

Northeast Public Power Association Legislative Update



August 2018

FERC Issues Order on Cyber Intrusions

On July 19, FERC finalized Order 848, which requires the North American Electric Reliability Corporation (NERC) to revise its reliability standards to require utilities to report nearly all cyber intrusions that could compromise Electronic Security Perimeters (ESPs) and related Electronic Access Control or Monitoring Systems (EACMS). The final rule requires NERC to revise what it considers a reportable cyber incident so that more incidents are captured, though it does give NERC some discretion to focus on the threat level, potential consequences to EACMS systems, and to prioritize reporting incidents that threaten reliability. The order also requires utilities to report cyber incidents to the Department of Homeland Security in addition to NERC's Electricity Information Sharing and Analysis Center (E-ISAC). NERC will be required to provide FERC an annual report on the incident data it collects as a result of this order.

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Congress Continues Work on FY19 Appropriations Bills

Congress continued progress on the Fiscal Year 2019 appropriations process utilizing several "minibus" legislative packages that pair multiple spending bills together for floor consideration. The conference process to work out differences between each chamber's Energy and Water minibuss (which also included legislative branch and veterans funding) stalled over how to provide funding for a veterans program that the Trump Administration recently shifted from mandatory to discretionary funding.

The House approved the second FY19 minibuss appropriations bill, comprised of the Interior-Environment and Financial Services bills, on July 19. The Senate added Transportation and Agriculture appropriations bills to the package and passed the bill on Aug. 1. The House-passed version included \$44.7 billion for the Interior-Environment portion but added several contentious policy riders, while Senate appropriators provided \$43.7 for that section and kept it clear of riders.

Cantwell, Graham Urge Investigation of Russian Threat to Grid

On July 25, Sens. Maria Cantwell (D-WA) and Lindsey Graham (R-SC) sent a letter to President Trump asking that he order an analysis of Russian cyber threats to grid infrastructure. The letter notes a recent story by the Wall Street Journal that reported Russian hackers penetrated industrial control systems of utilities last year, though they did not cause blackouts.

Further, the letter praises the formation of the new Office of Cybersecurity, Energy Security, and Emergency Response at the Department of Energy, but suggests additional action by the federal government is needed and cites proposed cuts to DOE as being counterproductive to maintaining grid reliability.

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The letter asks the President to provide an assessment of Russian cyber capabilities, a report describing what is known about Russian penetration of electric infrastructure, and steps the Administration is taking to respond to the threat. This is the third such letter from Cantwell, and the addition of Graham makes it stand out as a bipartisan effort, though the Administration is not required to provide the requested information.

House Postures on Carbon Tax

On July 19, the House voted 229-180 to pass a non-binding resolution expressing the sense of Congress that a carbon tax would be detrimental to the U.S. Seven Democrats crossed the aisle to vote for the resolution, and six Republicans voted against it. A similar resolution in the previous Congress had no Republican defectors. The resolution, advanced by Republican leaders, was designed to counter an effort by Rep. Carlos Curbelo (R-FL), co-chair of the bipartisan Climate Solutions Caucus. Curbelo introduced carbon tax legislation on July 23 that would put a price on emissions and redistribute the revenue as a dividend to taxpayers. The Republican leadership resolution makes clear that the party will not advance the measure being circulated by Curbelo despite growing momentum for a market-based approach to controlling carbon emissions.

Powelson Resigns from FERC, Potential Replacements Floated

Republican FERC Commissioner Robert Powelson announced on June 28 his plans to resign effective mid-August to become President and CEO of the National Association of Water Companies. A Republican, he had been sharply critical of the administration's efforts to shore up financially struggling nuclear and coal plants. Powelson's tenure was to last until June of 2020. In the absence of a fifth commissioner, FERC will be a split panel, with two Democrats and two Republicans until President Trump nominates and the Senate approves another Republican commissioner. With other items crowding the Senate's schedule, it is unclear when the Administration and Senate will move forward with a replacement. Several names have been rumored to be under consideration, including: Travis Kavulla, vice chairman of the Montana Public Service Commission and former President of NARUC; Tim Echols, member of the Georgia Public Service Commission; Douglas Little, Deputy Assistant Secretary of Intergovernmental and External Affairs at DOE; Bruce Walker, Assistant Secretary of the Office of Electricity at DOE; and Sean Cunningham, Director of DOE's Office of Policy.

Trump Names Brett Kavanaugh to Replace Kennedy on Supreme Court

On July 9, President Trump announced his nomination of Brett Kavanaugh of the D.C. Circuit Court of Appeals to fill the Supreme Court vacancy created by Justice Anthony Kennedy's retirement. Judge Kavanaugh has opined on numerous Obama-era environmental regulations and found that the EPA overstepped its authority. Early reviews of his record also suggest he may be more open to reexamining the Chevron doctrine of deference to federal agencies. No Judiciary Committee hearings have been scheduled yet but Judge Kavanaugh has begun meeting with Senators individually. Majority Leader Mitch McConnell (R-KY) has promised a swift confirmation process with the goal of having the new Justice seated before the high court's new term starts in October.

Wheeler Takes the Helm of EPA in Wake of Pruitt's Resignation

On July 5, Environmental Protection Agency (EPA) Administrator Scott Pruitt tendered his resignation after a relentless torrent of headlines about improper behavior and financial mismanagement at the agency. Deputy Director Andrew Wheeler assumed the role of Acting Director July 9. Wheeler previously served as a staff member for Sen. Jim Inhofe (R-OK) as well as an aide for the Senate Environment and Public Works Committee. While Wheeler's style has already been notably different from Pruitt's with respect to transparency and internal and external relations, the agency's deregulatory agenda is not expected to significantly change with the new leadership at the top.

