



February 26, 2009

Via E-mail: comment@bpa.gov

Mr. Mark O. Gendron
Vice President
Northwest Requirements Marketing
Bonneville Power Administration

Submitted via electronic mail

Dear Mr. Gendron:

Pacific Northwest Generating Cooperative (PNGC), on behalf of itself and its 16 members, provides these comments in response to your January 28, 2009 letter concerning a proposed settlement with Avista regarding its deemer balance. For the reasons below and the additional reasons detailed in the comments submitted by the Public Power Council, in which PNGC joins, we oppose the proposed settlement with Avista.

The reasons given by BPA are weak justifications for granting Avista such a deep discount in its liability to BPA. The proposed settlement value, \$55 million, is substantially below not only the agreed interest rate, but also is well below the value of the obligation measured in current dollars. According to the Bureau of Labor Statistics, that value is \$72.49 million.

BPA justifies its proposed settlement in part as a compromise of a claim by Avista that it canceled its RPSA effective September 30, 1993 and that FERC "granted" that request. See Letter Order, Docket No. ER93-980-000 (December 3, 1993). As pointed out by PPC, the Commission did not expressly approve the cancellation. Indeed, the text of the letter order disclaims any such approval:

This acceptance for filing does not constitute approval of any . . . contract . . . ; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which . . . may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against [Avista].

If the phrase "your letter is accepted for filing" would not constitute an "approval" or otherwise be binding in any concurrent or future proceeding before the Commission, it is inappropriate for BPA to give any weight to an assertion that this notice somehow permitted Avista to unilaterally cancel its obligation. If it had that effect, we would have

expected BPA to protest the notice. BPA was apparently aware of the notice filing and filed no protest in this docket at FERC. Nor, to the best of our knowledge, did BPA provide any notice to its preference customers or other interested parties that it intended to allow Avista to walk away from such a large liability. There is no good legal or business reason to discount Avista's deemer account obligation based on the prospect of a patently insubstantial claim by Avista that it simply walked away from its contract liability over 15 years ago.

As you know, the Ninth Circuit Court of Appeals ruled in December 2008 that BPA is subject to a statutory mandate in connection with its sales of power. The Court held that BPA is obligated to act with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles. *See* Transmission System Act, Section 9, 16 USC §838g. The Court also ruled May 2007 that BPA may not use its settlement authority to do what its governing statutes do not authorize it to do.

The settlement that BPA proposes to offer Avista is not consistent with sound business principles. It will have the effect of increasing the rates that BPA charges to PNGC for requirements service to PNGC's Members, and thus will drive up the rates paid by consumers served by our Members. Particularly in these times of economic distress and high levels of uncertainty, BPA owes its preference customers and their retail customers a more rigorous and business-like treatment of any resolution of Avista's outstanding deemer account obligation. There is no equity for regional consumers in BPA drastically discounting Avista's obligation, while requiring so little of Avista.

For the above reasons, then, PNGC and its members oppose Bonneville's proposed settlement with Avista. Thank for the opportunity to comment on this issue.

Sincerely,

A handwritten signature in blue ink, appearing to be 'John P. Prescott', with a long horizontal line extending to the right.

John P. Prescott
President and CEO