

# Clearing Up

Clearinghouse Service  
Information Resources  
Box 9157 Queen Anne Station  
Seattle, WA 98109  
(206) 285-2332

A Weekly Report to Northwest Utilities  
Wednesday, May 26, 1982 No. 2

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## IN SUMMARY

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[1] **OVERSIGHT COMMITTEE: CONTINUING TROUBLE** The newly reconstituted Participants' Committee will be pushing hard when it reconvenes Thursday May 27 to get an Oversight Committee named ahead of the June 1 deadline spelled out in the Termination Loan agreement. Indemnification of members against personal liability is a major stumbling block (PARTICIPANTS' COMMITTEE, Page 2).

[2] **CHEMICAL BANK SUIT FILED AGAINST 88** The Chemical Bank of New York, trustees for the WPPSS 4/5 bonds, filed suit in King County Superior Court Tuesday May 18 against the Supply System and all 88 participants asking for a declaratory judgment compelling participants to pay principal and interest on the bonds. Betts Patterson and Mines of Seattle is the law firm filing the suit; also involved is one of New York's largest firms, Cravath, Swaine and Moore (CHEMICAL BANK, Page 2).

[3] **CLARK PUD & OTHERS LOOK AT BPA 4/5 LIABILITY** Clark County PUD and what newsstories said were 20 other utilities have asked the Portland law firm of Schwabe Williamson Wyatt Moore and Roberts to conduct legal research into possible liability of the Bonneville Power Administration for the 4/5 debt. The Bullivant firm of Portland previously looked at BPA as a possible lawsuit target for the 12 utilities that filed in Lewis County.

[4] **GAO ALSO LOOKS AT BPA** At the urging of Idaho Congressman George Hansen and Governor John Evans, the General Accounting Office is studying the role of BPA in promoting WNP's 4 and 5 (with an eye to possible BPA liability) and alleged actions taken by the Rural Electrification Administration to pressure REA-funded co-ops to pay 4/5 obligations without question or face loss of low-interest loans. An early version of the GAO report announced to media in Boise last week (5/20) confirms both the BPA role and REA pressure.

[5] **SPRINGFIELD II** A second lawsuit on 4/5 has been filed in the Lane County, OR, Circuit courtroom of Judge George Woodrich, this one filed by Portland attorney Garry McMurry on behalf of the Springfield Utility Board alleging damages on the part of WPPSS for breaching the contract to build 4/5. Judge Woodrich in an action on Springfield I (the ratepayer suit challenging Springfield 4/5 authority) has denied a motion to join all 88 participants in that lawsuit (SPRINGFIELD II, Page 3).

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[6] PARTICIPANTS' COMMITTEE Harold Brazil, recently retired manager of the Chelan County PUD, was elected chairman of the Participants' Committee May 20 at its first meeting following elections in Portland the previous week. By election time, a majority of the committee had resigned.

Now at full strength, the seven members hold five "entity" seats and two individual positions. Individual members are Don DeFreese, a board member from Central Lincoln (OR) PUD, and Ed Fadeley, attorney for Lane Electric Co-op. Entity members are Brazil for Chelan (WA) PUD; Joe Custer, general manager of Vera Water and Power District in Eastern Washington for that utility; W. G. Hulbert, manager of Snohomish (WA) PUD for that utility; Paul Nolan, director of Tacoma City Light for that utility; and Clark (WA) PUD, which will have no single representative (but which was represented at the May 20 meeting by PUD Commissioner Frank Lambert).

The Oversight Committee mandated by the Termination Loan Agreement is to have five members to oversee the shutdown of 4 and 5 on behalf of the Participants' Committee. Some candidates for Oversight Committee positions have declined to serve, at least in part because no insurance can be purchased to protect members from personal liability. Ken Billington, former director of the Washington PUD Assn. and a Committee candidate, declined to serve on the Committee and suggested in light of the nearness of the June 1 deadline that the Participants' Committee pick an Oversight group from among its own membership and hire staff to assist what would in effect then be a subcommittee of the Participants' Committee.

