Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022

Enhanced Credits – Energy Community

Background

Certain clean energy projects located in an energy community are entitled to increase the clean energy tax credits arising from such projects by 10 percent (in the case of the production tax credit (PTC)) or 10 percentage points (in the case of the investment tax credit (ITC)). The Edison Electric Institute (EEI) requests guidance that will allow its members to accurately determine where energy communities are located to unlock the value that Congress intended to provide on qualifying projects.

Issue

The statutory language defining energy community is not sufficiently specific to allow taxpayers to accurately determine where energy communities are located. EEI is thus requesting the Treasury Department to issue regulations providing the necessary specificity to allow its members to accurately site projects within the targeted energy communities, consistent with Congressional intent.

Proposal

- General rules are needed to help taxpayers determine if a project is located in an energy community as defined in section 45(b)) that should:
    - Provide a safe harbor on the location of energy communities to reduce controversy. A safe harbor provides certainty to taxpayers and the Internal Revenue Service (IRS) in identifying section 45(b)(11)(B)(ii) metropolitan and non-metropolitan statistical area energy communities and section 45(b)(11)(B)(iii) census tract energy communities. EEI recommends providing a safe harbor on which taxpayers may rely when claiming enhanced credits based on an energy community database and mapping tool which would be updated quarterly by the government. Taxpayers should be allowed to submit comments on the proposed database and mapping tool at any time for government consideration. The safe harbor should not restrict a taxpayer in making its own determination of energy community qualification on its tax return based on facts and circumstances.
    - Provide that the determination of an energy community is made at the project level, and if any portion of project is in an energy community, all facilities in the project qualify for the enhanced credit.

  - Provide that a census tract that borders another census tract at any location is sufficient to be a "directly adjoining" census tract.
- Guidance is needed to clarify the meaning of brownfield site under section 45(b)) and should:
  - Provide that brownfield site status may be determined by the taxpayer, without formal brownfield designation by Environmental Protection Agency or other government agency.
  - Define a brownfield site to include the entire project site where any portion of the site is contaminated. This definition will permit equipment, such as turbines, to be located in non-contaminated areas of the site to avoid the impact of pollutants on the equipment.
  - Provide a low threshold for what "complicates" redevelopment (e.g., it caused the taxpayer to incur costs or extended the time required to develop a project) based on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), definition of brownfield site.
  - Designate substances added to petroleum products as pollutants or contaminants to eliminate ambiguity as to whether such sites may qualify based on the CERCLA definition of brownfield site. This specificity is needed because (i) petroleum products are excluded from the definition of "hazardous substance" and (ii) the IRA leaves out the special CERCLA section 101(39)(D)(ii)(II) for sites contaminated by petroleum.
- Guidance is needed to accurately determine a metropolitan statistical area or non-metropolitan statistical area which has local tax revenues related to the extraction, processing, transport, or storage of coal, oil or unemployment rate at or above the national average. Such guidance should:
  - Provide that for determining "related to the extraction, processing, transport, or storage," specified North American Industry Classification System (NAICS) codes, are based on a broad interpretation of terms, including manufacture of petroleum lubricants (as petroleum processing) and retail gasoline of fuel sale (as petroleum transport or storage).
  - Identify the source where a metropolitan and non-metropolitan statistical area can be located and relied on.
  - Provide that 0.17 percent or greater direct employment is determined by dividing employment included within specified NAICS codes by employment under all NAICS codes using BLS data.
  - Provide that local tax revenues are determined using publicly available data of specified tax revenues (e.g., property tax rolls).
  - Provide that the unemployment rate is determined based on unemployment data, and that unemployment is tested in the calendar year prior to project start of construction (determined under existing IRS guidance).
- Clarification on the timing of energy community determination and size of retired coal-fired electric generating units or coal mines.
  - Provide a rule that clarifies that the enhanced credits are available for a qualifying renewable electric generating facility constructed in a census tract energy community once the necessary regulatory approvals for the retirement of the coal-fired electric generating unit have been received, prior to placing the qualifying

electric generating facility in service. This rule is necessary to maintain the ability to generate electricity required for grid reliability during the construction period of the qualifying electric generating facility and before such facility is placed in service and capable of providing electricity to the electric grid which is necessary to maintain reliable electric service.

