



COLUMBIA RIVER TREATY POWER GROUP

August 16, 2013

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Dear Mr. Oliver and Mr. Ponganis:

The Columbia River Treaty Power Group (Power Group) appreciates this opportunity to provide comments in response to the U.S. Entity's June 27, 2013 draft regional recommendation (Draft Recommendation) for the future of the Columbia River Treaty (Treaty) with Canada. The Power Group, formed in 2011, consists of over 70 electric utilities, industry associations and other entities that depend on power produced by the Columbia River hydropower generating plants. Together, we represent 6.4 million electric customers in the four Northwest states that are directly impacted by this Treaty.

The Power Group strongly believes the Draft Recommendation does not reflect the priorities of the region and should not be considered a regional recommendation in its current form. In particular, the Draft Recommendation fails to focus on the primary issue facing Northwest electric customers – specifically, the need to reestablish an equitable distribution of power benefits between the U.S. and Canada. Instead, the draft concentrates on adding ecosystem functions as a formal “third primary purpose” of the Treaty without any recognition of the billions of dollars of investments made by Northwest electric customers in non-Treaty-related fish and wildlife programs, which have resulted in substantial ecosystem improvements and enhancements since the Treaty was ratified.

Over the past few years, the Bonneville Power Administration and the U.S. Army Corps of Engineers (U.S. Entity) have been meeting with the Sovereign Review Team (SRT) which they established to provide input into the Treaty review process. The SRT is comprised of federal and state agencies and tribes and is the most influential forum for evaluating the future of this agreement. Unfortunately, this process used to date resulted in a Draft Recommendation that fails to prioritize the paramount Treaty issue facing Northwest electric customers. These stakeholders, customers of Power Group members, bear financial responsibility for the Canadian Entitlement. The Canadian Entitlement is the financial lynchpin of the Treaty, and the U.S. Entity has estimated its value at \$250 to \$350 million in annual power benefits transferred by the

U.S. to Canada.¹ While the Power Group has provided input to the U.S. Entity outside the SRT process, the Draft Recommendation largely ignores our input.

The Draft Recommendation's proposal to formally expand the Treaty to include ecosystem functions loses sight of the need to resolve the central issue of the Canadian Entitlement. Power Group members fully understand and are firmly committed to the importance of Columbia River ecosystem to regional stakeholders, including our own customers. The Power Group believes, however, that existing programs for fish and wildlife have been overlooked in the Draft Recommendation, and that ecosystem priorities should continue to occur in a domestic setting, under the auspices of federal and state regulatory programs.

In its cover letter accompanying the Draft Recommendation, the U.S. Entity states “[n]o firm decisions have been made on the content of the final Treaty recommendation; rather, the U.S. Entity is releasing this working draft to inform and include stakeholders in the further development of the draft recommendation.” As it seeks to craft a legitimate regional recommendation, the U.S. Entity must engage in a robust, comprehensive, and transparent consultation with the Power Group. The views of utilities serving 6.4 million electric customers must be included in the final recommendation to the U.S. Department of State (State Department).

Rebalance the Canadian Entitlement

In the Draft Recommendation, the need to rebalance the Canadian Entitlement – the centerpiece of the Treaty in its current form – is not specifically addressed in the list of general “key principles” that are intended to craft “a modern approach to the Treaty.”² The Power Group appreciates the recognition in the Draft Recommendation that “[t]he present [Treaty] power benefits are not equitably shared” and that “Canada is deriving substantially greater value from coordinated power operations than the U.S.”³ In the context of the overall Draft Recommendation, however, this issue is largely buried in the myriad of resources and issues possibly to be included in any Treaty negotiations.

The Power Group believes that the U.S. Entity's final recommendation to the State Department should clearly identify the rebalancing of the Canadian Entitlement as the most important issue to be resolved in any Treaty negotiations. The U.S. has compensated Canada for the construction of Canadian storage projects that improved flood control and increased hydropower generation in both countries. This compensation took the form of lump sum payments (\$64 million for 60 years of assured flood control) and the provision of the Canadian Entitlement, which represents Canada's share of the difference in hydroelectric power capable of being generated in the U.S. with and without the use of Canadian storage. Over the last 50 years of implementing this arrangement, actual U.S. benefits of coordinated operations with Canada have reduced precipitously over time, while the Canadian Entitlement calculations in the Treaty are tied to theoretical, 50 year-old assumptions. For example, if the Treaty continued using the

¹ See Iteration #2 Alternatives & Components: General Summary of Results at 33 (Apr. 10, 2013).

