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TESTIMONY
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
MARCH 4, 2010
MALCOLM WOOLF
DIRECTOR
MARYLAND ENERGY ADMINISTRATION
AND
VICE-CHAIR
NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS
IMPLEMENTATION OF ENERGY PROGRAMS BY THE STATES
PURSUANT TO THE AMERICAN RECOVERY AND
REINVESTMENT ACT

Mr. Chairman, my name is Malcolm Woolf and I am appearing today on behalf of the National Association of State Energy Officials (NASEO). I am Vice-Chair of NASEO and the Director of the Maryland Energy Administration. I am also pleased to be here today alongside the National Governors Association, where I previously served as the Staff Director of the Natural Resources Committee. I also previously worked as a staff counsel for the Senate Environment and Public Works Committee.

NASEO represents the energy offices in the states, territories and the District of Columbia. We are focused on a balanced national energy policy. At the present time, the Association is focused on working with the states in ensuring that the energy portion of the stimulus funds directed to state activities is effectively distributed.

The short answer is that the energy portion of the stimulus funds operated by the state governments has been a success. Clean energy investments are being made in every state that are creating jobs, reducing household bills and promoting renewable power sources to accelerate our energy independence. We are seeing a significant ramp-up in spending across the United States and we are certainly observing a flood of innovative activities by state and local governments.

During NASEO's recent winter meeting here in Washington, D.C., I discussed with my colleagues a wide variety of creative solutions being implemented by my fellow energy directors. The dynamism and progress was palpable. In my own state of Maryland, we have instituted energy programs in all sectors of the economy that are retaining and producing jobs.

Today, I will focus on describing our activities under the State Energy Program (SEP) and the Energy Efficiency and Conservation Block Grant (EECBG). I will also discuss the Weatherization Assistance Program (WAP) and the Energy Star Appliance Rebate Program. SEP received \$3.1 billion under ARRA, EECBG received \$3.2 billion under ARRA, WAP received \$5 billion under ARRA and the Appliance Rebate Program received \$300 million under ARRA.

SEP and WAP have been funded since the 1970s and have a strong track record of success. ARRA funds were added to base funding with an existing infrastructure. Congress was wise to build on existing programs and existing authorizations. EECBG was authorized in the Energy Independence and Security Act of 2007 (EISA) and the Appliance Program was authorized in the Energy Policy Act of 2005 (EPACT 2005). Neither of these programs received funding until ARRA was passed.

There is no doubt that the ramp-up of existing programs and the implementation of new programs has been a challenge, both at the federal and state levels. The federal government has been adding and training new employees. The state governments are suffering through the worst cutbacks since the Great Depression, which has led to difficulties, but we are adding energy jobs and persevering to effectively invest the federal funds.

OVER HALF OF SEP FUNDS ARE ALREADY COMMITTED, WHICH ENABLES COMPANIES TO HIRE EMPLOYEES AND BEGIN WORK LONG BEFORE FUNDS ARE FORMALLY “SPENT”

In the case of SEP and EECBG, the present reporting mechanisms under ARRA do not reflect the whole picture. With respect to SEP, our recent survey from last week indicates that well over one-half (\$1.8b. +) of the SEP funds are committed (grantees selected and awards made) and approximately \$777 million is actually under contract. This is very important, because the actual rate of “costing” or federal spending does not accurately reflect the jobs created or the impact on the economy. I should also note that DOE NEPA reviews have been completed for \$1.86 billion in projects.

For illustrative purposes, the vast majority of the states utilize private sector companies to conduct the energy efficiency activities. In the case of an energy service company (ESCO) that has received a contract to undertake energy efficiency upgrades in a school building, the contract generally provides that payments are not made until the work is actually completed or milestones under the contract are satisfied. In general, the ESCO begins hiring upon contract execution and conducts the work. The economy is directly and indirectly impacted. However, the spending or “costing” (in federal parlance) does not occur until the work is completed, the state is satisfied that the work is done properly and then the payment is made. Payments are not generally made up-front in order to protect the public against waste, fraud and abuse. Our ability to enforce the terms of these agreements are greatly enhanced if the state is holding the money, not the contractor. So, while the “costing” figure is low, the work conducted and jobs created is accelerating. We will not waste federal or state dollars by changing these contract terms. However, businesses can add employees and receive financing once the binding contracts are executed, with appropriate performance guarantees.

