Hydropower Licensing and Relicensing Regulation
March 2001

Summary: Hydropower is the nation's leading renewable energy resource. In addition to providing emission-free, reliable and domestic-based energy, hydropower contributes non-power benefits such as recreation, irrigation, flood control and water supply. Despite these numerous benefits, hydropower is at risk today due to the existing regulatory scheme for licensing and relicensing projects. Unless Congress and the federal agencies reexamine their policies toward this important energy resource, hydropower will not fare well in a restructured electricity industry designed to promote greater competition. Loss of hydropower generation would deprive the country and electricity consumers of a low-cost energy source and numerous other environmental and other non-power benefits associated with these projects.

Facts and Benefits of Hydropower: Hydropower represents approximately 12 percent of the energy produced in the U.S. and 85 percent of all renewable energy generation. Among its many uses and benefits, hydropower, and the multipurpose water projects that depend on this resource, provide clean, efficient and renewable electric power, operational flexibility for maintenance of system reliability, drinking water, flood control, fish and wildlife habitat improvement, irrigation support, transportation, recreation and environmental enhancement funding. Also, due to its unique load-following capability, peaking capacity and voltage stability attributes, hydropower can provide unparalleled reliable service in a market driven industry.

Background: By the year 2015, over half of all federally regulated hydroelectric capacity – 284 projects in 39 states – will be up before the Federal Energy Regulatory Commission (FERC) for license renewals. This group, which includes many large and complex projects, has a combined capacity of approximately 29,000 MW, or 20 percent of the nation's installed hydroelectric capacity. By the year 2010, 16,000 MW of publicly-owned hydro capacity will be up for license renewal. This represents nearly 50 percent of all hydro capacity subject to the relicensing renewal process.

The regulatory process involves input not only from FERC and a variety of interest groups but also from numerous federal and state natural resource agencies concerned with environmental protection. Under this scheme, federal and state agencies take full advantage of their statutory authorities to impose conditions on hydropower project licenses, frequently without regard for project economics. In one recent case, a hydropower owner has been given the choice of operating at an economic loss or shutting down the project.
Overall, the concern with the present regulatory structure involves the loss of hydropower capacity. Studies are showing that there will be an average 8 percent loss of hydropower generation per project resulting from new conditions imposed on existing projects up for relicensing in the next 20 years. At this rate, nearly 2,400 MW of total hydro capacity may be lost. In the 2000 edition of its annual Energy Outlook report, the Energy Information Administration – the Department of Energy's statistical agency – for the first time projects that hydropower generation will decline through 2020, “as regulatory actions limit capacity at existing sites.”

The relicensing process has brought into focus the costs and conflicts of this process at a time when the electric utility industry at both the wholesale and retail levels is experiencing increased competition. Utilities are under increasing pressure to lower prices or risk losing customers. The ability of hydro licensees to pass to their customers ever-increasing costs of environmental compliance will be limited by the market. These increasing costs threaten to significantly reduce hydropower's economic viability.

**Congressional and Regulatory Action:** The hydropower industry brought focus to the problems of relicensing and licensing process in 1996 by formally petitioning the FERC to reform its procedures. Specifically, the industry recommended changes to streamline the decision-making process and to require condition-setting recommendations to occur early in the application timeline. FERC rejected most of the recommendations and opted, instead, for modest reform aimed at encouraging voluntary settlements instead of litigation. While FERC agreed that every effort should be made to lessen the burden of such proceedings on the participants, the Commission indicated that it lacked statutory authority to go much beyond the changes it did make.

During the last two years, Senate and House energy panels sponsored oversight hearings on FERC's hydropower licensing and relicensing process. Testimony was taken from hydropower industry representatives, including public power, FERC, federal agencies, and environmental groups. When former FERC Chair James Hoecker testified before the Senate during the 105th Congress he said legislative action is necessary to reform the licensing process. This examination of the issue resulted in the introduction of legislation sponsored by Senator Larry Craig (R-ID) and Representative Eldophus Towns (D-NY), the "Hydroelectric Licensing Process Improvement Act of 1999."

Reintroduced this year as S. 71, Sen. Craig proposes amending the Federal Power Act by requiring the FERC to set a date certain of no more than one year for intra-agency review, thus limiting the amount of time federal agencies have to intervene in the relicensing process. Importantly, the proposal would not directly remove the conditioning power from the various agencies; however, it would impose a greater degree of responsibility and accountability on these agencies by ensuring that they consider various factors before imposing mandatory conditions on a licensee.

