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

IN THE MATTER OF: **OVERSUPPLY MANAGEMENT COST-RECOVERY RATE PROPOSED AS PART OF COMPLIANCE FILING WITH THE FEDERAL ENERGY REGULATORY COMMISSION**	**Docket No. OS-14**

REBUTTAL TESTIMONY OF WILLIAM A. PASCOE WITNESS FOR CAITHNESS SHEPHERDS FLAT, LLC

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WILLIAM A. PASCOE
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DOCKET NO. OS-14

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Rebuttal Summary

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Supporting documents referenced in this testimony are contained in a separate exhibit, OS-14-E-CS-04

REBUTTAL TESTIMONY of
William A. Pascoe
Witness for Caithness Shepherds Flat, LLC

Q Please state your name and qualifications.

A My name is William A. Pascoe. My expert-witness qualifications are found in OS-14-Q-CS-01. I previously submitted written direct testimony in this proceeding, designated as OS-14-E-CS-01, together with supporting documentation (OS-14-E-CS-02).

Q What is the purpose of your rebuttal testimony?

A I am rebutting the testimony of Joint Party 03 (OS-14-E-JP03-01), the Western Public Agency Group (OS-14-E-WG-01), Joint Party 06 (OS-14-E-JP06-01), Alcoa (OS-14-E-AL-01) and Joint Party 05 (OS-14-E-JP05-01).

Section 1: <u>Rebuttal to Direct Testimony of Joint Party 03 (OS-14-E-JP03-01)</u>

Q Please explain your understanding of the purposes of the testimony of Joint Party 03.

A This joint party consists of several BPA preference power customers, several of their interest groups and Alcoa, another customer that purchases power from BPA. Their interest is in recharacterizing OMP compensations costs as "transmission-related" in arguing that these costs should be shifted from BPA's power customers to its transmission customers. Their testimony makes no mention of Northwest Power Act Section 7(g), the statute that deals with the allocation of BPA's costs relating to fish and wildlife measures and costs of unsold federal power.

Q At OS-14-E-JP03-01, p. 2, lines 11-14, the JP 03 panel claims that wind generation in the BPA Balancing Authority "impedes BPA's ability to displace sufficient generation with very low-priced energy to avoid an imbalance of generation and load within its system." Does this statement adequately explain BPA's oversupply situation?

A No, it does not. Over the past 20 years, there have been several changes in the Northwest power system with cumulative effects on the incidence of oversupply. JP 03 unfairly singles out wind generation, ignoring material changes in both BPA's energy supply and demand.

One very significant change in BPA's energy supply has resulted from its decision to switch the annual, springtime refueling and maintenance cycle for its Columbia Nuclear Generating Station to a biannual cycle. As a result of that change, every other spring runoff season, BPA contributes to its potential oversupply with up to 1,100 of nuclear generation (with only limited cycling capability) that also "impedes BPA's ability to displace sufficient generation with very low-priced energy."

Relevant changes in demand for BPA energy include BPA's loss of most of its 3,000 MW of DSI loads. DSI loads, operated near 100 percent load factor, had been particularly beneficial in utilizing energy from BPA's hydro system during off-peak hours when BPA would otherwise have been left with excess, unsold power. Other losses of BPA load have resulted from its extensive conservation and energy efficiency programs:

> For 30 years, the Northwest has been a leader in treating energy efficiency and conservation as a power resource. The Northwest Power Act of 1980 called on the Northwest to give energy conservation top priority in meeting its power needs, and the region quickly learned that a megawatt saved is the equivalent of a megawatt produced. As of 2009, energy efficiency accounted for only 1 percent of all electricity production in the United States. But in the Northwest, it accounted for 12 percent, thanks to collaboration among a number of entities - the Bonneville Power Administration, Northwest Power and Conservation Council, regional utilities, state agencies and environmental interests. In fiscal year 2009 alone, BPA secured approximately 70 average megawatts of energy efficiency for the Northwest - enough energy to power 60,000 homes. Today, energy efficiency is more important than ever. It is clean and emission free. It is also low cost relative to new energy generating resources. It serves our national goals of reducing our carbon footprint and enhancing our energy independence. In short, it is the world's most environmentally and economically friendly energy resource. [OS-14-E-CS-04, p. 1.]

Notably, BPA characterizes conservation as an "energy resource." Any attempt to tie wind generation to oversupply would also apply to conservation as an energy resource that also "impedes BPA's ability to displace sufficient generation with very low-priced energy." In short, the JP 03 witnesses seriously oversimplify the hydro situation faced by BPA by implying that nothing has changed about BPA's ability over time to manage its energy supply and demand

during times of hydro oversupply, except for the addition of new wind generation. Instead, the situation is driven by a number of changes, most having nothing to do with wind generation.

Q Regarding the JP 03 focus on generating resources within BPA's Balancing Authority (OS-14-E-JP03-01, p. 2), is there any reason why BPA could not economically displace coal-fired and other thermal generation in neighboring balancing authorities during oversupply?

