



Legal & Regulatory Conference

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A background image showing a group of people in a professional setting, likely a conference. The image is partially obscured by a blue overlay. In the foreground, a woman with blonde hair is looking towards the right, and a man in a suit is looking towards the left. Other people are visible in the background, slightly out of focus.

Examine Together

Federal Legislative Update

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Public Power Priorities in 2018

- Priority issues tied to APPA strategic plan:
 - Hydropower licensing reform
 - Power Marketing Administrations/Tennessee Valley Authority
 - Tax-exempt financing
 - Grid security
 - Wholesale electricity markets
 - Environment
 - Distributed energy resources
- Other priority issues – pole attachments, drones, Endangered Species Act (ESA) reform, and nuclear waste.

Accomplishments of the 115th Congress

- Tax Cuts and Jobs Act
- Debt limit increase (x2)
- Bipartisan Budget Act 2018
 - Two-year spending cap increase
 - Paved way for FY 2018 Consolidated Appropriations Act and FY 2019 appropriations process.
 - Debt limit increase (suspended through March 2019).
- John S. McCain National Defense Authorization Act
- Russia sanctions
- Hurricanes Irma and Jose disaster response
- Economic Growth, Regulatory Relief, and Consumer Protection Act
- Foreign Intelligence Surveillance Act/domestic surveillance reauthorization
- Federal Aviation Administration (FAA) Reauthorization

What Remains on Congress' Agenda?



- House of Representatives
 - NAFTA implementation legislation
 - Remaining fiscal year (FY) 2019 appropriations
 - Farm bill
- Senate
 - Executive Branch nominations
 - Farm bill
 - Water Resources Development Act (WRDA) agreement
 - Remaining FY 2019 appropriations

What about Infrastructure?

- Broad-based infrastructure legislation is dead. Why?
 - Key architect of Trump infrastructure proposal left for the private sector.
 - Rising partisan tensions leading up to the mid-term elections.
 - No money – deficit increasing after tax reform and omnibus appropriations bills.
 - Democrats less supportive of efforts to ease regulatory burdens that could facilitate infrastructure development. They want money for infrastructure projects.
- Rebranding of infrastructure – focus on bills that fund infrastructure – WRDA and FAA reauthorization.

Energy Issues

- The House passed several energy bills in 2017, including hydropower licensing reform and natural gas pipeline process coordination bills.
- The vegetation management bill was included in Omnibus Appropriations bill that became law in March.
- The Senate energy bill (S. 1460) is still on the Senate calendar.
- Our top energy priority is hydropower licensing reform.
 - Not much has happened since the bill was passed last year.
 - A non-controversial bill (S. 724) allowing FERC to issue extended preliminary permits passed the Senate on June 28 (it is similar to a provision included in the Senate's FY 2019 Energy and Water Development (EWD) appropriations bill).

Energy Issues

- Some hydro provisions were included in the WRDA agreement (S. 3021), which was passed by the House and is awaiting Senate floor consideration.
 - Sec. 3001 - Modernizing Authorizations for Necessary Hydropower Approvals
 - Sect. 3002 – Qualifying Conduit Hydropower Facilities
 - Sec. 3003 – Promoting Hydropower Development at Existing Nonpowered Dams
 - Sec. 3004 – Closed Loop Pumped Storage Projects
 - Sec. 3005 – Consideration for Relicensing Terms (“credit for early action”)

Power Marketing Administrations/ Tennessee Valley Authority

- President Trump's FY 2019 budget proposed to divest the transmission assets of the PMAs and TVA. It also recommended that the PMAs charge market-based rates.
- Three bipartisan letters were sent to the Administration expressing strong opposition to the proposals (House, Senate, and TN delegation).
- Energy Secretary Rick Perry was questioned on these proposals at several hearings. The Secretary expressed no support for them.
- An amendment offered by Rep. Newhouse (R-WA) prohibiting the use of funds to sell PMA/TVA transmission assets was added to the FY 2019 EWD appropriations bill by voice vote, which is now law.

