



**Statement of the**

**AMERICAN PUBLIC POWER ASSOCIATION**

**Submitted to the**

**HOUSE ENERGY AND COMMERCE SUBCOMMITTEE ON ENERGY AND POWER**

**For the May 19, 2015 Hearing to Review the**

**“Discussion Draft Addressing Energy Reliability and Security”**

**(Submitted May 19, 2015)**

The American Public Power Association (APPA) appreciates the opportunity to provide the following statement to the House Subcommittee on Energy and Power on the May 12, 2015, “Discussion Draft Addressing Energy Reliability and Security” (Discussion Draft). APPA is the national service organization for the more than 2,000 not-for-profit, community-owned electric utilities in the U.S. Collectively, these utilities serve more than 48 million Americans in 49 states (all but Hawaii). APPA was created in 1940 as a nonprofit, non-partisan organization to advance the public policy interests of its members and their customers. We assist our members in providing reliable electric service at a reasonable price with appropriate environmental stewardship. Most public power utilities are owned by municipalities, with others owned by counties, public utility districts, and states. APPA members also include joint action agencies (state and regional entities formed by public power utilities to provide them wholesale power supply and other services) and state, regional, and local associations that have purposes similar to APPA. Collectively, public power utilities deliver electricity to one of every seven electricity consumers. We serve some of the nation’s largest cities, including Los Angeles, CA; San Antonio, TX; Austin, TX; Jacksonville, FL; and Memphis, TN. However, most public power utilities serve small communities of 10,000 people or less.

In terms of public power’s generation portfolio, in 2013 these utilities generated 169.6 million megawatt-hours (MWhs) of electricity from coal; 76.9 million MWhs from natural gas; 62.78 MWhs million from nuclear; 69.8 million MWhs from hydropower; and 8 million MWhs from other sources such as non-hydropower renewable energy like wind, solar, and geothermal. It is important to note, however, that public power supplies approximately 15 percent of electricity to end-users in the United States, but it only produces 10 percent of the megawatt-hours generated. To make up the difference, public power utilities purchase power at wholesale from other entities such as investor-owned utilities, independent power

producers, rural electric cooperatives, federal power marketing administrations, and the Tennessee Valley Authority.

This Subcommittee will also hear today from John Di Stasio, President of the Large Public Power Council (LPPC). The members of LPPC are all public power utilities and are also members of APPA. We support his remarks. As Mr. Di Stasio writes in testimony prepared for delivery before this Subcommittee, as more of our life and economy depend on electric power, and as new risks emerge, public power utilities recognize the growing importance of reliability and resiliency.

More detailed comments on the Discussion Draft follow.

## **Discussion Draft Section 1201—Resolving Environmental and Grid Reliability Conflicts**

### Background

In extraordinary circumstances, Section 202(c) of the Federal Power Act (FPA) allows the Department of Energy (DOE) to order emergency operation of an electricity generating facility to protect grid reliability. At the same time, environmental laws and regulations, implemented through permit limitations, may prohibit the same generating facility from fully complying with the DOE order. In such a situation, which has actually occurred more than once in the past, the owner/operator of the generation facility must choose between violating the DOE emergency order and violating environmental limitations, with either choice exposing the company to liability.

Discussion Draft Section 1201 incorporates the provisions of H.R. 1558, the Resolving Environmental and Grid Reliability Conflicts Act, sponsored by Representatives Pete Olson (R-TX), Gene Green (D-TX), and Mike Doyle (D-PA). The provision would amend the FPA to clarify that electricity generators caught in such a bind would not be liable for violations of environmental laws or regulations, or subject to civil or criminal liability, or citizen suits, as a result of complying with Section 202(c) emergency orders. The Discussion Draft also provides a process for DOE, working with other agencies, to administer emergency orders in a manner that minimizes adverse environmental impacts without jeopardizing reliability.

### APPA Comments

APPA joined with Edison Electric Institute and National Rural Electric Cooperative Association in a May 18, 2015 letter to the Energy and Power Subcommittee supporting the inclusion of the provisions of H.R. 1558 in the discussion draft. The letter states, and APPA believes, that the legislation would ensure that electricity generators will no longer be forced to choose between conflicting legal obligations when complying with emergency reliability orders from the Department of Energy.

