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Earthrise Energy, PBC ("Earthrise") is submitting this response to the Treasury Department and IRS's Request for Comment on the Credit Enhancements in the Inflation Reduction Act (Notice 2022-51) related to energy communities. Earthrise is grateful for the opportunity to comment.

Introduction

Earthrise Energy is an independent power producer founded to accelerate the United States' clean energy transition. Earthrise currently owns five natural gas peaking plants with a capacity of nearly 1.7 gigawatts (GW) and has a more than 1.5 GW pipeline of renewables in development in the regions where we operate. Earthrise's comments reflect its experience operating in communities impacted by the country's transition from traditional fossil fuels to renewable energy resources.

Earthrise's comments address the following topics: (1) the source(s) of information used to determine "direct employment" related to the extraction, processing, transport, or storage of coal, oil, or natural gas; (2) the relevant industries or occupations that should be considered under the definition of "direct employment" related to the extraction, processing, transport, or storage of coal, oil, or natural gas; and (3) the definition of "previous year" in the context of determining the unemployment rate of an MSA or non-MSA relative to the national average unemployment rate.

Earthrise Energy's Comments on Specific Sections of Notice 2022-51

Notice 2022-51 Section 3.04 (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?*

Notice 2022-51 Section 3.04 (3): *Which source or sources of information should the Treasury Department and the IRS consider in determining a "metropolitan statistical area" (MSA) and "nonmetropolitan 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?*

(1) Source(s) of Information Used to Determine "Direct Employment" Related to the Extraction, Processing, Transport, or Storage of Coal, Oil, or Natural Gas

The source(s) of information used to quantify the amount of "direct employment" related to the extraction, processing, transport, or storage of coal, oil, or natural gas should be easily quantifiable, internally consistent, and publicly available such that investors (equity, tax equity, and debt) can use said source(s) to make firm, well-informed investment decisions with a high degree of certainty regarding the qualification of an MSA or non-MSA as an energy community, and therefore, regarding the extent of tax credits available to projects located in each MSA or non-MSA. To that end, the Treasury and IRS should utilize public industry-level employment datasets and identify the source(s) of this information.

Two recommended publicly available data sources that can be used to quantify the number of people in a county directly employed in the fossil fuel industry are (1) the U.S. Census Bureau County Business Patterns ("CBP") dataset and (2) the U.S. Bureau of Labor Statistics ("BLS") Quarterly Census of Employment and Wages ("QCEW") dataset. Both datasets contain county-level employment data by industry as defined by North American Industry Classification System ("NAICS") codes. In publishing data at the county level, these datasets allow for a high level of data transparency and allow for a consistent methodology to be applied across the entire country.

Earthrise also encourages the use of a standardized industry classification system such as NAICS, which is publicly documented and accessible. An *industry*-level code system is better suited for the purpose of determining the qualification of a community as an "energy community" (as opposed to an *occupational* code system as used in the U.S. Bureau of Labor Statistics ("BLS") Occupational Employment and Wage Statistics ("OEWS") dataset). The Treasury and IRS's intent to qualify an energy community on the basis of direct employment "*related to* the extraction, processing, transport, or storage of coal, oil, or natural gas" inherently – and correctly – implies that communities that have historically depended on fossil fuel *industry*-related activities, regardless of the number of employees *occupied explicitly* in the "extraction, processing, transport, or storage of coal, oil, or natural gas," rely on such activities to support the community's tax base, provide funds for public services, and create employment opportunities for community residents. For example, an employee working in a company engaged in the "extraction, processing, transport, or storage of coal, oil, or natural gas" directly depends on the continuation of fossil fuel *industry*-related activities to make a living, regardless of whether their job requirements would be defined as fossil fuel-related. An example of this is an Environmental Health and Safety ("EHS") professional who works on coal site remediation but would not be considered directly employed in the "extraction, processing, transport, or storage of coal, oil, or natural gas" under the position's current occupational code (Code 17-3025).

