Sponsors: Salt River Project; Orlando Utilities Commission; New York Association of Public Power

In Support of Congressional Efforts to Provide Public Power Utilities with Comparable Incentives to Energy-Related Tax Incentives

Since the 1970s, Congress has used the federal income tax to stimulate the development of alternative energy sources, first with the creation of the investment tax credit and then later with the production tax credit. Despite these incentives, it was not until 2011 before generation from these resources exceeded 100,000 gigawatt hours (GWh) annually and the value of these tax expenditures reached roughly $2 billion annually. In the subsequent decade, generation from these resources has tripled to nearly 300,000 GWh and the value of these tax expenditures has increased to nearly $11 billion annually. These tax incentives have had far more effect on our nation’s generation portfolio than regulatory changes Congress has sought to make over the last several decades.

However, with relatively few exceptions, tax-exempt entities cannot take advantage of these incentives, including public power utilities and rural electric cooperatives that serve nearly 30 percent of the nation’s electric utility customers. In most cases, this makes it economically unfeasible for a public power utility to directly own such facilities: instead it must rely on a power purchase agreement with a third-party generator that can take advantage of tax credits. As a result, the value of tax credits for most wind and solar facilities accrues to public power utility customers only insofar as the seller of the output of such facilities passes some percentage of it on in the form of reduced prices. Additionally, the utility loses operational control and expertise it would gain from direct ownership. Omitting tax-exempt entities from energy-related tax incentives makes it more costly for public power utilities to make investments in renewable resources that will be needed to reduce greenhouse gas emissions to address climate change. This is unfair and inefficient.

Over the years, Congress has sought to provide comparable incentives for alternative energy source development by tax-exempt entities. These attempts include: (1) direct appropriations through the Renewable Energy Production Incentives (REPI) program; (2) tax credit and direct payment Clean Renewable Energy Bonds (CREBs) for the financing of qualified facilities; and (3) allowing the transfer of certain energy-related tax credits to project partners. However, these alternatives have always been hamstrung: Congress never fully funded REPI; the volume of CREBs allowed to be issued was severely limited by the statute itself; and only limited types of energy-related tax credits can be transferred.

However, in recent years, policymakers have begun to understand the importance of tax policy in driving energy and environmental policy and the folly of excluding tax-exempt entities and the 30 percent of
retail customers that they serve. As a result, it is becoming more common for legislative proposals to accommodate tax-exempt entities. Oftentimes these proposals seek to improve upon past initiatives. For example, S. 1288, the Clean Energy for America Act, would allow the issuance of tax credit and direct payment bonds for qualified facilities with no volume restrictions. Likewise, H.R. 2704, the Renewable Energy Transferability Act, would allow the transfer of the production and investment tax credits for all types of qualifying facilities. Policymakers are also developing new approaches. A discussion draft of the Growing Renewable Energy and Efficiency Now (GREEN) Act would make production and investment tax credits directly refundable to project owners.

NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association (APPA) believes if Congress is going to continue to use the tax code to drive federal energy and environmental policy, it must provide comparable incentives to public power utilities that—because of their tax-exempt status—cannot directly access many energy-related tax credits, such as the wind production tax credit (PTC) and solar investment tax credit (ITC);

BE IT FURTHER RESOLVED: That APPA applauds lawmakers in Congress who are seeking to make federal energy investment incentives fairer and more efficient by pursuing legislation that will allow tax-exempt entities, including public power utilities, to benefit from energy-related tax incentives;

BE IT FURTHER RESOLVED: That APPA commits to working with members of Congress seeking to improve upon past efforts, or seeking new approaches, to provide comparable incentives to energy-related tax incentives; and

BE IT FURTHER RESOLVED: That APPA strongly encourages Congress, as it develops comprehensive climate legislation, to ensure public power utilities are put on a level playing field for making investments in renewable resources by providing them with comparable incentives for the PTC and ITC.