

**ISSUE BRIEF** June 2021

# U.S. Federal Power Program



## Summary

The federal Power Marketing Administrations (PMAs) provide millions of Americans served by not-for-profit public power utilities and rural electric cooperatives with cost-based hydroelectric power produced at federal dams operated by the U.S. Army Corps of Engineers (Corps) and Bureau of Reclamation. The PMAs market federally generated hydropower, with a statutory right of first refusal granted to not-for-profit entities, including public power utilities and rural electric cooperatives (called preference customers), at rates set to cover all the costs of generating and transmitting the electricity, as well as repayment, with interest, of the federal investment in these hydropower projects. Because the PMAs are part of the U.S. electricity market and are also federal entities, congressional and administrative action in the last 20 years has primarily addressed increased federal oversight of PMA facilities and potential ways in which the U.S. Treasury could receive additional funding from the PMAs and their customers. Both Democratic and Republican administrations have proposed selling the transmission assets of the PMAs and changing the rate structure from cost-based to market-based, which APPA strongly opposes. For the first time in recent years, President Biden's Fiscal Year (FY) 2022 budget proposal did not include these misguided changes.

Another important aspect of the federal power program is the federally owned Tennessee Valley Authority (TVA). Congress established TVA in 1933 in the states of Tennessee, Alabama, North Carolina, Kentucky, Virginia, Mississippi, and Georgia. TVA's authorizing statutes cite rural electrification, flood control, and navigation along the Tennessee River as reasons for its creation. Today, TVA provides affordable electric power to public power utilities and rural electric cooperatives serving ten million people in an 80,000 square-mile territory. Similar to the PMAs, both Democratic and Republican administrations have proposed to sell TVA in some form or fashion, which APPA strongly opposes. Again, for the first time in recent years, President Biden's FY 2022 budget proposal did not include this misguided idea.

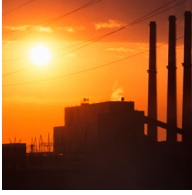
## Background

There are four PMAs—Bonneville Power Administration (BPA), Western Area Power Administration (WAPA), Southwestern Power Administration (SWPA), and Southeastern Power Administration (SEPA). These entities market wholesale electric power to approximately 1,200 public power utilities and rural electric cooperatives in 33 states.<sup>1</sup> They also sell power to other public agencies and federal installations, as well as to for-profit, investor-owned utilities in years with high water flows or in special circumstances.

In accordance with federal law, PMA rates are set at the levels needed to recover the costs of the initial federal investment (plus interest) in the hydropower and transmission facilities. The PMAs annually review their rates to ensure full cost recovery. None of the costs are borne by taxpayers. Power rates also

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<sup>1</sup> The following states receive a portion of their power from the PMAs. BPA: Washington, Oregon, Idaho, and Montana (part). WAPA: Arizona, California, Colorado, Iowa, Kansas (part), Minnesota, Montana (part), North Dakota, Nebraska, New Mexico, Nevada, South Dakota, Texas (part), Utah, and Wyoming. SWPA: Arkansas, Kansas (part), Louisiana, Missouri, Oklahoma, and Texas (part). SEPA: Alabama, Florida, Georgia, Illinois, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.



help to cover the costs of other activities authorized by these multipurpose projects, such as navigation, flood control, water supply, environmental programs, and recreation. The annual appropriations process is also important to the PMAs. Although the customers pay all the PMA costs through their power rates, for WAPA, SEPA, and SWPA, those monies flow back to the U.S. Treasury and then must be appropriated by Congress. (BPA's governing statute, amended in the 1980s, allows for a revolving fund so ratepayer money goes directly to BPA rather than to the Treasury.) In addition, the PMAs must receive yearly funding levels from Congress for purchasing and wheeling (transmitting) power in a drought situation or when the water at the dams is used for purposes other than for electricity production (i.e., recreation and environmental mitigation). This money for purchase power and wheeling is then paid for by the PMA customers through their rates.