## **Discussion Draft Section 1202—Reliability Analysis for Certain Rules That Affect Electric Generating Facilities**

### Background

The electric utility sector is facing implementation of more than a dozen major environmental regulations between 2011 and 2020. These include the Mercury and Air Toxics Standards (MATS), Cross State Air Pollution Rule, National Pollutant Discharge Elimination System Cooling Water Intake Structure Rule (316(b)), Coal Combustion Residuals Rule, Effluent Guidelines for the Steam Electric Power Generating Point Sources, New Source Performance Standards for New Fossil Fuel-Fired Power Plants, and Emission Guidelines for Existing Fossil Fuel-Fired Power Plants (Clean Power Plan), among others. Collectively, these air, water, and waste regulations represent the largest number of rules ever promulgated in such a short period of time, with the correspondingly largest cost in the history of the electric power sector. In addition to these environmental regulations, the electric utility industry is subject to regulations by other federal agencies, such as the Army Corps of Engineers and Bureau of Land Management. Many of these regulations could have implications for bulk-power system (BPS) reliability.

To date, the Federal Energy Regulatory Commission (FERC), the federal agency Congress has charged with ensuring the reliable operation of the BPS, has had no formal role in examining the potential reliability implications of these rules, (other than advising EPA, case-by-case, on requests for EPA administrative orders allowing generators to operate in noncompliance with the MATS rule).

Discussion Draft Section 1202(b)(1)(A) directs FERC, in coordination with the National Electric Reliability Corporation (NERC), to conduct independent reliability analyses of major proposed or final rules to “[e]valuate the anticipated effects of implementation and enforcement of the rule on national, regional, or local electric reliability and resource adequacy.” NERC is the “Electric Reliability Organization” designated by FERC under section 215 of the Federal Power Act to develop mandatory reliability standards for the BPS, subject to FERC review and approval. FERC and NERC’s reliability jurisdiction is limited to the BPS under section 215 of the Federal Power Act, which specifically excludes local distribution facilities. Likewise, resource adequacy is a matter traditionally entrusted to state and local regulation. However, this provision directs FERC to look at national, regional, and local electric reliability and resource adequacy.

### APPA Comments

APPA believes FERC should have a role in examining the potential reliability implications of major rules. APPA is pleased to see the discussion draft includes language to provide the commission with a formal role in analyzing the potential reliability impacts of major future and final federal regulations that impact electric generating units (EGUs).

However, APPA believes the breadth of the proposal is problematic. As discussed above, this language would give FERC a broad, uncertain mandate and treads on traditional state and local authority. Furthermore, the use of the term “electric reliability” in the discussion draft is not the same as BPS reliability as laid out in Section 215 of the Federal Power Act. APPA respectfully requests that the Subcommittee consider changing this language to limit FERC’s role to examining the reliability implications of a major rule on the BPS.

## **Discussion Draft Section 1204—Critical Electric Infrastructure Security**

### Background

Public power utilities fully understand the importance of guarding against physical attacks on their infrastructure—their poles, wires, substations, transformers, and generating facilities. We also take seriously the growing threat of a cyberattack, which could cause disruptions in the flow of power. Public power utilities have longstanding programs and protocols designed to protect their utility systems. As the sources of threats have increased over the years, public power utilities have planned, prepared, and responded accordingly.

As noted above, NERC promulgates mandatory and enforceable standards to ensure the reliability of the BPS, including cybersecurity related standards. The electric utility sector is the only critical infrastructure sector besides nuclear power plants (a part of the overall sector) that currently has a mandatory and enforceable federal regulatory regime in place to address cybersecurity vulnerabilities. The industry is currently preparing to implement Version 5 of NERC’s Critical Infrastructure Protection (CIP) standards. In developing and revising its CIP standards, NERC has considered proposals and issued regularly updated reliability standards that would enhance physical security requirements related to access to cyber assets at electric utilities.