The state energy director in Arizona recently reflected on this example, when he described being in his office one day in January when two contractors appeared looking at lighting and examining the facility in great detail – they were hired by the state’s contractor – and they were doing a technical energy audit as the precursor to implementing the energy efficiency measures. The state had not yet paid them, thus the federal money was not yet “costed” but the work was surely being done and these individuals were surely being paid.

Moreover, the federal tally of jobs created does not reflect the substantial leverage states are achieving with excellent program design. In the case of state and local government building retrofits, states typically obtain 4-to-1 private capital leverage for projects. The federal guidelines for jobs created does not allow for the counting of any of the jobs directly created by this leverage. Given states’ use of at least one third of SEP funding for these types of retrofits the jobs count provided by DOE is far lower than reality.

Spending of WAP funds has accelerated this quarter, despite the delays caused by Davis-Bacon compliance. The National Association of State Community Service Programs (NASCS) and the National Community Action Foundation (NCAF) have been working closely with DOE to accelerate program delivery. We are confident that the target of 600,000 weatherized homes by March of 2012 will be achieved.

For example, in New York the WAP program will dramatically exceed its goal by weatherizing 15,000 low-income houses and apartments in 2010, with an ultimate goal of 45,000 units by March of 2012. 550 housing units have now been completed and more than 17,400 units are in process. As of December 31, 2009, 226 jobs were directly created with many more subcontractor jobs and more than 720 people have been trained. In New York, \$60 million from ARRA has been targeted for multi-family dwellings.

In Arizona, 110 homes received weatherization services in September and October 2009 with ARRA funds and an additional 369 houses were weatherized with regular appropriated dollars (an increase of 50% above normal rates).

EECBG funds have been provided to well over 2000 cities, towns and tribes, many of which have not operated energy programs previously. In addition, the authorizing legislation also requires the development of an energy strategy. We have been impressed with the types of projects that are being implemented. The states are also tasked to work with the smaller communities directly. This has led to more coordinated energy programs and the use of “best practices.” We are also working closely with the U.S. Conference of Mayors, National League of Cities and the National Association of Counties to share information and assist the local and state governments.

The State Energy Efficient Appliance Rebate Program (SEEARP), totaling \$300 million, is being rolled out across the country, generally in the first two quarters of 2010. The states are working with retailers to identify target time frames for program initiation, e.g., President’s Day sales or Earth Day. The program is over-subscribed and has had an immediate impact. The DOE Energy Savers web site has updated information (www.energysavers.gov/rebates).

We are also trying to use these funds to transform energy markets and produce long-term, sustainable jobs. Thus, it is critical to plan our programs so that projects are conducted over time rather than over 1-3 months. This will help more effectively train workers, allow the demand to increase and allow a “green” workforce to develop. SEP ARRA funds are leveraging almost an additional \$5 billion in investments, beyond the ARRA dollars.

INITIAL DELAYS ARE NOW LARGELY OVERCOME

The most significant problems in ramping-up these programs have simply been in the processing of the paperwork and the need for federal, state and local employees to gear-up. This was an enormous job. SEP went from \$50 million to \$3.1 billion (though state-administered funding was in the hundreds of millions). WAP went from a DOE funding level of \$450 million (though much more when considering other sources of funds) to \$5 billion. EECBG went from \$0 to \$3.2 billion, with over 2,300 direct grantees. The Appliance Rebates went from \$0 to \$300 million.

With that said, the work completed thus far has been extraordinary. While there are, and there will be, examples of problems that are slowing us down, the results have been very

positive. While there have been frustrations, the federal, state and local governments are working together – we are sharing successful approaches and looking at ways to streamline the systems.

To step up to the challenge, NASEO hired on a part-time basis (with DOE support), 7 former state energy officials to help coordinate on a regional basis to ensure that every time a problem was solved we would not have to solve that exact problem again. DOE has also assembled a remarkable team. Matt Rogers has been extremely helpful in moving the ball forward. Cathy Zoi, as the Assistant Secretary for Energy Efficiency and Renewable Energy, has been tremendously accessible and moved quickly to find creative solutions. Gil Sperling first and now Claire Johnson, as the heads of the Office of Weatherization and Intergovernmental Programs (managing SEP, WAP and EECBG), and their staff, have been critical in addressing problems. Scott Blake Harris, the DOE General Counsel, recommended holding monthly calls with the state energy officials and the appropriate legal officials in the states to address problems. These calls have produced positive results. General Counsel Harris has also imposed a 48-hour rule — he attempts to solve problems in 48 hours. They have also set up a hotline (gchotline@hq.doe.gov) to respond to state and local legal problems. Sky Gallegos, the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs, has also been a key problem-solver for the Department. The National Energy Technology Laboratory (NETL) and the Golden Field Office (GO) are the key procurement arms for the Energy Efficiency and Renewable Energy Division (EERE) and they have been staffing up and improving their response times. Have there been issues – absolutely. Do we wish that problems were solved earlier – absolutely. However, we all recognize that the personnel are trying hard to get the job done and are more rapidly processing the paperwork.

