

Northeast Public Power Association Legislative Update



December 2019

Senators Send Letter to ISO-NE on Capacity Market

Following NEPPA's trip to Washington, DC in October, a group of New England Senators sent a letter to ISO-NE President Gordon van Welie expressing concerns about the ability of clean energy resources to compete fairly in the capacity market. The letter notes that the ISO's actions to resolve tensions between state public policies and market rules have favored fossil fuels and the status quo, and asks van Welie to go back to a broad stakeholder process to address these major concerns. Van Welie's response reinforces his support for the existing market rules and processes, and largely dismisses the senators' concerns.

FERC Adopts New ROE Methodology

On Nov. 21, the Federal Energy Regulatory Commission (FERC) revised its methodology for calculating the base Return on Equity (ROE) used in setting utility rates, including transmission rates. The order essentially adopts the methodology proposed after the Emera Maine v. FERC proceeding, which combines the discounted cash flow (DCF) model and a capital asset pricing model (CAPM) to analyze whether a return is just and reasonable. The Emera Maine decision had also considered an expected earnings and risk premium model, but that approach was not adopted. The new methodologies will establish a range of reasonableness for returns.

Congress Passes Continuing Resolution Through Dec. 20

During the week of Nov. 18, Congress passed and the President signed a continuing resolution (CR) to keep the government operating through Dec. 20. Congressional leadership and the White House had hoped to work out a deal allowing for outstanding disputes on FY20 appropriations bills to be resolved and passed between Oct. 1 and Nov. 21, but time ran out before any conference negotiations began. Allocations for the 12 funding bills have now been agreed upon, but border wall funding remains a major sticking point between the two parties. Many remain concerned that the new deadline could lead to a government shutdown over the holiday season, similar to the shutdown that began in late December 2018 and lasted 35 days.

House Democrats Release Draft Green Energy Tax Package

On Nov. 19, House Democrats released a draft proposal for a "green energy" tax bill that could be included in an end-of-year tax package. The bill contains dozens of provisions related to decarbonization and energy efficiency. Notably, the bill would expand the 30D tax credit for electric vehicles (EVs) by raising the current 200,000 model cap for manufacturers to 600,000 vehicles. The draft bill also extends production and investment tax credits for wind, solar, and other renewable generation technologies. Tax incentives for energy efficient buildings are also included in the bill. These provisions are separate from the so-called "tax extenders," which are temporary tax provisions that have expired that many in Congress hope to renew and extend (among those provisions are tax credits for fuel cells, biodiesel, and energy efficient homes). Of interest to public power, the bill includes a pathway for entities with no tax liability to benefit from the bill's renewable investment and production tax credits. APPA is still reviewing the language of this comparability provision and may suggest modifications before the bill is formally introduced.

House Democrats are hoping to negotiate with Senate Republicans on an end-of-year tax package that may include some of the provisions from this proposal and all or some of the tax extenders. Republicans would like to include technical corrections to the 2017 tax law, but Democrats have said they will only agree if expansions of the child tax credit and earned income tax credit are included. Republicans strongly oppose those measures, and some Democrats have threatened to oppose passing a pared down tax extenders bill unless their other priorities are included, highlighting how fraught and uncertain these negotiations are. Any tax bill

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will likely be attached to a final FY20 appropriations measure, and growing uncertainty over whether there will be such a measure – Congress may pass another continuing resolution instead (see above) – casts doubt on whether any tax bill will advance before the end of the year. If one ultimately does, it is very unlikely it will restore the tax exemption for advance refunding municipal bonds, as that tax provision does not fall in any of the categories of tax policy under current consideration.

Energy Secretary Confirmed

On Nov. 14, the Senate Energy and Natural Resources Committee held a hearing on the nomination of Dan Brouillette to be the next Secretary of Energy. Brouillette currently serves as Deputy Secretary and was nominated to replace Secretary Rick Perry after Perry stepped down amid questions over his role in the President's Ukraine policy, now at the center of the ongoing impeachment hearings. Senators questioned Brouillette on a range of topics including long-delayed energy efficiency rulemakings, which he pledged to complete, and the Office of Management and Budget's (OMB) efforts to slash Department of Energy (DOE) programs.

Later, reporters asked Brouillette if he would support the White House and DOE effort to support coal and nuclear plants in organized markets. He mentioned the North American Energy Resilience Model DOE is developing and said "We're looking at that resilience model as a way to show us in real time what's happening out there... It's not about simply saving the plants. It's about looking at the entirety of the grid, the entirety of the energy sector and making sure that we don't have distortions or artificial impacts on it that might ... create some level of security risk." Brouillette was confirmed by the full Senate Dec. 2 by a vote of 70-15.

Senate ENR Committee Moves Nominations and Large Package of Bills

On Nov. 19, the Senate Energy and Natural Resources Committee held a business meeting to advance three nominations and consider 15 energy and public lands bills. James Danly was approved on a 12-8 vote to be a FERC Commissioner, and Kate MacGregor was advanced by a vote of 14-6 to be the Deputy Secretary of the Interior.

After the nomination votes, the committee turned to legislative business. Among the bills considered were several measures that would bolster energy technology innovation and authorize research and development for solar, geothermal, and nuclear energy development. Another measure approved by the committee would reauthorize the Advanced Research Projects Agency - Energy, or ARPA-E. The other bills on the committee agenda focused on cybersecurity, energy technology transitions, and the energy sector workforce.

House Committee on the Climate Crisis Holds 'Member Day' Hearing

On Nov. 14, the House Select Committee on the Climate Crisis heard testimony from Members of Congress about their proposed climate legislation at a Member Day hearing. The Committee featured 31 Members providing testimony on topics that varied widely, from energy generation issues to the socioeconomic effects of climate change. Many of the Democratic members that provided testimony emphasized their continued support for the "Climate Action Now Act," which would require the President to develop and annually update a plan for the United States to meet a specified contribution under the Paris Climate Agreement. Rep. Ted Deutch (D-FL) spoke about a bill he introduced that would put a price on carbon, the "Energy Innovation and Carbon Dividend Act." Under this legislation, carbon would be priced at \$15 per ton, which fossil fuel companies would pay. The money collected from this tax would be redistributed to consumers as a monthly dividend, ultimately benefiting the consumer and the environment. Rep. Dean Phillips (D-MN) also voiced his support for this legislation, noting the importance of incentivizing change as the most effective means to actualize carbon reduction goals.

Reps. Susan Davis (D-CA) and Peter DeFazio (D-OR) touched on the importance of modernizing the transportation sector, which currently makes up 29% of the United States' greenhouse gas emissions. Rep. Davis spoke specifically about the importance of federal partnerships with local governments to encourage the building of local infrastructure that can support an overhaul of their transportation systems. Rep. DeFazio, who is the Chairman of the House Transportation and Infrastructure Committee, noted that significant federal and state investment in public transit, bicycle, and pedestrian infrastructure is a crucial first step towards reducing emissions, but that in order to eliminate all emissions, single occupancy vehicles must become fully electric. Other topics that multiple members touched on included the importance of large scale wind and solar farms, particularly in rural areas of the country, and the necessity of expanding rural broadband.

