

Calendar No. 451

106TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 106-235

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

MARCH 9, 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 1167]

The Committee on energy and Natural Resources, to which was referred the bill (S. 1167) to amend the Pacific Northwest Electric Power Planning and Conservation Act to provide for expanding the scope of the Independent Scientific Review Panel, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

On page 3, line 17, insert the following after the word “committees”:

“, and the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Bureau of Reclamation, and the Bonneville Power Administration”.

PURPOSE OF THE MEASURE

The purpose of S. 1167 is to amend the Pacific Northwest Electric Power Planning and Conservation Act to provide for expanding the scope of the Independent Scientific Review Panel.

BACKGROUND AND NEED

In a 1996 amendment to the Northwest Power Act of 1980, Congress directed the Northwest Power Planning Council (Council) to create the Independent Scientific Review Panel (ISRP) to scrutinize the Bonneville Power Administration’s annual direct expenditures that implement the Council’s Columbia River Basin Fish and Wildlife Program. The implementation of the amendment over the last

three years has resulted in improved credibility and public accountability for the program and the Council.

The 1996 amendment, section 4(h)(10)(D) of the Northwest Power Act, directed the ISRP to make recommendations to the Council on project priorities within the Council's Program and to review project proposals for their scientific merit and consistency with the program. In addition, projects must be prioritized within a fixed annual budget. The amendment specified three criteria the ISRP must take into consideration when reviewing project proposals. Those criteria require the Panel to determine whether fish and wildlife proposals are "based on sound science principles, benefit fish and wildlife, and have a clearly defined objective and outcome with provisions for monitoring and evaluation of results." The ISRP is to include in its report to the Council "any recommendations that the ISRP considers to make the project, program or measure meet the criteria."

The Council is required to make the ISRP's report available for public review and comment. The Council is then to "fully consider" the ISRP's findings when making its final recommendations to the Bonneville Power Administration. Ultimately, it is Bonneville's responsibility to determine which projects are funded. If the Council does not incorporate a finding of the Panel, the council must explain its reasons in writing.

S. 1167 expands the responsibilities of the ISRP and the Council by directing that Bonneville's reimbursable fish and wildlife expenditures also be subject to annual scientific review. The reimbursable category includes those fish and wildlife expenditures made by other federal agencies using their annual congressional appropriations, which are later repaid to the U.S. Treasury by Bonneville. Those reimbursable programs currently consist of the Corps of engineers' capital construction and research activities associated with the Columbia River Fish Mitigation Program, and the U.S. Fish and Wildlife Service's Lower Snake River Compensation Program. In addition, S. 1167 requires that two other programs, the Corps of engineers' fish-related operations and maintenance activities and the Bureau of Reclamation's responsibilities for the Leavenworth National Fish Hatchery, be subjected to ISRP review. These two programs used to be reimbursed, but are now directly funded by Bonneville according to interagency agreements. congressional appropriations, Bonneville's reimbursable expenditures repay the Treasury for prior appropriated dollars. The Federal operating agencies in the Columbia River Basin request funds for these programs in their annual congressional budget submittals. While the Congress retains the ultimate authority to determine program funding levels through the appropriations process, and will have the opportunity to review the Council's annual recommendations on the reimbursable programs, the agencies should consider the recommendations of the Council when preparing annual budget requests. In doing so, improved coordination and consistency among the federal operating agencies is encouraged.

LEGISLATIVE HISTORY

S. 1167 was introduced by Senators Gorton, G. Smith and Craig on May 27, 1999. A hearing was held in the Water and Power Sub-

committee on October 20, 1999. At the business meeting on February 10, 2000, the Committee on Energy and Natural Resources ordered S. 1167, as amended, favorable reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on February 10, 2000, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1167, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1167, the Committee adopted an amendment that would require the Council to submit its recommendations to the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Bureau of Reclamation, and the Bonneville Power Administration.

SUMMARY OF MAJOR PROVISIONS

S. 1167 amends section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act to provide that the Independent Scientific Review Panel: (1) review Columbia Basin fish and wildlife projects, programs or measures for consistency; (2) make appropriate recommendations; and (3) transmit recommendations to the Council. The measure also requires that determinations and recommendations made by the Panel be available to the public and subject to public comment. The recommendations of the Panel shall be fully considered by the Council and if the council does not incorporate a Panel recommendation, the Council must explain its reasons in writing. The measure contains an annual cost limitation for this provision of \$750,000 (in 1997 dollars).

