

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO TAXATION; ENCOURAGING THE DEVELOPMENT OF ELECTRICAL GENERATION BY ADVANCED COAL ELECTRIC GENERATING OR GASIFICATION FACILITIES, RECYCLED ENERGY FACILITIES, RENEWABLE ENERGY STORAGE FACILITIES OR SOLAR THERMAL ELECTRIC GENERATING FACILITIES; ENACTING A TAX CREDIT AGAINST THE GROSS RECEIPTS TAX, COMPENSATING TAX AND WITHHOLDING TAX LIABILITY OF A QUALIFIED TAXPAYER; PROVIDING FOR COST RECOVERY FOR CLEAN ENERGY UTILITY PROJECTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. ADVANCED ENERGY TAX CREDIT--GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--

A. A taxpayer that holds an interest in a qualified generating facility may claim a credit to be computed pursuant to the provisions of this section. The credit provided by this section may be referred to as the "advanced energy tax credit".

B. As used in this section:

(1) "department" means the taxation and revenue department;

(2) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon

1 dioxide capture, treatment, compression, transportation and
2 sequestration; site and equipment acquisition; and fuel
3 supply development used directly and exclusively in a
4 qualified generating facility;

5 (3) "qualified generating facility" means a
6 new solar thermal electric generating facility that may
7 include an associated renewable energy storage facility or
8 recycled energy projects that begins construction no later
9 than December 31, 2015 or a new or re-powered coal-based
10 electric generating unit and an associated coal gasification
11 facility, if any, that begins construction no later than
12 December 31, 2015 that meets the following specifications:

13 (a) emits the lesser of: 1) what is
14 achievable with the best available control technology; or 2)
15 thirty-five thousandths pound per million British thermal
16 units of sulfur dioxide, twenty-five thousandths pound per
17 million British thermal units of oxides of nitrogen and one
18 hundredth pound per million British thermal units of total
19 particulates in the flue gas;

20 (b) removes the greater of: 1) what
21 is achievable with the best available control technology; or
22 2) ninety percent of the mercury from the input fuel;

23 (c) captures and sequesters or
24 controls carbon dioxide emissions so that by the later of
25 January 1, 2017 or eighteen months after the commercial

1 operation date of the qualified generating facility, no more
2 than one thousand one hundred pounds per megawatt-hour of
3 carbon dioxide is emitted into the atmosphere;

4 (d) all infrastructure required for
5 sequestration is in place by the later of January 1, 2017, or
6 eighteen months after the commercial operation date of the
7 qualified generating facility;

8 (e) includes methods and procedures to
9 monitor the disposition of the carbon dioxide captured and
10 sequestered from the facility; and

11 (f) does not exceed seven hundred net
12 megawatts name-plate capacity;

13 (4) "recycled energy" means energy produced
14 by a generation unit with a name-plate capacity of not more
15 than fifteen megawatts that converts the otherwise lost
16 energy from the exhaust stacks or pipes to electricity
17 without combustion of additional fossil fuel; and

18 (5) "sequester" means to store, or
19 chemically convert, carbon dioxide in a manner that prevents
20 its release into the atmosphere and may include the use of
21 geologic formations and enhanced oil, coalbed methane or
22 natural gas recovery techniques.

23 C. Subject to the limit imposed in Subsection H
24 of this section, the advanced energy tax credit shall equal
25 no more than six percent of the eligible generation plant

1 costs of a qualified generating facility.

2 D. A taxpayer may apply for the advanced energy
3 tax credit by submitting to the taxation and revenue
4 department a certificate issued by the department of
5 environment pursuant to Subsection I of this section,
6 documentation showing the taxpayer's interest in the
7 qualified generating facility identified in the certificate
8 and other information the taxation and revenue department
9 requests to determine the amount of tax credit due to the
10 taxpayer.

11 E. A taxpayer having applied for and been granted
12 approval for a credit by the department pursuant to this
13 section may claim an amount of available credit against the
14 taxpayer's gross receipts tax, compensating tax or
15 withholding tax due to the state.