A JP 03 is too complacent about BPA's reluctance to displace more thermal generation outside its Balancing Authority during oversupply. If BPA were willing to negotiate displacement arrangements with owners of thermal generation in neighboring Balancing Authorities consistent with the ramp-rate and minimum down times of such generation, there is no economic reason of which I am aware why it could not displace at least some of the coal-fired and gas-fired thermal generation that continues to operate during oversupply, as a market-based alternative to its forced displacement of wind generation under OMP. Because thermal generation incurs fuel costs that the owner can avoid during displacement, I believe that BPA could displace thermal generation at modestly positive displacement-energy prices, in contrast to the formulary negative prices it accepts from wind generators under OMP and now proposes to recover through the OS-14 rate.

Q JP 03 witnesses claim that OMP relates to transmission reliability. Do you believe that the JP 03 panel of witnesses is competent to testify as experts witness on questions of reliability?

A No, I do not. No member of the JP 03 witness panel has a degree in electrical engineering. Only one has an engineering degree (mechanical). None of their qualification statements mentions any professional training or practical experience in any aspect of transmission planning, design, operations, or reliability. None purports to have ever performed, or even participated in the preparation of, any transmission-reliability study.

Even overlooking the lack of expert qualifications, the JP 03 testimony would still violate the Special Rules of Practice in this case because they never explain their allegation. "Expert witnesses may testify in terms of opinion, provided that their testimony includes the reasons and

the underlying data in support of their conclusions." OS-14-HOO-02. JP 03 "reliability" testimony deserves no more weight than that given unexplained comments from the lay public.

Q Why should JP 03 testimony be given any less weight than BPA's testimony on questions of transmission or system reliability?

A BPA's testimony never alleges transmission or system reliability to be a cause of OMP or OMP compensation costs. BPA's testimony states only that some parties "could well argue" that OMP compensation costs are transmission-related – an apparent reference to JP 03 and WPAG. OS-14-E-BPA-02, p. 5. As I discuss below at p. 11, line 23 through p. 12, line 14, of this rebuttal, WPAG witnesses are also professionally unqualified to testify as experts about transmission or system reliability. Thus, there is no competent expert testimony in the record that would support any conclusion that OMP or OMP compensation costs relates to transmission or system reliability.

Q While the JP 03 panelists are unqualified as experts, do you agree with their lay allegation that OMP and OMP cost compensation relate to transmission or system reliability?

A No, I do not agree with their allegation. While BPA's earlier pronouncements about Environmental Redispatch may have created ambiguity about possible transmission reliability questions, its witnesses have removed this ambiguity in their answers to several data requests:

> "BPA does not contend that oversupply is the result of insufficient transmission capacity." [Exhibit OS-14-E-CS-02-V01, p. 9.]
>
> "We [BPA's witnesses] are not aware of any situations when there was insufficient transmission availability during oversupply events." [OS-14-E-IR-02, p. 2.]
>
> "In the Initial Proposal, [BPA] Staff stated that oversupply is too much electricity relative to load, not a lack of transmission capacity." [OS-14-E-IR-02, p. 3.]

These BPA admissions refute the lay allegations of JP 03 witnesses (and also WPAG as I explain below) that the BPA transmission system does not operate normally, within the relevant reliability limits, when OMP is in effect. Perhaps even FERC was influenced by this ambiguity in the order referenced in JP 03 testimony. However, any such ambiguity will be dispelled by

these BPA admissions when BPA makes its next compliance filing with FERC. Nowhere in their testimony do JP 03 witnesses explain their claim about reliability. In my opinion as a transmission expert, their testimony is just idle talk offered by JP 03 in the hope that BPA might use "transmission reliability" as a pretext for shifting fish and wildlife costs and unsold power costs from its power rates to its transmission rates.

Q At page 9, lines 20-25, of BPA's supplemental testimony, OS-14-E-BPA-02, BPA proposes to impose the OS-14 rate on firm and non-firm transmission usage of its network, during oversupply, by users other than wind generators. Is this relevant to the transmission reliability allegation of JP 03?

A Yes, it is further confirmation that OMP is unrelated to transmission reliability. I read the cited BPA testimony as an admission that it continues to honor both the firm and nonfirm transmission schedules of transmission customers other than wind generators within BPA's Balancing Authority, while OMP is in effect. BPA witnesses' admissions make it clear that transmission reliability has not been a problem during times when OMP has been in effect, However, assuming hypothetically that it were a problem, BPA would be obligated under Section 13.6 of BPA's Open Access Transmission Tariff ("OATT") to curtail nonfirm schedules before curtailing any of the firm schedules of wind generators. Section 13.6 would also obligate BPA to curtail all firm schedules *pro rata*, without discrimination between wind generators and other transmission customers. Section 13.6 of BPA's OATT provides: "All Curtailments will be made on a non-discriminatory basis, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service." BPA curtails wind generators, not because of transmission problems, but instead so it can confiscate wind-generator loads for federal supply.

