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Council Meeting Grouse Mountain Lodge Whitefish, MT

March 11-12, 2003

Minutes

All Council Members were present. The meeting began at 1:35 pm on Tuesday, March 11th and ended at 11:35 am on March 12th.

After the meeting was called to order by chair Judi Danielson, Jim Kempton reported on the activities of the Power Committee, and Ed Bartlett provided an update on the work of the Fish Committee.

1. Remarks by Bill Drummond, Manager, Western Montana Electric G&T Co-op, Inc.

"We need the Council's leadership on regional issues now more than any time before," Bill Drummond, manager of Western Montana Electric G&T Cooperative (WMG&T) said. The Council is the "lone organization" that can achieve true cost-effectiveness and accountability in fish and wildlife programs, he stated. And on the power side, you have an enviable record on power forecasting, Drummond noted.

He explained that WMG&T is unique in that it is the first international co-op, with eight members in Montana, as well as Prairie Power & Light in Alberta, for which Drummond serves as manager. WMG&T serves 140,000 consumers, including 25,000 in Alberta; its average load is 256 aMW, and its peak load 450 MW.

Drummond opined on three issues, starting with the process under way to determine Bonneville's future. Bonneville's current situation is untenable, he said. In Subscription, Bonneville was surprised by the amount of load it attracted and was forced into an "overheated" short-term market, according to Drummond. Now 75 percent of the agency's shortfall is due to resource augmentation and buydowns, and we run the risk of doing the same thing next time, he said.

The IOUs have little or no certainty regarding their residential exchange payments, and as a result, we may end up with “backroom deals” like those that occurred in the past, Drummond cautioned. We have no cost controls, and the current system we have isn’t working, he added.

“The Joint Customer Proposal (JCP) is a good one,” and it does not require the passage of legislation, Drummond said. Three main questions about the settlement “are floating around the region,” he indicated. The first is, are the IOU payments too high, Drummond said. I can’t answer that until I know how Bonneville will implement the Average System Cost (ASC) methodology and how the 7(b)(2) rate test in the Power Act will be applied, he stated.

The 7(b)(2) calculation is basically impossible, Drummond said, adding “you end up in what-if hell.” Who knows what the world would have looked like without the Act? he added. But until you can answer the ASC and 7(b)(2) questions, you can’t say if the JCP proposal is too generous or not generous enough, Drummond said.

The second question involves cost control at Bonneville, he continued. The JCP doesn’t say a lot about this topic, but it is a fundamental issue, Drummond told the Council. We had several processes, such as the Cost Review, but the only thing that has ever worked to get Bonneville to focus on cost control has been the threat customers would leave and take their load off Bonneville, he stated. That raises the question of who would be left to pay Bonneville’s Treasury debt if everyone were to leave, Drummond noted.

Bonneville is one of the few large organizations that doesn’t have some kind of board of directors, he pointed out. If one were created, there would be questions about who would sit on it and the extent to which the Administrator could delegate authority to the board, Drummond stated.

The third question about the JCP proposal is whether the region has “the political will to pull this all off,” he continued. Avoiding legislation is the best course, but in doing that, the challenge is finding a way to achieve a regional compromise, Drummond said.

Today a lot of the players have changed, he noted. The Slice product “has turned some publics into IOUs” with respect to Bonneville, according to Drummond. The DSIs used to be a major economic force in the region, but now there are “only a few limping along,” he stated. Pacific Gas & Electric, Pacific Power & Light, and Montana Power all have had major changes; merchant plants have come on the scene; and Bonneville power at \$37/MWh is “incomprehensible,” Drummond said.

The JCP proposal is the best option we’ve got at the moment to resolve the major issues without legislation, but there’s still a long way to go, Drummond stated. Jim Kempton asked whether a Bonneville advisory board would require a delegation of federal authority and whether the current Council structure has such authority. The Council is not set up to advise Bonneville -- it’s set up for planning and fish and wildlife mitigation, but that doesn’t extend to all aspects of Bonneville operations, Drummond replied.

