

Record of Decision

**Termination of Residential Purchase and Sale
Agreement for Portland General Electric Company**

I. Background

Bonneville Power Administration (BPA) was established by the Bonneville Project Act of 1937 (Project Act), 16 U.S.C. §§ 832 *et seq.* After enactment of the Project Act, BPA marketed the low-cost hydropower generated by Federal dams in the Pacific Northwest. Section 4(a) of the Project Act requires BPA to “give preference and priority to public bodies and cooperatives” when selling power. 16 U.S.C. § 832c(a). This preference had little significance in BPA’s early years, however, because BPA had sufficient power to serve the needs of all customers in the region. These customers included public bodies and cooperatives, known as “preference customers” because of their statutory first right to Federal power under the preference clause noted above. *Id.* These customers also included investor-owned utilities (IOUs) and direct service industrial customers (DSIs). In 1948, the increasing demand for power caused BPA to require that contracts with the DSIs must include provisions to allow the interruption of service when necessary to meet the needs of BPA’s preference customers. In the 1970’s, forecasts showed that preference customers would soon require all of BPA’s power. Therefore, in 1973, BPA gave notice that new contracts for firm power for IOUs would not be offered and that as DSI contracts expired between 1981-1991, the contracts were not likely to be renewed. *Aluminum Co. of America v. Central Lincoln Peoples' Utility*

Dist., 467 U.S. 380, 383-385 (1984). In 1976, BPA advised preference customers that BPA would not be able to satisfy preference customer load growth after 1983 and that BPA would have to determine how to allocate power among preference customers.

The high cost of alternative sources of power caused BPA's non-preference customers to attempt to regain access to cheap Federal power. Many areas served by IOUs moved to establish public entities designed to qualify as preference customers and be eligible for administrative allocations of power. Because the Project Act provided no clear way of allocating power among preference customers, and because the stakes involved in buying cheap federal power had become very high, the competition for administrative allocations threatened to produce contentious litigation. The uncertainty inherent in the situation greatly complicated the efforts by all BPA customers to plan for their future power needs. In order to avoid the prospect of unproductive and endless litigation regarding access to the Federal power marketed by BPA, Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. §. 839 *et seq.*, in 1980. *Central Lincoln Peoples' Utility Dist. v. Johnson*, 735 F.2d 1101, 1107 (9th Cir. 1984).

The Northwest Power Act expressly reaffirmed the right of BPA's preference customers to first call on Federal power before such power could be offered to BPA's IOU or DSI customers. 16 U.S.C. §. 839g(c). The Act also established the Residential Exchange Program. 16 U.S.C. §. 839c(c). As noted above, when BPA had insufficient Federal power to meet the needs of investor-owned utilities in the 1970s, such utilities developed their own resources which were generally more costly than Federal hydropower. The Residential Exchange Program provides Pacific Northwest utilities a

monetary form of access to low-cost Federal power. *See California Energy Resources Conservation and Dev. Comm'n v. Johnson*, 807 F.2d 1456, 1459-60 (9th Cir. 1986).

Under the program, Pacific Northwest utilities may sell power to BPA at a rate based on the utility's average system cost (ASC) of its resources. BPA is required to purchase that power and sell, in exchange, an equivalent amount of power to the utility at BPA's Priority Firm Power (PF) rate. This is the same rate that applies to BPA's sales of power to its preference customers, although the Act provides that the PF rate for the Residential Exchange Program may be higher than the PF rate for preference customers due to a rate ceiling for preference customers established in section 7(b)(2) of the Act. 16 U.S.C. § 839e(b)(2); 16 U.S.C. § 839e(b)(3). The Residential Exchange is not "a mechanism . . . for establishing a traditional cost of purchased power." Federal Energy Regulatory Commission Order No. 400-A, 30 F.E.R.C. ¶ 61,108, 61,195-96 (1985); *see Central Elec. Cooperative v. Bonneville Power Admin.*, 835 F.2d 199-1, 200-01 (9th Cir. 1987). No power is actually transferred to or from BPA since the "exchange" is simply an accounting transaction: "in practice, only dollars are exchanged, not electric power." *Public Util. Comm'r of Oregon v. Bonneville Power Admin.*, 583 F. Supp. 752, 754 (D. Or. 1984), *aff'd*, 767 F.2d 622 (9th Cir. 1985).

