

END-OF-YEAR LEGISLATION SUMMARY

Energy Bill (“Energy Act of 2020”)

As part of the final massive end-of-year legislative package, Congress included the first major energy bill since the American Recovery and Reinvestment Act (ARRA) in 2009, and the first major energy authorizing bill since the Energy Independence and Security Act of 2007 (EISA). Unfortunately, the legislation did not include the reauthorization of the State Energy Program (SEP), due to the elimination of the entire cybersecurity title of the energy bill because of objections from the Department of Homeland Security (DHS). Apparently, DHS at the senior staff level, has never liked the Department of Energy’s involvement in cybersecurity and extensive energy security matters, even though DOE and the states have extensive involvement already through Energy Support Function 12 (ESF-12). DHS objected to the energy provisions of the FAST Act in 2015, and this time they sent a letter to Capitol Hill (cleared by OMB), without DOE’s approval or concurrence. You may recall that the SEP reauthorization was tied to the addition of cybersecurity and physical energy security planning language (and language setting forth requirements for state energy offices to develop energy security plans). The SEP legislation was a bipartisan bill supported by both the Senate Energy Committee (S. 2094 – sponsored by Sen. Gardner [R-CO] and Senator Bennett [D-CO], and supported by Senate Energy Chair Murkowski [R-AK] and Ranking Member Manchin [D-WV]) and it passed the House on two occasions through unanimous consent and a voice vote (HR 2114, sponsored by Rep. Rush [D-IL] and Rep. Upton [R-MI])(the Energy Subcommittee leads), and supported by House Energy and Commerce Chairman Pallone [D-NJ] and Ranking Member Walden [R-OR]). The SEP reauthorization had also been included in the House infrastructure bill (HR. 2) and the House Energy bill (HR. 4447). NASEO has communicated with the remaining bill sponsors and they intend to reintroduce the legislation and move it forward. The underlying SEP statute does not sunset and the fact that a specific number has not been included in the authorization for appropriations is not a limiting factor in the actual appropriations level. As noted separately in this memorandum, the final SEP appropriations for FY’21 is \$62.5 million (equal to the FY’20 funding level).

The legislation did reauthorize and reform the Low-Income Weatherization Assistance Program (WAP), including the addition of the “innovation” program at a maximum level of \$25 million/year (see Section 1011, pages 789-803). NASEO has worked on that legislation since 2011. Other elements of the WAP reauthorization include defining “Weatherization materials” to include renewables, increasing the administrative costs to 15% from 10%, permitting greater use of private contractors and allowing “reweatherization” of homes after 15 years.

In addition, the legislation includes a program to promote energy storage (the “BEST” Act)(S. 1602), which includes a demonstration program that has state energy offices as eligible entities (Section 3201, page 1005). Energy storage and microgrid assistance is also authorized for municipal utilities and rural electric cooperatives. The bill adds R&D provisions for water (Section 3001), hydropower (Section 3005), solar (Section 3004), wind (Section 3003), geothermal (Section 3002), marine energy, nuclear (Title II, Sections 2001-2008) and carbon capture utilization and sequestration. The legislation officially authorizes the Federal Energy Management Program (FEMP) at DOE (Section 1012). The bill includes a provision to encourage coordination of school energy efficiency programs (Section 1001). A separate deal was achieved to implement a 15-year phase down of hydrofluorocarbons (HFCs). The pipeline safety legislation was reauthorized for five years in the final package and it requires companies to

include advanced technologies for methane leak detection in their efforts (the Pipeline and Hazardous Materials Safety Administration [PHMSA] is an agency within the Department of Transportation). The pipeline safety bill will also require regulation of approximately 100,000 miles of “gathering” facilities for the first time. The DOE loan guarantee program established originally in Title XVII of EPACT 2005 was also modified. On the appropriations side, \$1.9 billion of loan authority was rescinded under the advanced vehicle technology loan program (see Energy and Water Development Appropriations Report, page 103). R&D for industrial energy efficiency is expanded (Section 6002) and a “smart manufacturing” plan is required (Section 6006). Senator Murkowski also got an R&D program for critical minerals included (Sections 7001 – 7003). The Federal Energy Regulatory Commission (FERC) will finally have to implement an Office of Public Participation and figure out a way to fund it within 180 days. This effort was led by Senator Shaheen (D-NH). Wind, solar and geothermal energy producers should be able to gain greater access to federal lands, with national goals set by 9/22 and the issuance of permits for 25 GW of clean generation by 2025 (Section 3104). The legislation would also establish a new program of R&D for “new uses for coal,” as well as expanded carbon capture utilization and sequestration (CCUS) R&D, and a study of “blue hydrogen” (Sections 4001-4008 and 5001-5002).