Do you think the Council doesn’t have the delegated federal authority? Kempton asked. Not to lay out an overall course Bonneville should take in the way that an independent board of directors would, Drummond said. “That may be a false perception,” responded Kempton. We

have that authority, but it's never been used, he stated, pointing out that it appears in Section 4(i) of the Power Act. It's the federal authority that came with the interstate compact, Kempton said. My personal opinion is that the formation of the Council gave it the authority "to bring Bonneville to the table," he added. But that doesn't detract from the JCP proposal, Kempton said.

Drummond then outlined his concerns about RTO West. The first is facilities inclusion, the need to make sure everything is included in the filing that is necessary to carry wholesale power, plus GTA facilities, he said. We want to protect our retail customers and avoid rate pancaking based on voltage level, Drummond indicated. We want to preserve our existing contract rights, he said. WMG&T also seeks transmission adequacy for load service not at risk, and we want to be sure reliability is not diminished, according to Drummond. And we want to see a cost-benefit study that shows benefits for each state, he added.

The Standard Market Design (SMD) proposal "seems to be on life support," Drummond observed. If somebody thinks it's such a great idea, I suggest they implement it in their part of the country -- what about Texas? he said. There are problems with the transmission system in this region, but the SMD is not the answer for the Northwest, Drummond stated.

As for the Safety Net CRAC, there are questions Bonneville and customers have to answer, such as what are the assumptions for costs and revenues, he continued. When, if ever, do you use long-term debt to finance current expenses? What is the right balance of adjustment clauses versus cash reserves? The customers expected that the adjustment clauses would slow down the way cost increases flow to ratepayers, but "that hasn't worked so well," and my enthusiasm for CRACs has waned, Drummond said.

Another question is whether Bonneville should have a multiyear Safety Net CRAC, or should it be required to get authority every year, he stated. If it is multiyear, how do you keep up the cost-control pressure, Drummond said. We want the pressure for greater efficiencies to be there, and we support the spill and flow augmentation proposals in the mainstem draft before the Council because they are aimed at greater efficiency, he added.

Drummond ended his presentation with a cautionary note about the Council getting involved in the upcoming Bonneville rate case. No rate case I can recall has allowed budget testimony, he said. I caution you about putting testimony into the rate case -- "it's a minefield," according to Drummond. You would run the risk of undermining some of your constituency, if, for example, you file testimony about costs and cost allocation, he said.

2. Status Report on Fiscal Year 2003 recommendations and policies for capitalization and "carry-over" funding

Doug Marker, Director, Fish & Wildlife Division

The Council wrote to Bonneville Administrator Steve Wright February 21 describing a set of expense reductions in Bonneville's fish and wildlife program that would keep spending below \$139 million in FY 2003, staffer Doug Marker explained. The letter also noted "fundamental and profound policy issues" that need immediate resolution, he said. Marker went over where

things stand with each of the issues, noting that Wright had not yet responded officially to the Council's letter.

Matching Obligations with Funds (Carryover). Marker said he has been meeting with Bonneville staff and is optimistic this issue, which means maintaining a balance of funds to meet contract obligations and not eliminating those funds at the end of the fiscal year, can be resolved.

Access to Capital Funds for Land Easements and Acquisitions. This issue has gotten tangled up with crediting for the mitigation of wildlife losses caused by the hydro system, he noted. We see wildlife crediting as an accounting issue and separate from the capitalization issue, Marker explained. We're trying to separate them, but Bonneville staff have said they should stay connected, he noted. We are asking Bonneville to go ahead now with those land acquisitions that don't raise the issue of wildlife crediting, Marker added.

Tracking Accruals. We are working with Bonneville and the Columbia Basin Fish and Wildlife Authority (CBFWA) on a way to track actual project accruals against the Council's recommended spending limits and re-establish a within-year reallocation process, he said. We need to track what actually is being spent and see if the impact of this approach is falling on certain projects, and if so, do funds from other projects need to be re-allocated to mitigate this effect, Marker stated.

