



Oregon

Kate Brown, Governor



OREGON
DEPARTMENT OF
ENERGY

625 Marion St. NE
Salem, OR 97301-3737
Phone: (503) 378-4040
Toll Free: 1-800-221-8035
FAX: (503) 373-7806
www.Oregon.gov/ENERGY

September 8, 2016

Jeanne P. Atkins
Secretary of State
136 State Capitol
Salem, OR 97310-0722

Dear Secretary Atkins:

This letter is in response to the “Report of Findings Business Energy Tax Credit Program Investigative Examination,” issued by Marsh Minick P.C. through your office on September 8, 2016. I would be remiss if I did not begin my response by thanking Governor Brown for recognizing the need for and continuing to pursue a thorough review of the Business Energy Tax Credit Program. In multiple communications to your office and legislative leadership, Governor Brown has acknowledged that the BETC program, despite ending in 2014, remains an anchor on the Oregon Department of Energy. The Governor has pushed to find definitive answers to questions that remain about the Department of Energy’s handling of BETC. We appreciate the commitment your office has made to advance that effort.

The “Report of Findings Business Energy Tax Credit Program Investigation Examination” provides a deeper look at problems our agency has called into question over the past two years. In a September 2015 letter to your Audits Division, I wrote that BETC was “besieged by problems.” I’ve criticized the department’s management of BETC in multiple presentations to the Oregon Legislature, starting in August 2014 and most recently in June, when I discussed the department’s BETC problems at length. Administrative issues I’ve highlighted include flawed internal processes, unreliable data management, and inconsistent staff training and understanding of program rules and statutes. Marsh Minick’s report confirms these assessments, providing an evaluation of projects and procedures that illustrate ODOE’s missteps and mistakes administering the BETC program.

As a state agency, it is our responsibility to implement laws passed by the legislature and signed by the governor – and to do so with care and duty. With BETC, ODOE failed this responsibility. The administrative problems identified by Marsh Minick could have been solved by management and staff, even without legislative changes, at the time the program was expanded in 2007 or at any point over the next seven years. It is not enough for a state agency to merely flag problems and expect solutions; ODOE also had the responsibility to solve those problems using a variety of tools, including better in-house oversight and management. Requesting fixes in the legislature is a resource to address policy issues and not a mechanism to correct systemic management challenges.

Across all divisions in our department, our team is committed to being accountable for our actions and the oversight of BETC and every other program under our purview. Since the program ended in June 2014, we continue to face and work to overcome problems from ODOE's handling of BETC. We take full responsibility for BETC's problems in light of glaring and years-long evidence that shows unequivocally that ODOE simply did not manage BETC well.

We acknowledge and appreciate the recommendations included in the Marsh Minick report for future tax incentive programs. To the extent we can implement these recommendations, or the recommendations provided to us by your office on the afternoon of September 7, we will. Further, we believe these recommendations should inform every discussion about future state incentives. However, in a June letter to legislative leadership, Governor Brown called for our existing tax credit programs to end with their legislatively approved sunset. This is the appropriate path for these programs.

With recent actions taken by the Oregon Department of Justice addressing one case of alleged BETC fraud, the large number of high-value "projects of concern" identified by Marsh Minick, and the systemic administrative faults within the BETC program articulated in this report, we suspect that the 2.7 percent of projects of \$1 million or less identified as "projects of concern" is optimistic. It's difficult to resolve that the program's considerable problems, which impacted such a high percentage of large BETCs, did not similarly influence smaller projects that were subject to even fewer controls during application and review processes.

The Department of Energy made significant mistakes administering the BETC program. We do not want the state to compound those past mistakes by failing to comprehensively understand and document BETC.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Kaplan", with a long, sweeping underline.

Mike Kaplan
Director, Oregon Department of Energy