

**Testimony of Christine Keck
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**Before the Subcommittee on Capital Markets and Government Sponsored Enterprises
Committee on Financial Services, U.S. House of Representatives**

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Chairman Garrett, Ranking Member Waters, members of the Subcommittee, my name is Christine Keck and I am an executive with Energy Systems Group (ESG). On behalf of ESG and the energy services (ESCO) industry, I appreciate the opportunity to share my views on H.R. 2827 and the rulemaking underway at the Securities and Exchange Commission (SEC) regarding the registration of municipal advisors.

Energy Systems Group applauds Congressman Dold for the introduction of his important legislation. We support the objective of the bill, which attempts to exclude those who provide engineering advice from registration as a municipal advisor – including energy services companies. This was the original intent of Congress when it passed the Wall Street Reform and Protection Act.

Congressman Dold's legislation is a positive step in addressing the impact to the ESCO industry of the proposed rule under consideration at the SEC. The rule proposed recognizes that engineers provide advice as part of engineering services, but we believe it too narrowly defines the advice that the engineering exclusion would cover. As I will explain in my testimony today, the "advice" and "services" ESCOs provide to customers are inexorably linked and, as such, should be excluded from the definition of municipal advisory activity.

We are seeking a rule that properly interprets the term "engineering advice," recognizes the inexorable link between the continuum of services ESCOs provide and, in the final analysis, appropriately excludes ESCOs from the requirement to register as municipal advisors.

Energy Systems Group

Energy Systems Group is an award-winning and nationally-accredited energy services company that develops innovative and self-funding energy and infrastructure solutions for a broad range of customers, of which municipalities account for a substantial amount of contracted work. ESG is wholly-owned by Vectren Corporation, an energy

services provider serving more than 1 million customers in Indiana and Ohio based in Evansville, Indiana.

Founded in 1994, ESG has implemented over \$1.3 billion in projects for more than 300 customers throughout the United States and U.S. Virgin Islands. ESG is headquartered in Newburgh, Indiana and operates through local offices in the Midwest, Mid-Atlantic, Southeast and Southwest United States. ESG is licensed to do business in 39 states, the U.S. Virgin Islands and Puerto Rico.

ESG has completed or implemented approximately \$250 million of energy and infrastructure improvements for municipalities. On average, municipal work accounts for nearly 25 percent of ESG's annual business portfolio. This is not inconsistent with the rest of the industry, where other ESCOs also undertake a significant amount of municipal work.

Energy Systems Group is accredited by the National Association of Energy Service Companies (NAESCO) as an energy services provider. During the last twenty years, NAESCO-member companies have delivered thousands of Guaranteed Energy Savings Projects across the US and in a number of other countries. NAESCO member projects have produced:

- \$40B in projects paid from savings
- \$50B in savings – guaranteed and verified
- 380,000 person-years of direct employment
- \$25 billion of infrastructure improvements in public facilities
- 420 million tons of CO₂ savings at no additional cost

ESG's comprehensive offering, which is typical of NAESCO member ESCOs, includes facility-wide audits, energy and facility project development, engineering and design services, implementation, operations and maintenance services and measurement and verification of savings.

Through our core business of performance contracting and extensive network of utility partnerships, ESG provides innovative solutions for the modernization of buildings and energy infrastructures in the government, education, healthcare and commercial sectors. ESG also designs, builds and operates waste-to-energy facilities and cogeneration plants and offers a full range of renewable energy technology solutions such as solar, wind and geothermal.

ESG has developed a particular expertise and success in developing energy conservation projects for municipal governments. Through performance contracting, ESG assists local governments in overcoming major barriers that often prevent the implementation of infrastructure and energy saving improvements. Performance contracting is a turnkey service through which comprehensive energy efficiency, renewable energy and distributed generation measures are made possible and often is accompanied with guarantees that the savings produced by a project will be sufficient to finance the full cost of the project.