The greatest burdens have been in five areas: 1) general ramp-up issues; 2) the National Environmental Policy Act (NEPA); 3) Davis-Bacon; 4) Buy-American; and 5) Historic Preservation. In each case, spending has been delayed but the laws are being complied with and the programs are being implemented. DOE's efforts to address these issues resulted in the issuance of multiple guidance documents by the Department in November and December 2009. With this guidance in hand, states were then able to rapidly move funds to grantees. This process is accelerating.

Ramp-up issues: DOE has been faced with quickly building the capacity to manage massive new responsibilities. In addition to huge paperwork increases, DOE also needed to hire and train new personnel. The rapid expansion at DOE has led to some inconsistent decisions where one DOE program manager approves a state program while the identical program is rejected by another DOE official.

To minimize the risk of waste, fraud or abuse, states also have detailed procurement processes that hindered rapid ramp-up. In Maryland, for example, any contract over \$200,000 goes before a three member Public Works Commission, consisting of the Governor, Comptroller and Treasurer. While such procurement procedures take time, they help ensure that taxpayers receive the maximum value for their dollar.

NEPA: NEPA posed a variety of challenges. First was simple logistics - there were simply not enough trained DOE personnel to evaluate these projects and programs. DOE has acted on over 5,000 NEPA actions, though there are thousands more.

Second, NEPA forced states to look for “shovel-ready” projects that didn’t involve shovels, since physical construction would likely trigger a lengthy NEPA review process. Maryland, for example, submitted its SEP application in June 2009 with programs designed to qualify for so-called “Categorical Exclusions” under NEPA. In early November 2009, DOE created “templates” for SEP and EECBG to make it easier for state and local governments to get “Categorical Exclusions.” Once we revised our application to fit the new DOE templates, DOE finally approved Maryland’s categorical exclusions in January 2010. For example, NEPA reviews for solar activities in Tennessee has slowed spending in that state. Nationwide, NEPA determinations have been completed on over \$1.8 billion of SEP projects.

Davis-Bacon: ARRA applied the Davis-Bacon statute to state energy activities for the very first time, creating a series of issues. In the WAP program we had to wait for the establishment of the wage rate for WAP workers by the Department of Labor before issuing contracts for WAP work. This wage rate was not established until September 2009, after the survey was completed in late August. Contracts were issued within a couple of months and work has ramped-up.

In the recent IG report (OAS-RA-10-04) regarding the WAP program, the IG suggests that the states could have initiated these programs without knowing the wage rates. Unfortunately, the DOE IG simply has a lack of knowledge about these programs. If the preliminary wage rate was too high, does the IG suggest that we should get the money back from the employees? In the case of Ohio, where they did move more aggressively, the Department of Labor essentially reprimanded the state for moving too quickly. Wage determinations are still required for 5 states. In addition, we are still awaiting a determination by the Department of Labor that the WAP wage rates for residential energy efficiency programs can be utilized for the approximately \$800 million in residential energy efficiency programs planned under SEP and EECBG. This determination will be critical and needs to happen quickly. Twenty-five percent unemployment in the construction trades and a 38% drop in residential construction jobs since the recession started, could be partially alleviated by permitting these projects to go forward.

Another provision of Davis-Bacon requires that employees be paid weekly. In Maryland, and I believe elsewhere, many potential recipients of federal stimulus funds have declined awards upon learning of the need to reprogram their entire payroll system. It simply costs too much to accept the federal grant.

Buy-American: For Buy-American requirements, three product waivers have been issued since the start of 2010 for LED street lighting, CFLs and certain types of electronic ballasts. These products are simply not made here. Without more guidance in the Davis-Bacon and Buy-American areas, the state and local governments are simply requiring that fund recipients ensure that the laws are complied with. We recognize the importance of these legal requirements; we are simply stating that it has caused delay.

