November 4, 2022

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Douglas O'Donnell
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable Tom West
Deputy Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mrs. Batchelder, Mr. O'Donnell, and Mr. West:

The Edison Electric Institute (EEI), on behalf of its members, request guidance from the United States Department of Treasury (the "Treasury Department") regarding provisions §§ 45, 45U, 45Y, 48, and 48E of the Internal Revenue Code (Code), as amended or added by §§ 13101, 13105, 13701, 13102, and 13702, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). In addition, we request guidance with respect to prevailing wage, apprenticeship, domestic content, and energy community requirements for increased or bonus credit amounts under those respective provisions of the Code and the elective credit transfer provisions under § 6418, as added by § 13801 of the IRA. The Treasury Department invited comments on each of these topics on October 5, 2022, in I.R.S. Notice 2022-49, I.R.S. Notice 2022-51, and I.R.S. Notice 2022-50, respectively.

EEI is the trade association that represents all U.S. investor-owned electric companies. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums. Our members represent over 70 percent of the U.S. electric power industry and provide electricity for more than 235 million Americans and operate in all 50 states and the District of Columbia. The electric power industry also supports more than 7 million jobs in communities across the United States and contributes 5 percent to the nation's GDP.

EEI members are committed to getting the energy they provide as clean as they can as fast as they can, without compromising on the reliability and the affordability that their customers value. Our member companies are leaders on clean energy. Carbon emissions from the U.S. power sector were 36 percent below 2005 levels at the end of 2021. These emission levels are as low as they were in 1984, while electricity use is up 72 percent since then.

Electric companies invest more than $130 billion on average each year to make the energy grid stronger, smarter, cleaner, more dynamic, and more secure. Today, 40 percent of all U.S. power generation comes from clean, carbon-free sources, including nuclear energy, hydropower, wind, and solar energy. The clean energy tax credits that were part of the IRA are critical to meeting aggressive emission reductions goals and making the clean energy transition affordable for our customers, especially during these times of rising inflation and supply chain disruptions.

In response to I.R.S. Notice 2022-49, I.R.S. Notice 2022-51, and I.R.S. Notice 2022-50, EEI has identified seven key areas where the Treasury Department can provide greater clarity in the near term to help the industry meet the intent of the IRA. These are:

1. Clarifying that transactions under the section 6418—the new ability to transfer the tax credits—are not taxable under the IRA, among other related issues;
2. Clarifying the expectations for and providing guidance on how electric companies can adequately meet new prevailing wage and labor requirements;
3. Defining the requirements for bonus credits for meeting domestic content and energy community requirements;
4. Affirming that certain safe harbor rules and determinations for marking the start of construction apply for purposes of the IRA, particularly with respect to transitioning between current credits and the new technology-neutral credits in 2025;
5. Clarifying the definition of "gross receipts" for section 45U, which addresses the nuclear Production Tax Credit (PTC) for existing facilities, and how increased capacity for nuclear facilities placed in service after 2024 impacts eligibility under sections 45Y and 48E;
6. Specifying whether the new, separate class of energy property for energy storage technology (EST) is eligible for the investment tax credit (ITC) if it is co-located with a generation facility that qualifies for a PTC; and
7. Ensuring pumped storage is included in the new "energy storage property" definition.

We have included separate documents for each of these seven topics that outline our specific comments in response to the given Notices. Thank you for considering these comments. If you have any questions or need further clarifications, please contact Alex Zakupowsky of Miller &

Chevalier (202-626-5950), or Eric Grey (202-508-5471), Mark Agnew (202-508-5049) or Kristen Siegele (925-413-8899) of EEI.

Sincerely,

Richard F. McMahon, Jr.
Senior Vice President, Energy Supply & Finance
Edison Electric Institute

cc: Jonathan Davidson, Deputy Under Secretary of the Treasury
Shelley Leonard, Treasury Special Counsel
Jarrett Jacinto, Attorney-Advisor, Office of Tax Policy at Treasury
John Morton, Climate Counselor to Treasury Secretary Janet Yellen