



# The Power of Working Together

PMEA E-NEWS

April 2015

## Message from the president

**W**hat uncertainty faces our borough electric systems in 2015 and beyond? The U.S. Environmental Protection Agency (USEPA) has proposed a series of rules to regulate carbon dioxide (CO<sub>2</sub>) emissions from electric generating plants. Section 111(b) of the Clean Air Act addresses new, modified and reconstructed generation plants. Section 111(d) is a proposed set of rules that will govern emissions from existing fossil fuel plants.

This summer, the USEPA is likely to finalize the proposed Section 111 rules. These rules are expected to significantly impact energy markets. Individual standards are proposed for each state by using assumptions for what reductions states could achieve via four building blocks – 1) efficiencies at existing coal plants; 2) re-dispatch of natural gas combined cycle plants; 3) renewable energy investments; and 4) energy efficiency programs. States, including Pennsylvania, are expected to develop plans to comply with the final rule. State environmental agencies, utility service commissions and legislatures are all expected to play a role. States have one year to submit plans from the official publication of the final rule. Additional time will be granted if states are working in a multi-state compact.

It is certain that the new rules will face legal challenges. The rules are at the forefront of topics in the electric industry, including our municipal electric systems.

I strongly encourage PMEA members be informed of the new rules and their potential impact. Additionally, I would recommend that your borough representative(s) attend our upcoming Legislative Reception in Harrisburg on June 2, where PMEA members will have the opportunity to voice their concerns to our state lawmakers. As Henry Ford stated: "Coming together is a beginning, Keeping together is progress. Working together is success." I look forward to working with each of you and your communities in 2015.

– **Vance E. Oakes**  
*Borough Manager, Grove City*

## *Calendar*

**JUNE 2, 2015**

**Legislative Reception**

*Harrisburg Hilton*

*1 N. Second St.*

*Harrisburg, PA*

**OCTOBER 14-16, 2015**

**2015 Annual Conference &**

**Business Meeting**

*Nittany Lion Inn*

*200 W. Park Ave.*

*State College, PA*

## *About PMEA*

PMEA is the trade association representing the Boroughs in Pennsylvania that own and operate electric distribution systems. These Boroughs provide reliable, low-cost electric service to all citizens and businesses within their geographic territories. For more information, please contact David Woglom, PMEA executive director, at 610.330.5856.

# State legislative update: Highlights from General Assembly

By Tony Adonizio – PMEA Legislative Counsel

As this update is being written, we are a few months into the new 2015-16 session of the Pennsylvania General Assembly, and only a limited number of bills of interest to the members of PMEA have been introduced in the state legislature to date. With the start of the new session, I first would like to provide a review of the highlights of the results of the last session which has just concluded, and then outline the recent legislation of interest.

## Review of Key PA Legislation in the 2013-14 Session of the General Assembly Impacting the Interests of the Members of PMEA

Unlike in recent years, in the session which just ended there were no bills before the PA General Assembly, which posed a significant threat to the interests of the 35 municipal electric systems. For example, you'll recall that for a number of years we had fought against legislation which would have placed borough-owned electric operations under PA Public Utility Commission (PA PUC) regulation. That type of adverse legislation was not introduced in the 2013-14 session of the PA legislature, and thus, we faced no major state legislative threats.

While there were a number of bills which PMEA followed during the 2013-14 session, the following were the key enactments from the past session:

**Local Government Capital Project Loan Fund - Act No. 71 - Senate Bill 591 of 2013:** This bill, sponsored by Sen. Randy Vulakovich (R-Butler and Allegheny Counties), amended the Local Government Capital Project Loan Fund in the Fiscal Code by increasing the amount from \$25,000 to \$50,000 that municipalities may receive for low interest equipment loans, and from \$50,000 to \$100,000 the amount that municipalities may receive for facility loans. The legislation was passed and signed by the governor as Act No. 71 of 2013 – available [here](#). PSAB and PMEA supported this legislation.

**Borough Code Codification - Act No. 37 - House Bill 1719 of 2014:** HB 1719, sponsored by Rep. Mauree Gingrich (R-Lebanon County), was a complete codification of The Borough Code. This bill was part of the multi-year process of the comprehensive editorial rewriting, or “codification,” of the PA laws, by the General Assembly. The main purposes of codification bills like this are to reorganize the existing provisions of a subject area which have been amended by the legislature over the years, update cross references, repeal provisions of a law which have been struck down by court decisions over the years and to remove unnecessary



duplicative provisions. Each session the legislature takes up one or two of these codification bills.

