The Sun Will Continue to Shine on Renewable Energy: A Surprise Ending to the Renewable Energy Tax Credits Debate

October 6, 2008

Did you hear the collective sigh of relief from the renewable energy industry on October 3? On that day, the U.S. House of Representatives passed the Emergency Economic Stabilization Act of 2008, H.R. 1424, a/k/a the "bailout" bill, which the U.S. Senate had passed earlier in the week. While completely unrelated to the Act's primary objective of stabilizing the economic crisis from Wall Street, the final bill includes extensions of key tax provisions of great significance to renewable energy investors and producers. The overall energy package has an estimated revenue impact of approximately $18 billion.

The fate of the energy extensions has been an issue in Congress over the past two years. Despite numerous stalled and failed attempts to extend the credits, these tax provisions were set to expire (or in Washington-speak, "to sunset") on December 31, 2008. With the House set to adjourn on September 26, perhaps for the rest of the year, prospects for an extension of the tax provisions had looked increasingly bleak. Ironically, most of Congress supported the extensions in theory, but disputes over how to offset their costs and a related proposed rollback of tax provisions favorable to large oil companies repeatedly derailed the extensions and led to filibusters, threatened vetoes, competing bills from the Senate and the House and an ultimate stalemate. Advocates for the wind and solar energy industries relentlessly lobbied Congress and demonstrated the significant negative impact to investment in and construction of new renewable energy facilities already caused by the legislative delay.

Ultimately, success for the extensions came only after the Wall Street crisis and the stunning September 29 failure in the House to pass the original economic package negotiated by the White House and congressional leaders. As stocks plummeted on Wall Street and investors worried on Main Street, Senate leaders scrambled to "sweeten the deal" in a revised bill that passed easily in the Senate. This time, in an effort to attract more votes for the package, the new bill included various energy provisions, including the extension of renewable energy credits. In the intervening days, various members of Congress indicated their support for both the energy credits and the overall economic package.

On October 3, the House voted overwhelming in favor of the package (263-171), and that same afternoon, President Bush signed the bill into law. Relieved members of Congress fled Washington to return to their districts for the last month of the campaign and, in many instances, to explain their vote for or against the bill. While the success of the federal bailout remains to be seen, the renewable energy industry clearly – and somewhat miraculously – was a major winner.

Key Energy Provisions Adopted in the Emergency Economic Stabilization Act of 2008

- Extends the Production Tax Credit (PTC) for wind and refined coal projects by one year to include such facilities placed in service by December 31, 2009.
- Provides a two year extension of the PTC for open-loop biomass, closed-loop biomass, geothermal, landfill gas, waste-to-energy, small irrigation, and qualified hydropower facilities placed in service before January 1, 2011.
- Extends the 30% Investment Tax Credit (ITC) for solar energy and qualified fuel cell property by eight years to include facilities placed in service before January 1, 2017.
- Creates a new 10% ITC for new combined heat and power facilities.
- Establishes new Clean Renewable Energy Bonds ("CREBS") and provides $800 million to finance wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, qualified hydropower, landfill gas, marine renewable and trash combustion facilities.

- Provides $1.5 billion in new tax credits for advanced coal electricity and coal gasification projects.
- Provides a carbon tax credit, subject to various requirements, for sequestration and storage of carbon dioxide in the United States and requires a thorough review of the U.S. Tax Code to evaluate which tax provisions are most effective in reducing carbon dioxide and other greenhouse gases.
- Extends and increases income tax credits for biodiesel and renewable diesel production in the United States.
- Provides incentives for energy efficiency through deductions to taxpayers for the cost of commercial building energy-efficiency property and accelerated depreciation for smart electric.

For Further Information

If you have any questions about this Alert or would like more information, please contact James W. McTarnaghan or any of the members of the Energy, Environment and Resources Practice Group or the attorney in the firm with whom you are regularly in contact.