The need to reform the hydro licensing process is generating broad support especially in light of the energy supply problems in the West. In seeking a solution to the crisis in the West, decision-makers must come to terms with the need to preserve existing capacity. Unless licensing reform is enacted, the Western region's 25,000 MW of non-federal hydro capacity will continue to decline as a result of a broken regulatory process. Licensing process improvements are needed. Industry is not alone in advocating reform, a large number of
non-industry interests have joined together as WaterPower: The Clean Energy Coalition to support the call for congressional action to improve the hydro licensing process. The coalition consists of 500 hydro producers and suppliers, municipalities, businesses and environmental, consumer, labor, recreational, and farming groups from nearly every state.

APPA Position: APPA supports legislative and regulatory changes to improve and clarify FERC's ability to make balanced and rational licensing decisions, such as those contained in S. 71. These decisions should ensure that low cost, renewable hydropower resources continue to operate in an environmentally friendly manner. Among the reforms needed to federal hydropower regulation are changes that would: make the process more certain, consistent, and less time-consuming; evaluate the value of project economics; require the involvement of appropriate decision-makers of all affected parties early in the process; commit resources to the protection of the environment; and eliminate duplicative overlapping jurisdictions. In addition, as the federal government pursues the restructuring of the electricity industry, excessive regulatory impediments to hydropower's competitive position in the new market that cannot be addressed administratively should be evaluated and resolved by federal legislation.
Facilitating Distributed Resources Through Federal Interconnection Policies
March 2001

Summary: There is wide recognition that distributed resources, typically small generation units located close to the load they serve, offer a variety of benefits for consumers, communities, the environment, and utilities. As a result, multiple efforts are underway to develop new distributed generation technologies, enhance existing technologies, and address various technical and policy issues that may be hindering the deployment of distributed resources. Congress has taken an active interest in this issue and several industry restructuring proposals have included provisions to give the Federal Energy Regulatory Commission (FERC) additional authority to order interconnection of distributed resources to transmission and distribution facilities using a uniform technical standard. Public power supports efforts to promote greater use of distributed resources so long as those efforts respect local authority and recognize the diverse characteristics of local electric systems.

Background: The market prospects for distributed resources have grown substantially in recent years for several reasons: 1) generating reserve levels are declining and load shedding and rolling brownouts are becoming more common; 2) transmission constraints and line load relief events are also increasingly frequent occurrences; 3) new transmission is more difficult to site and build than new generation; 4) recent price spikes call into question the predictability of cost and availability; and 5) polls show that local reliability and service rank equal with, and often above, price regarding what customers want and expect. All of these facts and more are pushing the market to provide new power supply options and creating the incentive to pursue them. Distributed resources can help meet the needs that exist in the electricity industry today, and provide many benefits to municipal utilities, electricity consumers and their communities throughout the country.

First, these facilities can make significant contributions to system reliability. Public power systems not only have sensitive customers -- hospitals, city water services and others -- for whom reliability is essential, but also customers that cannot withstand even the shortest disruption in service. Some computer networks cannot withstand disruptions longer than eight-thousandths of a second. Enhanced reliability to protect the health, safety and economic prosperity of the communities they serve is now or will soon drive publicly owned utilities to rely increasingly on distributed generation.
Moreover, distributed resources help to promote important environmental objectives by enabling utilities to increase their use of new renewable and low-or no-emission generation to meet their communities' needs. Finally, distributed resources enhance local control and decision making by reducing our dependence on external sources of power supply, allowing for increased reliance on fuel sources that are available locally, thus providing benefits to local economies.

Along with all of the benefits, distributed resources offers come challenges and practical problems that must be considered. With a multitude of distributed generation facilities connected to the grid, smaller generators connected at distribution voltage, existing hazards of routine line maintenance, and emergency services restoration activities have to be taken into account. Power quality is another important factor. Federal policies governing interconnection of distributed resources must provide municipal utilities with the ability to exercise their discretion to account for such matters with local impacts.

