



Summary of ESPC ESA Request for Comments

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ESPC Energy Sales Agreement (ESA) Structure

- Utilize the 25-year ESPC authority for an on-site privately owned renewable project, federal agency purchases the electricity
- Must meet all ESPC requirements and OMB Memo M-12-21 “Addendum to OMB Memorandum M-98-13 on Federal Use of Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs)” title retention requirement for annual scoring
- The funds necessary for the fair market value renewable equipment purchase must be generated from the savings used to make the ESPC payments and held by the ESCO in a reserve account

DOE FEMP ESPC ESA Request for Comments (RFC)

- Issued on February 2, 2016 with responses due March 2, 2016
- RFC purpose: Obtain information regarding investment tax credit (ITC) eligibility and other obstacles for ESPC ESA and ESPC ENABLE renewable energy (RE) projects
- RFC is available at <http://energy.gov/eere/femp/downloads/request-comments-including-onsite-renewable-energy-generation-under-energy>

DOE FEMP ESPC ESA RFC - Questions

- Whether greater clarity is needed regarding 26 U.S.C. § 7701 and ITC eligibility if the federal government purchases the renewable equipment by the end of the contract
- Whether the Consolidated Edison case may have created uncertainty with ITC eligibility
- How the federal government can provide greater assurance that an ESPC ESA remains eligible for the ITC given the OMB Memo annual scoring requirements and the Consolidated Edison case

DOE FEMP ESPC ESA RFC – Questions, Cont'd

- Whether further clarity is needed regarding federal authority for a reserve account, to ensure that the federal agency has sufficient funds for a fair market value renewable equipment purchase by the end of the contract
- Information regarding the practicality of ESPC ESAs or ESPC ENABLE PV projects without the ITC or SREC sale
- Any other obstacles to ESPC ESA or ESPC ENABLE projects

DOE FEMP ESPC ESA RFC – Response Summary

- Greater clarity is needed regarding ESPC ESA eligibility for the ITC - industry is not willing to accept any level of risk or uncertainty
- Industry recommends official tax guidance such as a Revenue Ruling
- The Consolidated Edison decision has contributed to tax treatment uncertainty for similar contracts involving tax exempt entities
- Industry has some concerns regarding the reserve account concept

Note: These are Industry responses and do not represent DOE/FEMP's position.

DOE FEMP ESPC ESA RFC – Response Summary, Cont’d

- Small renewable projects, most like bundled with other measures, may be financially viable without the ITC or SREC sale. Large RE project viability is dependent upon factors such as energy prices, energy consumption patterns and local incentives
- Any rule changes should apply equally to UESCs and ESPCs
- Ownership of a UESC project could transfer at the end of the UESC for ITC and other reasons

Note: These are Industry responses and do not represent DOE/FEMP’s position.

Treasury/IRS Statement

Treasury and IRS are aware of developer and investor concerns over the availability of tax credits for renewable energy systems on gov't property under ESPC-ESA arrangements because of certain provisions about the ownership of property at the end of the contract term that some fear may run afoul of certain tax rules.

Treasury and IRS are taking a look at this issue and hope to take steps to be able to alleviate concerns associated with the availability of the tax credits in these arrangements.

Questions?

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