

The Sheppard Mullin Six

Tax Equity for Public Utilities

Here are six key items to be aware of today in tax equity transactions for renewable energy projects owned by public utilities

1. A recent IRS Private Letter Ruling (1) held a wind-powered electrical generation facility with a wholesale Power Purchase Agreement (“PPA”) would not be treated as public utility property on account of the fact that the facility has a revenue contract that is set at market-based rates rather than a revenue stream set on a regulated rate-of-return basis, and (2) declined (on the grounds that further legislation and/or regulation was necessary) to rule on whether the PPA, if between the utility and a tax equity partnership, would be subject to loss disallowance rules applicable to related party transactions. The facility intended to claim Production Tax Credits.
2. Our experience shows that utilities should begin conversations (with potential tax equity providers, stakeholders and advisors with extensive tax equity experience) far in advance of any potential state public utility commission (“PUC”) filing and should be prepared for the process to take longer than non-utility-sponsored tax equity.
3. Once a filing has been made with a state PUC, a utility faces enormous pressure to not change the form and/or content of the transaction that it described to the commission.
4. Even basic elements of tax equity transactions (such as special purpose project companies) present novel issues for many state PUCs to consider.
5. Facilities located in bilateral or illiquid power markets are less likely to benefit from the ruling.
6. The ruling does not address the application of normalization rules to a utility-sponsored tax equity partnership that claims the Investment Tax Credit (“ITC”), but the analysis used in the ruling sheds light on how the IRS may view a similarly-situated ITC transaction.

Key Contacts - Tax Equity for Public Utilities



Ben Huffman, Chicago

Ben helps developers, utilities, infrastructure funds, banks and institutional investors finance, buy and sell infrastructure projects, and advises the companies that develop and own those projects, across the United States. While his experience spans asset classes and transaction types, he focuses on tax credit monetization transactions and renewable energy generation facilities.



Bill Rappolt, Washington D.C.

Bill Rappolt's practice includes representing participants in the natural gas, electric and oil/liquids industries before federal agencies, state utility commissions and appellate courts. Bill has represented natural gas pipelines and storage providers, electric generators, power marketing and trading companies, commercial class electric customers, electric utilities, independent electric transmission providers and oil/liquids pipelines and storage providers. He has aided clients with rate making issues involving cost of service, return on equity and rate design. Bill has also advised and represented energy industry participants regarding tariff-related issues, natural gas pipeline certificates, Department of Energy (DOE) export and import authorizations, market-based rate authorizations, compliance with energy market rules and regulations, standards of conduct, interconnection issues, and purchases and sales of energy facilities and companies



Amit Kalra, Chicago

Amit structures and forms partnerships that own and operate alternative energy resources. His experience includes the pricing of partnership investments through the preparation of pro forma economic models that incorporate relevant federal income tax assumptions and constraints to accurately determine the expected after-tax return on a partnership investment. He is actively involved in the market for financing alternative energy resources, including: ethanol; biodiesel; biomass; solar; and fuel cell facilities, as well as carbon capture and sequestration. Amit's partnership practice includes all forms of direct investments in partnerships and pass-through entities, including private equity fund formation and investment. He counsels clients in private equity and venture capital investments.



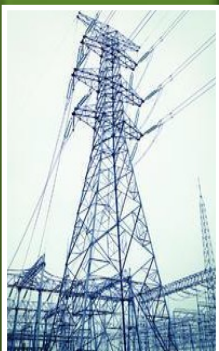
Andrew Mina, Washington D.C.

Andrew Mina represents energy companies in a variety of federal and state regulatory matters, particularly before the FERC, state public utility commissions, and appellate courts. Andrew counsels oil and natural gas pipelines, electric utilities, 15 natural gas distribution companies, and other industry participants on regulatory issues, including those related to electric transmission development, natural gas supply, compliance, standards of conduct, renewable energy project development, jurisdiction, and utility ratemaking. Andrew regularly helps clients navigate complex transmission tariff-related issues, including those involving some of the largest electric transmission providers in the U.S. He has also advised oil and gas pipelines on state regulatory requirements associated with the development of new oil and gas facilities, and represents major interstate pipelines in FERC proceedings

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