

To: All NAESCO Members
From: Terry E. Singer, Executive Director
Date: December 6, 2011
Re: 2011 NAESCO Management Report

National Voice of the ESCO Industry

NAESCO serves as the national voice of the ESCO industry through its national and regional advocacy efforts that have such a direct impact on the strategic interests of its members. We can be proud that our industry and our members are the vanguard of leading the economy back to life by providing the investment, the jobs, and the infrastructure improvements needed to rebuild America.

We expect that our advocacy work in 2012 will build on the work undertaken in 2011 and will continue to be a mix of ensuring the continued funding and political support for key federal, state and utility administered ESPC programs, advocating for utility and state energy efficiency incentives that enhance ESCO projects in states with major ESCO markets, and promoting the adoption and use of state and utility energy savings monitoring and verification (M&V) rules and protocols that are workable and that recognize the full value that customers realize from ESCO projects.

Federal Policy and Advocacy Activities

NAESCO Advocacy work in 2011 shifted away from its effort in 2010 to enact comprehensive national climate and energy legislation to supporting the achievement of more modest federal goals.

Federal ESPC

Through a subcontract with the Lawrence Berkeley National Laboratory, NAESCO is providing technical assistance to FEMP to assist FEMP to expand the scope of ESCO projects into what are being called Deep Retrofits, and to assist FEMP in addressing some of the persistent barriers to performance contracting within federal government agencies.

In order to accomplish the aggressive mandates to which federal civilian and military agencies are subject, FEMP, GSA and CERL, working with the 16 Super ESPC ESCOs, are developing new retrofit strategies that will, among other things, minimize the thermal load of each building with super insulation and air sealing, technologies that are rarely used in ESPC projects today because of their high cost and long paybacks;

Implement district heating and cooling and CHP strategies as feasible; and, implement renewable energy generation to meet the fossil fuel reduction goals.

NAESCO has participated in two kick-off conferences on Deep Retrofit strategies. The first conference was organized by FEMP and CERL, and focused on the development of projects in which renovation funding from the Army will be blended with ESPC funding from ESCOs to achieve 60-70% energy savings in Army facilities. The second conference was organized by the Rocky Mountain Institute and focused on GSA's Zero Net Energy Challenge, in which each of the Super ESCOs will be given the chance to respond to an RFQ which solicits their qualifications to develop Deep Retrofit and Zero Net Energy strategies in about 35 selected federal facilities.

In 2012, we expect to continue the work of assisting FEMP to develop its Deep Retrofit program, and to assist FEMP in identifying and addressing the barriers to ESPC implementation in federal agencies. We have been addressing these barriers in our policy work for years, but much of the research that underlies our arguments is outdated and/or in the form of federal laboratory research reports that are not very user-friendly. So we are going to assemble the most up-to-date research information and write it into documents that are accessible to the target audience of federal agency facility and financial managers.

Federal Administrative Actions

On December 2, President Obama and Former President Clinton announced a program that will invest \$2 billion in energy efficiency retrofits in federal and \$2 billion in local government and university facilities in the next two years. The program, which is part of the President's Better Buildings Initiative announced last January, will give a strong boost to federal ESPC, because it is done through a Presidential Memorandum and is not accompanied by a budget allocation to pay for the work. Since local governments generally have little or no capital funds for EE projects, we expect that they will also have to meet their commitments through ESPC projects. NAESCO has worked on the Better Buildings Initiative since last winter, meeting with senior US DOE staff and supporting the EE elements of the President's Jobs Bill.

Federal Budget

The federal budget situation is pretty grim. The debate in Congress is not about how to expand EE and RE programs, but rather how much will be cut from US DOE Energy Efficiency and Renewable Energy programs and the US EPA programs to curtail air pollution. With the failure in late November of the Congressional Super Committee to produce a bi-partisan agreement on debt reduction and tax reform initiatives, significant additional federal budget cuts will automatically be triggered in 2013, and the federal government seems likely to limp through FY 2012 on a series of Continuing Resolutions, which are extensions of the FY 2011 budget.

