

STIPULATION AND AGREEMENT FOR SETTLEMENT

THIS STIPULATION AND AGREEMENT FOR SETTLEMENT, Contract No. 04PB-11417, dated as of October 23, 2003 is made and entered into by and among the Parties. ATTACHMENT A sets forth definitions of terms used in this Stipulation and is incorporated herein by this reference.

WHEREAS, the following entities as of October 1, 2003, had filed the following petitions for review in the Ninth Circuit challenging actions of the Administrator: Portland General Electric, Nos. 01-70002 and 01-70003; PacifiCorp, Nos. 01-70005 and 01-70008; Public Power Council, Inc., Nos. 01-70009 and 01-70010; Benton Rural Electric Association, *et al.* (including approximately 51 other public agencies), Nos. 01-70012 and 01-70014; Puget, Nos. 00-70949, 01-70041, and 01-70202; Avista Corporation, No. 01-70020; Atofina Chemicals, Inc., Columbia Falls Aluminum Co., Goldendale Aluminum Co., Kaiser Aluminum & Chemical Corporation, and Northwest Aluminum Co., No. 01-70042; and Northwest Aluminum Co., Atofina Chemicals, Inc., Columbia Falls Aluminum Co., Goldendale Aluminum Co. and Kaiser Aluminum & Chemical Corporation, No. 01-70060;

WHEREAS, Pacific Northwest Generating Cooperative as of October 1, 2003, had filed a petition for review in the Ninth Circuit challenging actions of the Administrator in Cause No. 00-70948;

WHEREAS, ATTACHMENT B sets forth the names of all petitioners and intervenors in the Referenced Causes as of October 1, 2003;

WHEREAS, the Investor Owned Utilities are either parties to the Referenced Causes or potentially affected by the outcome of one or more of the Referenced Causes;

WHEREAS, BPA entered into an Existing Settlement Agreement with each Investor Owned Utility;

WHEREAS, BPA entered into a Slice Agreement with each Slice Customer; and

WHEREAS, the Parties wish to avoid the continued expense and risk of litigation in connection with the Referenced Causes, and to settle their differences thereto, subject to and in accordance with this Stipulation;

NOW, THEREFORE, in consideration of the promises contained in this Stipulation, the undersigned Parties hereby mutually agree as follows:

1. Effectiveness.

(a) ***Effective Date.*** Subject to the provisions of section 11 below, this Stipulation shall take effect and be binding in accordance with its terms at such time as BPA executes the Stipulation and at least one Investor Owned Utility and one Public Litigant, both of which are petitioners in at least one or more of the Referenced Causes, also execute and deliver (by physical delivery or facsimile) this Stipulation to BPA ("**Effective Date**").

(b) ***Retroactive Effectiveness.*** Each Party that executes and delivers this Stipulation, whether or not after the Effective Date, agrees to be bound by the terms of each of the Settlement Documents (to which it is a party) as of the Effective Date.

(c) ***No Withdrawal.*** Following its execution and delivery of this Stipulation, no Party may withdraw from this Stipulation except as provided in section 11.

2. Amendments to Existing Settlement Agreements. BPA and each Investor Owned Utility shall, contemporaneously with the execution and delivery of this Stipulation, execute and deliver an Amendment(s) to Existing Settlement Agreement between BPA and such Investor Owned Utility (each of which forms of amendment is attached hereto for reference). If this Stipulation has not been rendered void *ab initio* pursuant to section 11 before the 121st day after the Effective Date, each Amendment to Existing Settlement Agreement shall, upon execution and delivery by the parties thereto, take effect and be binding in accordance with its terms as of the Effective Date.

3. Slice Settlement Agreements. Contemporaneously with BPA's execution of this Stipulation, BPA shall offer to each Slice Settlement Agreement Party a form of Slice Settlement Agreement executed by BPA (which forms are listed as items (viii) through (xviii) in section 13(b) and which are attached hereto for reference). If this Stipulation has not been rendered void *ab initio* pursuant to section 11 before the 121st day after the Effective Date, each Slice Settlement Agreement shall, upon execution and delivery by the parties thereto, take effect and be binding in accordance with its terms as of the Effective Date.

4. Stipulation of BPA Related to Monetary Payments. BPA has concluded and agrees, unless a court of competent jurisdiction orders otherwise, that:

(i) it will assert that the monetary payments, and calculation thereof, under sections 4(c) and 5 of the Amended Settlement Agreements constitute neither a rate nor a sale of power as those terms are used in the Northwest Power Act;

(ii) it will assert that the offering and execution of the Slice Settlement Agreement, does not constitute a change or modification to the Slice Rate, the Slice Rate Methodology or the Slice Agreement; and

(iii) it will not take or initiate, and will vigorously defend against the prosecution by others of, any action that any Party would be precluded from initiating or prosecuting by the Waiver and Covenant Not to Sue.

5. Record of Decision. Contemporaneously with its execution of this Stipulation, BPA is issuing a final Record of Decision that concludes, among other things, that

(i) the monetary payments, and calculations thereof, under sections 4(c) and 5 of the Amended Settlement Agreements constitute neither a rate nor a sale of power as those terms are used in the Northwest Power Act; and

(ii) the offering and execution of the Slice Settlement Agreement does not constitute a change or modification to the Slice Rate, the Slice Rate Methodology or the Slice Agreement.

If this Stipulation has been rendered void *ab initio* pursuant to section 11 before the 121st day after the Effective Date, BPA shall withdraw such Record of Decision.

6. Adjustments to FY 2004 SN CRAC Percentage Increase. If the Stipulation is in effect on the 121st day after the Effective Date, BPA agrees to implement the reduction to the FY 2004 rates subject to the SN CRAC and the rate rebate for the period after September 30, 2003, all as described in ATTACHMENT G to this Stipulation.

7. BPA Contractual Commitments. BPA will not include in any power sales, load reduction or power buy-back agreement a provision to pay additional money to or decrease the amounts paid by the customer under any such agreement that is expressly contingent upon another customer, that is not a party to any such agreement, exercising or continuing to exercise its right to judicially challenge a BPA action; provided, however, that this does not preclude BPA from otherwise adjusting the price or compensation in an agreement with a customer for risks incurred in the conduct of business with BPA.

8. BPA Principles for Settlement.

(a) ***Future SN CRAC Adjustments.*** The BPA Administrator has the objectives of keeping rates as low as reasonably possible, and achieving a zero SN CRAC rate adjustment for FY 2005, while assuring BPA cost recovery and a sufficiently high U.S. Treasury repayment probability. In order to position the Administrator so that he will most likely be able to exercise the discretion available to him under the SN-03 CRAC GRSPs (SN-03-A-02, as corrected by errata) to reduce the SN CRAC rate adjustment to zero for FY 2005, the Administrator:

(i) has identified an aggregate cost reduction and revenue increase target of approximately \$100 million that in the Administrator's estimation would, if achieved over FY 2004 and FY 2005 and all other costs and revenues remained at the level forecast in the third quarter review for FY 2003, allow for a zero SN CRAC rate adjustment for FY 2005; and

(ii) will work with customers and other third parties, through the process described in section 8(b) below, to achieve those aggregate cost reductions and revenue enhancements (other than rate increase and secondary revenue performance), as the Administrator determines is appropriate.

(b) ***Cost Reductions and Revenue Improvements.*** BPA will conduct an open and collaborative public process which will focus on achievement of the cost reduction and revenue improvement target, and on a schedule that will permit information regarding such cost reductions and revenue enhancements to be considered in the FY 2005 SN CRAC decision. This process will involve BPA, customers, and other interested parties. Key features of this process include:

(i) Periodic sharing (at least quarterly) by BPA of pertinent information on actions taken and actions planned to achieve the cost reduction and revenue improvement targets, and reporting of actual progress toward the target;

(ii) Collaborative and ongoing consultations between BPA, customers, and other parties on how best to achieve the cost reduction and revenue improvement target;

(iii) The intent to use outside expertise to define opportunities for process improvement;

(iv) The SN-03 CRAC GRSPs (SN-03-A-02, as corrected by errata) allow the Administrator to elect at his discretion to reduce the SN CRAC rate adjustment for a fiscal year, and provide that if the Administrator elects to reduce the SN CRAC rate adjustment, BPA will recalibrate the caps for the SN CRAC and the thresholds for FB CRAC and SN CRAC for later years to maintain the equivalent of the three year TPP of 80 percent (calculated as 80 percent for three years, 86.2 percent for two years, and 92.8 percent for one year). As a part of the Administrator's decision for FY 2005 and then again for FY 2006 whether to reduce the SN CRAC rate adjustments, and acting consistent with the GRSPs, the Administrator commits to calculating a forward looking TPP for the remainder of the rate period using the BPA Toolkit, and to incorporating into that analysis changes in costs and revenues forecast by the Administrator. If the TPP is above the target levels, the Administrator will give due consideration to using his discretion to reduce the SN CRAC percentage, with the goal of achieving a zero percent SN CRAC;

(v) Sharing by BPA of draft forecasts, assumptions and the Toolkit model used in the calculation of forward-looking TPP for FY 2005 and FY 2006, and ample opportunity for input used in those forecasts and assumptions, not less than 60 days in advance of the FY 2005 and FY 2006 SN CRAC decisions. Any sharing of information shall be limited to the extent it involves materials covered under section 8(c);

(vi) Opportunities for collaborative discussions with the Administrator regarding the appropriate exercise of the Administrator's discretion in setting the level of the FY 2005 and FY 2006 SN CRACs. The Administrator will give due consideration to the comments made at such collaborative discussions when setting the levels of such SN CRACs.

Not later than 30 days after the Effective Date, the Administrator will convene discussions with customer representatives and other parties for the purpose of establishing the specifics of this process. The objective will be to define the process not later than 90 days after the Effective Date.

(c) ***Privileged Information.*** The BPA Administrator reserves the discretion when sharing forecasts, pertinent information, or assumptions to not include information BPA determines to be privileged or exempt from disclosure under FOIA including any material BPA determines to be proprietary and business sensitive.

(d) ***Failure to Achieve Objectives of these Principles.*** The target for cost reductions and revenue enhancements described in sections 8(a) and 8(b) above is just that. The failure or inability of the Administrator to achieve the target or take aggressive or sufficient actions to achieve it or provide a particular process shall have no legal consequence under this Stipulation, and shall give rise to no remedies in law or equity for breach of this Stipulation. The Parties recognize that even if the target is achieved, low water or adverse events could partially or totally offset the cost reductions or revenue enhancements. Conversely, high water, favorable market conditions, or other positive events when considered in the forward forecast may improve the Administrator's ability to exercise discretion in determining the size of any FB CRAC or SN CRAC.

9. Waiver and Covenant Not to Sue; Other Challenges.

(a) ***Waiver and Covenant Not to Sue by Party.*** Each Party except BPA shall, contemporaneously with the execution and delivery of this Stipulation, execute and deliver to BPA in trust a Waiver and Covenant Not to Sue. Each such Waiver and Covenant Not to Sue executed and delivered by a Party is incorporated herein by reference.

(b) ***Covenants Not to Sue by Non-Party.*** Any person or entity that is not a Party may, before the 90th day after the Effective Date, execute and deliver to BPA in trust a Waiver and Covenant Not to Sue.

(c) ***Filing or Return of Waiver and Covenant Not to Sue.*** If this Stipulation has not been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, BPA shall file and serve each Waiver and Covenant Not to Sue along with the Motions to Limit Issues on Certain Rate Claims and Motions to Dismiss Causes and Claims filed and served pursuant to section 10(c). If this Stipulation has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, BPA will not file or serve but will, on or before the 135th day after the Effective Date, return each of the originally signed Waivers and Covenants Not to Sue to the respective signing Parties, persons or entities.

(d) ***Other Challenges.*** Except to the extent inconsistent with the Waiver and Covenant Not to Sue, each Party is free to exercise whatever rights it may have under law to petition for review, or otherwise lawfully challenge, the Administrator's triggering of and implementation of the SN CRAC.

(e) ***Release of Claims by Investor Owned Utilities Against Direct Service Industrial Customers.*** Each Party that is an Investor Owned Utility hereby releases any and all claims it may have to challenge BPA power sales (or rates) for service to BPA direct service industrial customers for the FY 2002-2006 period.

