

# CHAPTER 6: NORTHWEST POWER ACT REQUIREMENTS FOR THE POWER PLAN

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In the Northwest Power Act of 1980, Congress authorized the four states of the Columbia River basin to form an interstate compact agency – the Council -- and directed the Council to prepare and periodically review a “regional conservation and electric power plan.” The Act specifies how the Council is to review the power plan; what the Council must do prior to the review of the power plan (engage the region in a separate process to develop or amend a program to “protect, mitigate and enhance” Columbia River fish and wildlife); what the Council must include in the power plan; what the ultimate purpose of the power plan is; and how the Bonneville Power Administration is to use the Council’s power plan to guide decisions to implement energy-conservation measures and acquire new generating resources.

## **The purposes of the Northwest Power Act that the power plan is intended to fulfill: Northwest Power Act, Section 2**

The power planning effort must fulfill the purposes of the Act as established by Congress, including:

- to encourage conservation and efficiency in the use of electric power and the development of renewable resources within the Pacific Northwest;
- to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply;
- to provide for the participation and consultation of the states, local governments, consumers, customers, users of the Columbia River system, federal and state fish and wildlife agencies, Indian tribes, and the public at large in the development of regional plans and programs for energy conservation and new generating resources; protecting, mitigating and enhancing fish and wildlife resources; facilitating the orderly planning of the region’s power system; and providing environmental quality; and
- to protect, mitigate, and enhance the fish and wildlife of the Columbia River and its tributaries, including related spawning grounds and habitat.

The purposes set forth in the Act were a direct response by Congress to the increasingly difficult resource issues the Pacific Northwest faced in the years leading up to the Act -- how best to develop an adequate, reliable, and economical power system for the region on the base of the region’s extensive hydroelectric system while simultaneously dealing with the decline in salmon and steelhead populations resulting from the development and operation of that system.

To carry out these purposes, the Act authorized the states of Washington, Oregon, Idaho, and Montana to establish the Council as an interstate compact agency and charged the Council with three primary responsibilities: 1) developing and periodically reviewing a “regional conservation and electric power plan”; 2) prior to each power plan, developing and periodically amending a “program



to protect, mitigate and enhance fish and wildlife” affected by the Columbia River basin hydrosystem; and 3) developing both plan and program in a highly public manner with substantial public input.

**The Council’s regional conservation and electric power plan: Plan priorities; elements; and development process: Northwest Power Act, Sections 4(d) through 4(g)**

Sections 4(d) through 4(g) of the Act describe the “regional conservation and electric power plan” that the Council is to adopt and then review every five years; the process the Council is to follow in developing and reviewing the plan; and the substantive elements of the plan.

Section 4(e) lists the substantive priorities, considerations, and elements that the power plan must contain and reflect. The plan must “give priority to resources which the Council determines to be cost effective.” Of the cost-effective resources available, the plan must give priority “first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.” Given the resource priorities established by Congress, the Council is responsible for developing a plan that “set[s] forth a general scheme for implementing conservation measures and developing resources... to reduce or meet the [Bonneville Power] Administrator’s obligations.” (See below on what those obligations are.) The Council must develop this resource scheme “with due consideration by the Council for (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish” and other criteria the Council may set forth in the plan.

The Act then details specific elements that must be included in the power plan in order to accomplish the priorities established by Congress in the Act. The Council is to include these elements “in such detail as the Council determines to be appropriate”:

- (A) an energy conservation program, including model conservation standards<sup>1</sup>
- (B) recommendations for research and development
- (C) a methodology for determining quantifiable environmental costs and benefits under section 3(4) of this Act<sup>2</sup>
- (D) an electricity demand forecast of at least 20 years; a forecast of the power resources estimated by the Council to be required to meet the obligations of the Bonneville Power Administrator; and the portion of those obligations can be met by resources in the Act’s

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<sup>1</sup> Conservation is defined in Section 3(3) of the Act. Detailed requirements for the model conservation standards are set forth described in Section 4(f) of the Act. For further discussion, see Chapters 12 and 17.

