

Statement of Scott Simms

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Subcommittee on Water, Wildlife and Fisheries oversight hearing titled,

*“Left in the Dark: Examining the Biden Administration’s Efforts
to Eliminate the Pacific Northwest’s Clean Energy Production.”*

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Good morning, Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. My name is Scott Simms, and I serve as the CEO and Executive Director of the Public Power Council (PPC). While it is always a pleasure to testify before this Committee, I wish it was under better circumstances. The topic we are discussing today is the single greatest threat to the Northwest's hydropower system in decades.

Background

PPC is the non-partisan trade association representing the interests of non-profit, consumer-owned electric utilities in the Pacific Northwest, which together serve millions of people and businesses in Washington, Oregon, Idaho, western Montana, and parts of Nevada and Wyoming. These large and small utilities in rural and urban areas of the Great Pacific Northwest purchase electricity and transmission services at cost from the Bonneville Power Administration, or BPA – which is one of four U.S. federal Power Marketing Agencies (PMA). BPA is the clean energy frontrunner among these PMAs, with a 95 percent emission-free power portfolio. The consumer-owned utilities served by BPA collectively pay 70 percent of BPA's \$3.9 billion annual revenue requirement, with the remainder of BPA's budget covered by sales to others, such as through short term surplus power sales to other Western states. BPA is unique among the PMAs in that all of its revenue requirements are provided by its customers and operations. As well, all of BPA's consumer-owned utility customers are invested in BPA's success, which includes ensuring BPA complies with its statutory obligation to provide the lowest possible rates to consumers consistent with sound business principles.

BPA markets power from 31 federal hydroelectric dams on the Columbia River and its tributaries, plus the output of the Columbia Generating Station, a nuclear power plant located on the Hanford Site in Eastern Washington. BPA has more than 15,000 miles of high voltage transmission lines and 261 Substations with a footprint of about 75% of the total transmission resources in the Northwest.

The State of Salmon Today

As stewards focused on affordability and reliability, PPC member utilities also have a solid environmental interest and are committed to mitigating the impacts of Federal Columbia River Power System (FCRPS) operations. As the most significant single contributor to the nation's Endangered Species Act effort, we have a keen interest in ensuring that fish mitigation measures are science-based, cost-effective, and have a clear nexus with the operations of the FCRPS. Such actions serve dual purposes – they promote the restoration of the region's valued endangered and threatened species and, ultimately, reduce the impacts on fish and wildlife and costs associated with FCRPS operations. We are committed to paying our total mitigation share – no more and no less. This balance enables PPC members to offer their communities affordable, reliable and clean power in an environmentally responsible manner.

As a matter of perspective, BPA's total fish and wildlife expense category, supported by public power revenues, stands at an average of \$685 million a year over the past 10 years. These funds and operational concessions result in better habitat, critical land set-asides, thriving hatcheries, robust fish predation reduction programs, Tribal program partnerships that provide Tribal community jobs and the application of on-the-ground indigenous Basin expertise, fish friendly hydro turbines and an exhaustive list of other meaningful contributions. Sadly, in today's world, these steady and extensive science-led investments in the Columbia River Basin do not grab the headlines, though the achievements over time are certainly notable and undeniable.

While these Columbia River Basin fish mitigation efforts are producing measurable improvements in certain salmon runs – especially when compared to the decimation of salmon from aggressive Columbia Basin harvesting and cannery operations in the late 1800s to early 1900s before the FCRPS dams were constructed¹ – the successes of today's mitigation efforts are rejected by those who refuse to acknowledge the decades of steady progress. Even in recent years, the Columbia River Basin recorded banner years of salmon returns in 2014 and in 2022. These successes are especially notable, though, when considering the strong headwinds of continued off-shore and in-river salmon harvesting, unfavorable ocean conditions, predation and impacts from pollution that these fish face, among other factors. Interestingly, as side note, recent news coverage of the pristine Yukon River in Alaska is showing massive declines in Chinook and Chum salmon varieties.² This is very recent news on top of ongoing similar media coverage of analysis of salmon returns up and down the West Coast, which is a cause for overall concern. As context, continued Columbia River salmon returns – though varied by year given factors mentioned above – stand out as a bright spot in comparison to these other downward trending West Coast stocks.

