AMERICAN PUBLIC POWER ASSOCIATION

80 Years of Powering Strong Communities

Overview of the Federal Legislative Response to the COVID-19 Pandemic

To date, 13 pieces of legislation have been signed into law in response to the COVID-19 pandemic. These include:

- The Coronavirus Preparedness and Response Supplemental Appropriations Act (Public Law No: 116-123) enacted on March 6, 2020, and which provided $8 billion in emergency supplemental spending to aid in the response to the pandemic.
- The Families First Coronavirus Response Act (FFCRA) (Public Law No: 116-127) enacted on March 18, 2020, which included an additional $8 billion in emergency appropriations, imposed new paid sick leave and paid family leave requirements on public and private employers, and provided as much as $100 billion in payroll tax credits to private employers to offset the cost of these new requirements.
- The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No: 116-136) enacted on March 27, 2020, which included:
    - $340 billion in new emergency supplemental appropriations;
    - $600 billion in tax cuts – split roughly evenly between individual "rebates" and business tax breaks;
    - $500 billion for Treasury's Economic Stabilization Fund for loans and loan guarantees to businesses, including to states and local governments;
    - $260 billion in additional unemployment insurance;
    - $350 billion for the Paycheck Protection Program (PPP) for small businesses; and
    - $150 billion for a state and local coronavirus expenditure fund.
- The Paycheck Protection Program and Health Care Enhancement (Public Law No. 116-139) enacted on April 24, 2020, which provided an additional $321 billion for the PPP and another $162 billion in additional small business loans and assistance to health care providers.
- The Paycheck Protection Program Flexibility Act of 2020 (Public Law 116-142) enacted on June 5, 2020, which, among other changes, raised the portion of loan proceeds that could fund fixed costs rather than wages from 25 percent to 40 percent.
- An untitled bill (Public Law No. 116-147) enacted on July 4, 2020, which extended authority to issue loans under the PPP and other small business loan programs.
- The Emergency Aid for Returning Americans Affected by Coronavirus Act (Public Law No. 116-148) enacted on July 31, 2020.

- The Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 (Public Law No. 116-151) enacted on August 3, 2020, which provided unemployment insurance payment relief to governmental employers.
- The Safeguarding America's First Responders Act of 2020 (Public Law No. 116-157) enacted on August 14, 2020.
- The Impact Aid Coronavirus Relief Act (Public Law No: 116-211) enacted on December 4, 2020.
- The Consolidated Appropriations Act, 2021 (Public Law No. 116-260) enacted on December 27, 2020. This end-of-the-year bill included $1.64 trillion in regular fiscal year 2021 appropriations, but also included COVID-specific measures, including:
    - $120 billion to extend federal unemployment insurance benefits – including a $300 per week additional payment – for 10 weeks (through March 14, 2021);
    - $166 billion to provide a $600 per person direct payment for households with income of up to $150,000;
    - $325 billion for the Paycheck Protection Program, with up proceeds still eligible to be spent on wages or fixed costs such as rent, mortgage and utilities;
    - Provide $69 billion for vaccines, testing and tracing, and related community health and health care provider support;
    - Provide $82 billion for schools; and
    - $328 billion in tax relief, including an extension of expiring energy-related tax credits.
- The Combating Pandemic Scams Act of 2020 (Public Law No: 116-287) enacted on January 5, 2021.
- The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Public Law No: 116-315) enacted on January 5, 2021.

Many of the provisions of these bills have been of great benefit to public power utilities and public power utility customers. To give a better idea of the scope of these provisions, below we provide an overview of the various provisions we believe to be of interest to public power. We will also discuss several issues of importance to public power that have not yet been included in either legislative or administrative action, but still may emerge in subsequent actions, including APPA's priorities for such actions.

Issues of Interest to Public Power in COVID Legislation Enacted to Date

Emergency Paid Sick Time and Paid Family Leave

FFCRA imposes new paid sick time and paid medical leave requirements on private employers with fewer than 500 employees and government employers of all sizes. Under the act, employers must provide two weeks of sick leave for a number of coronavirus-related absences – with the rate of pay depending on the nature of the reason for being absent. Additionally, employees can receive paid family leave equal to two-thirds their normal rate of pay if they are staying home to take care of a child whose school has closed as a result of the pandemic. Department of Labor guidance regarding the definition of an "emergency responder" has been read by some utilities to indicate that electric power utility workers can be exempt from both the sick leave and paid family leave requirements. However, while FFCRA provides a payroll tax credit to offset the cost of these new requirements to private employers, government employers are not allowed to receive such credits.

