

# Energy Community Tax Credit Primer for Clean Energy Development in Illinois



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*This solar farm was built on top of a landfill located in Rehoboth, MA. The landfill had not been used for decades and provides clean renewable energy to customers nearby. The system size is about 2.4 MW DC. (Source: US Department of Energy, photo by Lucas Faria.)*

## Overview

Clean energy development can provide significant benefits to communities if sited and designed to be consistent with community priorities. To incentivize clean energy development in communities with historical or current connections to the fossil fuel industry—referred to as energy communities—the Biden administration, through the Inflation Reduction Act of 2022 (IRA), directed new federal funding to energy communities through tax incentives.

Most of the federal funding flows through the Treasury Department, which on June 15, 2023, published Notice 2023-45, providing additional guidance on the bonus tax credits for clean energy or energy storage projects in energy communities.<sup>1</sup> Under §§ 45, 45Y, 48, and 48E of the Internal Revenue Code (Code), clean energy projects in energy communities can take an additional up to 10 percent credit (on top of any other tax credit) on the investment tax credit (ITC) or production tax credit (PTC).

## The tax credit bonus

The tax credit bonus applies an “add-on” or bonus (on top of any other tax credit) of up to 10 percent for the PTC or 10 percentage points for ITC projects, facilities, and technologies located in energy communities. PTC projects must be located in an energy community by 2023 or thereafter; ITC qualifying projects must be placed in service in 2023 or thereafter in an energy community.

## Energy Community Eligibility

The IRA defines energy communities as areas with significant employment or tax revenue from fossil fuel activities or facilities that have experienced facility closures or that currently face significant unemployment.<sup>2</sup> Specifically, the IRA defines energy communities as being in one of the following three categories:<sup>3</sup>

1. **Brownfield category**—a brownfield site as defined in 42 U.S.C. § 9601(39)(A) and certain mine-scarred land as defined in 42 U.S.C. § 9601(39)(D)(ii)(III). Projects located on brownfields or mine-scarred land sites are eligible for a 10 percent bonus credit.
2. **Coal closure category**—a census tract (or directly adjoining census tract) with a recently closed coal mine or coal-fired power plant. The coal mine closure must have occurred after 1999, and the coal-fired generating unit must have retired after 2009. Projects located within the designated census tract are eligible for the bonus.

**This tax credit primer provides an overview of the federal tax credit bonus and the additional support from Illinois available for developing clean energy projects in energy communities.**

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3. **Statistical area category**—a metropolitan or non-metropolitan statistical area that has, at any time since 2009, experienced at least a 0.17 percent direct employment rate or at least a 25 percent local tax revenue related to fossil fuel activities, and has a local unemployment rate for the prior year that was higher than the national average. Projects located within the jurisdictional boundaries of these statistical areas are eligible for the 10 percent credit.

The Treasury Department, the US Department of Energy, and the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization have mapped eligible energy communities and maintain an online tool depicting eligible energy communities. This map will be updated annually to show metropolitan or non-metropolitan statistical areas that meet the fossil fuel employment threshold. Eligible Illinois areas for 2023 are shown in figure 1 below.

## Brownfield eligibility

Projects located on brownfield sites qualify for the energy community bonus credit. Brownfield sites are broadly defined in federal rules 42 U.S.C. § 9601(39) (A), but not all sites eligible for brownfield assistance

under other federal or state programs are eligible for the energy communities bonus tax credit. The US Environmental Protection Agency (EPA) maintains a Cleanups in My Community web page<sup>4</sup> that shows eligible brownfield sites.

According to Notice 2023-29, the site automatically qualifies as a brownfield in the following scenarios:<sup>5</sup>

- The site was previously assessed as a brownfield site through a federal, state, or tribal program.
- The site completed a Phase II Environmental Site Assessment that has confirmed the presence of a pollutant, contaminant, or hazardous substance as defined in 42 U.S.C. § 9601(14) or 42 U.S.C. § 9601(33).
- For projects that are five megawatts (MW) or less in nameplate capacity, a Phase I Environmental Site Assessment has been completed. (Note that the notice does not state that on-site pollutants must have been confirmed.)

Brownfield sites also include certain mine-scarred land.