The programs that directly affect the ESCO business which have already been cut significantly include the following:

- The Better Buildings Initiative, which President Obama proposed to provide incentives and loan guarantees for public and private commercial building energy efficiency, is zeroed out.
- The State Energy Program, which provides funding to the State Energy Offices that usually administer state ESPC programs, is cut by 61%.
- The Weatherization Program, which funds low-income programs in which our RES ESCO members work, is cut by 90%.

We continue to work with a broad national coalition of EE, RE and business groups to convince Congress to restore funding to these critical programs, but it is very difficult, in the current deadlocked political situation, to even get focused debate and votes on these programs.

3% Withholding Tax Repeal

NAESCO joined the broad-based Government Withholding Relief Coalition (GWRC), organized by the US Chamber of Commerce, which worked successfully to repeal the 3% withholding on all federal payments to contractors that was scheduled to start on January 1, 2012. The repeal legislation was enacted and signed into law by President Obama.

Federal Energy Legislation

The extended Congressional debate on deficit and tax policies has precluded action on several energy policy bills that have been introduced into the Senate this year. These bills, unlike ARRA or last year's failed energy and climate legislation, do not rely on massive federal grants or huge new sources of funding like a carbon trading regime, but rather on mandates (building codes and appliance standards), modest tax incentives, and revolving loan programs. It should be noted that the House does not seem to be enthusiastic about the Senate energy efficiency policies under consideration. NAESCO has provided industry input to these bills as they have been assembled and introduced.

Federal Regulatory Issues: Municipal Advisor Registration Requirement under the Dodd-Frank Act

NAESCO has spent a significant amount of time in 2011 seeking to prevent a proposed regulatory change that would significantly affect the ESCO industry were it enacted in its current form. The Securities Exchange Commission (SEC), under what they believe is a mandate enacted in the Dodd-Frank financial reform legislation, has proposed that ESCOs be required to register as municipal securities advisors and be subject to regulatory oversight appropriate to that status.

NAESCO has worked extensively with its member companies to mount a major lobbying effort to overturn this SEC rule. Members companies and NAESCO have met with SEC Commissioners and staff, as well as staff and members of Congressional Committees that have jurisdiction over the SEC and/or are concerned with the potential effects of the rule on the ESCO industry. Our argument is that the SEC has misunderstood the intent of the Congress, which specifically exempted engineering firms from the registration requirement, and should apply a similar exemption to ESCOs.

In response to our efforts, and those of other concerned industries, the SEC has delayed the issuance of the final rules; NAESCO continues to work to get the proposed rules modified and “safe harbor” language adopted. The SEC is re-writing the rule, and NAESCO continues to meet with SEC staff to respond to their questions, and to help them understand the distinction between the spreadsheets and other analyses that ESCOs provide to customers in the course of project development and the kind of services that municipal financial advisers provide.

State Energy Efficiency Action Project

NAESCO is participating in the State Energy Efficiency Action (SEE Action) project, which has been convened by US DOE and US EPA. The purpose of SEE Action is to accelerate the adoption of aggressive energy efficiency programs that seek to acquire all cost-effective energy efficiency, across the country. It appears that the US DOE Office of Energy Efficiency and Renewable Energy (EERE) is using the SEE Action blueprint as the foundation of its national EE strategy. NAESCO is a member of the Executive Group and three Working Groups – EM&V, Finance and Utility Motivation. NAESCO was also asked to join a national Steering Group, convened by US DOE that will guide a pilot project to set a common framework for M&V protocols for common energy efficiency measures, which we think will benefit the ESCO industry.

State Advocacy Activities

NAESCO is active in all of the key state proceedings that will have an immediate effect on the ESCO industry as well as in several regional initiatives of importance to the ESCO industry.

