

**AMERICAN
PUBLIC
POWER
ASSOCIATION**

Powering Strong Communities

APPA Legislative Preview

**Sam Owen
Government Relations Director**

**American Public Power Association
Mid-West Electric Consumers Association Annual Meeting**

December 11, 2024

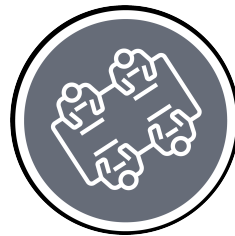
About APPA

The voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide

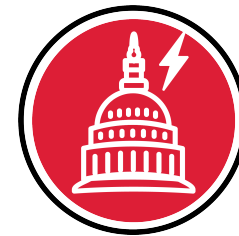
We serve our nearly 1,500 utility members & 220 corporate members through:



Offering education and professional development opportunities



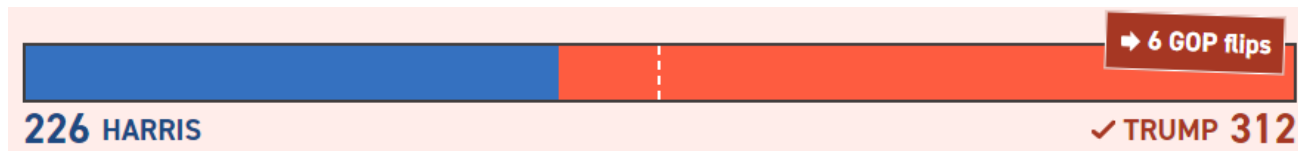
Sharing information and building connections across the industry



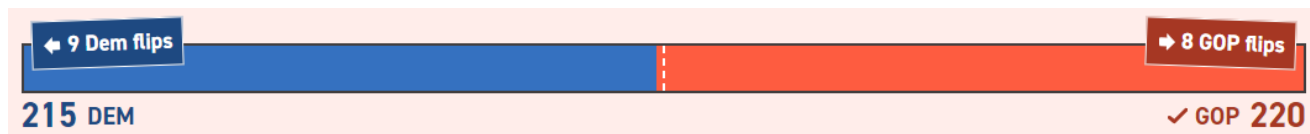
Advocating for policies and regulations that support public power

Election Overview

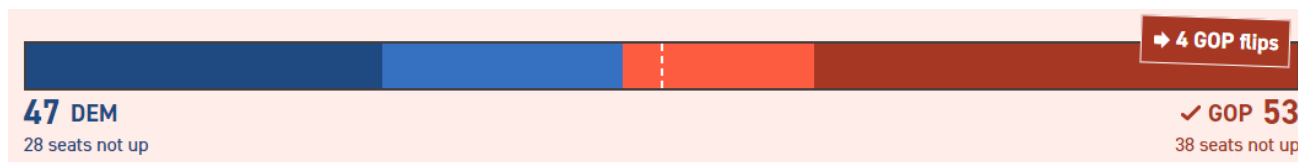
President



House of Representatives



Senate



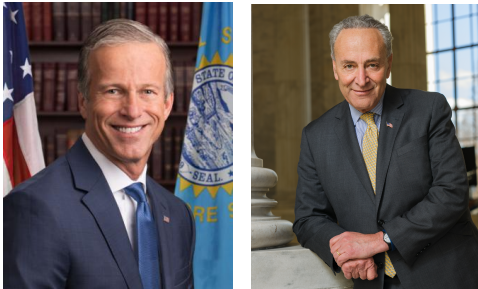
House of Representatives Dynamics

- Republican's House majority will be slimmer in the first months of 2025
- They will temporarily lose three seats to start 2025:
 - Rep. Matt Gaetz (FL) already resigned from the House
 - Reps. Elise Stefanik (NY) and Michael Waltz (FL) are expected to resign in the new year
- Special elections will be held to fill these seats
- House Republicans increased the vote threshold needed to invoke a motion to vacate the Speaker's chair, from 1 to 9 votes. This makes it more difficult to remove Speaker of the House Mike Johnson (LA)

