

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

July 16, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x58331)

Markup: **H.R. 5556 (Rep. Paul A. Gosar, R-AZ)**, To provide for transparency and reporting related to direct and indirect costs incurred by the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration related to compliance with any Federal environmental laws impacting the conservation of fish and wildlife, and for other purposes.
Wednesday, July 18, 2018, at 10:45AM; 1324 Longworth HOB

H.R. 5556, *Environmental Compliance Cost Transparency Act of 2018*

Bill Summary

H.R. 5556 requires the four federal Power Marketing Administrations (PMAs), which sell electricity generated at federal dams and reservoirs, to estimate and report in monthly billing statements any direct or indirect costs associated with any federal environmental laws impacting the conservation of fish and wildlife.

Cosponsors

Reps. Ralph Lee Abraham (R-LA), Mark E. Amodei (R-NV), Andy Biggs (R-AZ), Dave Brat (R-VA), Ken Buck (R-CO), Ted Budd (R-NC), Greg Gianforte (R-MT), Louie Gohmert (R-TX), Walter B. Jones, Jr. (R-NC), Steve King (R-IA), Tom McClintock (R-CA), David B. McKinley (R-WV), Ralph Norman (R-SC), Stevan Pearce (R-NM), Kurt Schrader (D-OR), Ted S. Yoho (R-FL)

Background

Under the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.), the Secretary of the Interior has responsibility for plants, wildlife and inland fish. The Secretary of Commerce is responsible for implementing the ESA with respect to mostly marine and anadromous species. Each agency follows a regulatory process to list a species as “endangered” or “threatened” based on best available scientific and commercial data.¹ If federal actions -- including permit approval or funding actions -- may affect a listed species, Section 7 of the ESA requires federal agencies to consult with the Secretaries to “insure that any action authorized, funded or carried out by such agency. . . is not likely to jeopardize the continued existence” of a species.²

The ESA significantly impacts the four PMAs, their wholesale electricity customers and, ultimately, the end-use retail customer. The PMAs market and deliver (via transmission lines) electricity generated at federal dams and reservoirs operated by the Bureau of Reclamation and the U.S. Army Corps of Engineers.³ Hydropower generated at these facilities, particularly in the western United States, is first used to provide electricity to operate irrigation pumps.⁴ Any excess power is then primarily sold by the PMAs to preference customers, which, by federal statute, largely consist of publicly-owned and cooperative-owned utilities, Indian tribes, federal entities, investor-owned utilities, and some industrial customers.⁵ Under numerous authorizing statutes, the power is sold at rates designed to repay the federal capital investment in federal electricity generation and transmission facilities, annual operation and maintenance of such facilities and federal staffing. These rates also include the costs of environmental regulations and replacement power services resulting from these mandates.⁶ In certain regions of the country, such as the Pacific Northwest, the Intermountain West and the Upper Midwest, federal power generation and transmission services play a very significant regional role in their respective electricity markets, as discussed below.

¹ Id., at p. 4

² 16 U.S.C. 1536.

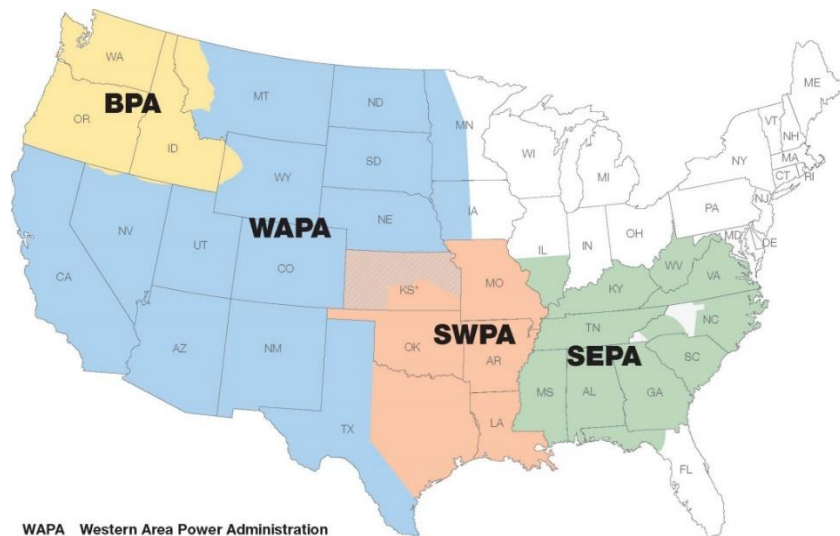
³ Bracmort, Kelsi. “Hydropower: Federal and Nonfederal Investment.” 22 January 2013. R42579. Pg. 9.

