



ABC's Weekly Federal Legislative Update July 20, 2020

Introduction

Congress returns to Washington to complete a mad dash of legislation before the August recess. At the top of their list is another COVID 19 relief package. The House will also address the annual defense reauthorization bill as well as the first FY 2021 appropriations package. In addition to working on the COVID 10 relief package, the Senate will also voting on a long list of Trump nominations in both committee and on the floor. The following is news from Washington, D.C.

Administration

FERC Issues Two Rulings

Last week, FERC issued two rulings regarding renewable energy. They rejected a petition to end nationwide net metering and reformed FERC implementation of PURPA. The following two stories discuss the outcome.

Arianna Skibell and Jeremy Dillion of [Energywire](#) wrote on July 17, "The Federal Energy Regulatory Commission made two decisions yesterday that affect renewable energy, prompting starkly opposing reactions from wind and solar supporters.

"In a unanimous vote, FERC rejected a contentious petition that sought to end nationwide net metering, a practice that requires utilities to pay rooftop solar owners for the extra electricity they generate.

"That sparked praise from renewable groups that also blasted the agency for a separate, final rule updating the Public Utility Regulatory Policies Act (PURPA), a 1970s energy law meant to promote the adoption of small-scale, independent wind and solar projects.

"[I]f someone loads a gun with two bullets and then decides to fire only one bullet at the victim, would the headline be 'fair-minded person fires only 1 bullet'?" Miles Farmer, an energy analyst and former policy adviser for New York Gov. Andrew Cuomo (D), asked on Twitter about the two decisions.

“Yet Republican Chairman Neil Chatterjee rejected the charge that an updated PURPA would curtail the "thriving" renewable industry.

"I am not at all concerned," he said on a call with reporters after yesterday's meeting.

“The commission rejected the petition by the New England Ratepayers Association (NERA) on procedural grounds, saying the request didn't identify a specific controversy or harm for the agency to address. Republican Commissioners James Danly and Bernard McNamee offered comments about the petition, raising questions about whether the commission might have an appetite to examine federal jurisdiction over net metering in the future.

"Though I support the commission's order dismissing [the petition] on procedural grounds ... I provide this concurrence to make clear today's order does not address the underlying issues," McNamee said at the agency meeting. "Nor is it a decision on the merits raised by and contained in the petition."

“Ari Peskoe, director of the Electricity Law Initiative at Harvard Law School's Environmental and Energy Law Program who has been critical of NERA's petition, said in general, he doesn't see the commission picking the issue back up, however.

"Although perhaps yes if [Republicans] hold the majority for another five years, which might provide enough time for someone to file a more specific petition/enforcement action," he wrote in an email.

“Peskoe said Danly seemed to suggest parties might now bring lawsuits in federal court to challenge net metering.

"Perhaps he knows something. His premise is that various courts might draw different conclusions about FERC's jurisdiction, and that would be a bad result," he said. "He therefore appears to suggest that FERC ought to weigh in, to ensure a uniform national approach to FERC's jurisdiction."

“He added that a court faced with a net-metering lawsuit could simply ask FERC to weigh in as has happened in the past.

“The development was a welcome one for the thousands of people and groups that had asked FERC to dismiss the petition after it was first filed in April.

"This is a big win for our climate and for communities embracing clean solar power," Howard Crystal, an attorney with the Center for Biological Diversity's Energy Justice Program, said in a statement. "FERC's unanimous ruling ensures that states can keep appropriately compensating people who install rooftop solar."

“In a statement, NERA President Marc Brown expressed disappointment but said FERC left the door open "to address the concerns raised by the Commissioners in its order."

"In its order the Commission didn't address the merits of NERA's petition and, in fact, stated that the dismissal is not a concession by FERC that it does not have jurisdiction over exports from customer-generators," Brown said. "Commissioners Danyl and McNamee noted in their concurrences that the issues raised by NERA are 'questions of profound importance and the Commission will eventually have to address them' and 'the Commission's Order is not a decision on whether the Commission lacks jurisdiction over the energy sales made through net metering'."