**APPA Position:** APPA supports increased use of distributed resources and efforts at the federal level to promote such use. To that end, Congress should adopt transmission and distribution interconnection policies that provide FERC the authority to order the use of standardized technical interconnections. At the same time, Congress must preserve local authority to require any additional measures necessary for system reliability, safety, or other factors deemed to be in the public interest.

Congress should also adopt competitively neutral policies that promote the safe and cost-effective commercial deployment of distributed generation technologies, including smaller generators connected at distribution voltages. Such policies should be adopted in order to increase generation capacity in applications where they alleviate transmission constraints, improve air quality and protect the environment, and enhance reliability while maintaining safe working practices.
Issue Brief

Congress Must Act to Solve the Wholesale Electricity Market Crisis
March 2001

Summary: The failure of California’s electricity industry restructuring plan has made clear the important role that wholesale markets have in determining the effectiveness of the retail competition plans enacted by the states. For several years, consumer organizations have emphasized that state objectives for retail competition will only succeed if supported by a workable wholesale marketplace. While many factors have contributed to the rolling blackouts and high prices in California’s electricity market, it is apparent that improvements in the structure of the interstate electricity marketplace would go a long way toward helping to avoid such problems in the future. In fact, other state restructuring plans are likely to cause the same problems in other regions of the country if they are advanced without Congress first addressing the serious problems that exist in the wholesale marketplace. What is happening in California is not simply just that state’s problem. Consumers throughout the West are directly affected, and there will be ripple effects throughout the economy. Regardless of its origin or cause, the solution requires federal legislative and regulatory action to address shortcomings of the wholesale market.

In the end, Congress must act to finish the job it started in 1992 when it enacted the Energy Policy Act to create competitive wholesale markets. Necessary improvements include policies designed to: 1) create truly independent Regional Transmission Organizations (RTOs); 2) allow for federal siting authority to encourage construction of new transmission facilities where needed; 3) provide the necessary authority and support for rigorous Federal Energy Regulatory Commission (FERC) oversight of the wholesale market to prevent market abuses; and 4) assure FERC approval of market rates for wholesale sales only in markets that can be defined as competitive, requiring only cost-based rates in those that are not. Moreover, in light of market conditions today that are very similar to those that led to the enactment of the Public Utility Holding Company Act (PUHCA) over 65 years ago, stand-alone PUHCA repeal should not be enacted absent the development of new consumer protections in its place.

Development of Truly Neutral Regional Transmission Organizations: The lack of effective Regional Transmission Organizations that can ensure truly neutral management of the nations’ transmission facilities is the single biggest obstacle to a properly functioning interstate electricity market. Private utilities that control vast amounts of the nation’s transmission systems have a long history of denying access to their systems, or providing access at highly discriminatory rates and unfair terms. It is vitally important that federal policies encourage the development of independent RTOs.

The American Public Power Association is the national service organization representing the nation’s more than 2,000 local publicly owned electric utilities.
Despite actions to open up the nation’s transmission grid and produce a competitive bulk power market, such as passage of the Energy Policy Act of 1992 and the issuance of FERC Orders 888 and 889, private transmission owners continue to operate essential transmission facilities in ways designed to prevent competition. They are able to exercise control over these facilities to favor their own generation resources, thereby blocking competitors and sometimes forcing bulk power purchasers, including consumer-owned utilities, to purchase power at a higher cost.

In an effort to remedy these problems, FERC issued Order 2000 to encourage all transmission owners to participate in RTOs. In the order, FERC acknowledges it has authority to mandate participation in RTOs for jurisdictional utilities, but chooses to pursue a voluntary industry and stakeholder-led approach to the development of such organizations. Order 2000 outlines minimum standards and functions for critical RTO elements such as independence, geographical scope, and operations, and requested that utilities submit applications for RTOs before October 15, 2000. Those applications are currently under review by the Commission.

Order 2000, issued in December 1999, represents a very important step toward preventing transmission market power abuses and establishing effective interstate wholesale competition. Congress should do nothing to reverse or undermine the RTO framework established by FERC in Order 2000 or its underlying authority to pursue such a course of action.

In addition to addressing the need for neutral management of existing transmission lines, federal policies must account for the need for the construction of new transmission facilities to allow for a transition to effective competition. Construction of new much-needed transmission facilities must be aided by the creation of federal authority of eminent domain where necessary. Federal siting authority is necessary to encourage construction of new power lines to accommodate growth in the industry and address barriers to competition created by existing transmission constraints.