Q Do you have any additional observations about the "reliability" claim of JP 03?

A Given my testimony above, the JP 03 "reliability" claim boils down to a presumption that BPA would intentionally generate hydropower in excess of BPA's loads. Doing so would violate relevant NERC and WECC rules governing the activities of entities that, like BPA, operate

balancing areas. It might actually require BPA to intentionally disarm the automatic generator control devices on its hydro units. The resulting excess of generation over load would increase the frequency above 60 Hz on the BPA transmission system and the systems with which BPA's system interconnects, causing instability, blackouts and perhaps even major property damage.

Such hypothetical intentional misconduct by BPA would reap enforcement penalties from NERC or WECC. It could also lead to civil lawsuits and new complaints against BPA before FERC. However, it would not be a "reliability" issue. It would instead be a legal-standards enforcement issue. The key point to this hypothetical is to recall BPA's admissions about transmission availability during OMP, quoted above on p. 2 of this rebuttal, and BPA's supplemental testimony that nonfirm transmission usage continues under OMP. Whatever constraints might limit BPA from engaging in such intentional misconduct, those constraints do not include any unavailability of transmission capacity during hydro oversupply. Transmission is not the problem. I do not mean to suggest that BPA would ever intentionally engage in such misconduct. I use this hypothetical only to demonstrate that the alleged linkage between OMP compensation costs and transmission reliability is totally baseless.

Q What is your response to the claim by JP 03 that BPA may be compelled to operate its hydro system at levels above federal loads because of "non-power and legal constraints in some situations?"

A This is further confirmation that OMP costs relate to BPA's fish and wildlife obligations, not transmission reliability. Moreover, JP 03 totally ignores BPA's purpose in imposing Environmental Redispatch and OMP. Each is a mechanism by which BPA coercively clears the supply market of wind-generated energy during times of hydro oversupply by denying wind generators within its Balancing Area access to its transmission system. Its express purpose under the "Environmental Redispatch and Negative Pricing Policy" was to clear the market without accepting negative prices for unsold hydro energy, lest it increase the cost of its fish and wildlife measures passed on to power customers by its marketing function. Under Environmental

Redispatch, BPA never accepted a negative power price. After FERC rejected Environmental Redispatch, BPA now accepts formulary negative power prices under OMP. The purposes of both Environmental Redispatch and OPM are market-control and cost-shifting made possible through BPA's exercise of its transmission monopoly power. BPA has used both Environmental Redispatch and OMP as market-control mechanisms by which BPA artificially augments its power loads by taking the nonfederal loads through forced displacement of wind generators.

Q Do you agree with the claim of JP 03 witnesses, at OS-14-E-JP03-01, p. 12, lines 3-20, that transmission customers are "beneficiaries" of OMP?

A The claim is baseless. To the extent this "beneficiary" claim is derivative of the claim about "transmission reliability," I have rebutted it above. Regarding other possible bases for this claim, also left unexplained and unstated in JP 03 testimony, I offer the following additional rebuttal.

It is helpful to view the situation, hypothetically, as one in which BPA were responsible only for the federal power system in the Northwest, with the transmission system independently owned and operated – perhaps by a Northwest RTO. Under this hypothetical, BPA would consist only of its power marketing function. When faced with hydro oversupply, BPA would then have to resolve its problem exclusively through use of the solutions (exclusive of OMP) described in its most recent Attachment P filing with FERC. To the extent these solutions still left BPA with a need to generate hydropower in excess of its existing federal power loads, it would have to accept negative power prices determined in the wholesale power market. Alternatively, it could have negotiated, in advance of oversupply, mutually agreeable arrangements with nonfederal generators specifying the price, terms and conditions at which these generators would agree to have their units displaced during hydro oversupply. (This is exactly the type of mutually agreeable arrangement several wind generators have been asking BPA to negotiate. Thus far, such requests seem to have been ignored by BPA.)

Under this hypothetical, BPA would have netted revenues from its positively priced displacement energy against costs associated with its acceptance of negative prices for other displacement energy, crediting only the netted amount against its power rates. This is what is required of BPA in the non-hypothetical world by Northwest Power Act Section 7(g). This is the course followed by BPA during oversupply conditions predating the development of wind generation in its Balancing Authority. *See* my direct testimony, OS-14-E-CS-01, pp. 8-9.

