This is a truncated set of stories on the business energy tax credit (BETC) and Shepherds Flat.

Tax incentives don't power wind energy

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Byline: TED SICKINGER

SUMMARY: Green projects | Oregon's lucrative subsidies are far from the main reason companies build here

Tax incentives don't power wind energy

California

drives market

in Northwest

TED SICKINGER

TEST BEGIN

When Gov. Ted Kulongoski vetoed a bill last summer that would have slashed Oregon's tax subsidies for large wind farms, he insisted the reduction went too far and would jeopardize the growth of Oregon's green economy.

But during the past eight years, while the state has taken applications for $300 million in tax breaks to subsidize the development of the windiest, most transmission-accessible sites, it has yet to do any substantive analysis of how big a subsidy --if any --is necessary to continue attracting investments.

Wind developers such as Iberdrola Renewables, the largest developer of wind farms in the state, say the Business Energy Tax Credit is a decisive draw for them as Oregon competes in a 50-state marketplace. That sentiment is echoed by rural counties, which insist the jobs and tax revenue from wind development are the only thing blowing their way these days.

In contrast, the state's biggest utilities, Portland General Electric and Pacific Power --which can use the credits to reduce customers' rates --say the BETC has little or no impact on where they build.

And critics argue the state is lavishing scarce tax dollars, needed more for schools and other state services, on a maturing industry that already enjoys substantial federal and local subsidies.

The truth is, many factors drive developers' siting decisions. But an analysis by The Oregonian suggests the tax credits probably come near the bottom of the list.

Mandated demand for renewable power, viable winds, nearby transmission and proximity to markets with high energy prices such as California drive development. Though the BETC certainly has accelerated wind power in Oregon, taxpayers are subsidizing many projects that eventually would be built anyway. Consider:

TEST END

* Even at the reduced level the Legislature was contemplating and Kulongoski vetoed --reducing the maximum tax credits for large wind farms from $11 million to $3.5 million a project --Oregon's BETC would remain one of the most generous wind farm subsidies of its kind in the nation.

* Rules requiring renewable energy production in Oregon, Washington and California have collectively created one of the largest mandatory markets for green power in the country --one that will continue to grow for the next 15 years. Meanwhile, the bulk of the power generated by subsidized wind projects in Oregon is being shipped out of state.

* Property taxes are lower in Washington, which gives the state a competitive advantage for investments save for Oregon's tax credits, developers say. But property tax exemptions in Oregon help level that playing field, and counties and individual landowners have discretion to negotiate fees to make projects more competitive.

This month, Kulongoski ordered a hurry-up analysis on whether the BETC is necessary for renewable energy projects, specifically wind energy. He wants the feedback before the Legislature meets in February.

Sen. Ginny Burdick, D-Portland, a sponsor of the original bill, says she has no problem with the basic strategy of providing incentives.

"But we're greatly oversubsidizing these things, and the benefits are flowing to California ratepayers," she said. "I don't think that's what Oregon taxpayers signed up for."

Cash on the table

Oregon's Business Energy Tax Credit isn't unique. North Dakota offers a more lucrative subsidy, and

North Carolina has a smaller but similar incentive. But among front-running states in the country's wind boom, Oregon's is the subsidy to beat.

Texas, for example, offers an exemption from its state franchise tax, though state officials say Lone Star State coffers are forgoing little revenue associated with wind farms. Iowa, another leader, offers a production tax credit for small wind farms but not for large, single-owner projects.

Other wind industry leaders such as New York and California offer little beyond a state renewable mandate and a market where energy prices are high.

Oregon, meanwhile, is laying cash on the table, or a near equivalent. The state ponies up a tax credit worth 50 percent of a project's cost up to $20 million, meaning a maximum credit of $10 million ($11 million, including cost overruns).

Developers can use it to offset their state tax bill over five years or sell it to another entity to raise upfront financing for a project. A $10 million tax credit is worth $6.7 million in cash under Oregon's pass-through rules.

That sounds like big money, but the Northwest Power and Conservation Council estimates that a $10 million tax credit, when fully reflected in the price of delivered power from a 100-megawatt wind farm, would reduce the price by less than 2 percent. On a larger project, savings are even smaller.

National tax accounting firm Ernst & Young ranks Oregon fifth out of the 50 states when it comes to the attractiveness of its renewable-energy market for developers. Oregon's incentives help, said Michael Bernier, author of the Ernst & Young index, because they reduce the cost of a project's output. A $3.5 million subsidy, as the Legislature envisions, would still be "a very good subsidy," he said, but any reduction would make the state less attractive.

On the other hand, you can't look at it solely on the basis of tax credits, he said. "It has to be the whole package."

25% renewable by 2025

Oregon, Washington and California rank in the top six states for wind power being generated or under construction.

Neither California nor Washington offers a tax credit comparable to Oregon's BETC. And none of the three states offers the best wind resource in the West.

What they do offer is a predictable, growing market for the product. Mandates in all three states require utilities to buy green power and guarantees them recovery of any prudently incurred costs. Oregon utilities must serve a quarter of customers' needs with renewable power by 2025. In Washington, it's 15 percent by 2020, and California requires 20 percent by 2010, increasing to 33 percent by 2020.

To satisfy those requirements, West Coast utilities will need to come up with about 16,000 megawatts of generation from renewable sources by 2025. That's a staggering amount of electricity --more than double the output of the entire federal hydroelectric system in the Northwest, which includes 31 dams and one nuclear plant.

Moreover, most renewable power sources produce only intermittently. To meet 1 megawatt of the renewable mandate in Oregon, utilities must build or buy 3 megawatts of wind capacity.

It's windier in other Western states, notably Wyoming and Montana. And developers suggest those projects will be more competitive in the absence of state tax subsidies.

But capturing distant resources will require expensive transmission expansions. Portland General Electric, for example, estimates the price of wind power imported from Wyoming will be double that of the same electricity generated by less productive turbines in Oregon, once transmission costs are factored in.

"It's not cost effective at this point when you have to reach that far," said Jim Eden, a consulting transmission engineer at PGE. What that means, he says, is "make best available use of all close-in resources first, then move outward."

The Northwest has its own transmission bottlenecks. But the Bonneville Power Administration is pursuing projects to increase capacity and has enough requests in hand to predict that wind power on its lines will double by 2012 and again by 2016.

Going to California

California already is a dominant driver of the Northwest's wind market. That's little surprise, since the heart of the region's wind resource sits at the on-ramp to the high-voltage highway built to transfer hydropower to power-hungry metro areas of California.

With bigger demand and rates that are 70 percent higher than in Oregon, California utilities already buy nearly half the power generated by Northwest wind farms, according to the Northwest Power and Conservation Council.

Oregon's operating wind farms export more than half their output, much of it to California. And the biggest project on the drawing board --the Shepherd's Flat wind farm in Gilliam and Morrow counties --is already pledged to Southern California Edison. SCE officials call the project "the crown jewel in our renewable energy portfolio" because of its size, competitive price and the fact that it required no transmission upgrades.

"Lets face it, the customers are in California," said Tim McCabe, a former PacifiCorp executive who now heads Oregon's economic development arm, the Business Development Department. "To be realistic, that's what (developers) are shooting for."

There are limits to California's appetite. Connecting transmission is already congested, and California lawmakers have argued over how much of that state's renewable mandates can be satisfied with imported power or renewable energy credits.

On the other hand, even the 25 percent limit on imported renewables contemplated this year would leave an immense demand for power. And BPA officials say California utilities have been reshuffling their existing capacity to accommodate wind power.

Oregon's subsidy system makes no distinction on where the power is used, which would probably violate interstate commerce, according to the Oregon Department of Justice. Renewables advocates argue that the question is moot, as Oregon is part of an energy system that spans the Western states.

Arlo Corwin, director of Western region development at Horizon Wind Energy, says that despite big West Coast demand, the bidding process to supply regional utilities is intensely competitive.

"I fundamentally disagree with the notion that we are in a seller's market," he said.

Not apples to apples

One of the chief rationales for large wind subsidies is that Oregon is in head-to-head competition with comparable projects in Washington. Lower property taxes in Washington tip the scales in that direction, developers say, save for the BETC.

"Our calculations have shown that all else being equal, without the BETC, on average, Washington has approximately a $7 million to $8 million competitive advantage over Oregon," Corwin said.

Iberdrola, the wind developer, used the same number in a half-page summary that was sent to Kulongoski comparing its property tax burdens on two existing projects on opposite sides of the river. The governor, in turn, repeated the figure when vetoing the bill to reduce wind BETCs.