NAESCO has worked aggressively in several states to defend existing ESPC programs and energy efficiency funds, as well as to expand the use of ESPC in states that have historically not had aggressive programs. In our strategic planning for 2011, we did not anticipate the extent of the pushback against ESPC, and so have spent far more resources in 2011 on defending existing ESPC programs than we planned. We are happy to be able to report victories in California and Maine preserving public performance contracting enabling statutory language.

The following chart summarizes some key issues on which NAESCO worked in 2011 many of which are expected to also be a focus in 2012.

<p>CALIFORNIA <i>Defeat of SB-118</i></p>	<p>NAESCO led the effort of the ESCO industry to defeat SB 118, which would have replaced negotiated performance contracts with low-bid procurement for all public agency EE and RE projects. This was a major victory and represents another example of the effectiveness of the industry when it works together in a coordinated way and with one voice.</p>
<p><i>Gas Surcharge Funds</i></p>	<p>The California FY 2012 budget deal designed to close the massive state deficit appropriated the \$150 million surcharge from the funding that was supposed to support gas EE programs into the state’s General Fund. NAESCO supported a lawsuit brought by multiple parties to have the funding grab declared illegal. The CPUC currently has a proceeding underway to cobble together enough funding from various sources</p>

	<p>(unspent prior year gas and electric EE, unspent EM&V funds, etc.) to keep the gas EE programs running through 2012. A CPUC decision was issued on October 12. In early November, in a suit brought by NRDC and supported by a NAESCO affidavit, the courts ruled that the legislative action is unconstitutional. We are waiting to see if the state will appeal the court decision.</p>
<p>Electric EE System Benefits Charge (SBC)</p>	<p>Legislation to renew the electric SBC beyond its expiration at the end of 2011 failed on the last day of the legislative session, September 9. The utilities that administer the electric EE programs assure NAESCO that the defeat of the bill will not result in cuts to electric EE programs, because the 2012 budgets have already been set by the CPUC, and full funding is simply a matter of the amount of the SBC funding (which today is only about 25% of the full EE program funding) from the SBC to the supply procurement lines on customer bills. NAESCO, the utilities and prominent environmental and EE organizations in California believe that the SBC extension legislation has serious problems because it proposes to extend legislative control over the EE programs. NAESCO successfully fought similar provisions in New York legislation several years ago, because we think that EE funds collected from ratepayers should not be subject to appropriation into the state's General Fund, and that the CPUC process, not a legislative process, is the appropriate way to administer EE programs. CPUC Commissioner Ferron (and lead Energy Efficiency Commissioner) issued a Scoping Order on October 25 to which NAESCO provided comments and reply comments.</p>
<p>Custom Measures EM&V</p>	<p>Many ESCO projects in large facilities involve custom measures, (i.e., measures that are not common enough to be captured in tables of standard savings values). The Energy Division (ED) of the Public Utilities Commission (CPUC) had proposed an EM&V process that involves an unworkable additional review by the already overworked ED staff, or a 20% discount on project savings. NAESCO participated in a coalition of other project implementers to fight the ED proposal through submission of several rounds of comments, lobbying visits to the CPUC Commissioners and staff and a special hearing held by the three new CPUC Commissioners on June 6. As a result of this effort, the decision issued by the Commission in mid-July mandated an M&V protocol that is a substantial improvement from the original proposal.</p>
<p>Bridge Year Programs</p>	<p>All stakeholders in the California EE programs agree that the new program portfolios will not be ready for implementation on the currently scheduled date – January 1, 2013. The pre-requisite EM&V work on the current portfolio (2010-2012) will not be completed in time to allow the Commission and the utilities to incorporate the EM&V results into the 2013 program portfolios. NAESCO coordinated a group of stakeholders that included the utilities, project implementers, local governments and environmental groups that submitted Joint Comments that recommended continued funding for successful programs for the Bridge Year. The Scoping Order of CPUC Commissioner Ferron issued on October 25 also addresses Bridge Year programs and NAESCO addressed these issues in its comments and reply comments.</p>
<p>GEORGIA</p>	<p>NAESCO is monitoring the development of the rules for the new state ESPC program, which was approved by Georgia voters with a Constitutional Amendment last November. The development process has been slower than we had hoped. The RFP for a pre-qualified list of ESCOs was issued in mid-August, with responses due September 23. Evaluation of the responses will then take up to two months, with the announcement of the rankings of the pre-qualified ESCOs announced in early December.</p>

