

Legislative Update

January 2017

LaFleur to Lead FERC Without Quorum

On Jan. 25, President Trump designated Federal Energy Regulatory Commission (FERC) Commissioner Cheryl LaFleur as Acting Chairman. That same day, current Chairman Norman Bay announced he will resign effective Feb. 3. With two existing vacancies, the Commission will lack a quorum to make decisions until new commissioners are confirmed.

Sen. Lisa Murkowski (R-AK), Chairman of the Senate Energy and Natural Resources Committee, said, "After next week, FERC will need a full complement of commissioners as soon as possible so that it can tackle the important work on its busy docket. I will make it a top priority to work with President Trump and my colleagues to move nominees rapidly and to re-establish a working quorum on the Commission."

LaFleur announced that the pending rulemaking freeze (see related story below) had ended with respect to FERC orders, which the Commission is now trying to quickly finalize before losing a quorum.

FERC Issues Policy Statement Allowing Dual Cost Recovery for Storage

On Jan. 19, FERC issued a [policy statement](#) (over the dissent of Commissioner LaFleur) to provide guidance on cost recovery for storage devices. The guidance allows for cost recovery through both cost-based rates and market-based rates concurrently. LaFleur's dissent expresses concerns about multiple payment streams, especially with respect to how they might complicate regional discussions on state policy initiatives.

FERC Extends Deadline for Comments on Hydro License Terms

On Jan. 12, FERC extended to March 24 its deadline for comments on whether, and how, to revise its policy for establishing the length of licenses for hydroelectric projects at non-federal dams. Current policy is to set a 30-year term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement; a 40-year term for a license involving a moderate amount of these activities; and a 50-year term where there is an extensive amount of such activity. APPA plans to comment in support of an alternative to grant a default 50-year term.

Presidential Transition has Rocky First Week

President Trump was sworn into office on Jan. 20 and immediately began signing Executive orders to implement his campaign pledges, including one to shorten the approval process for high-priority infrastructure projects and a memo hastening environmental reviews under the National Environmental Policy Act. He also halted all pending regulations until an Administration official can review them, and froze federal hiring. Further, the press learned of agency memoranda directing career officials to cease communications with the press and freeze all pending grants (many grants have since resumed).



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Congressional Republicans were also blindsided by the President's order establishing extreme vetting of refugees, which was rolled out with no advance notice for Congress and generated major protests over the weekend of Jan. 27. The issue may continue to distract from the legislative agenda.

Speaker Outlines 200-Day Agenda, Including Infrastructure

Speaker Paul Ryan (R-WI) has laid out an ambitious 200-day agenda that includes repealing the Affordable Care Act by April and rewriting the tax code by August using the “reconciliation” process to avoid a filibuster in the Senate. Both priorities have hit early snags, making the timeline particularly ambitious given the need to also pass continuing appropriations and raise the debt limit in that time frame. The plan also includes action on a major infrastructure bill, a top priority for the President that Ryan and Senate Majority Leader Mitch McConnell (R-KY) initially dismissed.

Cabinet Members Vetted, Confirmed

On Jan. 17-19, Senate committees of jurisdiction held hearings on the nomination of Rep. Ryan Zinke (R-MT) to be Secretary of the Interior, Oklahoma Attorney General Scott Pruitt to be Administrator of the Environmental Protection Agency (EPA), and former Texas Gov. Rick Perry to be Secretary of Energy. All three echoed a common theme on climate change, breaking with President-elect Trump to say they believed climate change is real, and possibly man-made, but that the degree of human influence and control is debatable. The nominees are expected to be confirmed the week of Jan. 30.

Energy Department Releases QER 1.2 with Dire Warnings on Cyber

On Jan. 6, the Department of Energy released its second and final installment of the Quadrennial Energy Review (QER) – version 1.2, focused on the electric sector from generation to distribution. The report earned headlines for saying the grid is in “imminent danger” from cyber attacks and made several recommendations to give new and broader authority to FERC – often in specific ways that the industry has resisted, such as allowing FERC to edit or propose standards rather than going through the existing process with the North American Electric Reliability Corporation (NERC). Senate Energy and Natural Resources Ranking Member Maria Cantwell (D-WA) has said she will introduce implementing legislation.

“Analog Control” Cyber Bill Reintroduced

Sens. James Risch (R-ID) and Angus King (I-ME) reintroduced “the Securing Energy Infrastructure Act,” which would authorize a two-year pilot program at the National Laboratories to research technologies to reduce the likelihood of a cyber attack on the electric grid, including “retro” analog technology and manual systems, which enabled Ukraine to quickly respond to a power interruption caused by Russian hacking in 2015.

Hultgren, Ruppersberger Circulate Municipal Bond Support Letter

Reps. Randy Hultgren (R-CA) and Dutch Ruppersberger (D-MD) are asking House colleagues to sign a letter to leaders of the tax-writing committee in support of municipal bonds. The letter says that changes to the tax code should recognize the vital role of municipal bonds. Recent drafts of tax reform proposals would tax municipal bond interest. APPA is asking its members to contact their delegation members to sign on.