Power Marketing Administrations/ Tennessee Valley Authority

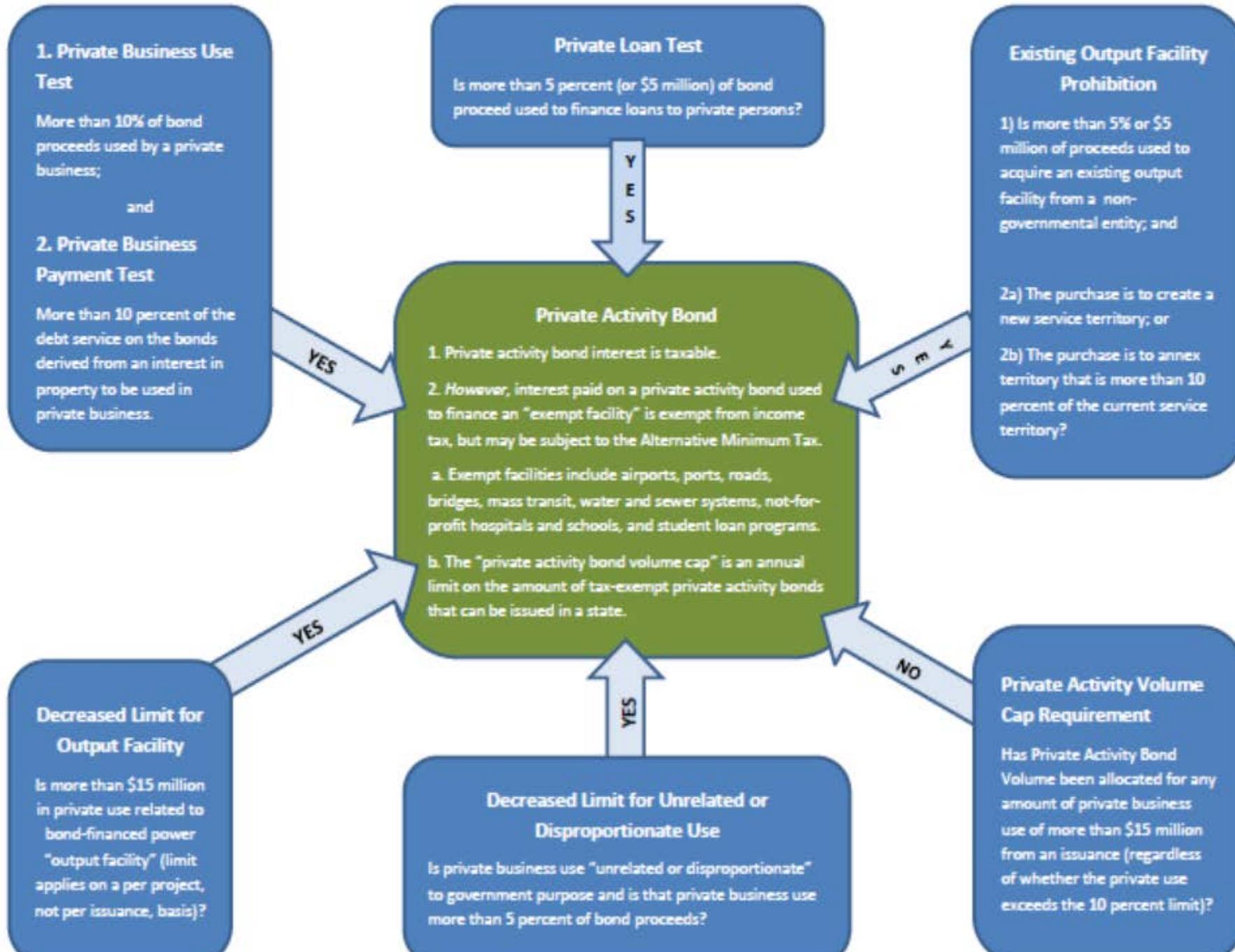
- The Administration included a proposal to sell the transmission assets of the PMAs and TVA in its June 2018 government reorganization proposal.
- Both the House and Senate FY 2019 EWD appropriations bills included language expressing concerns with the change in the reporting structure for PMAs at the Department of Energy (DOE).
 - The PMA Administrators will now report to the Assistant Secretary for Electricity rather than the Deputy Secretary.
- Outside of the President's budget proposals, other threats exist.
 - Rep. Lipinski spearheaded an effort in the House to use PMA revenues to fund the Inland Waterway Trust Fund. Backed by navigation groups, the proposal is an attempt to get hydropower customers to subsidize non-hydropower functions at multi-purpose federal dams.
 - He filed and withdrew an amendment at committee to include this in the WRDA bill.
 - No language to enact this proposal is in the House or Senate WRDA bills.