I hope we can bring these issues to a swift conclusion, he said. But, Marker noted, the land capitalization issues contain "lots of questions" and will take some work.

Hines pointed out that some customers are asking Bonneville not to do the Safety Net CRAC. Have you looked at whether Bonneville has to do it, and if the Safety Net CRAC doesn't go forward, what other funding mechanism there might be? he asked. Bonneville says the rate case is "unspecific" on this point, and so we've asked, if it is unspecific, "why can't you capitalize land acquisitions?" replied Marker.

Is there a timeline to resolve this so we can develop project lists and prioritize them for funding? Karier asked. Wright asked us to provide Bonneville a number to manage to by March 21, but we need to determine where projects stand and meet with project sponsors, replied Marker. The Administrator set the March 21 date so he could have a number to plug in for the rate case, he added.

Danielson said the capitalization issues are complex and announced formation of a Council "capitalization committee" to wrestle with them. She appointed Derfler as chairman, and Larry Cassidy, Kempton, and Hines as committee members.

Rob Walton of the Public Power Council (PPC), who in April will become Assistant Regional Administrator for Salmon Recovery for NOAA Fisheries, said he wanted to make one final comment as a representative of PPC. I've been with PPC for 15 years, but in the last few months, I've noted a fairly dramatic change in the perspectives of Bonneville's customers, he stated.

You have been hearing about the increasingly difficult economic situation, with jobs going away, more utility disconnects for non-payment, and loads continuing to drop, Walton told the Council.

But I'm pleased to say I've never heard PPC or PNUCC say "torpedo the fish and wildlife program," he added. They know the responsibilities for fish and wildlife are legitimate and prefer to be part of the solution, not the problem, according to Walton.

But today utilities are speaking up more forcefully on behalf of their customers than I've heard before, reflecting the concerns and tensions in their service areas, he said. More than ever before, Bonneville customers are becoming less tolerant of what appears to be fuzzy accountability, sloppy accounting, and ambiguous fish and wildlife programs with unrelenting demands for higher budgets and more water for fish, Walton stated.

Last week, the PPC and PNUCC boards directed their staffs to write to the Council in response to Chair Danielson's February 21 letter to Steve Wright, he said. It's a sign of the times that both organizations agreed to ask the Council and the federal fish and wildlife agencies to take a fresh look at the fish and wildlife program "to make sure you are getting the best bang for the buck" and see that cost-effectiveness reviews are conducted under the Gorton amendment, Walton stated. They emphasized the need for the Council to fulfill its mandate to assure the region an adequate, efficient, economical, and reliable power supply, he added.

I was going to make some specific recommendations about your mainstem program, but your ex parte rules preclude that, Walton continued. So instead I'll make it my parting shot to simply say Bonneville's customers are asking the Council, Bonneville, and other agencies to be "evermindful of the public purse" when you look at strategies and projects to approve, and that your scrutiny begin with the most expensive measures first, he said. I look forward to working with you, "wearing my new hat," next month, Walton concluded.

Susan How of the Flathead Land Trust told the Council land acquisition projects have to be done in a timely way, and that there is a window of opportunity for a very important project in the Flathead Lake area, the McWinegar Slough. The ability to acquire the land hinges on a timely resolution of issues between Bonneville and the Council, she said. These are difficult times economically, but "land conservation is an enduring value," How stated, urging the Council to do all it can to get land acquisition projects funded.

Brian Marotz of Montana Fish, Wildlife and Parks (MFWP) explained the importance of a parcel of land that provides overwintering habitat for juvenile bull trout and urged the Council to provide funding for its acquisition as soon as possible. Alan Wood of MFWP said Flathead Land Trust projects can't be deferred and will remain viable if there is a commitment from Bonneville to save them. Bonneville pulled the money for the Fisher Creek project the day before we were going to close, he noted.

Lynn DuCharme of the Salish-Kootenai Tribes said they had a land acquisition project approved by the Council, but that Bonneville rejected it because of the Montana Wildlife Trust Agreement. We ask the Council to support our project -- "stick to your guns and don't let Bonneville win on this," she said. Habitat is slipping out of our hands every day, DuCharme added.

