

2019 | THE ACADEMY
Legal & Regulatory
Conference



Federal Legislative Update

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Overview

- Congressional agenda
- Nominations
- Appropriations
- Infrastructure
- Energy tax legislation/comparable incentives
- Grid security
- Power Marketing Administrations
- Climate
- Electric vehicles
- Energy storage and energy efficiency
- Pole attachments

Congressional Agenda

- House of Representatives
 - Appropriations
 - Oversight of the Trump Administration
 - Infrastructure
 - Climate change
 - Healthcare
- Senate
 - Appropriations
 - Nominations of President Trump's political and judicial nominees
 - Reauthorization of Terrorism Risk Insurance Act
 - Infrastructure – may only be reauthorization of surface transportation law

Nominations

- The Senate is still continuing to vetting President Trump's nominees for political and judicial vacancies
- Key nominations
 - Two nominees for Federal Energy Regulatory Commission (FERC)
 - Current vacancy due to Commissioner Kevin McIntyre's death
 - James Danly nominated – current FERC GC
 - Current vacancy for seat of Cheryl LaFleur
 - Minority Leader Schumer pushing for nomination of Allison Clement
 - Secretary of Homeland Security
 - Secretary of Energy

Appropriations

- Fiscal year 2019 ended on September 30
- The House and Senate passed a continuing resolution that was signed into law on September 28 – funds the government through November 21
- The House has passed 10 out of 12 appropriations bills
- The Senate has not passed a single appropriations bill
- Looking to move mini omnibus appropriations bills to fund the government in fiscal year 2020

Infrastructure Legislation

- President Trump met with Democratic leadership in late April – \$2T package
- Soon thereafter President Trump refused to work with Democrats if they continued to investigate him
- House Democrats still saying it is a priority, but the prospects for a comprehensive bill are dimming fast
- The House Transportation & Infrastructure Committee won't begin work on a surface transportation bill until 2020
- What is still unclear – how to pay for a package
- Issue of Highway Trust Fund
- Senate Environment & Public Works (EPW) Committee approved a reauthorization of the surface transportation bill

Infrastructure Legislation

- H.R. 2741, the LIFT America Act – introduced by Energy & Commerce (E&C) Committee Chairman Frank Pallone (D-NJ)
- What it would do – \$33B over five years for energy-related infrastructure:
 - \$4B for grid modernization, resilience, security, and efficiency;
 - \$4B for renewables;
 - \$23B for energy efficiency efforts (i.e., retrofitting and weatherizing buildings and funding the deployment of clean energy fuels); and
 - \$2.7B to spur smart communities (which includes \$1.4B to support the development of an EV charging network)
- Other provisions on healthcare, broadband, drinking water infrastructure, and brownfields
- Energy efficiency provisions approved by the committee in July

Public Power Priorities for Infrastructure Legislation

- Hydropower licensing/relicensing reform
 - All resource agencies with mandatory conditions for a facility need to be required to work together under a designated schedule
 - Resource agencies need to clearly define the objective of each mandatory condition with an accompanying rationale and disclosure of impacts in an open and transparent manner
- Electric vehicles – support inclusion of Carper bill to provide grants to deploy charging infrastructure along national corridors
- Energy storage – support RD&D, technical assistance, and grants for energy storage

Public Power Priorities for Infrastructure Legislation

- Grid modernization – support funding and technical assistance for technologies that integrate distributed energy resources, advanced distribution system management
- Restoration of advance refunding bonds
- Increase of small issuer exemption
- Comparable incentives – i.e., clean energy bonds for public power investments in renewables, energy storage, carbon capture and sequestration, etc.

