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CRT Review (DKE)
P.O. Box 14428
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August 15, 2013

U.S. Entity Coordinators, Columbia River Treaty:
Mr. Stephen Oliver
Bonneville Power Administration
Mr. David Ponganis
U.S. Army Corps of Engineers, Northwestern Division

Gentlemen,

The following is a response from Northwest Requirements Utilities (NRU) regarding your June 27, 2013 "Columbia River Treaty Review Working Draft of a Regional Recommendation." NRU is a non-profit trade association of 52 public power systems that rely upon BPA as their primary or exclusive supplier of wholesale electric energy. These utilities account for nearly 25% of BPA's wholesale public power sales in the Northwest.

As an introduction to our comments, I would like to reference our February 8, 2013 response to your January 16th letter to stakeholders about the future of the Columbia River Treaty. At a summary level, the major points we made on behalf of NRU members were as follows:

- *"Based on our evaluation of the analysis that the Corps and BPA has shared to date, NRU concludes that the remaining benefit for downstream power generation is minimal while the costs imposed under the Treaty protocols is high. In other words, maintaining the current Treaty protocols longer than is necessary does not make economic sense and is at cross purposes with BPA's responsibility to operate using sound business principles."*
- *"Consistent with the flood control funding approach employed throughout the United States, any payments for Columbia River flood control should be the responsibility of the taxpayers of the United States."*
- *"Each of the entities providing the Canadian Entitlement return already have robust environmental mitigation plans embedded in their project authorizations and developed in legal forums. Along with the cost of the Entitlement return, this mitigation is funded by utility customers. Therefore, an equitable correction to the Entitlement should not lead to an increased mitigation requirement."*

NRU still uses these evaluative measures as a basis for considering the U.S. Entity's draft June 27th recommendation. **Applying these measures, we are in the unfortunate position of needing to categorically reject the draft recommendation as a possible regional recommendation for negotiation of a new treaty.** The Sovereign Review Team (SRT) process has failed to adequately represent customer interests as measured

by the written products to date. The draft recommendation needs to be revised to incorporate the substantive concerns of NRU members, as described below. Absent these revisions, the best options we see would be to:

- Initiate discussions with the Canadians, including possible treaty termination based on the understanding that the primary areas of negotiation are power supply, flood control, related financial payments, and then any related ecosystem improvements that can be achieved.
- As a fallback, delay the entire process, if necessary, including initial discussions with Canada and possible 10 year termination notification, until a regional recommendation can be developed that adequately addresses power supply and flood control issues.

While our comments are critical, we would like the opportunity to work with the U.S. Entity in a meaningful manner to help develop a regional position that is more relevant to the underlying purposes of the Columbia River Treaty with Canada. We understand that there are additional technical studies that have not been released by the U.S. Entity that may influence the Entity's final recommendations in a manner that customers would likely support.

Representation of the Region's Perspective

Members of the SRT developed the U.S. Entity's draft recommendation through extensive closed-door deliberations. The SRT consists of representatives of four states, eleven federal agencies and fifteen Native American Tribes. While there is not agreement within the SRT on all elements of the draft recommendation, all SRT members had a seat at the table during the regional process of formulating recommendations. Conversely, BPA's customers (with their elected governing bodies), and other regional stakeholders were excluded from these substantive deliberations and relegated to a few opportunities to provide comments at public meetings and in writing. It is noteworthy that customers were told by the former BPA Administrator that BPA, as one of two designees for the U.S. Entity, would not serve as a representative of power customers, but would instead need to give due consideration to all of the interests in the region.

Within the SRT, BPA and the Army Corps of Engineers ("the Corps") accounts for two of the thirty seats. The overarching question is whether the SRT is an objective body to help the U.S. Entity develop regional recommendations regarding the Columbia River Treaty. To answer this, two additional questions need to be asked:

1. What is the primary purpose of the Columbia River Treaty? and
2. Given the primary purpose, are their other societal benefits that could be achieved in the context of a new treaty that does not undermine the primary purpose?

The primary purpose of the Columbia River Treaty with the Canadians surrounds the issues of power supply and flood control and the related issues of compensation between the two nations. *"When the Treaty was originally drafted in the 1960s, it was designated to provide hydropower and flood risk management as its two primary benefits."* (Draft recommendations page 2.)

The draft recommendation seems to take the liberty of revising the purposes of the treaty, and in so doing seeks to make alleged societal benefits a predominant purpose over power supply and flood control. *"The region's goal is for the U.S. and Canada to develop a modernized framework for the Treaty that ensures a more resilient and healthy ecosystem-based function throughout the Columbia River Basin while maintaining an acceptable level of flood risk and preserving reliable and economic hydropower benefits."* (Draft recommendations page 2.) This begs the question of why the U.S. Entity is only trying to "preserve" the

economic hydropower benefits when it has been demonstrated that the Canadians are receiving vastly disproportionate benefits.

