AMERICAN PUBLIC POWER ASSOCIATION
80 Years of Powering Strong Communities

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

To date, Congress has passed, and the President has signed into law, nine pieces of legislation drafted in response to the COVID-19 pandemic. These include:

- The Coronavirus Preparedness and Response Supplemental Appropriations Act (Public Law No: 116-123) enacted on March 6 and which 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) enacted on March 18, which 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.

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No: 116-136) enacted on March 27, which 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, including to states and local governments;
    - $260 billion in additional unemployment insurance;
    - $350 billion for the Paycheck Protection Program (PPP) for small businesses; and
    - $150 billion for a state and local coronavirus expenditure fund.

- The Paycheck Protection Program and Health Care Enhancement (Public Law No. 116-139) enacted on April 24, which provided an additional $321 billion for the Paycheck Protection Program (PPP) and another $162 billion in additional small business loans and assistance to health care providers.

- The Paycheck Protection Program Flexibility Act of 2020 (Public Law 116-142) enacted on June 5, which, among other changes, raised the portion of loan proceeds that could fund fixed costs rather than wages from 25 percent to 40 percent.

- An untitled bill (Public Law No. 116-147) enacted on July 4, which extended authority to issue loans under the PPP and other small business loan programs.

- The Emergency Aid for Returning Americans Affected by Coronavirus Act (Public Law No. 116-148) enacted on July 31.

- The Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 (Public Law No. 116-151) enacted on August 3, which provided unemployment insurance payment relief to governmental employers.

- The Safeguarding America's First Responders Act of 2020 (Public Law No. 116-157) enacted on August 14.

Many of the provisions of these bills have been of great benefit to public power utilities and public power utility customers. To give 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 COVID 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, CARES Act (section 1102) created the PPP, which authorized up to $349 billion for new small business loans. Congress has passed, and the President has signed into law, a series of changes providing an additional $321 billion in funding for the program, extending the deadline for loan applications, and otherwise modifying the program to make it more accessible. 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. (While cooperative utilities are not for profit entities, exempt from tax under Code section 501(c)(12), Treasury guidance has stated that they are to be considered for profit "businesses" for purposes of qualifying for PPP loans.)

PPP loan proceeds spent on qualifying purposes, including wages, mortgages, rent, and utility payments, will be forgiven. Early Treasury guidance stipulated that at least 75 percent of loan proceeds must go to wages (with the remaining 25 percent to be spent on utility payments, rent, and mortgage). Congress later passed, and the President signed into law on June 5, legislation providing that up to 40 percent of forgivable PPP loan proceeds can be spent on fixed costs, including utility payments.

Emergency Unemployment Relief

Emergency unemployment relief has been helpful to public power utility customers and public power utilities. Under normal circumstances, most states provide unemployment insurance (UI) benefits for up to 26 weeks. So, in most states a worker laid off in March would have run out of UI benefits by the end of September (if not earlier in states offering fewer than 26 weeks of UI). However, the CARES Act provided an extension of UI benefits through 2020. Additionally, while unemployment compensation (UC) is generally set at 50 percent of previous wages, the Federal Pandemic Unemployment Compensation (FPUC) under the CARES Act increased UC payments by $600 per week. After FPUC expired at the end of July, the Trump Administration tapped unspent Federal Emergency Management Agency (FEMA) funds to provide Lost Wags Assistance (LWA) grants to allow states to provide up to $400 per week in additional UC payments for up to six additional weeks. While some states were quick to take advantage of LWA grants, others have taken longer. As a result, workers in some states have already expended their six additional weeks of LWA payments, while workers in others are just beginning to receive LWA payments. Since March, FPCU- and LWA-enhanced UC payments, coupled with $1,200 stimulus payments also authorized under the CARES Act, have helped unemployed and underemployed workers pay their bills. However, while UI benefits for most workers will last through the calendar year, most will receive just 50 percent of previous wages and so their ability to meet ongoing financial needs is expected to be severely limited.

As an employer, public power utilities have also benefited from COVID legislation. 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 (UC) paid to their furloughed or laid off workers. CARES Act section 2103 requires the federal government to pay 50 percent of the reimbursement to states for UC paid from March 13, 2020 (when the President first declared the pandemic to be a national emergency) through December 31, 2020. Initially, the upfront value of this benefit was limited by the Trump Administration, which on April 27 issued guidance requiring governmental employers to first reimburse states for 100 percent of the cost of unemployment compensation with a refund of 50 percent to be paid eventually by the federal government (Department of Labor (DOL) UIPL 18-20). The Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 overrode this guidance, instead allowing governmental employers to make up-front payments of just 50 percent of qualifying UC with the federal government to reimburse the state unemployment programs for the remaining 50 percent thereafter.

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 March 27, 2020, 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. Additionally, governors may designate up to two revenue-bond issuing entities to qualify as borrowers. To date, no public power utilities have directly accessed this Municipal Liquidity Facility (MLF). Still, the availability of the MLF, the Federal Reserve's continued close monitoring of conditions in the primary and secondary markets for municipal securities, and the Federal Reserves' commitment to continue to evaluate whether additional measures are needed to support the flow of credit and liquidity to state and local governments has contributed to stabilization of those markets since March.

State and Local Coronavirus Relief Funds

CARES Act section 5001 provides $150 billion in Coronavirus Relief Funds (CRF) 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. States, and counties and cities with a population that exceeds 500,000, were allocated CRF funds. Of particular interest to public power, CRF funds can be used to fund the local share of FEMA public assistance grants related to the COVID emergency. They can also be used to fund economic assistance programs to individuals and businesses, including programs helping individuals and businesses pay their utility bills. While some state and local officials initially argued that such programs could not benefit public power utility customers, APPA worked with other state and local associations to secure guidance from Treasury clarifying the parameters of qualifying utility payment assistance programs that benefit any utility customer.