Where a utility's ASC is higher than BPA's PF rate, the difference between the rates is multiplied by the utility's jurisdictional residential load to determine an amount of money that is paid to the utility as Residential Exchange Benefits. These benefits must be passed through directly to the utility's residential consumers, generally through lower retail rates. 16 U.S.C. § 839c(c)(3). The cost of providing these benefits to exchanging utilities is borne primarily by BPA's publicly owned utility and DSI customers, subject to

the rate ceiling established in section 7(b)(2) of the Northwest Power Act, which protects BPA's preference customers from excessive costs of the Residential Exchange Program. 16 U.S.C. § 839e(b)(2). The Northwest Power Act, however, provides that in lieu of purchasing electric power offered by a utility, the Administrator may acquire an equivalent amount of power from other sources to replace power sold to a utility as part of an exchange sale if the cost of the acquisition is less than the cost of purchasing power from the utility at its average system cost. 16 U.S.C. 839c(c)(5). In this event, the residential exchange becomes an actual power transaction wherein BPA acquires power from a source and sells power to the exchanging utility at BPA's Priority Firm Power (PF) rate schedule.

The Residential Exchange Program, since its inception, has been implemented through contracts called Residential Purchase and Sale Agreements (RPSAs). RPSAs were executed with Pacific Northwest utilities interested in participating in the Residential Exchange Program. BPA previously executed an RPSA with PGE, Contract No. DE-MS79-81BP90603. PGE has participated in the Residential Exchange Program since the execution of its RPSA.

II. Procedural History

The Conference Report to the Energy and Water Development Appropriations Act of 1995 (P.L. 104-46) states in part, "[c]onsistent with the regional review, Bonneville and its customers should work together to gradually phase out the residential exchange program by October 1, 2001." In the early summer of 1996, PacifiCorp, Puget Sound Power & Light Company (Puget) and PGE expressed interest to BPA regarding the possible buyout of their RPSAs. As noted above, these agreements establish the

terms governing a utility's participation in the Residential Exchange Program. The agreements were intended to run through June 30, 2001. Joint discussions were mutually suspended in July 1996, pending the acquisition of further data. Subsequent separate negotiations occurred with Puget and PacifiCorp, respectively, resulting in settlement agreements with both utilities. Discussions with PGE resumed in August 1997.

Following negotiations, BPA and PGE developed a proposed agreement to terminate PGE's participation in the Residential Exchange Program by terminating PGE's RPSA and providing for the payment to PGE of \$25.5 million from BPA. In addition, BPA would offer to PGE or other qualified entities an option to purchase 360 average annual megawatts (aMW) of firm power with deliveries beginning October 1, 2001. Further, BPA and PGE would terminate all pending, and commence no new litigation, contract disputes, or regulatory or administrative disputes, including ASC determinations, load determinations, billing disputes, or other issues regarding the Residential Exchange Program, with respect to Residential Exchange Benefits (including challenges to BPA's 1996 rates) for the period prior to July 1, 2001.

On April 22, 1998, BPA sent a notice to all interested parties announcing a comment period regarding a proposal by BPA and PGE to terminate PGE's participation in the Residential Exchange Program through June 30, 2001. Interested parties were encouraged to express their views. BPA's notice also described the proposed agreement and copies of the draft agreement were provided to requesting parties.

III. Review of Comments

BPA's April 22, 1998, notice requested written comments by May 22, 1998. BPA received written comments from 12 parties. The commenting parties include the

Clearwater Power Company (Clearwater); the Citizens' Utility Board of Oregon (CUB); the City of Glendale, California (Glendale); Kaiser Aluminum, Goldendale Aluminum, Northwest Aluminum and Reynolds Metals (the direct service industries or DSIs); the Northwest Energy Coalition (NEC); the Oregon Public Utility Commission (OPUC); the Pacific Northwest Generating Cooperative (PNGC); the Public Power Council (PPC); the Public Generating Pool (PGP); The Washington Water Power Company (WWP); and the Western Public Agencies Group (WPAG). The Washington Utilities and Transportation Commission (WUTC) filed comments out of time which were accepted for review.