[7] CHEMICAL BANK ASKS DECLARATORY RELIEF The lawsuit filed in King County Superior Court May 18 on behalf of Chemical Bank of New York, trustee of 4/5 bonds, "prays for judgment against defendants...Declaring that the Participants are obligated to make payments to WPPSS sufficient to insure timely payment of principal and interest on the bonds... Awarding Chemical its costs and disbursements...[and] Awarding Chemical such other and further relief as may be just and proper."

The Supply System and all 88 participants are named. The Seattle law firm of Betts Patterson and Mines says it is expected service in the six states will not be complete for two weeks.

Accompanying interrogatories due for reply within 40 days from service ask each defendant utility to declare if it contends "that you are not obligated to make payments to WPPSS sufficient to insure timely payment of principal and interest on the bonds."

Affirmative answers require identification of documents which support the contention, a statement to "Set forth in full the basis for your contention, including reference to the specific provisions of any document or documents upon which you rely and your interpretation or construction of such documents or the specific provisions thereof."

In addition, "Identify all persons known or believed by you or your

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counsel to have knowledge of facts supporting or otherwise relating to your contention." And finally, a demand to "Summarize the aforesaid facts which you or your counsel believe to be, with regard to each such person, known by him or her."

Also involved for Chemical in the lawsuit is Cravath, Swaine and Moore, one of New York's largest law firms. The Betts Patterson and Mines firm is at 40th Floor/Bank of California Center/900 Fourth Avenue/Seattle, WA 98164. Telephone (206) 292-9988.

[8] SPRINGFIELD II The Springfield Utility Board is represented in the damages action filed against the Supply System by the law firm of Rankin, McMurry, Vavrosky and Doherty of Portland.

In newsstories announcing the litigation, lead attorney Garry McMurry was quoted as saying he thought all utilities not seated on the WPPSS Board would want to join the lawsuit. However, sources familiar with litigation theories involving 4 and 5 see Springfield II as a premature and probably unnecessary adventure into matters of contract performance--an action increasing the complexity of litigation and raising its costs to all parties very considerably. Sources said the current best bet is to try the 4/5 matter either on matters of state law authority (as in Springfield I) or on interpretation (as in the Lewis County action), leaving the very complicated matter of judging Supply System performance in reserve if the other courses do not succeed.

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WATCHWORDS: MEDIA REVIEW

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For this report, selected clippings are offered without comment. All of the clips are from Seattle dailies in this first issue of Clearing Up; as our clipping service responds to our orders for wider coverage, we will be reporting on stories in papers and other publications throughout the Pacific Northwest.

--Cyrus Noë,  
Editor

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# Clearing Up

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A Weekly Report to Northwest Utilities  
Thursday, June 3, 1982 No. 3

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## IN SUMMARY

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[BULLETIN] The Seattle Times reports (June 3) that WPPSS is preparing to sue Fall River (ID) and Hood River (OR) Co-ops for refusing to make termination loan payments due June 1. Other utilities not mentioned in the story, including Idaho Falls, are holding back. (See WATCHWORDS, Page 3).

[1] ELLENSBURG RATEPAYERS SUE Last week (May 26) Washington state ratepayers joined the legal conflict related to WNP's 4/5 as a group of "irate" Ellensburg citizens took its municipal utility to court asking that the utility be prohibited from paying on its share of the \$2.25 billion in 4/5 bonds. Except for issues challenging the authority of the utility to pay, the declaratory relief action was not remarkably different in content from the Lewis County lawsuit filed by 12 co-ops on April 23. The full text of the Ellensburg pleading is enclosed.

[2] POLITICAL ACTION MEETING IN SPOKANE Representatives from 15 utilities in four states (Idaho, Montana, Oregon and Washington) met in Spokane late this week to discuss organized political action related to 4/5 issues, according to Leo Hansen, manager of Missoula Electric Co-op. Also on the program was a presentation by Bob Scott of Seeley Lake, MT, a retired federal employee and Missoula co-op ratepayer who has done a penetrating study of retroactive cost sharing. More on this meeting next week.

[3] PARTICIPANTS' OVERSIGHT: UNDER THE WIRE The Participants' Committee beat the June 1 deadline for naming an Oversight Committee on retroactive cost sharing by naming "entities" rather than individuals to serve on the group--thus avoiding (apparently) the thorny issue of personal indemnification (OVERSIGHT BY ENTITY, Page 2).

