

Legislative Options After The Cash Grant

The deadline is quickly approaching for new wind energy projects to start construction in order to qualify for the federal cash grant in lieu of the 30% investment tax credit (ITC). Absent congressional action to extend the deadline, planned projects must commence construction before the end of this year in order to qualify.

Given that projects receiving cash grants or other direct federal payments (including loan guarantees) must reach development milestones – including site control, procurement arrangements, locking in funding and environmental reviews – before breaking ground, and developers and lenders have a heightened focus on what it means, precisely, to start construction for the purposes of beating the federal deadline, time is running out. Industry advocates continue to seek a legislative extension of the deadline.

By any measure, the cash grants have been a success. The program makes up-front cash available to qualifying projects in a streamlined, straightforward manner. This supplemental funding has enabled projects to bridge the gap between available debt and available cash equity. According to the U.S. Department of the Treasury, by March, about 400 projects had already received over \$2.6 billion in cash grants.

In contrast, the Department of Energy's loan-guarantee programs have been much slower to ramp up funding for renewable energy projects and entail significantly more admin-

istrative and substantive complexity. The cash grants have helped to keep wind energy investment relatively strong through a recessionary period when both bank debt and tax equity were substantially more scarce than in earlier boom times.

The Section 1603 cash grant, enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA), is available only for projects completed in 2009 or 2010 and for projects that begin construction in 2009 or 2010 and that are completed before specified dates – Jan. 1, 2013, in the case of large wind facilities (i.e., wind facilities using turbines with nameplate capacities greater than 100 kW).

As the deadline approaches, developers are already focusing on whether they will be able to satisfy the year-end construction-commencement requirement and what options will be available to them if they do not meet that deadline. Currently, there is a great deal of speculation as to whether Congress and the Obama administration will extend the cash-grant program. Amidst this speculation, as of this writing, one proposal has emerged as the most likely option to replace the existing grant program, while another proposal would severely limit the existing program.

The Blumenauer bill. In February, Rep. Earl Blumenauer, D-Ore., vice chairman of the Select Committee on Energy Independence and Global Warming and a member of the House Climate Change Caucus,

introduced H.R.4599, the Renewable Energy Expansion Act of 2010. That act would provide owners of eligible projects that commence construction before Jan. 1, 2013, and that are placed in service after the date of enactment, with the option of claiming, in lieu of a cash grant, a 30% refundable ITC.

The Blumenauer proposal uses the framework of the Treasury cash grant, but with some modifications. Most notably, unlike the cash grant, which must be paid within 60 days after the later of the date the facility is placed in service and the date of the application, the refundable credit would only be paid after the applicant's income tax return for the year in which the property is placed in service has been filed. This might be six months after the end of the tax year in which the facility was completed.

The Blumenauer proposal includes provisions that would allow partnerships, which are generally not usually thought of as taxpayers, to claim the credit and thereby eliminate the risk to financing parties that the anticipated refund may be offset against other tax obligations of the applicant.

The Blumenauer proposal relaxes some of the other restrictions applicable to Treasury cash grants. For example, one problem encountered with the cash-grant program has been that the grant is 100% eliminated if any direct or indirect interest in the project is owned by a tax-exempt or government entity. The Blumenauer proposal provides a propor-

tionate disallowance mechanism to permit investment by these entities, reducing the credit amount proportionately according to the percentage of tax-exempt or government ownership. (For instance, if 10% of the investors are tax-exempt or government entities, the credit amount would be reduced by 10%.)

The Schumer proposal. In March, Sen. Charles Schumer, D-N.Y., and a group of Democratic senators introduced S.3069, the American Renewable Energy Jobs Act. The act would amend the existing Treasury grant rules to make the grants discretionary, to make grants subject to “Buy American” requirements, and to make the grants contingent on the applicant’s creation and/or preservation of American jobs.

The Schumer proposal was introduced in the wake of press reports

highlighting a Texas wind project and grant recipient that was using Chinese-manufactured wind turbines. To address concerns about stimulus funds supporting foreign manufacturing and production, the Schumer proposal imposes stringent requirements to ensure grant funds are used for U.S.-sourced materials and on U.S. manufacturing and production. The Schumer proposal would apply to any grants paid after the date of enactment.

By making the grants discretionary, Schumer’s proposal raises serious concerns for potential financing parties and developers. As a result, there has been a strong lobbying effort against the Schumer proposal.

For now, developers and lenders are rushing to get project construction started to meet the existing Dec. 31 deadline for cash grants. Some projects will have to be more creative or

bolder than others in meeting the applicable requirements, if on-site construction is not already on track.

There remains hope that the cash-grant program will be extended. If it is, this tool will remain available a while longer and can continue to close the financing gap facing many new wind energy projects, further boosting renewable generating capacity in the U.S.

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