Chuck Mercord, representing the Flathead Lakers group, said that under "the current scenario," Montana's share of mitigation funds would be reduced from 3.6 percent to 1.5 percent. "Is it because we're at the extremity of the food chain that we get this lack of attention?" he asked.

Last April, Bonneville made a commitment of \$6.6 million to the governor of Montana for mitigation, Mercord stated. How can an agency like Bonneville make a commitment to a governor, and then “in a blasé way, say ‘by the way, we can’t do that,’” he wondered. We need to address Bonneville’s accountability to the people it does business with, Mercord said. We have to address these problems soon -- we’re running out of time, agreed Bartlett.

Terry Courtney, Jr., of the Confederated Tribes of the Warm Springs, also raised the question of Bonneville’s accountability. He said the tribes are upset that Bonneville brought its financial problems to the Council in the way that it did.

3. Council decision on approval of subbasin planning work plans

Peter Paquet, Manager, Wildlife and Resident Fish

Staffer Peter Paquet presented information on three subbasin planning contracts for the Salmon Subbasin, and a contract for regional technical support, for Council approval.

Decision – Contracts for developing subbasin plans

Kempton moved that the Council authorize the Executive Director to negotiate three contracts for the development of a subbasin plan for the Salmon Subbasin, observing the terms and conditions of the Council’s Master Contract with Bonneville for subbasin planning and following the Council’s standard contracting policies and procedures: with the Shoshone-Bannock Tribe in an amount not to exceed \$150,000; with the Nez Perce Tribe in an amount not to exceed \$150,000; and with the Idaho Department of Fish and Game in an amount not to exceed \$100,000, funded from the Level II Technical Budget, as reviewed by the Idaho Subbasin Planning Steering Committee. Eden seconded, and the motion passed unanimously.

Decision – Contract with Oregon Natural Heritage Information Center

Eden moved that the Council authorize the Executive Director to negotiate a contract in an amount not to exceed \$24,270 with the Oregon Natural Heritage Information Center at Oregon State University for development of regional technical products to be used in subbasin planning in Oregon. Cassidy seconded, and the motion passed unanimously.

4. Discussion of Council role in Bonneville Rate Case

John Shurts, General Counsel

Staffer John Shurts told the Council Bonneville’s initial proposal for the Safety Net CRAC rate case is expected to be published on March 24. In addition, there’s a proposal out from a group of customers that identifies a number of tools Bonneville could use to get through the next year, instead of calling on the Safety Net CRAC, he said.

Bonneville has lost the trust of a lot of its customers, noted staffer Mark Walker. Rather than a 15 percent rate increase on top of the other rate increases that have been put into effect, customers would like Bonneville to concentrate on cost overruns and cost-control issues, he stated. Bonneville’s costs are a billion dollars more than what was anticipated in the May 2000 rate case, Walker said.

The Safety Net CRAC rate increase won't affect Bonneville's Treasury payment this year because the increase would go into effect October 1, while the payment is due September 30, he pointed out. Customers are concerned about the sources of money Bonneville will tap to make the September 30 payment, particularly how much of the \$315 million in Energy Northwest bond refinancing proceeds will be used, Walker said.

What are the advantages and disadvantages of using the \$315 million as part of the payment? Gene Derfler asked. The Energy Northwest board agreed the bonds can be refinanced, but that the funds should be used to prepay federal debt and not, as Bonneville puts it, "to buy groceries," Walker replied. But if Bonneville comes up short on its payment and has the \$315 million from the refinancing, there will be a lot of pressure on it to use that money for the payment, he said. Bonneville can't make a prepayment on the debt if it doesn't make a regular payment, Walker noted.

The customer proposal to get Bonneville through the next year without the Safety Net CRAC involves Bonneville taking \$100 million of the \$315 million and putting it in as a "reserve of last resort," Shurts explained. It also involves more cost reductions, increased secondary power sales revenues, and increased 4(h)(10)(c) credits, he said.

