

# Energy and Clean Technology Alert: Smart Grid Stimulus Dollars May Start Flowing Soon

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## Introduction

The American Reinvestment and Recovery Act of 2009 (ARRA) committed billions of dollars in incentives to those companies that develop and deploy smart grid technologies. To date, however, the government has distributed very little of that money. The Department of Energy (DOE) and other government agencies were tasked with creating the requirements entities must meet before receiving the smart grid incentives, and those requirements are now starting to take shape.

Over the last 30 days, the agencies have slowly begun to release information, and the ground rules for getting ARRA-generated stimulus funds for smart grid projects are starting to emerge. These ground rules will become much clearer over the next 30 days. Indeed, Funding Opportunity Announcements (FOAs) for the Smart Grid Investment Grant (SGIG) program and Smart Grid Demonstration Project Grants were released this week. Solicitations for the “Innovative” loan guarantee program and “Commercial” loan guarantees are expected by the middle of July. Finally, interoperability standards for smart grid technologies and guidelines for new tax credits will be issued by the end of the summer.

## Grant Programs

### Recent Developments

On May 18, 2009, the DOE announced that the maximum grant size under both the SGIG program and the Demonstration Project program will be increased substantially from earlier projections. The maximum-level SGIG grants will now be **\$200 million** as opposed to the \$20 million cap announced in the April 20th Notice of Intent. Likewise, the cap for Demonstration Project grants will be increased from \$40 million to **\$100 million**.

This week, with the release of the FOAs, the DOE released more information regarding SGIG and Demonstration Project grant eligibility. Specifically, the SGIG program FOA states that the purpose of the SGIG is to “accelerate the modernization of the nation’s electric transmission and distribution systems and promote investments in smart grid technologies, tools, and techniques which increase flexibility, functionality, interoperability, cyber-security, situational awareness, and operational efficiency.” In addition, the FOA states that the applicant’s proposed project

period must not exceed three years and the applicants must propose a “minimum of 50% sharing for the total project costs.”

The Demonstration Project FOA states that grants will be awarded for “regionally unique demonstration projects to quantify smart grid costs, benefits and cost-effectiveness, verify smart grid technology viability, and validate new smart grid business models, at a scale that can be readily adapted and replicated around the country.” All companies and individuals, not just public utilities, are eligible. Grants will only be given under the Demonstration Project program, however, to projects carried out in collaboration with the electric utility that owns the grid facilities in the demonstration area. Further, all projects require a cost share of at least 50% from non-federal funds.

## Important Upcoming Dates

The release of the official FOAs will start the process of grants dollars beginning to flow to companies. The FOAs outline projects’ eligibility for the grants and detail the process for applying. Entities applying for grants under the SGIG program will need to act fast. The DOE set an **August 6, 2009** application deadline for the first wave of SGIG grants. Similarly, the application deadline for the Demonstration Project program is set for **August 26, 2009**. With nearly \$4.5 billion in available grant money for smart grid development and deployment, this is an extremely short turnaround period for such an important initiative.

## Loan Guarantee Programs

### Important Upcoming Dates

There are two loan guarantee programs available for entities assessing financing options for smart grid projects. The “Innovative” loan guarantees target novel technologies and include restrictions on the use of the funds. Alternatively, “Commercial” loan guarantees apply to many more technology categories and entail fewer conditions. Solicitations for both programs are expected to be released in the second or third week of July. More urgently, the ARRA requires that projects receiving loan guarantees must begin construction by **September 30, 2011**. The result is a very narrow window for companies to secure a loan and commence construction.

## Tax Credits & Grants in Lieu of Tax Credits

### Important Upcoming Dates

On June 30, 2009, the IRS is expected to release the application for the “Grant in Lieu of Tax Credits” program authorized by ARRA § 1603. Entities that wish to get a cash grant upfront instead of a tax credit will need to apply to, and be accepted by, the IRS program. The application will provide details regarding who will be eligible for the grants. This program will

be of special interest for entities that do not have enough taxable income to make tax credits valuable.

By August 17, 2009, the IRS is required to establish a certification program for the new Qualifying Advanced Energy credit outlined in IRS Code Sec. 48C. This new credit is directly applicable for companies making investments in smart grid technologies. In conjunction with the Grants in Lieu of Tax Credits program, companies that invest in smart grid technologies will have a new source of grants outside the SGIG and Demonstration Project grants. It appears that companies will be able to apply for the Grants in Lieu of Tax Credits, in addition to SGIG and Demonstration Project grants. Because both the SGIG and Demonstration Project grants require a cost share with non-federal funds, companies will likely be able to claim a tax credit or grant for their out-of-pocket expenses. Exclusivity provisions, however, may be worked into the tax application that the IRS is due to release by August 17th. In order for a company to take advantage of these additional grants, however, it will need to be accepted into two separate IRS programs.

## Interoperability Standards

### Recent Developments

Interoperability standards are established protocols that allow devices and infrastructure created by different developers to work together seamlessly. The ARRA tasked the National Institute of Standards and Technology (NIST) with building a consensus on interoperability standards. Once the final standards have been published, compliance with them will likely be a prerequisite to receiving smart grid grants or loan guarantees. On June 9, 2009, NIST published an initial standards framework titled Release 1.0. Release 1.0 sets out technological standards for security, automation, and inter-device communication. Public comments on the initial standards will be accepted until July 8, 2009.

Earlier this year, NIST awarded a contract to the Electric Power Research Institute (EPRI) to engage smart grid stakeholders and develop a draft interim standards “roadmap.” On June 17, 2009, EPRI delivered its report, which NIST will use as a “starting point” in developing a roadmap for smart grid interoperability standards. The nearly 300-page report thoroughly examines the priorities of all stakeholders in smart grid development and use. The report also outlines the hardware, software, and infrastructure that will likely be needed to develop a truly “smart grid” so no technology will be left out of the interoperability framework. Additionally, the report lists all the feasible standards options that could be adopted for each component of the smart grid. This could be an early indication of which standards will ultimately be adopted by NIST.

### Important Upcoming Dates

**July 8, 2009** is the last day NIST will accept comments on the 16 proposed interoperability standards announced in Release 1.0. Compliance with the final interoperability standards will be a prerequisite to receiving federal smart grid grants, loan guarantees, and tax credits; therefore it

is vital that companies with objections to the proposed standards voice their concern. Indeed, NIST will take into account public comments and EPRI's June 17th report when it finalizes the initial standards. NIST expects to publish the initial set of standards to support standardized smart grid architecture by **September 30, 2009**.

## Conclusion

Over the next 30 days, companies will learn how to get a share of the \$4.5 billion that the ARRA designated for smart grid development. The combination of delayed application processes and fixed deadlines for application submission or construction commencement means that companies will need to be prepared to move quickly this summer. Similarly, interoperability standards will be finalized by the end of September. This accelerated timeline will bring clarity to those developing new technologies, but the window to help influence which standards will be adopted is closing quickly.

Accordingly, entities operating in the smart grid space, patiently waiting for government guidance, will have to spring to action this summer to take advantage of the multiple grants, loan guarantees, and tax credits available for qualifying projects.

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For more information on federal smart grid initiatives and incentives, please [click here](#) for a comprehensive timeline of recent developments.

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*If you have any questions about the new regulations or the regulatory process, please call your Mintz Levin service professional or any of those listed below.*

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