IOUs also argue that BPA is prohibited from retroactive ratemaking and  
5 therefore prohibited from determining that the IOUs were overpaid. *Id.* at 54-55. If the  
6 court sustains either of the IOUs' arguments, BPA would have engaged in legal error  
7 beginning with the WP-07 Supplemental rate proceeding and would need to rectify the  
8 error by reclaiming the funds erroneously paid to COUs as if they had never been paid.  
9 APAC presumes that the *PGE* opinion entitled the COUs to refunds; we believe that  
10 particular reading of *PGE* in light of a further clarification by the court regarding the  
11 invalidity clause and/or retroactive ratemaking may be much different from the  
12 conclusion BPA reached in the WP-07 Supplemental ROD. Under such conflicting  
13 rulings by the court, whether APAC likes it or not—and we presume it would not—BPA  
14 would have to reconcile the court's holdings with each other. In Scenario 1, we modeled  
15 one possible reconciliation. Adding a different reconciliation preferred by APAC might  
16 add to the diversity of modeled outcomes of the litigation, but it would not negate the  
17 possibility of Scenario 1 as posed, and the alternative results would likely fall between  
18 the results of Scenario 1 and the Reference Case.

19  
20 **Section 4.2: Scenarios 2 and 3 – Assumptions Regarding Load Reduction Agreements**

21 *Q. APAC charges that "BPA's treatment of the LRA scenario biases the assessment against*  
22 *the Preference Customers' positions." Wolverton, REP-12-E-AP-01, at 11. Please*  
23 *comment.*

24 *A. APAC's statement appears to be a rehash of its earlier argument that the analysis of the*  
25 *Settlement should have taken into account a multiplicity of possible outcomes. We have*



1 rebutted this charge above. Beyond that, APAC poses no basis on which to determine  
2 that the treatment of the LRA introduces bias into the results. Our analysis includes three  
3 positions on the LRA. First, the Reference Case and Scenario 2 sustain BPA's finding in  
4 the WP-07 Supplemental ROD that the LRAs were separate agreements and allowed to  
5 stand but are treated in the Lookback calculations in a way that does not fully protect the  
6 REP amounts paid to the two IOUs. Second, Scenario 1 assumes that the LRAs are valid  
7 and that the payments to the two IOUs would be fully protected and would not be  
8 considered in the Lookback calculations such that the two IOUs would keep both the  
9 LRA payments and the REP benefits to which they would otherwise be entitled. Third,  
10 Scenario 3 assumes that the LRAs are found to be improper and the two IOUs would be  
11 subject to Lookback withholding for the amounts paid to them under the LRAs. These  
12 three outcomes are treated separately and independently to examine their effect on the  
13 expectation of REP benefits to be paid to the IOUs in the future. APAC posits no  
14 alternative outcome to these three possibilities; rather, it makes an unsubstantiated claim  
15 that these outcomes somehow bias the results of the analysis against the COUs. We do  
16 not see any bias.

17  
18 **Section 4.3: Scenario 4 – Assumptions Relating to Idaho Deemer Balance**

19 *Q. APAC states, in its comment on Scenario 4, that “[u]nless BPA is changing past policy,*  
20 *Scenario 4, the Idaho deemer issue, has no impact on COU rate protection....”*  
21 *Wolverton, REP-12-E-AP-01, at 11. APAC states that “the deemer payments from Idaho*  
22 *Power are intended to pay Preference Customers for the higher rates that they paid when*  
23 *the deemer provisions were in effect.” Id. Please comment.*

24 *A. We are unsure what APAC's point is in its first statement. We do not claim that the*  
25 *treatment of the deemer balance in Scenario 4 would affect COU rate protection. We do*

1 claim that removing the deemer credit that results from withholding REP benefit  
2 payments to Idaho Power would affect the rates of all other ratepayers if the issue is  
3 settled with Idaho. Scenario 4 examines the effects of removing the withholding of REP  
4 benefits from Idaho and allowing its REP benefits to be paid to it. These effects will be  
5 felt by all other ratepayers.

6 This brings us to the second statement by APAC. In our construct of all scenarios  
7 other than Scenarios 4, 19, 20, and 22, those that remove Idaho's deemer balance, we  
8 assume that Idaho REP benefit payments are withheld from Idaho and credited against all  
9 other rates. These other rates include the Priority Firm Public (PFp), Priority Firm  
10 Exchange (PFx), Industrial Firm Power (IP), and New Resource Firm Power (NR) rates.  
11 This credit flows to all ratepayers based on the fact that all other ratepayers, including  
12 other REP participants, paid higher rates when deemer balances were being accrued. The  
13 credit is not limited to preference customers, as might be inferred when reading APAC's  
14 testimony.

15  
16 **Section 4.4: Scenario 15 – Inflation and Discount Rates**

17 *Q. APAC points to Scenario 15, which uses inflation instead of discount rates to determine*  
18 *the section 7(b)(2) trigger, as another scenario that could exist side-by-side with any of*  
19 *the other scenarios except Scenario 16 (using an investment discount rate) and the Best*  
20 *and Brief Cases. Wolverton, REP-12-E-AP-01, at 11. APAC claims that it is the*  
21 *expected value of this scenario in conjunction with the expected value of other scenarios*  
22 *that should be used to analyze the recommendation of Staff on the Settlement. Do you*  
23 *agree?*

24 *A. No. We recognize that some resolution to the discounting issue will eventually occur and*  
25 *that it will coexist with every other issue resolution that will eventually occur. But that,*

1 in and of itself, is not an issue with the construct of Scenario 15. This is merely a  
2 restatement of APAC's issue of outcome combinations that we address in section 3.4  
3 above. Unless we are completely missing a nuance in APAC's concern with Scenario 15,  
4 this concern could be stated for each and every scenario that we constructed.

5 *Q. Does this conclude your testimony?*

6 *A. Yes .*

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