**FERC Has an Important Role to Play in Creating Effective Markets:** Many of the market problems in California can be attributed to policymakers both at the state and federal level assuming that market forces alone would be sufficient to forge competition out of an industry structure that had been monopolistic in nature since inception. Consumers have paid the price for the consequences of premature decisions by federal regulators to allow a transition to market-based rates without first requiring the existence of a competitive market structure. The California experience makes clear that FERC should permit wholesale sales at market rates only in regional markets that meet predetermined criteria that define the characteristics of workable competitive wholesale markets. Only cost-based rates should be allowed in those markets that do not meet that definition.

Moreover, as a transition toward competitive markets occurs, FERC must play an active role in relying on existing authority to monitor wholesale electricity markets to prevent and correct market abuses such as those that are subject to investigation in California. Specifically, FERC must be directed to monitor the wholesale market, given the resources necessary to do so and the responsibility and the authority to provide remedies and impose penalties as appropriate.
Such changes in federal policies are necessary to maintain adequate consumer protection and will not create an entirely new regulatory regime or increase the size of the federal government. They instead implement an alternative, clarified and limited type of federal oversight that can address the problems that clearly exist in interstate markets today, and allow for an effective transition to a competitive marketplace. That is the appropriate federal role and should be the ultimate focus of federal legislation.

Stand-alone PUHCA Repeal: The Public Utility Holding Company Act (PUHCA) established passive restraints on the structure of the electric utility (and natural gas) industry in order to mitigate the accumulation and exercise of market power; preclude practices abusive to consumers, shareholders and competitors; and facilitate effective regulation. Many of the fundamental protections included in PUHCA are relevant to the changing structure of the industry today and must be preserved in some fashion.

In fact, there are numerous parallels that can be drawn between the market conditions that existed in 1935 that led to the enactment of PUHCA – and the market conditions that exist today that highlight its continued importance. Now, as then, there are dramatic corporate reorganizations underway. As in 1935, there are trends toward the formation of many new holding companies. For example, the number of registered holding companies has expanded from 14 to 30 in the last eight years. In fact, during that time, both the number of registered holding companies and the number of electricity customers served by registered holding company subsidiaries more than doubled. Secondly, as then, there has been a proliferation of new company affiliates and subsidiaries that complicate the abilities of regulators to oversee transactions, and create increased opportunities for market abuses. The 150 registered and unregistered holding companies today have a combined total of 240 utility subsidiaries, and 4,200 non-utility subsidiaries.

The increased emphasis on the creation of new subsidiaries and affiliates of private utilities is leading to a dramatic shifting of funds between regulated and unregulated activities that is sure to create substantial new costs for American consumers. A clear example of such problems can be seen in recent actions taken by Pacific Gas and Electric Company and Southern California Edison in California to shift billions of dollars in revenues to their parent companies for payout to shareholders while they are simultaneously calling for a bailout from the electricity customers and the state government to avoid bankruptcy.

Yet another parallel between the markets that gave rise to PUHCA and today's industry conditions is the ongoing rapid consolidation of the marketplace as evidenced by 54 mergers completed or announced during the past two years alone - in addition to 24 mergers of U.S. utilities with foreign companies over that same period of time. This consolidation limits the number of potential competitors, and requires additional oversight to prevent market power abuses that put consumers at risk.

Stand-alone repeal of PUHCA will unleash vast multi-state holding companies from public accountability before the structure of a competitive market is developed. It will enable these existing monopolies to garner even greater amounts of market power through mergers and widespread diversification, and escape effective regulatory oversight. Stand-alone PUHCA repeal will only further consolidate control in the hands of a small number of existing monopolists, undermine wholesale and retail competition, and leave consumers at risk of severe market power abuses.
Merger Review: Rapid consolidation due to mergers only increases the difficulty of creating new competitive markets, as we are starting from a point where the nation's regional electricity markets are already characterized by a highly concentrated monopoly industry structure. Given the existing levels of concentration, coupled with the rapid pace of mergers today, it is important that FERC's merger review process lead to an approval of only those mergers shown to promote competition and bring net savings and benefits to consumers.