Returning from this hypothetical to the real world, BPA has a federal power system and a transmission system, the latter comprising 75 percent of all high-voltage transmission in the Northwest. BPA has a transmission monopoly over every wind generator operating within its Balancing Authority. It used that monopoly power under Environmental Redispatch, and then under OMP, to deny wind generators their contractual rights to firm transmission capacity (despite the fact that transmission capacity remains available, as I have explained above at pp. 2-3), all the while maintaining that it is not "curtailing" their firm transmission service. It has sent its transmission customers, and purported to implement, unilateral amendments to their Large Generator Interconnection Agreements that purportedly deny them transmission access. It has done all this in order to confiscate their nonfederal power loads for federal use. Now, under OS-14, it would shift fish-related costs of its power marketing function onto transmission rates.

It is simply not credible to suggest that BPA transmission customers are "beneficiaries" of BPA's exercise of its monopoly power over transmission. BPA uses its transmission monopoly to control market supply (through forced displacement of wind generation with excess hydro energy), market demand (by taking wind generator loads for federal use) and market price (by setting formulary negative prices) whenever it implements OMP to dispose of excess hydro supply at the prices it sets. Instead, the sole "beneficiaries" of OMP are BPA's marketing function and its power customers – customers represented by JP 03, WPAG and JP 06.

Q What is your response to the JP 03 claim that allocating OMP compensation costs to transmission follows "cost-causation?"

A The term "cost-causation" is sprinkled liberally throughout the testimonies of BPA and its power customers, but left unexplained. These are merely conclusory statements. Their claim is false.

It is important to remember that when OMP is in effect, transmission customers are "bumped" from the transmission system, despite their contractual firm capacity rights and despite the fact that BPA is "not aware of any situations when there was insufficient transmission availability during oversupply events." OS-14-E-IR-02, p. 2. This interruption of firm transmission service is the consequence of OMP, not its cause. After BPA was ordered by FERC to stop confiscating its customers' firm transmission rights under the Environmental Redispatch and Negative Pricing Policy, BPA decided to compensate wind generators under OMP by using the formulaic negative power prices described in my direct testimony, OS-14-E-CS-01. These OMP compensation costs were incurred by BPA, not because of the fact that wind generators are transmission customers, but because they do not burn fossil fuels in the production of renewable energy and associated RECs. Freedom from fossil fuel dependence is neither a cause nor an effect of hydro oversupply, which is a recurring phenomenon of the Columbia River system that long predates OMP. Instead, avoidance of fossil fuels is an independent regulatory and economic fact, fostered by federal and state renewable energy laws and policies. In this regard, it is important to note that FERC rejected BPA's first OS-14 tracker rate proposal, which would have penalized curtailed wind generators with half of all OMP compensation costs. BPA would have charged wind generators it "bumped" from the transmission system with half the cost of its bumping compensation payments. *See* Caithness Position Paper, OS-14-P-CS-01, p. 11.

Q What then is the cause of OMP?

A The cause relates to the fish and wildlife measures that BPA is obligated to undertake in order to offset the adverse effects of its hydro system on fish protected under the Endangered Species Act.

During times of high spill these measures can involve the generation of excess hydro energy that BPA is unwilling to sell at negative market-clearing prices determined in the market. OMP is the mechanism by which BPA controls the market to fix the negative pricing levels it is willing to accept. To the extent OMP is even lawful, principles of cost-causation make OMP compensation costs the responsibility of BPA's hydro system and the power customers who benefit from it, not BPA's transmission system and transmission customers. *See* my direct testimony at pp. 5-7.

Q JP 03 witnesses make repeated references to the RECs and PTCs of wind generators. Do you agree that this is the proper focus?

A No. JP 03, and also WPAG, seem not to appreciate the fact that wind generators typically do not get paid at all under their power sale contracts if they cannot produce renewable energy and RECs at their generators. I am not aware of any wind generator that gets paid by its power purchasers for the excess federal hydro energy that BPA substitutes as it confiscates wind-generator power loads for use as a sink for that excess federal energy, which has no RECs associated with it. BPA's forced-displacement energy is simply a different product than the one for which wind generators are paid under their sales contracts. However, curtailment of firm transmission rights by BPA, for reasons of hydro oversupply and unrelated to the BPA transmission system, is not something wind generators could reasonably have been expected to anticipate when negotiating their respective long-term power sale agreements.

Q Do you agree with the JP 03 proposal for a periodic true-up of OMP compensation costs?

A No. There has been too much focus on OMP compensation costs as BPA's cost *de jour*. However, I believe that both BPA and its customers have been surprised by the modest actual cost levels and future expected value of such costs. They do not warrant special treatment. For comparison, consider the costs BPA could expect to incur during an extended outage at its Columbia nuclear generating station or the costs it would incur during an especially dry year on the Columbia River. Either of these costs would dwarf OMP compensation costs. Yet, there is

no special tracker or true-up for the nuclear station or a drought; both are covered generically through BPA's cost recovery adjustment, the CRAC. If there were such a nuclear outage or low-water condition, then BPA's related cost increase would be netted against under-runs in other costs categories, with only the net recovered through the CRAC. OMP costs warrant nothing more than that.

Q Please summarize your differences with JP 03 regarding the proposed OS-14 rate tracker.

