

September 29, 2022

Chair Mallory
Council on Environmental Quality
Washington, D.C. 20585

Cynthia Jeffries
Federal Mediation & Conciliation Service
Orlando, FL 32817

Re: CEQ Effort to Unlawfully Influence BPA Rates and Statutory Ratemaking Obligations

Dear Chair Mallory and Ms. Jeffries:

We are writing to express our grave concerns with your agencies' apparent disregard of the Bonneville Power Administration's (BPA) statutory obligations and your agencies' efforts to impede and influence a BPA rate case settlement process, despite having no legal authority to do so. These efforts came to our attention through the State of Oregon's intergovernmental affairs activities.

The Public Power Council (PPC) is the regional trade association representing the interests of the public power customers of BPA. Unlike other Federal agencies, BPA funds its operations entirely through the rates it charges its customers for the products and services it markets. BPA's customers repay all the costs associated with producing and transmitting power that is generated at the multipurpose federal projects—including the costs associated with mitigating the impact of federal hydropower generation on threatened and endangered fish species. Today, public power utilities fund over 70 percent of BPA's \$3.9 billion annual revenue requirement and fully subscribe the firm output of the federal hydropower system.

However, BPA's authority to assume costs is constrained by its organic and enabling statutes and BPA's authority to recover those costs from its customers in rates is further cabined by explicit statutory ratemaking directives. BPA has no lawful authority to incur costs that are not directly related to the ongoing operation of the Federal system. Likewise, any efforts to establish rates that are inconsistent with BPA's statutory ratemaking directives, including the mandate that BPA set "the lowest possible rates to consumers consistent with sound business principles," will be in contravention of BPA's statutory obligations and construed by the Ninth Circuit Court of Appeals as arbitrary and capricious, and therefore, unlawful.

We are concerned with the efforts of the State of Oregon and your agencies to compel BPA to ignore the legal and contractual requirements and to impede a BPA statutory rate-making process to achieve unrelated investments in fish mitigation on the back of nonprofit utilities that provide at-cost power to the residents of the Pacific Northwest. Any efforts to compel BPA to incur costs that go beyond BPA's lawful authority to fund operations pursuant to the Northwest Power Act ("NWPAct"), 16 U.S.C. §§ 839-839h, or any of its other statutory authorities, are unlawful and are outside of your lawful authorities. Any efforts to improperly use ratepayer funds that

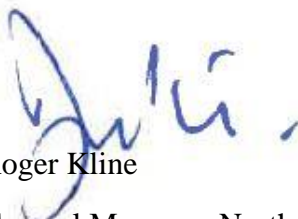
BPA has unexpectedly accumulated are equally unlawful. Because BPA rates are necessarily set using projections and assumptions, sometimes BPA under-collects and sometimes it over collects revenues from its preference customers. When there is a revenue shortfall, the applicable rate agreement and contracts provides mechanisms for BPA to “claw back” needed revenue from customers. When there are surplus revenues, BPA must either return the excess funds to ratepayers, use the revenue to boost financial reserves, pay down debt, or otherwise benefit the ratepayers that are responsible for the full cost of BPA’s operations. **Seeking the use of Northwest ratepayer revenues for programs or ventures that are beyond the scope of or totally divorced from BPA’s statutory obligations and necessary administrative processes violate BPA’s statutory authorities and are inconsistent with both administrative law and sound public policy.**

In addition, your efforts to up-end the BPA settlement on treatment of excess revenues fundamentally challenges your neutrality and resulting ability to craft a fair and equitable settlement among litigants in the CRSO litigation. We strongly urge you to cease these efforts that contravene applicable legal and contractual requirements.

Please be advised that PPC will examine all of its legal options to preclude using BPA ratepayer dollars inappropriately, without a clear legal basis for doing so and without a direct connection to legally requisite mitigation for Columbia River System Operations. This would include PPC invoking its right as a party to the CRSO litigation to move to lift the newly extended stay given its position that any attempt to fund any settlement or agreements without a sound legal foundation and transparent process would constitute “good cause” to justify lifting the stay without delay.

We ask that you take immediate steps to disavow any and all efforts and support for extra-legal encroachment on BPA’s statutory rate setting processes and reaffirm the Administration’s alignment of its position on the LSRDs and its broader energy and climate goals. We call on you to take immediate steps to ensure that BPA can fulfill its statutory obligations without undue interference. Thank you for your attention to this matter.

Sincerely,



Roger Kline

General Manager, Northern
Wasco County PUD, OR
Chairman,
Public Power Council



Scott Simms

Executive Director, Public
Power Council

cc: Secretary Haaland, Department of Interior
Secretary Raimondo, Department of Commerce

Secretary Jennifer Granholm, Department of Energy
Deputy Secretary Turk, Department of Energy
Mr. Sullivan, Assistant to the President for National Security Affairs
Assistant Secretary Connor, U.S. Army Corps of Engineers

Commissioner Touton, U.S. Bureau of Reclamation
Assistant Administrator Coit, NOAA-Fisheries
Administrator Hairston, Bonneville Power Administration
State Governors
Northwest Congressional Delegation