

NASEO GOVERNMENTAL AFFAIRS COMMITTEE CALL

THURSDAY, MAY 19, 2016 (2:30 – 3:30 P.M.)(EASTERN TIME)

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

CONFERENCE ROOM NUMBER: 4962036

- 1) **BUDGET AND APPROPRIATIONS** – The full Senate passed the FY'17 Energy and Water Development Appropriations bill (HR 2028) on May 12th, by a 90-8 vote. The \$37.7 billion bill was freed to final action when the Senate disposed of Senator Cotton's (R-AR) amendment regarding the U.S. purchases of heavy water from Iran, under the nuclear deal with Iran. Cloture was invoked, allowing Cotton to withdraw the amendment and the final bill was passed. The House version is slightly below the Senate version (only \$93 million), but includes a number of controversial riders and other policy issues (California drought and Yucca Mountain). In the Senate and House bills, funding of \$50 million was provided for the State Energy Program (SEP), while the Senate provided \$220 million for Weatherization and the House provided \$214 million. The House Appropriations Committee has acted on their version of the Energy and Water bill, and floor action could come as early as next week. The Senate had previously decided not to take up a Budget Resolution at this time, while the House is still trying to figure out a way to get a Budget Resolution to the floor. Starting on May 15th, under the Budget Act, the Appropriations bills can progress to the House floor without final action on a Budget.
 - A) The Senate is moving on a combined Transportation-HUD and Military Construction/VA Appropriations bill (HR 2577/S. 2844, S. 2806), while the House is moving on the Military Construction/VA bill (HR. 4974). The House Appropriations Committee approved a \$575.8 billion DOD Appropriations bill (with an additional \$58.6 billion for the Overseas Contingency Operations accounts). The Senate DOD Appropriations Subcommittee is scheduled to mark-up their version of the bill on May 24th. The Senate Homeland Security Appropriations Subcommittee bill is also set for mark-up on 5/24/16. The Senate Agriculture Appropriations Subcommittee approved their bill on 5/17/16. On 5/17/16, the House Appropriations Committee released the text of the \$56 billion Commerce, Justice, Science bill for FY'17, as well as the Transportation-HUD bill (totaling \$58.2 billion).
 - B) The most likely scenario still appears to be a Continuing Resolution, though action on some of the "non-controversial" bills is still possible. With the Memorial Day recess coming up and then the break for the political conventions, there is very little time to act.
- 2) **ENERGY TAX PROVISIONS** – It looks increasingly likely that no action on energy tax provisions (or any other tax provisions) will occur until a lame-duck session after the election. If you recall some "orphaned" energy tax provisions were inadvertently left off of last year's end-of-year tax extenders package. There was attempt to have them hitch a ride on the FAA reauthorization,

but that failed. Senator Cruz (R-TX) has indicated that he will fight any effort to have a lame-duck session. On May 12th the House Ways and Means Committee held their “Member Day” Hearing on tax legislation. During that hearing, Rep. Tom Reed (R-NY) discussed HR 5172, which would extend and phase out the Section 25D tax credit for residential energy efficient property and would extend the Section 48 ITC. Rep. Poe (R-TX) pushed his version of the Master Limited Partnerships Parity Act (HR 2883), similar to the legislation from Senator Coons (D-DE). The House Majority Whip, Steve Scalise (R-LA), also testified in support of H.Con.Res. 89, opposing a carbon tax.

- 3) **ENERGY LEGISLATION** –As we discussed last month, the Senate passed their version of the comprehensive energy bill (S. 2012) on 4/20/16. House action had occurred on the bill in early December 2015 (H.R. 8). The next step is the appointment of conferees, which has not yet occurred. As noted already, the clock is ticking on this session of Congress, which leaves very little time for an energy bill conference. The two bills are very much different on a variety of issues. The Senate version of the bill includes the reauthorization of SEP and Weatherization (Sections 1012 and 1013), as well as the extension of the loan guarantee program to states and state-supported entities (Section 4002). The building code provision in the Senate bill is also far better. In any final version of the energy bill, we would strongly support the Senate version on the 4 points noted above. President Obama would not sign the House version of the bill, but he has generally been more favorably disposed towards the Senate bill. The House bill is described as including “no money and no mandates,” and was a far more partisan affair.
 - A) The Senate Energy and Natural Resources Committee is holding a hearing on OCS leasing on 5/19/16.
 - B) There are energy provides included in the DOD authorization bill, which is moving forward in the House and Senate.
 - C) On 5/18/16, the Senate Environment and Public Works Committee marked-up three relevant energy bills: S. 2816 (Diesel Emissions Reduction Act), S. 2446 (Improving Coal Combustion Residuals Regulation Act), and S. 2795 (Nuclear Energy Innovation and Modernization Act).
 - D) There is a great deal of pressure to address the Zika virus funding, which the Senate moved at a \$1.1 billion level on a bi-partisan basis. The House has moved a \$662 million version and the White House is supporting a \$1.9 billion supplemental appropriation. There is also a new House effort to begin impeachment actions against the IRS Commissioner. I only mention this, to stress that time is short and political action might prevent further steps to move an energy bill.

