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A Federal Legislative & Regulatory Update

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Overview

- Agenda of the 115th Congress
- Nominations
- Public power priority issues in 2017
- Environmental Protection Agency regulations
- Federal Energy Regulatory Commission

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"Before I begin, one of the acronyms I'm going to use is completely made up. See if you can figure out which one."

Acronyms

- CPP – Clean Power Plan
- DOE – Department of Energy
- DOI – Department of Interior
- DER – Distributed energy resources
- DG – Distributed generation
- EEI – Edison Electric Institute
- ESCC – Electric Subsector Coordinating Council
- EMP – Electromagnetic pulse
- ESA – Endangered Species Act
- EPW – Environment & Public Works Committee
- EPA – Environmental Protection Agency
- E&C Cte. – House Energy & Commerce Committee
- EO – Executive Order
- FAA – Federal Aviation Administration
- FCC – Federal Communications Commission
- FERC – Federal Energy Regulatory Commission
- FY – Fiscal Year
- NAAQS – National Ambient Air Quality Standards
- NRECA – National Rural Electric Cooperative Association
- NEI – Nuclear Energy Institute
- OMB – Office of Management and Budget
- PURPA – Public Utility Regulatory Policies Act of 1978
- RTO – Regional transmission organization
- SENR – Senate Energy & Natural Resources Committee
- WOTUS – Waters of the U.S.

Agenda of the 115th Congress

- Repeal and replace of Obamacare
- Tax reform
- Budget/Appropriations – remainder of FY 2017 and FY 2018
- Nominations
- Debt ceiling
- FAA reauthorization
- Infrastructure legislation

Public Power Priorities in 2017

- Seven Priority Issues
 - Tax-exempt financing
 - Grid security
 - Infrastructure/energy legislation
 - Distributed energy resources
 - Environment
 - Power Marketing Administrations
 - Wholesale electricity markets
- Other priority issues – ESA reform, pole attachments, and drones

Nominations

- The Trump Administration has been pretty slow nominating candidates for sub-cabinet appointments.
- The Senate approved the nominations of Neil Chatterjee and Robert Powelson to be commissioners at FERC, restoring a quorum to the Commission.
- The SENR Committee has approved the nominations of Rich Glick and Kevin McIntyre to be FERC commissioners. They are waiting a Senate floor vote.
- The Senate has approved some key appointments to EPA, DOE, and DOI. Other nominations are pending before committees or waiting for floor votes.
- The slow pace of appointments has impacted the ability of the Administration to push its regulatory agenda.

Tax Reform

- The budget approved by the House Budget Committee in July includes reconciliation instructions for tax reform (\$1B).
- On Sept. 27, House and Senate leadership released their Unified Tax Reform Framework.
 - Assumes \$1.5 trillion tax cut.
 - Does not mention municipal bonds, but we are told tax reform will not seek to make such bonds taxable.
 - APPA will be on the look out for efforts to use municipal bonds as a pay-for for tax reform.
- The Senate Budget Committee this week considering budget with \$1.5 trillion tax reconciliation instruction.
- Tax reform done under reconciliation only requires 51 votes to pass in the Senate.

Grid Security

- Today, APPA, EEI, and NRECA are hosting a briefing for House staff on grid security efforts by the electric utility industry.
 - Speakers from DOE, ESCC, NERC, and NEI.
- APPA, EEI, and NRECA, at the direction of the ESCC, have been working on legislation to allow electric utilities to access FBI database for background checks on employees with access to critical infrastructure.
- House-passed National Defense Authorization Act (NDAA) contains language to reconstitute the EMP Commission with members nominated by the House and Senate Armed Services Committees.

Infrastructure/Energy Legislation

- This is a top priority for the Trump Administration.
- Unlikely to come up before 2018.
- If both health care and tax reform efforts fail, there will be a lot of pressure for a legislative win on infrastructure.
- Key questions – what kind of infrastructure will be included? How much money and where does it come from? Does this include policy changes to facilitate infrastructure building?
- Concern is that much of the plan will focus on the shifting of public services to the private sector through:
 - Tax credits for equity investors
 - Expansion of access to private activity bond financing
 - Federal bonus payments to localities that sell infrastructure assets

Infrastructure/Energy Legislation

- We expect energy infrastructure will be included in any infrastructure package.
- House Energy & Commerce Committee moving stand-alone bills for potential inclusion in a package:
 - Hydropower licensing and relicensing reform
 - Interstate natural gas pipeline process coordination
 - Grid modernization
 - Vegetation management
- Modified version of Senate energy bill reintroduced by Senators Murkowski (R-AK) and Cantwell (D-WA) – S. 1460, the Energy & Natural Resources Act
 - Includes same public power energy priorities as individual House bills.

Distributed Energy Resources

- S. 1460 – DER-related provisions
 - Grid storage
 - Electric grid architecture, scenario development, and modeling
 - Microgrids
 - Voluntary model pathways
 - Performance metrics for electricity infrastructure providers
 - Voluntary state, regional, and local electricity distribution planning
 - Report by RTOs on DERs and interconnected microgrid systems
 - Study of combined heat and power
 - Technology demonstration on the distribution system
- What is NOT in S. 1460:
 - PURPA must-consider provisions.

