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Statement of the

AMERICAN PUBLIC POWER ASSOCIATION (APPA)

For the

**HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES
And
SUBCOMMITTEE ON OVERSIGHT**

Hearing on Energy Tax Policy and Tax Reform

September 22, 2011

The American Public Power Association (APPA) appreciates the opportunity to provide the following statement for the record for the House Ways and Means Subcommittee on Select Revenue Measures and Subcommittee on Oversight joint hearing on "Energy Tax Policy and Tax Reform."

APPA represents the interests of more than 2,000 not-for-profit, publicly-owned electric utility systems across the country, serving approximately 46 million Americans. APPA member utilities include not-for-profit state public power agencies and municipal electric utilities that serve some of the nation's largest cities. However, the vast majority of these publicly-owned electric utilities serve small- and medium-sized communities in 49 states, all but Hawaii. In fact, 70 percent of our member systems serve communities with populations of 10,000 people or less.

Overall, public power utilities' primary purpose is to provide reliable, efficient service to their local customers at the lowest possible cost, consistent with good environmental stewardship. Like hospitals, 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: they operate on a not-for-profit basis to provide an essential public service, reliably and efficiently, at a reasonable price.

As various tax reform proposals have been developed over the last year, APPA members have seen their access to tax-exempt financing, our most important infrastructure development tool, fall under attack. For example and most recently, a proposal included in the President's American Jobs Act of 2011 would prevent certain high-income earners from using the full tax-exemption on municipal bonds, and this provision would be applied retroactively—an unprecedented proposal in the municipal bond world.

This proposal, even if not enacted, creates an uncertainty in the municipal bond market, given that retroactive elimination of the exemption for certain investors has been proposed for the first time. In the past, municipal bond investors could feel fairly certain that the investment would remain stable—that is simply not the case now. The President's proposal, in reality would not be a tax on high-income investors, but a tax on state and local governments. Investors will continue to invest in municipal bonds, demanding a higher yield to make up for the lost benefit, and municipal interest rates will increase. **Any repeal or restriction of tax-exempt financing would be a tax on customers of public power electric utilities and state and local tax-payers, and would therefore result in decreased job creation.**

Background

In 1895, the Supreme Court decided that the federal government could not tax interest on municipal bonds under the U.S. Constitution. The Supreme Court later ruled, in 1988, that subsequent cases had proven that the federal government could, in fact, tax interest on municipal bonds, if it desired, but Congress has wisely refrained from doing so because the underlying "federalism" principle embodied in the original 1895 court case is based in the idea that one level of government should not tax another. For example, state and local governments do not assess property taxes on all the federal property within their jurisdictions. Upsetting the "federalism balance" could lead to unintended consequences.

Benefits of Tax-Exempt Financing

- Results in lower capital costs to public power utilities, which they can then pass along to electricity customers. In addition, tax-exempt bonds result in lower taxes and user fees for states, counties and cities overall—resulting in a lower cost burden for communities. Given the lower cost burden, community services are less likely to be interrupted due to budgetary constraints.
- Creates an economic incentive for government units and public power utilities to continue to make timely investments in infrastructure, thereby keeping the community safe, and keeping electricity distribution efficient.
- Allows government units and public power utilities' consistent access to a financing tool instead of having to rely on the annual federal appropriations process.
- The legal and regulatory process for tax-exempt bonds is well established, and ensures that states and localities cannot abuse the tax-exemption.
- Provides a natural project viability test. If issuers cannot convince investors of viability, projects are unable to move forward.
- Efficient and affordable way for the federal government to assist states, counties and cities to develop infrastructure and jobs.

Tax-exempt financing is an extremely important tool for public power utilities, and has been important to our nation's infrastructure development for over 100 years. Any elimination or further restriction of tax-exempt bonds would be a direct tax on local communities and public power rate payers.