⁴ Id. at 1.

⁵ <https://www.eia.gov/todayinenergy/detail.php?id=11651>

⁶ <https://www.bpa.gov/news/pubs/FactSheets/fs-201305-BPAs-Fish-and-Wildlife-Program-the-Northwest-working-together.pdf>

PMA Service Areas:



There are numerous federal environmental statutes impacting the PMAs, including the ESA, the Central Valley Project Improvement Act (Public Law 102-575)⁷ and the Grand Canyon Protection Act (Public Law 102-575)⁸ which have ultimately altered and decreased some federal power generation due to modification of water releases from dams. Since the PMAs are typically under contract with their customers to provide a set amount of power, the PMAs have to purchase replacement power on the open market to make up for lost federal generation to meet these contractual needs. Additionally, the PMAs experience costs for habitat restoration and protection, structural modifications to facilities, fish hatcheries, and other on-the-ground work. Much of these costs are built into the rate base and have been factors in recent rate hikes, as discussed below.

Bonneville Power Administration (BPA)

BPA, created in 1937, markets and delivers wholesale electrical hydropower generated at 31 federal facilities (known as the Federal Columbia River Power System or FCRPS) to wholesale customers in Oregon, Washington and parts of Idaho, Montana, Wyoming and Nevada.⁹ BPA has a large impact on the region's electricity market, providing nearly a third of the region's electricity sales and almost three-fourths of its transmission capacity.¹⁰ BPA also sells a significant amount of "surplus" energy to California utilities in some years. Like the other PMAs, BPA is required to set power rates sufficient to repay the federal investment and recover costs associated with the operation and maintenance of the federal facilities. Costs associated with fish and wildlife

⁷ http://www.usbr.gov/mp/cvpia/title_34/public_law_complete.html

⁸ <http://www.usbr.gov/uc/legal/gcpa1992.html>

⁹ <https://www.bpa.gov/Finance/FinancialInformation/AnnualReports/Documents/AR2017.pdf>, at 2

¹⁰ *Id.*

enhancement and protection attributable to power production in the Columbia/Snake River system are imposed on wholesale customers who then pass it on to their customers.

Since the passage of the Northwest Power Act (Public Law 96-501)¹¹ in 1980, BPA ratepayers have financed the agency's Fish and Wildlife Program.¹² This program was created to "protect, mitigate and enhance" fish and wildlife populations and their habitat in the Columbia Basin.¹³ The costs of this program include lost power generation caused by water spillage used for environmental purposes, power purchases to replace lost generation, and on-the-ground work including structural modifications at dams, habitat protection, predator mitigation, research and fish hatcheries.¹⁴ The vast majority of these costs are dedicated to ESA compliance. At a June 2013 Water and Power Subcommittee hearing, Mr. Scott Corwin, Executive Director of the Public Power Council, which represents consumer-owned utilities in the Pacific Northwest, testified, "These efforts cost around \$700 million per year (about 25 to 30 percent of the wholesale power cost), and some of the measures impose large constraints on the production of clean hydropower."¹⁵

In fiscal year 2017, the total fish and wildlife costs including forgone revenue and power purchases for BPA was reported to be **\$450.4 million**. Much of that cost involves ESA-listed salmon.¹⁶

Western Area Power Administration (WAPA)

WAPA, created in 1977, markets and delivers an average of 10,000 megawatts of hydroelectricity produced at Bureau of Reclamation and Army Corps of Engineers dams.¹⁷ WAPA serves about 700 wholesale customers over 1.3 million square miles in Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah and Wyoming through a 17,000-mile federal transmission system.¹⁸ These wholesale customers, in turn, supply 40 million retail customers.¹⁹ WAPA is financed by annual customer funding and advance payments and appropriations, which are then reimbursed with interest through customer contractual repayment obligations. Since the Bureau of Reclamation and the Army Corps are required to modify their hydropower generation services and

¹¹ <https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg2697.pdf>

¹² <https://www.bpa.gov/efw/FishWildlife/Pages/default.aspx>

¹³ <https://www.bpa.gov/news/pubs/FactSheets/fs-201305-BPAs-Fish-and-Wildlife-Program-the-Northwest-working-together.pdf>

¹⁴ <https://www.bpa.gov/news/pubs/FactSheets/fs-201601-BPA-invests-in-fish-and-wildlife.pdf>

¹⁵ Testimony of Mr. Scott Corwin before the House Water and Power Subcommittee, June 26, 2013, p. 5.

