NAESCO ADVOCACY UPDATE

December 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. These coalitions are holding a series of meetings this fall to prepare lists of EE priorities for the new Congress that convenes in January. One key focus is on maintaining the budgets for the programs in the Department of Energy that affect the ESCO industry.

Good news on the federal budget. The FY 2019 budget for the Department of Energy was passed in September. The Congress rejected the deep cuts to energy efficiency and renewable energy programs that were proposed by President Trump and directed DOE to maintain a diverse portfolio of early-, mid- and late-stage research within EERE. FY 2019 budget contains small increases for the Federal Energy Management Program (FEMP) and the Weatherization Assistance Program (WAP), and level-funds the State Energy Program (SEP) that provides funding to the state energy offices.

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. NAESCO has met with the Council on Environmental Quality (CEQ) to urge the administration to adopt specific goals for federal performance contracting and to include ESPC in the new Trump infrastructure program which will be released in early 2019.

The Trump Administration and the Federal Energy Regulatory Commission (FERC) are considering proposals to prevent the retirement of coal and nuclear plants which are being sidelined by lower-cost gas and renewables. Several states -- Illinois, New York, New Jersey and Connecticut have already passed legislation to subsidize the operation of in-state nuclear plants. How DOE could actually implement this request is an open question, as cost estimates range up to $35 billion.

A related issue in front of the FERC is complaints from gas generation owners that state Renewable Portfolio Standards (RPS) are distorting the competitive electricity supply markets. If a utility is obligated to provide 30% of its power from renewable sources, it will make bilateral contracts with wind farms or solar farms, reducing its need to buy power from the ISO or RTO auction markets and lowering the clearing prices in the auctions. FERC is allowing the ISOs and RTOs to propose solutions in litigated proceedings, such as making RE that is subsidized with federal tax credits be "price takers" in the auctions, it is not clear how FERC will establish a system that is fair to all participants.

What all of this means to ESCOs is that the forward price projections of electricity and gas (and the savings produced by an ESCO project) in some states may be more complex than it has been in the last few years, and ESCOs operating in those states will need to protect themselves from significant short-term price shifts.

In late November, House Ways and Means Committee Chairman Brady introduced another major tax bill with the intention of passing the bill in the December Lame Duck session. The Brady bill includes an extension of the 179D deduction, as well as other tax extenders, but there doesn't seem to be much appetite in the Senate for moving the bill forward.

Finally, there is increasing interest (and some mandates) from Federal customers for including resilience and cyber security into all future ESPC and UESC projects. The problem is how to pay for these measures, since they typically add costs without producing much, or any, energy savings. One of NAESCO's policy priorities is the development of standardized methodologies for valuing resilience, cyber security and other Non-Energy Benefits (NEBs) so that these values can be included in ESCO projects.

Energy Legislation and Regulation

Energy policy legislation, such as the Portman-Shaheen and Murkowski-Cantwell bills that would boost EE, have not made much progress in 2018. The Administration is pursuing a significant reduction in energy and environmental regulations, proposing to scale back the auto mileage (CAFÉ) standards, the mercury emissions rules, the methane gas discharge rules, and replacing the Clean Power Plan with a less stringent rule on power plant emissions. Each of these changes in is being contested in the courts, and so the ultimate outcome will not be known for some time.

US DOE ESPC MUSH Sector Working Group

The DOE Office of Weatherization and Intergovernmental Programs (OWIP) has convened a national Working Group to look at how to expand the use of ESPC in the MUSH market by addressing several perceived problem areas. The Working Group is composed of representatives from OWIP, FEMP, the Oak Ridge (ORNL) and Lawrence Berkeley (LBNL) National Labs, the Efficiency Valuation Organization (EVO - the international organization that maintains the IPMVP), NASEO, the ESC and NAESCO. One focus of the Working Group is M&V practices, particularly the lack of long-term M&V in many MUSH projects, which makes it difficult to demonstrate that projects are actually meeting their savings guarantees. As part of this effort, DOE has commissioned LBNL and ORNL to produce reports that promote long-term project M&V, using the FEMP ESPC program as an example. NAESCO is working to assure that the Working Group includes significant input from ESCOs to guide the development of these "best practices" resources, and to see the Working Group as an opportunity to expand the use of ESPC by MUSH market customers, rather than impugning MUSH market ESPC by focusing on a few problem projects.

State Issues

During 2018, NAESCO defended the ESCO industry against legislation that would severely restrict performance contracting in several states 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 would effectively eliminate ESPC in the K-12 market and 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 by the legislature.