² Draft Recommendation at 2.

³ *Id.* at 4.

current calculations for the Canadian Entitlement, by 2025 the U.S. would be returning to Canada about 450 average megawatts and 1,300 megawatts of capacity each year, valued at approximately \$250 to \$350 million annually. Stated differently, Northwest electric customers are likely to provide well over \$2 billion in benefits to Canada over the next 10 years alone, despite the U.S. Entity's own estimate that the actual annual value of this benefit to the U.S. is only in the range of \$50 to \$60 million, which translates to an annual Canadian Entitlement of \$25 to \$30 million (i.e., only one-tenth of the current Canadian Entitlement obligation).⁴

When the Treaty was ratified, both the U.S. and Canada anticipated that the Treaty calculation of U.S. power benefits would result in a much smaller energy benefit by 2024, with any capacity benefit being eliminated even earlier due to certain assumptions such as high load growth and a large amount of thermal installations. The U.S. and Canada acknowledged that the real power benefits would be much less than the Treaty calculation due to additional U.S. storage reservoirs and transmission interconnections that are not included in the Treaty calculation. These assumptions and forecasts, together with the provisions for a 10-year notice of intent to terminate at the end of the initial Treaty term,⁵ demonstrate an intention that the two nations would update these assumptions and reevaluate the benefits and obligations over time.

Beginning in 2014, the U.S. and Canada must reevaluate these benefits and rebalance Treaty obligations to match the actual benefits received. The Power Group believes that any benefits provided to Canada for downstream power benefits should not exceed one-half of the actual, incremental power benefit achieved through coordinated U.S./Canada operation (as compared to the non-coordinated operation). The U.S. Entity's final recommendation to the State Department should identify this issue of rebalancing the Canadian Entitlement to resolve the current significant economic mismatch as the highest priority in any Treaty negotiations. The Draft Recommendation states that "if unable to achieve agreement in principle on key aspects by summer 2014, we recommend evaluating other options to create a modernized post-2024 Treaty, such as starting from a clean slate."⁶ The Power Group agrees that termination should be an option if downstream power benefits cannot be more equitably allocated under the existing Treaty structure.

Address Flood Risk Management

The Power Group strongly agrees with the U.S. Entity that a common understanding needs to be reached between the U.S. and Canada regarding the methods and procedures for post-2024 "called upon" flood control. The issue of "effective use" in the Draft Recommendation is particularly critical and should be defined as applying only to the eight U.S. reservoirs authorized for system flood control.⁷ Indeed, the British Columbia Ministry of Energy and Mines has suggested that post-2024, called-upon flood control "may be able to provide the same level of flood risk to the U.S. by using all the smaller U.S. reservoirs on the Columbia, Snake and other

⁴ See Iteration #2 Alternatives & Components: General Summary of Results at 34 (Apr. 10, 2013).

⁵ Treaty, Art. XIX(2).

⁶ Draft Recommendation at 6.

⁷ *Id.* at 5.

tributaries.”⁸ The final U.S. Entity recommendation to the State Department should squarely reject this proposition and emphasize that only the eight U.S. reservoirs authorized for system flood control are covered by the post-2024 Treaty requirement that the U.S. adequately control floods using its own storage facilities before invoking the right to call upon Canada to perform.

The Power Group also believes that the financial responsibility for funding “called upon” or any other flood risk management strategy within the Columbia River Basin should be a responsibility borne equitably by all taxpayers, as all benefit from these efforts and investments. Accordingly, the U.S. Entity’s final recommendation to the State Department should resist making any suggestion that potential savings to the U.S. provided by a renegotiated Treaty (e.g., rebalancing the Canadian Entitlement) should be allocated to other resources. Electric customers in the Northwest should not be required to shoulder responsibilities that benefit the entire region.

