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SUBMITTED ELECTRONICALLY

RE: IRS Guidance on Domestic Content Implementation from the IRA

Submitted electronically: www.regulations.gov; Notice 2022-51

I. Background

Jupiter Power LLC ("Jupiter Power") appreciates the opportunity to submit the following comments in response to the request for public comment in the Internal Revenue Service's ("IRS") *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*.

Jupiter Power is a leading developer and owner-operator of battery energy storage systems. Jupiter Power's first stand-alone, utility-scale battery energy storage project commenced commercial operations in 2021. Jupiter Power currently owns and operates a portfolio of 655MWh of stand-alone storage projects, with each project being in front of the meter, utility-scale and over 1MW. Section 48 of the Inflation Reduction Act ("IRA") creates, for the first time, an Investment Tax Credit ("ITC") for use by battery energy storage that is not co-located with solar. For that reason, prompt IRS guidance is crucial in order to achieve the intent of implementing a new ITC that is available for practical, commercial use by stand-alone battery energy storage systems. Further, that guidance should be specific to this new technology application. Jupiter Power offers its expertise and experience with developing and operating significant battery energy storage assets and looks forward to continuing to provide feedback to the IRS.

Jupiter Power's comments at this time focus specifically and intentionally on Section 45 (b)(9) of the IRA regarding domestic content requirements. As an already established leader in developing stand-alone battery energy storage systems, Jupiter Power believes the next step in leading the battery energy storage industry is to leverage the domestic content provisions and use the positions of companies like Jupiter Power, with an established development pipeline and supplier relationships, to expeditiously create a path for domestic manufacturing to supply utility-scale battery energy storage projects.

Interpretations of Section 45 (b)(9) should not be made that would exclude a technology type that is a new recipient of the ITC, and therefore seems intentionally designated to utilize the IRA, and that has the ability to share domestic manufacturing with other IRA beneficiaries, namely electric vehicles. Most importantly, with regards to domestic content, Jupiter Power believes that the

inherently modular physical characteristics of battery energy storage are not representative of some older technologies, and better suited for specifics in application of language regarding manufactured products, components and subcomponents.

These comments are responsive to *the 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, but limited to "SECTION 3. REQUEST FOR COMMENTS .03 Domestic Content Requirement." Jupiter Power appreciates this opportunity to comment on Section 45 (b)(9) of the IRA regarding Domestic Content.

II. QUESTIONS RAISED BY IRS .03 DOMESTIC CONTENT

Q2. 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?

(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?

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

The domestic content rules in Section 48 (and other Code sections similarly introduced or modified by the IRA) explicitly reference that the Federal Transit Authority ("FTA") Buy America rules should be used as a reference point. The FTA provides representative lists[1] and guidance letters[2] to assist taxpayers' understanding of how various items and materials are classified for purposes of the Buy America requirements. Under FTA regulations (and the representative lists and guidance letters), a system, like a battery energy storage system, may be considered an end product.[3] There is uncertainty over how energy projects under the ITC,

[1] 49 C.F.R. § 661.3 app. A; 49 C.F.R. § 661.11 apps. B, C, & D.
[2] *Buy America Guidance Letters*, FED. TRANSIT ADMIN., https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-guidance-letters (last visited Nov. 3, 2022).
[3] 49 C.F.R. § 661.3; *id.* § 661.3 app. A.

including battery storage systems, which are a newer technology, should be analyzed under the FTA precedent.

For taxpayers to comply with domestic content requirements, guidance is needed to understand how the materials and items that compose battery storage systems will ultimately be classified (i.e., as end products, components, or subcomponents) so taxpayers can source and account for such materials and items accordingly. Similar to the examples in the FTA regulations and guidance letters, the table below could be used for battery storage systems, as it is representative of the main items and materials composing such projects. Such a classification system would provide certainty for how various items and materials would be treated for purposes of compliance with the domestic content rules (especially if the FTA's "non-shift" rule[4] is applied with respect to energy projects and facilities under the IRA).

Technology	**End Product**	**Components**	**Subcomponents**
Battery Storage	Battery Energy Storage System	Battery Blocks	Battery Racks and Inverters

It is not the until battery blocks (made up of battery racks and inverters) are integrated that there is the end product of a battery energy storage system. A utility scale battery energy storage system is composed of many numerous racks, which are themselves composed of modules, which in turn are composed of cells. The modules are already incorporated into the racks well before a manufactured product for use in a battery storage system is created.[5] Further, the composition of racks, without the other subcomponents of inverters, is not of any commercial or operative use for a utility-scale battery energy storage project, until combination with the inverters into blocks.

The FTA rules (as noted above) use an end product, component, and subcomponent analysis. The new domestic content rules use the term manufactured product, but reference components in a parenthetical clause. We suggest that best way to incorporate the FTA structure with the domestic content requirement for battery storage systems is to treat components as manufactured products that make up the end projects, and subcomponents of the components as components of the manufactured products. The new domestic content rules do not seem to contemplate the idea of an end product as in the FTA. However, that concept remains useful when analyzing various types of energy projects and products, including application to battery storage.

[4] 72 Fed. Reg. 53,692 (Sept. 20, 2007).
[5] Note, the new section 45X Advanced Manufacturing Production Credit is designed to incentivize the mining of minerals, as well as the building of batteries and modules in the United States. As the table demonstrates, the end products and components of a battery storage system are simply not that granular.

The domestic content rules for battery storage systems require that at least 40 percent of the total costs of all of such manufactured products, including the first level of components of those manufactured products, of such facility are attributable to manufactured products to be mined, produced, or manufactured in the United States. If the FTA categories are used for this analysis, and the battery blocks (manufactured products), as well as the racks and inverters (components) are used to produce a battery storage system here in the United States (end product), the 40 percent test would be met.

III. CONCLUSION

We appreciate the opportunity to respond to this request for comments on the domestic content requirements and look forward to continuing engagement with IRS. There is some uncertainty as to how these new rules apply in the case of battery energy storage systems which are newer themselves than many sources of precedent. However, we believe the inherently modular nature unique to battery energy storage systems lends itself to a rather straightforward analysis under the FTA rules and indicates some intent that battery energy storage systems, as new recipient of the IRA be able to utilize provisions regarding domestic content.