

In Support of Congressional Oversight and Review of the Federal Power Act

1 Enacted in 1935, Part II of the Federal Power Act (FPA) has been the basis for federal regulation of
2 interstate electricity transmission and wholesale electricity sales for over eighty years. The provisions for
3 federal licensing of hydropower projects in Part I of the FPA were enacted in 1920 and are approaching
4 their centenary. In 1977, Congress created the Federal Energy Regulatory Commission (FERC) and
5 assigned to it the principal duties and authorities under Parts I and II of the FPA. The core provisions of
6 the statute have not changed since their enactment, even as Congress has, on a handful of occasions,
7 added and amended discrete provisions to address the Nation’s changing needs and priorities. The statute
8 has proven to be a flexible and effective regulatory instrument and, when properly applied, has served the
9 Nation well, consistent with the original purpose of the Act, “to encourage the orderly development of
10 plentiful supplies of electricity ... at reasonable prices.” (*NAACP v. FPC*, 425 U.S. 662, 670 (1976)).
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12 The American Public Power Association (APPA) has a long history of advocating for vigorous
13 application and strong enforcement of the FPA to protect the public interest and ensure just and
14 reasonable rates for interstate transmission service and wholesale electric energy sales. In the last twenty
15 years, APPA has focused on several key issues:

- 16 • Ensuring the availability of open-access, non-discriminatory interstate transmission service for
17 public power utilities and other load-serving entities;
- 18 • Preventing, deterring, and if necessary, punishing and remedying the exercise of market power;
- 19 • Preventing mergers and acquisitions that raise prices and enable market power to be exercised;
- 20 • Ensuring that public power utilities and other load-serving entities can make long-term firm
21 transmission arrangements for their long-term power-supply arrangements;
- 22 • Ensuring the orderly planning and development of the interstate power grid to meet the
23 reasonable needs of load-serving entities to meet their service obligations;
- 24 • Limiting the use of incentive adders on transmission rates;
- 25 • Promoting joint ownership of the transmission grid by public power utilities, cooperatives, and
26 investor-owned utilities;
- 27 • In areas served by regional transmission organizations or independent system operators,
28 preserving the ability of public power utilities and other load-serving entities to self-supply power
29 to meet their service obligations;
- 30 • Reasonable mandatory reliability standards for owners, operators, and users of the interstate bulk
31 power system, including physical and cybersecurity measures; and

- 32 • Respect for Congress’ clear statement that, except where specifically provided, the FPA does not
33 apply to public power utilities.

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35 A confluence of changes in other public policies affecting the electric sector—including environmental
36 policies—and changes in technologies of power generation and delivery—such as distributed energy
37 resources—have led some parties to call for a re-examination of the lines between federal and state and
38 local authority that Congress created in the FPA. The recent United States Supreme Court decisions in
39 *FERC v. EPSA* and *Hughes v. Talen Energy* have blurred the lines between federal and state authority and
40 led some parties to advocate for a greater federal role in electricity policy. Such measures could lead to
41 increased federal intrusion into state and local power-supply decisions and distribution-system planning
42 and operations. The aforementioned issues, along with the reliability and security of the grid, tax policies,
43 renewable energy mandates affecting the electric sector have led to Congress to begin new review and
44 oversight hearings concerning the Federal Power Act.

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46 **NOW, THEREFORE, LET IT BE RESOLVED:** That the American Public Power Association (APPA)
47 believes it is important that the administration of the Federal Power Act (FPA) be thoroughly reviewed;

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49 **BE IT FURTHER RESOLVED:** APPA calls on the House Energy & Commerce Committee and the
50 Senate Energy & Natural Resources to conduct oversight briefings and hearings on the Federal Power
51 Act; and

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53 **BE IT FURTHER RESOLVED:** That APPA will continue to actively engage with federal agencies
54 through the public rulemaking process on proposed FPA regulations and policies that impact public
55 power utilities.