"The petition called on FERC to place net metering under federal jurisdiction, which could have significantly cut the rates paid to rooftop solar owners, making the widespread practice less financially viable. But NERA said the move would have lowered costs for ratepayers.

"NERA has declined to disclose the group's members, including to E&E News, beyond describing them as businesses, associations and individuals in New England. As a 501(c)(4) organization, NERA is not required to disclose its donors to the IRS.

Chatterjee pushes back

"With PURPA, Republicans on the commission moved 3-1 to finalize their reworking of FERC's implementation of the law, prompting anger from advocates who said it would be disastrous for renewable deployment in vertically integrated electricity markets, where utilities own generation and transmission assets.

"Instead of promoting small, clean generation, FERC is undercutting the ability of solar and wind power to get a fair chance to compete," said Tom Rutigliano, an advocate with the Natural Resources Defense Council's Sustainable FERC Project. "Homeowners putting solar panels on their roof, farmers leasing their land to wind turbines and industrial facilities with efficient on-site power all lose under FERC's rule today."

"The changes made final by FERC yesterday give states and utilities more flexibility in how they set rates for producers looking to generate power on PURPA. That has the potential to undermine the market dynamics and financing mechanisms that have enabled more small-scale renewables to pop onto the grid.

"Republicans complained that the PURPA regulations were forcing utilities to take on power that they sometimes did not need, at prices that over the long term made wind power far more expensive than power from other sources.

"Considering the maturation of renewable technology, Chatterjee said he did not expect the changes to have any effect on renewable deployment under the PURPA umbrella or elsewhere.

"The renewable energy industry is thriving throughout this country. If you look at some of the RTO/ISO interconnection queues, you'll see that the queues are dominated by

solar, wind and battery storage projects," he said, referring to regional transmission organizations and independent system operators.

"Regardless of what you think about PURPA and this final rule, most of the renewable energy projects developed these days are done outside of PURPA," Chatterjee added. "That, to me, is total proof that renewables can compete in our markets, and I do not expect that to change in large part because they are now cost-competitive."

"Democrats also have complained about PURPA.

"As flagged by Democratic Commissioner Richard Glick, the "1 mile" rule — the factor which divides neighboring facilities from counting as one facility — has resulted in some abuse of the PURPA guidelines, and market rates could have found a more bipartisan approach.

"That sentiment was shared by Paul Bledsoe, a former climate adviser during the Clinton administration, who said changes in the rate structures have the potential to benefit ratepayers due to avoiding those long-term contracts, but more help to renewables should accompany the change.

"In this sense, the rule is a benefit to consumers and states, with the potential for cheaper power," said Bledsoe, now with the Progressive Policy Institute. "But it should be balanced on policy grounds by longer-term solar and wind tax credit extension."

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[FERC Overhauls PURPA](#)

On July 16, Jeremy Dillion of [Greenwire](#) reported, "The Federal Energy Regulatory Commission issued a final rule today overhauling a 1978 law that has long served as a vehicle for bringing more renewable energy to the grid.

"FERC's approval of the Public Utility Regulatory Policies Act (PURPA) rule in a 3-1 vote culminates a decadeslong industry effort to transform the provision that forces utilities to purchase power from qualifying renewable and cogeneration facilities. Democratic Commissioner Richard Glick opposed the changes, although he concurred in part with the final rule.

"The changes have major implications for small-scale renewable energy providers with issues for their financial backing and market incentives for tapping into the grid, especially in markets where power providers control both generation and transmission infrastructure.

"That likely spells trouble for independent renewable penetration in the West and Southeast, where PURPA has enabled solar energy to flourish.

“Republicans and utilities say the final rule keeps PURPA's central mission intact but expands state flexibility to ensure competitive pricing.

“The final rule largely represents what the commission put forward in its notice of proposed rulemaking from last September. It will take effect 120 days after its publication in the *Federal Register*. Glick warned that the changes amounted to the "gutting the heart of PURPA." Congressional Democrats have made similar comments on the rulemaking, raising the prospect that the changes could be subject to Capitol Hill oversight.

