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DISTRIBUTED WIND ENERGY ASSOCIATION

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Response to 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

Notice 2022-51

November 4, 2022

Distributed Wind Energy Association
P.O. Box 721866
Norman, OK 73070
info@distributedwind.org
www.distributedwind.org

Dear Treasury Department and IRS,

The Distributed Wind Energy Association (DWEA) is a national trade association representing the sector of the wind industry that designs, finances, manufactures, installs and supports wind turbines of all sizes installed at places where people live and work. Distributed wind energy systems are mostly installed behind-the-meter to offset utility power purchase and reduce energy costs.

We are pleased to offer the following responses to the questions posed in the RFC.

.01 Prevailing Wage Requirement

(1) Section 45(b)(7)(A) provides that a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, which is commonly known as the Davis-Bacon Act. Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A)?

DWEA Response:
Yes, we believe guidance is necessary.

Section 45(b)(7)(A) makes Davis-Bacon prevailing wage requirements apply to the "construction, alteration, or repair" of a qualified facility; however, it does not provide any

additional specificity concerning which activities that are covered and non-covered. Such clarification would provide much needed certainty regarding the applicability of the increased credit amount and will greatly enhance the ability of project developers and owners to engage with contractors and subcontractors and, in turn, create substantial new employment opportunities for laborers and mechanics in a timely fashion.

We recommend that the Treasury Department and IRS issue guidance clarifying that the terms "construction, alteration, or repair" shall not include maintenance work required for the continued operation of a facility, assembly, installation and replacement of machinery, parts and consumables of a facility, or work necessitated by casualty impairing the ability of a facility to return to operation. The US Department of Energy (DOE) adopted similar limitations it promulgated 48 CFR §970.2204-1-1 (Administrative controls and criteria for application of the Davis-Bacon Act in operational and maintenance activities). Following DOE's specific and practical approach, we recommend that, for purposes of the Inflation Reduction Act of 2022, Davis-Bacon prevailing wage requirements should not apply to the following categories of work and services described as "non-covered" under Davis-Bacon pursuant to 48 CFR §970.2204-1-1:

- "Work and services that are a part of operational and maintenance activities or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and/or repair work." 48 CFR §970.2204-1-1 (a)(2)

- "Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment. However, it is noted that these activities are covered if they are part of, or would be a logical part of, the construction of a facility, or if construction-type work which is not 'incidental' to the overall effort is involved." 48 CFR §970.2204-1-1 (a)(3)

- "Emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident, or other casualties, and to restart the operational activity following the casualty. Work which is not directly related to restarting the activity or which involves rebuilding or replacement of a structure, structural components, or equipment is excluded from this category." 48 CFR §970.2204-1-1 (a)(6)

Clarification that Davis-Bacon prevailing wage requirements do not apply to these particular categories of work (and, by implication, do apply to all categories of work falling within the scope of "construction, alteration, or repair" will provide necessary certainty for developers, builders, owners and operators of distributed wind energy facilities (and each of their respective contractors and subcontractors), to proceed without delay in recruiting, hiring and retaining the appropriate workforce for each category of work required to construct and operate these qualified facilities over the course of the applicable periods.

(2) Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for failure to satisfy prevailing wage requirements. What should the Treasury

Department and the IRS consider in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements?

DWEA Response:
No comment.

(3) What documentation or substantiation should be required to show compliance with the prevailing wage requirements?

DWEA Response:
No comment.

(4) Is guidance for purposes of § 45(b)(7)(A) needed to clarify the treatment of a qualified facility that has been placed in service but does not undergo alteration or repair during a year in which the prevailing wage requirements apply?

DWEA Response:
No comment

(5) Please provide comments on any other topics relating to the prevailing wage requirements for purposes of § 45(b)(7)(A) that may require guidance.

DWEA Response:
No comment.

.02 <u>Apprenticeship Requirement</u>

(1) Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?

DWEA Response:
No comment.

(2) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.

(a) What, if any, clarification is needed regarding the good faith effort exception?

DWEA Response:
No comment.

(b) What factors should be considered in administering and promoting compliance with this good faith effort exception?

DWEA Response:
No comment.

(c) Are there existing methods to facilitate reporting requirements, for example, through current Davis-Bacon reporting forms, current performance reporting requirements for contracts or grants, and/or through DOL's Registered Apprenticeship Partners Information Management Data System (RAPIDS) database or a State Apprenticeship Agency's database?

