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Federal Legislative Update

Desmarie Waterhouse
Vice President of Government Relations & Counsel
American Public Power Association

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Congressional Agenda

- “Must pass” bills this year include some reauthorizations, including:
 - The National Flood Insurance Program;
 - Temporary Assistance for Needy Families;
 - Food and Drug Administration user fees;
 - Water Resources Development Act of 2022
 - Fiscal Year (FY) 2023 National Defense Authorization Act
- Continuing Resolution – appropriations for FY 2023
 - Could include permitting reform bill

The Inflation Reduction Act

- On August 16, President Biden signed the Inflation Reduction Act (IRA) into law.
- The bill allocates more than \$300 billion for investment in energy and climate reform. It's the largest federal clean energy investment in U.S. history, although it falls short of what progressive Democrats and climate activists had originally called for.
- Democrats say the bill will lower greenhouse gas emissions (GHG) by 40%, based on 2005 levels, by the end of the decade, which falls short of the President's original goal of 50% by 2030.
- The bill builds off the investments made in the Energy Act of 2020 and the Infrastructure Investment and Jobs Act to develop and incent investment in clean energy technologies.
- The bill is a huge win for public power utilities, who for the first time, will be able to directly access various energy tax credits.

The Inflation Reduction Act

- The law extends and expands various energy tax incentives:
 - The section 30C alternative fuel vehicle refueling property credit;
 - Section 45 production tax credit;
 - Section 45Q credit for carbon capture and sequestration;
 - Section 45U zero-emission nuclear power production credit;
 - Section 45V clean hydrogen production credit;
 - Section 45W commercial clean vehicles credit;
 - Section 45X advanced manufacturing production credit;
 - Section 45Y clean electricity production credit;
 - Section 45Z clean fuel production credit.
 - Section 48 investment tax credit;
 - Section 48C advanced energy project credit; and
 - Section 48E clean electricity investment credit.

The Inflation Reduction Act

- It gives public power utilities direct access to such credits through a refundable direct payment tax credit.
 - Other governmental entities, including the Tennessee Valley Authority, rural electric cooperatives, and other tax-exempt entities can also qualify.
- Generally, direct payment elections are permitted for taxable years beginning after Dec. 31, 2022, through Dec. 31, 2032. However, the timing of the availability of the underlying credits may vary.
- For certain credits, direct payment is only permitted for property or equipment placed in service after December 31, 2022. These credits include the:
 - Section 45 production tax credit;
 - Section 45Q credit for carbon capture and sequestration; and
 - Section 45V clean hydrogen production credit.

The Inflation Reduction Act

- Projects seeking direct payment must meet domestic content requirements. This requirement does not apply where the owner is not seeking direct payment.
- Exceptions to the domestic content requirement for purposes of a direct payment election include:
 - If the project is smaller than 1 MW;
 - If the cost of meeting the domestic content requirement would increase the overall project cost by 25% or more; or
 - If the relevant products are not produced in sufficient “reasonably available” quantities or of a satisfactory quality to meet the domestic content requirement.

The Inflation Reduction Act

- The next step is guidance from Treasury and the IRS on the underlying energy tax credits, and the mechanism by which public power utilities would receive direct payments.
- The IRA also includes additional funding through various programs for renewables development and deployment, transmission projects, and federal permitting staff.
- APPA has already begun work educating members on the IRA, including by providing summaries and scheduling a webinar for members with APPA staff and APPA outside counsel on Tuesday, Sept. 27 from 2:00-3:00 p.m. ET.

Climate Change/EPA Regulatory Efforts

- The IRA did not include the clean electricity performance program, which would have required electric utilities to increase their percentage of clean electricity by 4% annually between 2023 and 2030. APPA had strong concerns with the CEPP.
- We expect the Environmental Protection Agency (EPA) to issue proposed regulations in 2023 to reduce greenhouse gas (GHG) emissions from power plants.
- Several weeks ago, EPA announced it was inviting small businesses, governments, and not-for-profit organizations to participate as small entity representatives for a potential Small Business Advocacy Review Panel.
 - The panel will focus on the agency's development of a rule that proposes to revise the new source performance standards for GHG emissions from new, modified, and reconstructed electric generating units under Clean Air Act section 111(b).

