Northeast Public Power Association

Legislative Update

October 2021

In this edition:

"Build Back Better" Details Take Shape but Face Delays

On Sept. 9, House committees released key components of the anticipated Reconciliation package related to clean energy and climate and began the process of marking them up for inclusion in the bill with the goal of passing both the bipartisan infrastructure bill and the Reconciliation bill by the end of September. However, in the intervening weeks it became clear that more work needed to be done to get all Democrats on board with the overall scope and cost of what has become known as the "Build Back Better Act." Acknowledging the need for more time, congressional leaders set a new date of Oct. 31 to establish a total spending amount and finalize the bill.

Of chief interest to utilities, the House Energy and Commerce Committee unveiled the Clean Electricity Payments Program: a $150 billion program to make grants to load serving entities (LSEs) who increase their share of clean energy (generation with a carbon intensity of .1 metric tons of CO_2/MWh) each year, at a rate of $150 per MWh above 1.5% of the previous year's share of clean electricity. Grants can be used to offset customer rate increases, worker retention, or investment in further clean energy and efficiency. LSEs that fail to meet the 4% increase threshold will owe $40 for each MWh of shortfall below that threshold. Grants and fees can be "deferred" for up to two years.

APPA and NRECA submitted letters raising concerns about whether the speed of decarbonization under the CEPP would be achievable, as well as a number of other drafting issues. In meetings held in October, NEPPA called for refinements to the bill to accommodate the fact that public power entities would have no source of funds for the potential penalties other than their customers.

The Energy and Commerce bill also includes $27.5 billion for climate finance institutions, $18 billion for home energy efficiency and appliance electrification rebates, $13.5 billion for electric vehicle charging infrastructure, $9 billion for transmission siting and grid modernization at interconnection seams, a $7 billion infusion into Department of Energy loan and grant programs related to innovation and communities, and $2.5 billion for low-income solar projects.

Separately, the House Agriculture Committee released legislative text in advance of a Sept. 10 markup. The bill includes a $10 billion fund for electric cooperatives to invest in renewable energy or energy efficiency, or to retire debt or defray costs associated with retiring higher-carbon intensity resources.

The week of Sept. 13, the House Ways and Means Committee advanced its part of the Democrats' Budget Reconciliation package, mostly along party lines. The bill builds upon the "Growing Renewable Energy and Efficiency Now (GREEN) Act" by extending for 10 years (through 2033) clean energy production tax credits (PTC) and investment tax credits (ITC) through a base and bonus credit rate approach. To claim the full bonus credit rates for the PTC and ITC, applicants must meet prevailing wage, apprenticeship, and domestic content requirements. The bill also expands tax credits for solar, energy storage, zero-emission facilities, carbon capture, hydrogen, and transmission. Importantly, the bill includes a direct pay provision of these credits for public power utilities and electric cooperatives, making them directly available to not-for-profit utilities for the first time.

The bond financing title would also reinstate tax-exempt advance refunding for municipal bonds and increase the threshold for small issuers to $30 million from $10 million. To pay for the $3.5 trillion bill, House Democrats are proposing changes to the corporate tax rate, capital gains, and surtax on high income earners, among other things. On the heels of the committee completing its markup, Senate Finance Chairman Wyden (D-OR) yesterday remarked that he wants energy tax incentives to be tied more closely to carbon emissions reductions, as outlined in his "Clean Energy for America Act," and will not commit to a timeline to reconciling the differences among the two tax-writing committees.

Senate Panel Holds Hearing on the Scope and Administration of FERC Statutes

On Sept. 28, the Senate Energy and Natural Resources Committee held a hearing with all four Commissioners of the Federal Energy Regulatory Commission (FERC) to review the scope and administration of laws within the agency's jurisdiction. Most of the hearing focused on the impact of implementing FERC priorities, including the buildout of electric transmission, modernizing electricity market design, and mandating cybersecurity standards. Several senators asked if FERC has the tools it needs to allocate transmission costs equitably, to which FERC Chairman Richard Glick replied that the Commission is required to ensure costs are allocated roughly commensurate with benefits, however he feels that benefits are defined too narrowly. Senators also raised challenges with siting authority for electric transmission, to which all the Commissioners agreed reforms are needed; however, they had varying opinions on the specific types of reforms.

Biden Nominates Willie Phillips to FERC

On Sept. 9, President Biden nominated Washington, DC utility regulator Willie Phillips to the Federal Energy Regulatory Commission (FERC). If confirmed by the Senate, Phillips would replace Republican Commissioner Neil Chatterjee, who left his post at the end of August, and would flip the Commission's majority to be 3-2 Democratic. Phillips could be instrumental in helping advance Chairman Richard Glick's priorities such as eliminating the Minimum Offer Price Rule and mandating cyber standards for the oil and gas industry. While Phillips has been endorsed by groups such as the Solar Energy Industries Association, his nomination is a perceived snub on the Biden administration's part to a coalition of hundreds of environmental groups that have been pushing the White House to nominate a candidate who has a history of advocacy in environmental justice and climate change.