DWEA Response:
No comment.

(3) What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements in § 45(b)(8)(A), (B), and (C), or the good faith effort exception?

DWEA Response:
No comment.

(4) Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

DWEA Response:
Section 45(b)(8)(A)(i) provides that a taxpayer satisfies the apprenticeship requirements with respect to the construction of any qualified facility if the taxpayer ensures that not less than the applicable percentage of the total labor hours of the "construction, alteration, or repair" work (including such work performed by any contractor or subcontractor) with respect to such facility is, subject to § 45(b)(8)(B), performed by qualified apprentices.

As with the Davis-Bacon prevailing wage requirements discussed above, further guidance regarding the scope of work covered and not covered by the terms "construction, alteration or repair, would help contractors and subcontractors effectively and expeditiously target their apprenticeship programs to covered work so that they are well-positioned to be engaged by developers of qualified facilities. Accordingly, we recommend that the Treasury Department and IRS provide guidance indicating that application of the apprenticeship requirements of the Inflation Reduction Act of 2022 to "construction, alteration, or repair" work does not include maintenance work required for the continued operation of a facility, assembly, installation and replacement of machinery, parts and consumables of a facility, or work necessitated by casualty impairing the ability of a facility to return to operation and that the categories for non-coverage be the same or similar to those delineated in 48 CFR §970.2204-1-1 (a)(2), (3) & (6).

.03 Domestic Content Requirement

(1) Sections 45(b)(9)(B) and 45Y(g)(11)(B) provide that a taxpayer must certify that any steel, iron, or manufactured product that is a component of a qualified facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. 661).

(a) What regulations, if any, under 49 C.F.R. 661 (such as 49 C.F.R. 661.5 or 661.6) should apply in determining whether the requirements of section §§ 45(b)(9)(B) and 45Y(g)(11)(B) are satisfied? Why?

DWEA Response:

We believe 49 C.F.R. 661.5 is an imperfect guide for the domestic content rules needed to implement 45(b)(9)(B) and 45Y(g)(11)(B) and that it would be best if the Treasury Department provided direct guidance. For example, the component exemption in 661.5(c) and the definition of "component" in 661.3 conflict with the intent of the legislation and the use of the term "component" in § 45(b)(9)(B) and 45Y(g)(11)(B). Since the "end product" or "qualifying facility" for a wind turbine is composed of many components (blades, nacelle, tower, controls, etc.), as with other qualifying technologies, this would seem to provide a wholesale exemption to the "Buy America Requirements". The requirement that the origin, domestic or foreign, of the iron, steel and manufactured products that are incorporated into a qualifying facility will need to be accounted for to determine whether the 10% bonus qualifying domestic percentage of 40% is achieved is straightforward. Project developers will need this accounting from their vendors and suppliers in order to provide the taxpayer with an appropriate statement of qualification for the bonus, which then will allow the taxpayer to provide the certification required in the legislation.

(b) What should the Treasury Department and the IRS consider when determining "completion of construction" for purposes of the domestic content requirement? Should the "completion of construction date" be the same as the placed in service date? If not, why?

DWEA Response:

We do not recommend that "completion of construction" and "placed in service" dates be the same. "Placed in service" for distributed renewable energy projects is at the mercy of the utility company. Typically, 99% of the project cost is incurred upon completion of physical construction. However, "placed in service" could be delayed one week to many months for renewable energy projects based on interconnection queues, utility delays, etc. Since credits are based on tax filing dates, this could cause significant financial burdens on taxpayers. Therefore, we suggest "completion of construction" to be the date when physical construction is completed.

(c) Should the definitions of "steel" and "iron" under 49 C.F.R. 661.3, 661.5(b) and (c) be used for purposes of defining those terms under §§ 45(b)(9)(B) and 45Y(g)(11)(B)? If not, what alternative definitions should be used?

DWEA Response:

Neither "steel" or "iron" are defined in 661.3 and the requirements in 661.5(b) are not a definition. Since definitions for "steel" and "iron" were excluded from 661.3 we surmise that they do not need clarifying definitions.

(d) What records or documentation do taxpayers maintain or could they create to substantiate a taxpayer's certification that they have satisfied the domestic content requirements?

