Comment from Ocean Winds North America

See attached file(s) regarding implementation of the Energy Communities, Wage and Apprenticeship Requirements and Domestic Content Bonus Credit provisions of the Inflation Reduction Act. These comments reflect our perspective as the developer of Offshore Wind facilities on the Outer Continental Shelf.

OCEAN WINDS

November 4, 2022

SUBMITTED ELECTRONICALLY

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-49 and Notice 2022-50)
Room 5203
P.O. Box 5203, Ben Franklin Station
Washington, D.C. 20044

The Honorable Lily L. Batchelder
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RE: Treasury Department and IRS Guidance on Energy Communities Implementation from the IRA

Submitted via www.regulations.gov; Notice 2022-51

OW North America LLC, (aka "Ocean Winds" or "OW") is one of the largest and most established global offshore wind power developers with more than 1.5 GWs in operation and is on a trajectory to reach the 2025 target of 5 to 7 GW of projects in operation, or construction, and an additional 5 to 10 GW under advanced development. In 2022, OW's offshore wind gross capacity already operating, contracted or with grid connection rights granted reached 14.6 GW. In the U.S., OW owns a 50% equity stake in Mayflower Wind off the coast of Massachusetts and an 50% equity stake in Bluepoint Wind in the New York Bight, off the coast of New York and New Jersey.

We are writing today about three points regarding the implementation of the Inflation Reduction Act (the "IRA") specifically Section 13101: the "Energy Communities" enhanced credit, the "Wage and Apprentice Requirements", and the "Domestic Content Bonus Credit". We offer these observations in support of the detailed comments of the American Clean Power Association ("ACP") on these topics.

The Energy Communities Provision (Section 130101 of the IRA)

The United States is navigating a critical energy transition. The result of this transition will be cleaner, more reliable energy from secure local sources. However, the process of moving to this new paradigm may be jarring for communities that were home to facilities like coal mines, fossil fuel transportation hubs, and coal-fired power plants. The Energy Communities enhanced credit created by Section 13101 of the IRA is explicitly intended to address that very issue by drawing clean energy investment to those very communities.

This question of community transition is very real for our Mayflower Wind project. Mayflower's South Coast project will interconnect to the wholesale electricity grid (and settle its power sales) at Brayton Point in the town of Somerset Massachusetts – the former site of the largest coal-fired power plant in New England and the quintessential example of an Energy Community.

The Mayflower South Coast project is a prime example of electrical infrastructure put in place for a fossil plant being reused by a renewable energy project. Mayflower's engagement with these Energy Communities is even deeper then just use of that infrastructure, as the project plans to place its Operations and Maintenance Base and office in the City of Fall River, in the adjoining census tract, which is of course also an Energy Community - and the commercial sale of the project's power will occur in the Energy Community of Somerset MA.

President Biden, during his speech at Brayton Point on July 20, 2022, on the eve of enactment of the IRA, laid out the situation clearly:

> Now, let me tell you why we're here at Brayton Point . . .
>
> For over 50 years, this plant supported this region's economy the electricity they supplied, the good jobs they provided, and the local taxes they paid.
>
> But the plant, like many others around the country, had another legacy: one of toxins, smog, greenhouse gas emissions, the kind of pollution that contributed to the climate emergency we now face today . . .
>
> But that's the past, and we're going [] to build a different future with [] with clean energy, good-paying jobs . . .
>
> The converter station here and the substation nearby are the assets that move energy across the power lines.
>
> They'll now move clean electricity generated offshore by the wind [] to power hundreds of thousands of homes onto the grid — putting old assets to work delivering clean energy. This didn't happen by accident. It happened because we believed and invested in America's innovation and ingenuity.
>
> Remarks by President Biden Actions to Tackle the Climate Crisis, Brayton Point Power Station, Somerset, Massachusetts (July 20, 2022) available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/07/20/remarks-by-president-biden-on-actions-to-tackle-the-climate-crisis/

The Energy Communities ("EC") provision of the IRA was explicitly intended to induce and reward exactly this kind of investment decision: bringing clean energy infrastructure and efforts to communities that previously relied on fossil fuel-based energy for their economic and employment foundation.[1]

As ACP notes in their comments, "Offshore wind projects will also have direct, economic benefits for ECs, but much of the project will be in federal waters (on the Outer Continental Shelf)."

