

# Northeast Public Power Association Legislative Update



## November 2017

### DOE Proposal on Pricing “Fuel-Secure” Resources Roils Energy Policy Community

On Sept. 29, Energy Secretary Rick Perry issued an unexpected directive to the Federal Energy Regulatory Commission (FERC) calling on the agency to issue a rule within 60 days that would allow generators with 90 days of fuel on-site (i.e., coal and nuclear plants) to recover their full cost of service in organized markets with an energy and capacity market. The proposal has generated significant controversy because of the significant ramifications, the seldom-used provision of law under which the Department of Energy can task FERC as an independent agency, and the incredibly short window for action given the complexity of the issue. The directive cites severe weather-related outages as a justification for action to improve the “resiliency” of the grid, which is loosely understood to mean the grid’s ability to withstand and bounce back from extreme events.

FERC denied a request by several trade associations for more time to comment on the Notice of Proposed Rulemaking (NOPR), and on Oct. 23, the abnormally short comment period closed. Several groups weighed in, including APPA, TAPS, NRECA, the National Hydropower Association (NHA), and others. APPA’s comments focus on the legal deficiencies of the proposal, express concern at the potential costs to consumers, and point out that RTO markets are ineffective at establishing a diverse resource mix. The TAPS Group lists numerous legal issues with the proposal and its merits. NRECA’s comments center on the costs to consumers and the preferential treatment for some generators. NHA pointed out that hydropower resources possess many of the desired reliability attributes and should be part of a dialogue on resilience. Eleven Democrats on the Senate Energy and Natural Resources Committee sent a letter rebutting several premises of what they called an “ill-conceived” rule.

Ultimately, FERC will either vote to accept, reject, or modify DOE’s proposal. Commissioners Powelson and LaFleur have indicated that they do not support the NOPR as written. However, many commenters have given credence to concerns about the need to maintain fuel diversity in markets and to have a broader conversation about resilience, two issues FERC may address in the context of deliberations already underway.

### Political Feud Threatens Timely Confirmation of FERC Commissioners

On Oct. 25, the Senate Environment and Public Works Committee approved the nominations of four of President Trump’s picks to lead the Environmental Protection Agency (EPA). Two more controversial picks passed on a party line vote of 11-10. The others passed by voice vote. Though Chairman John Barrasso (R-WY) described the GOP nominees as “well-qualified,” there was a great amount of criticism from Democrats on the committee. Ranking Member Tom Carper (D-DE) called one nominee, who ran a nonprofit that frequently downplayed the risk of chemicals, “one of the most troubling nominees” he had ever considered during his 17-year tenure on the committee.

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None of the nominees are likely to see a confirmation vote on the Senate floor anytime soon, as Sen. Carper vowed during the hearing to continue blocking that nomination. In retaliation, Sen. Jim Inhofe (R-OK) has placed a hold on the Democratic FERC nominee Richard Glick. However, Inhofe's plan could backfire, as Glick is part of a negotiated package of nominees and without him, the entire group will be stuck.

### **Energy & Commerce Panel Advances Two Hydro Bills**

On Oct. 26, the House Energy and Commerce Subcommittee on Energy advanced two bills related to non-federal hydropower. One, H.R. 2872 by Rep. Larry Bucshon (R-IN), would allow FERC to exempt certain requirements for developing hydropower facilities at non-powered dams. The other, H.R. 2880 by Rep. Morgan Griffith (R-VA), would promote closed-loop pumped storage development. Both measures passed by voice vote and will now await consideration by the full committee. A more comprehensive hydropower bill supported by NEPPA, H.R. 3043 by Rep. Cathy McMorris Rodgers (R-WA), was advanced by the full committee and still awaits a House vote.

### **Budget Resolutions Clear Path for Tax Reform**

The end of the fiscal year on Sept. 30 ended Congress' ability to use budget reconciliation under the FY17 budget resolution to repeal the Affordable Care Act with a party-line vote in the Senate. Having failed to agree on a bill to do so, GOP leaders determined they would use the FY18 budget process to advance tax reform, another bill they believe will pass with only votes from their party.

The House of Representatives passed the Senate's FY18 budget resolution by a narrow 216-212 vote on Oct. 26. The resolution includes "reconciliation instructions" that will set into motion a process for the Congress to draft and pass tax reform legislation with a simple majority in the Senate. The instructions call on the tax writing committees to develop tax reform legislation that does not cost more than \$1.5 trillion. While the resolution will allow for such procedures to be used for the remainder of the fiscal year, Republicans would like to pass tax reform by the end of the calendar year so that they can campaign on its success in 2018.

Substantively, however, Republicans are divided over how to pay for lower tax rates on businesses and individuals. Of the 20 Republicans that voted against the resolution, many hailed from New York and New Jersey where the proposed elimination for the state and local tax deduction would hit the hardest. If eliminating that deduction proves to be politically impossible, lawmakers may look to the exemption for municipal bond interest.

House Ways and Means Committee Chairman Kevin Brady (R-TX) intends to release draft tax reform legislation on Nov. 1 and has scheduled a markup of the legislation for Nov. 6.

