NAESCO Advocacy Update December 2017

Overview

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

Federal Issues

On the federal level, NAESCO works with coalitions of national EE organizations to promote energy efficiency, renewables, distributed generation and demand response in federal legislation and federal regulatory rulemaking. The coalitions 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. In the spring, FEMP announced the next round of IDIQ awards to 21 ESCOs. NAESCO participated in the FEMP national webinar at which the awards were announced, and also at which FEMP announced a new study by the Lawrence Berkeley National Laboratory, which estimates the total national potential market for performance contracting at up to $300 Billion (SEE: LINK ON NAESCO WEBSITE). Finally, both the House and Senate 2018 Budget Resolutions contain provisions that resolve the ESPC "scoring" issue by directing the Office of Management and Budget (OMB) to count both costs and savings, rather than just costs.

179D Deduction

NAESCO and several member companies continue to work with Van Ness Feldman and Prime Policy Group to seek an extension of Section 179D.

FERC NOPR

The Department of Energy has filed a Notice of Proposed Rulemaking (NOPR), asking that the FERC modify the rules that govern the regional ISO and RTOs 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. DOE also asked for an extraordinarily fast proceeding schedule for the NOPR. There is significant opposition across the political spectrum to this NOPR, from EE and RE groups, environmental groups, and conservative free-market advocates. NAESCO joined with EE coalitions in the initial round of comments to FERC.

Infrastructure Program

The large infrastructure program that the Trump Administration had promised has been delayed by the prolonged fight over the repeal of the Affordable Care Act and the tax reform legislation. Last winter, the Trump Administration published a short outline of its proposed program: a $1 Trillion Public Private Partnership (3P) package that included about $200 Billion in federal funding, primarily tax incentives. There was substantial pushback from Senators and Governors from both parties that this type of program was more modest than they expected and would result in higher tolls and fees to repay the private investors who would provide 80% of the capital.

NAESCO has been promoting 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. 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 and believe that performance contracting will be included in the Trump infrastructure program, hopefully next year.

HUD Programs and Procedures

NAESCO and a number of ESCOs have had occasional 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.

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

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 (SB 1287) in early 2017. NAESCO organized a 2017 lobbying campaign, funded by a 9-member ESCO Working Group, to fight the legislation. Our efforts bottled up the bill in the state Senate, though it may stay alive during 2018. The ESCO Working Group is also modifying an RFP template for K-12 projects that has been drafted by the Illinois Association of School Business Officials (IASBO) to make it more usable for ESCOs.

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 will have to be approved by voters at regularly scheduled elections. These legislators are now sponsoring a second bill, SB 236, which would 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 organizing a group of ESCOs to fight it in the House.

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 or Connecticut). In 2017, the BEC has been 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.

Ohio

In late December 2016, Governor Kasich vetoed legislation, heavily promoted by fossil fuel interest groups, that would have made the 2013 suspension of the state's 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 Committee. NAESCO is working with the national Business Energy Coalition (BEC) to defeat this legislation.

Connecticut and Rhode Island

The state legislatures in both states are appropriating ratepayer funding for EE programs to fill holes in the states' general fund budgets. NAESCO worked with the Business Energy Coalition to oppose these funding cuts, and is now exploring whether it will be possible to revive the fix that funded EE programs the last time the Connecticut legislature grabbed the ratepayer funds. That fix allowed the utilities to borrow money to fund the programs, and the borrowing was repaid over several years through a ratepayer surcharge.

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. Utilities filed their 10-year EE Business Plans in January, and the CPUC ruled that the Plans had to be supplemented with additional information by mid-June. NAESCO and other parties believe that the Plans, as supplemented, do not conform to explicit CPUC guidance and rulings and have requested the Commission to address issues such as the minimum 60% of the portfolio that is to be outsourced to third parties, 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). We have gone through multiple rounds of comments on various issues, and the Commission has issued a Proposed Decision that orders the utilities to begin the bidding process for third party contracts, while deferring decisions on the other aspects of the proceeding.

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 persuade 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.