- 4) **ADMINISTRATION/JUDICIALS ACTIONS.**
 - A) The U.S. Court of Appeals for the D.C. Circuit announced on 5/16, that they would address the appeals of the Clean Power Plan rule *en banc*. That means all the judges on the D.C. Circuit will consider the appeal (and the oral argument), rather than simply a three-judge

- panel. The oral argument had been set for 6/2-6/3/16, and it is now set for 9/27/16. I will not attempt to characterize the meaning of this decision. However, it would save at least 45 days, for any future petition to the U.S. Supreme Court (which is guaranteed). There is also a dispute as to whether EPA actions on the CEIP while the stay is in effect, violates the stay.
- B) The EPSA office at DOE has been holding the Quadrennial Energy Review (QER) 1.2 hearings around the U.S.
 - C) DOE announced \$14 million for new commercial buildings initiatives. In addition, the Better Buildings Summit occurred last week in Washington, D.C., attending by a large number of state energy officials.
 - D) Also last week (May 10th), the White House convened a summit on resiliency in buildings, including a tie to building codes. This subsumes both energy assurance/energy security issues and building energy efficiency.
 - E) DOE is holding a summit on 5/19/16, regarding the future of nuclear power.
 - F) On May 5th, the Nuclear Regulatory Commission (NRC) released a final Environmental Impact Statement evaluating the impacts of developing the high-level nuclear waste repository at Yucca Mountain.
 - G) On May 5th, EPA issued their regulations for reducing methane emissions from oil and gas activities. The planned reductions of 40-45% below 2012 levels by 2025 are certainly controversial. The rule is actually a combination of three final rules that target methane, volatile organic compounds (VOCs) and toxic air pollutants from new and modified oil and gas sources.
 - H) May 5th was very busy. Also on that date, the IRS issued guidance updating the definition of “beginning of construction” for entities seeking renewable energy tax credits. The IRS guidance extends the “Continuity Safe Harbor,” and basically finds that if a facility is placed into service no more than 4 calendar years after construction began, it satisfies the requirement. The guidance also lists the “preliminary activities” that cannot be used to satisfy the “physical work test.” The guidance allows a portion of a wind project (or other project) that includes multiple facilities to be treated as a single project to satisfy the continuous construction/efforts test. The guidance provides other examples of work that will satisfy the “physical work test.” A taxpayer cannot use different tests in alternating calendar years. Finally, “excusable disruptions” are further defined to allow the “continuity requirement” to be more easily satisfied, e.g., permitting delays, interconnection-related delays, and delays in component manufacturing.
 - I) The Clean Energy Ministerial is an international forum to promote policies for advanced clean energy technology, and it is being held in San Francisco on Jun 1-2. The Administration has been collecting examples of state actions on energy investments.
 - J) David Danielson announced his departure from DOE as the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE). David Friedman (the Principal Deputy Assistant Secretary), will now hold that position on an acting basis. Roland Risser had previously moved from running the buildings program to serving as Deputy Assistant Secretary for Renewable Energy. David Nemtzow (former Alliance to Save Energy President), is now the acting program manager for the Buildings Program.

5) MISCELLANEOUS.

- A) NASEO Regional Meetings report (David Terry).
- B) New State Energy Director training (Arlington, VA)(June 13-17, 2016)(David Terry).
- C) NASEO Summer Board of Directors Meeting (Arlington, VA)(July 18-19, 2016)(David Terry).
- D) Energy Security Committee Update (Annual Energy Outlook announced by EIA; Energy Security Workshop [5/13]; big possible shifts in Saudi energy policy, including the departure of Ali al-Naimi after 20 years as oil minister; fires in the oil sands region of Alberta) (Jeff Pillon).
- E) Report from NGA.
- F) Report from regional governors' associations and energy boards (Anne Stubbs, the long-time Executive Director of the Coalition of Northeastern Governors retired this month, and she has been replaced by Jay Lucey. Anne has worked with NASEO for many decades and has been a great ally. She will be missed.).

6) NEW BUSINESS.

7) NEXT CALL- THURSDAY, JUNE 23, 2016 (2:30 – 3:30 PM)(EASTERN TIME).