



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 more than 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”).

The Notice requested feedback on the following question related to the energy community requirements under §45(b) of the IRA:

Which source or sources of information should the Treasury Department and the IRS consider in determining census tracts that had a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009, under § 45(b)(11)(B)(iii)? How should the closure of a coal mine or the retirement of a coal-fired electric generating unit be defined under § 45(b)(11)(B)(iii)?

575 Fifth Ave
35th Floor
New York, NY 10017

(212) 478-0000
FAX (212) 478-0100

Proposed Clarifications as to when a Coal-Fired Electric Generating Unit Should be Deemed “Retired” for Purposes of §45(b)(11)(B)(iii) of the IRA

“Retirement” Should Recognize the Labor Deployed During Plant Decommissioning

“Retirement” of a coal-fired electric generating unit under IRA § 45(b)(11)(B)(iii) should be defined in a manner that will (i) provide certainty to developers and other stakeholders as to whether the 10% energy community adder will apply to the project in question, and (ii) promote and realize the economic development objectives of the energy community provisions of the IRA.

The definition of “retirement” should account for the fact that between a coal generator’s cessation of operations and its full retirement, fossil-fuel industry workers continue to actively work on site. The decommissioning process extends meaningfully beyond the date that energy was last generated and involves compliance with permits, demolition of buildings, removal of equipment, etc., can require substantial time and labor resources to complete. As such, if the definition of retirement is tied to the cessation of generation, a “decommissioning tail” must be added to such date to accurately reflect the true retirement date.

Because developers and other stakeholders need a bright line test to determine when a project has been retired, and the process for decommissioning can vary from project to project and may not be fully knowable to a third-party, a fixed amount of time (e.g., 36 months) from the cessation of generation should be built into the definition of retirement, which recognizes the extensive labor and other resources deployed during the decommissioning process.

For the foregoing reasons, a coal-fired electric generating unit should be deemed to have been “retired” after December 31, 2009 for purposes of § 45(b)(11)(B)(iii) if the unit has ceased generation on or after December 31, 2006 (thereby building a 3-year decommissioning tail into the date set forth in the IRA).

Completion of Retrofitting as “Retirement”

The definition of retirement of a coal-fired generation unit should also accommodate the retrofitting of a coal-fired generating unit for an alternative fuel source. Altering a plant’s fuel source (e.g., from coal to natural gas) should constitute a “retirement” of the existing coal-fired generating unit because such alterations (i) make an existing coal generating unit physically incapable of using coal as a fuel source and (ii) advance the broader policy agenda behind the energy community provisions of the IRA by promoting the training of new workers and retraining of coal workers in the construction and operation of a different plant.

Conclusion

For the reasons stated above, Treasury should issue guidance that clarifies that a coal-fired electric generating unit should be deemed to have been “retired” after December 31, 2009 for purposes of § 45(b)(11)(B)(iii) if:

1. The unit has ceased generation on or after December 31, 2006; or
2. The unit has been retrofitted to operate on an alternative fuel source on or after such date.

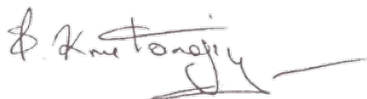
Who We Are

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Sincerely,

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

By:

A handwritten signature in black ink, appearing to read "S. Krutonogiy", with a horizontal line extending to the right.

Name: Stan Krutonogiy
Title: Authorized Signatory