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Obama-Biden Administration Advocating Renewable-Driven Economic Recovery

President Obama and policymakers on Capitol Hill have begun the year focusing on economic recovery as well as energy security and climate change. The enormous economic recovery plan proposed by House Democrats and the Obama Administration is entitled the American Recovery and Reinvestment Act, and remains under development. But a substantial component of the final plan will certainly address energy issues, including major efforts to create green jobs, expand the country's ability to produce energy from renewable resources and move to a cleaner and greener economy.

The economic recovery bill, as it has been conceived, will be on a scale we have never seen. Details of where the investments will be directed and funding levels for specific programs are changing on a near-daily basis, and likely will not be confirmed for several weeks while the legislation continues to be refined. At the time of this writing, the legislation proposes \$825 billion in spending over the next 10 years, with the bulk of the money being spent in the next two years. The plan includes \$275 billion in tax cuts and \$550 billion in priority investments in a number of areas. Details of the economic recovery plan's potential impact on the energy sector are discussed below.

Green Economy and Green Jobs

President Obama has indicated that he wants to double the nation's supply of renewable energy within three years. He has pledged \$150 billion in investments over the next 10 years for alternative energy, and believes that this investment will create five million new jobs. This money will be spent developing the next generation of biofuels and fuel infrastructure, commercial plug-in hybrid automobiles and commercial-scale renewable energy systems.

The House legislation proposes \$32 billion to transform the nation's energy transmission, distribution and production systems into a "smart electricity grid." The legislation also proposes \$2.4 billion for developing carbon capture technology, \$16 billion to repair public housing and make energy efficiency retrofits, and \$6 billion for weatherizing modest-income homes.

Green Job Training Programs

Green investment will not only be in technology and infrastructure improvements, but also in workforce training in building efficiency and weatherization. The Obama Administration seeks to launch new federal

FOREcast (Funding Opportunities for Renewable Energy), a periodic newsletter published by Brownstein Hyatt Farber Schreck. With this newsletter, we hope to assist the clean technology community in funding the development and commercialization of clean technologies. *FOREcast* will provide information on the types of projects funded by the federal and state governments, the types of funding instruments used, private companies' input to public agencies for clean tech support, trends in the public support of clean technology, and funding awards.

workforce training programs specifically focused on green technology training and make existing training programs more robust. The stimulus legislation will also create an energy-focused youth jobs program targeted towards disadvantaged youth.

Renewable Energy Incentives

President Obama hopes to extend the production tax credit for renewable energy to encourage investment in renewable energy sources. The economic recovery bill includes \$20 billion-plus in renewable energy tax cuts, including a tax credit for research and development of energy conservation, energy efficiency and renewable energy, and also a multiyear extension of the renewable energy production tax credit for wind, hydropower, geothermal power and bioenergy.

The legislation includes substantial amounts for direct financial assistance and loan guarantees for renewable energy, transmission, energy efficiency and clean energy projects. The plan provides an additional \$8 billion of guarantee authority for the Department of Energy's (DOE) Loan Guarantee Program that will encourage lending for commercial renewable projects, as well as \$2 billion for advanced battery projects. The legislation also provides \$2 billion in direct federal funding, on a cost sharing basis, for renewable energy technology projects, and an additional \$2.4 billion (mentioned above) on carbon sequestration projects. DOE will normally disburse these monies under funding opportunity announcements for specific technology areas and will require projects to compete among like-technology projects for the available funding.

Energy Efficiency Incentives

It is anticipated that substantial sums will also be appropriated for improving the energy efficiency of federal buildings and schools. The legislation sets aside \$14 billion for school modernization and repair. Under the bill, the Government Services Administration will receive at least \$6 billion for federal building efficiency improvements. In addition, state and local governments will be eligible for energy efficiency block grants totaling \$6.9 billion to make improvements in efficiency and reduce carbon emissions.

Other Renewable Energy Opportunities Ahead

While passage of the economic recovery bill will be the priority during President Obama's first 100 days in office, there are several other legislative vehicles that Congress will likely take up this year to increase investment in renewable energy sources. During this term, Congress will likely consider a significant energy policy bill that could impact the development of and tax incentives relating to renewable energy projects. Additionally, such a bill may include additional energy efficiency standards and the establishment of a federal Renewable Portfolio Standard (RPS) requiring that 25 percent of our electricity be generated from renewable resources.