A Neither JP 03 nor I approve of BPA's proposal to recover its OMP compensation costs through a new rate tracker. We both believe that a tracker would be needlessly complicated and continuously controversial. I believe that these negative features could lead to further complaints before FERC under Federal Power Act Section 211A. JP 03 advocates, without justification or professional qualifications as I have demonstrated in this rebuttal, that OMP compensation costs be recovered through transmission base rates. I advocate, for reasons stated in OS-14-E-CS-01 and in this rebuttal, that OMP costs are costs of the BPA hydro system that must be recovered through power rates. My testimony draws on Northwest Power Act Section 7(g), whereas BPA, JP 03 and other intervenors representing power-customer interests have all ignored Section 7(g), both in their testimony and in their statements of position.

Section 2: <u>Rebuttal to Testimony of Western Public Agency Group (OS-14-E-WG-01)</u>

Q Please explain your understanding of the Western Public Agency Group ("WPAG") testimony.

A A fair amount of this testimony is cumulative of testimony presented by JP 03. WPAG also makes conclusory statements about "beneficiaries," "cost-causation" and "transmission reliability." Like JP 03, WPAG never substantiates its claims. WPAG testimony offers nothing really different from JP 03 on these points.

Q WPAG witnesses also purport to address "transmission reliability" in their testimony. Do you believe this panel is competent to testify as experts witness on questions of reliability?

A No, I do not. As with the JP 03 panel, no member of the WPAG panel has a degree in electrical engineering or any branch of engineering. None of their qualification statements mention any background in any aspect of transmission planning, design, operations, or reliability. None purports to have ever performed, or even participated in the preparation of, any transmission-reliability study. As with the JP 03 panel, the "reliability" testimony of WPAG should treated as a lay comment from the general public.

Q Do you agree with WPAG's summary of "high water events in the past" at OS-14-E-WG-01, p. 3?

A We agree that BPA's occasional need to avoid spill predates the development of wind generation within BPA's Balancing Authority and that spill "is considered detrimental to fish." *Id.,* line 16. However, I disagree with WPAG's categorical claim that "[t]his was done without BPA paying anyone to take its power.' *Id*., lines 24-25. This WPAG allegation is simply untrue.

At pp. 8-9 of my initial testimony, OS-14-E-CS-01, I quoted the testimony of BPA executive Steve Oliver in a FERC investigative proceeding on power pricing during the 2001 energy crisis. Mr. Oliver testified that BPA accepted negative prices during oversupply situations occurring within the period covered by the FERC investigation, including a bid price of -$500/MWh. Relevant excerpts from Mr. Oliver's testimony are reprinted in OS-14-E-CS-02, pp. 27-33. Also bearing on this point is BPA's brief in this FERC investigative proceeding, which states on page 88:

> Thus, when BPA had to move an amount of water through the system, BPA's bids tended to be at low <u>sometimes even negative-priced</u>. [Reprinted in OS-14-E-CS-04, p. 4, emphasis added.]

Not "never," not "just once," but "sometimes." The footnote to this BPA statement on brief is also quite germane:

> BPA-001 (Oliver Direct) … (Explaining that a -$500/MWh bid into the CAISO helped 'ensure that the bid would be taken and so that it could move that particular amount of water through the system to meet the flow objectives necessary to meet the mandated fish and wildlife requirements.') [*Id*.]

Observe that BPA's use of "mandated fish and wildlife requirements" in the quote above is a very close paraphrasing of the language of Northwest Power Act Section 7(g).

WPAG witnesses also ignore that BPA also dealt with past oversupply situations by entering into consensual agreements with parties compensated for helping in the solution of BPA problems. An instance on point was addressed in *California Energy Commission v. BPA*, 754 F.2d 1470 (9th Cir. 1985), which dealt with an agreement between BPA and the co-owners of the Trojan nuclear plant to displace this plant during an oversupply situation. Like wind generators, Trojan's running costs were negligible, meaning that BPA could not displace it with positively priced BPA displacement energy. To displace Trojan, BPA purchased plant scheduling rights and shut down the plant consensually. Purchasing Trojan scheduling rights is no different, functionally, from paying a negative price to help clear the short-term energy supply market.

Q Is WPAG's characterization of the FERC order on BPA's first compliance filing accurate?

A No. FERC never declared that "OMP costs are transmission costs, and are not power costs." OS-14-E-WG-01, p. 7, lines 6-7. Beyond noting this WPAG error, quibbling about the meaning of FERC's order seems pointless at this juncture. BPA and the parties will learn soon enough what FERC means and intends when it takes up BPA's revised compliance filing after this proceeding, based on the evidentiary record the parties have compiled. My understanding is that this will be the first time FERC considers both Federal Power Act Section 211A and the question of whether BPA's transmission rates reflect the equitable allocation of costs under Northwest Power Act Section 7(a)(2), read in conjunction with Northwest Power Act Section 7(g).