Distributed Energy Resources

- Reps. Bob Latta (R-OH) and Jerry McNerney (D-CA) introduced H.R. 3290 – voluntary model pathway language from Senate energy bill from the 114th Congress.
- All of these provisions could be wrapped up in an energy title to an infrastructure bill.
- Both the House E&C and SENR Committees have held hearings looking at DERs and grid modernization.
- PURPA legislation being drafted by Rep. Tim Walberg (R-MI). Would:
 - Make changes to qualifying facilities (QF) language – Section 210(m)
 - termination of mandatory purchase requirements.
 - Make changes to the one-mile rule.

Environment

- Ozone – legislation introduced in the House and Senate (S. 263 and H.R. 806)
 - Approved by House on July 18
- Possible updates to Clean Air Act, including changes to New Source Review
- Endangered Species Act reform
 - Five bills being marked up this week in the House Natural Resources Committee.
 - Key priority of Senate EPW Committee Chairman John Barrasso (R-WY)

Wholesale Electricity Markets/Federal Power Act (FPA) Oversight

- E&C Committee has held six “Powering America” hearings this year to educate Members on FPA-related matters. A seventh one will be held today.
- Issues that have been/will be examined:
 - RTO markets from perspective of market participants
 - The operation and effectiveness of wholesale electricity markets
 - Reevaluating PURPA’s objectives and its effects on consumers
 - Defining reliability in a transforming electricity sector
 - Technology’s role in empowering consumers
 - Consumer-oriented perspectives on electricity markets
- The Senate Energy & Natural Resources Committee will not conduct similar hearings.

Pole Attachments

- Lots of interest in promoting broadband infrastructure, including roll out of 5G wireless.
- Wireless industry wants to repeal municipal exemption in Communications Act from federal regulation by Federal Communications Commission (FCC) on pole attachments.
- Mobilite proceeding – APPA filed reply comments.
- FCC issued two notices of inquiry and notices of proposed rulemaking that could impact public power – APPA filed comments on June 15 and reply comments on July 17.
- APPA meeting with FCC Commissioners' offices and Wireline and Wireless Bureaus on comments.
- The wireless industry is seeking legislative changes to pole attachment provisions of the Communications Act of 1934.

Drones

- A short-term (six months) FAA reauthorization bill was approved by the House and Senate at the end of Sept.
- The House and Senate long-term FAA reauthorization bills include language to encourage the FAA to improve regulations for beyond line-of-sight use, operations over people, and operations at night.
- We expect Rep. Jason Lewis (R-MN) to push for the inclusion of language in the long-term reauthorization bill that would give states and localities the ability to regulate drones in unclassified airspace (i.e., non-FAA controlled airspace).
 - The electric utility industry has concerns about this language and how it could inhibit the use of drones.

Environmental Protection Agency Regulations

- Trump Administration
 - Issued WOTUS Executive Order (EO) in early March
 - Issued Climate EO at the end of March
- EPA and the Army Corps of Engineers issued a repeal of the 2015 WOTUS rule in July. It also redefines WOTUS.
 - APPA filed comments on Sept 27.
- We are waiting for the agencies to conduct a substantive review and rewrite of the scope of WOTUS.
- WOTUS litigation stayed in the Sixth Circuit Court of Appeals.
- U.S. Supreme Court will hear oral argument on National Association of Manufacturers' challenge to Sixth Circuit's decision that it has jurisdiction over WOTUS rule on Oct. 11.

Environmental Protection Agency Regulations

- Clean Power Plan – EPA has sent a proposed rule to OMB for interagency review.
 - No one has seen the text, but it is believed to be a repeal of the CPP.
 - Once the proposed rule is published in the Federal Register, APPA will file comments.
 - We anticipate EPA will also propose a rule to replace the CPP. The timing for that is unclear – maybe not until 2018.
- Other pending activities at EPA:
 - Ozone implementation rule at OMB – draft rule on ozone NAAQS – nonattainment classification areas.
 - Agency granted petition for reconsideration of parts of the coal ash rule.

Federal Energy Regulatory Commission

- In August, FERC regained a quorum, which allows it to address its backlog of cases and rulemakings.
- FERC has issued two rules in its price formation docket – settlement intervals and shortage pricing (Order No. 825) and offer caps (Order No. 831). We are waiting for the Commission to act in the fast-start pricing and uplift dockets.
- FERC has not yet issued a rule in its energy storage docket.
- On Sept. 29, DOE Secretary Perry proposed that FERC issue a final rule requiring “its organized markets to develop and implement reforms that would full price generation resources necessary to maintain the reliability and resiliency of our nation’s grid.” The text of the proposed rule, which the Secretary issued under Section 403 of the DOE Act was sent to FERC’s commissioners.
 - Under Sec. 403, FERC is required to consider and take action on the proposal “in an expeditious manner in accordance with such reasonable time limits as may be set for the Secretary.”
 - The proposed rule directs FERC to take action within 60 days of its publication in the Federal Register.

Federal Energy Regulatory Commission

- The proposed rule would:
 - Require RTOs to “develop and implement market rules” that would allow the “full recovery of costs of certain eligible units physically located within the” RTOs. Those markets would have to establish just and reasonable rate tariffs for the full recovery of costs and a fair rate of return.
 - Eligible resources “must also be able to provide essential energy and ancillary reliability services and have a 90-day fuel supply on site in the event of supply disruptions caused by emergencies, extreme weather, or natural or man-made disasters.”
- APPA filed a joint motion with 10 other energy industry associations asking FERC to not implement the proposal as an interim final rule and to extend the comment period and hold a technical conference.
- FERC issued a notice on October 2 inviting comments on the proposed rule by DOE. Comments are due by October 23 and reply comments by November 7.
- APPA plans to file comments and welcomes input from members on what our comments should say.