

## POLICY

# Continuing resolution passed in lieu of 2013 budget

IN WHAT HAS unfortunately become a *modus operandi* for the U.S. Congress, another fiscal year has come and gone without a new budget having been approved. As a stopgap measure, Congress passed—and on September 28, President Obama signed—a spending bill that will keep the government running until March 27, 2013, when, it is hoped, final appropriations can be negotiated and approved.

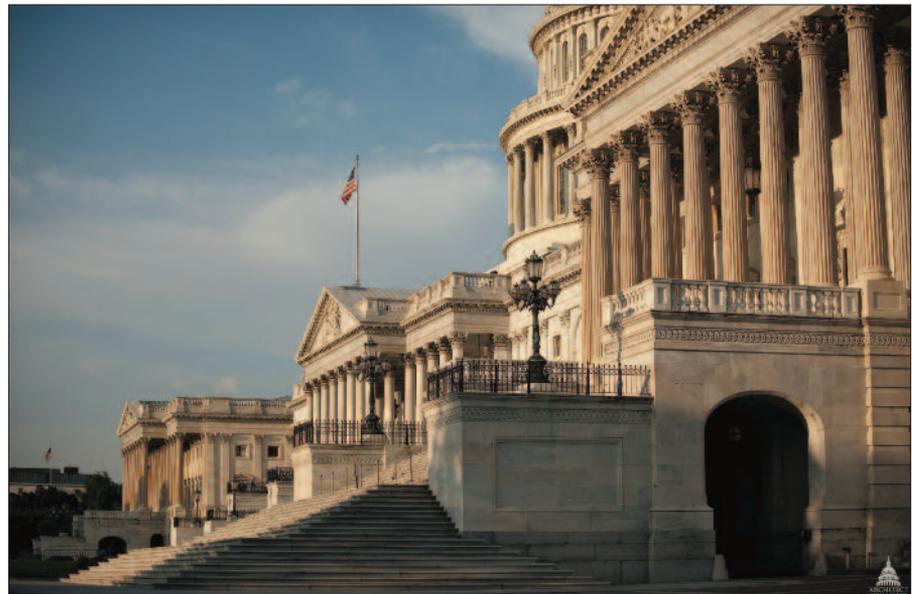
The continuing resolution spending bill (C.R. 117) continues to fund federal agencies, programs, and services at their current rate of operations, with a few provisions to ensure the continuation of critical government functions. The bill's \$1.047 trillion annual rate includes a governmentwide, across-the-board increase of 0.6 percent.

Without an approved budget in hand, however, government departments—including the Department of Energy—and the Nuclear Regulatory Commission, which recovers 90 percent of its budget through licensing fees, will remain in the dark on funding for their programs for fiscal year 2013. In a September 28 bulletin to government departments, the U.S. Office of Management and Budget instructed them to “continue normal spending and operations” until a new budget is passed.

Moreover, the lack of agreement on a new budget brings the United States closer to the looming “fiscal cliff” and the spending sequestrations mandated by the Budget Control Act of 2011. Those sequestrations, scheduled to go into effect on January 2, 2013, would automatically cut the operating budgets of all federal agencies, with the result of a loss of funding for nuclear research and development, as well as programs for nuclear education and training, environmental remediation, and safety and security.

It is unclear, for example, what the fate of the DOE's technical support program for small modular reactors (SMR) would be. Currently, that program has an annual budget (FY 2012) of \$67 million (the FY 2013

*With potential approval of a new budget delayed until March 2013 and deep sequestration cuts a possibility, nuclear programs face real risk.*



A continuing resolution once again will keep the government running, as Congress fails to approve a 2013 budget. Nuclear programs, however, may be at risk. (Photo: Architect of the Capitol)

budget requested \$65 million). In March, the DOE announced a grant opportunity that would provide \$450 million to private industry to help fund the development, design certification, and licensing of up to two SMRs over five years (*NV*, Apr. 2012, p. 84). Westinghouse, Babcock & Wilcox, Holtec International, and NuScale Power all have submitted applications for the grant money. (Gen4 Energy, formerly Hyperion, announced in April that it had withdrawn its application.)

According to the DOE's March 22 funding opportunity announcement, a decision on the grant applications was to be made by the end of August. As of November 1, however, the DOE was still evaluating the ap-

plications.

