

Northeast Public Power Association Legislative Update



June 2020

House passes more COVID-19 relief, Senate moves more slowly

The House passed a \$3 trillion “Phase 4” coronavirus aid bill, dubbed the “HEROES Act,” containing additional funds for food assistance, another round of \$1,200 payments for most individuals, \$500 billion in state fiscal relief, \$375 billion in local government relief, and hundreds of additional aid provisions.

The bill would institute a moratorium on debt collection (including disconnecting utility service) against consumers, small businesses, and not-for-profits during the crisis and for 120 days thereafter. However, the provision would also provide creditors access to a Federal Reserve facility to receive long-term, low-interest loans on which payments would be deferred until a borrower resumes making payments to the creditor. A different section requires states and utilities receiving emergency funds to adopt or maintain policies to prevent residential electric utility shutoffs during the emergency period.

The Senate has been reluctant to pass additional COVID-19 relief legislation, instead preferring to monitor the aid programs that have already been passed. As social distancing is more manageable in the Senate, the chamber has restarted in-person activities, with some virtual capabilities as select lawmakers continue to self-quarantine.

While the HEROES Act is essentially dead on arrival in the Senate, the chambers do seem to agree that the Paycheck Protection Program (PPP) should be modified to allow more of the funds to be used on non-payroll expenses. On May 28, the House approved a bill to modify the Paycheck Protection Program loan requirements on a nearly-unanimous basis. In addition to giving recipients the remainder of the year to spend the funds, the bill lowers the threshold for the percentage of the loans that must be spent on payroll in order to have the loans forgiven, from 75% to 60%. The remainder may be spent on other expenses, including utility bills. The Senate is expected to act on the bill but failed to gain unanimous consent to pass the House bill on June 3.

Fed Expands MLF, SBA Grants Coops Access to PPP

Two administrative actions taken this month will provide greater access for not-for-profit utilities to previously-passed emergency funds. On May 14, the Small Business Administration clarified in interim final guidance that cooperatives are eligible to receive loans under the PPP. Access to the program had been uncertain and some banks clawed back funds previously awarded to cooperatives after realizing their eligibility was in question.

Separately, on May 11, the Federal Reserve finalized a new term sheet for the Municipal Liquidity Facility (MLF) and extended eligibility to state and local governments with smaller population thresholds than previously allowed. The term sheet also includes updated pricing that is considerably higher than the rates municipalities could get from traditional banks, however – municipalities with the best credit ratings would pay an extra 1.5% above an overnight indexed swap rate, and those with the lowest credit ratings would pay an extra 5.9%. These numbers reflect the Fed’s intention for its loans to act as “last resort financing” for municipalities, as they want to encourage municipalities to apply for funding through traditional avenues before turning to the MLF for help. APPA submitted comments to the

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Fed urging further expansion to political subdivisions that issue bonds backed by their own revenue, as suggested in the Fed's announcement of the MLF expansion last week.

FERC to Hold Technical Conference on Pandemic Impacts

The Federal Energy Regulatory Commission (FERC) announced a late June/early July technical conference on the long-term impacts of the pandemic on energy industries. Topics will include system operations and planning challenges; changes to power and natural gas demand; and credit, liquidity, and access to capital issues.

FERC Approves Changes to PJM Reserve Market, New Base ROE

On May 21, the Federal Energy Regulatory Commission (FERC) ordered an overhaul of the reserve market in PJM Interconnection, the largest RTO. The order would require PJM to adopt a new demand curve that will raise prices for generators and increase penalties for failure to deliver power bid into the market. The operating reserve market is intended to compensate resources for immediate availability, and is distinct from the energy market and the capacity market. Commissioner Rich Glick dissented on the grounds that the overhaul would cost consumers between \$500 million and \$2 billion annually with no commensurate benefits.

At the same meeting, FERC approved a new method for analyzing the base return on equity (ROE) for transmission projects, adding back a third methodology (discounted cash flow) that was just recently eliminated in a November 2019 order. The change is expected to yield a higher base ROE for transmission projects.

DOE Provides Clarification on Bulk Power System Executive Order

After the White House issued an Executive Order on Securing the Bulk Power System (BPS) on May 7, the Department of Energy (DOE) released a "Frequently Asked Questions" (FAQ) document and is hosting a series of stakeholder calls to address concerns about its scope and implementation. The Order was promulgated out of concern that foreign-supplied equipment used in the bulk power system constituted an "unusual and extraordinary threat" to U.S. national security. In an acknowledgement that industry stakeholders have many unanswered questions about the Executive Order, Assistant Secretary for the Office of Energy Bruce Walker has set up several conference calls to provide additional information about implementation. Among the clarifications offered in a May 12 call are that utilities do not need to take immediate action regarding existing equipment, and that BPS purchases currently in process will not be impacted. DOE will be looking to refine the terms in the Order and will consult with FERC and the North American Electric Reliability Corporation (NERC) to do so, Walker said. On a May 14 call, Walker and others clarified that DOE has already been working to identify the most critical nodes and pathways and will be focusing on equipment that could produce unacceptable and/or catastrophic risk.

