

NASEO GOVERNMENTAL AFFAIRS COMMITTEE CALL

THURSDAY, FEBRUARY 25, 2016 (2:30 – 3:30 P.M.)(EASTERN TIME)

CALL-IN NUMBER: 1-631-992-3444

CODE – 4962036

- 1) **BUDGET AND APPROPRIATIONS** – As we discussed at length during the recent NASEO Winter Meeting, the President submitted his last budget for FY'17 on February 9, 2016. As we all budgets in a divided federal government, the House and Senate majorities declared this budget “dead on arrival.” With very few legislative days during an election year, and during the 8th year of a two-term President, the most likely scenario is a Continuing Resolution (CR). While the budget and appropriations process has started early this year, with a possible House budget resolution originally planned for House Budget Committee consideration today (now apparently delayed), this year has all the hallmarks of a quagmire. As you may recall, last October a two-year budget deal was reached as now former Speaker Boehner’s (R-OH) last act (P.L. 114-74). It provided \$50 billion in additional discretionary spending in FY'16 and an additional \$30 billion in discretionary spending in FY'17 (with increases split evenly between defense and non-defense accounts), with no debt-limit theatrics until March of 2017 (when a new President will be in office). This deal is what allowed the omnibus appropriations bill to pass in December 2015 (P.L. 114-113 – 12/18/15). However, the budget deliberations that started during the past month have not been smooth. Apparently, as a way to placate the right-wing of the House Republicans, the leadership had agreed to propose an offset to the \$30 million in increased discretionary spending in the two-year budget deal, by cutting mandatory spending (entitlements). That would be a non-starter for the President, even if a budget were to pass (you may recall, that the passage of a budget is a congressional act, which does not require Presidential approval, it is only when implementing legislation [such as appropriations bills] are considered that the normal bill process is needed). The rancor between Capitol Hill and the President on budgetary issues has not abated. For the first time in years, the head of the Office of Management and Budget (OMB) was not invited to testify concerning the budget. In addition, the appropriations process is always unpredictable based upon emergencies that could not have been predicted, e.g., the onset of the Zika virus this year.

- A) The President’s budget proposed \$70 million for the State Energy Program (SEP), including \$45 million for base formula appropriations, \$15 million for competitive funds and \$10 million for technical assistance). The FY'16 funding level was \$50 million for SEP. The President’s budget proposed \$230 million for the Weatherization Assistance Program (WAP), including \$5 million for training and technical assistance. WAP received \$211 million in FY'16. An additional \$15 million was proposed within the Office of Electricity Delivery and

Energy Reliability for energy assurance technical assistance and regional energy emergency exercises for the states. This is consistent with the Quadrennial Energy Review (QER) and is also supported by NASEO. At the Department of Health and Human Services, the President proposed \$3 billion for the Low-Income Home Energy Assistance Program (LIHEAP), down from \$3.39 billion in FY'16, but it would also propose \$570 million in contingency funds. The budget proposal also suggests that 40% of LIHEAP funds could be used for WAP, up from a base (without a waiver) at the state's discretion of 15%, and 25% with a waiver. That proposal went nowhere in FY'16.

- B) The annual "Dear Colleague" letters have been initiated supporting \$70 million for SEP and \$230 million for WAP. These letters are bipartisan and are being led by Representatives' McKinley (R-WV) and Tonko (D-NY) in the House. This letter was circulated to you last week, with a deadline of 3/9/16. Please remember that these letters are signed by members of Congress and sent to the Chair and Ranking Member of the Energy and Water Development Appropriations Subcommittee. We urge you to contact members of the House to support the McKinley/Tonko letter {the contacts for sign-ons are Brendan.Larkin@mail.house.gov – Rep. Tonko, and Blake.Deeley@mail.house.gov – Rep. McKinley). The Senate version will be led by Senators' Collins (R-ME) and Reed (D-RI), and should begin circulating in a few days. Again, contact with your Senators to support this letter is also crucial.

- 2) ENERGY TAX PROVISIONS** – After passage of the major tax extenders package in December 2015, there appears little appetite to address long-term tax reform in an election year.
- 3) ENERGY LEGISLATION** – As you may recall, the House passed their version of a comprehensive energy bill in early December 2015 (H.R. 8). As compared to S. 2012, reported out of the Senate Energy and Natural Resources Committee, the House bill was generally a partisan affair. The Murkowski (R-AK)/Cantwell (D-WA) bill (S. 2012) received floor time beginning in late January, but was pulled from the Senate floor over a dispute regarding funding for the Flint, MI water crisis. The Senate announced a \$250 million funding deal yesterday and the Senate has resumed consideration of S. 2012. There were over 300 amendments pending when the prior work stopped, but it appears that most of the pending amendments will be dropped. Some of the notable provisions from the state perspective include the proposed fix to the WAP reauthorizing language (Section 1012) to remove "not less than" language (amendment from Collins and Reed), which could provide DOE unwanted discretion to exceed the percentages (starting at 2%) for the new competitive WAP program established in the innovative authorizing language. No other changes are contemplated at this time. Section 1013, regarding SEP, is a simple authorization of appropriations. Section 4002 would allow states and state-supported entities to access the loan guarantee program at DOE, even with technologies that are not completely new. The advantage of this provision is that it requires no new appropriations. We are hopeful that no changes will occur in the building code language, which mirrors the Portman (R-OH)/Shaheen (D-NH) bill language. We are supporting the SAVE Act (Isakson [R-GA]/Bennet [D-CO])(#3202), the Gillibrand (D-NY) amendment (#3004) to permit disaster relief funds to be utilized for energy efficient structures, among others. If the Senate actually completes action on