DWEA Response:

Taxpayers will rely on a certification provided by the project developer that substantiates the qualification and that is the documentation they should maintain. However, should the taxpayer's claim be challenged by the IRS, the project developer should be prepared to substantiate the basis of their certification to the taxpayer. Thus, a project developer should maintain records from its suppliers concerning domestic content and the accounting they have used to determine whether the appropriate adjusted percentage was achieved. Those records should be available to the IRS upon request.

(2) Sections 45(b)(9)(B)(iii) and 45Y(g)(11)(B)(iii) provide that manufactured products that are components of a qualified facility upon completion of construction will be deemed to have been produced in the United States if not less than the adjusted percentage of the total costs of all of such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.

(a) Does the term "component of a qualified facility" need further clarification? If so, what should be clarified and is any clarification needed for specific types of property, such as qualified interconnection property?

DWEA Response:

The Treasury Department should clarify that this provision does not constitute an alternate path for the qualification of manufactured products for the credits provided in 45X.

(b) Does the determination of "total costs" with regard to all manufactured products of a qualified facility that are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States need further clarification? If so, what should be clarified? Is guidance needed to clarify the term "mined, produced, or manufactured"?

DWEA Response:
No comment.

(c) Does the term "manufactured product" with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified? Is guidance needed to clarify what constitutes an "end product" (as defined in 49 C.F.R. 661.3) for purposes of satisfying the domestic content requirements?

DWEA Response:
For wind turbines we recommend that the "manufactured product" be defined as including the blades, nacelle, electronics and tower needed to construct an operational qualifying wind energy facility.

(d) Does the adjusted percentage threshold rule that applies to manufactured products need further clarification? If so, what should be clarified?

DWEA Response:
If we are understanding this correctly, the Treasury Department should clarify that the adjusted percentage should not be applied to both manufactured products or components and the completed qualifying facility. Otherwise, the effective adjusted percentage could be lowered, for example, to 40% of 40% or 16% if a component with 40% domestic content is deemed to be made in the U.S. and counted as 100% domestic for the purposes of the taxpayer's certification.

(e) Does the treatment of subcomponents with regard to manufactured products need further clarification? If so, what should be clarified?

DWEA Response:
We recommend that the Treasury Department set a threshold percentage amount of the cost of a subcomponent of a manufactured product below which a manufacturer can disregard the origin of that sub-subcomponent in determining the subcomponents domestic content. For example, discrete components of a circuit board that cost less than 5% of the total manufacturing cost of that board can be excluded. It would be a huge burden on manufacturers if every resistor, screw and wire had to be documented for every unit produced and archived for future use in a taxpayer audit.

(3) Solely for purposes of determining whether a reduction in an elective payment amount is required under § 6417, §§ 45(b)(10)(D) and 45Y(g)(12)(D) provide an exception

for the requirements contained in §§ 45(b)(9)(B) and 45Y(g)(10)(B) (respectively) if the inclusion of steel, iron, or manufactured productions that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent or relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

(a) Does the determination of "overall costs" and increases in the overall costs with regard to construction of a qualified facility need further clarification? If so, what should be clarified?

DWEA Response:
No comment.

(b) What factors should the Secretary include in guidance to clarify when an exception to the requirements under section §§ 45(b)(10)(D) and 45Y(g)(12)(D) applies?

DWEA Response:
We recommend setting a high standard for the "not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality" exemption because otherwise it will have a significant dampening effect on the legislation's intent of ramping up domestic production of iron, steel and manufactured products used in qualifying products.

What existing regulatory or guidance frameworks, such as the Federal Acquisition Regulation (FAR) and Build America Buy America (BABA) guidance, may be useful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?

DWEA Response:
FAR accounting standards compliance should not be required of manufacturers solely for the purpose of documenting domestic content.

(c) Do the "sufficient and reasonably available quantities" and "satisfactory quality" standards need further clarification? If so, what should be clarified?

DWEA Response:
See our response to .03(3)(b) above.

(4) Sections 48 and 48E have domestic content bonus amount rules similar to other provisions of the Code. Section 48(a)(12) has domestic content requirement rules similar to § 45(b)(9)(B) and § 48E(a)(3)(B) has domestic content rules similar to the rules of § 48(a)(12). What should the Treasury Department and the IRS consider in providing guidance regarding the similar domestic content requirements under § 48(a)(12) and § 48E(a)(3)(B)?

