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December 3, 2008

MEMORANDUM

TO: Council Members

FROM: John Shurts

SUBJECT: Columbia River Treaty 2014/2024 Review

On the agenda for the December Council meeting is a presentation from Rick Pendergrass and Steve Oliver of Bonneville concerning the Columbia River Treaty. As you all know, Steve Oliver is the Vice President for Generation Asset Management. Rick Pendergrass directs Power and Operations Planning, and is a Bonneville member of the Columbia River Treaty Operating Committee.

The primary purpose of this agenda item is to have the Bonneville representatives discuss and take questions about what is being called the Columbia River Treaty 2014/2024 Review. I have attached a document about the 2014/2024 Review jointly produced by Bonneville and the Corps of Engineers, which also contains a useful summary of the history, provisions, structures, and operations of the Treaty. *Columbia River Treaty: History and 2014/2024 Review* (which can be found also at http://www.bpa.gov/corporate/pubs/Columbia_River_Treaty_Review_-_April_2008.pdf). At the end of this memorandum, I have also excerpted a key section of the document explaining the nature and purpose of the 2014/2024 Review.

The Columbia River Treaty between the U.S. and Canada, first signed in 1961 and finally ratified in 1964, obligated Canada to construct three water storage dams in the Columbia River basin in British Columbia (Arrow/Keenleyside, Mica, and Duncan). The Treaty and its attendant Protocol and Annexes call for the coordinated operation of this storage and hydroelectric projects in Canada and the United States for the purposes of flood control and power generation.

The Treaty called upon both nations to name operating entities. The U.S. Entity named by the President consists jointly of the Administrator of the Bonneville Power Administration and the Northwestern Division Engineer of the U.S. Army Corps of Engineers. The Canadian Entity, named by the Canadian federal government, is the British Columbia Hydro and Power Authority (B.C. Hydro).

The Treaty also allowed the U.S. to construct Libby Dam on the Kootenai River. Libby Dam storage is not part of Treaty project operations, but the U.S., must operate Libby so as not to compromise Treaty operations, and Libby is the subject of a separate Coordination Agreement between the entities signed in 2000.

For more background information at this time, please see the attached document as well as the excellent collection of information on the Treaty on the new website maintained by the Corps of Engineers for the Treaty's Permanent Engineering Board, http://www.nwd-wc.usace.army.mil/PB/PEB_08/index.htm. The staff also plans to develop briefing material and schedule informal work sessions with the members in the following months to provide more details about the Treaty and Treaty operations.

The Columbia River Treaty does not have an expiration date, but as most of you know, it does have provision allowing either nation to terminate most of the provisions of the Treaty in or after 2024, with a minimum 10 years' written advance notice. The approaching date for a possible termination notice sparks obvious questions about how well the current Treaty still serves the varied purposes and values of the two nations 45 years after the Treaty went into operation. Nonpower constraints especially for fish and wildlife and other environmental considerations – which are not part of the Treaty purposes, and which are accommodated if at all in year-to-year supplemental operating agreements – are obviously much different now than they were anticipated to be in 1960. So are the Pacific Northwest and west coast power systems. What may be less well known is that the Treaty's terms for flood control change automatically in 2024 even if neither country terminates the Treaty, a change that by itself requires serious consideration and discussions.

For these reasons, it is not surprising that the Entities have begun reviewing current Treaty operations and possible scenarios for change. This is the purpose for the 2014/2024 Review. I have excerpted the key section from the Review document below, but the main point is that the Entities have begun a series of “technical studies to establish rudimentary baseline information of what power and flood control operations might look like after 2024 with and without the Treaty.” The Entities expect to complete the first phase of these studies in the spring of 2009, “at which time BPA and the U.S. Army Corps of Engineers will host public workshops to discuss the initial findings and seek input on the direction for the second phase of studies.”

I suggest the Council will want to take an independent technical (and eventually policy) look at these matters as well, and provide input to the Entities, because of the Council's authority and obligation to engage in long-term planning for both power system and fish and wildlife needs in the Columbia River Basin and the Pacific Northwest. Given our mandate for broad regional and public involvement in these critical issues, the Council should also be an excellent forum for regional public discussion of these matters. The members may wish to discuss with the Bonneville representatives expectations for analysis and input by the Council and others during the 2014/2024 Review.

The 2014/2024 Treaty Review

Over the years, the Columbia River Treaty has provided significant benefits on both sides of the order through coordinated river management. It remains the standard against which other international water coordination agreements are compared. The low electricity rates enjoyed both in the Pacific Northwest and British Columbia are due primarily to coordination benefits provided by the joint development and operation of hydroelectric projects within the Columbia Basin and the Intertie – all made possible by the Columbia River Treaty.

Either Canada or the United States can terminate most of the provisions of the Treaty any time on or after Sept. 16, 2024, with a minimum 10 years' written advance notice. Unless it is terminated, most of the provisions of the Treaty continue indefinitely. The terms for flood control under the Treaty, however, will change automatically in 2024. After 2024, Canada will still be required to provide some operations for flood control in the United States whether or not the Treaty is terminated. However, the United States will be required to provide additional reimbursement to Canada for their lost power benefits and operational costs due to the requested flood control operations. If the Treaty is terminated, the United States will no longer be obligated to pay Canada its entitlement to one-half of the downstream power benefits realized in the United States.

Treaty Players and Decision Makers

While the U.S. and Canadian Entities were given broad discretion to implement the Treaty, they are not authorized to modify or terminate the Treaty. In the United States, the U.S. Department of State assists the U.S. government in foreign relations matters and is primarily responsible for international negotiations. The authority over international treaties rests with the President, who must seek the advice and consent of the U.S. Senate.

In Canada, international treaties are within the prerogative of the executive branch of the federal government. In some cases, a treaty may be ratified by parliamentary resolution. The Canada-B.C. agreement requires Canada to obtain the agreement of the Province of British Columbia before Canada issues a terminating notice for the Treaty.

Looking to the Future

For the life of the Treaty, both countries will enjoy flood control and power production benefits provided by regulating the water flow in the Columbia River. Since the Treaty was signed, however, circumstances in both countries have changed in areas influenced by hydro operations in the Columbia Basin, such as fish and wildlife, recreation, cultural resources, irrigation, navigation and water supply. Before studying these additional influences, it is important for both countries to better understand the power and flood control implications of continuing with or terminating the Treaty. Power and flood control are the only components recognized in the Treaty. Future studies will address the other uses of the Columbia River.

The U.S. and Canadian Entities are reviewing future scenarios regarding the Treaty. This joint effort has been named the 2014/2024 Columbia River Treaty Review. The Entities launched the first phase of the review with technical studies designed to establish rudimentary baseline information of what power and flood control operations might look like after 2024 with and without the Treaty. They are not designed to establish future strategic direction or policy. The first phase of studies should be completed around the spring of 2009, at which time BPA and the U.S. Army Corps of Engineers will host public workshops to discuss the initial findings and seek input on the direction for the second phase of studies.