



April 20, 2020

Overview of the Federal Legislative Response to the COVID-19 Pandemic

Summary

Congress has passed and the President has signed into law three legislative responses to the ongoing COVID-19 pandemic. Some aspects of these bills have been helpful to public power, including provisions intended to help utility customers pay their bills, steps to ensure liquidity in municipal credit markets, and direct aid to states and local governments responding to the pandemic. Work on a fourth bill to shore up funding for a small business grant program is already underway, and subsequent legislation focused less on emergency response and disaster mitigation – and more on economic recovery – is expected.

APPA's top priorities in the ongoing pandemic are that public power utilities have the physical, logistical, and financial resources to continue to operate while keeping their workers safe. Logistical and operational concerns are largely being addressed through our interaction with various stakeholder groups and federal departments and agencies. Financial concerns are largely being addressed through legislation. In this arena APPA is working with congressional committee and member staff on:

- Suspension of power shutoffs and the implications for public power;
- Direct financial assistance to public power utilities;
- Increased funding for the Low-Income Home Energy Assistance Program (LIHEAP);
- Access to payroll tax credits for emergency paid sick leave and paid family leave;
- Enhancements to tax-exempt financing; and
- Ensuring emergency appropriations for the Power Marketing Administrations (PMAs), Army Corps of Engineers (Corps), and Bureau of Reclamation (Bureau) are non-reimbursable from preference customers

A more detailed discussion of the above follows.

Congressional Action to Date

The Coronavirus Preparedness and Response Supplemental Appropriations Act (Public Law No: 116-123) was enacted on March 6 and provided \$8 billion in emergency supplemental spending to aid in the

response to the pandemic. The Families First Coronavirus Response Act (FFCRA) (Public Law No: 116-127) included an additional \$8 billion in emergency appropriations, imposed new paid sick leave and paid family leave requirements on public and private employers, and provided as much as \$100 billion in payroll tax credits to private employers to offset the cost of these new requirements. Finally, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No: 116-136) enacted on March 27 dwarves these bills in size and scope, and included:

- \$340 billion in new emergency supplemental appropriations;
- \$600 billion in tax cuts – split roughly evenly between individual “rebates” and business tax breaks;
- \$500 billion for Treasury’s Economic Stabilization Fund for loans and loan guarantees to businesses, states, and local governments;
- \$260 billion in additional unemployment insurance;
- \$350 billion in “loan forgiveness grants” to small businesses; and
- \$150 billion for a state and local coronavirus expenditure fund.

Few of the provisions in these bills directly target public power, but many will benefit public power. To give our members a better idea of the scope of these provisions, below we provide an overview of the various provisions we believe to be of interest to public power. We will also discuss several issues of importance to public power that have not yet been included in either legislative or administrative action, but still may emerge in subsequent actions, including APPA’s priorities for such actions.

Issues of Interest to Public Power in Legislation Enacted to Date

Emergency Paid Sick Time and Paid Family Leave

FFCRA imposes new paid sick time and paid medical leave requirements on private employers with fewer than 500 employees and government employers of all sizes. Under the act, employers must provide two weeks of sick leave for a number of coronavirus-related absences – with the rate of pay depending on the nature of the reason for being absent. Additionally, employees can receive paid family leave equal to two-thirds their normal rate of pay if they are staying home to take care of a child whose school has closed as a result of the pandemic. [Department of Labor guidance](#) regarding the definition of an “emergency responder” has been read by some utilities to indicate that electric power utility workers can be exempt from both the sick leave and paid family leave requirements. However, while FFCRA provides a payroll tax credit to offset the cost of these new requirements to private employers, government employers are not allowed to receive such credits.

