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Statement

Of the

AMERICAN PUBLIC POWER ASSOCIATION

Submitted to the

ENERGY AND COMMERCE SUBCOMMITTEE ON ENERGY AND POWER

For the December 5, 2013, Hearing on

"Evaluating the Role of FERC in a Changing Energy Landscape"

(Submitted December 4, 2013)

The American Public Power Association (APPA) appreciates the opportunity to submit this statement for the record in relation to the House Energy and Commerce Committee's Energy and Power Subcommittee hearing on "Evaluating the Role of FERC in a Changing Energy Landscape."

APPA is the national service organization representing the interests of over 2,000 municipal and other state- and locally-owned, not-for-profit electric utilities throughout the United States (all but Hawaii). Collectively, public power utilities deliver electricity to one of every seven electricity consumers (approximately 47 million people), serving some of the nation's largest cities. However, the vast majority of APPA's members serve communities with populations of 10,000 or less.

Overall, public power utilities' primary purpose is to provide reliable, efficient service to local customers at the lowest possible cost, consistent with good environmental stewardship. Public power utilities are locally created governmental institutions that address a basic community need: they operate on a not-for-profit basis to provide an essential public service, reliably and efficiently, at a reasonable price.

APPA commends you for holding a hearing on the issues surrounding the legal and regulatory authorities of FERC and the manner in which it has been carrying out its statutory duties. The country faces numerous challenges to the provision of electricity in the near future, including retirements of coal and nuclear power plants; dramatic increases in variable renewable energy resources and the integration challenges they present; an increasing reliance on natural gas; and the slow development of additional hydropower resources including the difficulties with mandatory conditioning authority. All of these issues are troubling to APPA and its members. We are also concerned about the inability of FERC and the Commodity Futures Trading Commission (CFTC) to reach an agreement, as mandated in the Dodd-Frank Wall Street Reform Act, on how to share the information necessary to oversee electricity markets, so that market abuses are identified and mitigated. The CFTC must oversee a derivatives market in which quadrillions of dollars of transactions are made annually. FERC, with twice the staff, has the sole task of overseeing the U.S.'s $153 billion electricity market. Clearly, FERC has the resources and expertise to perform this essential task, and APPA supports FERC's efforts to clarify its regulatory and enforcement role with the CFTC. While these issues, among others, are important to public power, APPA's major issue of concern with FERC, and therefore the focus of this statement, is its ill-advised, continued support of mandatory capacity markets run by Regional Transmission Organizations (RTOs).

Mandatory Capacity Markets Have Raised Electricity Prices with Little New Electric Generation Capacity in Return

To ensure reliability and protect the economy from unnecessary electricity price increases, major reforms are needed to the mandatory capacity markets operated by the RTOs in three regions of the country – the Northeast, New York, and the Mid-Atlantic/Mid-West. These RTO operated constructs are often termed "competitive" or "organized markets," yet true competition does not exist. APPA and many others have concluded that the basic capacity procurement construct is not a "market" in any meaningful sense of the word. It is instead centralized procurement based on a heavily administered pricing structure governed by thousands of pages of complex rules. The failure to recognize this reality has led FERC to agree to proposals in these markets that only exacerbate costs and impede needed new resource development.

The "classic," and historically successful, way to finance capital intensive investments is through long-term bilateral contracts that support financing by providing assured cost recovery. However, this model has been upended in these mandatory capacity markets, overseen by FERC. In addition, because new supply development increases competition, the primary beneficiaries of the capacity markets – incumbent owners of older, less efficient power plants – have sought and received approval from FERC for the RTOs to implement new rules that create impediments to new supply. These recent changes to the capacity market rules, known as Minimum Offer Price Rules ("MOPRs") or "buyer-side mitigation," administratively impose floor prices on such new generation, and have weakened the ability of the states to make decisions on their energy future and of public power utilities to fulfill their obligation to provide reliable electric power at the lowest reasonable cost. To further exacerbate the concerns of public power utilities and others, the buyer side "market power" that FERC is attempting to mitigate has never been demonstrated to exist.

When the capacity markets were implemented, public power and cooperative utilities and a number of states carefully negotiated provisions that exempted self-supply and state-procured resources from such buyer-side mitigation. Unfortunately, FERC has since chosen to ignore these negotiated settlements, and to remove such exemptions. As a result, these local utilities face the potential for double cost exposure – the cost to construct a plant and a potential additional cost to buy the same power from the market if the mitigated offer price does not "clear" the relevant capacity auction – making it much more difficult and costly to finance such new resources.

An example of a problematic FERC decision concerns a highly efficient combined-cycle natural gas plant that replaced an older plant in the Astoria neighborhood of Queens in New York City. FERC found the competitive procurement process that the New York Power Authority (NYPA) had conducted for the Astoria II contract to be "discriminatory" because it was limited to new resources, even though its express purpose was to replace an existing unit in a transmission-constrained area. As a result, FERC ordered the NYISO to replace the actual cost of capital used to finance the plant with a higher proxy cost of capital, resulting in a mitigation of the plant's offer into the market and an increase in costs to consumers.

These capacity market decisions reflect APPA's broader concern that FERC often accepts market proposals from the incumbent generation owners that are only aimed at maintaining their revenues and reducing competition – the exact opposite of how a robust, competitive market functions, and a shift away from the mandate under the Federal Power Act for FERC to ensure that wholesale market rates are "just and reasonable." When formulating its positions, FERC frequently ignores the complete lack of evidence that the restructured markets operated by RTOs are actually markets in the first place or that they have provided real benefits to consumers and the economy. FERC should take a more critical and holistic view of these markets, and pursue fundamental reforms that reduce the adverse impact on reliability and electric consumers, including removing mandatory requirements for participation in these capacity markets.

Thank you again for this opportunity to submit a statement for the record.

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