Testimony of
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Chairman Hall, Ranking Member Boucher, and members of the Subcommittee, my name is Alan Richardson, and I am the President and Chief Executive Officer of the American Public Power Association (APPA). Thank you for the opportunity to appear before you today to discuss APPA's views on comprehensive energy legislation.

APPA is the service organization for the nation's more than 2,000 community-owned electric utilities that serve over 43 million Americans. The utilities include state public power agencies, municipal electric utilities, and special utility districts that provide electricity and other services to some of the nation's largest cities such as Los Angeles, Phoenix, Seattle, San Antonio and Jacksonville, as well as some of its smallest towns. Indeed, the vast majority of these utilities serve small and medium-sized communities in 49 states, all but Hawaii. In fact, 75 percent of publicly owned electric utilities are located in communities with populations of 10,000 people or less.

Public power systems were created by state or local governments to serve the public interest. More than 500 public power systems have, or by the end of this year will have, celebrated their 100th anniversary. One of the most fundamental values that all APPA members share is local control. Like public schools, police and fire departments, and publicly owned water and waste water utilities, public power systems are locally created governmental institutions that address a basic community need: the provision of an essential public service at a reasonable price. Public power systems share the core mission and obligation to provide reliable and low-cost electric power to their retail and wholesale requirements customers, consistent with good environmental stewardship, and to do so year in and year out. Because they are locally controlled, the interests of public power systems are aligned with the long-term interests of their respective customers and communities.

Publicly owned utilities also have an obligation to serve the electricity needs of all their customers. They have maintained this "obligation to serve," even in states that have introduced retail competition. Public power's ongoing commitment to its service obligation in those local communities requires it to pay attention to long-term infrastructure needs. Because infrastructure is so critical to the future of the electric industry in general, and public power systems specifically, APPA can only support legislative initiatives that bolster our members' commitment to maintain existing infrastructure and to enhance their ability to develop needed new infrastructure. Without adequate transmission and generation infrastructure, public power cannot meet its service obligations.

APPA has consistently supported a comprehensive approach to energy policy. APPA has continually asserted that there are a number of areas where the Administration and Congress should act to enhance the viability of traditional fuels used to generate electricity, promote the commercialization of new, alternative sources of electricity, increase energy conservation, and provide adequate energy assistance to low-income households.

The 109th Congress is now underway and the debate on comprehensive energy legislation is set to be renewed. The Conference Report for H.R. 6, 108th Congress, will serve as the foundation for the upcoming debate on energy legislation in the House of Representatives, while the other body is taking a step back from legislation previously considered to determine whether the proposals advanced in the last few years still meet the needs of our country in 2005 and beyond. While some aspects of H.R. 6 still reflect sound public policy, others are dated and should be reconsidered.

Much of my testimony will focus on those provisions contained in the conference report that are directly related to electricity. However, I would first like to comment on other aspects of H.R. 6 that continue to be of great interest to APPA. The following is a brief summary of major issues APPA supports, outside of the scope of the electricity title:

Comparable Incentives for Renewable Energy Facilities

Many APPA members are extremely interested in expanding their portfolio of renewable generation facilities and contracts. The Conference Report for H.R. 6 originally contained a substantial energy tax title, which included production tax incentives for renewable generation by private entities, but contained no comparable incentive for public power systems and cooperatively owned utilities. Comparable incentive language had been included in the Senate-passed version of comprehensive energy legislation, but was stripped out of the final bill in conference.

These incentives are intended to stimulate investments that advance our overall national energy policy – specifically greater investment in renewable energy. However, they do not work for the nearly 3,000 publicly and cooperatively owned electric utilities that provide electricity to over 25% of the nation's consumers. If the goal is to promote these socially beneficial investments, it is imperative that a comparable incentive be available to this sector of the electric utility industry for renewable energy facilities. This is particularly important now that several states have passed, or are considering, renewable portfolio standards. APPA strongly supports the inclusion of a comparable incentive plan in comprehensive energy legislation.