Congressional Action: With the inception of the 107th Congress, House and Senate policymakers have begun to focus on the development of national energy supply legislation designed to increase domestic production of energy resources. At this writing, it is largely unclear whether Congress will also attempt to address industry restructuring matters as part of this debate. The first step in this regard is not encouraging – Senate Energy and Natural Resources Committee Chairman Frank Murkowski (R-AK) has introduced a comprehensive energy supply measure that includes stand-alone PUHCA repeal, but omits the consumer protections that must be enacted in its place. A new freestanding PUHCA repeal bill (S. 206) has also been introduced by Senator Richard Shelby (R-AL), and is expected to be considered by the Senate Banking Committee early this Congress. The Chairman of the Senate Banking Committee, Senator Phil Gramm (R-TX), continues to oppose enactment of PUHCA repeal outside of a more comprehensive industry restructuring package.

Since the 107th Congress convened, both the House and Senate have held hearings regarding the California energy crisis which have provided opportunities for public power testimony regarding the need for federal action to address problems in the wholesale marketplace. With regard to the California markets, and potential abuses that have occurred there, APPA supports legislation (S. 287) that has been introduced by Senator Dianne Feinstein (D-CA) calling on FERC to impose cost-based rates in the Western energy market on an interim basis. A hearing on this and other related bills was held in the Senate Energy and Natural Resources Committee on March 15, 2001.

APPA Position: The essential purpose of federal restructuring legislation should be to establish a structure for interstate commerce in electricity that promotes effective wholesale competition. Truly effective wholesale competition benefits every consumer in America and, without it, consumers that live in states adopting retail competition will not see the full benefits of customer choice.

Thus, federal legislation should:

1. Support and enhance FERC's Order 2000 regarding establishment of RTOs.
2. Allow for federal siting authority for the construction of new transmission facilities necessary for effective competition.
3. Assure a strong role for FERC to serve as a market monitor to prevent market abuses and ensure a transition to market-based rates only where a competitive market is known to exist. Toward this end, APPA supports pending Senate legislation calling on FERC to impose cost-based rates in the Western energy market on an interim basis.
4. Modify or repeal PUHCA only if combined with alternative consumer protections.
5. Require that federal merger review include consideration of the effect on consumers and competition.
Transmission Policies Needed to Promote Wholesale Competition in the Electricity Industry
March 2001

Summary: Competition in the electricity industry will not develop unless the nation's transmission facilities are managed in a truly neutral and independent manner. Toward that end, federal restructuring legislation must ensure that the nation's transmission facilities cannot be manipulated to give one competitor an unfair advantage over another. Achieving this end will require federal legislation that assures the development of competitively neutral and broad Regional Transmission Organizations (RTOs), and assures comparability in the rates, terms, and conditions and rates for transmission to prevent transmission market power abuse. APPA believes that new selective Federal Energy Regulatory Commission (FERC) review authority over public power transmission rates also is necessary to achieve this objective.

Regional Transmission Organizations Must be Independent and Broad in Scope: The lack of effective RTOs that can ensure truly neutral management of the nation's transmission facilities is the single biggest obstacle to a properly functioning interstate electricity market. Private utilities that control vast amounts of the nation's transmission systems have a long documented history of denying access to their systems, or providing access at highly discriminatory rates and unfair terms. It is vitally important that federal policies encourage the development of independent RTOs.

Despite actions to open up the nation's transmission grid and produce a competitive bulk power market, such as passage of the Energy Policy Act of 1992 and the issuance of FERC Orders 888 and 889, private transmission owners continue to operate essential transmission facilities in ways designed to prevent competition. They are able to exercise control over these facilities to favor their own generation resources, thereby blocking competitors and sometimes forcing bulk power purchasers, including consumer-owned utilities, to purchase power at a higher cost.

In an effort to remedy these problems, FERC issued Order 2000 to encourage all transmission owners to participate in RTOs. In that order, FERC acknowledges it has authority to mandate participation in RTOs for currently jurisdictional utilities, but chooses to pursue a voluntary industry and stakeholder-led approach to the development of such organizations. Order 2000 outlines minimum standards and functions for critical RTO elements such as independence, geographical scope, and configuration, and requested that utilities submit applications for RTOs by October 15, 2000. Those applications are currently under review by the Commission.
Order 2000, issued in December 1999, represents a very important step toward preventing transmission market power abuses and establishing effective interstate wholesale competition. Congress should do nothing to reverse or undermine the RTO framework established by FERC in Order 2000 or its underlying authority to pursue such a course of action.

