Federal COVID-19 Legislation

Both houses of Congresses have adjourned until April 20th, so that members do not have to travel or congregate in the Capitol for votes, hearings, etc.

Congressional activities during March were focused on relief of the COVID-19 pandemic. Three pieces of legislation, generally known as COVID-1, COVID-2 and COVID-3, have been enacted. Senate Majority Leader McConnell has stressed that these bills are rescue bills, not stimulus bills. They are designed to ensure that individuals, small businesses, and certain industries that are virtually out of business (e.g., airlines and hotels) can survive the initial tsunami of the coronavirus.

The House has already begun work on a COVID-4 bill, which would include extensions of some of the extraordinary relief for individuals (direct payments to low and moderate-income taxpayers and expanded unemployment benefits), state governments and stimulus measures, including tax incentives, to re-start critical industries. NAESCO is working with the Energy Efficiency Strategy Group (EESG), a DC-based coalition of about 20 national organizations, to assemble a package of stimulus measures for the COVID-4 legislation. A summary of this package is on the following page.

EESG members have agreed that, in addition to circulating the full list of stimulus measures, each member organization will promote its priorities to the appropriate Congressional offices. NAESCO focusing on a program to provide modest incentives for MUSH market ESPC projects that can quickly get into construction. We believe that there are $8-10 Billion of these projects in development that could be pushed to immediate implementation by a short-term (e.g., 12-month) incentive.

Federal FY 2021 Budget

Jeff Genzer, NAESCO’s General Counsel, reports that

*The appropriations process has been thrown into disarray by the coronavirus. The Appropriations Subcommittee members and staff are focused on FY’20 supplemental appropriations to address the virus. It is very likely that they will move to a continuing resolution (CR) for FY’21, based on FY’20 funding, except for coronavirus needs.*

NAESCO is working with the EESG and the other organizations to communicate to the Appropriations Subcommittees with position papers and letters. In this kind of environment, every industry is scrambling for funding and special treatment. So we do not want to lose visibility, and want to ensure that our priority EE and RE budgets are preserved.

Federal Energy Legislation

A long-awaited Senate floor action on comprehensive energy bill was stalled over a fight about restricting HFC emissions. It appeared that a majority of Senators favor the bill, but further action is indefinitely postponed.
COVID-4 Emergency Stimulus Legislation
Summary of Energy Efficiency Strategy Group Recommendations

Energy efficiency (EE) is a key component of the infrastructure program that will enable the nation to recover from the economic effects of COVID-19, restart the economy, and improve the long-term competitiveness of American businesses and manufacturers. EE reaches all sectors (residential, commercial, industrial and public/institutional), all geographic areas and all income levels. EE delivery capability -- private-sector companies, workforce, and enabling federal and state laws and regulations -- already exists across the country and can be jump-started or accelerated with the immediate infusion of federal investment. The list below describes short and medium-term opportunities that are available from EE investments.

1. Energy Efficiency Tax Incentives
Re-authorize, expand and/or extend tax credits and deductions, including 25c, 179d, 45L(?)
Private Activity Bonds, CREBs, QECBs, Build America Bonds, Qualified School Construction Bonds, Qualified Zone Academy Bonds, and New Clean Renewable Energy Bonds (CREBs).
Reauthorize(?) Qualified Energy Conservation Bonds (QECBs).

2. Low Income Utility Assistance and Weatherization
Ensure that low-income Americans can pay their energy bills during the economic slowdown by increasing the LIHEAP appropriation to $5.1 Billion and the WAP appropriation to $5 Billion.

3. Retrofit of Homes and Apartment Buildings
Reauthorize and expand 25c, 25L. Reauthorize the State Energy Efficient Appliance Rebate Program to re-start the domestic appliance manufacturing industry. Provide immediate online and virtual training programs to improve worker skills until they can get back into residences.

4. Improve the Competitiveness of Private Industrial and Commercial Facilities
Reauthorize, expand and extend Private Activity Bonds, (others?), and 179d. Authorize grants and loans to small businesses and manufacturers to improve their long-term productivity.

