

# Northeast Public Power Association Legislative Update



## June 2018

### White House Directs DOE to Take Steps to Protect Coal and Nuclear

A leaked draft White House memo foreshadowed a June 1 order from the President to have the Department of Energy (DOE) take “immediate steps” to shore up coal and nuclear power plants at risk of retirement, in what is being called a “Strategic Electric Generation Reserve.” The memo relies on both Sec. 202 of the Federal Power Act and the Defense Production Act, authorities related to emergencies and national security, respectively. However, it is not clear what exactly DOE will do in response to the memo and order.

As recently as May 25, news outlets had reported that the National Security Council (NSC) planned to evaluate the reliability risk of coal and nuclear plant retirements and “take the lead” on developing solutions for grid reliability. The President’s action appears to take up the mantle of national security while keeping DOE in the lead. It is also unclear whether there will be a role for the Federal Energy Regulatory Commission (FERC), which is still grappling with a docket on resilience that resulted from DOE’s previous attempt to keep coal and nuclear plants online by mandating cost recovery in organized markets. The current effort appears to be broader in scope, rather than tailored to market regions.

The leaked memo hits at the center of concerns over the ability of baseload generation, such as coal and nuclear, to remain competitive in regions where organized markets favor cheap natural gas. However, experts dispute that an acute reliability or national security threat exists outside these regions.

### FERC Announces PURPA Review

At the May 17 FERC open meeting, Chairman Kevin McIntyre announced the Commission will be conducting a review of the Public Utility Regulatory Policies Act (PURPA). The Commission had already been engaged in a review of the law, but McIntyre’s announcement intends to “reenergize” the effort now that a full complement of Commissioners is on board. McIntyre did not provide a timetable or scope of the review, but said the staff would be tasked with identifying what, if any, actions the Commission can take to improve and update its practices with respect to PURPA. Commissioners Chatterjee and Glick noted at the FERC meeting that any major changes would need to come from Congressional action.

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## Senate Committee Passes Hydro, WAPA Transparency Bills

On May 17, the Senate Energy and Natural Resources Committee advanced 22 pieces of legislation including several hydro-related bills. The water power bills contain policy updates that would require FERC to study the benefits and challenges of requiring licenses for small non-powered dams; extend the deadline to begin construction on newly licensed dams up to six additional years; and promote the development of small conduit hydropower facilities by requiring FERC to make an eligibility determinization within 30 days and scrapping the five-megawatt limit.

## Energy & Water Appropriations Bills Advance through Committee

On May 24, the Senate Appropriations Committee marked up and passed its FY19 funding bill. The \$43.8 billion bill funds DOE, U.S. Army Corps of Engineers, and the Bureau of Reclamation. The measure represents a \$566 million increase over FY18 spending levels, and \$7.2 billion more than the President's request. Energy Efficiency and Renewable Energy programs receive a sizable increase from President Trump's request, at \$2.3 billion, and the Office of Science, which funds basic energy research, is also increased from FY18 levels. Nuclear Energy research and development is funded at the same level as FY18, at \$1.2 billion. The Bureau of Reclamation, funded at \$1.49 billion, receives a \$500 million increase from the President's budget.

The House advanced its version of the Energy and Water bill through committee May 16 and is set to pass it June 13. The bill includes \$267.7 million in funding to support efforts for nuclear waste disposal at Yucca Mountain, \$100 million above the budget request. Also, per the administration's request, the Office of Electricity Delivery and Energy Reliability would be split to include a new office, "Cybersecurity, Energy Security, and Emergency Response (CESER)," at a combined increase of \$41 million from last year. The bill maintains Advanced Research Projects Agency – Energy (ARPA-E) and the Innovative Technologies Loan Guarantee program – two items that were targeted for elimination in the President's budget.

## DOE Releases Cyber Strategic Plan

On May 14, DOE released a five-year strategic plan to mitigate cyber vulnerabilities and risks to the electric grid. The plan will be the guiding document for the new Office of Cybersecurity, Energy Security, and Emergency Response (CESER). It emphasizes that cyber threats are increasing faster than the energy sector can respond, and therefore DOE intends to "develop game-changing solutions that will create inherently secure, resilient, and self-defending energy systems." The plan sets three broad goals: enhance preparedness, coordinate response actions, and expedite development of more resilient systems. Increasing utility participation in the cybersecurity risk information sharing program (CRISP), operated by the Electricity Information Sharing and Analysis Center (E-ISAC), is a central plank in the strategy, as are investing in technological applications that can detect intrusions early and working trainings to reduce risk of human error.

## House Environment Panel Considers New Source Review Reform

On May 16, the House Energy and Commerce Subcommittee on the Environment held a hearing on draft legislation to reform the Environmental Protection Agency's (EPA's) New Source Review program under the Clean Air Act, which governs new and modified emissions sources for a range of pollutants. With a few exceptions, support for the draft broke down along party lines, with Republican members speaking to the program's unintended disincentive to install new pollution controls while Democrats generally said the program was not "unworkable" but that companies simply do not like how it works. EPA Assistant Administrator for Air and Radiation Bill Wehrum testified on EPA's actions to reform its internal guidance and interpretations of the program, and in the question and answer period he praised the discussion draft for aligning the definition of "modification" with other statutory definitions. Kirk Johnson of NRECA testified in the second panel, which included state officials, academics, and other industry representatives.

