AMERICAN PUBLIC POWER ASSOCIATION
80 Years of Powering Strong Communities

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U.S. Federal Power Program

Summary

The federal Power Marketing Administrations (PMAs) provide millions of Americans served by not-for-profit public power and rural cooperative electric utilities 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. Three years in a row, the Trump Administration has proposed selling the transmission assets of the PMAs and for the last two years, changing the rate structure from cost-based to market-based. The American Public Power Association (APPA or Association) opposes these misguided proposals.

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. President Trump proposed selling TVA's transmission assets in his fiscal year (FY) 2019 and FY 2020 budget proposals; APPA also opposes this proposal.

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.[1] 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 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.

1 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.

Administrative and Congressional Action

Proposal 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. Most recently, President Trump's FY 2020 budget request 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." This is the third year in a row that President Trump has proposed selling PMA transmission assets and the second year in a row that the Administration has proposed selling TVA's transmission assets.

PMA and TVA costs are paid by customers and not the federal government; none of the costs are borne by taxpayers. Furthermore, there is no factual evidence that selling the transmission assets of the PMAs would result in a more efficient allocation of resources. Rather, it is much more likely that any sale of these assets to private entities would result in attempts by the new owners to charge substantially increased transmission rates to PMA customers for the same service they have historically received. These arguments are merely a pretext for actions that would raise electricity costs for millions of people and businesses.

Also included in the FY 2020 budget request—for the second year in a row—is a proposal to change the current cost-based rate structure for all four of the PMAs to a market-based rate structure. There again is no factual evidence to support the Administration's claim 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." PMA customers already pay for all the costs associated with generating and transmitting power produced at federal dams, positioning 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 2020 budget proposal to sell off PMA and TVA transmission assets and change the cost-based rate structure was swift and strong. On May 8, 2019, 63 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), Dan Newhouse (R-WA), Rick Crawford (R-AR), and Chuck Flesichmann (R-TN), said the proposals were an attempt to fix something that is not broken and would lead to higher electric prices for millions of consumers. A similar letter was sent by Senators Maria Cantwell (D-WA) and Jim Risch (R-ID) and 18 other senators to Office and Management and Budget (OMB) Director Mick Mulvaney on May 11. It came as no surprise then that Congress did not include provisions to sell the PMAs or change the cost-based rate system in the FY 2020 appropriations bills that were signed into law at the end of 2019.

TVA Divestment

President Obama's FY 2014 budget directed 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." However, the FY 2015 budget also endorsed severing or reducing federal ties with TVA, possibly by transferring ownership to state or local shareholders. APPA was pleased to see that President Obama's FY 2017 budget did not include any proposals related to divesting TVA.

Unfortunately, President Trump proposed selling TVA's transmission assets in his FY 2019 and FY 2020 budgets (see above). Led by Senator Lamar Alexander (R-TN), the entire Tennessee delegation and others from TVA's footprint sent a letter to President Trump on April 18, 2018, asking him

to reconsider his proposal. Senators Alexander and Marsha Blackburn (R-TN), along with others in Tennessee's delegation, sent another letter to President Trump on April 4, 2019, in opposition to the Administration's most recent (FY 2020 budget request) proposal to sell TVA's transmission assets. Congress did not include a provision to sell TVA's transmission in the FY 2020 appropriations bills that were signed into law at the end of 2019.

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.

In addition to the reasons discussed above, there are other considerations that illustrate why ESPCs at federal hydropower facilities are unfair, unworkable, and unnecessary:

- Most dams are multipurpose—in addition to generating hydropower, they provide flood control, water supply, and navigation. An ESPC contractor may want to install an efficiency product that increases costs or reduces benefits to these stakeholders;
- In addition to repaying the full cost of the power generating facilities, PMA customers also pay a large portion of the "joint costs" of the associated federal dam. This repayment obligation helps make the other purposes of these federal facilities possible. Unless ESPC contractors pay a share of these joint costs, they would be subsidized by the other users;
- Current investments in federal power facilities are usually financed at very attractive rates. The economics of these investments—and the pocketbooks of the electric consumers of PMA customers—will be adversely impacted if the ESPC is unable to access lower-cost financing than existing arrangements;
- With the cost of federal power escalating—in part as a result of rehabilitating older projects—and the market cost of power declining, revenues from the sale of additional power generated as a result of ESPC investments may prove inadequate to recoup the investment. Federal power customers could end up financially liable for uneconomic investments; and
- When federal power facilities are adversely impacted by drought or environmental restrictions, federal power customers are still required to make full payments to the Treasury. Additionally, these customers must purchase replacement power to cover the lost generation. Proposals from the ESPCs suggest that payments to these companies would remain constant, even under drought conditions, suggesting that their payments take priority over payments to the Treasury.

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) on June 4, 2019, introduced the Energy Savings Through Public Private Partnerships Act of 2019 (S. 1706/H.R. 3079). The legislation promotes the use of ESPCs at federal buildings but excludes federal hydropower facilities that provide power marketed by a PMA or TVA. The Senate bill was approved by the Energy & Natural Resources Committee in September 2019 and the House bill was approved by the House Energy Subcommittee on January 9.

American Public Power Association 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 introduction of S. 1706 and H.R. 3079, which prohibit 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.