



Delivering water and power™

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November 4, 2022

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notices 2022-50)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Inflation Reduction Act: Highest Priority Issues for Clarification in Treasury Guidance

Dear Sir/Madam:

In response to Notices 2022-49, 2022-50, and 2022-51 (collectively, the “**Notices**”), the Salt River Project (“**SRP**”) is writing to respond to certain questions set forth in these Notices.

Introduction & Background

SRP is comprised of two separate entities, the Salt River Valley Water Users’ Association, a private corporation incorporated in 1903 (the “**Association**”) and the Salt River Project Agricultural Improvement and Power District, an agricultural improvement district and a political subdivision of the State of Arizona formed in 1937 (the “**District**”). The term “SRP” as used herein may refer interchangeably to either the Association, District or collectively to both entities.

SRP has a long and productive relationship with the United States federal government. As the operator of one of the first federal reclamation projects authorized under the Federal Reclamation Act of 1902 (the “**Project**”), SRP has successfully worked with the United States to help provide the Phoenix metropolitan area with the water and electricity resources needed to become the thriving region that it is today.

In 1904, the United States agreed to construct and operate dams and power plants incident to the operation of irrigation and power facilities, and SRP agreed to repay the cost thereof. The Roosevelt Dam and Granite Reef Dam were among the first facilities that were

constructed as part of this collaboration between the United States and SRP. The United States later agreed to have SRP assume the operation and maintenance of the Project. Since then, the Project has expanded to include a robust network of seven dams, with five dams on the Salt River, two dams on the Verde River and one dam on East Clear Creek.

Today, SRP is the third largest not-for-profit community based public power entity in the nation and provides sustainable, reliable and affordable electricity to the majority of the population living in the Phoenix metropolitan area. As the governmental and economic center of Arizona, the Phoenix metropolitan area contains approximately 67% of the state's population, and more than two-thirds of its total employment and personal income. As of April 30, 2022, SRP served almost 3,000,000 people in central Arizona. To serve such a large population, SRP owns and operates an extensive electric system consisting of generation plants, transmission lines and distribution facilities that provides electric service to residential, commercial, industrial and agricultural power users in a 2,900 square mile service territory in parts of Maricopa, Gila and Pinal Counties, plus mining loads in an adjacent 2,400 square mile area in Gila and Pinal Counties.

To keep electricity rates as low as possible for its customers, SRP relies on a diverse portfolio of power generation resources which include natural gas, coal, nuclear, hydro, solar, wind, and geothermal resources. Today, approximately 70% of the energy provided to customers comes from fossil resources, but that resource mix is rapidly changing as SRP brings on new zero-carbon resources. With the resource additions described below, SRP expects that by 2025, nearly 50% of the energy we serve to retail customers will be carbon free.

FUTURE PLANS FOR GROWTH

The Phoenix metropolitan area is experiencing tremendous growth. In its service territory, SRP is forecasting 35% growth in peak electricity demand by 2030, which is equivalent to the amount of power needed to serve nearly 600,000 average size Arizona homes. A key factor in this growth has been the relocation of many large manufacturing companies, especially in the high-tech semiconductor and EV battery sectors, to SRP's service territory. In just the last six months, fourteen companies have either relocated to or significantly expanded their operations in SRP's service territory. A common reason for these companies moving to SRP's service territory has been the availability of reliable and affordable electricity for their businesses. The proliferation of these types of businesses locally will only accelerate the development of the domestic supply chain and is, therefore, in the national interest of the United States. As an indication of future growth potential, there are 251 economic development prospects that are actively evaluating a potential site in the Phoenix metropolitan area.

Driven by this unprecedented growth and its commitments to reducing carbon emissions and transition to a clean energy future, SRP is implementing transformational changes to its power system in the coming decade and beyond. SRP's Board of Directors has established a goal to reduce carbon intensity by 65% from 2005 levels by 2035 and 90% by 2050. To achieve these

goals, SRP has already retired 1,300 MW of coal generation and plans to retire another 1,300 MW by 2032. To put this in perspective, SRP serves a peak demand of approximately 8,000 MW today.

