

October 13, 2021

TO: Policy Makers Council
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SUBJECT: October PMC Call Summary

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Infrastructure Investment and Jobs Act (bipartisan infrastructure bill)

- On September 29, APPA President & CEO Joy Ditto sent a letter to congressional leadership outlining provisions in H.R. 3684, the Infrastructure Investment and Jobs Act, which would benefit public power. The provisions include funding for electric vehicles (EV), cybersecurity, grid resiliency, and smart grid technology, increased funding for the Weatherization Assistance Program and the Low Income Home Energy Assistance Program, and Department of Energy (DOE) research, development, and deployment efforts that will assist public power utilities as they continue to reduce greenhouse gas emissions.
 - The letter notes that robust federal support will be critical as public power utilities continue to transition to cleaner energy resources, while keeping service reliable and rates affordable for their customers.
- Despite earlier agreement to a non-binding deadline of September 27 for the House to consider H.R. 3684, the House failed to vote on it last month, as members of the House Progressive Caucus planned to vote against it without either a vote or significant progress on the reconciliation bill.

Build Back Better Act (budget reconciliation package)

- When the September PMC call was held, the House was in the process of moving budget reconciliation instructions from the various committees of jurisdiction to the House Budget Committee.
 - APPA strongly supports the tax title, which includes a reinstatement of tax-exempt advance refunding bonds, an increase in the small-issuer exception to \$30 million, and the ability to issue direct payment bonds. The bill would also extend and expand energy tax credits which have been redesigned to provide refundable direct payment, making them directly accessible by public power utilities. The one hiccup is the coordination of tax creditable projects with the tax-exempt status of municipal bonds. It appears that the tax credit for a project financed with tax-exempt bonds would be reduced by 15 percent, i.e., from 30 percent to 25.5 percent. That is an absolute win.
 - The House Energy & Commerce Committee's recommendations include the creation of the Clean Electricity Performance Program (CEPP). APPA President & CEO Joy Ditto sent a letter to the leadership of the committee expressing the concerns the association has with the proposal, which does not provide sufficient time for public power utilities to make further investments in non-emitting technologies and would likely result in cost increases for many customers and could impact grid reliability.

- All committees completed their work by September 15, and the House Budget Committee compiled and approved those recommendations on September 25. The Senate is not doing anything similar thus far and is not likely to do so. Negotiations are ongoing between House and Senate Democratic leadership and the White House on a smaller reconciliation package.
- Congress extended the highway programs authorization through October 31, passed a stop-gap spending bill through December 3, and increased the federal debt limit by \$480 billion.
- With progressive Democrats refusing to support the bipartisan infrastructure bill until a reconciliation bill moves through the Senate, for now the fate of both bills are intertwined.
- With leadership paring back the scope of the reconciliation package in response to concerns of moderate Democrats, items of interest to public power could be affected, including the energy-related tax credits, the reinstatement of advance refunding bonds, and the CEPP.

Federal Energy Regulatory Commission (FERC)

- On September 28, the Senate Energy & Natural Resources (ENR) Committee held an oversight hearing, which covered hydropower, transmission, and cybersecurity issues, with the four FERC Commissioners. Notably, Republican Commissioners Danly and Christie expressed serious concerns with the proposed CEPP, noting that it could increase prices and hurt reliability.
- On October 19, the ENR Committee will hold a hearing to consider the nomination of Willie L. Phillips to join FERC. If Phillips' nomination is approved by the full Senate, FERC would be back up to five commissioners with a 3-2 Democratic majority.

Cybersecurity

- On September 23, the House passed H.R. 4350, the National Defense Authorization Act for Fiscal Year 2022 (FY 2022 NDAA). Incorporated into the bill as part of an en bloc package of an amendments was an amendment filed by Representatives Yvette Clarke (D-NY) and John Katko (R-NY) that contains the text of their legislation, the Cyber Incident Reporting for Critical Infrastructure Act of 2021. This provision would require critical infrastructure entities to report cyber incidents to a newly-established office within the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA).
- On October 6, the Senate Homeland Security & Government Affairs Committee approved S. 2875, the Cyber Incident Reporting Act of 2021. Similar to the House-passed bill, the legislation would require critical infrastructure owners and operators to report to the Cybersecurity and Infrastructure Security Agency within 72 hours if they are experiencing a cyber-attack. The bill also would create a requirement for critical infrastructure entities and other organizations, including nonprofits, certain businesses, and state and local governments, to notify the federal government within 24 hours if they make a ransom payment. Chairman Peters said that he would like to offer this bill as an amendment to the Senate's version of the FY 2022 NDAA when it comes to the Senate floor. It is currently unknown when the Senate will consider the NDAA.

6 GHz and Court Proceeding

- The U.S. Court of Appeals for the District of Columbia Circuit held oral argument on September 17 in the litigation challenging the Federal Communication Commission's Report & Order opening the 6 GHz spectrum band for unlicensed use.
 - The court is unlikely to issue a decision before next year. It could uphold the R&O or vacate and remand it for further consideration.

Broadband Survey

- Last week, APPA sent a survey to members asking for information on the types of communications/broadband services they use for internal operations, as well as those they offer or may be interested in offering in the future to end-use customers. The information collected will help APPA staff get a better understanding of the types of communications/broadband technologies they currently use for internal and external purposes, in addition to gauging interest in providing external services to customers. Responses are due November 5. If you have any questions about the survey, please contact [Corry Marshall](#).