But the property tax advantage isn't that clear cut.

No two wind projects are strictly comparable. Economics vary based on size, wind strength, constructability or distance from transmission. Property tax bills, even on a comparable, per-megawatt basis, vary widely.

Washington tax authorities assess wind farms based on the income they generate or comparable values, with more limited depreciation than Oregon's method offers. Tax rates in Klickitat County, home to several Washington wind farms, can vary by as much as 50 percent based on the taxing district in which the turbines are located.

Most of the new wind farms in Oregon, meanwhile, are being built under the state's strategic investment program, which allows counties to limit their assessment to the first $25 million of a project's investment. Savings are considerable on projects that cost $200 million to $500 million.

Developers are still required to pay community service fees equal to 25 percent of the abated tax, but county officials also have wide discretion to negotiate development fees to be more competitive.

According to Union County Assessor Linda Hill, the investment program gives developers a great deal.

"They will always complain unless they're paying nothing," Hill said. "You wouldn't see all these wind farms going up if it wasn't hugely profitable. They continue to complain, but they continue to build."

To date, Washington and Oregon are generating almost identical amounts of wind power. Oregon has captured more projects since 2007, when the BETC was expanded. But Washington has hardly been dormant, and it, too, has a backlog of projects in development.

"We are somewhat jealous of the BETC, because she's a mistress we don't have," said Tim Stearns, a policy adviser with Washington's Department of Commerce. "But I don't think it's significantly affected the location of large-scale wind projects in the Northwest.

"If you don't have a good site and you don't have a transmission path, you don't have a project."

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Massive solar project marks end of era

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Byline: TED SICKINGER

SUMMARY: Oregon's largest venture yet begins as tax credits for future commercial efforts are drying up

TEST BEGIN

Gov. John Kitzhaber will visit Klamath Falls today to cut the ribbon on Oregon's largest-ever solar energy project, a constellation of more than 20,000 photovoltaic panels spread over 27 acres on three Oregon University System campuses.

Compared with California, where solar developers are looking to build arrays covering 1,000 acres, the OUS installation is fairly run of the mill. But by Oregon standards, the $25 million project is huge. Apart from one mega-project being installed in Yamhill County, it dwarfs any other solar array in the state.

The Oregon Institute of Technology campus alone will be home to more than 10,000 panels spread over a barren hillside the size of 12 football fields. At peak output, the panels will be capable of supplying 35 percent of OIT's electricity needs, carbon-free, at prices comparable to what the university is paying for power today.

Like the mammoth Shepherd's Flat wind farm under construction in eastern Oregon, the signature project exemplifies the renewable energy boom that has taken place in Oregon since 2007.

That boom was spawned by the Legislature's supersizing of Oregon's controversial Business Energy Tax Credit in 2007, under which the state covered 50 percent of the cost of renewable energy projects up to a maximum credit of $10 million.

But solar developers in Oregon say the OUS solar installation also illustrates exactly the kind of project that will no longer be feasible, now that lawmakers have put the state subsidies system on a starvation diet.

With the state budget in free fall, the Legislature cleaved its commercial renewable energy subsidy pot by 99 percent for the current budget cycle, from a cap of $300 million in credits for 2009-11 to $3 million in 2011-13. TEST END

Wedded to subsidies

Large wind farms can still make the numbers work without the state subsidy. Residential solar still has viable support under the state's residential energy tax credit.

But commercial solar is taking it in the teeth.

"Unless things change, you won't see any more of these systems built in Oregon," said Jon Miller, a solar project manager with EnXco Inc., which is building a 3.8 megawatt array in two locations in Yamhill County.

Even with panel prices plummeting in the past five years, solar is still a creature of public policy. All forms of renewable energy are heavily dependent on federal and state subsidies. Indeed, renewables advocates say all forms of energy feed at the public trough, including the costs of two wars to help keep the nation's oil supplies flowing.

Yet unlike large wind farms, solar electricity is still too expensive to compete without state support in the Northwest, where regular power prices are so much lower than the rest of the country.

Without the tax credits, the economics of commercial solar projects don't work, for electricity buyers or investors who underwrite the projects.

"This wouldn't have happened without the BETC, I can tell you that point blank," said Martin Shain, a consultant with BacGen Solar Group who helped structure the OUS deal.

Solar installers hope the state Legislature will revisit the business energy tax credit when the economy and the state budget recover. In the meantime, they say, their pipeline of commercial projects has dried up, and the backlog of projects preapproved under the state's more generous subsidy regime is dwindling.

Deadline looms

The Oregon Department of Energy says there are 357 commercial solar projects that have been precertified for tax credits. That includes some big projects, such as the EnXco installation in Yamhill County and a $10 million solar highway project in Wilsonville that Portland General Electric and the

Oregon Department of Transportation will cut the ribbon on next week.

It also includes projects that have been abandoned. Developers who intend to go forward need to complete their projects before the end of 2012 to get the tax credit.

Mark Osborn, smart grid manager for PGE, says there may be a short-term lull in commercial solar, but he insists "it's certainly not dead." Industry players, he says, need to have a fresh look at how to make the projects financially viable.

Solutions will almost certainly include working with the solar manufacturers that the state subsidized to locate here in order to continue reducing panel prices.

Oregon does have a pilot "feed-in tariff" program under which participating utilities pay premium prices for electricity generated by the owners of solar systems. Under that scheme, ratepayers, rather than taxpayers, subsidize the projects.

But the small program has been oversubscribed, with most applicants shut out of the first-come-first-serve allotments. The application process has now been changed to a lottery, but solar installers say they can't offer customers any assurance that their projects will get chosen. Moreover, the state has continued to lower the rates paid for electricity generated by qualifying projects.

"It doesn't breed a good business model if the customers you're generating are actually going to be dependent on a lottery to get an incentive to move forward," said Andy Noel, Oregon regional manager for REC Solar. "That's a pretty low level of predictability."

Companies shift gears

Noel says his company is having a record year in 2011 as it works through its backlog of projects with the older tax credits and those approved in the first rounds of the state's feed-in tariff program. Next year, however, he expects his volume of solar projects to drop by at least half in Oregon.

Alan Hickenbottom, general manager of Tanner Creek Energy, says the BETC changes were no surprise. The solar company he founded became part of Christenson Electric last year and has shifted gears to focus on energy efficiency, residential solar and even electric vehicle charging infrastructure.

Eric Nill, owner of Advanced Energy Systems in Eugene, says he has shifted focus to solar thermal projects subsidized with conservation tax credits, residential solar and public projects that may still have stimulus money to spend.

In the meantime, he's still trying to sell commercial projects to businesses that have longer investment horizons and may be willing to pay premium energy prices to get off the grid and reduce their carbon footprint.

"We're out there making the case, but we're not listing an Oregon tax credit," he said. "There's no silver bullet. We're going to need silver buckshot."

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A hard look at tax credit windfall

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Byline: TED SICKINGER

SUMMARY: Oregon will re-examine $30 million for Shepherd's Flat wind farm, which split itself and tripled its credits

The Oregon Department of Energy said it will re-evaluate its recent approval of $30 million in tax credits for the Shepherd's Flat wind farm, a collection of 338 turbines in Gilliam and Morrow counties that bills itself as one of the largest wind farms in the world.

The decision came last week as The Oregonian pressed an investigation into whether the wind farm qualified for multiple Business Energy Tax Credits under explicit state rules governing what constitutes a "separate and distinct" renewable energy facility.

"Because of this information, we do need to revisit this one," said Kyleen Stone, deputy director at the Energy Department. "We are going to do some work and actually legitimately look at it and review our determinations. We need some time to review all the facts."

The newspaper's investigation focused on an abuse of the tax credit program that has vexed legislators for years: wind farm developers subdividing their projects to garner multiple tax credits.

It also reprises a concern that has dogged the department: lax oversight and minimal accountability for the tax credits, which have drained state coffers of millions of dollars that might otherwise fund schools and other public services.

The Legislature previously moved to phase out the tax credit to rein in runaway costs, but is now considering an extension of the tax credits for manufacturers. Meanwhile, the Energy Department faces a long hangover of applications filed to beat the program's sunset dates. A backlog of some 2,000 tax credits awaits final certification, department officials said.

"This is a program that's has been riddled with problems," said Chuck Sheketoff, executive director of the Oregon Center for Public Policy and a frequent critic of the state's tax giveaways. "The DOE has taken the promotion role for industry to the exclusion of being careful with the tax credits. They're not giving any scrutiny.