<sup>2</sup> Section 3(4) of the Act defines what it means for a conservation measure or generating resource to be “cost-effective”. Cost-effectiveness, per the Act, is based on the “incremental system cost” of each resource, and is to include all direct costs of that resource over its effective life, including all direct and quantifiable environmental costs and benefits. See Chapter 19 for the required “methodology for determining quantifiable environmental costs and benefits” and further discussion of that element of the Act and of the “due consideration” requirements on the Council in developing the plan’s resource strategy. “Resource” is defined in Section 3(19).

priority categories. The power resource forecast shall also (i) include regional reliability and reserve requirements, (ii) take into account the effect, if any, of the requirements of the Council's fish and wildlife program on the availability of resources to Bonneville, and (iii) include the approximate amounts of power the Council recommends should be acquired by Bonneville and may include, to the extent practicable, an estimate of the types of resources from which such power should be acquired

- (E) an analysis of electricity reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost
- (F) the fish and wildlife program promulgated prior to the power plan by the Council under Section 4(h) of the Act
- (G) any surcharge recommendation relevant to implementation of the model conservation standards and a methodology for calculating the surcharge

Sections 4(d)(1) and (g) of the Act describe how the Council is to engage the region in developing the power plan, requiring the Council to engage the public extensively in review of the power plan issues and elements. The Act directs the Council (and Bonneville) to insure widespread public involvement in the formulation of the plan and regional power policies, as well as to maintain comprehensive programs to inform the public of major regional power issues and obtain the public's views on the plan and major regional power issues. The Council and Bonneville are also directed to secure advice and consultation from Bonneville's power sales customers and others. The Act also requires the Council and Bonneville, as the Council develops and Bonneville implements the power plan, to encourage the cooperation, participation, and assistance of appropriate federal and state agencies, local governments, and Indian tribes. The Council and Bonneville are also to recognize and not abridge the authorities of state and local governments, electric utility systems, and other non-federal entities responsible for the planning, supply, distribution, operation, and use of electric power and the operation of electricity generating facilities.

What this adds up to is that the Council engages the public and key regional stakeholders for more than two years in an extensive public effort to review the power plan issues, develop a draft revised power plan, review the draft, and then finalize the updated power plan. The Council develops and discusses the substantive power plan issues in public at regularly scheduled monthly meetings of the Power Committee and the full Council during the development of the plan and at additional Power Committee and Council meetings called solely for the purpose of discussing issues related to the power plan. All meetings are open to the public, with substantial public notice and participation. Documents relevant to the power plan are widely available to the public throughout this process. The same is true of the meetings and discussions of the Council's power plan advisory committees, which are groups of technical and policy experts assembled to assist the Council in, among other things, analyzing issues and analytical work prepared in anticipation of the power plan. All meeting agendas and presentations are made available to the public through the Council's website and in other ways.

Once the Council develops and releases a draft revised power plan, the Act requires that the Council hold public hearings on the proposed power plan in each of the four Northwest states. The Council also schedules consultations on the draft plan with key regional entities, many of them specifically called out in the Act for consultation. This includes Bonneville, the Bonneville customers,



other state and federal agencies, the region's Indian tribes, and non-governmental organizations with an interest in the power plan. In releasing the draft power plan and taking and considering public comment, the Council largely follows the notice and comment procedures specified in the federal Administrative Procedures Act. This includes providing for wide public notice of the draft power plan (and major elements of the plan in formulation before the draft), as well as written and oral comments at not just the specially designated public hearings on the draft plan, but also at the Council's regularly-scheduled meetings and through informal consultations throughout the two-year period both leading up to the release of the draft plan and then following its release.

### **The Council's power plan guides Bonneville's new resource acquisition decisions: Northwest Power Act, Sections 4(d)(2) and 6(a) through 6(c)**

In adopting the Northwest Power Act, Congress envisioned that Bonneville, the federal power marketing agency selling at wholesale the electrical power produced by the Federal Columbia River Power System, would also be a major engine for adding new resources to the region's power system as needed. Sections 6(a)(2)(A) and (B) of the Act thus authorize and obligate Bonneville to acquire "sufficient resources" to meet the agency's contractual power sales obligations and to assist the agency in meeting the requirements of section 4(h) of the Act, that is, the fish and wildlife provisions.

Sections 4(d)(2) and 6(a), 6(b), and 6(c) then tie Bonneville's acquisition of new resources for these purposes directly to the Council's power plan by requiring that Bonneville's resource acquisitions, with certain narrow exceptions, be consistent with the Council's power plan. This assures the states and the region, through the Council, have a significant role in guiding Bonneville's resource acquisitions.