On November 20, 2014, FERC approved NERC-submitted physical security reliability standards requiring utilities with critical assets to take steps, or to demonstrate that they have taken steps, to address physical security risks and vulnerabilities related to these assets, to support the reliable operation of BPS.

### APPA Comments

APPA supports the goals of section 1204—giving the Secretary of Energy broader authority to address grid security emergencies, while facilitating the protection, and voluntary sharing, of critical electric infrastructure information. This approach allows public power utilities to continue to take the appropriate physical and cyber security measures, gives DOE the flexibility to respond to threats, and promotes an enhanced dialogue between the industry and federal government on physical and cyber security threats and potential remediation. We support granting DOE broader authority in grid security emergencies, providing temporary access to classified information to key personnel of an entity subject to attack or

potential attack, and protections for public power utilities sharing critical electric infrastructure information.

The legislation also hews to the jurisdictional boundaries drawn by the Federal Power Act, avoiding mandates regarding distribution facilities which are regulated by states and localities. However, we continue to review the definitions established under what would be a newly created Federal Power Act (FPA) Section 215A for unforeseen consequences arising from those definitions. We remain very concerned about the cost-recovery provisions under proposed FPA Section 215A(b)(6). APPA believes the cost recovery provision is duplicative and unnecessary, and that the means of implementing the provision is overly broad.

Regarding the latter, Section 215A(b)(6) is aimed at “owners, operators, or users of the bulk-power system,” which is the term for the entities that are subject to NERC mandatory reliability standards under FPA Section 215. That term includes certain public power entities. It is a broader term than the “public utilities” (which in this instance, generally refers to the for-profit, investor-owned utility segment of the industry) subject to FERC rate regulation under FPA Sections 205 and 206. That may seem even-handed and fair, but it actually opens the door to FERC regulation of this narrow category of public power utilities’ rates and charges, that have been governed at the local level for decades. FPA Section 215 does not allow such regulation now. Conforming amendments proposed by Discussion Draft Section 1204(b) to FPA section 201(b)(2) and 201(e) make clear that proposed FPA Section 215A would apply to non-jurisdictional entities like rural electric cooperatives and public power utilities. This clearly indicates that the cost-recovery language applies FERC rate regulation to these entities for this limited purpose.

Proposed FPA Section 215A(b)(6) is not tethered to FERC’s rate-regulatory authority under FPA Sections 205 and 206—rather it stands distinct, with no clear basis in the rest of the statute. Additionally, cost-causation or the beneficiary-pays principles would still apply, but are ignored here. The language of section 215A(b)(6) even allows costs incurred to serve *retail* customers to be recovered from *wholesale* and *transmission* customers. That is, if a state-regulated investor-owned utility (IOU) cannot recover the costs in retail “regulated rates or market prices,” it can recover them under a FERC rate. Cost shifting and cross-subsidization would be allowed, even required. Finally, proposed Section 215A(b)(6) states that FERC: “shall . . . establish a mechanism that permits such owners, operators, or users to recover such costs.” This would require FERC to permit cost recovery. One could presume such recovery would only come from wholesale and transmission customers, but the section does not say that specifically. If the provision would allow FERC to prescribe a retail rate, then APPA is, very concerned and would have to oppose it.

### APPA Proposed Changes

Again, while APPA does not believe this provision is necessary, as we have discussed with Committee staff, APPA believes the provision could be amended to resolve these concerns. First, the definition of “defense critical infrastructure” in proposed FPA Section 215A(a)(4) should be amended from:

(4) DEFENSE CRITICAL ELECTRIC INFRASTRUCTURE.—The term ‘defense critical electric infrastructure’ means any infrastructure located in the United States (including the territories) used for the generation, transmission, or distribution of electric energy that—

(A) is not part of the bulk-power system; and

(B) serves a facility designated by the Secretary pursuant to subsection (c), but is not owned or operated by the owner or operator of such facility.

To, instead:

(4) DEFENSE CRITICAL ELECTRIC INFRASTRUCTURE.—The term ‘defense critical electric infrastructure’ means any electric infrastructure located in the United States (including the territories) that serves a facility designated by the Secretary pursuant to subsection (c), but is not owned or operated by the owner or operator of such facility.