"If they've done it for this one, what other ones have they done it with?"

Slicing and dicing is nothing new. One wind developer applied for nine tax credits and received approval in 2009 for four, worth a total of $40 million, for what some in the Energy Department considered to be a single project. Solar manufacturers have also been able to break projects into phases to claim multiple credits.

Despite repeated rewrites of the administrative rules and laws specifically intended to curb the practice, the loophole persists.

The developer of Shepherd's Flat, New York-based Caithness Energy, jumped through numerous hoops to legally separate the wind farm into three projects on paper, dividing the ownership and various contracts among subsidiaries. In 2009 the state pre-certified the company's three tax credits based on assurances the projects would meet state standards for separate and distinct facilities, both in development and ongoing operation.

The Energy Department's approval of the three $10 million credits for Shepherd's Flat came in the past five months. The final credit was approved last month after a cursory, cut-and-paste analysis of the finished product.

Yet a review of Shepherd's Flat's structure and the Energy Department's due diligence by The Oregonian indicates that the wind farm meets neither the spirit nor the specific requirements of Oregon law to receive final certification of multiple tax credits. Separate analyses by Energy Department staff cited three factors that identify the wind farm as a single facility:

* The three sections of Shepherd's Flat sit on adjacent pieces of land.

* Generation equipment was bought from the same supplier, under the authority of the same general manager.

* There is a single point of interconnection to the grid and a shared electrical switching system, called a ring bus.

Those factors alone are sufficient to disqualify the project from multiple tax credits. But the state rules include several other defining characteristics of single facilities and give the Energy Department latitude to weigh "other factors or considerations . . . based on its construction, operation, maintenance and output."

In fact, Shepherd's Flat sold its output to a single customer, Southern California Edison. The deal was made under three power purchase agreements, but the utility told its regulator that the three contracts related to "a single wind project" in Oregon.

The three sections used the same general contractor, Minnesota-based Blattner Energy, for construction. They share operations and maintenance contractors under a 10-year agreement with General Electric. And they were financed under a single loan guarantee from the U.S. Department of Energy that went to Caithness Shepherd's Flat LLC.

Even Caithness' own website and communications refer to Shepherd's Flat as a single "wind farm."

Lynn Frank, a former director of the Energy Department, was tapped to help write the tax credit rules when the credit was expanded in 2007. He said rules were drafted to make the definition of a single facility unambiguous. That intention was spelled out in Frank's memo to the Energy Department director: "The underlying concept is: If it looks like a duck, walks like a duck and quacks like a duck, it is a duck."

"All Oregonians can understand that," Frank said last week. "They cannot understand a public official paying three times for one duck cut into three parts. It is still one duck. Why was taxpayer money used this way? Good question. It deserves a good answer."

Legal maneuvers

Caithness didn't always claim to be developing three projects. It originally applied to Oregon's Energy Facility Siting Council for a land-use permit covering a single wind farm. The council granted that application July 25, 2008, four days after the Bonneville Power Administration issued a transmission agreement to interconnect with a single, 846-megawatt project.

That same month, however, when Caithness submitted applications for tax credits to the Energy Department, the owners revealed their plans to divide Shepherd's Flat into "at least four" discrete projects. The company said each project would have separate owners, financing plans, structures, equipment and power sales agreements. So each would be eligible for a separate $10 million tax credit.

The cover letter said the company originally sought a single permit for "reasons of efficiency and economy," and would amend its site permit to reflect the new reality. It went on to say that it hadn't committed to the projects. "Making such financial commitments depends in significant part" on whether the tax credits are certified by the state, it said.

Caithness filed the paperwork to subdivide. It registered three separate limited liability corporations with the Oregon secretary of state and transferred ownership to them. It applied for and received amended site certificates. The BPA split its interconnection agreement in three. And Caithness sold the power to Southern California Edison under three contracts.

But it was still up to the Energy Department to make a final decision, when the wind farm was up and running, whether there were separate and distinct projects.

National example,

local concerns

In 2010, Shepherd's Flat attracted national notoriety for its subsidies. In a briefing memo for the president leaked to the media, President Barack Obama's top advisers worried that the U.S. Department of Energy's loan guarantee program was subsidizing projects that didn't need it. Shepherd's Flat was their case in point.

Treasury Secretary Larry Summers, energy czar Carol Browner, and Vice President Joe Biden's chief of staff Ron Klain said Shepherd's Flat was "double-dipping" on $1.2 billion in federal and state subsidies, 65 percent of its projected cost. The incentives included a $500 million federal grant, $200 million in federal and state tax benefits from accelerated depreciation, $220 million in premium power prices attributed to state renewable energy mandates, and a $1 billion loan guarantee with a value of $300 million to the developers.

They concluded that Caithness has "little skin in the game," about 10 percent of the project's cost, but stood to earn a 30 percent return on its investment. It also speculated that Shepherd's Flat would probably go ahead without the federal loan guarantee because "the economics are favorable for wind investment given tax credits and state renewable energy standards."

In the meantime, the Oregon Legislature was having its own second thoughts about subsidies. The cost associated with the long-running BETC program had skyrocketed from $15 million every two years to $150 million after the Legislature expanded the tax credit.

As previously reported in The Oregonian, state officials greenwashed the BETC expansion, low-balling its estimated cost before asking the Legislature to boost the subsidies. And the state Energy

Department exercised little oversight of the program, handing out tax credits to companies that went bankrupt, never operated, generated little energy savings, or subdivided projects for additional credits.

Wind farms were big recipients. New laws in Oregon, California and Washington required utilities to serve customers renewable energy, so the demand for wind power exploded, resulting in a stampede to develop the windiest sites near transmission corridors on the Columbia Plateau.

By 2009, Oregon lawmakers were questioning whether the tax credits for big wind were necessary at all.

"I remember thinking we'd made this credit way too rich and needed to cut it back," said Rep. Phil Barnhart, D-Eugene. Developers, he said, "were quite blatant about it. They were not at all reticent to show me they were going to apply for 10 tax credits."

Lawmakers passed a bill in 2009 to cut back wind farm incentives from $10 million to $3.5 million apiece. But then-Gov. Ted Kulongoski vetoed the bill after heavy lobbying by wind developers, unions and environmental advocates. Kulongoski cited the economy's volatility and the uncertainty about the wind industry's ability to stand on its own. But he directed the Energy Department to address some of the program's problems.

Its new rules laid out nine specific criteria and said a project that failed to meet any three of them would be considered a single facility. The next year, the Legislature passed a bill to reduce wind farm tax credits, which Kulongoski signed.

"Absolutely, one of our intents was not to allow projects to be sliced and diced," said Rep Vicki Berger, R-Salem.

$30 million question

Shepherd's Flat is certainly a big deal for Gilliam and Morrow counties. It supported 400 construction and 35 to 45 permanent jobs. It promises more than $100 million in property taxes during the next 15 years. And landowners stand to collect millions in lease payments.

Last September, Oregon politicos gathered with Caithness officials to cut the ribbon. Gov. John Kitzhaber, Sens. Jeff Merkley and Ron Wyden, all Democrats, and Rep. Greg Walden, the state's lone Republican congressman, issued statements praising Shepherd's Flat as a rural job generator, an environmental boon and a building block of the future economy.

Caithness and state officials were already hard at work finalizing the tax credits.

Anthony Buckley, the head of the Energy Department's development services division, said he asked an analyst to review the wind farm's files last July to answer the $30 million question: Does it still qualify as three separate facilities under the latest state rules?

In reality, Buckley said, the question had already been answered in the state's pre-certification process, years before Shepherd's Flat was even built. The department, he said, couldn't afford to spend an inordinate amount of time on the final certification lest it bottleneck its backlog of 2,000 other applications.

Nevertheless it was a lot of money for a project that had already received media scrutiny.

"We didn't want to get caught short so we did our homework," Buckley said.

The analyst, Evan Elias, offered a four-paragraph answer. He said the facilities were on adjacent parcels, and the general manager was the same for all three applications, so the generation equipment was purchased under the authority of the same person. Under those two criteria, Shepherd's Flat amounts to a single facility, he said.

For everything else --whether the projects shared personnel, operating expenses, had a single interconnection to the grid, or were interdependent in the way they were owned, financed, constructed, operated or maintained --Elias said "the answer is either clearly or likely no."

Therefore, he determined, there were three separate and distinct projects.

In fact, his answer didn't address most of those criteria. It simply restated some of the promises Caithness originally made in its 2008 application. Department officials said Elias was not available to answer questions, and the only background available was what was in the file.

