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RENEWABLE ENERGY ALERT

HOUSE PASSES STIMULUS BILL CONTAINING SUBSTANTIAL RENEWABLE ENERGY MEASURES

On January 28, 2009, the U.S. House of Representatives approved the American Recovery and Reinvestment Act of 2009: $819 billion in emergency stimulus legislation containing substantial tax and spending provisions for the renewable energy industry. The renewable energy provisions of the House bill primarily support grants and loan guarantees for renewable energy generation and offer the industry extended and flexible tax provisions. The bill authorizes significant investments in energy infrastructure and government expenditures on energy efficiency. The Senate version of the legislation makes similar commitments to renewable energy; the Senate bill, however, contains additional benefits for the coal industry, including increased spending for research into carbon capture and sequestration technologies and demonstration projects.

The Senate is expected to begin debate on its bill this week. This client alert provides an overview of the renewable energy grant and tax provisions in the House bill, with attention to modifications anticipated in a companion Senate bill.

BILL EXPANDS DEPARTMENT OF ENERGY RENEWABLE ENERGY GRANT AND LOAN GUARANTEE PROGRAMS

The House bill allocates funding to the Department of Energy (DOE) in the form of renewable energy and energy efficiency grants and loan guarantees. A total of $18.5 billion in additional funding is allocated to the Department of Energy for its Energy Efficiency and Renewable Energy (EERE) programs. The renewable energy industry is poised to benefit from $2 billion in spending for the Renewable Energy Research, Development, Demonstration and Deployment program. This program funds research and demonstrations of renewable energy technologies; the bill allocates a minimum of $400 million for geothermal technologies and $800 million in biomass programs. The Senate version of the bill under consideration expands eligibility for this program to include advanced coal and nuclear projects. The remainder of authorized DOE expenditures includes investment into energy efficiency research and retrofits, low-income weatherization, advanced transportation infrastructure and advanced battery technologies.

The House bill also contains $8 billion in additional funding for the Innovative Technology Loan Guarantee Program, supporting loans for the rapid deployment of new or significantly improved renewable energy and electric power transmission systems. The increased loan guarantee program is intended to provide adequate capital for postponed renewable construction and transmission projects due to the current contraction in the credit market. The Senate version of the bill provides for $10 billion for the Innovative Technology Loan Guarantee Program; however, it expands the program to permit temporary DOE loans for renewable and transmission projects that are based upon commercially available technologies.

BILL AUTHORIZES SPENDING FOR SMART GRID AND EXPANDED ELECTRICAL INFRASTRUCTURE INVESTMENTS

The House bill authorizes billions in spending to upgrade the U.S. electrical transmission and distribution systems. In particular, $4.5 billion is allocated toward investments in a smart grid system. The DOE Smart Grid Investment Program is intended to deploy digital technologies in the transmission grid to save energy and costs, facilitate demand response and improve power quality. The current Senate version of the bill also supports this level of funding for a smart-grid system.

The House and Senate versions of the stimulus package both authorize the Bonneville Power Administration and the Western Area Power Administration to each borrow an additional $3.25 billion from the Treasury to finance grid improvements. The Western Power Administration may use that amount to construct, finance or study upgraded transmission lines and upgraded power delivery systems for renewable energy resources. Bonneville Power Administration is authorized to incur lending to construct, acquire and replace the transmission system.

BILL EXTENDS PLACED-IN-SERVICE DATE FOR TAX CREDITS AND OFFERS ADDITIONAL FLEXIBILITY

The House bill contains three major modifications renewable energy tax incentives. First, it extends the placed-in-service date for the renewable energy production tax credits. Second, it allows flexibility for certain projects placed in service in 2009 and 2010 to elect tax credits based on production or investment expenditures. Third, it offers a grant program in which eligible renewable energy producers can be reimbursed for expenditures in renewable energy facilities instead of tax credits.

The Production Tax Credit (PTC) is a cent-per-kilowatt-hour credit on renewable energy production for eligible renewable energy projects. Currently, wind projects must be placed in service by the end of this year for financers to claim the credit; other PTC-eligible projects have until the end of next year. For wind energy, the House bill and Senate tax provisions extend the PTC placed-in-service date to December 31, 2012. For other eligible renewable technologies, such as biomass and geothermal facilities, the House and Senate extend the placed-in-service date to December 31, 2013.

Both the House bill and the Senate bill respond to current market conditions that make uncertain the appetite for PTCs by allowing technologies that traditionally qualify for the PTC to, instead, receive an Investment Tax Credit (ITC) on renewable facility expenditures. Currently, only certain solar, geothermal and micro turbine facilities receive the ITC. The House bill provides a 30 percent ITC to wind, biomass, landfill gas, trash combustion and marine renewable electricity placed into service in 2009 and 2010. A separate provision in the bill expands the ITC to allow the subsidized portion of renewable energy facilities to qualify for the credit.

Finally, the House bill responds to the lack of appetite for tax credits by allowing renewable energy producers to receive grants from the DOE in lieu of receiving the PTC or ITC. Under the bill, the DOE would reimburse a certain percentage of investments in eligible renewable energy properties placed into service in 2009 and 2010. The DOE grant would consist of 30 percent total of the basis of eligible wind, biomass, geothermal and solar plants, with no cap on the amount of the grant. Other eligible technologies receive a 10 percent grant and may be subject to a grant limit. Participation in the grant program prohibits the facility from subsequently claiming the PTC or ITC. This provision is anticipated to be more controversial in Senate debate of the bill. It was not included in the current Senate version; however, a Senate amendment offered this week modifies the grant program to allow renewable energy producers to receive such a grant after Department of Treasury review.

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