Second, the last independent clause of proposed Section 215A(b)(6)(A) should be amended from:

... the Commission shall, after notice and an opportunity for comment, establish a mechanism that permits such owners, operators, or users to recover such costs;

To, instead:

...the Commission may, after notice and an opportunity for comment, prescribe standards for a public utility to seek to recover such costs by filing a rate schedule or tariff pursuant to section 205 of the Act for sales of electric energy or the transmission of electric energy subject to the jurisdiction of the Commission.

## **Discussion Draft Section 1205—Strategic Transformer Reserve**

### Background

As noted above, APPA and its members are keenly aware of the importance of electric power grid reliability. This includes preventing outages – whatever the source – in the first place, and speeding recovery from such outages in the second place. To speed recovery, APPA members make investments necessary to reduce and mitigate damage during outages; APPA facilitates, and our members participate, in hundreds of mutual aid agreements with other electric power sector participants; and have an ongoing program via the Electricity Subsector Coordinating Council (ESCC) to work with the Department of Energy, the Department of Homeland Security, and other critical infrastructure sectors to facilitate disaster recovery for large-scale regional or national disasters or attacks.

One key hurdle to recovery from an outage is ensuring that spare equipment is available. While the industry has programs and agreements in place, with a particular emphasis on large-scale transformers, Discussion Draft Section 1205 would require the DOE to submit a plan to Congress evaluating the feasibility of establishing a Strategic Transformer Reserve. Public power utilities would be included in

such an assessment. Such a process was proposed in the Administration’s Quadrennial Energy Review as well.

### APPA Comments

APPA supports evaluating the feasibility of a Strategic Transformer Reserve. Clear hurdles to such a system include the difficulty in deploying such transformers either by rail or road and the costs of maintaining such a reserve. Including a balanced and thorough discussion of such issues is critical for assessing whether such a program could in fact work, and in designing a program if such a program is determined to be appropriate.

## **Discussion Draft Section 1206—Cyber Sense**

### Background

As discussed above, APPA and its members are keenly aware of the threats posed by cyberattacks. They have worked, and will continue to work, to respond to and prevent such threats from damaging their ability to reliably provide electric power. Discussion Draft Section 1206 would authorize DOE to establish, in consultation with FERC and the National Institute of Standards and Technology (NIST), a voluntary program (Cyber Sense) to identify and promote products and technologies that are secure against cyberattack.

### APPA Comments

APPA has long supported the creation of a program to give utilities greater ability to discern the security of electronic “smart” devices that they use for a variety of reasons to better manage their systems, but that must be secure when purchased. APPA appreciates the Subcommittee’s effort to address this issue, and would gladly work with DOE, FERC, and NIST on such a program’s development. APPA would strongly underscore the need for ongoing review of certified products and corrective actions for products found no longer to be secure as provided under Discussion Draft Section 1206(b)(5).

## **Discussion Draft Section 1207—State Consideration of Resiliency and Advanced Energy Analytics Technologies and Base-load Generation**

### Background

Discussion Draft Section 1207 would amend Subtitle B of the Public Utility Regulatory Policies Act (PURPA) Title I to create a new “must consider” provision directing state regulatory commissions to consider requiring regulated utilities to increase their use of “resiliency-related technologies” and authorizing such utilities to recover capital and operating expenditures for such investments, plus a

“reasonable rate of return” for such investments. The provision lists four separate design goals for resiliency technology which must be considered and 16 separate resiliency technology types which must be considered. The provision would directly affect only the limited number of public power utilities that are subject to PURPA Title I Subtitle B and to state regulatory commission authority.

### APPA Comments

The Discussion Draft appropriately leaves to state regulatory authorities the decision of what resiliency-related technologies to require and what cost-recovery and rate of return to provide for such investments. However, the provision does expand the list of Subtitle B’s “must consider” provisions (to 20 if the legislation is enacted), requiring state regulatory authorities to consider whether at least 16 different resiliency technologies should be used to achieve any of four separate resiliency goals. State regulatory authorities are already conducting these kinds of analyses. A federal mandate for such analyses may therefore be unnecessary and create further administrative burdens on already resource-constrained state regulatory authorities.