“Enacted into law during the Carter administration, PURPA came in response to the Arab oil embargo as the United States looked to boost alternative energy to wean itself from its foreign petroleum. The law requires states and utilities to purchase power from qualifying renewable power facilities that are usually smaller, independently owned energy sources.

“Republicans and utility trade groups have long sought to overhaul PURPA with arguments that modern energy practices and renewable energy technological maturation have drastically changed since the 1970s.

"It's been more than four decades since Congress enacted PURPA, and I've been clear that it is incumbent on us to update our regulations as Congress instructed us to do from time to time in order to ensure that the commission continues to satisfy its statutory requirements under PURPA," said FERC Chairman Neil Chatterjee, a Republican.

“Chatterjee said he and FERC's Office of the General Counsel agreed that the changes do not undercut the law and still enable qualifying facilities to compete and operate.

Among its changes, the final rule would:

- Grant states more flexibility in setting energy rates from qualified facilities' power sales contracts in accordance with changes to the purchasing utility's avoided costs as well as to base those rates on market factors in the region where the generation would be based. States would have the ability to keep the existing pricing structure in place, as well.
- Reduce the size of qualifying facilities from 20 megawatts to 5 MW in certain markets, although the 20-MW threshold would remain in place for cogeneration facilities. Originally, the commission pegged that number to drop to 1 MW.
- Change the "1-mile rule" to a tiered approach of establishing facilities located within a mile as the same facility: Up to 10 miles as a separate facility that can be challenged and 10 miles or more as a "different" facility.

"These changes were necessary because the evidence demonstrated under the old PURPA regime it was likely that customers were overpaying for power they received

from [qualified facilities] in contradiction of the requirements of the PURPA statute," Republican Commissioner Bernard McNamee said.

"Edison Electric Institute President Tom Kuhn said the rule changes would "ensure that renewable energy can continue to grow without forcing electricity customers to pay a premium to the developers that learned how to game the system."

"But renewable energy advocates warned that the changes threaten the solar industry. The Solar Energy Industries Association hinted as much in its statement opposing the final rule.

"While we are glad to see FERC include elements of SEIA's proposals, the overall rule changes approved today will undermine the stated intention of the PURPA statute and stifle competition, allowing utilities to strengthen their monopolies and raise costs for customers," said Katherine Gensler, SEIA's vice president of regulatory affairs.

"We will continue advocating for reforms that strengthen PURPA and allow solar to compete nationwide."

Congress

[House Agenda](#)

The following story contains updates on the House's agenda.

E&E Daily reporter Emma Dumain published on July 14, "The House has set a date for consideration of the "Great American Outdoors Act," along with spending and defense legislation.

"House Majority Leader Steny Hoyer (D-MD) announced last night that lawmakers would debate and vote next week on a sweeping conservation bill that would fully and permanently fund the Land and Water Conservation Fund, plus put a dent in a \$20 billion backlog of deferred maintenance projects on national parks and public lands.

"In a letter updating colleagues on the upcoming House floor schedule, Hoyer described the legislation, poised for a vote on July 22, as one that would "invest in the protection of America's cherished National Parks for generations to come."

"Senators in late June passed the bill, also known as "GAOA," 73-25, and since that time, it has been considered a foregone conclusion that the measure would soon become law.

"President Trump has committed to signing the legislation, which Republicans think could help buoy the reelection prospects of two vulnerable GOP incumbent senators and lead bill sponsors, Cory Gardner of Colorado and Steve Daines of Montana.

“In the House, Democrats did not include discretionary spending for the LWCF in their fiscal 2021 Interior-Environment appropriations bill as in previous years, a clear recognition that enactment of "GAOA" was imminent that would in turn make \$900 million in mandatory spending available for the federal program annually.

“There is little doubt the House will pass the bill next week, but lawmakers are still preparing for some speed bumps along the way.

