

Northeast Public Power Association Legislative Update



December 2022

Sen. Manchin's Permitting Reform Bill Excluded from NDAA

Sen. Joe Manchin's (D-WV) permitting reform legislation has been officially left out of the base text of the FY23 National Defense Authorization Act (NDAA) despite Democratic leadership and President Biden's support. On Dec. 5, Sen. Manchin made some adjustments to the draft to help facilitate integration of additional renewable and other clean energy resources into the grid. However, too many progressive Democratic lawmakers stood in opposition, voicing concerns that the bill would undermine environmental protections and other environmental justice issues. Ultimately, Democratic leadership elected to exclude the reforms from the base bill to ensure it will be able to pass. Nevertheless, Sen. Manchin may continue the effort by pursuing a floor amendment to the NDAA or by seeking inclusion of the permitting reform language in the omnibus appropriations package.

In this edition:

- **Congress:** Sen. Manchin's energy permitting reform is not included in the National Defense Authorization Act; mid-term election results are finalized...
- **Energy:** Appropriations Committees receive letters from APPA and House Democrats to pass emergency funding for distribution transformers...
- **Tax and Finance:** U.S. Treasury releases its first set of Inflation Reduction Act tax guidance on prevailing wage and apprenticeship requirements; President Biden announces nominee to head the IRS...

Democrats Keep Majority in the Senate, Republicans Flip the House for the 118th Congress

On Nov. 12, Democrats secured a majority in the Senate for the 118th Congress after the razor thin race for incumbent Sen. Catherine Cortez Masto (D-NV) was called following the Nov. 8 election. Sen. Cortez Masto's 0.5 percentage point win ensured Democrats will retain control of the chamber when the new Congress convenes in January 2023. In a Dec. 6 runoff election in Georgia, Sen. Raphael Warnock retained his seat, giving Democrats a 51-49 advantage in the Senate. In the House, Republicans won enough seats to flip the majority, and will hold a slim margin of 222-213 for the two-year term beginning in January.

APPA, NRECA, and EEI Send Joint Letter to Appropriations Leadership on Distribution Transformer Shortage Crisis

On Nov. 18, the American Public Power Association (APPA), National Rural Electric Cooperative Association (NRECA), and Edison Electric Institute (EEI) sent a letter to House and Senate Appropriations Committee leadership requesting a \$1 billion appropriation to address the national distribution transformer shortage crisis. The letter requests that funding be included in the end-of-year emergency supplemental appropriations bill and be authorized under President Biden's Defense Production Act (DPA) Executive Order that was issued in June of this year to increase domestic production of distribution transformers,



electric grid components, solar, fuel cells, electrolyzers, heat pumps, and others. Influential groups from the construction industry, including the Association of General Contractors and National Association of Home Builders also cosigned the letter, signaling that the transformer shortage is affecting the residential and commercial development industry in addition to the electric grid.

On Dec. 5, a group of House Democrats sent a letter to House and Senate Appropriations Committees asking them to include \$2.1 billion in the end of year emergency supplemental to boost domestic production of distribution transformers and other electric grid components. The request emphasized that “the current shortage puts America’s national security at risk, weakens the resilience of our electrical grid, and jeopardizes our decarbonization goals.” The letter was led by Rep. Sean Casten (D-IL) and cosigned by Rep. Connor Lamb (D-PA), Paul Tonko (D-NY), and six other House members.

Treasury Releases First Guidance on Inflation Reduction Act Tax Title

On Nov. 29, the U.S. Department of Treasury and the Internal Revenue Service (IRS) published initial guidance on prevailing wage and apprenticeship requirements that tax-exempt entities, including public power and electric cooperatives, must meet to be eligible for the enhanced value or “bonus rate” of various production and investment tax credits under the Inflation Reduction Act (IRA). Under the IRA, energy tax credits are structured in a two-tier approach with a “base rate” and a “bonus rate,” in which the bonus rate is five times that of the base rate and would apply to projects that meet prevailing wage and apprenticeship requirements. The IRS Notice provides guidance and accompanying examples on how owners of clean energy facilities may satisfy these requirements as well as guidance on methods to use to establish the beginning of construction or installation of a facility. Under the Act, the requirements must go into full effect 60 days after publication, which is Jan. 30, 2023. In the near future, the Treasury and IRS anticipate issuing proposed regulations and other guidance related to the prevailing wage and apprenticeship requirements.

President Biden Announces Nomination for Head of IRS

On Nov. 10, President Biden announced the nomination of Danny Werfel to lead the Internal Revenue Service (IRS). Werfel has held posts in both Democratic and Republican administrations, serving both President Barack Obama as the IRS Acting Commissioner and President George W. Bush as Office of Management and Budget (OMB) Controller. If confirmed by the Senate, Werfel would take charge at the agency in the wake of an \$80 billion influx of funding to the agency from the Inflation Reduction Act to implement the substantive climate and energy tax title. Chuck Rettig, the current IRS head, departed from the agency at the end of his term on Nov. 12.