## **Discussion Draft Section 1208—Reliability and Performance Assurance in Regional Transmission Organizations.**

### Background

Regional Transmission Organizations (RTOs) operating in certain regions of the country with restructured wholesale electric markets provide for the purchase of the electric capacity needed to meet electricity demand through “capacity markets.” The intent of these “markets” is to ensure that resources will be in place and available when needed (i.e., there will be adequate capacity) to meet the demand for electricity. APPA and others have long had concerns with a specific type of capacity market – namely the mandatory capacity markets that are operated by RTOs in the eastern wholesale markets (the PJM Interconnection, ISO New England and parts of the New York ISO). These administrative constructs account for a substantial share of the total electricity costs paid by consumers and businesses in these regions.

Unfortunately for electric consumers, these mechanisms have not demonstrated that they can achieve a reliable and diverse supply of power and incent the building of new generation where it is most needed. Instead, they have required consumers to pay billions of dollars in costs, with little concomitant benefit. Because these mechanisms to date have not distinguished between technology types or between existing and new units, critical needs are not addressed, including: adequate flexible ramping capability (an operational requirement needed to match the variability of some renewable resources that come online when the sun is shining or wind is blowing, and go offline when they are not); reliability needs created by



new environmental regulations and retiring coal plants; and the coordination of natural gas pipeline infrastructure needs with the increasing electricity generation from natural gas.

These mandatory capacity markets are not actually markets and are certainly not competitive. Instead, they are administrative constructs requiring elaborate rules and processes that have been in a constant state of flux as the RTOs continually tweak these rules. In practice, the constant rule changes have simply increased costs to consumers without addressing the fundamental flaw in the capacity markets -- that new generation generally requires long-term contracts to secure financing, as opposed to short-term, volatile capacity market prices and frequently changing rules. APPA studies have shown that 98 percent of new generation completed in recent years has been built with financing from ownership or long-term contracts. Moreover, in 2013 only 6 percent of new generation was constructed within RTOs with mandatory capacity markets. (There has been a recent increase in planned merchant natural gas plant capacity in the Eastern RTOs, but not all of this has actually been developed and, moreover, this capacity is being planned without consideration of fuel diversity or the impact on already constrained natural gas pipelines and natural gas prices. The speculative nature of these projects also leads to higher financing costs, which may drive up prices in the capacity markets.)

APPA believes that continued reliance on mandatory capacity markets for resource development will not enable the development of needed resources in these regions to assure their energy future, especially in light of EPA's pending 111(d) rule for carbon dioxide emissions, as discussed later in this statement. These constructs persist because owners of existing generation resources have a strong financial interest in maintaining them. In recent years, these generation owners have successfully advocated for rules that reduce competition from new entrants and increase prices to consumers. Unfortunately, FERC has approved many of these rule changes.

Such recent restrictions on new entry and competition are the direct result of actions taken in states located within the Eastern RTOs. These states became frustrated with the lack of new power generation being developed in their states, given the billions of dollars being spent on capacity payments. They sought to take control of their energy resource future and protect their residents from high electricity prices and potential shortages. For example, New Jersey, Maryland, and Connecticut all took steps to establish competitive bidding processes for the procurement of new generation capacity through long-term bilateral contracts. Similarly, the New York Power Authority issued an RFP for new power supplies and subsequently entered into a long-term contract with a new efficient natural gas plant in the New York City area to displace an older, less efficient generation facility.

Fearful of the *lower* prices that would result from the entry of new generation constructed under these state efforts, owners of existing power plants in the New York, New England and PJM RTOs sought to block this new entry through highly problematic new rules, or changes to or reinterpretations of existing rules that were approved by FERC. Such tariff rules involve what is known as the "minimum offer price rule" (MOPR) or "buyer-side mitigation" (BSM). While tariffs regarding MOPR or BSM differ slightly in the details among the three RTOs, the basic concept is to replace lower price offers to sell new capacity

with administratively determined higher price offers, making it more difficult for these new plants to “clear” the capacity auctions. Such rules are based on a largely misguided fear of so-called “buyer-side market power,” – buyers exerting their “power” is what causes prices to come down in competitive markets, which these are decidedly not. Instead, they produce results that have little to do with competitive markets and everything to do with the maintenance of existing seller-side market power.