Conclusion

Although the details of any final version of the economic recovery bill remain uncertain, recent legislative efforts will undoubtedly lead to increased investment in renewable energy and move us toward a greener economy. For up-to-date details on the economic recovery legislation or any energy-related developments under the Obama Administration, please contact Brownstein Hyatt Farber Schreck's attorneys and policy advisors. ♦

FOREcast Practice Tips

Water Supply and the Siting of Solar Projects – Stephanie Hastings and Ryan Drake

Concentrated solar projects are becoming a more common means of generating power from solar energy. This form of solar technology requires large quantities of water for heat transfer fluid and cooling purposes. As developers seek new sites for concentrated solar energy projects, they must have a clear understanding of a property's water rights, including the reliability of existing water supplies, the existence of any relevant water law restrictions, and the type and quality of water used. This will assist developers in purchasing or leasing decisions for a site, and help establish a project's budget, efficiency and ultimate feasibility.

One of the states taking the lead in the solar energy market is California. The California Energy Commission's (CEC) streamlined certification program for solar projects preempts local groundwater ordinances and Water Supply Assessment requirements for projects falling under the California Environmental Quality Act, which requires development projects to submit documentation of their potential environmental impact. Cal. Water Code section 10910 et seq. Since local groundwater ordinances limit and highly regulate the extraction of groundwater in the area, and Water Supply Assessments require developers to engage in a lengthy and costly process to demonstrate adequate water supplies for the project, the CEC's streamlined process appears on the surface to avoid difficult water rights issues. As part of its review process, however, the CEC thoroughly evaluates water supply and quality issues, and requires that an applicant's proposed use of water conforms to all state water-related laws and policies.

For instance, the applicant must first provide a detailed description of the project's hydrologic setting. The applicant must explain the "sources of the primary and back-up water supplies and the rationale for their selection." Along with water supply details, the applicant must provide water quality information, as well as the average and maximum daily and annual water demand and waste water discharge for construction and operation phases of the project. Next, the applicant must highlight any water conservation measures and the amount that they reduce water demand. If an applicant will be using potable water, the applicant must include a discussion of the cumulative impacts, alternative water supply sources and alternative cooling technologies considered as part of the project design. The CEC will approve the use of potable water for solar plant cooling purposes only where alternative water supply sources are "environmentally undesirable" or "economically unsound."

While states across the nation build their regulatory framework for solar energy projects, developers should evaluate the availability of water supplies and water quality before committing substantial resources to development of property for solar generation. A state agency may incorporate applicable local and state water laws under the auspice of its review. While in some states the applicant may forego formal compliance with other applicable laws because of legislative preemption for renewable energy projects, the applicant may still be required to comply with other laws in substance. In an increasingly parched West, demonstrating adequate water supplies could be a difficult hurdle in the permitting process for solar energy projects. ♦

Key Funding and Business Opportunities

Xcel Energy Issues Colorado All-Source RFP

On January 9, 2009, Xcel Energy issued a request for proposal (RFP) to acquire approximately 2,200 megawatts of electricity between now and 2015. A pre-bid conference is scheduled for January 28, 2009 in Denver, with proposals due on April 10, 2009. All forms of electric generation greater than 30 megawatts can be bid in the process, although any coal-fired bids are limited to facilities that capture and sequester at least 50 percent of carbon dioxide emissions. Xcel seeks to add up to 700 megawatts of wind and solar generation through the RFP, and will consider acquiring up to 600 megawatts from solar thermal generation with storage or natural gas backup. Additional information and RFP documents are available at http://www.xcelenergy.com/Company/About_Energy_and_Rates/Energy%20RFPs/Pages/2009PSCoAll-SourceRFP.aspx ♦

Federal Funding for Pilot and Demonstration Projects of Second Generation Transportation Biofuels

The U.S. Department of Energy (DOE) has announced that it will allocate up to \$200 million in potential funding to support pilot-scale and demonstration-scale biorefinery projects over the next six years for projects that use feedstocks such as algae, bio-butanol, green gasoline, and other innovative biofuels. Applicants for these funds must submit a letter of intent by February 20, 2009, and completed applications for funding are due by April 30, 2009. DOE plans to make between five and twelve separate awards.

