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Testimony on H.R. 1719, the Endangered Species Compliance and
Transparency Act of 2011
Before the Water and Power Subcommittee of the Natural Resources Committee
September 22, 2011

The NW Energy Coalition is a coalition of more than 110 consumer, environmental, faith-based and low-income groups, unions, clean energy businesses, and progressive utilities from the four Northwest states and British Columbia, working toward a clean and affordable energy future. I am testifying today in opposition to H.R. 1719. Although H.R. 1719 applies equally to all Federal Power Marketing Agencies (PMAs), this testimony is focused mainly on the Bonneville Power Administration (BPA) because that is our area of expertise and concern. However, in most cases, we believe the intent of these comments is applicable to the other PMAs.

Summary

The proposal in H.R. 1719 to require the Bonneville Power Administration (BPA) to report the costs of compliance with the Endangered Species Act (ESA) raises a number of concerns:

- Transparency of BPA's costs is a laudable goal, if there is full and honest accounting to inform the public of the whole story.
- This bill is unnecessary: the information on fish and wildlife program funding is already readily available from BPA, and utilities are free to inform their customers if they wish.
- BPA's fish and wildlife funding is required by a number of federal laws and treaties; separating out ESA costs is difficult or impossible.
- Proposals to include foregone revenues in these costs imply that BPA can claim benefits for violating federal laws, and that BPA power production usage is paramount to all other uses.
- Meaningful economic transparency should address both costs and benefits.
- The definition of the firm customers' share of BPA's ESA costs can be interpreted in different ways, leading to starkly different conclusions. If not done correctly such accounting fosters more confusion than transparency.
- This issue is likely to focus national attention on the fact that BPA's wholesale power rates are lower than most any other wholesale generator, and normally well below market rates.

The NW Energy Coalition Supports Real Transparency

Environmental and consumer advocates would enthusiastically support H.R. 1719 if it mandated honest accounting of the costs and benefits of federal dam operations on fish, anglers and fishing communities, irrigators, recreation businesses and other users of the river—along with power consumers. Only by looking at the whole picture can any

particular cost category be put into perspective. H.R. 1719 looks at only a small part of how the Columbia River system is shared and paid for. This issue will be addressed in detail later in this testimony.

H.R. 1719 is Unnecessary

H.R. 1719 does not compel the production of any information that is not already available to the public, electricity utilities, or anyone else who seeks it. BPA currently provides information to the region regarding the costs of its fish and wildlife programs (including so-called “indirect costs”). Bonneville also provides a detailed walk through of all of its costs as part of its Integrated Program Review preparatory to each power rate case. Any utility wishing to provide this information to its retail consumers may do so; some do this now. This bill is not needed and would not change current practice at all.

Salmon Recovery Actions Meet a Myriad of Federal Responsibilities

BPA’s investments in rebuilding fish and wildlife populations are required by a number of federal laws and treaties, including the Endangered Species Act, the Northwest Power Act, the Fish and Wildlife Coordination Act, the Clean Water Act and United States treaties with Indian Tribes and Canada. It is not possible to categorize which of the costs are related solely to the ESA.

Bonneville and the federal family have numerous legal obligations to recover these valuable fish in addition to the ESA. H.R. 1719’s mandate to isolate ESA costs is impossible, since most of the actions being taken for endangered and threatened fish and habitat overlap or are also required by these other laws and treaties.

For example, the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Section 16 U.S.C. 839b(h)(6)(E), requires the Northwest Power and Conservation Council (NPPC) to include measures in its Fish and Wildlife Program (Program) that:

- (i) provide for improved survival of such fish at hydroelectric facilities located in the Columbia River system; and
- (ii) provide **flows of sufficient quality and quantity** between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives. (Emphasis added)

More generally, the Northwest Power Act requires the Administrator and other Federal agencies to exercise their responsibilities “in a manner that provides **equitable treatment** for such fish and wildlife with the other purposes for which such system and facilities are managed and operated.” (Section 16 U.S.C. 839b(h)(11)(A); emphasis added). BPA’s obligation “to adequately protect, mitigate, and enhance fish and wildlife...” (ibid.) is not a secondary “cost” of the power system, it is a coequal purpose along with irrigation, navigation, recreation and flood control.

