

A meeting was held at 10:00 am on October 20, 2009 with the following participants:

Department of Energy

Scott Blake Harris, General Counsel, Department of Energy
Sean A. Lev, Deputy General Counsel (Environment and Nuclear Programs), Department of Energy
Bruce Diamond, Assistant General Counsel

Renewable Energy Industry Representatives

- Charles R. Shipp (Federally Registered Lobbyist), Partner, SC Partners LLC, Clients: NTR plc, NextLight Renewable Power, U.S. Combined Heat and Power Association, Solar Energy Industries Association
- Katherine A. Gensler (Federally Registered Lobbyist), Manager of Legislative and Regulatory Affairs, Solar Energy Industries Association
- Steven W. Howlett, Senior Vice President, General Electric
- Gene Grace, Senior Counsel, American Wind Energy Association
- Byron Kent Burton (Federally Registered Lobbyist), Partner, National Environmental Strategies, Client: Vulcan Energy
- Kenneth H. Berlin, Partner, Skadden, Arps, Meahger & Flom
- Andrew Giaccia, Partner, Chadbourne & Parke
- Thomas R. Vinson (Federally Registered Lobbyist), Environment Legislative Manager, American Wind Energy Association

At the meeting the following issues were discussed regarding the Department of Energy's Loan Guarantee Program:

1. Ways to streamline the National Environmental Policy Act (NEPA) review requirements for Department of Energy loan guarantees. Specifically, avoiding duplicative environmental review by state agencies and the federal government, allowing project implementation to proceed without NEPA clearance (provided project sponsors accept ultimate risk of rejection), NEPA reviews and the timeline for loan guarantee application reviews, and establishing a single set of NEPA requirements with a coordinated review when more than one federal agency is involved.
2. Allowing project sponsors to submit multiple applications under section 1705 of the Energy Policy Act of 2005.
3. Ensuring that the Financial Institution's Partnership Program is properly funded, and allowing borrowers to use the Federal Financing Bank for the guaranteed portion on loans.
4. Allowing borrowers to bundle small projects.

ALLOWING MULTIPLE PROJECTS PER APPLICATION FOR SECTION 1705 LOAN GUARANTEES

The American Recovery and Reinvestment Act of 2009 (Recovery Act), P.L. 115-5 was enacted to create and preserve jobs; invest in infrastructure, economic efficiency, and science; assist the unemployed; and stabilize state and local budgets. Section 406 of the Recovery Act amended Title XVII to create Section 1705 authorizing a new program for rapid deployment of renewable energy and electric power transmission projects (the “Section 1705 Program”). Section 1705 of Title XVII is authorized by the Recovery Act notwithstanding Section 1703 of Title XVII. The Section 1705 Program is designed to address the current economic conditions of the nation, in part, through rapid deployment of renewable energy and transmission projects.

Two solicitations were issued on July 29, 2009 by Department of Energy (DOE) under Section 1703/1705, one for innovative technology projects for renewable energy and one for electric power transmission infrastructure investment projects. Each solicitation had a section for “multiple applications”. The transmission infrastructure solicitation stated “More than one application may be submitted by an applicant.” and the innovative renewable energy solicitation stated “A Project Sponsor may only submit one application for one project employing a particular technology”. Similarly, the solicitation issued on October 7, 2009 for commercial technology renewable energy projects states that “More than one application may be submitted by a Lender-Applicant.” The Energy Policy Act of 2005 which authorized DOE’s loan program does not require these limitations.

Today, there are significant number project developers that have multiple innovative and/or commercial renewable energy projects employing the same technology (wind, solar, etc.) that are “shovel-ready” and can meet the ARRA timelines and the requirements of DOE’s solicitation. The rules stated above are inconsistent and could force project developers to pick only one project to apply for a loan. The economic conditions for loans in the private sector have not changed since the inception of the financial crisis, so many projects that are being developed may not be completed due to this limitation. This was not the intent of the ARRA or the Temporary Loan Program.

At a time when the United States has a 9.8 percent unemployment rate, along with a multitude of underemployed and discouraged workers, and needs to begin leading a global effort to reduce carbon dioxide emissions, why should the DOE limit investments in competitive clean renewable energy? Unlike the Section 1703 program, the Recovery Act created the Section 1705 program to finance projects that are ready to begin construction and create jobs in the near-term. Without modification, we fear that the program will fall short of the objectives of Congress, the Administration and the DOE to create jobs and double renewable energy penetration by 2012. The DOE should evaluate each project application based on the project’s merits: its development team, creditworthiness, environmental benefits, and technology risk with the objective of deploying clean energy technology, and putting people to work as quickly as possible. This will allow the DOE to select those projects that are ready to be constructed today, and are most worthy of taxpayer investment.