To accomplish these decarbonization goals while serving a rapidly growing area, SRP will need to add a significant amount of clean energy resources in the coming years. SRP has already committed to adding 2,025 MW of solar by 2025, 161 MW of wind by 2023, and over 800 MW of battery storage by 2024. This is only the beginning – SRP’s latest Resource Plan includes over 6,000 MW of solar and battery storage by 2035, 1,000 MW of wind, and 400 MW of geothermal resources. SRP is also investing in long-duration energy storage, hydrogen research, and in the development of over 1,000 MW of pumped hydro storage on the Salt River. To further address these needs, SRP is actively implementing 12 individual clean energy projects, all with developers through power purchase agreements (“PPAs”).

The recent passage of the Inflation Reduction Act of 2022 (“IRA”) will help public power entities such as SRP to evaluate the direct ownership of renewable energy projects versus obtaining the benefits of these projects through PPAs which has traditionally been the case prior to the IRA. By being able to benefit directly from the energy tax credits made available pursuant to the IRA, SRP will have a powerful new option with which to implement the expansion of its renewable energy portfolio as well as evaluate the availability of production tax credits for its existing nuclear resource, the Palo Verde Nuclear Generating Station (“PVNGS”), the nation’s largest producer of carbon-free energy, in which SRP currently has a 17.5% ownership interest. SRP is under contract to acquire an additional interest in PVNGS and by February 2024, SRP will have a 20.4% ownership interest in the facility.

SRP seeks to build on its past record of successful collaboration with the United States for our mutual benefit. This partnership, which has been in place for almost 120 years, helped transform the Phoenix metropolitan area from an arid desert into the 5th largest city in the United States. With the passage of the IRA, SRP and the United States have another opportunity to work together towards a common goal, namely, the increased adoption of utility-scale renewable energy production in SRP’s service territory. In order to obtain the optimal benefit from the IRA towards this common goal, SRP respectfully submits the following set of comments which will help clarify SRP’s opportunities and obligations with respect to the IRA. The development and successful implementation of SRP’s clean energy portfolio will require intricate supply chain, permitting, and regulatory considerations. To provide the opportunity for SRP and other public power entities to practically access direct pay benefits, SRP strongly urges Treasury to provide clear guidelines that address the questions and comments provided herein as soon as possible. SRP needs to make resource decisions in the coming months in order to bring critical new power generation facilities online as soon as the summer of 2024. These new resources will be crucial to SRP’s ability to provide reliable and affordable electricity to its customers. Clear guidelines that provide cost certainty will ensure that SRP can make resource choices that maximize our customers’ ability to benefit from the IRA. These guidelines will be critical to ensuring certainty as to whether a project

will qualify for direct pay benefits in advance of its implementation, which is critical to decision-making.

As a not-for-profit public power entity, SRP's guiding principles have remained the same since it was founded – to act in the best interest of SRP's customers and to strive to help build a better future for the State of Arizona. A big part of SRP's commitment to these guiding principles has been to keep electricity rates as low as possible for our customers while still maintaining system reliability. The IRA represents another opportunity for SRP to proactively act on its customers' behalf since any cost savings that are available to SRP as a result of the IRA will directly benefit SRP's customers.

While SRP's comments are submitted in accordance with the November 4th deadline, please note that further comments and questions may arise as our review continues and we hope to be able to provide additional input to the Treasury and IRS if necessary.

Detailed Comments. Set forth below are SRP's comments to the issues of concern arising under the IRA.

1. Domestic Content

For public power entities such as SRP, the application of the domestic content requirements of the IRA poses an extremely important issue. Failure to satisfy these requirements after 2025 will result in the loss of the entire tax credit that is otherwise available for a project. This will be a significant challenge for public power entities because three years is unlikely to be sufficient time for the entire supply chain to be adequately developed in the United States.

We strongly suggest that Treasury provide flexibility here by allowing projects to qualify if certain parts of the supply chain for a project are domestic. We also strongly encourage the availability of waivers from and exceptions to these requirements if it can be demonstrated through commercially reasonable efforts that the supply either does not exist in the U.S. or would be significantly more costly if procured within the U.S. Moreover, the process to obtain a waiver needs to be clear, flexible and capable of being completed in a timely manner. In addition, clarification is needed on the scope and nature of the documentation required to certify the domestic content requirements. Public power entities such as SRP should be able to rely on certifications and information provided by their contractors and subcontractors in determining compliance with the domestic content requirements. Given the length of the planning process for major renewable projects, SRP strongly supports the adoption of clear, detailed, comprehensive and timely guidance on the domestic content requirements of the IRA.

