

Wind Developers Receive Unexpected Benefit in Latest Production Tax Credit Extension

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The latest production tax credit (“PTC”) extension included an unexpected boost in value that will benefit developers of both on-shore and off-shore wind projects.

PTCs are currently subject to a phase-down schedule in which the value of the credit (currently worth 2.5 cents per kWh of electricity sold to third parties) is subject to reduction of between 20-60% depending on the year in which the construction of the underlying project began. The schedule that was in place just before Christmas required developers to start construction on their wind farms before 2020 in order to qualify for a credit with a haircut of 60%. The credit was set to expire after 2019. However, the [Further Consolidated Appropriations Act, 2020](#) (H.R. 1865), signed into law on December 20, 2019, not only extended the phase-down schedule by an additional year, but also increased the value of projects that start construction in 2020 compared to those that started in 2019 by reducing the haircut to 40% of PTC value for 2020 projects.

While helpful for developers who weren’t able to mobilize in time to start construction in 2019, the value increase for 2020 projects creates a perverse incentive for developers who started in 2019 to try to break their contracts, encourage delivery delays, or otherwise try to take the position that the work they did in 2019 shouldn’t count. The IRS start of construction guidance does not say when or if a project can ever really “restart” construction.

Although off-shore wind developers were disappointed that the tax extenders legislation did not include a standalone tax credit for off-shore wind, off-shore wind developers may benefit the most from the legislation’s value boost for 2020 projects. Off-shore wind projects are generally more expensive than on-shore projects, and in

most cases it is more economic to claim an investment tax credit (an “ITC,” which is based on cost as opposed to production) for them rather than PTCs. The tax code allows taxpayers to effectively exchange PTCs for ITCs in certain circumstances, and with the added value in the new tax legislation, off-shore wind developers can now claim an ITC worth 18% of cost for projects that begin in 2020. No ITC or PTC will be available for off-shore wind projects that begin construction after 2020.

This latest tax extenders package does not alter the current phase-down schedule for assets, including solar, that qualify for the ITC. However, it does retroactively extend PTCs for many non-wind assets that qualify for PTCs through 2020.

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