

Legislative Update



December 2016

Election Ushers in Change Agent

Voters on Nov. 8 elected Donald Trump to be the next President of the United States. Republicans kept majorities in both House and Senate, albeit with smaller margins, setting up a 115th Congress that is sure to be full of major policy shifts, including reversing course on major Obama Administration priorities.

While several Trump Administration nominees have been announced, there is little more than speculation about the agencies that most directly affect the utility industry, including the Department of Energy (DOE), Environmental Protection Agency (EPA), and the Federal Energy Regulatory Commission (FERC), which has two Republican vacancies.

Perhaps the highest profile regulation on the chopping block is the Clean Power Plan. President-elect Trump has vowed to “cancel” the rule, setting up a legal battle with environmental and health groups. Acknowledging that clean energy advocates have little recourse to advance technology-driving regulations without support from the Administration, current EPA officials have issued statements focused on the economic drivers leading utilities to adopt greener portfolios.

The election results have also dimmed the prospects for legislation moving in the lame duck session, including an energy bill conference report. The Senate now appears far more motivated to complete a bill than the House, which replied to the upper chamber’s initial proposal with a vastly slimmed-down version. A second volley from the Senate attempted to reignite negotiations on several provisions, but prospects for final passage are low.

On the other hand, Republicans are eyeing the opportunity to advance an overhaul of the tax code they have been preparing for the past several years. Past drafts would cap the deduction for municipal bonds, reducing the value of public power’s chief financing tool.

Next week, leaders plan to unveil a year-end spending package that may or may not include provisions from the energy bill, water resources projects, and other items. It is expected to fund the government at current levels through March, 2017. After passing that bill, Congress is expected to adjourn before returning Jan. 2.

FERC Proposes Storage and Demand Response Integration

On Nov. 17, FERC requested comments on a proposal to integrate storage and distributed energy resources into wholesale markets. The proposal would require RTO/ISOs to develop market rules to recognize these resources operational characteristics and define distributed generation “aggregators” as a type of market participant.

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Watchdog Group Calls for Review of PJM Capacity Rules

Monitoring Analytics, the Independent Market Monitor for PJM Interconnection, filed a request with FERC asking the agency to immediately reinstate rules requiring that replaced capacity be physical, among other requirements. The newer rules were adopted over the objection of FERC staff, the filing says, and are “unjust and unreasonable, inconsistent with competitive markets.”

Senate Hearing on Nuclear Power’s Future

On Nov. 16, the Senate Appropriations Subcommittee on Energy and Water Development held a hearing to discuss the future of nuclear power. During opening statements, Chair Lamar Alexander (R-TN) expressed the need to invest in advanced nuclear reactors while pushing for the licensing of Small Modular Reactors. Ranking Member Dianne Feinstein (D-CA) said that first there must be a viable solution for spent fuel; and industry must “financially commit” to the technology.

In the 115th Congress, both Sens. Alexander and Feinstein plan to work with House Energy and Water Appropriations Chairman Mike Simpson (R-ID) and Ranking Member Marcy Kaptur (D-OH) to reach a solution on spent nuclear fuel. Potential Energy and Commerce Chair John Shimkus (R-IL) has said he would advance nuclear waste legislation to open Yucca Mountain, which may be a possibility now that its staunchest opponent, Minority Leader Harry Reid (D-NV), is leaving office. However, incoming Senate Majority Leader Chuck Schumer has pledged to take up Reid’s mantle and follow the “tradition” of opposing Yucca Mountain.