

AMERICAN
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ASSOCIATION

Powering Strong Communities

Federal Legislative Update

Presentation to the Michigan Municipal Electric Association

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Issues (Big and Small) on Our Radar

- Priority issues tied to APPA strategic plan:
 - Hydropower licensing reform
 - Power Marketing Administrations/Tennessee Valley Authority
 - Tax-exempt financing
 - Grid security
 - Wholesale electricity markets
 - Environmental regulations
 - Distributed energy resources
- Other issues –
 - Pole attachments, drones, Endangered Species Act, nuclear waste, derivatives, LIHEAP, rail and other transportation issues, workforce development, Stafford Act, smart grid, electric vehicles.



Six Key Messages in Washington

1. Support bond-funded electric system investments.
2. Protect federal ownership of the PMAs and TVA.
3. Fix RTO-run wholesale electricity markets.
4. Strengthen partnerships for a secure grid.
5. Retain local control of pole attachments.
6. Support common sense environmental regulation.

PUBLIC POWER LEGISLATIVE PRIORITIES



1

Support bond-funded ELECTRIC SYSTEM INVESTMENTS



Tax-exempt municipal bonds finance more than \$5 billion in annual public power investments that keep the lights on and rates affordable.

Privatization is no free lunch for infrastructure investment — customers will pay.

Remove barriers to investing in and maintaining electric infrastructure.



2

Protect federal ownership OF THE PMAS AND TVA



PMAs and TVA provide affordable electricity to millions of Americans served by public power and rural coops

PMA and TVA rates cover all costs -- including interest.

Selling the PMA's and TVA's transmission assets would increase costs for customers

Congress should oppose the Administration's attempts to raise costs for PMA and TVA ratepayers



3

Fix RTO-run WHOLESALE ELECTRICITY MARKETS



Regional Transmission Organizations can efficiently dispatch wholesale electricity and keep the grid reliable.

However, FERC-approved RTO rules:

- Make wholesale prices volatile;
- Impede public power's ability to supply or buy its own generation; and
- Reward merchant generators.

Stop using RTOs to override state and local decisions.



4

Strengthen partnerships for a SECURE GRID



Electricity is the only critical infrastructure sector with mandatory cyber and physical security standards.

Threats to the electric grid are continuously evolving.

Enable strong industry-government partnerships to prevent, prepare for, and respond to attacks.



5

PUBLIC POWER POLE ATTACHMENTS are best regulated at the local level



The Communications Act exempts attachments to public power poles from Federal Communications Commission regulation.

One-size-fits-all pole regulations won't work for public power utilities diverse in size, operations, and structure.

Congress should oppose the Thune-Schatz broadband bill, which would gut the exemption and impose unworkable regulations.



6

Support common sense reform in ENVIRONMENTAL REGULATION



EPA has started repealing and replacing the Clean Power Plan and Waters of the U.S. Rule.

Public power utilities are environmentally responsible and care for their communities.

Public power supports EPA's efforts to develop environmental regulations that work.

115th Congress: Accomplishments



- Tax Cuts and Jobs Act
- Bipartisan Budget Act
 - Debt limit increase
 - Two-Year spending cap increase
 - Paved way for FY 2018 Consolidated Appropriations Act and FY 2019 appropriations process (which is well underway).
- John S. McCain National Defense Authorization Act
- Russian Sanctions
- Hurricanes Irma and Jose disaster response
- Economic Growth, Regulatory Relief, and Consumer Protection Act
- FISA/domestic surveillance reauthorization

What Remains on Congress' Agenda?



- House of Representatives
 - Tax Cuts and Jobs Act personal income tax provision permanence
 - Trade agreements
 - Retirement savings legislation
- Senate
 - Executive Branch nominations
 - Kavanaugh nomination to U.S. Supreme Court
 - Retirement savings legislation
 - Federal Aviation Administration Reauthorization
 - Stafford Act amendments
- House/Senate Conference
 - Water Resources Development Act
 - Fiscal Year 2019 Appropriations

What about Infrastructure?

- Early consensus?
 - Area for possible compromise on \$1 trillion plan
- Now?
 - Broad-based infrastructure bill is dead
- Why?
 - Lack of consensus on approach
 - Impasse over new revenues



Infrastructure Funding/Finance

- Trump Administration focus
 - Sell/privatize federal assets (such as the PMAs).
 - Encourage states and localities to do the same.
- Congressional Democrats' focus
 - Raise revenues to pay for increased federal investment in infrastructure.
- Congressional Republicans' are split on approach
- Lots of buzz around “public-private partnerships”
 - Just “privatization” with better marketing
 - Business interests are relentlessly pursuing
 - Playing off mistaken belief that private sector is inherently “better”
 - For Democrats – one of several options
 - For Administration – the reason for infrastructure legislation.
- APPA has been working with other stakeholders to raise awareness of privatization, including through a policy resolution adopted at the National Conference.

