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# Client Alert

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## TREASURY GUIDANCE ON SECTION 1603 GRANTS

On Thursday July 9, 2009, the United States Department of the Treasury (Treasury Department) released a guidance document (the Treasury Guidance), the terms and conditions to which all grant recipients must agree (the Terms and Conditions), and a sample application form for the renewable energy grant program established by Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (ARRA), copies of which are available on the Treasury Department website at <http://www.treas.gov/recovery/1603.shtml>. Grant applications will be accepted via a web-based program after the Treasury Department posts a notice with further instructions. The Treasury Department expects to begin taking applications on August 1, 2009. The application form and terms and conditions are now final.

### Background

ARRA requires the Treasury Department to provide cash grants to applicants who place

in service renewable energy facilities that would otherwise qualify for the investment tax credit (the ITC) (including those production tax credit eligible facilities in respect of which taxpayers may elect to claim the ITC under ARRA).

In general, the grant amount is equal to the amount of allowable ITC, i.e., 30% of the basis of qualifying property. For qualified microturbines, combined heat and power system property, and geothermal heat pump property, the amount is 10% of the basis of the qualifying property. To be eligible, the facility must (1) be placed in service in 2009 or 2010, or (2) construction of the facility must begin in 2009 or 2010 and the facility must be placed in service before the applicable "credit termination date" indicated in the chart below (generally January 1, 2013 in the case of wind facilities, January 1, 2017 in the case of solar energy property and certain other property eligible for ITCs under pre-ARRA rules, and January 1, 2014 otherwise).

Specified Energy Property	Credit Termination Date	Applicable Percentage of Eligible Cost Basis
Large Wind	Jan 1, 2013	30%
Closed-Loop Biomass Facility	Jan 1, 2014	30%
Open-loop Biomass Facility	Jan 1, 2014	30%
Geothermal under IRC sec. 45	Jan 1, 2014	30%
Landfill Gas Facility	Jan 1, 2014	30%
Trash Facility	Jan 1, 2014	30%
Qualified Hydropower Facility	Jan 1, 2014	30%
Marine & Hydrokinetic	Jan 1, 2014	30%
Solar	Jan 1, 2017	30%
Geothermal under IRC sec. 48	Jan 1, 2017	10%*
Fuel Cells	Jan 1, 2017	30%**
Microturbines	Jan 1, 2017	10%***
Combined Heat & Power	Jan 1, 2017	10%
Small Wind	Jan 1, 2017	30%
Geothermal Heat Pumps	Jan 1, 2017	10%

\* Geothermal Property that meets the definition of qualified property in both § 45 and § 48 of the Internal Revenue Code is allowed either the 30% credit or the 10% credit, but not both.

\*\* The maximum amount of the payment may not exceed an amount equal to \$1,500 for each 0.5 kilowatt of capacity.

\*\*\* The maximum amount of the payment may not exceed an amount equal to \$200 for each kilowatt of capacity.

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## PROGRAM GUIDANCE

### *Application Procedure*

For property placed in service in 2009 or 2010 applications must be submitted *after* the property has been placed in service and before the statutory deadline of October 1, 2011. Applications submitted before property is placed in service will be treated as incomplete and will not be considered until the property is placed in service. For property not placed in service in 2009 or 2010 but for which construction began in 2009 or 2010, applications must be submitted after construction commences but before October 1, 2011.

Applications must include: (i) a signed and complete application form; (ii) supporting documentation; (iii) signed terms and conditions; and (iv) complete payment information. Applicants are permitted to apply for multiple units of property, such as an individual wind turbine, its tower and supporting pad, that are part of a larger unit of property, such as a wind farm, in a single application. As part of the required documentation, all applicants must submit final engineering design documents stamped by a licensed professional engineer. Specific documentation requirements vary by the type of eligible property.

Before payment can be made, applicants must register with the Central Contractor Registration (CCR) at [www.ccr.gov/startregistration.aspx](http://www.ccr.gov/startregistration.aspx). Applicants will be paid by Electronic Funds Transfer (EFT). Additionally, applicants must include a Data Universal Numbering Systems (DUNS) number from Dun and Bradstreet as part of the application; a DUNS number can be requested at no cost by calling 1-866-705-5711.

### *Applicant Eligibility*

An applicant is eligible to receive a grant with respect to qualifying property only if it is an owner (or in certain circumstances, a lessee) at the time the property is originally placed in service (or in certain circumstance described below, deemed placed in service).