Paycheck Protection Program

A key issue for public power during the pandemic is the ability of financially stressed customers to pay their bills. Small businesses may be especially strapped, facing reduced demand for their goods and services and possibly few reserves to pay ongoing costs. To help these small businesses, the CARES Act (section 1102) created the PPP, which authorized up to $349 billion for new small business loans. Congress has passed, and the President has signed into law, a series of changes providing an additional $646 billion in funding for the program, extending the deadline for loan applications, and otherwise modifying the program to make it more accessible. PPP loans are available at low rates and for up to 10 years. The CARES Act provides that small businesses, 501(c)(3) charitable organizations, certain 501(c)(6) organizations, 501(c)(19) veterans organizations, and tribal business enterprises qualify for the PPP. As units of government, public power utilities do not qualify for these loans. (While cooperative utilities are not-for-profit entities, exempt from tax under Code section 501(c)(12), Treasury guidance has stated that they are to be considered for profit "businesses" for purposes of qualifying for PPP loans.)

PPP loan proceeds spent on qualifying purposes, including wages, mortgages, rent, and utility payments, will be forgiven. Early Treasury guidance stipulated that at least 75 percent of loan proceeds must go to wages (with the remaining 25 percent to be spent on utility payments, rent, and mortgage). Congress later passed, and the President signed into law on June 5, legislation providing that up to 40 percent of forgivable PPP loan proceeds can be spent on fixed costs, including utility payments.

Emergency Unemployment Relief

Emergency unemployment relief has been helpful to public power utility customers and public power utilities. Under normal circumstances, most states provide unemployment insurance (UI) benefits for up to 26 weeks. So, in most states a worker laid off in March 2020 would have run out of UI benefits by the end of September 2020 (if not earlier in states offering fewer than 26 weeks of UI). However, the CARES Act provided an extension of UI benefits through 2020 and the Consolidated Appropriations Act extended those benefits again through March 14, 2021.

Additionally, while unemployment compensation (UC) is generally set at 50 percent of previous wages, the Federal Pandemic Unemployment Compensation (FPUC) under the CARES Act increased UC payments by $600 per week. After FPUC expired at the end of July, the Trump Administration tapped unspent Federal Emergency Management Agency (FEMA) funds to provide Lost Wags Assistance (LWA) grants to allow states to provide up to $400 per week in additional UC payments for up to six additional weeks. The Consolidated Appropriations Act reinstated a $300 per week FPUC increase in UC payments.

Since March, FPCU- and LWA-enhanced UC payments, coupled with $1,200 stimulus payments authorized under the CARES Act and the additional $600 in stimulus payments authorized by the Consolidated Appropriations Act, have helped unemployed and underemployed workers pay their bills.

As employers, public power utilities have also benefited from COVID legislation. Most Indian Tribes and governmental entities do not pay per-worker unemployment taxes. Instead, they have "reimbursable arrangements" with state unemployment programs, which require them to reimburse the state for 100 percent of the cost of UC paid to their furloughed or laid off workers. CARES Act section 2103 requires the federal government to pay 50 percent of the reimbursement to states for UC paid from March 13, 2020 (when the President first declared the pandemic to be a national emergency) through December 31, 2020. Initially, the upfront value of this benefit was limited by the Trump Administration, which on April 27 issued guidance requiring governmental employers to first reimburse states for 100 percent of the cost of unemployment compensation with a refund of 50 percent to be paid eventually by the federal government (Department of Labor (DOL) UIPL 18-20). The Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 overrode this guidance, instead allowing governmental employers to make up-front payments of just 50 percent of qualifying UC with the federal government to reimburse the state unemployment programs for the remaining 50 percent thereafter. This benefit was extended through March 14, 2021.