Energy Issues

- The House passed several energy bills in 2017, including hydropower licensing reform and natural gas pipeline process coordination bills.
- Vegetation management legislation included in the Consolidated Appropriations Act, Fiscal Year 2018.
- Senate energy bill (S. 1460) is still on the Senate calendar.
- Our top energy priority is hydropower licensing reform.
 - Minor provisions included in recently released WRDA agreement: allowing FERC to issue longer preliminary permits, streamlining regulations for licensing of qualifying small conduit hydro facilities, allowing FERC to give “credit” in a new license for investments made under a current license.
 - Broader, more ambitious relicensing reform not moving anywhere right now.

Tax-Exempt Financing

- House Republicans are advancing “Tax Reform 2.0”.
 - Focus is on making permanent tax cuts that are set to expire after 2025.
 - Will also extend \$10,000 cap on state and local tax deduction.
 - This is largely a political document; unlikely to include revenue offsets.
 - The plan is to discuss the need for more tax reform in 2018 and advance the measure in 2019 (assuming Republicans retain majority).
- H.R. 5003, to reinstate advance refunding bonds, remains pending in the House.
 - Not likely to be included in Tax Reform 2.0.
- APPA bond modernization proposal:
 - Reinstating advance refunding, making other improvements.
 - Being advanced by APPA (alone and with other stakeholder groups).

Grid Security

- Frequent topic of hearings and inquiries.
- APPA and the broader electric utility industry are in constant “education mode” on NERC/FERC standards, ESCC and other current efforts to protect the grid.
- The House Energy & Commerce Committee approved four cybersecurity bills in May:
 - H.R. 5240 – the Enhancing Grid Security through Public-Private Partnerships Act – modeled on APPA’s current Cybersecurity for Energy Delivery Systems grant program.
 - H.R. 5239 – Cyber Sense Act – would direct Department of Energy (DOE) to establish a voluntary program to identify and promote cybersecure products intended for use in the bulk power system.
 - H.R. 5175 – Pipeline and LNG Facility Cybersecurity Act – would direct DOE Secretary to coordinate federal agencies, states, and energy sector to ensure the security, resilience, and survivability of natural gas pipelines, hazardous liquid pipelines, and LNG facilities.
 - H.R. 5174 – the Energy Emergency Leadership Act – would clarify and codify DOE’s new Office of Cybersecurity, Energy Security, and Emergency Response functions.
 - Karen Evans was recently confirmed to head the new office.

Wholesale Electricity Markets

- The House Energy & Commerce Committee has completed a series of Federal Power Act oversight hearings.
 - Examined operation and effectiveness of wholesale markets; role of financial trading in these markets; bulk power grid reliability and resiliency;
- But,
 - Committee has given no indication of next steps.
 - The Senate Energy & Natural Resources Committee has not conducted similar hearings.
- Most discussion of wholesale markets in 115th Congress has occurred at FERC oversight hearings. Much of discussion focused on the Administration's desire to prevent the retirement of coal and nuclear power plants.
- APPA continues to educate the Hill on our concerns with mandatory capacity markets and the importance of self-supply.

Environmental

- On August 21, EPA released a proposed rule, the “Affordable Clean Energy” (ACE) rule that would establish emission guidelines for states to develop plans to address GHGs from existing coal-fired power plants
 - Defines the “best system of emission reduction” for GHG emissions from existing power plants as on-site, heat rate efficiency improvements.
 - Provides states with a list of “candidate technologies” that can be used to establish standards of performance and incorporate into their state plans.
 - Updates EPA’s New Source Review Permitting program to incentivize efficiency improvements at existing power plants;
 - Aligns Clean Air Act Section 111(d) general implementing regulations to give states adequate time and flexibility to develop their state plans.

Environmental

- EPA is working on the repeal and replacement of the Clean Power Plan and Waters of the U.S. (WOTUS) rule.
- The House Energy & Commerce Committee approved on July 28 legislation to reform New Source Review (H.R. 3128).
 - APPA supports the legislation by Rep. Griffith (R-VA)
 - Would make it clear that a “modification” to an existing facility would only trigger NSR permitting if the project increases the “maximum hourly emissions rate” rather than the annual emissions calculus that is currently used and harder to predict.
 - Ensures utilities can move forward with pollution control, energy efficiency, and other beneficial projects without the threat of NSR enforcement.

