

March 3, 2021

The Honorable Chuck Schumer  
Majority Leader  
United State Senate  
S-221, U.S. Capitol  
Washington, DC 20510

The Honorable Nancy Pelosi  
Speaker of the House  
United States House of Representatives  
H-232, U.S. Capitol  
Washington, DC 20515

The Honorable Mitch McConnell  
Minority Leader  
United State Senate  
S-230, U.S. Capitol  
Washington, DC 20510

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
H-204, U.S. Capitol  
Washington, DC 2051

Dear Leader Schumer, Leader McConnell, Speaker Pelosi, and Leader McCarthy:

The National Utility Contractors Association (NUCA) represents represent construction contractors, manufacturers, and distributors who build and maintain a wide range of underground facilities and transportation infrastructure. Since its establishment in 1964, NUCA's member companies have provided the manpower and equipment needed to build, repair, and maintain the systems needed for water and wastewater, gas distribution, broadband, and electric infrastructure as well as the nation's surface transportation system.

As Congress prepares to debate on a much-needed major infrastructure package in 2021, NUCA offers our studied perspective on issues and policies related to underground utility construction that we hope will be considered before your legislative process is fully underway.

### **Fortifying our Nation's Infrastructure**

The February 2021 widespread failure in Texas and other states in the face of cold weather is putting the dilapidated state of America's power infrastructure in the spotlight. Modernizing the electrical grid to make it more resilient, efficient, and secure will be complex and expensive, and major improvements will require all local utilities to make major investments to improve their systems. In many cases, local utility companies lack the capital and political will to build a stronger grid on their own.

The federal government has an important role to play in achieving this goal. While putting together the wide range of elements that will be included in comprehensive energy legislation, Congress should set standards for efficiency and reliability that local utility companies, as well as generation and transmission providers of electric power, must meet and provide federal resources to help pay for the needed upgrades. In addition, it is increasingly clear that our national power grids are vulnerable to cyber-attacks, and that hardening the nation's electrical supply is clearly a federal responsibility and a matter of national security. Energy policy must provide for a more efficient, flexible, and reliable electricity network while ensuring its security.

The aftermath of the winter storms and extreme cold weather that struck Texas in February 2021 has underscored the importance of weatherizing and modernizing our nation's water infrastructure as well. Days

after the storms subsided and the weather warmed, more than 1,200 public water systems servicing nearly 8.8 million people – roughly one third of the state’s population – were affected by outages or other service disruptions caused by damage to the utility infrastructure system. Old and underfunded systems across the state suffered critical failures due to a variety of factors, including age, failure to be properly weatherized, and maintenance deferrals due to a lack of adequate funding. The longer that action is delayed to modernize and upgrade our nation’s water infrastructure, the more frequent – and more expensive – these events will become.

### **Financing Programs for Water and Wastewater Infrastructure Improvements**

While NUCA members engage in all construction activities related to underground utility systems, the water and wastewater infrastructure of a community is the primary market of most of our members. NUCA members see and address the impacts of neglected American infrastructure up close in their everyday work. They see first-hand that our nation’s dilapidated and obsolete water, sewer and stormwater systems require hundreds of billions of dollars in needed improvements. Although there are several existing federal programs that finance these critical projects, all are woefully underfunded.

NUCA has long supported the doctrine that the massive funding needs facing America’s environmental infrastructure invite participation by both the public and private sector. Over the past several years, NUCA has supported a wide range of legislative proposals that would:

- Reauthorize and increase appropriations for the Environmental Protection Agency’s (EPA) Drinking Water State Revolving Fund and Clean Water State Revolving Fund (SRF) programs. These highly efficient existing financing vehicles provide needed resources to the states through revolving loans for local communities to help refurbish their water and wastewater infrastructure. H.R. 2, a major infrastructure proposal from the 116<sup>th</sup> Congress, proposed CW SRF reauthorization of approximately \$40 billion and DW SRF reauthorization of approximately \$25 billion. NUCA strongly supported said provisions of H.R. 2, and urges Congress to target a similarly ambitious level of SRF reauthorization.
- Increase funding for the Water Infrastructure and Innovation Act (WIFIA), which provides long-term, low-cost credit assistance for regionally and nationally significant water and wastewater projects. The WIFIA program has proven successful since its establishment, but continues to suffer from a lack of adequate funding. WIFIA’s current funding levels will enable it to serve as a sustainable funding source, but more is required given the backlog of projects.
- Authorize municipal grants for construction and planning/design of treatment works to address overflows of combined sewers, sanitary sewers, or stormwater systems, as well grants to promote workforce development in the water utility sector.