Delay of Payment of Employer Payroll Taxes

CARES Act section 2302 allows employers, including governmental employers, to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. The delay applies to payments due after March 27, 2020, and before January 1, 2021. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

Economic Stabilization Fund

Out of concern that access to lending would be difficult and/or costly for many borrowers, the CARES Act (Subtitle A—Coronavirus Economic Stabilization Act of 2020) authorized $500 billion "to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus, throughout the pandemic." While the Federal Reserve had already taken steps to stabilize municipal credit markets, the CARES Act specifically directed the Treasury Department to "endeavor to seek the implementation of a (loan) program or facility (at the Federal Reserve) that provides liquidity to the financial system that supports lending to States and municipalities."

On April 9, the Federal Reserve announced it would use $35 billion of stabilization funds to provide up to $500 billion in lending to states and large cities and counties. This Municipal Liquidity Facility (MLF) was not used by any public power utilities, and its authority to lend expired on December 31, 2020. However, APPA successfully joined with others to prevent Senator Patrick Toomey (R-PA) from using the sunset of the MLF to also block the Federal Reserve from ever taking the steps it took earlier in the pandemic to stabilize municipal credit markets. The availability of these steps will help assure municipal markets should credit crises emerge in the future.

State and Local Coronavirus Relief Funds

CARES Act section 5001 provides $150 billion in Coronavirus Relief Funds (CRF) to be distributed by the Secretary of Health and Human Services (HHS) to states and local governments. Qualifying uses for such funds include necessary expenditures incurred due to the COVID-19 pandemic. Initially, the deadline for spending these funds was December 31, 2020, but the Consolidated Appropriations Act extended the deadline to December 31, 2021. States, and counties and cities with a population that exceeds 500,000, were allocated CRF funds. Smaller units of local government received no direct allocation, but most states "suballocated" funds to these jurisdictions.

Of particular interest to public power, CRF funds are being used to fund the local share of FEMA public assistance grants related to the COVID emergency. They are also being used to fund economic assistance programs to individuals and businesses, including programs helping individuals and businesses pay their utility bills. While some state and local officials initially argued that such programs could not benefit public power utility customers, APPA worked with other state and local associations to secure guidance from Treasury clarifying the parameters of qualifying utility payment assistance programs that benefit any utility customer.

Community Development Block Grant

The CARES Act made available $5 billion in supplemental Community Development Block Grant (CDBG) funding for grants to prevent, prepare for, and respond to COVID-19 (CDBG-CV grants). Additionally, the CARES Act provided CDBG grantees with flexibilities that make it easier to use CDBG-CV grants and fiscal years 2019 and 2020 CDBG grants for coronavirus response and authorizes the Department of Housing and Urban Development (HUD) to grant waivers and alternative requirements. One use for CDBG and CDBG-CV funds is emergency payments for residents, including for utilities. As with other federal assistance programs, these payments are made on behalf of the beneficiary directly to the landlord, lender, or utility. Grantees must document, in their policies and procedures, how they will determine that the amount of assistance to be provided is necessary and reasonable and how the activity meets a CDBG national objective. For CDBG-CV, the grantee must also document how the activity prepares for, prevents, or responds to the coronavirus and does not duplicate other benefits.

While some public power utilities have been able to obtain these benefits for their customers, others have met resistance from HUD in approval. The issue is an underlying rule that CDBG funds need to be spent on novel programs, not existing ones. HUD has taken the position that a public power utility could be considered a "program" of the city in which it operates and, so, customer payment relief for this "existing" program would not be allowed. Guidance released in December by HUD appears to provide a clarity for certain public power utilities that are clearly distinct from the granting city or county. However, the guidance provides is less clear for a utility that is operated by a city or county seeking to implement such a program. Specifically, the guidance states:

> "If the grantee operates a public utility that is not budgeted or accounted for in a separate fund, the grantee is strongly advised to discuss options with its assigned HUD field office."

While the guidance implies that some accommodation might be made, in reality public power utilities in such circumstances are finding it quite hard to reach agreement with HUD on a program that would qualify. APPA is working with congressional staff to see what steps can be taken to clear a path for all public power utility customers to benefit from such programs.