[4] NO DRAFT REPORT ON GAO PROBE--YET News reports from Boise late last month seemed to suggest that there is in existence a draft version of a General Accounting Office study on BPA's role in promoting 4 and 5 and possible REA pressure on co-ops to pay bond obligations without question; not so says the GAO regional office. But the study will be completed by the end of the month (HANSEN'S REPORT, Page 2).

[5] FUTURES The full WPPSS Board is scheduled to meet early next week in Seattle (day uncertain at press time) to consider matters pertaining to the cost effectiveness study mandated by Initiative 394--comparing costs of completing existing projects to alternatives, including conservation.

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[6] LITIGATION STATUS Six 4/5 lawsuits are known to have been filed in the courts of three states as of this writing: Springfield (OR) I (ratepayers vs. Springfield Utility Board with various intervenors); Fall River (ID) Co-op (ratepayers vs. utility); Lewis County (WA) (12 co-ops vs. WPPSS, 76 other participants & bond trustees); Springfield (OR) II (Springfield Utility Board vs. WPPSS, damages); Chemical Bank (in King County, WA; Chemical Bank as 4/5 bond trustee vs. 88 participants and WPPSS); and Ellensburg (WA) (ratepayers vs. utility & WPPSS). Beginning with next week's report, the status of these litigations will be detailed and in following editions updated weekly.

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[7] OVERSIGHT BY ENTITY The Participants' Committee, plagued by the problem of personal liability protection in finding individuals willing to serve on its key Oversight Committee to monitor retroactive cost sharing between projects 4/5 and 1/2/3, has elected to appoint "entities" rather than individuals to the group.

The decision was made at the Participants' Committee meeting May 27 in Seattle; the Termination Agreement deadline for appointing the committee was June 1. The seven-member board chose five utilities as the entities comprising the Oversight Committee: Clark PUD, Snohomish PUD, Tacoma City Light, Umatilla Co-op and Vera Irrigation District.

Umatilla, however, declined to serve; the official position is now that the Oversight Committee is regularly constituted with a vacancy. Participants' Committee member Ed Fadeley pointed out one possible problem with the entity concept: a quorum of the Oversight Committee could also comprise a quorum of the Participants' Committee, thus constituting in fact a meeting of the Participants' Committee subject to Open Meeting laws. It had not been anticipated that the Oversight Committee would have to work within the constraints of the open meeting law.

DON DeFREESE, Central Lincoln (OR) PUD board member and an individual member of the Participants' Committee, announced by letter to Chairman Harold Brazil at the May 27 meeting that effective at once he was resigning his position for personal reasons.

[8] HANSEN'S REPORT BY END OF MONTH The news stories on the General Accounting Office probe of BPA's promoting of 4/5 construction and REA pressure on co-ops to meet 4/5 obligations without question stemmed not from a draft report but from an oral briefing by GAO of Idaho Congressman George Hansen and staff; nothing written yet. The final report, according to asst. regional mgr. Gary McGill, is due out of GAO's Portland office at the end of June for announcement by Hansen, who asked for the investigation.

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[9] SUPPLY SYSTEM SEATTLE OFFICE CLOSES AUGUST 1 WPPSS managing director Bob Ferguson in light of WNP 1 construction delay has ordered staff reductions and other economies which will result in the closing August 1 of the Supply System's Seattle offices. Still to be resolved is the issue of meeting space in the Sea-Tac airport area.

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WATCHWORDS: REGIONAL MEDIA

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[10] BULLETIN: LATE TERMINATION LOAN PAYMENTS The full text of the 6/3 Seattle Times story is on the reverse of this page.

Several utilities are holding back on termination loan payments. Thursday evening, the city of Idaho Falls voted not to pay its loan installment on the advice of counsel Art Smith. Smith says a key reason for withholding payment is a variety of litigation both current and pending which will affect the issue of termination funds.

Calvin Wickham, manager of Fall River Co-op, confirms that his utility has elected to refuse loan payment and says that counsel Ray Rigby has been authorized to change Fall River's status in the Lewis County lawsuit from defendant to plaintiff. Wickham says he understands that two other co-ops represented by Rigby--Lost River and Raft River--are also in the process of holding back termination loan payments.