The requirements of the Buy America Act are applied to projects that are directly funded by the U.S. federal government. The IRA was established to award optional tax credits for projects which do not technically meet the definition of a federally funded project. However, if a public power entity such as SRP uses the direct-payment option available under the IRA and the tax credit

is monetized in this manner, would a project then be considered federally funded for the purposes of the Buy America Act? If so, Treasury should provide guidance that makes it clear that satisfying the domestic content requirements of the IRA also satisfies the requirements of the Buy America Act.

2. Direct Pay Timing

For the first time, the IRA provides for the direct payment of tax credits to public power entities such as SRP. At present, there is little guidance available with respect to the logistics of the direct pay election or the timing and receipt of the tax credit payment. SRP strongly encourages Treasury to provide clear, detailed and comprehensive guidance on the following topics so that public power entities will have the time needed for adequate project planning and to explore opportunities to obtain project financing when appropriate:

- The form of application to elect direct payment of tax credits
- Timing of election to receive direct payments
- One application for multiple projects? One application for each different method of financing?
- Attribution of the 15% reduction for any project cost allocated to tax-exempt debt after the project begins?
- How will specific projects be identified to avoid duplication while minimizing the documentary burden on tax-exempt entities such as SRP?
- Timing for direct payment of tax credits

If possible, SRP strongly recommends that a process similar to applying for interest subsidy payments under the Build America Bonds (“**BABs**”) program be utilized here. SRP has utilized this simple and straightforward process to successfully claim BABs subsidy payments from Treasury since almost the inception of the BABs program. Whatever approach is adopted by Treasury in this regard, SRP strongly emphasizes the need for a payment process that does not result in delays of payments to tax-exempt entities and that permits tax-exempt entities to receive direct payments as soon as a project is placed in service. Moreover, the election to receive direct payments should not be due until a project is placed in service.

3. Apprenticeship and Prevailing Wage

Section 45(b)(8)(C) of the IRA provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work.

The IRA provides for good faith exceptions to the apprenticeship requirement that rely on a set of factors to support a demonstration of good faith compliance with this requirement. SRP strongly supports the adoption of objective safe harbors that will make it easier to demonstrate

compliance with the apprenticeship requirement than a set of factors that may be subjective and open to interpretation. It will be important for project planning and evaluation to have clear, detailed and comprehensive guidance on the apprenticeship requirements that will determine the eligibility of certain tax credits as well as the documentation needed to demonstrate compliance with these apprenticeship requirements. As with the domestic content requirements, public power entities such as SRP should be able to rely on the information and certifications provided by their contractors and subcontractors in order to demonstrate compliance with the apprenticeship requirements.

The prevailing wage requirements of the IRA requires that any laborers and mechanics employed for construction of a facility are paid wages not less than the prevailing wage rate for that specific location. There is also a correction and penalty mechanism for failure to meet the prevailing wage requirements which requires that the worker be compensated for any shortfall plus interest and a \$5,000 penalty for each worker that was undercompensated. Similar to other provisions of the IRA that affect the eligibility for receipt of tax credits, we strongly suggest the adoption of objective safe harbors for the prevailing wage requirement so that public power entities are not unduly penalized for their contractors' and subcontractors' lack of compliance with these requirements. Like the domestic content and apprenticeship requirements, tax-exempt entities should be able to rely on information and certifications provided by their contractors and subcontractors in order to demonstrate compliance with the prevailing wage requirements.

4. Production Tax Credit (PTC) Benefits for Existing Nuclear

PTC benefits are expected to last for 10 years through 2032 for existing nuclear production. SRP is seeking guidance on how to receive credits for existing nuclear generation at the PVNGS. The challenge for SRP and other utilities is the application of the reduction in the PTCs depending on the gross receipts from the nuclear facility as, for the most part, SRP sells electricity from the PVNGS as part of the service it provides to retail customers on a combined basis with its other electric facilities and at combined prices.