Similarly, there are numerous treaty obligations to Native American Tribes that require BPA and the Federal agencies to restore and enhance their native fisheries. At the same time, the Federal Columbia River Power System (FCRPS) Biological Opinion requires specific flow and spill operations to ensure that the operation of the FCRPS does not jeopardize the continued existence of listed species under the ESA.

It is important to note that the flow targets in the Program and Biological Opinion are constrained by the current configuration of the hydroelectric system. Average spring flows in the Columbia before the dams were 450,000 cubic feet per second. The current target is 200,000 cubic feet per second—less than half the historical average.

Unfortunately, the federal agencies have only met this flow target 37.5% percent of the time between 1995 and 2010, and not once between 2006 and 2010.

It is evident that these various obligations overlap and cannot be separated into ESA and non-ESA obligation

Adding “Indirect Costs” is Improper and Obscures The Actual Monetary Contribution BPA Makes to Salmon Recovery

H.R. 1719 requires PMAs to include “foregone generation and replacement power costs” as indirect costs in their ESA-compliance calculations (Sec. 2 (c)). As explained below, it is false and highly misleading to include these items as “costs.” It also improperly distorts the actual monetary contribution BPA makes to salmon recovery. H.R. 1719 would set a dangerous precedent by codifying this type of accounting.

BPA already counts the revenue foregone and the cost of replacement power from operating the FCRPS to meet the requirements of the Endangered Species Act, the Northwest Power Act, the Clean Water Act, and other laws and regulations as a part of these costs. According to the NW Power and Conservation Council's Tenth Annual Report to the Northwest Governors on BPA Expenditures (July 1, 2011; Document 2011-04), over 50% of BPA's claimed expenditures for Fish and Wildlife programs are from foregone revenue and replacement power costs.

Foregone Revenue

“Foregone revenue” is the cost of foregone generation; that is, the money BPA speculates it could have made if it did not have to operate the river to assist salmon migration. It is the lost generation from water spilled over the dams plus the difference in prices BPA forecasts it might have received if it could shift timing of generation into higher priced periods rather than when salmon need a push out to sea. Considering as a “cost” the revenues or profits that a business or agency could have made if it had violated federal laws, regulations, or court orders is a curious accounting concept, to say the least.

An example is illustrative. Trucking companies must obey a number of safety regulations. These include providing seat belts, equipment inspections and rest breaks for drivers. These are all proper costs of compliance with these regulations. However, we do

not count as a cost or even “indirect cost” the foregone revenue that the company could have realized if it did not have to give its drivers rest breaks, or if those drivers could drive over the speed limits or ignore weight limits. On the contrary, it is understood that the trucking companies do not own the highways, and the “cost” of sharing it with other users is not revenue somehow owed to them.

Given its practice of reporting foregone revenue for fish and wildlife protection, it is important to note that BPA does not report the foregone revenue associated with meeting other legal constraints on power generation such as providing irrigation water, flood control, maintaining minimum flow depths for river transportation, limiting rapid variations (“ramping”—which can damage streambeds and banks) in flow rates, or recreation. All of these other federally mandated purposes limit the ability to generate electricity and reduce BPA’s potential revenue. Hence, to be consistent, BPA would need to count them as “costs” as well.

For example, the Northwest Power and Conservation Council has calculated that the 14.4 million acre-feet withdrawn for irrigation could generate an additional 625 average megawatts if the water remained in the river—about five percent of the total output of the BPA system. (“Multiple Use Memorandum,” NPCC, February 7, 2006, p.5) Analysis by the NPCC calculated that at average market rates, the foregone revenue of this irrigation would be \$250 million per year. At the market prices for the summer of 2005, the lost revenue associated with irrigation withdrawals was over \$380 million. Neither BPA nor H.R. 1719 counts this “cost.”

While these numbers are dated and the impact of other uses of the river will vary from year to year depending on market power prices and the amount of water in the river at any given time, the point remains that BPA is not including foregone revenue from any other uses of the river in its calculations of costs.

All of this begs the important question of whose costs these are. Are irrigation foregone revenues a “cost” for BPA’s ratepayers? Is a requirement to keep rivers flowing at minimum levels for navigation another “cost”? If so, then one would conclude that Bonneville is subsidizing the irrigators and barge and boat operators. This logic is absurd. Bonneville does not own the river; it shares the river with all the other uses, including fish and wildlife. BPA is not entitled to all of the possible revenue it can squeeze out of the river, only its share. NW Energy Coalition recommends that Sec. 2(c) be deleted from the bill. The various uses and users of the river do not owe each other money; they are all simply sharing in this great resource.

