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October 2, 2003

## MEMORANDUM

**TO:** Power Committee

**FROM:** John Shurts

**SUBJECT:** Implementation of the power plan

The tentative agenda for the Missoula Power Committee includes a discussion of Bonneville's responsibility for implementing the power plan. I am not completely sure what the committee members want out of me for that discussion, but from what I can tell the topic has two components, both quite straightforward.

The first is simply informational -- a review of what the Power Act says about Bonneville's responsibility to act consistent with the power plan except as specifically provided in the act itself. We have given you that summary before, as part of a larger review of what the act says about the power plan. I repeat the part about Bonneville and implementation below.

The second half of this topic concerns whether the Council wants to set up any particular process or structure to oversee how well Bonneville satisfies its obligation to act consistent with the power plan. Sections 4i and 4j of the Power Act provide the basic authority for the Council to do this, but how the Council chooses to exercise that authority is a choice for it to make with the power division staff. A bit more explanation on that topic is also below.

This memo is what I propose to submit for the Power Committee packet and would constitute my part of the discussion of this topic with the committee at the meeting. It will not be a long or involved discussion, at least on my part. If the committee has other expectations for this topic, please let me know.

## **I. Bonneville's obligation to act consistent with the power plan**

### **Resource acquisitions in general**

Sections 4(d)(2), 6(a)(1) and 6(b)(1) provide that Bonneville's acquisition of resources "shall be consistent with the plan," "except as otherwise specifically provided in this Act."

Section 6(a)(1) leads off the resource acquisition section with an emphasis on conservation and renewable resources: "The Administrator shall acquire such resources through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commercial consumer to reduce load, as the Administrator determines are consistent with the plan . . . ."

### **"Major resources"**

The Act defines a "major resource" as one that has a planned capability greater than 50 average megawatts and will be acquired for more than five years. Section 3(12)(B).

Any Bonneville proposal to acquire a "major resource" requires that Bonneville undertake a detailed and lengthy public process, culminating in a requirement that the Administrator make a finding of consistency or inconsistency with the power plan. Section 6(c). This section also gives the Council an opportunity to review the proposal plan consistency. If either the Administrator or the Council finds such proposed activity to be inconsistent with the power plan, Bonneville may only proceed if Congress approves the expenditure of funds.

Bonneville and the Council have established joint policies for reviewing proposals to acquire major resources under Section 6(c). Those policies include an understanding that under certain conditions a "program" to acquire a set of resources of a specific type will meet the definition of a "major resource" if the planned acquisitions in aggregate are above the threshold, even if each individual resource acquired would be below the defining threshold for a major resource. For a hypothetical example, one can imagine a coordinated program to acquire 500 mw of conservation or of wind resources in individual units of less than 50 mw.

### **Resources other than "major resources"**

Again, the general premise of the act is that Bonneville is to acquire all resources, including resources that do not qualify as major resources, consistent with the power plan except as specifically provided in the Power Act.

Section 6(b)(2) provides that Bonneville may acquire resources other than major resources which are not consistent with the plan, "but which are determined by the Administrator to be consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)."

These are the sections of the act that require the power plan to give priority to certain resources and give due consideration to environmental quality, compatibility with the existing system, the protection, mitigation and enhancement of fish and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival and propagation of anadromous fish, and other criteria the Council may establish in the plan.

## **II. Council review or oversight of how Bonneville is satisfying its obligation to act consistent with the power plan**

### **Basic authority in Sections 4(i) and 4(j)**

Section 4(i) of the Power Act provides generally that the Council may “review the actions of the Administrator with respect to the power plan and the fish and wildlife program to determine whether such actions are consistent with the plan and program, the extent to which the plan and program are being implemented, and to help the Council bring the plan and program up to date.”

Section 4(j) is more specific to Bonneville resource acquisition. It provides that Council may request the Administrator “to take an action under section 6 [the resource acquisition provisions] to carry out the Administrator’s responsibilities under the plan.” A Council request under section 4(j) triggers a somewhat formal process that involves a written response from the Administrator within a time certain explaining how he will undertake to do what the Council has asked or the reasons such action “would not be consistent with the plan, or with the Administrator’s legal obligations under this Act, or other provisions of law, which the Administrator shall specifically identify.” If the Administrator declines to take the action requested, the Council may ask the Administrator to hold an informal hearing on the matter and make a final decision.

Also, as noted above, Section 6(c) has specific provisions for Council review of a Bonneville proposal to acquire a major resource.

The Council needs information only Bonneville has to undertake a meaningful oversight role. Section 4(c)(9) of the act requires Bonneville to provide such information, in our view: “The Administrator and other federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.” Council review of the Tenaska major resource proposal was hindered by the difficulty staff encountered in getting critical information from Bonneville. But by the end of the Tenaska review process, it is our belief that Bonneville’s legal division came to share the Council’s view of Bonneville’s obligation to provide information under Section 4(c)(9).

### **Particular implementation structure or process or expectations for the 5<sup>th</sup> power plan?**

The particular question for the committee and ultimately the Council is whether to include in the power plan a more explicit and specific review procedure to regularly and systematically review what Bonneville is doing to satisfy its obligation to act consistent with the power plan. I have my own ideas on that topic, in the bullets below, but this is a policy choice for the committee and power division staff, not a legal matter:

- To oversee how Bonneville acts consistent with the power plan, the Council could call for regular reporting (quarterly?) from Bonneville on load obligations; resources available; a rolling view of what Bonneville sees coming in terms of loads and resources;

power sales and forecasts of power sales (including surplus sales); any actions or plans for actions to augment system or acquire resources (including spot market and short-term power purchase contracts); Bonneville costs of serving load, etc. -- an active interaction on these power supply and sales matters. Bonneville would provide the key information, even if some of it needs to be kept confidential, and then allow for a real opportunity for questions and responses, Council staff analysis, and frequent Council guidance on what actions are needed to ensure consistency with the power plan based on the information provided, as much of this in public as possible.

- Based on the central premise we have been working under, the focus of this implementation/oversight effort would be to keep Bonneville out of the resource acquisition business if at all possible, or to undertake it only in a bilateral or tiered rate way, and to guide what resource acquisitions do indeed take place if the main effort fails, including as much emphasis as possible on the conservation program.
- If Council has to be more formal about this, it would invoke the authority in Sections 4(i) and 4(j) to review actions of the Administrator and request the Administrator take actions under the plan, as well as Section 4(c)(9), concerning the furnishing of information by Bonneville.
- A resource augmentation/acquisition *program* to fill a large hole in the resources needed to meet load obligations would get Section 6(c) treatment, or the close equivalent, even if the individual acquisitions are less than the 6(c) threshold. This includes any sustained, significant use of (or plans to use) spot market purchases or short-term purchase contracts.
- Given the experience of the last few years, the power supply oversight would also include frequent reporting, review and interaction on Bonneville costs and revenues, including cost and revenue forecasts, as well as a review and interaction on Bonneville management of the power supply issues.

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