



# 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

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## 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 3<sup>rd</sup> 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) **1.5 cents [2.2 cents]**, 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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