The Honorable Richard Neal
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20510

The Honorable Kevin Brady
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20510

The Honorable Charles Grassley
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Ron Wyden
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20515

March 19, 2020

Dear Chairmen Neal and Grassley and Ranking Members Brady and Wyden:

On behalf of the American Public Power Association (APPA), I want to thank you for your leadership and swift action over the last several weeks to confront both the public health crisis caused by the pandemic spread of COVID-19 and the economic challenges associated with this unprecedented situation. APPA is the voice of not-for-profit, community-owned utilities that power more than 2,000 towns and cities nationwide. Public power utilities operate in every state except Hawaii, provide power to 49 million people and 2.6 million businesses, and employ 93,000 people. While several of our members serve large cities, two-thirds of them are in communities with populations of fewer than 10,000 people.

Now, more than ever, we need strong federal, state and local intergovernmental collaboration to address this crisis. Hence, APPA and its member utilities have been working with federal agencies and congressional committees to help in the response. Much of this discussion is focused on operational concerns: i.e.; how to ensure that the lights stay on. Those discussions fall largely outside the bounds of your committees. However, we are also concerned about the financial effect of this crisis – on our utilities, utility employees, and customers – and that issue falls squarely under your jurisdiction.

So, as you continue to consider legislative proposals to address the pandemic, we strongly urge you to:

- Clarify the availability of payroll tax credits for required emergency paid sick leave and required paid family leave;
- Restore the ability to issue tax-exempt advance refunding bonds;
- Raise the small issuer exception;
- End the sequestration of direct payment bond payments to issuers; and

- Include public power utilities if current tax credits are amended to allow corporate entities to monetize tax credits regardless off tax liability.

A more detailed discussion follows in the Appendix below.

Thank you very much for your time and please do not hesitate to contact John Godfrey on my staff at jgodfrey@publicpower.org or 202-467-2929 if you have any questions.

Sincerely,

Joy Ditto
President & CEO

Appendix

Clarify Availability of Payroll Tax Credits for Paid Sick and Paid Family and Medical Leave for Public Power Employers: Among other provisions, the Families First Coronavirus Response Act (Act) will require covered employers, including all governmental employers, to provide: a) two weeks of coronavirus-related Emergency Paid Sick Leave and b) up to 10 weeks of paid Emergency Family and Medical Leave Expansion Act leave for employees absent to care for a child whose school or daycare provider has closed due to coronavirus. To help relieve the financial burden and cash-flow strains of these new requirements, the Act provides payroll tax credits to employers. However, while public power utilities pay the employer share of the payroll tax, sections 7001(e)(4) and 7003(e)(4) of the Act specifically preclude governmental employers from claiming these credits.

State and local governments, including public power utilities, will face massive challenges in the months ahead, including the challenge of finding the cash to pay for these new benefits. We have no shareholders on whom to lean, and so these costs must be met with rate increases or additional borrowing – and borrowing in today's markets would be a harrowing prospect. As a result, we strongly urge you to strike sections 7001(e)(4) and 7003(e)(4) of the Act and clarify that state and local government employers fully qualify for the Act's payroll credits for required paid sick and required paid family leave.

Restore Advance Refunding Bonds: The Government Finance Officers Association estimates that advance refundings from 2013-2017 saved state and local governments at least $12 billion through reduced interest expenses. During the same time period, public power utilities alone used 154 advance refundings to generate net present value savings of at least $600 million. These savings were passed on to residents in the form of lower rates or used to offset the cost of additional system investments. Public power utilities and public power utility customers will face huge financial challenges as a result of the current pandemic. To provide just one example, some public power utilities will need to sequester employees (potentially for weeks at a time) at facilities like control centers – requiring provisioning, protection, and housing.

APPA strongly believes that allowing public power utilities to refinance existing debt at the best financial terms could help alleviate the burden these challenges will impose. Thus, we support H.R. 2772, the Investing in Our Communities Act, which would reinstate the ability to issue tax-exempt advance refunding bonds. H.R. 2772 would allow states and localities to refinance existing debt with the greatest flexibility, resulting in substantial reductions in borrowing costs at a time when state and local governments are already incredibly financially stressed.

Raise the Small Issuer Exception: While public power utilities serve some of the nation's largest cities, the vast majority are quite small. In fact, based on the Small Business Administration standard (750 employees or more), of the more than 2,000 public power utilities operating in the United States, all but 26 would be considered "small businesses." These utilities face the same challenges as other small businesses, including access to capital. Again, the pandemic will cause huge financial strains for public power utilities.

One way to ease the challenge of access to capital would be to increase the annual threshold for the small issuer exception. H.R. 3967, the Municipal Bond Market Support Act, would increase the small issuer threshold from $10 million in issuances to $30 million (indexed to inflation). This will make such debt more attractive as an investment by banks – historically smaller local banks – and provide smaller issuers with access to capital that would not otherwise exist and/or reduce the cost of borrowing by increasing competition for debt of these utilities. APPA strongly supports this bipartisan legislation.

Direct Payment Bonds: As noted above, municipal bonds markets are in turmoil. As a result, Congress may consider – as in the past – to expand the pool of investors for state and local infrastructure projects to include entities that are "indifferent" to tax, such as pension funds, insurance, and offshore investors, by allowing the issuance of direct payments bonds. Most proposals would appropriately protect such direct payments from budget sequestration: this is consistent with the budgetary treatment of refundable tax credit payments to individuals and of refundable Alternative Minimum Tax (AMT) credit payments to corporations.

However, prospective relief does not address the sequestration that applies to direct payments bonds that have already been issued, including Build America Bonds and New Clean Renewable Energy Bonds. Based on the Office of Management and Budget Report to the Congress on the Joint Committee Reductions for Fiscal Year 2020, we would estimate that ending the sequestration of payments to issuers of existing direct payment bonds would provide roughly $270 million to these entities this year. This would free up resources these issuers and increase the uptake of any newly created taxable direct payment bond.

Comparable Incentives: APPA has long argued that insofar as Congress intends to continue incentivizing energy-related investments through the tax code public power utilities should be provided comparable incentives. We do not see this as a high priority at this time, but if Congress were to move to allow other entities with low or no tax liability to monetize tax credits as part of coronavirus legislation, we would expect the same provisions to be available to public power. Again, whatever the purposes of such a change, omitting the tax-exempt entities that serve 30 percent of the nation’s retail customers would certainly work against that policy goal. We particularly support the idea of making such tax credits refundable. While we support other options – including clean energy bonds – refundability benefits from having the support of stakeholders from across the utility sector.