



February 20, 2013

The Honorable Henry Waxman
House Energy & Commerce Committee
2322A Rayburn House Office Building
Washington, D.C. 20515

The Honorable Sheldon Whitehouse
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Waxman and Chairman Whitehouse:

Thank you for soliciting the American Public Power Association's (APPA) views on climate change and on developing effective policy responses. We appreciate your recognition of our association, which represents over 2,000 community-owned, not-for-profit electric utilities serving more than 47 million Americans, as a key stakeholder on this issue.

As you may be aware, in 2006, APPA created a CEO Climate Change Task Force to evaluate and develop policy positions on climate change and to provide practical advice to APPA members on programs and activities they could pursue locally to reduce greenhouse gas (GHG) emissions in their own communities. APPA's membership recognized early on that it was important for the association to develop consensus on how public power should address climate change. The task force has met several times a year since 2006 and developed several APPA policy resolutions on the regulation of GHG emissions from power plants that have been adopted by the full APPA membership. This task force is still active, although its mission has been expanded to also examine generation policies.

APPA has a long history of working with its members on climate change and the need to address it. The association supported the voluntary reporting program established under Section 1605(b) of the Energy Policy Act of 1992. APPA was also a signatory to the Climate VISION Power Partners Memorandum of Understanding with the Department of Energy (DOE), a program created in 2003 that sought to reduce GHG intensity through voluntary actions by electric utilities. Principles guiding the Partnership included "improved energy efficiency, increased investments in research and development, technological innovation, market-based initiatives, and cost-effective [carbon dioxide] CO₂ reductions."¹ Since then, APPA and its members have been involved in a variety of efforts at the state and local levels to reduce emissions through energy efficiency and demand response programs and increased use of hydropower and non-hydropower renewables.²

Congressional efforts to address climate change failed in the 111th Congress due to a lack of consensus, and there appears to be no consensus on the issue today. Should that change, APPA believes such legislation would need to be applied economy-wide, to all industry sectors, and would need to consider local, state, and regional initiatives that address the issue. A June 2007 resolution adopted by APPA further discusses the key issues climate change legislation must address. A copy of that resolution is included with this letter.

However, in the absence of near-term consensus on broad climate change-specific legislation, Congress could focus on legislation that addresses other important energy issues, but also has the collateral benefit

¹ Power Partners, Voluntary Climate Actions to Sustain Economic Growth, February 2003, at p. 4. Available at http://climatevision.gov/sectors/electricpower/pdfs/power_partners.pdf

² Some public power systems are subject to state renewable portfolio standards imposed on regulated utilities. Many voluntarily undertake initiatives to meet renewable portfolio goals that are separate from any state requirement.

of reducing emissions. Such legislation would include bills to promote energy efficiency, streamline hydro relicensing requirements and other regulations limiting or preventing the expansion of hydro power, and to establish a permanent repository for nuclear waste. Such bills stand a much better chance of passage in both chambers. For example, Senators Shaheen (D-NH) and Portman (R-OH) sponsored energy efficiency legislation in the previous Congress, S. 1000, that enjoyed broad support and would have improved efficiency in a number of areas, including buildings. The Senators have indicated their interest in reintroducing such legislation again in this Congress, which has a chance of achieving bipartisan consensus. The goal of this and other similar measures is to ensure we are using energy as efficiently as possible throughout our economy so as to minimize the need to expand our fleet of power plants, which in turn has a positive impact on reducing GHGs.

In terms of hydropower, according to U.S. Energy Information Administration (EIA) data from 2011, hydropower is the nation's largest source of clean, renewable electricity, accounting for 62% of domestic renewable generation and 8% of total electricity generation. Despite the beneficial use of hydropower, most dams were built decades ago, for purposes other than power generation—only 3% of the country's approximately 80,000 dams currently have facilities that generate electricity. Thus, there is substantial potential to add renewable electric generation to non-power dams by installing electricity generation equipment at those sites, as well as to existing municipal, industrial, and agricultural water distribution conduits/canals. Legislation to modernize and streamline the licensing process for new hydropower units on existing dams, for new hydropower technologies, such as marine hydrokinetic, and for relicensing of existing facilities to allow for efficiency upgrades could significantly increase this clean, renewable source and further reduce emissions.

With regard to nuclear waste, the broader electric sector, public power included, has long sought a solution to storage of waste, either in a permanent repository or in long-term on-site facilities. At the same time, the industry has contributed billions of dollars to the federal government to create a permanent repository, an outcome that has not been achieved. Resolution of both the financial and policy uncertainty surrounding this issue would have a positive impact on developing new nuclear power plants as well as upgrading existing plants, again paving the way for additional emissions reductions.

Regardless of any legislation Congress may pass that would lower GHG emissions (whether directly or indirectly), the Environmental Protection Agency has the authority to regulate such emissions under the Clean Air Act (CAA), and is in the process of doing so. In April 2012, the agency issued a notice of proposed rulemaking that would establish New Source Performance Standards (NSPS) for new Electric Generating Units (EGUs). While APPA has some significant concerns with the proposed rule and believes it demonstrates that the CAA is ill-suited to regulate ubiquitous GHG emissions,³ a final rule is expected this year. A proposed NSPS for existing EGUs to further regulate CO₂ is expected soon thereafter.