Infrastructure/Privatization

- We continue to be on the look out for attempts to push for privatization in infrastructure legislation or other legislative and/or regulatory vehicles
- Approach de jour – incentivizing the sale/transfer to utilities to public pension plans (operated by private third party)
 - The Trump Administration appears willing to facilitate this model – see IRS 2018 public pension plan guidance
- Language may be included to promote public-private partnerships

Infrastructure – Tax

- There is still talk of developing a tax title for a broad-based infrastructure bill that would likely include:
 - New revenues for construction
 - Likely reform the tax code to encourage new investment
- It could also include some of APPA's bond modernization agenda:
 - Restoration of advance refunding bonds
 - Raise the small issue exemption
 - Maybe include clean energy bonds
- Timing, if drafted at all, 2020

Bond Modernization/Infrastructure

- Our bond modernization agenda, which is shared with the Public Finance Network and Municipal Bonds for America coalition, includes:
 - Restoring advance refunding bonds – H.R. 2772, Investing in Our Communities Act
 - Stopping the sequestration of tax credit payments to Build America Bond issuers
 - Increasing the amount of the small-issuer exemption (current limit is \$10M)
 - Making common-sense changes to private-use rules to make them less complex and punitive toward public power

Energy Tax Legislation

- There is strong interest in Congress to use the tax code to drive energy policy
- There is a strong desire to extend energy-related tax provisions that expired at the end of 2017 (e.g., electric vehicle charging infrastructure)
- Tax extenders legislation could be used to make substantive changes to energy tax credits
- Senator Ron Wyden (D-OR) introduced S. 1288, the Clean Energy for America Act that would:
 - Create uniform subsidies (technology neutrality) and/or
 - Create a comparable incentive for public power utilities that cannot take advantage of energy-related tax incentives – “Clean Energy Bond”

Energy Tax Legislation

- Rep. Earl Blumenauer (D-OR) introduced H.R. 2704, the Renewable Energy Transferability Act, to allow energy tax credits under IRC sections 45 (production tax credit) and 48 (investment tax credit) to be transferred. The bill would:
 - Benefit investor owned utilities because they can no longer take full advantage of tax credits due to their reduced tax liability under the Tax Cuts and Jobs Act of 2017
 - Includes language to allow public power utilities and coops to transfer credits to an eligible project partner (technical fix still needed)
 - This language is helpful, but not as helpful as the comparable incentives language in the Wyden bill

Grid Security

- There is still strong interest in cybersecurity issues on the Hill.
- APPA supports H.R. 359/S. 2095, the Enhancing Grid Security through Public-Private Partnerships Act:
 - Originally introduced during the last Congress by Representatives Jerry McNerney (D-CA) and Bob Latta (R-OH)
 - Senators Cory Gardner (R-CO) and Michael Bennett (D-CO) introduced the companion bill
 - Would require the Department of Energy (DOE) to establish a program to facilitate and encourage public-private partnerships to promote and advance the physical and cybersecurity of electric utilities. It is modeled on APPA's current Cybersecurity for Energy Delivery Systems (CEDS) cooperative agreement

Grid Security

- Senate Energy & Natural Resources (ENR) Committee Chairman Lisa Murkowski (R-AK) and Ranking Member Joe Manchin (D-WV) introduced S. 2556, the Protecting Resources on the Electric Grid with Cybersecurity Technology Act. The bill would:
 - Direct FERC to begin a rulemaking on rate incentives for advanced cybersecurity technology
 - Direct DOE to establish a grant program to provide assistance to public power and coops to deploy advanced cybersecurity technologies and to increase their participation in cybersecurity threat information sharing programs.
- Chairman Murkowski is also working on a bill to bolster protections for critical electric infrastructure information

Power Marketing Administrations

- President Trump's FY 2020 budget proposed to sell off the transmission assets of the PMAs and TVA and/or change the cost-based rate structure for the PMAs
 - Letters sent in the House and Senate pushing back on the proposal
 - House FY 2020 Energy and Water Appropriations bill rejected the Administration's PMA proposals
- Other threats lurking outside of outright privatization:
 - Efforts by third parties to allow energy savings performance contracts at federal hydropower facilities that pose a threat to preference power and are unnecessary
 - Monitoring efforts on the 2020 Water Resources Development Act bill to prevent any attempt to skim funds from the PMAs for the Inland Waterways Trust Fund

