sustainable business oregon

PORTLAND BUSINESS JOURNAL

ONLINE, WEDNESDAY, MARCH 17, 2010

BUSINESS NEWS FROM THE FOUR-COUNTY REGION

A reformed energy tax credit, a stagnant investment environment?

DAVID VAN'T HOF

In 2007, the Oregon Business Energy Tax Credit ("BETC") program was significantly expanded and it resulted in unprecedented levels of investment in the Oregon economy in the renewable energy sector. This week, Gov. Kulongoski will sign HB 3680 into law, a law that attempts to rein in the BETC program by placing new financial limits on the BETC program and giving more discretion to the director of the Oregon Department of Energy to reject BETC applications and to reduce the amount of tax credits delivered to projects.

With the adverse political climate surrounding the BETC program leading up to the special session — including numerous attacks on certain aspects of the program in the press — the results could have been much worse for renewable energy developers who count on the BETC to make the financing of their projects pencil out. It's my hope that the changes will only temporarily slow investment in the clean energy sector in Oregon.

For the most part, HB 3680 avoided taking away the right to tax incentives that developers and their financers had already relied upon in developing projects (so-called retroactive legislation). Most importantly, the overall ceiling on allowable BETCs for renewable energy projects during the current biennium ($300 million) is expected to be large enough to enable all holders of preliminary BETC certificates to receive their tax credits upon certification — though it did enable the Oregon Department of Energy to renegotiate some of the large preliminary certificates to a lower tax credit value. Moreover, no overall ceiling was imposed for energy efficiency and recycling projects. The Legislature even expanded the program slightly, by adding electric vehicles and renewable energy storage devices to the manufacturing program.

However, the two most troublesome issues for the BETC program may be what the Legislature left unchanged. First, the Legislature did not extend the sunset on the program for any facilities other than manufacturing facilities. If the sunset is not addressed by the 2011 Legislature, the BETC program will terminate in July 2012 for any non-manufacturing facility. As a result, some projects may be put on hold until the sunset issue is addressed in 2011.

Second, the Legislature did not address rules, issued by the Oregon Department of Energy in January, that reduce the returns for investors purchasing BETCs from project developers. Many financial analysts believe that the reduced rates of return will be insufficient to attract investment capital. As a result, the BETC is not expected to provide a meaningful subsidy for those projects that do seek to move forward using the BETC's so-called "pass through" program.

The state energy department plans to begin its rulemaking process to address the changes in HB 3680 later this month and also will revisit the new discount rate at the next quarterly review, in April 2010. Developers of projects eligible for the BETC hope that the department can be persuaded to increase the rate of return on purchased BETCs to a level that will attract investment.

Other specific BETC modifications in the bill 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.

• *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.

• *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."

• *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.

David Van't Hof is a lawyer with Lane Powell specializing in sustainability, clean technology, renewable energy, green building and carbon regulation. He is a former sustainability policy adviser to Gov. Ted Kulongoski. David can be reached at vanthofd@lanepowell.com or 503-778-2112.