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# *The Role of Independent Power and Competition*

Todd Glass

Electric Power in the West  
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## **Overview**

A few thoughts from a counsel for project developers and financiers:

- Tailwinds for Renewable Energy Independent Power
- . . . and the Headwinds
- Why Independent Power Matters
- Status of Competition in Wholesale Electric Markets
- A Regulation Gap

## Tailwinds for Renewable Energy Independent Power Overview – Federal Legislation

- 10+ years stable ITC and PTC tax credit regime
- Creation of new, technology-neutral ITC and PTC that phase in beginning in 2025
- Standalone, technology-neutral energy storage ITC and PTC authorized; **public utilities able to elect out of tax normalization rules for energy storage projects and pumped hydro qualifies as energy storage**
- Creation of new “base” and “bonus” structure, with adders prevailing wage and apprenticeship, domestic content, and energy communities applicable to IPPs, **creating possibility to obtain up to 50% ITC or \$1.65 PTC rate**
- New Section 45X advanced manufacturing credit to promote onshoring of key manufacturing components across solar, wind, critical mineral, and other areas that may **further lower cost of deploying solar, wind, and battery storage projects**
- New Section 45V hydrogen credit that **could advantage IPPs to generate clean hydrogen with excess renewable generation**
- New direct pay and transferability regime applicable across most credits and **create new financing structures, particularly with entities like pension funds**
- **Authorization of new Loan Programs Office “Section 1706” Program**, dropping new technology requirement and providing cheap debt to IPPs to site new generation in “energy communities.”

## Tax Credits: Direct Pay and Transferability

The IRA contains numerous structural changes to the existing energy tax credit regime:

- **Direct Pay:** Allows eligible tax-exempt entities, and in limited cases taxpayers, to treat credits as taxes already paid and receive cash payments. Direct payment is available for all existing technologies and for new technologies that are now eligible for credits (e.g., standalone energy storage systems). Direct pay can be limited if domestic content requirements are not met
- **Transferability:** Allows eligible taxpayers to transfer eligible credits to unrelated entities, including possibly tax-exempt entities, for cash

- Enables flexibility to structure ownership of project assets in a way that maximizes credit benefits
- Enables alternative tax structures, including lease, inverted lease, service contract, and financing solutions as replacements for, or in addition to, traditional tax equity financing

## Tax Credits: 45X Advanced Manufacturing Production Credit

- **Dates:** Effective for components produced and sold after 12/31/22, taxpayers may receive a credit for eligible components produced in the United States and sold to unrelated third parties
- **Comparison with Prior Law:** Under prior law, no tax credit existed for renewable components produced in the United States
- **Limitations:** The credit is only available for eligible components, which include solar polysilicon, wafers, cells, modules, backsheets, longitudinal purlins, and structural fasteners; wind blades, nacelles, towers, and offshore foundations; inverters; battery electrode active materials, cells, and modules, and critical minerals
- **Critical Minerals:** The credit does not expire for authorized critical minerals – this is effectively *permanent tax policy*
- **Credit Amount:** The credit amount varies based on physical size and per watt capacity of components



**IMPACT: Significant new credit for eligible components; direct pay is available for taxpaying entities**

## Tailwinds for Renewable Energy Independent Power - 2

### Capital Inflows For Renewable Energy are Growing

- Princeton [REPEAT Lab](#) estimates that post-IRA, investment in solar could reach **\$321 billion in 2030**, nearly double the figure expected had the IRA not passed. Further, Princeton estimates that the IRA will lead to a nearly **\$3.5 trillion in cumulative capital investment** in new American energy supply over the next decade

### Potential Actions at FERC

- RM 22-34: Interconnection Process Reform NOPR (June 2022)
- RM21-17: Transmission Planning NOPR (April 2022)
- AD21-10: Modernizing Wholesale Electricity Market Design

### ISO Market Expansion

- CAISO final proposal for the [extended day-ahead market \(EDAM\)](#)
- Southwest Power Pool's [Markets+ proposal](#) for a Western day-ahead market