Donald Heisler, counsel for Hood River Co-op, says that utility will consider withholding termination loan payments at a board meeting Monday, June 7.

[11] CONFUSING? Actually, both stories are essentially correct. The important new development is the higher job floor figure for WNP 1 during its period of suspended animation--from 500 to maybe 900 to perhaps 1,200 instead of 300 once forecast. A sort of "slow track" construction is scheduled for July '83--the "restart" of the Times headline.

[12] SMALL DAMS Joel Connelly of the P-I reports on possible problems with low-head hydro development.

--Cyrus Noë, Editor

[EDITOR'S NOTE: Again, apologies for the Seattle bias in media clips. We still are working with our service to gather in clippings from media throughout the Northwest. C. N.]

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# Clearing Up

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Thursday, June 10, 1982 No.4

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## IN SUMMARY

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[BULLETIN] THE SUPPLY SYSTEM IS SUING EIGHT UTILITIES in Benton County (WA) court for holding back termination loan payments (SEE WATCHWORDS, Page 4). NEXT WEEK we will publish a special report on the status of termination loan withholding and litigation.

[1] LITIGATION STATUS: MOTIONS IN LEWIS COUNTY SUIT Bank defendants (Seafirst & Rainier) in the Lewis County lawsuit are scheduled to file motions in superior court Friday June 11 asking dismissal of the action for failure to join an indispensable party (Chemical Bank) or alternatively for a stay of the Lewis County suit while the Chembank suit is being tried or alternatively again for a change of venue (seconding a motion filed at the same time by the Supply System) to King County superior court (MOTIONS, Page 2).

DISCOVERY/DEPOSITIONS IN SPRINGFIELD I Lead attorney Bob Ackerman says discovery teams in this action have been working in Richland for two weeks and in Seattle for a week. Depositions are scheduled to start in Springfield the week of June 14 and in Seattle a week later. The court date is still September 21.

SPRINGFIELD II WAITING Earlier this week lead attorney Garry McMurry said he had not yet received a notice of appearance in the Springfield Utility Board damage action against WPPSS. He says no other utility has moved to intervene in that suit, although he expects several will do so.

[2] SEATTLE WANTS BPA TO WITHDRAW INSUFFICIENCY NOTICE The June 1976 notice of insufficiency from Bonneville to Northwest utilities which played such a pivotal role in utility decisions to participate in WNP 4/5 is still in effect and Seattle could go to court on that account. This possibility was suggested by attorney B. Gerald Johnson of Wickwire Lewis of Seattle at a CLE seminar at the University of Washington on Saturday June 5. Johnson said Seattle has asked that the notice of insufficiency be withdrawn and "may litigate to test the continuing validity of the notice." City Light attorney Art Lane says discussions with BPA are continuing and that there are still differences between the parties, but legal action is still not imminent.

[3] NORTHWEST POWER ACT: A ROUGH ROAD TO IMPLEMENTATION? "Unforeseen events are catching up with us; many of us who worked so hard to get the Act passed now are wondering whether or not it ought to be amended or even repealed." Thus Jerry Johnson, a key figure in drafting the Act, spoke at the CLE seminar cited above (POWER ACT PROPHECIES, Page 2).

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[4] **NO NOVEMBER SHOWDOWN WITH VOTERS** Provisions of Washington Initiative 394 called for an independent cost effectiveness study to help voters decide on the relative financial merits of completing WNP's 1, 2 and 3 and alternative sources of energy. This study was to be in print in time for the November voting; now the consultants have asked for and the Supply System Executive Board granted an extension of time and scope of work so that the earliest voters could pass on WPPSS funding would be in February of 1983 (WPPSS BOARDS ACT, Page 3).

[NOTE: BRIEFING SERVICE] The Clearinghouse now offers informal briefings to attorneys, managers and other staff for meetings of boards, councils or commissions. Call me at [206] 285-2332 and I'll tell you what I know about litigation and other 4/5 and Supply System/BPA developments since the last news report. There is no charge for this service. —C. N.

[5] **PARTICIPANTS' COMMITTEE TOOLING UP** The Participants' Committee and its alter ego Oversight Committee are looking at added staff to help it pursue their roles in 4/5 termination affairs (HELP, Page 4).