“Rank-and-file Republicans have already objected to House Democratic leaders' bringing the lands package to the floor under an expedited procedure that would have eliminated a debate on whether to allow votes on amendments.

“Now these Republicans are discussing whether they can force their own leadership to demand certain amendments be made in order during floor debate on the underlying bill to address their concerns.

“House Natural Resources Committee ranking member Rob Bishop (R-UT) is trying to get members of both parties animated over a provision included in the Senate-passed "GAOA" that would codify Congress' practice of effectively ignoring a law designed to protect Western states from federal land grabs while ensuring that Eastern states aren't deprived of LWFC dollars to which they are entitled.

“Bishop sent a letter to lawmakers July 2 in hopes of building a coalition around an amendment to protect the statute stipulating that no more than 15% of land purchased through LWCF funds to be added to the National Forest System can come from the west of the 100th meridian, which cuts through North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.

“But the major sticking point ahead of House floor debate is likely to involve the Gulf Coast state congressional delegation, whose members are by and large incensed that the bill does not remove the cap on how much their states can receive in revenue from offshore oil and gas leasing, which funds the LWFC.

“In the Senate, Louisiana Republican Bill Cassidy attempted to address this discrepancy but was locked out by bill proponents who argued that "GAOA" must not be opened up to any amendments that could derail the entire legislative effort. Fellow Louisiana Republican Rep. Garret Graves has pledged to take up this issue in the House.

“It is not clear where Louisiana's most prominent Republican in Congress, House Minority Whip Steve Scalise, stands on the legislation, as House Minority Leader Kevin McCarthy (R-CA) has expressed his enthusiastic support. Multiple requests for comment to Scalise's office from E&E News have not been returned.

“Also on the agenda for the next several weeks are the National Defense Authorization Act, spending packages and possible coronavirus legislation.”

Democrats Chart Course for Bold 2021 Climate Overhaul

Democrats are beginning to discuss their Climate Priorities for 2021. The following story outlines many of their goals.

Jean Chemnick of [E&E Daily](#) wrote on July 16, "Democrats are working on climate plans now in hopes that they'll be ready if voters deliver them the Senate and White House.

"But winning it all won't mean a Democratic cakewalk in the Senate where controversial bills require 60 votes.

"There are some Democrats making noise about eliminating the filibuster to allow a simple Democratic Senate majority to work its will, but the party's presumptive presidential nominee, Joe Biden, who spent 36 years in the Senate, isn't a fan of that option; although he told *The New York Times* this week he might reconsider if Republicans prove to be too "obstreperous."

"But Senate Democrats may have another option for moving climate legislation: budget reconciliation.

"Both Democrats and Republicans have used budget reconciliation in the past to circumvent the need for a 60-vote supermajority. The maneuver helped Republicans pass tax cuts for Presidents George W. Bush and Trump, while Democrats used it to tweak President Obama's Affordable Care Act.

"Will Democrats use that strategy for climate legislation that might include Biden's just released plan for midcentury carbon neutrality.

"It's complicated," said Carol Browner, a former EPA administrator and Obama climate czar, who noted that Obama's transition team considered and then rejected using budget reconciliation as a vehicle for climate legislation.

"But, she added, the time might be right to try it. "My point of view is that this is a crisis," she told E&E News. "We've got to do what we've got to do, and if that's the vehicle so be it."

"The House Select Committee on the Climate Crisis, in its long-awaited report, included carbon pricing and the goal of getting the nation to net-zero greenhouse gas emissions by 2050.

"The benefit of using reconciliation is that it allows for passage with 51 votes in the Senate and limits debate.

"Here's how it would work: House and Senate Budget committees would produce budget resolutions — blueprints for spending and revenue — that would then pass the

full chambers with simple majorities with differences being hashed out in House-Senate negotiations before final passage.

“That resolution can include instructions to relevant committees to raise revenue or to make changes in mandatory spending to maintain the budget at a certain level. If it does, those panels could decide how to achieve that outcome with confidence their work could pass the Senate with a simple majority.