Low-Income Home Energy Assistance Program

A major concern in the pandemic are the effects unemployment and the economic downturn are having on at-risk utility customers, including low-income households and seniors. While the vast majority of utilities already have provided substantial relief to customers during the pandemic – including moratoria on shutoffs, the waiving of late payment penalties, and the like – all customers are still obligated to pay their bills. To help these customers, Division B of the CARES Act provides $900 million for the Low Income Home Energy Assistance Program (LIHEAP). This $900 million comes in addition to the $3.74 billion already appropriated for the account for fiscal year 2020. The act provides that the additional funds could be spent through fiscal year 2021 for which another $3.75 billion was appropriated as part of the normal budget process. However, while roughly 6 million households receive LIHEAP benefits annually, it is estimated that nearly 30 million households could be eligible under current conditions.

Emergency Rental Assistance

The Consolidated Appropriations Act created a $25 billion Emergency Rental Assistance program proceeds of which are intended to be used for rent and utility assistance to residential renters. The program is being administered through the Treasury Department with funds distributed to states and to requesting city and counties with a population of more than 200,000. Eligible households are defined as renter households who: (1) have a household income not more than 80 percent of area median income

(AMI); (2) have one or more household members who can demonstrate a risk of experiencing homelessness or housing instability; and (3) have one or more household members who qualify for unemployment benefits or experienced financial hardship due, directly or indirectly, to the pandemic. The Trump Administration issued initial guidance for the program on January 19. Some of the requirements imposed by this guidance could make the program hard to administer. For example, beneficiaries must provide written documentation proving they have suffered economic hardship as a result of the pandemic. It is possible that given the change in administrations, Treasury may release further or revised guidance.

Because this is primarily a rent-assistance program, it is likely that the bulk of funding will go to rent, not energy, needs. However, APPA has strongly encouraged its members to reach out to cities and counties eligible to receive funds and to state LIHEAP and housing agencies with information on their best estimate of the number of renters in the service territory who are behind on their energy bills. We have also suggested offering to provide lists of names of renters who are behind who need help and offering to help facilitate a process where the utility informs their customers that funding is available and provide access to applications and a point of contact to local agencies to sign up for help.

FEMA Public Assistance

On March 13, President Trump declared the COVID-19 coronavirus pandemic a national emergency, allowing states to request a 75 percent state-25 percent state cost-sharing for spending on emergency health care aid, such as vaccinations, supplies, and tests. Then on March 23, the President began granting governor's requests for major disaster designations for states. As of April 11, all 50 states and four territories have been declared a major disaster as a result of the pandemic. These designations date back to January 20 and have authorized reimbursements for Category B – Emergency Protective Measures. A variety of utility-related expenditures should qualify, including some labor costs, equipment use, and supplies. To pay for these and other COVID-19 related costs, the CARES Act appropriated an additional $45 billion to FEMA, which was instrumental in providing additional ongoing unemployment insurance benefits as discussed above.

APPA Priorities

APPA's top priorities in the ongoing pandemic are that public power utilities have the physical, logistical, and financial resources to continue to operate while keeping their workers safe. Logistical and operational concerns are largely being addressed through our interaction with various stakeholder groups and federal departments and agencies. On the financial side, APPA has focused on guiding members to take best advantage of provisions available under current law and pursuing legislation to provide additional relief.

Maximizing the Benefit of Existing Programs

Throughout the pandemic, APPA has sought to provide guidance to its members about the effects of new legislation and its potential benefit to public power utilities and their customers. The association has also sought to intervene with lawmakers and the Administration when regulations and guidance for implementing these programs were unnecessarily complicated or inappropriately excluded public power utilities and their customers. For example, APPA worked with outside stakeholders and the Treasury Department to secure guidance clarifying that utility customer assistance program funded by Coronavirus Relief Funds could benefit public power utility customers. The association also sought, and secured, legislation extending the time to use such funds from December 31, 2020, to December 31, 2021. Similarly, APPA is now working to clear the way for the use of CDBG funds for emergency payments for all public power utility customers where such programs are being considered.

APPA has also worked to clarify the definition of "emergency responder" for purposes of determining whether a worker is exempt from the CARES Act emergency paid sick leave and paid family leave requirements. Likewise, APPA has provided guidance to members about FEMA assistance made available through disaster designations and the steps that need to be taken to ensure later reimbursement for COVID-19 related costs.

