NAESCO Advocacy Update
March 2017

NAESCO continues to work on several major programs and legislative issues that are important to the growth of the ESCO industry.

Performance Contracting Challenge
NAESCO continues to work with the FPCC to ensure the actual implementation of the $2 billion extension of the Challenge announced in October, 2016 with its new focus on both water and energy efficiency. FEMP has announced that federal agencies implemented $4.2 billion of ESPC and UESC projects by the end of 2016, exceeding the original $4 billion target.

Policy Agenda for the New Administration
NAESCO worked with the EE Strategy Group coalition to develop a "wish list" of EE programs for the new administration. The list includes a few measures that will benefit the ESCO industry, including the extension and expansion of tax incentives (179D and Section 48 renewables) and the extension and expansion of federal incentive programs for bonds used in ESCO projects (QECB, CREBs, QZAB, etc.), and the creation of a new incentive for bonds used to finance comprehensive projects to make public facilities resilient (EE + RE + DG + storage and microgrids).

179D Deduction
NAESCO had worked successfully for four years with a group of interested NAESCO members and the lobbying firms Van Ness Feldman and Prime Policy Group to secure the extension of the Section 179D deductions for energy efficiency work in commercial buildings. We got extensions that covered the 2014 through 2016 tax years, but there were no action on extenders at the end of 2016.

HUD Programs and Procedures
NAESCO and a number of ESCOs had established bi-monthly conference calls, hosted by HUD, to discuss several chronic problem areas in the HUD PHA ESPC program, including the difficulties of implementing ESPC projects with the Rental Assistance Demonstration (RAD) program that is changing the federal funding of PHAs, the lack of knowledge of local HUD staff and PHA managers about the HUD Rate Reduction Incentive program, and the HUD initiative to stimulate EE projects in federally assisted multifamily housing. HUD has postponed the first two calls in 2017, pending the installation of the new HUD senior management team led by Secretary Carson.

Clean Power Plan (CPP)
NAESCO had worked for three years with a group of ten ESCOs that developed a substantial White Paper and a number of formal comment documents that were submitted to the EPA. President Trump intends to unwind the CPP. The actual process

could take several years, because the CPP is based on federal court orders and an extensive record of EPA research and findings that must be challenged and reversed.

State Issues

NAESCO state advocacy has focused on four states where we have defended the industry against potentially damaging legislation, two states that offer legislative opportunities to improve ESCO industry opportunities in the short term, and two precedent-setting states where we are working to assure that multi-year proceedings to re-vamp energy efficiency programs and utility regulation offer new opportunities for ESCOs.

Illinois

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 2016 session. The promoters of the 2016 legislation introduced the same legislation (SB1287) this January, based on their claim that recent ESCO projects have implemented retrofits utilizing life safety and IAQ improvements which are not authorized in ESPC legislation. NAESCO has organized a 2017 lobbying campaign, funded by an 8-member ESCO Working Group, to fight the legislation.

Indiana

Apparently inspired by their colleagues in Illinois, the AIA in Indiana are trying to rouse support for a bill similar to IL SB1287.

Wisconsin

Governor Walker has introduced, as part of his budget package, a provision that would revoke the Revenue Limit Exemption (RLE) for K-12 ESPC projects. The RLE allows 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.

Ohio

In late December, Governor Kasich vetoed legislation that would have made the suspension of the state's EERS and RPS goals permanent. Unfortunately, the legislation has been reintroduced in the 2017 legislative sessions, and we anticipate that it will be pushed aggressively by fossil-fuel interest groups in the state.

Texas

Over the past couple of years, a phrase in the ESPC enabling laws – that government agencies can use all types of financing except for state loan funds -- has caused problems with the development of some projects, particularly for water and sewer agencies. The problem is that the language, which was inadvertently added to a rewrite of the enabling laws in 2013, precludes agencies from using the popular Loan Star revolving loan fund. NAESCO has assembled a group of interested ESCOs interested in promoting a legislative fix.

Michigan

Michigan passed a comprehensive energy bill that included increases in the state's EERS and RPS and other provisions that encourage utilities to promote the development of Distributed Energy Resources. The bill had been under development in the legislature for two years, with the active sponsorship of Governor Snyder.

California

In California, a multi-year proceeding of the CPUC that is re-working the structure of the ratepayer-funded EE programs has reached a critical phase. In mid-August, the CPUC issued its most recent decision specifying the content of the utility Business Plans, which will set the framework for a ten-year Rolling Cycle of programs, and will be followed by more detailed Program Implementation Plans. One of the major changes in the August decision is that the utilities were ordered to raise the percentage of third-party programs from the current minimum of 20% of the portfolio to a minimum of 60% of the portfolio by 2020. Third party programs are defined as programs <u>designed and implemented</u> by third parties, not designed by the utilities and bid out to third parties for implementation.

Utilities filed their Business Plans in January, and other parties filed their Responses and Protests on March 3. The Responses and Protests of NAESCO and a number of other parties said that the utility plans failed to conform to the CPUC guidance in critical areas – Third Party programs, doubling the state's implementation of energy efficiency (SB 350), and modifying the programs to recognize savings above existing conditions, with M&V based on normalized meter readings (AB 802).

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.

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 and Energize New York. 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.