

Northeast Public Power Association Legislative Update



June 2021

Plans to Eliminate MOPR

At a FERC technical conference on May 25, ISO New England CEO Gordon van Welie announced that the organization will file to eliminate the minimum offer price rule (MOPR) in the first quarter of 2022. This rule has been used to frustrate state and local government policies that favor certain generation sources, such as emissions-free or government-owned resources, and effectively ended the ability of consumer-owned utilities to “self-supply” their own capacity. After years of pushback on the problems inherent with the MOPR, Van Welie acknowledged to the Commission that the MOPR negatively impacts renewable energy generators and would hurt states’ abilities to promote zero emission generation. Several states, most publicly Connecticut, have even considered taking control of their own resources entirely in order to keep up with state-level clean energy goals. Eliminating the rule would set a precedent for other capacity markets to potentially do the same, with PJM Interconnection expected to file a proposal to replace its own rule later this year. FERC Chairman Richard Glick has been supportive of eliminating the MOPR, as well as broader changes to the capacity market construct.

Senate Republicans Release Second Infrastructure Counteroffer, Parliamentarian Gives Ruling on Reconciliation

On May 27, a group of Senate Republicans, led by Sen. Shelley Moore Capito (R-WV), unveiled a \$928 billion counteroffer as negotiations with the White House on a major infrastructure plan continue. This latest Republican offer is a \$360 billion increase from their original proposal offered in April, but it remains far below President Biden’s latest proposal that totals \$1.7 trillion. Among other things, the new proposal increases spending on roads and bridges, public transit, electric vehicle infrastructure, and western water storage. In a memo accompanying the latest proposal, the Senate Republican group remained firmly opposed to inclusion of social policy program spending in the bill, stating that “policies unrelated to physical infrastructure do not fit in this package.”

Meanwhile, Senate Parliamentarian Elizabeth MacDonough issued a ruling on May 28 that would allow Democrats to use Reconciliation once again to pass an infrastructure package, with the stipulation that the process cannot be used only for political expediency and must be justified by reasons such as an economic downturn. This ruling would significantly slow Democrats down if they choose to use Reconciliation as a means for passing either the American Jobs Plan or the American Families Plan, as they would be required to start the budget process from the beginning, including going back to House and Senate budget committees. Senate Majority Leader Chuck Schumer (D-NY) has indicated that he plans to pass the President’s infrastructure plan by July, a timeline that could be impacted by the ruling.

Ransomware Hack Disrupts Major Pipeline, Spurs Lawmaker Response

A large pipeline that serves as the main oil supply to the East Coast shut down after suffering a large ransomware cyberattack over the weekend of May 8-9. The attack was reportedly carried out by a group of private hackers known as DarkSide, who targeted poorly protected corporate data rather than industrial controls governing pipeline operations. Nevertheless, the group was able to access so much data that the company elected to close the pipeline

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rather than risk a more widespread attack. The pipeline was re-opened on May 13.

In response, lawmakers from both parties called for greater cybersecurity measures to be included in any upcoming infrastructure package. Sen. Maria Cantwell (D-WA) is leading an effort on moving pipeline cybersecurity oversight from the Transportation Security Administration (TSA) to DOE, citing TSA's insufficient staffing and under-preparedness, and the role of the grid in securing supplies. House Energy and Commerce Committee leaders reintroduced bipartisan cybersecurity bills on May 11, including legislation aimed at the electric grid as well as pipeline operations. Federal Energy Regulatory Commission (FERC) Chairman Rich Glick said that pipelines may need to be subject to mandatory cybersecurity standards, as electric utilities are.

President Biden Signs EO Aimed at Shoring Up Federal Cybersecurity

On May 12, President Biden signed a highly anticipated Executive order that aims to improve federal cybersecurity. The order requires that all software sold to the federal government establish a baseline cybersecurity standard and gives current software used by the government a nine-month deadline to establish these standards. The order also establishes a standardized guide for how agencies should immediately respond to cyber breaches and requires that IT providers in business with the federal government report data breaches.

Biden Administration Releases Presidential Budget

On May 28, the Biden administration released its proposed FY22 Budget, a more than \$6 trillion request that incorporates the President's previous spending plans known as the American Jobs Plan and American Families Plan. The budget assumes deficits of more than \$1 trillion for the next ten years.