Tax-Exempt Financing

- The tax reform bill preserves the exemption for municipal bonds. It unfortunately repealed advance refunding bonds and new Clean Renewable Energy Bonds (CREBs).
- H.R. 5003 by Reps. Hultgren (R-IL) and Ruppertsburger (D-MD) would restore advance refunding bonds.
 - Prospects for bill not great given opposition by Chairman Brady (R-TX).
- The House approved a second tax reform bill in late Sept. (Tax Reform 2.0).
 - It would permanently extend provisions in the Tax Cuts and Jobs Act that are set to expire in 2025. It would also extend the \$10,000 cap on the state and local tax deduction.
 - The Senate does not have the votes to take it up in 2018.

Tax-Exempt Financing

- Senate Finance Committee Democrats introduced S. 1068 to expand CREBs.
- President Trump signed S. 2155 into law in May. It allows municipal bonds to qualify as a high-quality liquid asset for federal bank liquidity standards.
 - This reaffirms Congress's ongoing commitment to municipal finance.
- We are exploring ways to improve the use of bonds.
- We remain vigilant in our efforts to protect municipal finance and monitor privatization efforts in Congress and the Administration.



Grid Security

- Secured year-three funding for Cybersecurity for Energy Delivery Systems (CEDS) cooperative agreement with DOE.
- The House Energy & Commerce Committee approved several cybersecurity bills in May.
 - H.R. 5240 – the Enhancing Grid Security through Public-Private Partnerships Act – modeled on APPA’s current Cybersecurity for Energy Delivery Systems grant program.
 - H.R. 5239 – Cyber Sense Act – would direct DOE to establish a voluntary program to identify and promote cybersecure products intended for use in the bulk power system.
 - H.R. 5174 – the Energy Emergency Leadership Act – would clarify and codify DOE’s new Office of Cybersecurity, Energy Security, and Emergency Response (CESER) functions.
- Karen Evans confirmed by Senate to head new CESER office at DOE.

Wholesale Electricity Markets

- The House Energy & Commerce Committee held 11 Federal Power Act oversight hearings.
- Issues that have been examined:
 - The operation and effectiveness of wholesale markets; the role of financial trading in these markets; bulk power grid reliability and resiliency; and energy storage.
- The Senate Energy & Natural Resources Committee has not conducted similar hearings.
- Most discussion of wholesale markets has occurred at FERC oversight hearings with a lot of the discussion focused on the Administration's desire to prevent the retirement of coal and nuclear power plants.
- APPA continues to educate the Hill on our concerns with mandatory capacity markets and the importance of self-supply.

Environmental

- Most of the action is at the Environmental Protection Agency (EPA).
 - EPA published its proposed CPP replacement rule – the Affordable Clean Energy rule – in the Federal Register on August 31. It includes reforms to the New Source Review (NSR) permitting program.
 - The agency is working on the repeal and replacement of Waters of the U.S. (WOTUS) rule.
- The House Energy & Commerce Committee approved legislation to reform NSR (H.R. 3128).
 - Clarifies when a physical change in, or change in the method of operation of, a stationary source constitutes a “modification.”
- Mary Neumayr was nominated to head the Council on Environmental Quality. Her nomination awaits full Senate approval.

