

A Renewable Energy Law Update

02/24/10

The Oregon Legislature Puts New Limits on Business Energy Tax Credits

Oregon's Business Energy Tax Credit ("BETC") is undergoing significant changes as a result of HB 3680, passed by the Oregon Legislature on February 23, 2010. The governor has indicated he will sign the bill. HB 3680 will place new financial limits on the program and give more discretion to the Director of the Oregon Department of Energy ("ODOE") to reject BETC applications and to reduce the amount of BETCs delivered to projects. Some of the key modifications include:

- **New Program-Wide Caps** – The bill establishes separate caps on "the total amount of potential tax credits" for renewable energy facilities and renewable energy equipment manufacturing facilities. For renewable energy facilities, the caps are \$300 million for the biennium ending June 30, 2011, and \$150 million for the year beginning July 1, 2011, and ending June 30, 2012. For manufacturing facilities, the caps are \$200 million for the biennium ending June 30, 2011, \$200 million for the biennium ending June 30, 2013, and \$50 million for the six month period starting July 1, 2013, and ending December 31, 2013. These program-wide caps apply to all facilities receiving preliminary certificates after June 2009. For other types of facilities, such as energy efficiency and recycling facilities, no program-wide cap has been imposed.
- **Reduced Credits for Larger Wind Facilities** – The credit for a wind facility with over 10 megawatts of installed capacity is limited to 5 percent of the cost of the facility, effective for all facilities receiving preliminary certificates after 2009. The maximum eligible cost for such a facility is further capped at \$7 million if the preliminary certificate is issued in 2010, \$5 million if the preliminary certificate is issued in 2011, and \$3 million if the preliminary certificate is issued in 2012. Any wind facility that received a preliminary certificate in 2009 or earlier is not affected by these changes.
- **Delayed Use of Tax Credit for Larger Renewable Energy Facilities** – In the case of a renewable energy facility that has over \$10 million in certified costs and receives final certification after January 1, 2010, the five-year credit period begins with the tax year after the tax year in which the application for final certification is filed. This delay does not affect other facilities such as energy efficiency or manufacturing facilities.

- **New Dates for Termination of BETC Program** – For facilities other than manufacturing facilities, final certification must be received before July 1, 2012. For manufacturing facilities, preliminary certification must be received before January 1, 2014.
- **Credit Allowed for Facilities Manufacturing Electric Vehicles and Renewable Energy Storage Devices** – The bill adds electric vehicles, electric vehicle component parts (not including batteries), and renewable energy storage devices to the types of property that may be manufactured by an eligible "renewable energy resource equipment manufacturing facility." The bill limits the total eligible cost for an electric vehicle manufacturing facility to \$2.5 million. Electric vehicle batteries may be included by rule in the definition of renewable energy storage devices.
- **10 Percent Overrun Provision Eliminated** – The bill provides that the Department of Energy may not certify an amount of eligible cost for a facility that is more than the amount approved in the preliminary certificate.
- **Greater Discretion Given to ODOE in Administering the BETC Program** – The bill codifies many of the program-tightening proposals contained in the temporary rules issued by ODOE in November 2009 and in ODOE's recommendations provided to the Governor in December. For example, ODOE is directed to establish a "tiered priority system" for evaluating preliminary applications for renewable energy facilities, taking into account factors such as relative cost, investment payback period, job creation, strength of business plan, satisfaction of environmental standards established by ODOE, and amount of energy generation. The bill also provides greater discretion to ODOE to allocate BETCs among manufacturing facilities when the program is oversubscribed. For a facility that receives preliminary certification, the bill empowers ODOE to deny or revoke final certification if the applicant cannot demonstrate that the facility will remain in operation for at least five years, or if the facility ceases to operate.
- **Reduced Return for Investors in Pass-Through Program** – While not part of HB 3680, another significant change to the BETC program has resulted from temporary rules issued by ODOE in November 2009. In those temporary rules, ODOE increased the pass-through rate that must be paid to an owner of a facility eligible for a 50 percent BETC from 33.5 percent to 42.7 percent. From an investment perspective, the change in formula means the annualized rate of return for the pass-through partner will be reduced significantly. While the new rates are intended to provide more capital to project owners and less return on investment to pass-through partners, there is great concern that the lower rates of return will make it difficult for project developers to monetize BETCs.

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