<p>NEW YORK</p> <p><i>NYSERDA SBC IV Planning</i></p>	<p>The third five-year cycle of the NYSERDA System Benefit Charge (SBC) programs expires at the end of 2011, after a six-month extension from June 30, 2011. Planning for the SBC IV cycle is well underway and should be completed on time. The program has been bifurcated into Technology and Market Development (TMD) and energy efficiency implementation, which now uses the same name as the utility EE programs – the Energy Efficiency Portfolio Standard (EEPS). NYSERDA's total budget remains at about \$175 million per year, but the allocation of the funding shifts about \$40 million from EE to TMD. NAESCO has protested this funding shift in two rounds of comments, and has participated in a working group that is addressing the rationale and funding allocations for the TMD programs. This shift of emphasis from project implementation to R&D support mirrors what is also occurring at the federal level. The New York PSC issued an order in mid-October that retained the funding for the EEPs program at its current level for the next three years. NAESCO believes that this is a significant endorsement of energy efficiency by the PSC, and puts a lot of pressure on the utility program administrators to achieve the aggressive EEPs goals.</p>
<p><i>NYC Schools Retrofits</i></p>	<p>In response to the urging of the US EPA, New York City is starting a program to remove all of the PCB-laden magnetic ballasts from about 700 school buildings, and to expand the lighting retrofits into comprehensive retrofits. The NYC Department of Education sent NAESCO a draft retrofit plan, and asked that NAESCO endorse the plan. We declined to do so, because we think the plan is too slow (10 years) and should be accelerated. NAESCO is working with the Blue-Green Alliance (BGA), a national organization of environmental and labor groups, to develop a program to use the BCB issue to catalyze comprehensive retrofit programs in large urban school districts across the country. Five ESCOs have been selected by the NYC Department of Education but the program scope is still under development.</p>
<p>MICHIGAN</p>	<p>After several years of work by NAESCO and the ESC, Michigan announced its first round of ESPC projects – three state prison facilities – earlier this year. Shortly thereafter, the new Governor began to reorganize that Department of Energy, Labor and Economic Growth (DELEG), and unfortunately in that process the ESPC “champion” was let go. The program has apparently recovered from this setback, and is moving ahead with the next set of projects. NAESCO plans to attend, and present at an upcoming meeting of the Michigan ESC.</p>
<p>NEW JERSEY</p>	<p>In early June, the Christie Administration released its draft Energy Master Plan, which had been delayed through the first half of the year. The Plan re-affirms the central role of Energy Efficiency and Renewable Energy and sets new goals for the expansion of DG, CHP, waste-to-energy and biomass. The Plan also calls for the state to lead by example with an aggressive implementation of EE in state buildings, using the recently enacted ESPC legislation. The Plan also broaches the concept of shifting the administration of EE programs to an Efficiency Utility, such as the one operating in Vermont, which has achieved the highest rate of EE implementation in the country, reducing electricity consumption more than 2% per year. NAESCO will participate in the development of the program initiatives that will result from its adoption. NAESCO is also involved in providing analysis to a protest that has been launched by environmentalists in New Jersey to the decision by Governor Christie to pull the state out of the nine-state Regional Greenhouse Gas Initiative (RGGI).</p>

