

May 27, 2021

TO: Policy Makers Council

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SUBJECT: May PMC Call Summary

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Grid Security

- On May 12, President Biden signed an [Executive Order \(EO\) on Improving the Nation's Cybersecurity](#) that focuses on securing federal networks and requires federal contractors to report cyber incidents to the Cybersecurity and Infrastructure Security Agency. It also establishes a new government entity modeled after the National Transportation Safety Review Board to review major breaches and will require software that the government buys to meet a baseline set of security standards.
- In light of the recent Colonial pipeline ransomware attack, cybersecurity of the nation's energy system, and pipelines in particular, conversations among policymakers on whether to impose such regulations and what agency would have oversight of said regulations are occurring. Unlike the electric system, the pipeline industry is not subject to mandatory and enforceable reliability standards.

Infrastructure/Electric Vehicles (EVs)

- Ongoing negotiations on an infrastructure package continue between President Biden and Senate Republicans. At the end of March, the President released an outline for a \$2 trillion infrastructure package called the American Jobs Plan. It includes energy-related infrastructure, including spending on EVs, an investment tax credit for high-voltage transmission, and a national green bank program. In response, Senate Republicans released a much narrower \$568 billion infrastructure framework.
- Last week, the Administration sent a \$1.7 trillion counteroffer, that matched the Republican spending proposal on broadband, reduced spending on roads and bridges, and eliminated several manufacturing and research and development proposals. Today, in response, Senate Republicans released a \$928 billion counteroffer, which includes funding for roads, bridges, highway infrastructure (including \$4 billion for EVs), public transit, water systems, broadband, airports, rail, ports and waterways, water storage, safety, and infrastructure financing.
- In Congress, the Senate Environment and Public Works (EPW) Committee is marking up a bipartisan bill to reauthorize surface transportation programs, including grant funding available to public power for the purchase and installation of EV chargers along designated alternative fuel corridors. On the House side, the bill is expected to include the EV provision, be partisan, and will likely be marked up the second week of June. This could, however, change given the outcome of the White House negotiations. House Speaker Pelosi (D-CA) has said she wants to have a larger infrastructure package, which would likely include surface transportation programs, as well as tax and energy provisions, to come before the House before July 4.

Comparable Incentives

- APPA has advocated for comparable incentives for years. The choice now appears to be between two options.
 - The first option being a refundable direct payment of energy tax credits. However, recipients of refundable tax credits may get a 15 percent cut on the value of those tax credits.
 - The second option would be the ability to issue a taxable Clean Energy Bonds (CEBs), for which the issuer would receive a payment equal to 70 percent of interest paid to bondholders. Financially, CEBs might be a more attractive option – particularly for long-lived assets. However, many renewables investments (including battery storage) are going to be short-lived; and there are lingering doubts that the federal interest payment obligations over the entire life of long-lived asset.
- **House Activity:** Ways and Means Committee Democrats are refining H.R. 848, the GREEN Act by seeking to perfect provisions to allow public power utilities and rural electric cooperatives to qualify for direct payment refundable credits.
 - Rep. Earl Blumenauer (D-OR) also introduced on May 13 the “Renewable Energy Investment Act,” which would allow direct payment refundable credits. Congressional staff worked with APPA to ensure that refundability is available to public power.
- **Senate Activity: Yesterday, the Finance Committee marked up Chairman Ron Wyden’s (D-OR) Clean Energy for America Act (S. 1298). APPA worked jointly with NRECA and LPPC to secure an amendment by Senator Michael Bennet (D-CO) be included to allow public power access to direct payment refundable tax credits and allow Clean Energy Bonds as an alternative for public power and cooperative. Thank you to all who helped reach out to your senators in these efforts.**
- Finance Committee Ranking Republican Mike Crapo (R-ID) joined Senator Sheldon Whitehouse in releasing on April 26, 2021, a discussion draft of the Energy Sector Innovation Credit Act. The legislation would convert energy tax credits into innovation-based credit, which public power and cooperative owners could transfer tax credits to other project owners.

Bond Modernization

- The bond modernization agenda is still likely to proceed on two tracks.
 - First, as stand alone, bipartisan bills in the House and Senate to restore the ability to issue tax-exempt advance refunding bonds and increase the small-issuer exception from \$10 million to \$30 million.
 - Second, they could move as part of broad-based infrastructure legislation. In the House, infrastructure legislation is likely to use H.R. 2, the Moving Forward Act, from the 116th Congress as the base text. That bill included provisions to reinstate tax-exempt advance refunding bonds; increase the small issuer exception; and reinstate direct payment bonds with protection from budget sequestration. APPA believes there is support for including these provisions in a Senate infrastructure package. If efforts to negotiate bipartisan infrastructure legislation fail, the bill will likely advance under budget reconciliation rules this fall.

Utility Customer Assistance

- Collectively, the Consolidated Appropriations Act, 2021 (enacted Dec. 27, 2021), and American Rescue Plan (enacted March 11, 2021) provided a huge amount of resources. Agency guidance continues to emerge.
- Most significant on May 5, the U.S. Department of the Treasury announced the launch of the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) program authorized by the American Rescue Plan Act.
 - This initiative provides \$350 billion in emergency funding for eligible state, local, territorial, and tribal governments including potentially for utility assistance programs.
 - APPA will likely submit comments to Treasury – particular as to whether utility revenues should be considered “lost revenue”.

Climate

- The House Energy & Commerce Committee continues to hold legislative hearings on the CLEAN Future Act.

Nuclear

- Media reports have suggested that the Biden Administration is privately indicating support for a tax credit for existing nuclear plants as part of the American Jobs Plan. The tax credit would require a plant to demonstrate financial need and would not be available to plants already receiving state level financial support. In a May 7 budget hearing, Department of Energy Secretary Jennifer Granholm said the Administration is open to subsidies for existing, at-risk nuclear plants and “would be eager to work with Congress” to keep existing plants open as they will be necessary to achieving the Administration’s climate goals.

Telephone Consumer Protection Act (TCPA)

- On May 7, APPA and NRECA filed joint reply comments in support of a Petition for Partial Reconsideration before the Federal Communications Commission (FCC) to reconsider certain aspects of its TCPA Exemptions Order, which amended longstanding exemptions from the act’s consent requirements for certain categories of informational calls. Some of the modifications impact how electric utilities can interact with customers for safety and customer service, such as frequency of notifications and consent for non-telemarketing notifications. For background, Congress enacted in 2020 the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act to fight unwanted and illegal robocalls, with Section 8 of the bill requiring that the FCC ensure that any exemptions granted include certain conditions.