

Sponsors: Northern California Power Agency; Southern California Public Power Authority; Florida Municipal Electric Association; WPPI Energy; New York Association of Public Power

In Support of Comparable Energy Tax Incentives for Public Power

1 Current energy tax policies began decades ago. Business energy investment tax credits (ITCs) were
2 enacted in 1978 and 1980 to stimulate the development of “alternative” energy sources and remain in
3 effect today. In 1992, Congress created a production tax credit (PTC) for the production of energy from
4 renewable resources, which is still in effect. Today, the tax code specifies roughly a dozen different fuel
5 sources as providing qualified electricity production or qualified energy property for purposes of the PTC
6 and ITC. Additionally, the tax code provides tax credits for carbon capture and sequestration, fuel cell
7 properties, combined heat and power property, microturbine property, and other non-renewable
8 properties. Combined, these energy tax credits are worth roughly \$11.7 billion annually and have had a
9 profound effect on the nation’s generation mix and emissions profile.

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11 Energy tax credits are tantamount to the federal government paying a portion of the initial cost of
12 investment in, or paying for the production of, power from certain types of energy facilities. That is why
13 both the Treasury Department and Joint Committee on Taxation consider these tax incentives to be the
14 equivalent of spending, i.e., a tax expenditure.

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16 However, because tax-exempt entities, including public power utilities, have no taxes against which to
17 offset a tax credit, they cannot directly receive energy tax credit “payments.” In other words, the federal
18 government will use an investment tax credit, for example, to pay a portion of the investment cost of a
19 new solar facility if the owner is a private entity, but not if the same facility is owned by a public power
20 utility.

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22 In most cases, this bias makes it economically unfeasible for a public power utility to directly own such
23 facilities. Instead, it must rely on a power purchase agreement with a third-party generator that can take
24 advantage of these tax credits. As a result, the value of tax credits for most wind and solar facilities
25 accrues to public power utility customers only insofar as the seller of the output of such facilities passes
26 some percentage of it on in the form of reduced prices. Additionally, the utility loses operational control
27 and expertise it would gain from direct ownership, including for renewable energy projects located
28 directly on public lands and facilities.

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30 Omitting tax-exempt entities from energy-related tax credits makes it more costly for public power
31 utilities to make investments in renewable resources and other clean energy technologies that will be

32 needed to reduce greenhouse gas emissions to address climate change. With nearly 30 percent of retail
33 customers served by tax-exempt entities, this bias against public power is also inefficient.

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35 Over the years, Congress has sought to provide comparable incentives for alternative energy source
36 development by tax-exempt entities, but each effort has failed.

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38 In recent years, policymakers have begun to understand the importance of tax policy in driving energy
39 and environmental policy and the folly of excluding tax-exempt entities and the 30 percent of retail
40 customers that they serve. As a result, it is becoming more common for legislative proposals to
41 accommodate tax-exempt entities. The leading approach being refundable direct payment tax credits, as
42 an alternative to traditional tax credits.

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

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

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55 **BE IT FURTHER RESOLVED:** That APPA commits to working with members of Congress seeking to
56 provide public power utilities with comparable incentives to energy-related tax incentives.

Adopted at the Legislative & Resolutions Committee Meeting

March 1, 2022

Sunsets in March 2030