

## RENEWABLE ENERGY ALERT

### **\$787 BILLION STIMULUS BILL CONTAINING SUBSTANTIAL RENEWABLE ENERGY MEASURES SIGNED INTO LAW**

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the “stimulus bill”), a \$787 billion emergency stimulus legislation containing substantial tax and spending provisions for the renewable energy industry. The stimulus bill’s renewable energy spending provisions include loan guarantees and grants for renewable energy projects and infrastructure. The stimulus bill substantially revises the tax code, extending the production tax credit deadline, offering flexibility to renewable projects to choose between a tax credit on production or investment, and establishing a program by which a renewable project developer may receive a grant in lieu of tax credits. Tax credits are also made available to manufacturers of clean technology equipment. This client alert provides an overview of the renewable energy spending and tax provisions.

### **STIMULUS BILL EXPANDS DEPARTMENT OF ENERGY RENEWABLE ENERGY GRANT PROGRAMS, SUPPORTING STATE AND LOCAL RENEWABLE ENERGY AND EFFICIENCY PROGRAMS**

The stimulus bill allocates \$16.8 billion in additional funding to the Department of Energy’s (DOE) Energy Efficiency and Renewable Energy grant programs. These programs include the Renewable Energy Research, Development, Demonstration and Deployment Program, of which \$2.5 billion is allocated to fund research and demonstrations of renewable energy technologies. The majority of funding is allocated to investment into state- and local-level energy efficiency and building retrofits, low-income weatherization, state energy program funds and grants for advanced battery technologies to support the manufacture of advanced vehicle batteries and components.

## **STIMULUS BILL EXPANDS THE DOE LOAN GUARANTEE PROGRAM**

The stimulus bill includes \$6 billion in additional funding for the DOE 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 will provide capital for renewable construction and transmission projects postponed due to the current contraction in the credit market. The stimulus bill requires that renewable energy systems, electric transmission systems and pilot biofuel projects funded through the \$6 billion in additional funding commence construction by September 30, 2011.

## **BILL AUTHORIZES SPENDING FOR SMART GRID AND EXPANDED ELECTRICAL INFRASTRUCTURE INVESTMENTS**

The stimulus bill authorizes a total of \$11 billion 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, including research and demonstration projects. The DOE Smart Grid Investment Program will deploy digital technologies in the transmission grid to save energy and costs, facilitate demand response and improve power quality. The stimulus bill provides 50 percent matching grants for Smart Grid demonstration projects to utilities, and the solicitation process will begin within 60 days of enactment of the stimulus bill.

The stimulus bill also authorizes 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 in their respective jurisdictions. The Western Power Administration may use that amount to construct, finance or study upgraded transmission lines and upgrading power delivery systems for renewable energy resources. The Bonneville Power Administration is authorized to incur lending to construct, acquire and replace its transmission system.

## **BILL EXTENDS PRODUCTION TAX CREDITS AND OFFERS ADDITIONAL FLEXIBILITY**

The stimulus bill contains three major modifications regarding renewable energy tax incentives, estimated to provide over \$20 billion in benefits to the renewable energy industry. First, it extends the placed-in-service date for all technologies receiving production tax credits. Second, it allows certain renewable energy facilities to receive an investment tax credit instead of the production tax credit. Third, it establishes a temporary grant program in lieu of tax credits, whereby the Department of the Treasury reimburses expenditures in renewable energy facilities after those facilities are placed into service.

The Production Tax Credit (PTC) is a cent-per-kilowatt hour (kWh) credit on renewable energy production for eligible facilities, generally lasting for 10 years after the project is placed into service. For wind energy, the PTC is a 1.5 cents per kWh credit, indexed for inflation, and is currently 2.1 cents/kWh. The stimulus bill extends the PTC placed-in-service date for wind facilities to December 31, 2012. For other eligible renewable technologies, such as biomass and geothermal facilities, the bill extends the placed-in-service date to December 31, 2013. The PTC was set to expire at the end of 2009 for wind and at the end of 2010 for other PTC-eligible projects.

The stimulus bill responds 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. The ITC is made available once the facility is placed into service. Previously, only certain solar, geothermal and micro turbine facilities qualified to receive the ITC. The stimulus bill provides the option to receive a 30 percent ITC on expenditures on wind, biomass, landfill gas, trash combustion and marine renewable electricity facilities. The option is available through 2012 for wind and through 2013 for other PTC-eligible renewable technologies. Separately, the stimulus bill modifies the ITC to allow the basis of the property upon which the tax credit is based to include government grants and incentives, thereby increasing the amount of the credit.

Responding to the lack of appetite for tax credits in a down economy, the stimulus bill also adopts a temporary grant program through the Department of the Treasury for a project developer to receive a grant in lieu of receiving tax credits. The Treasury grant program reimburses a certain percentage of investments in eligible renewable energy properties placed into service in 2009 and 2010 and projects placed into service after that date where construction began in 2009 or 2010. The Treasury grant consists of up to 30 percent of the basis of eligible wind, biomass, geothermal and solar property. Other eligible technologies are eligible to receive a 10 percent grant. Participation in the grant program prohibits the facility from subsequently claiming tax credits under the PTC or the ITC. The Treasury would award the grant after the facility is placed into service; its grant review period is 60 days.

## TAX INCENTIVES FOR INVESTMENTS IN CLEAN TECHNOLOGY MANUFACTURING

The stimulus bill also provides \$2.3 billion in tax credits for clean technology manufacturers. Manufacturers may receive a 30 percent credit for re-equipping, expanding or establishing facilities that manufacture advanced energy technologies—such as those supporting renewable energy systems, renewable transmission and storage, energy efficiency, renewable fuel blending, and carbon capture and sequestration. Qualifying equipment may be later expanded to include other advanced energy property designed to reduce greenhouse gas emissions. The stimulus bill requires the treasury secretary, in consultation with the energy secretary, to certify facilities to receive the credits. Facility certification will take into consideration factors such as job creation, commercial feasibility, greenhouse gas reduction potential and project timeline. The clean technology credit is not available to manufacturers who also receive the ITC.

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