After receipt of the parties' comments, BPA and PGE continued settlement negotiations. As noted previously, the initial settlement proposal included \$25.5 million in cash payments and a firm power purchase option for up to 360 aMW of firm power for the post-2001 period. After further negotiations, BPA and PGE decided to revise the proposed settlement to eliminate the firm power purchase option. In order to address the elimination of the firm power purchase option, the revised settlement provides for an additional cash payment of \$9 million for a total cash payment of \$34.5 million. The additional cash payment of \$9 million will be paid proportionally to the payment schedule specified in the initial settlement proposal. The revised payment schedule is:

Payment Schedule	Payment Amount (\$)
Effective Date	6,800,000
Effective Date through September 30, 1998	14,900,000
October 1, 1998 through September 30, 1999	9,500,000
October 1, 1999 through September 30, 2000	3,300,000

The initial settlement proposal provided that PGE would file with the OPUC for a rate rollback to a net increase of 6.4 percent or less out of the 11.9 percent increase granted in

January 1998. As a result of the additional cash payment, PGE will file for a rate rollback to a net increase of 5.7 percent or less.

As noted below, most of the comments raised by the parties concerned the proposed firm power option. Because the firm power option has been eliminated, many of these comments have been rendered moot. The parties' comments are addressed below.

A. Procedural Issues

Issue 1: Whether the proper parties negotiated the settlement.

Parties' Positions: PPC argues that representatives of BPA's customers, such as PPC, should have been permitted to participate in the negotiations of the settlement. PPC at 2.

Evaluation and Decision: In BPA's approximately 30 successful negotiations with the numerous utilities that were bought out of the residential exchange program, BPA only negotiated with the utility (or its representative, such as PNGC) and state regulators, not with other BPA customers. BPA continued this practice in the PGE negotiations. In Oregon, utilities are regulated by the Oregon Public Utility Commission (OPUC). PGE would not be able to implement a settlement unless the OPUC permitted it to do so. It was therefore appropriate to include the OPUC in the negotiations. Similarly, the Citizens' Utility Board is also an integral part of Oregon's residential retail rate development. CUB's participation was also appropriate. While BPA would have agreed to include PPC in the settlement discussions, other parties to the negotiations were uncomfortable with such participation, particularly where it had not occurred in the negotiation of previous settlements. Also, a public comment process was initiated after initial negotiations were concluded, providing PPC the opportunity to comment on the

proposed settlement. It is clear that PPC's comments were reviewed and seriously considered in determining whether BPA should proceed with a settlement. PPC was not adversely affected simply because it was not permitted to participate first hand in the long and complex negotiation process that preceded the current settlement.

Issue 2: Whether the proposed settlement payment was determined in the proper process.

Parties' Positions: WPAG argues that the initial proposed payment of \$25.5 million to PGE in the settlement has not been justified in a public process. WPAG at 2.

Evaluation and Decision: As noted previously, BPA has negotiated over 30 residential exchange termination agreements with Pacific Northwest utilities. In each case there were two parties to the contract: BPA and the exchanging utility. Only BPA and the exchanging utility can negotiate the terms of a residential exchange contract (including public utility commission involvement where appropriate), including termination of that agreement by mutual consent. For this reason, every termination agreement with exchanging utilities has been negotiated between BPA and the utility. None of the negotiations have ever occurred in a public process. Significantly, this includes termination agreements with Snohomish County P.U.D. and Clark County P.U.D., two members of WPAG. While BPA has never negotiated termination agreements in a public process, BPA has consistently provided a public process to receive comment from interested parties about any proposed termination agreement, including the instant proposed settlement agreement. It is in this public process that WPAG and other utilities filed comments addressing their concerns. As noted earlier, these

comments are taken seriously by BPA and have assisted the agency greatly in making a final determination.

B. Proposed Firm Power Purchase Option Issues

Issue 1: Whether the proposed firm power purchase option is a section 5(c) transaction.

Parties' Positions: PPC notes that residential exchange transactions under section 5(c) of the Northwest Power Act can occur either as a monetary transaction or as an "in lieu" transaction. PPC at 2. PPC and PNGC argue that the proposed sale is neither a financial transaction nor an "in lieu" transaction and the proposal therefore is inconsistent with section 5(c). Id.; PNGC at 1. WPAG claims that PGE has not offered to sell power to BPA under the exchange and therefore the power sale cannot be an in lieu transaction. WPAG at 4. PNGC argues that power sales to PGE to serve residential loads that are not subject to recall are inconsistent with public preference. PNGC at 2-3. The DSIs argue that the residential exchange program was designed not to diminish BPA's service to other loads and that BPA should replace any power sold to PGE through in lieu purchases. DSI at 1.