FERC RTO Authority Must Preserve Local Control and Account for the Unique Characteristics of Public Power Systems: Public power systems are owned and managed by their citizens at the local level, and are for that reason expressly exempt from FERC jurisdiction. Cooperatively-owned utilities with outstanding Rural Utility Service loans also are not under FERC jurisdiction. In addition, federal power systems are not subject to FERC jurisdiction over their transmission facilities. Public power systems recognize that RTOs serve as the underpinning of effective wholesale competition, and it is clear most of them will join RTOs on a voluntary basis – just as public power systems have voluntarily complied with the open access requirements of Order 888 by filing tariffs with the Commission.

As noted above, it is the private FERC-jurisdictional utilities, however, that have a demonstrated history of transmission market power abuses that must be addressed before effective wholesale competition is possible. Unfortunately, the proposed RTO filings by these utilities that were required under Order 2000 fall far short of what is needed to achieve this goal. It is clear that further action by Congress and FERC is necessary to bring about RTOs that are truly independent and broad enough in scope to support competition.

Legislative proposals that address RTOs and call for extended FERC jurisdiction over public power systems in this regard will be unworkable unless the distinct characteristics of the public sector of the industry are taken into account. Specifically, there are key differences between investor-owned utilities and public power systems that warrant distinctions in regulation. FERC does not regulate public power’s rates today because public power systems (unlike investor-owned utilities that are operated to maximize returns to stockholders) are nonprofit public entities whose rates have been set by public officials for over 110 years. As community-owned systems, public power utilities are already subject to extensive public accountability requirements and sunshine laws at the local level that do not apply to investor-owned utilities. In addition, public power systems, unlike investor-owned utilities, are financed by bonds containing covenants regarding various debt to equity ratios and revenue requirements. Issuers of those bonds are responsible for the enforcement of these covenants. FERC jurisdiction over rates would undermine this responsibility.

The electricity industry restructuring bill approved by the House Subcommittee on Energy and Power during the 106th Congress included provisions that accounted for these differences by carving out new limited FERC authority to ensure that public power systems’ transmission rates are comparable and not unduly discriminatory or preferential while preserving local control of the transmission rate-setting. The proposed extension of FERC authority over public power systems to allow for a review of the rates, terms and conditions under which transmission services are provided, while creating a process where FERC can review public power transmission rates and remand those that are not approved back to the utility for revision, is referred to as “FERC-lite”. Given the differences among private utilities and the other sectors of the industry, an extension of FERC authority over public power transmission systems – or those of cooperative and federal utilities as well – would be warranted only if FERC is allowed to compel RTO participation by a non-jurisdictional utility based upon a finding that the local utility has engaged in undue discrimination in the provision of
transmission service, or abused its control over transmission so as to disadvantage competitors, and open access transmission tariffs in place are not likely to remedy the problem. Such orders must accommodate and take into account tax code restrictions and/or bond covenants.

Congressional Action: Transmission-related issues are now recognized as critical components of comprehensive electricity restructuring legislation, and there is broad support among a number of industry stakeholders for the creation of effective Regional Transmission Organizations, FERC jurisdiction over all transmission facilities and FERC-lite. At this writing, comprehensive restructuring legislation that incorporates such proposals has not yet been introduced in the 107th Congress. However, transmission-related matters could be addressed as House and Senate Energy Committees proceed with their consideration of energy supply policy.

APPA Position: Concentration of control over transmission assets presents opportunities for dominant players in the electric utility industry to undermine competition through the exercise of market power. Congress must prevent transmission market power abuses by enacting policies to:

1) Support and enhance FERC's Order 2000 regarding establishment of truly independent and geographically broad RTOs by jurisdictional utilities.