Hydroelectric Relicensing

Over the next 15 years, two-thirds of all non-federal hydroelectric capacity – which totals nearly 29,000 megawatts of power and can provide enough electricity to serve six million retail customers – must undergo the Federal Energy Regulatory Commission (FERC) relicensing process. The relicensing of each hydro project may potentially result in a significant loss of existing capacity due to the operational changes that relicensing requires at specific projects. Such lost capacity must be replaced by less efficient generation sources that are likely to impose additional costs on consumers and produce greenhouse gas emissions. Therefore, APPA believes that improvements to FERC's hydroelectric licensing and relicensing processes are a necessity. APPA supports the hydro language contained in the House-passed Conference Report, and would urge the Subcommittee to retain it.

Renewable Energy Production Incentive

APPA strongly supports the reauthorization of and changes to the Renewable Energy Production Incentive (REPI) program contained in the Conference Report for H.R. 6. REPI was established by the Energy Policy Act of 1992, and authorizes the Department of Energy (DOE) to make direct payments to publicly- and cooperatively-owned electric utilities for electricity generated from solar, wind, landfill-gas, and certain geothermal and biomass projects. It was intended to provide incentives to public power for investment in renewable energy that were comparable to those provided to for profit utilities through the tax code. Because this program has been grossly under-funded, it has never fulfilled its primary mission. While we strongly believe REPI should be updated and preserved, we also believe, as noted above, that Congress should create a program that provides comparable financial incentives to those offered to for-profit companies to encourage investment in renewable and clean energy facilities. Since 1995, REPI has funded more than 36 renewable energy projects in 17 states. REPI's authorization expired in 2003.

The renewable energy title in the Conference Report includes the language APPA advocates to reauthorize and reform REPI. It extends REPI for another ten years and directs DOE to allocate funds during funding shortfall years to all projects on a more equitable basis than is the case under the current process. The language also clarifies that landfill gas-to-energy projects and Indian tribal governments are eligible for funding under REPI. The reauthorization of REPI is a high priority for APPA in any comprehensive energy measure that Congress may consider.

Price-Anderson Act Reauthorization

The Price-Anderson Act, a law that indemnifies DOE contractors and Nuclear Regulatory Commission (NRC) licensees for damages resulting from nuclear incidents, expired in 2003. A two-year extension of Price-Anderson coverage for DOE contractors was included in the FY 2005 defense authorization bill (H.R. 4200), which was approved by Congress on October 9, 2004.

The Conference Report for H.R. 6 sought to extend Price-Anderson coverage for new commercial reactors and new DOE nuclear contracts through the end of 2023. The legislation raised the maximum reactor assessment from $88 million to $95.8 million and the limit on per-reactor annual payments from $10 million to $15 million, while at the same time limiting DOE contractor indemnification to $10 billion. APPA supports the long term reauthorization of the Price-Anderson Act.

Clean Coal Technology

The Conference Report for H.R. 6 contains a 15% investment tax credit for retrofits or re-powering of existing coal units with qualifying "basic" clean coal technologies (including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion and integrated gasification combined cycle). Such technologies must meet certain pollution control requirements and comply with a design net heat rate of at least 500 BTU/KWh less than the heat rate of the existing coal-based unit prior to conversion. Up to 4000 megawatts of capacity nationwide would be eligible.

A 17.5% investment tax credit is provided in the Conference Report for H.R. 6 for a new advanced clean coal technology unit meeting certain carbon and heat rate requirements, which vary among eligible technologies. These technologies include advanced pulverized coal, atmospheric fluidized bed combustion technology, pressurized fluidized bed combustion, integrated gasification combined cycle, and others. Up to

6000 megawatts of capacity nationwide would be eligible. APPA supports clean coal technology research and development, as well as incentives for such development, so long as they are linked to comparable investment incentives that are available for public power systems and rural electric cooperatives.