Evaluation and Decision: As a result of negotiations with PGE after the receipt of public comments, a firm power purchase option is not included in the final settlement. For this reason, the parties' arguments regarding the nature of the power sale are moot and it is not necessary for BPA to respond to the comments or address the merits of the positions taken by the commenters.

Issue 2: Whether the proposed sale must be recallable to meet preference loads.

Parties' Positions: PPC and WPAG argue that any power sale to PGE must be subject to the recall provisions of the Northwest Power Act because the power sale does not constitute an in lieu transaction. PPC at 2; WPAG at 5. PNGC argues that absent being a proper in lieu transaction, the power sale will reduce the amount of Federal power that BPA will have available to meet preference loads. PNGC at 3. The DSIs note that if the power purchase option is for other than section 5(c) power, it is subject to recall under the Bonneville Project Act. DSI at 2.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, the parties' arguments regarding recall of a power sale are moot and require no further response.

Issue 3: Whether the proposed power sale is legally priced.

Parties' Positions: PPC, WPAG and PGP argue that the rate that applies to the proposed power sale is inappropriate. PPC at 2-3; WPAG at 6; PGP at 2. PPC, WPAG and PGP argue that the rate that applies to residential exchange loads is subject to the section 7(b)(2) rate test and that because the agreement ignores this statutory requirement, this produces an illegal and unjust outcome. *Id.* PPC and WPAG argue that this outcome is unjust because the section 7(b)(2) rate test is intended to provide rate protection to BPA's public agency and preference customers from the costs of implementing the Northwest Power Act, including the residential exchange program. *Id.* PGP argues that the rate provided in the settlement agreement will result in a rate shift to other customers. PGP at 2. WPAG argues that the settlement agreement also exempts the power sold from any higher rate that might apply to all other subscribers, which is inconsistent with what other purchasers may face. WPAG at 7. PGP argues that the

settlement provides a guarantee of the lowest price available through Subscription even if PGE waits to exercise its option, claiming that this arrangement should be offered first to preference customers. PGP at 3.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, the parties' arguments regarding the price of a power sale are moot and require no further response.

Issue 4: Whether the firm power purchase option effectively predetermines the outcome of the Subscription process regarding the amounts of power that BPA's customers may purchase after 2001.

Parties' Positions: PPC argues that the proposed settlement locks in an amount of power exclusively available to PGE and predetermines a higher exchange benefit to PGE for PGE's remaining residential exchange load in excess of the 360 aMW. PPC at 5. PPC also argues that because PGE is advocating that BPA be forbidden from future power acquisitions, the proposed option to purchase power may give PGE a priority lock on a limited resource and reduce the power available for preference customers. PPC at 6.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, the parties' arguments regarding possibly higher exchange benefits and inappropriate priorities to limited resources are moot and require no further response.

Issue 5: Whether the proposed firm power purchase option provides for the collection of BPA's transition or stranded costs from PGE.

Parties' Positions: PPC and WPAG argue that the proposed power sale does not provide for the collection of BPA's transition or stranded costs from PGE and amounts to inequitable and unjustifiable discrimination among BPA's customers. PPC at 5; WPAG at 7.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, the parties' arguments regarding the recovery of transition or stranded costs are moot and require no further response.

Issue 6: Whether it is appropriate for a Qualified Entity to be able to purchase power under the settlement agreement.

Parties' Positions: PPC notes that the proposed power sale would be "to PGE or another qualified entity legally able to purchase power from BPA and approved by the OPUC to serve PGE residential and small farm load." PPC at 5. PPC argues that it would not be appropriate for a Qualified Entity to purchase power under the settlement because it would ignore that the exchanging utility's ASC is the relevant point for determining exchange benefits. *Id.* WPAG, PGP and PNGC argue that power sales under the settlement agreement cannot be made to Qualifying Entities because such entities are not Pacific Northwest electric utilities that are eligible to participate in the residential exchange program. WPAG at 5; PGP at 2; PNGC at 2.

