Minnesota Municipal Utilities Association

To unify, support, and serve as a common voice for municipal utilities

Comparable Incentives for Targeted Investments in Clean Energy and Renewable Sources

Need

Financial tools by which public power utilities can benefit in a comparable manner as taxable entities benefit from current tax incentives for investments in the production of clean energy, and the increased use of renewable sources. Examples of such tools include refundable tax credits, transferability, and non-capped Clean Renewable Energy Bonds.

Background

Congress routinely seeks to incentivize investments in the production of cleaner energy and the use of renewable sources. Sometimes this is done through direct federal grants, subsidized loans, and/or loan guarantees; however, the most significant incentives are usually provided through the federal tax code. These tax policies began decades ago. Business energy investment tax credits (ITCs) were enacted in 1978 and 1980 to stimulate the development of "alternative" energy sources, and they remain in effect today. In 1992, Congress created a production tax credit (PTC) for the production of energy from renewable resources, which also remains in effect today. Combined, ITCs and PTCs account for 58% of the federal energy-related tax-expenditure budget. According to the most recent Joint Committee on Taxation estimate, energy-related tax expenditures were worth $11 billion to project developers in 2019 alone.

Unfortunately, public power utilities cannot directly benefit from either an ITC or PTC. In fact, the tax code states specifically that no ITC will accrue to a government-owned project. Likewise, a public power utility cannot feasibly enter the sort of "partnership flip transaction" that electric cooperatives can use to indirectly access an ITC or PTC. Public power utilities can indirectly benefit from such credits by entering long-term power-purchase agreements with taxable entities that can benefit from the credits. The transactional costs of such agreements, however, can be high. Additionally, only a portion of the value of the tax credit is generally eligible to be passed on to the purchaser, thus further muting the incentive effect.

There are examples in the existing tax code of efforts to accommodate tax-exempt entities to incentivize clean and renewable energy-related activities. However, the tax code also includes a variety of provisions which can make such accommodations difficult to apply to public power utilities and which can result in unintended consequences.

Over the last several decades, Congress has tried several methods for addressing these problems. In 1992, Congress authorized Renewable Energy Production Incentives (REPIs) for public power and cooperative utilities, which sought to provide direct payments comparable to a PTC earned by other entities including investor-owned utilities. However, during the 15 years during which REPI funds were appropriated, public power utilities and rural electric

cooperatives qualified for $329 million in REPI payments, but Congress appropriated just $54 million. After 2009, Congress stopped appropriating funds for REPI entirely.

In the Energy Policy Act of 2005, Congress sought to provide an investment incentive for certain tax-exempt entities akin to an ITC by creating the Clean Renewable Energy Bond (CREB). Qualified CREB issuers included public power utilities, states and localities, and rural electric cooperatives. Interest paid on a CREB is taxable, but the CREB holder receives a tax credit. However, tax credit bonds are quite complex, and issuers had a difficult time finding willing buyers. As a result, in 2010, Congress modified CREBs (now called New CREBs) to allow issuers the option of receiving a direct payment from Treasury in lieu of providing bond holders a tax credit. CREBs and New CREBs were hamstrung by an overall volume limit which was initially set at $800 million, but eventually increased to $2.4 billion. This limit was problematic in that allocating volume was time consuming and burdensome both for issuers and the Internal Revenue Service (IRS). The limit was also substantially lower than needed to meet demand. For example, in 2009, the IRS received 38 applications from public power utilities requesting a total of $1.45 billion in New CREB bond volume, but just $800 million of bond volume was available for public power. New CREBs issued as direct payment bonds were further handicapped by budge sequestration – across-the-board cuts applying to all mandatory spending, including payments to issuers of direct payment bonds. Finally, in 2017, Congress prohibited the issuance of any additional New CREBs as part of the Tax Cuts and Jobs Act.

By not offering comparable incentives to public power utilities and other tax-exempt energy related entities, Congress is failing to reach a full market- wide approach to incentivizing investments in cleaner energy and renewable sources.

MMUA Position

Direct grants and the improved use of some current tools are needed to create a full-market approach to energy related incentives. Energy related tax credits should be refundable and transferable. Transferability is already proving a critical lifeline to advanced nuclear power projects in Georgia and Idaho. Refundability is another viable alternative. In the case of New CREBs, no volume cap should be established that is not also imposed on other incentives utilized by non-public power entities. And, direct payments used for energy incentives should not be subject to budge sequestration. Finally, MMUA strongly encourages lawmakers to enlist APPA and local public power utilities when drafting new proposals and refining existing efforts, to ensure that these proposals will work as intended.