Maintain Appropriate Scope of Treaty

The Power Group is firmly committed to environmental stewardship under the auspices of current federal and state regulatory programs. For decades, electric utility customers in the Northwest have been making significant investments, totaling billions of dollars, resulting in ecosystem improvements through Habitat Conservation Plans (HCPs), Federal Energy Regulatory Commission (FERC) licenses, Bonneville Power Administration’s fish and wildlife program, and other investments.

However, the Power Group objects to the Draft Recommendation’s proposal to formally expand the Treaty to include an ecosystem-based function. The Draft Recommendation seems to envision a renegotiated Treaty that elevates ecosystem functions as the *primary* purpose of the Treaty. The discussion of ecosystem-based function appears before any other resource area in the Draft Recommendation, is the most lengthy of any other discussion in the document, and contains more specific recommendations than any other resource area.⁹ While the draft recommendation speaks to “maintaining” the benefits of coordinated hydropower and flood control operations, other statements suggest that these benefits would occur only to the extent possible within the context of expanded priorities. For example, the Draft Recommendation:

- Contemplates that a “modernized” Treaty could result in “reductions in generation capability for either country, including lost revenue, decreased system reliability, substantial increases in loss of load probability, greater renewable resource integration, energy efficiency and conservation, and carbon emissions.”¹⁰ The Power Group would be extremely concerned about, and advise against, any proposed potential impairment of system reliability. The Columbia River power system in total, including the Federal Columbia River Power System (FCRPS) and non-federal projects, operates extraordinarily well, day in and day out, with system-wide coordination. Any impairment of that coordination, and its inherent reliability, should be thoroughly

⁸ U.S. Benefits from the Columbia River Treaty – Past, Present and Future: A Province of British Columbia Perspective at 9 (June 25, 2013).

⁹ Draft Recommendation at 3-4.

¹⁰ *Id.* at 4.

deliberated before any further suggestion that Treaty renegotiations with Canada could possibly compromise the integrity of electric system reliability.

- Provides that the Treaty “should allow for the storage and release of water from Canada in the spring and summer for additional out-of-stream and in-stream water uses,”¹¹ and that “Pacific Northwest States and Tribes will design and initiate a process that includes appropriate Federal agencies, to allocate any additional spring or summer flows derived through the post-2024 CRT operations.”¹² The Power Group is concerned with any recommendation that water supply issues, including appropriative rights, be revisited and potentially disturbed as part of any Treaty renegotiations. Longstanding and well-established water uses and systems for allocating this resource should not be disturbed as part of this process.
- States (in the U.S. Entity’s cover letter for the Draft Recommendation) that the “Columbia Basin Tribes and others continue discussing the degree and extent to which both Canadian and U.S. hydropower production should be reduced or traded-off in order to provide increased ecosystem-based function.” The Power Group believes it is inappropriate for a renegotiated Treaty to elevate ecosystem-based functions above other important public interests and the core obligations under the current Treaty. As described below, issues related to this balancing and prioritization of complex and, at times, competing resource values are domestic decisions that already are addressed under existing federal and state regulatory programs.
- Envisions adaptations and changes in Treaty requirements based on climate conditions and other factors “to meet ecosystem-based function requirements.”¹³ The Power Group is very concerned with the uncertainty associated with any potential changes in Treaty requirements over time – particularly because the Draft Recommendation offers no standards, protocols or limits that would govern such changes, such as a requirement to undertake a cost/benefit analysis or to require changes to be based on the best available scientific information. Moreover, any operational changes to the flow regime to protect an undefined ecosystem function under a renegotiated Treaty could well curtail electric service, compromise electric reliability, disrupt navigational interests, impede long-standing water supply obligations, and interfere with ongoing ecosystem management under existing federal and state regulatory programs, including FERC licenses.

The Power Group is very concerned with these proposed expansions and reprioritizations of the Treaty. While the U.S. Entity’s cover letter cautions that “there still remain significant differences in opinion on several key issues,” the letter also confirms that “there is tentative alignment among the U.S. Entity and Sovereigns on a number of key issues,” including the proposal to expand the Treaty to include ecosystem-based functions. Despite this apparent

¹¹ *Id.* at 5.