16 F. A taxpayer that is liable for the payment of
17 gross receipts or compensating tax with respect to the
18 ownership, development, construction, maintenance or
19 operation of a new coal-based electric generating facility
20 that does not meet the criteria for a qualified generating
21 facility and that begins construction after January 1, 2007
22 shall not claim an advanced energy tax credit pursuant to
23 this section or a gross receipts tax credit, a compensating
24 tax credit or a withholding tax credit pursuant to any other
25 state law.

1 G. If the amount of the tax credit claimed
2 exceeds the taxpayer's liability, the excess may be carried
3 forward for up to five years.

4 H. The aggregate amount of tax credit that may be
5 claimed with respect to each qualified generating facility
6 shall not exceed sixty million dollars (\$60,000,000).

7 I. An entity that holds title to a qualified
8 generating facility may request a certificate of eligibility
9 from the department of environment to enable the requester to
10 apply for the advanced energy tax credit. The department of
11 environment:

12 (1) shall determine if the facility is a
13 qualified generating facility;

14 (2) shall require that the requester provide
15 the department of environment with the information necessary
16 to assess whether the requester's facility meets the criteria
17 to be a qualified generating facility;

18 (3) shall issue a certificate to the
19 requester stating that the facility is or is not a qualified
20 generating facility within one hundred eighty days after
21 receiving all information necessary to make a determination;

22 (4) shall:

23 (a) issue rules governing the procedure
24 for administering the provisions of this subsection and
25 Subsection J of this section;

1 (b) issue a schedule of fees in which
2 no fee exceeds one hundred fifty thousand dollars (\$150,000);
3 and

4 (c) deposit fees collected pursuant to
5 this paragraph in the state air quality permit fund created
6 pursuant to Section 74-2-15 NMSA 1978; and

7 (5) shall report annually to the appropriate
8 interim legislative committee information that will allow the
9 legislative committee to analyze the effectiveness of the
10 advanced energy tax credit, including the identity of
11 qualified generating facilities, the energy production means
12 used, the amount of emissions identified in this section
13 reduced and removed by those qualified generating facilities
14 and whether any requests for certificates of eligibility
15 could not be approved due to program limits.

16 J. If the department of environment issues a
17 certificate of eligibility to a taxpayer stating that the
18 taxpayer is a qualified generating facility and the taxpayer
19 does not sequester or control carbon dioxide emissions to the
20 extent required by this section by the later of January 1, 2017
21 or eighteen months after the commercial operation date of the
22 qualified generating facility, the taxpayer's certification as
23 a qualified generating facility shall be revoked by the
24 department of environment and the taxpayer shall refund to the
25 state tax credits granted pursuant to this section; provided

1 that if the taxpayer demonstrates to the department of
2 environment that the taxpayer made every effort to sequester or
3 control carbon dioxide emissions to the extent feasible and the
4 facility's inability to meet the sequestration requirements of
5 a qualified generating facility was beyond the facility's
6 control, in which case the department of environment shall
7 determine, after a public hearing, the amount of the tax credit
8 that should be refunded. The department of environment, in its
9 determination, shall consider the environmental performance of
10 the facility and the extent to which the inability to meet the
11 sequestration requirements of a qualified generating facility
12 was in the control of the taxpayer. The refund as determined
13 by the department of environment shall be paid within one
14 hundred eighty days following a final order by the department
15 of environment.

16 K. Expenditures for which a taxpayer claims a
17 credit pursuant to this section are ineligible for credits
18 pursuant to the provisions of the Investment Credit Act or any
19 other credit against compensating tax, gross receipts tax or
20 withholding tax.

21 L. A taxpayer shall apply for approval for a credit
22 within one year following the end of the calendar year in which
23 the eligible generation plant costs are incurred.

