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Region's utilities offered referendum on litigation settlement

Thursday Oct. 23 was day one in a crucial 120-day period during which public power utilities and other parties that have filed litigation against the Bonneville Power Administration will decide whether to end their lawsuits and make possible a wholesale power rate reduction for many public power utilities, direct-service industries such as aluminum companies and the regional investor-owned utility (IOU) that buys power from BPA. BPA, Vera Water and Power, Avista Corporation and Puget Sound Energy each signed the legal documents that define the terms and conditions of the settlement, establish its effective date and make it a final action by BPA under the Northwest Power Act.

The suits, filed earlier by various utilities in the region, challenge the nature and level of investor-owned utility benefits and other contractual arrangements entered into by BPA in 2001. BPA is required by the Northwest Power Act to provide benefits to IOU residential and small farm customers. The challenge is over the level of the benefits, not over provision of the benefits.

If the settlement succeeds, BPA would eliminate a 2.2 percent rate increase that took effect Oct. 1 and reduce rates 7.4 percent below 2003 average rates. The net effect, compared to current rates, would be a nearly 10 percent reduction in wholesale power rates for fiscal year 2004.

How it would work

In basic terms, the IOUs would give up a $200 million risk contingency payment and defer $269 million in benefits into the FY 2007-2011 period. The affected public utilities would get rate relief for the remainder of this rate period in exchange for some increased costs in the FY 2007-2011 period. Both the publics and the IOUs would receive certainty about the range of benefits that the residential and small farm customers of the IOUs will receive in the latter period.

One of the major benefits of the settlement would be elimination of several lawsuits. That should provide a much improved business climate for all utilities and allow the region to focus on the future.

The parts of the agreement

The agreement has three parts:

- A Stipulation and Agreement for Settlement (Stipulation),
- Amendments to the existing IOU contracts (IOU Amendment) and
- Slice Settlement Agreements.

The Stipulation states the terms and conditions that each party agrees to in the settlement. The Stipulation has three attachments.

- **Covenant Not to Sue:** A contractual promise in which parties to the settlement agree not to file future suits challenging the Stipulation or aspects of BPA's rates.
- **Motions to Dismiss:** A set of motions that ask the Ninth Circuit Court of Appeals to dismiss the pending contract and policy-related litigation.
- **Motion to Limit Issues on Certain Rate Claims:** Which asks the Ninth Circuit Court to limit the issues that parties can raise on their existing challenges regarding BPA's 2002 wholesale power rates.

In addition to the Stipulation, BPA signed the IOU Contract Amendments and the Slice Agreements.

The IOU Contract Amendments commit the IOUs to eliminate the $200 million risk contingency payment and to defer the $269 million in benefits from this rate period into FY 2007-2011. Each of the six regional IOUs has been offered an amendment but it is not necessary for all of the IOUs to sign for the settlement to be binding. If an IOU chooses not to sign its amendment, the other parties to the settlement can choose to continue with the agreement, or not, based on their assessment of the associated risks.

The Slice Agreements ensure that purchasers of the Slice power product will benefit in the FY 2004-2006 period from the deferral of IOU benefits into the next rate period. It also ensures that the Slice purchasers will pay for their share of the deferred monetary benefits in the next rate period. All Slice purchasers have been offered the Slice Agreements, but it is not essential for all Slice purchasers to sign in order for the settlement agreement to be binding. Again, if a Slice purchaser does not sign the agreement, BPA has the opportunity to decide whether to continue.

The process

In order to implement the settlement, all public utilities that are parties to the litigation (public litigants) must sign the Covenant Not to Sue and the applicable Motions to Dismiss and Motion to Limit Issues on Certain Rate Claims. Public litigants may opt to also sign the Stipulation. It is essential for the public litigants to sign the Covenant not to Sue and appropriate motions within 90 days for the agreements to be final and binding.

Following that 90-day period, if all public litigants have signed the covenant and applicable motions, the IOUs will have 15 days to opt out of the settlement agreement if certain events have occurred. These events create risks for the IOUs that potentially could undermine the framework of the settlement. Therefore, the IOUs would have the opportunity to decide whether to continue with the settlement. In the event any IOU elects to withdraw, the settlement is not automatically terminated.

After the IOUs have the opportunity to assess the landscape, the public utility litigants and BPA will also have 15 days to opt out if certain events have occurred.

Throughout these 30 days, if there is a challenge to the settlement or a challenge to BPA's rates by an entity that has not signed the covenant, BPA, public litigants and IOUs can choose to withdraw from the settlement, which could result in automatic termination. After 120 days if all parties remain in agreement, then the terms and conditions of the settlement will be implemented.

If the settlement fails, the IOUs continue to take service under their existing contracts. The currently forecast 2.2 percent annual average rate increase for FY 2004 that went into effect on Oct. 1, 2003, will remain in effect, as will all the lawsuits that the agreement would otherwise dismiss.

For More Information

For more information, a comprehensive list of questions and answers about the settlement is available on the Internet at *www.bpa.gov/power/LP/settlement/*.

Schedule

- **Oct. 23** – BPA and at least one public litigant and one IOU sign the Stipulation establishing the effective date. BPA releases the Record of Decision on the Stipulation.
- **90 days later** – Deadline for all public litigants to sign the settlement. Failure of any one public litigant to sign results in automatic termination of the settlement. This is also the deadline to file legal challenges to the Stipulation.
- **Between days 91 and 105** – IOUs assess risk exposure and may opt out under certain circumstances defined in the Stipulation. Failure of IOUs to opt out binds them to the agreement.
- **Between days 106 and 120** – BPA and publics assess value of settlement and may opt out under certain circumstances defined in the Stipulation. If BPA or public litigants opt out, the agreement terminates. If neither BPA nor the public litigants opts out, the settlement becomes binding on all parties and the rate decrease goes into effect.
- **March** – New settlement rates go into effect and the first of monthly refunds appear on bills mailed in March.

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