



UPDATE REPORT

THE AMERICAN RECOVERY AND REINVESTMENT ACT: Opportunities for Wind Energy Projects and Technologies

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The American Recovery and Reinvestment Act of 2009 (“ARRA”), a \$787 billion economic stimulus package, provides a number of new and expanded tax incentives related to wind and other renewable energy projects, and creates new avenues for businesses to fund wind energy projects and technologies.

Extension of “Eligibility Dates” for PTC. ARRA extends the production tax credit (“PTC”) for wind facilities producing electricity. A wind energy project “placed in service” on or before December 31, 2012 will qualify for the PTC. Qualified projects will receive a per kilowatt hour credit, currently indexed at 2.1¢ for 2009, for every kilowatt hour generated and sold to a third-party person during each year of the 10-year period beginning on the date the project is originally placed in service.

Election to Claim Investment Tax Credit (“ITC”) in Lieu of PTC. ARRA allows a taxpayer who is eligible to claim the PTC for a wind energy project to instead claim an ITC. The owner of a qualifying wind energy facility may elect to claim either the ITC or the PTC, but not both. The ITC allows for a 30% credit on “qualified property” used in a wind energy facility, and it may be claimed for wind energy facilities placed in service from January 1, 2009 to January 1, 2012. Additionally, the ARRA repeals the \$4,000 limit on the 30% credit available for small wind energy property. If the facility fails to use its entire credit, any unused portion can be carried back one tax year and carried forward up to 20 tax years. Any owner electing to claim an ITC must reduce the facility’s tax basis by one-half of the credit claimed.

On June 5, 2009, the IRS issued Notice 2009-52, describing the procedures for making an irrevocable ITC election in lieu of a PTC election. The Notice is available [here](#).

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Grants in Lieu of Tax Credits. In addition to expanding benefits for, and access to, tax credits, ARRA also enables taxpayers to elect to receive a cash grant from the U.S. Treasury Department in lieu of tax credits. Eligibility for grants is based on the same criteria as eligibility for the ITC or PTC. Qualified property will be eligible for a cash amount equal to either 10% or 30% of the cost of the property. Even after the Treasury Department issued guidance on July 9, 2009, a number of uncertainties remain related to the administration of the cash grant program. For a thorough treatment of the program, complete with its advantages and disadvantages, please consult the Brown Rudnick client alert, published [here](#).

Advanced Energy Facilities Investment Credit.

To encourage the development of a domestic manufacturing base to support the renewable energy industry, ARRA provides a new 30% tax credit to businesses investing in a “qualified advanced energy manufacturing project.” Qualified projects include those that establish, re-equip, or expand manufacturing facilities engaged in, among other things, the production of renewable energy, including wind energy. ARRA will fund the project up to \$2.3 billion. Credits will be awarded through an application process, the procedure of which will be made available by August 16, 2009 through the Treasury Department.

Expanded Energy Bonds. ARRA increases funding for energy bonds. For renewable energy bonds,

available for financing wind energy and other renewable energy facilities, ARRA increases the amount of funds available for issuing new clean renewable energy bonds from \$800 million to \$2.4 billion. For qualified energy conservation bonds, used to fund governmental programs aimed at reducing greenhouse gases and promoting conservation, the cap has been raised from \$800 million to \$3.2 billion.

Expanded DOE Loan Guarantee Program.

ARRA infused an additional \$6 billion into the existing DOE Loan Guarantee Program, resulting in an estimated \$60 billion in support for “qualified programs.” The Energy Policy Act of 2005 that originally established the loan program defines a qualified program as one that employs a “new or significantly improved technology that is not a commercial technology.” Under ARRA, qualified programs now include commercial technology projects for renewable energy systems that will commence construction no later than September 30, 2011.

Federal Grant and Contract Program. As of June 2009, there are two primary clearinghouses where interested parties may search for federal grant and contract opportunities: FedConnect and Grants.gov.

FedConnect serves as an online marketplace for grant and contract opportunities, connecting federal agencies with vendors and interested parties. It may be accessed by any member of the public, although registered vendors gain the added benefit of direct online communication with government agencies.

Interested parties wishing to become registered vendors must obtain a Data Universal Number System (“DUNS”) number to complete the registration process, or use the DUNS number already assigned them.