¹⁶ <https://www.nwcouncil.org/sites/default/files/2018-4.pdf>, p. 7

¹⁷ <https://www.wapa.gov/newsroom/Publications/Documents/How-WAPA-Does-Business.pdf> p. 1, p. 3.

¹⁸ <https://www.wapa.gov/newsroom/FactSheets/Pages/About.aspx>

¹⁹ <https://www.wapa.gov/newsroom/FactSheets/Documents/WAPA-at-a-glance.pdf>

flow requirements to account for ESA and other federal mandates, WAPA has lost base hydropower and must purchase replacement power, as discussed below.

WAPA's customers are impacted by many ESA requirements, including but not limited to constraints on releases of water from dams. In one dramatic case, ESA-impacted flows have contributed to the loss of over a third – or about 400-500 megawatts -- of the average annual production of Glen Canyon Dam at a cost of \$50 million.²⁰ At a 2011 Water and Power Subcommittee legislative hearing on a similar bill, Ms. Leslie James, Executive Director of the Colorado River Energy Distributors Association (CREDA), testified:

Specific examples of the environment-related costs assessed to the [Colorado River Storage Project] are the programmatic (i.e., “direct”) costs of the Glen Canyon Adaptive Management Program (AMP) and the Upper Basin Endangered Fish Recovery Implementation Program (RIP). Since approximately \$743 million in purchased power costs have been incurred by WAPA since 2000, CREDA believes it is important that the customers have visibility of those costs, which are included in their firm power rates.²¹

These costs, as well as drought, play a significant role in WAPA's wholesale electricity rates.

H.R. 5556, Environmental Compliance Cost Transparency Act of 2018

In light of rising and uncertain federal environmental compliance costs and questions over their effectiveness -- particularly in the Pacific Northwest -- some PMA customers have called for greater transparency in the way such costs are reported. For example, the Northwest RiverPartners, a consortium of water and power users, found in a 2005 poll that “more than 70% either don't know how much they pay for salmon recovery or believe less than 5% of their monthly bills go to salmon recovery” in the Northwest.²²

As a result, H.R. 5556 requires the PMAs to estimate and report the direct and indirect costs associated with any federal environmental laws impacting the conservation of fish and wildlife to each wholesale firm power customer on a monthly billing basis. Direct costs are defined as “Federal agency obligations related to costs of studies; capital, operation, maintenance, and replacement costs; and staffing costs.”²³ Indirect costs are defined as “foregone generation and replacement power costs, including the net costs of any transmission.”²⁴ Under the bill, the PMAs

²⁰ [Testimony of Mr. Timothy Meeks before the House Water and Power Subcommittee, March 15, 2011](#)

²¹ Testimony of Ms. Leslie James before the House Water and Power Subcommittee, September 22, 2011, p. 1.

²² http://mcmorris.house.gov/mcmorris_rogers_introduces_legislation_to_shed_light_on_esa_compliance_costs-3/

²³ H.R. 5556, Section 2(b).

²⁴ H.R. 5556, Section 2(c).

provide the information to their wholesale customers, who can then decide how or whether to report this information to their retail consumers.

On July 11, 2018 the Subcommittee on Water, Power and Oceans held a legislative hearing on H.R. 5556.

Major Provisions of H.R. 5556

Section 2 directs the Administrators of each of the four PMAs to report both the direct and indirect costs associated with any federal environmental law associated with the conservation of fish and wildlife to their wholesale power customers on their monthly billing statement. It also directs the PMA Administrators, in coordination with the Bureau of Reclamation and other affected federal agencies, to provide an annual report on such costs and the sources of replacement power to the appropriate Congressional committees.

Cost

The Congressional Budget Office has not completed a cost estimate of this bill.

Administration Position

Unknown.

Anticipated Amendments

None anticipated.