## Administrative and Congressional Action

### Proposals to Sell PMA Transmission Assets

Several presidents have proposed selling or divesting the PMAs. Driving these misguided policy proposals has been the belief that doing so would save the federal government money or that the PMAs are no longer needed. Throughout his presidency, President Trump's annual budget requests proposed selling the transmission assets of BPA, SWPA, TVA, and WAPA, asserting that "ownership of transmission is best carried out by the private sector where there are appropriate market and regulatory incentives," and that "increasing the private sector's role would encourage a more efficient allocation of economic resources and mitigate risk to taxpayers." Similarly, three out of four of the Trump administration's budget requests proposed to change the current cost-based rate structure for the PMAs to a market-based rate structure, claiming that "[e]liminating the requirement that PMA rates be limited to a cost-based structure and requiring instead that these rates be based on consideration of appropriate market incentives, including whether they are just and reasonable, would encourage a more efficient allocation of economic resources, and could result in faster recoupment of taxpayer investments."

There is no factual evidence to support either of the Trump administration's justifications to sell transmission assets or change the PMA rate structures. PMA and TVA costs are paid by customers and not the federal government; none of the costs are borne by taxpayers. The sale of these assets to private entities would likely result in attempts by the new owners to charge substantially increased transmission rates to PMA customers for the same service they have historically received.

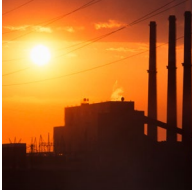
Moreover, PMA customers already pay for all the costs associated with generating and transmitting power produced at federal dams, meaning that changing the rate structure from cost-based to market-based would position the federal government to profit off retail customers already covering all the costs for their power supplies. Such a move would undermine regional economic development and almost certainly invite legal challenges from wholesale customers holding long-term contracts with the PMAs.

As in previous years, congressional reaction to proposals in President Trump's FY 2021 budget proposal to sell off PMA and TVA transmission assets and change the cost-based rate structure was swift and strong. On April 16, 2020, 57 members of Congress wrote to House Budget Committee leadership to voice their opposition to these proposals. The letter, led by Representatives Paul Gosar (R-AZ), Kurt Schrader (D-OR), and Dan Newhouse (R-WA), refuted the claim that federal ownership of the PMAs is a burden on taxpayers and said that implementing the Administration's proposals would lead to higher electric prices for millions of consumers.

In his first budget request to Congress (for FY 2022), President Biden notably did not include proposals to sell the PMAs or change their rate structure. APPA applauds his decision to forgo proposing these destructive and politically unpopular ideas.

### TVA Divestment

President Obama's FY 2014 budget directed the Office of Management and Budget (OMB) to examine ways to reform, and possibly eliminate, TVA through divestiture. The President's budget proposal argued



that “reducing or eliminating the Federal Government’s role in programs such as TVA, which have achieved their original objectives and no longer require Federal participation, can help put the Nation on a sustainable fiscal path.” The premises underlying this budget instruction—that TVA is unnecessary and negatively impacting the federal budget—are incorrect. TVA ceased receiving money from the federal government in 1959, is now fully funded through electric sales and power bond financing, and has continually reformed itself to respond to the changing needs of its customers. Although TVA does currently have debt on its books, this debt is not tied to the federal budget deficit. Moreover, the debt TVA holds currently is not unusual in the electric power industry, where power plants can cost billions of dollars and are financed over 30 to 50 years.

The President’s budget instruction regarding TVA triggered a great deal of negative feedback from TVA stakeholders in and outside of Congress. A June 2014 report by Lazard Frères & Co. LLC (Lazard), a financial advisory and asset management firm that was commissioned by OMB to conduct a strategic review of TVA, concluded that TVA’s financial and operational plans were sound, and that TVA should not be divested from the federal portfolio. Responding to this feedback, the President’s FY 2015 budget stated that “TVA has undergone a major internal review and taken significant steps to improve its future operating and financial performance.”

Unfortunately, President Trump proposed selling TVA’s transmission assets in his FY 2019, FY 2020, and FY 2021 budgets. Led by Senators Lamar Alexander (R-TN) and Marsha Blackburn (R-TN), the Tennessee delegation, and others from TVA’s footprint sent letters to President Trump expressing opposition to each of his proposals.

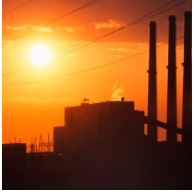
Similar to his decision to not include a proposal to sell PMA transmission assets in his FY 2022 budget request, President Biden did not propose to sell TVA’s transmission assets either. APPA strongly supports maintaining full federal ownership of TVA.

