

The Inflation Reduction Act of 2022 Aims to Reduce Energy Costs

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- Energy
- Environmental, Energy & Land Use
- Tax

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On August 16, 2022, President Biden signed into law the *Inflation Reduction Act of 2022* (the “Act”), which seeks to reduce inflation by paying down the national debt, extending affordable healthcare coverage for millions of Americans and, for the purpose of this Energy Alert, reducing energy costs.

To that effect, the Act intends, among other matters, to incentivize investments in products and technologies that utilize clean energy, including offshore wind, and reduce emissions through tax credits and rebates, grants, research, and loan programs at the federal, state, and local levels, including:

- tax rebates and credits to lower energy costs for households;
- tax credits to incentivize consumers to buy electric cars, electric HVAC systems, and other forms of cleaner technology, leading to fewer emissions from cars and electricity generation;
- tax credits, research loans, and grants to increase the manufacturing capacity for wind turbines, solar panels, batteries, and other essential components of clean energy production and storage in the United States; and
- tax credits to deploy carbon capture and sequestration projects; among other incentives.

The federal government implements hundreds of renewable energy-related initiatives that benefit investors, project developers, and energy producers through its various agencies and departments, including the Environmental Protection Agency and the Departments of Energy, Agriculture, Commerce, Defense, Defense, Treasury, and Interior. The Act includes provisions to incentivize the development of clean energy, strengthen the U.S. energy supply chain, and reduce reliance on foreign components. These incentives will not only benefit homeowners and energy consumers but also the manufacture of energy components and the development of renewable energy projects. Over \$360 billion will be invested in energy and climate reform, the most significant federal clean energy investment in U.S. history.

The Inflation Reduction Act of 2022 Aims to Reduce Energy Costs

Below is a quick overview of key provisions of the Act that may be applicable to Puerto Rico or, otherwise, impact directly or indirectly entities that do business or wish to do business in the island in connection with renewable energy facilities and other projects. Particular attention is provided to the potential development of offshore wind projects.

FEDERAL ENERGY TAX CREDITS

Federal Production Tax Credit (26 USCA §45) & Investment Tax Credit (26 USCA §48)

- Among the energy-related initiatives included in the Act are the reinstatement of the federal production tax credit (PTC) and the investment tax credit (ITC) at their pre-phaseout rates.
- The Act extends the PTC to wind, geothermal, biomass and hydropower facilities that begin construction before January 1, 2025. This extension is retroactive to January 1, 2022. Moreover, the Act reinstates the PTC for solar facilities placed in service after 2021 that begin construction before 2025.
- The Act extends the ITC benefits for several additional technologies, including standalone energy storage, qualified biogas property, fuel cells using electromechanical processes, dynamic glass, and microgrid controllers.
- The Act retroactively extends the ITC to projects placed in service in 2022, allowing projects that previously began construction but were subject to a reduced ITC under the phaseout to benefit from higher credits.
- The Act extends to the end of 2024 the election for a taxpayer to treat certain facilities that otherwise qualify for the PTC as energy property qualified for the ITC instead, to align with the extensions to the PTC and ITC.
- The PTC and the ITC will transition to technology-neutral in 2025.

Direct Pay

- The Act allows certain organizations to take direct pay equal to certain specified credits. Subject to conditions, this election is available for various credits, including solar and solar storage in the PTC and ITC.

Transfer of Federal Credits (Sec. 6418 of the Act)

The Inflation Reduction Act of 2022 Aims to Reduce Energy Costs

- Certain federal tax credits may be transferred to an unrelated eligible taxpayer, including PTC and ITC.
- The credit will not be included in the gross income of the original recipient of the credit.
- The buyer must pay for the credit in cash and cannot deduct the amount paid for such credit or subsequently transfer the credit.
- A taxpayer must make the election to transfer all or any portion of the PTC for renewable electricity and carbon capture for each taxable year during the 10-year period after the project is placed in service.

GRANTS, REBATES & OTHER INCENTIVES

Advanced Industrial Facilities Deployment Program (Sec. 50161 of the Act)

- The Act creates a \$5.812 billion fund to remain available through September 30, 2026, for the U.S. Department of Energy (DOE) to provide financial assistance, through grants, rebates, direct loans, or cooperative agreements, on a competitive basis, to owners and operators of certain industrial and manufacturing facilities engaged in energy-intensive industrial processes, to carry out projects for (1) the purchase and installation, or implementation, of advanced industrial technology at an eligible facility; (2) retrofits, upgrades to, or operational improvements at an eligible facility to install or implement advanced industrial technology; or (3) engineering studies and other work needed to prepare an eligible facility for said activities described.