Energy Conservation

The H.R. 6 Conference Report would have established a program for developing plans for increasing energy and water conservation in congressional buildings. It sets targets and timetables for energy consumption reductions in federal buildings nationwide and permanently extends existing authority provided to federal agencies to contract with energy service companies to assume the capital costs of installing conservation equipment and renewable energy systems in federal facilities or buildings. The legislation expands the use of these contracts to cover the replacement of existing federal buildings with new, more energy-efficient buildings and expands the definition of energy savings to include a reduction in water costs. The language also directs federal agencies to procure Energy Star or Federal Energy Management Program designated-energy efficient products. Furthermore, the language authorizes $20 million annually through FY2006 for grants to local governments, community development corporations, and Indian tribes for efficiency and renewable energy projects in low-income communities and authorizes $3.4 billion annually from FY2004 through FY2006 for the Low-Income Home Energy Assistance Program (LIHEAP). APPA remains very supportive of the energy efficiency and conservation goals set forth in the Conference Report.

ELECTRICITY

The House first passed the H.R. 6 Conference report on November 18, 2003. In the fifteen months since that vote, there has been a great deal of change in the electric utility industry. Much of the electricity title's language may indeed be past its shelf life and in need of retooling. While APPA supports the goal of ultimately passing comprehensive energy policy legislation, we urge the Subcommittee to exercise caution when addressing a number of the provisions contained in the Conference Report's electricity title.

The goals of federal electricity restructuring policies should be to promote effective competition in wholesale electricity markets where it is possible to do so for the benefit of consumers and the well-being of our economy, while recognizing the regional diversity of those markets and the very unique characteristics of electricity. APPA believes that the number of electricity policy issues requiring congressional action has decreased since the passage of H.R. 6. To achieve a more robust marketplace, APPA believes that the Federal Energy Regulatory Commission (FERC) must use its existing authorities under the Federal Power Act to, among other things: allow market-based rate sales only by sellers that cannot exercise market power, through use of mitigation measures if needed; ensure transparent market information; remedy market power abuses in a timely manner; ensure that existing Regional Transmission Organizations (RTOs) put the interests of consumers first and foremost; and clarify and enforce open access transmission rules in non-RTO regions. In addition, the market power protections contained in the Public Utility Holding Company Act (PUHCA) should be enforced by the Securities and Exchange Commission (SEC), and the Act must not be repealed by Congress outright.

I will now discuss specifically a number of the electricity related provisions contained in the Conference Report for H.R. 6.

Electric Reliability Standards (Sec. 1221)

The Conference Report for H.R. 6 creates mandatory reliability standards promulgated by an electric reliability organization with regional stakeholder input. The language comports with that agreed to previously by APPA and other industry stakeholders. APPA strongly supports the reliability language contained in the Conference Report. Should comprehensive energy legislation stall once again, we believe Congress should move the reliability provisions on a stand alone basis.

Siting of Interstate Electric Transmission Facilities (Sec. 1221)

The language included in the H.R. 6 Conference Report grants FERC "backstop" transmission facilities siting authority (through the use of eminent domain) in areas identified by DOE as critical transmission congestion pathways, if a state has delayed or denied a permit. The provision authorizes interstate siting "compacts" to help identify regional siting priorities. The siting authority applies to both existing and new transmission facilities. There is an ERCOT (Electric Reliability Council of Texas) exemption.

APPA is generally supportive of this approach to the transmission siting issue. The need for new transmission infrastructure is one of the most pressing issues facing the industry and the public it serves. APPA does urge the Subcommittee to look carefully at provisions dealing with state "compacts" that could undermine the effectiveness of this section in siting new transmission.