NUCA also fully supported the Water Resources Development Act (WRDA) of 2020, which authorized federal dollars to improve the infrastructure that supports America’s ports, harbors, inland waterways. WRDA also supported flood damage reduction and ecosystem restoration projects overseen by the U.S. Army Corps of Engineers. While NUCA supports passage of WRDA legislation when it is considered every few years, we continue to encourage greater attention to the water and sewer infrastructure used by Americans every day. Additionally, while there was significant funding for the SRF programs included in previous versions of the most recent WRDA legislation, these provisions were removed in late 2020 to allow for inclusion of the legislation in the year-end omnibus package passed last month. These resources are often rescinded from larger legislative measures, but the need for them continues to grow across the country.

Although our underground environmental infrastructure is indispensable to the health of our country, federal spending accounts for only a small percentage of investments in water infrastructure over the past several

years. EPA assessments cite funding needs at approximately a half a trillion dollars – a figure which will only grow as long as necessary improvements are neglected. The February 2021 water infrastructure calamity across Texas illustrated to the nation what can happen when these hidden systems are neglected because of resource shortfalls. This Congress can make rebuilding water and sewer systems a true priority rather than a convenient political soundbite, and NUCA is willing to help lawmakers make these needs become real pipe and concrete delivering clean water and sanitary services to their communities.

### **Exploring Alternative Funding Sources for Water Infrastructure**

Federal funding for water systems has fallen by 77% in real terms since its peak in 1977 according to the Congressional Budget Office, leaving local municipalities and utilities scrambling to find the resources they require to build, maintain, or repair expensive infrastructure systems. As the nation recently witnessed across Texas in their urban and suburban water systems, these local authorities are not always successful in addressing their resource requirements.

NUCA has long maintained that while increased public investment in our environmental infrastructure is needed, there is a carefully defined role for investment from the private sector. Tax-exempt facility bonds are a very effective existing tool for financing long-term, capital-intensive infrastructure projects. Also known as “private activity bonds,” tax-exempt facility bonds provide reliable financing that encourages state and municipal governments to collaborate with sources of private capital to meet a public need. This approach makes infrastructure construction more affordable for municipalities and ultimately for end users, such as building a water treatment facility through a public-private partnership.

Exempt facility bonds utilize private capital instead of public debt and shift the risk and long-term debt from the municipality to the private partner. The lower cost financing often translated to lower costs for the customer. Exempt facility bonds have historically been issued to fund more politically attractive, short-term initiatives such as housing projects or providing student loans, instead of longer-term community projects like water and wastewater infrastructure.

This disregard is in part because of an annual volume cap in federal tax law applied to exempt facility bonds which hinders their use for water and wastewater infrastructure. As a result, on average less than five percent of exempt facility bonds are issued to water and wastewater projects annually. Some believe these bonds “privatize” public utilities, but that is not the case.

Last year, the Moving Forward Act (H.R. 2), an enormous infrastructure bill, included a provision that would have revised the Internal Revenue Code to provide that wastewater infrastructure would no longer be subject to state volume cap limits subject to exempt facility bonds. While NUCA did not support every provision included in HR 2, which ultimately was not considered in the Senate last session, this provision has bipartisan support and would take significant steps to open the door to private investment in water and wastewater infrastructure projects.

NUCA looks forward to working with Congress on advancing a comprehensive infrastructure package that includes language that would remove both wastewater *and* water infrastructure from state volume cap limitations and in doing so open up hundreds of millions of dollars to address our nation’s critical water infrastructure needs.