10. Motions to Dismiss or Limit Issues.

(a) ***Motions to Limit Issues on Certain Rate Claims.***

(i) ***Party.*** Any Party may timely file a petition for review or motion to intervene in the Ninth Circuit on any issue regarding BPA's WP-02 rates (or any CRAC during the WP-02 rate period). Any Party that has, as of its execution and delivery of this

Stipulation, filed such a petition or motion (and such petition remains pending or such motion remains pending or has been granted) shall, contemporaneously with its execution and delivery of this Stipulation, execute and deliver to BPA in trust a Motion to Limit Issues on Certain Rate Claims captioned to include all cause numbers as to which such Party has filed such a petition or motion. Any Party that, after its execution and delivery of this Stipulation, files such a petition or motion shall expressly exclude from such petition or motion any claims precluded by the Waiver and Covenant Not to Sue executed and delivered by such Party.

(ii) *Non-Party.* Any person or entity that is not a Party but that files or has filed a petition for review or motion to intervene in the Ninth Circuit on any issue regarding BPA's WP-02 rates (or any CRAC during the WP-02 rate period) may, before the 90th day after the Effective Date, execute and deliver to BPA in trust a Motion to Limit Issues on Certain Rate Claims captioned to include all Cause Numbers as to which such person or entity files or has filed such a petition or motion.

(b) *Motions to Dismiss Causes and Claims.* Each Party that has filed, as of its execution and delivery of this Stipulation, a petition or motion to intervene in any of the Referenced Causes (and such petition remains pending or such motion remains pending or has been granted) shall contemporaneously with its execution and delivery of the Stipulation execute and deliver to BPA in trust a Motion to Dismiss Causes and Claims.

(c) *Filing or Return of Motions to Dismiss.* If this Stipulation has not been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, BPA shall join, file and serve the Motions to Limit Issues on Certain Rate Claims and Motions to Dismiss Causes and Claims. If this Stipulation has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, BPA will not file or serve but will, on or before the 135th day after the Effective Date, return each of the originally signed Motions to Dismiss and Motions to Limit Issues on Certain Rate Claims to the respective signing Parties, person or entity.

(d) *Severance of Reserved Claims; Stipulation and Agreement to Dismiss.* Each Party, for itself and for its successors, assigns, and any person or entity acting for, by or through it, does hereby covenant and agree:

(i) to the severance of Cause No. 00-70948 from each of the other Referenced Causes; and

(ii) to the dismissal (with prejudice and with each party to bear its own costs) of all petitions and claims in each of the Referenced Causes other than Cause No. 00-70948.

Each Party represents to each other Party that as of October 1, 2003, the Referenced Causes encompass all pending litigation known to such representing Party that challenge or may challenge BPA's Slice Agreements, Residential Exchange Program, Residential Purchase and Sale Agreements, any of the Existing Settlement Agreements or Amended Settlement Agreements, or any records of decision issued in support of such agreements.

(e) ***Administrator's Authority.*** This Stipulation, and actions taken pursuant to it, are not intended in any way to alter the Administrator's authority to review periodically and revise the Administrator's power and transmission rates in a manner not inconsistent with this Stipulation so that such rates meet statutory requirements, including but not limited to any requirement that the Administrator's power and transmission rates recover costs and assure repayment of the United States Treasury.

11. Voiding of Stipulation and Events Of Default.

(a) ***Voiding of Stipulation.*** This Stipulation and all other Settlement Documents shall be void *ab initio* upon the occurrence of any of the following events:

(i) ***Failure of Public Litigant to Execute and Deliver.*** Failure of any Public Litigant to execute and deliver to BPA in trust, on or before the 90th day after the Effective Date each of the following,

(A) a Waiver and Covenant Not to Sue;

(B) a Motion to Dismiss Causes and Claims {unless such Public Litigant has as of the 90th day after the Effective Date dismissed with prejudice any and all of its petitions for review in any and all the Referenced Causes (other than with respect to Reserved Claims in Cause No. 00-70948), withdrawn as an intervenor in any and all of the Referenced Causes (other than with respect to Reserved Claims in Cause No. 00-70948), and delivered with the Waiver and Covenant Not to Sue a copy of an order (or other indicia of dismissal with prejudice and withdrawal) from the Ninth Circuit dismissing all such petitions for review and granting all such withdrawals}; and

(C) a Motion to Limit Issues on Certain Rate Claims {if such Public Litigant has as of the 90th day after the Effective Date filed a petition for review or motion to intervene in the Ninth Circuit that includes or may include any claim that a Party would be precluded from filing or maintaining by its Waiver and Covenant Not to Sue regarding BPA's WP-02 rates (or any CRAC during the WP-02 rate period)}.

(ii) ***Withdrawal from Stipulation.*** Withdrawal, pursuant to an Event of Default, from this Stipulation by any Public Litigant or BPA.

(iii) ***Court Action Prior to 121st Day.*** Withdrawal by any Public Litigant, BPA, or Investor Owned Utility pursuant to an Event of Default described in item (iii), (iv), or (viii) of section 11(b) below.

(iv) ***Failure of United States Department of Justice to Authorize.*** Failure of the Department of Justice to notify BPA in writing on or before the 90th day after the Effective Date of its intent to authorize the appropriate departmental officials or attorneys to sign and file on behalf of Respondent the Motion to Dismiss Causes and Claims and the Motion to Limit Issues on Certain Rate Claims and to the extent necessary or advisable to provide its approval of the Stipulation.

(b) ***Events of Default.*** The occurrence of any of the following events constitutes an Event of Default (“**Event of Default**”):

(i) *Failure of Other Litigant to Execute and Deliver.* Failure by any Other Litigant that is not a Party to execute and deliver to BPA in trust each of the following:

(A) a Waiver and Covenant Not to Sue;

(B) a Motion to Dismiss Causes and Claims {unless such Other Litigant has as of the 90th day after the Effective Date dismissed with prejudice any and all of its petitions for review in any and all the Referenced Causes (other than with respect to Reserved Claims in Cause No. 00-70948), withdrawn as an intervenor in any and all of the Referenced Causes (other than with respect to Reserved Claims in Cause No. 00-70948), and delivered with the Waiver and Covenant Not to Sue a copy of an order (or other indicia of dismissal with prejudice and withdrawal) from the Ninth Circuit dismissing all such petitions for review and granting all such withdrawals}; and

(C) a Motion to Limit Issues on Certain Rate Claims {if such Other Litigant has as of the 90th day after the Effective Date filed a petition for review or motion to intervene in the Ninth Circuit that includes or may include any claim that a Party would be precluded from filing or maintaining by its Waiver and Covenant Not to Sue regarding BPA’s WP-02 rates (or any CRAC during the WP-02 rate period)};

(ii) *Failure of the Investor Owned Utilities to Execute and Deliver.* Failure of any Investor Owned Utility to execute and deliver this Stipulation, any Amendment to Existing Settlement Agreement required pursuant to section 2, any Motion to Dismiss required pursuant to section 10, or a Waiver and Covenant Not to Sue required pursuant to section 9;

(iii) *Challenges to Settlement.* Filing or maintaining by any person or entity of any claim in the Ninth Circuit (or any other court) that a Party would be precluded from filing or maintaining by its Waiver and Covenant Not to Sue, including a challenge to any of the following actions: offering or entering into this Stipulation, offering or entering into any Amendment to Existing Settlement Agreement, offering or entering into any Slice Settlement Agreement, issuance of the final Record of Decision as described in section 5, filing or joining the Motions to Dismiss, or any action proposed or taken by the Administrator required or contemplated by this Stipulation or other Settlement Documents;

(iv) *Failure to Dismiss Rate Claims.* Failure by any person or entity that is not a Party that has filed a petition for review or intervened in any proceeding regarding BPA’s WP-02 rates (or any CRAC during the WP-02 rate period) to execute and deliver to BPA in trust a Waiver and Covenant Not to Sue and, a Motion to Limit Issues on

Certain Rate Claims, if such person or entity has as of the 90th day after the Effective Date filed a petition for review in the Ninth Circuit;

(v) *Withdrawal of Investor Owned Utility(s) from Stipulation.* Withdrawal, pursuant to an Event of Default, from this Stipulation by any Investor Owned Utility;

(vi) *Agreed-to Annual Deferral Amounts of Less Than \$75 Million.* The Investor Owned Utilities fail to enter into Amendments to Existing Settlement Agreements pursuant to section 2 specifying Annual Deferral Amounts in the appropriate exhibits to their respective Amended Settlement Agreements in an aggregate amount of \$75 million per year for FY 2004, 2005 and 2006 (this amount does not include the \$55 million of deferrals previously agreed to for FY 2003);

(vii) *Failure of Slice Customer to Execute Slice Settlement Agreement.* Any Slice Settlement Agreement Party fails to execute and deliver a Slice Settlement Agreement pursuant to section 3; or

(viii) *Court Action Prior to 121st Day.* This Stipulation, any other Settlement Document, or the Record of Decision as described in section 5 is, prior to the 121st day after the Effective Date, enjoined, stayed, or determined to be void, unenforceable, or unlawful.

If an Event of Default has occurred and is then continuing, any Party including BPA (other than an entity whose action gave rise to such Event of Default) may withdraw from the Stipulation by serving timely notice upon the General Counsel of Bonneville Power Administration, (A) not earlier than the 90th day after the Effective Date and not later than the 105th day after the Effective Date in the case of withdrawal by any Investor Owned Utility, and (B) not earlier than the 106th day after the Effective Date and not later than the 120th day after the Effective Date in the case of withdrawal by any other Party; provided, that no Party other than BPA may withdraw due to an Event of Default described in item (vi) or (vii) above; provided further, any Party that is an Investor Owned Utility, Public Litigant or BPA may withdraw due to an Event of Default described in item (iii), (iv), or (viii) above at any time after the 90th day after the Effective Date but not later than the 120th day after the Effective Date. Any withdrawal from this Stipulation shall be irrevocable. Any Party that withdraws from this Stipulation pursuant to this section shall be deemed to have executed neither this Stipulation nor any other Settlement Documents. BPA shall promptly return to such Party its executed Settlement Documents.

12. Survival of Settlement Documents. If this Stipulation has not been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date,

(a) the Amendments to Existing Settlement Agreements, which among other things provide for amendment of the Existing Settlement Agreements to continue the Reduction of Risk Discount through September 30, 2006, shall be independent of all other Settlement Documents and shall remain in effect even if any or all other Settlement Documents are void, unenforceable or unlawful;

(b) the Waivers and Covenants Not to Sue shall be independent of all other Settlement Documents and shall remain in effect even if any or all other Settlement Documents are void, unenforceable or unlawful; and

(c) the Slice Settlement Agreements shall be independent of all other Settlement Documents and shall remain in effect even if any or all other Settlement Documents are void, unenforceable or unlawful.