Evaluation and Decision : BPA has not included a firm power purchase option as part of the final settlement. For this reason, the parties' arguments regarding the transfer of a power sale to qualified entities are moot and require no further response.

Issue 7: Whether it is appropriate to provide PGE an option to purchase which can be exercised at a later time than other purchasers in Subscription.

Parties' Positions: PPC, WPAG and PGP argue that no matter what timing constraints, obligations and risks other utilities have to accept in order to receive an allocation of Subscription power, PGE has been provided rights not available to others because PGE can sit back, see how the market is going, observe Subscription purchases, and then either exercise the option if valuable or walk away if not valuable. PPC at 6; WPAG at 3; PGP at 2. WPAG argues that BPA has agreed to reserve for PGE's exclusive use 300 [sic] aMW of power and has given PGE more time to decide than any other subscriber. WPAG at 3-4.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, the parties' arguments regarding the appropriateness of providing PGE an option to purchase power are moot and require no further response.

Issue 8: Whether the settlement agreement would increase PGE's average system cost.

Parties' Positions: WPAG argues that the settlement agreement provides that for purposes of calculating PGE's ASC under the ASC Methodology, PGE's Contract System Load will be reduced by any power sold under the agreement and any payments for such power will be excluded from PGE's Contract System Costs, thereby resulting in an increase in PGE's ASC and thus exchange benefits. WPAG at 3.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, WPAG's arguments regarding the effect of a power sale on PGE's average system cost are moot and require no further response.

Issue 9: Whether the settlement agreement permits PGE to have its load growth served at the preference customer rate.

Parties' Positions: WPAG argues that the settlement agreement allows PGE to continue to receive monetary exchange benefits for the remainder of its exchange load not served with the power purchase. WPAG at 3. WPAG argues that this means that PGE will be entitled to have its residential load growth served at the preference customer rate while BPA is not offering such unlimited load growth service to its preference customers at the preference customer rate. Id.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, WPAG's arguments regarding the rate applicable to load growth service are moot and require no further response.

Issue 10: Whether the settlement agreement ensures that the benefits of a power sale will be passed through to the relevant PGE residential and small farm customers.

Parties' Positions: WPAG argues that the Northwest Power Act requires that residential exchange benefits, including benefits of in lieu power purchases, be passed through to residential and small farm customers. WPAG at 6. WPAG argues that the settlement agreement only requires that the power made available be resold to the residential and small farm customers, which does not limit the price at which the power is resold. Id. PGP argues that it is unclear how Qualified Entities will be required to pass the benefit of Federal power directly to residential and small farm customers. PGP at 2.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, the parties' arguments regarding the price and procedures applicable to passthrough sales are moot and require no further response.

Issue 11: Whether the proposed settlement is consistent with Conference Report language from the 1995 Energy and Water Development Appropriations Act.

Parties' Positions: PNGC argues that the proposed settlement, with the potential for power sales after 2001, is inconsistent with Conference Report language from the 1995 Energy and Water Development Appropriations Act which encourages BPA and its customers to work together to "gradually phase out the residential exchange program by October 1, 2001." PNGC at 1.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, PNGC's arguments regarding the continuation of a power sale after 2001 are moot and require no further response.

Issue 12: Whether the firm power purchase option is in satisfaction of BPA's section 5(c) obligations for the post-2001 period.

Parties' Positions: PNGC argues that the settlement agreement does not state that power sales under the agreement would be in satisfaction of BPA's section 5(c) obligations for the post-2001 period. PNGC at 1.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, PNGC's arguments regarding a power sale affecting BPA's residential exchange obligations after 2001 are moot and require no further response.

Issue 13: Whether there should be a post-2001 sale in the settlement agreement given the uncertainty regarding the residential exchange program.

Parties' Positions: PNGC argues that there is great uncertainty regarding residential exchange benefits in the post-2001 period due to changes in the market and in the market structure. PNGC at 1.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, PNGC's arguments regarding the effect of changing markets on a power sale as part of BPA's residential exchange obligations after 2001 are moot and require no further response.

Issue 14: Whether any settlement should address the residential exchange program after 2001 until the rights of all prospective participants have been finalized.