Distributed Energy Resources

- Most discussion of DERs has been in the context of rebuilding Puerto Rico's grid.
- There have been a few oversight hearings focused on the consumer benefits of DERs and grid modernization.
- There are some DER related provisions in the Senate energy bill:
 - Voluntary model pathways
 - Study on interconnection for combined heat and power
- King bill – seeks to promote DG through the creation of must-consider requirements under Public Utility Regulatory Policies Act (PURPA), interconnection requirements, and distribution system operator pilot.

Pole Attachments

- Senators Thune (R-SD) and Schatz (D-HI) introduced their broadband legislation (S. 3157). It would effectively repeal public power's exemption from federal pole attachment regulation. APPA opposes the bill.
- The House has passed numerous broadband-related bills. None touch on pole attachments.
- Broadband Deployment Advisory Committee (BDAC) – it submitted its model state and municipal codes with the FCC. They include problematic pole attachment language, similar to what has been pushed in state legislatures.
- APPA filed a letter with the BDAC criticizing the proposals.

Pole Attachments

- On Sept. 26, the Federal Communications Commission (FCC) approved its Third Report and Order, which the Commission believes will “remove regulatory barriers that inhibit the deployment of infrastructure necessary for 5G and other advanced wireless services.”
- It effectively preempts state and local laws or requirements governing access to public rights-of-way (ROW) and publicly-owned infrastructure within the ROW, ***including rates, terms, or conditions of pole attachment agreements***, using Section 253 (related to rights-of-way) and Section 332 (related to wireless services) of the Communications Act.

Drones

- The Senate Commerce and House Transportation & Infrastructure Committees reached a long-term FAA reauthorization deal (H.R. 302) that includes several provisions regarding drones that would:
 - Require the FAA to initiate a rulemaking to create “no-fly” zones over critical infrastructure and complete a rulemaking within a year of the proposed rule.
 - Improve the waiver process for using drones beyond line-of-sight, at night, or over people.
 - Require the FAA to create a new process for utilities to apply for waivers when operating during emergencies.
 - Implement several new measures to improve safety (i.e., rules on recreational drone users, and regulations to allow the FAA to perform counter-UAS tactics).

Stafford Act Reform

- The Disaster Recovery and Reform Act was included in the FAA reauthorization bill.
 - The main goal of the bill is to encourage greater use of Federal Emergency Management Agency (FEMA) funds for hazard mitigation.
- Why is it relevant to public power?
 - The bill prohibits FEMA from seeking to de-obligate public assistance grants more than three-year's after the fact.
 - Current law includes a three-year limit on direct recoveries, but FEMA still pursues administrative recoveries many years after the fact.
 - APPA formed a Stafford Act working group to get feedback on additional improvements to the act and joined the Stafford Act Coalition.

Endangered Species Act Reform

- The Administration released proposed revisions to the implementing regulations for sections 4, 4(d), and 7 of the ESA.
 - They address critical habitat designations, interagency cooperation, the factors to consider to list/delist a species, etc.
- The Senate Environment & Public Works Committee held a hearing on Chairman John Barrasso's draft ESA reform bill that is based on recommendations of the Western Governors Association.
- The House Natural Resources Committee marked up nine House Western Caucus ESA bills that take a more targeted approach than the Barrasso legislation. They would require:
 - State science to be included in listing decisions;
 - Reform the petition process; and
 - Federal data used in ESA listing decisions to be made public.

Other Important Issues We Are Working On

- Nuclear
- Energy efficiency
- Electric vehicles
- Telephone Consumer Protection Act
- Derivatives

Midterm Elections

- Fivethirtyeight.com's latest projections for the midterm elections:
 - Republicans have a 7 in 9 chance of keeping their majority in the Senate (77.9%).
 - Democrats have a 3 in 4 chance of winning back the majority in the House (73.9%)
- If Democrats take by the House, their agenda in 116th Congress – health care, rigorous oversight of the Administration, restoring pay-go rules, and infrastructure.
 - Climate, DERs, EVs, renewables and storage

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