Paycheck Protection Program

A key issue for public power during the pandemic is the ability of financially stressed customers to pay their bills. Small businesses may be especially strapped, facing reduced demand for their goods and services and possibly few reserves to pay ongoing costs. To help these small businesses, the CARES Act (section 1102) creates the Paycheck Protection Program (PPP), which authorizes up to \$349 billion for new small business loans. PPP loans are available at low rates and for up to 10 years. The CARES Act provides that small businesses, 501(c)(3) charitable organization, 501(c)(19) veterans organizations, and tribal business enterprises qualify for the PPP. As units of government, public power utilities do not qualify for these loans.

Nonetheless, PPP is not without potential benefit to public power. Recent [Treasury Guidance](#) has said that at least 75 percent of loan proceeds must go to wages, but additional qualifying purposes for these loans include electric utility payments, rent, and mortgage payments. Additionally, these loans will be forgiven insofar as the small business can document that have used these funds for these qualifying purposes, again including utility payments.

Emergency Unemployment Relief for Governmental Entities

Most Indian Tribes and governmental entities do not pay per-worker unemployment taxes. Instead they have “reimbursable arrangements” with state unemployment programs, which require them to reimburse the state for 100 percent of the cost of unemployment compensation paid to their furloughed or laid off workers. Under CARES Act section 2103, the federal government will pay 50 percent of the reimbursement for unemployment compensation paid from March 13, 2020 (when the President first declared the pandemic to be a national emergency), through December 31, 2020.

Delay of Payment of Employer Payroll Taxes

CARES Act section 2302 allows employers, including governmental employers, to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. The delay applies to payments due after the date of enactment and before January 1, 2021. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021, and the other half by December 31, 2022.

Economic Stabilization Fund

Out of concern that access to lending will be difficult and/or costly for many borrowers, the CARES Act (Subtitle A—Coronavirus Economic Stabilization Act of 2020) authorizes \$500 billion “to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of

coronavirus, throughout the pandemic.” While the Federal Reserve had already taken some [steps](#) to stabilize municipal credit markets, the CARES Act specifically directed the Treasury Department to “endeavor to seek the implementation of a (loan) program or facility (at the Federal Reserve) that provides liquidity to the financial system that supports lending to States and municipalities.”

On April 9, the Federal Reserve [announced](#) it would use \$35 billion of stabilization funds to provide up to \$500 billion in lending to states and large cities and counties. While public power utilities will not be able to directly access this Municipal Liquidity Facility (MLF), the Federal Reserve intends that states borrowing from the MLF would in turn lend to other political subdivisions of that state. In addition, the Federal Reserve announced it will continue to closely monitor conditions in the primary and secondary markets for municipal securities and will evaluate whether additional measures are needed to support the flow of credit and liquidity to state and local governments.

State and Local Coronavirus Relief Funds

CARES Act section 5001 provides \$150 billion to be distributed by the Secretary of Health and Human Services (HHS) to states and local governments. Qualifying uses for such funds include necessary expenditures incurred due to the COVID-19 pandemic between March 1, 2020, and December 31, 2020, that had not previously been budgeted for by the requesting state or local government. Requests for funding can be made by state or local governments, although the total amount allocated to a state is limited by formulas included in the act. (See the attached allocation estimate by the National Governors Association.) Additionally, only larger “units of local governments” can make a direct request for aid. Specifically, only a “county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 500,000.” HHS is required to release funds within 30 days of enactment.

Low-Income Home Energy Assistance

A major concern in the pandemic is the effect unemployment and the economic downturn will have on at-risk utility customers, including low-income households and seniors. While the vast majority of utilities already have announced they will not cut off power to customers during the pandemic, all customers are still obligated to pay their bills. To help these customers, Division B of the CARES Act provides \$900 million for the Low Income Home Energy Assistance Program (LIHEAP). This \$900 million comes in addition to the \$3.74 billion already appropriated for the account for fiscal year 2020. The act provides that the additional funds could be spent through fiscal year 2021, but demand for LIHEAP will certainly outstrip the \$4.64 billion appropriated to date.