Senate Dynamics

- With a 53-47 majority, Republicans can lose up to three votes (with VP Vance acting as a tiebreaker)
- This will be especially important for votes like President-elect Trump's cabinet nominations and major spending legislation like the expected reconciliation package(s)

The 119th Congress – Party Leadership



**Senate Leadership
Republicans and
Democrats**



**House
Republican
Leadership**

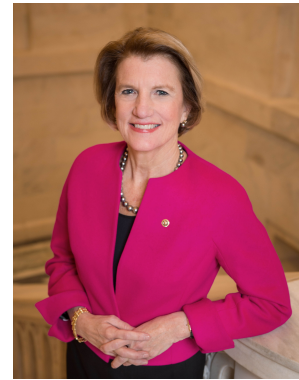


**House
Democratic
Leadership**

The 119th Congress – Key Committee Leadership



**Expected Leadership at Senate Energy
& Natural Resources Committee:
Chair Mike Lee (R-UT)
RM Martin Heinrich (D-NM)**



**Expected Leadership at Senate
Environment & Public Works
Committee:
Chair Shelley Moore Capito (R-WV)
RM Sheldon Whitehouse (D-RI)**



The 119th Congress – Key Committee Leadership

House Energy and Commerce Committee



The 119th Congress – Key Committee Leadership

House Natural Resources Cmt.



House Transportation and Infrastructure Cmt.



Timeline and Major Upcoming Events

- December 20 – Current government funding expires
- January 3, 2025 – New Congress sworn in
- January 20, 2025 – Presidential swearing-in ceremony
- March 2025 – Likely deadline for government funding if there is another CR
- April 30, 2025 – End of the “first 100 days” of the new administration, typically the period when the new President sets their policy priorities in motion
- First half of 2025 – Hearings for President-elect Trump’s cabinet picks

What's on the Agenda the Remainder of 2024

- Continuing resolution (CR) or omnibus spending package to fund the federal government for the remainder of the fiscal year (FY) 2025 – current CR expires on December 20
 - CR more likely
 - Disaster supplemental likely included in spending package
- Potential permitting reform legislation
- Water Resources Development Act (WRDA)
- National Defense Authorization Act (NDAA)

Permitting Reform

- Senate Energy & Natural Resources Committee Chairman Joe Manchin (I-WV) and Ranking Member John Barrasso (R-WY) introduced S. 4753, the Energy Permitting Reform Act of 2024. The bill would:
 - Streamline energy permitting processes on federal lands
 - Make changes to the existing federal backstop siting authority for national interest transmission lines
 - Require transmission planning regions to create FERC-approved plans for interregional transmission
- The legislation does not make changes to the National Environmental Policy Act (NEPA) or Clean Water Act (CWA), which are needed to speed up permitting for all kinds of energy infrastructure

Permitting Reform

- The bill would expand the jurisdiction of FERC over section 201(f) entities, including public power utilities, rural electric cooperatives, and the federal Power Marketing Administrations (PMAs) in an unprecedented manner
 - This includes requiring 201(f) entities to file tariffs with FERC for lines “in the national interest” or built as part of an interregional plan and requires 201(f) entities to participate in interregional planning on a mandatory basis (as opposed to existing voluntary participation for regional planning)
- During the markup, Senators Maria Cantwell (D-WA) and Mike Lee (R-UT) drafted amendments to address the issue, but did not offer them
- It would also require FERC to promulgate a rule on interregional transmission planning within 180 days of enactment

Permitting Reform

- APPA and the National Rural Electric Cooperative Association (NRECA) are working together to educate lawmakers about the need to fix this language
- The bill could be attached to a must-pass bill. It was not included in the NDAA
- APPA supports efforts to:
 - Streamline federal permitting and siting processes
 - Eliminate excessive regulatory burdens
 - Ensure more predictable and timely decisions from relevant federal agencies

Water Resources Development Act (WRDA)

