

Federal Power Act Oversight

Summary

The Federal Power Act (FPA) has been the basis for federal regulation of interstate electricity transmission and wholesale electricity sales on the bulk power system for over 80 years. Part I of the FPA was enacted in 1920 and governs federal licensing of hydropower projects; Part II was enacted in 1935 and governs federal regulation of interstate transmission and wholesale electricity sales. The Federal Energy Regulatory Commission (FERC) was created in 1977 and given primary responsibility to administer the act. Congress has since added and amended discrete provisions on a handful of occasions, but the core provisions have remained unchanged. The statute has proven to be a flexible and effective regulatory instrument and, when properly applied, has served the nation well, consistent with the original purpose of the act, “to encourage the orderly development of plentiful supplies of electricity...at reasonable prices.”¹

However, a confluence of changes and events in the electric utility sector in recent years have made the FPA ripe for congressional review. As such, the American Public Power Association (Association or APPA) agrees that a review of the FPA is appropriate. During the last year and a half, the House Energy & Commerce Committee has conducted oversight hearings on various aspects of the FPA and how it has been impacted by changes in technology and policies at the federal, state, and local levels. Topics examined thus far include the intersection of energy and environmental policies, changes in technologies of power generation and delivery, a blurring of the line between federal and state authority, reliability and security of the bulk power system, tax policies, issues surrounding mandatory capacity markets in the Eastern U.S., renewable energy mandates, and challenges associated with the siting and construction of new electric transmission infrastructure.

¹ *NAACP v. FPC*, 425 U.S. 662, 670 (1976)

Background

APPA has long advocated for the vigorous application and strong enforcement of the FPA to protect the public interest and ensure just and reasonable rates for interstate transmission service and wholesale electric energy sales. In the last twenty years, the Association has focused on several key issues:

- Ensuring the availability of open-access, non-discriminatory interstate transmission service for public power utilities and other load-serving entities;
- Preventing, deterring, and if necessary, penalizing and remedying, the exercise of market power;
- Preventing utility mergers and acquisitions that raise prices and consolidate market power;
- Ensuring that public power utilities and other load-serving entities can make long-term firm transmission arrangements for their long-term power-supply arrangements;
- Ensuring the orderly planning and development of the interstate power grid to meet the reasonable needs of load-serving entities to meet their service obligations;
- Limiting the use of incentive adders on transmission rates;
- Promoting joint ownership of the transmission grid by public power utilities, cooperatives, and investor-owned utilities;
- In areas served by regional transmission organizations or independent system operators, preserving the ability of public power utilities and other load-serving entities to self-supply power to meet their service obligations;
- Ensuring reasonable mandatory reliability standards for owners, operators, and users of the interstate bulk power system, including physical and cybersecurity measures; and
- Ensuring respect for Congress’ clear statement that, except where specifically provided, the FPA does not apply to public power utilities.

Several changes in public policies affecting the electric sector, including environmental policies and changes in technologies of power generation and delivery (such as distributed energy resources), have led to calls for a re-examination of the lines between federal and state and local authority that Congress created in the FPA. The recent U.S. Supreme Court decisions in *FERC v. EPSA* and *Hughes v. Talen Energy* have blurred these lines in the minds of some parties and led them to advocate for a greater federal role in electricity policy. Such measures could lead to increased federal intrusion into state and local power-supply decisions and distribution system planning and operations. Additionally, in the alleged pursuit of reliability, FERC has approved increasingly aggressive regimes by regional transmission organizations, which limit resource selection by states and load-serving entities with little regard to whether they are resulting in “just and reasonable” rates to consumers. The aforementioned issues, along with the reliability and security of the grid, tax policies, and renewable energy mandates affecting the electric sector, have led Congress to begin reviewing and conducting oversight hearings on implementation of the FPA.

Congressional Action

The House Energy & Commerce Committee’s Subcommittee on Energy began a series of hearings starting in September 2016 entitled, “Powering America.” These hearings have explored electricity markets, electricity generation, distribution, energy consumption, transmission infrastructure, and the resiliency of the electric grid. In addition, the committee held an oversight hearing with all five FERC Commissioners in April 2018 where numerous electricity issues impacting public power were discussed. While it is unclear what legislative action, if any, the subcommittee will take in response to these hearings, the issues examined at them are complicated, will continue impacting the electric utility industry and its customers, and warrant further oversight by Congress.

On January 23, 2017, the House passed H.R. 587, the Fair Ratepayer Accountability, Transparency, and Efficiency Standards Act (“Fair RATES Act”). This bill amends the FPA to permit a party to seek a rehearing and subsequent judicial review of any rate change filed by a public utility that takes effect without FERC issuing an order making such change effective. Currently,

proposed rate changes take effect automatically after 60 days if FERC fails to affirmatively issue an order approving or disapproving of the change. FERC has said that parties may not seek rehearing of such default “approvals” because there is no formal FERC order to “rehear.” Companion legislation in the Senate, S. 186, was introduced by Senator Ed Markey (D-MA) in January 2017. On October 3, 2017, the Senate Energy & Natural Resources Committee held a hearing on the legislation. It is unclear if the Senate Energy & Natural Resources Committee will act on the legislation in 2018.

American Public Power Association Position

APPA believes it is important that the administration of the FPA be thoroughly reviewed by Congress and supports limited changes, such as the Fair RATES Act, which seek to give consumers a greater voice in market rules.

American Public Power Association Contacts

John Godfrey, Senior Government Relations Director,
202-467-2929 / jgodfrey@publicpower.org

Bryson Wong, Government Relations Director, 202-467-2939 /
bwong@publicpower.org

The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.