Energy Services Companies

The energy services industry serves a vital role to its customers by providing energy solutions that furnish low-cost, state-of-the-art power and energy efficiency services. Public sector entities, including municipalities, look to ESCOs to address their energy maintenance and infrastructure needs through projects that generate sufficient energy and cost savings, allowing for further investments to be made in clean energy and other engineering projects.

Typically, an energy services company will review a customer's current energy sources and uses and then will propose engineering solutions designed to reduce the customer's energy costs and upgrade the physical infrastructure. If the proposal is accepted, the ESCO will build and install the energy project. Providing these services requires ESCOs to maintain expertise in both managerial and technical aspects of the engineering projects.

ESCOs provide prospective customers general information and educational material about potential energy services projects. Potential customers need this information to make a qualified judgment as to the viability and workability of the proposed project. In general, this "engineering advice" often includes:

- Preparation of energy audits, engineering diagrams, and technical reports;
- Cash flow analysis of projected savings;
- General information on available funding options and various government and utility financial incentive programs available to assist in the implementation of the project; and
- Information on potential funding sources, for which ESCOs are not compensated.

The world of energy services is complex and evolving rapidly – both in terms of the many types of projects that may be undertaken and the various financial incentive

programs available to assist in the implementation of those projects. The information I have outlined often is provided during the course of deliberations about the specifics of a project. It simply is impossible to disentangle information about engineering (the different processes and technologies available to save energy) from the cost of that engineering, the savings that engineering can provide and the options for financing that engineering.

Registration of Municipal Advisors with the Securities and Exchange Commission

The statutory definition of municipal advisor, as included in Section 975 of Dodd-Frank, specifically excludes “engineers providing engineering advice.” We believe the intent of Congress was clear in that engineering services, by their nature, involve the provision of project-related economic information and, therefore, “engineers providing engineering advice” should be excluded from registering as municipal advisors.

However, the SEC’s proposed rule and accompanying comments effectively would place outside of the statutory exclusion the majority of situations in which engineering firms, including energy services companies, work with local governments to develop and implement energy savings and other projects. The SEC has stipulated in its proposal that cash-flow modeling or the provision of information and education relating to municipal financial products, even if incidental to the provision of engineering advice, would be deemed municipal advisory activities.

Cash-flow modeling and feasibility studies, which include a contemplation of financing – municipal or otherwise – are inexorably linked in the continuum of engineering services. Absent the ability of ESCOs to discuss the costs, savings and financing options of a potential energy project, the discussion of engineering itself essentially is useless to a customer.

Adoption of the proposed SEC rule would threaten the very nature of the ESCO industry and impede significantly our ability to undertake municipal projects that save taxpayer dollars, reduce energy usage and create jobs. In addition, it would place ESCOs – unnecessarily and contrary to the intent of Congress – under the regulatory framework of a financial services regulator, which has little or no understanding of the predominant engineering activities and services offered by an energy services company.

The Dold bill seeks to remove ESCOs from entanglement in a registration regime that was unintended and would be unnecessarily burdensome. At a time when governments at all levels are seeking greater energy efficiency and innovative cost-savings measures, our public policy should help facilitate the very projects ESCOs undertake with municipalities – not hinder them.

Our industry has engaged in constructive dialogue with the SEC and we appreciate the commission's willingness to consider the unique and complex nature of municipal energy services projects. We will continue to educate the SEC about our business practices and encourage the Commission to adopt a final rule that clearly exempts ESCOs from registration and regulation requirements that apply to municipal advisors.

Conclusion

Mr. Chairman, in conclusion I would like to thank you and the entire Subcommittee for the opportunity to provide my views here today. The outcome of the proposed rule and the exclusion from registration by ESCOs as municipal advisors is critical to the vibrancy of the energy services industry and our ability to assist municipalities in their endeavor to achieve lower-cost and more efficient energy.

I am willing to take any questions the committee may have.