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Background on Expiring Production Tax Credits for “Open-loop” Biomass

Since 1992, a federal income tax credit has been allowed for the production of electricity from energy resources at qualified facilities. The base amount of the electricity production credit is 1.5 cents per kilowatt-hour (indexed annually for inflation, or 2.1 cents per kilowatt-hour for 2008). Generally, the credit is claimed during the 10-year period commencing with the date the qualified facility is “placed in service.” The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits. The term of benefits and value of the credit differs by technology and date of service—this is particularly true in the case of biomass, which has a unique set of rules.

As originally enacted by Congress as part of the Natural Gas Act in 1992, so-called “qualified energy resources” included only wind and “closed-loop biomass” (defined as biomass plants that used fuel specifically grown as energy crops). After many years of working with the Congress, the biomass industry was successful in advocating for expansion of the original credit program to include not just energy crops but all forms of organic fuel, or so-called “open-loop biomass,” as part of the JOBS Act of 2004.

Like other renewable technologies added to the Code (hydroelectric, waste to energy) *new* biomass (defined as “placed in service” after date of enactment) under the JOBS Act of 2004 received a five year term, and a .75 cent PTC per kilowatt-hour—in other words, half the term and rate of wind energy. Importantly, Congress recognized the value of providing tax credits to *existing* facilities that were placed in service prior to enactment of the JOBS Act (October 22, 2004), and provided a five year term, but again at only half the rate.

One year later, as part of EPACT of 2005, Congress kept the lower rate but increased the term of *new* open-loop biomass from 5 to 10 years for *new* facilities. For *existing* facilities (other than those facilities that use agricultural livestock waste nutrients), Congress amended the Code by providing that for facilities in service prior to October 22, 2004, the five year term was to commence on January 1, 2005.

Since 2005, Congress has extended the expiring provisions for *new* biomass, most recently as part of the American Recovery and Investment Tax Act of 2009, by extending the placed in service through 2013 and providing the option for a 30% investment tax credit. For existing biomass, however, the term of 5 years has remained unchanged. As a result, tax credits for all existing biomass plants that were in-service prior to October 2004 (which means most biomass facilities currently operating) will expire on December 31, 2009.