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 29, 2000.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1167, a bill to amend the Pacific Northwest Electric Power Planning and Conservation Act to provide for expanding the scope of the Independent Scientific Review Panel.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1167—A bill to amend the Pacific Northwest Electric Power Planning and Conservation Act to provide for expanding the scope of the Independent Scientific Review Panel

S. 1167 would amend the Northwest Power Act to expand the authority of the Independent Scientific Review Panel (ISRP) to allow review of certain federal projects designed to mitigate the damage to fish populations caused by the operation of hydroelectric projects in the Northwestern United States. Currently, the ISRP only reviews projects that are directly funded by the Bonneville Power Administration (BPA). Under the bill, the ISRP would review and make recommendations on projects undertaken by the Army Corps of Engineers, the Bureau of Reclamation, and other federal agencies whose costs are reimbursed by BPA.

CBO estimates that enacting this bill would have no significant impact on the federal budget. Currently, BPA can spend up to \$500,000 a year (in 1997 dollars) to pay for costs incurred by members of the ISRP. The bill would increase that limit to \$750,000 a year (in 1997 dollars) to reimburse costs associated with the ISRP's increased responsibilities.

Because enactment of S. 1167 would affect direct spending, pay-as-you-go procedures would apply; however, we estimate that any additional net direct spending would be less than \$250,000 annually. This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no impact on the budgets of state, local, or tribal governments.

The CBO staff contact is Lisa Cash Driskill. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1167. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1167, as ordered reported.

EXECUTIVE COMMUNICATIONS

On October 13, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of Energy and the Office of Management and Budget setting forth Executive agency recommendations on S. 1167. These reports had not been received at the time the report on S. 1167 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

The testimony provided by the Bonneville Power Administration at the Subcommittee hearing follows:

STATEMENT OF LORRI BODI, SENIOR POLICY ADVISOR, BONNEVILLE POWER ADMINISTRATION, DEPARTMENT OF ENERGY

INTRODUCTION

We appreciate the opportunity to appear today, Mr. Chairman, and applaud your and the Senate Energy and Natural Resources Committee's continued support and attention to Columbia Basin fish and wildlife mitigation.

Bonneville Power Administration (BPA) is the primary funder of an ambitious program to mitigate impacts on fish and wildlife, including endangered salmon runs, of the Federal Columbia River Power System. Under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) and the Endangered Species Act, BPA funds a variety of Federal, State, tribal, and local efforts. Since 1980, we have spent more than \$1 billion to improve fish passage and survival at Federal dams, operate and manage fish hatcheries, restore habitat in tributary watersheds, and conduct scientific research and monitoring.

We divide our fish and wildlife expenditures into three categories: (1) BPA's direct fish and wildlife program, now budgeted at \$127 million per year, (2) reimbursable expenses for operations and maintenance of fish mitigation projects undertaken by the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and the U.S. Fish and Wildlife Service, and (3) debt service on capital investments such as fish bypass facilities and spillway modifications that have been made since 1981.

Stabilizing and enhancing salmon and steelhead runs in the Columbia Basin will require a concerted effort on the part all interests in the Columbia Basin. BPA and the other Federal agencies active in the Basin are committed to working with the region to arrive at a unified plan to save these fish. For a unified plan to work, it must be grounded in the best science available. That is why BPA has consistently endorsed—and funded—independent science reviews to aid the region in assembling the best possible program.

INDEPENDENT SCIENTIFIC REVIEW PANEL (ISRP)

Another reason for our support of independent reviews is the sheer magnitude of the annual expenditures we make in fish and wildlife. BPA is keenly concerned about the effectiveness of these dollars. We heartily supported the 1997 amendment to the Northwest Power Act that created the Independent Scientific Review Panel (ISRP) and its assessment and prioritization of projects.

In our testimony to this Subcommittee on February 17, 1998, regarding the ISRP, BPA endorsed its activities to

that point, stating that we were “confident of its value.” We noted that “. . . ratepayer dollars should be spent wisely and should produce the most positive biological results.” At that time, we also suggested in our testimony some recommendations which would improve the ISRP process. One recommendation was to extend the ISRP review beyond the direct-funded fish and wildlife program into the reimbursable program and capital projects, which are large parts of our annual fish and wildlife expenditures.

Today, with two full cycles of ISRP review behind us, BPA believes more than ever that independent review of fish and wildlife projects is a useful and important tool. Independent scientific review has freed the fish and wildlife prioritization process from much of the perceived conflict of interest that occurred when projects were recommended by some of the same interests that potentially could receive the funding. With the ISRP’s strong emphasis on clearly defined objectives and the monitoring and evaluation of result, we are confident that we have a stronger scientific basis for projects BPA is funding under the Northwest Power Planning Council’s (Council) program. There is no question that this process has brought needed credibility to this part of our fish and wildlife expenditures. It is time to expand the review to the entire BPA-funded program.