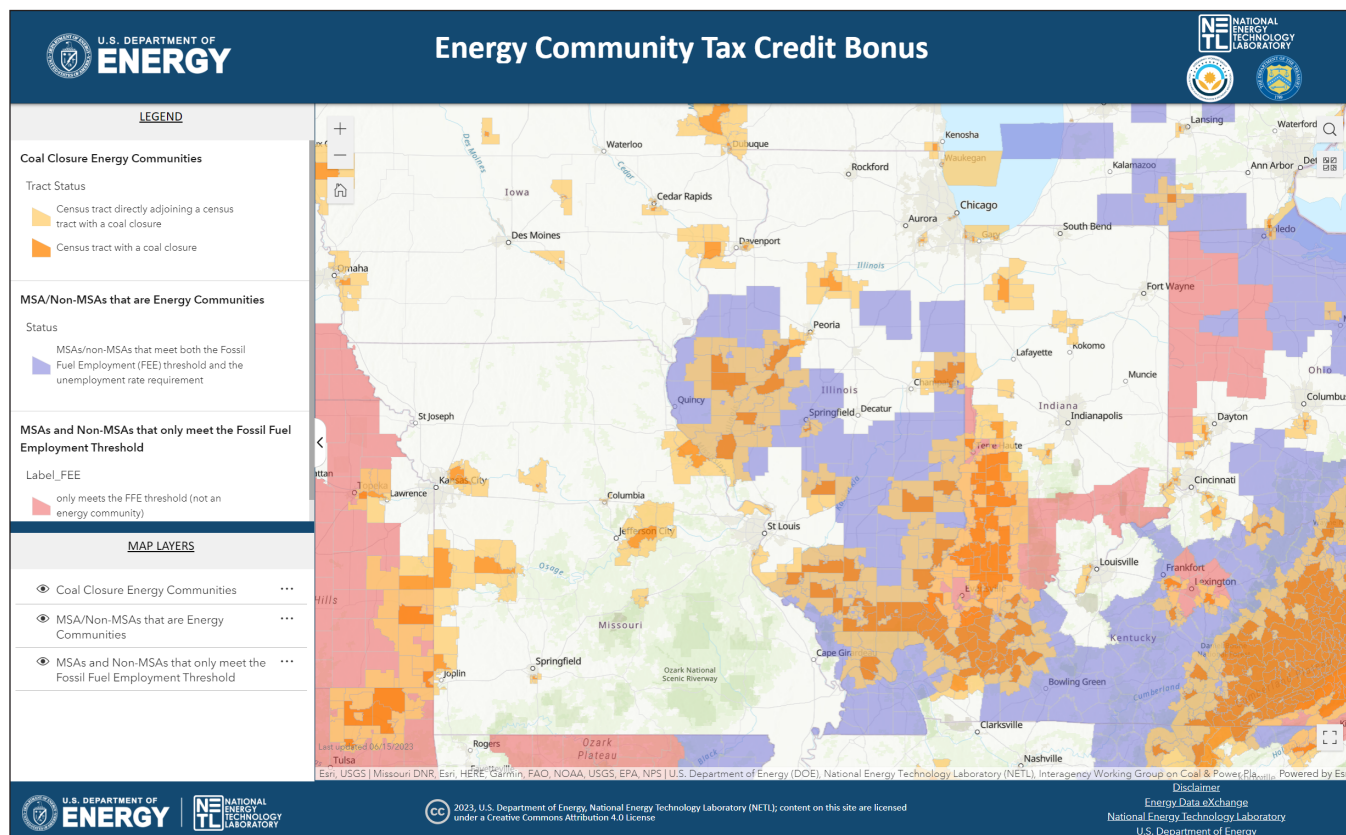


Figure 1: US Department of Energy Energy Community Tax Credit Bonus map showing eligible energy communities within Illinois. (Image from “Energy Community Tax Credit Bonus,” US Department of Energy, accessed February 27, 2024, <https://energycommunities.gov/energy-community-tax-credit-bonus/>. Used under CC 4.0)



Superfund sites or other sites subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, and other federal environmental statutes do not qualify as brownfields.

## Coal closure eligibility

Clean energy projects located in or adjacent to census tracts where a coal mine has closed since 1999 or a coal-fired electric plant has closed since 2009 are eligible for an energy community bonus credit. For mine closure eligibility, an underground or surface mine must have an “abandoned” or “abandoned and sealed” status since December 31, 1999, in the Department of Labor’s Mine Safety and Health Administration records (the Mine Data Retrieval System).