The BSM rules greatly limit state control over generation resources in their own states and adversely impact not-for-profit public power and cooperative utilities and their millions of utility customers. Because the capacity markets are mandatory, utilities that construct or contract for generation to meet their own customers’ power needs still must offer such self-supply capacity into the annual or sub-annual capacity market auctions. If that capacity does not clear the auction, the utility nevertheless would be required to purchase capacity from the market to meet its capacity obligation—thus paying twice for capacity: once for its own power plant and again for the capacity obtained from the “market.” The original rules of the capacity markets in PJM and ISO-NE contained provisions to ensure that self-supply would clear the auctions, avoiding this double-collection dilemma. But these exceptions for self-supplied generation were undone by FERC in subsequent rule changes. The revised capacity market rules now threaten a cornerstone of the business model for public power and cooperative utilities—their ability to self-supply their own customers.

Public power utilities have spent critical time and resources fighting to restore their self-supply rights. In PJM, lengthy negotiations among merchant generators, industrial customers, and public power and cooperative utilities in 2012 resulted in an agreement providing for, among other things, a MOPR exemption for self-supply resources, but only if such supply meets certain criteria. This exemption was approved by FERC in May 2013, but it is unclear whether it will in fact survive, given further litigation. State-sponsored resources are still not subject to any exemption.

Most recently, on May 8, 2015, the New York Power Authority, New York Public Service Commission, and New York Energy Research and Development Authority filed a joint complaint with FERC requesting that resources used for self-supply or the use of resources to meet an identified reliability be exempted from the MOPR applicable to certain capacity zones in New York. In their complaint, these entities note that “imposing imprecise or misdirected mitigation measures can pervert market outcomes and cause substantial deviations from the competitive equilibrium, much to the detriment of the social welfare.”

Because the BSM rules also adversely impact the ability of states to procure needed generation or to make decisions on the types of resources they might need to meet their energy needs, the implementation of the EPA’s proposed rules under Clean Air Act section 111(d) becomes even more complicated. EPA’s proposed rule of necessity relies on state implementation, but the capacity constructs substantially impede state control of their own resource destinies. It is therefore difficult to see how the affected states will be able to carry out these new obligations. The capacity market rules could well exacerbate reliability problems and price increases as any final rule under section 111(d) is implemented.

Concerns about these constructs were encapsulated in a February 2014 joint letter to FERC from thirty entities, including APPA, publicly and cooperatively owned electric utilities, national consumer and low-income organizations, state public utility commissions, state consumer advocates, investor-owned utilities, industrial customers, and independent power producers. The letter listed the following core principles for capacity market reforms: a recognition that load serving entities (LSEs, which are entities that directly serve end-use customers), states, and local regulatory bodies have policy reasons to support specific types of resources so that barriers should not be erected to thwart resource decisions made by these entities; encouragement and support for long-term contracting and self-supply; and consideration of rate impacts on consumers.

Discussion Draft Section 1208 would require FERC to direct RTOs with an existing capacity market to demonstrate that they meet certain criteria either by filing a new schedule of the rates and charges for the transmission and sale of electricity, or by declaring that the current schedules meet the criteria. Additionally, FERC would be required to consider whether any new schedules filed by an RTO would result in a market meeting those criteria. Criteria include a diverse and flexible generation portfolio, stable pricing for customers, adequate pricing for power generators, and “sufficient supply of reliable electric energy.” The provision lists as an attribute of reliability the ability to generate daily for 30 days and during an electric energy emergency or severe weather conditions, and long-term fuel supply and dual-fuel capability. While demand response can currently be bid into capacity markets, it could not qualify as “reliable electric energy” under Discussion Draft Section 1208.

