December 13, 2022

TO: **Policy Makers Council**
FROM: **Steve Medved / SMedved@PublicPower.org / 202-467-2928**

SUBJECT: **December PMC Call Update**

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118th Congress

- With Senator Warnock's (D-GA) reelection in Georgia last week, the Senate will be split 51 Democrats – 49 Republicans.
    - Arizona Senator Krysten Sinema announced last week that she is leaving the Democratic Party and is becoming an Independent. Sinema says she will still caucus with Democrats in the Senate, so the partisan makeup of the Senate will not be impacted.
- The House will be split 222 Republicans – 212 Democrats (VA-04 is currently vacant).

End of 2022 Must-Pass Legislation

- The continuing resolution (CR) currently funding the federal government runs out on December 16. Congressional appropriators are reportedly nearing a deal on an omnibus appropriations bill to fund the government for the rest of Fiscal Year (FY) 2023; another week-long CR will likely be necessary to give negotiators time to finish ironing out details.

- The House last week approved the FY23 National Defense Authorization Act (NDAA), which includes the Water Resources and Development Act of 2022. The Senate is expected to vote on passage of NDAA this week.

Energy Siting & Permitting Reform Legislation

- Senator Joe Manchin (D-WV) last week released a revised version of his energy-permitting reform legislation and is seeking to have it added to the NDAA.

- This language, now titled the Building American Energy Security Act of 2022:
    - Still sets maximum timelines for permitting reviews, including two years for NEPA reviews;
    - Creates a list of at least 25 high-priority energy infrastructure projects and prioritizes their permitting;

    - Provides for the expedited judicial review of cases involving energy permit projects; and
    - Authorizes the Mountain Valley Pipeline project.

- Some major changes made from the previous version include:
    - It no longer includes modifications to Clean Water Act section 401;
    - It makes clarifications to the language that adds hydrogen to the Natural Gas Act; and
    - It makes further refinements to the transmission language.

- APPA views some of the changes as positive, but we still have significant concerns with regards to expansion of FERC's authority and transmission cost allocation.

- Sen. Manchin attempted unsuccessfully to get this language included as part of the base text of the NDAA bill.

- While Manchin made the changes to get more support, many Republicans still object that the bill does not go far enough, whereas some progressive Democrats object that the changes go too far.

<u>Hydropower</u>

- APPA on December 1 sent a letter to the leaders of the House and Senate tax writing committees in support of adding S. 2306, the Maintaining and Enhancing Hydroelectricity and River Restoration Act of 2021, to a year-end omnibus funding package.

- The bill would add a 30 percent investment tax credit (ITC) for hydropower environmental and safety improvements and is supported by APPA.

- Senators Maria Cantwell (D-WA) and Lisa Murkowski (R-AK) introduced S. 2306 in June 2021. The bill, which has since been revised to both simplify the language and reflect changes in the tax code since introduction (including the new refundable direct payment tax credit regime) would help hydropower owners make the environmental and safety investments necessary to complete the relicensing process and comply with dam safety requirements.

- Unfortunately, the ITC in the Inflation Reduction Act (IRA) only applies to generation upgrades at hydropower facilities, not environmental and safety upgrades necessary to maintain existing facilities.
    - According to FERC, licenses for more than 500 hydropower and pumped storage facilities – representing more than 23 gigawatts of renewable, reliable energy generation – must be renewed by 2035.

- Without the tax incentive support in the revised S. 2306, these facilities may close, threatening the reliability of the grid and the nation's ability to achieve emission reduction goals.

Appropriations funding for Distribution Transformers

- APPA, NRECA, EEI, and several construction and building trade associations recently sent a letter to House and Senate Appropriations leaders requesting funding for Defense Production Act authorities to address supply chain issues impacting electric reliability.

- The letter requests $1 billion for DPA authorities to specifically address production constraints for distribution transformers.

- Those authorities would be used to immediately address labor and materials shortages identified by manufacturers as impediments to increasing the production of distribution transformers.

- APPA has been working with Appropriations Committee staff to secure funding in year-end omnibus appropriations package.

IRA Treasury Department Guidance

- On November 29, the Treasury Department released guidance on the tax credit related wage and apprenticeship requirements of the Inflation Reduction Act (IRA). Releasing the guidance begins a 60-day "clock" for when these rules take effect. Under the IRA, facilities are only eligible for increased investment and production tax credits if they meet these labor requirements.

- In addition, to further assist taxpayers and other stakeholders in understanding these provisions, the Department of Labor issued two Frequently Asked Question (FAQ) documents – one on prevailing wage and the other one on apprenticeships.