

Northeast Public Power Association Legislative Update



April 2018

FirstEnergy Solutions Calls for Emergency Order Days Before Bankruptcy

On March 29, FirstEnergy petitioned the Department of Energy (DOE) to use its emergency authority under Sec. 202(c) of the Federal Power Act to require PJM to enter into full recovery contracts with all plants in its footprint with 25 days of fuel on site. Such contracts would remain in effect for four years. The petition cites pending retirements in the market as the emergency condition triggering the need for an exercise of 202 authority. The prior day, FirstEnergy had announced the sale or closure of three of its nuclear plants over the next three years.

The petition cites a study released by DOE's National Energy Technology Laboratory (NETL) on March 27 that highlighted the role coal-generated power played during the "Bomb Cyclone" cold snap that gripped the east coast and significantly increased energy demand at the turn of the new year. The NETL analysis showed coal provided 55 percent of the incremental daily generation during the cold snap and claimed that without coal, energy shortages would have been likely.

The following weekend, FirstEnergy and related companies filed for bankruptcy, but noted that the filing did not extinguish their request for relief via the emergency order.

DOE may take emergency action under Sec. 202 without notice, hearing, or report on a temporary basis. PJM and trade associations have already weighed in questioning whether an emergency exists, and Secretary Perry has said the emergency order may not be the best way to avoid such an emergency, if one exists. However, President Trump has made comments indicating the Administration is taking a close look at the petition.

Congress Passes FY18 Omnibus Spending Bill

On March 23, Congress passed a massive omnibus spending bill, funding the entire government for FY18. The Energy and Water appropriations section of the omnibus received a sizeable boost from last year's levels to \$43.2 billion, with the Department of Energy (DOE) seeing across the board increases to the Office of Science, Office of Energy Efficiency and Renewable Energy and the Advanced Research Projects Agency-Energy (ARPA-E), which was zeroed out in the Administration's request. The Low-Income Home Energy Assistance Program (LIHEAP) received \$3.6 billion, an increase of \$250m million over last year. Controversial environmental riders were left out of the final package.

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Iranian Hackers Breach FERC Systems

The Department of Justice (DOJ) indicted nine Iranian citizens alleging that since 2013, these individuals had engaged in large-scale cyber assault on hundreds of public and private entities, including the Federal Energy Regulatory Commission (FERC). Outside observers worry that some e-mails may have contained sensitive security information exchanged with employees at the North American Reliability Corporation (NERC), which could include information about grid vulnerabilities. In response to the indictments, FERC announced that it has taken “corrective action” to ensure “appropriate controls” are in place.

Electric Industry Urges Changes to FERC Supply Chain Standards

Utilities and trade associations, including the American Public Power Association, asked FERC to reconsider provisions of its proposed supply chain standards issued in January. An earlier draft standard was rejected by industry through NERC’s stakeholder balloting process in 2017 because it would have forced utilities to dictate requirements to technology vendors, like Microsoft. The final standards approved by NERC called for utilities to implement cyber security best practices for supply chains systems determined to have medium or high levels of risk. FERC issued a notice of proposed rulemaking (NPR) on Jan. 18 to move towards approving these standards. However, FERC’s NPR amended NERC’s proposal by expanding their scope to cover additional physical control and electronic monitoring systems and shortened the implementation period from 18 months to 12. The trade associations believe that applying the standards to these additional systems would effectively force utilities to negotiate with large tech vendors into achieving compliance – similar to what industry rejected last year. They argue that utilities lack the purchasing power to force large tech vendors to meet the standards and they are concerned they would be held liable to noncompliance fines for vendor behavior outside their direct control. Comments on FERC’s NPR were due March 26.

EPA Reconsiders Vehicle Emissions Standards, Implications for EV Production

On Apr. 2, the Environmental Protection Agency (EPA) announced it would reconsider its Jan. 12, 2017 final determination that existing greenhouse gas (GHG) emissions standards for model year (MY) 2022-2025 light-duty vehicles are appropriate (a decision known as the Mid-Term Evaluation or MTE). The reconsideration paves the way for a rollback of GHG standards that would make automakers less likely to manufacture electric vehicles. EPA proposes to coordinate with the National Highway Traffic Safety Administration (NHTSA), the other federal agency with responsibility for automobile standards related to fuel economy. However, any rollback at the federal level would upend the One National Program of harmonized standards, brokered in 2012 and including California. California officials have said they will not consider loosening the existing standards.

House Subcommittee Considers Broadband Deployment

On March 13, the Senate Commerce Subcommittee on Communications, Technology, Innovation and the Internet held a hearing to consider how broadband deployment could be encouraged in a potential infrastructure bill. The panel heard from representatives from the telecom industry, as well as from Mike Romano of the Rural Broadband Association and Mayor Gary Resnick of Wilton Manors, FL who serves as Chair of the National League of Cities Information Technology and Communications Committee. Chairman Roger Wicker (R-MS) emphasized the importance of broadband expansion for the economic development of communities and said that “outdated rules” were holding back broadband deployment. Mayor Resnick impressed upon the committee that cities and municipalities are not standing in the way of broadband deployment, and that wireless carriers have refrained from investing in rural areas because such areas do not have a large enough customer base. He said that municipalities, residents, and businesses should not be asked to subsidize for-profit wireless carriers.

