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Client Alert

Government Advocacy & Public Policy Practice Group

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Congress Passes End of Year Spending Bill Containing Significant Energy Related Provisions

After weeks of intense negotiations and backroom tradeoffs, last Friday Congress passed, and President Obama signed into law, a 2,000 page omnibus bill to fund the federal government for fiscal year 2016. The biggest winner may be the nation's energy industry. For decades, the debate about the future of America's energy policy has pitted renewable energy against fossil fuels. The debate has at times been philosophical, partisan and regional. This time both sides can claim victory. The omnibus bill includes provisions that will end a forty year old ban on exporting crude oil from the United States, and extends for five years critical tax credits for the wind and solar industries.

Democrats strongly supported the extension of expired or expiring tax credits for wind and solar energy. Republicans negotiated the oil export provision in exchange for their votes for the omnibus. It was a hard fought compromise that in the end had an significant impact on the nation's energy policy and final passage of the omnibus bill.

Oil Export Ban

The oil export ban dates back to 1973, when America was the largest oil consumer in the world and heavily reliant on oil imports. For decades the policy was not challenged, primarily because of a rising economy.

In 2015, the playing field has changed dramatically. Largely because of the recent sharp increase in U.S. oil production, the United Sates is no longer dependent on foreign oil to fuel its economy. In fact, the United States is now truly energy independent.

Removing the ban has been a major goal of the oil industry and members of Congress from oil and gas producing states. "Allowing oil exports is an important step forward in ensuring that our energy policies reflect our nation's renewed abundance of resources," said Sen. Lisa Murkowski (R-Alaska).

Keeping the ban in place became a rallying point for environmentalists and most Democrats. President Obama has adamantly opposed lifting the ban in his public statements, but because of the renewable energy provisions in the

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legislation, he will sign the bill. It was a trade-off to find the votes for final passage.

Renewable Energy Tax Breaks

The omnibus bill also extends critically important renewable energy-related tax provisions, including the production tax credit (PTC) for wind and the investment tax credit (ITC) for solar. For years, the starts and stops of the renewable energy tax credits have had a negative impact for investors and the construction of new projects. The bill may bring stability to the industry and a final phase out of the tax breaks.

For the wind industry, the legislation extends the PTC to projects which begin construction before January 1, 2020. The PTC will start to phase out based on when construction begins. The PTC would be reduced by 20 percent if construction begins in 2017, 40 percent if construction begins in 2018 and 60 percent if construction begins in 2019. For energy sources like geothermal and hydropower, a developer will be eligible to claim the PTC if construction begins before January 1, 2017, with no phase-out.

The omnibus also will extend the ability of taxpayers to elect to claim the ITC in lieu of the PTC. For wind facilities electing to claim the ITC instead of the PTC, the ITC would phase out in the same manner as it would for the PTC--by 20 percent if construction begins in 2018, 40 percent if constructions begins in 2018 and 60 percent if construction begins in 2019.

In the case of solar facilities, the bill will extend the 30 percent ITC and replace the current requirement that the facility be placed in service by a certain date with a requirement that construction begin on the facility by a certain date, aligning the solar and wind industries.

The amount of the ITC for solar facilities would decrease depending on the year in which construction begins. If construction begins any time before 2020, the ITC would equal 30 percent of eligible costs. If construction begins in 2020, the ITC would equal 26 percent of eligible costs, and if construction begins in 2021, the ITC would equal 22 percent of eligible costs. If construction on an eligible solar facility begins after 2021, the ITC would drop to 10 percent of eligible costs. The bill also includes a reduction in the ITC if certain projects do not meet a placed-in-service deadline. If construction of a solar facility begins before 2022 but the facility is not placed in service before 2024, the ITC would be reduced to 10 percent.