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Federal Legislative Update

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117th Congress Highlights

- American Rescue Plan Act – March 11, 2021
- Infrastructure Investment & Jobs Act – November 15, 2021
- Cyber Incident Reporting for Critical Infrastructure Act – March 15, 2022
- Chips and Science Act – August 9, 2022
- Inflation Reduction Act – August 16, 2022

Infrastructure Investment and Jobs Act

- \$1.2 trillion in funding for transportation, energy, and water infrastructure
 - \$550 billion in new federal spending not previously authorized.
 - Includes traditional highway programs, funding for grid and electric infrastructure, broadband infrastructure, cybersecurity, and electric and alternative fuel vehicle infrastructure.



Infrastructure Investment & Jobs Act

- APPA provided feedback to key congressional committees and staff during the development of the bipartisan 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
 - Department of Energy (DOE) research, development, and deployment for energy technologies.

The Inflation Reduction Act

- Big legislative package that spans multiple areas: deficit reduction, corporate tax policy, healthcare/prescription drug policy and energy policy.
- \$369 billion in tax incentives and funding in energy/climate title.
- Democrats say that the bill will lower GHG by 40%, based on 2005 levels by the end of the decade.
- BIG WIN for public power – for the first time, public power utilities will be able to directly access various energy tax credits.

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.

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 at least Dec. 31, 2032. However, the timing of the availability of the underlying credits may vary.
- The law also includes domestic content requirements, prevailing wage requirements, and provisions regarding the use of apprentices.

Inflation Reduction Act

- Treasury Department has begun seeking comments on implementing the IRA's energy tax incentives.
- Of the nine notices issued to date, three are of most interest to public power:
 - Energy Generation Incentives
 - Credit Enhancements
 - Credit Monetization
- APPA filed its comments on November 4 and focused on issues that could:
 - Be addressed through guidance.
 - Is of high importance.
 - Is time sensitive.
 - Is of particular importance to public power or one likely to only be raised by public power.
- APPA coordinated with state and local government groups and the National Rural Electric Cooperative Association (NRECA), in the development of the comments.
- Treasury released initial guidance on wage and apprenticeship requirements on November 28.

The Inflation Reduction Act

- Why the direct pay provisions are helpful to public power:
 - They will put public power utilities on a level playing field with for-profit utilities and entities by providing them with access to a variety of energy tax credits.
 - These tax credits are essentially energy policy embedded within the tax code. Consumer-owned electric utilities, which serve close to 30 percent of all electric retail customers, should also benefit from these tax credits.
 - They will make investments in clean energy technologies more affordable for public power utilities, which helps keep rates affordable for customers.
 - The credits also enable public power utilities to be responsive to their customers, including commercial and industrial customers, that want their power to come from clean energy resources.

Permitting Reform Legislation

- In August, Senate Energy & Natural Resources Committee Chairman Joe Manchin (D-WV) drafted legislation to reform the permitting process.
- The draft bill 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;
 - Modify the Federal Power Act to expand the scope of the Federal Energy Regulatory Commission's (FERC) authority to require the construction of certain electric transmission facilities.
- Senator Manchin sought to include his permitting reform bill in the CR to fund the federal government, but withdrew it when it was clear he did not have the votes to add it to the CR.

Supply Chain

- Top priority for APPA 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.
- President Biden invoked the Defense Production Act in June – how exactly that gets implemented is TBD.

Federal Hydropower

- Not much action for Federal hydropower on Capitol Hill in this Congress.
- President Biden did not propose selling the PMAs in his FY22 or FY23 budget requests.
- Ongoing work on issue of rising Corps joint costs that threatens economic viability of federal hydropower.

Congressional Year-End Agenda

- “Must pass” bills of interest to public power before the end of the 117th Congress:
 - Fiscal Year (FY) 2023 National Defense Authorization Act
 - Water Resources Development Act of 2022
 - Filed as an amendment to Senate version of NDAA
 - Appropriations for FY 2023
 - Continuing resolution expires on December 16

Looking Ahead - 118th Congress

- Another 50-50 Senate or 51 Democrats – 49 Republicans? TBD
- House Republicans will have a slim majority.
- House Republican Agenda:
 - Oversight
 - Oversight
 - Oversight
 - Energy package