



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER BUSINESS LINE

AUTHENTICATED

May 23, 2001

In reply refer to: PTS

Amendment No. 1
Contract No. 01PB-12229
SETTLEMENT AGREEMENT

Mr. Matthew Wright
Senior Vice President
PacifiCorp
825 NE. Multnomah Street
Portland, OR 97232

Dear Mr. Wright:

This letter agreement (Amendment No. 1) constitutes an amendment to Contract No. 01PB-12229 (Settlement Agreement) between the Bonneville Power Administration (BPA) and **PACIFICORP (PacifiCorp)**. Since the execution of the Settlement Agreement, BPA and PacifiCorp have agreed that BPA will, rather than deliver Firm Power to PacifiCorp for the first 5 years of the Settlement Agreement, make cash payments during the period that begins October 1, 2001, and ends on September 30, 2006. These cash payments will be made under Contract No. 01PB-10854 (Financial Settlement Agreement). This Amendment No. 1 removes BPA's obligation to deliver Firm Power for the first 5 years of the Settlement Agreement. BPA and PacifiCorp intend to execute this Amendment No. 1 and the Financial Settlement Agreement simultaneously.

The Parties agree:

- 1. EFFECTIVE DATE.** This Amendment No. 1 takes effect on the date signed by the Parties.
- 2. AMENDMENT OF SETTLEMENT AGREEMENT.** The Settlement Agreement is amended as follows:
 - (a) Section 3(a) is deleted and replaced by the following:
 - “(a) **Satisfaction of Section 5(c) Obligations**
BPA shall, in full and complete satisfaction of all of its obligations during the period from July 1, 2001, through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act, provide to **PacifiCorp**: (1) cash payments for the period that begins July 1, 2001, and ends on September 30, 2001, pursuant to section 3(d) of this

Agreement; (2) beginning October 1, 2001, and continuing through September 30, 2006, cash payments under the Financial Settlement Agreement in lieu of Firm Power deliveries under this Agreement, plus Monetary Benefit payments under this Agreement; and (3) beginning October 1, 2006, Firm Power or Monetary Benefit payments, or both, pursuant to sections 4 and 5 of this Agreement. **PacifiCorp** agrees that the cash payments, Firm Power or Monetary Benefits, or both, provided under this Agreement, and the cash payments provided under the Financial Settlement Agreement satisfy all of BPA's obligations during the period from July 1, 2001, through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act."

(b) Section 3(b) is deleted and replaced by the following:

“(b) **Invalidity**

(1) **Invalidity of this Agreement**

In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that this Agreement (or payments under section 4 of this Agreement) is unlawful, void, or unenforceable, then: (A) PacifiCorp may provide written notice to BPA within 30 calendar days that the cash payments provided under the Financial Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following such final determination through September 30, 2006; or, if no such notice is provided, (B) the Parties hereby agree that the provisions of section 3(a) above shall be of no further force or effect. In the event of the court's final determination, the Parties intend and agree that: (1) the cash payments pursuant to section 3(d), the cash payments pursuant to the Financial Settlement Agreement, and the Monetary Benefits provided prior to such final determination shall be retained by **PacifiCorp**; and (2) the satisfaction of BPA's obligations to **PacifiCorp** under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 3(b)(1) shall survive notwithstanding any determination that any other provision of this Agreement is unlawful, void, or unenforceable.

(2) **Invalidity of the Financial Settlement Agreement**

In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that the Financial Settlement Agreement (or cash payments under the Financial Settlement Agreement) is unlawful, void, or unenforceable, then: (A) PacifiCorp may provide written notice to BPA within 30 calendar days that the Monetary Benefits provided under section 4 of this Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following such final determination through September 30, 2006; or, if no such notice is provided, (B) the Parties hereby agree that the provisions of section 3(a) above shall be of no further force or effect. In the event of the court's final determination, the Parties intend and agree that: (1) the cash payments pursuant to section 3(d), the cash payments pursuant to the Financial Settlement Agreement and the Monetary Benefits provided under this Agreement provided prior to such final determination shall be retained by **PacifiCorp**; and (2) the satisfaction of BPA's obligations to **PacifiCorp** under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law."

(c) Section 3(c) is deleted and replaced by the following:

"(c) **Negotiation of New Agreement if this Agreement Held Invalid**

If this Agreement (or section 4(a), section 4(c), or section 5 of this Agreement) is finally determined to be unlawful, void, or unenforceable and PacifiCorp does not notify BPA that the cash payments under Financial Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act as described in section 3(b)(1) above, then both Parties agree to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act. The term of such new agreement would continue for the remaining term of this Agreement."

(d) Section 4(a)(1) is deleted and replaced by the following:

“(a) **Total Benefits**

(1) **October 1, 2001, through September 30, 2006**

BPA shall provide to **PacifiCorp** a Monetary Benefit expressed in annual average megawatts (aMW). This benefit is as follows:

<u>Period of Time</u>	<u>Monetary Benefit for PacifiCorp (annual aMW)</u>	<u>Oregon (annual aMW)</u>	<u>Washington (annual aMW)</u>	<u>Idaho (annual aMW)</u>
10/1/01 through 9/30/06	225	121	38	66

(e) Sections 4(b)(1)(A), 4(b)(1)(B), and 4(b)(1)(C) are deleted in their entirety.

(f) Section 4(a) of Exhibit A (Contract No. 01PB-12230) is deleted and replaced by the following:

“(a) **RL Product for Contract Years 2002 Through 2006**

PBL shall sell and make available and PacifiCorp shall purchase under the applicable RL rate zero (0) megawatts (MW) each hour of Contract Years 2002 through 2006.”

3. TERMINATION OF THIS AMENDMENT NO. 1. If BPA does not adopt the Partial Stipulation and Settlement Agreement in the WP-02 Wholesale Power Rate proceeding, then PacifiCorp may, upon written notice to BPA prior to September 1, 2001, terminate both this Amendment No. 1 and the Financial Settlement Agreement.

If the foregoing terms are acceptable, please sign both originals and return one original of this Amendment No. 1 to me. The remaining original is for your files.

Sincerely,

/S/ MARK E. MILLER

Account Executive

Name **Mark E. Miller**
(Print/Type)

ACCEPTED:

PACIFICORP

By **/S/ M.R. WRIGHT**

Name **M. R. Wright**
(Print/Type)

Title **SVP, Strategy & Planning**

Date **5/23/01**

(PBLLAN-PTS-W:\PSC\PM\CT\12229AA1.DOC)