- Biannual legislation that Congress must pass every other year (even-numbered years)
- House and Senate versions passed on July 22 and August 1, respectively
- During the House markup of WRDA (H.R. 8812), APPA expressed concerns with language in the bill and several amendments that were offered, including:
 - **Section 121, which expressly limits the ability to add water supply at a project if there would be an impact on “navigation, flood control, and environmental protection and restoration,” but not “hydropower production”**
- APPA advocated for adding “hydropower production” as a limitation on section 121 and on language improvements to ensure an amendment by Rep. Dina Titus (D-NV) on an emergency drought operations pilot program does not negatively impact hydropower operations

Water Resources Development Act (WRDA)

- In September, APPA sent a letter to the House Transportation & Infrastructure and Senate Environment & Public Works Committees laying out public power's priorities for WRDA conference negotiations
 - APPA expressed appreciation for a paragraph in the report accompanying H.R. 8812 that reaffirms the authority of the administrators of the PMAs to set rates for the sale of electric power
 - This is extremely important to federal hydropower customers, as there have been increasing instances of the Army Corps trying to dictate how PMAs set rates for their customers

Water Resources Development Act (WRDA)

- The House and Senate released the conferenced version of the bill on December 4
- Most of APPA's priorities were included in the conferenced bill, including the hydropower restrictions for the new drought operations pilot program and a new water supply mission for Army Corps facilities
- Language affirming PMA administrators' rate-making authority was not included, but likely will be in the manager's package
- The conferenced bill will likely be considered in the House of Representatives on December 9 or December 10
- If passed by the House (likely), APPA staff expects the bill to be considered swiftly by the Senate

Tax and Elective Payment

- The Inflation Reduction Act (IRA) created the ability for public power utilities to directly claim tax credits for projects they own through “elective payment”
- APPA has been working with Treasury, the IRS, and the White House to ensure implementation allows elective pay to be used for its full potential
- The wrinkles in the mechanics of claiming elective pay have largely been ironed out
- This includes the “pre-filing registration” process (to combat fraud) of energy properties and tax filing of Form 990-T and associated energy tax credit forms and schedules
- Major questions remain about the domestic content requirements

Tax and Elective Payment

- Domestic content requirements are being phased in
 - For projects, construction of which begins after 2025, elective payment isn't available if the domestic content provisions aren't met
- Exceptions for:
 - Projects of less than 1 MW of capacity
 - If domestic content is not available in sufficient quantity or quality
 - If using domestic content would increase project costs by more than 25 percent
- APPA domestic content concerns:
 - Given supply chain constraints, may be difficult to obtain
 - Proving you have met the requirement, or qualify for one of the statutory exceptions, may be very difficult

Tax and Elective Payment

- Treasury recently clarified that the domestic content bonus guidance applies to domestic content requirements for elective payment
 - **This is helpful because it includes useful safe harbors**
 - **However, the underlying regime for meeting the domestic content bonus requirement is unworkable**
- APPA filed joint comments with Treasury asking it to make use of existing guidance and Build America policy practices at other agencies to create a regulatory regime:
 - **Where owners could simply and reliably determine whether they qualify for one of the statutory exceptions**
 - **Where Treasury, working with other agencies, determines the type of generation that should automatically qualify for exceptions**
 - **Where owners can simply and reliably know from the start if a project will meet the requirements or qualify for an exception if supply chain interruptions occur**

Tax and Elective Payment

- Some Republicans have called for the repeal of the IRA
- We expect Congress to at a minimum review the provisions of the IRA in 2025 as part of the broader tax debate
 - **Tax legislation will be a major focus of the new Congress, with certain portions of the Tax Cuts and Jobs Act of 2017 (President Trump’s tax bill) expiring if not renewed, and Republican review of the IRA**
 - **Repealing municipal bonds may also be considered as a “pay for” for potential tax cuts**
- APPA is looking at ways to improve the statute, including potential fixes to the domestic content requirements
- We have spent a considerable amount of time educating tax and energy committee members and their staff on the importance of elective payment to public power

Reconciliation

- Budget tool not subject to filibuster in the Senate, but with strict procedural rules on what can and cannot be included
- Used in recent years to enact party priorities with majority (50+), but not super majority (60+), control in the Senate
- Republicans have discussed the possibility of two separate reconciliation measures in the new Congress:
 - One with energy, border security, and defense priorities
 - Another with the party's tax priorities

Reconciliation

HOW DOES BUDGET RECONCILIATION WORK?