- Provide that there is no minimum size threshold for purposes of determining a census tract, and that retired subsets of larger mines or generation qualify if those subsets viewed in isolation are sufficient to extract coal or generate electricity.
- Clarify that once a coal-fired electric generating unit is no longer equipped to burn coal to generate electricity it will be considered a retired coal-fired facility.

Support

Treasury is granted broad authority to issue regulations on energy communities that may be necessary to carry out the purposes of that provision. The requested guidance is consistent with the scope of that authority and the intent of IRA to provide incentives for projects to be sited in energy communities.

Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022

Enhanced Credits – Domestic Content

Background

Certain clean energy projects which are constructed utilizing domestic steel, iron and manufactured products are entitled to increased clean energy tax credits available on such projects by 10 percent (in the case of a PTC) or 10 percentage points (in the case of an ITC). Guidance that allows the member companies of the Edison Electric Institute (EEI) to accurately determine domestic content is necessary to unlock the value that Congress intended to provide on qualifying projects.

Issue

The statutory language defining domestic content is not sufficiently specific to allow taxpayers to accurately determine if they qualify for the additional credits. EEI is requesting the Treasury Department to issue regulations providing the necessary specificity to allow its members to determine if the domestic content requirement is satisfied consistent with Congressional intent.

Proposal

- References are made to section 661.5 of title 49, Code of Federal Regulations for steel and iron, but no reference is made for manufactured product. Clarification is necessary regarding components and subcomponents of certain solar, wind, and battery equipment, and whether certain activities that are undertaken in the U.S. qualify as domestic manufacturing.
- Regulations should include a representative list of manufactured product components and steel and iron components. Steel and iron components should be treated as domestic if all manufacturing processes take place in the United States, except metallurgical processes involving refinement of steel additives, irrespective of the source of any raw materials. The steel and iron requirements should only apply to steel and iron products incorporated into the qualified facility as a component, whereas steel and iron products incorporated as subcomponents of a manufactured product component should be subject to the requirements governing that manufactured product component. These limitations are consistent with the Federal Transit Administration's Buy America requirements for steel and iron products. A manufactured product component should be considered domestic if the manufacturing processes for the product take placed in the United States, irrespective of the origin of any subcomponents. For purchased components, the cost should be deemed equal to the purchase price of the component, whereas for components manufactured by the taxpayer, the cost should be deemed to include the cost of all labor and materials incorporated into the component, including allowances for administrative and overhead expenses as well as profit. The regulations should provide that domestic content is quantified based on value added by the addition of a component as opposed to cost of the component. Our understanding is that the value-added concept is the

preference of the Biden Administration for federal procurement. Capturing value added by activities (for example, assembly) within the U.S. would more meaningfully capture domestic content as opposed to merely looking at the origin of components.

- Provide guidance as to when a manufactured product would be considered "domestic." Specifically, for a manufactured product to be treated as "domestic," must all the materials and components of the product be of U.S. origin?
- Provide that a taxpayer may elect to apply the domestic content requirements on a facility basis or at the entire clean energy project basis. This election would not apply to determinations made under the wage and apprenticeship requirements.
- Provide that a taxpayer may rely on a domestic content certification provided by a supplier that the supplier has engaged in a good faith effort to comply with the domestic content requirements.
- Provide that the domestic content additional credit applies to both new and repowered facilities. For repowered facilities, the domestic content requirement applies only with respect to the cost of components installed as part of the repowered project (excluding costs of any used components that remain part of the qualified facility).
- Provide guidance that excludes from the domestic content calculation components the taxpayer concludes in good faith are not domestically available.

Support

Treasury is granted broad authority to issue regulations on domestic content to carry out the purposes of that provision. The requested guidance is consistent with the scope of that authority and the intent of the IRA to provide incentives for the use of domestic content in clean energy projects.