<p>PENNSYLVANIA</p>	<p>As in Michigan, the new Governor of Pennsylvania has reorganized the Department of General Services that houses the ESPC program, called the Guaranteed Energy Savings Agreement (GESA). The GESA program staff was reduced from eight to two and the program “champion” was let go. The program was suspended in the spring, pending the results of and audit of the program by the Department of Public Works. ESCOs have met with the Governor’s Energy Executive and report that he is primarily concerned with the development of the gas resources in the Marcellus Shale. ESCOs and NAESCO were referred to the Deputy Secretary for Public Works within DGS, who has so far been unresponsive to requests for a meeting, or even a telephone conversation. NAESCO has talked with the Governor’s Energy Executive several times during the past three months; he will not discuss the future of the GESA program until he has the results of the DGS audit, which were originally to be delivered in mid-August and now have no firm date for issuance. NAESCO has reviewed some project information that was obtained through a Freedom of Information request by Penn Futures; the documents indicate that the project is meeting its savings targets, so we have no evidence of any “smoking gun” that would undermine the success of the GESA program or give program opponents any ammunition. In early December, the DGS issued a set of documents that it proposes to use in a revised GESA program. The documents appear to be an attempt by DGS to return the GESA program to the early days of state buildings ESPC. ESCOs will compete for projects on basis of fully priced scopes of work, and the state agency will be trying to compare the prices for proposals on different scopes of work. The documents are out for public comment until January 15, and NAESCO will be organizing the PA ESCOs to make sure that NAESCO comments incorporate all of their concerns.</p>
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NAESCO is also active in several regional initiatives of importance to the ESCO industry. For example, NAESCO is participating in the development of the Regional Greenhouse Gas Initiative through its service on the Advisory Committee for the New York program (approximately 34% of the total RGGI program) that advises NYSERDA, the program administrator, on the composition of the RGGI program portfolio. NAESCO is participating as well in the Northeast Regional EM&V Forum which is attempting to understand and harmonize the EM&V protocols that are used by utility and state energy efficiency programs in ten Northeastern states.

NAESCO 2011 MARKETING INITIATIVES

Press Outreach

Our advocacy efforts are probably one of the most visible ways in which we communicate information about industry achievements and the multitude of economic, environmental, and societal benefits created by our members. In support of our advocacy initiatives, we have been working to place op-eds in national and local media outlets. These pieces have been conceived to help promote the ESCO industry as a jobs creator which is a key message underlying all of our advocacy efforts. We feel that our message is highly relevant and attractive.

In 2011, we hired a communications firm for a five-month trial period to assist NAESCO in its media outreach efforts. Together we were able to place an op-ed entitled *The Truth about*

Green Jobs in Politico, which was also picked up by, and featured on, numerous blogs and websites including that of *The Wall Street Journal*. NAESCO also placed an op-ed voicing concern over Pennsylvania Governor Corbett's Administration threats to the GESA program in the Sunday Editorial page in the Patriot News, the official newspaper of Harrisburg, PA. The editorial is entitled *Pennsylvania's Guaranteed Energy Savings Act Is Winner For All Parties*.

At the request of the White House Council on Environmental Quality, NAESCO provided comments featured on the CEQ website in conjunction with a piece entitled "Jumpstarting Jobs, Enhancing Education: The American Jobs Act" by CEQ Chair Nancy Sutley, Chair of the White House Council on Environmental Quality. Several NAESCO members' comments were included as well. NAESCO also issued a press release applauding the support of the Chamber of Commerce, in its open letter to Congress and the Administration, for the placement of a stronger emphasis on the federal ESPC program. The NAESCO press release provided additional context and project investment data to highlight the federal ESPC achievements to date. NAESCO and the industry were also featured in the *The Boston Globe* for a piece about the ESCO industry in Massachusetts.

In addition to the direct NAESCO press outreach, we created a template op-ed distributed to the NAESCO membership. The template focuses on performance contracting as a jobs creator. It was designed to reinforce NAESCO's talking points on the magnitude of the industry's job creation record while providing member companies a chance to highlight a project of their own which illustrates the many benefits of an ESPC in addition to jobs creation.

