

The Honorable Steven Chu  
Secretary of Energy  
U.S. Department of Energy  
Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585-1000

***Re: Secretarial Memorandum: “Power Marketing Administrations’ Role”***

Dear Secretary Chu:

I am writing, on behalf of the multi-sector membership of the Western Business Roundtable (“Roundtable”), regarding a March 16, 2012 memorandum issued by you to the heads of four federal Power Marketing Administrations (“PMAs”). In that document – entitled “*Power Marketing Administrations’ Role*” – you issued a series of directives intended to make major changes in the PMAs’ missions and priorities.

The memorandum (hereafter referred to as the “Chu Memo” or “Memo”) lays out the broad framework of new DOE-driven mandates. It also makes clear that detailed directions on implementation of the mandate will be forthcoming.<sup>1</sup>

The Chu Memo has fostered a tremendous amount of concern in Congress, within Western states and among rural cooperatives and municipal utilities and energy customers. Those concerns are numerous: legal, process and economic. A joint letter, submitted to you by 166 Members of the U.S. House of Representatives and U.S. Senate, sums up a number of the most troubling implications of the Memo:

*“Public power utilities, rural electric cooperatives and local officials in our states are troubled by the potential cost impacts of these directives and by a perceived expansion of the role of the PMAs beyond their current statutory authority. These proposals also constitute a fundamental shift away from regional planning, and the understanding of local needs and impacts which comes with it, towards a Washington, D.C.-based, top-down approach.”<sup>2</sup>*

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<sup>1</sup> U.S. Secretary of Energy Steven Chu, “*Power Marketing Administrations’ Role*” Memorandum to Power Marketing Administrators (March 16, 2012).

<sup>2</sup> Joint U.S. House of Representatives-U.S. Senate letter to U.S. Department of Energy Secretary Steven Chu regarding March 16, 2012 PMA Memorandum (June 5, 2012): <http://naturalresources.house.gov/uploadedfiles/congressionaltrtosecchupmas06-05-12.pdf>

## ROUNDTABLE STATEMENT OF INTEREST

The Roundtable is a broad-based coalition of companies doing business in the Western United States, including the State of Alaska. Our members are engaged in a wide array of enterprises, including: manufacturing; retail energy sales; mining; electric power generation and transmission; energy infrastructure development; oil and gas exploration development, transportation and distribution; and energy services.

We work to defend the interests of the West and support policies that encourage economic growth and opportunity, freedom of enterprise and a common-sense, balanced approach to conservation and environmental stewardship.

A number of our Members interact directly with Western PMAs, particularly the Western Area Power Administration (“WAPA”). Thus, we have a keen interest in the Chu Memo and the implications it has for our regional electricity system and economy.

## LEGAL AUTHORITIES

*“The PMAs have responsibly marketed federally-generated hydropower for decades to approximately 1,100 electric utilities in 34 states, providing this clean electricity to more than 40 million Americans. They have also built and maintained thousands of miles of high voltage transmission systems to deliver this power. Through a partnership with their customers, the PMAs repay the federal investment in these systems with interest annually. This public-private partnership between the PMAs and their customers is a model that works extraordinarily well, not only for our constituents, but for the U.S. taxpayer.”<sup>3</sup>*

The PMAs are complicated entities, each with its own legal foundations. Congress, recognizing the unique characteristics and needs of each region, purposefully structured separate authorizing statutes for each of the PMAs. By law, each PMA is required to be headquartered in the region it serves.

The statutorily-defined mission of the PMAs is to provide the lowest-cost energy possible (within sound business principles) to their wholesale electricity customers. Thus, PMAs are intricately tied to their customers, both contractually and functionally. Many Western rural cooperatives and municipal utilities depend on long-term purchase contracts with WAPA or BPA. A great deal of the Western interstate transmission grid is the result of joint funding by WAPA and its preference customers.

## SPECIFIC COMMENTS

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<sup>3</sup> Id.

A number of organizations have filed materials outlining detailed legal, technical and economic concerns with the directives contained in the Chu Memo. In particular, we would point the Department's attention to comments filed by the Colorado River Energy Distributors Association ("CREDA"), the American Public Power Association ("APPA") and the National Rural Electric Cooperative Association (NRECA"). These organizations represent the bulk of the PMAs' preference customers and their input is crucial to any legitimate discussion of the PMAs' missions or operations. We ask that the CREDA, APPA and NRECA comments be incorporated by reference into the Roundtable's comments.

Mr. Secretary, your Memo raises fundamental regulatory process, legal and operational issues. It is those threshold issues the Roundtable will focus the remainder of our comments on.

- **DOE's Authority to Mandate Changed Missions for PMAs is Questionable.**

There is a very real question whether DOE has the legal authority to compel the PMAs to alter their missions and whether PMAs have the legal authority to comply. As discussed above, PMAs are creatures of individual statutes that explicitly dictate the mission and responsibilities of each entity respectively.

Clearly, the Chu Memo was not the result of any meaningful consultation with Congress. The fact that 166 Members of the House and Senate have signed bipartisan/bicameral correspondence to you stating their opposition to the action is evidence of that fact.