As ACP also observes, offshore wind projects will literally be tied to, and bring significant investment to, those communities where its interconnection facility is located, where its port facilities (O&M and/or construction) are located or where its power is commercially settled. And therefore, it is very appropriate to deem an offshore project that will have one of these essential functions in an Energy Community to be deemed to be "located in" that Energy Community for the purposes of Section 13101. As projects like Mayflower contend with headwinds like inflation and global supply chain disruptions they are relying on this kind of common-sense interpretation of the IRA, implementing clear congressional intent to support investment in communities targeted for support by this law.

Wage and Apprentice Requirements

The Wage and Apprenticeship Requirements ensure that the jobs created by the IRA will support deliver economic opportunity to the individuals who build and maintain these projects. The Apprenticeship requirements offer pathways into the middle class, and the Wage requirements ensure the sustainability of and preservation of the middle class.

Where projects are built under a Project Labor Agreement, implementation of the IRA should recognize the self-determination of workers and deem projects compliant with the Wage and Labor Requirements if such a PLA is in place. For offshore wind specifically, implementation of the IRA should recognize the challenges of working offshore and give due consideration to the agreements negotiated between labor unions and developers.

As ACP notes:

> "Construction, alteration or repair contracts for a qualified facility or energy property awarded pursuant to a Project Labor Agreement (PLA) may have different labor standards for shift, premium and overtime work. If the qualified facility or energy property is constructed under a PLA, and the employer, contractor or subcontractor has provided shift, premium, overtime and other non-standard rates as they appear in a project's pre-negotiated labor agreement for all laborers and mechanics who are subject to the PLA, the taxpayer should be deemed compliant with the prevailing wage requirement. Unless relieved of such requirements by

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[1] Congressional intent on this subject can be found in the remarks of Rep. Auchincloss: "Offshore wind farms that connect to wholesale electric grids in such communities should be eligible for this additional support, as well, to maximize these credits' impact"), Congressional Record – House, 168 Congressional Record H7565, 2022, available at https://www.govinfo.gov/content/pkg/CREC-2022-08-12/pdf/CREC-2022-08-12-house.pdf and https://www.c-span.org/video/?c5027586/user-clip-rep-auchincloss-inflation-reduction-act.

> entering into a duly executed PLA, taxpayer should be responsible for complying with all prevailing wage requirements (including but not limited to reporting requirements)."

As noted by ACP, a project entering into and executing a Project Labor Agreement should be considered sufficient to meet the Wage and Apprenticeship Requirements, including the reporting requirements. When implemented effectively, Project Labor Agreements go well beyond the goals of the Wage and Apprenticeship Requirements of the IRA. More importantly, Project Labor Agreements implement oversight and dispute mechanisms to ensure effective implementation of these requirements.

Domestic Content Bonus Credit

Regarding the Domestic Content Bonus Credit, the comments provided by ACP seek to continue and accelerate the building of renewable energy and promote a domestic supply chain through implementation of the IRA. For the offshore wind industry, there must be a recognition that while the potential for the industry in the US is substantial, the manufacturing of components and construction of offshore wind is still in its infancy.

ACP's recommendation below provides an effective pathway to implementing the Domestic Content Bonus Credit by leveraging the existing precedent that exists within the Code of Federal Regulations:

> "ACP recommends that IRS apply Federal Transit Administration (FTA) regulations under 49 C.F.R. Part 661 and relevant FTA guidance applicable to manufactured products and steel and iron products in sections 661.3, 661.5, 661.6, and 661.7."

Achieving the goals of the Domestic Content Bonus Credit will require waivers, and more importantly facility definitions, that provide a pathway for manufacturers to invest in domestic manufacturing facilities as well as training for the workers needed to staff those facilities. The plain fact is that currently domestic facilities do not exist to manufacture all the elements of an offshore wind farm. The fact that every component and every piece of iron and steel cannot be sourced domestically should not be a barrier to implementation of the Domestic Content Bonus Credit. Instead, the IRS should implement the IRA as recommended by ACP to incentivize the first movers in this industry.

We greatly appreciate this opportunity provide comment on these critical issues and urge you to give full effect to the IRA and the congressional intent to reward and incentivize clean energy investment through efforts like offshore wind projects that support statutorily designated Energy Communities, make good faith efforts to deliver economic opportunity to workers and take critical steps towards building a domestic supply chain for this new industry.

Thank you for your time and consideration. If you have any questions, please contact Seth Kaplan (seth.kaplan@oceanwinds.com).