13. Scope of Stipulation.

(a) ***Entirety of Agreement; Attachments Incorporated.*** This Stipulation contains the entirety of the Parties' agreement with respect to the subject matter of this Stipulation. This Stipulation consists of the body of this document and the following Attachments, which are incorporated herein by reference:

- (i) ATTACHMENT A—Definitions
- (ii) ATTACHMENT B—Petitioners and Intervenors in Referenced Causes
- (iii) ATTACHMENT C—Service List
- (iv) ATTACHMENT D— Form of Waiver and Covenant Not to Sue
- (v) ATTACHMENT E—Form of Motion to Dismiss Causes and Claims
- (vi) ATTACHMENT F—Form of Motion to Limit Issues on Certain Rate Claims
- (vii) ATTACHMENT G— September 18th SN CRAC Workshop Materials

(b) ***Other Attachments Not Incorporated.*** The following forms of Amendment to Existing Settlement Agreement and Slice Settlement Agreement are attached for reference but are not incorporated in this Stipulation:

- (i) Form of Amendment No. 1 to Contract No. 01PB-10885 between BPA and Puget,
- (ii) Form of Amendment No. 2 to Contract No. 01PB-12229 between BPA and PacifiCorp,
- (iii) Form of Amendment No. 2 to Contract No. 00PB-12161 between BPA and PGE,
- (iv) Form of Amendment No. 3 to Contract No. 00PB-12157 between BPA and Avista,
- (v) Form of Amendment No. 3 to Contract No. 00PB-12158 between BPA and Idaho Power Company,

- (vi) Form of Amendment No. 3 to Contract No. 00PB-12160 between BPA and NorthWestern Energy,
- (vii) Form of Amendment No. 1 to Contract No. 01PB-10854 between BPA and PacifiCorp,
- (viii) Form of Slice Settlement Agreement No. 03PB-12246 between BPA and Public Utility District No. 1 of Benton County, Washington,
- (ix) Form of Slice Settlement Agreement No. 03PB-12247 between BPA and Clatskanie Peoples Utility District,
- (x) Form of Slice Settlement Agreement No. 03PB-12248 between BPA and Public Utility District No. 1 of Franklin County, Washington,
- (xi) Form of Slice Settlement Agreement No. 03PB-12249 between BPA and Eugene Water and Electric Board,
- (xii) Form of Slice Settlement Agreement No. 03PB-12250 between BPA and Public Utility District No. 1 of Grays Harbor County, Washington,
- (xiii) Form of Slice Settlement Agreement No. 03PB-12251 between BPA and Idaho Falls Power,
- (xiv) Form of Slice Settlement Agreement No. 03PB-12252 between BPA and Public Utility District No. 1 of Okanogan County, Washington,
- (xv) Form of Slice Settlement Agreement No. 03PB-12253 between BPA and Public Utility District No. 1 of Pend Oreille County, Washington,
- (xvi) Form of Slice Settlement Agreement No. 03PB-12254 between BPA and Seattle City Light,
- (xvii) Form of Slice Settlement Agreement No. 03PB-12255 between BPA and Public Utility District No. 1 of Snohomish County, Washington,
- (xviii) Form of Slice Settlement Agreement No. 03PB-12256 between BPA and Pacific Northwest Generating Cooperative,

14. Notices.

(a) ***Notice of Final Action.*** The Administrator shall promptly provide general notice to the public utilizing the BPA website and the mailing list for BPA's *Journal* publication that, as of the Effective Date, the Administrator is (i) offering and executing this Stipulation, (ii) offering and executing the Amendments to Existing Settlement Agreements pursuant to section 2, (iii) offering and executing the Slice Settlement Agreements pursuant to section 3, and (iv) issuing the final Record of Decision as described in section 5.

(b) **Notice Requirements for Certain Events.** Promptly upon BPA's knowledge of the occurrence of any of the following events, BPA shall notify by electronic mail (or facsimile if electronic mail is not available) and by posting on BPA's website each Party that has then entered into this Stipulation, each Investor Owned Utility, each Public Litigant, and each Other Litigant of the occurrence and date of such event:

- (i) the Effective Date;
- (ii) the occurrence of any event voiding *ab initio* the Stipulation pursuant to section 11;
- (iii) the occurrence of any Event of Default or withdrawal from this Stipulation pursuant to section 11(b);
- (iv) the execution and delivery by any entity to BPA of this Stipulation and each Motion to Limit Issues on Certain Rate Claims and Motion to Dismiss Causes and Claims pursuant to section 10;
- (v) the execution and delivery by any entity to BPA of each Slice Settlement Agreement pursuant to section 3, each Amendment to Existing Settlement Agreement pursuant to section 2, and each Waiver and Covenant Not to Sue pursuant to section 9;
- (vi) receipt by BPA of any petition for review challenging the WP-02 rates (or any CRAC during the WP-02 rate period), this Stipulation, any other Settlement Document, or the Record of Decision as described in section 5 (or motion to intervene with respect to any such petition); and
- (vii) receipt by BPA of the documents memorializing the intent of the United States Department of Justice to authorize the appropriate departmental officials or attorneys to sign and file on behalf of Respondent the Motion to Dismiss Causes and Claims and the Motion to Limit Issues on Certain Rate Claims and to the extent relevant, to provide its approval of this Stipulation.

Such notice shall be delivered by BPA to each person or persons listed in ATTACHMENT C—Service List.

(c) **Delivery of Executed Settlement Documents and Motions to Dismiss and Motions to Limit Issues on Certain Rate Claims.** Any Party, person or entity may deliver its executed Settlement Documents to BPA by any of the means for giving notice to BPA specified in section 14(d) below. If this Stipulation has not been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, BPA shall, on or about the 135th day after the Effective Date, deliver to each Party a copy of all Settlement Documents, including all signature pages, as executed and delivered to BPA.

(d) **Other Notices.** Except as provided in section 14(b) above, any notice, demand, approval, consent, waiver, direction, or request required or permitted under the terms of this Stipulation shall be in writing and (i) delivered personally, (ii) sent by registered mail, with

return receipt requested, (iii) sent by recognized overnight mail or courier service, with delivery receipt requested, or (iv) sent by telecopier or facsimile. Notices to BPA shall be delivered to:

Bonneville Power Administration
Office of General Counsel
905 N.E. 11th Street
Portland, OR 97208
Attn: Sarah A. Westenberg
Facsimile: (503) 230-7405
Email: sawestenberg@bpa.gov

Notices to Parties other than BPA shall be provided to the person or persons listed in ATTACHMENT C—Service List. Notices shall be effective from the date received by the intended recipient Party, except that notice received by BPA by the close of business on the next Federal business day following a weekend or Federal holiday shall be deemed received on the last Federal business day prior to such weekend or Federal holiday. Any Party making delivery by facsimile shall provide the signed original within a reasonable period. Any Party may change its designation on the Service List by giving notice to all other Parties in the manner provided in this section 14(d).

15. Representations of Authority. Each Party represents that it is authorized to enter into this Stipulation (and each of the other Settlement Documents required by this Stipulation to be executed by such Party), and that the obligations such Party has undertaken under this Stipulation (and each of such other Settlement Documents) are valid, lawful, binding and enforceable obligations and within the authority of such Party to undertake. Each Party also represents that all necessary approvals with respect to its authority to execute this Stipulation (and each of such other Settlement Documents) have been obtained, and that the person signing on behalf of such Party is duly authorized to execute such documents on behalf of such Party, and to bind such Party to the undertakings required of it by such documents.

16. Parties Bound. Each Party agrees that this Stipulation is binding on such Party and its successors, permitted assigns, and any person or persons acting for, by or through any of them.

17. Construction of Stipulation. The section headings in this Stipulation are for convenience and shall not be considered part of or used in the interpretation of this Stipulation. This Stipulation shall be considered for all purposes as prepared by each of the Parties and shall not be construed against any Party as a result of such Party's participation in the negotiation, preparation, drafting, or review of this Stipulation.

18. Counterparts. This Stipulation may be executed in a number of counterparts, each of which shall be deemed to be an original and shall be binding upon the Party who executed such counterpart, and all of such counterparts shall be deemed to constitute a single document with the same force and effect as if all Parties having signed a counterpart have signed all other counterparts.

19. Savings Clause.

(a) **No Precedent.** The parties agree that no action taken or not taken by any Party, person or entity with respect to this Stipulation, any other Settlement Document, or the Record of Decision described in section 5 shall serve to create any procedural or substantive precedent with respect to BPA's service or provision of benefits after September 30, 2011, in (i) any subsequent administrative forum, or (ii) any subsequent administrative, arbitral, or judicial forum reviewing BPA's decisions; nor shall any Party argue otherwise. No record of decision (nor any action taken or not taken by any Party, person or entity) with respect to any claim in the Referenced Causes, nor any claim with respect to such a record of decision in other causes dismissed pursuant to any Motion to Limit Issues on Certain Rate Claims or Motion to Dismiss Causes and Claims, shall serve to create any procedural or substantive precedent with respect to BPA's service or provision of benefits after September 30, 2011, in (i) any subsequent administrative forum, or (ii) any subsequent administrative, arbitral, or judicial forum reviewing BPA's decisions; nor shall any Party argue otherwise. The Parties acknowledge that certain Parties, persons or entities have opposing positions on certain issues. In addition, nothing in this Stipulation shall be construed or deemed to be an admission, or evidence of an admission, by any Party with respect to any claim dismissed pursuant to any of the Motions to Limit Issues on Certain Rate Claims and Motions to Dismiss Causes and Claims or with respect to any of the Reserved Claims.

(b) **Return of Documents.** If this Stipulation has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, BPA shall by the 135th day after the Effective Date return to each Party (to the person or persons identified for such Party on ATTACHMENT C) this Stipulation and all other Settlement Documents as executed by such Party.

(c) The following sentence is included in this Stipulation if its omission could trigger a requirement for an Investor Owned Utility to report this Stipulation on Internal Revenue Service Form 8886 (Reportable Transaction Disclosure Statement): The taxpayer (and each employee, representative, or other agent of the taxpayer) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer relating to such tax treatment and tax structure.

Bonneville Power Administration

By: _____ /s/ _____

Title: Administrator
and Chief Executive Officer

Name: Stephen Wright

Date: October 21, 2003

Avista Corporation

By: _____

Title: _____

Name: _____

Date: _____

Idaho Power Company

By: _____

Title: _____

Name: _____

Date: _____

NorthWestern Corporation

By: _____

Title: _____

Name: _____

Date: _____

PacifiCorp

By: _____

Title: _____

Name: _____

Date: _____

Portland General Electric Company

By: _____

Title: _____

Name: _____

Date: _____

Puget Sound Energy, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Pacific Northwest Generating Cooperative

By: _____

Title: _____

Name: _____

Date: _____

Public Generating Pool

By: _____

Title: _____

Name: _____

Date: _____

Public Power Council, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Idaho Public Utility Commission

By: _____

Title: _____

Name: _____

Date: _____

**Benton Rural Electric Association,
Washington**

By: _____

Title: _____

Name: _____

Date: _____

Oregon Public Utility Commission

By: _____

Title: _____

Name: _____

Date: _____

Big Bend Electric Co-Operative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

**Washington Utilities and Transportation
Commission**

By: _____

Title: _____

Name: _____

Date: _____

**Blachly-Lane County Cooperative
Electric Association**

By: _____

Title: _____

Name: _____

Date: _____

**Alder Mutual Light Company,
Washington**

By: _____

Title: _____

Name: _____

Date: _____

Central Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

City of Cheney, Washington

By: _____

Title: _____

Name: _____

Date: _____

City of Milton, Washington

By: _____

Title: _____

Name: _____

Date: _____

City of Ellensburg, Washington

By: _____

Title: _____

Name: _____

Date: _____

City of Port Angeles, Washington

By: _____

Title: _____

Name: _____

Date: _____

City of Fircrest, Washington

By: _____

Title: _____

Name: _____

Date: _____

City of Richland, Washington

By: _____

Title: _____

Name: _____

Date: _____

Idaho Falls Power

By: _____

Title: _____

Name: _____

Date: _____

City of Rupert, Idaho

By: _____

Title: _____

Name: _____

Date: _____

Clatskanie People's Utility District

By: _____

Title: _____

Name: _____

Date: _____

Columbia River Public Utility District

By: _____

Title: _____

Name: _____

Date: _____

Clearwater Power Company

By: _____

Title: _____

Name: _____

Date: _____

Columbia Rural Electric Association, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Columbia Basin Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Consumers Power, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Columbia Power Cooperative Association

By: _____

Title: _____

Name: _____

Date: _____

Coos-Curry Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Douglas Electric Cooperative

By: _____

Title: _____

Name: _____

Date: _____

Elmhurst Mutual Power and Light Company, Washington

By: _____

Title: _____

Name: _____

Date: _____

Eugene Water and Electric Board

By: _____

Title: _____

Name: _____

Date: _____

Fall River Rural Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Forest Grove Light and Power

By: _____

Title: _____

Name: _____

Date: _____

Franklin County Public Utility District

By: _____

Title: _____

Name: _____

Date: _____

Harney Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Hood River Electric Cooperative

By: _____

Title: _____

Name: _____

Date: _____

Inland Power & Light Company

By: _____

Title: _____

Name: _____

Date: _____

**Lakeview Light and Power Company,
Washington**

By: _____

Title: _____

Name: _____

Date: _____

Lane Electric Cooperative

By: _____

Title: _____

Name: _____

Date: _____

Lost River Rural Electric Cooperative

By: _____

Title: _____

Name: _____

Date: _____

McMinnville Water and Light

By: _____

Title: _____

Name: _____

Date: _____

Midstate Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

**Nespelem Valley Electric Cooperative,
Inc.**

By: _____

Title: _____

Name: _____

Date: _____

Northern Lights, Inc.