Charitable organizations, federal, state and local government instrumentalities and agencies, and qualified issuers of clean energy renewable bonds (which include certain cooperative electric companies and certain lenders to such companies) are not eligible for the renewable energy grant program. Partnerships and other pass through entities in which any direct or indirect partner (or other holder of an equity interest) is one of the foregoing ineligible persons are also not eligible. The Treasury Guidance clarifies that having as a direct or indirect partner, shareholder, or similar interest holder a taxable C corporation owned by one or more ineligible persons does not make the partnership or pass-thru entity ineligible for the grant. Thus, corporate “blockers” between an ineligible holder and a project are effective. Such

corporate “blockers” probably should be in place before the project is placed in service and must stay in place for the recapture period.

A foreign person will be eligible for the grant only if more than 50% of the gross income for the taxable year from the project is subject to United States taxation. This should almost always be true.

The Treasury Guidance states that applicant eligibility “will be determined as of the time the application is received.” Literally, this would imply that a partnership that had an ineligible partner could defer applying for the grant until the partner had left the partnership or placed its interest in a corporate blocker. It would be safer not to rely on this literal reading until it is confirmed by the Treasury Department and to, instead, have any such corporate “blockers” in place before the project is placed in service. The corporate blocker must stay in place for the recapture period.

### Lessee Eligibility

Lessors who are eligible to receive grants may elect to pass through grants to lessees and lessees will be permitted to apply for and receive grants directly. The election to pass through grants will generally follow existing rules governing elections to allow lessees to receive energy investment tax credits. The lessee will be treated as acquiring the property for an amount equal to the independently assessed fair market value of the property on the date the property is transferred to the lessee. The lessee must agree to include ratably an amount equal to 50% of the grant in its gross income over the five year recapture period.

Lessee applicants must submit (i) documentation demonstrating that the lessor and the lessee have entered into a qualifying lease, and (ii) a written agreement providing for a waiver of the lessor’s right to receive any payment under Section 1603, a production credit or an investment tax credit with respect to the eligible property. The written agreement must also contain contact and employee identification numbers for the lessor and lessee, a description of the property with respect to which the election is being made, the date on which possession of the property transferred to the lessee, and the lessee’s consent to the election.

Importantly, both the lessor and the lessee must be independently eligible to receive the grant. Additionally, mutual savings banks or similar financial institutions, regulated investment companies and real estate investment trusts may not make the election to pass the grant to a lessee.

In the context of a sale-leaseback transaction, the lessee may claim the grant only if (i) the lessee is the person who originally placed the property in service; (ii) the property must be sold and leased back by the lessee or must be leased to the lessee

within three months after the date the property was originally placed in service; and (iii) the lessor and the lessee must not make an election to preclude application of the sale-leaseback rules. These requirements seem an odd combination of prior requirements applicable to passing the investment credit to a lessee and for allowing sale leasebacks within the “ninety day” window.

### ***Lender Implications of Ownership and Placed in Service Requirements***

The requirement that applicants must be the owner or lessee of the project and must have originally placed the property in service will raise issues for lenders regarding the timing of any foreclosure on grant-eligible property. For eligible projects that are placed in service in 2009 or 2010, applications can only be made after the qualifying property has been placed in service. Lenders to a project which is placed in service in 2009 should be able to foreclose on the project at any time after the borrower/owner has placed the project in service and applied for and received the grant. But, the grant will be forfeited if lenders foreclose after a project is placed in service but prior to the date an application for a grant is filed, because the lenders (or other purchasers in the foreclosure) would not be the parties who originally placed the project in service. A project that is not yet placed in service can be transferred by foreclosure (or otherwise) and the subsequent owner of the project at the time that it is placed in service will be able to apply for the grant. While not totally clear, it is likely that the foreclosure problem cannot be solved by foreclosing on equity of an owner that is an entity taxed as a partnership because the foreclosure is likely to cause the partnership to undergo a termination for tax purposes, so that the partnership in the hands of the lenders would be treated as a new partnership for tax purposes. Foreclosing on the equity of a corporate owners should not pose this issue, but most facilities are not held by corporate owners and holding a project through a corporation may not be tax efficient.

### ***Property and Payment Eligibility***

#### Placed in Service

Qualified property must be originally placed in service between January 1, 2009, and December 31, 2010 (regardless of when construction began) or placed in service after 2010 and before the applicable credit termination date (see chart above) if construction of the property begins between January 1, 2009, and December 31, 2010.