Aspects of the Seventh Power Plan and its resource strategy particularly focused on Bonneville are found in Chapter 7 (including the "Bonneville needs" portion of the regional demand forecast); in the resource strategy and action plan items particularly focused on Bonneville (Chapters 3 and 4), and in the chapter that pulls together the disparate elements of the plan into a Bonneville-focused discussion (Chapter 5).

Given the Administrator's obligation to acquire resources consistent with the Council's plan, the Council's regional power plan has obvious effects and influences on power supply decisions made by others in the region. The Act does not impose on other entities the same legal obligations toward the Council's plan as the statute requires of Bonneville, but the fact that Bonneville is the primary wholesale provider and marketer of electric power in the Pacific Northwest necessarily results in the plan affecting the resource decisions of Bonneville's customers as well as investor-owned utilities that purchase power from Bonneville and who may also own and market their own generation. The power plan is also examined by state energy offices as well as regulators responsible for overseeing the activities of various participants in the region's energy industry. Such entities do not owe any legal obligation towards the Council's plan. But they and others recognize that Bonneville does have obligations, and they recognize as well that the Council is the only entity tasked with taking a region-wide perspective to long-range power planning. The result, not surprisingly, is that the Council's power plan has an impact on power planners and regulators that goes beyond the resource acquisition activities of Bonneville. The State of Washington has gone one step further, in that Washington's Energy Independence Act (known as I-937) ties conservation planning in Washington



to the Council's methodology for conservation planning. This is a matter of state law, not of the Northwest Power Act. See Chapter 12 for further discussion of the Energy Independence Act's requirements and their relationship to the Council's power plan.

**The relationship of the Council's fish and wildlife program to the power plan: Northwest Power Act, Sections 4(e)(3)(F), 4(h)**

The last important piece of the statutory background is the first in order of Council action. In Section 4(h) Congress directed the Council, "prior to the development or review of the [power] plan, or any major revision thereto" to adopt a program intended to protect, mitigate, and enhance the fish and wildlife adversely affected by the hydroelectric facilities in the Columbia River basin. In contrast to the power plan provisions of the Act, developing or amending the fish and wildlife program is highly circumscribed.

A fish and wildlife program amendment process must begin by the Council requesting in writing recommendations from the region's state and federal fish and wildlife agencies and Indian tribes for "measures ... to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries" and "objectives for the development and operation of such projects on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife." These recommendations become the raw material from which the Council builds the resulting program measures and objectives. The Council must engage with the fish and wildlife agencies and tribes, the federal agencies operating and regulating the Columbia hydroelectric facilities, Bonneville, Bonneville's utility customers, and the general public to shape the recommendations into program measures, with narrow criteria for rejecting recommendations and while satisfying a set of strict substantive criteria along the way. These include a number of standards that further tie the Council's fish and wildlife program decisionmaking to the recommendations, expertise, and activities of the fish and wildlife agencies and tribes, as well as requirements to use the best available scientific knowledge in the choice of program measures to select the least-cost measures among those that meet the same sound biological objectives. The program the Council adopts must also continue to assure that the region has an adequate, efficient, economical, and reliable power supply.

After the Council adopts its fish and wildlife program, Bonneville has an obligation under Section 4(h)(10)(A) to use its fund and its authorities to protect, mitigate, and enhance fish and wildlife "in a manner consistent with" the Council's fish and wildlife program and power plan and the purposes of the Act. Bonneville and the other federal agencies operating, managing, or regulating Columbia River hydroelectric facilities have a separate obligation under Section 4(h)(11) to exercise their responsibilities taking into account the Council's fish and wildlife program at each stage of relevant decisionmaking processes "to the fullest extent practicable."

Per Section 4(e), the Council's fish and wildlife program also becomes part of the Council's subsequent power plan. Bonneville has an obligation under Sections 4(d) and 6 of the Act to acquire sufficient resources consistent with the Council's power plan to not only meet load but to assist in meeting the fish and wildlife protection and mitigation requirements that emerge from the Council's fish and wildlife program. See Chapter 20 for a further discussion of the integration of the fish and wildlife program – and especially the program's measures for system operations – into the power plan analysis and the plan's resource strategy.

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