"But here's the problem with this: It has to have a budgetary consequence," said Bill Hoagland, who served as budget director for former Senate Majority Leader Bill Frist (R-TN) and is now a senior vice president at the Bipartisan Policy Center.

"The purpose of reconciliation is to effectuate the changes that have been assumed in the budget resolution to achieve that particular outcome," he said.

“A carbon tax would probably fit the bill, Hoagland said, if the budget bill instructs the House Ways and Means and Senate Finance committees to find new revenue.

“But Hoagland foresees problems if that new levy requires new regulations or a new office to administer it.

'Byrdable'?

“Budget reconciliation is also a tricky tool to use to boost spending, Hoagland said. It doesn't allow authorizations of new discretionary spending — something House and Senate appropriators are supposed to do.

“Hoagland said Democrats could create a new mandatory spending program — like a welfare program — using reconciliation. But again, setting up a mechanism to administer it would be difficult.

“Legislative staffers who opposed what Democratic leaders hoped to do on climate could be counted on to go through the Congressional Budget Office's analysis of the budget with a fine-toothed comb, looking for provisions that are "Byrdable."

“Named for a master of Senate, the late Senator Robert Byrd (D-WV.), who served in the chamber for 51 years and introduced the rule, "Byrdable" provisions don't add or deduct from the budget in a meaningful way and cannot pass without the threat of filibuster.

"I think you could take a solid run at creating a carbon tax or doing carbon tax reform through reconciliation," said Joseph Majkut, director of climate policy at the moderate Niskanen Center, which advocates for the policy. "That doesn't mean you could do the kind of carbon tax we've been talking about."

“For example, Majkut said he didn't know whether it would be possible to use reconciliation to adjust EPA regulatory authority to offset the new carbon price or to construct trade policies to ensure U.S. manufacturers aren't subject to unfair competition from producers in countries that lack a similar policy.

“Those provisions would have to move separately as part of a legislative package passed under regular Senate rules; although Majkut noted Democrats might feel less urgency to reduce EPA regulations, for example.

"I think regular order affords you a lot more ability to make good policy," he said. "I think a bipartisan, regular order process will always be preferable if it can be achieved."

This story also appears in Climatewire.

Other

[Biden Releases 2 Trillion Climate Plan](#)

The following story discusses the Climate Plan released by former Vice President Biden last week.

On July 14, Timothy Cama of [E&E News PM](#) submitted, “Democratic presidential hopeful Joe Biden spoke today of an increasing urgency to fight climate change, declaring that strong greenhouse gas reduction policies cannot wait.

“In a Wilmington, Del., speech, Biden highlighted a new \$2 trillion set of climate policies he's backing — with a focus on near-term actions that could be accomplished within four years of taking office — including a goal to completely decarbonize the electricity sector by 2035.

"Science requires a timetable for measuring progress on climate that isn't three decades or even two," Biden said. "Science tells us we have nine years before the damage is irreversible. So my timetable for results is in my first four years as president."

“The former vice president's tone was at times more urgent than it has been in the past. He previously published a climate plan without any major deadlines before a 2050 goal for the entire economy to achieve net-zero emissions.

“The new plan, released earlier today along with policies focused on environmental justice, keeps the overall 2050 goal. But it adds milestones, like the clean electricity deadline and aggressive action to make billions of buildings more efficient in his first four years in office.

“He focused heavily on the millions of jobs — good-paying and unionized — that he says these changes would spur.

"These aren't pie-in-the-sky dreams," Biden said. "These are actionable policies that we can get to work on right away.

"We can live up to our responsibilities, meet the challenges of a world at risk of a climate catastrophe, build more climate-resilient communities, put millions of skilled workers on the job, and make life markedly better and safer for the American people all at once. And benefit the world in the process."

"Biden also attacked President Trump's climate policies, his repeated skepticism of climate science and his rollbacks of environmental policies.

"When Donald Trump thinks about climate change, the only word he can muster is 'hoax.' When I think about climate change, the word I think of is 'jobs,'" Biden said.

