

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

FILE: B-203844**DATE:** June 16, 1982**MATTER OF:** Pacific Northwest Electric Power and
Conservation Planning Council

- DIGEST:**
1. Safeguards proposed by Bonneville Power Administration (BPA) certifying officer to govern certification of payments by BPA to Pacific Northwest Electric Power and Conservation Planning Council, pursuant to Public Law 96-501, are adequate to fulfill certifying officer's responsibility under 31 U.S.C. §82c for assuring compliance with requirements of Public Law 96-501. BPA certifying officer is also responsible for assuring that such payments are consistent with any other applicable legal requirements.

 2. GAO may scrutinize funding and functions and responsibilities of Pacific Northwest Electric Power and Conservation Planning Council through its authority to audit BPA's financial payments to Council under Public Law 96-501 and governmental programs and activities under 31 U.S.C. 1154(a) and to obtain access to Council's records. Also, BPA might work out with the Council some procedures short of direct audit to provide additional oversight of Council's use of funds.

This decision to the Secretary of Energy is in response to requests of June 26, 1981, and October 13, 1981, from Mr. Gordon Haynes, Authorized Certifying Officer, Bonneville Power Administration (BPA), for our concurrence with BPA's views on two matters involving the relationship between BPA and the Pacific Northwest Electric Power and Conservation Planning Council (Council). First, the Certifying Officer requests our agreement that certain safeguards which he proposes to apply in certifying payments from BPA funds to the

Council are adequate to satisfy his responsibility as a certifying officer under 31 U.S.C. §82c. 1.

Second, we are asked to concur with the view of the BPA General Counsel that GAO's audit authority over the Council represents the exclusive Federal audit authority with respect to the Council, so as to preclude any audit by BPA.

For the reasons stated hereafter, we agree that the safeguards proposed by the certifying officer are generally adequate to carry out his responsibilities. We also conclude that BPA lacks authority to audit the Council. In our view, GAO may scrutinize the funding and functions and responsibilities of the Council through its authority to audit BPA's financial payments to the Council and governmental programs and activities and to obtain access to the Council's records. We suggest certain steps that BPA might take, short of a direct audit, to enhance oversight of the Council's use of funds.

I.

The Council, a non-Federal regional body, was established by the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501 (December 5, 1980), 94 Stat. 2697, to be codified at 16 U.S.C. §839 et seq. Section 4(c)(10)(A) of Public Law 96-501, to be codified at 16 U.S.C. §839b(c)(10)(A), provides for payments by BPA to fund the Council's activities; imposes certain requirements for such payments; and provides for GAO audits

1/ Under 31 U.S.C. §82d, we are required to render decisions to certifying officers "* * * on any question of law involved in a payment on any vouchers presented to them for certification." In this case, no voucher accompanied the request for decision and the question presented is general in nature. Normally we would not render a decision under such circumstances. However, in view of the fact that the question presented raises problems of a recurring nature throughout the life of the Council, we are rendering our decision to the Secretary of Energy under the broad authority contained in 31 U.S.C. §74.

of BPA payments to the Council. 2/ Among other things, section 4(c)(10)(A) requires that BPA pay the compensation and other expenses of the Council authorized by the Act "as the Council determines are necessary or appropriate for the performance for its functions and responsibilities."

2/ Section 4(c)(10)(A) provides in relevant part:

"At the request of the Council, the Administrator [of BPA] shall pay from funds available to the Administrator the compensation and other expenses of the Council as are authorized by this Act * * * as the Council determines are necessary or appropriate for the performance of its functions and responsibilities. Such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act and shall be subject to the requirements of that Act, including the audit requirements of section 11(d) of such Act. The records, reports, and other documents of the Council shall be available to the Comptroller General for review in connection with such audit or other review and examination by the Comptroller General pursuant to other provisions of law applicable to the Comptroller General. Funds provided by the Administrator for such payments shall not exceed annually any amount equal to 0.02 mill multiplied by the kilowatt hours of firm power forecast to be sold by the Administrator during the year to be funded. In order to assist the Council's initial organization, the Administrator after the enactment of this Act shall promptly prepare and propose an amended annual budget to expedite payment for Council activities."

Section 4(c)(10)(A) also establishes that BPA's annual budget submissions to Congress, required by the Federal Columbia River Transmission Act, 16 U.S.C. §838 et seq., must include payments to the Council. Under the Transmission Act, BPA can only spend money out of the BPA fund for necessary or appropriate activities which are included in its annual budget submission to Congress. See 16 U.S.C. §838i(b). However, Congress may include specific instructions or limitations affecting the BPA fund in appropriation acts.

