

# Forestalling the Green Chill

Roger D. Feldman

Public-private partnerships are a key to preventing a chill from settling over the green ambitions of the newly capital-strapped state and municipal public sectors. The past decade has seen an increasing number of “green” program announcements from cities like Chicago and New York, and states like Virginia and Florida, laying out plans for carbon footprint reduction, which include energy efficient buildings and services, increased use of clean and renewable energy sources, application of electricity demand response, and other efficiency measures, and even carbon cap and trade programs in states like California (which in turn will require cities to develop responsive initiatives). The US mayors have collectively gone on record on the matter and, toward that end, several of the larger cities have voluntarily formed the Carbon Disclosure Project.

But it’s harder to be green when there are less funds available to finance doing so, especially when the political prospect of shifting all carbon mitigation costs to utilities, and requiring them to internalize these costs rather than pass them on to consumers, is reduced. Will the public sector stick with the status quo and fiscally muddle through (a not indefensible strategy)? Or will the increasingly politically-empowered tie between climate change control measures, improved energy efficiency, source diversity, and economic well being (jobs) swerve the course? Public-private partnerships are an important tool to be utilized if the latter course is to be executed. Their effectiveness depends on creatively deploying new available Federal tools based on prior lessons learned.

The “bailout” bill contained energy-related as well as its much heralded financial assistance measures. While the press labeled the non-financial portions of the bill as nothing more than placating “pork,” for bill opponents, at the same time it began gurgling that what was necessary for the country was a channeling of funds into “infrastructure” whose construction could put people back to work, and thereby contribute to the reestablishment of economic health (“green jobs”). The bailout bill contained several financial tools which may be utilized in public-private partnerships, to be discussed briefly below.

Not to say that the bailout bill changed certain basic realities in the energy/carbon sector:

- Foreign energy dependence, direct and indirect, remains a root cause of the fragility of the American economy and the insecurity of the American consumer.
- The introduction of carbon emissions reduction policy initiatives will still have the effect of raising energy rates, even though no root technological responses to power plant carbon emissions, e.g. carbon capture and sequestration, have been perfected.
- The repercussions of the financial crisis at the state and local level for funding infrastructure support was not addressed.

While the new law provides a new expanded source of clean energy development impetus through production tax credit extension for wind and certain other resources, and the investment tax credit, notably for solar, it is important to recognize that the functioning of these mechanisms depend on the presence of liquidity to utilize them. The new law does not affect the relative market competitiveness of renewables themselves.

That’s why public-private partnerships--“P3s”--civic and financial unions--focused on synthesizing low cost/high yield creation of energy efficiencies and/or cleantech developments, are most important. Potentially P3s can extend the value of public credit and provide a platform for near-term private current

capital investments. They can help forestall the green chill by being at once supportive of energy security goals, facilitating response to public climate change concerns, and providing a funded energy/environment stimulus for recovery, thereby facilitating employment. The nature of these P3s may have to be more innovative than in the past.

To gain a partial understanding why this is the case, and to provide a context for future evaluation of the climate change and renewable energy initiative clearly on the horizon, certain potentially important elements in the Energy Improvement and Extension Act of 2008, are flagged below which can roughly be grouped as follows:

1. Creation of new sources of liquidity (which could be utilized in energy infrastructure P3s).
2. Support for technologies which serve to reduce a public jurisdiction's carbon footprint and, probably at the same time, will reduce the cost of public facilities' operation by demonstrable energy or environmental efficiencies.
3. Enhancement of the possibility for incorporation of investor-owned public utilities into the needed infrastructure mix.

Two notable provisions potentially providing new sources of funding liquidity are CREBs and QECCBs, enabling the eligible issuer to develop working P3 arrangements with private providers. New "Clean Renewable Energy Bonds" (§ 107) ("CREBs"), in the amount of \$800 million, may be issued by governmental bodies, public power providers, or cooperative electric companies. The several categories for which these bonds may be put to work include: capital expenditures for energy use reduction and rural development involving electricity from renewable energy resources, support of a range of cleantech R&D, and specific "demonstration projects" for these purposes, as well as the other pre-existing eligible purposes for ("old" CREBs) bonds, which are reauthorized for another year. The proceeds must be expended within three years, with limited exceptions. At least 70% of the proceeds of such bonds may not be used for private activity bonds.