Q On page 12, lines 17-18, of its direct testimony, WPAG worries that "FERC will not sustain BPA's departures from the allocation approach it described in its order." Do you agree?

A Yes, this is the point I made in my direct testimony, OS-14-E-CS-01, pp. 15-16. WPAG describes one OS-14 defect as "BPA's use of customer transmission for displacement." The defect relates to BPA's proposal to impose OS-14 charges in wind generators it has curtailed,

while allowing its marketing function to escape such charges for the transmission it uses when it displaces wind generation involuntarily with federal energy to supply the wind generators' nonfederal power loads. There is consensus between Caithness and WPAG that FERC will reject OS-14 for this failure to satisfy "comparability" under Federal Power Act Section 211A.

Section 3: <u>Rebuttal to Testimony of Joint Party 06 (OS-14-E-JP06-01)</u>

Q Please explain your understanding of the purposes of the testimony of Joint Party 06.

A The utilities represented by "Joint Party 06" are preference power customers of BPA that purchase wholesale power from BPA under so-called "Slice" or "Slice of the System" contracts. Slice contracts are not tied to the total power requirements of the purchasers. Instead, they provide each Slice contract signatory with the right to a specified undivided percentage share of the capacity and energy output of BPA's hydroelectric system, in return for payment by the Slice customer of the same percentage share of the total costs of that hydro system. Because Slice involves a sharing of supply from the same hydroelectric system among BPA and each of its Slice customers, when there is high water in the Columbia River and the federal hydro system is producing energy more than enough to satisfy the respective contractual-wholesale and retail loads of BPA or any of its Slice customers, they may be simultaneously selling the excess in the short-term wholesale market. Conversely, during times of low water, BPA and Slice customers may be simultaneously covering their respective power deficiencies through wholesale purchases.

Q Do BPA and its Slice customers compete for energy sales and purchases in the same wholesale market?

A Yes, that is my understanding.

Q How does this competitive situation relate to OMP?

A As explained by the JP 06 witnesses, during times of hydro oversupply that give rise to OMP, Slice customers will be attempting to dispose of their respective shares of their Slice share of this oversupply. However, Slice customers have some flexibility under their respective Slice

contracts to take less than their full contractual share of this surplus energy. Taking less Slice energy actually creates the potential that they can meet at least part of their total power needs with energy in the short-term market that may be offered at a negative price.

As explained by the witnesses for JP 06, each Slice contract specifies a minimum delivery amount ("MDU") that each Slice customer is required to take under its contract. OS-14-E-JP06-01, pp. 6-11. According to JP 06 witnesses, the MDU is not an absolute minimum; the customer has some flexibility to reduce its energy take below its MDU:

> Simply put, the Slice customer has more power supply than load to serve, and as permitted by the Slice/Block Contract can elect to take less than its MDA to manage the situation. For those Slice customers that also use non-federal resources to serve their retail load, an additional factor that can result in the customer taking less than its MDA is a sudden increase in power available from its non-federal generation for which there may be no market. [OS-14-E-JP06-01, p. 9.]

Under OMP, BPA now intends to discourage Slice customers from exercising their contractual right to under-run their respective MDUs by imposing an unauthorized decrease charge ("UDC") "that would apply only to Slice customers." OS-14-E-JP06-01, p. 6. The UDC would be in addition to remedies already provided in each Slice contract. *Id*., p. 15, lines 8-18.

Q Why is BPA imposing the UDC?

A JP06 witnesses point to two reasons why BPA is proposing this charge. First, BPA hopes that it will help it control energy prices during oversupply in order to avoid paying negative prices. OS-14-E-JP06-01, p. 10, line 20, through p. 11, line 5. Second, BPA wants to deter the Slice customers with which it competes from reducing their take of Slice hydro energy during oversupply and, instead, covering their respective energy needs with purchases of wholesale-market energy offered for sale at negative prices. *Id*., p. 11, lines 5-13.

Q Why is this troubling?

A UDC would be another coercive mechanism by which BPA would use OMP to control market supplies and prices during times of hydro oversupply. Just as BPA uses its transmission

monopoly to curtail and involuntarily displace wind generators during OMP, it also proposes to use UDC to control the market behavior of its competitors that are Slice customers.

Q How do the JP 06 witnesses propose to respond to such control of market behavior?

A They actually propose to make matters even worse. Throughout their testimony they refer to the market behavior of Slice customers: "the behavior of Slice customers (OS-14-E-JP06-01, p. 13, line 14); "BPA should monitor Slice customer behavior" (*id*., p. 16, line 7); "the behavior about which BPA has expressed concerns" (*id*., p. 22, line 6). They then propose that Slice customers "collaborate" with BPA over the coming rate period to monitor the market behavior that BPA wants to discourage among Slice customers:

> If this were done during the next rate period, both BPA and its customers would be in a much better position to deal with any effort by a Slice customer to take less than its MDA in order to obtain negatively price power. Such an effort would provide an opportunity to collaborate on this issue rather than fight over it, and would alter the whole nature of the discussion of the UDC. We ask that BPA again look for a regional, collaborative solution to the interaction of oversupply events and the Slice MDA. [OS-14-E-JP06-01, p. 18, lines 10-15.]