By: _____

Title: _____

Name: _____

Date: _____

**Ohop Mutual Light Company,
Washington**

By: _____

Title: _____

Name: _____

Date: _____

Orcas Power & Light Cooperative

By: _____

Title: _____

Name: _____

Date: _____

**Oregon Trail Electric Consumers'
Cooperative**

By: _____

Title: _____

Name: _____

Date: _____

**Parkland Light and Water Company,
Washington**

By: _____

Title: _____

Name: _____

Date: _____

Peninsula Light Company, Washington

By: _____

Title: _____

Name: _____

Date: _____

**Public Utility District No. 1 of Benton
County, Washington**

By: _____

Title: _____

Name: _____

Date: _____

**Public Utility District No. 1 of Clallam
County, Washington**

By: _____

Title: _____

Name: _____

Date: _____

**Public Utility District No 1 of Clark
County, Washington**

By: _____

Title: _____

Name: _____

Date: _____

Public Utility District No. 1 of Cowlitz County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public District No. 1 of Kittitas County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public Utility District No. 1 of Ferry County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public Utility District No. 1 of Klickitat County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public Utility District No. 2 of Grant County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public District No. 1 of Lewis County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public Utility District No. 1 of Grays Harbor County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public District No. 1 of Mason County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public District No. 3 of Mason County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public Utility District No. 1 of Skamania County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public Utility District No. 1 of Okanogan County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public District No. 1 of Snohomish County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Public District No. 2 of Pacific County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Raft River Rural Electric Cooperative

By: _____

Title: _____

Name: _____

Date: _____

Public Utility District No. 1 of Pend Oreille County, Washington

By: _____

Title: _____

Name: _____

Date: _____

Salmon River Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Surprise Valley Electrification Corporation

By: _____

Title: _____

Name: _____

Date: _____

Town of Steilacoom, Washington

By: _____

Title: _____

Name: _____

Date: _____

Tanner Electric Cooperative

By: _____

Title: _____

Name: _____

Date: _____

Umatilla Electric Cooperative Association

By: _____

Title: _____

Name: _____

Date: _____

The City of Seattle, City Light Department

By: _____

Title: _____

Name: _____

Date: _____

United Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Town of Eatonville, Washington

By: _____

Title: _____

Name: _____

Date: _____

Vera Water & Power

By: _____

Title: _____

Name: _____

Date: _____

Wasco Electric Cooperative, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Columbia Falls Aluminum Company

By: _____

Title: _____

Name: _____

Date: _____

Wells Rural Electric Company

By: _____

Title: _____

Name: _____

Date: _____

Goldendale Aluminum Company

By: _____

Title: _____

Name: _____

Date: _____

West Oregon Electric Cooperative

By: _____

Title: _____

Name: _____

Date: _____

Kaiser Aluminum & Chemical Corporation

By: _____

Title: _____

Name: _____

Date: _____

Atofina, Inc.

By: _____

Title: _____

Name: _____

Date: _____

Northwest Aluminum Company

By: _____

Title: _____

Name: _____

Date: _____

By: _____

Title: _____

Name: _____

Date: _____

ATTACHMENT A—DEFINITIONS

Unless otherwise required by the context in which any term appears, (a) capitalized terms used in this Stipulation have the meanings specified in this Attachment A; (b) the singular shall include the plural and vice-versa; (c) references to “sections,” and “Attachments” shall be to sections and Attachments hereof; (d) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (e) the words “herein,” “hereof,” and “hereunder” shall refer to this Stipulation as a whole and not to any particular provision or section hereof; (f) the word “including” shall mean “including, without limitation,” and the word “include” shall mean “include, without limitation,” and (g) references to this Stipulation shall be a reference to this Stipulation and the Attachments referenced in section 13(a) of the body of this Stipulation.

“Administrator” means the BPA Administrator.

“Amended Settlement Agreement” means each Existing Settlement Agreement, as amended by its respective Amendment to Existing Settlement Agreement.

“Amendment to Existing Settlement Agreement” means each of the following amendments between BPA and the Investor Owned Utility identified below with respect to an Existing Settlement Agreement: (i) Amendment No. 1 to Contract No. 01PB-10885 between BPA and Puget, (ii) Amendment No. 2 to Contract No. 01PB-12229 between BPA and PacifiCorp, (iii) Amendment No. 2 to Contract No. 00PB-12161 between BPA and PGE, (iv) Amendment No. 3 to Contract No. 00PB-12157 between BPA and Avista, (v) Amendment No. 3 to Contract No. 00PB-12158 between BPA and Idaho Power Company, (vi) Amendment No. 3 to Contract No. 00PB-12160 between BPA and NorthWestern Energy, and (vii) Amendment No. 1 to Contract No. 01PB-10854 between BPA and PacifiCorp.

“BPA” means Bonneville Power Administration.

“Certain Rate Claims” means any claim, demand, action or cause of action, whether known or later discovered, with respect to any rate or final action proposed or adopted by BPA that:

(i) challenges (except as provided in section 11 of the Amended Settlement Agreement and exhibits thereto) all or any part of the Forward Flat-Block Price Forecast as defined and applied in the Amended Settlement Agreements for all or any portion of the period beginning October 1, 2001 and continuing through September 30, 2011;

(ii) challenges all or any part of BPA’s Forward Flat-Block Price Forecast in the WP-02 proceeding;

(iii) asserts that the RL Rate, Lowest PF Rate, RL, or Lowest PF, as such terms are defined and used to calculate monetary payment under the Amended

Settlement Agreements, is a rate or a sale of power, as those terms are used in the Northwest Power Act, for all or any portion of the period beginning October 1, 2001 and continuing through September 30, 2011;

(iv) challenges all or any part of the RL-02 Residential Load Firm Power Rate or the PFXS-02 PF Exchange Subscription Rate established in the WP-02 proceeding;

(v) asserts that section 7(b)(2) or section 7(b)(3) of the Northwest Power Act applies to the RL Rate, Lowest PF Rate, RL, or Lowest PF, as such terms are defined and used in the Amended Settlement Agreements (or applies to any CRAC or other adjustment clauses with respect to such RL Rate, Lowest PF Rate, RL, or Lowest PF), as defined and used under the Amended Settlement Agreements, for all or any portion of the period beginning October 1, 2001 and continuing through September 30, 2011;

(vi) challenges all or any part of the application (or lack of application) of section 7(b)(2) or 7(b)(3) of the Northwest Power Act in the WP-02 proceeding (or in any CRAC during the WP-02 rate period); or

(vii) challenges all or any part of the establishment of the Slice Rate or Slice Rate Methodology in the WP-02 proceeding.

“CRAC” means any Cost Recovery Adjustment Clause (including any SN CRAC, any FB CRAC and any BPA final action related to any such CRAC) with respect to BPA rates and the adjustments to BPA’s rates that result from such Cost Recovery Adjustment Clause.

“Effective Date” has the meaning set forth in section 1 of the body of this Stipulation.

“Event of Default” has the meaning set forth in section 11(b) of the body of this Stipulation.

“Existing Settlement Agreement” means each of the following agreements between BPA and the Investor Owned Utility identified below with respect to such agreement: Contract Nos. 00PB-12157, 00PB-12163, and 03PB-11265 with Avista Corporation; Contract Nos. 00PB-12158, 00PB-12164, and 03PB-11268 with Idaho Power Company; Contract Nos. 00PB-12160, 00PB-12165, and 03PB-11262 with NorthWestern; Contract Nos. 01PB-12229, 01PB-12230, 01PB-10854, 02PB-11157, and 03PB-11262 with PacifiCorp; Contract Nos. 01PB-10885, 01PB-10886, 02PB-11156, and 03PB-11251 with Puget; and Contract Nos. 00PB-12161, 00PB-12167, and 03PB-11267 with PGE.

“FB CRAC” means any Financial Based Cost Recovery Adjustment Clause under BPA’s WP-02 rates.

“Industrial Customer” means any of the following: Atofina Chemicals, Inc., Columbia Falls Aluminum Co., Goldendale Aluminum Co., Kaiser Aluminum & Chemical Corporation, Northwest Aluminum Co., and Alcoa Inc., and includes any other entity (including without limitation any predecessor, successor or assignee of any of the foregoing named entities) that has taken, or has or may claim a right to, service from BPA as a direct service industrial customer.

“Investor Owned Utility” means any of the following: Avista Corporation, Idaho Power Company, NorthWestern, PacifiCorp, PGE, and Puget.

“Lowest PF” shall have the same definition and usage as in the Amended Settlement Agreements.

“Lowest PF Rate” shall have the same definition and usage as in the Amended Settlement Agreements.

“Motion to Dismiss Causes and Claims” means each motion in the forms in ATTACHMENT E for each Referenced Cause for which each Public Litigant, Other Litigant, and Investor Owned Utility is a Petitioner or Intervenor.

“Motion to Limit Issues on Certain Rate Claims” means a stipulated Motion to Limit Issues under FRAP 33 in the form of ATTACHMENT F.

“Ninth Circuit” means United States Court of Appeals for the Ninth Circuit.

“Northwest Power Act” means the Pacific Northwest Electric Power Planning and Conservation Act, as amended.

“NorthWestern” means NorthWestern Energy, a division of NorthWestern Corporation.

“Other Litigant” means each of the entities identified in ATTACHMENT B as an Other Litigant as of October 1, 2003.

“Party” means BPA and each entity that executes and delivers this Stipulation to BPA in accordance with its terms, together with any other documents specified by this Stipulation to be executed and delivered contemporaneously with execution and delivery of this Stipulation.

“PGE” means Portland General Electric Company.

“PGP” means Public Generating Pool for itself and on behalf of its members Public Utility District No. 2 of Grant County, Washington; Public Utility District No. 1 of Pend Oreille County, Washington; Public Utility District No. 1 of Cowlitz County, Washington; The City of Seattle, City Light Department; and Public Utility District No. 1 of Douglas County, Washington.

“PNGC” means Pacific Northwest Generating Cooperative and its current or former member cooperatives Blachly-Lane County Cooperative Electric Association, Central Electric Cooperative, Inc., Clearwater Power Company, Consumers Power, Inc., Coos-Curry Electric Cooperative, Inc., Douglas Electric Cooperative, Fall River Rural Electric Cooperative, Inc., Lane Electric Cooperative, Lost River Rural Electric Cooperative, Northern Lights, Inc., Okanogan County Electric Cooperative, Oregon Trail Electric Consumers’ Cooperative, Raft River Rural Electric Cooperative, Salmon River Electric Cooperative, Inc., Umatilla Electric Cooperative Association, and West Oregon Electric Cooperative. For purposes of any obligations to be undertaken, any actions to be performed, and the disposition of any rights relating to Cause No. 00-70948, “PNGC” does not include Clearwater Power Company, Fall River Rural Electric Cooperative, Inc., Okanogan County Electric Cooperative, Salmon River Electric Cooperative, Inc. or West Oregon Electric Cooperative who were not members of PNGC at the time of filing of Cause No. 00-70948 and never became parties to that litigation.

“PPC” means the Public Power Council, Inc.

“Public Litigant” means each of the entities identified in ATTACHMENT B as a Public Litigant as of October 1, 2003.

“Puget” means Puget Sound Energy, Inc.

“Referenced Causes” means the following causes in the Ninth Circuit: Cause Nos. 00-70948, 00-70949, 01-70002, 01-70003, 01-70005, 01-70008, 01-70009, 01-70010, 01-70012, 01-70014, 01-70020, 01-70041, 01-70042, 01-70060, and 01-70202.

