Resolution 21-05
American Municipal Power; Ohio Municipal Electric Association; Missouri Joint Municipal Electric Utility Commission; Missouri Association of Municipal Utilities; Delaware Municipal Electric Corporation; Municipal Electric Authority of Georgia; Oklahoma Municipal Power Agency; Indiana Municipal Power Agency; Blue Ridge Power Agency; Illinois Municipal Electric Agency; JEA; Colorado Springs Utilities; Orlando Utilities Commission; Seattle City Light; Grant County Public Utility District

In Opposition to the Sequestration of Direct Payment Bond Payments

Congress established the Build America Bond (BAB) program in 2009 as an alternative to traditional tax-exempt municipal bonds. BABs were intended to encourage state and local investments in essential infrastructure projects and to stimulate the creation of jobs during the Great Recession. Interest on a BAB is taxable to the bondholder and is not deductible as an expense to the bond issuer. Instead, either the bondholder receives a tax credit, or the issuer receives a refundable tax credit payment equal to 35 percent of the interest paid to the bondholder. Of the $181 billion in BABs issued since the program's inception, roughly $16 billion were issued by 78 public power utilities for essential investments in municipal electric system generation, distribution, and transmission.

Congress in 2008 created New Clean Renewable Energy Bonds (New CREBs) as incentives for investment in renewable project development by not-for-profit entities. As with a BAB, interest on a New CREB is taxable to the bond holder and is not deductible to the bond issuer. Instead, either the bond holder receives a tax credit, or the issuer receives a credit payment to compensate for the loss of tax benefit. A total of $2.4 billion in New CREBs were authorized in 2009, including $800 million for public-power issuers.

Congress sought to shelter BAB and New CREB credit payments from annual appropriations battles by authorizing such credit payments and linking the mechanism for payment of these credits to the mechanism for tax credit payments to individuals. Nonetheless, effective March 1, 2013, BAB and New CREB credit payments to issuers have been subject to sequestration pursuant to a White House Office of Management and Budget interpretation of the Budget Control Act of 2011 that holds that, while tax credit payments to individuals are exempt from sequestration, credit payments to other entities – including to BAB and New CREB issuers – are not.

Mandatory sequestration went into effect in March 2013 and was originally imposed through fiscal year 2021. The budget sequester has since been extended six times and now runs through 2030. Subjecting BABs and New CREBs payments to sequestration cuts has cost participating public power communities nearly $200 million – dollars that could be invested in local communities and used to reduce electric rates and create jobs.

While this issue could be resolved on a going-forward basis through clarifying legislation or a reinterpretation of Administration policy, several public power entities have recently filed suit in the U.S. Court of Federal Claims to seek a legal remedy to this outstanding issue. These cuts are unfair, leave in question the cost of financing agreements entered into, and threaten some of the economic benefits intended when Congress provided the direct payment option for BABs and CREBs.

NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association (APPA) opposes federal sequestration of refundable tax credit payments to Build American Bond (BAB) and New Clean Renewable Energy Bond (New CREB) issuers; and

BE IT FURTHER RESOLVED: That APPA urges the Biden Administration and Congress to take such steps as are necessary to prevent sequestration of BAB and New CREB refundable tax credit payments to issuers.

Adopted at the Legislative & Resolutions Committee meeting
March 2, 2021
Sunsets in March 2029