Third Party Finance (Sec. 1222)

This provision authorizes WAPA and SWPA to engage in certain financing and operation arrangements for existing and new transmission lines with a cap of $100 million for 10 years from third-party contributions. APPA is concerned that this provision addresses a problem that does not now exist (if, indeed, it ever did). Third-party arrangements have been entered into absent any federal statute, as demonstrated by WAPA's partnerships for the construction of the Path 15 transmission line in California. APPA is concerned that this language could actually slow down the process by which WAPA and SWPA undertake to build new transmission facilities. We recommend this portion of the electricity title be deleted.

Open Nondiscriminatory Access (Sec. 1231)

Known as "FERC-lite," this provision requires an "unregulated transmitting utility" (certain public power systems and rural electric cooperatives, the Tennessee Valley Authority and the Power Marketing Administrations) to provide open access to their transmission facilities at rates comparable to what they charge themselves and under terms and conditions comparable to those they apply to themselves. Systems that do not sell more than 4 million MWh of electricity annually or that do not own or operate transmission facilities necessary for operating an interconnected grid are exempted. The provision clarifies that nothing in this section authorizes FERC to order an unregulated transmitting utility to join an RTO. The provision also includes the comparability language sought by APPA, as well as a limitation on FERC's ability to require an action under the section which would result in a violation of private use restrictions on municipal bonds. While APPA is still not convinced that this provision is necessary, we are not seeking any changes to the language at this time.

Regional Transmission Organizations (Secs. 1232-1234)

In light of many changes since the passage of the H.R. 6 Conference Report in November of 2003, the Committee should reconsider the need for sections 1232-1234. APPA members, once strong supporters of Regional Transmission Organizations (RTOs) in theory, now find serious problems with the functional RTOs in practice. Our concerns are set forth in a publication entitled, *Restructuring at the Crossroads: FERC Electric Policy Reconsidered.* This report is available on the APPA website, www.appanet.org.

If the Committee retains section 1233 regarding RTO progress reports, we would recommend that FERC be directed to report on its progress in addressing specific RTO problems we identified in our report. These problems include: increasing RTO administrative costs; unaccountable governance and lack of responsiveness to customer needs; and implementation of new markets that are not clearly shown to benefit end use consumers. Another serious problem in RTO regions is the lack of available long-term physical or financial transmission rights. In an industry with long lead times for construction and long life span of generation facilities, the absence of long-term physical or financial transmission rights is a serious impediment. Public power systems in RTO regions need both assured long-term access and predictable transmission rates. Their absence is hampering public power's ability to enter into the long-term generation commitments that are critical to fulfilling their service obligations. FERC has begun to focus on RTO administrative costs, governance problems and the need for assured long-term transmission access at reasonable rates. We believe that periodic reports from FERC to Congress on its progress in addressing these problems would be appropriate. Congressional attention to these matters might well promote the "mid-course corrections" with respect to RTO policies that APPA has recommended.

Standard Market Design (Sec. 1235)

This provision states that no final rule mandating a standard electricity market design pursuant to the Standard Market Design Notice of Proposed Rulemaking (SMD NOPR), including any rule or order of general applicability within the scope of the NOPR, may be issued before October 31, 2006, or take effect before December 31, 2006. Due to shifts in policy direction at FERC, APPA believes that this provision represents a legacy from the past and is likely now unnecessary within the context of a Federal electricity title.

Native Load Service Obligation (Sec. 1236)

This language was drafted to protect the ability of load-serving entities (LSEs) to access transmission to serve their native loads under any kind of transmission pricing and allocation regime, unless an RTO or ISO has determined its transmission pricing methodology prior to September 15, 2003. When this provision was originally crafted, FERC's Standard Market Design NOPR was seen by many as a looming threat to the ability of LSEs to maintain access to the transmission rights necessary to serve their native load. Because SMD does not pose the same threat that it did at the time this legislation was originally passed, it would be appropriate to review this section once again, to ensure that it accomplishes its intended purpose.

