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New Commission Nominees Tout States' Rights in Confirmation Hearing

On May 8, President Trump nominated Neil Chatterjee, a longtime energy aide to Senate Majority Leader Mitch McConnell (R-KY), and Robert Powelson, a Pennsylvania regulator serving as president of the National Association of Regulatory Utility Commissioners, to sit on the Federal Energy Regulatory Commission (FERC).

FERC has been without a quorum since Chairman Norman Bay resigned on Feb. 3. The two remaining commissioners – Cheryl LaFleur and Colette Honorable – convened a technical conference on markets and state public policies May 2-3, but acknowledged the incoming commissioners' views would be determinative of the path forward.

On May 25, the Senate Energy and Natural Resources Committee convened for a hearing on the nominees. Although the nominees declined to give in-depth answers to lines of questioning, Sen. Cory Gardner (R-CO) asked pointedly about wholesale power markets and state energy policies, asking, "Where would you come down on using federal authority to preempt state laws?" Powelson responded that he is "respectful of state's rights" unless the policies add up to "an interference in the market design," indicating that he would support FERC intervention and preemption in those cases. He later said his philosophy was to "do no harm" to state jurisdiction.

Sen. Tammy Duckworth (D-IL) asked whether FERC would throw out Illinois' nuclear subsidies, which have come in conflict with PJM market rules. "I believe in state's rights and in local communities making their own determinations," Chatterjee said.

House Resources, Energy & Commerce

On May 3, the House Energy & Commerce Subcommittee on Energy held a hearing on hydropower and pipeline modernization, and the House Natural Resources Subcommittee on Water, Power, and Oceans held a hearing to examine keeping hydropower affordable.

The former focused on bills including Rep. Cathy McMorris Rodgers' (R-WA) "Hydropower Policy Modernization Act," which would streamline hydropower relicensing. Witnesses from FERC discussed how delays often arise when resource agencies with mandatory conditioning authority fail to move quickly or when developers select sites that lack support from stakeholders. The latter hearing focused more generally on the challenges to hydropower operations, but hydropower relicensing reform was central to the discussions. Although the Resources Committee does not have jurisdiction over FERC or its licensing process, it does have jurisdiction over the resource agencies that have mandatory conditioning authority over licenses.

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Trump Administration Issues FY18 Budget

On May 23, the Trump Administration sent Congress its FY18 Budget request, titled “A New Foundation for American Greatness,” following through with plans to decrease funding for domestic programs, including at the Department of Energy (DOE), the Department of the Interior (DOI), and the Environmental Protection Agency (EPA). Funding for the Low Income Home Energy Assistance Program (LIHEAP) is eliminated, as is the Energy STAR program and the research program ARPA-E.

President Trump’s spending proposal would reduce DOE’s budget to \$28 billion, with cuts above 30 to 50 percent to many of its programs. The Office of Energy Efficiency & Renewable Energy (EERE) would be cut from \$2 billion to \$636 million. Additionally, the Administration proposes an 11 percent decrease in DOI’s budget with cuts that would affect the acquisition and maintenance of public lands. EPA would see a decrease of 30 percent, with spending going from \$8 billion to \$5.7 billion. The budget also moves forward with plans to revive the controversial nuclear waste site, Yucca Mountain.

Several committees held budget hearings on the proposal, although strong bipartisan support for many of the programs President Trump is planning to cut make the budget proposal almost certainly “dead on arrival.”

President Issues Executive Order on Cyber Security

On May 11, President Trump issued a long awaited Executive order on cyber security and the electric grid. The order requires the Secretary of Homeland Security to work with the heads of other agencies, including the Energy Secretary, to prepare a report within 90 days on how the country should respond to large scale cyber attacks on critical infrastructure, which includes an attack on the electric grid that results in a large power outage. The order instructs the agencies to rely on the National Institute of Standards and Technology’s Cyber Framework, which was developed under the Obama Administration.

Chances for BAT Dim After House Hearing

On May 23, the House Ways and Means Committee held its second hearing this year on tax reform. This hearing focused on the effects a border adjustment (BAT) - a 20 percent tax on imports intended to discourage outsourcing – could have on jobs, investment, and economic growth in the U.S. The BAT is estimated to raise more than \$1 trillion over ten years and is the linchpin for offsetting the costs of reducing tax rates in the House Republican tax plan. However, it is strongly opposed by the retail sector, which believes it will increase the price of consumer goods.

Speaker Paul Ryan (R-WI), a supporter of the BAT, conceded on May 24 that House Republicans were discussing alternatives to the BAT with the White House and Senate. If the tax bill does not include BAT, eliminating or curbing the tax-exempt status of municipal bonds may become an attractive option for raising revenue. Treasury Secretary Steven Mnuchin criticized the proposed BAT in a speech this week, but also delivered encouraging remarks about municipal bonds at a hearing of the Senate Finance Committee, saying, “Our preference is strongly to keep the interest deductibility of state and local bonds.” Mnuchin declined to take the exemption off the table, however.