BPA and the Council entered into an agreement on May 8, 1981, establishing procedures for BPA to pay the Council's necessary and appropriate expenses, including compensation. Section 8 of the agreement provides that BPA will advance to the Council enough funds to meet Council expenses for 30 days. 3/ Subsequently, the Council's revolving working capital account will be replenished through reimbursement for expenses actually incurred. Such payments will be made no more frequently than every 2 weeks, but at least once a month. To obtain payment, the Council is required to submit "a Financial Summary Statement (Statement) certified by the Council's certifying officer that its expenditures have been documented and made in accordance with applicable Federal laws."

To obtain reimbursement from BPA, the Council has been using on an interim basis Office of Management and Budget (OMB) Standard Form 270 (7-76), "Request for Advance or Reimbursement." BPA proposes to add the following certification language to OMB Form 270 or any subsequent statement:

"I [the Council's Certifying Officer] certify that (1) funds are for expenditures authorized by the Regional Act, (2) funds are necessary or appropriate to perform the functions and responsibilities of the Regional Planning Council pursuant to the Regional Act, and (3) funds

3/ Under the agreement, this initial disbursement of funds was conditioned upon the Council's certifying in writing that the Council had provided for "an adequate accounting system to facilitate audit of its finances." We understand that the Council has so certified in a letter to BPA.

are for expenditures that have been included in the Administrator's budget submittal to Congress."

The Council would also attach to OMB Form 270 or any subsequent statement an itemization of expenditures for which funds have been requested. The itemization would be in sufficient detail to allow BPA's Certifying Officer to compare each item with the Council's prior budget submission to BPA and to determine whether each such expenditure is authorized by the Act.

According to Mr. Haynes' October 13 letter, BPA's Certifying Officer would certify the statement for payment if he is satisfied that (1) the statement represents the Council's determination that the expenditures are necessary or appropriate for it to perform its functions pursuant to the Act; (2) each expenditure is authorized by the Act; ^{4/} and (3) each expenditure has been included by the Administrator in his budget submission to Congress under the Transmission Act.

BPA also will request the Council to submit its advance budget showing proposed expenditures according to specific categories. The Council is required under the agreement to certify that such expenditures are necessary and appropriate for performance of its functions and responsibilities under the Act. The advance budget is submitted by July 1 of each year for the fiscal year beginning 15 months later.

A certifying officer is responsible for both the accuracy of the facts contained in the papers submitted to him and the legality of the proposed payments. Specifically, section 82c of title 31, United States Code, provides:

^{4/} We assume that in determining whether an expenditure is authorized, the Certifying Officer will make sure that BPA has not exceeded the funding limitation in the Act, which is based on a mill-rate formula. Section 4(c)(10)(A), quoted previously, provided that BPA funding for the Council is restricted to an amount equal to 0.02 mill, multiplied by a stated formula. (However, this limitation may be raised to 0.10 mill upon an annual showing that the Council cannot carry out its functions and responsibilities at the lower level. See section 4(c)(10)(B).)

"The officer or employee certifying a voucher shall (1) be held responsible for the existence and correctness of the facts recited in the certificate or otherwise stated on the voucher or its supporting papers and for the legality of the proposed payment under the appropriation of fund involved; and (2) be held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved
* * *."

We agree that the safeguards proposed by the BPA Certifying Officer and set out in BPA's agreement with the Council, as described previously, are adequate to fulfill his responsibilities in applying the requirements of Public Law 96-501. In addition, the BPA Certifying Officer is responsible for applying any requirements from sources other than Public Law 96-501 that might affect the legality of BPA payments to the Council. For example, the Congress could enact subsequent legislation having some bearing on BPA funding of certain Council activities.

In sum, so long as the BPA Certifying Officer follows his proposed procedures for assuring compliance with the requirements with Public Law 96-501, and takes reasonable steps to ascertain any other applicable legal requirements, he will have satisfied his responsibilities under 31 U.S.C. §82c.

II.

The BPA Certifying Officer also requested our concurrence with the opinion of BPA's General Counsel that Public Law 96-501 vests Federal audit responsibility for the Council in GAO exclusively, thereby precluding any audit of the Council by BPA.