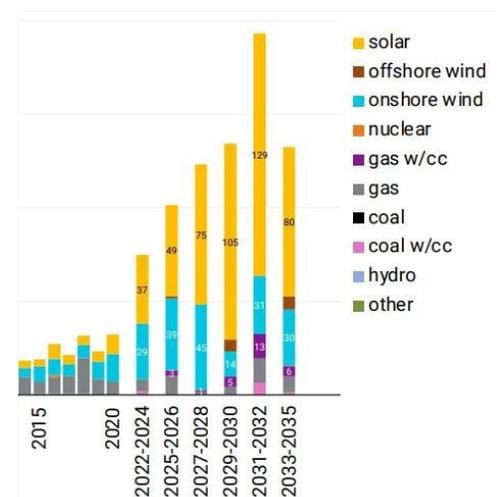
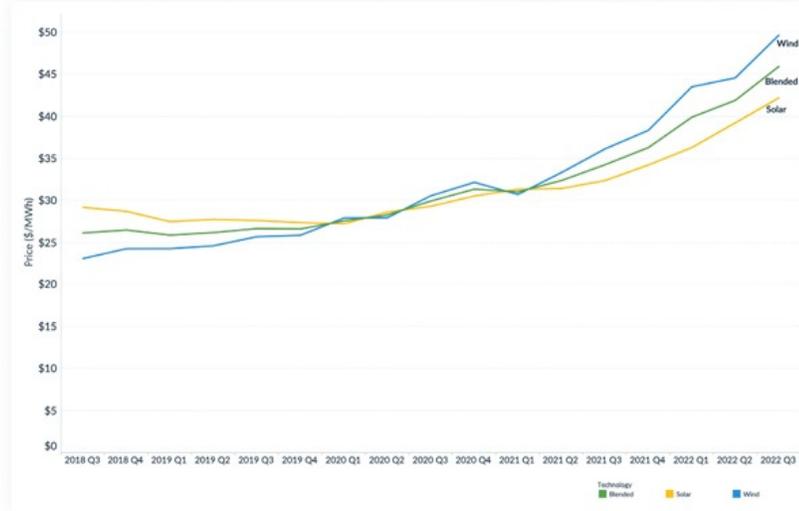


Image from Princeton REPEAT Study; displays historical capacity additions and projections under the IRA in GW

**And PPA Prices Going UP!**

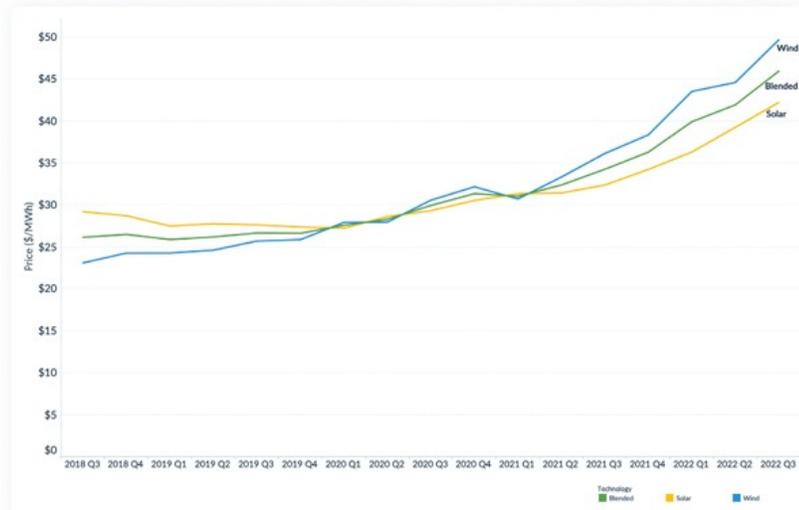
## LevelTen North American P25 PPA Price Index



**And PPA Prices Going UP!**

*But the prices may be more reflective of headwinds . . .*

## LevelTen North American P25 PPA Price Index



## Headwinds are blowing and growing

Renewable developers and IPPs have plenty of worries:

- Trade restrictions and tariffs (even the 2-year solar module tariff hiatus is likely up for a vote)
- Inflation in steel and other commodity prices
- Inflation in transportation costs
- Continued uncertainty in interconnection time and cost (queue clearing efforts by utilities often eliminate good projects with significant investment)
- Cost of money is rising (debt and tax equity)
- Recession following heady times cause capital restriction
- None of the above gets accommodated in fixed price PPAs executed in the past
- Utility RFPs are increasingly competitive and many vertically-integrated utilities want to own and ratebase generation assets
- New US House of Reps will be aiming for many aspects of IRA and its implementation

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Plus regulatory uncertainties:

- “Renewables did it.” Gov. Abbott Feb 2021
- All Chairman Glick’s initiated rulemakings are up for grabs with 3:1 pro-utility FERC
- PURPA must purchase opportunities are dead in most states; smaller projects lack offtake
- Order 872’s 10 mile rule is a development landmine waiting to be stepped on
- Retail access is not discussed in polite company; sleeving requires utility cooperation
- Only the most sophisticated customers can handle VPPAs; other customers remain stuck
- Despite the talk, greater wholesale market access in “traditional markets” is not really progressing in SE, PNW, and Intermountain West

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## IPPs and Competition

- Why Independent Power Matters
  - Utilities and regulators don’t care for development risk, technology risk, cost overruns; developer take risks
  - Independent power pushes technology and innovation forward
  - Creates competition to impose price discipline
- Status of Competition in US Wholesale Electric Markets
  - 2005 -- over 200 IOUs; 2022 -- 51
  - Nobody knows; not really monitored; regulators assume markets are fine
  - Monopolies are going to monopolize
  - Outspent, out-resourced, and out-lawyered, IPPs can’t advocate sufficiently in market development

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“At Xcel, the answer has been to create a whole new division dedicated to envisioning and planning for the utility systems of the future. Generation, transmission, distribution, and even natural gas service will be planned from within the same department, called the Integrated System Planning department, beginning this year.”

“In addition to the company’s transmission, distribution, generation and natural gas planning teams, the company is also moving standards functions from across the company into the planning division.”

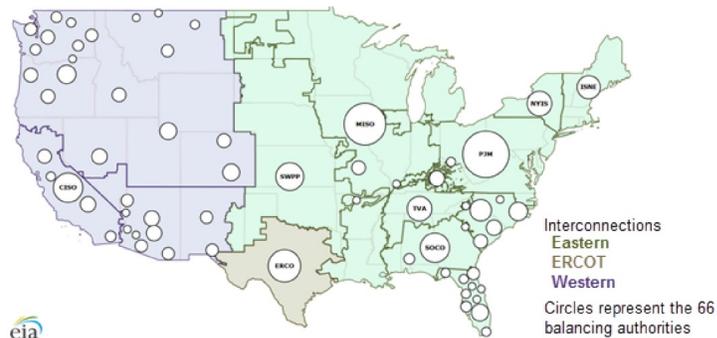
“Xcel, other utilities launch dedicated planning teams to streamline energy transitions, boost innovation” *Utility Dive* January 25, 2023

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## IPPs and Competition

### ■ A Regulation Gap?

- Monopsony market power: many sellers, one buyer
- Who regulates buyer's market power in wholesale elect markets? FERC, state PUCs, FTC?
- Examples of market power where only one buyer exists market and wants to own capacity; no transmission capacity exists; no real wheeling options:
  - Common executives and lawyers advise both procurement and transmission/interconnection tear
  - RFP Requirement: proposals must include purchase price, all cost, as well as PPA pricing options; utility will choose and negotiate among bidders with perfect knowledge of generation and transmission system
  - RFP Rule: Bidders cannot be adverse in any proceeding before FERC or PUC



# Thank you

Todd Glass  
tglass@wsgr.com  
206-883-2571

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