

ENERGY TAX CREDITS: THE MEANING OF “SINGLE PROJECT”

Three different levels of rigor for defining the boundaries of a “Single Project” for energy tax credit purposes

Lenient

Moderate

Stringent

Situation

Interconnection Cost ITC

ITC on Interconnection Costs for Projects w/ Capacity of ≤ 5 MW_(a/c)
 See Prop. Reg. § 1.48-14(g)(7). Ex. (ii)-(iv). These examples are contained in Exhibit I.

PWA

Grandfathered from the Prevailing Wage & Apprenticeship (PWA) Requirements due to Starting Construction Before 1/29/23
 See Notice 2022-61, § 2.02.

LMI Adder

Low-Middle Income (LMI) Adder for Projects ≤ 5 MW_(a/c)
 See Prop. Reg. § 1.48(e)-1(b)(3).

PWA Exclusion (<1MW)

PWA Exclusion for Projects ≤ 1 MW_(a/c)
 See Prop. Reg. § 1.48-13(d).

Domestic Content

See Prop. Reg. § 1.48-13(d).

Energy Community

See Prop. Reg. § 1.48-13(d).

Applicable Rule

Bright-line rule appears to be based on examples:

- Wind: each turbine is ≤ 5 MW_(a/c)
- Solar: each inverter serves ≤ 5 MW_(a/c)
- Storage: each battery container is ≤ 5 MW_(a/c)

Non-exclusive eight factor balancing test

From Notices 2013-29 & 2018-59

- (i) the energy properties are owned by a single legal entity;
- (ii) the energy properties are constructed on contiguous pieces of land;
- (iii) the energy properties are described in a common PPA
- (iv) the energy properties have a common intertie;
- (v) the energy properties share a common substation
- (vi) the energy properties are described in one or more common permits
- (vii) the energy properties were constructed per a single construction contract
- (viii) the construction of the energy properties was financed pursuant to the same loan agreement.

Eight factor balancing test, with weighting

From Notices 2013-29 & 2018-59

However, if (a) during construction multiple “energy properties” are owned by a single taxpayer (including related entities) and (b) two of any of the eight factors are present then, the energy properties are deemed a single project.

See Prop. Reg. § 1.48-13(d)(2) (“members of a group of ... businesses ... under common control (as defined in § 1.52-1(b)).