WPAG, of which JP 06 is an intervenor subset, advances the same "collaborate rather than fight" proposal at OS-14-E-WG-01, p. 18, lines 10-15.

Q What do the JP-06 witnesses propose as the outcome of this collaboration?

A After this "collaboration," only those Slice customers whose market behavior is determined not to conform to the expectations of BPA's marketing function would suffer imposition of the UDC. *Id*. p. 20, lines 1-5. *See also* WPAG's testimony at OS-14-E-WG-01, p. 19, line 9, through p. 20, line 16. The JP 06 testimony about penalties, and their avoidance, is particularly troublesome:

> At this juncture, where the <u>behavior</u> about which BPA has expressed concerns has not occurred, the more prudent path is to defer implementation of this proposed UDC until the end of the next rate period. This will allow BPA to determine, based on actual <u>behavior</u>, whether there is a problem that needs to be addressed. [OS-14-E-JP06-01, p. 22, lines 6-9, emphasis supplied.]

That's wholesale power market "behavior" JP 06 witnesses are describing. However, it does not take a lawyer to understand that antitrust law and policy look with extreme disfavor

upon "collaboration" among competitors on matters inextricably linked to market supply, market prices and market-behavior-driven penalties.

JP-06 testimony suggests that this "collaborative" review of competitive information has already begun. "So far as we know, there has not been an occurrence of a Slice customer intentionally taking less than its MDA in order to replace Slice energy with negatively priced market power during an oversupply event." OS-14-E-JP06-01, p. 12, lines 1-3. How do these witnesses know this statement to be true, except by surveying JP 06 sponsoring utilities to exchange information about their supply and pricing decisions? JP 06 even suggests a forum for further market-behavior "collaboration" with BPA. *See* JP 06 data response CS-JP06-2, included in Exhibit OS-14-E-CS-04, p. 9. If this is the "collaborative solution" UDC fosters, UDC is a very bad idea. I believe that FERC will be very interested to learn how OMP and UDC can lead to manipulation of western energy markets during the coming BPA rate period.

Q Has BPA included its proposed UDC charge in the compliance filing it submitted to FERC in response to the adverse ruling in *Iberdrola Renewables, Inc., et al. v. BPA*?

A I have not found any reference to the proposed UDC charge in BPA's compliance filing.

Q Do you believe that UDC must be included as part of BPA's compliance filing?

A I leave the legal requirements of a compliance filing to the lawyers. However, as a matter of implementation and policy, OMP can only be understood as a package of control mechanisms, imposed by BPA as a transmission monopoly, on the market behavior of entities that sell and buy energy in the same market as BPA's marketing function during times of hydro oversupply. UDC and OMP are each market-control mechanisms. I do not believe that FERC can fully understand OMP unless all its components, including all rate components, are included in the compliance filing that BPA has been ordered to make. As FERC has already ruled:

> The rate and non-rate aspects of Bonneville's proposal are intrinsically linked. As a result, the Commission concludes that it must consider both the rate and non-rate aspects of the compliance proposal to determine whether, consistent with section 211A of the Federal Power Act, Bonneville's proposal results in

> comparable and not unduly discriminatory treatment of all generating resources connected to Bonneville's transmission system. [Order on compliance filing, 141 FERC ¶ 61,234, P 43.]

"[A]ll generating resources connected to Bonneville's transmission system" necessarily includes the individual shares of the federal hydro system contractually committed to Slice customers.

Q Do you have a recommendation regarding the proposed UDC?

A UDC has grave potential for market manipulation. It should be withdrawn, along with the OS-14 tracker rate. If the UDC is adopted, however, I believe that BPA should include it as part of its next compliance filing so that FERC may be given a more complete picture of OMP.

Section 4: <u>Rebuttal to Alcoa (OS-14-E-Al-01)</u>

Q What is your understanding of the purpose of Alcoa's separate testimony?

A Alcoa wishes to bring to BPA's attention its belief that OS-14, as a separate tracker rate, might operate as a penalty or other disincentive to possible nighttime loads that might arise during off-peak hours of hydro oversupply. The concern seems speculative, but I suppose it could have some substance.

Q How might Alcoa's concern be resolved?

A This concern is traceable to the use of a rate tracker, which sends a price signal separate and apart from BPA's power base rates. If the tracker were withdrawn, and BPA recovered its OMP compensation costs through power base rates, then the penalty or disincentive perceived by Alcoa would be eliminated. I recommended this in my initial testimony, OS-14-E-CS-01.

