NAESCO Advocacy Update
March 2018

Overview

NAESCO continues to work on legislation, regulations and policy issues that affect the ESCO industry at the federal and state level.

Federal Issues

NAESCO participates in several national coalitions of energy efficiency organizations, which also include the Federal Performance Contracting Coalition (FPCC), the Alliance for Industrial Efficiency, the Alliance to Save Energy (ASE), the American Council for an Energy Efficient Economy (ACEEE), the National Resources Defense Council (NRDC), the American Gas Association (AGA), the National Association of State Energy Officials (NASEO), the Energy Services Coalition (ESC), and a number of other groups. The coalitions plan national legislative and regulatory strategy and actively lobby. NAESCO also serves on the Executive Group of SEE Action, which is funded by US DOE and US EPA to identify and develop resources to solve problems in the acceleration of state and utility energy efficiency programs. Finally, NAESCO serves on the Board of PACENation, a national organization that provides education and expert resources to promote the expansion of PACE programs across the country.

Performance Contracting Challenge

NAESCO continues to work with the FPCC to ensure the implementation of the $2 billion extension of the Challenge announced in October, 2016 with its new focus on both water and energy efficiency, and is also supporting the FPCC's effort to get the Trump Administration to raise the goal to $10 billion.

Federal Budget and Appropriations

On March 22, Congress passed an omnibus budget bill for FY 2018. A previously-agreed two-year budget deal provided for spending increases of $63 billion/year for domestic discretionary spending, along with $80 billion/year for base defense spending. The two-year budget deal allowed increases in spending on energy efficiency and renewable energy to $2.3 billion, an increase over the FY'17 funding levels of $2.1 billion. The $2.3 billion was above the proposed House level of $1.1 billion, the Senate level of $1.95 billion and far above the Administration's request of under $700 million. FEMP received $27 million in FY'18, equal to FY'17 levels, but far above the $10 million Administration request. The Weatherization Assistance Program (WAP) and the State Energy Program (SEP) both received modest increases from their FY 2017 budgets. Both programs had been zeroed-out in the Trump Administration's budget proposal.

Of interest potential interest to some NAESCO members, the final supplemental appropriations provisions addressing the disasters included language that would permit modifications to rebuilding requirements so that the structures could be more hazard resistant and resilient, as opposed to the general Stafford Act language requiring a return to the "pre-disaster condition."

The FY'19 budget process has begun. The President's budget, submitted on February 12, would eliminate SEP, WAP and the Low-Income Home Energy Assistance Program (LIHEAP at HHS). The most significant cuts at DOE include an approximate 70% cut in the EERE programs. Once again the EPA programs would be gutted, especially programs such as Energy Star (which they plan to fund by assessing fees to participants). OMB also submitted an addendum to the FY'19 budget submittal, which included additional funds to accommodate the two-year budget increase deal. The $1.5 billion add-on for DOE, includes $1.2 billion for the Office of Science for fundamental science research, $200 million for Fossil Energy R&D for clean coal and $120 million for EERE to specifically support competitively awarded agreements between industry and the national labs involving R&D.

179D Deduction

NAESCO has had a multi-year lobbying effort (coordinated by Van Ness Feldman and Prime Policy Group) to extend the Section 179D tax deduction for retrofits in commercial and institutional buildings, and our efforts were successful again this year. In early February, Congress passed an extenders bill that provides for retroactive extensions of a number of energy-related tax deductions and credits, including Section 179D. Thanks are due to the few NAESCO member companies that have supported this lobbying effort, which benefits many more members than contribute to the funding. Chairman Brady of the House Ways and Means Committee, who has historically been seen as an opponent of extenders, held a hearing on March 14 entitled "Post Tax Reform Evaluation of Recently Expired Tax Provisions." The hearing examined the rationale for these temporary tax provisions, including 179D, to determine whether any of them should become a permanent provision in the reformed tax code. NAESCO submitted written comments detailing the reasons for making 179D a permanent provision in the tax code.

Taxes

The 2017 tax reform bill provides substantial permanent reductions in corporate tax rates and modest temporary reductions in individual tax rates, as well as the repatriation of profits held abroad by US corporations at a reduced rate. The most significant aspect of the legislation for ESCOs may be its effect on the tax equity market. A lower corporate tax rate means less appetite for tax exempt earnings, which may increase the cost of financing for ESCO projects. NAESCO will have a panel on this subject at its Technology and Finance Workshop in Milwaukee in June.

As noted above, the two-year budget agreement included approximately $17 billion of tax extenders and modifications. Most of the energy extenders that we were concerned about were extended for the 2017 calendar year. Importantly, the so-called "orphan tax credits" that were inadvertently excluded from the five-year deal for the Production Tax Credit (PTC) for wind and the Investment Tax Credit (ITC) for solar, when that package was completed at the end of 2015, were extended for the length of the five-year phase-down. These include the fuel cell and geothermal credits. The nuclear PTC was also extended (specifically to address the Vogtle plant in Georgia and the Summer plant in SC), and a credit was provided for carbon capture utilizations and sequestration. The extenders for 2017 included the 179d commercial buildings deduction, the 25C residential energy efficiency provisions, etc. There will be an effort to attach the tax provisions extended for calendar year 2017 on a must-pass bill in 2018. The first opportunity, the omnibus budget bill (see above) passed without including any of the extenders.

