Northeast Public Power Association

Legislative Update

December 2018

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Bernard McNamee Confirmed to FERC

On Nov. 15, the Senate Energy and Natural Resources Committee held a hearing on several pending nominees, including Bernard McNamee for the Federal Energy Regulatory Commission (FERC). McNamee faced tough questioning from Democrats, specifically on policy decisions he has promoted as a political appointee for the Department of Energy (DOE). In his testimony, McNamee noted that he would work to maintain the autonomy of FERC by being an "independent arbiter" for the agency, but declined to recuse himself from reviewing anything related to Energy Secretary Perry's resiliency proposal. The nomination became more controversial following the hearing as past critical statements by McNamee regarding renewables came to light. The committee advanced McNamee to the full Senate on Nov. 27, by a vote of 13-10 with Sen. Joe Manchin (D-WV) crossing party lines to advance the nominee. However, Sen. Manchin voted against a procedural vote to confirm the nominee Dec. 5, saying he had reservations about the nominee's position on climate change. Manchin, who is expected to assume the Ranking Member position on the Senate Energy Committee if Sen. Maria Cantwell relinquishes it to take the top spot on the Commerce Committee, has been the subject of protests from environmental groups concerned about his pro-coal stance. McNamee was ultimately confirmed Dec. 5 by a party-line vote of 50-49.

FERC Approves Interim Fuel Security Proposal

On Dec. 3, FERC approved 2-1 an interim measure aimed at keeping open Mystic 8 and 9, two units slated for retirement that the Commission agreed were needed for fuel security purposes. The order allows the units to remain in the market as price-takers. The proposal also called for a fuel security review process for resources set to retire before the next three forward capacity auctions. FERC also directed ISO-New England to quickly develop a longer-term solution. Chairman Chatterjee dissented from the order, saying that allowing the units to act as price-takers would suppress prices and potentially force otherwise economic units to retire instead, and he also took issue with the sunset provision because it could allow the tariff to revert to the underlying model without fuel security provisions.

FERC Dismisses Complaint Calling for Capacity Market Construct in CAISO

On Nov. 19, FERC denied a complaint by natural gas plant owner La Paloma, LLC calling for the establishment of a mandatory capacity market in the California Independent System Operator (CAISO) market. The complaint alleged that the existing resource adequacy framework is unjust, unreasonable and unduly discriminatory because it fails to adequately compensate generators that are needed for grid flexibility. FERC's order denied the complaint on the grounds that it did not identify any specific tariffs that are unjust or unreasonable, and did not demonstrate that the existing tariff failed to assure reliability. FERC noted that market participants are not entitled to a profitable return.

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National Lab Report Highlights U.S. Small Hydro

The Oak Ridge National Lab has released a report titled "Small Hydropower in the United States." Small hydro (defined as 10MW or less) makes up just 3.6 GW of generation across the country, but represents the largest potential for growth in hydropower with 420 MW currently planned and another 6,800 MW of untapped potential in existing and new stream-read development. The report also noted the potential impact of recent federal actions to encourage the development of small hydropower, such as the Water Resources Development Act legislation signed into law Oct. 10.

Bipartisan Carbon Tax Legislation Introduced in House

On Nov. 28, a bipartisan group of House members introduced legislation to impose a $15 fee on carbon emissions from oil, gas, and coal industries, increasing by $10 each year until emissions standards are met. Revenues would be returned as a dividend to taxpayers and the tax would preempt certain existing greenhouse gas regulations. The bill's sponsors are members of the bipartisan Climate Solutions Caucus, but, notably, are not members of the committees of jurisdiction for tax or environmental legislation. The bill could be one of many competing approaches to address climate change in the 116th Congress, but is unlikely to move in the near term.

FERC Approves GMD Reliability Standard

On Nov. 15, FERC approved a reliability standard requiring covered entities to develop response plans for potential geomagnetic disturbances (GMD). In addition to the proposal, FERC decided to require covered entities to prepare for localized impacts related to GMD event vulnerabilities. Also, FERC directed a stricter standard in awarding deadline extensions to entities requesting more time to complete their compliance plans. Trade associations, including the American Public Power Association (APPA) and the National Rural Electric Cooperative Association, had opposed both of these modifications to NERC's proposal.

APPA Challenges FCC Pole Attachment Order in Federal Court

On Nov. 15, APPA filed a suit challenging the Federal Communications Commission's (FCC) declaratory order asserting authority over pole attachment fees and application timelines for municipal utilities. APPA believes this order is not lawful given public power's longstanding exemption to federal pole attachment regulation, codified in Section 224 of the Communications Act. Several other parties have filed suits against the FCC's order in multiple federal circuit courts for various reasons in addition to APPA's objections. The Communications Act establishes a lottery system to consolidate multiple cases in one circuit court jurisdiction based on the first ten challenges that are made. The 10th Circuit; which includes district courts in Colorado, Kansas, Oklahoma, New Mexico, Utah, and Wyoming; has been chosen, and APPA expects its case to be batched with the other cases.