Retired coal-fired electric plants must be classified as retired since December 31, 2009, by the Energy Information Administration (EIA) (EIA Form 860 or 860M ). The EIA data classifies the coal-generating units by year and lists the units by primary fuel source including anthracite coal, bituminous coal, lignite coal, refined coal, coal-derived synthesis gas, subbituminous coal, and waste/other coal. See IRS Notice 2023-29 for more information on the “coal closure category” including details on how coal mines and coal-fired electric generating units qualify for the bonus credit.<sup>6</sup>

Census tracts directly adjoining a closed coal mine or retired coal-fired electric generating unit qualify as an energy community. These tracts are listed and can be found on the Energy Community Tax Credit Bonus mapping tool (see figure 1 on previous page).

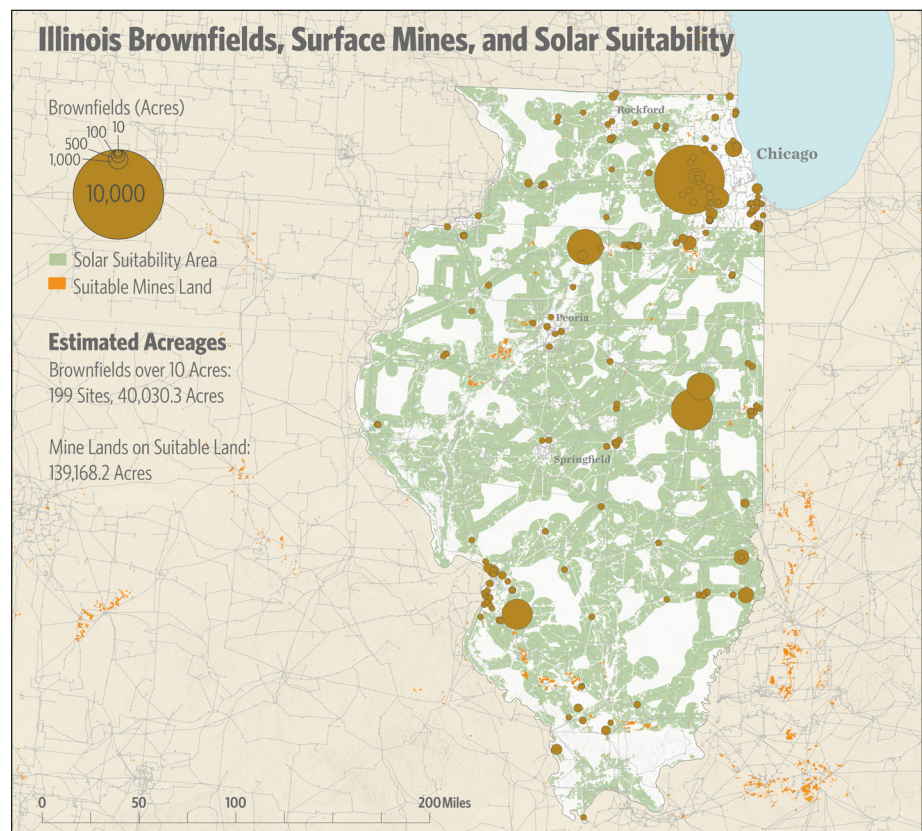
## Location and placed in service criteria

Energy community projects must meet location and timing criteria to qualify for the ITC or PTC bonus credit. To start claiming a tax credit, projects must be located

in an energy community during the taxable year and must be placed in service/begin generating electricity by a specified placed-in service date or have started construction (generally, incurred at least 5 percent of the total project cost). Which timing criteria is used depends on whether the project is claiming the ITC or the PTC.<sup>7</sup>

## Illinois’ opportunities for solar on brownfields development

Illinois has nearly 140,000 acres of former mined lands and over 40,000 acres of brownfields suitable for solar development. Figure 2 shows these suitable sites with the capacity to host solar development larger than 1MW. In addition to the federal incentives for energy communities, the Illinois Clean Energy and Equitable Jobs Act (Public Act 102-0662), or CEJA, put in place several policy, regulatory, and programmatic initiatives to accelerate clean energy deployment, increase the state’s renewable portfolio standard, set clean energy procurement targets, and provide new funding.