“Reserved Claim” means any cause, claim, contention, legal argument, or factual argument (i) that petitioners (or any intervenors that align with petitioners) have or may have in the Ninth Circuit Cause No. 00-70948 that arises out of, or in connection with, or relates to BPA’s decisions, actions taken, or actions not taken, with respect to service to its Industrial Customers, the terms and conditions for such service, or the rates and charges for such service, and (ii) that are, or could be, asserted in such Cause No. 00-70948. However, “Reserved Claim” does not include any cause, claim, contention, legal argument, or factual argument (i) that challenges BPA’s compliance with Northwest Power Act section 7(b)(2) or 7(b)(3) in connection with the rates or charges for service to its Industrial Customers that is, or could be, asserted in such Cause No. 00-70948, or (ii) that challenges all or any part of any Existing Settlement Agreement, Amendment to Existing Settlement Agreement, Amended Settlement Agreement or any final action proposed or adopted by BPA offering or entering into any such agreement or amendment. BPA expressly reserves any defense or right to challenge any Reserved Claim in such Cause No. 00-70948.

“Respondent” means each of the respondents in the Referenced Causes including: Stephen J. Wright, as Administrator of the Bonneville Power Administration, United States Department of Energy; Spencer Abraham, as Secretary of the Department of Energy; and the United States of America.

Initials  for
Bonneville Power Administration

“RL” shall have the same definition and usage as in the Amended Settlement Agreements.

“RL Rate” shall have the same definition and usage as in the Amended Settlement Agreements.

“Settlement Document” means this Stipulation and any of the following: Amendment to Existing Settlement Agreement, Slice Settlement Agreement, Motion to Limit Issues on Certain Rate Claims, Motion to Dismiss Causes and Claims, and Waiver and Covenant Not to Sue.

“Slice Agreement” means any Slice and Block Power Sales Agreements between BPA and a Slice Customer.

“Slice Customer” means each BPA preference customer that has entered into a Slice Agreement with BPA.

“Slice Settlement Agreement” means each agreement as described in section 3 of the body of this Stipulation between BPA and a Slice Customer.

“Slice Settlement Agreement Party” means the following Slice Customers: Public Utility District No. 1 of Benton County, Washington, Clatskanie Peoples Utility District, Franklin County Public Utility District, Washington, Eugene Water and Electric Board, Public Utility District No. 1 of Grays Harbor County, Washington, Idaho Falls Power, Public Utility District No. 1 of Okanogan County, Washington, Public Utility District No. 1 of Pend Oreille County, Washington, Seattle City Light, Public Utility District No. 1 of Snohomish County, Washington, and Pacific Northwest Generating Cooperative.

“SN CRAC” means any Safety Net Cost Recovery Adjustment Clause under BPA’s WP-02 rates and specifically includes the adjustment to BPA rates during the WP-02 rate period pursuant to BPA’s SN-03 proceeding or other proceedings.

“Stipulation” means the body of this Stipulation and Agreement for Settlement and the following attachments:

- ATTACHMENT A—Definitions
- ATTACHMENT B—Petitioners and Intervenors in Referenced Causes
- ATTACHMENT C—Service List
- ATTACHMENT D—Form of Waiver and Covenant Not to Sue
- ATTACHMENT E—Form of Motion to Dismiss Causes and Claims
- ATTACHMENT F—Form of Motion to Limit Issues on Certain Rate Claims
- ATTACHMENT G—September 18th SN CRAC Workshop Materials

“Waiver and Covenant Not to Sue” means each Waiver and Covenant Not to Sue in the form of ATTACHMENT D.

ATTACHMENT B—Petitioners and Intervenors in Referenced Cases

Intervenors and Petitioners in each of the following Causes, as of October 1, 2003: Nos. 00-70948, 00-70949, 01-70002, 01-70003, 01-70005, 01-70008, 01-70009, 01-70010, 01-70012, 01-70014, 01-70020, 01-70041, 01-70042, 01-70060 and 01-70202,

Case Nos. 00-70948 and 00-70949 are consolidated.

**I. Pacific Northwest Generating Cooperative v. Bonneville Power Administration,
Docket No. 00-70948**

Petitioners (Public Litigants)

Pacific Northwest Generating Cooperative
Blachly-Lane County Cooperative Electric Association
Central Electric Cooperative, Inc.
Consumers Power, Inc.
Coos-Curry Electric Cooperative, Inc.
Douglas Electric Cooperative
Lane Electric Cooperative
Lost River Rural Electric Cooperative
Northern Lights, Inc.
Oregon Trail Electric Consumers' Cooperative
Raft River Rural Electric Cooperative
Umatilla Electric Cooperative Association

Intervenor (Public Litigants)

Public Generating Pool
Public Power Council, Inc.

Intervenor (Investor Owned Utilities)

Avista Corporation

Intervenor (Other Litigants)

Oregon Public Utility Commission
Washington Utilities and Transportation Commission

Initials SW for
Bonneville Power Administration

**II. Puget Sound Energy Inc., et al., v. Bonneville Power Administration,
Docket No. 00-70949**

Petitioner (Investor Owned Utilities)
Puget Sound Energy, Inc.

Intervenor (Public Litigants)
Pacific Northwest Generating Cooperative
Public Generating Pool
Public Power Council, Inc.

Intervenor (Investor Owned Utilities)
Avista Corporation
PacifiCorp
Portland General Electric Company

Intervenor (Other Litigants)
Alcoa Inc.
Columbia Falls Aluminum Company
Goldendale Aluminum Company
Kaiser Aluminum & Chemical Corporation
Northwest Aluminum Company
Idaho Public Utilities Commission
Oregon Public Utility Commission
Washington Utilities and Transportation Commission

Cause Nos. 01-70002, 01-70008, 01-70009, 01-70014, 01-70020, 01-70041 and 01-70060 are consolidated and assigned to the same merits panel as the petitions on the Residential Exchange Program Settlement Agreements, Cause Nos. 01-70003, 01-70005, 01-70010 and 01-70042.

**III. Portland General Electric Company v. BPA
Docket No. 01-70002**

Petitioner (Investor Owned Utilities)
Portland General Electric Company

Intervenor (Public Litigants)
Public Generating Pool
Public Power Council, Inc.

Intervenor (Investor Owned Utilities)
Avista Corporation

Intervenor (Other Litigants)
Washington Utilities and Transportation Commission
Public Utility Commission of Oregon

**IV. PacifiCorp v. BPA
Docket No. 01-70008**

Petitioner (Investor Owned Utilities)
PacifiCorp

Intervenor (Public Litigants)
Public Power Council, Inc.

Intervenor (Investor Owned Utilities)
Avista Corporation
Puget Sound Energy, Inc.

Intervenor (Other Litigants)
Washington Utilities and Transportation Commission

**V. Public Power Council, Inc., v. U.S. DOE, et al
Docket No. 01-70009**

Petitioner (Public Litigants)
Public Power Council, Inc.

Intervenor (Public Litigants)
Public Generating Pool

Intervenor (Investor Owned Utilities)
Avista Corporation

Intervenor (Other Litigants)
Oregon Public Utility Commission
Washington Utilities and Transportation Commission

**VI. Benton Rural Electric Association, et al., v. U.S. DOE
Docket No. 01-70014**

Petitioner (Public Litigants)
Benton Rural Electric Association

City of Port Angeles
City of Cheney
City of Ellensburg
City of Fircrest
City of Milton
Town of Eatonville
Town of Steilacoom
Alder Mutual Light Company
Elmhurst Mutual Power and Light Company
Lakeview Light & Power
Ohop Mutual Light Company
Parkland Light & Water Company
Peninsula Light Company
Public Utility District No. 1 of Clallam County, Washington
Public Utility District No. 1 of Clark County, Washington
Public Utility District No. 1 of Grays Harbor County, Washington
Public Utility District No. 1 of Kittitas County, Washington
Public Utility District No. 1 of Lewis County, Washington
Public Utility District No. 1 of Mason County, Washington
Public Utility District No. 3 of Mason County, Washington
Public Utility District No. 2 of Pacific County, Washington
Public Utility District No. 1 of Snohomish County, Washington
Big Bend Electric Co-Operative, Inc.
Idaho Falls Power
City of Richland
City of Rupert
Columbia Basin Electric Cooperative, Inc.
Columbia Power Cooperative Association
Columbia River Public Utility District
Columbia Rural Electric Association, Inc.
Fall River Rural Electric Cooperative, Inc.
City of Forest Grove Light and Power
Public Utility District No. 1 of Franklin County, Washington
Harney Electric Cooperative, Inc.
Hood River Electric Cooperative
Inland Power & Light Company
McMinnville Water and Light
Midstate Electric Cooperative, Inc.
Nespelem Valley Electric Cooperative, Inc.
Orcas Power & Light Cooperative
Public Utility District No. 1 of Benton County, Washington
Public Utility District No. 1 of Ferry County, Washington
Public Utility District No. 1 of Klickitat County, Washington
Public Utility District No. 1 of Okanogan County, Washington
Public Utility District No. 1 of Skamania County, Washington

Surprise Valley Electrification Corporation
Tanner Electric Cooperative
United Electric Cooperative
Vera Water & Power
Wasco Electric Cooperative
Wells Rural Electric

Intervenor (Investor Owned Utilities)
Avista Corporation

Intervenor (Other Litigants)
Washington Utilities and Transportation Commission

**VII. Avista Corporation v. BPA
Docket No. 01-70020**

Petitioner (Investor Owned Utilities)
Avista Corporation

Intervenor (Public Litigants)
Public Power Council, Inc.

Intervenor (Other Litigants)
Washington Utilities and Transportation Commission

**VIII. Puget Sound Energy, Inc., v. BPA
Docket No. 01-70041**

Petitioner (Investor Owned Utilities)
Puget Sound Energy, Inc.

Intervenor (Public Litigants)
Public Generating Pool
Public Power Council, Inc.

Intervenor (Investor Owned Utilities)
Avista Corporation

Intervenor (Other Litigants)
Public Utility Commission of Oregon
Washington Utilities and Transportation Commission

IX. Northwest Aluminum, et al., v. BPA
Docket No. 01-70060

Petitioner (Other Litigants)

Atofina Chemicals, Inc.
Columbia Falls Aluminum Company
Goldendale Aluminum Company
Kaiser Aluminum and Chemical Corporation
Northwest Aluminum Company

Intervenor (Public Litigants)

Public Power Council, Inc.

Intervenor (Investor Owned Utilities)

Avista Corporation

Intervenor (Other Litigants)

Washington Utilities and Transportation Commission

X. Portland General Electric Company v. BPA
Docket No. 01-70003

Petitioner (Investor Owned Utilities)

Portland General Electric Company

Intervenor (Public Litigants)

Public Generating Pool
Public Power Council, Inc.

Intervenor (Investor Owned Utilities)

Avista Corporation

XI. PacifiCorp v. BPA
Docket No. 01-70005

Petitioner (Investor Owned Utilities)

PacifiCorp

Intervenor (Public Litigants)

Public Power Council, Inc.

Intervenor (Investor Owned Utilities)
Avista Corporation

XII. Public Power Council, Inc., v. U.S. DOE, et al.
Docket No. 01-70010

Petitioner (Public Litigants)
Public Power Council, Inc.

Intervenor (Public Litigants)
Public Generating Pool

Intervenor (Investor Owned Utilities)
Avista Corporation

XIII. Benton Rural Electric Association, et al., v. BPA
Docket No. 01-70012

Petitioners (Public Litigants)

Benton Rural Electric Association
City of Port Angeles
City of Cheney
City of Ellensburg
City of Fircrest
City of Milton
Town of Eatonville
Town of Steilacoom
Alder Mutual Light Company
Elmhurst Mutual Power and Light Company
Lakeview Light and Power Company
Ohop Mutual Light Company
Parkland Light and Water Company
Peninsula Light Company
Public Utility District No. 1 of Clallam County, Washington
Public Utility District No. 1 of Clark County, Washington
Public Utility District No. 1 of Grays Harbor County, Washington
Public Utility District No. 1 of Kittitas County, Washington
Public Utility District No. 1 of Lewis County, Washington
Public Utility District No. 1 of Mason County, Washington
Public Utility District No. 3 of Mason County, Washington
Public Utility District No. 2 of Pacific County, Washington
Public Utility District No. 1 of Snohomish County, Washington
Big Bend Electric Co-Operative, Inc.

