



November 4, 2022

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
P.O. Box 7604,
Ben Franklin Station
Washington, DC 20044

Re: Notice 2022-51 (“Notice”), Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

To whom it may concern:

D. E. Shaw Renewable Investments (“DESRI”) is one of the country’s leading renewable energy independent power producers. DESRI currently owns, operates, or has a signed power purchase agreement in place with respect to more than 6,000 MW of solar and wind assets in the United States across over 70 projects, as well as more than 5,000 MW of solar projects in development across the United States.

DESRI appreciates the opportunity to submit comments to in response to the Notice to inform the development of guidance implementing the provisions of the Inflation Reduction Act (“IRA”).

We are submitting this commentary because guidance is needed to clarify circumstances under which a renewable energy project located near a census tract with a retired coal-fired generator can be considered to be located in an “energy community” for purposes of §45(b)(11)(B)(iii) of the IRA.

§45(b)(11)(B) of the IRA provides that renewable energy projects can qualify for a 10% investment tax credit adder by being sited in an “energy community”. Under §45(b)(11)(B) of the IRA, an “energy community” means, *inter alia*, “A census tract (I)(aa) in which a coal mine has closed after December 31, 1999; or (bb) in which a coal-fired electric generating station has been retired after December 31, 2009; or (II) **which is directly adjoining to any census tract described in [§ 45(b)(11)(B)(iii)](I).**”

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As recognized by the IRA, the impact that retirement of a coal generator or mine has on the community (e.g., job losses and reduced economic activity) extend beyond the census tract in which the retired plant or mine is located. As such, the IRA seeks to capture nearby areas in §45(b)(11)(B)(iii). However, if the “energy community” qualification for purposes of §45(b)(11)(B)(iii) is interpreted to require the siting of a project in or directly neighboring a census tract in which a coal generator or coal mine has been retired, §45(b)(11)(B)(iii) will disproportionately and arbitrarily promote development of projects in areas where census tracts are larger (often areas with lower population density). This can have the effect of disincentivizing development of energy projects in more populated areas (which contain significantly smaller census tracts), which are areas of the highest load (i.e., areas of the U.S. with the greatest electricity demand).

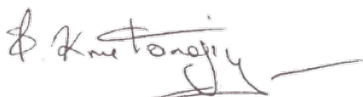
In light of the foregoing, Treasury guidance should clarify that a project is in a “directly adjoining” census tract for purposes of §45(b)(11)(B)(iii)(II) if it is sited (i) within a census tract directly adjacent to the applicable census tract and/or (ii) within a 100-mile radius of a retired coal-fired generator or coal mine. Clarifying the definition in this fashion will more consistently incentivize development in areas with large and small census tracts, thereby better promoting renewable energy development that can replace lost jobs and revenue resulting from a coal unit or coal mine retirement. The bright line second prong will also allow renewable energy development to proceed when there is uncertainty with respect the potential future changes to the boundaries of a census tracts. Without such guidance, renewable energy stakeholders may forego opportunities to develop projects in areas that have significant new capacity needs solely because the applicable census tracts are small or may be subject to unpredictable redesignations.

Who We Are

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Sincerely,

D. E. Shaw Renewable Investments, L.L.C.

By: 

Name: Stan Krutonogiy
Title: Authorized Signatory