#### Beginning of Construction

Physical work of a significant nature must begin before December 31, 2010 in order for projects placed in service after December 31, 2010 to be eligible for the grant. The Treasury

Guidance distinguishes self construction from construction by contract and provides a safe harbor for applicants who have paid or incurred more than 5% of the total cost of the property as described below.

*Self Construction.* In the context of self construction, “physical work of a significant nature” excludes preliminary activities such as planning or designing, securing financing, exploring or researching. The Treasury Guidance offers examples: clearing a site, test drilling to determine soil conditions or excavation to change the contour of the land does not constitute the beginning of construction, although excavation for footings and foundations, or the off-site assembly of a wind turbine will.

*Construction by Contract.* For property that is manufactured, constructed, or produced for the applicant by another person under a binding written contract entered into prior to the manufacture, construction, or production of the property, construction begins when physical work of a significant nature begins under the contract. A contract is considered binding only if it is enforceable under State law against the applicant or a predecessor, and does not limit damages to a specified amount less than 5% of the total contract price. For this purpose, a contractual provision that limits damages to an amount equal to at least 5% of the total contract price will not be treated as limiting damages to a specified amount, so a liquidated damages provision is acceptable if the amount of liquidated damages is sufficiently high. On the other hand, a contract is not considered binding if it “provides for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation.”<sup>1</sup> A contract is binding even if it is subject to conditions or has an undetermined term, as long as the condition or the determination of the term is not in the control of either party. A contract that imposes significant obligations on the applicant or a predecessor is binding even if some terms remain to be negotiated. An option to buy or sell property is not a binding contract. A binding contract does not include a supply or similar agreement if the amount and design specifications of the property to be purchased have not been specified.

*Safe Harbor.* The Treasury Guidance provides that an applicant may treat physical work of a significant nature as beginning when the applicant incurs, in the case of an accrual basis taxpayer, or pays, in the case of a cash basis taxpayer, more than 5% of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring or researching). The 5% threshold must be met by the applicant and not the applicant’s suppliers or contractors. The economic performance rules of section 461(h) of the Internal Revenue Code (the Code) apply, which means that in the case of an accrual basis taxpayer that accruing (or paying) for a service is insufficient and the service for which the payment is being accrued must have been performed. Thus, prepayments

<sup>1</sup> This language in the Treasury Guidance would appear to inhibit the inclusion of a put right type remedy in a construction contract.

for future services will not count toward the safe harbor. This rule does not literally apply to cash basis taxpayers.

### Units of Property

The Treasury Department will consider all the components of a larger property to be a single unit of property if the components are “functionally interdependent.” Each wind turbine on a wind farm can be treated as a separate, single unit. This may be helpful in meeting the deadlines for the beginning of construction and the date property must be placed in service. On the other hand, the owner of multiple units of property located on the same site and that will be operated as a larger unit may elect to treat the units as a single unit of property. This may be helpful in meeting the requirements for beginning construction in the situation in which over 5% of the cost of the larger unit (an entire wind farm) has been expended in building some units (individual wind turbines), but no work at all has been done on other units (other individual wind turbines). While not totally clear, this provision may also allow treating the larger unit as not placed in service until all units are placed in service. This position could be important if, after some units are placed in service by a partnership, new partners purchase sufficient interests in the partnership to cause the partnership to terminate for tax purposes so that arguably the project is owned by a new partnership that was not the owner when the first units were separately placed in service. The Treasury Department adds that even if a large unit is treated as a single unit of property, failure to complete the entire project will not prevent obtaining the grant with respect to underlying units that were placed in service. This is a very helpful addition, but casts some doubt on the prior arguable conclusion.

### General Property Qualification Requirements

*Only Energy Property Qualifies.* The Treasury Guidance clarifies that only the portion of a facility described as energy property in Code section 48 is taken into account in computing the grant payment. The guidance specifically provides by way of an example that in the case of a rooftop solar project, the cost of the solar property (including the cost of mounting the solar property) qualifies, but the cost of the building does not.

*Location.* Only property that is used predominately within the United States is eligible for the grant. The Treasury Guidance adopts a location-based test: if the property is located outside the United States during more than 50% of the year, such property will be considered to be used predominately outside the United States during that year. Property that is moved outside the United States will be subject to recapture.