Idaho Falls Power
City of Richland
City of Rupert
Columbia Basin Electric Cooperative, Inc.
Columbia Power Cooperative Association
Columbia River Public Utility District
Columbia Rural Electric Association, Inc.
Fall River Rural Electric Cooperative, Inc.
Forest Grove Light and Power
Public Utility District No. 1 of Franklin County, Washington
Harney Electric Cooperative, Inc.
Hood River Electric Cooperative
Inland Power & Light Company
McMinnville Water and Light
Midstate Electric Cooperative, Inc.
Nespelem Valley Electric Cooperative, Inc.
Orcas Power & Light Cooperative
Public Utility District No. 1 of Benton County, Washington
Public Utility District No. 1 of Ferry County, Washington
Public Utility District No. 1 of Klickitat County, Washington
Public Utility District No. 1 of Okanogan County, Washington
Public Utility District No. 1 of Skamania County, Washington
Surprise Valley Electrification Corporation
Tanner Electric Cooperative
United Electric Cooperative, Inc.
Vera Water & Power
Wasco Electric Cooperative, Inc.
Wells Rural Electric Company

Intervenor (Investor Owned Utilities)
Avista Corporation

XIV. Atofina Chemicals, Inc., et al., v. BPA
Docket No. 01-70042

Petitioners (Other Litigants)
Atofina Chemicals, Inc.
Columbia Falls Aluminum Company
Goldendale Aluminum Company
Kaiser Aluminum & Chemical Corporation
Northwest Aluminum Company

Intervenor (Public Litigants)
Public Power Council, Inc.

Intervenor (Investor Owned Utilities)
Avista Corporation

XV. Puget Sound Energy, Inc. v. BPA
Docket No. 01-70202

Petitioner (Investor Owned Utilities)
Puget Sound Energy, Inc.

Intervenor (Public Litigants)
Public Utility District No. 1 of Clark County, Washington
Public Utility District No. 1 of Snohomish County, Washington
Clatskanie Public Utility District
Eugene Water and Electric Board
Pacific Northwest Generating Cooperative

Intervenor (Investor Owned Utilities)
Avista Corporation
PacifiCorp
Portland General Electric

Intervenor (Other Litigants)
Columbia Falls Aluminum Company
Goldendale Aluminum Company
Kaiser Aluminum & Chemical Corporation
Northwest Aluminum Company
Washington Utilities and Transportation Division

ATTACHMENT C—SERVICE LIST

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ATTACHMENT D—Form of Waiver and Covenant Not to Sue

Waiver and Covenant Not to Sue

This Waiver and Covenant Not to Sue is intended to implement the terms and covenants contained in the Stipulation and Agreement for Settlement dated as of _____ (“Stipulation”). (Terms with initial capitalization defined in Attachment A of the Stipulation shall have the definitions specified in such Attachment A.) This Waiver and Covenant Not to Sue by the undersigned is (i) irrevocable (unless returned to the undersigned by BPA pursuant to paragraph D below) and for the express benefit of and may be relied upon by each of the Parties, (ii) binding on the undersigned and its successors, assigns, and any person or persons acting for, by or through it, and (iii) except for paragraphs C, G and H below, shall be of no force or effect with respect to the period after September 30, 2011.

A. The undersigned, for itself and for its successors, assigns, and any person or entity acting for, by or through it, does hereby covenant and agree that it will not institute, prosecute or in any way aid the prosecution of, and does hereby waive, any claim, demand, action or cause of action, whether known or later discovered that:

(i) challenges (except as provided in section 11 of the Amended Settlement Agreement and exhibits thereto) all or any part of the Forward Flat-Block Price Forecast as defined and applied in the Amended Settlement Agreements for all or any portion of the period beginning October 1, 2001 and continuing through September 30, 2011;

(ii) challenges all or any part of BPA’s Forward Flat-Block Price Forecast in the WP-02 proceeding;

(iii) asserts that the RL Rate, Lowest PF Rate, RL, or Lowest PF, as such terms are defined and used to calculate monetary payment under the Amended Settlement Agreements, is a rate or a sale of power, as those terms are used in the Northwest Power Act, for all or any portion of the period beginning October 1, 2001 and continuing through September 30, 2011;

(iv) challenges all or any part of the RL-02 Residential Load Firm Power Rate or the PFXS-02 PF Exchange Subscription Rate established in the WP-02 proceeding;

(v) asserts that section 7(b)(2) or section 7(b)(3) of the Northwest Power Act applies to the RL Rate, Lowest PF Rate, RL, or Lowest PF, as such terms are defined and used in the Amended Settlement Agreements (or applies to any CRAC or other adjustment clauses with respect to such RL Rate, Lowest PF Rate, RL, or Lowest PF), as defined and used under the Amended Settlement Agreements, for all or any portion of the period beginning October 1, 2001 and continuing through September 30, 2011;

(vi) challenges all or any part of the application (or lack of application) of section 7(b)(2) or 7(b)(3) of the Northwest Power Act in the WP-02 proceeding (or in any CRAC during the WP-02 rate period);

(vii) challenges all or any part of the establishment in WP-02 of the Slice Rate or Slice Rate Methodology in the WP-02 proceeding;

(viii) challenges all or any part of any final action proposed or adopted by BPA offering or entering into the Stipulation;

(ix) challenges all or any part of any Existing Settlement Agreement, Amendment to Existing Settlement Agreement, Amended Settlement Agreement or any final action proposed or adopted by BPA offering or entering into any such agreement or amendment;

(x) challenges all or any part of any Slice Agreement, Slice Settlement Agreement, or any final action proposed or adopted by BPA offering or entering into any such agreement;

(xi) challenges all or any part of any final action proposed or adopted by BPA filing or joining the Motions to Limit Issues on Certain Rate Claims and Motions to Dismiss Causes and Claims as described in section 10 of the Stipulation;

(xii) challenges all or any part of any final action proposed or adopted by BPA issuing the final Record of Decision as described in section 5 of the Stipulation;

(xiii) challenges all or any part of any other final action, proposed or adopted by BPA, that is required or provided for by the Stipulation; or

(xiv) asserts, in Ninth Circuit Cause No. 00-70948, any claim that is not a Reserved Claim.

B. The undersigned represents that it is authorized to enter into this Waiver and Covenant Not to Sue, and that the obligations such undersigned has undertaken under this Waiver and Covenant Not to Sue are valid, lawful, binding and enforceable obligations and within the authority of such undersigned to undertake. The undersigned also represents that all necessary approvals with respect to its authority to execute this Waiver and Covenant Not to Sue have been obtained, and that the person signing on behalf of such undersigned is duly authorized to execute this document on behalf of such undersigned, and to bind such undersigned to the undertakings required of it by such document.

C. The undersigned agrees that no action taken or not taken by the undersigned or any person or entity with respect to this Waiver and Covenant Not to Sue, any other Settlement Document, or the Record of Decision described in section 5 of the Stipulation shall serve to create any procedural or substantive precedent with respect to BPA's service or provision of benefits after September 30, 2011, in (i) any subsequent administrative forum, or(ii) any subsequent administrative, arbitral, or judicial forum reviewing BPA's decisions ; nor shall the undersigned argue otherwise. No record of decision (nor any action taken or not taken by the undersigned or any person or entity) with respect to any claim in the Referenced Causes, nor any claim with respect to such a record of decision in other causes dismissed pursuant to any Motion to Limit Issues on Certain Rate Claims or Motion to Dismiss Causes and Claims shall serve to create any procedural or substantive precedent with respect to BPA's service or provision of

benefits after September 30, 2011, in (i) any subsequent administrative forum, or (ii) any subsequent administrative, arbitral, or judicial forum reviewing BPA's decisions; nor shall the undersigned argue otherwise. The undersigned acknowledges that certain persons or entities have opposing positions on certain issues. In addition, nothing in this Waiver and Covenant Not to Sue shall be construed or deemed to be an admission, or evidence of an admission, by the undersigned with respect to any claim dismissed pursuant to any of the Motions to Limit Issues on Certain Rate Claims and Motions to Dismiss Causes and Claims or with respect to any of the Reserved Claims.

D. The undersigned has executed and delivered to BPA in trust this Waiver and Covenant Not to Sue. BPA is authorized and directed to deliver a copy of this Waiver and Covenant Not to Sue to each Party (and to file and serve this Waiver and Covenant Not to Sue with the Motions to Dismiss and Motions to Limit Issues on Certain Rate Claims) if and only if the Stipulation has not been voided *ab initio* pursuant to section 11 thereof before the 121st day after the Effective Date. If the Stipulation has been voided *ab initio* pursuant to section 11 thereof before the 121st day after the Effective Date, BPA shall not file or serve but is authorized and directed, on or before the 135th day after the Effective Date, to return this originally signed Waiver and Covenant Not to Sue to the undersigned.

E. The undersigned represents that as of October 1, 2003, the Referenced Causes encompass all pending litigation known to the undersigned that challenge or may challenge BPA's Slice Agreements, Residential Exchange Program, Residential Purchase and Sale Agreements, any of the Existing Settlement Agreements or Amended Settlement Agreements, or any records of decision issued in support of such agreements.

F. If the Stipulation has not been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, this Waiver and Covenant Not to Sue shall be independent of all other Settlement Documents and shall remain in effect even if any or all other Settlement Documents are void, unenforceable or unlawful.

G. The undersigned agrees that this Waiver and Covenant Not to Sue is binding on such undersigned and its successors, permitted assigns, and any person or persons acting for, by or through any of them.

H. This Waiver and Covenant Not to Sue shall not be construed against any person or entity as a result of such person or entity's participation in the negotiation, preparation, drafting, or review of this Waiver and Covenant Not to Sue.

Dated: _____

SIGNATURE BLOCK

ATTACHMENT E—FORMS OF MOTION TO DISMISS CAUSES AND CLAIMS
Nos. 01-70002, 01-70008, 01-70009, 01-70014, 01-70020,
01-70041, 01-70060

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PORTLAND GENERAL ELECTRIC COMPANY, *et al.*,

Petitioners,

v.

BONNEVILLE POWER ADMINISTRATION,

Respondent.

STIPULATED MOTION FOR VOLUNTARY DISMISSAL OF 01-70002, 01-70008, 01-70009, 01-70014, 01-70020, AND 01-70041 UNDER FRAP RULE 42(b)

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure (FRAP), petitioners, respondent and intervenors (the parties) in these consolidated cases, including all successors, assigns, and any other person or entity acting for, by and through such parties, jointly request and stipulate to voluntary dismissal of the following cases: Nos. 01-70002, 01-70008, 01-70009, 01-70014, 01-70020, and 01-70041. This stipulated motion does not include dismissal of No. 01-70060 (Northwest Aluminum v. Bonneville Power Administration).

The parties file this motion in consideration of and reliance on the attached Stipulation and Agreement for Settlement (“Stipulation Agreement”), and Waivers and Covenants Not To Sue, and to implement the Stipulation and Waivers and Covenants Not To Sue. The parties agree that dismissal shall be with prejudice and each party shall bear its own costs, with the

caveat that any court fees that may be assessed shall be borne by the Bonneville Power Administration (“Bonneville”).

The parties have executed and delivered the instant motion to Bonneville in trust. Bonneville is authorized and directed to file the instant motion if the Stipulation Agreement has not been voided *ab initio* as provided in section 11 of the Stipulation Agreement before the 121st day after the Effective Date (as defined in section 1 of the Stipulation Agreement). If the Stipulation Agreement has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, Bonneville shall not file the instant motion, but is authorized and directed, on or before the 135th day after the Effective Date, to return the originally signed motion to the undersigned parties.

Under Circuit Rule 15-3.2(c) a petitioner or intervenor in any of the consolidated cases is deemed to have intervened in each of the consolidated dockets. Upon dismissal of Nos. 01-70002, 01-70008, 01-70009, 01-70014, 01-70020, and 01-70041, the undersigned expressly retain intervenor status in No. 01-70060.

Neither this motion nor the dismissal of any claims pursuant to this motion shall be deemed to be precedential with respect to Bonneville’s service or provision of benefits after September 30, 2011. In addition, nothing in this motion shall be construed as or deemed to be evidence of an admission by the undersigned parties with respect to any claim dismissed pursuant to this motion.

For the foregoing reasons, the parties request this stipulated motion for voluntary dismissal be granted.

DATED: _____

Respectfully submitted,

Nos. 01-70003, 01-70005, 01-70010, 01-70012, 01-70041, 01-70042

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PORTLAND GENERAL ELECTRIC COMPANY, *et al.*,

Petitioners,

v.

