Summary of Key Renewable Energy Provisions in the Inflation Reduction Act of 2022

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On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 (Act) into law. The Act broadly addresses climate change, taxes, health care and inflation. In particular, the Act contains significant tax and governmental incentives to encourage the development of renewable energy, including wind, solar and other renewable energy facilities. Below is a summary of several key provisions affecting utility-scale renewable energy and energy storage projects.

Tax Credits

The Act extends important tax incentives for wind, solar, and other renewable energy facilities that were set to expire and establishes new federal tax incentives for emerging and established technologies. The Act extends the investment tax credit (ITC) for solar and other qualifying renewable projects beginning construction before January 1, 2025. The ITC starts at a base rate of 6% and rises to 30% if the project (1) pays prevailing wages during the construction phase and for the first five years of operation and (2) meets registered apprenticeship requirements. Projects may also qualify for ITC bonuses if they satisfy additional criteria, including projects that (1) satisfy certain U.S. domestic content requirements (10%) or (2) are located in an ?energy community?[1] (10%) or an ?environmental justice? area (10% or 20%). The Act now allows the ITC to be taken for stand-alone energy storage projects. Before the Act, storage was only allowed an ITC if it was part of another energy project. Under the Act, qualifying projects under 5MW (AC) may also include their interconnection costs as part of their eligible basis for the ITC.

The Act also extends the production tax credit (PTC) for wind, solar, geothermal, biomass, and certain hydropower projects beginning construction before January 1, 2025. The Act provides a 2.6c/kWh credit (adjusted for inflation) for projects that (1) pay prevailing wages during construction and the first 10 years of operation and (2) meet registered apprenticeship requirements. Similar to the ITC, a project qualifying for the PTC may also enhance the benefit by satisfying the domestic content, energy community, and/or environmental justice requirements. A project that qualifies for both the ITC and PTC may choose either, but cannot receive both.

In lieu of receiving a tax credit, the Act also allows an eligible entity (e.g., tax-exempt organizations, state and local governments, Indian tribes, etc.) to elect a cash payment option whereby the entity is treated as if it had paid taxes in the amount of the credit and then receive a cash refund. The Act also allows eligible entities that do not elect the direct pay option to transfer certain credits to unrelated taxpayers in exchange for cash.

The Act creates other new tax credits for renewable energy projects, including the following:

- Clean Electricity Investment Tax Credit: A new clean electricity tax credit that replaces the ITC and PTC once they are phased out in 2025. Any project producing electricity can qualify for the tax credit if its greenhouse gas emissions rate is not greater than zero. The tax credit will phase out on the later of 2032 or when emission targets are achieved (i.e., when the electric power sector emits 75% less carbon than 2022 levels).
- Clean Hydrogen Production Credit: A new tax credit for clean hydrogen produced at a qualifying facility during the facility?s first 10 years of operation. The facility must begin construction before January 1, 2033.
- Carbon Capture and Sequestration (CCS) Credit: Extends the deadline for construction to January 1, 2033 and increases the credit amount.
- Advanced Energy Project Credit: Effective on January 1, 2023, projects meeting the prevailing wage and apprenticeship requirements may receive a 30% credit for investments in projects that re-equip, expend, or establish certain domestic manufacturing or industrial facilities to support the production or recycling of renewable energy property. Of the $10 billion allocated for qualifying advanced energy projects, at least $4 billion must be allocated to projects located in certain energy communities.
- Advanced Manufacturing Production Credit: A new production tax credit that can be claimed for the domestic production and sale of qualifying solar and wind components. A 10% credit is also available for the production of critical minerals. The credit begins to phase out for components sold after December 31, 2029 and is not available for components sold after December 31, 2032. The phase-out does not apply to the production of critical minerals.
- Zero Emission Nuclear Power Production Credit: A new PTC for the production of electricity from an existing nuclear facility that was placed in service before the date of the Act. The electricity from the facility must be produced and sold to an unrelated person after December 31, 2023, with the credit terminating on December 31, 2032.

Manufacturing

In addition to the Advanced Manufacturing Production tax credit to incentivize domestic production of renewable components and critical minerals, the Act allocates $500 million to remain available until September 30, 2024 to carry out the Defense Production Act, presumably on an as needed basis.

Development/Permitting

The Act allocates $2 billion through September 30, 2030 to provide direct loans for the construction or modification of electric transmission facilities designated as necessary in the national interest under the Federal Power Act. The loan term cannot exceed the lesser of 90% of the projected useful life of the transmission facility and 30 years and the loan amount cannot exceed 80% of the project costs.

To help facilitate the siting of transmission lines, the Act allocates $760 million until September 30, 2029 for federal grants to state or local governmental entities for any of the following with respect to certain high-voltage interstate or offshore electricity transmission line projects: (1) studies and analyses of the impacts of the project; (2) examination of up to three alternative siting corridors within which the project feasibly could be sited; (3) 50% of the costs to participate in regulatory proceedings or negotiations in another jurisdiction that is also considering the siting or permitting of a covered transmission project; (4) 50% of the costs to participate in federal or state regulatory proceedings for determining applicable rates and cost allocation for the project; or (5) other measures and actions that may improve the chances of, and shorten the time required for, approval by the siting authority of the application relating to the siting or permitting of the covered transmission project. In order to receive a grant, a siting authority must agree, in writing, to reach a final decision on the application within two years after the date on which such grant is provided.

The Act also allocates $40 million to the Environmental Protection Agency through September 30, 2026 to provide for development of efficient, accurate, and timely reviews for permitting and approval processes.

The Act withdraws the existing moratorium against offshore wind leasing in the Southeastern United States and the Eastern Gulf of Mexico. For 10 years after the date of the Act, (1) no right-of-way permit may be issued on federal land unless an oil and gas lease sale has also been held within 120 days before issuance of the permit and is not less than 2 million acres and (2) no leases for offshore wind development may be issued unless an oil and gas lease sale has also been held in the previous year and is not less than 60 million acres.

If you have any questions concerning the Act, please contact the above authors or the Williams Mullen attorney with whom you may already work.

[1] An ?energy community? is defined in the Act as a brownfield site, an area that has had significant employment related to coal, oil or natural gas activities, or a census tract or any adjoining tract in which

a coal mine closed after December 31, 1999, or in which a coal-fired electric power plant was retired after December 31, 2009.

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