Enactment of Stimulus Bill Promotes Development of Renewable Resources

Enactment of Stimulus Bill Promotes Development of Renewable Resources

Insight — 2/17/2009 12:00:00 AM

With President Obama's signing of the Stimulus Bill on February 17, 2009, the American Recovery and Reinvestment Act of 2009 (Stimulus Act) has become law. While public debate will likely continue as to whether the Stimulus Act was a product of bipartisan efforts for which specific interest groups can claim victory, our focus should remain on the details of the law. An initial review of the final text of the law reveals financial and tax incentives for the development of energy resources, including incentives for the further development of transmission facilities and wind, solar, and geothermal projects.

Direct Spending - Transmission Infrastructure

The Stimulus Act will make $4.5 billion available to help fund electricity delivery and energy reliability activities, which will:

- modernize the electric grid, including the development of demand-responsive equipment;
- enhance security and reliability of the energy infrastructure;
- foster energy storage research, development, demonstration and deployment;
- facilitate recovery from disruptions to the energy supply; and
- implement programs authorized under Title XIII of the Energy Independence and Security Act of 2007 (involving the development of smart grid technologies).

This represents an increase in federal funding for approved projects from 20 percent to 50 percent.

Grantees will be required to utilize open protocols and standards when available. Lessons learned during demonstration projects will be available to help others to deploy smart grid infrastructure.

The authority of the Western Area and Bonneville Power Administrations (WAPA and BPA) to borrow funds from the U. S. Treasury will be increased to $6.5 billion under the Stimulus Act. For WAPA, such funds may be deployed as loans to support projects involving:

- the construction, financing, facilitating, planning, operating, maintaining, or studying construction of new upgraded electric power transmission lines and related facilities with at least one

terminus within the area served by the WAPA (includes most areas within California, Nevada, Arizona, New Mexico, Utah, Wyoming, Colorado, Montana, North Dakota, South Dakota, Nebraska, and portions of Texas, Kansas, Oklahoma, Minnesota and Iowa); and

- where such facilities will deliver or facilitate the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the enactment of the Stimulus Act.

Loans provided by the WAPA will be repaid by revenues derived from the use of the projects financed under the Stimulus Act. The WAPA Administrator will use a public process to develop practices and policies that implement such borrowing authority and seek Requests for Interest from entities seeking loans through a public notice process.

BPA's borrowing authority will be made available under similar terms to assist in financing the construction, acquisition, and replacement of transmission systems in the Pacific Northwest.

Direct Spending - Renewable Resources and Generation

The loan guarantee provisions of the Energy Policy Act of 2005 (Energy Act) are amended by the Stimulus Act to allow 50 percent participation in projects that commence construction no later than September 30, 2011, involving:

- renewable energy systems (including incremental hydropower) that generate electricity or thermal energy, and facilities that manufacture related components;
- electric power transmission systems, including upgrading and reconductoring projects; and
- leading edge biofuel projects.

Six billion dollars is being made available to better fund the projects contemplated by the Energy Act. In determining which projects to fund, the Secretary of Energy will consider (i) the viability of the project without guarantees, (ii) the availability of other Federal and State incentives, (iii) the importance of the project in meeting reliability needs, and (iv) the effect of the project in meeting a State or region's environmental and energy goals.

Under the Stimulus Act, $3.4 billion will be made available for Fossil Energy Research and Development.

Within 60 days of the enactment of the Stimulus Act, the Secretary of Energy will establish procedures by which applicants may obtain various grants authorized under the new law.

Tax Incentives

Various tax incentives related to renewable energy projects and systems are also included in the Stimulus Act. Such incentives --

- Provide $20 billion in tax incentives for development of renewable

energy and increased energy efficiency over the next 10 years;

- Include a three-year extension of the production tax credit for electricity derived from wind (through 2012) and for electricity derived from biomass, geothermal, hydropower, landfill gas, waste-to-energy, and marine facilities (through 2013);
- Provide grants of up to 30 percent of the cost of building a new renewable energy facility to address current renewable energy credit market concerns, where such facilities involve fuel cells, solar generation, small wind energy generation, geothermal heat pump or energy generation, microturbine energy generation, or the use of a combined heat and power system; and
- Include clean renewable energy bonds for State and local governments.

Summary

Time is of the essence to take full advantage of many of the provisions of the Stimulus Act. As agencies promulgate new rules and procedures governing grants and loans or publish notice of invitations to receive Requests for Interest, Holland & Hart will remain focused on how the Stimulus Act can benefit our clients. Such information can then be shared with clients interested in moving forward with the development and funding of transmission infrastructure or renewable resource projects that can utilize the economic benefits of the Stimulus Act.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.