

ENVIRONMENTAL COMPLIANCE COST TRANSPARENCY
ACT OF 2018

SEPTEMBER 20, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5556]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5556) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Environmental Compliance Cost Transparency Act of 2018”.

SEC. 2. TRANSPARENCY AND REPORTING.

(a) INFORMATION INCLUDED IN MONTHLY BILLING TO POWER CUSTOMERS.—The Administrators of each of the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration shall include in monthly billings sent to each of their power customers information estimating and reporting all costs and factors affecting total power costs, including the costs of the customer’s share of the direct and indi-

rect costs that are incurred by the administration related to compliance with any Federal environmental laws impacting the conservation of fish and wildlife considered by the Administrator concerned, at that Administrator's sole discretion after consultation with consumers, to be relevant.

(b) DIRECT COSTS.—Direct costs reported under this section shall include Federal agency obligations related to costs of studies; capital, operation, maintenance, and replacement costs; and staffing costs.

(c) INDIRECT COSTS.—Indirect costs reported under this section shall include foregone generation (including as a result of water lost to comply with any Federal environmental laws impacting the conservation of fish and wildlife), and replacement power costs, including the net costs of any transmission.

(d) COORDINATION.—The Commissioner of the Bureau of Reclamation and the head of any other affected Federal agency shall assist the Administrators with the identification of the costs.

(e) REPORT.—No later than January 30 of each year, each of the Administrators referred to in subsection (a), in coordination with the Bureau of Reclamation and other affected Federal agencies, shall provide an annual report to the appropriate committees of the House of Representatives and the Senate that includes—

(1) all estimated costs and factors affecting total power costs, including estimates of the total direct and indirect costs that are incurred by the administration related to compliance with any Federal environmental laws impacting the conservation of fish and wildlife considered by the Administrator concerned, at that Administrator's sole discretion after consultation with consumers, to be relevant; and

(2) the sources of replacement power.

PURPOSE OF THE BILL

The purpose of H.R. 5556 is 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.

BACKGROUND AND NEED FOR LEGISLATION

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 Power Market Administrations (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 pro-

¹Id., at p. 4.

²16 U.S.C. 1536.

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

vide 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.

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 must 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 enhancement and protection attributable to power production in the Columbia/Snake River system

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>.

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.*

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 foregone 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 hydro-electricity 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 of Engineers are required to modify their hydropower generation services and 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 mil-

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. 8.

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>.

lion.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, as reported, requires the PMAs to estimate and report all costs and factors affecting total power costs, including 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 provide the information to their wholesale customers, who can then decide how or whether to report this information to their retail consumers.

During Committee consideration of the bill, Ranking Member Raúl M. Grijalva offered a successful amendment that expanded the information to be reported to include all costs and factors affecting total power costs.

COMMITTEE ACTION

H.R. 5556 was introduced on April 18, 2018, by Congressman Paul A. Gosar (R–AZ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On July 11, 2018, the Subcommittee held a hearing on the legislation. On July 18, 2018, the Natural

²⁰Testimony of Mr. Timothy Meeks before the House Water and Power Subcommittee, March 15, 2011.

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

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

²³H.R. 5556, Section 2(b).

²⁴H.R. 5556, Section 2(c).

Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Raúl M. Grijalva (D–AZ) offered an amendment designated 180; it was adopted by unanimous consent. Congressman Jim Costa (D–CA) offered an amendment designated #1; it was adopted by unanimous consent. No further amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 13, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5556, the Environmental Compliance Cost Transparency Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

KEITH HALL,
Director.

Enclosure.

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

Summary: Four federal power marketing administrations (PMAs) within the Department of Energy (DOE)—the Bonneville Power Administration (BPA), Southeastern Power Administration (SEPA), Southwestern Power Administration (SWPA), and Western Area Power Administration (WAPA)—sell electricity produced at federal hydroelectric and other power facilities to wholesale customers in western and southeastern states. H.R. 5556 would direct those PMAs to provide customers with certain information each month.

CBO estimates that implementing the bill would cost \$10 million over the 2019–2023 bill period, assuming appropriation of the necessary amounts.

Enacting H.R. 5556 would increase direct spending by BPA; therefore, pay-as-you go procedures apply. However, CBO estimates that the net effect on direct spending would be negligible. The bill would not affect revenues.