#### APPA Comments

APPA appreciates the effort to recognize the importance of the mandatory capacity market issue by including legislation regarding this subject in the Discussion Draft. As drafted, however, this provision would not address our concerns and could actually be used as an excuse to expand mandatory capacity markets into RTOs where no mandatory market currently exists. We would oppose its inclusion as drafted in a base energy bill and, so, will endeavor to work with the Committee and Committee members to provide a better alternative.

As noted above, Section 1208 would require RTOs not to explain how their capacity markets provide price stability for customers, but rather how they maintain price adequacy for power generators. The provision ignores the FPA requirement that FERC seek rates that are “just and reasonable” (FPA Sections 205(e) and 206(a)), or to in any other way balance the requirement that this new review ensure that power generators receive an “adequate” price.

Likewise, we are concerned that the strict definition of “reliable electric energy” would needlessly exclude certain forms of capacity, and is contradictory to “a diverse and flexible generation portfolio.” The requirement that resources be able to supply generation for at least 30 continuous days would discriminate against certain resources that are part of a diverse fuel supply, including hydropower,

renewable resources and demand response. Moreover, such a strict requirement for capacity resources would create excessive costs to consumers and is not necessary to achieve a reliable supply of power. This provision is similar to a recent and highly problematic capacity performance proposal by the PJM Interconnection. A group of 14 public power utilities and associations, electric cooperatives, large industrial customers, state commissions and consumer advocates distributed a letter to Members of Congress in PJM stating that this proposal “would dramatically increase electric costs without providing meaningful and necessary improvements in system reliability.”

The draft makes no mention of perhaps the single most troublesome aspect of mandatory capacity markets – their interference with a load-serving entity’s ability to self-supply capacity. This omission continues to skew the balance in favor of incumbent generators that benefit financially when new supply resources are impeded from entering the market.

Finally, the requirements would appear to apply to any RTO with a capacity market or other capacity procurement mechanism, not just ones with a mandatory capacity market. Given the market requirements established by the provision, this would result in greater pressure from the merchant generation owners in the footprints of the Midcontinent Independent System Operator (MISO) and the California Independent System Operator (CAISO) to adopt a mandatory capacity market with restrictions on new supply to prop up prices.

APPA has long recommended that these mandatory capacity constructs be phased out and replaced with voluntary, residual capacity markets, with primary resource procurement achieved through a portfolio of long-, medium- and short-term contracts and a diverse resource mix. Such an overhaul may require further inquiry and analysis by Congress and the relevant agencies and commissions. However, APPA believes a narrower near-term fix is already justified by what we know today.

Specifically, APPA would propose that:

- A. RTOs that have not yet implemented a mandatory capacity market should not move to do so without unanimous support by the states in the region.
- B. RTOs that have already adopted a mandatory capacity market should not impair (through rates, or rules, regulations, or practices affecting rates) the ability of a load-serving entity to meet its capacity obligations through a resource it owns, builds, controls, or for which it has a contract for capacity.

APPA believes legislation implementing these two changes would make common sense. A state should not be forced into a mandatory capacity payment mechanism when it wishes to meet its capacity obligations through some other means. Likewise, a load-serving entity should be able to meet its capacity obligations through self-supply. As for whether such an approach might “risk” reliability, APPA members have been providing reliable service to their customers for more than a century. Moreover, load-serving entities would continue to be subject to resource adequacy and reliability obligations. Such an approach

would simply allow our members and other load-serving entities to do so without being forced to pay billions of dollars for capacity they could more affordably supply themselves, and allow them to construct the diverse portfolios they need to protect their customers and better comply with coming EPA regulations.

In sum, APPA's members are absolutely committed to providing reliable electric power. We object, however, to being forced, through mandatory capacity markets, to squander billions of dollars for capacity payments which are not resulting in the building of new generation to meet capacity requirements that our members could better, and more affordably, meet through self-supply. As a result, we appreciate greatly the interest shown by this Subcommittee in this issue. We would hope that in drafting energy legislation this year, the Subcommittee will recognize the impediments to an affordable, reliable and more efficient generation future posed by these mandatory capacity constructs and move to impose needed reforms to those markets, such as those proposed above.