"He said Trump and congressional Republicans only offer "backward-looking policies that will harm the environment, make communities less healthy, hold back economic progress, while other countries race ahead. It's a mindset that doesn't have any faith in the ability of the American people to compete, to innovate and to win."

[Electric Vehicles – 15 States and D.C. Aim for 100% Zero Emission Trucks and Buses](#)

The following story discusses a recent agreement by 15 state and the District of Columbia to move to zero emission trucks and buses by 2050.

On July 14, Maxine Joselow of [Greenwire](#) published, "Fifteen states and the District of Columbia today signed an agreement to transition to 100% zero-emission trucks and buses by 2050.

"The agreement marks a milestone in state efforts to slash pollution from the transportation sector, which is currently the country's largest source of carbon emissions.

"The states signed a memorandum of understanding to "work collaboratively to advance and accelerate the market for electric medium- and heavy-duty vehicles, including large pickup trucks and vans, delivery trucks, box trucks, school and transit buses, and long-haul delivery trucks."

"Over the next six months, the states will develop an action plan that recommends ways of accelerating the still-nascent market, such as tax credits for consumers.

"The goal is to ensure that 100% of all new truck and bus sales be zero-emission vehicles by midcentury, with an interim target of 30% zero-emission vehicles by 2030.

"While trucks and buses only account for 4% of vehicles on the road, they are responsible for nearly 25% of total transportation sector greenhouse gas emissions," the document says.

"In fact, emissions from trucks are the fastest growing source of greenhouse gases, and the number of truck miles traveled on the nation's roads is forecast to continue to grow significantly in the coming decades," it adds.

"The participating states are California, Connecticut, Colorado, Hawaii, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont and Washington.

"The agreement was organized by Northeast States for Coordinated Air Use Management (NESCAUM), a regional nonprofit association of eight state air quality agencies.

"The states will work cooperatively to foster the development of a more robust heavy-duty vehicle market and infrastructure to advance their climate and air pollution goals," NESCAUM Executive Director Paul Miller said in a phone interview yesterday.

"Miller said the deal could significantly reduce ozone and particulate matter pollution — commonly known as smog and soot — from vehicle tailpipes.

"Many of the states have nonattainment areas for the National Ambient Air Quality Standards for ozone and particulates. EPA Administrator Andrew Wheeler yesterday opted to maintain the 2015 ground-level ozone standard, despite calls to strengthen it from public health advocates.

"Miller also noted that the agreement could offer relief to low-income communities and communities of color that are located near major freight corridors, ports and distribution hubs.

"Diesel exhaust, which is an air toxic, has a disproportionate impact on environmental justice communities that are near ports and industrial areas where there's a lot of heavy truck traffic coming through," he said.

"Many of those same communities have seen higher infection and death rates from COVID-19, the disease caused by the novel coronavirus, he added.

Chasing California?

"The agreement comes after the California Air Resources Board last month adopted the first regulation in the world aimed at boosting sales of zero-emission trucks.

"The so-called Advanced Clean Trucks rule would require truck manufacturers to sell a certain percentage of zero-emission trucks in California starting in 2024.

"The stringency of the requirements would gradually increase each year, with the goal of putting 300,000 electric trucks on California's roads by 2035 and phasing out diesel trucks by 2045.

"The California Advanced Clean Trucks regulation is one of the options that states are considering. But it's up to the states. It's not a requirement or a commitment," Miller said.

"Certainly, adopting the California requirement is an option," he added. "That's on the table."

"California Gov. Gavin Newsom (D) today thanked the governors of the 14 other states — as well as the mayor of Washington — for supporting the initiative.

"California is proud to be joined by 14 other states and the District of Columbia in a push for clean, zero emission trucks," Newsom said in a statement.

"Our efforts in California will be magnified through the efforts of this multi-state coalition to reduce emissions and improve air quality, especially crucial in communities where our most vulnerable citizens live," he said. "By working together, we can move toward a cleaner future."