

Comment from Estuary Power

Estuary Power Comments Re: Request for Comments on Regulatory Implementation of the Inflation Reduction Act and Section 6417 of the Code Pursuant to Notice 2022-51



Estuary Power LLC

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Reno, Nevada 89501

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Via Federal eRulemaking Portal: <http://www.regulations.gov>

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022--51)
Room 5203
P.O. Box 5203, Ben Franklin Station
Washington, D.C. 20044

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Mr. William M. Paul
Principal Deputy Chief Counsel and Deputy Chief
Counsel (Technical)
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

**Re: Request for Comments on Regulatory Implementation of the Inflation
Reduction Act and Section 6417 of the Code Pursuant to Notice 2022-51**

Dear Ms. Batchelder and Mr. Paul:

Estuary Power LLC is a renewable energy developer, owner, and operator based in Reno, Nevada. Estuary is developing a number of renewable energy projects on Indian Reservations. In order to share the benefits of ownership of renewable energy projects with Indian Tribes, Estuary is developing projects which may be partially owned by Indian Tribes, who are tax-exempt and therefore eligible for direct pay of ITC or PTC, and partially owned by taxable investors.

We respectfully request guidance regarding scenarios in which a project is partially owned by tax-exempt investors (such as Indian Tribes) and partially owned by taxable investors. We suggest that the IRS clarify that direct pay will be permitted to the extent that a partnership or S corporation is owned by tax-exempt investors. For example, if ninety percent (90%) of the partnership interests are owned by tax-exempt investors, then the partnership should be eligible for direct pay for ninety percent (90%) of the credit. Further, the remaining ten percent (10%) of the credits attributable to taxable investors should be eligible to be transferred by the partnership or monetized through a tax equity partnership without any haircut (i.e., consistent with §

6417(d)(2)). Additionally, we request clarification that recapture will not be triggered if ownership of the entity changes so long as the ratio of tax-exempt to taxable ownership does not change by more than a specified percentage.

Further, we respectfully request guidance confirming that Rev. Rul. 78-268, 1978-2 C.B. 10 (which allows proportionate ITC to be recognized by co-owners of an electric generating facility who own the facility as tenants-in-common with tax-exempt entities that are disqualified for ITC purposes) applies if the tax-exempt entities are receiving direct pay of the ITC or PTC.

Respectfully,

A handwritten signature in cursive script that reads "Jill Daniel".

Jill Daniel
Chief Executive Officer
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