



**American
Public Power
Association**

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March 3, 2010

The Honorable Henry A. Waxman
Chairman
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Edward J. Markey
Chairman
House Energy and Commerce Committee
Energy and Environment Subcommittee
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen Waxman and Markey:

I am writing in response to your letter of February 25, 2010, in which you posed two questions to clarify the position of the American Public Power Association (APPA) related to our endorsement of S.J. Res. 26. As you are aware, APPA is the national service organization representing the interests of the 2,009 not-for-profit public power systems providing electric service to approximately 45 million Americans in 49 states.

APPA's responses to the two questions you posed in your letter are as follows:

- 1) Please clarify what exactly APPA's position is on EPA's scientific finding. If APPA disputes the scientific validity of the EPA finding, please provide the scientific basis for this dispute. If APPA does not dispute the scientific validity of the EPA finding, please explain why APPA is urging U.S. Senators to "disapprove" of EPA's science when APPA has no basis for disputing it.

APPA does not dispute the science of climate change, which has shown that: 1) climatic changes are occurring; and 2) human actions are contributing to such changes. Thus, APPA has been on record since 2007 in support of appropriate federal legislation to address climate change, and we continue to work with Members of Congress to ensure passage of such legislation. This position was not taken lightly given the inevitable costs to electricity consumers that will be associated with any legislation to lower greenhouse gas (GHG) emissions to the point that it has the desired environmental benefit. However, APPA has repeatedly expressed opposition to the regulation of GHG emissions under the Clean Air Act while at the same time recognizing that the 2007 *Massachusetts vs. EPA* Supreme Court decision has prompted such regulation by the EPA. Hence, the need for congressional action.

The endangerment finding made by the EPA in December represented the first step toward a potentially irreversible course of greenhouse gas regulation under the Clean Air Act, a course of action laid out in some detail in the February 22, 2010, letter sent by EPA Administrator Jackson to eight Senators. As Administrator Jackson noted therein, the endangerment finding is the "legal precursor" to EPA action. APPA cautioned the EPA against triggering that legal precursor in its comments (June 23, 2009) on the EPA's then-proposed endangerment finding:

“Importantly, for the reasons described below, APPA believes that U.S. EPA continues to retain discretion at this moment, and should exercise that discretion, to avoid triggering the otherwise unavoidable cascade of consequences that would result from a final endangerment determination. Given the uniform recognition of the unsuitability of the Clean Air Act to address GHGs—including a recent statement by U.S. EPA Administrator Lisa Jackson—and the ongoing developments on comprehensive legislation, EPA must exercise this discretion to defer a final endangerment determination at this time. APPA’s views have not changed as to a preference that Congress pass an entirely new law to accommodate an economy wide approach to reduce GHGs and mitigate against climate change.”

It is clear that the EPA is moving forward to regulate GHG emissions of stationary sources in the next year, but it is not clear that Congress will enact workable, comprehensive climate change legislation prior to EPA implementation of these regulations. Consequently, it is critical that Congress consider legislation to suspend EPA action for a period of time sufficient to permit negotiations on legislation to conclude. Currently, S.J. Res. 26 is the only proposal pending for a vote on the Senate floor that would do so.

APPA will also support alternative approaches in the Senate that achieve a “time out” from Clean Air Act regulation of stationary sources, and we stand ready to work with you and the rest of the congressional leadership to enact such legislation this year.

2) Does APPA oppose the regulation of carbon pollution from automobiles? If so, why?

No. APPA opposes the regulation of GHGs for stationary sources under the Clean Air Act. As is mentioned above, the EPA’s decision to promulgate an endangerment finding for public health and welfare in December triggered the circumstance we are now facing, i.e. the regulation of stationary sources under the Clean Air Act, beginning in 2011. We do not dispute climate change science, but the approach used to address climate change based on the science matters greatly to consumers of electricity. Therefore, APPA urges Congress to delay this timeline for regulations of stationary sources until comprehensive climate change legislation that fully preempts the Clean Air Act can be finalized.

While it is our understanding that the dual track being undertaken, pursuant to separate statutes, by the National Highway Traffic Safety Administration (NHTSA) and the EPA to regulate CO₂ emissions from automobiles would allow NHTSA to move forward regardless, we appreciate that agreements have been made by stakeholders, lawmakers and regulators in this area and we do not seek to undermine those agreements. However, EPA’s regulation of mobile sources inevitably leads to regulation of stationary sources under the Clean Air Act. This must be avoided through legislation to delay EPA action to regulate stationary sources and also in any comprehensive climate change legislation that is ultimately passed.

Thank you for the opportunity to respond, and we stand ready to continue to work with you on these important issues.

Sincerely,



Mark Crisson
President & CEO

CC: Ranking Member Barton
Ranking Member Upton