Resolution 23-06
Sponsors: Northern California Power Agency; City of Healdsburg

In Support of Refundable Direct Pay Tax Credits for Public Power

After years of effort, public power utilities secured access to the value of energy tax credits through the Inflation reduction Act. The new law allows tax-exempt entities to claim most energy-related tax credits as a refundable direct payment tax credit.

In addition to the fundamental question of whether a particular facility or asset qualifies for an energy tax credit, access to refundable direct pay tax credits and the value of the underlying tax credits will depend on a number of additional factors, including domestic content rules, wage and apprenticeship requirements, the location of the facility in certain energy communities, and the extent to which the facility is financed with tax-exempt debt.

The regulatory authority granted to the Department of Treasury and Internal Revenue Service in implementing the new law is quite broad. This breadth of authority could be used to simplify compliance with these multiple layers of requirements. Likewise, rules and regulations could be drafted to allow flexibility in the use of this new tool. Conversely, this authority could be used to add additional complexity to an already complicated regime and decrease flexibility. Complexity and inflexibility will add millions of dollars of cost to large projects and could prevent smaller projects from advancing at all. This will hurt public power utilities' ability to economically own and operate tax creditable facilities, including wind, solar, hydropower, nuclear, carbon capture, and energy storage facilities—and will require engagement with a third party to construct such facilities.

Further, the new law protects refundable direct pay tax credits from sequestration due to the Budget Control Act—the sequestration responsible for cutting payments to Build America Bond issuers today. However, the law does not protect refundable direct pay tax credits from sequestration resulting from the Statutory Pay-as-You-Go Act. While Congress has not allowed "PAYGO" sequestration cuts to take effect in the past, it has yet to definitively wipe the current "PAYGO" scorecard clean, leaving refundable direct pay tax credit payments and other mandatory spending programs vulnerable to cuts after January 2025 until September 2031.

NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association (APPA) believes that the Department of Treasury and Internal Revenue Service (IRS) should work to simplify the compliance costs associated with navigating the multiple layers of requirements for qualifying for, and calculating the value of, refundable direct pay energy tax credits, which will be essential to maintaining critical baseload generation and spurring investment in the future power supply needed to fuel our nation's economy; and

BE IT FURTHER RESOLVED: That APPA believes that the Department of Treasury and IRS should work to ensure that rules and regulations provide flexibility in implementing refundable direct pay tax credits to allow for innovation and evolution in the use of this new tool; and

BE IT FURTHER RESOLVED: Congress should abandon the indiscriminate, across-the-board spending cuts imposed by sequestration and so remove the needless threat of statutory Pay-As-You-Go Act sequestration from refundable direct pay tax credits.