NAESCO Advocacy Update
Summer 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

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.

An area where the Administration is focusing, and where ESCOs could have an interest, is in the field of building to grid integration issues. The Administration is interested in trying to connect the R&D to deployment of new technologies. The introduction of new technologies, energy storage, cyber controls on energy management systems, micro-grids, two-way communication, the use of buildings for delivering energy in a timed manner, are all new areas where regulation is slipping behind technology development.

On 5/17/18 the White House issued an executive order on "Efficient Federal Operations." The order does not set forth an annual energy efficiency reduction goal, but orders the agencies to achieve annual reductions, implement energy efficiency measures and reduce costs. Section 2(d) explicitly encourages the use of performance contracting. Ninety days was given to prepare an agency plan, including consultation with CEQ and OMB.

Congress has also signed-off on the creation of the new CESER office (Cyber Security and Emergency Response office) at DOE, which was created out of the Office of Electricity. Large funding has been added in both the House and Senate to deal with cyber security.

The effects of the tax reform legislation passed in late 2017 on the ESCO industry are still developing. 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. Congress does not appear to have the stomach to move forward with another major tax bill at this time, beyond the significant tax reform that was passed in late 2017. After the mid-term elections there has been discussion of passing a tax extenders package, which could include the 179D commercial building energy efficiency tax deduction. A recent New York Times article on 179D has not been helpful in building support for 179D. The House Ways and Means Committee has also discussed making the personal income tax reductions "permanent" and reducing capital gains taxes. However, the Senate appears to be in no mood to deal with taxes before the election.

Energy Legislation

Issues that have moved forward in the House include hydropower permitting reform, natural gas pipeline siting and cybersecurity legislation. They are also interested in moving modifications to NEPA and the Public Utilities Regulatory Policies Act of 1978 (PURPA). Most of the legislation has been stymied in the Senate, where Senators' Murkowski and Cantwell are still interested in moving more comprehensive energy legislation (S. 1460).

The infrastructure proposal advanced by the Administration is mostly moribund at this time. The basic premise was a proposal to shift $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.

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 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 new sustainability Executive Order, the release of IDIQ contracts, and the LBNL estimate of a $300 Billion potential market for performance contracting.

Congress is focused on streamlined permitting by EPA, FERC and Interior for infrastructure development, including limiting the Clean Water Act, the Clean Air Act, the Endangered Species Act and the National Environmental Policy Act. Onshore energy development legislation and offshore development are at the forefront of Administration action and congressional action, though passage of final legislation will be tough.

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 2018. But we anticipate that the issue will continue into 2019, with the potential for a new Governor and continued interest in the legislature.

Ohio

The multi-year fight about the Ohio EERS and RPS has continued into 2018. In 2013, the state suspended the standards for two years. In 2016, 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 was reintroduced in the current legislative session, quickly passed the House in 2017, and has been in negotiation in the Senate for several months. The negotiation has been stalled by a scandal that involves dubious $1 Billion of state funding for a charter school operation, and an unrelated FBI investigation that caused the resignation of the House speaker. NAESCO is working with the national Business Energy Coalition to preserve the EERS.

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.

North Carolina

The state has had a successful, large-scale ESPC program for the last decade, which is distinguished from other state programs by a combination of promotion of ESPC across the state, rigorous state program rules and project oversight, and extensive project technical assistance. The state has just issued a draft set of new program documents for review. Written comments are due on June 18, and a mandatory meeting of pre-qualified ESCOS will be held on June 26. NAESCO plans to submit comments.

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 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

In California, a multi-year proceeding of the CPUC that is re-working the structure of the ratepayer-funded EE programs is moving ahead. On May 31, the CPUC adopted the second revision of its Proposed Decision that approves the utilities' and RENs' revised 10-year EE Business Plans with minimal revisions. The approval begins the run-up to the first round of bidding program design and implementation to Third Parties (3Ps), pending several more critical CPUC decisions, including the approval of standard contract terms and conditions and the procedures for Normalized Metered Energy Consumption (NMEC) calculation of energy savings using existing baselines. The program bidding is a two-stage process. The first stage is the submission of short program summaries, followed by detailed program proposals from selected first-round bidders. Best guess is that new programs will be in the field in early 2019.

Major EE issues still on the CPUC docket are the restart (after a 9-month hiatus) of the Working Group charged with streamlining the Custom Review process and Phase 3 of the EE proceeding, which will examine and probably revise EE program cost benefit analyses and EE program EM&V systems.

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, NYSERDA recently published a revision of the state's Energy Plan, which realizes Governor Cuomo's pledge to establish aggressive new EE goals for the state. NAESCO was invited to participate in a Public Service Commission roundtable 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.