Historic Preservation: ARRA has created an avalanche of new work for state historic preservation agencies. Maryland, for example, will issue over a thousand ARRA grants and each one will need to be reviewed by our state historic preservation office. We have worked collaboratively to establish a screening process whereby grants at newly constructed buildings are approved quickly, whereas work performed at older buildings receive heightened scrutiny. Despite this workable arrangement, it sometimes causes frustrating delays. DOE, the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation recently concluded a model agreement that will hopefully speed program implementation.

ARRA'S ENERGY INVESTMENTS ARE BEGINNING TO PAY SIGNIFICANT DIVIDENDS

It is sometimes said that “Statistics lie, but stories tell the truth.” Let me briefly highlight four examples of early successes that Governor O’Malley and the Maryland Energy Administration have achieved thus far. I believe these stories show that ARRA’s clean energy investments are beginning to show significant returns.

First, we announced last week the “Greens at Liberty Road” project, which involves the construction of 105 affordable rental housing units for the elderly in northwest Baltimore County. The typical resident will enjoy energy savings of approximately 20%. The savings are particularly significant because low income families pay a disproportionate share of their income on energy.

Thus far, over 1,300 apartments occupied by low income Marylanders have been retrofitted to date with ARRA funds. The Maryland Energy Efficiency Housing Affordability program provides grants for energy audits and the purchase and installation of equipment and materials for energy efficiency and renewable energy measures in affordable multi-family rental housing. The program is an ongoing partnership between the Maryland Department of Housing and Community Development and the Maryland Energy Administration and is part of Governor Martin O’Malley’s EmPOWER Maryland initiative, which aims to reduce the state’s peak demand and overall energy consumption by 15 percent by 2015.

Governor Martin O’Malley also announced last week a “Clean Energy Economic Development Initiative” grant to TDI, a Bethesda based company that manufactures components of energy efficient lighting. With this funding, TDI will be able to transform their production from ‘batch’ to ‘continuous’ and they anticipate hiring new employees. TDI was one of four companies receiving the first round of performance-based awards to businesses that will spur clean energy production and create jobs in Maryland. Other winners include SWEBO, a Swedish-based biomass company that recently opened its U.S. headquarters in Bowie, Maryland, Competitive Power Ventures, which is proposing to build a 10MW solar installation in Charles County, and Maryland Environmental Services, which is developing a poultry litter-based biomass facility at the Maryland Eastern Correctional Installation.

To bring the benefits of clean energy within reach of Main Street Maryland, Governor O'Malley has also invested \$4 million of SEP funds into the development of an innovative, property-assessed clean energy (PACE) loan program. The EmPOWER Financing initiative seeks to leverage public funds with private capital to offer local governments a voluntary, clean energy loan program for their citizens. Maryland families and small businesses will benefit from the opportunity to obtain loans, which will be assessed on their property, to lower upfront costs for energy efficiency improvements and renewable energy installations. In close partnership with the Maryland Clean Energy Center, both the City of Annapolis and Montgomery County have enacted implementing local ordinances and several other localities are actively following suit. We hope to issue the first 50 loans over the next quarter.

My final story involves our residential solar grant program. With hundreds of Marylanders on our wait-list, the Maryland Energy Administration exhausted its annual budget early in the fiscal year. Using ARRA funds, MEA was able to keep this program running. In just the last few months, over 100 homeowners have installed systems on their homes. An additional 185 homeowners have been approved for grants, while over 400 individuals are on a wait-list. The wait-list ensures a steady flow of work and avoids the boom and bust cycle, so solar installers can hire new crews with the confidence that the funds will continue through April 2012, the end of ARRA.

Qualified Energy Conservation Bonds - Last week, when the Senate passed the first Jobs Bill, it approved a provision to allow Qualified Energy Conservation Bonds (QECBs), which are currently structured as tax-credit bonds, to be issued as direct-subsidy bonds, which have been far more successful. This is an important change for a valuable yet difficult-to-issue Stimulus bond program. I thank the Committee for your leadership on this issue and encourage you to work with the House to not only keep the Senate language in the final bill but also raise the subsidy level.

Maryland's QECB allocation is a little more than \$58 million, split among 12 local governments and the state. Maryland's eligible local governments are very interested in issuing QECBs to help finance viable energy projects that will save energy and create jobs. Until the change to direct-subsidy bonds and a higher subsidy level are enacted, QECBs will continue to be tantalizingly out of reach."

