

Northeast Public Power Association

Legislative Update



February 2018

NEPPA Members Head to Washington, D.C. for APPA Rally

NEPPA is once again supporting New England public power systems making the trek to Washington, D.C. for the annual APPA Legislative Rally Feb. 25-27. NEPPA is assisting with scheduling meetings on behalf of its members with the congressional delegation, as well as preparing helpful talking points and briefing documents on legislative issues of particular interest to our region: capacity markets, climate change, hydropower relicensing, broadband and pole attachments, and municipal bonds. NEPPA will host an educational prep webinar Feb. 19 for members making the trip.

Government Reopens as Lawmakers Hash Out Border Wall Funding

On Jan. 3, the 116th Congress was sworn in amid a protracted dispute with the President over funding for a border wall with Mexico that resulted in a partial government shutdown. The impasse ended on Jan. 25 after Congress voted and President Trump quickly signed a three-week Continuing Resolution (CR), keeping the government open until Feb. 15 as lawmakers work to find a longer-term agreement on border security funding. The 35-day shutdown, which withheld pay from approximately 800,000 federal employees, was the longest in history. Congressional leaders have formed a conference committee to work on a longer-term deal.

President Trump continues to press for border wall funding in tweets and public statements and appears willing to declare border security a national emergency, which the White House has asserted could allow him to order the wall's construction without congressional approval. Leaders on both sides of the aisle have expressed that they remain hopeful all parties can be satisfied by Feb. 15, thus avoiding both another government shutdown and a national emergency declaration, which would likely be the subject of a lawsuit. The six other appropriations bills entangled in this temporary CR appear fully negotiated and ready for passage. A disaster relief package and an extension of expired tax provisions, including some energy-related tax credits, are part of the negotiations.

FERC Commissioner Kevin McIntyre Dies; LaFleur Announces Departure

On Jan. 2, Federal Energy Regulatory Commissioner Kevin McIntyre passed away. He was 58. Commissioner McIntyre was diagnosed with brain cancer in 2017 and underwent treatment, which he acknowledged in a statement in March 2018. His colleagues on the Commission offered tributes at the January public meeting, and they announced the FERC public meeting room will be named in his honor.

The vacancy created by his absence leaves the Commission with four commissioners, two Republicans and

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two Democrats.

One of the Democrats, Commissioner Cheryl LaFleur, announced on Jan. 31 via Twitter that she will leave the agency later this year. Her term expires on June 30, though if a successor is not appointed by then she can remain until one is confirmed or until the end of the year, whichever happens first. She had expressed a desire to be re-nominated for a third term, writing that her departure was “not the outcome I had hoped for.” A strong supporter of organized energy markets, LaFleur has served on the Commission since 2010. Senate Energy and Natural Resources Committee Chairman Lisa Murkowski (R-AK) and Ranking Member Joe Manchin III (D-WV) recently disclosed that they have not heard anything from the White House regarding potential nominees to fill McIntyre’s seat, although Senate Minority Leader Chuck Schumer (D-NY) reportedly floated the name of Allison Clements, an attorney focused on climate issues, as a potential nominee. LaFleur’s pending departure makes a bi-partisan pairing of nominees likely, though Murkowski said she would not wait for a second nominee if only one name is sent up.

President Formally Nominates Wheeler for EPA

On Jan. 9, President Trump formally nominated Andrew Wheeler to serve as Administrator of the Environmental Protection Agency (EPA). Wheeler has been serving in an Acting capacity since the departure of former Administrator Scott Pruitt in July 2018, and was Pruitt’s top deputy at the agency. Prior to his time at EPA, Wheeler was a lobbyist in Washington, D.C., serving clients that included some fossil fuel interests. Democrats have objected to potential conflicts of interest and opposed Wheeler’s nomination in a Feb. 5 vote of the Environment and Public Works Committee. Wheeler’s tenure has not been marked with the same level of scandal and mismanagement as his predecessor’s, however Democrats have still objected to EPA’s policy agenda in areas such as automobile emissions, hydrofluorocarbons, and drinking water contaminates. A vote in the full Senate has not been scheduled, and Democrats have urged the Republican majority to allow more time for Wheeler to respond to questions before proceeding with his confirmation.

House Bill Would Overturn FCC Pole Attachment Ruling

Rep. Anna Eshoo (D-CA) introduced legislation on Jan. 14 that would overturn the Federal Communications Commission (FCC) Declaratory Ruling from September 2018 that undermines the public power exemption from federal pole attachment regulation. In an attempt to remove perceived barriers to expanding high-speed internet access, the FCC asserted that local government and public power procedures and fee structures governing pole attachment applications must meet FCC standards. The standards would cap application fees and require applications to be processed within 60 days, promoting free-ridership, undermining local control, and threatening community safety. APPA and nearly 100 other entities have sued to block the FCC’s order from taking effect. Rep. Eshoo’s bill, if passed, would ensure the FCC’s order “shall have no force or effect.” While it is unlikely the bill would become law under President Trump, the more support it garners could hinder other lawmakers from introducing legislative proposals that encroach upon the public power pole attachment exemption.

FAA Proposes Regulations Allowing Drone Operations at Night, Over People

On Jan. 14, the Federal Aviation Administration (FAA) announced that it will propose regulatory changes to allow unmanned aircraft systems (UAS or “drones) to fly over people and at night without obtaining a waiver. These general prohibitions have significantly limited the potential drone technology could have for electric utility applications. The FAA Reauthorization law Congress passed in October 2018 requires the FAA to explore how to safely relax these prohibitions. The formal proposal will be published in the Federal Register in the coming weeks.

