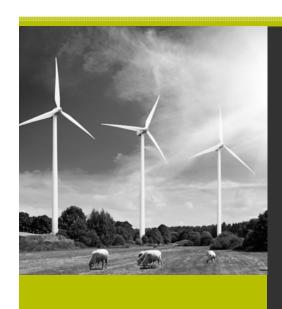


Mass Wind Working Group Offshore Wind



From the Bailout to the Fiscal Cliff

American Taxpayer Relief Act of 2012
Extension of Production Tax Credit and
Investment Tax Credit for Wind Power

January 30, 2013

Adam D. Wade



Status as of 12/31/2012

Investment Tax Credit ("ITC") - IRC Section 48

- 30% of eligible project basis; credit arises in year project is placed-in-service; subject to recapture in certain circumstances; cost of credit: reduce project basis by 50% of the credit amount for depreciation purposes
- expires 1/1/2013 for wind

Production Tax Credit ("PTC") - IRC Section 45

- currently 2.2 cents per kWh of electricity; credit period is 10 years; arises in year of production
- electricity must be sold to unrelated 3rd party
- expires 1/1/2013 for wind

Cash Grant - ARRA Section 1603

- 30% of eligible project basis
- paid by Treasury within 60 days; not earlier than 60 days after project placed-in-service
- Commence construction by end of 2011; grandfathering under 5% safe harbor
- expired 12/31/2011, safe harbor for projects that are placed in service by PTC sunset



PTC – IRC Section 45 – 12/31/2012

- § 45 (electricity produced from certain renewable resources, etc.)
- (a) General rule. ..., the renewable electricity production credit for any taxable year is an amount equal to the product of--
 - (1) <u>1.5 cents [2.2 cents]</u>, multiplied by
 - (2) the **kilowatt hours** of electricity--
 - (A) **produced** by the taxpayer--
 - (i) from qualified energy resources, and
- (ii) at a qualified facility [see next slide] during the 10-year period beginning on the date the facility was originally placed in service, and
- (B) sold by the taxpayer to an unrelated person during the taxable year.



PTC – "Qualified Facilities" –12/31/2012

- § 45(d)(1) (wind facilities that qualify as "qualified facilities")
- (d) **Qualified facilities**. For purposes of this section:
- (1) Wind facility. In the case of a facility using wind to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before **January 1**, **2013**....



ITC – Section 48 – 12/31/2012

- § 48 (energy credit)
- (a) Energy credit.
- (1) In general. [Generally,] the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.
 - (2) Energy percentage.
 - (A) In general. The energy percentage is--
 - (i) 30 percent in the case of--
- (II) energy property described in paragraph (3)(A)(i) [see next slide] but only with respect to periods ending before **January 1, 2017**,



ITC – "Energy Property" – 12/31/2012

- § 48(a)(3)(A)(i) (solar energy equipment that qualifies as "energy property")
- (3) **Energy property**. For purposes of this subpart [i.e., § 46 et seq.], the term "energy property" means any property--
 - (A) which is--
- (i) equipment which uses **solar energy to generate electricity**, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool



Election of ITC -12/31/2012

§ 48(a)(5) (elect ITC in lieu of PTC)

(5) Election to treat qualified facilities as energy property.

- (C) Qualified investment credit facility. For purposes of this paragraph, the term "qualified investment credit facility" means any of the following facilities if no credit has been allowed under § 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:
- (i) Wind facilities. Any qualified facility (within the meaning of section 45) described in *paragraph (1) of section 45(d)* [see *previous slide*] if such facility is placed in service in 2009, 2010, 2011, or 2012.
- Note: This election is the only means by which a large wind project (i.e., a project with a wind turbine having a nameplate capacity of greater than 100 kw) can qualify for the ITC



Extension & Amendment – 1/2/2013

HR 8 - American Taxpayer Relief Act of 2012 Enacted January 2, 2012

PTC

- Extended sunset date for Production Tax Credit to January 1, 2014
- Amended milestone from placed in service to beginning construction

ITC

- Extended sunset date for wind's eligibility to elect Investment Tax Credit to January 1, 2014
- Amended milestone from "placed in service" to "begin construction"
- No definition of "begin construction"



HR 8 Section 407(a)(1) and (3)

SEC. 407. EXTENSION AND MODIFICATION OF CREDITS WITH RESPECT TO FACILITIES PRODUCING ENERGY FROM CERTAIN RENEWABLE RESOURCES.

