

## **NASEO GOVERNMENTAL AFFAIRS COMMITTEE AGENDA**

**TUESDAY, JANUARY 22, 2019 (2:30 – 3:30 P.M.) (EASTERN TIME)**

**CALL-IN NUMBER: 631-992-3444**

**CODE – 4962036**

- 1) **BUDGET AND APPROPRIATIONS** – The President and the Democrats are still fighting about settling the last 7 major annual appropriations bills during this extended (partial) federal government shutdown which began on 12/22/18. 25% of the federal government is not covered by the already-passed annual appropriations bills. Approximately 800,000 federal workers are not being paid and approximately ½ of that number are working while not being paid (these workers will miss their second paycheck on 1/25/19, if the shutdown is not resolved). Yesterday, the Senate Majority Leader McConnell (R-KY) unveiled a new offer, consistent with the President's offer from Saturday. This bill would move forward on the 7 fully conferenced appropriations bills (\$354.5 billion), provide the \$5.6 billion the President has now requested for a border wall and related security measures and provide 3 years of protection for Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) individuals. The bill also provides federal disaster aid of \$12.7 billion. Majority Leader McConnell indicated that the Senate would vote this week. The Democrats rejected the offer, pointing out that the President is the one who removed the DACA protections in the first place and that they want the federal government fully reopened before they negotiate on border security. Some commentators to the President's right accused him of offering amnesty. However, the discussions over the last couple of days offer the first glimmer of hope that the partial federal government shutdown can be resolved. With uncertainty associated with tax returns, a stoppage in federal transportation funds and slow-downs at TSA lines, there may be some movement. Of greatest concern to NASEO members has been the shutdown of the Interior Department, the EPA and the Agriculture Department. The National Governors Association has sent a letter to the President and congressional leadership requesting that the issues get settled and the federal government fully reopen. The President has stated that he still may order the southern border wall constructed, using funds from other agencies (including the Corps of Engineers or disaster relief) under emergency authority. Also last week the Speaker suggested that the President should delay the State of the Union address and the President canceled a military jet that would have taken the Speaker and a congressional delegation to Brussels and a war zone to visit troops. Meanwhile, the Department of Energy has been operating, since the FY'19 Energy and Water Development Appropriations bill was passed and signed into law in September 2018. The President's budget submittal, originally scheduled for the first Monday in February, may be delayed to late February. Even when the shut-down is resolved, the need for a debt limit increase and a budget deal is required (the last deal was a two-year budget deal that allowed increases in defense spending and domestic discretionary spending), in order to set appropriations levels for FY'20. Rumors indicate that

the President's budget will slash non- DOD departments by approximately 5%, with the Energy Efficiency and Renewable Energy (EERE) account rumored to be cut from the appropriated level of approximately \$2.3 billion to around \$500 million.

- 2) **ENERGY TAXES** – No tax extenders package has moved forward, so the energy tax provisions that had not been extended covering calendar year 2018 are still in limbo. There are numerous discussions on a tax extenders package and language to fix technical problems in the major 2017 tax bill. At this point, there appears to be no meeting of the minds between the House, Senate and the White House. The tax pieces of an infrastructure package or even the final FY'19 bill containing the seven remaining annual appropriations bills could be a vehicle. No action yet, though Senators' Grassley (R-IA) and Wyden (D-OR), who are the Chairman and ranking member of the Senate Finance Committee, recently announced that they wanted to move forward. The House Progressive Caucus is pushing for a carbon tax. In addition, last week an eminent group of economists and a bipartisan group of former Secretaries of State announced support for a carbon tax and rebate program. This issue is getting attention.

