

ECG Annual Meeting

Desmarie Waterhouse
American Public Power Association

March 26, 2012

APPA Overview

- The American Public Power Association (APPA) is the service organization for the nation's more than 2,000 community-owned electric utilities that serve more than 46 million Americans.
- It was created in 1940 as a non-profit, non-partisan organization, and its purpose is to advance the public policy interests of its members and their consumers, and provide member services to ensure adequate, reliable electricity at a reasonable price with the proper protection of the environment.
- 49 states have public power systems (Hawaii is the lone exception).
- 1,400 public power systems serve communities with populations of 10,000 or less.

Overview

- Environmental Issues
- Cyber Security Issues
- Energy Issues
- Tax/Budget Issues
- Power Marketing Administrations
- Telecom Issues
- Implementation of Dodd-Frank (Derivatives)
- Nuclear
- Captive Rail

Environmental Issues

- Utility MACT
 - EPA's final Utility MACT rule will take effect on April 16, 2015.
 - Utilities have three years to comply with the rule with the possibility of a fourth year that can be granted by the states.
 - Several suits have been filed against EPA regarding the rule.
 - APPA plans to file a petition for reconsideration that focuses mostly on the time for compliance.

Environmental Issues

- Several bills address Utility MACT and the Cross State Air Pollution Rule (CSAPR):
 - H.R. 2401 – the TRAIN Act – passed House in Sept. 2011
 - APAA supports this legislation by Reps. Sullivan (R-OK) and Matheson (D-UT)
 - It invalidates CSAPR and directs EPA to continue to apply the Clean Air Interstate Rule (CAIR) for at least three years until after the study in the underlying bill is complete (August 2015).
 - Invalidates Utility MACT rule and directs EPA to re-propose the rule no sooner than one year after the study in the underlying bill is complete (August 2013). If reissuing the rule, EPA is required to ensure that MACT standards are achievable in practice and that the compliance period is at least five years.
 - S. 1833 – Fair Compliance Act of 2011 (Coats-Manchin)
 - Extends the compliance time for Utility MACT and Boiler MACT rules to five years.
 - For CSAPR, EPA would have to provide states with sufficient time to develop SIPs. The rule's Phase I emissions reductions would have to be met by January 1, 2015, and Phase II reductions would have to be met two years later (January 1, 2017).

Environmental Issues

- Legislation is being drafted in both the House and Senate to address impacts to reliability due to EPA regulations:
 - Rep. Pete Olson (R-TX) is getting ready to introduce a bill to amend Section 202 of the Federal Power Act to prevent utilities from being penalized for violating environmental laws if they are ordered to run an EGU.
 - Senate Energy & Natural Resources Committee Ranking Member Lisa Murkowski (R-AK) is working on broader legislation to create a reliability safety valve to avoid penalties if they run plants for reliability purposes and require up-front consultation with FERC and NERC.

Environmental Issues

- EPA should soon be issuing New Source Performance Standards (NSPS) for greenhouse gas emissions – it is unclear whether the rule will only apply to new plants.
- Coal Ash:
 - H.R. 2273 – Coal Residuals Reuse and Management Act – Rep. David McKinley (R-WV) – passed the House in October 2011
 - S. 1751 – Coal Residuals Reuse and Management Act – Sen. John Hoeven (R-ND)
 - Both bills would prevent EPA from regulating coal ash as hazardous material under Subtitle C of the Resource Conservation & Recovery Act (governs disposal of solid waste and hazardous waste).
- EPA will issue a proposed rule on effluent guidelines this summer.

Cyber Security

- Cyber security legislation is likely to come to the House and Senate floors this spring.
- In the Senate, there are three bills:
 - S. 1342, the GRID Act (Bingaman) – was adopted by the Energy & Natural Resources Committee in May 2011
 - Bill is specific to electric sector. Would give authority for increased vulnerabilities to FERC (APPA opposes).
 - S. 2105, the Cyber Security Act of 2012 (Lieberman-Collins)
 - APPA is concerned the bill might not adequately shield electric sector from broad new authorities given to Dept. of Homeland Security.
 - S. 2151, SECURE IT (McCain)
 - Would create cybersecurity framework for federal government and focus on information sharing and R&D.