The Council doesn't usually participate in Bonneville rate cases, Shurts stated. Staff has a reluctance to do that, but the dilemma is that the Council wants to be sure the costs Bonneville will be putting forth in the rate case are accurately described, he said.

The question is whether the Council should become an intervenor in the rate case so it will be able to scrutinize costs, or whether there is another arena the Council can use to ensure costs are correctly described, Shurts indicated. Is there a presumption in the rate case that perpetuates the annual expenditure process Bonneville has instituted for fish and wildlife funding? Kempton asked. I don't see any reason that in a rate case period you can't have multiyear funding, replied Shurts. In the last Memorandum of Agreement (MOA) budget, dollars flowed back and forth between years, but I could do some more research on the subject, he offered.

What are the pluses and minuses of the Council intervening in the rate case? Tom Karier inquired. If budget numbers are dropped in and then set in stone, the rate case is a place where you can highlight them, replied Shurts. The downsides are that Bonneville has closed off cost control as a rate case issue in the past, and that rate cases are complex and participation is time-consuming, he said.

In light of the advice Bill Drummond gave us, I strongly believe the Bonneville rate case is not the place for us to intervene, stated Ed Bartlett. Maybe there's a way the Council could add value by trying to get the right costs included in the rate case, but not intervene, suggested John Hines. We could try to get accurate costs included and monitor to see if the objectives we want fulfilled are being met through the budgetary process, he added.

We need to do more homework before staff makes a recommendation, said Shurts. We want to determine if there's an interest we need "to get in there to protect" or whether there are better forums we could use, he stated.

Will the staff recommendation depend on what's in Bonneville's initial proposal? Melinda Eden asked. It will depend on two things, according to Shurts: what's in the initial proposal and more discussion with others in the region.

What would you look for in the initial proposal? Eden asked. I want to see how it describes what Bonneville's costs are and how it describes the issues open for discussion, replied Shurts. Before we make a decision on whether to intervene, I'd want to be comfortable with our position under the Power Act, said Council chair Judi Danielson. I'd be concerned that we might be seen as advocates, she stated.

The Council decided to lift the ex parte rule that had been in effect on discussions about the mainstem amendments until March 24, when the ex parte rule would go back into effect. The Council indicated that any informal talks among members that occur with respect to the mainstem amendments would only take place when less than a quorum (5) of Council members is present.

5. Council decision on Mainstem amendments

Doug Marker; and John Shurts

Shurts kicked off a general discussion of the main issues that have arisen in "the boatload of comment" the Council received on its draft mainstem amendments to the fish and wildlife program. He also noted that Idaho, Washington, and Oregon Council members have prepared packages of proposed changes to the draft proposal.

The use of Biological Opinion (BiOp) operations as a baseline received little objection in the comments, but the mainstem amendments need to be clearer on the extent to which Council objectives and strategies are a deviation from BiOp operations, Shurts said.

Washington's proposal addresses this issue, noted Karier. It says BiOp operations would continue to set the baseline, but that "the Council recognizes a need to test certain assumptions and uncertainties in the BiOp in particular as they relate to spill, flow, and reservoir drafting" and that the Council supports the development of tests and experiments for the hydro system even where some of these may require temporary departures from current BiOp operations. The Council "adds value" by designing and implementing these tests, Karier said.

Tests aren't the only thing we can do and still be within the bounds of the BiOps, said Bartlett, emphasizing there are two BiOps. There are things the Council can recommend with respect to reservoir operations that don't "take on" the BiOps, he added. We understand that the two BiOps have contradictions between them, and the Council can add value by putting forward where the BiOps don't mesh, said Hines.

Kempton indicated that the BiOps deal with performance standards, which establish the Reasonable and Prudent Alternatives (RPAs). The Council has to review the basis on which the standards are established, and in some cases, the RPAs are in opposition to the reasonable operation of the hydro system, he said. We have to identify where the standards of the RPAs aren't meeting the objectives of the RPAs, according to Kempton.