DWEA Response:
DWEA's comments on §§ 45 and 45Y are applicable to § 48.

(5) Please provide comments on any other topics relating to the domestic content requirements that may require guidance.

DWEA Response:
No comment.

.04 <u>Energy Community Requirement</u>

(1) Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community. What further clarifications are needed regarding the term "located in" for this purpose, including any relevant timing considerations for determining whether a qualified facility is located in an energy community? Should a rule similar to the rule in § 1397C(f) (Enterprise Zones rule regarding the treatment of businesses straddling census tract lines), the rules in 26 C.F.R. §§ 1.1400Z2(d)-1 and 1.1400Z2(d)-2, or other frameworks apply in making this determination?

DWEA Response:
"Located in" should mean that the generating asset "i.e., power plant" is producing power and is physically located in the region thus defined as an energy community. We have concerns about MSA's and non-MSA's being used as they are too large of an area and furthermore there are many areas in the US that would qualify as an energy community that are not registered as MSA's. See response to questions #3. If and when the brownfield definition is clarified than located in a brownfield should be sufficient as it can be a more discrete defined definitions of area especially with the suggestions of improvement to the brownfield definition we provide. Additionally, we recommend a 1-mile radius is applied around a brownfield for eligible energy projects so as not to potentially disturb hazardous soil or content in the ground. For instance, in a capped brownfield or remediated brownfield, often the hazardous material is left on site. Boring into the actual contaminated material for wind/solar foundations is costly and could create more disturbance and/or contamination. So, if a 1 mile boundary is used for the located in definition of a brownfield, the wind/solar project can still be useful without disturbing the potentially hazardous material. This 1-mile boundary for brownfields (contaminated sites) is a practice used in New England for new real estate purchase.

(2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?

DWEA Response:

The current definition of a "brownfield" is problematic and requires updating due to exclusions that prohibit sites that should logically be qualified as a brownfield.

Per CERCLA 42 U.S. Code § 9601 - Definitions

(A) In general.— The term "brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(B) Exclusions.—The term "brownfield site" does not include—

(i) a facility that is the subject of a planned or ongoing removal action under this subchapter;
(ii) a facility that is listed on the National Priorities List or is proposed for listing;
(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this chapter;
(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321) [33 U.S.C. § 1251 et seq.], the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);
(v) a facility that—
(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and
(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;
(vi) a land disposal unit with respect to which—
(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and
(II)closure requirements have been specified in a closure plan or permit;
(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;
(viii) a portion of a facility—
(I)at which there has been a release of polychlorinated biphenyls (PCB's); and
(II)that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26.

It is helpful to note the following language in section C

(C) Site-by-site determinations.—
Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 9604(k) of this title to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

(D) Additional areas.—For the purposes of section 9604(k) of this title, the term "brownfield site" includes a site that—
(i) meets the definition of "brownfield site" under subparagraphs (A) through (C); and
(ii)
(I) is contaminated by a controlled substance (as defined in section 802 of title 21);
(II)
(aa) is contaminated by petroleum or a petroleum product excluded from the definition of "hazardous substance" under this section; and
(bb) is a site for which there is no viable responsible party and that is determined by the Administrator or the State, as appropriate, to be a site that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site under this chapter or any other law pertaining to the cleanup of petroleum products; and
(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or
(III) is mine-scarred land.

To be abundantly clear brownfields should include petroleum or petroleum products, PCB's, PFA's, mine scarred lands, and all the exclusions highlighted above in section B.

(3) Which source or sources of information should the Treasury Department and the IRS consider in determining a "metropolitan statistical area" (MSA) and "non-metropolitan statistical area" (non-MSA) under § 45(b)(11)(B)(ii)? Which source or sources of information should be used in determining whether an MSA or non-MSA meets the threshold of 0.17 percent or greater direct employment related to the extraction, processing, transport, or storage of coal, oil, or natural gas, and an unemployment rate at or above the national average unemployment rate for the previous year? What industries or occupations should be considered under the definition of "direct employment" for purposes of this section?