- **The Chu Memo is Just the Latest Example of Regulatory "Side-Stepping" by the Administration.**

Your Memo is just the latest example of a trend exhibited across the Obama Administration: the frequent side-stepping of formal rulemaking processes set forth in the Administrative Procedures Act ("APA") and various enabling statutes in favor of unilateral regulation through the use of Executive Orders, Secretarial Orders, agency guidance, interim rules, draft policies, reinterpretation policies and legal "consent agreements," etc.

This approach is directly at odds with the standards of cooperativeness, transparency and regulatory efficiency President Obama explicitly set for his Administration:

- On January 3, 2010, the President issued the "*Transparency and Open Government*" Executive Order. In it he said: "*My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.*"
- In January, 2011, the President issued Executive Order: "*Improving Regulation and Regulatory Review.*" In it, he directed all federal agencies "*to develop and*

*submit plans to identify and review existing regulations that can be made more effective and less burdensome, while achieving regulatory objectives.” (In August, 2011, DOE issued its plan.”<sup>4</sup>)*

- In March, 2012, the President issued Executive Order: “*Improving Performance of Federal Permitting and Review of Infrastructure Projects.*” The President stated, “*Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities.*”
- In May, 2012, the President issued Executive Order: “*Identifying and Reducing Regulatory Burdens.*” This EO speaks to how federal agencies are to use their retrospective review processes going forward: “*Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall, to the extent practicable and consistent with law, give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.*”

It is ever more difficult to reconcile the incongruities between the President’s stated regulatory reform goals and the seemingly insatiable desire of federal agencies to expand their power and scope of regulatory authority. Sadly, the Chu Memo appears to fall into that latter category. It is a highly questionable assertion of authority which would dictate a top-down “Washington Knows Best” approach. It would add new layers of bureaucracy and would increase costs to industrial and retail electric consumers already struggling to cope with the impacts of an extended economic downturn.

The Chu Memo clearly violated the President’s “*Transparency and Open Government*” Executive Order,” which committed the Administration to “*a system of transparency, public participation, and collaboration.*” As already noted, you issued the Memo without even consulting with the PMAs, much less Congress, state electricity regulators, local communities, rural cooperatives/municipal utilities or electricity consumers.

The workshops DOE has been holding in recent weeks have done little to give impacted parties comfort. As CREDA states in its comments:

*“A significant amount of time and expense on the part of all Western’s customers have been incurred in an effort to have meaningful participation in this process; notwithstanding the cost of the workshops that will be included in Western [WAPA] customer rates. To what end? Much of this could have been mitigated or avoided by the Department employing the collaborative planning processes that area already underway*

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<sup>4</sup> U.S. Department of Energy, “*Final Plan for Retrospective Analysis of Existing Rules*” (August 23, 2011)

*regionally between Western and its customers....”*

*“Western’s most recent Annual Report and its Strategic Plan (both available on its website) clearly indicate the initiatives and progress Western is already making toward some of the concepts proposed by the Memo. Western and its customers have already built robust regional transmission grids operated consistently with national reliability standards, led the nation in integrating renewable resources into their systems, and promoted energy efficiency and demand response programs. Western and its customers have a long history of regional planning, collaboration and problem-solving. Let history repeat itself!”<sup>5</sup>*

- **The Chu Memo Will Needlessly Increase Electricity Costs.**

A major concern in the West is the potential for cost increases to electricity consumers. The Memo seeks to mandate that PMAs become “technology and policy test beds” for renewable energy, energy efficiency and other research issues such as cyber-security and solar flares. Not only is this R&D function duplicative (the Department already has the National Renewable Energy Laboratory focused exclusively on those research and development efforts), it will force additional costs onto PMA customers and their retail electricity consumers.

- **The Directives Contained in the Chu Memo Impact State/Local Authority.**

State and local regulators have traditionally focused on energy efficiency, demand response and related programs, as part of their authority to regulate retail transportation, delivery and consumption of electricity. DOE’s “one size fits all” federal mandate will either duplicate or cause a conflict with those state and local authorities.

- **The Chu Memo’s Mandates Would Distract PMAs’ From Focus on Grid Reliability.**

The PMAs play a crucial role – working with their utility customers – in ensuring the reliability of the Western grid. Grid reliability is of fundamental concern to our region. Public health and safety depend on it, as does our economy. The suggestion that the PMAs’ employees could be mandated by DOE to turn attention away from this core function, and toward R&D activities outside their statutory mission, is stunning. The likelihood that customers will be forced to finance it is infuriating.

## CONCLUSION

On behalf of the Roundtable’s multi-sector membership, I strongly urge you to rescind the Chu Memo. It fixes what isn’t broken, at great cost to the West, its economy and its consumers.

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<sup>5</sup> Colorado River Energy Distributors Association: Comments to Department of Energy Secretary Steven Chu Regarding Chu’s March 16, 2012 “Power Marketing Administrations’ Role” Memorandum: [http://www.westernroundtable.com/Portals/0/Docs/energy/2012/ChuMemoComments\\_CREDA\\_081712.pdf](http://www.westernroundtable.com/Portals/0/Docs/energy/2012/ChuMemoComments_CREDA_081712.pdf)

Best regards.

A handwritten signature in black ink that reads "Holly Propst". The signature is written in a cursive, slightly slanted style.

Holly Propst  
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