Idaho's proposal says "the Council, in following the provisions of the Northwest Power Act requiring the Council to be responsive to best available science and to considerations of cost for the same biological benefit, may elect to identify apparent conflicts between stated federal biological standards and the results, to date, of related research, monitoring, and evaluation." Such action is not inconsistent with the BiOp, according to Kempton.

The official Oregon policy is to use the BiOp as the standard, said Eden. I need to be able to understand what things are being proposed in the way of reservoir operations changes that would still follow from the BiOp, she indicated. "Frankly, the BiOp needs to be in place, but the Council needs to make changes and to take some risks that we think will make the system better," stated Derfler. Just to "rubberstamp the BiOp" isn't enough, he added.

Washington supports having a testing process that would allow for the evaluation of operations before they become permanent, said Cassidy. He asked Kempton to comment on the interplay between Idaho water law and the interstate compact rules that underpin the Council.

Idaho water law is unique among the four states, responded Kempton. When the state agreed to participate in the formation of the Council, it was written into state law that nothing in the agreement "shall be construed to alter, diminish, or abridge" the rights of the state and its citizens with respect to any water or water-related right and "those related to the regulation of the energy industry," according to Kempton. If the Council decided to support Snake River flows, or flow augmentation, in excess of levels conditionally established under Idaho law, it would conflict with the position Idaho expressly stated in agreeing to participate in formation of the interstate compact that is the Council, he said.

Subject to legal action, "Idaho would have to decide if Council participation is even relevant anymore," Kempton stated, adding "that isn't a threat." It's a restatement of what Idaho put into state law when it entered into the compact, he noted.

In the mainstem habitat section, Shurts noted some anadromous fish groups recommended the interim objective of smolt-to-adult (SAR) survival rates in the 2-6 percent range be converted to a hard objective. The SAR number in the draft came from staff, who said, "let's see what comments we get on it" -- now it seems to be set in stone, commented Hines. The 2-6 percent range appears to be in the extreme, said Bartlett. Staffer Bruce Suzumoto said many factors can influence those numbers, including ocean conditions. I don't know if 2-6 percent can be reached on a consistent basis, he stated. It's important to have a target in here that we are working towards, Karier said.

In the juvenile fish transportation section, Shurts said the Council's endorsement of a "spread-the-risk" strategy until it is determined whether migration inriver or transportation provides the best level of survival got a lot of comment. Transportation seems to be becoming a permanent policy, and we need to address that, stated Cassidy.

The Oregon Department of Fish and Wildlife's (ODFW) policy is that maximum transportation is not spread the risk, said Eden. I'm struggling with how to test what really is the best policy, especially in light of ODFW's position, she stated. We need a real spread-the-risk strategy, Eden indicated. Oregon has recommended that up to 50 percent of the fish might be left in the river as

a way to test the strategy, she said. The Council's draft follows the BiOp transportation strategy, Shurts noted. Transport of 90 percent of the fish is not spread the risk, Eden responded.

Turning to spill, Shurts said the anadromous fish managers commented that the Council's draft had an overall "negative characterization" of spill. Eden pointed out that Oregon's package proposes "significant spill changes."

Bartlett asked Karier to describe what Washington is proposing for Grand Coulee. "Targets, not firm elevation levels," replied Karier. He said Washington's proposal recommends formation of a committee of federal operators, fish and wildlife managers, and others to meet to determine how to provide biological benefits, while preserving normal hydro system operations. The group would determine when to relax the minimum elevation in order to provide flows for chum, Karier said.

The Council decided to lift the ex parte rule that had been in effect on discussions about the mainstem amendments until March 24, when the ex parte rule would go back into effect. The Council indicated that any informal talks among members that occur with respect to the mainstem amendments would only take place when less than a quorum (5) of Council members is present.

6. Council Business

– Approval of Minutes

Decision – Minutes Approved

Karier moved that the Council approve the minutes for the February 18-20, 2003 meeting. Cassidy seconded, and the motion passed unanimously.

Approved on April 10, 2003

/s/ Tom Karier

Vice-Chair

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