5. Protect and Improve Public Facilities
Provide an immediate appropriation of $45 Million to State Energy Offices to enhance their ability to identify and resolve short-term utility and energy industry emergencies (e.g., critical workforce absences). Provide grants and loans to critical care facilities to enable them to immediately expand and upgrade facilities to treat COVID-19 patients and to operate through storms, floods, cyber attacks and other threats to their resiliency. Accelerate the implementation of billions of dollars of planned retrofits of schools and universities that will have reduced occupancy through the summer. Accelerate the implementation of $10 Billion of identified, cost-effective retrofits to federal civilian and military facilities, by leveraging private investment through an expansion of the AFFECT program. Authorize AFFECT-type programs for state and local government facilities. Authorize grants, loans and guarantee facilities for state revolving loan funds, green banks and other financing facilities for state and local government facilities.
State and Regional Advocacy

Since most of the country is on some form of lockdown, there is significantly reduced activity in state legislatures or regulatory agencies. The initiatives that NAESCO has been working on in Illinois, Michigan, Ohio, Wisconsin and Minnesota are on hold until the lockdowns ease up and the legislatures go back into session. So perhaps this is a good time to think about developments in California and the PJM Regional Transmission Organization (RTO) that may significantly affect the economics of ratepayer-funded EE programs, and thus the economics of ESCO projects.

California – Reduced Avoided Cost of Power

The value of utility EE incentives is a function of the long-term Avoided Cost of the power that an EE retrofit replaces. For example, if it costs the utility $.10/kWh to supply power to a customer, the EE program pays a fraction of that cost, perhaps $.05/kWh, as an incentive for retrofit that eliminates the need for that $.10/kWh power. For years, the Avoided Cost has been roughly based on the cost of adding new gas plants, either peakers or combined cycle, depending on the jurisdiction. Recently, the CPUC has decided that it is not realistic, given the phenomenal growth of renewable generation, to base the cost of new generation for the next 10 years on gas plants, and has substituted a combination of renewables and storage. The problem is that this substantially changes the value of EE. Mid-afternoon summer peaks, which have strained the generating fleet and caused dramatic spikes in energy prices, are being replaced by the Duck Curve, which has morning and evening peaks, and a low point in mid-afternoon when the solar generation is running at full capacity. On many days in California, there is so much solar available that the avoided energy cost is literally zero. This change, as well as the elimination of virtually all lighting incentives, has caused SoCal Edison and PG&E to reduce their 2020 EE budgets by more than $200 Million, because their old programs are no longer cost-effective. The brunt of these reductions has fallen on large C/I, institutional and industrial programs, the sweet spot for the ESCO industry. So ESCOs may have to re-think some of their market targeting and retrofit strategies, to take advantage of the new utility EE incentive structures.

PJM – Minimum Offer Price Rule (MOPR)

A variation of this issue of long-term Avoided Costs is now playing out in the PJM RTO territory, which operates the transmission grid for a huge section of the mid-Atlantic and Rust Belt (Think DC to Chicago). The issue may seem a little far removed, and is more complicated than the CPUC proceeding on Avoided Costs, but it will ripple through to the ESCO business. PJM is responsible for balance supply and demand on the grid, which they do by making load projections and then holding periodic auctions for generators to supply the power needs that are not covered by bi-lateral contracts between distribution utilities and the owners of generation. The auctions work by stacking generator bids, from the lowest to the highest bid prices, and then accepting all of the bids up to the maximum load that
PJM forecasts. The highest accepted bid sets the “clearing price” that all winning bidders get.

This auction system worked reasonably well until a couple of years ago, when several states, including New Jersey, Ohio and Illinois, began subsidizing low-carbon generating plants (typically nuclear and renewables) to meet state carbon reduction goals and preserve employment at the plants. The subsidies allow the selected generators to lower their bid prices, so they can be assured of getting under the auction clearing prices. States provided these subsidies after several PJM auctions in which nuclear plants finished “out of the money” and the plant owners threatened to shut them down, eliminating jobs and a substantial portion of the region’s low-carbon generation. This was not a hollow threat; FirstEnergy’s generating company, which owns a number of nuclear plants and high-cost coal plants, went bankrupt.

Generators that do not receive the subsidies, because they are not in the right states or do not qualify as “low carbon” protested to the Federal Energy Regulatory Commission (FERC), which delayed the auction schedule and issued an order for a Minimum Offer Price Rule (MOPR), which seeks to ameliorate the effects of the state subsidies, but offended those on the other side of the argument -- states that offer subsidies, owners of subsidized generators and some environmental groups. FERC has recently issued Guidelines for the application of the MOPR, which seems to have gotten grudging initial acceptance from the opposing parties. The issues are still being litigated, and the real test will be the first auction that uses the new rule.

What this means for ESCOs is that the long-term utility rates will be more difficult to project, because they involve both market and political factors (e.g., a state either adds or cancels a subsidy for renewables), which can change the utility load curve and peak periods, and thus change the value of certain retrofits and/or certain market segments. For example, as increased renewable generation pushes the summer peak from mid-afternoon to evening, basic lighting and HVAC retrofits may be more valuable in small C/I than in large C/I.

NAESCO is active in or is monitoring these proceedings, to make sure that the interests of our members are protected and that we can inform members of significant developments.