2) Ensure FERC authority to order RTO participation by a non-jurisdictional utility only after a finding that the utility has engaged in undue discrimination in the provision of transmission service, or abused its control over transmission so as to disadvantage competitors, and existing open access transmission tariffs are not likely to remedy the problem. In the case of public power, such orders must accommodate and take into account tax code restrictions and/or bond covenants.
Letter to
Vice President
Cheney
December 21, 2000

The Honorable Richard Cheney
Vice-President Elect
Bush-Cheney Transition
1800 G Street, NW 2nd Floor
Washington, D.C. 20270

Dear Vice-President Elect Cheney:

On behalf of the American Public Power Association, APPA, I write to offer our assistance to you, President-Elect Bush and the transition team as you work through policy and personnel decisions related to national energy policy and environmental issues. APPA represents the interests of the nation’s over 2,000 state and municipal, locally-owned and locally-controlled, not-for-profit electric utilities that provide for the electric power needs of nearly 45 million Americans. While several of our members are located in some of the largest cities in the country, such as the Los Angeles Department of Water and Power, the Sacramento Municipal Utility District, and City Public Service of San Antonio, most APPA member utilities are in small to medium-sized towns in all regions of the country.

Public power utilities serve roughly fifteen percent of the nation’s electricity consumers, are community-focused, and provide valuable balance to the private sector in the increasingly competitive electric utility marketplace. It is not an accident that customers served by our member utilities in California are faring relatively well in comparison to those served by private power companies. Their success is due in large part to their continued commitment to their communities and customers and to prudent decision-making in a restructured environment.

We share many of the energy policy objectives President-Elect Bush articulated during the campaign. Chief among these are developing a balanced national energy policy, integrating energy issues with environmental concerns, supporting the development of clean coal technologies, storage of nuclear waste and hydropower license reform. APPA also has a well-developed set of policies regarding electricity restructuring legislation. The Congress and the Administration must focus on creating a more competitive market for wholesale sales of electricity, protecting consumers from wildly fluctuating prices throughout the transition, establishing mandatory reliability enforcement standards, ensuring fair, equitable and non-discriminatory access to transmission, guarding against the undue concentration of control over power generation and transmission facilities, and addressing forcefully market manipulation and abuse of market power.

APPA has been and will remain actively engaged in a constructive effort to restructure the nation’s electric utility industry. There are many experienced and knowledgeable energy professionals in the public power arena that could serve and assist in your transition.
efforts, as well as in the future Administration. Please do not hesitate to have anyone in
the transition operation contact me at 202-467-2901, if I can answer any questions or
provide additional information about our arena of the electric utility sector or energy
policy in general. We look forward to working with your Administration and hope that we
can be of assistance to you.

Sincerely,
Alan H. Richardson
Executive Director

AHR/sd
Tradeable Tax Credits
 Tradable Tax Credits for Renewable Energy or Environmentally
Sound Energy Technologies—Providing Comparable Incentives to
Public Power

In light of ongoing energy supply shortages and environmental challenges throughout
the nation, Congress and the Administration are reviewing legislative options to promote
the production of domestic, low-cost, efficient and clean energy supplies. Tax and
investment credits made available to investor-owned utilities and privately-owned energy
production companies do not create incentives for publicly-owned electric utilities.
Publicly-owned electric utilities do not have a federal income tax liability against which to
apply credits. In order to provide publicly-owned electric utilities with useful tax
credits comparable to those available to private sector market participants, public
power entities must be permitted to sell the tax credits to private entities that can utilize
them. The proceeds from the tax credit sales provide the incentive for public power
investment in renewable and clean energy production.

Benefits of Providing Tradable Tax Credits

As the electricity market opens to competition, public power utilities need to generate
and obtain electricity, derived from inexpensive and clean sources, to the same degree as
their competitors. Because renewable energy sources and environmentally clean,
advanced technologies usually are more expensive to operate than traditional alternatives,
public power utilities may not be able to afford to invest in them unless they receive
investment incentives comparable to those made available to their private sector
counterparts. With comparable incentives and the strong public policy rationales of
cleaner and renewable resources, energy security and independence, and energy diversity,
Congress and the Administration can expect greater investment from publicly-owned
utilities than its competitors.

Nature of a Tradable Tax Credit Program

A publicly-owned electric utility would build a renewable energy facility and would be
authorized to receive a federal tax credit that would be comparable in amount to that
made available to its private counterpart. The utility would be permitted under the
Internal Revenue Code to sell, transfer, assign or otherwise dispose of the credits directly
or indirectly to any taxpayer. For a non-profit entity, neither the credits nor the proceeds
derived from their disposition would result in federal taxable income. Taxpayers
receiving the credits will not have their alternative minimum income taxes increased as a
result of their use. Tax-exempt municipal bonds can continue to be used for project
financing, but renewable energy production incentive program funds may not.