Power Marketing Administrations

- Energy & Environment (E&E) Daily has published a series of negative articles on the Bonneville Power Administration (BPA) over the last couple of months
- Entitled “Bloodbath: Red Ink Pours Over Northwest Dams,” the series paints a grossly inaccurate picture of BPA’s current financial condition
- The CEOs of APPA and NRECA sent a letter to the congressional delegation in the Pacific Northwest on October 2 voicing support for BPA and stressing the important role it plays in the region’s economy

Climate Change

- Addressing climate change remains a top priority for House Democrats
- There have been two dozen hearings on the issue in multiple committees
- In early May, the House passed H.R. 9, the Climate Action Now Act, to prevent the President from pulling the U.S. out of the Paris Climate Agreement
- The focus remains on efforts to reduce CO₂ emissions through a variety of means, including policies to promote:
 - Renewables
 - Electric vehicles
 - Distributed energy resources
 - Energy storage
 - Energy efficiency

Climate Change

- In late July, E&C Committee Chairman Pallone and Environment & Climate Change Subcommittee Chairman Paul Tonko (D-NY) announced plans to draft comprehensive climate legislation that would get the U.S. to net-zero emissions by 2050
- The committee has held several hearings since announcement
- Will introduce discussion drafts focused on electric, industrial, transportation, buildings, and agriculture sectors
 - Timing for draft bills – first quarter 2020
- The Select Committee on the Climate Crisis will draft its report to Congress on how to address climate by March 2020

Climate Change

- The Senate has also held hearings focused on climate change:
 - Several hearings held in the ENR Committee (utility efforts to reduce emissions, energy innovation, energy storage, carbon capture, utilization, and sequestration (CCUS), renewables, and geothermal).
 - The EPW Committee held a legislative hearing on a bill to promote carbon capture and sequestration (S. 383, the USE IT Act) and approved the legislation on April 10; bill included in National Defense Authorization Act approved by Senate in June
- Senate focus is on how to develop and use technology to reduce emissions

Climate Change

- Senator Tina Smith (D-MN) and Rep. Ben Ray Lujan (D-NM) introduced the Clean Energy Standard Act of 2019 – sets CES to achieve net-zero emissions by 2050
- Several carbon tax bills have been introduced, but will not be considered in either the House or Senate
- Last week, the Senate voted on a disapproval resolution under the Congressional Review Act on the Affordable Clean Energy rule:
 - The resolution failed by a vote of 41-53.
 - Three Democrats voted against the resolution – Senators Joe Manchin (D-WV), Kyrsten Sinema (D-AZ), and Doug Jones (D-AL)

Electric Vehicles

- The Alternative Fuel Vehicle Refueling Property Credit (30C) is in both the House and Senate tax extenders bills (House version extends through 2020; Senate only reinstates it for 2018 and 2019)
- APPA supports S. 667 by Senator Tom Carper (D-DE) to establish a grant program for public entities to receive funds for EV charging infrastructure and hydrogen fueling along designated federal alternative fuel corridors
 - The bill was included in S. 2303, America's Transportation Infrastructure Act, approved by the Senate EPW Committee in late July

Electric Vehicles

- S. 1094/H.R. 2265, the Driving America Forward Act – would expand the EV tax credit (30D) by an additional 400,000 cars per manufacturer
 - APPA signed onto a letter with other organizations supporting the bill
- Legislation was introduced in the House and Senate to repeal EV tax credit (30D) and also impose a user fee on alternative fuel vehicles to fund the Highway Trust Fund (H.R. 1027 and S. 343)
- S.1484/H.R. 2764, the Zero-Emissions Vehicles Act – would amend the Clean Air Act to require that all car sales be zero-emissions vehicles by 2040 (Levin/Merkley)