BONNEVILLE POWER ADMINISTRATION,

Respondent.

STIPULATED MOTION FOR VOLUNTARY DISMISSAL OF NOS. 01-70003, 01-70005, 01-70010, 01-70012, AND 01-70041 UNDER FRAP RULE 42(b)

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure (FRAP), petitioners, respondent and intervenors (the parties) in these consolidated cases, including all successors, assigns, and any other person or entity acting for, by and through such parties, jointly request and stipulate to voluntary dismissal of the following cases: Nos. 01-70003, 01-70005, 01-70010, 01-70012, and 01-70041. This stipulated motion does not include dismissal of No. 01-70042 (Atofina Chemicals, Inc. v. Bonneville Power Administration).

The parties file this motion in consideration of and reliance on the attached Stipulation and Agreement for Settlement (“Stipulation Agreement”), and Waivers and Covenants Not To Sue, and to implement the Stipulation and Waivers and Covenants Not To Sue. The parties agree that dismissal shall be with prejudice and each party shall bear its own costs, with the

caveat that any court fees that may be assessed shall be borne by the Bonneville Power Administration (“Bonneville”).

The parties have executed and delivered the instant motion to Bonneville in trust. Bonneville is authorized and directed to file the instant motion if the Stipulation Agreement has not been voided *ab initio* as provided in section 11 of the Stipulation Agreement before the 121st day after the Effective Date (as defined in section 1 of the Stipulation Agreement). If the Stipulation Agreement has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, Bonneville shall not file the instant motion, but is authorized and directed, on or before the 135th day after the Effective Date, to return the originally signed motion to the undersigned parties.

Under Circuit Rule 15-3.2(c) a petitioner or intervenor in any of the consolidated cases is deemed to have intervened in each of the consolidated dockets. Upon dismissal of Nos. 01-70003, 01-70005, 01-70010, 01-70012, and 01-70041, the undersigned expressly retain intervenor status in No. 01-70042.

Neither this motion nor the dismissal of any claims pursuant to this motion shall be deemed to be precedential with respect to Bonneville’s service or provision of benefits after September 30, 2011. In addition, nothing in this motion shall be construed as or deemed to be evidence of an admission by the undersigned parties with respect to any claim dismissed pursuant to this motion.

For the foregoing reasons, the parties request this stipulated motion for voluntary dismissal be granted.

DATED: _____

Respectfully submitted,

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PACIFIC NORTHWEST GENERATING COOPERATIVE, *et al.*,

Petitioners,

v.

BONNEVILLE POWER ADMINISTRATION,

Respondent.

STIPULATED MOTION FOR VOLUNTARY DISMISSAL OF NO. 00-70949 UNDER FRAP
RULE 42(b)

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure (FRAP), petitioners, respondent and intervenors (the parties) in No. 00-70949, including all successors, assigns, and any other person or entity acting for, by and through such parties, jointly request and stipulate to voluntary dismissal of No. 00-70949. This Stipulated Motion does not include dismissal of No. 00-70948 (Pacific Northwest Generating Cooperative v. Bonneville Power Administration).

The parties file this motion in consideration of and reliance on the attached Stipulation and Agreement for Settlement (“Stipulation Agreement”), and Waivers and Covenants Not To Sue, and to implement the Stipulation and Waivers and Covenants Not To Sue. The parties agree that dismissal shall be with prejudice and each party shall bear its own costs, with the caveat that any court fees that may be assessed shall be borne by the Bonneville Power Administration (“Bonneville”).

The parties have executed and delivered the instant motion to Bonneville in trust. Bonneville is authorized and directed to file the instant motion if the Stipulation Agreement has not been voided *ab initio* as provided in section 11 of the Agreement before the 121st day after the Effective Date (as defined in section 1 of the Stipulation Agreement). If the Stipulation Agreement has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, Bonneville shall not file the instant motion, but is authorized and directed, on or before the 135th day after the Effective Date, to return the originally signed motion to the undersigned parties.

Under Circuit Rule 15-3.2(c) a petitioner or intervenor in any of the consolidated cases is deemed to have intervened in each of the consolidated dockets. Upon dismissal of No. 00-70949, the parties expressly retain intervenor status in No. 00-70948. Further, the parties expressly retain intervenor status in No. 00-70949, if and to the extent the Court were to continue such proceeding notwithstanding this motion.

Neither this motion nor the dismissal of any claims pursuant to this motion shall be deemed to be precedential with respect to Bonneville's service or provision of benefits after September 30, 2011. In addition, nothing in this motion shall be construed as or deemed to be evidence of an admission by the undersigned parties with respect to any claim dismissed pursuant to this motion.

For the foregoing reasons, the parties request this stipulated motion for voluntary dismissal be granted.

DATED: _____

Respectfully submitted,

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PUGET SOUND ENERGY, INC.,

Petitioners,

v.

BONNEVILLE POWER ADMINISTRATION, et al.,

Respondents.

STIPULATED MOTION FOR VOLUNTARY DISMISSAL UNDER FRAP RULE 42(b)

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure (FRAP), petitioners, respondent and intervenors (the parties) in the above-entitled case, including all successors, assigns, and any other person or entity acting for, by and through such parties, jointly request and stipulate to voluntary dismissal of this case as described herein. The parties file this motion in consideration of and reliance on the attached Stipulation and Agreement for Settlement (“Stipulation Agreement”), and Waivers and Covenants Not To Sue, and to implement the Stipulation and Waivers and Covenants Not To Sue. The parties agree that dismissal shall be with prejudice and each party shall bear its own costs, with the caveat that any court fees that may be assessed shall be borne by the Bonneville Power Administration (“Bonneville”).

The parties have executed and delivered the instant motion to Bonneville in trust. Bonneville is authorized and directed to file the instant motion if the Stipulation Agreement has not been voided *ab initio* as provided in section 11 of the Agreement before the 121st day after

the Effective Date (as defined in section 1 of the Stipulation Agreement). If the Stipulation Agreement has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, Bonneville shall not file the instant motion, but is authorized and directed, on or before the 135th day after the Effective Date, to return the originally signed motion to the undersigned parties.

Neither this motion nor the dismissal of any claims pursuant to this motion shall be deemed to be precedential with respect to Bonneville's service or provision of benefits after September 30, 2011. In addition, nothing in this motion shall be construed as or deemed to be evidence of an admission by the undersigned parties with respect to any claim dismissed pursuant to this motion.

For the foregoing reasons, the parties request this stipulated motion for voluntary dismissal be granted.

DATED: _____

Respectfully submitted,

Nos. 01-70002, 01-70008, 01-70009, 01-70014, 01-70020,
01-70041, 01-70060

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PORTLAND GENERAL ELECTRIC COMPANY, *et al.*,

Petitioners,

v.

BONNEVILLE POWER ADMINISTRATION,

Respondent.

STIPULATED MOTION FOR VOLUNTARY DISMISSAL OF NO. 01-70060 UNDER FRAP
RULE 42(b)

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure (FRAP), petitioners, respondent and intervenors (the parties) in No. 01-70060 (Northwest Aluminum, et al. v. Bonneville Power Administration), including all successors, assigns, and any other person or entity acting for, by and through such parties, jointly request and stipulate to voluntary dismissal of this case. The dismissal of Nos. 01-70002, 01-70008, 01-70009, 01-70014, 01-70020, and 01-70041 have been addressed by a separate motion.

The parties file this motion in consideration of and reliance on the attached Stipulation and Agreement for Settlement (“Stipulation Agreement”), and Waivers and Covenants Not To Sue, and to implement the Stipulation and Waivers and Covenants Not To Sue. The parties agree that dismissal shall be with prejudice and each party shall bear its own costs, with the

caveat that any court fees that may be assessed shall be borne by the Bonneville Power Administration (“Bonneville”).

The parties have executed and delivered the instant motion to Bonneville in trust. Bonneville is authorized and directed to file the instant motion if the Stipulation Agreement has not been voided *ab initio* as provided in section 11 of the Stipulation Agreement before the 121st day after the Effective Date (as defined in section 1 of the Stipulation Agreement). If the Stipulation Agreement has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, Bonneville shall not file the instant motion, but is authorized and directed, on or before the 135th day after the Effective Date, to return the originally signed motion to the undersigned parties.

Neither this motion nor the dismissal of any claims pursuant to this motion shall be deemed to be precedential with respect to Bonneville’s service or provision of benefits after September 30, 2011. In addition, nothing in this motion shall be construed as or deemed to be evidence of an admission by the undersigned parties with respect to any claim dismissed pursuant to this motion.

For the foregoing reasons, the parties request this motion be granted.

DATED: _____

Respectfully submitted,

Nos. 01-70003, 01-70005, 01-70010, 01-70012, 01-70041, 01-70042

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PORTLAND GENERAL ELECTRIC COMPANY, *et al.*,

Petitioners,

v.

BONNEVILLE POWER ADMINISTRATION,

Respondent.

STIPULATED MOTION FOR VOLUNTARY DISMISSAL OF NO. 01-70042 UNDER FRAP
RULE 42(b)

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure (FRAP), petitioners, respondent and intervenors (the parties) in the No. 01-70042 (Atofina Chemicals, Inc., et al. v. Bonneville Power Administration), including all successors, assigns, and any other person or entity acting for, by and through such parties, jointly request and stipulate to voluntary dismissal of this case. The dismissal of Nos. 01-70003, 01-70005, 01-70010, 01-70012, and 01-70041, have been addressed by a separate motion.

The parties file this motion in consideration of and reliance on the attached Stipulation and Agreement for Settlement (“Stipulation Agreement”), and Waivers and Covenants Not To Sue, and to implement the Stipulation and Waivers and Covenants Not To Sue. The parties agree that dismissal shall be with prejudice and each party shall bear its own costs, with the caveat that any court fees that may be assessed shall be borne by the Bonneville Power

Administration (“Bonneville”). The parties have executed and delivered the instant motion to Bonneville in trust. Bonneville is authorized and directed to file the instant motion if the Stipulation Agreement has not been voided *ab initio* as provided in section 11 of the Stipulation Agreement before the 121st day after the Effective Date (as defined in section 1 of the Stipulation Agreement). If the Stipulation Agreement has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, Bonneville shall not file the instant motion, but is authorized and directed, on or before the 135th day after the Effective Date, to return the originally signed motion to the undersigned parties.

Neither this motion nor the dismissal of any claims pursuant to this motion shall be deemed to be precedential with respect to Bonneville’s service or provision of benefits after September 30, 2011. In addition, nothing in this motion shall be construed as or deemed to be evidence of an admission by the undersigned parties with respect to any claim dismissed pursuant to this motion.

For the foregoing reasons, the parties request this motion be granted.

DATED: _____

Respectfully submitted,

**ATTACHMENT F—Form of Motion to Limit Issues on Certain Rate Claims
PROTOTYPE FORM OF MOTION**

Nos. 03-_____

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[TO BE COMPLETED],

Petitioners,

v.

BONNEVILLE POWER ADMINISTRATION,

Respondent.

STIPULATED MOTION TO LIMIT THE SCOPE OF ISSUES UNDER FRAP RULE 33

Pursuant to Rule 33 of the Federal Rules of Appellate Procedure (FRAP), petitioners and respondent (the parties) in these consolidated cases, including all successors, assigns, and any other person or entity acting for, by and through such parties, jointly request and stipulate to voluntarily limit the scope of the issues to be addressed in the above-entitled consolidated cases. The parties file this motion in consideration of and reliance on the attached Stipulation and Agreement for Settlement (“Stipulation Agreement”), and Waivers and Covenants Not To Sue, and to implement the Stipulation and Waivers and Covenants Not To Sue. The parties hereby agree that the scope of the issues to be raised and litigated in these cases shall be limited by and be consistent with the Waivers and Covenants Not To Sue executed by petitioners, a copy of

which is attached hereto, and that petitioners are estopped from raising and litigating any issues that are proscribed by the Waivers and Covenants Not To Sue.

