

Legislative Update

October 2016

House Panel Examines “Historical Perspectives” on Federal Power Act

On Sept. 7, the House Energy and Commerce Subcommittee on Energy and Power held a broad-ranging hearing titled, “*The Federal Power Act: Historical Perspectives*.” The hearing is the first in a series of inquiries into the Federal Power Act planned by the Committee, whose leaders announced the initiative in July with a letter to Federal Energy Regulatory Commission (FERC) Chair Norman Bay.

Although the hearing covered significant ground, the only witnesses were former FERC general counsels (Susan Tomasky and Doug Smith) and Commissioners (Clifford M. Naeve), and one former Deputy Energy Secretary (Linda Stuntz). The federal experience of the witnesses meant that the perspectives of state and local representatives, utilities, and consumer advocates were not voiced, although future hearings could provide opportunities for these views. Members appeared to be interested in taking a deep dive into granular energy issues, and no overarching themes or partisan angles emerged in the nearly two-hour hearing.

Subcommittee Chair Pete Olson (R-TX), taking over for Ed Whitfield (R-KY) (who helped spearhead the broad review efforts but resigned from Congress the day before the hearing), discussed the benefits of electric choice at the wholesale level, but said the markets were “far from perfect.” Full Committee Ranking Member Frank Pallone (D-NJ) said there is a legitimate question as to whether recent developments make the Act “obsolete.”

Several members discussed technological changes, such as distributed generation. Stuntz said one of the strengths of the Act is its breadth, but the jurisdictional bright line will be challenged by distributed generation, demand response, and other developments. Naeve said it is difficult to anticipate the effects of new technologies, and said that the breadth of the statute was helpful in adapting to changes – although FERC could need additional authority in the future.

Other Members asked questions about the functioning of competitive markets, and received replies across the board indicating that the markets are essentially functioning “well” or “very well,” and although some limitations of markets were acknowledged, the witnesses generally suggested that the existing structures could accommodate changing goals and values.

Chair Emeritus Joe Barton (R-TX) said Congress has been “all over the map” over the last 30 years on creating a framework that customers think is fair. He asked how the Clean Power Plan might work given all these challenges, and Stuntz said that it was unclear how it would work. “I foresee real difficulties,” she said.

Additional hearings are likely to be scheduled in 2017, when the panel will have a new full committee and subcommittee chair.



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Energy Bill Conferees Kick off Energy Bill Conference

Forty-one House and Senate negotiators met on Sept. 8 to start the official process of working to reach agreement between two very different energy bills and produce a bipartisan conference report that the President will sign into law. This is a tall order given the limited time left in the Congressional session, and the many controversial provisions in each bill.

Senators are generally more likely to believe the committee will produce a final bill. House conferees are far less optimistic. House Energy and Commerce (E&C) Chair Fred Upton (R-MI), however, said he thought they could “find a sweet spot” and committed “to working to develop a final bill that the President will not veto.”

On Sept. 8, APPA sent a letter to leaders of the energy bill conference expressing support for a final bill and summarizing the organization’s priorities, including hydropower reform, reliability impact statements, energy efficiency provisions, vegetation management, and the Senate version of the report by transmission organizations on diversity of fuel supply. Separately, APPA joined the National Hydropower Association, National Rural Electric Cooperative Association, and Edison Electric Institute in a letter of support for the hydropower provisions. NEPPA previously sent a letter to Sen. Bernie Sanders (D-VT) and Rep. Peter Welch (D-VT), both conferees, supporting the Senate version of the fuel diversity measure and hydropower reforms.

On Sept. 20, 2016, 13 environmental organizations sent a strongly worded letter to the House and Senate energy bill conferees urging them to oppose provisions in both bills that would “harm our environment, climate, and public health.” The letter lists over 28 provisions the groups oppose, including hydropower licensing reforms.

DOE Secretary Moniz Testifies on Federal Role in Securing Energy Sector

On Sept. 15, Secretary Moniz testified on the federal government’s role in ensuring the energy sector is secure. Moniz said cybersecurity will likely remain one of the highest priorities for the DOE.

Moniz said the next Quadrennial Energy Review (QER) report will focus on the changing generation mix; low load growth; increasing vulnerabilities to severe weather/climate change; the proliferation of new technologies, services and market entrants; emerging cyber/physical threats; aging infrastructure and workforce; the growing overlap between jurisdictions; value creation; and the growing need for an integrated North American electricity market. It will be released by the end of the year, he said.

CFTC Head Signals *de minimis* Exception Will Stay at \$8 Billion, Backs off Private Rights of Action

On Sept. 15, Commodity Futures Trading Commission (CFTC) Chair Timothy Massad said that he will recommend keeping the threshold for registration as a Swap Dealer at \$8 billion in notional swaps for an additional year. The threshold was set to drop to \$3 billion at the end of 2017.

“The *de minimis* threshold was set in 2012 by the CFTC and the SEC jointly. At that time, the agencies had limited data on the market,” Massad said. “Adopting this order [to delay the drop for one year] will give us more time to consider this critical issue. Given its importance, a delay is the sensible and responsible thing to do – and doing it now will provide much-needed certainty to market participants.”

In an unrelated action, Massad announced in a [letter](#) to Sen. John Boozman (R-AR) that he would recommend against a proposed policy change that would allow a private right of action to enforce general manipulation provisions under the Commodity Exchange Act in RTO/ISO markets. Energy trade groups, including APPA, weighed in advising against such a change due to the uncertainty and liability it would create in the markets.

Boozman had advanced an amendment to CFTC reauthorization legislation that would have blocked the change, but that legislation stalled and is not expected to advance this year.