Federal Emergency Management Agency (FEMA) Public Assistance

On March 13, President Trump declared the COVID-19 coronavirus pandemic a national emergency, allowing states to request a 75 percent-25 percent federal-state cost-sharing for spending on emergency

health care aid such as vaccinations, supplies, and tests. Then on March 23, he began granting governor's requests for major disaster designations for states. As of April 11, all 50 states and four territories have been declared a major disaster as a result of the pandemic. These designations date back to January 20 and have authorized reimbursements for Category B – Emergency Protective Measures. As described in the attached fact sheet by Ernst & Young a variety of utility-related expenditures should qualify, including some labor costs, equipment use, and supplies. To pay for these and other COVID-19 related costs, the CARES Act appropriates an additional \$45 billion for FEMA, though we expect further appropriations will be necessary.

Future Legislation – Phase #4

The week after enactment of the CARES Act, Senate Majority Leader Mitch McConnell (R-KY) said he planned to “wait a few days, wait a few weeks” before thinking about a fourth coronavirus bill. Conversely, congressional Democrats sought to immediately pivot to a fourth coronavirus response bill that was ambitious in size and scope. House Speaker Nancy Pelosi (D-CA) said Congress would continue to consider whether emergency and mitigation needs are being met, but that a fourth bill would be focused on recovery. The expectation was that the bulk of this legislation would move through the House Energy and Commerce, Transportation and Infrastructure, and Ways and Means Committees. The expectation was that Democrats would rely heavily on the [Leading Infrastructure For Tomorrow's \(LIFT\) America Act](#) and the [Moving Forward Framework](#) as source material for this fourth bill. They were also considering including limited provisions from the [Climate Leadership and Environmental Action for our Nation's \(CLEAN\) Future Act](#). President Trump himself seemed eager to pursue an aggressive fourth bill, stating via Twitter that now was the time to pursue a “VERY BIG & BOLD” \$2 trillion bill focused solely on jobs and rebuilding infrastructure.

However, talk of such a bill – which would likely take weeks if not months to develop and enact – ended almost as quickly as it began as it became evident that the CARES Act would not be enough to meet demand for emergency relief. As a result, Senator McConnell and congressional Republicans have sought to increase PPP funding to \$600 billion. Congressional Democrats are agreeing to the increase, but would also like to see a \$150 billion increase in funding for the State and Local Coronavirus Relief Fund, \$100 billion for hospitals, community health centers, and health systems, and a 15 percent increase in the maximum benefit allowed under Supplemental Nutrition Assistance Programs. Senator McConnell tried to force the issue to a vote on April 8, but Democrats objected and, in turn, Senator McConnell objected when Democrats sought a vote on their proposal. The issue has been deadlocked since, though talks between Senate Minority Leader Charles Schumer and Treasury Secretary Mnuchin – who seems less opposed to providing additional relief to state and local governments than Senator McConnell – have begun.

APPA Priorities

APPA's top priorities in the ongoing pandemic are that public power utilities have the physical, logistical, and financial resources to continue to operate while keeping their workers safe. Logistical and operational concerns are largely being addressed through our interaction with various stakeholder groups and federal departments and agencies. On the financial side, APPA has sought to provide guidance to its members about the effects of new legislation, for example the definition of "emergency responder" for purposes of determining whether a worker is exempt from the CARES Act emergency paid sick leave and paid family leave requirements. Likewise, APPA is seeking to provide guidance to members about FEMA assistance made available through disaster designations and the steps that need to be taken now to ensure later reimbursement for COVID-19 related costs.

However, much of our ongoing efforts to address financial concerns are proactive, seeking to provide resources and/or relief to public power and to prevent policy changes that might do financial harm.

