

ADMINISTRATOR'S OPENING STATEMENT FOR SETTLEMENT DISCUSSIONS
May 14, 2008

Given the substantial sensitivity associated with this proceeding and the amount that is at stake, I have chosen my words carefully today and will be reading an opening statement. Copies of this statement will be available in the back of the room when you leave today. In order to foster an open discussion, I would encourage that nothing said today will be used by any party against another party in this or other proceedings.

We, collectively, have come a long way since the Ninth Circuit released its decisions just a little more than a year ago. We have had many discussions, both formal and informal. We have participated in public meetings, taken and provided public comment. Residential exchange payments have been suspended and interim payments initiated. A formal rate case is underway to address issues that before a year ago did not exist, such as lookback amounts and recovery periods. And, a group of regional investor and consumer owned utilities came together and forged conceptual agreement on a framework for determining and distributing Residential Exchange benefits. Significant progress has been made.

Now we face another crossroad. We are in the midst of this formal rate case with various parties expressing strongly held, forcefully articulated and frequently contrary views about how we should resolve the outstanding issues emanating from the Court's remand. The nature of this process unfortunately encourages such battle lines to be drawn.

When considering the issues raised in this proceeding, I will start from what the law requires. The Ninth Circuit decisions have created a period of great upheaval, uncertainty for all regional electric utilities, and a source of at least some regional discord. I do not want our legacy to be that BPA made decisions that led the Court to remand this case for a second time and put the region through this again. I am committed to developing a solution that is based on the statutes and the guidance provided by the Court, while keeping our Treasury payment probability high.

But as all of you know, these issues are extremely complex, the statute can be vague on matters of substantial financial consequence, and there are many issues the Court has not addressed. As a result, there are a number of areas where I have discretion how to resolve issues. Some issues can swing the level of benefits by hundreds of millions and possibly billions of dollars. In making my decisions, I must consider the entire rate case record. When I consider the issues raised in this proceeding, I will, when the discretion afforded me allows it, give greater weight to proposals that reflect agreement in the region when it exists.

BPA staff earlier reflected certain aspects of the recommendations of the joint consumer and investor-owned utilities group in the initial proposal. BPA staff did so in the initial proposal because it would take a fair amount of hubris to declare that there is one, and only one, correct way to do this and that BPA staff know what it is.

Ideally, the decision in this case will result in a fair distribution of the benefits of the FCRPS, based on the law, and where discretion exists, in consideration of the parties' joint recommendations, because the parties are well positioned to identify where that equity lies. As stated repeatedly, BPA is prepared to respect compromises that can be generated across customer and other groups where such compromises are consistent with the law.

I had been hopeful that there might be more joint testimony filed in this case across customer groups and that there might have been more than the smattering of support identified for the joint customer recommendations. Recognizing that not all stakeholders were involved in the discussions that led to those recommendations, nor that all stakeholders agree with them, it remains our belief that these recommendations could provide a platform for advancing discussions that possibly could lead to greater agreement in the region.

We know it is difficult in an adversarial proceeding such as this for parties to "lay down their arms" and take compromise positions. The rules of the proceeding may well discourage the kind of discourse that could lead to further regional agreement. For that reason we have called this meeting. We wanted to create a venue where parties could speak more openly and without repercussion about the possibility of compromise.

We are offering you the opportunity to have a greater control over your destiny. The path we are on is one that we all recognize. The parties take positions that optimize results only for the constituencies they represent, difficult decisions are left to the Administrator, with litigation a certainty to follow once a Record of Decision is completed. That means your destiny is in the hands of BPA and the courts.

I can tell you that the magnitude and complexity of these issues is at times almost overwhelming and I would welcome any efforts you would make to lighten the burden by reducing the cavernous gaps between the positions "on the record." I am quite willing to give deference in the areas within the Administrator's discretion to regional consensus where it can be achieved. I suspect that judges with jurisdiction over these issues, given the overwhelming workload before the courts, would also support such consensus.

I can tell you from having dealt with these issues for many years and having waded through much of the testimony, many of the issues that have substantial economic impacts appear to be close calls. I will make those calls as necessary in order to issue the decisions on schedule. But, based on my review of the record so far, and mindful that I must decide issues based on the entire record, I will tell you that at this point in my review it is extremely unlikely any party is going to get near all that it is asking for.

In having this conversation, I hope we will also keep in mind the costs of not reaching agreement. The prospect of years of adversarial proceedings distracting the region's attention from addressing the compelling issues of load growth and environmental protection that have serious rate and reliability consequences is disquieting to say the least.

Unfortunately, the clock is ticking. Because the schedule is important, this is an appropriate moment to note that if some or all of the parties desire to reach agreement and have it impact this proceeding, now is the time to act.

I would also note that none of my comments today should suggest I have made up my mind on any issue that is pending in the formal rate case. I won't do that until the close of the record and I have had time to fully review and evaluate the evidence and arguments of the parties. Maintaining the integrity of this process is absolutely necessary to achieve the goal of not having this issue remanded again and I will not compromise my role as the ultimate decision-maker. But BPA staff can express views about matters pending before the agency without compromising the process. I am most interested in hearing about anything, from anyone, that could advance greater regional agreement.

We believe that many of you sincerely desire a regional accord that will end, or at least reduce the risk of, litigation over these matters. We hope that today's meeting will provide a safe harbor for such a discussion. Or if the ex parte rules prove daunting, that it would provide an impetus to any interested parties to have discussions outside this process without BPA that would lead to greater regional alignment.

This is our region, and those of us in this room today are its leaders. This meeting provides the opportunity to make a choice about which path our region should pursue. I look forward to your input today about how we can achieve greater alignment in the region that can be reflected in the formal rate case.