### **Energy Savings Performance Contracts**

In the 115th Congress, several hydropower developers and equipment suppliers proposed amending committee-passed bills (S. 239 and H.R. 723) intended to promote the use of energy savings performance contracts (ESPCs) at federal buildings to allow their use at federal hydropower facilities so that private interests can repair or replace hydropower generation at existing federal dams. While ESPCs can work well to reduce energy usage in federal buildings, they are not suitable for federal hydropower facilities due to the federal hydropower system’s unique nature. Proposals suggested that the ESPC contractor would be compensated through sales of additional hydropower resulting from the efficiency investment. There are two problems with this: (1) the power is not sold at a profit, so payment to an ESPC contractor would come directly out of the pockets of not-for-profit federal hydropower customers; and (2) not all needed investments would generate additional power sales: an investment might replace aging infrastructure but maintain the existing output, or limits on water availability could result in no net increase even with the addition of generating capacity.

In addition to allowing a mechanism for private interests to make a profit out of the pockets of not-for-profit utility customers, there is no need to allow ESPCs at federal hydropower facilities: it is a solution in search of a problem. Federal power customers have developed innovative customer-funding agreements to provide the funds necessary for infrastructure improvements and modernizations. For example, since 1999, SWPA customers and the Corps have worked together to fund over \$350 million in infrastructure improvements and modernization on federally owned dams through one of the nation’s first public-private partnerships. In addition, the customers of SWPA have committed another \$1 billion over the next 30 years to fully revitalize the federally owned hydropower assets in the Midwest.

Recognizing the harm that allowing the use of ESPCs at federal hydropower facilities would do to public power and rural electric cooperative preference customers, Senators Cory Gardner (R-CO) and Chris Coons (D-DE) and Representatives Peter Welch (D-VT) and Adam Kinzinger (R-IL), introduced the Energy Savings through Public Private Partnerships Act of 2019 (S. 1706/H.R. 3079). The



legislation would promote the use of ESPCs at federal buildings but would exclude federal hydropower facilities that provide power marketed by a PMA or TVA, and was subsequently approved by the House and Senate Energy Committees. The Energy Act of 2020 (enacted as Division Z of the Consolidated Appropriations Act, 2021) included a provision substantially similar to the text of the Energy Savings through Public Private Partnerships Act that appropriately prohibits the use of ESPCs at federal hydropower facilities that provide power marketed by a PMA or TVA.

### **Federal Hydropower MOU**

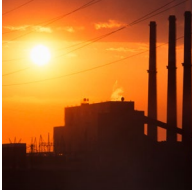
In August 2020, the U.S. Department of the Army (through the U.S. Army Corps of Engineers), the U.S. Department of Energy (through the Water Power Technologies Office), and the U.S. Department of the Interior (through the Bureau of Reclamation) signed a Memorandum of Understanding (MOU) for Federal Hydropower. The MOU outlined a vision for future collaboration among the agencies, which stated that they will leverage their resources and efforts to help position federal hydropower to meet the nation's need for reliable and affordable renewable energy. The MOU called for an action plan "to adapt hydropower to changing markets, environmental concerns, and water issues, and to facilitate the influx of non-dispatchable generation resources penetrating the bulk electric system," a draft of which was released in December 2020. In comments submitted in response to the draft, APPA and several PMA customer groups urged the agencies to explicitly include customers in the development and approval of any projects resulting from the MOU, ensure that any costs incurred implementing the MOU are non-reimbursable by customers, and carefully consider how customers can play a role in the MOU projects to ensure customer needs are met in any project outcomes. The final action plan was released in June 2021. APPA is pleased that its comments seem to have been taken to heart in the action plan and looks forward to further customer consultation as the action plan is implemented.

### **APPA Position**

APPA strongly opposes proposals to divest the transmission assets of BPA, SWPA, TVA, and WAPA and to change the PMAs' cost-based rate structure to a market-based rate structure. The association supports the continued existence and federal ownership of the PMAs and TVA, the sale of federally generated hydropower at cost-based rates, increased customer involvement in funding critical operation and maintenance activities, and the increased federal emphasis on funding these same activities. APPA also continues to strongly oppose any action by Congress or the Administration that would modify the federal power program in ways that could result in substantial, unjustified electric rate increases for public power utilities, create adverse economic impacts, or reduce competition. Finally, the association strongly opposes the use of ESPCs at federal hydropower facilities and any efforts to disproportionately assign costs to federal hydropower users for which they receive no additional benefits. APPA applauds the passage of the provision in the Energy Act of 2020 prohibiting the use of ESPCs at federal hydropower facilities that provide power marketed by a PMA or TVA.

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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.