

FEDERAL UTILITY PARTNERSHIP WORKING GROUP SEMINAR

Federal capture of energy incentives: Getting to “no” you ...

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May 3rd, 2019



My Thesis

- Federal procurement officials, lawyers, and other policy makers are trained that accepting funds from sources other than Congress is “augmentation” and that doing so is tantamount to commitment of a cardinal sin
- Consequently, they’re preternaturally opposed to the idea of taking energy project incentives
- This very responsible predilection inclines them to resist acceptance of these funds in a multitude of ways, such that various obstacles exist to successfully capturing the incentives

Background (authorization to accept)

- **The Energy Policy Act of 1992 “authorized and encouraged” agencies to participate in utility incentive programs; this is codified in sections 10 and 42 of the U.S. Code**
- **10 USC 2913 (DOD):**
 - “The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the DoD to participate in programs conducted by any gas or electric utility for the mgmt. of energy demand or for energy conservation.”
 - “The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a gas or electric utility ...”
- **42 USC 8256 (All Federal Agencies):**
 - “Agencies are authorized and encouraged to participate in programs to increase EE, water conservation or the mgmt. of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.”
 - “Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase EE or to conserve water or to manage electricity demand.”

Obstacles to Incentives Capture

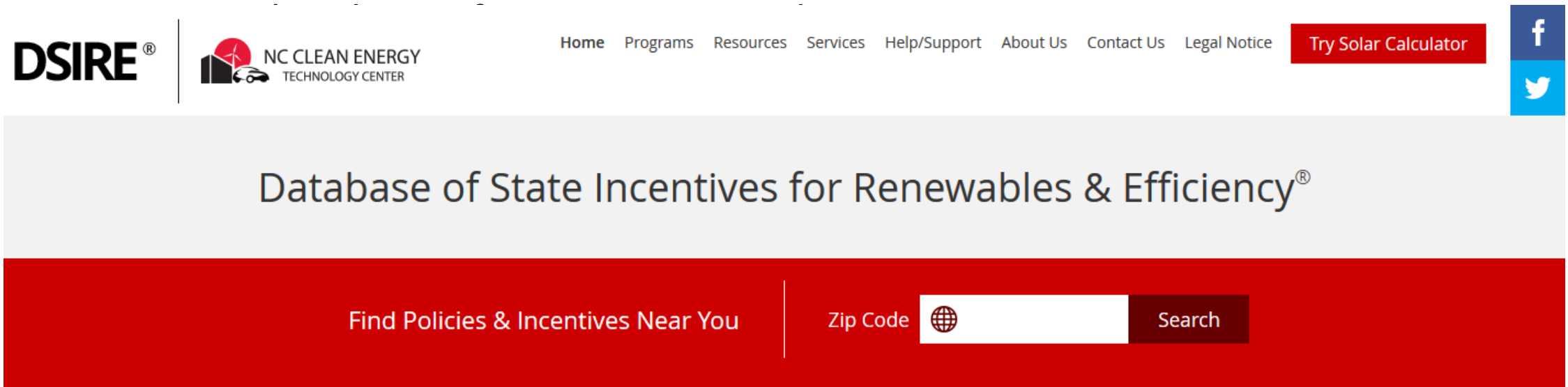
- **Augmentation perception – “That’s illegal”**
- **Acceptance of funds – many federal sites face difficulties in accepting checks (or ACH)**
 - Easiest when funds are from utilities and can be given as bill credits
- **At least one DoD service restrictively interpreted the original EPACT-’92 language identifying the source of incentives as “utilities”**
 - Non-utility incentives sources (e.g., Energy Trust of Oregon, Hawaii Energy or NYSERDA) either didn’t exist or weren’t offering energy incentives in 1992
 - Good news! NDAA-’19 amended 10 USC 2913 to add “state or local govt.” as permissible sources – and most non-utility providers can be construed as such

Obstacles to Incentives Capture (cont.)

- **Lawyers at a couple of civilian agencies have latched onto instructions to a 1995 appropriations bill**
 - Directed civilian agencies to send 50% of captured incentives to the Treasury
 - This wasn't explicitly pre-empted in EISA's (2007) authorization for agencies to retain 100% of the incentives they receive
- **In 2013, an administrative law judge ruled that renewable energy credits (RECs) are "property"**
 - Federally owned property can't be readily sold by most agencies
 - This crimped government's ability to benefit from this lucrative revenue source

So what's FEMP's role with incentives?

- From 2001 to 2015, FEMP maintained state-by-state profiles to let agencies know what incentives were available
 - Included EE, distributed generation (inc. RE), and demand response opportunities
- In 2015, FEMP decided that the Database of State Incentives for Renewables and Efficiency (www.dsireusa.com) obviated this role



What about demand response (DR)?

- **DSIRE, run by NC State, does not include DR programs**
 - Would like to, but are struggling with funding for core product
- **FEMP is now seeking to fill this void (goal: on-line June 1st)**
 - State-by-state DR profiles – annotated lists
 - Will include ISO/RTO programs – e.g., those from PJM, ISO-NE, ERCOT, etc.
 - Will also include info on time-varying pricing (TVP) options from utilities
 - DR coverage like this is not available anywhere else (at least for free)!
- **To find: FEMP → Energy and Project Procurement Development Services → Incentives and Demand Response Programs**