Energy Storage

- There is a lot of interest in energy storage on the Hill
- Senate ENR Committee passed S. 1602, the Better Energy Storage Technology (BEST Act) in September. The bill would:
 - Authorize \$300 million over five years to reduce the cost of grid-scale energy storage systems;
 - Focus grid-scale energy storage research and development;
 - Support five demonstration projects to advance commercialization of grid-scale energy storage technologies;
 - Direct DOE to develop a strategic plan and cost targets for grid-scale energy storage; and
 - Require coordination and alignment of research efforts to produce commercially viable energy storage systems through coordination at DOE, the national labs, federal agencies, and end users
- APPA supports the bill

Energy Efficiency

- S. 1245/H.R 2664, the All-of-the-Above Federal Building Energy Conservation Act of 2019 (Hoeven/Manchin and Carter/Veasey), was reintroduced:
 - Would repeal a legacy efficiency requirement that all new and existing federal buildings phase out fossil fuel-generated usage by 2030
 - Would replace the fossil fuel ban with more reasonable energy reduction goals, and other measures to implement energy efficiency measures if they are deemed to be cost-effective
 - The Senate approved S. 1245 in July
 - APPA supports this bill

Energy Efficiency

- Earlier this spring, several energy efficiency bills were introduced to provide cash rebates for energy-efficiency retrofits to homeowners; increase funding for the DOE's Weatherization Assistance Program; and promote new technologies in smart buildings and water systems
- A legislative hearing was held in early April on these measures and the full committee approved them in July
- Some of the bills are also included in text of the LIFT America Act

Energy Efficiency

- S. 2137, the Energy Savings and Industrial Competitiveness Act (Portman-Shaheen) was reintroduced this year and approved by the ENR Committee in September. It would:
 - Update building codes to improve efficiency in residential and commercial spaces;
 - Restore energy and water intensity reduction goals for federal facilities; and
 - Expand DOE programs that support increased industrial efficiency
- The bill includes several changes from versions introduced and approved in the 114th and 115th Congresses
- APPA supports the legislation

Pole Attachments

- Rep. Anna Eshoo (D-CA) introduced a bill (H.R. 530) to repeal the R&O as well as other related report and orders
 - Senator Dianne Feinstein introduced companion bill (S. 2012, the Restoring Local Control Over Public Infrastructure Act)
- STREAMLINE Small Cell Deployment Act reintroduced by Senators Thune (R-SD) and Schatz (D-HI) – S. 1699
 - Would essentially codify what the FCC adopted last year
 - No companion bill in the House

Small Cell Litigation

- APPA appealed the FCC's September Small Cell Order in the U.S. Court of Appeals for the D.C. Circuit
 - Similar appeals were brought by multiple coalitions of local governments in other federal circuits
 - Multiple carriers filed appeals in multiple jurisdictions
 - Judicial lottery determined that the cases would be held in the 10th Circuit
 - In December 2018, the 8th and 10th Circuits denied motions to stay the FCC's September Small Cell Order
 - In December, the 10th Circuit granted a petition to move all of the September Small Cell Order litigation to the 9th Circuit based on its conclusion that it arose out of the same underlying proceeding as the Portland Appeal of the August Moratorium Order
 - Given the large number of parties and diverse issues the appellants have requested that 9th Circuit appoint a case manager to work with the parties to develop a briefing scheduling, consolidate similar issues, and establish page limits for the various briefs
 - Case management conference held in April

Small Cell Litigation

- Briefing schedule:
 - Initial APPA brief – filed on June 10
 - Intervenor briefs/amicus supporting briefs – filed on June 17
 - FCC response – filed on August 8
 - APPA reply brief – filed on September 4
 - Oral argument expected between February and April 2020 (court granted petition for expedited oral argument)
- Court decision expected in late 2020

Other Issues APPA Is Tracking

- Wholesale markets
- Nuclear – waste and advanced nuclear reactors
- Endangered Species Act reform
- Vegetation management – implementation of law enacted in 2018 (comments due November 25 on proposed rule)
- Stafford Act reform
- Drones – implementation of drone provisions included in the FAA Reauthorization Act of 2018
- Telephone Consumer Protection Act – statute governing telemarketing
- Privacy – legislation to establish federal data breach law
- Spectrum
- Captive rail