It is anticipated that publicly-owned utilities will net a smaller amount from the credits
than their private counter parts. Investor-owned utilities will be able to use the full
amount of the credits assuming they have sufficient tax liability. Publicly-owned utilities
will have to offer them at a discount to encourage their purchase by taxpayers and will
have to incur transaction costs to effect the disposition.
Landfill Gas to Energy

Landfills have the potential to be an important source of energy and have long been understood to be a major source of methane – one of the most potent greenhouse gas. Methane is approximately 21 times more potent than carbon dioxide. If captured, this gas has the potential to be a sustainable source of energy that actually reduces greenhouse gas emissions.

Landfill gas – problems and opportunities

Landfills are the largest single human source of methane emissions in the United States (USEPA 1993). In 1995, landfills emitted over 11.1 million tons of methane gas. Based on methane’s higher heat trapping potential, the level of methane emission is equivalent to releasing over 233 million tons of carbon dioxide (CO2) into the atmosphere or 56 million metric tons carbon equivalent – almost 5% of the net annual CO2.1

Currently, there are over 300 landfill sites that use technology to capture and/or use the emitted gas. These projects developed primarily because of the existence of a federal tax credit for development of non-conventional fuels. If this now expired tax credit were reinstated along with a credit available to projects that use the gas for electricity, communities with landfills could benefit from a new stream of revenue from the sale of gas or electricity from the projects and the nation as a whole would benefit from the reduction of a critical greenhouse gas. It is estimated that between 500 and 600 additional landfill gas to energy projects (LFGTE) could be developed if an incentive were provided.

Landfill gas to energy project inventory and potential (based on a USEPA analysis of 31 states)

- 817 LFGTE projects already exist and 54 are under construction;
  - Of these projects, 195 are on private landfills and 176 are on public landfills;
- The EPA has already identified 561 undeveloped landfills that could produce economically viable LFGTE projects;
  - Of these undeveloped landfills, 241 are privately owned and 320 are publicly owned;
- New LFGTE projects could add 1741 MW of new capacity;
- New LFGTE projects could produce 15.2 million MWh of electricity annually
- All landfills with over 2.5 million megagrams of capacity that emit 50 or more megagrams of landfill gas must flare the gas and would not be eligible as a source of alternative energy.

Potential to reduce greenhouse gas emissions through landfill gas-to-energy projects

The decay of organic matter creates significant amounts of greenhouse gases. These gases can be captured and used for LFGTE projects. In fact landfills:

- produce approximately 56 million metric tons carbon equivalent (mmtcc) each year;
- represent approximately 3 percent of all human sources of greenhouse gas emissions;
- have developed LFGTE projects remove over 12 mmtcc of methane annually;
- could develop LFGTE projects to remove much of the remaining 56 mmtce of methane

1 To understand this number in context electric utilities in 1999 emitted approximately 923 million metric tons of carbon equivalent, accounting for about a third of all human induced carbon emissions.
Public Power Is Green
Summary
Based on a new report profiling public power’s emissions and green program activities, below are select graphs showing results.

**Profile of Fossil Fuel Generation**

- Public power leads the industry in minimizing SO₂ and NOₓ emissions
  - Better control technology
- Public power is even with CO₂ emissions
  - No available control technology for CO₂
  - Must switch fuels or retire plants

**Fossil Fuel Generating Sources**

Source: EGRID 97 database

Obtained and made public by the Natural Resources Defense Council, March/April 2002
Percent of Coal Capacity with Scrubbers

Sulfur Dioxide Emission Rates for Fossil Fuel Generation

Source: 1999 EIA data table named "Table 36: Flue Gas Desulfurization (FGD) Capacity in Operation at U.S. Electric Utilities"

Source: EPA 1999 Emissions Scorecard

Obtained and made public by the Natural Resources Defense Council, March/April 2002
Nitrogen Oxide Emission Rates for Fossil Fuel Generation

Carbon Dioxide Emission Rates for Fossil Fuel Generation

Source: EPA 1999 Emissions Scorecard
Percent of Capacity by Age

Hydro Generation Mix

Percent Generation

Source: Form EIA-860, 1999

Source: Form EIA-860, 1999
Non-Hydro Renewable Generation Mix

Source: Form EIA-860, 1999