Cyber Security

- In the House, there are two bills with more expected:
 - H.R. 3523, the Cyber Intelligence Sharing and Protection Act (Rogers) – was adopted by the Intelligence Committee in Nov. 2011
 - Focuses on information sharing and would not impact the FERC-NERC relationship.
 - H.R. 3674, PRECISE Act of 2011 (Lungren) – adopted by Homeland Security Committee’s Subcommittee on Cybersecurity, Infrastructure Protection, & Security Technologies
 - Full committee mark up will happen this week.
 - Also focuses on information sharing.
 - The House Energy & Commerce Committee is also working on a bill that would most directly impact electric utilities.

Energy Issues

- Energy Efficiency
 - S. 1000 – Energy Savings & Industrial Competitiveness Act – approved by Senate Energy & Natural Resources Committee in July 2011 (APPA supports).
 - H.R. 4017 – Smart Energy Act – promotes energy efficiency in federal government and business/industry.
- Clean Energy Standard
 - S. 2146 – Clean Energy Standard Act of 2012 – would create a federal CES – 84% of energy would have to be generated from clean energy sources (renewable, qualified renewable biomass, natural gas, hydropower, nuclear, and qualified waste-to-energy. CCS facilities would also qualify).

Tax/Budget Issues

- The President's FY 2013 budget proposal includes two proposals on municipal financing:
 - A limitation on the interest deduction on tax-exempt bonds
 - Applies to investors with marginal rate over 28%
 - Is retroactive
 - Reinstates Build America Bonds (BABs)
- House Budget Committee Chairman Paul Ryan (R-WI) FY 2013 budget resolution doesn't specifically mention tax-exempt financing.
 - It passed out of the Budget Committee on March 21. Will come to the floor for vote this week.

Tax/Budget Issues

- The production tax credit and some other energy-related tax incentives are set to expire on December 31, 2012.
 - An Extension will be difficult – one amendment in the Senate to extend them failed by a 49-49 vote.
 - Public power is not likely to receive comparable benefits.
 - The House Ways & Means Committee will look at these issues in April.
- The Senate is unlikely to move a budget resolution.
 - Democrats say there is no need to since last year's budget agreement set numbers for FY 2013.
 - Republicans respond that Democrats are trying to avoid tough vote.

Power Marketing Administrations

- On March 16, 2012, DOE Secretary Chu sent a memo to PMA Administrators outlining dramatic changes in PMAs' role.
- He said PMAs “have the tools to take a leadership role in transforming our Nation’s electric sector, to the extent allowable under their enabling statutes.”
- Key elements:
 - Improve existing infrastructure
 - Implement new transmission authority (TIP, Section 1222 of EPAAct05)
 - Improve PMA rate designs
 - Improve collaboration with grid owners/operators
 - Modernize oversight

Power Marketing Administrations

- APPA and preference customers have strong concerns regarding the proposals in the memo:
 - Higher and inappropriate costs
 - Cost-shifting and subsidization of “incentives”
 - Embraces a new energy imbalance market
 - “Test lab” for cyber security
- The memo was the key focus of the House Resources Committee’s Water & Power Subcommittee hearing on March 20, 2012.
- Additional hearings are likely.
- APPA PMA/Hydro Summit in Denver, May 30-31

Telecom

- On February 22, 2012, President Obama signed H.R. 3630, the Middle Class Tax Relief & Job Creation Act of 2012, into law.
 - Title VI of the bill governs public safety communications and electromagnetic spectrum auctions.
 - APPA worked with a coalition to get electric utilities access to the public safety broadband network in the 700 MHz band.
 - Why did public power seek such access?
 - Need more access to spectrum and will not get any from government
 - Electric utilities and public safety have same requirements for networks
 - Public power utilities in some communities share spectrum with local public safety in other bands
 - FCC interpreted Section 337(f) of the Communications Act of 1934 from allowing sharing in the 700 MHz band
 - Electric utilities can help reduce cost of building out and operating the network

Telecom

- Spectrum bill continued:
 - The House Energy & Commerce Committee spectrum bill included language to allow electric utilities to get access to the public safety broadband network.
 - The Senate Commerce Committee spectrum bill did not include specific language regarding utility access.
 - When the bill went to conference, the House ceded the public safety language to the Senate.
 - The new law provides no opportunity for electric utilities to share 700 MHz spectrum with public safety unless they are partners with wireless provider who wins contract to build, manage, and operate the network.