A second issue in Illinois is an attempt by Exelon to put a damper on the growth of solar by asking the utility regulator (Illinois Commerce Commission) to restrict the net metering tariff to customers who own and operate their own systems. Customers who contract for solar power through a PPA would not be eligible for net metering. Customers would have to choose between the utility incentive and the tax credits that effectively lower the price of a solar PV system by about 30%. NAESCO is organizing a group of ESCOs to contest Exelon on this matter.

Ohio

The multi-year fight about the Ohio Energy Efficiency Resource Standard (EERS) and Renewable Portfolio Standard (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 during 2018. NAESCO is working with the national Business Energy Coalition to preserve the EERS.

Ohio also has completed a major Public Utilities Commission (PUCO) proceeding called "PowerForward" and has published a "Roadmap" for the transformation of the electric distribution system. The Roadmap is not designed to be an action plan, like the REV proceeding in New York (see below). It is described by PUCO Chair Asim Haque as a "conservative" document, designed to point the private sector to investment opportunities. See: https://www.puco.ohio.gov/industry-information/industry-topics/powerforward/

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. These provisions made some progress in the legislature, but are now stalled, pending a more comprehensive deal about who pays the multi-billion-dollar costs of the nuclear plants and the potential sale of one or both of the utilities that incurred the costs.

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 issued a draft set of new program documents in the spring, and after significant pushback from NAESCO and NC ESCOs, modified the documents to reduce their negative impacts on ESCO projects.

Business Energy Coalition (BEC)

NAESCO is working with a national organization of EE equipment manufacturers that includes 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 or increase EERS programs. So far this year, in addition to Ohio, BEC efforts have focused on Iowa, Virginia and Arizona, Pennsylvania, and North Carolina.

Florida

The Florida Department of Management Services (DMS), which for years has maintained the state list of pre-qualified ESCOs, issued an RFP to renew in late 2017. Selected ESCOs were announced in January of 2018 and posted on the DMS website for a few days. In mid-March 2018, DMS issued a notice, without explanation, that all of the ESCO proposals had been rejected. This action makes it impossible for state agencies to do new ESPC projects and undermines the local government and K-12 markets, which had relied on the DMS list to identify qualified bidders for their projects. NAESCO contacted the Florida Office of Energy and was told that DMS dropped the ESCO list because state agencies are not doing ESPC projects. So the Office of Energy has shifted away from state projects and is trying to facilitate local government and K-12 projects by posting a link on its website to the list of NAESCO accredited ESCOs, so that local government customers can have a list of ESCOs that have passed a rigorous screening process. The link to the NAESCO list can be found at this URL: https://www.freshfromflorida.com/Energy/Florida-Energy-Clearinghouse/Energy-Service-Businesses. NAESCO plans to approach the new governor and his staff in early 2019 to attempt to get the state buildings ESPC program back on track.

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. The CPUC has adopted the second revision of its Proposed Decision that approves the utilities' and Regional Energy Networks' (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, Workforce Quality Standards for large projects, the approval of the utilities Annual Budget Advice Letters (ABALs), and the procedures for Normalized Metered Energy Consumption (NMEC) calculation of energy savings using existing baselines. The CPUC has recently issued approvals on Resolution E-4939 (Track 2 Working Group on Custom Measures Projects) and E-4952 (DEER Updates) and a decision on Workforce Standards and Standard Third-Party Contract Terms. NAESCO is working with the California Efficiency and Demand Management Council (CEDMC), the statewide organization of EE companies, with filed comments that are in the Briefing Book in the “Members Only” section of the NAESCO website.

As these issues are being sorted out, utilities and other Program Administrators have begun the process of competitively procuring program design and implementation by Third Parties (3Ps). This means that instead of third parties competing to implement utility-designed programs, 3Ps will compete to design and implement their own programs. This new program structure may offer new opportunities for ESCOs and may well be copied for new programs in other states. The process involves two stages. The first stage is a Request for Abstracts (RFA), short program summaries, followed by RFPs for detailed program proposals from selected first-round bidders. Our current estimate is that RFPs will be out in the first half of 2019, with new program implementation starting in late 2019 or early 2020. Here is a link to the solicitation schedules: https://www.caeecc.org/third-party-solicitation-process

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 involves the utilities’ filing updated Distributed System Information Plans (DSIPs), which are designed to facilitate the participation of ESCOs and other Distributed Energy Resources (DERs) in the electric system.

Each utility is posting its 2018 DSIP on its website and holding informational meetings and webinars for interested stakeholders. The utilities seem to be committing significant investment to roll out advanced metering systems and interactive information systems that display on network to help ESCOs locate DERs. Please see the New York Joint Utilities website for information on the individual utility DSIPs: http://jointutilitiesofny.org/system-data/#tab-1497664740388-11-3