

Northeast Public Power Association

Legislative Update



January 2019

Partial Government Shutdown Continues Over Border Wall Impasse

At midnight on Dec. 21, funding for several federal agencies lapsed, as Congress and the President could not reach agreement on an appropriations measure that would keep the government open. The impasse centers on President Trump's desire to provide funding for a border wall with Mexico, a measure that cannot pass the Senate. On Dec. 19, the Senate passed a Continuing Resolution (CR) extending funding for federal agencies within seven appropriations bills at FY18 levels until Feb. 8. The House had been expected to take up and pass the CR on Dec. 20, but Republican leadership canceled the vote and instead passed a bill that included funding for the wall. With no time or plan to resolve the impasse, the chambers departed for the Christmas holiday break without passing any appropriation for the unfunded agencies, leading to a partial government shutdown over the holidays. The chambers returned to work Dec. 27, but ended the week no closer to an agreement. The House, transitioning to Democratic control, is expected to pass a spending bill on Jan. 3, the first day of the 116th Congress.

Five FY19 appropriations bills were passed earlier in 2018, which accounted for roughly 2/3 of the federal budget, including the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC). Funding for the Department of the Interior and the Environmental Protection Agency (EPA) was not included and those agencies and others have shut down, operating with only personnel deemed "essential" to core agency activities. Most of the outstanding bills are packaged and ready to be passed once the dispute on border wall funding is resolved.

McNamee Seated; FERC Holds December Meeting

Bernard McNamee was officially sworn in as the newest FERC Commissioner on Dec. 18, restoring the Commission's complement of five commissioners. Senate Democrats renewed their calls for McNamee to recuse himself from certain matters related to his previous work at DOE, in a letter addressed to McNamee that requested he commit to recusing himself from "any future matters before FERC that might be characterized as pitting one fuel source against another." Commissioner McNamee did not directly address this criticism at FERC's monthly public meeting on Dec. 20. In an opening statement, he emphasized the complexity of FERC's work and the importance of listening before reaching conclusions. He did not take any substantive votes on FERC's meeting agenda, saying that he was still getting up to speed.

Among the actions taken by commissioners, FERC proposed an update to its requirements for "horizontal market power" analysis. Additionally, the commission finalized a rule that eliminates Form 80, the Licensed Hydropower Development Recreation Report. The form required entities to provide information regarding recreation activities at hydro facilities. Also, this was the fourth consecutive meeting Commissioner Kevin McIntyre missed for health reasons.

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Administration Releases Scaled Back WOTUS Rule

On Dec 11, the Trump Administration released its long-expected revision to the Waters of the United States (WOTUS) rule, which defines which bodies of water are covered by federal Clean Water Act protections. The new rule significantly scales back the Obama-era definition critics claimed was overly broad and burdensome for land and water users. The joint proposal by the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers identifies six types of water resources as Waters of the United States: traditionally navigable waters, tributaries, impoundments, wetlands adjacent to traditionally navigable waters, some ditches, and some lakes and ponds. Most small creeks, streams and man-made ditches would not be covered unless they flow regularly and drain into other covered bodies.

The biggest change from the 2015 definition concerns wetlands and ephemeral streams. Only those wetlands with a direct surface connection to adjacent covered waters would be subject to the revised WOTUS definition. Wetlands separated from covered waters by land, dikes or other natural or artificial barriers would be left out, and therefore not subject to Clean Water Act permitting requirements for development or other land use activities. Also left out of the revised rule are ephemeral streams or those that flow only after rainfall or snowmelt – a hydrologic feature common across the West.

Proponents of the rule change have cheered the move as a win for property owners and business interests such as agriculture and real estate development. Critics have accused federal agencies of ignoring the science demonstrating the interconnectedness of water systems and have promised to challenge the issue in court. Also at play are several broad questions posed to commenters that may justify a further narrowing of the definition in the final rule. The proposed rule will be subject to a 60-day public comment period once it is published in the Federal Register and is expected to be finalized in early 2019.

Farm Bill Passes with Broadband, Forestry Provisions

After months of negotiating the 2018 Farm Bill, Congress swiftly passed compromise legislation that was released by House and Senate Agriculture Committee leaders Dec. 11. The final text tacked closely to the Senate version which had bipartisan support in the upper chamber. Of interest to not-for-profit utilities, the bill contained a significant increase to broadband deployment funding from \$25 million up to \$350 million per year. The increased funding for grants and loans will be targeted to the most underserved areas through more narrow eligibility requirements. The bill also expanded funding eligibility to “middle-mile” broadband infrastructure such as datacenters, backhaul, and interoffice connectivity projects, which can be a major expense when trying to connect rural areas.

The legislation also advanced several forest management provisions aimed at improving forest health and reducing the risk of wildfire. A pilot program will be created that allows utilities to partner with the Forest Service to perform extended vegetation management within and adjacent to utility rights of way (up to 150 feet) in an effort to protect critical utility infrastructure. Expanded “good neighbor authority” will allow states, counties and Indian tribes to perform forest management activities on federal land to restore forest health, improve habitat and reduce the risk of wildfire along the urban-wildland interface and other neighboring parcels of land.