With so much concern about the state of the world's climate and the desire among many of our nation's utilities and communities to have a clean, reliable power portfolio such as ours in the Pacific Northwest, why in the world would the US Government set out a path to breach these highly productive, emission-free hydro projects?

¹ Northwest Power & Conservation Council Website, "Canneries," <https://www.nwccouncil.org/reports/columbia-river-history/canneries/>

² Marlena Sloss and Dino Grandoni, "There's a crisis in the Yukon River," Washington Post, December 3, 2023.

FMCS Process Flawed from the Start

It's unfortunate that FCRPS operations have been mired by long-running litigation, and that a lack of logic and reason seems to prevail. Roughly 16 months ago, the federal district court judge overseeing litigation on the Columbia Basin System Operations approved a stay in that litigation. At the same time, the Council on Environmental Quality (CEQ) engaged the Federal Mediation and Conciliation Service (FMCS) to resolve the litigated issues. The stay in litigation was launched with this US Government commitment:

“The Biden Administration is committed to supporting development of a durable long-term strategy to restore salmon and other native fish populations to healthy and abundant levels, honoring Federal commitments to Tribal Nations, delivering affordable and reliable clean power, and meeting the many resilience needs of stakeholders across the region.”³

Now, almost two years later, we are fully aware the US Government fell far short of that mark, failing to meet “the many resilience needs of stakeholders in this region.” In fact, one could legitimately argue that the divisions between various stakeholders in the region have only worsened as a direct result of the US Government’s efforts during this stay in litigation.

PPC entered these negotiations with guarded optimism that the process would finally be pursued in a fair, confidential, and collaborative way led by skilled third-party mediators. Regretfully, our experience has been to the contrary. What has resulted is a frustrating bureaucratic process with little discussion of new ideas and much less progress toward a regional compromise. Confidentiality has been conveniently used to protect “private caucuses” between CEQ and select parties. Meanwhile, many official participants in the process and their stakeholders have been left in the dark and have yet to be equal parties despite, continued efforts to advance new ideas, explore compromise solutions and share further information. Our voice was not sought out, despite the dire financial and operational consequences – and even health and human safety risks – that electric utilities and their customers would face from ill-conceived “agreements.” Again, it's worth noting that public power utilities pay the lion's share of FCRPS costs. Yet, we've been walled off from CEQ and plaintiff party conversations inevitably involving future cost obligations of Northwest ratepayers either from further operational constraints; direct cash outlays – or both.

On November 27, 2023, PPC and other parties in the region⁴ received a copy of the 34-page confidential document titled “U.S. Government Commitments in Support of the Columbia Basin Restoration Initiative and Partnership with the Six Sovereigns” (US Government Commitments). Simply put, PPC believes these commitments are egregious and put into question our utilities’ core mission of system reliability and affordability. Further, PPC continues to be gravely concerned about the ambiguity surrounding these obligations and the continued uncertainty and associated risks that jeopardize the long-term value of the Federal Columbia River Power System. The level of concern in the region has risen in recent weeks as a group of Congressional

³ “United States Commitments,” Case 3:01-cv-00640-SI, Document 2423-2, Filed August 4, 2022.

⁴ PPC received a copy of the USG Commitments from an email forwarded by a reputable media organization on Nov. 27, 2023. Other regional stakeholders stated they received a similar email that same day.

offices posted the U.S. Commitments document on November 29, 2023⁵, widening the aperture to the greater public and uncovering the secrecy surrounding the development of these commitments over many months and involving a very small number of interests in conjunction with the US Government.

US Government Commitments Are Problematic In Many Ways

From the perspective of BPA customers, what the US Government has proposed is an unthinkable venture with no upsides, only downsides. Imagine being expected to sign a 20-year commercial real estate lease when the landlord and the adjoining tenant negotiated the terms – you, as the funder, were not present. The deal says the square footage can be dramatically reduced at any point in the future. You may show up at the space one day and find out that it's no longer wired for internet. With vague initial lease price estimates and unknown hidden fees, you are told the lease rate can change at any point, with the landlord loading on even more additional costs later. Also, the adjoining tenant can sue you at any moment, whether you've violated your lease terms or not. No one would sign such a lease, yet the US Government expects PPC member utilities and their customers to do so. Adding insult to injury, the US Government keeps telling us and the rest of the region that it's a “good deal.” Clearly, this agreement is anything but that.