Another way Congress could address climate change is by directing federal agencies to examine how their regulations impact the ability of electric utilities to reduce GHG emissions. Public power utilities have been subjected to a plethora of regulations in the last couple of years, and some of these regulations have conflicting policy objectives. While EPA has issued a host of regulations impacting power plants,

³ One strong concern APPA has is with the standard of performance set in the proposal. It sets a limit of 1,000 lbs. CO₂/MWh gross for all fuel types, yet such a standard of performance could only be achieved by a natural gas combined cycle EGU. In seeking to reduce emissions from new power plants by setting a standard based on a single fuel, APPA believes EPA's proposal violates CAA Section 111(a)(1)'s definition of the term "standard of performance." Further concerns are discussed in comments APPA's submitted to EPA in June 2012.

other agencies have issued regulations impacting the electric industry as a whole, including those issued by the Federal Energy Regulatory Commission (related to transmission and wholesale markets), the Commodity Futures Trading Commission (CFTC) (regarding rules for hedging natural gas and electricity prices in derivatives markets), and the Department of Energy (related to appliance efficiency and transmission line efficiency). Some of these regulations are focused on enhancing efficiency and/or bringing non-hydropower renewables to market, but because they are not being viewed holistically in some cases, may have the unintended effect of making it more difficult for electric utilities to address climate change.

For example, regulations recently issued by the CFTC regarding the definition of swap dealer make it very difficult for public power utilities to swap arrangements with third parties that allow them to address volatility in fuel prices (e.g., natural gas). If public power utilities cannot enter into these agreements, among other things, it makes it more difficult for them to use natural gas as a fuel source. As you are aware, natural gas power plants emit about half the GHG emissions of coal plants, and natural gas generation is one of only a few, low-emitting base-load (available 24 hours seven days a week) resources that can be relied on to generate electricity at all times of the day. These CFTC regulations could make it more difficult for utilities seeking to fuel switch from coal to natural gas, ironically, often as a result of the plethora of EPA regulations being imposed on coal-fired plants.

Congress, therefore, could direct federal agencies to better coordinate on policies related to climate change. As mentioned above, agencies such as FERC, EPA, CFTC, and the Department of Energy are all implementing policies that have an impact on GHG emissions. However, there is little to no coordination among them on how each other's policies could complement one another or, at a minimum, not work at cross-purposes.

Any efforts to address climate change, whether by Congress or a federal agency, must recognize that CO₂ emissions are decreasing in the U.S. Data from the International Energy Agency (IEA) for 2011 shows that U.S. emissions have decreased 7.7% since 2006 due to lower oil use in the transportation sector and fuel switching by electric utilities from coal to gas. EIA data from the first quarter of 2012 also shows reduced emissions – the lowest since 1992 – from a decline in coal-fired electricity generation, a mild winter, and reduced gasoline demand.⁴ Emissions from power plants are likely to continue dropping as the electric industry uses more renewable energy to comply with renewable portfolio standards and continues fuel switching to natural gas.

A January 2013 APPA report examining new generation capacity in the U.S., finds that “the share of coal-fired capacity continues to diminish, as solar and nuclear, in addition to wind and natural gas, have surpassed it in the under construction category.”⁵ Over 40% of new plant construction is natural gas, with 19.1% wind, 12.7% solar, and 11.4% nuclear.⁶ In addition, since 2007, the share of coal plants under construction has dropped dramatically. The report also notes that natural gas has the largest share of operating capacity (43.4%), with coal at 30%.⁷ The operating capacity of coal will continue to drop as more coal-fired plants are retired due to age, EPA regulations, and the lower price of natural gas. In 2012 alone, over 12,200 MW of capacity were retired. Two-thirds of that retirement was coal-fired.⁸

⁴ See <http://www.eia.gov/todayinenergy/detail.cfm?id=7350>.

⁵ See APPA Report on New Generating Capacity: 2013 Update, January 2013, available at

⁶ *Id.* at 2.

⁷ *Id.* at 15.

⁸ *Id.* at 17.

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Legislative or regulatory efforts to further reduce emissions should not ignore these trends nor subject utilities to unrealistic emissions limits that cannot be achieved with existing technologies. Utilities should be provided with as much flexibility as possible to reduce emissions through a variety of means, including energy efficiency and demand response programs.

In addition, any such efforts must recognize that natural gas is simply not a bridge fuel towards ultimately generating electricity exclusively from renewable resources. Natural gas is a key, long-term fuel that many utilities will use to generate cleaner power. EPA regulations, such as utility MACT, are driving more utilities to use natural gas. Utilities are spending hundreds of millions of dollars to convert existing coal facilities to natural gas or to construct new natural gas plants. These are long-term investments that should not be undercut by legislation or regulations that would penalize natural gas generation solely because it is a fossil fuel and leave consumers footing the bill for significant stranded costs. In addition, natural gas generation is needed to back up wind and solar power, variable energy sources. The promotion of more wind and solar power, therefore, necessitates the use of more natural gas. Hence, climate change legislation or regulations should not dis-incentivize or penalize the use of natural gas.

Lastly, legislation or regulations must balance the need for electric reliability and costs to consumers and businesses with the need to address climate change. Low-cost, reliable electricity is a critical component of our nation's economy and crucial to everyday lives. Policies seeking to reduce GHG emissions cannot ignore the costs to consumers and businesses. We can and should seek to reduce GHG emissions, but should not do so in a manner that makes electricity cost-prohibitive for our most vulnerable citizens or for businesses competing in the global marketplace. In addition, such policies should not jeopardize electric reliability. Utilities are subject to a variety of reliability standards. Any new climate change policies must ensure utilities can operate in a manner that maintains reliability of the electric grid.

APPA members recognize the need to address climate change and are undertaking a variety of efforts to reduce GHG emissions. We appreciate your recognition of those efforts and outreach to APPA on this issue. Should you have further questions regarding our views, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Crisson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark Crisson
President & CEO

MC/DW