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[6] **MOTIONS, LEWIS COUNTY** What will we call it if the venue of the April 23 declaratory judgment action filed in Lewis County superior court is moved to King County on motion by bank defendants (Seafirst & Rainier) and the Supply System (as seems likely)?

Attorneys were scheduled to argue three motions in Lewis County Friday, June 11. The banks moved for dismissal: "Plaintiff' Failure to Name All Interested Persons Affected by Declaratory Relief as Required by RCW 7.24.110 Deprives the Court of Jurisdiction." The missing party is alleged to be Chemical Bank, the 4/5 Bond Trustee. The motion also argues that the Bond Trustee is an indispensable party to the lawsuit under Civil Rule 19.

Alternatively, the Seattle Banks asked for a stay of the Lewis County suit pending proceedings in the lawsuit filed by Chemical Bank in King County on May 18, citing RCW 7.24.190.

As another alternative, the banks concurred in a Supply System motion to change venue of the Lewis County suit to King County. The motion memo called King County a "neutral forum," said its court system (in contrast to that of Lewis County) was large enough to accommodate the action, was located in the easily accessible city of Seattle and had in its court system already the Chemical Bank lawsuit which also involves all 4/5 participants. The memo also claimed that irate ratepayer activities "give reason to believe that an impartial trial cannot be had in Lewis County."

[7] **POWER ACT PROPHECIES** Problems, says N. F. Simpson, propagate their species by being fertilized with solutions, which enrichment hatches dozens more problems. The Pacific Northwest Electric Power Planning and

Conservation Act of 1980 may be in the process of propagating problems if the experts talking at the June 5 Continuing Legal Education Seminar at the University of Washington are correct.

The seminar was put together by William Rodgers, professor of law at the UW, who specializes in energy law. Charles Collins, the "other" Washington state member with Power Council chairman Dan Evans, laid out the very substantial planning responsibilities of the Council and noted that the economic effect of 4 and 5 "may turn out to be paralyzing."

Linda Steinmann of the Washington State Senate Energy and Utilities Committee ticked off a list of conflicts with state law which may block progress under the Power Act. Chip Greening of the Public Power Council dealt with conflicts under the preference clause and on forecasting.

Harvey Spigal of BPA's Office of General Counsel reviewed litigation under the act; he sees the Ninth Circuit Court as moving into a decision making role, and the conclusion of his paper distributed at the seminar is worth reproducing here (the text of that paper will be included in next week's Clearing Up):

Implementation of the Regional Act involves substantial monetary sums, management of the region's power and natural resources and immense controversy. There is little in the regional act that is not subject to dispute and multiple interpretations. Given the court's active interest in the implementation of the Regional Act, its willingness to substitute its own interpretation for that of BPA, and the ripple effect of its decisions, we can expect substantial and expanding litigation. The court may become the focus of regional power decisionmaking with a frequency that is not now appreciated.

Jerry Johnson of the Wickwire Lewis firm said the major implementation issues from the standpoint of larger utilities are policy problems and operational objections--the latter having to do with what Johnson called BPA's "one utility" concept. He said Seattle's BPA contract running through 1993 might be defended in its present form, as opposed to the alternative of signing a new one under provisions of the Power Act.

[8] WPPSS BOARDS ACT Voters in effected areas of the state of Washington were scheduled to read an independent cost-effectiveness report mandated by Initiative 394 at election time this November to help them decide on approving or denying construction funds to the Supply System. But the consultants, Applied Economic Associates of Seattle, told the WPPSS Executive Board Thursday June 10 that they needed more time (and money) to produce "a full and complete picture upon which voters might make an informed decision."

The Executive Board, after some griping by Stan Olsen (Snohomish) and Joe Recchi (Seattle), heard the extension of time and money (four to eight weeks of time, added money not specified) blessed by BPA Administrator Peter Johnson and voted yes.

Later in the day, the full Board approved five new members of the new and high-powered Executive Board. Three newcomers were selected by the 23

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WPPSS members: Lewis Winnard of Los Angeles and Durwood Hill of Nebraska, both utility management veterans and Carl Halvorson of Portland, a contractor with experience in major dam building. Two new appointments from the office of Washington Governor John Spellman were C. Michael Berry, recently retired president of Seafirst Bank and briefly a member of the Board last year, and William Wall of Topeka, Kansas, a former utility executive. One member remains to be appointed by Governor Spellman.

