

## The Investment Tax Credit And Consumer Demand, Make Outlook For Solar Development Look Robust

For years we have heard that alternative, renewable energy, including solar energy, is the future for America. Travelling by train from Amsterdam to Berlin, one sees numerous wind turbines producing renewable energy. Travelling by automobile in New England, one is beginning to see much the same although the projects tend to be solar and not wind. So, what is the outlook for solar energy in New England for the remainder of 2019?

The investment tax credit (ITC) has been the biggest driver of solar projects since it was enacted in 2006. According to the Solar Energy Industries Association, the average annual solar growth is 52% since the ITC became law. Through the remainder of 2019, the ITC is a 30% tax credit for commercial properties, which includes both customer-sited commercial solar systems and large-scale utility solar farms. However, the ITC for commercial projects under current law is scheduled to be reduced to 26% in 2020, 21% in 2022, and 10% in 2022. Accordingly, there is a strong economic incentive to begin construction of a new commercial solar project by December 31, 2019.

The IRS issued "commence construction" guidance for purposes of claiming the solar ITC in Notice 2018-59, issued on June 22, 2018. Pursuant to the Notice, there are two methods that will establish that the construction of a solar facility has begun that allow the taxpayer to claim the ITC. The first method is the Physical Work Test and requires that physical work of a significant nature begin within the year that the ITC is claimed. The second method is the Five Percent Safe Harbor, which requires the taxpayer to pay or incur not less than five percent of the total cost of the solar facility in the year that construction begins and in which the ITC is claimed. In addition, the taxpayer must make continuous progress towards completing the solar project once construction has begun.

The ITC remains a significant factor in new solar developments. However, it is not the sole factor and a second important impetus for new solar projects is consumer demand. Utility companies report that strong voluntary requests from its customers has supplanted demand driven by policy mandates as was more common in the past. Landlords also report that many of their larger, national tenants are now requiring that all or a significant portion of the energy consumed at a shopping center be renewable energy. We have seen certain national tenants place a premium on new locations that are powered by renewable energy to the extent that those shopping centers offering renewable energy get priority over locations that do not.

There are of course other drivers in the growth of solar energy: lower costs of generating power through solar facilities, advances in battery storage capabilities, and the growing expertise of utilities in integrating solar facilities into the power grid. These factors, along with the ITC and consumer demand, combine to make the outlook for solar development in the remainder of 2019 look robust.

Permitting for a new solar facility still takes time. There is a very short timeframe for new projects to be permitted and for developer/taxpayer to meet either the Physical Work Test or the Five Percent Safe Harbor and be eligible for the 30% ITC allowed in 2019. However, there are many projects in development that are either fully or mostly permitted that will begin construction in 2019 and thus be eligible for the last year of the 30% ITC. The outlook for new solar facilities completed or substantially begun in 2019 is strong, and we anticipate that strength will continue into 2020 and beyond. And who knows, maybe Congress will extend the 30% ITC beyond 2019 as solar becomes an increasingly greater percentage of the power generated in the United States!

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