The counterpart to this language as it emerged from the Senate in 2003 specifically provided that transmission rights of transmission owners or holders of transmission rights as a result of contracts or service agreements would be protected and further, that the holders of such rights could elect whether to accept firm transmission rights or equivalent tradable or financial rights. This option was not included in the conference report for H.R. 6. Yesterday, February 9, APPA's policy committee reaffirmed this position as follows: "That APPA supports appropriate legislative language confirming that transmission owners and other load-serving entities (including public power transmission dependent utilities) are eligible for service obligation protection under any comprehensive energy legislation to be passed, and should have the unequivocal right to elect to use their physical transmission rights to meet their service obligation, and only on a voluntary basis exchange these physical rights for tradable or financial transmission rights."

While the section addresses the preservation of existing transmission rights in order for utilities to meet their service obligations, it is silent on their ability to obtain new, long-term transmission rights. Yet future long-term rights and predictable transmission rates are critical to meeting future long-term obligations. They are equally critical to the development of new renewable generation resources, particularly wind, and new base load generation, which generally must be built far from load. APPA believes this section should be modified to address this issue.

Transmission Infrastructure Investment (Sec. 1241)

The legislation requires a FERC rulemaking on transmission rate incentives, with some incentives applicable to all transmission owners (TOs), and significant incentives applicable to TOs that participate in RTOs or ISOs (including accelerated depreciation of new transmission facilities over a maximum of 15 years).

APPA believes that this language should be redrafted so that the "reward" matches the risk for the siting, construction, and utilization of new transmission facilities. This means that incentives should not be awarded through excessive rates of return after transmission has been built and placed in service. At that point, the investor's risk is relatively low and the return on investment should reflect that fact. Instead, higher reward in the form of greater assurance of cost recovery should be given to entities willing to take the risk of building transmission facilities in areas in great need of infrastructure while they are in the process of obtaining the necessary permits and constructing the facilities.

The industry badly needs new transmission infrastructure, and public power represents an untapped resource for the development of such new facilities. Public power systems serve approximately 15% of the nation's retail load. They have maintained high credit ratings during recent years, when many investor-owned utilities have experienced difficult financial situations due to their aggressive diversification and growth strategies. Public power systems are willing and able to invest in transmission facilities provided they receive the concomitant long-term transmission rights. APPA would urge Congress to explore avenues to encourage joint ownership of new transmission facilities by all load-serving entities in a region, be they public or private.

Voluntary Transmission Pricing Plans (Sec. 1242)

Commonly known as the "participant funding" provision, this section of the H.R. 6 Conference Report enables investor-owned transmission owners, RTOs and ISOs to propose transmission pricing plans for transmission upgrades that FERC must approve. While the section is very convoluted (which is in itself a problem), the practical effect is that virtually all transmission facilities deemed to be needed for "economic" purposes (rather than "reliability" purposes) would be funded by the party requesting transmission service, even if many other transmission customers would benefit from those same facilities.

APPA remains strongly opposed to this provision of the Conference Report. APPA believes that this pricing scheme should not be mandated and that Congress should respect the diversity and flexibility of each region to address this issue as it sees fit. FERC is allowing each RTO to develop, through a regional collaborative process, the pricing plan for new transmission facilities applicable in that region. A form of participant funding is, for example, being used in PJM, while the New England ISO has adopted a very different method, and the Southwest Power Pool RTO is developing yet a third approach. Hence, this mandate is both unnecessary and potentially counterproductive. It could also stall the development of new transmission facilities, thus potentially impacting the overall reliability of the bulk electric power system.

Amendments to PURPA (Subtitle E)

This subtitle contains language that addresses the termination of mandatory purchase and sales requirements. The provisions direct FERC to issue a rulemaking, within 180 days from enactment, revising the criteria for new qualifying cogeneration facilities seeking to sell electric energy. They mandate that this rulemaking shall insure the thermal energy output is used in a productive and beneficial manner, as well as meeting other criteria, and direct state regulatory authorities and electric utilities to make available, upon request, real-time pricing and net-metering services. APPA believes these provisions have been carefully crafted and support their inclusion in future legislation.

