

November 4, 2022

The Honorable Janet L. Yellen
U.S. Secretary of the Treasury
Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203, P.O. Box 7604
Ben Franklin Station, Washington, DC 20044

RE: Notice 2022-51, 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

Dear Secretary Yellen:

(i) Blue Ridge Renewables, LLC, (ii) Corpus Christi Renewables, LLC, (iii) JDP Renewables, LLC, (iv) Swift Creek Renewables, LLC, and (v) Twin Oaks Renewables, LLC (together, the “Project Owners”) submit these comments to the U.S. Department of the Treasury (“Treasury”) on the implementation and administration of certain provisions of the Internal Revenue Code of 1986 (as amended and restated, the “Code”), as amended by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (the “IRA”). The Project Owners appreciate the opportunity to provide Treasury their comments on aspects of the IRA.

Each of the Project Owners produces renewable natural gas (“RNG”) from landfill gas, which is produced by bacterial decomposition of organic matter in the landfill under anaerobic conditions. Two of the landfill gas-to-RNG projects owned and operated by the Project Owners are operating. These are located in Pearland, Texas and Welsh, Louisiana. The remaining Project Owners are currently engaged in the construction of three more landfill gas-to-RNG projects located in Virginia and Texas. These are projected to be placed in service by mid-2023.

Through the IRA and other public efforts, Congress and the Biden Administration have made clear the importance of:

1. Combating climate change, promoting the development of renewable fuels and reducing greenhouse gas emissions;
2. Investing in domestic renewable energy production and manufacturing, creating jobs, expanding domestic supply chains, and increasing US energy security; and
3. Investing in disadvantaged communities, reducing pollution and improving quality of life.

To support these aims, the Project Owners urge Treasury to interpret the reference in Code Section 48(a)(9)(B)(iii) to when a project “begins construction” consistently with prior guidance and the same terminology when used in other portions of Code Section 48 and other federal income tax credits.

With that introduction, the Project Owners’ specific recommendations are set forth below.

I. Treasury should utilize standard beginning-of-construction rules for purposes of determining when a project is required to meet the prevailing wage and apprenticeship requirements

Code Section 48(a)(9) states that the base credit rate shall be multiplied by five times when certain prevailing wage and apprenticeship requirements are met. However, Code Section 48(a)(9)(B)(iii) states that these requirements will apply only to “a project the construction of which begins” before that day that is 60 days after Treasury publishes guidance concerning the prevailing wage and apprenticeship requirements. However, any guidance that Treasury releases must address not only the prevailing wage and apprenticeship requirements, but also the meaning of the “construction of which begins” component of this rule. This phrase, as used in Code Section in Code Section 48(a)(9)(B)(iii), is exactly the same as the statutory language used in the sunset provisions of various current and prior iterations of Code Section 48. Accordingly, the Project Owners urge Treasury to issue guidance concerning this standard that is substantively identical to prior guidance interpreting this concept and to new guidance interpreting this concept in other circumstances under Code Section 48.

The existing beginning-of-construction rules are well established. They are familiar to and understood by both taxpayers and Treasury. The certainty that using established rules provides cannot be understated. Clear and understood rules provide the predictability that financing parties require and that helps developers grow their businesses so that they can build more renewable energy facilities.

For these reasons, the Project Owners suggest that Treasury issue guidance combining the beginning-of-construction rules in Notice 2018-59 and Notice 2021-41 and specifying a four-year continuous construction safe harbor. The Project Owners further suggest that Treasury also specifically state in this guidance that after a taxpayer acquires safe harbored property, any actions taken that would constitute continuous construction demonstrate sufficient development of a project such that safe harbored equipment may be transferred to an unrelated person.¹

Implementing new beginning-of-construction rules would create unnecessary uncertainty regarding interpretation that will reduce the attractiveness of the new credits and increase administrative burden for Treasury. In addition, issuing beginning-of-construction rules in the context of the prevailing wage and apprenticeship requirements that are different from those in other contexts under Code Section 48 would be confusing for taxpayers and only lead to inadvertent and unnecessary error. Moreover, new or different rules are not warranted either under principles of statutory interpretation or for any apparent policy reason. Accordingly, the Project Owners urges Treasury to utilize the existing and understood rules concerning beginning-of-construction requirements in Notices 2018-59 and 2021-41, in the context of the

¹ See Section 8 of Notice 2018-59.

prevailing wage and apprenticeship requirements under Code Section 48(a)(9), and in similar contexts in other sections of the Code concerning U.S. federal income tax credits.

Thank you for considering our comments regarding the interpretation of domestic content requirements set forth by the IRA. We look forward to more guidance around these important issues and encourage you to contact Morrow Energy's Vice President of Operations, Peter Smith, at PSmith@MorrowEnergy.com if we can provide additional context for any of these topics.

Sincerely,

DocuSigned by:

Paul Morrow

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Paul Morrow

Manager

Blue Ridge Renewables, LLC

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