



Subscription payments until FY 2006-2011; 2) Petitions for Review pending in the Ninth Circuit Court of Appeals challenging the BPA Administrator's decisions regarding the level of benefits owed the residential and small-farm (Residential) customers of investor-owned utilities under the Northwest Power Act will be dismissed; and 3) BPA will establish a zero SN CRAC for Fiscal Year 2004, and will lower its rates over the balance of the current rate period. (For a more detailed discussion of the Settlement, see Public Meeting memo by Marc Hellman, presented at the December 4, 2003, Public Meeting.)

At the December 4, 2003, Public Meeting, the Commission directed both Portland General Electric and PacifiCorp to execute agreements with the Bonneville Power Administration to defer a portion of BPA's fiscal year 2004 through 2006 Subscription payments and amend agreements related to determining the level of benefits and their administration.

Also on December 4, 2003, the Commission held an Executive Session to discuss the referenced cases and the merits of filing to withdraw the causes and claims.

It is not necessary for the Commission to enter into the Settlement Agreement and we know of no material advantage to the Commission in doing so. However, to facilitate the Agreement, we recommend that the Commission agree to the dismissal of several Petitions for Review pending before the Ninth Circuit Court of Appeals, in which the Commission intervened, regarding the level of benefits provided to Residential customers of investor-owned utilities. These cases are:

Pacific Northwest Generating Cooperative v. Bonneville Power Administration,  
Docket No. 00-70948

Puget Sound Energy Inc., *et al.*, v. Bonneville Power Administration,  
Docket No. 00-70949

Portland General Electric Company v. BPA  
Docket No. 01-70002

Public Power Council, Inc., v. U.S. DOE, *et al*  
Docket No. 01-70009

Puget Sound Energy, Inc., v. BPA  
Docket No. 01-70041

We also recommend that the Commission agree to waive its right to sue regarding the level of benefits given to Residential customers through 2011. In the event the Commission agrees to the dismissal of pending cases, and to waive its right to pursue future claims regarding payment of benefits to Residential customers, this agreement is predicated on the finality of the Settlement Agreement. If any one of the publicly-owned utilities, who are current litigants, does not agree to the dismissal of the pending litigation or does not execute a Waiver and Covenant Not to Sue, the Settlement Agreement Is voided ab initio.

The procedure for dismissing the pending litigation and executing the covenant is to send to BPA signed motions stipulating to the dismissal of the cases listed above, and a signed Waiver and Covenant Not to Sue. BPA will hold these documents in trust in the event that the settlement becomes effective. If the Agreement becomes effective, BPA will promptly file the motions stipulating to dismissal of the listed cases with the Ninth Circuit Court of Appeals. If the Settlement is voided ab initio, Bonneville Power Administration will return the motions and Waiver and Covenant to the Commission.

Specifically, the Settlement Agreement provides:

*If this Stipulation has not been voided ab initio pursuant to section 11 before the 121<sup>st</sup> day after the Effective Date, BPA shall join, file and serve the Motions to Limit Issues on Certain Rate Claims and Motions to Dismiss Causes and Claims. If this Stipulation has been voided ab initio pursuant to section 11 before the 121<sup>st</sup> day after the Effective Date, BPA will not file or serve but will, on or before the 135<sup>th</sup> day after the Effective Date, return each of the originally signed Motions to Dismiss and Motions to Limit Issues on Certain Rate Claims to the respective signing Parties, person or entity.*

The text of Section 11(a), dealing with Voiding of Stipulation, is included in Attachment A.

#### **PROPOSED COMMISSION MOTION:**

The Commission transmit to the Bonneville Power Administration, to hold in trust, motions requesting dismissal of Ninth Circuit Causes and Claims Regarding Bonneville Power Administration Matters and a Waiver and Covenant not to Sue.

**11. Voiding of Stipulation and Events Of Default.**

(a) *Voiding of Stipulation.* This Stipulation and all other Settlement Documents shall be void *ab initio* upon the occurrence of any of the following events:

(i) *Failure of Public Litigant to Execute and Deliver.* Failure of any Public Litigant to execute and deliver to BPA in trust, on or before the 90<sup>th</sup> day after the Effective Date each of the following,

(A) a Waiver and Covenant Not to Sue;

(B) a Motion to Dismiss Causes and Claims {unless such Public Litigant has as of the 90<sup>th</sup> day after the Effective Date dismissed with prejudice any and all of its petitions for review in any and all the Referenced Causes (other than with respect to Reserved Claims in Cause No. 00-70948), withdrawn as an intervenor in any and all of the Referenced Causes (other than with respect to Reserved Claims in Cause No. 00-70948), and delivered with the Waiver and Covenant Not to Sue a copy of an order (or other indicia of dismissal with prejudice and withdrawal) from the Ninth Circuit dismissing all such petitions for review and granting all such withdrawals}; and

(C) a Motion to Limit Issues on Certain Rate Claims {if such Public Litigant has as of the 90<sup>th</sup> day after the Effective Date filed a petition for review or motion to intervene in the Ninth Circuit that includes or may include any claim that a Party would be precluded from filing or maintaining by its Waiver and Covenant Not to Sue regarding BPA's WP-02 rates (or any CRAC during the WP-02 rate period)}.

(ii) *Withdrawal from Stipulation.* Withdrawal, pursuant to an Event of Default, from this Stipulation by any Public Litigant or BPA.

(iii) *Court Action Prior to 121<sup>st</sup> Day.* Withdrawal by any Public Litigant, BPA, or Investor Owned Utility pursuant to an Event of Default described in item (iii), (iv), or (viii) of section 11(b) below.

(iv) *Failure of United States Department of Justice to Authorize.* Failure of the Department of Justice to notify BPA in writing on or before the 90<sup>th</sup> day after the Effective Date of its intent to authorize the appropriate departmental officials or attorneys to sign and file on behalf of Respondent the Motion to Dismiss Causes and Claims and the Motion to Limit Issues on Certain Rate Claims and to the extent necessary or advisable to provide its approval of the Stipulation.