### 3) **CONGRESSIONAL ACTION.**

- A) The Democrats have now taken over the House and the committee reorganizations are occurring. While not much of substance has happened yet, some of the outlines are clear. The newly revived Climate Change Committee will apparently have no specific legislative authority, but can hold hearings. The new head of the House Energy and Commerce Committee, Frank Pallone (D-NJ) has set his subcommittees, similar to the last Congress, except with Bobby Rush (D-IL) as chair of the Energy Subcommittee (Fred Upton [R-MI] has become the ranking member) and Paul Tonko (D-NY) as head of the Environment and Climate Subcommittee (they added "Climate" to the name), with John Shimkus (R-IL) as the ranking member Greg Walden (R-OR) has shifted to become the ranking member of the full Committee. The first two hearings that Energy and Commerce will hold will apparently be on climate issues. They are also planning on moving individual bills, as opposed to the Senate Energy and Natural Resources Committee's penchant for moving larger bills. The progressive wing of the Democratic party wants to move their version of a "Green New Deal" to address climate change. Obviously, they will be on a collision course with the Administration.
- B) We understand that a revived version of HR 3050 to reauthorize the State Energy Program (SEP) will be introduced by Subcommittee Chairman Rush and ranking member Upton (R-MI). The 2017 bill passed by unanimous consent in the House in July, 2017. This bill is similar, though not identical, with the draft bill introduced in the Senate by Senators' Gardner (R-CO) and Bennet (D-CO) in December 2018, which was the focus of a legislative hearing on 12/17/18 before the Senate Energy Committee. The Administration indicated support of the legislation. In addition, we are close to introduction of the reauthorization of the Weatherization Assistance Program. In the

House it is expected to be a stand-alone bill, while the Senate bill may be coupled with the SEP reauthorization.

- C) Last week, Senator Shaheen (D-NH) reintroduced the “Investing in State Energy Act,” (S. 185), which would require DOE to release to the states the SEP and WAP funds within 60 days of enactment. The original cosponsors include Senator Collins (R-ME), Senate Coons (D-DE) and Senator Reed (D-RI). NASEO has endorsed the bill.
- D) We still expect House Energy and Commerce Committee action in the near term on energy legislation, including a focus on energy efficiency, renewable energy, smart grid, cyber and physical security, energy savings performance contracts, etc.
- E) The House did move on HR 359 (cybersecurity and addressing vulnerabilities to the grid)(Rep. McNerney – D-CA), HR 360 (voluntary cyber sense program dealing with the bulk power system)(Rep. Latta – R-OH), HR 362 (creating a permanent cybersecurity assistant secretary at DOE)(Rep. Rush) and HR 370 (physical and cybersecurity for pipelines and LNG facilities)(Rep. Upton).
- F) Senator Manchin (D-WV) has become the ranking member on Senate Energy. He took over for Senator Cantwell (D-WA), who has become the ranking member on the Senate Commerce Committee. With a slightly expanded Republican majority in the Senate (from 51-49 to 53-49), in order to move any legislation through both bodies successfully, they will have to be bipartisan. Possible bipartisan packages could include the SEP and WAP reauthorization bills, the Shaheen bill noted in Section C, above, cybersecurity legislation, a revised Portman (R-OH)/Shaheen energy efficiency bill, resiliency related bills and infrastructure bills.
- G) The Chairman of the Senate Energy and Water Development Appropriations Subcommittee, Lamar Alexander (R-TN), announced that he would not seek reelection in 2020. He has worked hard to reach across the aisle in a number of areas. In addition, he and ranking member Feinstein (D-CA) of Energy and Water have worked closely together. He held a hearing on 1/17/19 on nuclear energy technology.
- H) Reaching across the aisle and making a deal with the President may become harder as additional Senators join the field of declared Presidential candidates, now including Warren (D-MA), Gillibrand (D-NY) and Harris (D-CA). Other sitting Senators considering a run include Sanders (I-VT), Brown (D-OH) and Klobuchar (D-MN).

