

Renewable Energy Alert

March 11, 2015

IRS Publishes Favorable Guidance on PTC “Start of Construction” Rules

Today, the IRS published Notice 2015-25 that provides guidance the wind power industry has been waiting for since the extension of the production tax credit (PTC) in December.

Notice 2015-25 provides that any wind power project (or other PTC-eligible project¹) that started construction prior to 2015 has until the end of 2016 to be placed in service so as to avoid the application of either the “continuous construction” or the “continuous work” standards promulgated by the IRS in Notice 2013-29.²

Under prior guidance, projects that qualified for PTCs by starting construction prior to 2014 had to be placed in service prior to the end of 2015.³ Today’s notice gives such projects (and other projects that started construction prior to 2015) until the end of 2016 to be placed in service. This gives the developers time to sign a power purchase agreement or an interconnection agreement or solve construction obstacles.

Notice 2015-25 is a function of the extension of the PTC that was enacted on December 19, 2014 in the Tax Increase Prevention Act of 2014. That legislation extended the “start of construction” deadline to December 31, 2014 (from the prior deadline of December 31, 2013) in order for projects to be eligible for PTCs. The IRS had published three favorable notices in 2013 and earlier in 2014, which contained critical safe harbors, that on their face applied only to projects that started construction prior to 2014. Notice 2015-25 confirms that projects that started construction in 2014 also benefit from those notices, and each date in those notices is effectively pushed out one year.

Notice 2015-25 also confirms that the projects that started construction in 2013 benefit from the additional year to be placed in service. In theory, there was a concern that the IRS would only give projects that started construction in 2014 the additional year to be placed in service under the safe harbor, while requiring projects that started construction in 2013 to be placed in service by the end of 2015 to meet the safe harbor. However, due to certain ambiguities in the “start of construction” rules, it could have been an administrative challenge for the IRS to draw a line between construction projects that were started in 2013 and those that were started in 2014. The IRS eliminated the need to distinguish between the two by

¹ Notice 2015-25 also applies to projects that are PTC eligible that the owners of opt to elect the investment tax credit in lieu of the PTC. See I.R.C. § 48(a)(5).

² §§ 4.06 (“continuous work”), 5.02 (“continuous efforts”).

³ IRS Notice 2013-60, § 3.02.

extending the placed in service deadline for all projects that started construction at *any time* prior to January 1, 2015.

Notice 2015-25 is expected to enable a large number of projects to raise tax equity or construction debt (with the lenders having assurances they will be repaid by tax equity). It should enable 2015 and 2016 to be the strong years the wind industry has been anticipating.

Contact Information

If you have any questions regarding this alert, please contact:

David K. Burton

dburton@akingump.com

212.872.1068

New York

Edward W. Zaelke

ezaelke@akingump.com

213.254.1234

Los Angeles

Daniel Phillip Sinaiko

dsinaiko@akingump.com

213.254.1211

Los Angeles

Anne S. Levin-Nussbaum

alevin-nussbaum@akingump.com

212.872.7476

New York