The files included copies of the three site inspections. On Sept. 5, 2012, an inspector met with Kenneth Talovich, an asset manager at Caithness Energy, to inspect the three sites. The two-page inspection forms for the three facilities include identical checkmarks and comments on eight standard interview questions. A five-paragraph narrative report also was cut and pasted for all three projects, with only the name and number of turbines changed.

Importantly, the final paragraph in each report notes the facilities share a common interconnection to the grid. That third point of commonality could have disqualified the second and third tax credits when coupled with the two that Elias' analysis identified.

But the department never put them together, or thoroughly analyzed if the project met the other criteria.

The inspector's report concluded that beyond the common interconnection and ring bus, "Mr. Talovich assures the projects are autonomous." Furthermore, it said Evan Elias' memo agreed with that assessment.

Caithness, through its local public relations contact, offered a statement.

"Caithness Shepherd's Flat is a world-class wind farm that is providing clean renewable energy to the electric market. The wind farm was developed with the cooperation and support of many stakeholder groups including local landowners, state permitting authorities and local, state and federal elected officials."

The company said the wind farm was developed as three separate and distinct projects, each with its own site permit, interconnection agreement, power purchase agreement and tax credit.

"All requirements of the Oregon Business Energy Tax Credit program were fully met."

Energy Department officials said last week that they would gather new information to review the tax credits given Shepherd's Flat. It's not clear, if its decision is reversed, whether the state would or could recover the money.

The company, like many other tax credit recipients, received approval to sell the credits in exchange for cash. The pass-through option will net Caithness $20 million but leave the state's general fund out the full $30 million.

"We should be calling on the secretary of state to audit the department's giveaway of these things," said Jody Wiser, organizer of the advocacy group Tax Fairness Oregon. "There are so many unmet needs in this state that it's a travesty that we're throwing money at wind farms that are going to make money with or without our subsidies."

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One project, indivisible

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Byline: TED SICKINGER

SUMMARY: A detailed analysis by The Oregonian strongly indicates Shepherd's Flat wind farm in eastern Oregon wrongly qualified for $30 million in tax credits as three separate farms

The Oregon Department of Energy says it is re-examining its recent approval of $30 million in tax credits to the Shepherd's Flat wind farm in eastern Oregon, and has consulted the Department of Justice.

An analysis by The Oregonian suggests there may be grounds under state rules to revoke the credits.

The developer of the mammoth wind farm, New York-based Caithness Energy, went though the legal exercise of subdividing the project on paper to qualify for three separate $10 million state subsidies. The Energy Department approved them in the past six months, despite sufficient evidence in two of its own analyses to define the wind farm as a single facility, deserving only one tax credit.

Now that the incentives are out the door, the state's ability to recover taxpayers' money would depend on whether Caithness misrepresented its project in filings with the state.

The Oregonian's review of those filings suggests that Shepherd's Flat does not meet state requirements as "separate and distinct" renewable energy facilities.

* Energy Department final approval came despite department analyses that should have disqualified it.

* The project may not have the separate ownership, separate financing, separate procurement, separate construction, and separate operation and maintenance that Caithness promised in its original applications.

* Documents provided to the newspaper show no amendments to those representations by Caithness, as required for major changes.

* The paper trail shows the department's staff relied heavily on Caithness' assertions, rather than independent verification, in final approval of the tax credits.

The Justice Department declined to comment or confirm whether it is making any inquiry into the credits. Since questions from The Oregonian prompted the Energy Department review, officials have declined to answer detailed questions regarding its tax credit approvals or the legal basis for revoking them. Agencies often ask their general counsel at the DOJ for basic legal advice without taking further action.

"We have had an initial discussion with the Department of Justice," said Diana Enright, an Energy Department spokeswoman. "We will continue to consult with DOJ and don't know how long this might take."

Caithness officials would not answer detailed questions about the structure of Shepherd's Flat but sent an emailed statement: "All the rules were followed, and the requirements of the Oregon Business Energy Tax Credit program were fully met."

One or three?

Any state re-examination would tip on seven specific characteristics in state rules that define a single facility.

The Energy Department has repeatedly refined those criteria to protect taxpayers from developers who slice and dice renewable energy projects to qualify for multiple tax credits. The rules say that "the project will be determined to be a single facility, despite the number of applications, owners and construction phases, if three or more" of the criteria apply.

Below are the criteria; how the Energy Department applied them to Shepherd's Flat; and The Oregonian's analysis.

1. The facilities are on adjacent parcels of land.

The property --which Caithness calls North Hurlbert, South Hurlbert and Horseshoe Bend --is adjacent and by this measure a single project, the Energy Department found.

This one's a geographic no-brainer.

2. The generating equipment was purchased by the same person or persons who own or operate the facility.

The department said yes; all equipment was purchased under the authority of the general manager of all three facilities, Derrell Grant.

Caithness' preliminary applications stated that each facility would purchase its generating equipment "separate and apart from the procurement activity" for other projects. Turbine selection, it said, would depend on its specific contracts with one or more suppliers. The three subdivisions of

Shepherd's Flat use identical turbines, The Oregonian found. The supplier, General Electric, originally announced a $1.4 billion contract for the entire project, though Fitch Ratings indicates that contract may have been divided in three.

3. Facilities are connected to the grid through a single connection or multiple connections when there is shared net metering.

The Energy Department's approval didn't address this, though its site inspector noted the three subdivisions "share a common ring bus and an interconnection."

The Oregonian's review indicates that Caithness set up a subsidiary that owns the shared grid interconnection. But that's a moot point under the rules. The answer appears to be yes. And that would be three strikes for Caithness. By those measures, Shepherd's Flat would meet the definition of a single facility and be eligible for only a single $10 million credit.

The project appears to meet other criteria too.

4. There was a single construction contract or multiple contracts with one or multiple contractors entered into within a year of each other; or the projects are interdependent in the way they will be owned, financed, constructed, operated or maintained.

The Energy Department said no, but didn't compare the project to the rule, other than mentioning the company's 2008 assertion it would select contractors and suppliers after competitive bidding.

The Oregonian's review suggests yes, the subdivisions are interdependent in numerous ways.

Ownership: In a cover letter with its preliminary applications, Caithness told the Energy Department that none of its single-facility criteria applied to Shepherd's Flat's subdivisions because they would all be separately owned.

That's not the way the rules work. And it's not at all clear they are separately owned. A variety of regulatory filings refer to North Hurlbert, South Hurlbert and Horseshoe Bend as "directly and wholly owned facilities of Caithness Shepherd's Flat LLC." Property tax abatement deals with Gilliam and Morrow counties are with Caithness Shepherd's Flat, and tax bills list the properties' owner as Caithness Shepherd's Flat. The tax bills get sent to Caithness Energy's headquarters in New York.

Fitch Ratings says Caithness Shepherd's Flat LLC is owned by Caithness Energy, GE and three companies that made equity investments in 2011: Google, Sumitomo and Itochu.

Financing: Caithness' preliminary applications stated each subdivision would be separately "financed and securitized." An overview of the project financing by GE in 2011 references a single borrower, Caithness Shepherd's Flat LLC. Bonds to finance the project were issued by that company, and according to Fitch Ratings, the debt securities have no connection to any subdivision. The project's financing was guaranteed by a single federal loan guarantee to Caithness Shepherd's Flat LLC, according to the U.S. Department of Energy.

Construction: Caithness' preliminary applications stated it would select contractors for each subdivision through competitive bidding and the contracts "will relate only to the . . . facility and not to other renewable energy projects to be separately designed, owned and operated by any affiliate of the applicant."

Caithness hired Minnesota-based Blattner Energy as the general contractor for the entire wind farm. Caithness filings reviewed by The Oregonian don't detail how or when its contract or contracts were structured. Blattner invoices submitted to the Energy Department do name separate "projects," but the account name for all of them is "Caithness Shepherd's Flat Wind Project" with a portfolio name "CSF Construction Account."

Operation and Maintenance: Caithness preliminary application stated its individual facilities would be operated and maintained by their turbine suppliers for at least two years. Photographs from the Energy Department inspection show three maintenance huts for the wind farm, which sprawls over 32,000 acres. But news releases from GE identify a 10-year operations and maintenance agreement for the entirety of Shepherd's Flat. Caithness wouldn't detail its agreements, but if its turbine supply contract with GE was split in three, that may cover the operations and maintenance agreement too. The Energy Department's inspection said all the turbines are monitored by GE from New York.

