

# United States Senate

WASHINGTON, DC 20510

May 21, 2020

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretary Mnuchin:

Thank you for your efforts to support individual Americans and businesses during this unprecedented time. We appreciate your Department's recent confirmation that it will modify continuity safe harbor requirements for renewable energy projects that have been impacted by the COVID-19 pandemic, and we write today to urge you to take two additional steps that will similarly provide needed relief.

Specifically, we ask that you extend safe harbor requirements for the "start of construction" as provided by Treasury's guidance for both the Investment Tax Credit (ITC) and Production Tax Credit (PTC). We also ask that you modify the "Physical Work Test" to allow "continuous efforts" in place of a "continuous program of construction" for projects commencing construction through 2020. These modifications will help account for COVID-19 and other current impacts, which have affected supply chains and construction operations but are out of the control of those seeking to claim the PTC or ITC for qualifying energy properties.

By law, in order for taxpayers to qualify for the full PTC or ITC, they must begin construction by a certain specified date. Under current Internal Revenue Service (IRS) guidance, a taxpayer is treated as having begun construction by starting physical work of a significant nature or, alternatively, by satisfying safe harbor requirements by incurring five percent or more of the total cost of the facility or property. Using equipment purchases to meet the safe harbor for "start of construction" also requires that equipment delivery must be reasonably expected within 105 days of when the cost is incurred.

A large number of new renewable energy projects, particularly solar projects, began construction at the end of 2019 in order to qualify for the full 30 percent ITC. While many projects officially started construction by paying for equipment at the end of 2019, many developers did not receive equipment by the 105-day deadline due to COVID-19 related disruptions. Ongoing uncertainty over equipment delivery in 2020 could lower investment in new projects, as well.

In order to mitigate this uncertainty, we urge you to modify Treasury's guidance to treat COVID-19-related equipment delivery delays as acceptable disruptions to "start of construction" safe harbor requirements for projects that commenced in 2019 or 2020, so long as those materials are received by the end of the following year (2020 and 2021, respectively). Such projects should qualify for the appropriate credit amount when five percent of costs were paid.

Our second request, to modify the "Physical Work Test," is critical for projects featuring certain

technologies that are seeking to maintain a “continuous program of construction” but are unable to do so based on permitting requirements or other delays. Moving to a “continuous efforts” requirement would better reflect the full range of activities that are required to begin and complete projects that require some form of federal approval. While we appreciate the Administration’s efforts to modernize the environmental review process, we recognize that it is still burdensome – even for these projects.

At a time when the renewable energy industry is facing significant challenges, these steps will help protect American jobs and provide investor certainty as we work to rebuild our economy.

We appreciate your consideration of this letter.

Sincerely,



Lisa Murkowski  
United States Senator



Susan M. Collins  
United States Senator



Thom Tillis  
United States Senator