Customer Outreach

In an effort to increase our outreach to end user groups as well as to service members' interest in getting in front of customer groups, NAESCO has been working to forge closer alliances with other trade organizations in which there are shared members. NAESCO exhibited at AEE's World Congress in Chicago. The materials displayed were designed to promote our member successes as well as the importance of joining NAESCO to support its advocacy and market building initiatives. We created a display entitled "Retrofitting America One Building at a Time" featuring pictures of projects of many of our member companies. Additionally, it provided us with an opportunity to interact with employees of member companies and to discuss with AEE possible partnership opportunities in 2012 that would be jointly beneficial to the membership of the two groups. Donald Gilligan also spoke at the conference on ARRA funded ESCO projects.

We continue to work to expand the universe of opportunities where we can place NAESCO members on industry panels and forge relationships with relevant industry groups. We arranged for representatives from three member companies to present "Performance Contracting 101" on behalf of the industry at the Memphis meeting of the Tennessee Renewable Energy & Economic Development Council. We have also been invited to present at two of their meetings in 2012. "Performance Contracting 101" is a slide show that NAESCO created that provides a general overview of the ESCO industry. Another member company presented the slide show at the ICLEI regional conference; ICLEI is an association of over 1220 local government members who are committed to sustainable development.

We are also working with regional US Chambers of Commerce offices to present "Performance Contracting 101" at their quarterly meetings that typically attract heads of regional state chambers, state government lobbyists and industry representatives. Now in its fifth year, *the 2012 Good Jobs, Green Jobs Regional Conferences* bring together thousands of labor, environmental, business, elected and community leaders working in their area and around the country to promote, preserve, and build coalitions that create good jobs and preserve our economic and environmental future. NAESCO submitted a session proposal entitled "Getting Back to Basics: Performance Contracting; Delivering Energy Savings and Jobs." The proposal was accepted and we have made it to the final round of session consideration for the April conference.

Webinars

After more than six months of planning, NAESCO presented the first of a five part webinar series in conjunction with NAESCO member Leonard, Street and Deinard and the consulting company MesaPoint Energy entitled "Delivering a Quality Performance Contract and Energy Efficiency Project."

The webinar is free to NAESCO members and members can also access the slides from the members' only portion of the NAESCO website. Nearly 200 people have participated in each of the two sessions of the webinar presented thus far.

Website

Our event registration was recently completed over-hauled and now allows exhibitors and sponsors to register online. The program is more sophisticated than our former system and allows for attendees to access their registration and update their profile to make changes and upload necessary information such as their vendor profile. This new system makes the registration process much more streamlined for all parties.

International

Following a meeting in 2010 hosted by NAESCO with U.S. Ambassador to Finland Oreck that was attended by interested member companies, NAESCO was asked by the Ambassador to provide a report on strategies to enhance and accelerate the use of energy efficiency and sustainable energy practices at U.S. embassies throughout Europe. NAESCO, with input from interested member companies, prepared a report on the opportunities created by implementing energy efficiency retrofits in U.S. embassies and focused on the largely successful experience that the Federal government has had using Energy Savings Performance Contracts as a key mechanism for acquiring energy efficiency investment at Federal facilities. The Ambassador has met with NAESCO and its members twice in 2011 to update interested ESCOs on the progress being made in facilitating ESPC opportunities at U.S. facilities overseas.

NAESCO also met in 2011 with delegations from Australia, China, and Spain and will be presenting at an upcoming meeting of the US-China ESCO Council.

Promotion of NAESCO Accreditation

As interest in energy efficiency grows around the country, policy makers and program administrators are struggling to identify experienced, high-quality energy service providers. NAESCO is meeting this need by expanding its efforts to communicate the value of the of its rigorous accreditation program. A new state (Alabama) was added to the list of states where NAESCO accreditation provides additional points in the ESPC evaluation process.

We hope you will continue to support NAESCO and participate actively in NAESCO initiatives and activities in 2012.