

---

# Briefing on the Economic Stimulus Bill Moving Through Congress

*January 30, 2009*

---

***Moderator***

**Keith Martin**, Chadbourne Washington Office

***Reporters***

**Kenneth Hansen**, Chadbourne Washington Office

**Eli Katz**, Chadbourne New York office

**John Marciano**, Chadbourne Washington office

**Adam Wenner**, Chadbourne Washington Office

***Washington Lobbyists***

**Joe Mikrut**, *Partner*, Capitol Tax Partners

**Jonathan Weisgall**, *Vice President, Legislative and Regulatory Affairs*, MidAmerican Energy Holdings Company

---

CHADBOURNE  
& PARKE LLP

CAPITOL TAX  
PARTNERS

MIDAMERICAN  
ENERGY HOLDINGS COMPANY



**Kenneth Hansen**

---

**Chadbourne Washington Office**

# DOE Loan Guarantee Program for Innovative Energy Technologies

CHADBOURNE  
& PARKE LLP

**Existing program** – Title XVII of the Energy Policy Act of 2005 created a loan guarantee program to support the deployment of innovative, clean energy technologies – including renewable energy, transmission and advanced coal-based and nuclear technologies – that “reduce, avoid or sequester carbon dioxide and other air emissions.”

- Up to \$42.5 billion in loan guarantees are currently authorized.
- Credit subsidy cost of the guarantees is to be self-funded by borrowers.

# DOE Loan Guarantee Program for Innovative Energy Technologies

CHADBOURNE  
& PARKE LLP

## House Bill (passed January 28):

- Includes a new program to provide loan guarantees for proven, commercially available renewable energy technologies, transmission technologies and “leading edge biofuels projects.”
- \$8 billion is appropriated to cover the credit subsidy costs of up to approximately \$80 billion in project financing.
- This new program, which expires on September 30, 2011, is meant to be a temporary addition to the Title XVII loan guarantee program.

# DOE Loan Guarantee Program for Innovative Energy Technologies

CHADBOURNE  
& PARKE LLP

## Senate Bill:

- Authorizes an additional \$50 billion in loan volume for the existing loan guarantee program (with borrowers paying the related credit subsidy cost).
- Appropriates \$9.5 billion for the new loan guarantee program for commercially proven renewables and transmission projects (supporting approximately \$95 billion in project financing).

# DOE Loan Guarantee Program for Innovative Energy Technologies

CHADBOURNE  
& PARKE LLP

## Issues:

- Should/will the new program be open to innovative as well as proven, commercial technologies?
- Should/will the proposed subsidy appropriation be available to defray credit subsidy costs in connection with innovative project applications already pending or expected at the DOE under the current program for innovative technologies?

# Eli Katz

---

**Chadbourne  
New York office**

# John Marciano

---

**Chadbourne  
Washington office**

## Overview

---

- Similar versions of the stimulus bill are winding through both the House and Senate.
- The House passed the bill on Wednesday.
- The Senate will start debating the bill next Tuesday night.

# One Problem the Bills are Trying to Solve....

---

CHADBOURNE  
& PARKE LLP

- Tax subsidies pay for as much as 65% of renewable energy projects.
- Financing of renewable energy projects developed around “tax equity” investments.
  - Investors declining tax appetite = very few left to finance the tax subsidies
- Projects are stalled – no tax equity – no construction lending

## What's in the Bills...

---

- More and larger tax benefits.....
  - Extension of production tax credits – wind = 2012, others = 2013.
  - Bonus depreciation extension – immediate 50% tax write-off
  - Trade the PTC for an investment tax credit
  - Expand clean renewable energy bonds
  - Energy research credit
  - NOL and tax credit carrybacks (5 years)

**Will more of the same solve the tax liquidity problem?**

## Cash Grants

---

- The House bill would bypass the tax equity market
  - Cash grant of either 30% or 10% of the cost of renewable energy projects.
  - Only for projects completed in 2009 or 2010.
- Limitations:
  - Little to no information on implementation.
  - Stranded depreciation.
  - Cash must be returned if project is sold within 5 years.

**Trade Tax Credits for Cash**

# Investment Tax Credit...

## Will That Help?

---

CHADBOURNE  
& PARKE LLP

- One-off tax credit instead of future tax credits based on production.
  - This credit did not help solar through credit crisis.
- Benefit:
  - Less operational risk.
  - Immediate benefit.
- Drawbacks:
  - Recapture risk.
  - Limited to percentage of project cost.

## Market Outlook

---

- Cash Grants – the best “fix” is also the most controversial
  - Depreciation bonus monetization
- Tax credit carrybacks should ease the market
  - How long? (5 or 10 years)
  - TARP exclusion?
- ITC election – limited effect
  - Opens the door to sale-leaseback structures
  - Lease-pass-through structures
  - Eliminates production risks

## Senate

- COD income waiver
- Credit for manufacturers of products for the green economy
- Expand new markets tax credits
- Recovery zone and tribal bonds

## House

- No House version
- No House version
- No House version
- Recovery zone and tribal bonds



# **Adam Wenner**

---

**Chadbourn Washington Office**

The House stimulus requires the US Department of Energy to provide financial support to smart grid demonstration projects for both investor-owned and tax-exempt (municipal) utilities. DOE would assist — through an existing “smart grid matching grant program” — with up to 50% of the cost of advanced grid technology investments by an electric utility or other party carrying out a demonstration project. This is an increase in the current level of support from 20% to 50%.

DOE would also maintain a smart grid clearinghouse.

The department is already required under a 2007 law to establish a smart grid regional demonstration initiative.

The House bill pushes state public utility commissions to change how they set utility rates so that utilities have as much incentive to invest in conservation as they have to build new power plants. It does this by denying conservation grants above a base amount to states unless the governor promises to establish ratemaking policies that allow utilities to recover prudent fixed costs of investments in conservation on a timely basis, independent of their retail sales and without shifting variable costs to fixed charges.

Any new policies must also provide for cost recovery for prudent investments in energy efficiency. They must give utilities an earnings opportunity for energy efficiency savings.

The House bill authorizes DOE to lend up to \$3.25 billion to the Western Area Power Administration to build new transmission lines, with at least one terminus in the WAPA-served area, in order to deliver electricity from renewable energy projects constructed after the bill is enacted.

It also authorized an additional \$3.25 billion in borrowing authority for the Bonneville Power Administration to fund improvements to the BPA grid.