NRU members expect that BPA and the Corps would have used “sound business principles” in the SRT process, and in so doing would have advanced a baseline operational proposal for power supply and flood control, subject to modification through discussion with other parties to achieve incremental ecosystem enhancements. Lacking such a base, the recommendations are now very general, with an emphasis on ecosystem enhancements. It appears that BPA and the Corps lacked a clear position at the outset, which allowed the other SRT participants who had very different agendas, to simply outnumber and overwhelm BPA and the Corps. Those participants may have a motivation to use the Treaty renegotiations as a mechanism to redeploy the Columbia River system flow for new activities under the banner of ecosystem related functions.

NRU members support a healthy ecosystem, and as discussed below, we believe we already have one. Unfortunately, the process the U.S. Entity has followed to formulate draft recommendation resulted in a lost focus on the primary purposes of the Treaty, which in turn allowed for the insertion of a prominently featured wish list where many items are at odds with power supply and flood control and may lack necessary supporting scientific justification.

Ecosystem and FCRPS Biological Opinion and Tribal Accords

The “General Principles” of the draft recommendation begin with 1. *“CRT provisions should enable the greatest possible shared benefits in the U.S. and Canada from the coordinated operation of Treaty reservoirs for ecosystem, hydropower, and flood risk management, as well as water supply, recreation, navigation and other pertinent benefits and uses...”*

The document has an overwhelming emphasis on proposed ecosystem modifications, even though such modifications could impact power supply, flood control and net financial benefits. So the underlying question becomes whether the intent of the U.S. is to primarily emphasize ecosystem modifications from current system operations, or to seek a more financially equitable business relationship with Canada. We read the document as focusing on ecosystem, and we object to this change in focus.

The Federal Action Agencies have just released the Draft Comprehensive Evaluation 2013 Overview which identifies the accomplishments in implementing the FCRPS BiOp from 2008 to 2012. The BiOp provides a plan for environmental mitigation for the FCRPS dams through 2018 where the measures and evaluation criteria have been subject to close scrutiny using the best science available from NOAA Fisheries and the Federal Agencies.

The summary on page 18 lists the following accomplishments:

- *Hydrosystem improvements and operations are in place and working*
- *Juvenile salmon dam passage survival is meeting or on track to meet hydro performance standards*
- *Hundreds of tributary and estuary habitat actions already implemented are benefitting salmon and steelhead*
- *Hatchery reforms and ESA compliance for all hatchery programs are underway*
- *Predator control actions are being implemented & an expanded plan for cormorants is underway*
- *Extensive RME in place to track results*
- *Solid partnerships and sound science have put us well on the path to achieving BiOp goals.*

The FCRPS BiOp is the scientifically supported roadmap for mitigation measures for FCRPS facilities and has been embraced by the Federal Action Agencies (BPA, the Corps of Engineers and the Bureau of Reclamation), as well as NOAA Fisheries and the courts. NRU members have supported the BiOp, recognizing that fish mitigation measures are costing over \$160 million annually. NRU members did not oppose BPA entering into Fish Accords with many Native American Tribes and did not vigorously question the nature of the spending. BPA also entered into spending agreements with the States for environmental mitigation. The region has invested over \$13 billion between 1978 and 2012 for federal fish and wildlife measures, and has a 2012 budget for federal agencies of \$644 million.

As BPA customers we are trustworthy stewards of the environment and support the Agency providing reasonable mitigation related to the operation of the federal dams. It is our understanding that the BiOp provides a plan through 2018 that includes measures that fully mitigate FCRPS facilities (96% survival performance standard for spring migrants and 93% for summer migrants.) Notably, this is the largest fish and wildlife enhancement program in the world.

The FCRPS BiOp, needs to be the framework for the long term future of the Columbia River system, not just a stopgap measure through 2018. If parties are unwilling to accept this framework for the future, then the basis for the Tribal Accords and the MOAs with the States are at risk at their expiration and may likely be challenged by customers who pay for them.

In light of our support of the scientifically based BiOp to provide a fish mitigation plan through 2018, we vigorously object to the perceived “open season” for consideration of a broad list of undertakings that are categorized as an “Ecosystem-based Function” in the draft recommendation. We are open to considering the scientific and cost/benefit value of discrete measures impacting the ecosystem that could emanate from a new/revised treaty, and future system operations, provided that such measures are not materially at odds with power supply and flood control considerations. Unfortunately, that balance is not achieved in the draft recommendation.

Another Look at Ecosystem Recommendations

NRU is concerned about the lack of documentation, scientific analysis, and overall context for some of the Ecosystem-based Function proposals. For example:

3. *Expand on present CRT agreements to further augment flows for spring and summer with the recognition that these increased flows come from less fall and winter draft in Canadian reservoirs.*
 - This proposal is inconsistent with the FCRPS BiOp.
 - It would likely lead to more involuntary spill, in excess of the dissolved gas cap limits for fish promulgated pursuant to the Clean Water Act.
 - This proposal would likely result in more voluntary spill of water and a reduction of power supply inventory for BPA to sell.
 - BPA would need to find a reliable source of high capacity replacement power, such as a thermal resource, which could have an adverse impact on the climate.
 - This proposal increases the likelihood of Generation Oversupply events for BPA.
 - Finally, this proposal would likely increase the overall cost of power given current prices in seasonal energy markets.