Repeal of PUHCA (Subtitle F)

The Public Utility Holding Company Act of 1935 (PUHCA) is repealed twelve months after the date of enactment of the bill. APPA strongly opposes repeal of PUHCA unless FERC is simultaneously given the authority to address the probable consequences of repeal.

Opponents of the Holding Company Act have been calling for its repeal ultimately since its enactment 70 year ago. Today, PUHCA repeal is advanced, in part, to address the perceived needs of a disaggregated and restructured industry that was envisioned in the almost euphoric deregulation climate of the late 1990s. PUHCA was enacted to protect investors and consumers from abusive and market manipulative activities and to ensure effective regulation of utility holding companies controlling vertically integrated utilities. A few years ago it was believed that the vertically integrated utility model of the past would soon be displaced by a multitude of participants, each with a different focus – transmission, generation, distribution, marketers, etc. As a result, the need for PUHCA would disappear. However, the envisioned industry transformation has not occurred and indeed public utilities are now pursuing a "back to the basics" strategy, which includes a return to the vertically integrated structure of past decades. In other words, the industry structure is precisely the structure PUHCA was created to regulate in order to protect the interests of investors and consumers.

Advocates of PUHCA repeal also characterize the Act as an impediment to investment in the industry. A report a year ago from Standard & Poor's noted that this argument "does not seem to hold much water after the power generation market imploded." S&P went on to note that investors have a solid appetite for companies with stable, regulated revenues.

A point on which almost all agree is that PUHCA repeal will promote further consolidation within the industry. Consolidation and a reduction in the number of industry participants will not promote a more competitive market.

Among the provisions that should be considered to accompany PUHCA repeal, if repeal is still deemed good public policy, are: explicit authority for FERC to review transfers of generation assets, utility holding company mergers and consolidation of natural gas and electric utilities; enhancement of FERC's existing merger review authority, with a higher threshold for merger approval; expanded FERC authority to identify market manipulative and anti-competitive behavior; authority to impose substantial penalties for violations; and truly meaningful access to holding company books and records.

Market Transparency, Enforcement, and Consumer Protection (Subtitle G)

This subtitle includes a ban on round-trip trades and the filing of false information, instructs FERC to establish market transparency rules within 180 days of enactment of the bill, and imposes penalties for violations. The positive changes that APPA and others had advocated for and won in the House and Senate bills are minimized by the addition of a new "savings clause" that prevents FERC from regulating other providers of market information (e.g. trade publications) or from competing with them. In addition, language preserving exclusive Commodity Futures Trade Commission (CFTC) jurisdiction was added, enhancing the potential for significant jurisdictional confusion between FERC and CFTC.

APPA would like to see a stronger and clearer market transparency and consumer protection provision contained in the electricity title. The legislation identifies and prohibits one market manipulative practice utilized by certain market participants – round trip trades. But there were many more, including the very recent discovery of Enron traders colluding to withhold generation capacity from the market (with callous disregard for the effects on the economy and the public of rolling blackouts). FERC should have the authority to identify abusive practices by rule, and the ability to impose substantial penalties for violations. There are many important consumer protection issues facing FERC today, including the issue of what standards it will use to grant authority to public utility sellers to charge market-based rates. FERC should be encouraged to deal with such market power issues, to protect electric consumers from the payment of unjust and unreasonable rates.

Refund Authority (Sec. 1285)

Also known as the "uniform refund authority" provision, this language asserts FERC's authority to order refunds if certain non-jurisdictional entities violate FERC rules. The language applies to public power systems with sales above eight million MWh of electricity annually. It applies to "short-term" sales - meaning sales agreements in effect for 31 days or less. Rural electric cooperatives are explicitly exempt. TVA, SWPA, SEPA and WAPA are subject to FERC's authority in this regard only insofar as FERC can order refunds of these federal entities to achieve a just and reasonable rate. FERC's authority to order refunds of BPA sales under this section is even more limited than for the other federal utilities.