Distributed Energy Resources

- Recent Hill discussion of DERs has been in the context of rebuilding Puerto Rico's grid.
- There have been a few oversight hearings focused on the consumer benefits of DERs and grid modernization.
- There are some DER related provisions in the Senate energy bill:
 - Voluntary model pathways
 - Study on interconnection for combined heat and power
- Senator King (I-ME) seeking to promote DG through the creation of must-consider requirements under Public Utility Regulatory Policies Act (PURPA), interconnection requirements, and distribution system operator pilot.
- Will be a big topic of discussion if Democrats take the House majority.

Pole Attachments

- In late June, Chairman John Thune (R-SD) and Senator Brian Schatz (D-HI) introduced S. 3157, the STREAMLINE Small Cell Act, which would effectively gut public power's exemption from federal pole attachment regulation.
 - Opposition to this bill has been significant. No hearings have been scheduled yet.
- In May, APPA filed a letter with the Federal Communications Commission (FCC) opposing the process by which the Broadband Deployment Advisory Committee (BDAC) was chosen and the substance of the “model” municipal and state siting codes they have created without input from public power.
 - APPA filed a letter with the BDAC criticizing the proposals.

Pole Attachments

- FCC issued a third order on August 2 on the same docket where it had expressed its intention to preempt local and state pole attachment laws. The order does not take this step, but does significantly revise its rules and regulations for pole attachment “make ready” for IOUs, as well as rules on overloading.
 - It also said local moratoria are de facto unreasonable and it will preempt those decisions.
- FCC expected to issue fourth and final order on September 26.
 - FCC Commissioner Carr said recently that the fourth order will preempt municipal pole attachment regulations that do not comply with certain “guardrails.”

Drones

- The House passed H.R. 4, the FAA Reauthorization Act in May. It includes several provisions that improve the ability of utilities to use drones for infrastructure inspection and siting and prevent drones from being flown over critical infrastructure.
- The Senate Commerce Committee approved its FAA reauthorization bill, S. 1405, in May. The bill does not include the drone provisions APPA supports in the House bill and it includes problematic language APPA opposes that would give the Federal Trade Commission jurisdiction over commercial drone users that violate privacy rules.
- The current short-term reauthorization of the FAA expires on Sept. 30, 2018.
- Unlikely that Congress will pass a long-term reauthorization bill before the election and will instead pass an extension.

Endangered Species Act (ESA) Reform

- Draft legislation to amend ESA introduced by Senate Environment & Public Works Committee Chairman John Barrasso (R-WY)
 - Would reauthorize ESA for the first time in 20 years
 - EPW Committee has held hearing on the legislation in July but there hasn't been any additional activity since then
- House Western Caucus introduced nine ESA reform bills in July that are more targeted than the Senate bill – hearings likely later this month
- The Interior Department (Fish and Wildlife Services) and National Marine Fisheries Service jointly released proposed revisions to regulations implementing Section 4 (procedures for listing species, recovery plans, critical habitat designations) and Section 7 (consultation among federal agencies regarding potential actions impacting endangered/threatened species & habitat)
 - APPA is working on comments with the National Endangered Species Act Reform Coalition (NESARC) to file comments before September 24 deadline

Nuclear Power

- House approved H.R. 3053, the Nuclear Waste Policy Amendments Act of 2017, in May
 - Would jumpstart construction of Yucca Mountain as a permanent repository for nuclear waste while also paving the way for an interim storage facility for spent nuclear fuel.
 - Given that Sen. Dean Heller (R-NV) is one of the most vulnerable GOP incumbents up for reelection this year, it is unlikely that the bill will be considered before the November election.
- A bipartisan group of senators introduced a comprehensive nuclear energy bill last week.
 - Would extend the maximum length of a federal power purchase agreement from 10 to 40 years, and establish a program to provide a minimum amount of high-assay low enriched uranium (HALEU) for advanced reactors currently under development.

Stafford Act Reform

- The House has twice passed amendments to the Stafford Act to encourage greater use of Federal Emergency Management Agency (FEMA) funds for hazard mitigation.
 - Companion legislation passed the Senate Homeland Security Committee on June 13.
- There are efforts to include the bill in the final FAA reauthorization bill...which, as you've heard, has an uncertain future.
 - Public power utilities would particularly benefit from a provision providing a three-year statute of limitations for de-obligation of FEMA public assistance grants.
 - Current law includes a three-years limit on direct recoveries, but FEMA still pursues administrative recoveries many years after the fact.
 - APPA has formed a Stafford Act working group to get feedback on additional improvements to the act and joined the Stafford Act Coalition.

Vegetation Management

- The U.S. Forest Service and Bureau of Land Management are taking internal steps to implement the vegetation management provisions included in the March omnibus spending bill.
- APPA staff is working with Congress to ensure that these provisions are implemented correctly, and that these agencies are responsive to utility requests to remove trees that could fall on their power lines.

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