Parties' Positions: WWP objects to any settlement involving the residential exchange program after 2001 until the rights of all prospective participants have been finalized. WWP at 1. WWP argues that the existing ASC methodology and the implementation of the section 7(b)(2) rate test have excluded WWP's residential and small farm customers from having access to Federal resources. WWP at 2. WWP argues that the residential exchange program provides benefits only to the highest cost utilities. *Id.* WWP supports the concept of actual power sales as a substitute for the monetary exchange but believes that the 360 aMW amount in the PGE settlement may be greater than would be provided to other utilities in a pro rata distribution of Federal power and therefore opposes the settlement until sales to all utilities for the post-2001 period is addressed. *Id.*

The WUTC argues that BPA should not consider the post-2001 firm power option that covers only a portion of PGE's exchangeable load to constitute any precedent for the broader resolution of post-2001 residential exchange issues. WUTC at 2.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, the parties' arguments regarding any precedential settlement of post-2001 residential exchange issues are moot and require no further response.

Issue 15: Whether the proposed settlement would affect the price of power in a separate power sale agreement between PGE and the City of Glendale, California.

Parties' Positions: Glendale argues that the proposed settlement would drive PGE's variable costs upward thereby increasing the rate paid by Glendale to PGE in an existing power sale agreement. Glendale at 1.

Evaluation and Decision: BPA has not included a firm power purchase option as part of the final settlement. For this reason, Glendale's arguments regarding the effect of a power sale on an unrelated contract are moot and require no further response.

C. Cash Payment Issues

Issue 1: Whether BPA's cash offer to terminate PGE's participation in the residential exchange program is excessive.

Parties' Positions: WPAG argues that the proposed payment of \$25.5 million to PGE in the settlement is excessive. WPAG at 2. PPC and PNGC argue that a reasonable monetary value for an RPSA buyout is the net present value of the exchange benefits that a utility would have received absent the buyout discounted to reflect the time value of money. PPC at 4; PNGC at 3. PPC argues that forecasted benefits to PGE would have been approximately \$5 million but that BPA proposed to pay \$25.5 million to PGE and that such an amount is excessive. *Id.* PNGC argues that previous termination agreements were negotiated with exchanging utilities that did not provide monetary benefits as high

as the PGE settlement, which raises equity issues for those utilities who previously settled, including utilities who settled residential exchange benefits through 2011. PNGC at 3-4.

Evaluation and Decision: BPA has completed residential exchange termination agreements with over 30 utilities. The determination of termination payments is not a precise science and is different in each settlement with each utility. While the final payment amount for PGE was larger than forecasted benefits at the time the negotiations began, this does not mean that the payment amount was inappropriate. During the negotiations the parties correctly noted the existence of a wide range of potential scenarios in which the exchange costs could be significantly higher (e.g., potential impacts of deregulation on calculation of ASC, etc.).

It must be recognized that the PGE settlement is taking place during a period in which change in the electric utility industry is more acute than during any of the prior settlement processes. The possible effects on the residential exchange program of state utility regulation are myriad and difficult to predict. While some may argue that deregulation would lead to residential consumers served by entities other than PGE and thus a reduction in residential exchange benefits to PGE, this would not preclude the possibility that the lost load would be served by another utility eligible for residential exchange benefits. There are also possibilities that only a portion of a utility's residential load might be lost, resulting in the same costs applied to a smaller load and thus an increase in the utility's ASC.

After lengthy negotiations, BPA and PGE agreed on the \$34.5 million payment. PGE is the last actively exchanging utility with which BPA reached a settlement. This

settlement payment not only terminates PGE's participation in the residential exchange program through 2001, but it also effectively eliminates the residential exchange program completely for that period. Had a settlement not been reached, BPA would have been required to keep experienced staff and adequate resources available to process ASC filings for PGE. The elimination of this burden allows BPA to focus those resources upon important issues currently facing the agency and to avoid protracted administrative and judicial proceedings.