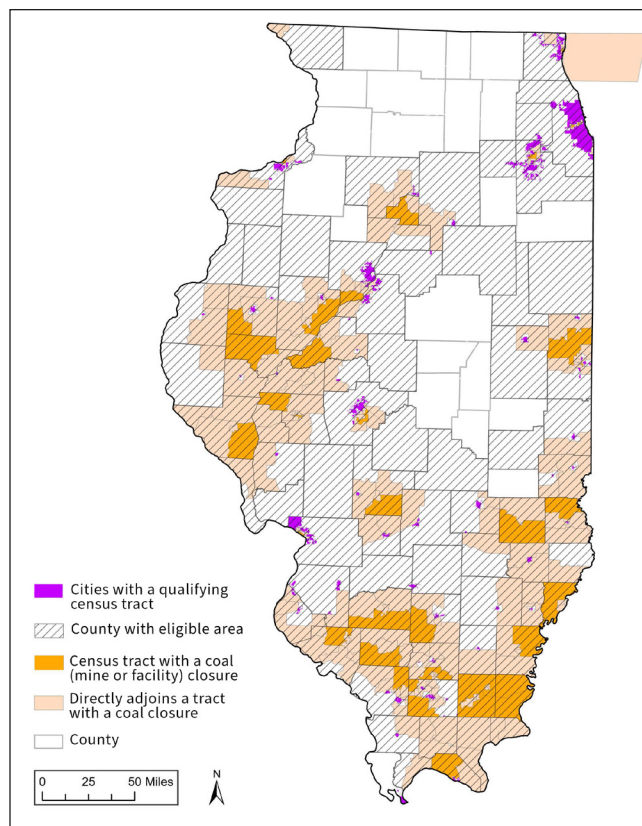
**Figure 2:** Brownfield and minelands with the potential capacity to host renewable development larger than 1 MW. (Credit: The Nature Conservancy. For more information, visit [www.nature.org/miningthesun](http://www.nature.org/miningthesun).)

CEJA expanded the Illinois Power Agency's procurement of renewable energy credits (RECs) from brown-field solar projects from 2 to 3 percent of the state's total solar procurement. Over half (55 percent) of the total procurement must be met through new solar, of which 3 percent must be from brownfield solar projects. The Illinois Power Agency has developed competitive procurement plans and processes to obtain RECs from brownfield solar resources.

The new CEJA allowance for brownfield solar expanded eligibility to include projects located at former coal mines. The Illinois Power Agency Act §1-10 defines brownfields somewhat differently than the federal brownfield category described above. Qualifying projects are either

- interconnected to an electric utility, a municipal utility, a public utility, or an electric cooperative (all as defined in statute) and located at sites regulated by the US EPA under CERCLA or the Corrective Action Program of the Resource Conservation and Recovery Act (both as amended) or at sites regulated by the Illinois EPA under the state Site Remediation Program or Solid Waste Program; or
- located at former coal mine sites that have met all state and federal remediation and clean-up requirements.

CEJA also allows the agency to consider "other approaches" in addition to competitive procurements for procuring RECs from brownfield solar. See local jurisdictions with coal closures and retirements in figure 3.



**Figure 3:** Illinois local government jurisdictions with coal closures and retirements. (Data from "Energy Community Tax Credit Bonus," US Department of Energy, <https://energycommunities.gov/energy-community-tax-credit-bonus/>.)

## Notes

<sup>1</sup> "IRS, Treasury update Notice 2023-29 related to energy community bonus credit amounts under the Inflation Reduction Act," Internal Revenue Service, June 15, 2023, <https://www.irs.gov/newsroom/irs-treasury-update-notice-2023-29-related-to-energy-community-bonus-credit-amounts-under-the-inflation-reduction-act>.

<sup>2</sup> "H.R.5376 - Inflation Reduction Act of 2022," Congress.gov, last updated August, 16, 2022, <https://www.congress.gov/bill/117th-congress/house-bill/5376>.

<sup>3</sup> "H.R.5376 - Inflation Reduction Act of 2022," Congress.gov.

<sup>4</sup> "Cleanups in My Community," US Environmental Protection Agency, last updated July 18, 2023, <https://www.epa.gov/cleanups/cleanups-my-community>.

<sup>5</sup> "Energy Community Bonus Credit Amounts under the Inflation Reduction Act of 2022," Internal Revenue Service, accessed February 27, 2024, <https://www.irs.gov/pub/irs-drop/n-23-29.pdf>.

<sup>6</sup> "Energy Community Bonus Credit Amounts," IRS.

<sup>7</sup> For the PTC bonus credit under §§ 45 and 45Y, the qualified facility or energy project must be located in an energy community during the taxable year. Both tax credit requirements guarantee that the project will be able to claim the tax credits for the duration of the project's tax credit period. The tax credits use the "beginning of construction" standard, which allows projects to qualify once they have demonstrated the start of construction through on-site or off-site physical work of a significant nature or by paying for or incurring more than 5 percent of the total cost of the project (the Safe Harbor provision), and then finishing the project within a defined period. For the purposes of §§ 48, 48E, 45, and 45Y, projects qualify if they have begun construction on or after January 1, 2023.