

A Renewable Energy Law Update

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Oregon Department of Energy Releases Information on New Rounds of Renewable Energy Generation Applications for the BETC Program

The Oregon Department of Energy ("ODOE") has released information about the 2011 application process for the Business Energy Tax Credit ("BETC"). Under ODOE's three-tier priority system, \$15 million in tax credits is available for renewable projects estimated to cost less than \$500,000 ("Tier 1"), \$10 million is available for projects costing between \$500,000 and \$6 million ("Tier 2"), and \$10 million is available for projects costing \$6 million or more ("Tier 3"). This guidance follows ODOE's November 23, 2010, release of revised permanent rules for the BETC program. (Click [here](#) for links to the new permanent rules and a summary of the changes).

Some of the key developments include:

- **New Process for Filing Applications** – Applications cannot be hand delivered and must be mailed to an ODOE post office box. Applications that are postmarked before the beginning of an application round will not be processed.
- **Tier 1 Applications** (renewable energy generation projects with estimated costs less than \$500,000) – ODOE will conduct the Tier 1 application process in three phases of \$5 million each. Phase 1 applications must be postmarked after January 2, 2011, and before February 12. Phase 2 will run from February 18 through April 1, and Phase 3 will run from April 11 through May 19. Each phase will remain open until \$5 million of tax credits are committed; any unsuccessful applications for that phase will be returned. Unsuccessful applicants should be able to reapply in subsequent phases and will not receive priority over first-time applicants. Newly revised ODOE application forms must be used. The new forms will first be on the ODOE website on January 3, 2011, the same day ODOE will begin accepting applications.
- **Tier 2 Applications** (renewable energy generation projects with estimated costs from \$500,000 to \$6 million) – ODOE will accept applications for the competitive Tier 2 process from March 7 through April 8. With only \$10 million in tax credits allocated for Tier 2, we expect a relatively small number of projects will receive preliminary certificates.
- **Tier 3 Applications** (renewable energy generation projects with estimated costs of \$6 million or more) – ODOE will accept applications for the competitive Tier 3 process

from January 24 through February 28. With only \$10 million allocated for Tier 3, there will only be a few projects, at best, that receive a preliminary certificate.

- **Future Funding Cycles** – Once ODOE has committed the full \$35 million for 2011, the tax credits currently authorized by the Legislature for renewable energy generation facilities will be fully utilized. Renewable energy advocates are seeking to persuade the Legislature to authorize additional tax credits for renewable energy projects in the upcoming legislative session, but with the anticipated severe budget reductions, the prospects for any additional tax credit dollars for renewable energy generation facilities are in doubt. In addition, the BETC program for renewable energy generation facilities, as well as for energy efficiency facilities, is scheduled to sunset July 1, 2012, unless the legislature extends the sunset.
- **Permanent Rules** – ODOE issued revised permanent rules for the BETC program, effective as of November 23, 2011. The permanent rules generally adopt the temporary rules that were issued on May 27, 2010. The most significant changes from the temporary rules are the following:
 - **Pass-Through Partners:** ODOE clarified that a complete final application for a project owner choosing to sell the tax credit must include a signed pass-through partner agreement form in addition to a complete final certification application form. ODOE also clarified that the Department can hold "incomplete" applications until a pass-through partner is identified and a pass-through partner agreement form submitted. Finally, ODOE clarified that where the pass-through partner has not been identified by 60 days before the July 1, 2012, program sunset for renewable energy generation facilities, ODOE may issue the Final Certificate to the facility owner rather than to a subsequently identified pass-through partner. ODOE is working with the Department of Revenue to clarify how a pass-through partner later identified can claim the tax credit.
 - **Amendments to Preliminary Certificates:** ODOE removed certain restrictions in the temporary rules for amendments to preliminary certificates issued after June 1, 2009. Under the final rules, such preliminary certificates may be amended to change the name of the applicant when there is a change in ownership. Post-June 1, 2009, preliminary certificates also may be amended to reflect changes to the facility that increase output or otherwise improve the facility but do not result in an increased potential tax credit amount.
 - **Safe Harbor Date to Submit Final Certification Applications:** The new rules include a safe harbor date to assist project owners in planning for the BETC program's sunset. The rules clarify that, if a final certification application is received by April 30, 2012, ODOE will guarantee that the application will be processed prior to the July 1, 2012, sunset date for the renewable energy generation projects.

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