DWEA Response:

We find potential challenges with MSA or non-MSA as useful definitions as they could be too broad. They often encompass an exceptionally large area and this creates challenges in determining whether the MSA or non-MSA meets the required thresholds to qualify. A community or county that is heavily negatively affected by oil and gas or coal mining (extraction or low employment) could be ruled out because it will get grouped into a large MSA that is overwhelmingly prosperous or unrelated to extraction of fossil fuels. Local jurisdiction or municipality level definitions are more helpful in determining impact and designation of an "energy community", and the taxes from direct employment can be assessed as local.

(4) 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)?

DWEA Response:

Qualified facility (QF) as defined by the Public Utility Regulatory Policies Act of 1978 (PURPA) is the best definition to be used be used for determining the closure dates of a Coal fired plant. An owner or operator of a generating facility with a maximum net power production capacity of greater than 1 MW (1000 kW), i.e., a Coal fired plant, may obtain QF status by either submitting a self-certification or applying for and obtaining a Commission certification of QF status, and must do so by completing and electronically filing a Form No. 556 with the Federal Energy Regulatory Commission FERC). This registration is a federal requirement and is available via the FERC. Each state regulatory authority has access to where the QF is and its operating status by law. QF status is required to be maintained by the owner / operator.

That is definition of closure is when a QF is non-operating as a QF or has been removed.

(5) For each of the three categories of energy communities allowed under § 45(b)(11)(B), what past or possible future changes in the definition, scope, boundary, or status of a "brownfield site" under § 45(b)(11)(B)(i), a "metropolitan statistical area or non-metropolitan statistical area" under § 45(b)(11)(B)(ii), or a "census tract" under § 45(b)(11)(B)(iii) should be considered, and why?

DWEA Response:

Regarding Brownfield definitions please see responses to questions 1 & 2 in this section.

Census tracts, as defined by census.gov [https://www.census.gov/programs-surveys/geography/about/glossary.html#par_textimage_13] appear to be problematic as the geographic area can be too broad of a definition for an energy community. It is possible that

some cases it can work, i.e. a tribal entity.

(6) Under § 45(b)(11)(B)(ii)(I), what should the Treasury Department and the IRS consider in determining whether a metropolitan statistical area or non-metropolitan statistical area has or had 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas? What sources of information should be used in making this determination? What tax revenues (for example, municipal, county, special district) should be considered under this section? What, if any, consideration should be given to the unavailability of consistent public data for some of these types of taxes?

DWEA Response:

Taxes bills that are linked to businesses related to the extraction, processing, transport, or storage of coal, oil, or natural gas and calculated as a percent of the tax base for a given municipality or county should be sufficient. Per comment #3 we believe MSA's could be too large to determine a greater than 25% taxable impact. We recommend a lower tax threshold of 20%.

(7) Please provide comments on any other topics relating to the energy community requirement that may require guidance.

DWEA Response:

No comment.

.**05 <u>Increased Credit Amount for Qualified Facility With Maximum Net Output of Less than 1 Megawatt</u>**

Section 45(b)(6)(A) provides for an increased credit amount in the case of any qualified facility that satisfies the requirements of § 45(b)(6)(B). One way that a qualified facility can satisfy the requirements of § 45(b)(6)(B) is if it is a facility with a maximum net output of less than 1 megawatt (as measured in alternating current). Similarly, § 48(a)(9)(A) provides for an increased credit amount in the case of any energy project that satisfies the requirements of § 48(a)(9)(B), and one way that an energy project can satisfy the requirements of § 48(a)(9)(B) is if it is a project with a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy. Sections 45Y(a)(2)(B) and 48E(a)(2)(A) also provide similar rules. Does the determination of when a facility or project will be considered to have a maximum net output of less than 1 megawatt need further clarification? If so, what should be clarified?

DWEA Response:

We recommend that the nameplate (max power) capacity in AC Watts used for the purposes of § 45X be used in determining product capacity and that all products on one site be considered as part of a project. Setting up separate business entities for one site so that sub-projects are under 1 MW should not be allowed. Also, rerating of a standard product to qualify for the 1 MW exemptions (e.g., using controls to reduce the maximum power for a 1.25 MW

wind turbine to 1 MW) should not be allowed. This type of derating was often seen for wind turbines in capacity-limited feed-in-tariff programs in the UK and Japan.

We thank you for the opportunity.

Respectfully submitted by,

Michael Bergey
DWEA President
Email: mbergey@bergey.com
Cell: 405-204-6653