

Northeast Public Power Association Legislative Update



November 2018

House Flips as New England Welcomes New Members of Congress

Voters went to the polls Nov. 6 and delivered a mixed verdict on the President's first two years in office, as midterm elections are often a referendum on the sitting president. In this case, the House turned to Democratic control for the first time in eight years. With several races still remaining to be called, Democrats will have a slim majority but will nevertheless control the chamber and, importantly, its committees - which will likely be used to investigate and criticize the Administration. The Senate remains in Republican control, where the GOP will be able to control the political appointee confirmation process. In the New England delegation, newcomers Jahana Hayes (D-CT), Ayanna Presley (D-MA), Lori Trahan (D-MA), and Chris Pappas (D-NH) will join the House in January.

Chatterjee Named FERC Chair

On Oct 24, President Trump designated Republican Commissioner Neil Chatterjee to be chairman of the Federal Energy Regulatory Committee (FERC). Outgoing Chairman Kevin McIntyre, also a Republican, will remain on the Commission but chose to relinquish the chair after a series of health issues impacted his ability to perform the additional duties, according to a letter he sent to the President Oct. 22. As a native of coal-heavy Kentucky and a former energy aide to Senate Majority Leader Mitch McConnell (R-KY), some stakeholders speculate Chatterjee's appointment could make the Commission more receptive to the Administration's efforts to prop up baseload coal and nuclear plants. However, Chatterjee voted against the Department of Energy's initial plan in January 2018 after at first appearing to support it. FERC remains a split commission with two Republicans and two Democrats after Commissioner Robert Powelson stepped down in August. The Senate Energy and Natural Resources Committee has scheduled a hearing for Nov. 15 to consider the President's nominee to fill the panel's vacant fifth seat, Bernard McNamee.

FERC Proposes to Modify ROE Methodology

On Oct. 19, FERC responded to a 2017 court ruling on transmission investment return on equity (ROE) and proposed new methodologies for calculating whether ROE is just and reasonable and for setting new ROE. In both instances, FERC would use four separate financial models to establish a "zone of reasonableness" to establish a cap on ROE. The new approach would likely result in higher ROE's than the current model and be more difficult to challenge once applied. Comments from stakeholders are due Dec. 19.

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FERC Approves Final Supply Chain Standards

On Oct. 18, FERC issued an order approving three reliability standards regarding supply chain cyber security. The three standards require utilities to develop plans for addressing cyber risks to industrial control system hardware and software, as well as network systems. The standards emphasize remote access protections and vendor risk management. The final rule requires NERC to determine how to apply the standards to Electronic Access Control and Monitoring Systems (EACMS) within 24 months. NERC's initial proposal did not apply to EACMS, but commissioners found their absence represented a significant risk. Also, utilities will have 18 months to comply with the standards, more than the 12-month implementation period initially favored by FERC.

New Supreme Court Justice Sworn In

Judge Brett Kavanaugh was confirmed and sworn into the Supreme Court following a bitterly partisan confirmation process. In the final vote, Sens. Joe Manchin (D-WV) and Lisa Murkowski (R-AK) bucked their parties and long-undecided Sen. Susan Collins (R-ME) cast the deciding vote in favor of the nominee after a lengthy floor speech.