the legislation, then a conference committee would be appointed with the House. Chairman Upton (R-MI) of the House Energy and Commerce Committee has indicated an interest in some bipartisan compromise on a bill, that could actually get signed by the President. We will see.

4) **ADMINISTRATION/JUDICIAL ACTIONS.**

- A) The big news occurred during the week of the NASEO Winter Meeting, when the U.S. Supreme Court, on a 5-4 vote, placed a stay on the Clean Power Plan. Obviously, that sent shock waves across the country, injecting some additional uncertainty into the course of the rule and its possible implementation. Of course, NASEO has not taken a position of the rule, but we have worked with the other state groups to provide information to the states in the event that the rule eventually does move forward. The nationwide meeting among NASEO representatives, representatives from the National Association of Regulatory Utility Commissioners (NARUC), the National Association of Clean Air Agencies (NACAA), and a number of other state and local groups, utility associations and others, occurred on 2/11-2/12 (right after the NASEO Winter Meeting). The stay was followed a few days later on 2/13 by the untimely passing of Justice Scalia, who was one of the 5 votes supporting a stay. While the stay is in effect, the U.S. Court of Appeals is accepting briefs and will hold oral argument on 6/2-6/3 on the underlying rule. Final action by the D.C. Circuit, will be followed by a petition to the U.S. Supreme Court. Most commentators believe that the earliest final Supreme Court action might occur would be June of 2017. Stay tuned.
- B) The next phase of the QER is now being discussed in public. DOE representatives have been briefing the states on their efforts, including end-use energy efficiency and the electricity sector issues more broadly. DOE will be hosting 6 regional meetings for QER 1.2 in Boston (4/15/16), Atlanta, Des Moines (5/6/16), Austin, Los Angeles and somewhere else in the west. The present intent is for the Administration to issue the next phase of the QER before this President leaves office.
- C) DOE issued a response this week to a congressionally-mandated commission to address the DOE National Laboratory-DOE relationship. The so-called Commission to Review the Effectiveness of the National Energy Laboratories released their report last year, with a congressional hearing before a House Energy and Commerce Subcommittee on Oversight and Investigations on 2/24/16. The labs are seeking more flexibility and DOE is seeking some modicum of control.
- D) Also on the judicial front, the U.S. Court of Appeals for the 6th Circuit is considering the "Waters of the US Rule."
- E) In addition to requiring a replacement for former FERC Commissioner, Phil Moeller, sitting Commissioner Tony Clark, has indicated that he will not seek reappointment when his term ends this year. This will put the Commission down two Republicans, on a five member Commission. FERC has also announced a technical conference to address PURPA, in response to questions regarding its viability. In response, on 2/11/16, 3 senior Democrats wrote FERC Chair, Norman Bay, suggesting that PURPA is a pretty important tool.

- F) DOE has indicated that they will continue to issue new appliance energy standards, in addition to the 13 final rules completed by the end of 2015.
- G) You should expect to hear a great deal about cybersecurity this year, both in Congress and the Administration. The President's budget has a big increase for cybersecurity. The energy sector is greatly concerned after the apparent cyber attack on the Ukraine power system last year.
- H) On February 5th, DOE issued a funding opportunity notice (FOA) to address so-called "soft costs" for solar.
- I) Also on the retirement front, on 2/17/16, NRC member Bill Ostendorff indicated that he would step down at the end of June 2016. He is a Republican appointee.
- J) Finally, also on the judicial front, since we last had a governmental affairs committee call, the U.S. Supreme Court (on a 6-2 vote), overturned the D.C. Circuit and reinstated FERC's order 745 in *EPSA v. FERC*. That ruling essentially allowed FERC's demand response rule to go forward, by authorizing FERC to approve demand response programs setting locational marginal pricing at the wholesale price for demand response programs in organized markets.

5) **MISCELLANEOUS.**

- A) Report on NASEO Winter Meeting (2/9-2/11/16)(Washington, DC)(David Terry).
- B) Energy Security Committee Report (Jeff Pillon).
- C) On 2/16/16, a bipartisan group of 17 governors signed a "Governors' Accord for a New Energy Future," intended to support boosts in renewable energy, reducing transportation emissions and modernizing the electric grid. The plan suggests collaboration on energy planning and policy making.
- D) Report from NGA.
- E) Report from regional governors' associations and energy boards.

6) **NEW BUSINESS.**

7) **NEXT CALL – THURSDAY, MARCH 24, 2016 (2:30 P.M.)(EASTERN TIME).**