CBO estimates that enacting H.R. 5556 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5556 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 5556 is shown in the following table. The costs of the legislation fall within budget function 270 (energy).

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	4	3	1	1	1	10
Estimated Outlays	0	2	5	1	1	1	10

Basis of estimate: H.R. 5556 would direct four PMAs to revise their monthly billing statements to include estimates of each customer's share of the direct and indirect costs of complying with federal laws regarding fish and wildlife conservation, as well as information about other factors that affect power costs. Other federal agencies would be directed to assist those PMAs in developing those estimates and in preparing annual reports to the Congress.

The operations of three PMAs—WAPA, SWPA, and SEPA—are financed by annual appropriation acts. By contrast, BPA's expenditures affect direct spending because they are not subject to appropriation.¹ All four agencies are required by law to set electricity prices sufficient to recover most costs over the useful life of their assets or activities.

Using information from the affected agencies, CBO estimates that implementing the bill would cost about \$10 million over the 2019–2023 period, assuming appropriation of the necessary amounts. Including costs for the Bureau of Reclamation and Corps of Engineers, CBO estimates that the workload in the first two years of the program would be equivalent to about 22 full-time employees, at an average cost of about \$160,000 per person. Most of those costs would be incurred by WAPA, which would need to conduct various studies and develop software to provide its customers with data specific to each of the 13 separate regions it uses for setting rates. The costs of implementing the bill are projected to be lower for SWPA and SEPA because their hydropower systems and conservation programs are smaller and less geographically diverse than those at WAPA.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting the bill would increase direct spending by BPA. However, that increase would not be significant because BPA provides similar information

¹ BPA is authorized to finance its costs by directly spending income received from the sale of electricity and by borrowing funds from the Treasury, subject to statutory limits on the amount of debt that can be outstanding at any time.

to its customers under current law. Furthermore, CBO expects that any increase in operating costs would be recovered quickly because BPA would subsequently increase the rates it charges customers. Thus, CBO estimates that the net effect on direct spending by BPA would be negligible. H.R. 5556 would not affect revenues.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 5556 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 5556 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Kathleen Gramp and Aurora Swanson; Mandates: Zachary Byrum.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is 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.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

ADDITIONAL VIEWS

H.R. 5556, as introduced, required the Department of Energy's four Power Marketing Administrations to make a special note on customer bills highlighting only the costs of fish and wildlife mitigation measures. The four Power Marketing Administrations (PMAs) market wholesale power generated by federally-owned hydroelectric dams. These federal dams can negatively impact the survival of our nation's fish and wildlife. Fish and wildlife mitigation measures can reduce the negative environmental impacts of federal dams at a relatively small cost. These mitigation measures also promote functioning ecosystems that are a significant net benefit to the American economy and pay for themselves many times over.

At markup, Ranking Member Raúl M. Grijalva successfully included an amendment to H.R. 5556 that would require the PMAs to publish all costs that affect power rates. Requiring only the publication of costs associated with fish and wildlife mitigation would have excluded several other factors affecting a customer's monthly power bill and provided a misleading, wholly incomplete picture.

For example, the Bonneville Power Administration's failed investment in a nuclear power plant cost rate-payers as much as \$200 million in Fiscal Year 2013¹ and likely billions in total. That information should be provided to the customers paying those costs.

Power customers also must pay billions to subsidize irrigation contractors. Irrigation contractors are not required to repay taxpayers for the costs of building federal dams beyond what's deemed their "ability to pay." The amount that irrigators do not pay is then transferred to power customers. The Western Area Power Administration recently estimated that power customers are responsible for more than \$1.7 billion in irrigation assistance payments.² These costs should be disclosed on power bills as well.

¹McCullough, R., Vatter, M., Anderson, R., Heimensen, J., Long, S., May, C.,...Oursland, G. (December 11, 2013). *Economic Analysis of the Columbia Generating Station*. Portland, Oregon: McCullough Research.

²Western Area Power Administration. 2017 Annual Report. U.S. Department of Energy.

Should H.R. 5556 continue to advance through the legislative process, the bill text may need to be further refined before enactment to ensure that all relevant information is provided to power customers. Full transparency means that customers are provided a full accounting of all major factors impacting their power bills, not just the costs of fish and wildlife mitigation.

RAÚL M. GRIJALVA,
*Ranking Member Committee
on Natural Resources.*
NANETTE DIAZ BARRAGÁN.
ALAN LOWENTHAL.

