

# Northeast Public Power Association Legislative Update



## July 2017

### D.C. Circuit Upholds PJM Capacity Performance Plan

On June 20, the D.C. Circuit Court of Appeals unanimously affirmed an order of the Federal Energy Regulatory Commission (FERC) approving PJM's "Capacity Performance" proposal. A similar performance proposal was instituted in ISO-New England, providing significant payments for delivering resources during times of constraint as well as stiff penalties for failure to perform even if the failure was due to scheduled maintenance. NEPPA opposed the policy. The opinion repeatedly defers to FERC's expertise, rejecting the arguments of nine petitioners including APPA. It follows recent trends in court opinions deferring to FERC on jurisdictional and substantive matters, and demonstrates the court's comfort with FERC's line of argument supporting higher costs for consumers being justified.

### Senate Energy and Natural Resources Committee Sends Nominees to Senate Floor

By a vote of 20-3, the Senate Energy and Natural Resources Committee voted on June 6 to advance the nominations of Neil Chatterjee and Robert Powelson to be FERC Commissioners to the full Senate. Despite protests at the hearing, Chairwoman Lisa Murkowski (R-AK) said she hoped to confirm all nominees before the July 4 recess. That now seems unlikely, as Democrats are hoping to advance a progressive nominee (Committee staffer Rich Glick) along with President Trump's nominee for Chairman (expected to be Kevin McIntyre of Jones Day). Complicating matters, Commissioner Colette Honorable will step down from the agency June 30.

### Hydropower Relicensing Reform Bill Clears House Subcommittee

On June 22, the House Energy and Commerce Subcommittee on Energy reviewed five bills related to energy security and hydropower. All five bills were sent to the full committee, including the "Hydropower Modernization Act of 2017" by Rep. Cathy McMorris Rodgers (R-WA). The bill would designate FERC as the coordinating agency for licensing and relicensing hydropower projects. This change would help streamline the complicated and lengthy relicensing process that can last a decade or more in some cases. Ranking Member Frank Pallone (D-NJ) noted Democrats' support for the intent of the bill, but said it still needed work to receive their votes at the full committee level. The bill is slated for markup by the full committee on June 28.

### Industry Approves Cyber Security Supply Chain Standards, Focus Shifts to FERC

On June 19, the North American Electric Reliability Corporation (NERC) approved reliability standards addressing cyber vulnerabilities in the supply chain. The proposals stem from FERC Order No. 829, but fall well short of the robust standards the Commission had hoped for – harsh requirements that would have attempted to have utilities dictate cyber security standards to vendors such as Microsoft – and instead call for utilities to simply have a plan in place to address supply chain risks. The measures received overwhelming support from industry, each passing with

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more than 82% of voting members. A prior proposal hewing more closely to FERC's directive failed miserably in March, gaining just 10% support. NERC will now forward the proposals to FERC for final review. It remains to be seen how incoming FERC Commissioners Neil Chatterjee and Robert Powelson will receive the lighter-touch proposal. Acting Chair Cheryl LaFleur dissented from Order 829, but has made comments indicating skepticism about the industry's preferred approach.

### **“Crash Override” Poses Threat to Grid Security**

Dragos, an independent U.S.-based cybersecurity think tank, found that Russian hackers have developed a cyberweapon that may be capable of disrupting transmission and distribution lines in the United States. The malware, called “Crash Override,” was used to cause a brief blackout in Ukraine in December 2016, and researchers at Dragos believe it can be modified to affect U.S. electric utilities. Once a utility is breached, “Crash Override” can disrupt circuit breakers and stop electricity flow. Additionally, it wipes the memory on circuit breaker system so that when an outage occurs it can only be restored manually at the affected substation. The malware can target multiple substations at once, potentially triggering several outages in different places simultaneously.

Dragos informed government agencies before releasing its report on June 12. The National Cybersecurity and Communications Center at the Department of Homeland Security later said that it is assessing the risk the malware poses to the nation's critical infrastructure.

NERC issued an alert to utilities on June 13 encouraging them to limit access to their networks. The Electric Information Sharing and Analysis Center began circulating information and hosted an informational webinar for utilities on June 16. Researchers at Dragos were impressed with rapid response by the various public and private agencies to evaluate and disseminate information on the risks revealed in their report.

### **Pence, Ryan Talk Tax Reform to Manufacturers**

Vice President Mike Pence and Speaker Paul Ryan (R-WI) spoke about tax reform before a conference sponsored by the National Association of Manufacturers on June 20. Both spoke in general terms about the importance of a territorial-based tax system, which would limit the tax liability of U.S. companies to their domestic activities, including imports. However, neither Pence nor Ryan spoke directly about the border-adjustment tax (BAT), a proposed tax on companies that import products. Also, neither Pence nor Ryan mentioned the tax exemption for income accrued from municipal bond interest, which was recently targeted in a Senate Republican Policy Committee report.

### **House Environment Panel Advances Spent Fuel Bill Favoring Yucca Mountain**

On June 15, the House Energy and Commerce Subcommittee on Environment held a markup on several pieces of legislation, including a bill to advance several issues related to restarting the application process for storing spent nuclear fuel at Yucca Mountain. The bill would authorize licensing interim storage facilities only after a final determination has been made on the suitability of Yucca Mountain as a permanent repository, a policy known as “linkage” that would cut off a potential path for an interim site to be licensed under the Department of Energy's existing authority. At the hearing, Rep. Doris Matsui (D-CA) offered and withdrew an amendment to allow an unlinked pilot facility to receive waste from currently shut-down reactors. Although the amendment was withdrawn, Committee Vice Chair Joe Barton (R-TX) spoke forcefully in favor of the Matsui Amendment, imploring Subcommittee Chairman John Shimkus (R-IL) – who has insisted upon linkage – to reconsider interim storage. The measure was advanced to the full committee by a voice vote and is scheduled to be considered June 28.

### **U.S. to Withdraw from Paris Agreement**

On June 1, President Trump made a long-awaited announcement that he intends to withdraw the United States from the Paris Agreement, the 2015 international accord outlining the steps each signatory country will take to reduce its carbon emissions in hopes of stemming the rise of global warming. The move will fulfill a key campaign pledge, but will place the U.S. among just two other nations – Iran and Nicaragua – that have shunned the agreement.