24 Section 2. A new section of Chapter 62, Article 6 NMSA
25 1978 is enacted to read:

1 "CLEAN ENERGY INVESTMENTS--AUTHORIZATION--DEPARTMENT OF
2 ENVIRONMENT CERTIFICATION.--

3 A. The commission shall adopt rules to allow public
4 utilities a reasonable opportunity to recover costs incurred by
5 a public utility for the development and ongoing construction
6 of a clean energy project. Such costs must not exceed the
7 level authorized by the commission in a proceeding to establish
8 a reasonable level of expenditure that the public utility may
9 undertake to develop and construct a clean energy project. The
10 public utility shall recover approved costs reasonably incurred
11 up to the time it files a general rate case whether or not the
12 project is in service. This section does not relieve a public
13 utility of its duty to act reasonably and prudently as
14 circumstances indicate once development and construction of a
15 clean energy project begins.

16 B. A public utility that incurs costs to reduce
17 harmful air emissions at new or existing power plants may seek
18 recovery of those costs in a general rate case, regardless of
19 whether the technology or method used qualifies as a clean
20 energy project or advanced coal technology. If a public
21 utility seeks cost recovery for expenditures to reduce harmful
22 air emissions beyond levels required by law or rule, the
23 commission may find that such expenditures are reasonable.

24 C. The commission, upon petition or its own motion,
25 shall open a docket to consider appropriate performance-based

1 financial or other incentives to encourage public utilities to
2 develop and construct clean energy projects.

3 D. As used in this section:

4 (1) "advanced coal technology" means new
5 coal-based generation, coal gasification or other technology
6 using coal as a fuel source that is certified by the department
7 of environment to meet the following specifications:

8 (a) emits the lesser of: 1) what is
9 achievable with the best available control technology; or 2)
10 thirty-five thousandths pound per million British thermal units
11 of sulfur dioxide, twenty-five thousandths pound per million
12 British thermal units of oxides of nitrogen and one hundredth
13 pound per million British thermal units of total particulates
14 in the flue gas;

15 (b) removes the greater of: 1) what is
16 achievable with the best available control technology; or 2)
17 ninety percent or more of the mercury from the input fuel;

18 (c) captures and sequesters or controls
19 carbon dioxide emissions such that by the later of January 1,
20 2017, or eighteen months after the commercial operation date,
21 no more than one thousand one hundred pounds per megawatt-hour
22 of carbon dioxide is emitted into the atmosphere;

23 (d) all infrastructure required for
24 sequestration is in place by the later of January 1, 2017, or
25 eighteen months after the commercial operation date of the

1 qualified generating facility;

2 (e) includes methods and procedures to
3 monitor the disposition of the carbon dioxide captured and
4 sequestered from the facility; and

5 (f) does not exceed seven hundred net
6 megawatts nameplate capacity;

7 (2) "clean energy project" means the
8 construction or modification of a new or existing electric
9 generation facility in a manner that employs a technology that
10 has additional financial risk because it is not commercially
11 established or because it employs an established technology
12 that is not commercially proven under the altitude, geographic
13 or resource availability conditions under which it is proposed
14 to operate and may include associated renewable energy storage
15 facilities, recycled energy and, for the limited purposes of
16 this section, advanced coal technology, or other technology as
17 deemed appropriate by the commission; a "clean energy project"
18 shall achieve emission levels no greater than those specified
19 for advanced coal technology and shall not include nuclear
20 power;

21 (3) "development" means the study, plan,
22 design, site, permit, engineering, assessment and determination
23 of the economic and operational feasibility at one or more
24 locations and may include small-scale demonstration projects,
25 if approved by the commission, as a reasonable expenditure;

1 (4) "recycled energy" means energy produced
2 by a generation unit with a name-plate capacity of not more
3 than fifteen megawatts that converts the otherwise lost energy
4 from exhaust stacks or pipes to electricity without combustion
5 of additional fossil fuel; and

6 (5) "sequester" means to store, or chemically
7 convert, carbon dioxide in a manner that prevents its release
8 into the atmosphere and may include the use of geologic
9 formations and enhanced oil, coalbed methane or natural gas
10 recovery techniques.

11 E. The department of environment may issue rules
12 governing the procedure for administering the certification
13 provisions of this section."

14 Section 3. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2007. _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25