Power Shutoffs

As discussed above, those most vulnerable to the economic effects of this pandemic may face significant challenges in paying their utility bills. There is every indication that utilities throughout the country will not cut off services to delinquent customers during the pandemic. A congressional Democratic version of the third coronavirus bill included several provisions on power shutoffs. The first one would have required any entity receiving aid under the bill to suspend power shutoffs for the period of the COVID-19 national emergency or to require entities it regulates to do so. The other set of provisions would have prohibited such power shutoffs, as well as the collection of debt from residential, small business, and nonprofit customers, for the length of the national emergency plus 120 days. In addition, it included language dictating notice to customers that could have the unintended consequence of preventing at-risk customers from accessing LIHEAP assistance. In most states, a utility cut off notice is required to qualify for emergency LIHEAP benefits. APPA worked to educate relevant member and committee staff about the consequences of such a proposal. We also continue to work with these staff given that Democrats will continue to pursue such a moratorium in subsequent legislation. APPA believes such a requirement is unnecessary and could be quite devastating to the operations of some utilities if such a moratorium were imposed for an extended period of time.

Assistance to Public Power Utilities

APPA remains extremely concerned about the financial effect of this crisis on public power utilities operating through the U.S. The pandemic is creating a double-edge challenge for these critical providers: increased costs and reduced revenues. Increased costs as public power utilities take extraordinary measures to ensure that "the lights stay on," but decreased revenues as commercial, industrial, and institutional use declines and delinquency in payments increase. The full extent of this may not be seen for weeks – or even months – and financial concerns may seem secondary when life safety is on the line,

but public power utilities must pay their workers, for fuel that drives their power plants, and for equipment when repairs are needed. Thus, we are seeking short-term financial assistance for public power utilities that are experiencing liquidity issues due to the economic fallout of the pandemic.

LIHEAP

The advance seasonally adjusted insured unemployment rate was 8.2 percent for the week ending April 4, an increase of 3.1 percentage points from the previous week's unrevised rate and the highest level of the seasonally adjusted insured unemployment rate in the history of the seasonally adjusted series. The previous high was 7.0 percent in May of 1975. Looking at these unemployment numbers and market declines, the National Energy Assistance Directors Association and National Energy and Utility Affordability Coalition (NEUAC) has estimated that an additional \$4.3 billion should be appropriated for LIHEAP. APPA is a member of NEUAC and an ex officio member of its board and strongly supports this request.

Payroll Tax Credits

APPA intends to continue to press Congress to provide access to payroll tax credits to offset the cost of emergency paid sick leave and paid family leave required under the CARES Act. While public power utility employees may be exempt from these requirements under Department of Labor guidance, many public power utilities have moved to provide them. Access to the payroll tax credit would give utilities the greatest flexibility to make these decisions without adding to the substantial working capital challenges they already face.

Tax-Exempt Financing

While APPA will continue to work to find ways to directly offset additional costs and lost revenues lost as a result of the pandemic, we will also continue to work with other state and local stakeholders to pursue policies that will reduce our financing costs.

This includes:

- Reinstating the ability to issue tax-exempt advance refunding bonds;
- Increasing the small-issuer exception from \$10 million to \$30 million;
- Allowing the issuance of direct payment bonds, with a prohibition of sequestration of direct payment bond payments; and
- Making whatever changes are needed to allow the use of tax-exempt financing to help span working capital shortfalls.

Prohibition of Cost-Recovery of Emergency Appropriations for the Power Marketing Administrations (PMAs), Army Corps of Engineers (Corps), and Bureau of Reclamation (Bureau)

Additional emergency funds provided to the PMAs, the Corps, and Bureau hydropower programs may be recovered in rates by electric customers, which is likely an unintended outcome. If the PMAs must recover these additional expenditures in rates, ultimate power customers will see rate increases at a time when many are facing the economic impacts of the coronavirus emergency, including reduced electricity load and increased non-payments by customers. APPA has sought to ensure that emergency funds provided to the PMAs, the Corps, and Bureau are on par with funding for other federal agencies. However, the CARES Act does not explicitly state that funds provided under the bill may not be recovered in rates from customers of the Federal Power Program. APPA will continue to work to ensure that this issue is resolved in subsequent legislation.