

# Northeast Public Power Association Legislative Update



## July 2020

### Climate Crisis Recommendations Take Aim at MOPR

On June 30, the House Select Committee on the Climate Crisis unveiled its long-awaited recommendations for combating climate change. The report calls for reaching net zero emissions by 2050 and net-negative in the second half of the century, through multiple policy recommendations. With respect to the electric sector, the recommendations call for a Clean Energy Standard that creates “rapid deployment” of renewables and other zero-emissions technology, strengthening building codes, and zero-emissions cars by 2035, among many other things.

Of interest to NEPPA, the report states that “one of the most significant barriers to a reliable and affordable decarbonized grid is the use of mandatory capacity markets...” and recommends that Congress amend the Federal Power Act to clarify that state authority over generation includes clean energy incentives and prohibit the Federal Energy Regulatory Commission (FERC) from mitigating bids on the basis that it receives support from a state or local government. Such a policy would effectively undo the minimum offer price rule (MOPR) and restore self-supply.

### Court Strikes Down Tolling Orders

On June 30, the D.C. Circuit Court of Appeals struck down FERC’s use of “tolling orders” that allow pipeline projects to move forward while the agency mulls rehearing, a practice that challengers and the judges said effectively denies petitioners a meaningful opportunity to challenge those projects in court since a final decision from the agency is a prerequisite to do so. The ruling overturns 50 years of precedent on the matter, and is likely to impact projects under the Federal Power Act, which uses the same statutory language as the Natural Gas Act to prescribe just 30 days for FERC to take up a rehearing request. That could mean that long-delayed final agency decisions on issues such as the Minimum Offer Price Rule (MOPR) in New England and New York’s capacity markets could be ripe for legal challenges.

### McMorris Rodgers Introduces Hydropower Licensing Bill

Rep. Cathy McMorris Rodgers (R-WA) reintroduced H.R. 7410, the “Hydropower Clean Energy Future Act of 2020,” on June 29. The bill is similar to legislation she introduced in 2017 which passed the House but ultimately was not signed into law. Among other things, the bill affirms the role of hydropower as a renewable resource and modernizes the hydropower licensing process by improving coordination among permitting agencies and making FERC the lead agency for complying with state and local environmental reviews. The bill also promotes innovation and next-generation hydropower technologies, including expediting licensing for new technologies and small hydropower projects that are unlikely to jeopardize endangered species or critical habitat.

### Panels Hold Hearings on Effects of COVID-19 on the Energy Sector

On June 16, the House Energy and Commerce Subcommittee on Energy held a hearing entitled “Reviving Our Economy: COVID-19’s Impact on the Energy Sector.” The Subcommittee heard from Ernest Moniz, President & CEO of the Energy Futures Initiative (and former Secretary of Energy); Gregory Wetstone, President & CEO of the American Council on Renewable Energy; and Rich Powell, Executive Director of ClearPath. Topics covered in the hearing

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included the effects of climate change on marginalized communities, loss of jobs in the solar industry, the importance of developing greater energy storage capacity, and grid modernization. All of the witnesses urged the Members to consider aid for clean energy in any further stimulus packages.

On the same day, the Senate Energy and Natural Resources Committee hosted a full committee hearing examining the impacts of COVID on the energy industry. Witnesses included Lisa Jacobson, President of the Business Council for Sustainable Energy; Jackie Roberts, President of the National Association of State Utility Advocates; and representatives from the International Energy Agency, the U.S. Energy Information Administration, and the American Petroleum Institute. Though the hearing focused much of its time on crude oil and petroleum market disruption, Senators expressed willingness to engage and help with the unique issues faced by utilities during this pandemic. Both Chairman Lisa Murkowski (R-AK) and Ranking Member Joe Manchin III (D-WV) noted how critical it could be to revisit the energy legislation that was pulled from the floor early this year, updating some provisions to help boost energy sector jobs and expand coverage of financial help to those unable to pay their utility bills. Roberts spoke about the struggles faced by utilities, particularly public power and co-ops. In her testimony and her responses to member questions, Roberts underscored the importance of expanding assistance beyond low-income recipients of LIHEAP to customers who have faced job loss and uncertainty about when they may be able to pay their utility bills – a situation that could cause significant stress to public power and co-ops who depend on sufficient revenue for operating.

### **House Passes Massive Infrastructure Bill**

House Democrats released the legislative text of a major infrastructure package, H.R. 2, the “Moving Forward Act.” The \$1.5 trillion bill builds on previous outlines released by Democratic House leaders, and it includes hundreds of wish-list items such as extending the Production Tax Credit for renewables (and making it available as a direct payment to entities with no tax liability) and expanding the electric vehicle tax credit, grants for energy storage projects, and \$4.5 billion for transportation electrification. As indicated in the framework released in January, the bill would restore advance refunding for municipal bonds and increase the small issuer exemption. New provisions on dam safety respond to recent dam breaches in the Midwest. The bill would also set FERC on a path to facilitate interregional transmission and includes provisions related to western water, lands, and drought issues. The bill is paid for with a massive transfer from the general fund rather than a fix to the gas tax, although aides report that the pay-for is an opening offer. The House expects to pass the bill before the July 4 recess.

### **Federal Reserve Again Expands Municipal Liquidity Facility**

The Federal Reserve announced on June 3 it would expand the scope of the Municipal Liquidity Facility (MLF) to allow Governors to designate two “Revenue Bond Issuers” in their state that may participate directly in the MLF. A revenue bond issuer is a government-owned, state or political subdivision that issues bonds secured by revenue from a specified source - i.e., a public power utility. The MLF is still considered a lender of last resort, in that a borrower must be unable to secure adequate credit accommodations elsewhere. However, issuers may certify that market or economic conditions due to the pandemic have made lending options inconsistent with “a normal, well-functioning market.” Municipal utilities are hopeful that the MLF will be a viable tool to increase liquidity to manage cash flow pressures during the pandemic. The recent expansion in eligibility will allow additional flexibility for governors of lower population states to access the facility.

### **FERC Invites Comment on Incentivizing Cybersecurity Investments**

At its monthly meeting on June 18, FERC issued a white paper examining incentives for voluntary cybersecurity investments. In doing so, the Commission announced an invitation for stakeholders to provide feedback in addressing a range of questions aimed at improving grid cybersecurity. One option outlined in the white paper would offer transmission owners a higher return on equity (ROE) for voluntarily applying Critical Infrastructure Protection (CIP) standards to facilities currently not subject to those requirements. Among the other questions on which FERC is inviting input is whether a 200-basis point, project-specific adder would be sufficient to incentivize cybersecurity investments that exceed the requirements of CIP standards. A formal Notice of Inquiry was published in the Federal Register on June 24 and will be open to comment for 60 days.