Climate Change/EPA Regulatory Efforts

- EPA's proposed rule for existing resources will have to comply with the U.S. Supreme Court's decision in *West Virginia v. EPA*.
 - This means that EPA cannot propose a rule that requires electric utilities to generation shift to lower- or non-emitting resources.
 - It also means that EPA cannot create a cap-and-trade program to reduce GHG emissions from existing power plants.
- For new power plants, we wouldn't be surprised if EPA proposes requiring the use of carbon capture and storage technologies to reduce GHG emissions from fossil fired power plants.
- EPA is expected to move forward on a host of air, water, and waste regulations that will likely have the effect of closing more coal-fired power plants, thus further reducing carbon dioxide emissions.

Climate Change/EPA Regulatory Efforts

- EPA Administrator Regan discussed the agency's plans at CERAWEEK in Houston in March.
- He announced plans to holistically look at air, water, and waste regulations to “tackle the full array of threats that power plants pose to clean air, safe water, and healthy land” while providing “greater transparency, regulatory certainty for long-term investments, opportunities to reduce compliance complexity, and the right signals to create market and price stability.”
- He reiterated this plan in a statement issued after the Supreme Court decision in *West Virginia v. EPA*.

Permitting Reform Legislation

- APPA provided a summary to members of the leaked draft energy permitting text authored by Senator Joe Manchin (D-WV) as part of the deal to secure his vote for the IRA.
- This draft language would:
 - Set maximum timelines for permitting reviews, including two years for National Environmental Policy Act (NEPA) reviews;
 - Create a list of at least 25 high-priority energy infrastructure projects and prioritize their permitting;
 - Amend Clean Water Act section 401 (state ability to override federal permit on discharge) to act within one year;
 - Set limitations on judicial review.

Permitting Reform Legislation

- While it was agreed that a permitting bill would come to the floor, many Senate Democrats have already stated that reforming NEPA is not something they are interested in doing.
- Approximately 70 House members sent a letter to House Democratic leadership urging for the continuing resolution to fund the government to not include the permitting reform language.
- APPA has some concerns with changes the bill would make to the Federal Power Act on transmission and has shared those concerns with Chairman Manchin's committee staff.
- The House could release the bill text as soon as this weekend.
- Senate Republicans recently introduced an alternate permitting reform bill, which would go further than the Manchin one.

Grid Security – Cyber Incident Reporting

- The Cyber Incident Reporting for Critical Infrastructure Act of 2022 was signed into law in March as part of a broader appropriations bill.
 - The law will require critical infrastructure entities to report cyber incidents to the Cybersecurity and Infrastructure Security Agency (CISA) within 72 hours and ransomware payments within 24 hours.
 - CISA has 24 months to issue a notice of proposed rulemaking, and a final rule must be issued 18 months after that.
- APPA did not think additional reporting mandates were necessary for the electric utility sector, but there was broad, bipartisan support on the Hill for critical infrastructure-wide reporting mandates, so APPA worked constructively with staff to ensure the law is as workable as possible.

Grid Security – Cyber Incident Reporting

- The law gives CISA some significant discretion in implementation.
- APPA sent a letter to CISA Director Easterly in mid-June with three goals:
 - Getting CISA to recognize how unique our sector/public power is with our existing requirements and how widely we vary in size;
 - Making sure CISA works directly with the Department of Energy (DOE), Federal Energy Regulatory Commission, and North American Electric Reliability Corporation to harmonize new reporting regulations with existing ones; and
 - Urging CISA to implement the law in a risk-based manner – i.e., not all public power utilities should be included in the definition of “covered entities” because they are not all equally impactful to national security.
- CISA just released its request for information, which kicks off the rulemaking process – APPA will file comments.

Supply Chain

- This is APPA's top priority because of the lack of supply of essential grid components, such as distribution transformers, smart meters, conductor materials, is putting electric reliability at risk.
 - In an early 2022 survey of public power utilities, 80 percent reported having either pad-mounted or pole-mounted distribution transformer inventories that are lower today than in 2018.
 - Lead times to purchase new distribution transformers have risen from three months in 2018 to an extraordinary 12 months or more today.
- APPA is working with industry and government partners to develop collaborative solutions that will ensure reliability.
 - APPA, EEI, and NRECA have been meeting regularly to identify issues, needs, and possible solutions.
 - Early attempts to interact with the manufacturing sector have not been successful.
 - We are working with DOE to bring transformer manufacturers to the table to determine viable solutions to the supply chain crisis.

Supply Chain

- The lack of transformers could impact electric reliability, thus elevating the issue as an ESCC concern to address.
 - A Supply Chain Tiger Team has been created to look at the issue, which includes three APPA members and one APPA co-chair lead.
- Public power utilities are asking the federal government to:
 - Ensure the robust availability of electric grid components, such as distribution transformers.
 - Provide a temporary waiver to efficiency standards for distribution transformer manufacturers as a part of an all-options approach to increasing supply.
 - May 2022 APPA/NRECA letter to DOE Secretary Granholm seeking a temporary waiver. DOE denied the request in August.
 - Increase domestic manufacturing of electric grid components.

