



November 4, 2022

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Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

The Honorable Lilly Batchelder
Assistant Secretary
Department of Treasury
Washington, DC 20220

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
Washington, DC 20224

Re: Notice 2022-51: Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements

Dear Assistant Secretary Batchelder and Commissioner Rettig:

The Sacramento Municipal Utility District (“SMUD”) appreciates the opportunity to provide comments in response to the Department of Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) Notice 2022-51. The forthcoming guidance to be developed by the Treasury and IRS on the implementation of the clean energy tax incentives in the Inflation Reduction Act (“IRA”) will help greatly inform SMUD’s decision-making in clean energy infrastructure investments.

SMUD is the nation’s sixth-largest municipally-owned electric utility, serving over 1.5 million people who live and work in the capital city of Sacramento, California on a not-for-profit basis. Our service territory is nearly 900 square miles and includes California’s capital city, most of Sacramento County, and small slices of Placer and Yolo counties. As a community-owned utility, SMUD is governed by a seven-member Board of Directors elected by voters to serve four-year terms.

Below are SMUD’s comments to the selected questions to the Request for Information on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements (Notice 2022-51).

.01 Prevailing Wage Requirement and .02 Apprenticeship Requirement.

(.01) (5) Please provide comments on any other topics relating to the prevailing wage requirements for purposes of § 45(b)(7)(A) that may require guidance.

(.02) (4) Please provide comments on any other topics relating to the apprenticeship requirements in § 45(b)(8)(B) that may require guidance.

§ 45(b)(7) and § 45(b)(8) provide that, generally, certain prevailing wage and apprenticeship requirements must be met in order to qualify for the full amount of the credit. §45(b)(6)(B)(iii) provides that these labor requirements do not apply if construction of the facility began prior to the date that is 60 days after the Secretary publishes guidance with respect to those requirements. These labor requirements are new to the Code and many taxpayers have begun developing projects without regard to these requirements.

Historically, IRS guidance has provided that, for purposes of determining whether construction of a facility has begun, a taxpayer may meet either one of two tests:

- (1) Physical work of a significant nature (either on-site or off-site, e.g., excavating a wind turbine foundation, installing racks or other structures to affix photovoltaic cells, or beginning manufacture of a transformer) or;
- (2) The 5% safe harbor test¹ (paying or incurring costs equal to 5% or more of the total cost of the facility).

These tests have been in place since 2013, and similar tests were earlier used in the guidance relating to the cash grant program Section 1603 of the American Recovery and Reinvestment Act of 2009.

Given that the industry has been using these tests for close to (or over) a decade, SMUD requests that Treasury and the IRS do not modify these tests for purposes of determining whether the grace period for following prevailing wage and apprenticeship requirements applies.

.03 Domestic Content Requirement.

(3)(b) What factors should the Secretary include in guidance to clarify when an exception to the requirements under section §§ 45(b)(10)(D) and 45Y(g)(12)(D) applies? What existing regulatory or guidance frameworks, such as the Federal Acquisition Regulation (FAR) and Build America Buy America (BABA) guidance, may be useful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?

SMUD requests the Treasury and the IRS to issue guidance clarifying domestic content requirements in determining whether a reduction in an elective payment amount is required under § 6417, §§ 45(b)(10)(D) and 45Y(g)(12)(D). The domestic content requirements in § 45(b)(9)(B) cross-reference U.S. Department of Transportation regulations (49 CFR § 661) which are more aligned with railroad and other transportation or infrastructure projects rather than renewable energy projects. For example, if a single piece of non-U.S. iron rebar were incorporated into a renewable energy project, would that mean that the project would not meet the domestic content requirement and potentially result in a reduction in the available direct payment? SMUD strongly for flexibility on the domestic content waiver process given the lack of compressive domestic

¹ IRS Notices 2013-29, 2013-60, 2014-46, 2015-25, 2016-31, 2017-4, 2018-59, 2019-43, 2020-41, 2021-5, and 2021-41.

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content requirements for clean energy projects and current domestic material, manufacturing, and supply chain constraints.

Again, thank you for the opportunity to submit comments. Please do not hesitate to call on me for further information or with any questions you may have.

Respectfully Submitted,

/s/ Larry Luong

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