

Northeast Public Power Association Legislative Update



January 2024

Unified Agenda Reveals Timetable for Finalizing Transformers Rule, House Looks to Block It

On Dec. 6, the Biden administration released its fall agenda for upcoming energy regulations, revealing that the Department of Energy (DOE) is planning to finalize its proposed conservation standard for distribution transformers by April 2024. The rule, which would require certain transformers to have amorphous steel cores instead of the traditional grain-oriented electrical steel, comes despite repeated warnings from utilities, advocacy groups, members of Congress, and other stakeholders that the rule would greatly exacerbate the existing supply chain crisis. On the same day, the House Energy and Commerce Committee advanced several energy bills including the “Protecting America’s Distribution Transformer Supply Chain Act,” which would block DOE from implementing any new conservation standards for distribution transformers for five years. The bill passed on a partisan vote of 24-22.

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FCC Finalizes Pole Replacement Order

At its monthly meeting Dec. 13, the Federal Communications Commission (FCC) adopted a Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking (NPRM) that would reform pole replacement rules, seek comment on ways the Commission defines timelines for large pole attachment applications, and facilitate the approval process for pole attachment applications, among other things. Chairwoman Jessica Rosenworcel stated that the Commission is looking for ways to “ensure that the investment Congress made ... is fully modern and meets this moment” under Section 224 of the Communications Act. Consumer-owned utilities are exempt from FCC pole attachment regulations under Sec. 224, however over the past decade, this exemption has been continuously eroded. Initial comments to the NRPM are due 30 days after publication in the Federal Register.

Treasury, IRS Release Multiple Guidance Documents, Open Direct Pay Portal

In the final weeks of 2023, the Treasury Department and Internal Revenue Service (IRS) released several long-awaited items. In a high-profile notice of proposed rulemaking, the Treasury Department released initial guidance on eligibility for the hydrogen production tax credit that will require producers using electrolysis to show they are using new, emissions-free power sources. Initially, producers will be able to match clean power production with hydrogen production on an annual basis, but must show an hourly match after 2028. Some hoped the proposal would boost the overall availability of hydrogen by allowing existing sources to power production facilities. Instead, the guidance requests comment on using existing clean sources like nuclear power. In addition, the IRS proposed regulations concerning domestic content



requirements, including the phaseout and waiver processes, and new battery sourcing rules for electric vehicles. IRS also opened a “pre-registration portal” for entities that intend to take direct pay tax credits (now known as elective pay). Pre-registration is required before filing for a payment.

House Dems Release Clean Energy and Transmission Bill as Top Priority

In a bid to lay a marker for Democrats’ energy and permitting priorities, Reps. Sean Casten (D-IL) and Mike Levin (D-CA) led 76 House Democrats in introducing the “Clean Electricity and Transmission Acceleration Act.” The bill would make several permitting changes at the Federal Energy Regulatory Commission (FERC) and DOE, and it would give FERC exclusive siting authority for “national interest” transmission lines. The bill would also direct FERC to allocate costs of large-scale regional, interregional, and offshore transmission projects “roughly commensurate with benefits” of the project, but does not define those benefits or lay out a process by which FERC should allocate the costs. FERC would also be required to determine the existing electricity transfer capacity between grid regions and establish minimum levels of transfer capabilities between regions, ensuring that minimum is above 30% of load for most regions.

NERC Warns of Rolling Blackouts Due to Plant Retirements

The North American Electric Reliability Corporation (NERC) released its 2023 Long-Term Reliability Assessment report on Dec. 13, finding that many parts of the U.S. are at risk of rolling blackouts as more coal plants retire and as clean energy sources are slow to be connected to the grid. The report also found that most regions of the country face growing risks of inadequate power supply during periods of extreme temperatures over the coming decade due to rising energy demands and aging power grids. The analysis comes amid the debate between the electric sector and climate advocacy groups over EPA’s proposed greenhouse gas emissions regulations for coal- and gas-fired generation plants, and whether DOE and state regulators should slow down retirements of fossil fuel generation for grid reliability.

Senate ENR Reviews Challenges for Advanced Nuclear

On Nov. 30, the Senate Energy and Natural Resources Committee held a hearing on opportunities and challenges for advanced nuclear. Witnesses included the Director of the Idaho National Lab, which was to be the site of the recently cancelled Carbon Free Power Project (CFPP); Jeffrey Merrifield, former commissioner for the Nuclear Regulatory Commission; and a representative from Dow Chemical (now slated to be the first customer of an advanced reactor). Utility risk aversion was a major theme of the hearing despite the lack of a utility witness on the panel, with Merrifield suggesting that utilities could form a “cost sharing pool” to build a series of reactors together in order to lower the financial risk and burden.