Supply Chain

- In early June, President Biden announced he was using the Defense Production Act (DPA) of 1950 to increase production capabilities for transformers, electric power grid components, and solar photovoltaic components:
 - Solar components will have a two-year tariff waiver to bridge the supply chain gap until domestic manufacturing capabilities come online.
 - The Administration is still identifying its implementation strategy for incentives and other actions to increase domestic capabilities of other grid components.
 - DOE has some access to DPA funding but is seeking a direct congressional appropriation (the IRA bill appropriated \$500 million for overall DPA activities; the House Appropriations bill includes \$100 million for DOE for DPA).

Energy Infrastructure – IIJA

- APPA provided feedback to key congressional committees and staff during the development of the bipartisan Infrastructure Investment and Jobs Act (IIJA); weighed in publicly to support provisions that would benefit public power; and continues to engage and educate members as this significant law is being implemented.
- The IIJA includes funding opportunities of interest to public power for things like cybersecurity, grid resiliency, broadband, electric vehicle (EV) and hydrogen vehicle infrastructure, energy efficiency, and DOE research, development, and deployment for energy technologies.

Energy Infrastructure – IIJA

- Some of the latest agency activities include:
 - In August, DOE released a Request for Information (RFI) on what it is calling the “Grid Resilience and Innovation Partnerships (GRIP) Program.” A combined program of three IIJA sections, including 40101(c) Grid Resilience Grants, 40107 Smart Grid Grants, and 40103(b) Grid Innovation Program, which together appropriated approximately \$10.5 billion for FYs 2022-2026.
 - APPA plans to seek member and will likely respond to the RFI.
 - Earlier this month, APPA responded to a Department of Transportation (DOT) notice of proposed rulemaking (NPR) setting minimum standards and requirements for projects funded under the National Electric Vehicle Infrastructure (NEVI) formula program.
 - DOE issued notices of intent (NOI) for the Regional Clean Hydrogen Hubs, Carbon Capture Demonstration Program, and the Regional Direct Air Capture Hubs – all programs anticipate funding announcements will go out in Q4 of 2022.

Energy Infrastructure – IIJA

- IIJA Cyber Funding:
 - Of particular interest to public power is the Rural and Municipal Utility Advanced Cybersecurity Grant and Technical Assistance Program (RMUC). It was set up in section 40124 of the bipartisan infrastructure law. DOE's Office of Cybersecurity, Energy Security, and Emergency Response (CESER) is in the early stages of developing the RMUC Program.
 - The goal of the program is to enhance the security posture of rural, municipal, and small investor-owned electric utilities and improve their ability to protect against, detect, respond to, or recover from a cybersecurity threat. Congress appropriated \$250 million for FY 2022 – FY 2026 to carry out the program.
 - CESER is hosting a listening session for municipal utilities on Thursday, September 29, from 3:00-4:00 p.m. ET. APPA will distribute registration details when they become available (approximately two weeks out).

Energy Infrastructure – IIJA

- We expect the level of agency activity to only increase going forward and to help keep members informed, APPA is providing several resources related to the implementation of the IIJA:
 - APPA has collected resources, including a summary of the IIJA and the potential funding opportunities of interest to public power, on a new member website:
<http://www.Publicpower.org/InfrastructureFunding>
 - The website also links to other external resource hubs, including from the National Association of Counties, National Governors Association, and National Association of State Energy Officials. It also links to resources provided by the White House and Grants.gov.
 - APPA is regularly updating the Infrastructure Funding Website with the latest announcements from federal departments and agencies, including new initiatives, requests for information, draft rulemakings, and announcements of funding opportunities.

Energy Infrastructure

- APPA held two free webinars for members:
 - In December 2021, APPA staff went over important funding provisions of the new law.
 - In February 2022, federal grant experts from Ernst & Young provided a “Federal Grants 101” class.
 - An April webinar on state funding for EV charging networks, featuring speakers from NASEO and the American Association of State Highway and Transportation Officials.
 - APPA’s [Virtual Public Power Forward Summit](#), which will be held October 18-19, will focus on “Leveraging Federal Funding to Move Public Power Forward.”
- APPA staff has also created a dedicated email listserv to share the latest IIJA news, so members can check the IIJA website or receive updates directly to their inbox. Since the start of 2022, over 20 email updates have been sent to members highlighting recent relevant announcements.