1

Budget resolution adopted that includes reconciliation directives to individual committees.



2

2a
Specific committees report legislation in response to reconciliation directives.

2b

Generally, the Budget Committee in each chamber packages responses together and reports a bill.



3

Reconciliation bill considered on each chamber floor. Simple majority needed for Senate passage.



4

Differences resolved between chambers (conference committee or amendment exchange).



5

Reconciliation bill enacted into law or vetoed.

Source: Congressional Research Service.



PMA Divestment

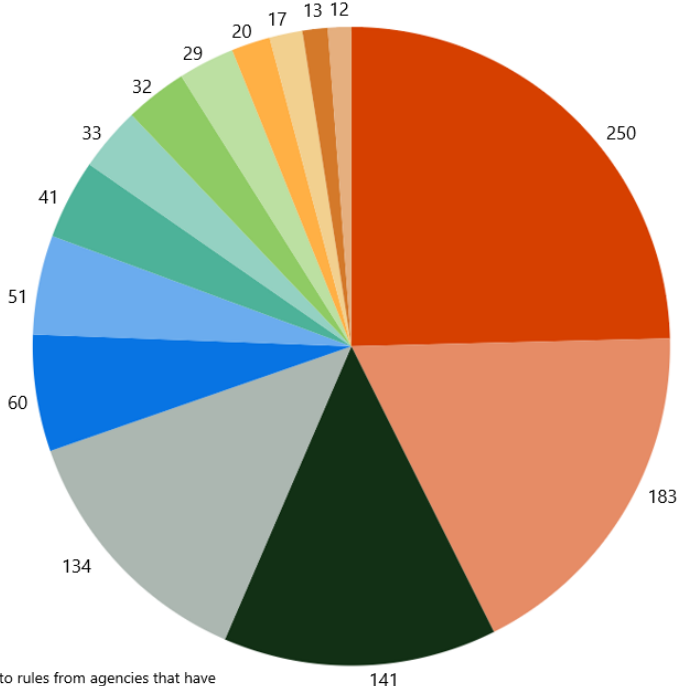
- The sale of the PMAs could be used as a “revenue raiser” in the reconciliation process
- Each of Trump’s four budget proposals in his first term included proposals to sell the PMAs – in whole or in part – and these proposals will likely be revived
- APPA will work aggressively to protect the PMAs in the 119th Congress

Congressional Review Act (CRA)

- Process by which Congress can nullify rules issued by federal agencies
- If a CRA resolution is passed by Congress and signed into law by the President, the impacted CRA regulation:
 - **Does not take effect**
 - **Provisions that have become effective are reversed**
 - **The agency is prohibited from issuing another rule that is substantially similar in the future**
- Lookback period - begins on the fifteenth day of the new session. Congress can review rules and other agency activities passed during the final months of the previous administration. We expect that rules finalized beginning in the late summer of 2024 to fall within this CRA window
 - **CRA resolutions require only a simple majority vote in both chambers**

Congressional Review Act

Potential rules at risk of Congressional Review Act disapproval



- Issuing agency**
- Transportation Department
 - Homeland Security Department
 - Environmental Protection Agency
 - Commerce Department
 - Health and Human Services Department
 - Treasury Department
 - Federal Communications Commission
 - Agriculture Department
 - Interior Department
 - Multiple
 - Nuclear Regulatory Commission
 - Defense Department
 - Veterans Affairs Department
 - Energy Department

Data source: Congressional Review Act (CRA) Window Exploratory Dashboard. The George Washington University Regulatory Studies Center. <https://regulatorystudies-cra-window-rules.hf.space/>

Data is limited to rules from agencies that have issued more than 10 rules at risk of disapproval.

Source: [Westlaw: Congressional Review Act looms after election results](#)

Issues That Could be Addressed Next Congress

- Wildfire-related issues (vegetation management, liability, etc.)
- Permitting reform (non-federal hydropower licensing, reform of environmental statutes – ESA, NEPA, CWA)

Q&A

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