FERC NOPR

On January 8, FERC unanimously rejected the DOE NOPR to provide for “reliability” payments to generators that have a 90-day supply of fuel on site, (*e.g.,* coal and nuclear plants). The plants that would receive the payments have increasingly been “out of the money” (bid prices too high) in the ISO and RTO capacity auctions, and so are scheduled for near-term retirement. FERC instead ordered a new proceeding (Docket No. AD18-7-000) about reliability and ordered the ISOs and RTOs to make initial filings to begin a thorough examination of the subject.

In addition, during its February meeting (2/15/18) FERC approved a final rule requiring the ISOs and RTOs to account for energy storage resources by developing rules that acknowledge their operational support characteristics (Order No. 841) (FERC Docket Nos. RM16-23-000 and AD16-20-000). The plans must be submitted within 9 months. On the issue of allowing distributed energy resources to participate in the wholesale markets, FERC decided to hold a technical conference (scheduled for 4/10 – 4/11/18). FERC also issued a rule that requires all interconnecting generators to install an operational “governor” as a precondition for interconnection (FERC Docket No. RM16-6 dealing with primary frequency response). FERC also modified their model interconnection agreements.

Infrastructure Program

In mid-February, the Trump Administration outlined its infrastructure program that was delayed by the prolonged fight over the repeal of Obamacare and tax reform legislation. The basic concept of the Trump plan is to utilize $200 billion in re-purposed federal funds to support over $1.5 trillion in infrastructure development, with a large portion of private financing and 25% dedicated to rural infrastructure development. It appears that hydropower facilities and government-run electric infrastructure would be eligible for infrastructure funding.

Streamlined permitting, reduced time-frames for NEPA reviews, limits on the NEPA work of the Council on Environmental Quality (CEQ) and simultaneous environmental reviews by agencies with time limits, are all part of the White House initiative and part of the Republican packages (especially moving forward in the House). Amending NEPA, the Clean Water Act, the Clean Air Act, the Endangered Species Act and the Safe Drinking Water Act would face a 60-vote hurdle in the Senate.

NAESCO has been positioning ESPC as the most successful form of 3P program in the country, with more than $50 Billion of projects and more than $35 Billion of capital improvements in public facilities. We believe that ESPC is a good fit for the administration’s targeting of infrastructure investments in water and wastewater facilities and federal buildings. We will work to expand the program’s reach to state and local government facilities. We also emphasize that the private investment in ESPC projects is paid from savings, not from new tolls and fees. We are encouraged by the administration’s apparent embrace of performance contracting, evidenced by the release of the new IDIQ contracts and the LBNL estimate of a $300 Billion potential market for performance contracting, and are working to ensure that performance contracting is included

State Issues

On the state level, NAESCO is defending the ESCO industry against legislation in several states that would severely restrict performance contracting and is participating in long-term proceedings in California and New York to restructure ratepayer-funded energy efficiency programs and the utility business model.

Illinois

In 2016, NAESCO organized a group of ESCOs and their lobbyists to defeat legislation that was sprung on us at the end of the state legislature's session. The promoters of the 2016 legislation (primarily the state chapter of the American Institute of Architects) introduced the same legislation (SB 1287) in early 2017 and essentially similar legislation (SB 3198) this year. NAESCO organized a 2017 lobbying campaign, funded by a 9-member ESCO Working Group and represented by the lobbying firm McGuireWoods, and has continued that group into 2018. Our efforts, supported by a coalition of unions and environmental groups, bottled up the bill in the state Senate in 2017 and we are working for a similar result in 2018.

Wisconsin

Governor Walker’s budget was approved and includes a provision that revokes the Revenue Limit Exemption (RLE) for K-12 ESPC projects. The RLE allowed school districts that implement ESPC projects to avoid the referenda that are normally required to raise school district debt limits because ESPC projects pay for themselves from savings. As of January 1, 2018, all K-12 ESPC financing that involves debt instruments has to be approved by voters at regularly scheduled elections. The fate of the RLE was sealed when a school district put a $15 million ESPC project up for a voter approval in the spring and it was defeated. The district then went ahead with essentially the same project using the RLE. This was a slap in the face to the conservative legislators who sponsored the RLE revocation, because they believe that voters should approve all expenditures of taxpayer funds. These legislators are now sponsoring a second bill, SB 236, which appears to many ESCOs to eliminate ESPC in K-12 schools by requiring that all K-12 construction projects use traditional spec and bid procurement. This bill has passed the Senate, and NAESCO is working with ESCOs to oppose its passage in the House.