Obviously, we were pleased with the recently-enacted amendment to the FY 2000 Energy and Water Development Appropriations Act that removed the original sunset clause and permanently established the ISRP. We believe that the scientific review and prioritization of fish and wildlife mitigation projects will always have an important place in any program where the region’s fish managers are called upon to develop and implement a comprehensive mitigation program involving hundreds of discrete projects.

SENATE BILL 1167

Similarly, we support the new amendment currently proposed by S. 1167. This bill would further extend the benefits of the ISRP by calling for scientific review of the major fish mitigation capital construction activities of the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and the U.S. Fish and Wildlife Service, which BPA reimburses from ratepayer revenues.

As we have suggested in the past, we believe that extending the ISRP’s review to reimbursable projects—including operations and maintenance and capital costs that BPA reimburses to the U.S. Treasury—will provide a standard yardstick by which to judge all projects and help create an integrated package for review and implementation. It makes good sense to scrutinize the significant investments ratepayers are making in fish ladders, fish friendly turbines, and other fish passage devices at the

dams just as we evaluate projects such as habitat restoration in the Council's Plan.

As Subcommittee members may be aware, the Council is planning to move to a three-year rolling project selection and funding cycle for its fish and wildlife program. The Council envisions a sub-basin planning process and multi-year funding for some projects. We would recommend that the prescribed annual ISRP review of the projects in the Council's Plan should be coordinated with this new three-year process.

In addition, the recent amendment to the Energy and Water Appropriations Bill, which eliminated the ISRP sunset provision, also provided for \$500,000 in annual funding for ISRP operation. As we understand it, this funding was intended to apply only to the scientific review of the Council's fish and wildlife program (BPA's direct funded program) only. However, S. 1167, in addition to extending the ISRP review to the reimbursable and capital program, sets a new annual operating limit of \$750,000. We would encourage the Subcommittee to clarify these overlapping provisions, i.e., whether the \$750,000 figure includes the initial \$500,000 or is in addition to it.

CONCLUSION

Mr. Chairman, BPA is committed to serving the important public purposes our agency was created to provide. This includes providing reliable and affordable power to the Northwest and sustaining healthy salmon runs. We will continue to work with the Congress, the Council, Northeast tribes, and the ISRP to ensure that ratepayer dollars are spent wisely and effectively.

In closing, let me reiterate that we believe S. 1167 is a logical and desirable next step to extend a successful scientific review to a broader application. We believe the independent scientific review of fish and wildlife mitigation and enhancement project is the right course, and we believe the current panel is doing a good job. The region is much the better for it.

Again, we appreciate the Committee's continued interest in the effectiveness and success of the region's fish and wildlife activities.

This concludes my formal statement. I would be pleased to respond to your questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1167, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**PACIFIC NORTHWEST ELECTRIC POWER PLANNING
AND CONSERVATION ACT**

Public Law 96-501 (94 Stat. 2697)

* * * * *

(4)(h)(10)(D) INDEPENDENT SCIENTIFIC REVIEW PANEL.—(i) The Northwest Power Planning Council (Council) shall appoint an Independent Scientific Review Panel (Panel), which shall be comprised of eleven members, to review projects proposed to be funded through that portion of the Bonneville Power Administration's (BPA) annual fish and wildlife budget that implements the Council's fish and wildlife program. Members shall be appointed from a list of no fewer than 20 scientists submitted by the National Academy of Sciences (Academy), provided that Pacific Northwest scientists with expertise in Columbia River anadromous and non-anadromous fish and wildlife and ocean experts shall be among those represented on the Panel. The Academy shall provide such nominations within 90 days of the date of this enactment, and in any case not later than December 31, 1996. If appointments are required in subsequent years, the Council shall request nominations from the Academy and the Academy shall provide nominations not later than 90 days after the date of this request. If the Academy does not provide nominations within these time requirements, the Council may appoint such members as the Council deems appropriate.

(ii) SCIENTIFIC PEER REVIEW GROUPS.—The Council shall establish Scientific Peer Review Groups (Peer Review Groups), which shall be comprised of the appropriate number of scientists, from a list submitted by the Academy to assist the Panel in making its recommendations to the Council for projects to be funded through BPA's annual fish and wildlife budget, provided that Pacific Northwest scientists with expertise in Columbia River anadromous and non-anadromous fish and wildlife and ocean experts shall be among those represented on the Peer Review Groups. The Academy shall provide such nominations within 90 days of the date of this enactment, and in any case not later than December 31, 1996. If appointments are required in subsequent years, the Council shall request nominations from the Academy and the Academy shall provide nominations not later than 90 days after the date of this request. If the Academy does not provide nominations within these time requirements, the Council may appoint such members as the Council deems appropriate.

