

Northeast Public Power Association Legislative Update



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House Holds First Hearings in “Powering America” Series

On July 18, The House Subcommittee on Energy held its first hearing in the “Powering America” series, giving Members an opportunity to learn about electricity markets from market participants. A second hearing on July 26 featured testimony from RTO/ISO operators.

Subcommittee Chairman Fred Upton (R-MI) and others noted in opening statements the significant transformation the electric sector is currently facing, which has affected the overall configuration of the country’s electric generation mix and the industry’s approach to grid reliability. Full Committee Chairman Greg Walden (R-OR) focused on the importance of fairness to consumers, who expect affordable and reliable electricity even as providing it becomes more complex. He further encouraged the panels to help come up with a way to achieve state priorities while maintaining wholesale prices.

Public power was represented by Lisa McAlister of American Municipal Power and Jackson Reasor of Old Dominion Electric Cooperative. Self supply by municipal utilities in RTO regions was a prominent issue, as was the pressure on baseload generators and the fact that nuclear is not compensated for being emissions-free.

The second hearing, with testimony from RTO/ISO operators, focused on the functionality of the markets. Operators claimed that they had addressed self-supply and that no legislative changes were needed to help them make adjustments to their markets. The hearings are the first in what is expected to be an educational series on Federal Power Act issues.

NRC Nominees Approved by Senate Committee, Head to Floor

On July 12, the Senate Environment and Public Works Committee approved Nuclear Regulatory Commission (NRC) nominees Annie Caputo and David Wright. Their nominations now move to the Senate floor, joining a slew of nominees awaiting confirmation. That backlog includes Federal Energy Regulatory Commission (FERC) nominees Neil Chatterjee and Robert Powelson, who may be held pending committee action on Rich Glick and Kevin McIntyre’s nominations for the other FERC slots.

Senate Committee Considers Energy Security

On July 18, the Senate Energy and Natural Resources Committee held a hearing to examine the outlook for U.S. and North American energy resource security. Witnesses addressed the rapid development of the U.S. shale gas industry, the lifting of the ban on crude oil exporting, and the global “energy dominance” of the United States. In relation to cybersecurity, Stephen Cheney, Chief Executive Officer from the American

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Security Project and a retired brigadier general from the U.S. Marine Corps, said that the U.S. could not counter emerging threats if Congress approves of spending cuts to research proposed by the Trump administration. He expressed concern about the cost for utilities to conduct their own cybersecurity R&D and recommended that DHS handle information sharing and consultation for securing networks at private utilities. Cheney recommended Congress promote the rapid proliferation of renewables, and Mark Mills, senior fellow from the Manhattan Institute, encouraged the committee to support policies that promote renewables while not undermining oil and gas in sectors where there are not affordable or reliable alternatives.

Senators Seek More Information on Cyber Protections at Nuclear Plants

The North American Reliability Corporation (NERC) has alerted grid operators that hackers are using “phishing” e-mails with suspicious links and attachments to disrupt utility operations, though so far, none have caused a disruption in service. NERC’s report follows a separate alert from DHS and the FBI on June 28 warning energy, nuclear, and manufacturing firms of ongoing efforts by hackers to infiltrate and disrupt their operations. Wolf Creek Operating Corporation, which runs a nuclear generating power plant in Burlington, Kansas, is among the firms that have been targeted. However, DHS concluded that the impact of the cyberattacks did not reach far and did not compromise any actual control systems, and stated that the attack “appears to be limited to administrative and business networks.” Nevertheless, Senate Energy and Natural Resources Committee Ranking Member Maria Cantwell (D-WA) said that the reports reveal that “our adversaries are trying to take advantage of the very real vulnerabilities of our energy infrastructure’s cyber defenses.” On July 10, Sen. Ed Markey (D-MA) sent a [letter](#) to several agencies requesting more information about recent cyberattacks on nuclear plants and whether agencies have adequate funding to take the direct measures needed to address vulnerabilities in cyber-networks at U.S. nuclear power stations.

Treasury Reconsiders “Political Subdivision” Rule

On July 7, the Treasury Department announced that it may amend or withdraw the IRS’ proposed “political subdivision” rule. The rule was proposed last year by the Obama Administration to limit the types of entities that can issue tax-exempt bonds. The proposed rule’s narrower criteria threatened to prevent some joint action agencies and public utility districts from maintaining their tax-exempt bond issuing authority. Last year, the Municipal Bonds for America (MBFA) coalition and APPA filed comments opposing this rule. The Treasury Department’s review comes as it responds to President Trump’s Executive order on April 21 requiring it to re-evaluate all “significant tax regulations” issued since January 2016 and propose changes to make them less burdensome. MBFA and APPA intend to resubmit comments opposing the rule.

Pruitt Takes Aim at Clean Power Plan, “Sue and Settle”

EPA Administrator Scott Pruitt is reportedly considering a withdrawal of the Clean Power Plan based on the legal argument some used to challenge the rule based on language in the Clean Air Act that may bar regulation of carbon dioxide at power plants if those sources are already regulated for mercury. Rejecting the rule based on that novel legal interpretation would likely lead to litigation and keep the rule tied up in court.

Separately, Pruitt issued an “oral directive” to end sue-and-settle practices, which some have suggested the Obama Administration used to create stricter environmental law faster and with less input than would have been possible under rulemaking procedures. Many Republicans on Capitol Hill have long advocated against “sue and settle” tactics, which involve EPA complicity in allowing environmental activists to sue the agency in certain cases. Republicans from the House Energy & Commerce Committee and the House Judiciary Committee sent a [letter](#) to the EPA and Department of Justice on June 29 asking them to provide written detail about the directive to curtail the practice and brief the Committees on the matter. In this letter, they note that “sue and settle” has led to 137 new Clean Air Act regulations since 2009, but indicate some concern that the policy is shifting without a written record of the change.