Title VIII addresses grid modernization. While there are a number of provisions, the bill authorizes RD&D activities to integrate both renewables and EVs onto the grid (Section 8004) and directs the Secretary of Energy to coordinate grid modernization efforts with utilities, states, and others (Section 8006). A new grant program for grid modernization, including distribution system technologies, is established (Section 8007). “Model pathways” (voluntary) for grid modernization to advise states and others is also established (Section 8008), as is a voluntary technical assistance effort for states and regions to assist in electricity distribution planning (Section 8010), which should build on the work of the joint NASEO-NARUC task force.

The bill establishes an Office of Technology Transitions, including a focus on technology commercialization (Section 9001) and reauthorizes the Technology Commercialization Fund from EPAct 2005 (Section 9003).

The loan program under EPAct 2005 (Title XVII) is modified through Section 9010 to: (a) defer the collection of fees until financial closing (this has been a huge barrier); (b) expand project eligibility; and (c) expand outreach.

ARPA-E’s mission is also expanded to address reliability, resilience, energy infrastructure security and nuclear waste clean-up (Section 10001).

Overall, the bill authorizes (but does not appropriate) \$35 billion for energy programs.

Under Senate Republican rules, Chair Murkowski is stepping down as Chair of the Senate Energy Committee, and she worked hard to get a “legacy” energy bill through Congress. Senator Barasso (R-WY) is taking over as either Ranking Member or Chairman of the Committee (if the Republicans retain control of the Senate). Ranking Member Manchin (D-WV) will remain in his role on the Committee, either as Chairman or Ranking Member. On the House side, with the retirement of Energy and Commerce Committee Ranking Member Walden (R-OR), the new Republican Ranking Member will be Cathy McMorris Rodgers (R-WA).

Final Omnibus Appropriations

The 12-bill omnibus appropriations package funds the federal government for the entirety of FY'21 and totals approximately \$1.4 trillion. In the energy area, most of the programs were funded close to FY'20 funding levels for FY'21. SEP was level-funded at \$62.5 million and Weatherization received a slight increase to \$310 million (with \$5 million for technical assistance). The major program categories of interest to the states received the following funding levels: a) Energy Efficiency and Renewable Energy (EERE) division at DOE received \$2.864 billion; b) Fossil Energy division received \$750 million; c) Nuclear received \$1.5 billion; d) Office of Electricity received \$211 million; e) Cybersecurity, Energy Security and Emergency Response (CESER) office received \$156 million; f) Northeast Home Heating Oil Reserve received \$6.5 million; g) EIA received \$127 million; and h) the Office of Indian Energy Policy received \$22 million.

Division D of the omnibus appropriations bill contains the report language for the annual Energy and Water Development Appropriations bill for 2021.

The report directs DOE to submit an energy storage R&D roadmap within 180 days of enactment (Report, page 60).

The DOE Energy Star program is directed to continue in its present form, without putting in place the Trump Administration's plan to dismantle it (Report, page 65).

Within EERE, vehicle technologies, \$40 million is provided for Clean Cities (Report, page 66), with an additional \$20 million for up to five community partner EV projects. Hydrogen and fuel cell technologies will receive \$175 million. \$805 million is provided for transportation.

On the renewable energy side, \$280 million was provided for solar energy. DOE is directed to fund the National Community Solar Partnership Program at the \$5 million level, and to provide TA to state and local governments to enhance community solar (see Report, page 69). Wind energy programs will receive \$110 million, and offshore wind programs are prioritized. For water power, \$109 million is provided for marine and hydrokinetic power and \$41 million for hydropower, for a total of \$150 million (Report, page 71). Geothermal will receive \$106 million.

