

## Status of Federal Energy Policy Legislation

Laura Ellen Jones

Hunton & Williams LLP

11<sup>th</sup> Annual LMOP Conference and Project Expo

January 2008

- Legislative Developments
- Energy Independence and Security Act of 2007
- 110<sup>th</sup> Congress, 2d Session
- Regulatory Developments
- Questions and Contact Information

- President signed The Energy Independence and Security Act of 2007 into law on Dec. 19, 2007
- Energy tax title was stripped from the bill in the Senate
- House then passed the Senate version
- President had threatened to veto bill if it contained a repeal of oil and gas tax subsidies
- House and the Senate Finance Committee versions of the energy bill both originally contained an extension and modification of the Section 45 tax credit and the CREB program

- House version:
  - Placed in service deadline would have been extended for four years (from Jan. 1, 2009 to Jan. 1, 2013)
  - Placed in service deadline for solar, refined coal and Indian coal facilities not extended
  - Phase out of the credit would be eliminated and replaced with a limitation on the amount of the credit based on the investment in a facility (placed in service after 2008)

- Limitation - Section 45 tax credits with respect to a facility for any taxable year may not exceed:
  - The facility's "eligible basis" multiplied by the "applicable percentage" for the month the facility is placed in service
  - Amounts can be carried forward
  - Taxpayer may elect to treat all facilities that are part of the same project as one facility

- Eligible basis is the basis of the facility determined *at the time the facility is placed in service* and a portion of the basis of any “shared qualified property”
- Applicable percentage is determined by the Secretary of Treasury and is a percentage which yields over a 10-year period an amount which has a present value equal to 35% of the eligible basis of the facility

- Senate (Finance Committee) version:
  - Placed in service deadline would have been extended for two years (from Jan. 1, 2009 to Jan. 1, 2011)
  - Placed in service deadline for solar and Indian coal facilities not extended
  - Did not contain credit limitation like House version

- House and Senate versions also contained similar extensions of the CREB program prior to the deletion of the tax title:
  - \$2 billion of New CREBs
  - New allocation methodology
  - Credits could be “stripped”

- Non-tax provisions relating to landfill gas:
  - Renewable Fuel Standard includes biogas produced from landfill gas as an “advanced biofuel”
    - Provided that lifecycle greenhouse gas emissions that are at least 50% less than baseline lifecycle greenhouse gas emissions
  - DOE grant program for renewable energy projects (including landfill gas to energy projects) constructed by a governmental entity, a private, public, municipal or cooperative utility, an Indian tribe and a “Regional Corporation”
  - Other “biomass” provisions

- Strong bipartisan support for an extension of energy tax credits and CREBs, but...
  - Paygo
  - Election year politics
  - RPS (or other controversial provision)
- Senate and House leaders have stated that they plan to bring the energy tax title back early this session
- Likely to be a shorter extension than desired and may contain other ways to contain the revenue cost of the provision

- IRS has not issued any Section 45 landfill gas PLRs
- We understand that there is an informal no-rule process for LFGE projects
- IRS released safe harbor guidance regarding wind transactions that use a partnership “flip” structure
- Due to manpower issues, the IRS has continued to express a preference for issuance of public rather than private guidance

→ Questions?

→ Contact Information:

Laura Ellen Jones  
(804) 788-8746  
ljones@hunton.com

Doug E. Lamb  
(804) 788-8513  
dlamb@hunton.com

Hunton & Williams LLP  
951 East Byrd Street  
Richmond, VA 23219  
www.hunton.com

→ Please contact us if you would like to be added to our Section 45 or CREB e-mail alert distribution lists.