5. The facilities have agreements to share project expenses, personnel, or capital investments, including generating equipment or other resources.

The Energy Department said no, because "agreements are written to exclude shared resources." The Oregonian found much sharing.

Expenses and resources: On June 17, 2011, the Federal Energy Regulatory Commission approved a "shared facilities agreement" covering how the subdivisions would "jointly own, utilize, operate and maintain certain shared facilities" to connect to the grid. The agreement said they would share construction costs and operating expenses in proportion to their output.

Personnel: Shepherd's Flat employs some 40 people. Derrell Grant is listed as the general manager of all three subdivisions in numerous filings to and from the Energy Department. David Casale was identified as the senior vice president for all three in separate letters to the Energy Department. Vincent Giglio, a tax manager at Caithness, is identified as the contact person on final tax credit applications filed by all three, and the department's letters certifying those credits.

6. If other factors or considerations that demonstrate the facility is not separate and distinct based on construction, operation, maintenance and output.

This catch-all was included to give extra latitude to determine that a chopped-up project was actually a single facility. The Energy Department didn't address this.

The Oregonian uncovered many factors, cited above, that suggest the answer is yes. In addition, the output of Shepherd's Flat all goes to one customer, Southern California Edison. Caithness structured the sale under three power purchase agreements. But Southern California Edison told its regulator it was seeking approval of three contracts "relating to a single wind project" in Oregon.

7. The project has been recognized as a single facility in a permit or license from a federal, state, county, city or local authority.

No, said the Energy Department, citing the separate site certificates and power purchase agreements.

Caithness may pass the test. Yet, as above, The Oregonian found descriptions of the wind farm as a single facility in official documents and self-promotions.

Shepherd's Flat was originally proposed and permitted as one wind farm in 2008. Caithness later persuaded the Energy Facility Siting Council to divide the land-use permit in three. Likewise, Caithness divided its single transmission agreement with the Bonneville Power Administration, its turbine agreement with GE, and its power purchase agreements with Southern California Edison. In news releases and regulatory filings, all those organizations refer to Shepherd's Flat as one wind farm.

Indeed, Caithness' own statements refer to Shepherd's Flat as "a wind power generation facility" and "the largest wind facility in Oregon."

Splitting the farm

If you're keeping score, The Oregonian's analysis suggests Shepherd's Flat meets six of the seven criteria for a single facility.

The Energy Department ultimately concluded Shepherd's Flat was multiple projects. It approved three $10 million tax credits, the last one in January. But the process appeared flawed, and more dependent on Caithness' promises than independent verification.

Last July, department analyst Evan Elias was asked to evaluate whether Shepherd's Flat was a single project or three. He found the projects met two of the state's criteria as a single facility, but said the answer to the others was "either clearly no or likely no."

In his two-page report, he said he based his conclusions on "applications and associated submittals" by Caithness. Attached to his report was the company's original rationale for its "separate and distinct" projects.

On Sept. 5, however, when the department's site inspector visited the wind farm, she noted the shared interconnection to the grid.

That third point of commonality could have defined Shepherd's Flat as a single facility, disqualifying the company for the second and third tax credits.

But the inspector apparently missed the significance. She noted in her reports that the Caithness representative she met with "assures the projects are autonomous and a memo to file from Evan Elias . . . indicates agreement with that assessment."

The Do-over

State rules give the Energy Department director the authority to revoke credits and recover taxpayers' money in the case of "fraud or misrepresentation."

Any re-evaluation of the tax credit approvals could hinge on Caithness' repeated assertions about the separate and distinct characteristics of its wind farm.

The application process for Oregon tax credits is long but fairly straightforward. For Caithness, it began before a shovel hit the dirt, with a 2008 pre-certification filing that detailed how Shepherd's Flat would qualify as multiple facilities eligible for multiple subsides.

Pre-certification provides reasonable assurance that developers will get the subsidies if they follow their initial plans. As such, the state mandates that developers file amendments covering any major changes, which require re-approval. When the project is up and running, developers apply for final certification of the tax credit.

The Energy Department verifies costs and inspects the site. But its final review leans on good-faith reporting by applicants, rather than in-depth analysis of its own. Managers say a backlog of 2,000 tax credit applications await certification, and it has only two site inspectors. With scant time, analysts turn to the information in applications, amendments and other submittals.

"We're limited in our resources," said Anthony Buckley, who manages the Energy Department's tax credit approvals. "Having staff spend an inordinate amount of time, or having someone challenge us on separate and distinct when they came in to final, that could hamper our ability to process the other 2,000 applications."

State rules also say that renewable energy facilities applying for tax credits "must operate in accordance with the representations made by the applicant" in its filings.

Indeed, in its final application form for tax credits, the Energy Department asks: "Was the project completed as proposed in the preliminary application?"

For each subdivision of Shepherd's Flat, Caithness checked "yes."

A department reviewer both circled and check-marked the answer.

Though Caithness amended its pre-certifications, that primarily concerned the substitution of GE as turbine supplier for all three subdivisions, instead of three different suppliers originally listed. They did not alter original representations that the projects would be separately owned, separately financed and securitized, separately constructed, and separately operated and maintained. They did not alter the assertion that the procurement for each subdivision would be undertaken separately, either.

Caithness has already taken some of Oregon's money to the bank. It sold one quarter of one of the tax credits, a chunk worth $2.5 million, to Wal-Mart, which will use it to reduce its own state tax bill.

The Energy Department said it had no other information on Caithness' use of the pass-though option for the tax credits, though it has approval to sell all $30 million worth.

If the re-evaluation finds any misrepresentation by Caithness, Shepherd's Flat could lose all its tax credits. If they've been sold, the original recipient is liable for the full face value.

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LC.11WIND121

Wind farm findings unfounded?

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Byline: TED SICKINGER

SUMMARY: Oregon's energy agency seems to gloss over facts while investigating its own questionable decision giving $30 million in tax credits to Shepherds Flat project

The Oregon Department of Energy ignored its own rules, legislators' intent and taxpayers' interests in reaffirming its decision to define Shepherds Flat wind farm as three separate facilities and provide its owners three separate $10 million tax credits. The mammoth installation of turbines in eastern Oregon, developed by a New York company to slake California's thirst for renewable energy, started spinning last year.

The agency undertook a review in March of its earlier tax credit approvals for the wind farm after an investigation by The Oregonian raised questions about its eligibility for more than one tax credit. Lisa Schwartz, appointed in January as ODOE's fourth director in five years, signed off on the final two credits last month after what she described as a rigorous review in cooperation with the Department of Justice.

Yet limited and often nonresponsive information about the review provided to The Oregonian suggests it was neither rigorous nor consistent with state rules governing tax credits. In its review, ODOE ignored clear evidence in its own files and additional records identified by The Oregonian that should have disqualified $20 million of the $30 million in tax credits. It failed to ask for contracts or other documentation to answer fundamental questions that state rules pose about ownership, financing, construction, operation and maintenance.

Instead, ODOE made assumptions, relied again on statements made by developers before the project was built, and reversed its own analysts' earlier conclusions. Its review apparently tapped only one new source: a report by ODOE's own staff for an entirely different purpose and largely irrelevant regarding tax credit eligibility. In the end, ODOE failed to apply its rules on separate and distinct facilities to Shepherds Flat.

"What is clear, without question, is that they have sought how to qualify it, not how to disqualify it," said Lynn Frank, a former ODOE director hired in 2008 to help write the original rules governing separate and distinct renewable energy projects. "Any reasonable person looking at the project would have denied the application."

The Legislature tried time and again in the past five years to rein in exploding liabilities and blatant abuses of Oregon's business energy tax credit program, which launched the richest green energy subsidies in the nation in 2007. Lawmakers first reduced what they saw as unnecessary incentives to lure large wind farms, and eventually killed the program altogether as controversy mounted over its administration. Nonetheless, state taxpayers are stuck with a long hangover of outstanding credits, with only ODOE to protect their interests and make sure applicants meet the letter of the law.

Schwartz claimed her department's review "uncovered every stone" to determine the three phases of Shepherds Flat were "separate and distinct facilities" under state rules. Yet she was uninformed about specifics, unopen to making staff available for interviews and unwilling to share any information from discussions with the Justice Department.

"You'll have to take our word for it, that we actually work with our attorneys and staff diligently," Schwartz said. "I'm not waiving client-attorney privilege."