However, much of our ongoing efforts to address public power financial concerns during the pandemic and recession are proactive, seeking to provide resources and/or relief to public power and to prevent policy changes that might do financial harm. A summary of these issues follows.

Utility Shutoffs

In the 116th Congress, the House of Representatives included in two COVID-related bills (HEROES Act and HEROES Act 2.0) language that would prohibit utilities from cutting off service to customers for non-payment of bills. One such proposal would continue this prohibition for up to four months after the pandemic ends. APPA has worked to educate relevant member and committee staff about the consequences of such a proposal. In particular, APPA believes such a requirement is unnecessary and could be quite devastating to the operations of some utilities if such a moratorium were imposed for an extended period of time. In addition, a moratorium could have unintended consequences. For example, in most states, a utility shutoff notice is required to qualify for emergency LIHEAP benefits. Even where those requirements have been suspended, customers still lack the incentive to seek help. As a result, prohibiting the issuance of such notices could actually deny at-risk customer the very help they need.

LIHEAP

The economy has added back 17 million jobs since losing 25 million jobs between February and April. However, job growth ended in October and the economy has lost 800,000 jobs since then. As a result, the ability of many American families to meet basic household needs have suffered. The National Energy Assistance Directors Association (NEADA) estimates that 15 to 20 percent of U.S. households are more than 60 days past due on the electric and natural gas utility bills and that total arrearages will add to $40 billion by March of 2021. As a result, APPA continues to work with NEADA and the National Energy and Utility Affordability Coalition to secure additional funding for LIHEAP. These efforts helped secure: the $900 million supplemental spending increase for LIHEAP in the CARES Act. These associations are now working jointly to secure legislation to provide a $10 billion emergency supplemental appropriation for the program. The groups are also working to increase programmatic flexibility, including increasing income eligibility maximums to 200 percent of poverty or 80 percent of state median income – whichever is higher; to prohibit states from imposing asset tests for COVID-related relief; and to increase the percentage of LIHEAP funds that can go to cover administrative expenses to 15 percent. The latter is particularly important as LIHEAP eligible households may not be seeking assistance while utility shutoff moratoria are in place.

Payroll Tax Credits

APPA intends to continue to press Congress to provide access to payroll tax credits to offset the cost of emergency paid sick leave and paid family leave required under the CARES Act. While public power utility employees may be exempt from these requirements under DOL guidance, APPA knows of no public power utilities that have not provided these benefits to workers. Absent access to the payroll tax credits, these emergency paid sick and family leave requirements are – effectively – an unfunded federal mandate when state and local governmental employers are already facing huge revenue shortfalls.

Tax-Exempt Financing

While APPA will continue to work to find ways to directly offset additional costs and lost revenues lost as a result of the pandemic, we will also continue to work with other state and local stakeholders to pursue policies that will reduce our financing costs.

This includes:

- Reinstating the ability to issue tax-exempt advance refunding bonds;
- Increasing the small issuer exception from $10 million to $30 million;
- Allowing the issuance of direct payment bonds, with a prohibition of sequestration of new and existing direct payment bond payments; and
- Amending private use restrictions to give utilities more flexibility in negotiating customized contracts with large commercial customers.

Targeted Direct Assistance

As discussed above, a number of provisions enacted to date have benefited public power utilities and public power utility customers. However, a number of the largest programs are of no direct benefit to public power utilities. As a result, the American Public Power Association has sought opportunities to advance direct pandemic-related aid for public power utilities. One such proposal was developed by the staff for the Senate Committee on Energy & Natural Resources. It would create a loan program for public power utilities and electric cooperatives. These loans would be forgivable to the extent that proceeds were used offset customers' COVID-related nonpayment of their utility bill. This will provide relief to customers and needed cash liquidity to utilities. However, given the momentum behind other proposals that would be of benefit to public power – including increased LIHEAP funding, ability to use payroll tax credits for emergency paid sick and family leave, and bond financing provisions – APPA is primarily focusing on those provisions at this time. However, we continue to discuss the idea of direct aid on the Hill and will return to focus on that issue if needed and appropriate.

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