Smart Grid - We are also concerned about the apparent impasse between the IRS and DOE on the taxability of "Smart Grid" grants. These grants should not be subject to federal taxation. This is slowing these projects and will reduce their reach and effectiveness.

PROGRAMS IN OTHER STATES

More complete updates are attached to this testimony.

Alabama: This state has focused on a revolving loan program (\$25 million), funding for energy efficient school retrofits (\$5 million) and \$20 million for state building energy efficiency retrofits including performance contracting.

Alaska: The state is working to establish a bond program that would utilize \$18 million in ARRA funds to match \$250 million in bonds for revolving loans for state and municipal building retrofits. Their appliance rebate program is targeted to begin on March 16, and will work with Alaskans with disabilities.

Arizona: \$19 million is being dedicated to school energy efficiency programs, with additional innovative activities in the agricultural sector and for non-profits.

Arkansas: This state has also established a revolving loan fund for K-12 schools, job training at technical and community colleges and industrial and agricultural energy efficiency programs. Arkansas has also established a \$12 million revolving fund for sustainable building design.

Colorado: \$19 million of Colorado's funds went to revolving loan funds, New Energy Economy Development Grants, renewable energy finance and a cooperative activity on technology commercialization with NREL. Residential energy efficiency programs received almost \$6 million and a variety of renewable energy activities received almost \$10 million.

Kansas: Over \$34 million in ARRA funds have been committed to revolving loans for residences and small businesses. The state is providing a \$250 rebate to local banks to defray the costs for financing energy efficiency improvements.

Kentucky: Almost \$10 million is allocated for energy efficiency programs in schools. They have also allocated funds for agricultural energy programs and a Home Performance with Energy Star program.

Louisiana: Almost \$26 million was allocated to energy efficiency in state university buildings. They have also expanded their home energy efficiency rebate (HERO) program. They have also developed a commercial buildings energy efficiency program.

Michigan: They allocated \$24 million for energy efficiency in small industrial operations and supplier expansion activities for wind, solar, geothermal and biomass.

New Hampshire: This state has 16 separate SEP programs, including their revolving loan fund and a first-time homebuyer's energy efficiency program.

New Jersey: \$7 million has been allocated to fund solar installations on multi-family buildings for income-qualified recipients. Residential energy efficiency activities also received \$8 million (including single and multi-family residences).

New Mexico: \$24 million under SEP was awarded to schools, colleges, tribes and other agencies to improve energy efficiency. Transportation programs and community-based district heating and cooling also received funds.

North Carolina: Over \$11 million was allocated to small businesses and industry for energy savings and renewable energy activities. \$18 million was used to create an energy investment revolving loan fund for businesses, schools and other agencies.

North Dakota: This state is working with the utilities providing consumer rebates for installation of energy efficiency and renewable energy equipment. Their wide variety of projects include extensive work with the agricultural and industrial sector and a high efficiency furnace rebate program.

Pennsylvania: \$82 million in SEP ARRA funds have been awarded, with most of the contracts executed for wind, biogas, combined heat and power and solar projects. Like many states, Pennsylvania has allocated funds for revolving loan programs (\$12 million for the Green Energy Revolving Loan Fund).

South Dakota: They committed \$20 million for a revolving loan for state institutions. They are also targeting on-site generation activities, ground source heat pumps and HVAC improvements.

Tennessee: \$24 million has been committed to the Tennessee Solar Institute, and additional funds for comprehensive solar programs throughout the state.

Utah: \$3 million has been dedicated to a whole home retrofit initiative with an additional \$3 million for builder rebates for high performance homes. Public schools also received funding directly and through a revolving loan.

Vermont: In this state they are expanding grants and loans for renewable energy through the Clean Energy Development Fund.

Washington: They established an energy efficiency and renewable energy loan and grant program. They also dedicated \$14 million for community-wide urban residential and a commercial energy efficiency pilot program. An additional \$5 million was provided as a credit enhancement to support \$50 million in project expenditures.

Wisconsin: This states' Energy Independent Communities Program has been an excellent example of state-local cooperation. This is complementing efforts under EECBG and SEP. Wisconsin has utilized ARRA funds to focus on manufacturing retooling and expanding new energy efficiency and renewable energy efforts.

Wyoming: \$19 million was provided for energy efficiency upgrades for public buildings, tribal entities and non-profit organizations. \$3.5 million was contributed to weatherize homes for individuals above the WAP level, up to 250% of poverty.