The DOJ declined to comment. A spokesman for Gov. John Kitzhaber said he was not consulted about the decision but was satisfied with the results. The wind farm developer, Caithness Energy, has declined The Oregonian's interview requests for years. Email statements from Caithness have repeatedly said it met Oregon's requirements for multiple tax credits.

Reaction from key legislators was mixed. Sen. Ginny Burdick, D-Portland, who chairs the Senate Revenue Committee and co-chairs the joint Tax Credits Committee, pushed the Legislature to downsize the incentive program and prevent abuses. She didn't have the information to assess the Shepherds Flat review but said the lack of transparency and accountability was unacceptable.

"We said very clearly we want these projects to be legitimate. We want Oregonians to know where their money is going, who benefits and why. If that's not being followed, we have to get answers."

Burdick's House counterpart and co-chair of the joint Tax Credits Committee, Rep. Phil Barnhart, D-Eugene, expressed confidence in ODOE's review of Shepherds Flat.

"I understand that the department found in each case that the credits were issued properly and that they qualified under the sideboards set out by the Legislature," he said in an email.

State rules specify that if a project meets any three of seven definitions for a single facility, ODOE should approve only one tax credit. Schwartz said she was "confident" that Shepherds Flat's three phases met only one of the seven criteria. "I wouldn't sign the credits unless I believed that were true."

The Oregonian's review suggests that, conservatively, Shepherds Flat meets four of the state criteria --more than enough to define it as a single facility, disqualify two of the three tax credits and save taxpayers $20 million.

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LC.11WIND221

Facts clearly indicate one connected project

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Byline: Ted Sickinger

State rules specify that if a project meets any three of seven criteria for a single facility, it will be determined to be a single facility, eligible for only one tax credit. Here are those criteria, what the Oregon Department of Energy concluded in its second review of Shepherds Flat and The Oregonian's assessment:

1. The facilities are on adjacent parcels of land.

ODOE: Yes, the three phases of Shepherds Flat are adjacent and by this measure, a single project.

The Oregonian: Agree.

2. The project has applied for, or has been recognized as, a single facility in a permit or license from a federal, state, county, city or local authority.

ODOE: No. The Energy Facility Siting Council, staffed by ODOE, issued three site certificates.

The Oregonian: Yes. Shepherds Flat originally filed one application to build one wind farm in February 2007. That's how the EFSC recognized and permitted the entire project in July 2008. Likewise, Caithness reached a single interconnection agreement with the Bonneville Power Administration in July 2008, which recognized a single Shepherds Flat project.

ODOE finalized separate and distinct facilities rules to prevent slicing and dicing in June 2008. A year later, Caithness applied to the EFSC, which has no involvement in tax credit decisions, to amend its previous agreement, chopping its site certificate in three. A year after that, the U.S. Department of Energy ordered the BPA to issue three interconnection agreements. Regardless, Shepherds Flat has applied for licenses and been recognized as a single facility by state and federal authorities.

3. A single construction contract or multiple contracts with one or multiple contractors entered into within a year of each other. Alternately, the project is interdependent in the way it will be owned, financed, constructed, operated or maintained.

* CONSTRUCTION

ODOE: No. "We rely on developer's submissions," the agency said, "which show the contracts were to be bid separately and competitively."

ODOE also found no interdependence in construction because "the three LLC's paid from three separate accounts."

The Oregonian: Yes. There was heavy and essential interdependence in construction. Caithness hired a single balance of plant contractor for the entire job: Blattner Energy. And trade press reports quote Blattner officials bragging about the intricate coordination in planning and construction of Shepherds Flat. They juggled common equipment, common suppliers and common workers, who moved back and forth among the three sites on a daily and even hourly basis because of planned sequencing, weather and seasonal endangered species considerations.

Blattner invoices submitted to ODOE name separate "projects." But Blattner's account name on all invoices in ODOE's file is "Caithness Shepherds Flat Wind Project" with a portfolio name "CSF Construction Account."

ODOE didn't apply this rule. It didn't check contracts, as the rules ask. Its spokeswoman said, "The agency has not made a point of asking people for contracts."

Caithness' pledge of competitive bidding --cited by ODOE as proof of separate projects --is immaterial under state rules. But apparently ODOE never verified whether it took place anyway.

* OWNERSHIP

ODOE: No. Caithness registered three limited liability companies --North Hurlburt LLC, South Hurlburt LLC and Horseshoe Bend LLC --with Oregon's secretary of state and pays $275 annually to maintain them. Because that paperwork is on file, and those entities applied for tax credits, ODOE says, they're separately owned. Full stop.

ODOE did mention in email that "each of the Oregon LLCs has different ownership profiles." But it failed to explain what that means.

The Oregonian: Yes. Each LLC is a pass-through entity. And the same state paperwork that ODOE apparently checked lists a single member, or owner, of all three: Caithness Shepherds Flat LLC. That ownership structure is repeated in countless regulatory and financial filings. The $35,000 fee that each LLC paid to ODOE to process separate tax credit applications came in consecutive checks from the same bank account, which belonged to the same company, Caithness Shepherds Flat LLC.

And analysts for Fitch Rating say Caithness Shepherds Flat LLC is owned by Caithness, GE and three equity investors brought in to harvest tax benefits: Google, Tyr Energy and Sumitomo Corp. of America.

Behind this fan dance, ownership of all three facilities is related and interdependent.

* FINANCING

ODOE: No. Though the bonds to finance the wind farm were issued together, by Caithness Shepherds Flat LLC, the department says it dealt with only the three Oregon LLCs.

The Oregonian: Yes. The financing is clearly interdependent. A series of bonds to finance the entire project was issued by one entity: Caithness Shepherds Flat LLC. According to Fitch Ratings, none of the bonds has any connection to a particular phase of the project. And the U.S. Department of Energy issued a single loan guarantee to cover 80 percent of the bonds to Caithness Shepherds Flat LLC.

* OPERATIONS, MAINTENANCE

ODOE: No. Each facility has its own site manager, its own operations and maintenance building, and separate contract to sell output to Southern California Edison.

The Oregonian: Yes. Turbine supplier GE is an equity investor in Shepherds Flat and has a 10-year operations and maintenance agreement with all phases. All the turbines are monitored from New York. The project spreads about 35 miles from the Columbia River south, so it's impractical to run out of one operations building. Its technicians are assigned to teams at particular sites, but they perform work at all three, according to a contract employee who has since left the job. Operators of the high voltage system also circulate among sites.

4. The facilities have agreements to share project expenses, personnel, or capital investments, including generating equipment or other resources.

ODOE: No. "We have no evidence of these types of agreements."

The Oregonian: Yes. The newspaper provided a "shared facilities agreement" to ODOE. The agreement, on file with the Federal Energy Regulatory Commission, outlines how the three LLCs will share ownership and expenses of common equipment. ODOE staff know the agreement exists, as they quoted it in response to queries from The Oregonian.

5. The generating equipment was purchased by the same person or persons who own or operate the facility.

ODOE: Flip-flopped. In June 2012, a department analyst concluded yes; all equipment was purchased under the authority of Derrell Grant, general manager of all three facilities.

In its recent review, ODOE changed its mind. "Just because the same general manager was listed as the main point of contact, that does not mean he also purchased all the equipment." ODOE said CPA letters "confirm different project payment dates."

The Oregonian: Maybe. Financial and regulatory transactions for Shepherd's Flat in ODOE's files are all under the authority of a common group of Caithness executives, including Grant. ODOE said it didn't request contracts, so it never verified whether the procurement was by the same person, persons or entity.

Procurement for the entire project is clearly related. Caithness initially told ODOE the three phases would buy turbines from three separate suppliers: Siemens, Vestas and GE. Instead, all bought turbines from GE, which announced a single $1.4 billion contract with Caithness in December 2009. "This is the largest contract we signed this year," a GE executive said at the time.

Once again, ODOE doesn't answer the question posed by the rules. The payment dates are immaterial.

6. Facilities are connected to the grid through a single connection or multiple connections when there is shared net metering.

ODOE: Flip-flopped. The agency's site inspector confirmed last fall that all three facilities share a ring bus and interconnection to the grid. Caithness' on-site representative apparently acknowledged that, but assured the inspector those were the only points of commonality.

For the current review, ODOE redefined "interconnection to the grid" and drew from a different site inspection this past spring by the Energy Facility Siting Council. The report noted three substations at Shepherds Flat. ODOE's conclusion: "Individual substations on each property are the first step of interconnection. The department's inquiry ends at the first substation and does not extend to every subsequent substation."

The Oregonian: Yes. A substation is not a connection to the grid. Shepherds Flat has a single interconnection to the grid.