¹² *Id.* at 6.

¹³ *Id.* at 3.

alignment between the U.S. Entity and SRT, many questions remain regarding the propriety of such a significant substantive expansion and reprioritization of the Treaty.

The Draft Recommendation does not discuss how any ecosystem-based functions would fit within the well-developed and understood federal and state regulatory programs. The FCRPS and non-federal hydropower projects in the Columbia Basin, together with the transportation, water supply, and irrigation industries in the region, already are heavily regulated. Projects and activities are subject to the substantive and procedural requirements of numerous federal and state programs such as the National Environmental Policy Act, Clean Water Act, Clean Air Act, Endangered Species Act, Federal Power Act, Fish and Wildlife Coordination Act, Magnuson-Stevens Fishery Conservation and Management Act, Pacific Northwest Electric Power Planning and Conservation Act, Coastal Zone Management Act, Federal Land Policy and Management Act, National Forest Management Act, state water quality standards, state water rights, and numerous other requirements. The Draft Recommendation offers no guidance on how a rather undefined ecosystem-based function in a renegotiated Treaty would affect existing programs, change existing well-established regulatory requirements, or add to the already heavily regulated landscape of the Northwest.

In this regard, the Draft Recommendation fails to recognize the substantial investments in ecosystem functions this region already has made for decades *outside* the Treaty. Utilities individually through their HCPs, for example, make significant ecosystem investments in addition to the \$700-800 million paid annually by the Bonneville Power Administration's customers (nearly 25% of its annual budget) for fish and habitat restoration and protection. Any suggestion that ecosystem function has been ignored under the Treaty ignores that U.S. hydropower operations in the Columbia River Basin have been adapted to ecosystem concerns pursuant to numerous laws and regulations passed since the Treaty was enacted. These programs are also funded by electric customers.¹⁴

In addition, the Draft Recommendation lacks clarity and specificity on how ecosystem-based functions are to be balanced with resources already covered by the Treaty,¹⁵ the scope of these new functions and how they would be implemented between two nations, the standards by which they will be developed and enforced, or how ecosystem function requirements would be funded. Given the complexity of these issues, as well as the well-developed federal and state domestic programs that have proven effective in managing and protecting ecosystem functions, the Power Group is concerned that any effort to expand Treaty negotiations with Canada to include these new issues would introduce unnecessary complexity, cause delays in the negotiations, and lead to capitulation in resolving the Canadian Entitlement – the core issue to be addressed in any Treaty renegotiations with Canada.

¹⁴ Northwest RiverPartners estimates that “currently, 10 to 20 percent of a typical family’s electric bill goes toward fish and wildlife costs, depending on the utility that provides service.” *State and Tribal Columbia Basin Fish Accords* (May 2012).

¹⁵ For example, the U.S. Entity’s cover letter for the Draft Recommendation states that “reductions in hydropower production would also result in reductions in system reliability.” Such a shift in flow timing would clearly have implications for system reliability. In addition, moving additional flows to the spring and summer also can have a negative effect on the health of migrating fish due to increased total dissolved gas as hydropower projects are forced to spill excess water.

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For these reasons, the Power Group believes that ecosystem-based functions are appropriately addressed under existing federal and state regulatory programs, and we ask the U.S. Entity to modify the current Draft Recommendation to account for the significant ecosystem stewardship actions taken to date.

Process and Structure for Developing Final Recommendation

The Power Group is mindful of the U.S. Entity's intent to review comments and circulate a revised recommendation within the next several weeks.¹⁶ Given our substantial concerns with the current Draft Recommendation, the Power Group does not believe that this abbreviated timeline allows the U.S. Entity sufficient time to meaningfully review and analyze comments received and develop a revised draft based on these comments.

The Power Group believes that the only way for the U.S. Entity to ensure the integrity of its Treaty review process is to meaningfully engage the Power Group in a robust, comprehensive, and transparent consultation. Certainly, this process would require additional investments of time and resources. Nonetheless, the Power Group believes that such an approach is necessary to cure the significant deficiencies in the Draft Recommendation and deliver a meaningful and legitimate final Northwest regional recommendation to the State Department by the end of 2013.

