



**EDISON ELECTRIC
INSTITUTE**

Energy Policy Act of 2005

SUMMARY OF ELECTRICITY-RELATED PROVISIONS IN TITLE XIII – TAX INCENTIVES

ELECTRICITY-RELATED PROVISIONS IN TITLE XIII – TAX INCENTIVES

Electricity Reliability

Sec. 1305. Disposition of electric transmission property to implement FERC restructuring policy. The Jobs Bill from last Fall included a provision to allow a longer recognition period for electric utilities that sell their transmission assets to a FERC-or state-approved independent transmission company. Rather than paying tax on any gain from the sale in the year that the sale is completed, utilities have 8 years to pay the tax on any gain from the sale. The rule expires at the end of 2006. The new provision allows sales during 2007 to qualify for the 8-year recognition.

Sec. 1306. Production tax credit for advanced nuclear power facilities. Provision establishes a production tax credit for new advanced nuclear power facilities. Credit amount is 1.8 cents per kwh (adjusted for inflation) for electricity produced over an 8-year period. To qualify for the credit, the plant must be placed in service after enactment and prior to 1/1/21 and the taxpayer must receive an allocation of MW capacity from the Secretary of Treasury (the Secretary may allocate up to 6,000 MW of capacity).

Sec. 1308. Electric transmission property treated as fifteen-year property. This provision shortens the recovery period from 20 to 15-years for certain assets used in the transmission of electricity for sale and related land improvements. For purposes of the provision, section 1245 property used in the transmission at 69 or more kv of electricity for sale, the original use of which commences with the taxpayer after April 11, 2005, will qualify for the new recovery period. The provision does not apply to any property which the taxpayer or a related party had entered into a binding contract for the construction thereof or self-constructed on or before April 11, 2005.

Sec. 1310. Nuclear decommissioning. Modifies the rules for qualified nuclear decommissioning trust funds. The proposal repeals the cost of service requirement for contributions to a qualified fund. The proposal permits full funding of a qualified nuclear decommissioning fund (removes pre-1984 limitation) and permits the transfer of the present value of pre-1984 decommissioning costs previously excluded to a

qualified fund. Finally, it requires that a new schedule of ruling amounts be requested by a company upon renewal of a license for a nuclear power plant.

Sec. 1311. 5-year Net Operating Loss Carryover for electric transmission equipment. A taxpayer may elect to carryback a net operating loss to each of the 5 years preceding the taxable year of such loss. The portion of the loss year NOL to which the election may apply is limited to an amount that does not exceed 20 percent of the cost of electric transmission capital expenditures and pollution control capital expenditures. Applies to losses incurred in 2003, 2004 and 2005.

Clean Coal

Sec. 1307. Credit for investment in clean coal facilities. Provision establishes three investment tax credits for clean coal facilities: integrated gasification combined cycle (IGCC) projects get a 20 percent investment tax credit, other advanced coal-based projects that produce electricity get a 15 percent credit and industrial gasification projects get a 20 percent credit. The Secretary may allocate up to \$800 million for IGCC projects, up to \$500 million for other advanced coal-based technologies and up to \$350 million for industrial gasification. Also clarifies that lignite is a qualifying coal.

Sec. 1309. 84-month amortization for pollution control facilities. Under present law, owners of plants that were in operation before January 1, 1976, may amortize a portion of the costs of certain certified air pollution control facilities over 60 months, but owners of plants not in operation at that time must depreciate the costs of such facilities under general depreciation rules. The Act provides a 7 year recovery period for 60% of the cost of certain certified air pollution control facilities used in connection with an electric generation plant which is primarily coal fired and which was not in operation before January 1, 1976.

Sec. 1322. Modification of credit for producing fuel from a non-conventional source. The provision makes the credit for producing fuel from a non-conventional source part of the general business credit, so that unused credits may be carried back one year and forward 20 years.

Renewable Incentives

Sec. 1301. Extension and modification of renewable electricity production credit (Section 45). Provision extends placed-in-service date by two years (through December 31, 2007) for qualifying facilities: wind facilities; closed-loop biomass facilities; geothermal facilities; small irrigation power facilities; landfill gas facilities; and trash combustion facilities. Placed-in-service dates for solar facilities and refined coal facilities are not altered. Qualifying facilities receive credits per kwh for electricity produced over a 10 year period. Hydropower and Indian coal are added as new qualifying energy resources. Provision is generally effective on date of enactment.