Section 5: <u>Rebuttal to Joint Party 05 (OS-14-E-JP05-01)</u>

Q Do market-determined negative prices necessarily yield higher costs than use of BPA's formulaic negative prices?

A The testimony of JP 05, pp. 38-39, contains prices, derived from BPA data, that I find quite remarkable:

> The average administratively determined negative price paid by BPA under OMP in FY2012 was –$54.42/MWh when Administrative Costs are excluded and –$59.43/MWh when Administrative Costs are included. [Footnotes omitted.]

These data are derived from BPA's own initial proposal, using the formulaic negative prices employed by BPA. "Administrative Costs" relate to the work of BPA's independent auditor in reviewing the competitive pricing data submitted by wind generators under seal as a condition of receiving OMP compensation. While total 2012 OMP compensation costs were less than $3 million (including $250,000 in Administrative Costs), these unit prices, derived by JP 05 from BPA data, are quite negative. The administrative cost alone has a -$5.00 effect. I agree with JP 05 that BPA might have found negative prices closer to $0.00 in the market if it had not categorically refused to do so as a matter of agency policy. Surely there are coal-fired and other thermal power plants running during oversupply situations that BPA might displace voluntarily in the market and at a cost closer to $0.00 than the –$59.43/MWh derived by JP 05 from BPA data. BPA would have to arrange such displacement in advance of real-time because thermal generation cannot be cycled within-the-hour, as BPA forces upon wind generators.

BPA may be wasting ratepayer money by accepting negative prices lower than those it might experience in competitive markets. Data presented by JP 05 raise reasonable questions about whether BPA is setting its rates in accordance with "sound business principles," as it is required to do under Northwest Power Act Section 7(a).

Section 6: <u>Rebuttal Summary</u>

Q What conclusions do you draw from your review of direct testimony in this proceeding?

A I make the following observations to refute the need for BPA to adopt its proposed OS-14 and UDC rates. No one supports OS-14. It is bureaucratic, controversial and unnecessary. Neither does anyone support UDC, which will inevitably lead to market manipulation among competitors.

BPA initiated its Environmental Redispatch and Negative Pricing Policy in a rushed response to the aberrantly large hydro oversupply of 2011. When FERC rejected Environmental

Redispatch under Federal Power Act Section 211A, BPA responded with OMP, which continues BPA's market-distorting practices, but accepts formulary negative prices for forced-displacement energy. Thus, under OMP, BPA has reversed itself on its earlier decision not to accept negative prices – the stated reason why it had adopted Environmental Redispatch.

As BPA prepares its next compliance filing, the opportunity arises to reconsider OMP. I recommend that BPA abandon OS-14 and UDC along with the rest of OMP. Experience since 2011 has proven OMP unnecessary and too distortive of competitive markets. In FERC filings, BPA has described OMP as "temporary." The time has come to move on to something better.

Q If BPA accepts your refutation of the need for adopting its OS-14 and UDC proposals, what do you recommend it do instead?

A I do not want to leave BPA without an alternative, if it accepts my refutation of the need for OS-14 and the UDC. I note that OMP compensation costs have been less than BPA feared as water conditions have moderated: under $3 million for FY 2012 (including $250,000 in administration costs) and probably zero for FY 2013. BPA has improved the mitigation measures that it has promised to undertake before ever again implementing OMP. The costs of negative power prices (whether formulary or market) will be further moderated by 22 percent now that BPA has accepted Caithness' request for application of Northwest Power Act Section 4(h)(10)(C). *See* OS-14-P-CS-01, pp. 3 and 12.

Instead of OMP, BPA should use voluntary methods to help clear the energy supply market during those infrequent times of oversupply when its Endangered Species Act obligations make further spill problematic. To borrow BPA's own wording in FERC's energy crisis investigation, this means "sometimes" accepting negative energy prices, but as determined by the competitive market and not by BPA's OMP formula.

The costs of negative power pricing -- reduced by 22 percent under Section 4(h)(10)(C) -- should be netted against BPA's positive energy sale revenues, with the netted amount recovered

through power rates, as required by Northwest Power Act Section 7(g). (Recall that BPA's first OS-14 proposal allocated half of OMP compensation costs to power rates.) Because expected annual OMP costs are modest, BPA need not adjust its $2 billion power revenue requirement to account for this amount over the next two-year rate period. Any material overrun in costs associated with negative prices could be handled by the CRAC, accompanied by full public scrutiny. Nearing the end of its next rate period, BPA can reassess the situation based on two more years of experience.

In so doing, BPA would end its OMP administrative costs, which arise from compiling and auditing the competitively sensitive pricing data wind generators must submit to qualify for formulary negative power prices under OMP. An administrative-cost-recovery rate would become unnecessary. Thus, I also refute the need to adopt this rate, as well as OS-14 and the UDC.

Q Does this conclude your rebuttal testimony?

A Yes.