This provision originated from allegations of market manipulation by non-jurisdictional public power systems during the Western energy crisis. Subsequent investigations and settlements, however, have not shown such an extraordinary remedy to be merited. In the absence of any demonstrated need for this provision, we do not believe it is necessary.

Sanctity of Contract (Sec. 1286)

This provision requires FERC, before abrogating certain contracts, to find that such action would meet a "public interest" standard (known as the *Mobile-Sierra* standard of review), unless the contract expressly provides for a different standard to apply. The provision would be applied prospectively. In the absence of express language, any future contracts could only be abrogated if a party of the contract could prove that abrogation of the contract is "in the public interest" – a higher threshold than demonstrating that the contract rate or terms are unjust and unreasonable (the standard contained in Sections 205 and 206 of the Federal Power Act) – and thus more difficult to prove.

We are very concerned about the consequences of this provision. Where two parties to a contract do not have equal bargaining power, the stronger party could insist that the contract be silent on the terms of review, resulting in the application of the *Mobile Sierra* "public interest" standard by default. Public power systems are frequently the weaker of two parties in such bargaining situations. Because they have an absolute obligation to meet the needs of their customers, and often have only a limited number of contractual options, they may have little choice but to accept a contract that is contrary to their interest, not through legitimate negotiations with the other party, but by Congressional *fiat.* Through this provision, they could well be deprived of the protection of the "just and reasonable" standard to which they should and otherwise would be entitled under the Federal Power Act. In essence, this provision substantially undermines the "just and reasonable" standard itself–one of the most fundamental consumer protection provisions of the Act. We recommend that this provision be deleted.

Merger Reform (Subtitle H)

The Conference Report would modify FERC's merger review authority to provide the Commission with authority to review holding company mergers. This subtitle requires a DOE study to determine whether or not FERC's merger review authority under the Federal Power Act is redundant of other federal and state authorities. FERC must also report to Congress annually on the actions it took on mergers in the previous year. In addition, these provisions raise the threshold of asset dispositions reviewable under Section 203 of the Federal Power Act to those valued at $10 million or more, and also limit the total time that the Commission has to review a merger to 360 days. Finally, the bill also eliminates the review of convergence mergers.

While we find the increase in the dollar threshold for FERC review of mergers reasonable, we oppose the balance of this section. We find these provisions particularly inappropriate when combined with the repeal of PUHCA, which is also included in the Conference Report and is noted in greater detail above, which will likely trigger a large number of mergers and consolidations within the electric utility industry. It is unlikely the new time limits set forth by this provision for FERC review will allow the Commission the adequate amount of time to review all of the potential mergers in a thorough fashion. If anything, APPA believes FERC's authority to review public utility's mergers and property acquisitions should be strengthened. For example, FERC should be given authority to review the disposition of generation assets by public utilities.

Studies (Title XVII)

Section 1611 requires FERC to assess the "reliability and consumer" effects of the exemption for public power systems and rural electric cooperatives set out in Section 201(f) of the Federal Power Act. This study is to be completed no later than five years after the date of enactment of the bill and every five years thereafter.

There seems little reason for this provision. While there were allegations of bad behavior by some western public power systems, there has generally been no evidence or judgments to support those claims. Despite the absence of evidence that the lack of FERC jurisdiction over transmitting publicly owned utilities has caused problems that have not and cannot be addressed through FERC's "comparability" requirements, the bill expands FERC's authority over some publicly owned transmitting utilities. In view of these facts, it would seem that the additional study requirement called for in this title is totally irrelevant and unneeded.

Thank you, once again, for allowing me to appear here today to testify on this important matter. APPA hopes to work with members of this Subcommittee as the debate on comprehensive energy legislation continues. I would be happy to answer any of your questions.