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Contents

Community Solar Opportunities

Michael Klaus

Nearly 50 percent of households and businesses are unable to host rooftop solar systems due to siting or property ownership issues,[1] among other factors. Community solar has the potential to significantly expand solar capacity in the United States by making solar available to those individuals and businesses, although the growth of this market may be constrained by a lack of state legislation or access to financing.

[1] National Renewable Energy Laboratory (NREL), *Shared Solar: Current Landscape, Market Potential and the Impact of Federal Securities Regulation*, April 2015, available at http://www.nrel.gov/docs/fy15osti/63892.pdf.

Community solar generally starts with "net metering." In the residential solar market in many states, net metering allows a homeowner to sell excess production generated by a rooftop PV system to the utility and receive a billing credit on the homeowner's invoice. "Virtual net metering" (also called "remote net metering") means that a customer is entitled to this same type of credit when the project is not located on the customer's property. Community solar is an extension of virtual net metering, with multiple customers participating in a virtual net metering pool and receiving some of the benefits of an off-site solar project.

Awards and Recognition

"Hunton & Williams' dynamic energy and infrastructure team was recognized as BTI Clientopia Standout in 2016 BTI: Power Rankings for strongest relationships with clients in the energy and utilities sector."

While community energy business models vary, the third-party owner model that is common in the residential solar market can be adapted to community solar, creating opportunities for tax equity investors to participate in community solar projects. Under this model, each customer may purchase the net metering credits associated with a percentage of a project's production for a fixed price, and a third-party owner of the project (or a tax equity partnership) may claim the tax benefits.

Some of the key issues that arise in community solar projects are:

- **Financing**. One key challenge for sponsors of community solar projects is aggregating enough projects to attract interest from the large financial institutions that typically provide tax equity financing for solar projects. At the same time, this market presents an opportunity for new tax equity investors to enter the market and make relatively small investments.
- **State Law Issues**. Community solar typically depends on state legislation that allows virtual net metering. To date, at least 14 states have implemented legislation that allows for some form of community solar. One issue that arises on the state level is the value of the net metering credit associated with a community solar project (i.e., whether the customer receives a credit equal to the full retail rate of electricity, or a lower credit that takes into account a utility's transmission costs). States may place caps on the aggregate capacity of projects that are eligible for virtual net metering.
- **Customer Credit Issues**. In a typical solar project, one of the primary issues for an investor or financing party is the credit of the customer or offtaker. For community solar, the credit risk can be mitigated if the project company has the ability to quickly and easily terminate and replace defaulting customers. Under community solar programs in certain states, if one customer in a virtual net metering pool defaults on its payment obligation to the project company, the project company has the ability to terminate that customer and then sell the applicable net metering credits to a different customer. This flexibility makes a project company less dependent on the credit of an individual customer, so long as there is sufficient demand for the net metering credits and a sufficient pool of customers that are eligible to participate in the applicable state program.
- **Real Estate Issues**. Given that community solar projects are typically ground-mount projects, diligence for a community solar project tends to be more expensive and time consuming than diligence for a rooftop PV project. For example, ground-mount projects could raise issues with respect to environmental laws and local zoning/setback requirements that are less likely to apply to a rooftop PV project. On the other hand, because community solar projects do not need to be located on the customer's property, a developer has more flexibility in selecting land that is suitable for a solar project.

As sponsors look for new ways reach customers, and states seek to facilitate the growth of renewable energy, we expect business models to continue to develop in the community solar market, creating new opportunities for tax equity investors and lenders of all sizes.

A Change in PACE: PACE Financing Update

Jo Anne Sirgado and Samantha Leavitt

Property assessed clean energy (PACE) financing programs allow state and local governments, where permitted by law, to incentivize homeowners to undertake energy efficiency improvements at no upfront cost to the homeowners. The government funds the initial cost as a loan and in turn a special assessment is added to the property to provide for repayment.

On July 19, 2016, the US Department of Housing and Urban Development, in conjunction with the Obama administration's new cross government partnership the Clean Energy Savings for All Initiative, released

guidance ("HUD Guidance") with respect to PACE financing to encourage homeowners to make energy efficiency improvements on their property.

Prior to the HUD Guidance, the Federal Housing Administration would only insure properties at which a PACE assessment was subordinated to the related mortgage; however, under the HUD Guidance, residential properties subject to a senior PACE assessment may now be eligible for FHA-insured mortgage financing, if the following are satisfied:

1. The PACE assessment is collected and secured in the same manner as other special property assessments under applicable law;
2. Only past due, regularly scheduled PACE assessments may be realized ahead of the mortgage on the property;
3. The PACE lien does not restrict transferability of the property;
4. The terms and existence of the PACE assessment are fully disclosed and transparent in applicable public records; and,
5. In the event of a sale, including a foreclosure sale, the outstanding amount of the PACE assessment runs with the property, causing the new property owner to be responsible for the outstanding amount.