However, if Congress believes it is important to report such costs, then it should require BPA to calculate the costs of each of the other purposes of the dams and report all of them on a consistent basis. After all, every use of the river, from navigation to flood control to irrigation, reduces BPA’s revenues, and its ability to fund its obligations.

Foregone salmon

We should also note, if the Committee wants to continue down the road of assigning indirect costs, that the NPCC found that 5 to 11 million salmon lost each year (compared to the period prior to dam construction) were attributable to damage caused by the hydroelectric system. Based on this estimate, the Columbia River Indian tribes, anglers and fishing businesses have “foregone” 365 to 805 million salmon and steelhead since the dams were built.

Salmon and steelhead are invaluable to tribal culture and religion—the tribes would not put a price on this loss. Non-tribal economists, on the other hand, would value the annual losses in the hundreds of millions of dollars.

Replacement Power Costs

H.R. 1719 also requires that BPA include “replacement power costs” due to fish and wildlife operations in its estimate of indirect costs. These costs can vary dramatically depending on water availability, market energy prices, and load demand – none of which can be properly attributed to salmon recovery.

This problem was made very clear in 2001 when BPA’s power purchase costs alone exceeded \$1 billion. But that was a year when the agency eliminated “spill” for salmon, so it would be fair to say that Bonneville’s salmon restoration efforts were reduced because the impact of fish operations on generation was even less than in previous years. Instead, BPA counts that as a year when its indirect costs skyrocketed. It is bad public policy to pin power purchase costs that could arise for any number of non-salmon-related reasons on salmon recovery. In fact, the reason power purchase costs were so high that year had nothing to do with fish and everything to do with energy deregulation problems and weather.

Costs Must be Balanced with Benefits

Any meaningful effort to provide real transparency should include both the cost and the benefits of actions to recover salmon. H.R. 1719 would require that only costs be reported, and therefore would fail to provide the public a complete picture. The economic benefits of salmon recovery efforts come in at least two forms: the economic benefit from increased fishing opportunities and the impact of actually implementing recovery measures.

Economic Impact of Implementing Salmon Recovery Measures

BPA funds implementation of habitat improvements and other restoration measures through the Federal Columbia River Power System (FCRPS) Biological Opinion and through BPA’s “Integrated Fish and Wildlife Program.” Most of these fish and wildlife activities are implemented in rural areas east of the Cascade Mountains. These investments pay salaries and purchase materials

creating additional jobs and economic activity. The effects of these investments over the next several years can be expected to ripple through tribal and rural economies, creating thousands of additional jobs and significant economic activity. If this work is implemented over the next ten years at the level recommended by state and tribal scientists, the annual funding would support more than 5,000 jobs over the next ten years (assuming \$40,000 per job).

Economic Benefits of Commercial and Recreational Fishing Opportunities

If fish and wildlife populations increase, the Pacific Northwest will experience increased spending by fishers, hunters, and recreationalists creating additional jobs and economic benefits. Increased fishing opportunities for the commercial fishing industry will also have a ripple effect on local coastal communities.

To illustrate the economic benefit of increased fishing opportunities, one need not look further than 2001, when the region experienced better-than-average adult salmon returns due to improved ocean conditions. In that year, salmon runs increased sufficiently for Idaho to open a rare recreational fishing season on salmon. A report by credentialed independent economists (Ben Johnson Associates, Inc. The Economic Impact of the 2001 Salmon Season in Idaho, prepared for the Idaho Fish and Wildlife Foundation, April 2003) examined the economic impact of the 2001 salmon season and found that the increased fish opportunity was responsible for almost \$90 million in angler expenditures. These expenditures were split evenly between the local river communities and the rest of the state. However, impacts were more significant in the smaller local economies. Angler expenditures in Riggins, Idaho (on the Salmon River) during the salmon fishing season stimulated 23 percent of the town's annual sales. While more recent economic analysis is not yet available, modestly higher salmon returns over the past three years (an increase widely attributed to spill) have provided fishermen and fishing businesses with seasons similar to the 2001 fishing season. Any presentation of economic costs must also provide the important benefits to local economies of investments in fish and wildlife while considering the costs of the actions.