## **Water Infrastructure Construction as a Job Creator**

While investment in water and wastewater infrastructure enhances public health and environmental protection, it also creates high-paying jobs, generates significant economic activity and expands the local tax base. Industry studies have indicated that every \$1 billion invested in water and wastewater infrastructure creates up to some 28,000 new jobs with average annual earnings of more than \$50,000 and increases demand for products and services in other industries by more than \$3 billion.

Due to the economic ripple effect that construction employment offers, investment in water infrastructure generates measurable employment in hundreds of standard industry classifications recognized by the U.S. Census Bureau. Moreover, a \$1 billion investment also results in tens of millions of dollars in state and local tax revenue at a time when they unarguably need it most.

## **Keeping America Connected through Fiber Optic Infrastructure**

Since the coronavirus hit the nation in earnest last year, the need to ensure for high-speed broadband service has been and continues to be a national priority. Countless hospitals are near or at full capacity, many schools and other critical buildings remain closed or have significantly reduced access, and remote-work directives intended to slow the spread of the coronavirus all underscore the importance of keeping America connected. At a time when the country continues to “social distance” and face-to-face conversations are increasingly limited, ensuring Americans across the country have access to broadband service is more important than ever.

NUCA hopes that providing for robust broadband construction will likely remain a high-profile issue throughout the 117<sup>th</sup> Congress in any future Covid-19 relief bills or other legislation intended to address infrastructure needs. However, carriers eligible to receive federal dollars for broadband deployment should utilize only technology proven to meet current and future demand. This requires installation of proven fiber-optic high-speed technology.

Criteria for receiving federal broadband dollars must include requirements for providing higher broadband speeds, as this will encourage fiber-optic technology installation. The lack of internet service in many areas of the country when we need it most has made it clear that today’s target speeds of 25/3 Mbps as maintained by the Federal Communications Commission (FCC) are already obsolete. Therefore, as representing the construction entities who install these systems, NUCA supports policy that targets broadband speeds of 100/100 Mbps, which would provide broadband systems that are as “future proof” as possible. Congress should institute additional oversight to ensure that recipients make good on their commitments, including funding disbursements based on meeting program performance milestones.

## **Natural Gas Must Be A Partner to Meet America’s Clean Energy Goals**

NUCA members also work to build and rebuild gas distribution systems across the country, and we believe that the increasing hostility regarding the important role that clean-burning natural gas plays in providing a sustainable source of American energy is largely misplaced. While we understand and support plans to increase the use of renewable energy sources, the concept of having to choose between using natural gas or other traditional energy sources presents a false choice. In fact, use of abundant, clean-burning natural gas actually *enables* the use of renewable fuels; America will not be able to meet its climate goals by taking natural gas out of the picture.

NUCA maintains that America will not be able to achieve its clean energy ambitions without substantial growth of natural gas production and an expansion of our natural gas pipeline network, and urges Congress not to pursue policies that would be counterproductive to our common goals.

### **Opposition to Government-Mandated Project-Labor Agreements**

NUCA counts both union and non-union companies among its members, and all are opposed to any provisions that would create a government mandate to require the use of project-labor agreements (PLA) on federal construction projects. Government-mandated PLAs require contractors and their employees to adhere to union dictates, such as following union wage scales and union work rules, hiring only union labor, and paying into union benefits. As a result, qualified contractors who use non-union workers are effectively locked out of the process, at a time when the skilled trades workforce is already facing a labor shortage. Mandating union labor while cutting out valuable non-union workers through mandated PLAs will unquestionably delay the construction of the infrastructure needed for effective broadband deployment and harm the ability of Americans to maintain access to clean water and wastewater systems, jeopardizing public health.

When left to their discretion, federal contracting agencies have affirmatively declined mandating PLAs, which undercuts the argument that government-mandated PLAs increase efficiency in federal contracts. PLAs often produce higher construction costs than under open and fair competition for contracts. As a result, studies have shown that these construction projects are often 12 to 18 percent more expensive than comparable non-PLA projects.