NRU does not have the resources to engage our own team of scientists, engineers, and power analysts to examine each of the Ecosystem-base Function recommendations in detail. Nevertheless, it is fair for us to

press for an explanation as to why some of these proposals are being advanced when we already have the FCRPS BiOp in place, particularly when some of the ideas appear to be inconsistent with the BiOp.

We offer one other general comment regarding this section. Many of the ideas are based on the premise that Canada is interested in, and willing to share in the cost of the proposed ecosystem improvements. This may be wishful thinking, and in some cases leaves the door open for the proposal to stay on the table with the default result being that the Northwest BPA customers absorb all costs.

U.S. Entity's Ability to Influence Outcomes

NRU appreciates the time BPA and Corp staff has spent working on the regional issues surrounding the Columbia River Treaty and interacting with the Administration and Congressional Delegation. Any subsequent negotiations with the Canadians will undoubtedly be difficult. We understand that the issues are complex, there are many interested stakeholders, and the processes for resolving matters between two nations poses its own set of challenges. While no one can predict negotiation results, we need to do our due diligence in reviewing the potential set of items that could be included within the scope of any negotiations proposed by the U.S. Entity.

The regional recommendations from the U.S. Entity need to be clear, focused and contain items that are mutually compatible. Otherwise the Entity's ability to influence outcomes may be severely diminished. The June 27th draft recommendations try to please all target audiences. A document of this nature leaves us vulnerable to other decision makers picking and choosing what is important to them. Given the tone of the draft, we may be exposed to the U.S. negotiators potentially advancing a strategy that is based disproportionately on ecosystem modifications rather than flood control and hydropower. The recommended addition of a third federal agency to the U.S. Entity with a focus on ecosystem heightens our concerns.

The Competitiveness of the Northwest for National and International Markets is at Stake

Members of NRU are very concerned about jobs in their communities. The price of electrical power in the Northwest is one of the reasons we have been able to attract and retain businesses where power supply is a major component of the cost of production, for example irrigated agriculture, cold storage facilities and data centers. According to the U.S. Bureau of Labor Statistics, the June 2013 seasonally adjusted unemployment rate in Oregon is 7.9%, the 35th highest in the country. In the more rural areas often served by NRU members, the unemployment rate is higher, for example 13% in Harney County, where agriculture is the only principle business activity. The national unemployment rate for June of 7.6% has been improving, but remains 2.0% higher than 5 years ago in 2008. In order to participate in the hoped-for economic recovery and to create more jobs, the Northwest needs to maintain or improve upon its competitive edge for power supply.

Unfortunately, the draft recommendation potentially move the region in the wrong direction by increasing the cost of power from what it would otherwise need to be. This results from proposals for more voluntary spill at federal dams, shifts in seasonal releases of water that are less economical, and adding new programmatic costs.

How to Move Forward

At this point, NRU does not support, and would likely oppose, the draft recommendation because it is far too nebulous and leaves the door open for outcomes that are at cross purposes with the overall intent of the Treaty. The draft recommendation must be materially revised to strike a better balance between the primary issues of

power supply and flood control and the secondary issue of ecosystem enhancements that could potentially be achieved through negotiations.

The U.S. Entity should regroup and determine an open access path forward that involves meaningful customer participation, even if it means delaying the submittal of a draft recommendation to the State Department in September. Our members do not defer to any of the other sovereigns in the SRT as representing their interests.

High Level NRU Proposed Framework for the Regional Recommendation

- Assume the FCRPS BiOp and related agreements as an underlying foundation for future system operations.
- Advance negotiation proposals with the Canadians with an expectation that downstream benefits to Canada should not exceed one-half of the actual incremental power benefit achieved through coordinated operations.
- Flood control should continue to be the responsibility of taxpayers of the United States.
- Proposed incremental benefits tied to ecosystem enhancements should be subject to rigorous scientific review and should not fundamentally detract from the power supply, financial or flood control expected future benefits of the treaty.

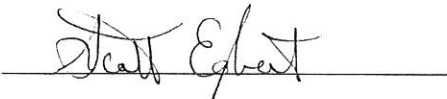
Conclusion

NRU recommends that the June 27th draft recommendation be generally revised as described above. We are concerned that the outcome of negotiations with Canada based on anything resembling the June 27th draft recommendation could be potentially more onerous on power customers than what is in place today. In the event the U.S. Entity cannot formulate written regional proposals that are more favorable to power customers for any set of reasons, then we would recommend one of the two following courses of action:

- Initiate discussions with the Canadians, including possible treaty termination based on the understanding that the primary areas of negotiation are power supply, flood control, related financial payments, and secondarily, any related ecosystem improvements that can be achieved.
- As a fallback, delay the entire process, if necessary, including initial discussions with Canada and possible 10 year termination notification, until a regional recommendation can be developed that adequately addresses power supply and flood control issues.

Thank you for the opportunity to comment.

Best Regards,



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