Briefing Paper
2010 Oregon Legislation

April 7, 2010

Summary

Attachment 1 outlines bills passed by the 2010 Legislature that affect Energy Trust or its work.

Background

- The 2010 short session of the legislature has adjourned after having wrestled with an enormous budget deficit and tackled several energy issues, including the Business Energy Tax Credit program.
- Although Governor Kulongowski may veto any bill within 30 days of adjournment, we do not expect any vetoes.

Discussion

- We have no particular concerns about the enacted bills.
- Note, however, that there was an effort in the 2010 session to “sweep” some of the House and Community Development Department’s share of public-purpose funds into the state’s general fund to deal with the budget shortfall. The effort was abandoned in the face of opposition, but several parties anticipate that there may be a more serious run at the public purpose fund in the 2011 session.

ATTACHMENT 1 -- BILLS THAT PASSED THE 2010 SHORT SESSION

Business Energy Tax Credit, HB 3680:
http://www.leg.state.or.us/10ss1/measures/hb3600.dir/hb3680.b.html. In 2009, the legislature passed HB 2472, which would have restricted BETC and introduced some accountability and transparency measures. The Governor vetoed the bill. Since then, key parties negotiated a compromise, encompassed in HB 3680. The bill:

- Establishes caps for allowable credits: $300 million for renewable energy generation facilities for the current biennium, and $150 million for the 2011-2013 biennium (current projections put the BETC cost at around $800 million without this cap). Manufacturing facilities are limited to $200 million for this biennium and the 2011-13 biennium, and $50 million for the second half of 2013. Wind generation facilities larger than 10 MW are allowed $3.5 million in 2010, $2.5 million in 2011 and $1.5 million in 2012.
- Large wind projects (over 10 MW) are limited to 5% of cost if the facility was preliminarily certified after 2009, and limited to $7 million if preliminarily certified in 2010, $5 million if preliminarily certified in 2011, and $3 million if preliminarily certified in 2013.
- For renewable projects finally certified after 2009 and costing over $10 million, the 5-year BETC credit period begins with the tax year after the tax year in which the application for final certification is filed.
- Sunset dates: For energy generation and conservation, final certification must be received before July 1, 2012. For manufacturing facilities, preliminary certification must be received before January 1, 2014. The 2011 legislature is expected to review whether to extend the BETC program further.
- Timelines for reviewing BETC applications. ODOE has 90 days to review and determine whether to issue preliminary certifications for renewable energy projects or manufacturing facilities if the project cost is less than $6 million, and six months if the project costs $6 million or more.
- Manufacturers of certain types of electric vehicles are included in the definition of "renewable energy resource equipment manufacturing facility." Total eligible costs are limited to $2.5 million.
- Changes included in the bill will not be applied retroactively to projects that have already received credits under the BETC program.
- The 10-percent cost overrun (compared to costs preliminarily certified) that used to be allowed is precluded.
- ODOE is given more discretion to prioritize projects when the programs are over-subscribed.
- The bill makes no changes to energy efficiency components of the program.

ODOE had already set a March 30 deadline to make permanent the temporary BETC rules. Reportedly, ODOE expects to proceed with this action and also tie in related aspects of HB 3680, such as the elimination of multiple smaller applications for one large project. A report on the program will be issued in October 2010, and it is expected that the legislature will revisit BETC in 2011.

Renewable energy

Solar feed-in tariff, HB 3690, http://www.leg.state.or.us/10ss1/measures/hb3600.dir/hb3690.en.html. The bill:

- Establishes different size categories for solar PV systems. Defines a residential qualifying system as one with a nameplate capacity of 10 KW or less and a small commercial qualifying system as being greater than 10 KW and less than or equal to 100 KW.
- Allows OPUC to adjust PV system deployment targets in utility pilot programs.
- Establishes a July 1, 2010 deadline for utilities to have pilot programs available to customers (date was April 1, 2010).

The OPUC already has two dockets associated with the solar feed-in tariffs --AR 538 and UM 1452.

Utility reliance on Energy Trust-funded projects to meet renewable energy standard, HB 3691, http://www.leg.state.or.us/10ss1/measures/hb3600.dir/hb3691.en.html. The 2007 renewable energy act and the 2009 solar capacity law provided that if utilities use a project to meet RPS or solar capacity requirements, the cost could not be considered an above-market cost for purposes of SB 1149 (the three-percent charge that funds basic Energy Trust electric programs). HB 3691 removes those provisions, eliminating a major uncertainty in Energy Trust's relationship with the utilities in renewable energy projects. HB 3691 also allows utilities to recover "all prudently incurred costs associated with the RPS" in rates--including above-market costs that are not funded by Energy Trust. The bill also calls for the Oregon PUC to establish an automatic adjustment clause or some other method that would allow timely recovery of such prudently incurred costs for constructing or acquiring facilities that "generate electricity from renewable energy sources and for associated electricity transmission."

Treatment of vintage biomass under the renewable energy standard, HB 3674, http://www.leg.state.or.us/10ss1/measures/hb3600.dir/hb3674.en.html. Last session, the legislature passed a bill (HB 2940), which would have allowed energy from vintage biomass facilities built before 1995 to count toward RPS compliance. The Governor vetoed the bill and sought a compromise, which was introduced in the 2010 session as HB 3674. Under HB 3674, energy from vintage (pre-1995) PURPA biomass projects may be used for RPS compliance. However, the projects' renewable energy certificates may not be used until 2026—between now and then they may only be banked. As a result, the original RPS must be met primarily with new resources, but the vintage biomass RECs can be used for ongoing compliance (since utilities have to maintain the 25 percent standard forever once it's been met in 2025). HB 3674 also allows a limited amount (up to 11 aMW) of municipal solid waste generation to be used for RPS compliance; and the PUC may allow cost recovery for hydrogen stations using anhydrous ammonia. Some observers expect there to be pressure to allow unlimited municipal solid waste generation under the RPS in 2011.

Marine renewable energy, HB 3633: The community energy goal established in the 2007 Renewable Energy Act (ORS 469A.210) is amended to include “marine renewable energy resources.” The Department of Land Conservation and Development is directed to perform a study, and a Marine Renewable Energy Resources Study Fund is established in the State Treasury. The study fund is to be fed by any source, public or private (sec. 3). http://www.leg.state.or.us/10ss1/measures/hb3600.dir/hb3633.b.html.

Hydropower under the renewable energy standard, HB 3649: (http://www.leg.state.or.us/10ss1/measures/hb3600.dir/hb3649.en.html). The bill allows utilities to include up to 40 aMW of certified low-impact hydroelectricity per year to be used to comply with the renewable energy standard (“RES”) created by the Renewable Energy Act of 2007. The facilities don't have to be owned by a utility, but must be located in Oregon and either licensed or exempted by FERC.

Prevailing wage for solar projects, HB 3651: requires prevailing wage rates on some public works projects involving the construction or installation of solar energy systems. (http://www.leg.state.or.us/10ss1/measures/hb3600.dir/hb3651.en.html)

EEAST

Adjustments to the energy efficiency and sustainable technology loan program (EEAST), HB 3675: http://www.leg.state.or.us/10ss1/measures/hb3600.dir/hb3675.b.html. Makes a variety of adjustments to clarify EEAST, e.g., requires ODOE to complete an energy savings projection before issuing an energy efficiency and sustainable technology loan.