In the energy efficiency area: (a) AMO will receive \$396 million (Report, pages 73-76); (b) Buildings will receive \$290 million, including \$10 million for Building Energy Codes, \$30 million in support for building-to-grid integration, \$8 million for "connected communities" (Report, pages 76-77); (c) FEMP will receive \$40 million, and \$2 million is again provided for the Performance-Based Contract National Resources Collaborative; and (d) \$377.5 million for WIP (Report, page 78), including \$310 million for WAP and \$62.5 million for SEP. Funds are also provided for a \$3 million cross-sector "Energy Transition Initiative," to work with community-based organizations. Language is included in the report to recommend streamlining policies where weatherization funds are provided from other sources (such as LIHEAP). Language is also included to encourage states to get WAP funds out "as quickly as appropriate."

ARPA-E has received \$427 million (Report, page 103).

At EPA, within the Interior and Environment Appropriations Bill, \$39 million was explicitly provided for Energy Star and the Committee rejected the fee-based mechanism proposed by the Trump Administration. (Division G, Interior Report, page 58).

COVID-19 Legislation

The final COVID-19 relief bill had very limited energy provisions, though it did create a new LIHEAP-like program for low-income water and wastewater bill arrearages. \$638 million is provided for this program to the states and tribes (3% for the tribes), and the funds will be distributed to the states for use to help owners or operators of public water and wastewater systems. \$3.75 billion was provided for LIHEAP with a one-year shut-off moratorium.

Energy Tax Provisions (Part of Division EE, starting on p. 4870)

The commercial buildings energy efficiency tax deduction under 179d of the Internal Revenue Code was made permanent and retroactive, with an inflation adder (Section 102, pages 4872-4874). The solar investment tax credit (ITC) (Section 45(d) of the Internal Revenue Code [IRC]) was extended for two years, so it will be 26% for 2020, 2021 and 2022, and 22% in 2023 (with a “placed in service date” of 12/31/25) (Section 132, pages 4907-4909) (Section 48 of the IRC). For the wind production tax credit (PTC), it was extended for one year. The wind PTC is 60% for 2020 and 2021 (for 10 years) and this is roughly worth \$15/mWh (Section 131, pages 4906-4907). The offshore wind investment tax credit of 30% was extended from 2017 – 2025 (Section 204, pages 4922-4923) (Section 48(a) of the IRC). No credit was put in place for energy storage nor was there a cash benefit (similar to Section 1603 of ARRA) enacted in lieu of tax credits for renewables. The EV tax credit of \$7500/vehicle for up to 200,000 vehicles/manufacture was not modified. Tesla and GM have already exceeded this level of vehicle production. The 45Q tax credit to support carbon capture and utilization was extended for one year so that projects would receive the benefits so long as the projects start before the end of 2025 (Section 121, page 4905).

Other tax extenders include: (a) second generation biofuels production credit through 2021 (Section 40(b) of the IRC) (Section 140, page 4912); (b) non-business energy property through 2021 (Section 25C) (Section 141, page 4912); (c) qualified fuel cell motor vehicles through 2021 (Section 30B of the IRC) (Section 142, page 4913); (d) alternative fuel refueling property credit through 2021 (Section 30C of the IRC) (Section 143, page 4913); (e) 2-wheeled plug-in EV credit through 2021 (Section 30D of the IRC) (Section 144, page 4913); (f) energy efficient homes credit through 2021 (Section 45L of the IRC) (Section 146, page 4914); (g) extension of excise tax credit relating to alternative fuels through 2021 (Section 6426(d)(5) of the IRC) (Section 147, page 4914); (h) extension of residential energy-efficient property credit and inclusion of biomass fuel property expenditures through 2023 (Section 25D of the IRC) (Section 148, pages 4715-4717); and (i) waste energy recovery property eligible for energy credit, with construction to begin before 1/1/24 (Section 48(a) of the IRC) (Section 203, pages 4920-4922).

Conclusion

We will also be discussing the legislation at the next NASEO Governmental Affairs call (1/28/21 – 2:30 pm – ET) and the virtual NASEO 2021 Energy Policy Outlook Conference (2/2 – 2/5/21).