PPC argues that it would be inappropriate to base a settlement payment on the amount of benefits BPA forecasted to pay PGE in BPA's 1996 rate case because, since exchange benefit payments are made on the basis of actual outcomes and not rate case forecasts, savings on exchange benefits might be needed to make up for shortages in other program areas. PPC at 4. BPA did not base the monetary payment amount on benefits forecasted in BPA's 1996 rate case. In BPA's 1996 rate case, forecasted benefits to PGE for the FY1998-2001 period were \$62 million dollars. The proposed monetary amount of \$34.5 million is much lower than PGE's forecasted benefits in the rate case for the period ending in 2001. However, PGE's forecasted benefits were used in developing BPA's rates, ensuring that BPA's rates would recover sufficient revenues to cover the costs of the Residential Exchange program. As a result of the settlement amount being less than the rate case forecast, BPA's current rates are recovering more than sufficient revenue to cover the settlement payment. Reducing the Residential Exchange obligation to a liquidated amount in this manner also has the effect of reducing the risk of net revenue shortfalls. This mitigation of risk benefits BPA's customers, including PPC members. In essence, while PPC is correct in noting that savings on exchange benefits

might be needed to make up for shortages in other areas, the excess net revenues from lower actual exchange costs for PGE gives BPA greater latitude in crafting a settlement amount that strikes a reasonable balance for all interested parties.

In addition, while a significant factor for BPA's buyout negotiations has been a forecast of benefits for the rate period, BPA also considers the retail rate effect on residential consumers. This principle is consistent with the legislative purposes behind the Residential Exchange program. Consequently, in negotiations with the IOUs, BPA attempted to provide settlement payments that treated the IOUs equitably in terms of the retail rate effects. Puget and PacifiCorp, dealing with a merger and mitigation of impacts to irrigators, respectively, had more flexibility to address this issue than PGE, which had already concluded a merger proceeding. PPC argues that the effect of retail rate impacts on PGE's customers should not be considered because such impacts were PGE's own doing. PPC at 5. PPC argues that this is the case because PGE deliberately chose not to pass on reductions in exchange benefits when such benefits were diminished, thereby creating a larger "cliff" when a future BPA rate change occurred. *Id.* PPC also notes that PGE and the OPUC chose not to use PGE's retail rate decreases as a means of buffering the rate impact of known future reductions in exchange benefits to PGE, thereby contributing to a "cliff" when BPA's 1996 rate went into effect. *Id.* PPC argues that PGE and the OPUC should not be rewarded for their manipulation of retail rate impacts on customers, particularly when they blame such impacts entirely on BPA and do not take responsibility for their contributions to the rate impacts. *Id.* In response to these arguments it should be noted that, in the conduct of the negotiations of all Residential Exchange settlements, BPA tried to focus on achieving an equitable resolution. Different

factual situations had to be taken into account in determining the appropriate settlement amounts for the various utilities, but the ultimate goal was to achieve a fair settlement for the benefit of the ultimate beneficiaries of the program. Focusing on what might or might not have motivated various actions taken by utilities or public utility commissions at different times would not be a productive approach for fostering resolution of the Residential Exchange program.

PNGC argues that previous termination agreements were negotiated with exchanging utilities that did not provide monetary benefits as high as the PGE settlement, which raises equity issues for those utilities who previously settled, including utilities who settled residential exchange benefits through 2011. PNGC at 3-4. As noted previously, the determination of termination payments is not a precise science and is different in each settlement with each utility. Some of the reasons for the amount of the proposed termination payment to PGE have been noted above, e.g., those related to differing factual circumstances of the utilities, increased efficiencies created by elimination of the program, and net revenue risk mitigation provided through settlement. However, another significant difference between the current proposed agreement and previous agreements should be noted. Only in the current circumstance was BPA negotiating a termination agreement at the same time that there was a related outstanding lawsuit against BPA. In BPA's 1996 rate case there was a dispute between BPA and the investor-owned utilities regarding the development of the PF rate, in particular the section 7(b)(2) rate test. Because the section 7(b)(2) rate test "triggered," it created a PF Exchange rate that was higher than the PF Preference rate. This had the effect of reducing prospective residential exchange benefits to exchanging utilities for the

following 5-year rate period. On October 27, 1997, PGE filed a lawsuit in the United States Court of Appeals for the Ninth Circuit challenging BPA's 1996 rates. While BPA believes that its rates were properly established, the existence of the lawsuit created some risk to the 1996 rates, which would potentially affect the revenues BPA planned to receive from its power sales over the rate period. The proposed termination agreement with PGE expressly requires PGE to voluntarily dismiss the lawsuit against BPA, subject to reinstatement of the lawsuit if the settlement were successfully challenged. The voluntary dismissal of the lawsuit provided additional value to BPA in determining the terms of the settlement. Again, such items are difficult to quantify but are certainly factors that must be weighed in reaching an overall settlement amount that is mutually acceptable.