SRP strongly encourages Treasury to provide definitions for "Gross Receipts" and "Unrelated Persons" that can be implemented specifically for public power entities. In particular, guidance is needed on how "Gross Receipts" can be calculated using a homogenous electric service territory with over 1 million separate customer accounts.

5. Energy Communities

Section 45(b)(11)(A) of the IRA provides an increased credit amount for a qualified facility located in an energy community. SRP seeks clarity on the definition of an energy community as well as the duration of an energy community's designation, particularly in the context of fluctuating unemployment rates for metropolitan/non-metropolitan statistical areas and especially since projects can take several years to develop and construct. There is a similar concern over the changing nature of census tracts, where an area that was part of a census tract comprising a 'coal

community’ may be absorbed into a different census tract over time. A public power entity should not be penalized if the designation of an energy community changes once it has committed significant resources towards the construction of a project. Since land acquisition and site preparation are among the most expensive items with respect to a project’s construction and development, SRP strongly recommends that this determination be made when a public power entity has committed significant resources towards these types of early stage construction activities. SRP also strongly suggests broader consideration for communities that have been impacted that may not be geographically adjacent to the site of a particular project and to allow consideration for communities in which closures occurred many years in the past.

6. Project Start & Completion Dates

The IRA details project start dates through 2025 that qualify for IRA bonuses and potential credit reductions. However, the IRA specifies that direct pay credits be paid “upon completion” of the project. SRP strongly encourages Treasury to clearly define critical terms and provide examples for how the direct pay provision is applied, based on a project’s start and end dates. As stated above, SRP strongly recommends that any application of the term “commencement of construction” take into account significant and costly early stage construction activities such as land acquisition and site preparation. If Treasury intends to rely on existing terms (such as “placed in service”), it should provide clear and timely indication of its intent to do so and provide as much certainty and flexibility as possible to the application of these terms.

7. IRA Sunsetting Provisions

The IRA tax credits are expected to be active for 10 years through 2032. The goal of the IRA is to reduce emissions 40% by 2030, with Treasury performing this calculation. Should emission reductions be realized early, would the end date of the IRA be modified? SRP encourages Treasury to enable benefits for as long as possible to support the growth of domestic renewable energy production. In addition, the 2032 sunsetting timeframe introduces eligibility uncertainty for projects that require a long time to develop and may not be commercially available until after 2031 such as pumped hydro or nuclear generation. Significant investment will need to occur between today and 2032 to see these project through to completion. SRP strongly recommends that Treasury provide guidance that allows projects that start prior to 2032 to be eligible for the credit even though project completion will not occur until after 2032.

8. Battery Storage Augmentation

The Act makes standalone battery storage technologies eligible for the Investment Tax Credit (“ITC”). To maintain performance and efficiency, lithium-ion batteries typically need to be augmented over time. Augmentation involves replacing battery modules as their efficiency degrades, similar to replacing an entire gas turbine, and is typically a capital cost. It is unclear whether the additional batteries installed for augmentation are eligible for additional ITC. SRP

strongly encourages Treasury to make battery augmentation eligible for ITC benefits because it is critical to ensuring that batteries deliver their full capacity over the life of the system.

9. Additional Financing Considerations

Given the multitude of rules governing tax-exempt debt issuance for public power entities, the IRS should address existing rules that can impact an entity's ability to issue tax-exempt debt under the IRA. Examples of such topics include the following:

- Allocation of debt proceeds
 - We suggest that the current rules for how the allocation of tax-exempt debt proceeds are handled apply to the tax credit provisions of the IRA.
- Customized contracts
 - Public power entities such as SRP are asked to enter into customized power contracts for certain commercial customers who seek power from renewable sources. Current tax law limits this practice if tax-exempt bond financing has been used. We would suggest revising these rules to help enable public power entities to enter into these contracts without penalty.
- Purchasing existing facilities
 - In the event an existing renewable energy facility becomes available for purchase, public power entities such as SRP are limited in their ability to purchase these facilities because of existing law under Section 141(d) of the IRS Code (the “**Rostenkowski Rule**”). We suggest that Treasury issue guidance with respect to the Rostenkowski Rule so that public power entities may purchase these facilities which will help meet the goals of the IRA.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact me with any additional questions you may have. We would be happy to meet with you or your staff to discuss these issues in greater detail if it would be helpful.

Sincerely,



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