Collective bargaining agreements between construction employers and unions are the result of negotiations between entities with competing interests but reflect local market conditions and practices. PLAs mandated by the government interfere with that balance and often impose questionable terms and conditions, inefficient work rules and staffing requirements, and other inefficiencies. They also force employers to work under collective bargaining agreements that they had no ability to shape or influence because they were negotiated by government agencies and a group of unions. It is important to note that government mandates for PLAs can even hurt union contractors by disrupting complex relationships between union contractors and their associations and union representatives.

NUCA would oppose any provision that would create a government mandate for the use of PLAs, and we urge Congress not to include such a controversial provision in any proposed infrastructure package.

### **Opposition to the PRO Act**

Last year, NUCA and more than 100 industry associations opposed the *Protecting the Right to Organize (PRO) Act*, which would have implemented a range of over-the-top policies, including:

- Eliminating of “right-to-work” laws across the country,
- Forcing union representation without an appropriate secret ballot election, and
- Undermining options for employers to determine independent contractor status.

Over the past 20 years, most of these concepts have either died during the legislative process or were struck down in the courts. While the PRO Act was recently introduced as standalone legislation, NUCA wants to be clear about our opposition to this harmful legislation and the negative impacts it would have on utility infrastructure if its provisions were enacted.

## Sharing Responsibility in Damage Prevention

NUCA was pleased to see pipeline safety reauthorization included in the omnibus/Covid-19 relief package that was enacted into law at the end of 2020. As an avid supporter of “shared responsibility” in efforts to protect underground facilities during excavation activity, NUCA supported provisions in the pipeline safety bill that requires operators of gas distribution pipelines to “identify and manage traceable, reliable, and complete records, including maps and other drawings,” and language that will ensure that this documentation is “accessible to all personnel responsible for performing or overseeing relevant construction or engineering work.”

As a leader in the excavation construction industry, NUCA supports what we consider “pillars” of underground facility damage prevention to underground facilities during excavation activities. These pillars include mandatory participation in the one-call process (both one-call notification and membership); accurate and timely locating of underground facilities prior to excavation; and “potholing” by excavators so that underground facilities are exposed in order to determine their exact location. The recordkeeping requirements described in the pipeline safety provisions will take important steps towards pipeline safety and provide for safer excavation sites.

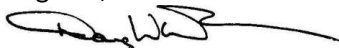
However, NUCA members continue to experience situations where responsibilities to locate and accurately mark subsurface facilities are not met, which undoubtedly compromises safety. In many of these cases, state authorities responsible for enforcing damage prevention law undermine the spirit of these laws through meaningless fines or a lack of any legitimate enforcement action. This amounts to more than failing to enforce the law – insufficient fines essentially incentivizes the neglect of meeting fundamental responsibilities. Damage prevention needs to be built around safety – not based on business decisions regarding what infrastructure gets marked, and when.

As policies that will be included in a comprehensive infrastructure bill are debated, NUCA supports consideration of language that would strengthen state enforcement of damage prevention law. This would increase the safety of all underground utility infrastructure projects, from water and sewer to broadband to gas distribution and electric power. Providing for damage prevention during excavation fundamentally impacts all underground construction.

NUCA appreciates the opportunity to provide the 117<sup>th</sup> Congress our perspective from the businesses at the forefront of our nation’s utility construction projects. Consistent with the President’s “Build Back Better” initiative, NUCA members stand ready to do their part in rebuilding a wide range of essential American infrastructure. We hope your team will call on our association as an expert resource as any potential infrastructure package begins to take shape this session.

Thank you for your consideration of our thoughts about these important issues in upcoming Congressional legislation. We stand ready to rebuild America.

Regards,



Doug Carlson  
Chief Executive Officer

CC:

House Transportation and Infrastructure Committee Chair Peter DeFazio

House Transportation and Infrastructure Ranking Member Sam Graves

Senate Environment and Public Works Committee Chair Tom Carper

Senate Environment and Public Works Committee Ranking Member Shelley Moore Capito

House Energy and Commerce Committee Chair Frank Pallone

House Energy and Commerce Committee Ranking Member Cathy McMorris Rodgers

Senate Energy and Natural Resources Committee Chair Joe Manchin

Senate Energy and Natural Resources Committee Chair John Barrasso