Telecom

- Pole attachments
 - The FCC adopted its pole attachment order in April 2011.
 - The order does not apply to public power utilities unless their states require them to follow the FCC rules (only five states do so).
 - Challenges to the order will likely fail.
 - There has been no attempt to take away the municipal and cooperative exemption in the Telecom Act.
- APPA is very appreciative of ECG's efforts on pole attachment issues.

Dodd-Frank Implementation

- Regulation of over-the-counter swaps:
 - The Pre-Dodd Frank Act (DFA) regime remains largely in place even though the bill became law in July 2010.
 - Most DFA provisions were supposed to go into effect in July 2011. To date, the Commodity Futures Trading Commission (CFTC) has only issued 30 final rules, with approximately 20 more to go.
 - Implementing many of the rules depends on the definition of swap (still only a proposed rule) and on the approval of certain registered entities – such as swap data repositories and swap execution facilities – that must meet new DFA regulations.

Dodd-Frank Implementation

- The definition of swap is key:
 - The proposed swap definition rule does not provide regulatory certainty for energy swaps. However, consistent with the proposed rule’s guidance:
 - Forward contracts (that is, contracts for deferred shipment or delivery), including contracts that are booked out, would not be swaps.
 - All-requirements contracts would not be swaps.
- The CFTC addressed options in a separate rulemaking:
 - The CFTC proposed to eliminate the “Trade Option exemption,” thereby including options on physical contracts as swaps. If this rule becomes final as written, an option on capacity for three months from now would be a “swap.”

Dodd-Frank Implementation

- The DFA specifically provides for certain electric-sector exemptions from most CFTC oversight, if the CFTC makes a public interest finding.
- The industry has taken steps to obtain these specific exemptions:
 - Exemption for transactions between “201(f)” entities: APPA, NRECA, and others are working with CFTC staff on an exemption request to cover transactions between entities listed in Section 201(f) of the Federal Power Act. Section 201(f) entities include public power utilities, federal utilities, and most coops.
 - Exemptions from FERC-tariffed transactions: The RTOs (except SPP) have filed an exemption request covering transactions subject to an RTO tariff. The electric trade associations are drafting an exemption petition for bilateral FERC-tariffed transactions.

Nuclear

- Nuclear Legislation
 - S. 2176, the Nuclear Waste Fund Relief and Rebate Act (Senator Lindsey Graham R-SC):
 - Would require the President to either confirm Yucca Mountain in Nevada as the nation's repository for nuclear waste, or refund the money that utilities have paid into the Nuclear Waste Fund to develop the site.
 - Would also give the President 30 days to deem Yucca Mountain the national repository. If the President fails to certify the site or revokes its certification, 75% of the money currently in the fund would be released to utilities to provide rebates to ratepayers, and the remainder of the funds would be used to enhance the storage and security of materials used to generate nuclear power, among other issues.
 - Several bills have been introduced to promote the development of small modular reactors (H.R. 1808, S. 512).

Nuclear

- Nuclear Regulatory Commission
 - There has been a lot of turmoil at the NRC, which has slowed its proceedings.
 - Post Fukushima safety initiatives will continue to be issued in 2012.
 - The Commission approved construction of two new units at the Vogtle plant in Georgia. Approval for construction at the Summer Plant in South Carolina is expected.
 - Approval of construction of these facilities is critical to the nuclear renaissance. If they go badly, it will be exponentially more difficult to get more new nuclear facilities approved.

Captive Rail

- Several bills have been introduced to remove the antitrust exemption for railroads and to provide the Surface Transportation Board (STB) with more authority to promote railroad competition:
 - S. 49, the Railroad Antitrust Enforcement Act – passed Senate Judiciary Committee in March 2011 (APPA supports).
 - Repeals antitrust exemption including those related to mergers and acquisitions, collective ratemaking, and private antitrust suits.
 - S. 158 – Surface Transportation Board Reauthorization Act
 - Among other things, it revises the objectives of U.S. rail transportation policy, including protection of rail shippers.

Questions

Desmarie Waterhouse

American Public Power Association

1875 Connecticut Ave., NW, Ste. 1200

Washington, D.C. 20009

202-467-2900

dwaterhouse@publicpower.org