*Original Use.* The applicant must be the original user of the property. Up to 20% of the total cost of the facility, however, may consist of used parts. If new property is placed in service by a person, is sold to a second person and then leased back to the first person within three months of the initial placed in service

date, unless the lessor and the lessee elect otherwise, the second person will be considered the original user of the property and the property will be considered placed in service not earlier than when it is used under the leaseback.

### Qualified Property

Property eligible to receive the grant must be “specified energy property.” This includes only tangible property (not including a building) that is both used as an integral part of the activity performed by the qualified facility and located at the site of the qualified facility. Qualified property does not include a building, but may include structural components of a building. The Treasury Guidance states that “[p]roperty is an integral part of a qualified facility if the property is used directly in the qualified facility, is essential to the completeness of the activity performed in that facility, and is located at the site of the qualified facility.” Generously, the Treasury Guidance states that roadways and paved parking areas located at a qualified facility and used for transport of materials to be processed at the facility or equipment to be used in maintaining and operating the facility are integral to the activity performed at the facility, though roadways and parking lots that provide solely for employee and visitor vehicle traffic are not integral.

The Treasury Guidance provides additional guidance on what is an integral part of a qualified facility for several of the specified energy property categories. In the case of an open-loop biomass, a closed-loop biomass, or a municipal solid waste facility, property used at the plant site for unloading, transfer, storage, reclaiming from storage, or preparation of the material to be processed by such facility qualifies for the grant although similar equipment located away from the plant site will not, and neither will equipment used to transport biomass to the facility. Property that is integral to a geothermal facility includes equipment that transports geothermal steam or hot water from a geothermal deposit to the site of ultimate use, and includes the components of a heating system or the equipment that transports hot water from the geothermal deposit to a power plant. It would appear that the cost of the geothermal deposit itself is not eligible for the grant.

For qualified property that generates electricity, the Treasury Guidance distinguishes between storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items, which are grant eligible, and electrical transmission equipment, such as transmission lines and towers, or any equipment beyond the electrical transmission stage, such as transformers and distribution lines, which are not.

The Treasury Guidance summarizes the definitions of the various types of property that are eligible for the grant. First it summarizes the definitions of those facilities that are also eligible for the production tax credit: wind facilities, closed-loop biomass facilities, open-loop biomass facilities, geothermal facilities, landfill

gas facilities, qualified hydropower facilities (including incremental hydropower and non-hydroelectric dam facilities), and marine and hydrokinetic renewable energy facilities. It then summarizes the definitions of properties that were historically eligible for the energy credit: solar property, geothermal property, qualified fuel cell property, qualified microturbine property, combined heat and power system property, qualified small wind energy property and geothermal heat pump property. Because the definitions in the Treasury Guidance generally paraphrase the definitions in the Internal Revenue Code, they are not summarized here.

### ***Eligible Basis***

The basis eligible for the grant is the cost of the property and includes all items, such as installation costs and cost of freight, that are included in basis for purposes of depreciation. Costs that are deductible for tax purposes in the year in which they are paid or incurred (such as the Code section 179 deduction allowed for a limited amount of depreciable property) are not included in basis. Thus, as to geothermal properties, intangible drilling and development expenses (IDCs) cannot be added to eligible basis if they are deducted currently. If they are capitalized, only the portion of the costs recovered through depreciation (i.e., costs capitalized to equipment and not to the geothermal source) can be added to eligible basis. However, if a taxpayer elects to deduct IDCs over 60 months under Code section 59(e), the entire IDCs are amortizable and can be added to eligible basis.

Eligible basis does not include the portion of the cost of a facility that is attributable to a non-qualifying activity. Thus, in the case of a biomass facility that also burns other fuel, the eligible cost basis is the percentage of the total cost that is equal to the percentage of the electricity produced at the facility that is attributable to biomass. However, the foregoing limitation does not reduce the eligible basis of a facility which qualifies as a modification of an existing facility and the Treasury Guidance indicates that eligible basis would include the entire cost of modifying a facility in order for it to use closed-loop biomass to co-fire with coal or other biomass so long as the modification is properly approved under the relevant federal programs.

### ***Recapture***

The grant is subject to recapture ratably over a five year period in the same manner as the energy credit would be recaptured if the applicant disposes of the property to a disqualified person *or* if the property ceases to qualify as a specified energy property, in each case within five years from the date the property is placed in service. Importantly, selling or otherwise disposing of the property to an entity other than a disqualified person will *not* result in recapture; provided that (i) the property continues to qualify as a specified energy property and (ii) the purchaser of the property agrees to be jointly liable with the applicant for any recapture.