Sec. 1303. Clean renewable energy bonds. Provision creates new category of tax-exempt bonds, Clean Renewable Energy Bonds (“CREBs”). A CREB is defined as a bond issued by a qualified issuer if, in addition to other requirements, 95 percent of proceeds are used to finance capital expenditures incurred for facilities qualifying for tax credit under section 45. CREBs are not interest-bearing obligations. Rather, the taxpayer holding a CREB would be allowed a tax credit at a rate set by the Secretary of the Treasury.

Qualified issuers include governmental bodies (including Indian tribal governments) and mutual or cooperative electric utilities (including both taxable and tax-exempt cooperatives). The maximum term of the bond is a term that will result in the present value of the obligation to repay the principal on the bond being equal to 50% of the face amount of the bond. Provision is effective for bonds issued after December 31, 2005. No apparent “private use” restrictions to hinder sales to other parties.

Natural Gas Depreciation

Sec. 1325. Natural gas distribution treated as 15-year property. Gas distribution lines must be depreciated over 20 years under present law. Provision shortens the depreciation period to 15 years for any gas distribution lines the original use of which occurred after April 11, 2004 and before January 1, 2011. The provision does not apply to any property which the taxpayer or a related party had entered into a binding contract for the construction thereof or self-constructed on or before April 11, 2005. Provision sunsets December 31, 2010.

Energy Efficiency and Conservation

Sec. 1331. Energy efficient commercial building deduction. The provision allows a deduction for energy efficient commercial buildings that reduce annual energy and power consumption by 50 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) standard. The deduction would equal the cost of energy efficient property installed during construction, with a maximum deduction of \$1.80 per square foot of the building. In addition, a partial deduction of 60 cents per square foot would be provided for building subsystems.

Sec. 1332. Business credit for new energy efficient homes. Provides credit to eligible contractor for construction of a qualified new energy-efficient home. Credit applies to manufactured homes meeting Energy Star Standards and other homes meeting a 50 percent standard. Credit applies to homes which are purchased after December 31, 2005 and prior to January 1, 2008.

Sec. 1333. Credit for energy efficiency improvements to existing homes. Provision provides a 10 percent investment tax credit for expenditures with respect to improvements to a building envelope. Allows credits for purchases of advanced main air circulating fans, natural gas, propane, or oil furnaces or hot water boilers, and other qualified energy efficient property. Credit applies to property placed in service after December 31, 2005 and prior to January 1, 2008.

Sec. 1336. Credit for qualified fuel cells and stationary microturbine power plants. The provision provides a 30 percent business energy credit for the purchase of qualified fuel power plants for businesses and a 10 percent credit for purchase of qualifying stationary microturbine power plants. Credit applies to periods after December 31, 2005 and before January 1, 2008.

Sec. 1337. Business solar investment tax credit. The provision increases the 10 percent credit to 30 percent in the case of solar energy property, applicable for periods before January 1, 2008. Additionally, the provision provides that equipment that uses fiber-optic distributed sunlight to illuminate the inside of a structure is solar energy property eligible for the 30 percent credit.

Sec. 1351. Research and development credit for energy research. Provision modifies the 20 percent research and development tax credit, so that a taxpayer may claim a credit equal to 20 percent of all expenditures on qualified energy research undertaken by an energy research consortium (like EPRI). The 20 percent credit for research by an energy research consortium applies to all such expenditures, not only those in excess of a base amount, as under current law. Other modifications to the credit with respect to energy-related research are included. Provision sunsets with the rest of the research credit on December 31, 2005.

Prepared August 10, 2005



**EDISON ELECTRIC
INSTITUTE**

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
202-508-5000
www.eei.org

Edison Electric Institute (EEI) is the association of U.S. shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve 97 percent of the ultimate customers in the shareholder-owned segment of the industry, and 71 percent of all electric utility ultimate customers in the nation. They generate almost 60 percent of the electricity produced by U.S. electric generators.