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2010 New Mexico Legislative Session Clean Energy Bills Signed by Governor Richardson

HB 171: Dairy Biomass Tax Credit

HB 171 creates a personal and corporate income tax credit for dairy or feedlot producers who transport agricultural biomass (i.e., dairy manure) to a qualified energy-production facility that generates electricity, makes biocrude or produces liquid or gaseous fuel for commercial use. The qualified individual or corporate taxpayer who files a New Mexico income tax return for a taxable year beginning on or after January 1, 2011, and ending prior to January 1, 2020, is eligible. The tax credit is an amount equal to no more than \$5.00 for every “wet ton” of agricultural biomass transported from the taxpayer’s dairy or feedlot to a qualified energy-production facility. Any portion of the agricultural biomass personal income or corporate income taxpayer credit that remains unused in the taxable year may be carried forward for four consecutive years, following the taxable year in which the tax credit originates. The aggregate amount of all personal and corporate agricultural biomass tax credits shall not exceed \$5,000,000 annually. Applications for the credit shall be considered in the order received by EMNRD.

HB 181/SB 190: Clarifies the Legality of “3rd Party” Solar Systems and Provides for an “Interconnected Customer Rate Rider”

3rd Party Solar Systems: HB 181 clarifies that so-called “3rd party” solar and other renewable energy systems are legal. 3rd party systems are where the renewable energy developer maintains ownership of the generation system (e.g., on a commercial business’ roof) and sells the power to the owner of the facility using the power. HB 181 provides that a producer of electricity (Producer) using renewable energy, that is not otherwise a public utility, is not subject to the Public Utility Act or the jurisdiction of the Public Regulation Commission (PRC) if the Producer (i) sells electricity to a public utility customer that occupies the site upon which the Producer is located (Host), or sells to tenants or employees of the Host, (ii) shares a common point of connection with the utility providing service and the Host, tenant or employee, and (iii) is sized to provide no more than 120% of the average annual electricity consumption of the Host at the site.

3rd party arrangements are particularly advantageous to governmental entities. Governments are unable to take advantage of the 30% federal and 10% New Mexico state income tax credits because they do not pay income taxes. 3rd party arrangements would allow renewable energy projects at



governmental facilities to take advantage of the tax credits (and therefore reduce the cost of the renewable energy system) because the developer, who does have an income tax liability, maintains ownership of the system, gets the credit, and passes the savings on to the governmental entity. 3rd party arrangements are considered key to obtaining financing, particularly for commercial and institutional/governmental renewable energy systems.

Interconnected Customer Rate Rider: Property owners with roof-top solar (or other renewable energy) systems are considered “interconnected customers” because their systems are interconnected to the utility. These systems impose certain costs on a utility’s system that the “rate rider” (fee) in HB 181 is intended to address. A utility may seek approval of interconnected customer rate riders in its renewable energy procurement plan filing before January 1, 2011. **Interconnected customer rate riders, only for new interconnected customers (i.e., not those currently with solar systems), may be established by investor-owned utilities (IOU), upon PRC approval, to recover ancillary and standby costs associated with the interconnected system.** Such recovered costs shall not be duplicative of recovered costs in an IOU’s underlying rates. The determination of recovered costs shall be on a net basis by also including the benefits of distributed energy on an IOU’s system that reduce costs.

HB 261/SB 201: Solar and Wind Energy Equipment Gross Receipts Deduction

Advanced Energy Gross Receipt Tax (GRT) and Compensating Tax Deduction: Allows the seller of tangible personal property or services for an advanced energy facility (e.g., > 1-MW utility-scale solar systems, advanced coal plant with carbon sequestration, etc.) to deduct GRT and compensating tax from receipts. This essentially keeps large-solar energy systems from having to pay GRT and compensating tax on the costs of developing the project. This deduction cannot be taken along with the existing Advanced Energy Tax Credit (AETC) for the same expenditures.

This additional avenue (to the AETC) for a solar developer to, in essence, receive a GRT and compensating tax exemption, is needed because developers have found the existing AETC to be “inaccessible” to the majority of solar developers given their lack of New Mexico tax liability. Solar developers need either the AETC or SB 201’s GRT and compensating tax deduction for project viability.

Also, the legislation expands the present statute GRT deduction for sale of wind generation equipment to include solar generation equipment. The deduction applies only if the sale is made to a government entity, which means that it would apply to a privately-developed project if that project has received Industrial Revenue Bond financing. No deduction would be allowed for expenditures for which the AETC or the deduction provided in the first half of the bill (above) are taken.

HB 233: Exempts Roof-top Solar Systems from Property Tax Assessment

HB 233 exempts roof-top scale solar energy system installations from property tax assessments at the time the system is installed. The solar system improvement would not be assessed property taxes until the property is sold. When the property is sold, the solar improvement will indirectly contribute to property tax assessments (and therefore a county’s revenue base) based on the market price at which the property sold (which presumably includes the value of the solar system). Thus, in the longer-run, counties do not lose out on property tax revenues from HB 233. The bill defines a “solar energy system installation” as an installation that is used to provide space heat, hot water or

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electricity to the property in which it is being installed and is an installation that uses solar panels that are not also windows, a dark-colored water tank exposed to the sunlight, or a non-vented trombe wall (heat storage wall).

SB 200: State-Funded Public Buildings Energy Efficiency Requirements

SB 200 requires that certain state-funded building projects qualify for an ENERGY STAR rating from the United States Environmental Protection Agency (EPA). In order for the standards to apply, the projects must be funded by legislative appropriations or by the proceeds of severance tax bonds, supplemental severance tax bonds, or general obligation bonds. The projects must be either new buildings of 3,000 square feet or more, building additions that increase the square footage of the original building by 3,000 square feet or more, or building renovations that entail the upgrade or replacement of at least two of the following: (i) HVAC system, (ii) an electrical system, or (iii) components that separate the interior and exterior environments, protect the interior environment and facilitate climate control.

For more Information:

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