F I S C A L   I M P A C T   R E P O R T

SPONSOR Cisneros
ORIGINAL DATE 2/19/07
LAST UPDATED 3/03/07
HB

SHORT TITLE Coal Electric Facility Gross Receipts
SB 994/aSCORC/aSFC

ANALYST Schardin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
		*See Narrative	Recurring	Air Quality Permit Fund-Fee Revenue
		($480.0)	Recurring	General Fund-Credits
		($320.0)	Recurring	Local Governments

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$75.0	$75.0	$150.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 178, SB 431, SB 463, HB 430

SOURCES OF INFORMATION
LFC Files

<u>Responses Received From</u>
New Mexico Environment Department (NMED)
Energy Minerals and Natural Resource Department (EMNRD)
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)

<u>No Response Received From</u>
Public Regulation Commission (PRC)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 994 will require NMED to report annually to the appropriate interim legislative committee information that will allow the committee to analyze the effectiveness of the advanced energy tax credit created in the bill. Information will include the identity of credit claimants, the energy production means used, the amount of emissions identified as reduced and removed by credit claimants, and whether any requests to receive the credit were denied due to program limits.

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 994 amends the definition of "qualified generating facilities" that will be eligible to receive the advanced energy tax credit to include associated renewable energy storage facilities or recycled energy projects. "Recycled energy" is defined as energy produced by a generation unit with a name-plate capacity of up to 15 megawatts that converts energy that is otherwise lost from the exhaust stacks or pipes into electricity without additional fossil fuel combustion.

The amendment also expands the definition of "sequester" to include techniques using coalbed methane to prevent the release of CO_2 into the atmosphere.

The amendment dictates that fees collected by NMED will be deposited in the state air quality permit fund, which is created in Section 74-2-15 NMSA, instead of the general fund. Current law appropriates money in that fund to NMED to pay the reasonable costs of permit review, permit enforcement, court costs, emissions monitoring, regulations development and other costs.

The amendment also clarifies that language in the bill does not relieve public utilities of the duty to act reasonably and prudently as circumstances indicate once development and construction of a clean energy project begins.

Finally, the amendment allows PRC to consider renewable energy storage facilities and advanced coal technology projects as clean energy projects.

Synopsis of Original Bill

Senate Bill 994 creates the advanced energy tax credit, which may be claimed by a taxpayer who holds an interest in a new solar thermal electric generating facility or new or repowered coal electric generating facility that begins construction before December 31, 2015. The credit will be available for the state portion of gross receipts tax, the compensating tax, or the withholding tax. Credits in excess of tax liability may be carried forward for up to five years.

The amount of the advanced energy tax credit will be up to 6 percent of the plant's expenditures for development and construction, including permitting, site characterization and assessment, engineering, design, CO_2 capture, treatment, compression, transportation and sequestration, site and equipment acquisition, and fuel supply development. The maximum credit claimed per generating facility will be limited to $60 million.

To qualify for the credit, the solar or coal facility must meet several emissions standards.

- The facility must emit the lesser of 1) what the best available technology allows, or 2) 35 thousandths pound per million Btu of sulfur dioxide (SO_2), 25 thousandths pound per million Btu of nitrous oxides, and 1 hundredth pound per million Btus of total particulates in the flue gas.
- The facility must also remove 1) the greater of what the best available technology allows, or 2) 90 percent of mercury emissions.
- The facility must capture and sequester or control CO_2 emissions so that by the later of January 1, 2017 or 18 months after the facility's commercial operation date, no more than 1,100 pounds per megawatt-hour of CO_2 is emitted.
- CO_2 sequestration infrastructure must be in place by the later of January 1, 2017 or 18 months after the facility's commercial operation date.
- The facility must also have methods in place to monitor CO_2 emissions and must not exceed a net of 700 megawatts nameplate capacity.

To apply for the credit, an entity that holds an interest in a qualified electric generating facility will need to apply for a certificate from NMED. NMED will be required to determine if the facility is eligible for the credit, issue a certificate stating whether or not the facility is eligible, and issue rules governing the credit. NMED will also issue a schedule of application fees not to exceed $150 thousand.

A taxpayer that receives advanced energy tax credits but does not control CO_2 emissions as required by the bill will have its eligibility for the credit revoked and will be required to repay some or all credits claimed to the state, as determined by NMED through a public hearing process.

To prevent double-dipping in state tax credits, the bill does not allow expenditures for which advanced energy tax credits are claimed to be eligible for any other gross receipts tax, compensating tax, or withholding tax credits.

The bill also allows public utilities an opportunity to request rate recovery for development and construction of a clean energy project from the PRC. PRC will be required to adopt rules to allow public utilities an opportunity to recover PRC-approved costs for the development and construction of a clean energy project. A public utility will be allowed to recover costs of reducing emissions at new or existing power plants, whether those plants qualify as clean or advanced energy projects.

The effective date of these provisions will be July 1, 2007.

FISCAL IMPLICATIONS

The bill allows NMED to establish fees associated with facility certification. The Senate Corporations and Transportation Committee amendment dictates that these fees will be deposited into the air quality permit fund, which is appropriated to NMED. The amount of fees collected will depend on the fee schedule set by NMED and the number of facilities that apply for certification.