- (a) PRODUCTION TAX CREDIT.—
- (1) EXTENSION FOR WIND FACILITIES.—Paragraph (1) of section 45(d) is amended by striking "January 1, 2013" and inserting "January 1, 2014".
 - (3) MODIFICATION TO DEFINITION OF QUALIFIED FACILITY.—
- A) IN GENERAL.—The following provisions of section
- 45(d), as amended by paragraph (1), are each amended

by striking "before January 1, 2014" and inserting "the construction of which begins before January 1, 2014":

. . . Paragraph (1)



HR 8 Section 407(b)

- (b) EXTENSION OF ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—Subparagraph (C) of section 48(a)(5) is amended to read as follows:
- "(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term 'qualified investment credit facility' means any facility—
- "(i) which is a **qualified facility (within the** meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d), "(ii) which is placed in service after 2008 and the construction of which begins before January 1, 2014,

and . . .



PTC – "Qualified Facilities" –1/2/2013

- § 45(d)(1) (wind facilities that qualify as "qualified facilities")
- (d) **Qualified facilities**. For purposes of this section:
- (1) Wind facility. In the case of a facility using wind to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and the

construction of which begins before January 1, 2014...



Election of ITC -1/2/2013

§ 48(a)(5) (elect ITC in lieu of PTC)

(5) Election to treat qualified facilities as energy property.

- (C) Qualified investment credit facility. For purposes of this paragraph, the term "qualified investment credit facility" means any of the following facilities if no credit has been allowed under § 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:
- (i) which is a *qualified facility* (within the meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d), "(ii) which is placed in service after 2008 and the construction of which begins before January 1, 2014,



ARRA 1603 Cash Grant

ARRA Sec. 1603. GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS (P.L. 111-5, 1603, as amended)

- (a) In General.--Upon application, the Secretary of the Treasury shall, subject to the requirements of this section, provide a grant to each person who places in service specified energy property ... No grant shall be made under this section with respect to any property unless such property--
 - (1) is placed in service during 2009, 2010, or 2011*, or
- (2) is placed in service after 2010 and before the credit termination date with respect to such property, but only if the construction of such property began during 2009, 2010, or 2011 *.

*Extension of end of 2010 expiration to end of 2011 by H.R. 4583, The Tax Relief Act of 2011.



Cash Grant Program: "Commencement of Construction"

Treasury Guidance for Cash Grant Program

- There are two ways to show that construction has begun.
- One is to begin physical work of a significant nature.
- The other is to meet a 5% safe harbor.
- Economic performance test (see Treas. Regs. § 1.461-4)
- Continuous program of construction or contractual obligation to undertake and complete within a reasonable period of time.



"Placed In Service"

Common factors to be considered in determining placed in service dates for power plants:

- (1) approval of required licenses and permits;
- (2) passage of control of the facility to taxpayer;
- (3) completion of critical tests;
- (4) commencement of daily or regular operations; and
- (5) synchronization into a power grid for generating electricity to produce income.

Source: IRS Private Letter Ruling 201205005 02/03/2012



Status?

- January 25, IRS Office of Chief Counsel says it has been "swamped"
- IRS is part of but distinct from Treasury
- Some action expected around March
- Form of action unclear
- Regulations?
- Safe harbor?
- Different technologies to have different end date for placed in service safe harbor?



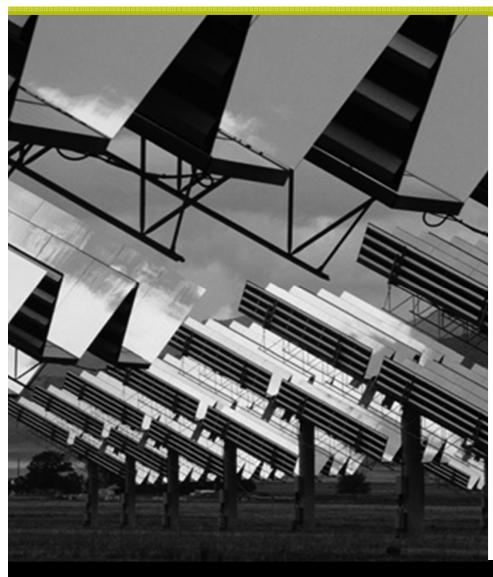
Questions?

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