(2) Relevant Industries and Occupations Included in "Direct Employment" Related to the Extraction, Processing, Transport, or Storage of Coal, Oil, or Natural Gas

In determining the relevant industries and occupations to be included in "direct employment" related to the extraction, processing, transport, or storage of coal, oil, or natural gas, Earthrise again encourages the use of a standardized industry-level classification system such as NAICS. Categorizing each NAICS code by qualification status related to the "direct employment" definition would significantly reduce uncertainty associated with the qualification of energy communities under this provision. Specifically, the definition of "processing" as used in the IRA language should be clarified in the IRS's additional guidance by identifying which end products of coal, oil, or natural gas qualify as "processing."

Given the association of petroleum with oil activities, Earthrise suggests all NAICS industry codes related to petroleum (including NAICS Code 324 – Petroleum and Coal Products Manufacturing, NAICS Code 4247 – Petroleum and Petroleum Products Merchant Wholesaler) should be *explicitly* included in (and confirmed to be included in) the intended definition of "processing" and, therefore, contribute to the eligibility of an MSA or non-MSA as an "energy community." The IRS should also explicitly clarify that

NAICS Code 221112 – Fossil Fuel Electric Power Generation and NAICS Code 45431 – Fuel Dealers qualifies under the definition of "processing" of coal, oil, or natural gas.

(3) Definition of "Previous Year" in Determining the Relevant Unemployment Rate of an MSA or Non-MSA Relative to the National Average Unemployment Rate

To qualify as an energy community, the IRA language requires an MSA or non-MSA to have "an unemployment rate at or above the national average unemployment rate for the previous year." Notably, the IRA does not specify the point in time in the development or construction of an energy facility or project from which "previous year" is to be defined. The phrase "previous year" requires additional clarification. For example, the IRA language could be interpreted to mean the relevant unemployment rate in the "previous year" beginning from any number of project milestones, including interconnection application submittal date, offtake agreement date, notice to proceed ("NTP") date, beginning of construction date, energization date, commercial operation date, and so on.

Earthrise recommends that the measurement of "previous year" should utilize the definition and practice that Treasury has adopted for safe harboring equipment to preserve the Investment Tax Credit ("ITC"). Under this guidance, Treasury defined the measurement as the point in time at which the developer has procured a minimum of 5% of the equipment for a project (based on value) or the point at which continuous construction began. For developers and investors to commit to a project, they need to know whether a project qualifies as being part of an energy community and be able to document and prove that it qualifies when they committed to the project. This is particularly important for tax equity investors who provide an important part of the capital structure but are not necessarily involved in day-to-day project development.

Further, Earthrise recommends that "previous year" be clarified to refer to the previous *full calendar* year (as opposed to the use of a rolling 12-month or 4-quarter concept, for example), to avoid adding unnecessary complexity. However, given that annual average unemployment rate data typically takes several months into the next year to publish, projects that evaluate qualification in the first few months of a year may face a situation where the unemployment data for the "previous *full calendar* year" will not be available for several months. In these instances, Earthrise recommends using the *most recent* calendar year data available at the point in time when the project's qualification status is evaluated (based on the equipment purchase or continuous construction process described above). For example, a project that qualifies as of January 2024 should be expected to rely on 2022 annual unemployment data because 2023 annual unemployment data is not available until March 2024. Defining "previous year" as the *most recent* calendar year with publicly available data will help to avoid unnecessary delays in development execution.

Conclusion

The energy community provisions in the IRA represent a powerful incentive for private investors to take action on behalf of communities most impacted by the energy transition. Based on our operating presence in specific communities in Illinois being impacted by the country's clean energy transition, Earthrise's comments and recommendations are intended to help address the challenges being faced in communities traditionally supported by the fossil fuel industry.

Earthrise is grateful to the Treasury Department and the IRS for the opportunity to provide our views on the implementation of this landmark legislation.