After a disposition, the Treasury Department will hold an applicant liable for recapture even if the applicant no longer has control over the property. In the context of a lease where a lessor elects to pass the grant through to the lessee, if the lessor sells the property to a disqualified person, the lessee is liable for the recapture amount even if the lessee maintains control over the property at the time of the disqualifying disposition. Obviously, sellers and lessees of qualified property need to negotiate indemnities and other contractual protections.

Recapture liability will be treated as a non-tax claim. As a consequence, the government's claim will be an unsecured creditor's claim junior to any senior secured claim. In addition, the "choateness doctrine" that might cause a tax lien to be senior to a secured lien with respect to revenues accruing after the tax lien comes into existence will not apply. Furthermore, applicants will not be required to post a security bond as a condition of receiving a grant.

Temporary cessation of production will not result in recapture. Permanent cessation of production will result in recapture, though if production ceases because of natural disaster, recapture liability will not arise unless the property is replaced with property for which another Section 1603 grant is allowed. Special rules apply in the case of hydropower property. In the case of biomass facilities where the amount of the grant depends on the percentage of electricity produced from biomass, if the percentage of electricity produced from biomass is reduced, a proportionate percentage ceases to qualify as specified energy property; this reduction is to be determined annually.

### ***Lender Implications of Recapture Rules***

Given that a purchaser must be jointly and severally liable with the applicant for any recapture, lenders to the borrower/owner of a facility which has applied for and received a grant may be jointly liable to the Treasury Department for recapture liability if they foreclose on and become the owners of the facility prior to the fifth anniversary of the date such facility is placed in service. Clarification on who is considered the "applicant" for purposes of the grant may also be important given the recapture liability to the Treasury Department. For example, it is not clear whether the tax equity investors of an applicant at the time the facility is placed in service would be considered to be an applicant by virtue of owning equity interests in the applicant (and thus would continue to be liable for any recapture liability after foreclosure on the equity in the applicant by the lenders). The recapture risks are likely to be allocated to original sponsors by both lenders and tax equity investors through indemnities and other contractual provisions (representations, covenants, defaults).

### ***Partnership Accounting***

The Treasury Guidance does not provide any guidance as to the partnership accounting that results from a partnership

getting a grant. In order to maintain conformity of asset basis and basis in partnership interests and in order to maintain the general relationship between capital account balances and basis of partnership interests, the aggregate capital account balances of the partners and the aggregate basis of the partners' interests in the partnerships must be increased by the amount of the grant (30% of eligible basis) and decreased by the reduction in depreciable basis of 50% of the grant, for a net increase in capital account balances and in the basis of partners' partnership interests of 50% of the grant (15% of eligible basis). The increase can be justified by treating the grant as tax exempt income or, less likely, by treating the partners as having received the grant and contributed the grant to the partnership. It would be helpful if the Treasury Department confirmed this result.

Furthermore, it is unclear how the increase in capital account balances and partnership interest basis should be allocated among the partners. The most likely allocation would be in proportion to the partners' interests in partnership profits for the year in which the grant is received. However, if the grant is distributed to the partners, the capital account and basis allocation could reflect the distributions. It is also possible that a partnership may allocate the basis increase in any manner it determines. It would be helpful if the Treasury Department provided guidance on that issue.

The lack of guidance as to partnership accounting may be particularly important in situations in which sponsors seek to monetize the MACRS deductions. In many transactions structured as "flip partnerships," tax equity is allocated 99% of all deductions for six or seven years. In practice, to make this allocation have substantial economic effect, investors often undertake a capped deficit restoration obligation (DRO). In a partnership taking the grant, only the MACRS deductions will be monetized and tax equity will be making a smaller investment. To receive the benefit of 99% of the MACRS deductions, tax equity may need to undertake a larger DRO. In an unleveraged transaction, the DRO may be substantially larger, especially if viewed as a percentage of the tax equity's equity investment. This may prove an unexpected impediment to the monetization of the MACRS deductions.

### **Miscellaneous**

*Assignment Permitted.* Applicants may submit, along with their request for payment, a Notice of Assignment, assigning the payment directly to a third party. Assignments must meet the requirements of the Federal Assignment of Claims Act. Generally, the Federal Assignment of Claims Act permits assignment only after a claim is allowed, the amount of the claim is decided, and a warrant for a payment of the claim has been issued. The foregoing requirements, however, do not apply to an assignment to a financing institution of money due or to become due under a contract providing for payments totaling at least \$1,000 if the contract does not forbid assignment, the assignment is for the entire amount not already paid, and is made to only one

party (although it may be made to an agent or trustee for more than one party participating in the financing).

