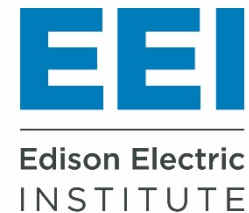


# FEDERAL UTILITY PARTNERSHIP WORKING GROUP SEMINAR

November 7-8, 2019  
Washington, DC

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

Hosted by:



# 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 U.S.C. § 2913:**
  - “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 U.S.C. § 8256:**
  - “Agencies are authorized and encouraged to participate in programs to increase EE, water conservation or the management 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 energy efficiency 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
  - Q: Is this “utilities” reference also a problem for other agencies?

# 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

# 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 programs
- In 2015, FEMP decided that the Database of State Incentives for Renewables and Efficiency ([www.dsireusa.com](http://www.dsireusa.com)) obviated this role

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