Northeast Public Power Association
Legislative Update

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SCOTUS Reins in EPA Authority to Regulate GHGs

The Supreme Court issued its much-anticipated ruling in West Virginia v. Environmental Protection Agency (EPA) on June 29, the case that began as a challenge to the Clean Power Plan. As expected, the conservative-leaning court ruled that Congress must speak with specificity on the issue of greenhouse gas regulation before EPA may issue sweeping rules that would transform the electric sector. The 6-3 opinion, written by Chief Justice Roberts, focuses on whether EPA's use of Sec. 111(d), under which the Clean Power Plan was issued, provides the agency with broad regulatory authority, but its invocation of the "major questions doctrine" indicates that other sections of the Act that had once been considered alternate paths to control the pervasive pollutant are also foreclosed from being used for major rules. Under the Court's ruling, it is possible that a much narrower exercise of power could be permissible, but it is hard to envision a rule that would meet the Court's approval and also provide meaningful emissions reductions.

Lawmakers and legal scholars continue to parse the Supreme Court opinion in West Virginia v. Environmental Protection Agency to determine what, if any, paths forward exist for the regulation of greenhouse gases from the electric sector. While the opinion did not go so far as to endorse the interpretation that only inside-the-fence-line upgrades are permissible as a system of emissions reduction under Clean Air Act Sec. 111(d), EPA is still foreclosed from any "major" regulation under existing law, as Congress has not clearly spoken to the issue. Democrats in Congress are examining options to do just that, although the Budget Reconciliation process that would allow them to do so over the objections of Republicans requires a focus on budgetary matters that may make granting new regulatory authority a challenge.

Budget Reconciliation Pressure Rises to Combat Inflation, SCOTUS Ruling

The SCOTUS ruling has Democrats feeling greater urgency to pass a climate deal. News outlets have reported that talks between Senate Majority Leader Chuck Schumer (D-NY) and Sen. Joe Manchin (D-WV) have progressed, however negotiations over various climate and clean energy tax credit provisions still need to be ironed out. Adding to the challenges, Senate Minority Leader Mitch McConnell (R-KY) tweeted a warning on June 30 that GOP support for the China competition bill (USICA) would evaporate if the majority moves a partisan budget reconciliation bill. After the Senate's two-week July 4 recess, Democrats will have very few legislative days to reach a deal on a budget reconciliation package before the month-long August recess. If a deal comes together, it would likely be in the form of a Reconciliation bill that could pass before September, and would consist of measures on energy and climate, inflation, the federal deficit, and prescription drug prices, but specific details have yet to be released. Of concern to not-for-profit electric utilities, Sen. Manchin is reportedly souring on a direct pay option for clean energy tax credits, which may threaten the value of those extensions.

House Appropriators Approve FY23 Energy and Environment Funding Bills

During the last week of June, the House Appropriations Committee approved several FY23 funding bills, readying the bills for floor action, including the Energy-Water and Interior-EPA appropriations bills. Earmarks were included in both measures, for the second year after a decade-long pause. under the bills, funding for the EPA would increase by 21% ($11.5 billion), up from $9.5 billion as enacted in FY22. The Department of Energy (DOE) would receive $48.2 billion, up $3.3 billion from the FY22 enacted level. Within the DOE, the Office of Energy Efficiency and Renewable Energy would receive the biggest boost, nearly $800 million more than last year, while ARPA-E received a $100 million plus-up from FY22 enacted ($550 million). Additionally, DOE would receive $100 million to fund President Biden's invocation of the Defense Production Act to increase domestic production capability for transformers, electric grid components, solar, fuel cells, electrolyzers, heat pumps, and insulation.

While all the House FY23 funding bills have been approved ahead of the July 4 recess, the Senate has yet to schedule markups for any of their FY23 bills. Senate Appropriations Chairman Patrick Leahy (D-VT) has indicated that the committee will begin reviewing bills after the July 4 recess, although Ranking Member Richard Shelby (R-AL) has told reporters that he is already preparing for a Continuing Resolution extending funding past the fiscal year deadline of Sept. 30, in anticipation of election-year delays.

Biden Announces Executive Actions for Solar Projects and Grid Reliability

The Biden administration has announced a two-year pause on any new tariffs on solar modules imported from four Southeast Asian countries on June 6. The tariff pause comes as the Department of Commerce (DOC) has been investigating whether solar imports from Cambodia, Malaysia, Thailand, and Vietnam have been circumventing tariffs on goods made in China. The investigation has stalled imports and solar projects in the U.S. since the probe began in March, which further stymied solar energy generation with an already fragile supply chain. Additionally, President Biden invoked the Defense Production Act (DPA) for clean energy allowing DOE to accelerate domestic production and manufacturing of solar technology, as well as increase production of transformers and electric grid components, electrolyzers, fuel cells, and others. The DPA is a wartime presidential authority used to increase production of supplies during national emergencies. Electric utilities have called for the Biden administration to address supply chain challenges to maintain grid reliability as the 2022 hurricane season gets underway and the number of extreme weather events increases.

Biden Administration Proposes National EV Charging Infrastructure Standards

On June 9, the Biden administration announced a Notice of Proposed Rulemaking (NPRM) for states on standards for EV charging stations and infrastructure. The document comes nearly a month late, as Congress originally set the deadline for May 13. This gives states about a month and a half to integrate the standards into their proposals for the National Electric Vehicle Infrastructure (NEVI) Program ahead of the August 1 deadline. The proposed standards are intended to help states build a nationwide network of EV charging stations to decrease range anxiety and increase EV reliability. The NPRM would require states to partner with electric utilities to ensure the secure operability and communications of EV charging stations. The Biden administration is also in the process of creating an advisory committee to plan the national EV charging station network, working with the American Public Power Association (APPA), Edison Electric Institute (EEI), and National Rural Electric Cooperative Association (NRECA).

FERC Moves Ahead with Generator Interconnection NOPR

At its monthly meeting on June 22, the Federal Energy Regulatory Commission (FERC) voted unanimously to move forward with a Notice of Proposed Rulemaking (NOPR) related to improvements to generator interconnection procedures and agreements. The new generation interconnection process would require transmission providers to conduct interconnection studies through a "first-ready, first-served" approach on a group of proposed generating facilities, rather than addressing each request in the order it was received. The NOPR would also require a more detailed system studies process, as well as impose deadlines and penalties on transmission providers that do not complete the studies on time. The updated process aims to reduce the backlog of over 8,100 projects in the interconnection queue waiting to connect to the grid, according to Chairman Glick. While the NOPR does not address the participant funding to pay for transmission upgrades, Chairman Glick noted that the Commission plans to address it in future FERC actions. Comments are due by Oct. 13.

DOE Proposes New Efficiency Standards for Home Furnaces

DOE has proposed efficiency standards for home furnaces that could require homeowners to switch from natural gas-fired furnaces to electric ones by 2029. Achieving an annual fuel utilization efficiency of 95 percent, as required by the proposed standard, would effectively phase out non-condensing gas furnaces in favor of condensing furnaces, which use secondary heat exchangers to capture and use excess heat. The proposal would be the first significant tightening of the standards since the 1980s, although the agency attempted to update them in 2011 before a court remand. The agency then finalized a rule allowing older models to remain on the market, but reversed its decision when the Biden Administration took office. DOE will accept comments for 60 days after publication in the Federal Register, and natural gas advocacy groups are already gearing up for another court challenge.