

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

**2012 RESIDENTIAL EXCHANGE PROGRAM
SETTLEMENT AGREEMENT PROCEEDING**

Docket No. REP-12

**STATEMENT OF COUNSEL OF
THE PACIFIC NORTHWEST INVESTOR-OWNED UTILITIES GROUP**

March 15, 2011

REP-12-B-JP04-01

1 Consistent with the foregoing and as set forth in the Prefiled Rebuttal Testimony of the
2 Pacific Northwest Investor-Owned Utilities Group, REP-12-E-JP04-02, it is specifically the
3 intention of each of the utilities that make up the Pacific Northwest Investor-Owned Utilities
4 Group² that, if it enters into the proposed 2012 REP Settlement Agreement, any and all claims
5 and defenses arising out of the BPA Records of Decision (including without limitation the WP-
6 07S ROD³ and the WP-10 ROD⁴) challenged in the Litigation will be available to each of such
7 utilities under circumstances such as:

- 8 (i) to oppose any argument that BPA should set rates in any manner
9 inconsistent with the 2012 REP Settlement Agreement,
- 10 (ii) to defend against any argument made in the Litigation, should the
11 Litigation continue despite the 2012 REP Settlement Agreement
12 becoming effective, or
- 13 (iii) in the event that 2012 REP Settlement Agreement in its entirety (or
14 the 2012 REP Settlement Agreement in its entirety with the
15 exception of sections 10, 11.1, and 11.2) becomes void *ab initio*.⁵

16 The direct testimony of the Association of Public Agency Customers states that the
17 proposed 2012 REP Settlement Agreement, if adopted, “would largely supplant the need for

² The utilities that make up the Pacific Northwest Investor-Owned Utilities Group are Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc.

³ 2007 Supplemental Wholesale Power Rate Case (WP-07S), Administrator’s Final Record of Decision (the “WP-07S ROD”).

⁴ 2010 Wholesale Power and Transmission Rate Adjustment Proceeding (BPA-10), Administrator’s Final Record of Decision (the “WP-10 ROD”).

⁵ This paragraph is addressing only the intention of each of the utilities that make up the Pacific Northwest Investor-Owned Utilities Group with respect to the availability, under the circumstances described in such paragraph, of any and all claims and defenses arising out of the BPA Records of Decision (including the WP-07S ROD and WP-10 ROD) challenged in the Litigation.

1 further litigation on the issues relating to WP-07S and WP-10 as well as future rate periods
2 through FY2028.” (Wolverton, REP-12-E-AP-01, at page 4, lines 13-16.) The BPA Initial
3 Proposal stated as follows:

4 The Settlement is proposed as a complete replacement of all decisions
5 BPA made in the WP-07 Supplemental and WP-10 rate proceedings in
6 response to *PGE* and *Golden NW*. If the Administrator executes the
7 Settlement, such execution would withdraw his prior decisions regarding
8 the FY 2002-2008 period and replace them with the resolution contained
9 in the Settlement.

10 ...

11 Thus, the Settlement seeks to settle all issues relating to the FY 2002-2008
12 period, the FY 2009-2011 period, and future rate periods covering FY
13 2012-2028. By superseding the WP-07 Supplemental and WP-10
14 decisions, the Settlement incorporates the resolution of any and all
15 challenges to those decisions into the stream of REP benefits and costs set
16 forth in the Settlement Agreement. The litigants executing the Settlement
17 are agreeing that the stream of REP benefits and costs specified in the
18 Settlement is a complete settlement of past and future claims regarding the
19 past periods and future quantification of rate protection and REP benefits.

20 (Gendron, *et al.*, REP-12-E-BPA-04, at page 3, line 24, through page 24, line 2.)

21 If the Administrator executes the 2012 REP Settlement Agreement, these statements of
22 APAC and BPA must be qualified by and harmonized with the provisions of the 2012 REP
23 Settlement Agreement. The Record of Decision in this proceeding, if BPA adopts the proposed
24 2012 REP Settlement Agreement, must recognize that the Records of Decision challenged in the
25 Litigation (including without limitation the WP-07S ROD and the WP-10 ROD) are, consistent
26 with provisions of the 2012 REP Settlement Agreement, neither withdrawn nor replaced. As a
27 general matter, if BPA decides to enter into the proposed 2012 REP Settlement Agreement, the

1 Record of Decision in this proceeding must be consistent in all respects with the 2012 REP
2 Settlement Agreement.

3 The Pacific Northwest Investor-Owned Utilities Group looks forward to clarifying and
4 confirming the parties' understanding of the matters covered by this Statement of Counsel at the
5 public meeting scheduled for March 22, 2011, in this proceeding.

6 Dated this 15th day of March, 2011.

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