

MEMORANDUM.

From: David W. Brown

Subject: Oregon House Bill 3606

Date: April 20, 2011

Summary

Obsidian Finance Group, LLC, an Oregon solar energy developer, supports House Bill 3606 as containing necessary technical fixes.

Discussion

1. Three Technical Fixes

There is an urgent need for three technical fixes to recent BETC administrative interpretations, including: the treatment of federal grants, the ability to "season" larger projects (greater than \$10 million), and not being penalized for the time it takes the Oregon Department of Energy to process paperwork.

a. Federal Grant / BETC Interaction The Oregon Department of Energy has informed several interested persons that if a project receives a federal grant for a portion of its cost, the grant amount will be deducted from the BETC certified cost, not from total project cost. Efforts to obtain an administrative fix have not been successful. This is an issue for all federal grants, not just Section 1603 payments in lieu of the Investment Tax Credit.

b. Seasoning a Six Year BETC In the 2010 Special Session, the BETC legislation added one year to the five year BETC schedule for projects in excess of \$10 million by delaying receipt of the credit to the tax year after the project is completed. The idea was for developers to hold the BETC for that first year, transferring it to a pass-through partner after it aged and became a five year credit. November 2010 regulations now prohibit this seasoning by requiring a pass-through partner to sign the pass-through agreement before the six year period begins. Extremely difficult to accomplish.

c. Credit start year. One of the agreements incorporated into the 2010 Special Session BETC Legislation was the idea that the time spent by ODOE processing the paperwork would not disadvantage projects, to quote the legislation (italics are deleted language, bold language is new):

The five-year period shall begin with the tax year of the applicant during which [*a certified facility is placed into operation, or the year the facility is certified under ORS 469.215, at the election of the applicant*] the completed application for final certification of the facility under ORS 469.215 is received by the State Department of Energy.

(2) Notwithstanding subsection (1) of this section, for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469.215 after January 1, 2010, the five-year period shall begin with the tax year immediately following the tax year during which the completed application for final certification of the facility under ORS 469.215 is received by the department.

2011 Laws Ch. 76, Section 13

A new regulation released the Oregon Department of Revenue at the end of 2010 concludes that a delay in ODOE processing paperwork means the pass-through partner tax benefits are shifted into the next year.

Thank you for your attention to these concerns.

David W. Brown