The foundation for the US Government Commitments is built on sand. On the first page, the agreement cites a 2022 report by the National Oceanic and Atmospheric Administration (NOAA) titled “Rebuilding Interior Columbia Basin Salmon and Steelhead” and says the “science is clear” – in reality, the opposite is true. Over a year ago, PPC submitted (and has received no response to date) [a detailed letter](#) citing official technical and scientific documents that pointed out the many inaccuracies and shortcomings of the report.

Essentially, the NOAA report ignores the substantial increases in salmon and steelhead abundance observed since ESA protections were established in the 1990s – including some stocks returning in numbers not marked before the construction of the dams. Abundance goals also neglect to account for millions of adult anadromous and non-native fish that are now part of the Basin's ecosystem. The report ignores substantial contributions, neglecting to cite the considerable contrary research from organizations that did not contribute to the report's development. PPC remains committed to scientific and cost-effective mitigation for the effects of the CRSO, but this single, unattributed NOAA report should not be the foundation.

The US Government agreement itself is not an agreement at all. Public power has no certainty or benefits from its sweeping actions yet is poised through seemingly purposeful ambiguous language to leave the door open to nearly all the costs and risks to be borne by public power ratepayers. The deal features a “Partnership with the Six Sovereigns.” The Six Sovereigns include the State of Oregon, the State of Washington, the Nez Perce Tribe, Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs Reservation.

⁵ “Washington Reps. Cathy McMorris Rodgers and Dan Newhouse, Oregon Rep. Cliff Bentz, and Idaho Rep. Russ Fulcher published the draft mediation document Wednesday...”; Jennifer Yachnin, “GOP leaks draft settlement in Pacific Northwest dam dispute,” E&E Daily, November 30, 2023.

No Forbearance = No Certainty

The basis for the mediation was to bring to an end the decades long CRSO litigation. While the US Government Commitments seek to hold the parties accountable for this specific litigation, there is no legal forbearance for BPA, and it is unlikely to result in regional certainty. Specifically, there is no protection in the agreement for BPA and its customers from exposure to further operational changes through CRSO claims not barred by the contract. For example, a claim through the Clean Water Act would trigger a different court to order new functional changes to address LSRDs' water temperature impacts that could result in additional operational changes. The fact that the US Government is settling with six parties does not preclude other non-signatory parties or non-parties from bringing claims. As well, this agreement does not rule out the prospect of other agreements the US Government might accept from other parties, which could saddle Northwest public power ratepayers with additional cost or operational impacts – or, again, both.

The US Government Selects A Chosen Few Among Many Interests

This agreement also calls into question the US Government's secret and prejudiced approach to recognizing certain interests and ignoring others, notably the majority of federally-recognized Tribes and multiple Northwest states – who are their own sovereign entities – along with a long list of other interests that include navigation, water users, recreation, ports, farmers, and – the party that has been historically expected to pick up the majority of costs from such ventures as this agreement – our non-profit, community-owned public power utilities and their customers.

It's notable how few Tribes in our region were included by the US Government as part of this agreement, considering the wide array of sovereign Tribes and their lands that cover the Pacific Northwest. Specifically, the US Government agreement describes that only four federally recognized Tribes were part of this agreement out of a total of well more than 40 Tribes and other Tribal interests in the Pacific Northwest. To that end, as the secret agreement is starting to get more exposure in the public domain, we are hearing more and more news from other Tribes in the region who are expressing concern about this narrowly-structured agreement that was developed in the absence of consultation or consideration of other Tribes' interests.

Additionally, the two sovereign states of Oregon and Washington in BPA's service territory were apparently involved in the formulation of the agreement with the US Government, but the other sovereign states in BPA service territory – Idaho, Montana, Wyoming and Nevada – were left out. Interestingly, though the states of Oregon and Washington are part of this agreement, ironically, many of these state's residents – including low income and economically disadvantaged citizens in both rural and urban areas – would likely see the most severe negative impacts from increased electricity rates if this proposed agreement moves forward.