As the DOE's grant program aims to have SMRs commercially operating by 2022, it is reasonable to assume that the companies vying for funding are anxious to know if it is forthcoming. On October 24, Westinghouse and Ameren Missouri, which have formed a partnership to compete for the grant, held an SMR supplier summit in St. Louis to discuss plans for building Westinghouse's 225-MWe pressurized water SMR at Ameren's Callaway plant. According to a report by the *St. Louis Post-Dispatch*, Joe Zwetolitz, president of Westinghouse Americas, told the summit attendees that Westinghouse was relying on the grant to move the project forward.

While the DOE was unable to provide information on the fate of other loan guarantees or grants to the nuclear industry, USEC Inc. announced on October 1 that the continuing resolution will keep the federal funding pipeline open for its American Centrifuge uranium enrichment plant in Piquette, Ohio (*NN*, Nov. 2012, p. 64). According to USEC, C.R. 117 will provide funding at an annual rate of \$100 million, or \$50 million for the six months covered by the resolution.

Previously, the federal government provided \$87.7 million of cost-share funding to support the enrichment program through the end of November, according to USEC. Additional funding beyond that provided by C.R. 117 will be needed to meet the government's \$280-million share in the program, and USEC is continuing to work with Congress and the White House "to identify funding sources to accomplish that objective," the company said.

### From the NRC's perspective

At a meeting of NRC employees on November 5, NRC Chairman Allison Macfarlane warned NRC staff that the agency is operating under the budget constraints of C.R. 117, with the "potential for significant budget reductions under sequestration." Macfarlane added, however, that although agency programs may lose funding, "sequestration will not result in furloughs or salary reductions" for NRC personnel.

Commissioner Kristine Svinicki, meanwhile, told the employees that there is room for "substantial improvement" to the NRC budget, but there are challenges in doing so. "It's tough because external budget factors are always changing every year, so as we try as an agency to have an adaptive process that fits well with the world around us in a budget climate where we often don't know our annual budget until quite late, it's difficult for us," she said.

One issue before the NRC on which the continuing resolution may have a direct effect is the unresolved Yucca Mountain lawsuit against the agency. That suit, *Aiken County, et al., v. Nuclear Regulatory Commission*, which seeks to force the agency to resume its licensing work on the Nevada repository, was held in abeyance by the U.S. Court of Appeals for the District of Columbia Circuit on August 3 pending possible congressional action on related

FY 2013 appropriations (*NN*, Sept. 2012, p. 70).

On the same day that President Obama signed C.R. 117, the plaintiffs in the case, which include, among others, Aiken County, S.C., the states of Washington and South Carolina, Nye County, Nev., and the National Association of Regulatory Utility Commissioners, filed a status report with the appeals court. The report asks that the court end its delay in issuing a writ of mandamus compelling the NRC to resume the Yucca Mountain license review, noting that C.R. 117 does not change or moot the arguments underpinning the dispute. "The basis upon which the court delayed issuing mandamus—waiting to see whether Congress's fiscal year 2013 appropriations decisions would affect the case—is now resolved," the report says. "The parties remain in the same position they were in at oral argument. Mandamus should thus issue."

In an October 9 response to the petitioners' report, the NRC essentially said that it's not over till it's over, and that Congress may yet act, either through appropriations or other legislation, to address the Yucca Mountain issue. The NRC pointed out that the last day that Congress is scheduled to be in session is December 14, which is the same day the appeals court set as a deadline for both parties in the suit to file status reports. "We trust that this court did not pick that date at random; instead, we presume that this court deliberately chose that date with the prospect of legislative action in a late or 'lame duck' session of Congress in mind," the NRC said in its response.

The NRC also told the court that it will refrain from filing its own status report "until the passage of legislation addressing the issues in this case or December 14, 2012, whichever occurs first."

Despite the NRC's optimistic stance, it's difficult, given past legislative performance, to presume that any clarity on the issue is forthcoming, particularly given that the 2012 elections did not meaningfully alter the political makeup of either house of Congress. As Aiken County, et al., point out, Congress has had three years to formally excuse the NRC from its work on Yucca Mountain and has not done so, nor has it barred funding for such work through legislative action. If that continues to be the case, it is likely the court will issue a writ of mandamus.—*Tim Gregoire* **NN**