Among other things, the Budget includes \$36 billion in investments to combat climate change, including investments in resilience (including cyber security investments) and clean energy infrastructure. Of interest to utilities, the Presidential budget contains over \$5 billion for building clean energy projects, an increase in 22% of funding for the Environmental Protection Agency, and a 10% increase in funding for the Department of Energy. Other provisions include funds designed to promote environmental justice in marginalized communities and increasing investments in innovation and science. The Budget also delves into tax policy, recommending elimination of oil and gas tax breaks and extending and expanding clean energy tax credits, along with new tax credits for transmission and existing nuclear plants.

EPA Administrator Regan Testifies on FY22 Budget in House Energy and Commerce

EPA Administrator Michael Regan testified before the House Energy and Commerce Committee on April 29, a day after his visit to the Senate Energy and Natural Resources Committee, to defend and take questions on the FY22 budget for the EPA. Regan faced scrutiny from Republicans on the House E&C Committee for the 21% increase to the EPA's budget proposed by President Biden. Democrats, meanwhile, put pressure on Regan to address parochial pollution problems in various districts represented by Committee members. Without details on the budget at the time of the hearing, members focused on the new Administration's emissions reduction goals, as well as the tools needed and feasibility of the President's plans.

House Appropriators and E&C Examine FY22 Budget for Department of Energy

On May 6, Secretary of Energy Jennifer Granholm made her first appearance on Capitol Hill since being sworn in, testifying before the House Appropriations Subcommittee on Energy and Water Development on the Biden Administration's FY22 budget request. Biden has stated that he plans to mandate an emissions-free standard for the electricity sector by 2035, and Granholm let the Subcommittee know that renewable energy (particularly wind and solar), as well as nuclear, will need to be supported with federal loan programs and tax incentives to achieve Biden's goal.

Granholm also visited the House Energy and Commerce Committee on May 19, testifying on the FY22 budget for DOE. Granholm has faced scrutiny about Biden's plans for cybersecurity in recent hearings, as the information on funding for the Office of Cybersecurity, Energy Security and Emergency Response has not been detailed. However, for this hearing, the first she testified in since the Colonial Pipeline ransomware attack, Granholm was grilled by committee members on how the Biden administration plans to help prevent such cyber-attacks from happening in the future. Granholm promised to work with lawmakers and the private sector on this issue.



Senate Finance Holds Markup of Wyden’s Clean Energy Tax Incentive Bill

On May 26, the Senate Finance Committee amended Chairman Ron Wyden’s (D-OR) clean energy tax incentive bill, which ended with a 14-14 vote along party lines. This bill aims to simplify the tax code for clean energy, consolidating a variety of incentives into technology neutral investment tax credits (ITC, valued at 30%) or production tax credits (PTC, valued at 1.5 cents per kWh). Republicans are opposed to the bill due to provisions that remove deductions for fossil fuels, citing the bill’s tech-neutral approach as a reason for inclusion of oil and gas.

One key amendment, from Sen. Michael Bennet (D-CO), provides for a direct pay option that would allow public power utilities to receive refundable direct payments of the investment and production tax credits. The bill as drafted allowed a direct pay option, but prohibited not-for-profit entities from accessing it. However, the amendment retains current law which says that projects receiving “subsidized” financing are ineligible for the credits (i.e., projects otherwise financed by municipal bonds may not also claim the tax credits). In addition, Chairman Wyden modified the bill text to remove the ability of municipal and cooperative utilities to issue taxable direct payment Clean Energy Bonds, as a tradeoff for these utilities being able to access the direct pay credits.

Senate EPW Holds Confirmation Hearing for DOI, EPA Nominees

On May 12, the Senate Environment and Public Works (EPW) Committee held a hearing for three Biden Administration nominees: Shannon Estenoz to be Assistant Secretary of Fish and Wildlife and Parks at the Department of the Interior (DOI), Radhika Fox to be Assistant Administrator for Water at the Environmental Protection Agency (EPA), and Michal Freedhoff to be Assistant Administrator for Chemical Safety and Pollution Prevention at the EPA. Senators questioned the nominees about the Biden Administration’s “30x30” conservation plan to conserve 30% of the nation’s land and waters by 2030, as well as the rollback of the Trump Administration’s changes to implementation of the National Environmental Policy Act (NEPA).

On May 18, three nominees for senior positions at the Department of the Interior appeared before the Senate Energy and Natural Resources (ENR) Committee. The nominees included Robert Anderson to be the Department’s Solicitor, Shannon Estenoz for Assistant Secretary of Fish and Wildlife and Parks, and Tanya Trujillo for Assistant Secretary of Water and Science. Questions during the hearing focused on how the nominees plan to help the Department’s agencies prepare for and adapt to a changing climate and emphasized the need for resilience, modernizing and repairing aging infrastructure, and addressing challenges associated with drought in Western states.