BPA And Ratepayers Largely On The Hook For Costs

Among the most appalling components of the US Government Commitments are the costs borne by ratepayers and the operational impacts that will inevitably impact system reliability. The definite BPA cost commitments are approximately \$370 million. It breaks down to:

- \$20 million in combined capital and expense increases for Fiscal Year 2024-2025,
- \$100 million for expenses over ten years for additional projects,
- \$200 million in capital over ten years for Lower Snake hatchery improvements, and,
- \$50 million for funding "backlog" projects from the U.S. Army Corps of Engineers.

Additional cost implications are unknown and could have a heavy price tag borne by ratepayers, as there are references to other federal agencies providing support, but no details on the appropriations and budgeting strategy. There are also sizable and ambiguous cost commitments, including an estimated \$2 billion responsibility for a 10-year “Mid-Columbia Restoration Plan.” Again, promises like this one in the document are undefined and do not have a funding source.

The concerns continue to compound with the US Government committing in this proposed agreement to develop between 1-3 GW of Tribal-owned renewable “replacement” generation for the Lower Snake River Dams. While the costs are unknown, initial estimates are that such an investment could range from \$2-6 billion in overnight capital costs without addressing capacity replacement for dispatchable resources. While the encouragement of Tribal-owned energy projects is a positive and noble policy goal in its own right, the implication in this agreement is that BPA would ultimately be the off-taker of these resources, despite limitations in the Northwest Power Act allowing it to do so. The agreement does not state that BPA shall NOT be compelled to acquire the replacement resources. If the agreement did not intend to compel BPA to acquire the replacement resources, then the agreement should very specifically say so.

Energy and Environmental Economics Consulting (E3) conducted an analysis on behalf of BPA that puts replacing the Lower Snake River Dams at \$415 million to \$860 million annually by 2045. Rash decisions to remove these hydro projects pose devastating consequences. The LSRDs regularly are the defining line between keeping the power flowing and parts of the West or being plunged into rolling blackouts. This was certainly the case during the massive heatwave that gripped California on Labor Day Weekend of 2022, when surplus electricity – including from the Lower Snake River Dams – was sent to California just in time, helping the state narrowly escape blackouts from its new historic peak of 51 gigawatts of demand. We need more stable, available generation capacity in the West, not less of it. And remember this point: as our nation explores policy decisions that will require electricity to play an even more prominent role in our lives, such as through vehicle electrification, we will depend even more on the clean, reliable capacity generation produced by our emission-free Northwest hydro projects as part of the overall electricity supply in the West.

Conclusion

In total, BPA's cost exposure is significant. **Our members anticipate that under the best-case scenario, the impact on rates would be 5%, and in the worst case, it would be 50%.** Again, the costs and operational uncertainty in this agreement as-is represents unacceptable risks and a range of potential extra costs for Northwest ratepayers. Because of so many encumbrances, quite simply, this proposed agreement as it exists should be scrapped.

What we must do is return to the government’s official record on this matter. The September 2020 Record of Decision (ROD) from the US Government on the CRSO Environmental Impact

Statement is the decisional document developed after a multi-year, transparent engagement overseen by US Government officials who are based in the Northwest and who engaged a wide array of stakeholders from the Northwest. The outcome of this ROD arrived at a non-dam breaching solution, but outlined helpful steps that can be taken for fish and for river operations.

This established CRSO ROD is the blueprint we should be following, not a half-baked proposal developed in secret between federal agencies in DC and just a handful of sovereign parties in the Northwest, and then released to the public only after members of Congress – who also had been kept in the dark – received a copy and shared it in the interest of the public at large. This CEQ-led process was clearly a failure from the start, throughout the duration, and now to this unfortunate crossroads in which we grapple with this untenable proposed US Government agreement.

The utilities I represent need to understand what the unknown provisions and vague references in the USG Commitments mean, and we need assurances that protect regional electricity consumers from bearing the brunt of national policy commitments by their US Government. Let's scrap this agreement as it stands, and do the hard work necessary in a truly transparent and inclusive way that engages all of us and our full range of perspectives in the Great Pacific Northwest.

Thank you for your leadership and for hosting this hearing today. We greatly appreciate the Committee's attention to this critical topic.