BPA's Firm Customers' "Share" of Fish Costs is not Well- Defined.

H.R. 1719 requires that PMAs report each firm power customer's "share" of ESA compliance costs, but leaves the determination of what constitutes a share to the PMAs (in coordination with other Federal agencies). How shares are calculated, and what constitutes a firm customer, is left open in the legislation, but these issues are highly contentious. How shares are calculated can vary tremendously, depending on various assumptions. We have seen media reports that set the proportion of fish restoration costs in Bonneville's rates ranging from less than 5% to 30% using the same basic information!

While this information is extremely important, we all know that statistics can be presented or “spun” in different ways depending on the desired outcome. It is important that this information be fair and objective.

There are several reasons why this calculation is not straightforward and will most likely foster confusion rather than transparency. First to recover its costs, BPA sells to many different types of firm customers at different rates. Some of these rates are determined by BPA, some by the market. Some rates to firm customers are fixed for many years, while others can vary periodically.

This complicated web of arrangements can lead to confusion and misinterpretations of what, at first, seem easy questions. We have seen the media and electric utility representatives take an accurate BPA statement that BPA power rates could go down by a specified percentage if it didn't have any fish costs and report that specified percentage of “your power bill” goes for fish. This deductive leap is incorrect and troubling for several reasons:

1. All of BPA's sales help pay its fish costs, but many of BPA's firm customers' rates are fixed or set by the market. Therefore, if costs are reduced, only a subset of BPA's customers would get all the benefit of the reduction. How much those customers' rates would be reduced is not the same as how much of BPA's rates go to fish.
2. BPA was referring to its power rates only. But almost a quarter of BPA's budget is transmission, whose costs are recovered through a separate rate. Those rates were not included in the calculation, but all customers have to pay for transmission.
3. BPA was referring to its wholesale rate, but consumers pay retail bills. Retail bills contain all the other costs of delivering electricity, such as meter reading, distribution wires, billing, etc. Only about 50-60% of a homeowner's bill is due to the actual wholesale cost of power.
4. Finally most consumers in the region are served by utilities that buy only some of their power from BPA, if any. These consumers' bill-impacts would be proportionally less.

This discussion illustrates how controversial and complicated this issue is—and how open to misinterpretation it will be.

There are less costly, and more effective ways to restore wild salmon and steelhead.

Public interest groups, fishing based businesses, taxpayer advocates and others support a full and honest accounting of BPA's fish-restoration costs. This is because we know that the public supports the goal of restoring wild salmon and steelhead to the Columbia Basin, but only if that effort is successful. That is why we believe that there is a better way: the removal of the four lower Snake River Dams; replacing their modest amount of power with energy efficiency and renewables; extending irrigation pumps to continue irrigation to the 13 or so affected farms; and refurbishing the rail and highway system to ensure farmers can economically ship their goods to market.

As the true costs of the expensive and ineffective path we are currently on becomes clear, the region will realize that removing those four dams is a less-expensive option. Every day these dams continue to exist, the federal government is wasting money and holding back the quality of life for people in the region.

The federal government can act responsibly by taking down these four dams. Eliminating them will be less costly than allowing them to exist, and will create a more reliable energy source in the Pacific Northwest that is paid for by people in the region. Taking down these dams will also reverse the decline of an important natural resource, Pacific salmon.

While NW Energy Coalition supports full transparency, it is important to note that even with BPA's large fish obligations, BPA's rates are the envy of other regions. If BPA's customers want to avoid these fish costs, they are free to get their power elsewhere—at about twice the price! We are concerned that shining a spotlight on BPA's rates will only renew calls by some outside the region who believe our rates are heavily subsidized.

Conclusion

Although the NW Energy Coalition supports objective accounting of BPA's fish and wildlife-related costs, indirect costs are not appropriate to assign to one party in a shared system that is put to multiple uses. However, if Congress believes it is important to attempt to quantify these costs, it should insist that the impacts from other users such as irrigation and navigation are also accounted for. Unfortunately, H.R. 1719 introduces a number of difficult issues that need to be resolved before our Coalition could support it.

Thank you for this opportunity to provide these comments.