WPPSS managing director Robert Ferguson, recently hospitalized for major by-pass heart surgery, is back on the job. A recent news story in a Seattle paper says Ferguson is again working a heavy schedule after a four-week period of recuperation.

**[9] HELP** The Participants' Committee June 10 voted to take on staff and hired an accounting firm to help in its mission—termination oversight, retroactive cost sharing and marketing of the unfinished plants.

The Committee hired the accounting firm of Moss Adams & Co. to assist in financial analysis. The legal representation with Rich Baxendale and Phil Yates was continued. Committee chairman Harold Brazil and consultant Ray Foleen are looking for an administrative assistant to work for the Participants' Committee in Vancouver. The Oversight Committee, now an "entity" offshoot of the main body, is chaired by Frank Lambert of Clark County. This group will be meeting in Seattle Wednesday June 16 to continue its search for staff and professional assistance.

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**COMMERCIAL BREAK**

People receiving Clearing Up have asked if they should send in their subscriptions on the basis of the marketing materials enclosed in Edition No. 2. Our accountant says to tell you no. We will be talking to each attorney or utility officer by phone within the next two or three weeks, after which our circulation coordinator will be following up for distribution and billing information. In the interim, you will continue to get our mailings. —C. N.

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**WATCHWORDS: REGIONAL MEDIA**

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**[10] TERMINATION LAWSUITS** WPPSS termination program director Bob DeLorenzo says by Monday or Tuesday (June 14 or 15) eight utilities in Idaho and Oregon will be sued in Benton County superior court for failure to pay termination loan installments (see Seattle Times clip). Lost River in Idaho, listed as uncertain in the story, has now decided not to pay and will be sued, DeLorenzo says.

Thus 31 of 42 which elected to make termination loans have paid and have had checks logged in; 2 more are in the mail; 1 is late because of a board meeting conflict; and 8 are withholding. DeLorenzo says that holdouts are about five percent of the \$4.045 million owing or about \$207 thousand.

**[11] ARTICLES BY KAI LEE** Enclosed with this week's Clearing Up are

clips of a two-part series in Seattle's The Weekly on the Supply System and on public power by Kai Lee, associate professor of environmental studies and political science at the University of Washington. Dr. Lee has agreed to join me as an editor of the forthcoming book on the Supply System and its problems.

[12] TAKE OR PAY STATUS THREATENED This interesting article by Howard Gleckman in The Weekly Bond Buyer comes to us courtesy of Ed O'Connor, attorney for Orcas Power and Light.

—Cyrus Noë, Editor

## WPPSS prepares to sue non-paying public utilities

Seven public utilities in Oregon and Idaho have refused to make promised loans to help the Washington Public Power Supply System pay for the termination of Nuclear Projects 4 and 5.

The Hood River, Ore., and Fall River, Idaho, electrical cooperatives already have been sued by WPPSS for refusing to pay and suits are being prepared for filing Monday against the five others.

Originally, 42 of the 88 utilities sponsoring Projects 4 and 5 agreed to loan the supply system \$70.5 million to pay termination costs until January when all are to begin making

payments required by their contracts with WPPSS for construction of the nuclear-power plants.

The first loan payments, totaling just over \$4 million, were due June 1. Those that have not been made as of today began accruing a penalty of 15 percent.

The supply system said that as of yesterday, 30 utilities have made payments totaling \$3.3 million. Three more have put checks in the mail and their loans will push the total to \$3.9 million.

The Wells Rural Electric Co. of Nevada agreed yesterday to make the payment, but it

will be late. Lost River Electrical-Cooperative Inc. of Idaho had not yet decided.

Others refusing to pay — and which probably will be sued Monday if decisions are not changed — are the Idaho Falls municipal utility, the Wasco Electric Cooperative of Oregon and the Raft River cooperative, the Unity Light & Power Co. and the Rural Electric Co., all in Idaho.

Supply-system officials said the slow payment by the utilities will not harm the termination process.

The second in a series of loan payments, also totaling \$4 million, is due Tuesday.

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