Power from all its turbines flows over a transmission line from the North Hurlburt substation to connect with the Federal Columbia River Transmission System at the BPA's Slatt substation. The wind farm's site certificates outline the design and ODOE's site inspector last year confirmed it.

7. Other factors or considerations that demonstrate the facility is not separate and distinct based on construction, operation, maintenance and output.

ODOE: "None that we know of; the three projects were constructed as stand-alone facilities with separate O&M buildings and separate substations. Moreover, the output is sold under separate contracts."

The Oregonian: Yes. The output was sold in one fell swoop, to one customer, Southern California Edison. In August 2008 SCE signed a 20-year contract for up to 909 megawatts of power from Shepherds Flat with DCE, a subsidiary of Caithness. In a news release, an SCE vice president said, "This contract is a crown jewel in our renewable energy portfolio."

SCE filed three power purchase agreements with regulators but told them it was seeking approval of three contracts "relating to a single wind project" in Oregon.

Indeed, Caithness' own statements refer to Shepherds Flat as "a wind power generation facility" and "the largest wind facility in Oregon."

Charged air over wind farm deal

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Byline: TED SICKINGER

SUMMARY: Oregon's Department of Energy is under fire from lawmakers for allowingShepherds Flat tax credits

The director and staffers at the Oregon Department of Energy faced sharp questions and criticisms from lawmakers at a Tuesday hearing regarding their approval of three separate $10 million tax credits for the Shepherds Flat wind farm in eastern Oregon.

The owners sliced and diced the massive wind farm into three entities on paper to qualify for $30 million in subsidies from Oregon taxpayers. An investigation by The Oregonian last spring, however, concluded they did not meet the state's definition of separate and distinct facilities and were therefore eligible for only a single, $10 million tax credit. Indeed, the newspaper found the Energy Department ignored legislators' intent and taxpayers' interest in signing the final two credits, either disregarding the tax credit rules or stretching their definition so far as to render them meaningless.

ODOE offered little new factual information at Tuesday's joint hearing of the House and Senate Revenue Committees. But Energy Department Director Lisa Schwartz came with a memo from the state Department of Justice that offered some legal cover for her decision to sign off on the credits.

It's unclear what lawmakers will do with the information they gathered at Tuesday's hearings. Some seemed principally interested in assurances that the same thing couldn't happen again because the state's business energy tax credit has been reformed. Others were nevertheless zeroed in on whether ODOE followed its own rules and protected taxpayers.

Many questions centered on ownership of the wind farm. House Revenue Chairman Phil Barnhart, D-Eugene, asked whether ODOE even attempted to look behind the veil of the project's three separate limited liability corporations to see if, in fact, the three phases of the wind farm share common ownership.

Schwartz didn't answer the question but insisted that common ownership was not a criteria for determining a single facility.

In fact, it is a factor in the state's seven-part test to define a single renewable energy facility, and Shepherds Flat's three LLCs share a common parent company, Caithness Shepherd's Flat LLC. Caithness Shepherd's Flat LLC, in turn, is owned by the project developer, Caithness Energy, its turbine supplier, General Electric, and three investors brought in to harvest the project's tax benefits, Google, Itochu and Sumitomo of America.

"I don't know how much more common ownership you could have," said Rep. Jason Conger, R-Bend, who originally requested the hearings on Shepherds Flat.

Conger also noted that the three phases were located next to each other; that a single contractor constructed the entire wind farm in a highly coordinated fashion; that ODOE's own analysts originally determined the project had a single interconnection to the grid; and that the three LLCs' agreement on file with federal regulators outlines how they will share ownership and expenses of shared facilities.

Those conditions would support a single facility finding under four of the seven state criteria. If a project meets any three of the criteria, it is supposed to be defined as a single facility eligible for only a single $10 million tax credit.

"Most people looking at this with just common sense would say this smells," Conger said. "I get the feeling it was a foregone conclusion that this should have been approved."

Schwartz insisted that wasn't the case, although the question persists on why the department pushed so hard to approve the credits.

Economic development officials like the bragging rights of hosting one of the world's largest wind farms, albeit one that supplies Californians. Judges from Gilliam and Morrow counties reminded legislators on Tuesday that the tax revenue and jobs generated are meaningful in rural communities.

Sen. Ginny Burdick, D-Portland, agreed that those benefits were real but reminded colleagues that wind farms would have been built in Oregon with or without state subsidies.

To explore ODOE's deliberations, The Oregonian requested a log of staff emails on Shepherds Flat. But the department says the search for five terms over six years would take its staff nearly two weeks to complete and cost the newspaper $5,200.

A hit-or-miss review

Schwartz insisted ODOE undertook a rigorous analysis of the wind farm. She said the decision conformed to Oregon's statute and was consistent with findings by numerous other state and federal entities that recognized three separate facilities at Shepherds Flat.

An analysis of the decision submitted to the committees, however, showed only a partial application of the rules. For example, Schwartz and Anthony Buckley, ODOE's administrator of energy development services, repeatedly asserted that each phase of the project was financed separately. In fact, the three phases of Shepherds Flat shared common financing with bonds issued by a single entity. According to Fitch Ratings, none of the bonds is connected with any particular phase. Likewise, the U.S. Department of Energy issued one loan guarantee for the entire financing package to the parent company, Caithness Shepherd's Flat LLC.

ODOE insists that Caithness Shepherds Flat LLC provided separate financing to each of the three LLCs, which are responsible for their respective portions of the debt service of the bonds issued by the parent company.

The department did not say whether construction contracts were executed within one year of each other, as the rules ask, or why the shared facilities agreement on file with federal regulators did not constitute an agreement to share expenses, as the rules ask. Likewise, ODOE ignored the physical layout of the projects' interconnection to the grid and bent the definition of interconnection to overturn its own analyst's earlier conclusion that three phases share a common interconnection.

Weighing the risk

ODOE did share with the committees an equivocal opinion on its decision from the DOJ. It asked the DOJ for a summary of its authority to grant the tax credits, and DOJ analyzed whether the decision was legally defensible. The Justice Department said the decision was within ODOE's range of authority, largely because it has wide discretion to interpret rules as it chooses.

However, DOJ said there was risk that ODOE's decision could be overturned based on arguments that it was a single facility. But DOJ said that risk was minimal because it was unlikely anyone with legal standing would challenge the decision. By contrast, the risk that the project backers would challenge a decision to revoke credits was high, the DOJ said.

The Energy Department could revoke all $30 million of the tax credits if it determined that Caithness made false statements in any of its applications or other submissions. ODOE's approval process relies heavily on promises rather than physical due diligence, and Shepherds Flat is structured differently than described in original submissions to the state. But revocation seems unlikely given ODOE's distance on the deal.

Rep. Cliff Bentz, R-Ontario, expressed frustration with the entire process.

"We went through this innumerable times to prevent what now appears to have happened," he said. "This is a classic form over substance situation."

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ED.21LENRX23

Answers blowin' in the wind

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Byline: Editorial

SUMMARY: $30 million in tax credits to the Shepherds Flat wind farm
win a feeble defense by state energy officials and the Department of Justice

E verybody has a different lawyer story. But most could agree on is this: Lawyers typically answer only what they're asked. And that, while a laudable rigor of the profession, can bring complication. If a client has good reason to believe the sky is falling but asks about the weather, a full and accurate answer could be: sunny.

Now comes the Oregon Department of Energy, under fire for possibly doling out $30 million in tax credits to the Shepherds Flat wind farm in eastern Oregon when it might have been entitled only to $10 million. In response to extensive reporting by The Oregonian's Ted Sickinger, who found the wind farm's owner split the facility into three to claim three $10 million credits when it otherwise would have qualified for one, the Energy Department committed to an independent review by the Oregon Department of Justice of its issuance of Business Energy Tax Credits. And the DOJ's opinion, made public last week, is a narrow, if 11-page, answer to the wrong question.

The opinion states that the Energy Department probably had the legal authority to do what it did. Bravo. The DOJ went on to suggest the department, though vulnerable to a lawsuit over the BETCs, would in all likelihood not get sued because few to no parties would have the legal standing to do so. Whew: Skies are clear.

The uselessness of the DOJ's opinion set the tone for a legislative hearing last week, also in response to Sickinger's reporting, in which Energy Department officials glossed over the key questions they'd never asked of the DOJ: Did they do their job in fully applying state laws designed to protect the public's interest? Did they adequately investigate whether the wind farm under review was one or three under the same owner? And did the department work in a manner that allowed it to stand back enough to notice whether the sky was falling?