#### 4) **TRUMP ADMINISTRATION.**

- A) Daniel Simmons was recently confirmed and finally sworn in as the Assistant Secretary for EERE at DOE. David Terry and Jeff Genzer met with him last week to discuss mutual areas of interest to the state energy office and DOE. Daniel will be speaking to the NASEO Winter Meeting on 2/6/19. Assistant Secretary Walker of the Office of Electricity will also be speaking.
- B) In other personnel actions, we have an Acting Attorney General (Whitaker) with Bill Barr having gone through his confirmation hearings to serve as Attorney General. No one has yet been nominated to fill Ryan Zinke’s place as Interior Secretary, with

Deputy Secretary Bernhardt filling in. At EPA, Andrew Wheeler (Deputy Administrator) has been serving as the Acting Administrator, and he has had his confirmation hearing before the Environment and Public Works Committee to serve as the permanent Administrator of EPA. The acting White House Chief of Staff is OMB Director Mulvaney.

- C) The President has renominated Rita Baranwal for Assistant Secretary for Nuclear Energy, Christopher Fall to head the DOE Office of Science and William Cooper to be DOE General Counsel. They failed to come to a vote at the end of the last Congress. In addition, the President has nominated Keith Krach as Under-Secretary of State for economic growth, energy and the environment. He is a Silicon Valley businessman.
- D) FERC has 4 of the 5 commissioners that it is authorized to have, as a result of the confirmation of Bernard McNamee, who had served as head of the DOE Office of Policy as well as the untimely passing of Commissioner Kevin McIntyre. The Administration has not yet nominated a replacement, and Neil Chatterjee is the Acting Chairman of FERC. With a 2-2 split at FERC the issue of any potential recusal by Commissioner McNamee in the event they will be considering a grid security plan, similar to the Perry proposal that was rejected in early 2018, will be highly sensitive. In a 1/7/19 letter to Senator Masto (D-NV), Commissioner McNamee indicated that he would recuse himself from Docket RM18-1 (Grid Reliability and Resilience Pricing rule), but he would not apparently recuse himself from Docket AD18-7 (the later docket). While at DOE Commissioner McNamee was apparently quite engaged in developing the first Perry plan.
- E) EPA is moving forward with the Waters of the United States (WOTUS) proposed rule. EPA also proposed a rule to limit the Obama-era rule for emissions from new power plants. The comment periods closed for the replacement to the Clean Power Plan (the Affordable Clean Energy proposed rule). The Administration is also moving forward with the suspension of the Obama-era increase in CAFÉ standards. Senator Carper (D-DE) indicated at a hearing on 1/16/19 that the Administration stated that they plan to back down slightly from the sharp rollback of CAFÉ standards, allowing a .5% increase in stringency for the 2020-2026 period. This is not likely to deter anyone from litigation, since the standard will still be about 10 times weaker than the Obama rules. Litigation is occurring in all these areas. On 1/19/19, the Ninth U.S. Circuit Court of Appeals rejected a challenge to California's climate change plan for transportation fuels (the standard applies a "carbon intensity" level to fuels). The EPA has also announced that it will issue a rule by summer adopting a year-round ethanol standard. In a number of these areas, individual states are moving forward to address climate and clean energy issues, in the absence of federal action.
- F) Last week the Energy Star website has been taken down at EPA. This sparked a letter from 3 senior members of the House.
- G) On 1/17/19, the Pentagon released a climate change report regarding impacts on military installations. As required by Congress, the report assessed 79 military

installations. The report indicated that two-thirds of the installations could be subject to recurrent flooding.

- H) How the PG&E bankruptcy plays out in California could have significant federal ramifications. For example, there will likely be disputes about FERC authority v. the authority of the bankruptcy judge. In addition, over \$8 billion in DOE Loan Guarantees were provided to renewable energy developers who executed Power Purchase Agreements (PPAs) with PG&E, which now may be the subject of price reductions, should the bankruptcy judge take that step. This is all very uncertain at this time.

**5) MISCELLANEOUS.**

- A) NASEO priorities (David Terry).
- B) Report of Energy Security Committee (Jeff Pillon).
- C) Update from NGA.
- D) Update from regional governors' groups.

**6) NEW BUSINESS.**

- 7) NEXT NASEO GOVERNMENTAL AFFAIRS COMMITTEE CALL – WEDNESDAY, FEBRUARY 27, 2019 (2:30 – 3:30 P.M.) (EASTERN TIME).**