The parties have executed and delivered the instant motion to Bonneville Power Administration in trust. Bonneville is authorized and directed to file the instant motion if the Stipulation Agreement has not been voided *ab initio* as provided in section 11 of the Agreement before the 121st day after the Effective Date (as defined in section 1 of the Stipulation Agreement). If the Stipulation Agreement has been voided *ab initio* pursuant to section 11 before the 121st day after the Effective Date, Bonneville shall not file the instant motion, but is authorized and directed, on or before the 135th day after the Effective Date, to return the originally signed motion to the undersigned parties.

This motion shall not be deemed to be precedential with respect to Bonneville's service or provision of benefits after September 30, 2011, and nothing in this motion shall be construed as or deemed to be evidence of an admission by the undersigned parties with respect to any issue not addressed or litigated pursuant to this motion. For the foregoing reasons, the parties request this motion be granted.

DATED:

SIGNATURE BLOCK

ATTACHMENT G—SEPTEMBER 18TH SN CRAC Workshop Materials

**SN CRAC Workshop
Thursday, September 18, 2003
9:00 a.m.**

Rates Hearing Room

Items for Discussion

- Introduction

- Implementation of the 2003 SN CRAC GRSPs

- Interaction of the FB, LB, and SN CRACs

- Closing

SN CRAC Workshop
Thursday, September 18, 2003

Implementing the GRSPs With an IOU Public Litigation Settlement

This paper describes how the Administrator can ensure that customers receive the benefit of the Public/IOU settlement in FY 2004, even if the final agreement on settlement is reached after September 15, 2003. In summary, on October 1, 2003, BPA will begin charging customers subject to the FB and SN CRACs the Without Settlement FB and SN CRAC rates as presented at the August 28, 2003, rate case workshop. Once the Administrator receives sufficient assurance that there is a final IOU Public Litigation settlement, the Administrator will rebate to customers the difference between the Without Settlement rates and the With Settlement rates, *i.e.*, the Rebate Amount, as described in this paper and workshop. The With Settlement rates will result in FY 2004 BPA power rates about 7 percent lower than average FY 2003 rates.

Overview of IOU Public Litigation Settlement Process

IOU Public Litigation settlement negotiations are ongoing. The Administrator is confident enough that there will be a settlement to describe how he will implement the GRSPs once he has sufficient assurance that there is, in fact, a settlement. The Administrator will not reduce the SN CRAC until he has sufficient assurance of a settlement. Sufficient Assurance will occur once the settlement is final and the cost reductions associated with the settlement are contractually committed (necessary parties have signed and the IOU's make final decisions after the time for challenges has passed). We anticipate this will occur on or before February 1, 2004, in which event credits will be provided for as described in this paper and workshop. If a final settlement and IOU commitment are not secured until after then, the Administrator retains the discretion to provide credits in FY 2004 rather than wait until FY 2005.

Implementation of the 2003 SN CRAC GRSPs

The 2003 SN CRAC provides for a recalculation of the SN CRAC parameters and thresholds contingent on changes in data inputs. One of the contingencies is the negotiated reduction in the magnitude of benefit payments by BPA to the IOUs under the 5(c) Settlement Agreements. The GRSPs contemplate a negotiated reduction and provide further that "if the Administrator, in his sole determination, receives sufficient assurance, such as the signing by the IOUs of settlement contracts, that the benefits payable to the IOUs during FY 2004 through FY 2006 will be either reduced or deferred," then the SN CRAC parameters and thresholds will be recalculated, thereby reducing the level of the SN CRAC. SN-03-A-02, Appendix A, Page A-17.

The Administrator has determined that he will have Sufficient Assurance of a negotiated reduction in benefits under the IOU agreements if there is a binding agreement by the IOUs to defer \$75 million in FY 2004, FY 2005, and FY 2006 plus all but Portland General Electric's share of the \$55 million FY 2003 deferral amounts, 120 days after the Effective Date of the settlement contracts deferring the benefits.

The GRSPs state, "The method by which such benefit reductions will be incorporated depends on the timing of the agreement." *Id.* The GRSPs acknowledge a settlement deferring or reducing IOU benefits could be achieved in time to implement a SN and/or FB CRAC rate

reduction before the rate period begins on October 1, 2003. While the GRSPs contemplated “the agreement” as a signed, final agreement; they do not directly address the situation of an agreement in principle. While BPA does not now have a signed, final settlement agreement, it would appear that the parties are very close to a signed, final agreement. Given this situation, and BPA’s intent to promote settlement sooner rather than later and to provide customers the benefit of a “final” settlement if it is reached early on in FY 2004, it is reasonable to provide for a rebate process in FY 2004 as described in this document.

How BPA will pass on the cost savings of an IOU Public Litigation Settlement

For Public Customers (non-Slice Products), DSIs, IOU power sales, and IOU Monetary Benefits

Beginning October 1, 2003, BPA will charge the base rate plus the appropriate Cost Recovery Adjustment Clauses (LB, FB, or SN CRACs) at the levels described at the June 10, 2003, workshop for LB CRAC and the August 28th workshop for SN and FB CRACs. These rates are shown in Attachment 1.

With Settlement Rates: With settlement the SN CRAC will go to zero percent. The FB CRAC may be different once the exact settlement amounts are known. Currently, BPA expects the FB CRAC to change by less than one-half of a percent, if at all, from the level presented in the August 28th workshop. The following is a short discussion of how the calculation will be done consistent with the GRSPs. BPA is willing to host another workshop as soon as practicable to explain the actual calculation, probably sometime in January or early February.

Calculation of New FB and SN CRACs if the Administrator receives Sufficient Assurance of a Public IOU Settlement

1. Calculate new parameters for the FB and SN CRACs. The “contingent recalculation” described in the August 14 and August 28 workshops for the Without Settlement case will be performed for the With Settlement numbers. Data from the Final Rate Case Studies will be used except for defined updates (chiefly 2003 hydro and price data, and settlement details). The results will be revised caps for the SN CRAC and revised thresholds for both the FB and SN CRACs.
2. Preliminary calculation of FB and SN rates for FY 2004. The revised caps and thresholds for FY 2004 and the FY 2003 Third Quarter Review projections of PBL ending Accumulated Net Revenues (ANR) will be used to calculate the FB CRAC percentages and preliminary percentages for SN CRAC for FY 2004.
3. Administrator exercises GRSP discretion. The Administrator then will exercise the discretion given him in the GRSPs to reduce the FY 2004 SN CRAC to zero percent.
4. Recalibrate FY 2005 and FY 2006 CRACs to maintain three-year 80 percent TPP. The thresholds for the FY 2005 and FY 2006 FB and SN CRACs will be recalibrated, taking into account the zero percent SN CRAC for FY 2004, to

maintain a three-year 80 percent TPP (FY 2004 through FY 2006). This step will not affect any FY 2004 FB or SN CRAC thresholds or percentages.

For the FB and SN CRACs: The total difference between what a customer is being billed at the Without Settlement FB and SN CRAC rates and what they would have been billed at the With Settlement SN and FB CRACs rates (the “Rebate Amount”) will be calculated for each billing month.

On the first day of the billing month following the date of Sufficient Assurance (assumed to be February 1, 2004) the Rebate Amount will be credited to the customers on a rolling month-by-month basis. For example, in February, the January bill will be calculated using the With Settlement FB and SN CRAC Rates and the October bill will be revised to credit the October Rebate Amount. The next month, March, the process would be repeated, with the February bill being calculated using the With Settlement Rates and the November bill being revised to reflect the Rebate Amount; and so on. Revised bills and Rebate Amounts will only be calculated for whole months. If the date of Sufficient Assurance occurs in February 2004, but after February 1, the Rebate Amount for October will not be credited until the March calculation of the February power bills.

Rates - apparent and effective, with and without settlement

2004 rates, as of 9-18-03

Notes	FB CRAC	SN CRAC	Apparent rates - rates customers will see on bills					Effective rates - rates reflecting known impacts of true-ups				
			LB CRAC	LB CRAC	LB CRAC	Total of	Change from	LB CRAC	LB CRAC	LB CRAC	Total of	Change from
			Oct-Mar	Apr-Sep	Average	3 CRACs	03 Average	Oct-Mar	Apr-Sep	Average	3 CRACs	03 Average
	12.28%	11.47%	21.29%	31.25%	26.27%	50.02%	2.63%	20.34%	31.25%	25.80%	49.55%	2.30%
Notes	1	1	2	3	4	4	4	5	3	6	6	6

- 1 These were set in the August 28, 2003 workshop
- 2 Set in the June 2003 LB CRAC workshop; does not include the decrease due to the SN CRAC, calculated after the June workshop.
- 3 Forecast of LB CRAC rate will be set at the December workshop. This forecast does include the reduction in LB due to non-zero SN.
- 4 This is the number calculated from posted rates, under the assumptions operative on 9-18-03 (including assumption that the IOUs WILL send BPA a letter prior to December 3 stating that they want to stop deferring, i.e., start receiving, the payments for the litigation contingency).
- 5 This is the effective LB CRAC rate for the first half of 2004, taking into account the impact of the eventual true-up, which in this case would include a reduction in augmentation expenses due to the non-zero SN CRAC. The incorporation of the impact of the SN CRAC, calculated after the final determination of the first-half LB CRAC in June, will be made through a true-up, but BPA does not formally consider that the true-up changes the LB CRAC rate; the LB CRAC rate, once posted, will not change, but true-ups will be made as needed to ensure each customer's total, true-up bill reflects all of the appropriate adjustments.
- 6 These numbers show "effective" rates, incorporating true-ups, but the true-ups will not change the posted rates per se.

2004 rates, if Settlement were final about February 1, 2004 [note 10]

Notes	FB CRAC	SN CRAC	Apparent rates - rates customers will see on bills					Effective rates - rates reflecting known impacts of true-ups				
			LB CRAC	LB CRAC	LB CRAC	Total of	Change from	LB CRAC	LB CRAC	LB CRAC	Total of	Change from
			Oct-Mar	Apr-Sep	Average	3 CRACs	03 Average	Oct-Mar	Apr-Sep	Average	3 CRACs	03 Average
	12.28%	0.00%	21.29%	23.75%	22.52%	34.80%	-7.78%	21.29%	24.70%	23.00%	35.28%	-7.46%
Notes	10, 11	10, 12	13	14	15	10, 15	10, 15	16	17	18	10, 18	10, 18

- 10 Assuming details of settlement financial impacts are the same as currently assumed by BPA's rates analysts. There may be changes in these figures due to minor corrections in data also.
- 11 The FB CRAC will be recalculated after final Settlement details are known - first the thresholds will be recalculated, and then the FB percentage. The percentage may go up by up to 0.4 percentage points from the 12.28% figure. The GRSPs give the Administrator the discretion to decrease the SN CRAC, but they give him no discretion to change the FB CRAC.
- 12 The Administrator will exercise the discretion given him by the GRSPs to zero out the 2004 SN CRAC if there is a full settlement.
- 13 This rate was set in June and cannot be changed. However, it is the correct rate under settlement.
- 14 Forecast of rates to be set in December, 2003. Since that is before the settlement can be final, it will (probably) be set based on the assumption operative at that moment - an 11.47% SN CRAC would be in place, lowering the LB CRAC rate by 0.95%; the IOUs will, we assume, not have sent BPA a letter requesting the beginning of litigation contingency payments, so there will be no augmentation expense for one-fifth of the \$200 million total.
- 15 This is the number calculated from posted rates, under the assumptions operative on 2-1-04 (including assumption that the IOUs did not send BPA a letter prior to the December LB CRAC workshop stating that they want to stop deferring, i.e., start receiving, the payments for the litigation contingency, and that the LB CRAC starting April 1 was set in December prior to the settlement becoming final).

- 16 This rate was set in June 2003 without any assumption of an SN CRAC, and that assumption is borne out in this scenario; no true-up needed for impacts of SN CRAC or settlement.
- 17 This rate was set in December under the assumption of an 11.47% SN CRAC, which is now (2-1-04) no longer correct; there will be no SN CRAC for 2004, so the assumed reduction in LB CRAC will have to be backed out in the true-up. The effective LB CRAC for the 2nd half of 2004 will be higher than the rate calculated in December 2003, but it will be incorporated via the true-up, not a change in LB rate per se.
- 18 These numbers show "effective" rates, incorporating true-ups, but the true-ups will not change the posted rates per se.