

Allen Matkins

Renewable Energy Alert



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Energy Related Provisions of the American Recovery and Reinvestment Act of 2009 May Help California Reach State Renewable Energy Goals

In 2006 California adopted the Global Warming Solutions Act (AB 32) to address concerns about the rising level of greenhouse gas emissions (GHG) in the atmosphere and its potential impact on climate change. The primary goal of AB 32 is to reduce GHG emissions from California back to 1990 levels by 2020. The California Air Resources Board, the state agency responsible for implementing the regulations necessary to accomplish the GHG reduction goal, recently adopted a Scoping Plan as an intermediate step in ultimately adopting such regulations. A key component of that Scoping Plan is that retail sellers of electricity in California obtain at least 33% of such electricity from renewable sources by 2020.

Governor Schwarzenegger reiterated the renewable energy goals in Executive Order S-14-08 in November 2008, and there are currently two bills in the state legislature that would mandate the reductions. Given that current state law requires 20% of electricity sold in California to come from renewable sources by 2010 and that the amount of electricity generated from renewable resources is only about 12% today, this is a very aggressive goal that will require significant growth in the renewable energy industry in the near future. While there continue to be some major challenges to accomplishing the 33% goal, including limited access to transmission facilities and barriers to project permitting, the biggest challenge recently has been the credit crunch and uncertainty regarding the long term availability of tax credits critical to the continued growth of the industry.

The American Recovery and Reinvestment Act of 2009 (the "Act"), a \$787 billion stimulus package, signed by President Obama on February 17, 2009, provides approximately \$65 billion in tax benefits or direct spending in the area of renewable energy. While this package does not resolve all the challenges to significant growth in renewable energy development, many in the industry are optimistic that it will be an important and much needed boost.

Below is a summary of certain tax and spending provisions of the Act relevant to renewable energy providers and investors.

Tax Provisions

Qualifying Advanced Energy Project Credit

The Act establishes a new Qualifying Advanced Energy Project Credit, which provides a 30% tax credit for certain facilities engaged in the manufacture of advanced energy property. Advanced energy property includes technology for the production of renewable energy, energy storage, energy conservation, efficient transmission and distribution of electricity, and carbon capture and sequestration. In order to receive credits pursuant to this program, the project must first be approved by the Secretary of the Treasury.

Production Tax Credit

Taxpayers that invest in certain qualified energy producing facilities may claim a Production Tax Credit equal to approximately \$0.02 per kilowatt hour of energy produced by certain renewable energy



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projects during the ten year period following the date the project is placed in service. The Act extends the placed in service date through the year 2012 for wind facilities and the year 2013 for closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable facilities. The Act also permits taxpayers to elect to claim the Investment Tax Credit in lieu of the Production Tax Credit.

Investment Tax Credit

Taxpayers that invest in certain energy properties are entitled to a 30% Investment Tax Credit. The Act eliminates the pre-Act requirement that, for purposes of determining the amount of the Investment Tax Credit, taxpayers reduce the basis of qualifying property that is financed with industrial development bonds or through any other federal, state or local subsidized financing program. A taxpayer's receipt of subsidized financing no longer reduces the amount of the available Investment Tax Credit. Additionally, the Act removes the \$4,000 cap for qualified small wind energy property.

Grants in lieu of Credits

Taxpayers may elect to receive grants in lieu of either the Production Tax Credit or the Investment Tax Credit. For qualifying projects, the grant will be issued in an amount equal to 30% of the cost of the renewable energy facility.

Clean Renewable Energy Bonds ("CREBs")

CREBs reduce a bond issuer's interest expense by entitling a CREB bondholder to a tax credit in lieu of interest. The Act authorizes an additional \$1.6 billion of new Clean Renewable Energy Bonds, which can be used to finance facilities that generate electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, marine renewable, and trash combustion facilities.

Qualified Energy Conservation Bonds

Qualified Energy Conservation Bonds are another type of tax credit bond. The Act authorizes an additional \$2.4 billion of Qualified Energy Conservation Bonds to finance state, municipal and tribal government programs and initiatives designed to reduce greenhouse gas emissions. The bonds may be issued to make loans and grants for capital expenditures to implement green community programs, and for use in programs where utilities provide ratepayers with energy-efficient property.

Alternative Refueling Property Credit

The Alternative Refueling Property Credit provides a tax credit to businesses that install fuel pumps that dispense E85 fuel, electricity, hydrogen, natural gas and other alternative energy. The Act increases the credit for all qualified alternative energy pumps other than hydrogen to 50% of cost (with a cap of \$50,000). The credit for hydrogen pumps remains at 30%, but the cap was increased to \$200,000.

Spending Provisions

The Act designates \$16.8 billion of spending for Energy Efficiency and Renewable Energy. From that amount, approximately \$6.3 billion is earmarked to stimulate growth of the renewable energy resources: \$3.2 billion will fund Energy Efficiency and Conservation Block Grants ("Block Grants"), and \$3.1 billion will bolster State Energy Programs. In addition, the Act provides \$4.5 billion for the modernization of the energy grid which includes matching funds for entities that own and operate a distributed electricity generator with certain Smart Grid Functions

Block Grants (\$3.2 billion)

Block Grants fund various energy efficiency and conservation initiatives, including the development, implementation, and installation of renewable energy technology on or in any government building. The renewable technologies funded by the Block Grants are solar energy, wind energy, fuel cells, and biomass. Block Grants' funding is apportioned according to the following: 68% to eligible units of government in qualified cities or counties; 28% to States; 2% to Indian tribes, and 2% for competitive grants. Each of the 50 States is entitled to at least 1.5% of the Block Grants' funding designated to the States, with the remainder apportioned according to a formula devised by the United States Secretary of Energy that has not yet been released.

State Energy Program (\$3.1 billion)

The State Energy Program authorizes financial assistance of renewable-resource energy measures through repayment guarantees of the outstanding principal on any loan, note, bond, or other obligation evidencing indebtedness entered into by a government agency for the purpose of financing any renewable-resource energy measure, except one that is to be installed on a residential building containing 2 or fewer units. The limit on the aggregate outstanding amount that may be guaranteed for any single borrower, however, may not exceed \$5 million.

Smart Grid (20%) Matching Funds (\$4.5 billion)

Smart Grid Matching Funds are available for the reimbursement of 20% of the costs incurred by an electric utility, distributor or marketer for certain qualifying investments, including metering devices, sensors, control devices, and other devices capable of engaging in Smart Grid Functions. For non-electric-utility-owned distributed electricity generator, reimbursement may be received for the expenditures required to enable that generator to be monitored, controlled or otherwise integrated into grid operations using Smart Grid Functions. Smart Grid Matching Funds may not, however, be used for investments or expenditures that are eligible for specific tax credits or deductions under the Internal Revenue Code.

These provisions in combination with other efforts in the state to streamline the construction of new transmission lines, expedite and simplify the project approval process and develop better working relationships with all agencies and electricity providers bode well for the future of the renewable energy industry.

This alert is a brief overview of certain renewable energy-related provisions of the American Recovery and Reinvestment Act of 2009 and the Global Warming Solutions Act. If you are interested in learning more about the issues discussed above, please feel free to contact one of our attorneys.