In addition to the above-outlined HUD Guidance, the US Department of Veterans Affairs released similar guidance ("VA Guidance") with respect to the use of PACE financing for VA-issued mortgages. Specifically, the VA Guidance outlines the circumstances under which veterans are able to take advantage of PACE programs in conjunction with their VA Home Loan Guaranty benefit.

The Department of Energy recently updated *Best Practices Guidelines for Residential PACE Financing* ("DOE Guidelines") for public comment. The DOE Guidelines, which are revisions to the original *Guidelines for Pilot PACE Financing Programs*, issued on May 7, 2010, focus exclusively on the design and successful implementation of residential PACE programs. For instance, the DOE Guidelines encourage PACE programs to, among other things:

1. Define which improvements are eligible and prioritize cost-effective measures to protect both homeowners and mortgage holders;
2. Establish criteria for eligible improvements that are consistent with the public purpose of such PACE program; and
3. Establish standardized procedures to determine the financial eligibility of the property.

In response to the HUD Guidance, VA Guidance and DOE Guidelines, we anticipate an upsurge in the development and implementation of PACE financing nationwide and thus an increase in residential solar financing opportunities available to homeowners, investors and lenders.

PTC & ITC Extension Overview

Hilary Lefko

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act"). This legislation extended the production tax credit (PTC) for wind facilities and the investment tax credit (ITC) for solar facilities, and imposes a "begun construction" requirement on both credits.

On May 5, 2016, the Internal Revenue Service released Notice 2016-31, 2016-23 I.R.B. 1022 ("Notice 2016-31"), which provided updated guidance on the beginning of construction requirement for the extended PTC. Notice 2016-31 extends and modifies prior guidance (collectively, the "prior notices") and provides additional guidance with respect to the continuity requirements for the PTC. Notice 2016-31 indicates that guidance addressing the extension of the ITC for solar facilities will be released in the future.

Wind PTC

Under the PATH Act extension, wind facilities that begin construction before January 1, 2017, will be eligible to claim the full amount of the PTC. Wind facilities that begin construction after January 1, 2017, will be subject to a step-down of the PTC until January 1, 2020, at which point, the PTC expires for new facilities.

The table below provides a summary of the PTC amounts available after the PATH Act extension:

	Began construction before January 1, 2017	Began construction before January 1, 2018	Began construction before January 1, 2019	Began construction before January 1, 2020	Began construction on or after January 1, 2020
PTC Amount (based on current credit amount, as may be adjusted for inflation)	100% ($0.023/kWh)	80% ($0.0184/kWh)	60% ($0.0138/kWh)	40% ($0.0092/kWh)	0% ($0/kWh)

The prior notices provide that once construction has begun, there must be continuous construction or continuous efforts to complete the facility (collectively, the "continuity requirement"). Notice 2016-31 provides that a facility must be placed in service by the later of (a) the end of a calendar year that is no more than four calendar years from the calendar year in which the facility began construction, or (b) December 31, 2016 (the "Continuity Safe Harbor"). Notice 2016-31 provides an example, stating that a facility on which construction begins on January 15, 2016, will be deemed to satisfy the Continuity Safe Harbor if that facility is placed in service by December 31, 2020.

The table below identifies the earliest date a project can commence construction and satisfy the Continuity Safe Harbor for each placed-in-service (PIS) year:

	PIS 2017	PIS 2018	PIS 2019	PIS 2020	PIS 2021	PIS 2022	PIS 2023
Earliest Begun Construction Date	2013	2014	2015	2016	2017	2018	2019

Solar ITC

The PATH Act also amended Section 48(a)(2)(A)(i) of the Internal Revenue Code to extend the ITC for solar. Under the old law, the full amount of the ITC (a 30 percent credit) was available to facilities placed in service on or before December 31, 2016. The PATH Act extension shifted from a "placed-in-service" standard to a "begun-construction" standard. Under the new law solar facilities that begin construction before January 1, 2020, will be eligible to claim the full amount of the ITC. Solar facilities that begin construction after January 1, 2020, will be subject to a phase-out of the amount of available ITC until January 1, 2022, after which point the ITC will step down to 10 percent.

The PATH Act also imposes a placed-in-service requirement on facilities that begin construction prior to January 1, 2022. Any such facility must be placed in service by December 31, 2023, in order to claim the credit amounts listed in the chart below. Facilities that begin construction prior to January 1, 2022, but are not placed in service until after December 31, 2023, are automatically subject to a 10 percent ITC.

The following table provides a summary of the ITC amounts available after the PATH Act extension:

	Began construction before January 1, 2020	Began construction before January 1, 2021	Began construction before January 1, 2022	Began construction on or after January 1, 2022 or placed-in-service after December 31, 2023
ITC Amount	30%	26%	22%	10%

Hunton & Williams' Renewable Energy Newsletter is prepared quarterly to provide general information about selected clean power developments and issues for attorneys at Hunton & Williams LLP, and is provided to clients and friends of Hunton & Williams LLP. It is not intended to provide legal advice or legal opinions and must not be relied on as such.

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