The original policy purpose of CREBs bonds was to enable the classes of authorized issuers, including public entities, to have the equivalent of tax incentives which are available to private issuers. CREBs now provide a potential predicate for a different forms of public-private cooperation.

Issuers of the new \$800 million category of "Qualified Energy Conservation Bonds," ("QECCBs") can be state or local governments. Allocations among the states are based on population (as are allocations among local governments). Like CREBs bonds, they can be issued without discount and interest cost to the issuer, and credits can be stripped from the ownership of the bonds, as "stripping of interest coupons" from tax exempt bonds. The eligible sweep of "qualified conservation purposes" of QECCBs extends in many energy directions beyond public building energy reduction, including implementing green community programs, development involving the production of electricity from renewable energy sources, and research grants and commercialized demonstration projects for specified technologies. Like the new CREBs bonds, the QECCBs are classified as "qualified tax credit bonds," of which not more than 30% of the allocation under these bonds may be for private activity purposes.

Sources of indirect funding are presented by the tax provisions of the Act. Public-private partnerships have, of course, created arrangements whereby a private company acquires the assets and secures the debt it issues to do so, with revenues from the provision of service payments by the public to the private provider. This enables the private provider to utilize the private tax benefits, and offer the public purchaser of the service a more competitive rate. This approach is reflected in the solar technology PPA

model, which made transactions possible where, up until now, economics did not render them feasible. The investment tax credit for solar energy property has been extended for eight years.

The Energy Improvement and Extension Act of 2008 also extends investment tax benefits to additional technologies susceptible of cleantech applications in innovative arrangements. One is the limited renaissance of what used to be called “small power production” in the form of an Energy Credit for Combined Heat and Power System Property (§ 103(c)) up to a capacity of 50 megawatts, among other enumerated efficiency requirements. Taken together with the plethora of existing 2005 Energy Policy Act and 2008 Energy Improvement and Extension Act programs for efficient public and commercial buildings, this can provide an impetus for various types of building refurbishment, and may complement the introduction of renewables.

A second is the provision of the accelerated recovery period for depreciation of smart meters and smart grid systems (§ 306). These classes of property are intrinsic to the realization of the possibilities of efficient micro grids, a municipal tool long under consideration, which serve to increase energy efficiency and provide for expanded demand management. Third party partnering in this area should be facilitated by these rapid depreciation provisions which serve to increase equity ROI. The Special Depreciation Allowance for Certain Reuse & Recycling Property (§308) similarly may be relevant to the improved overall coordination of municipal waste, energy, and environmental requirements, especially when combined with the expansion of production tax credits eligible “trash combustion facility” to those that “use” rather than “burn,” which results in the inclusion of municipal solid waste gasification/power production as tax credit qualified facilities.

The Energy Improvement and Extension Act of 2008 has also revised the Tax Code to expand the investment tax credit, for periods after February 13, 2008, in certain classes of renewables (like solar). Under the new Code, investor-owned public utilities may qualify for the credit. Activity by investor-owned utilities in areas where they previously have been customers of suppliers or participants in regulatory programs, and not participants in public-private ventures, may be expected to increase.

If the green chill is to be avoided it is clearly timely to examine how public-private partnerships can be structured to create projects which tangibly address the practical service delivery goals of public bodies, and enable them to respond to increased pressure to achieve improved carbon footprints. Now is a time when the P3 development and financing lessons already learned in transportation, water, and waste-to-energy need to not only be reviewed and mimicked, but ruefully examined and consciously improved upon. The tools exist for governments, and private providers are prepared to sustain public services in a “green” mode; the challenge is for the public and private sectors to grasp them together in new innovative ways.