Along with PSAB, we closely monitored this legislation as it moved through the process, to assure that there were no changes to the existing Borough Code provisions on electric service subjects. There were no changes to the electric service and supply sections, and after its final passage, this codification of the Borough Code, was signed into law by the governor on April 18, 2014, as Act No. 37. The new citation for the Borough Code is: 8 Pa.C.S. § 101, et seq., with the provisions on “Manufacture and Supply of Electricity” appearing at Chapter 24A; 8 Pa.C.S. §§ 24A01 through 24A05 (see pages 282 through 300 of the bill [here](#)).

**Prevailing Wage Act Amendments - Act No. 89 - House Bill 1060 of 2013:** Last session, a number of bills were introduced, providing for an increase in the \$25,000 threshold of the Prevailing Wage Act. That low threshold had been in effect since 1961, and resulted in significantly increased labor costs to PA municipalities, which were required to pay higher rates on virtually all municipal projects. Indeed, because of the Prevailing Wage Act mandate, many municipal projects were deferred or rejected because of budgetary constraints. As part of an overall bipartisan compromise reached on the state’s transportation funding bill, HB 1060, the threshold for transportation projects in the Prevailing Wage Act was increased to \$100,000. That amendment was supported by PMEA and all of the state’s municipal organizations, and the measure was signed into law as Act No. 89.

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# State legislative update

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## **Legislation Impacting the Interests of the Members of PMEA in the 2015-16 Session of the General Assembly**

With the start of the new session of the General Assembly in 2015, we have seen some of the same legislation reintroduced, which had expired without final action at the end of this past session, including the following:

**Senate Bill 411 - Open Records Law amendments:** In February, Sen. Dominic Pileggi (R-Chester and Delaware Counties) introduced SB 411, which would make numerous changes to the Open Records Law (Act 3 of 2008, the Right-to-Know Law). SB 411 is currently before the Senate State Government Committee. This same legislation was passed unanimously by the Senate in the last session, but was never taken up in the House. Among the changes to the Open Records Law, which would be made by this legislation, is one which would apply directly to PMEA's members. The following new language would be added to the Open Records Law, which would exempt from access the payment records of persons who receive electric service from a municipality, and which instead would require that information to be made available through a new "clearance certificate" process:

"Exceptions. – The following are exempt from access by a requester under this act: ...The payment records of a person receiving services from a municipal water or sewer authority or other municipal authority, municipality or cooperative that provides electricity, water, sewer, storm water, natural gas or similar service. The authority, municipality or cooperative shall establish a process to provide a clearance certificate to a person to certify that all fees and charges owed have been paid. A reasonable fee for a clearance certificate may be charged. This paragraph shall not apply to reports of aggregate payments made by a municipality, authority or cooperative to assist low-income consumers or other consumers in obtaining services. If funds are owed, the amount of the delinquency shall appear on the clearance certificate."

**House Bill 445 - Underground Utility Line Protection Law amendments:** This legislation was introduced in February by Rep. Matt Baker (R-Bradford and Tioga Counties), and was referred to the House Consumer Affairs Committee. HB 445 would transfer enforcement authority of PA One Call from the Department of Labor & Industry to the PA PUC, and make various other changes to the Underground Utility Line Protection Law. Among the changes in the bill is a repeal of the current exemption for so-called "minor routine

maintenance" by political subdivisions. "Minor routine maintenance" is presently excluded from the key definition of "excavation work" in the statute. This legislation would remove that current municipal carve-out which reads: "...but does not include...political subdivisions performing minor routine maintenance up to a depth of less than eighteen inches measured from the top of the edge of the cartway or the top of the outer edge of an improved shoulder, in addition to the performance of incidental de minimis excavation associated with the routine maintenance and the removal of sediment buildup, within the right-of-way of public roads..."

**Prevailing Wage Act amendments:** While the threshold in the Prevailing Wage Act for transportation projects was increased to \$100,000 during this last session (see above), several bills have already been introduced this year to further increase that threshold amount. For example, SB 350 would increase the threshold to \$200,000, and HB 541 would entirely repeal the Prevailing Wage Act. These bills, and other similar legislation, are currently pending before both the House Labor and Industry Committee and the Senate Labor and Industry Committee.