Parties interested in applying for federal grants can find over 1,000 opportunities, providing over \$500 billion in assistance, through [Grants.gov](#). The web site serves as a clearinghouse for government grant opportunities, making grants available to members primarily in the public sector, but also to members of the private sector. Interested parties can either browse listings by category (e.g., energy or environment) or agency (e.g., Department of Energy or Environmental Protection Agency). As an alternative to browsing listings, interested parties may conduct a basic or **advanced search** for available grants. Parties seeking to locate specific types of grants will be best served by the advanced search function. This function allows parties to narrow the scope of grant opportunities by restricting results based on keyword, date range, agency, eligibility, funding instrument, or funding activity searches. The latter search criterion allows users to search for grants uniquely associated to ARRA.

Eligibility for both grants and contracts varies widely.¹ As such, interested parties should consult individual grant and contract opportunities to learn of their eligibility. In nearly every instance, grantees and sub-awardees of ARRA contracts and grants, who have not previously done so, must obtain a DUNS Number, as well as complete registration with **Central Contractor Registration** (“CCR”). Parties must **obtain a DUNS number** before completing the CCR registration

process. Obtaining a DUNS number may prove to be a lengthy process, so interested parties are advised to begin the application process as soon as possible.

In April 2009, Secretary Chu **announced** plans to provide \$93 million from ARRA to support further development of wind energy in the United States. As of June 25, 2009, there are two wind energy projects for which the Department of Energy has solicited applications in connection with ARRA funding. One project, issued June 24, 2009, involves the development of a wind turbine drivetrain testing facility. The \$45 million financial assistance grant will be awarded on a competitive basis to an applicant that includes organizational participants from one or more states and universities. More details are available [here](#). A second project, issued June 2, 2009 and available to consortia led by an institution of higher learning, provides \$24 million, to be divided in 2-3 grants, for the development of consortia between universities and industry to focus on critical wind energy challenges. The application for this project is available [here](#).

¹ARRA has led to a substantial increase in the number of applications for federal grants. Accordingly, grants.gov continues to update and amend the grant application process. For a discussion of the current amendments, see <http://www.grants.gov/applicants/bulletin.jsp>. To remain up to date on future changes to the process, see <http://grants.gov.blogspot.com/>.

New York

Seven Times Square
New York, NY 10036
+1.212.209.4800
+1.212.209.4801 [fax]

Boston

One Financial Center
Boston, MA 02111
+1.617.856.8200
+1.617.856.8201 [fax]

Washington, DC

601 Thirteenth Street NW,
Suite 600
Washington, DC 20005
+1.202.347.2222
+1.202.347.4242 [fax]

Hartford

City Place I
185 Asylum Street
Hartford, CT 06103
+1.860.509.6500
+1.860.509.6501 [fax]

Providence

121 South Main Street
Providence, RI 02903
+1.401.276.2600
+1.401.276.2601 [fax]

London

8 Clifford Street
London, W1S 2LQ
United Kingdom
+44.20.7851.6000
+44.20.7851.6100 [fax]

Dublin

Alexandra House
The Sweepstakes
Ballsbridge, Dublin 4
Ireland
+353.1.664.1738
+353.1.664.1838 [fax]

www.brownrudnick.com

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By combining seasoned professionals across a spectrum of related disciplines -- energy and environmental law, tax, project and structured finance, regulatory compliance, U.S., Kyoto Protocol and EU emissions trading regimes, renewable energy, intellectual property, venture capital, and government law & strategies -- the team is able to provide fully integrated solutions to participants in the growing carbon and renewable marketplace. Brown Rudnick also brings to bear its industry knowledge and perspective to help investors, entrepreneurs, developers and service providers in the cleantech sector.

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For further information, please contact:

Paul G. Afonso
+1.617.856.8430
pafonso@brownrudnick.com

Patrick M. Cox
+1.212.209.4949
pcox@brownrudnick.com

Mark A. Dorff
+44.20.7851.6005
mdorff@brownrudnick.com

Alan N. Forman
+1.212.209.4812
aforman@brownrudnick.com

Jonathan W. Renfrew
+1.202.536.1722
jrenfrew@brownrudnick.com

Howard L. Siegel
+1.860.509.6519
hsiegel@brownrudnick.com

John W. Wadsworth
+1.617.856.8596
jwadsworth@brownrudnick.com

Nicole M. Bouchard contributed to this Alert.

