

Northeast Public Power Association Legislative Update



October 2019

Glick Recuses from Broad Swath of Matters; Danly Nominated to Commission Over Dem Concerns

Federal Energy Regulatory Commission (FERC) member Richard Glick has recused himself from all matters involving his former employer Avangrid, after learning that an ethics pledge he signed requires him to sit out participation in any docket where his former employer is a participant. The decision denies the Commission a quorum on a whole host of issues, including the rewrite of PJM's capacity market tariff, in which Glick was expected to dissent anyway. The recusal is valid for two years after leaving the company, which would be Nov. 29, 2019 in Glick's case.

On Sept. 30, President Trump nominated current FERC General Counsel James Danly to fill one of the open seats on the Commission, which would give Republicans a 3-1 advantage on the panel. Pairing Republican and Democratic nominees to FERC has been a longstanding tradition, especially since the Commission can have no more than three members from the same party. Senate Minority Leader Chuck Schumer (D-NY) has said he will block any legislation coming through the Senate Energy and Natural Resources Committee until a Democratic Commissioner is nominated, imperiling a number of energy bills recently reported from the Committee. However, it is reported that a Democratic nominee is being vetted.

FERC Advances PURPA Reform Over Glick Partial Dissent

On Sept. 19, FERC proposed revisions to its rules implementing the Public Utility Regulatory Policies Act (PURPA). PURPA was enacted to give small power producers better access to power markets but was written before competitive wholesale markets were common and has been under increasing calls for reform.

The new rules would give states the ability to require variable energy (but not capacity) rates in Qualifying Facility (QF) contracts, allow "as available" QF energy rates, replace the one-mile threshold for grouping co-located facilities for purposes of determining the size of a small renewable QF, reduce the threshold for presuming small facility access to markets from 20MW to 1MW (except for cogeneration facilities), clarify that a QF is entitled to a contract only when it can demonstrate commercial viability, and allow parties to protest QF self-certifications more easily.

Commissioner Glick stated that the Commission was going beyond its authority given that Congress has not acted to amend PURPA, and he is expected to dissent at least in part. Discussions on a compromise path were apparently scuttled with the departure of fellow Democratic Commissioner Cheryl LaFleur, leaving Republicans Chatterjee and McNamee the ability to move their own version of the reforms.

Senate Energy and Natural Resources Committee Advances 20 Bills

On Sept. 26, the Senate Energy and Natural Resources Committee marked up 20 bills, advancing them to the Senate floor for consideration. Among the bills considered:

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- Energy efficiency legislation (S. 2137) sponsored by Senators Rob Portman (R-OH) and Jeanne Shaheen (D-NH). Various iterations of the Portman-Shaheen bill have been introduced over the past several Congresses. The current bill focuses on energy efficiency of buildings and would require updates to building codes and set energy and water reduction targets. Additionally, the bill expands the Department of Energy's (DOE) industrial efficiency programs. The committee reported the bill by a 14-6 vote.
- A bill by Sen. Susan Collins (S. 1602) to establish an R&D program at DOE for energy storage. This bill was amended to include language from four other energy storage bills considered by the committee earlier this year. The bill will require FERC to enable utilities to recover the costs of energy storage systems. DOE is also directed to establish a technical assistance program for utilities seeking to develop energy storage systems.
- A bill by Sen. Cory Gardner (S. 2094) that would allow DOE to assist states in developing energy security plans.

Bill Introduced to Promote Local Permitting Processes for DER

Sens. Martin Heinrich (D-NM) and Susan Collins (R-ME) introduced S. 2447, the "American Energy Opportunity Act," on Sept. 9. This bill would create a Distributed Energy Opportunity Board at DOE that would be tasked with establishing a voluntary streamlined process for local permitting of distributed renewable energy, energy storage, and electric vehicle charging systems. Communities that choose to adopt the streamlined process model would be eligible for DOE grants to implement the new model. The model created by the board is intended to facilitate the permitting processes at the local government level by streamlining the application process and potentially reducing the costs of installing DER technology.

D.C. Circuit Dismisses Clean Power Plan Case

On Sept. 17, the D.C. Circuit Court of Appeals dismissed the long-running litigation challenging the Clean Power Plan (CPP). The litigation had been stayed by the Supreme Court pending adjudication on the merits by the D.C. Circuit, which had been repeatedly held in abeyance while the Trump Administration withdrew and rewrote the rule as the Affordable Clean Energy (ACE) rule. With the CPP withdrawn and the ACE rule written, the Court considered the litigation moot. Attention will now turn to separate litigation over the ACE rule.

Senate Appropriations Committee Approves Bills as Senate Votes for CR

The Senate Appropriations Committee met on Sept. 12 and advanced a \$48.9 billion FY20 Energy and Water funding bill. The bill is \$4.2 billion above the FY19 enacted bill and \$10.8 billion above the FY20 President's Request. Notably, the bill provides \$2.5 billion more than the FY20 House version. The Senate bill includes significant plus ups to programs the President asked to be slashed or eliminated, such as the Office of Energy Efficiency and Renewable Energy (\$2.9 billion) and the Advanced Research Projects Agency-Energy (\$428 million). The FY20 Senate Interior-Environment Appropriations bill was approved by the full Senate Appropriations Committee on Sept. 26. The \$35.8 billion bill is slightly smaller than the House version, whose FY20 bill totals \$37.3 billion. In addition, the bill includes \$9 billion for EPA, a slight increase from the FY19 level of \$8.8 billion, but less than the House's \$9.52 billion level. The FY20 President's Budget Request had included just \$6 billion for EPA. The Senate has now passed through the Appropriations Committee 10 of 12 funding bills for FY20, though none have been considered by the full Senate. The fiscal year ended Sept. 30, necessitating a continuing resolution (CR) to keep the government operating at last year's funding levels as the Senate considers how to overcome differences in opinion on allocation levels related to border wall construction funding. The CR expires on Nov. 21.

NERC Issues EMP Report

The Electromagnetic Pulse (EMP) task force created by the North American Electric Reliability Corporation (NERC) issued a draft report on Aug. 30 containing recommendations the organization can take to better secure the grid in the event of an EMP caused by a nuclear detonation in the atmosphere. While the report makes some cursory recommendations for utilities, it emphasizes that the federal government has not declassified enough information about EMPs. NERC's report also emphasizes the need for industry to have cost recovery mechanisms in place for EMP events and better coordination with other sectors that would be affected.

