

Northeast Public Power Association Legislative Update



July 2018

FERC Rejects Mystic Petition, Opens Docket on New England Fuel Security

On July 2, the Federal Energy Regulatory Commission (FERC) rejected ISO-New England's request for waivers to provide cost-of-service payments to keep two generators running after their planned retirement in June 2022. The units are critical for operating reserves and to keep open the liquefied natural gas terminal that is economically dependent on the units as customers, the ISO filing claimed. However, FERC's rejection says the requested waiver is an inappropriate approach to address fuel security and opens a new docket to address that issue.

FERC directs ISO-NE to submit within 60 days either interim tariff revisions providing for short-term cost-of-service agreements to address fuel security concerns, to be followed by permanent market design changes, or to show cause as to why its tariff remains just and reasonable such that these filings are not necessary.

Four Commissioners wrote separately: Commissioner LaFleur wrote a concurring opinion pointing out that the order does not indicate an approach to deal with resilience; Commissioner Chatterjee wrote a concurring opinion expressing pleasure that the order called for swift action along the lines of what he had originally championed in response to last year's Department of Energy directive. Commissioner Powelson drafted a partial dissent to indicate his opposition to granting cost of service payments to generators without fully exhausting other options, and Commissioner Glick wrote a partial dissent warning that the lack of a clearly defined reliability threat was likely to open the door to a "parade" of similar cost-of-service requests claiming fuel security challenges.

Members of Congress have not yet weighed in on the order.

FERC Rejects PJM State-Sponsored Resources Proposals

At the May 17 FERC open meeting, Chairman Kevin McIntyre announced the Commission will be conducting On June 29, the Federal Energy Regulatory Commission (FERC) released a 3-2 order rejecting PJM Interconnection's bid to address state public policy impacts on its capacity market. PJM offered two alternatives, both of which were rejected by FERC: one would have re-priced capacity bids after accounting for state-sponsored benefits, and the other would have extended the current Minimum Offer Price Rule (MOPR) to most units.

Saying the market's current tariff is unjust and unreasonable, FERC's order directed PJM to develop a new tariff, noting that a full expansion of the MOPR or a modification of the market's Fixed Resource Rule to force state-supported units to exit the capacity market with their commensurate load, would be found just and reasonable. Commissioners LaFleur and Glick dissented, saying the timetable for action would not allow for full development of the alternatives.

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Energy and Water Appropriations Headed for Conference

On May 17, the Senate Energy and Natural Resources Committee advanced 22 pieces of legislation including On June 25, the Senate passed the first of its FY19 “minibus” appropriations bills: a package of three funding bills, including Energy and Water Development. The Trump Administration’s proposed cuts to the Office of Science and Renewable Energy programs were rejected, and a number of programs the President zeroed out, like Loan Guarantees and the Advanced Research Projects Agency-Energy (ARPA-E), were maintained. Both chambers appear to be readying to begin conferencing the bills as soon as possible; the House passed its version on June 8.

LIHEAP funding maintained in draft FY19 bill

In related news, the House Labor, Health and Human Services, Education Appropriations subcommittee approved its FY19 funding bill on June 15. Funding for the Low Income Home Energy Assistance Program (LIHEAP), though proposed to be eliminated in the President’s budget, was included at the same level as in the FY18 omnibus bill, at \$3.64 billion. In the Senate, the FY19 Labor-HHS appropriations bill was considered by the subcommittee on June 26 and the full committee on June 28. The LIHEAP program received a \$50 million increase in that version, bringing it to \$3.7 billion.

5G Broadband Bill Introduced in Senate

Senate Commerce Committee Chairman John Thune (R-SD) and Sen. Brian Schatz (D-HI) introduced “the Streamlining the Rapid Evolution and Modernization of Leading-edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act” on June 28. The bill aims to remove barriers to 5G broadband infrastructure deployment. Wireless carriers have complained to Congress and the Federal Communications Commission (FCC) that state and local siting policies and procedures are delaying expansion of broadband. A draft version of the bill released in November 2017 would have encroached upon a longstanding public power exemption to FCC pole attachment regulations. The introduced bill allows for market-based pole attachment fees, but it still contains provisions that may be of concern, such as strict timelines for processing pole attachment applications. Sen. Thune has said the Senate Commerce Committee could hold a hearing on the bill in July.

Clean Power Plan Held in Abeyance, Likely for the Last Time

On June 26, the D.C. Circuit Court of Appeals issued a 60-day abeyance of the litigation challenging the Obama-era Clean Power Plan, with several concurrences indicating that further extensions will not be granted. Two judges gave notice that they would not grant further abeyances, and two chastised EPA for using the Supreme Court stay to avoid the legal responsibility to issue a new regulation. The order is the fifth temporary delay since the Trump Administration took office, and EPA will be required to give updates to the court every 30 days.

Justice Kennedy Announces Retirement, Political Clash to Upset Senate Calendar

On June 27, moderate Supreme Court Justice Anthony Kennedy announced that he would retire from the bench at the end of July. Senate Majority Leader Mitch McConnell quickly announced that the Senate would act to confirm whoever President Trump nominates prior to November’s election, meaning the debate on a nomination will take precedence over other items on the Senate’s agenda. If Sen. John McCain (R-AZ) remains away from Washington for health reasons, a single Republican “no” vote could sink a nomination in the closely divided Senate.