Two stages of advanced biofuels development can qualify for this funding opportunity: (1) pilot-scale projects, which must provide a minimum of 30% of the project costs to be eligible for federal funds, and (2) demonstration-scale projects where the applicant is funding at least 50% of the project and with a minimum daily throughput of 50 dry tons of feedstock. All projects must be located in the U.S., use feedstock from domestic biomass sources, and be able to provide significant greenhouse gas reductions during the life of the project. Projects are expected to begin in 2009 and continue through 2014, with the goal of having biorefinery projects in operation within three to four years after applicants are selected. The complete funding opportunity is available at www.grants.gov. ♦

Loan Guarantees Available from USDA for Commercial-Scale Advanced Biofuel Production

The U.S. Department of Agriculture (USDA) is currently offering to provide loan guarantees of up to \$250 million per project for the development of commercial-scale biorefineries that produce biofuels not produced from corn kernel starch (known as "advanced biofuels"). Although applications for the first wave of loan guarantees were due on December 31, 2008, USDA will be accepting additional applications for a second wave of loan guarantees between March 1, 2009 and April 30, 2009.

These loan guarantees, which are being offered under the Section 9003 Biorefinery Assistance Program as authorized in the 2008 Farm Bill, are aimed at supporting the construction of new biorefineries and the conversion of existing biorefineries to produce advanced biofuels. Preference will be given to projects using a first-of-a-kind technology to be deployed on a commercial scale. At least one company, U.S. Sugar Corporation, has announced that it will apply for loan guarantees under this program as it investigates the possibility of developing a cellulosic ethanol facility in Florida that would convert leftover sugar cane material into ethanol. ♦

Final EIS for Western Energy Corridor Designation Released

On November 26, 2008, multiple federal agencies released a final programmatic environmental impact statement (EIS) for a proposal to designate more than 6,000 miles of energy transport corridors on federal lands throughout the western United States. The energy corridors were proposed by the Bureau of Land Management, along with the U.S. Departments of Energy, Agriculture and Defense, to facilitate the siting on federal land of oil, gas and hydrogen pipelines, as well as electricity transmission and distribution facilities. Individual projects proposed within the corridors will still require further project-specific environmental analysis before being granted permits or rights-of-way. The EIS for energy corridor designation and related documents are available at <http://corridoreis.anl.gov> ♦

Recent Awards

DOE Invests in Alternative Vehicle Technology Projects

In December 2008, DOE announced that it would invest up to \$14.55 million over three years in six cost-shared research projects for the development and demonstration of alternative vehicle technology projects. Coupled with contributions from the private sector, this investment will total up to \$29.3 million.

The six projects and companies receiving this funding include the following types of projects:

<u>Project Type</u>	<u>Companies</u>
Development of lithium-ion battery technology to use in plug-in electric hybrid vehicles	3M Company BASF Catalyst LLC FMC Corporation
Advancement of thermoelectric systems for heating, ventilation and air conditioning in vehicles	Ford Motor Company General Motors Corporation
Development, evaluation and deployment of aerodynamic heavy-duty truck trailers	Navistar International ♦

DOE Awards Energy and Water Savings Contracts for Projects at Federal Facilities

In December 2008, DOE awarded long-term contracts to sixteen energy service contractors (ESCOs) aimed at implementing up to \$80 million

in energy efficiency, renewable energy and water conservation projects at federal buildings and facilities. These "Super Energy Savings Performance Contracts" were awarded under DOE efforts to meet or exceed the energy efficiency goals mandated for the federal government under Executive Order 13423. These contracts will allow ESCOs to use third-party financing to construct, install, and operate energy savings and water conservation projects at federal sites. The ESCO must guarantee performance, but in return will share in the long-term energy savings generated by the project. These contracts give the ESCO the right to bid on specific projects at specific sites for at least the next five years. The following ESCOs received contracts:

- Ameresco, Inc.
- Chevron Energy Solutions
- Clark Realty Builders
- Consolidated Edison Solutions, Inc.
- Constellation Energy Projects & Services Group, Inc.
- FPL Energy Service, Inc.
- Honeywell International, Inc.
- Johnson Controls Government Systems, LLC
- Lockheed Martin Services, Inc.
- McKinstry Essention, Inc.
- NORESKO, LLC
- Pepco Energy Services
- Siemens Government Services, Inc.
- TAC Energy Solutions
- The Benham Companies, LLC
- Trane U.S., Inc. ♦

FOREcast is intended to provide you with general information about issues related to renewable energy funding matters. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed below or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

Michelle C. Kales
mkales@bhfs.com

John A. Herrick
jherrick@bhfs.com

Geoffrey M. Williamson
gwilliamson@bhfs.com

Denver Office
410 Seventeenth Street
Suite 2200
Denver, CO 80202
T 303-223-1100
F 303.223.1111

C. Kyle Simpson
ksimpson@bhfs.com

Jack N. Jacobson
jjacobson@bhfs.com

Washington, DC Office
1350 I Street, NW
Suite 510
Washington, DC 20005-3305
T 202.296.7353
F 202.296.7009