Section 4(c)(10)(A) of Public Law 96-501 extends GAO's audit authority to the payments BPA makes to the Council:

"* * * Such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act and shall be subject to the requirements of that Act, including the audit requirements of section 11(d) of the Act. The records, reports, and other documents of the Council shall be available to the Comptroller General for review in connection with such audit or other review and examination by the Comptroller General pursuant to other provisions of law applicable to the Comptroller General."

Section 11(d) of the Transmission Act, 16 U.S.C. §8381(d), specifically provides:

"Notwithstanding the provisions of sections 850 and 851 of Title 31, the financial transactions of the Administrator shall be audited by the Comptroller General at such times and to such extent as the Comptroller General deems necessary, and reports of the results of each such audit shall be made to the Congress within 6-1/2 months following the end of the fiscal year covered by the audit." 5/

Section 4(c)(10)(A) specifically authorizes GAO to audit BPA's payments to the Council, which are considered BPA financial transactions under the Transmission Act.

5/ Sections 850 and 851 of title 31 set out the requirements for audits of wholly-owned Government corporations, to which BPA is subject. The reference to these sections was designed to remove the requirement that GAO perform an audit of BPA at set intervals.

Also, Public Law 96-501 grants GAO access to the Council's records in connection with our audit of BPA's payments to the Council and our audit authorities under other statutes. 6/ Under 31 U.S.C. 1154(a), GAO "shall review and evaluate governmental programs and activities under existing law."

We believe that these audit and access to records provisions, taken together, enable GAO to scrutinize the funding and functions and responsibilities of the Council in a manner similar to our review of the funding and operations of Federal agencies. 7/ GAO's audit of BPA's payments to the Council may review whether, in fact, BPA's funds were used to pay for Council expenses which are authorized under Public Law 96-501 and are necessary and appropriate for the Council to perform its statutory functions and responsibilities. Under 31 U.S.C. 1154(a), GAO may examine how the Council is carrying out these functions and responsibilities. 8/ GAO has access to the Council's records for the purpose of these audits.

6/ This statutory language would permit GAO to examine these records whether they are in the possession of the Council or BPA.

7/ Our view of GAO's scrutiny of the Council's actions is consistent with the statement of Congressman Dingell, November 17, 1980, on the floor of the House as the legislation was being considered. Congressman Dingell stated:

"The Council's funding and expenses, as well as all functions of the Council, will be subject to scrutiny by the General Accounting Office. GAO review is not intended to be limited to just funding matters but to all of the operations of the Council in the same manner and to the same extent as the GAO reviews operations of Federal agencies." Cong. Rec. for November 17, 1980 (daily ed.) at H10682.

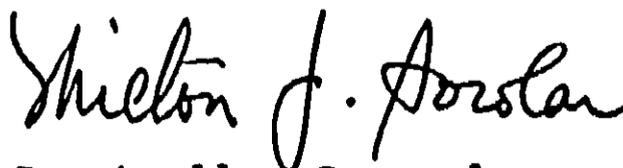
8/ Although the Council is not a Federal agency, it was established, assured of funding and assigned specific functions and responsibilities under Public Law 96-501. It undertakes and helps carry out governmental programs and activities established by Public Law 96-501.

On the other hand, Public Law 96-501 makes no mention of BPA having audit responsibility for the Council, nor does it provide BPA with authority to obtain the Council's records and documents. It establishes the Council as an agency independent of BPA which monitors BPA in some respects and can affect certain BPA activities. The language in section 4(c)(10)(A) of Public Law 96-501, discussed previously, which vests in the Council--rather than BPA--determination of the appropriateness of its expenditures, further supports the view that the Council is to be largely independent of BPA.

Since Public Law 96-501 does not specifically grant BPA authority to audit the Council or to obtain its records, and since the statute reflects a general intent to make the Council independent of BPA, we agree that BPA lacks authority to audit the Council. At the same time, we believe it would not be inappropriate for BPA to work out with the Council procedures for exercising some oversight over the Council's use of its funds short of performing direct audits. For example:

1. BPA could be consulted in the selection of the outside auditor for each year's audit required under the Council's by-laws.
2. BPA could make recommendations to the Council that the annual independent outside audit include a detailed review and examination of certain activities.
3. BPA could request the Council, after reviewing an annual audit, to have the independent auditor provide additional information to both the Council and BPA with respect to certain activities.

We believe that implementation of procedures along the above lines by BPA and the Council could balance the need for a limited oversight and the need to maintain the Council's independence from BPA.

for 
Comptroller General
of the United States