The Power Group stands ready to engage in immediate discussions with the U.S. Entity to explore how the next draft recommendation can better represent the priorities, values, and interests of electric customers in the Northwest.

Conclusion

The Columbia River is a magnificent asset that plays a central role in the Northwest's economy and cultural identity. It generates clean electricity to millions of people, avoids carbon emissions, provides habitat for fish and wildlife, offers recreational opportunities, provides water for navigation, and has been pressed into service to integrate wind into the electric grid. We urge the U.S. Entity not to contemplate changes to the Treaty that would degrade the system in a manner that results in a net loss of both environmental and economic benefits to the United States.

On behalf of our electric customers who bear the financial burden of the Canadian Entitlement, we also respectfully believe that the Power Group must be invited to participate in ongoing, regular, and meaningful consultation with the U.S. Entity as it develops its final recommendation to the State Department. We appreciate the U.S. Entity's consideration of these comments, and we look forward to working more closely with the U.S. Entity on these issues in the very near future.

Please do not hesitate to contact Jeff Smith at info@crtpowergroup.org with questions or comments about this letter.

¹⁶ Letter from Elliot Mainzer, Acting Chairman, U.S. Entity, *et al.*, at 1 (Aug. 6, 2013).

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Sincerely,

The Columbia River Treaty Power Group

- Alcoa Inc.
- Avista
- Benton PUD
- Benton Rural Electric Association
- Canby Utility Board
- Central Electric Cooperative, Inc.
- Central Lincoln PUD
- Chelan County PUD
- City of Bonners Ferry
- City of Cheney Light Department
- Clark Public Utilities
- Clatskanie People's Utility
- Clearwater Power Company
- Columbia River PUD
- Columbia Rural Electric
- Consumers Power Inc.
- Coos-Curry Electric Cooperative
- Cowlitz County PUD
- Douglas County PUD
- Emerald PUD
- Eugene Water and Electric Board
- Fall River Rural Electric Cooperative
- Ferry County PUD
- Flathead Electric Cooperative
- Franklin PUD
- Glacier Electric Cooperative
- Grand Coulee Project Hydroelectric Authority
- Grant County PUD
- Grays Harbor PUD
- Harney Electric Cooperative
- Idaho Consumer-Owned Utilities Association
- Idaho County Light & Power Cooperative
- Idaho Falls Power
- Idaho Power
- Inland Power and Light Company
- Lewis County PUD
- Lincoln Electric Cooperative
- Lost River Electric
- Lower Valley Energy
- Mason County PUD #1
- Mason County PUD #3
- Midstate Electric

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- Missoula Electric Cooperative
- Monmouth Power & Light
- Nevada Rural Electric Association
- Northern Wasco County PUD
- Northwest Requirements Utilities
- Okanogan County PUD
- Oregon Municipal Electric Utilities Association
- Oregon Rural Electric Cooperative Association
- Pacific County PUD #2
- PacifiCorp
- Pacific Northwest Utilities Conference Committee
- Pacific Northwest Waterways Association
- Peninsula Light Company
- PNGC Power
- Portland General Electric
- Public Generating Pool
- Public Power Council
- Puget Sound Energy
- Raft River Rural Electric Cooperative
- Ravalli County Electric Cooperative
- Richland Energy Services
- Salmon River Electric
- Seattle City Light
- Snohomish County PUD
- Springfield Utility Board
- Tacoma Power
- Tillamook PUD
- United Electric Co-op, Inc.
- Vigilante Electric Cooperative
- Washington Public Utility Districts Association
- Washington Rural Electric Cooperative Association
- Wells Rural Electric
- Western Montana Electric Generating & Transmission Cooperative

cc: Elliot Mainzer, Bonneville Power Administration
Colonel John Kem, U.S. Army Corps of Engineers, Northwestern Division
Daniel Poneman, U.S. Department of Energy
Matthew Rooney, U.S. Department of State