Ohio

The multi-year fight about the Ohio EERS and RPS continues into 2018. Several years ago, the state suspended the standards for two years. Last year, Governor Kasich vetoed legislation, heavily promoted by fossil fuel interest groups, that would have made the suspension of the EERS and RPS goals permanent. The legislation has been reintroduced in the 2017 legislative sessions, has already passed the House, and is now in the Senate Energy & Natural Resources Committee. NAESCO is working with the national Business Energy Coalition (see below) to defeat or substantially modify the legislation.

South Carolina

At the request of the Southern Environmental Law Center, an organization that NAESCO worked with a decade ago in North Carolina and South Carolina, NAESCO submitted letters to the House Judiciary Committee in support of energy efficiency programs to replace the capacity that was lost with the collapse of the Summer nuclear plant. To the surprise of many observers, the EE provisions passed out of the subcommittee, and is now in front of the full committee.

Business Energy Coalition (BEC)

NAESCO is working with a national organization of EE equipment manufacturers that includes Honeywell, Honeywell, Cree, Schneider, Whirlpool, UTC and Siemens; one ESCO (Ameresco) and two trade associations (NEMA and NAESCO) to fight legislation that would reduce or eliminate state EERS programs (e.g., Ohio and Connecticut). In 2017, the BEC was active in Connecticut, North Carolina, Nevada, Maryland, Virginia, Rhode Island and Ohio, submitting testimony, appearing in legislative hearings, and organizing lobby days in state capitols. So far this year, in addition to Ohio, BEC efforts have focused on Iowa, Virginia and Arizona.

California

We are waiting for CPUC decision on the 10-year EE business plans submitted by the utilities in January 2017 and subject to extensive stakeholder comments throughout throughout the year. So far, we have only a decision ordering the utilities to prepare for, but not issue, solicitations for the first round of Third Party (3P) programs. In compliance with this order, the utilities presented proposed standard contract language for comment. The review of the proposed language by other stakeholders was not favorable, and the utilities presented their revised proposal to stakeholders at a March 23 meeting of the California Energy Efficiency Collaborative (CAEECC). Meanwhile, the Commission has not announced a schedule for the release of its decision on the utility business plans or the beginning of Phase 3 of the general EE proceeding, which will re-examine the whole EM&V system.

NAESCO has joined the California Efficiency and Demand Management Council. We think that Council membership gives us a broader coverage of legislation and regulatory proceedings.

On the legislative front, the Council is pushing a bill (SB 1131) that will clarify and detail the requirements for Net Metered Energy Consumption (NMEC) that were established by AB 802 several years ago but have not been implemented by the CPUC. NMEC is important because it will allow for the wider use of existing conditions as the baseline for savings calculations. NAESCO is also supporting a bill promoted by Engie (formerly Opterra) that would allow for the expansion of net metering to customers that buy solar power from offsite facilities. The Council's lobbyist also told NAESCO that SB 518, which would extend the funding of SB 39 programs for school and college EE retrofits is tied up in the legislature because of the opposition of the California Teachers' Association (CTA), which wants the SB 39 money to go into general funding for schools, rather than be dedicated to EE.

New York -- Reforming the Energy Vision

The New York State Public Service Commission is in the middle of a proceeding to restructure the state's utility industry to enable customers to implement the full range of Distributed Energy Resources (DERs) -- EE, RE, DR, CHP, DG -- with utility support rather than resistance.

- The first stage of the proceeding established the fact that widespread DERs are technically feasible and valuable to all ratepayers, and the NY Public Service Commission (PSC) ordered each of the utilities to begin pilot DER programs.
- The second stage moves the utility revenue model away from the old centralized system, in which utility financial health and profitability are dependent on kWh throughput, to a system in which the utility acts as the operator for a complex network of DERs.
- The third stage is to get the utilities to invest stockholder funds into DER business initiatives, which would indicate that the utilities have embraced the new DER business model. The Cuomo Administration is putting pressure on the utilities to start making investments, but the utilities do not appear enthused.

It is important to note that while the PSC is moving ahead with this development, it is maintaining its commitment to NYSERDA and utility-administered EE and R&D programs, as well as to the DER financing initiative of the Green Bank. NAESCO served as part of the Best Practices Working Group, which surveyed EE programs around the country and made recommendations about initial programs that the utilities should implement. NAESCO also serves on the Advisory Board of Energize New York, the state’s PACE coordination agency.

Finally, in response to the appeals of NAESCO and many other stakeholders, Governor Cuomo recently announced a fast-track rewrite of the State Energy Plan that will, among other things, establish aggressive new EE goals for the state. NAESCO participated in a Public Service Commission roundtable in late February to develop suggestions for action steps, and emphasized the importance of Gubernatorial leadership, starting with an Executive Order, to push the MUSH market to implement all cost-effective EE.