**House Bill 689 - Political Subdivision Tort Claims Act amendments:** Introduced in March by Rep. Brian Sims (D-Philadelphia), HB 689 would amend the Political Subdivision Claims Act by increasing to \$1.25 million the current \$500,000 liability cap, for tort claims against municipalities. The bill is currently before the House Judiciary Committee.

**House Bill 120 - Including protection for employees of municipal utilities in the Crimes Code definition of "aggravated assault":** This bill, which was recently introduced by Rep. Dom Costa (D-Pittsburgh), would amend the Crimes Code, among other things, by expanding the definition of the term "public utility employees" to also include employees of municipally owned utilities, and independent contractors working on behalf of municipally owned utilities. This would make an assault on PMEA members' employees and contractors, while acting in scope of their employment, the more serious offense of "aggravated assault" under Section 2702 of the Crimes Code.

As the Pennsylvania General Assembly moves forward in this new session, we will continue to report and update you on all significant legislative developments, and I'm sure that I can speak for the PMEA Board in saying that we certainly welcome and encourage your active support and input. If any members have questions, or desire additional information on these or other bills, please feel free to contact me at [acadon@ezonline.com](mailto:acadon@ezonline.com) or 717.730.2052.

## PPL transmission rate settlement

By Chris Norton – American Municipal Power, Inc.

On Feb. 9, 2015, the Federal Energy Regulatory Commissions (FERC) approved a settlement between PPL Electric Utilities Corporation (PPL) and the Pennsylvania boroughs of Blakely, Catawissa, Duncannon, Ephrata, Hatfield, Lansdale, Lehigh, Mifflinburg, Perkasio, Quakertown, Schuylkill Haven, St. Clair, Watsonstown and Weatherly who challenged the PPL annual transmission rate updates for 2010, 2011 and 2012.

Approval of the settlement concludes a transmission rate dispute stretching

back several years. The settlement resulted in some changes to the accounting for PPL's transmission, a refund to the boroughs of past meter reading and reporting charges, and a payment in recognition of the expenditures the boroughs made in reviewing the transmission rate updates.

The boroughs originally challenged the PPL annual transmission formula rate update for 2010. At first FERC denied the challenge, but on rehearing set some of the group's issues for hearing

and settlement talks and combined the challenge with a subsequent challenge to the 2011 transmission rate update.

The group also challenged the 2012 formula rate update, which FERC consolidated with the 2010 and 2011 challenges. The boroughs and AMP negotiated several transmission rate issues with PPL over the course of a couple years ultimately culminating in a settlement that was filed on Sept. 17, 2014. Members should expect refunds by mid-April.

## COSTARS program aims to provide competitive pricing

By James Havrilla, PE and Norman Baron, PE – Utility Engineers, PC

Pennsylvania is home to a number of traditions, some real and some not so real, weather forecasting with Punxsutawney Phil, four seasons of Amish Mafia and tractor square dancing at the annual Pennsylvania Farm Show.

A real program is the Pennsylvania Department of General Services (DGS) COSTARS Program.

COSTARS is the Commonwealth of Pennsylvania's cooperative purchasing program aimed at providing competitive pricing for state affiliated entities. The legal authority for borough participation is the Commonwealth Procurement Code, 62 Pa.C.S. § 1902, authorizing DGS to enter into cooperative purchasing contracts for local procurement units including Boroughs as political subdivisions.

Both borough and supplier registration is required for participation. However, as noted by COSTARS, supplier registration and receipt of a vendor number does not mean that a supplier has been awarded a COSTARS contract and is able to sell any or all their products under the COSTARS program to participating boroughs. To become a COSTARS supplier, a supplier needs to respond to specific bidding opportunities for specific items solicited by COSTARS.

In the solicitation process, COSTARS exclusive bidding opportunities are published, competitive sealed bids are received and contracts awarded. Per DGS, price is not a factor in the COSTARS contract award and DGS does not



compare prices in the bids. COSTARS awards contracts to all responsive and responsible bidders.

COSTARS is not always the least expensive procurement option. Consequently, shopping for price is still important when using the COSTARS program. Today, it becomes an issue of increased importance as some suppliers only apply for a COSTARS registration, obtain a vendor number and do not participate in any procurement bid. The same suppliers then proceed to represent equipment lines as COSTARS approved when the equipment, in fact, is not part of a COSTARS contract award.

