

Northeast Public Power Association Legislative Update



January 2018

Congress Passes Final Tax Reform Legislation

On Dec. 20, the House of Representatives passed the final, conferenced tax reform bill by a vote of 224-201, with several Republicans joining all Democrats in opposition. President Trump signed the bill on Dec. 22.

The final bill preserves the general exemption for municipal bond interest, though it ends tax-exempt advance refunding bonds after Dec. 31, 2017. NEPPA urged its Senate delegation against keeping the provision to eliminate tax-exempt advance refunding bonds in its final bill. Some members of Congress have already suggested that there will be a “technical corrections” bill in 2018 to address language and drafting errors contained in the final tax reform bill, and such a bill could be a vehicle for other changes.

The bill does not address renewable tax credits, thereby preserving the 2015 agreement that extended the wind production tax credit and solar investment tax credit and their respective phasedown schedules. The tax credit for electric vehicles is also not affected by the bill, a major win for NEPPA after expressing their concerns with the earlier versions of the bill calling for its removal. The bill does not address credits for fuel cells, geothermal, and other renewable technologies that were left out of the 2015 legislation, the so-called “orphan” credits. Senate Finance Committee Chairman Orrin Hatch (R-UT) has already introduced legislation extending those credits, along with the nuclear production tax credit, and indicated that he intends to move the package in early 2018.

DOE Grants Extension on Grid Pricing NOPR

On Dec. 7, Kevin McIntyre was sworn in as Chairman of the Federal Energy Regulatory Commission (FERC) and immediately filed a request for a 30-day extension from the Department of Energy (DOE) regarding its directive to allow coal and nuclear plants to recover their full cost of service in most organized markets. The additional time is necessary for new commissioners to come up to speed on the voluminous comment record, McIntyre argued in his request. DOE Secretary Perry granted the request late Dec. 8 in a letter that reiterates the urgency of FERC action on the proposal. FERC will now have until Jan. 10 to act on the proposal, which it can accept, reject, or modify. The request for extension may indicate that Chairman McIntyre is cool to providing support for these generators through an interim plan, which had been floated by Commissioner Neil Chatterjee as acting Chairman.

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House Passes Two Hydro Bills

On Dec. 12, the House of Representatives passed by voice vote two bills to promote hydropower development. The Promoting Hydropower Development at Existing Nonpowered Dams Act (H.R. 2872) would allow FERC to make licensing requirement exemptions for hydropower projects at existing dams. The Promoting Closed-Loop Pumped Storage Hydropower Act (H.R. 2880) would promote closed-loop pump storage projects, connected to reservoirs, over a free-flowing natural waterway. The bill would limit FERC's authority to only impose licensing condition that are necessary to protect public safety; or are reasonable, economically feasible, and essential to protect fish and wildlife resources. Although the bills were seen as non-controversial at the time of the vote, last-minute negotiations altered the bill in ways that concern APPA and the National Hydropower Association, and negotiations continue as the bills move to the Senate.

Senate Holds Hearing on Several Energy Storage Bills

On Dec. 5, the Senate Energy and Natural Resources Subcommittee on Energy held a hearing on several energy storage bills. Witnesses included Sen. Thom Tillis (R-NC) and the DOE Undersecretary for Management and Performance, Mark Menezes. Throughout the hearing, Mr. Menezes stated that national security is a top priority for DOE. Sen. Ron Wyden (D-OR) noted that his bill, the Reducing the Cost of Energy Storage Act (S. 1876), would help "get technology to the grid" if complemented with his tax code proposals. Sen. Angus King (I-ME) later questioned if FERC could respond to the DOE directive regarding grid resilience and pricing with rules relating to energy storage, since it can strengthen the grid. Menezes responded that the NOPR was written generally for fuel, but said that it could accommodate storage if the device being used met the overall resiliency qualifications.

EPA Requests Comment on Re-Proposing the Clean Power Plan

On Dec. 19, the Environmental Protection Agency (EPA) released an Advance Notice of Proposed Rulemaking (ANPR) calling for public comment on a potential re-proposal of the Clean Power Plan. The ANPR makes further indications that any new rule will be focused on only measures that can be undertaken at individual units, rather than the fuel-switching envisioned by the previous Administration, and that responsibility for setting a performance standard will be left to the states, not EPA (the prior Administration had set targets for each state). It also opens the door to EPA issuing a new Endangerment Finding focused on power plants; the existing finding assesses the danger from automobile emissions.