The Treasury Guidance suggests that the grant will be treated as money due under a contract for purposes of the Federal Assignment of Claims Act. Therefore, the grant should be assignable to financing institutions such as banks and trust companies so long as the assignee files a written notice of the assignment and a copy of the assignment with the Treasury Department. Note that an assignee, however, will acquire no greater rights with respect to the payment of the grant than the assignor.

*Davis-Bacon and NEPA Do Not Apply.* Receipt of Section 1603 grants will not make property or an applicant subject to the requirements of the Davis-Bacon Act, the National Environmental Policy Act (NEPA) or similar laws.

*REITs.* Real Estate Investment Trusts (REITs) are eligible to receive Section 1603 grants, but only to the extent permitted by Code section 50.

*Normalized Accounting.* To be grant eligible, regulated utilities must use a normalized method of accounting.

*Reporting Requirements.* Applicants will be required to submit reports to the Treasury Department, including those described below.

### **Terms and Conditions**

Applicants will be required to agree to Terms and Conditions under penalty of perjury. The Terms and Conditions include representations by the applicant regarding the status of the applicant, a covenant that the applicant will not claim an investment or production tax credit, and reporting and record keeping obligations. Applicants are also required to acknowledge that the Treasury Department may share applicant information and to agree that the Treasury Department may publicly release the names of applicants and descriptions of projects.

*Annual Reporting and Certification.* Applicants must certify to the Treasury Department on an annual basis for five years that the property has not been disposed of to a disqualified person. In addition, applicants must provide periodic performance reports specifying, among other things, the number of jobs retained, annual production, and installed nameplate capacity.

*Disallowance.* An applicant's material failure to comply with "any term of the award" whether stated in the provisions of ARRA, the Treasury Guidance, the Terms and Conditions, or the notice of an award, will trigger the Treasury Department's right to take legally available remedial actions, including disallowance. The Terms and Conditions note, however, that in connection with taking any enforcement action, the Treasury Department will afford the applicant the opportunity for a hearing, appeal or other

administrative proceeding that such applicant may be entitled to under applicable statute or regulation underlying the enforcement action.

a FERC license is required for hydropower facilities installed on qualifying non-hydroelectric dams.

### ***Application Form***

The application form is a six page worksheet-like document that applicants will be able to submit to the Treasury Department electronically along with the Terms and Conditions. The information to be filled in is minimal. Applicants must provide information about the applicant, the applicant's interest in the property, and the property for which a grant is being claimed. Specifically, applicants must include information regarding the use of energy, the amount of energy generated by the property and estimates of the number of jobs created and/or retained by the property. Applicants are limited to a 2,500 character narrative describing the beginning of construction (for properties not yet placed in service) and describing the property. However, there are extensive documentation requirements to be included with the completed application.

The Treasury Guidance goes into significant detail as to what documentation is required. All applicants are required to provide final engineering design documents stamped by a licensed professional engineer. In addition, applicants must demonstrate that property is placed in service by supplying a commissioning report, which may be provided by the project engineer, equipment vendor, or an independent third-party. The commissioning report must certify that the equipment has been installed, tested, and is ready and capable of being used for its intended purpose. Properties placed in service that are interconnected with a utility must include the interconnection agreement. Applicants of projects under construction but not yet placed in service must provide documentation that construction has begun by providing copies of (i) paid invoices or financial documents demonstrating that physical work of a significant nature has begun and/or (ii) a binding contract for the manufacture, construction or production of the eligible property.

In addition to the foregoing requirements, special documentation is required for certain property. Properties with minimum or maximum nameplate capacity requirements (open-loop biomass facility (livestock waste nutrients), marine and hydrokinetic renewable energy facility, fuel cell property, microturbine property, combined heat and power system property, and small wind energy property) must provide evidence that they meet the requirements, and closed-loop biomass facilities modified to co-fire with coal, other biomass, or both must provide documentation demonstrating approval under the Biomass Power for Rural Development Program or qualification as a pilot project of the Commodity Credit Corporation. Documentation of energy efficiency percentages is required for combined heat and power system property, and system efficiency evidence is required for fuel cell and microturbine property. FERC certification is required for incremental hydropower production projects, and

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