(iii) CONFLICT OF INTEREST AND COMPENSATION.—Panel and Peer Review Group members may be compensated and shall be considered subject to the conflict of interest standards that apply to scientists performing comparable work for the National Academy of Sciences; provided that a Panel or Peer Review Group members with a direct or indirect financial interest in a project, or projects, shall recuse him or herself from review of, or recommendations associated with, such project or projects. All expenses of the Panel and the Peer Review Groups shall be paid by BPA as provided for under paragraph (vii). Neither the Panel nor the Peer Review Groups shall be deemed advisory committees within the meaning of the Federal Advisory Committee Act.

(iv) **PROJECT CRITERIA AND REVIEW.**—The Peer Review Groups, in conjunction with the Panel, shall review projects proposed to be funded through BPA's annual fish and wildlife budget and make recommendations on matters related to such projects to the Council no later than June 15 of each year. If the recommendations are not received by the Council by this date, the Council may proceed to make final recommendations on project fundings to BPA, relying on the best information available. The Panel and Peer Review Groups shall review a sufficient number of projects to adequately ensure that the list of prioritized projects recommended is consistent with the Council's program. Project recommendations shall be based on a determination that projects: are based on sound science principles; benefit fish and wildlife; and have a clearly defined objective and outcome with provisions for monitoring and evaluation of results. The Panel, with assistance from the Peer Review Groups, shall review, on an annual basis, the results of prior year expenditures based upon these criteria and submit its findings to the Council for its review.

(v) **PUBLIC REVIEW.**—Upon completion of the review of projects to be funded through BPA's annual fish and wildlife budget, the Peer Review Groups shall submit its findings to the Panel. The Panel shall analyze the information submitted by the Peer Review Groups and submit recommendations on project priorities to the Council. The Council shall make the Panel's findings available to the public and subject to public comment.

(vi) **RESPONSIBILITIES OF THE COUNCIL.**—The Council shall fully consider the recommendations of the Panel when making its final recommendations of projects to be funded through BPA's annual fish and wildlife budget, and if the Council does not incorporate a recommendation of the Panel, the Council shall explain in writing its reasons for not accepting Panel recommendations. In making its recommendations to BPA, the Council shall: consider the impact of ocean conditions on fish and wildlife populations; and shall determine whether the projects employ cost effective measures to achieve program objectives. The Council, after consideration of the recommendations of the Panel and other appropriate entities, shall be responsible for making the final recommendations of projects to be funded through BPA's annual fish and wildlife budget.

[(vii) **COST LIMITATION.**—The cost of this provision shall not exceed \$2,000,000 in 1997 dollars.]

[(viii) **EXPIRATION.**—This paragraph shall expire on September 30, 2000.]

(vii) **REVIEW BY THE PANEL OF REIMBURSABLE PROJECTS, PROGRAMS, AND MEASURES.**—

(I) **IN GENERAL.**—*With regard to Columbia Basin fish and wildlife projects, programs or measures proposed in a Federal agency budget to be reimbursed by BPA, or paid through a direct funding agreement with BPA, the panel shall annually—*

(aa) review such proposals;

(bb) determine whether the proposals are consistent with the criteria stated in item (iv);

(cc) make any recommendations that the Panel considers appropriate to make the project, program, or measure meet the criteria stated in item (iv); and

(dd) transmit the recommendations to the Council no later than April 1 of each year.

(II) PUBLIC AVAILABILITY AND COMMENT.—Determinations and recommendations made by the panel under subclause (I) shall be available to the public and shall be subject to public comment as in item (v).

(III) ROLE OF THE COUNCIL.—The Council shall fully consider the recommendations of the Panel when making its final recommendations of projects proposed by Federal agencies and reimbursed by BPA, or paid through a direct funding agreement with BPA. The Council shall submit its recommendations to the House and Senate Committees on Appropriations and relevant authorizing committees, and the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Bureau of Reclamation, and the Bonneville Power Administration no later than May 15 of each year. If the Council does not incorporate a recommendation of the Panel in its recommendations, the Council shall explain in writing its reasons for not accepting Panel recommendations.

(viii) COST LIMITATION.—The annual cost of this provision shall not exceed \$750,000 in 1997 dollars.