Low-Income Home Energy Assistance Program

A major concern in the pandemic is the effect unemployment and the economic downturn is having on at-risk utility customers, including low-income households and seniors. While the vast majority of utilities already have provided substantial relief to customers during the pandemic – including moratoria on shutoffs, the waiving of late payment penalties, and the like – 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 Administration (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. 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 appropriated an additional $45 billion to FEMA, which was instrumental in providing additional ongoing unemployment insurance benefits as discussed above.

**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 focused on guiding members to take best advantage of provisions available under current law and pursuing legislation to provide additional relief.

Regarding the former, APPA has 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 has provided guidance to members about FEMA assistance made available through disaster designations and the steps that need to be taken to ensure later reimbursement for COVID-19 related costs. As discussed above, APPA also dedicated substantial time and energy to ensuring that CRF resources could be used to support economic assistance programs, including by providing assistance payments to public power utility customers.

However, much of our ongoing efforts to address public power financial concerns during the pandemic and recession are proactive, seeking to provide resources and/or relief to public power and to prevent policy changes that might do financial harm. A summary of these issues follows.

Targeted Direct Assistance

As discussed above, a number of provisions enacted to date have benefited public power utilities and public power utility customers. However, a number of the largest programs are of no direct benefit to public power utilities. This has strained finances for public power utilities, and also put public power utilities at a disadvantage relative to other electric power providers. For example, other utility providers have access as much as $733 million in forgivable PPP loans. Likewise, only public power utilities are categorically excluded from receiving payroll tax credits intended to offset the cost of newly mandated emergency paid sick leave and emergency paid family leave. As a result, the American Public Power Association is seeking direct pandemic-related aid for public power utilities. To that end, staff for the Senate Committee on Energy & Natural Resources have drafted a loan program for public power utilities and electric cooperatives. These loans would be forgivable to the extent that proceeds were used offset customers' COVID-related nonpayment of their utility bill. This will provide relief to customers and needed cash liquidity to utilities.

Utility Shutoffs

The House of Representatives has included in two COVID-related bills (HEROES Act and HEROES Act 2.0) language that would prohibit utilities from cutting off service to customers for non-payment of bills. One such proposal would continue this prohibition for up to four months after the pandemic ends. APPA has worked to educate relevant member and committee staff about the consequences of such a proposal. In particular, 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. In addition, a moratorium could have unintended consequences. For example, in most states, a utility shutoff notice is required to qualify for emergency LIHEAP benefits. Even where those requirements have been suspended, customers still lack the incentive to seek help. As a result, prohibiting the issuance of such notices could actually deny at-risk customer the very help they need.

LIHEAP

The economy has added back 10 million jobs since losing 20 million jobs between February and April. However, job growth has plateaued, and weekly initial unemployment claims have remained stubbornly at or near 900,000 since the last week of August. As a result, the ability of many American families to meet basic household needs have suffered. A recent Marketplace-Edison Research Poll found that nearly half of all respondents would have a hard time paying an unexpected bill of $250. As a result, residential natural gas and electric utility non-payments are projected to grow from $9.8 billion as of July 31 to $24.3 billion by year end, according to the National Energy Assistance Directors Association (NEADA). As a result, APPA has worked with NEADA and the National Energy and Utility Affordability Coalition to secure additional funding for LIHEAP. These efforts helped secure: the $900 million supplemental spending increase for LIHEAP in the CARES Act; an additional $1.5 billion request in the May version of the HEROES Act passed by the House; and the $4.5 billion request in the revised version of the HEROES Act passed by the House in September. The $3 billion increase in requested funding for LIHEAP from May through September is all the more remarkable given that the overall size of the HEROES legislation was reduced by $1 trillion.

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 DOL guidance, APPA knows of no public power utilities that have not provided these benefits to workers. Absent access to the payroll tax credits, these emergency paid sick and family leave requirements are – effectively – an unfunded federal mandate when state and local governmental employers are already facing huge revenue shortfalls.

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
- Amending private use restrictions to give utilities more flexibility in negotiating customized contracts with large commercial customers.

Comparable Incentives

While APPA has not prioritized energy tax issues as a primary response to COVID, we have been actively engaged on this issue on two fronts. First, renewable energy stakeholders are seeking to extend and expand energy-related tax credits as part of COVID legislation. APPA has argued that energy-related incentives should be available to all segments of the electric utility sector and, so energy-related tax credits should be revised to allow tax-exempt entities, including public power utilities, to benefit. Second, large corporations who have accumulated far more tax credits than they are expecting in tax liability – because they are expecting little to no profitable income – are seeking the ability to "monetize" these tax credits immediately. As a result, Republican lawmakers in the House and Senate have introduced the Building Businesses Back Act of 2020 (H.R. 7734/S.4290), which would make business-related tax credits refundable. While House Democrats have not shown much interest in the proposal, Senate Democrats have said they might consider the legislation with certain caveats and an extension through 2021 of certain energy-related tax credits. As a result, APPA has been supportive of early versions of the Senate Democratic amendment to the Building Business Back Act that would allow public power utilities to monetize tax credits for projects construction of which begin in 2021.

Power Marketing Administrations

Additional emergency funds provided to the hydropower programs of the Power Marketing Administrations (PMAs), Army Corps of Engineers (Corps), and Bureau of Reclamation (Bureau) 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. APPA has sought to ensure that emergency funds provided to the PMAs, the Corps, and Bureau 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.

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