The answer is no. And storm clouds are ahead. Some folks, among them Rep. Jules Bailey, D-

Portland, said Shepherds Flat-style challenges are behind us. Others, however, among them Rep. Jason Conger, R-Bend, were irritated and asked the department to follow up by answering the right questions.

It's worth noting Conger is a lawyer. But he's the one doing the asking now, and his first and ugly question is hardly myopic and thus ours, too: Did the Shepherds Flat wind farm applicant furnish misinformation to state officials about ownership of its property, and if so, was the misinformation of such a scale that it would warrant recovery of some or all of $30 million for Oregon taxpayers?

The DOJ opinion suggests recovery would be fruitless because the tax credits were passed through to others beyond Oregon's collection reach. But Conger, who notes recovery is not an option if the Energy Department did the fumbling, insists misinformation by an applicant makes the applicant responsible and available to collection.

Nobody in any official capacity has decided anything, much less whether Shepherds Flat got a sweet deal that needs undoing. The wind farm is up and running and, based on testimony from Gilliam and Morrow counties, a surge to employment and the local economy. Nobody, official or otherwise, wants to upset that circumstance.

But the Energy Department has a task immediately ahead before yet another legislative hearing on the subject: It must tell lawmakers, who represent the Oregonians who underwrite incentive programs such as the BETC, whether Shepherds Flat got a deal too good to be true and whether it knows the right questions are being asked of an energy-producing applicant. Better yet, it must show what processes it has in place to ensure the right questions are being asked so that answers are pertinent.

BETC breathes last breath, but not last bill

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Byline: Ted Sickinger | tsickinger@oregonian.com

The Business Energy Tax Credit, one of Oregon's most costly and politically contentious business subsidies, is officially dead.

Tuesday marked the deadline for the Oregon Department of Energy to finish processing tax credits for renewable energy projects eligible for the credit.

While the program's original sunset date was in 2012, the drop dead date to finalize a credit was extended until Tuesday for projects that could demonstrate they were under construction before April 2011.

The final bill for the program has yet to come due.

Tax credit recipients and the companies the credits are sold to under the program's "pass-through" rules can exercise them over a period of years to reduce their tax liabilities. Since 2007, the year Gov. Ted Kulongoski and the Legislature supersized the long-running tax credit program, the Oregon Department of Energy approved some 12,529 credits worth $857 million. As of the beginning of the year, it had precertified an additional 122 credits worth $86 million for projects yet to be completed.

Final numbers weren't available Tuesday, but the department said 22 of those credits worth $29 million did not meet the deadline and others may have been reduced.

The state's economic development arm, Business Oregon, has approved another eight credits for manufacturers worth $40 million.

The tax credits were the most generous subsidies in the nation. Along with state renewable energy mandates, they helped fuel a green energy bonanza in Oregon. Renewable energy advocates and rural counties praise the program for the investment, tax revenues and jobs that were generated. But those benefits came with a high price tag.

Only a year after the subsidies were increased, the cost mushroomed beyond expectations as developers, entrepreneurs and existing businesses flocked to take advantage of them. Credits were issued for everything from wind farms and solar manufacturing plants to transit passes for Nike employees and lighting upgrades at convenience stores.

An investigation by The Oregonian found that state employees originally lowballed the projected cost of the program. And loose rules and lax administration of the program meant that credits were issued to projects that quickly went bankrupt or never operated, to projects that would have been built without the credits, and to developers who gamed the state's loose rules to qualify for multiple credits.

The Legislature tried time and again to rein in exploding liabilities and stop blatant abuses of the program. Lawmakers first reduced what they saw as unnecessary incentives to lure large wind farms, and eventually killed the program altogether as controversy mounted over its administration.

Nonetheless, state taxpayers are stuck with a long hangover of outstanding credits. Even last year, the Department of Energy ignored its own rules to approve three tax credits worth $30 million for the Shepherds Flat wind farm after its developers undertook an elaborate plan to subdivide the project on paper.

"It was probably the most frustrating issue of my legislative career," said Sen. Ginny Burdick, D-Portland. "Taxpayers dollars were being wasted in many cases."

Burdick says the BETC offers powerful lessons. All tax credits need dollar caps attached, a sunset date, and strong and transparent administrative rules to prevent the kind of abuses that occurred with the BETC, she said.

For Rep. Dennis Richardson, R-Central Point, the Republican candidate for governor and a longtime critic of the energy tax credits, “the question is whether lessons were learned at all.”

The biggest one, in his eyes, is that it doesn’t make sense for the state to be picking winners and losers in a competitive marketplace and using taxpayer dollars to do it. He cites Solarworld and Solopower, two companies that qualified for huge energy tax credits. Solarworld has had ongoing financial difficulties because of Chinese competition and downsized its Hillsboro presence, while Solopower shut its doors after only a few months in production.

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BZ Energy Department

Official overseeing troubled energy credit program quits

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Byline: Ted Sickinger | tsickinger@oregonian.com

Anthony Buckley, the chief financial officer of the Oregon Department of Energy and the manager directly responsible for the agency's troubled tax credit and loan programs, is resigning effective Friday.

Buckley said in an email to staff that he was moving on to "a new and challenging adventure." He is at the center of controversy over the resale of state energy tax credits, and his division is the common denominator in problems that have rocked the agency in the past five years.

His resignation follows a stream of turnovers among employees who reported to him, including the longtime head of the agency's energy loan program, Paul Zollner. Zollner announced his resignation last week.

Gov. Kate Brown also announced Monday the replacement of her energy policy adviser, Margi Hoffmann. The governor said in a statement that Hoffman's departure from the state Energy Department was "a great loss for the state, my office and the Oregon Department of Energy."

Brown recently asked the Legislature to review and then close the department's Business Energy Tax Credit program. She stopped short of calling for a full audit of Energy Department programs.

"The Legislature's deliberations may not be limited to the BETC program, but rather ODOE's administration of all incentives," said Chris Pair, a spokesman for Brown. "Determining how to move the agency forward is not possible without first ending the BETC program."

Buckley, a former light-rail transit

See Energy, C5

operator in Philadelphia, held marketing and finance jobs in the private sector before landing as a debt and investment manager at the Oregon Department of Transportation in 2006.

Inherited program

Buckley transferred to the Department of Energy in 2010 and became the administrator of its Energy Development Services Division. The division manages all the agency's incentive programs, so Buckley inherited the already controversial Business Energy Tax Credit program, as well as the department's small-scale energy loan program. That $200 million program was experiencing big losses on loans to companies with experimental products, little financial strength and no operating history.

Buckley's mandate from then-Energy Department Director Mark Long was to tighten loan standards and prevent further losses while improving what many lawmakers saw as lax administration of the state's energy tax credits. Those credits have mushroomed into nearly a $1 billion liability for taxpayers.

Yet under Buckley's leadership, the division continued awarding loans and tax credits to companies, including Solopower and Revolt Technologies, with untested technologies and little proven capacity to service the debt.

Agency director Michael Kaplan told legislators earlier this year that Buckley's division was looking to forestall the anticipated need for a taxpayer bailout of the small-scale energy loan program by ramping up lending to public agencies. The agencies haven't been eager to borrow, however, and the loan program experienced almost complete turnover in its staff during the past two years.

The Business Energy Tax Credit program has also continued to generate problems for the agency. Buckley managed the staff and was the official who justified the department's controversial determination in 2013 that the Shepherds Flat wind farm in eastern Oregon was three separate projects eligible for three $10 million tax credits. The Justice Department later said the agency had the authority to issue the multiple credits.

Ignoring rules

Buckley also signed off on nearly $12 million in tax credits for solar farms built at the Oregon Institute of Technology and Oregon State University. His division failed to perform basic due diligence on documentation submitted to get the credits. Key paperwork apparently was fraudulent, an investigation by The Oregonian/OregonLive determined earlier this year. The state Justice Department subsequently initiated a criminal investigation.

Recently auditors at the secretary of state's office found that the agency was ignoring rules restricting the resale of energy tax credits. The review found the agency allowed the credits to be sold at deeper discount than state laws allow.

Buckley was the manager who pushed to allow the deep discounts, over the objections of other agency employees. Joe Colello, who coordinated tax credit sales, expressed repeated concerns to Buckley and Director Michael Kaplan last winter and asked to see the Justice Department legal opinion that agency officials said approved the discounts. He wasn't provided the document, and the agency has refused requests from legislators and the media to see it. Colello resigned in August.

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