

Northeast Public Power Association Legislative Update



February 2020

Senate Votes to Acquit President Trump of Impeachment Charges

On Feb. 5, one day after a tense State of the Union address, the Senate voted along party lines (except for Sen. Mitt Romney (R-UT)) to acquit President Trump of the two charges leveled by the House in its Dec. 18 impeachment vote. Two-thirds of senators would have needed to vote in favor of finding the President guilty of the House's charges to remove him from office.

FERC Proposes Retiring Outdated Standards, McNamee to Step Down

The Federal Energy Regulatory Commission (FERC) held its monthly meeting on Jan. 23. Among other dockets considered at the meeting, commissioners proposed to rescind 74 of 77 reliability standard requirements that NERC recommended retiring as a result of its standards efficiency review process. Further, Commissioner Bernard McNamee announced he will not seek another term after his current term expires in June, 2020, citing family reasons. McNamee's departure, if not preceded by the confirmation of pending nominee James Danly, would result in the loss of a quorum at the Commission. It also complicates controversy over when a Democratic nominee will be announced. Senate Democrats were frustrated that Danly's nomination was not "paired" with a Democratic nominee, and Republicans had argued that the Democratic nominee would be more reasonably paired with McNamee's re-nomination.

House Democrats Issue Infrastructure Proposal

On Jan. 29, House Democrats released a framework that will guide their development of a major, \$760 billion infrastructure bill. The document outlines plans for clean energy investments, highways, water infrastructure, broadband deployment, and other transportation systems (airports, rail, and transit). At a press conference accompanying the document's release, House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) discussed the proposal's \$34 billion for energy infrastructure, saying that it will be directed to grid modernization and resilience efforts.

Notably, the tax title of the proposal suggests the bill will restore the tax exemption for advance refunding municipal bonds. This has been a top legislative priority for municipal utilities since the 2017 tax reform law revoked that tax exemption. It also includes provisions for direct pay bonds, similar to Build America Bonds, that would not be subject to budget sequestration. Legislative text of the proposal, which will include important details, did not accompany the framework document. Various committees of jurisdiction are expected to hold hearings and develop sections of the bill over the next few months. Congress must pass a new authorization of federal highway programs by Sept. 30, but the energy and tax provisions are not considered must-pass and may be stripped out.

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Energy and Commerce Democrats Release CLEAN Future Act Legislative Text

On Jan. 29, Democrats leading the House Energy and Commerce Committee released legislative text of “the Climate Leadership and Environmental Action for our Nation’s (CLEAN) Future Act,” following a narrative framework that was released earlier in January. The bill includes over 800 provisions intended to promote clean energy, climate stewardship, and efficiency. Meguire Whitney is still reviewing the bill for potential impacts to NEPPA members, but the bill still contains language mandating that all public utilities place their transmission facilities under the control of an RTO or ISO within two years of enactment (public utility is not defined in the bill, and sometimes excludes public power).

CEQ Proposes NEPA Modifications

The White House Council on Environmental Quality (CEQ) released a Notice of Proposed Rulemaking on Jan. 9 to make revisions to the implementation of the National Environmental Policy Act (NEPA). Overall, the proposed rule aims to reduce delays in the federal permitting process by streamlining NEPA reviews, establishing strict timelines, and reducing duplication of efforts among federal agencies. Specifically, the proposed rule calls for time limits of two years for the completion of environmental impact statements (EISs) and one year for completing an environmental assessment (EA). Another efficiency measure would be to allow the expanded use of both EAs and categorical exclusions (CEs) in conducting project reviews, which are less exhaustive than an EIS. Further, the proposal would strengthen the role of a lead agency and require senior agency officials to resolve disputes among federal agencies in a timely manner. The new proposal also requires federal agencies to establish procedures for adopting other agencies’ categorical exclusions and to encourage the use of documents required by states, tribes, and local agencies to reduce duplication of work. Finally, the proposed rule seeks to clarify the application of NEPA reviews by narrowing the scope of actions that would be required under the law.

One significant change contained in the rule would eliminate “cumulative” effects from the factors that agencies must consider. This provision would weaken the requirement to incorporate climate change effects into federal project reviews. Congressional Democrats were quick to condemn the federal action, complaining that the proposed rule ignores the growing threat of climate change and curtails environmental protections. The proposed rule will be open to public comment for 60 days.