As noted previously, the determination of an appropriate cash payment for the termination of an RPSA involves the exercise of judgment. Section 2(f) of the Bonneville Project Act provides BPA great discretion in the exercise of such judgment.

Section 2(f) provides:

Subject only to the provisions of this chapter, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary.

Pursuant to section 2(f), and for the reasons stated in this Record of Decision, the payment of \$34.5 million for the termination of PGE's RPSA is appropriate.

Issue 2: Whether the proposed settlement ignores PGE's tentative Customer Choice Plan on file with the OPUC.

Parties' Positions: PPC argues that at least three criteria must be met by PGE in order for PGE's residential and small farm loads to receive the benefits of the residential exchange program: (1) PGE must be a Pacific Northwest utility, (2) PGE must have regional residential loads to which the benefits of the residential exchange must be passed, and (3) PGE must pass the benefits directly to its regional residential loads. PPC notes that in September 1997 PGE filed a Customer Choice Plan and attendant rate schedules with the OPUC and proposed that the Plan be operational during the term of PGE's RPSA. PPC argues that PGE's Plan fails to meet the criteria necessary to obtain benefits from the residential exchange program. PPC argues that (1) under the Plan, PGE would not be a Pacific Northwest utility with regional residential loads, (2) unidentified energy service providers will serve PGE's former residential loads, which must be Pacific Northwest utilities and which must qualify for benefits based on the entity's average system cost, and (3) the residential exchange benefits must be passed through directly from the exchanging utility to the utility's residential loads, and if PGE is not serving the loads it cannot act as a middleman or conduit for an entity actually serving the loads. PPC argues that the proposed settlement provides exchange benefits where the exchanging utility, PGE, expressly desires not to serve the eligible load.

Evaluation and Decision: While BPA understands PPC's argument, it is premature to conclude that the proposed Customer Choice Plan would eliminate potential residential exchange benefits to PGE for the pre-2001 period. The Plan is currently a proposal before the OPUC. It has not been approved by the Commission and such approval might ultimately require legislative action. If the Plan is not approved by the Commission it would have no effect on PGE's ability to receive residential exchange

benefits. Notably, an alternative plan has been proposed to the OPUC called the portfolio approach. This approach differs greatly from the Customer Choice Plan and would not have the same consequences as those argued by PPC with regard to the Customer Choice Plan. Even if the plan were approved in its proposed form, it is not clear that its implementation could take place within the pre-2001 timeframe. This settlement agreement is largely predicated on the facts and circumstances reasonably within the knowledge of the parties at the time of the negotiations. Attempts to speculate on future events in the current climate of change in the power industry would not be productive. There is no clear indication of how this issue may be resolved by the OPUC and , if required, the Oregon legislature. BPA cannot assume that the results claimed by the PPC would actually occur, nor could it reasonably take such speculation into account in developing a settlement amount.

D. Miscellaneous

Issue 1: Whether BPA should initiate the Subscription process before allocation principles, rates, and general and uniform contract provisions are established.

Parties' Positions: WUTC argues that the current schedule would have Subscription taking place prior to the results of public processes, including ratemaking, that affect it in important ways. WUTC at 3. WUTC argues that this could put BPA in the awkward position of making implied or actual contractual commitments to exchange eligible utilities, or other customers, in advance of the public decisions necessary to implement them. Id.

Evaluation and Decision: The issue raised by WUTC relates to the Subscription process generally, which is separate and distinct from the PGE settlement. The PGE

settlement is not related to Subscription because the post-2001 firm power option has been eliminated. Subscription issues will not be resolved in this Record of Decision but WUTC's comments will be forwarded to the Subscription process.

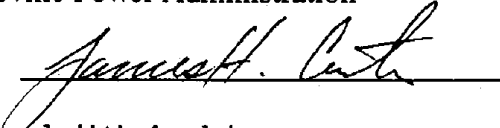
CONCLUSION

Based upon the foregoing discussion, the record compiled in this proceeding and all requirements of law, I hereby determine that BPA should execute the Residential Exchange Termination Agreement with PGE.

Issued at Portland, Oregon, on this 3rd day of September, 1998.

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By


Name Judith A. Johansen

Title Administrator and CEO