



October 24, 2008

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex C)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Section 5 Workshop P083900

To the Commission:

The National Rural Electric Cooperative Association (NRECA) and American Public Power Association (APPA) appreciate the opportunity to submit these brief comments to the Federal Trade Commission (FTC) to assist in its evaluation of the appropriate scope of Section 5 of the FTC Act.

As the national service organization representing approximately 930 not-for-profit, member-owned rural electric cooperatives, serving more than 40 million consumers in 47 states and providing approximately 10 per cent of electricity sales in the United States, NRECA is keenly interested in preventing of the accumulation, consolidation and abuse of market power in the energy industry.

Most of NRECA's members are distribution cooperatives that provide retail electric service, while some NRECA members supply power at wholesale to their distribution cooperative owner-members. All electric cooperatives – retail and wholesale – were formed to provide electric service to their owner-members at the lowest reasonable cost consistent with adequate and reliable service. Ideally, competition should produce precisely these results. Accordingly, NRECA is interested in ensuring fair competition at both the retail and wholesale levels.

APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. More than 2,000 public power systems provide over 16 percent of all kilowatt-hour sales to ultimate customers, and do business in every state except Hawaii. Public power systems own about 10 percent of the nation's electric generating capacity and about eight percent of the nation's high-voltage transmission lines; however many must use the transmission facilities of public utilities to move their power supplies to their loads.

APPA and the public power systems that it represents have a vital interest in the structure of the electric utility industry and its competitive health. APPA has participated actively in numerous proceedings before various agencies concerning wholesale competition and merger-related issues.

One relatively new development in the industry is joint ventures formed by two or more utilities to construct, own and operate electric transmission facilities in cooperation with one another. Properly implemented, such projects can contribute to the nurture of genuinely competitive electric power markets, both by enlarging the infrastructure essential to the development of such markets and by diminishing the transmission market power that can undermine those markets.

When cooperatives and public power systems have been allowed to participate in coordinated development of transmission they have done so enthusiastically. The nation's transmission infrastructure is severely under-built, and transmission constraints suppress competition in wholesale power sales in many regions of the country. Joint ventures can marshal capital that otherwise might not be available for transmission expansion and exploit economies of scale to develop new projects that might otherwise never be built.

However, NRECA and APPA are concerned that cooperatives, public power systems and other market participants willing and able to contribute to transmission projects may be excluded from joint ventures formed to pursue them. Such exclusion can be a method of unfair competition. By contrast, inclusion of willing participants in such arrangements would afford a diffusion of ownership that could enhance the competitiveness of markets affected by control of transmission.

To encourage joint projects that increase transmission access to market participants and reduce both retail and wholesale power prices, NRECA and APPA urge the FTC to use its authority under Section 5 and the Hart-Scott-Rodino Act to ensure that cooperatives and public power systems interested in participating in joint transmission projects are not unlawfully excluded from such participation.

NRECA and APPA appreciate the opportunity to address this issue. Please do not hesitate to contact us if you have any questions.

Sincerely,

NATIONAL RURAL ELECTRIC  
COOPERATIVE ASSOCIATION

/s/ Richard Meyer

Wallace F. Tillman  
Vice President, Energy Policy and General Counsel  
Richard Meyer  
Senior Regulatory Counsel

National Rural Electric Cooperative Association  
4301 Wilson Blvd.  
Arlington, VA 22203  
(703) 907-5811  
Fax: (703) 907-5517  
E-mail: [richard.meyer@nreca.coop](mailto:richard.meyer@nreca.coop)

AMERICAN PUBLIC POWER ASSOCIATION

**/s/ Susan N. Kelly**

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Susan N. Kelly  
Vice President of Policy Analysis  
and General Counsel  
American Public Power Association  
2301 M Street, N.W., Suite 300  
Washington, D.C. 20037-1484  
(202) 467-2900  
Fax: (202) 467-2910  
Email: [skelly@appanet.org](mailto:skelly@appanet.org)