Energy Infrastructure Reinvestment Financing (Sec. 50144 of the Act)

- The Act creates a new program under DOE's Loan Program Office of \$5 billion, to remain available through September 30, 2026, to be leveraged up to \$250 billion in commitment authority for loan guarantees, including refinancing for projects that: retool, repower, repurpose, or replace energy infrastructure that has ceased operations; or, enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases.

Home Energy Performance-Based, Whole-House Rebates (50121 of the Act)

- The DOE will provide \$4.3 billion in grants through September 30, 2031, to "State energy offices", which includes the Department of Economic Development and Commerce of Puerto Rico, to develop and implement a

The Inflation Reduction Act of 2022 Aims to Reduce Energy Costs

Home Energy Savings Retrofit Rebate Program, whereby the “State energy office” provides, subject to certain limits and conditions, rebates to: (a) single-family homes, (b) multifamily building owners; and (c) single-family homes occupied by low- or moderate-income households or multifamily buildings with at least 50 percent of dwellings occupied by low- or moderate-income households.

High-Efficiency Electric Home Rebate Program (Sec. 50122 of the Act)

- The DOE shall reserve and award about \$4.275 billion in grants through September 30, 2031, to “State energy offices” to develop and implement a high-efficiency electric home rebate program under which rebates shall be provided to eligible entities for qualified electrification projects, which include, subject to certain conditions: the purchase and installation of an electric heat pump water heater; an electric stove, cooktop, range, or oven; an electric heat pump clothes dryer; an electric load service center; or electric wiring.

Clean Heavy-Duty Vehicles Grants and Rebates (Sec. 60101 of the Act)

- The Act provides \$1 billion for the Environmental Protection Agency (EPA) to implement a program to make awards of grants and rebates to eligible recipients, which includes Puerto Rico and its municipalities, to replace Class 6 and Class 7 heavy-duty vehicles with zero-emission vehicles. Also included under this program are (1) the purchase, installation, operation, and maintenance of the infrastructure needed to charge, fuel, or maintain zero-emission vehicles; (2) the workforce development and training to support the maintenance, charging, fueling and operation of the zero-emission vehicles; and (3) planning and technical activities to support of the adoption and deployment of zero-emission vehicles.

Grants to Reduce Air Pollution at Ports (Sec. 60102 of the Act)

- The Act provides \$2.250 billion to remain available until September 30, 2027, for the EPA to award rebates and grants to eligible recipients (a) to purchase or install zero-emission port equipment or technology for use at, or to directly serve, one or more ports; (b) to conduct any relevant planning or permitting in connection with the purchase or installation of such zero-emission port equipment or technology; and (c) to develop qualified climate action plans, subject to certain conditions.

The Inflation Reduction Act of 2022 Aims to Reduce Energy Costs

- The term “eligible recipients” includes (a) a Puerto Rico agency that has jurisdiction over a port authority or a port; (b) an air pollution control agency; and (c) a private entity that applies for a grant under this section in partnership with any of the foregoing entities, and owns, operates or uses the facilities, cargo-handling equipment, transportation equipment, or related technology of a port.

OFFSHORE WIND DEVELOPMENT

- The Act expands the definition of the Outer Continental Shelf to include submerged land that is within the U.S. exclusive economic zone and adjacent to any U.S. territory, including Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands. Furthermore, it allows the Department of the Interior (DOI) to conduct wind lease sales in these areas if deemed feasible and of sufficient interest, after consulting with the territorial governor.
- The Act provides a base payment for PTC (\$0.6 per kWh) and ITC (6%), which can be increased for developers that offer prevailing wages and apprenticeship programs. The maximum PTC would be about \$0.31 per kWh if developers can certify that they use domestically manufactured products. The ITC could increase to 50% if developers are able to demonstrate the projects use domestically made materials and are located in low-income or fossil fuel-reliant communities.
- As stated above, developers will be able to choose between PTCs and ITCs. Moreover, they may be able to monetize their tax credits through contractual transfers to a third party that does not have an equity position in the project.
- In addition, Sec. 20152 of the Act provides \$760 million in funding through September 30, 2029, for the DOE to make grants to state, local or tribal government siting authorities for transmission projects, including offshore electricity transmission lines of 200 kV HVAC or HVDC, covering (1) studies and analyses of transmission projects; (2) examination of alternate siting corridors within which a transmission project could feasibly be sited; (3) participation in proceedings at FERC or a state regulatory commission for determining applicable rates or cost allocation for a particular transmission project; or (4) other measures and actions that may improve the chances of, and shorten the time required for, approval by the siting authority of the application relating to the siting or permitting of the transmission projects.

The Inflation Reduction Act of 2022 Aims to Reduce Energy Costs

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