TRD expects that credits claimed pursuant to the bill would be limited in the next few years because no qualified facilities are currently being planned. TRD reports that at least one developer is considering construction of a solar thermal facility that would be eligible, but the timing and scale of the project are uncertain. NMED reports that technologies to store energy produced at a solar thermal facility are being developed and won't be operational for several years.

Regarding recycled energy facilities, TRD reports that several eligible facilities are planned for location in New Mexico in the next few years. Facilities would cost an average of $10 million each. Assuming one facility is built each year yields a fiscal impact of about $600 thousand per year.

For illustration purposes, TRD calculates that a 25 megawatt facility with capital costs of $50 million would qualify for $3 million in tax credits. The tax liability would probably be less that this, especially if the taxpayer utilizes Industrial Revenue Bonds. TRD roughly estimates a fiscal impact of $200 thousand per year, of which 60 percent would come from the general fund and 40 percent from local governments.

LFC stresses that the fiscal impact of the bill could be substantially higher in the future if a large qualifying facility (up to 700 net megawatts) is constructed. As currently planned, the Desert Rock coal facility to be constructed in northwestern New Mexico would not qualify for the credits because its emissions will be too high. However, that facility could change its plans if given an incentive provided by this bill. Such a facility could feasibly exhaust the $60 million cap over several years.

SIGNIFICANT ISSUES

Water use and emissions from any coal facility must be considered, since the southwest faces severe water constraints and coal facilities emit mercury, nitrogen oxides (a component of ozone and smog), carbon-dioxide (CO_2), sulfur-dioxide (SO_2), and other toxins into the environment. The bill does not set any water use standards that must be met for a electric generating facility to qualify for the credit.

CO_2 is a greenhouse gas that is currently not regulated by federal emissions laws. SO_2 emissions are regulated by the Clean Air Act, and lower emissions standards are scheduled to take effect in 2015. Regarding mercury, a neurotoxin that is particularly harmful when ingested by pregnant women and children, about 920 pounds of mercury is currently emitted each year in New Mexico.

According to NMED, the bill provides an incentive for solar thermal and clean coal technologies to promote the state's abundant solar and coal resources in a way that is environmentally responsible and obviates the need to construct new conventional coal power plants that are harmful to the environment.

NMED reports the incentives provided in this bill are consistent with a Western Governors' Association (WGA) Clean and Diversified Energy Advisory Committee recommendation to develop clean energy in western states and increase energy efficiency. The bill's incentives are also consistent with the December 2006 final report issued by the citizen's advisory panel created by Governor Richardson in Executive Order 05-033.

NMED asserts that the incentives proposed help alleviate the higher costs and risks associated with clean coal electrical generation. Clean coal requires costly equipment as well as use of newer technology, which is not as well-established.

PERFORMANCE IMPLICATIONS

The bill may help NMED meet one of its performance based budgeting targets, the reduction of statewide greenhouse gas emissions. It may also help the state reach its goals to reduce greenhouse gas emissions to 2000 levels by 2012, to 10 percent below 2000 levels by 2020, and to 75 percent of 2000 levels by 2050.

ADMINISTRATIVE IMPLICATIONS

NMED anticipates requiring one additional FTE to accomplish the certification duties required by the bill. LFC estimates this cost, which is not appropriated in the bill, to be about $75 thousand per year. This cost is reflected in the "Estimated Additional Operating Budget Impact" table on page one of this analysis.

TRD reports it will need to track the credit manually. The $60 million cap per facility will require TRD to maintain records indefinitely.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 994 relates to House Bill 178 and Senate Bill 431, which would provide a compensating tax credit for the planned Desert Rock coal generating facility. That facility, which will be built on Navajo land by Sithe Global Power, would receive a compensating tax credit of $85 million over about nine years. According to NMED, Desert Rock could not qualify for the credit created in this bill unless it reduced SO_2 emissions by 1/3 and reduced CO_2 emissions by 60 percent.

Senate Bill 994 also relates to Senate Bill 463, the renewable energy production tax credit bill, and House Bill 430, the advanced energy manufacturing product tax credit.

TECHNICAL ISSUES

On page 6, the bill requires credit recipients who do not adequately control CO_2 emissions to refund all or some of the credits claimed. However, the bill does not have a similar provision for the other pollutants that must be controlled for a facility to be eligible for the credit (i.e. nitrous oxides, SO_2, and mercury).

TRD notes that taxpayers will be required to apply for the credit within one year after their construction expenses are incurred. However, since construction can take several years, it is unclear how NMED will determine that a plant meets the bill's criteria since the plant may not be operating after the first year of construction expenses have been incurred.

TRD also notes that NMED will make a ruling on whether a facility is qualified for the credit within 180 days of receiving all necessary information. It is unclear whether the facility will be deemed qualified or unqualified in NMED does not make a ruling within 180 days.

EMNRD notes that the Senate Corporations and Transportation Committee amendment to the definition of “qualified generating facility” makes it unclear whether the credit will be available to a standalone recycled energy project or only to a recycled energy project related to a solar thermal facility. The credit should apply to standalone facilities because typically solar thermal facilities do not generate any “recycled energy” opportunities.

OTHER SUBSTANTIVE ISSUES

In an effort to mitigate global climate change, the California Public Utilities Commission voted on January 25, 2007 to prohibit California power companies from entering new long-term contracts with electricity providers that emit more that 1,100 pounds of carbon dioxide (CO_2) per megawatt hour of electricity produced. The emissions standards proposed in this bill meets California’s new requirements.

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