Other vendors hold or once held COSTARS contract approval for a completely different item but now represent their entire equipment line as a COSTARS contract items.

While COSTARS may not be the best option for every borough procurement, it remains a viable option. In due diligence, any borough using COSTARS would be well advised to check for competitive pricing, verify that the vendor holds a COSTARS contract award for the specific item(s) to be procured and that no misrepresentation is made by the vendor about COSTARS pricing for items neither solicited nor bid into COSTARS.

Sy Sims, pioneer clothing retailer, called his sales team educators because he believed that the educated consumer was the best customer. An educated borough is the best customer.



## Congress looks to craft energy legislation

By Marty Kanner – AMP Federal Legislative Consultant

In the not too distant past, energy policy was one of the areas where bipartisan agreement could be reached and legislation enacted. However, since passage of the Energy Independence and Security Act of 2007, Congress has had little success in crafting energy legislation. That could soon change.

In March, House Energy and Commerce Committee Fred Upton (R-MI) released a legislative outline – “The Architecture of Abundance” – outlining his vision for new energy legislation. The document notes that “modern technology and American ingenuity have unlocked a wealth of energy resources, and with the right policies, this energy abundance can help fuel our economy for years to come.” The blueprint seeks new initiatives in four areas:

- Modernizing Infrastructure
- 21st Century Energy Workforce
- Energy Diplomacy for a Changing World
- Efficiency and Accountability

Significantly, the initiatives on workforce development and energy efficiency appear to build on bipartisan proposals from last year that garnered broad support. Of greatest interest for AMP will be the legislative proposals within the infrastructure initiative. Based on our discussions with committee staff, it appears likely that this title will include constructive initiatives to advance grid security. The legislation could also include needed reform of the Byzantine regulatory system for licensing hydropower projects.

Yet no opportunity is without risks. AMP will be watching carefully for efforts to “incentivize” transmission or grid security through unneeded higher payments from consumers.

Chairman Upton intends to release “discussion drafts” on each of these four initiatives in the coming months. The legislative proposals could move independently or bundled as a package. Yet the committee isn’t waiting for detailed legislative proposals to start the process. Energy and Power Subcommittee Chairman Ed Whitfield (R-KY) has already announced subcommittee three hearings as part of the effort to develop and advance the “Architecture of Abundance.”

Efforts are also moving forward in the Senate. Last year, now-Chair Lisa Murkowski released a detailed 121-page blueprint entitled “Energy 20/20.” The far-reaching proposal includes among its recommendations:

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## Energy legislation

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- Phasing out subsidies for renewable energy and creating technology-neutral incentives for clean energy sources
- Ensure that new regulations don't jeopardize the reliability and affordability of electricity
- Harness the generating capability of existing dams
- Boost support for nuclear power, particularly small nuclear reactors
- Increase energy efficiency without imposing government mandates

Although the committee is busy with budget oversight hearings, efforts are already underway to begin a series of hearings, with an early focus expected on electricity issues.

Not only are both the House and Senate preparing for action on energy legislation – they're talking to each other! With Republicans in control of both bodies that would seem like standard operating procedure. But differing

rules, procedures, personalities, and priorities mean the House and Senate are not always on the same page. In contrast, staffs for the House and Senate energy committees are already in discussions to outline possible areas of agreement and action.

While any energy package may be smaller than the 1,000 page bills passed by Congress last decade, the real story is that energy issues may once again represent the landscape where Congress can legislate.

Congressional action provides a number of important opportunities for AMP. Ideally, it provides a platform to address some of our most important concerns, including rapidly escalating transmission costs and irrational "capacity markets" in the RTOs. Yet even if legislation isn't enacted, congressional discussion of energy policies provides an invaluable opening to educate members of Congress and their staff on public power, current market and regulatory challenges, and the importance of affordable and reliable electricity in meeting the economic and social demands of our country.

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Berlin • Blakely • Catawissa • Chambersburg • Duncannon • East Conemaugh • Ellwood City • Ephrata • Girard • Goldsboro • Grove City • Hatfield • Hooversville • Kutztown • Lansdale • Leighton • Lewisberry • Middletown • Mifflinburg • Mont Alto • New Wilmington • Olyphant • Perkasie • Pitcairn • Quakertown • Royalton • St. Clair • Schuylkill Haven • Smethport • Summerhill • Tarentum • Wampum • Watsonstown • Weatherly • Zelienople

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