

## **DEPARTMENT OF TREASURY AND INTERNAL REVENUE SERVICE**

### **Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022**

#### **Response of Scale Microgrid Solutions to Request for Information**

##### **I. Introduction and Background**

Scale Microgrid Solutions (“Scale”) is pleased to offer comments to the Internal Revenue Service (“IRS”) with respect to the Notice 2022-51.

##### **Background on Scale**

Scale is a full-service distributed energy company dedicated to transforming the way modern energy infrastructure is designed, constructed, and financed. Scale’s national footprint includes offices in New York, New Jersey, and across California in Santa Monica, Santa Barbara, and Oakland.

Scale’s executive team is made up of the top talent in the industry with decades of experience designing, engineering, financing, constructing, operating, and maintaining distributed energy projects. Their project development and execution experience ranges from solar PV and battery energy storage installations to campus-wide combined heat and power systems and includes successful multi-megawatt deployments for customers such as the World Trade Center, JP Morgan Chase, Barclays Center, Morgan Stanley, US Air Force, and Verizon.

What sets Scale apart in the market is the ability to self-finance microgrid projects. In January 2020, Scale became a portfolio company of leading global private equity firm Warburg Pincus and with \$300 million of committed capital Scale launched their Capital Solutions division, enabling them to directly own the distributed energy systems that they design, build, and operate. This unique structure addresses many of the inefficiencies inherent to traditional project financing which results in more cost-effective solutions for their customers.

Scale is relentless in their pursuit of building a better future for themselves, their families, their colleagues, their investors, their customers, and their communities.

##### ***Responses to Specific RFI Questions***

- 1. 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?*

### **Component of Qualified Property**

Microgrids, as defined by the Department of Energy, is “a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid”. As microgrids integrate and manage generation, storage, and load resources commonly under a single microgrid controller, we want to provide certainty as to what is meant under a ‘qualified facility’. Some interpretations can lead to a disadvantage against technologies when incorporated into a microgrid compared to when they are standalone assets.

As stated in 26 U.S. Code § 45, a ‘qualified facility’ is to mean ‘energy property’ (§ 48), which is defined as

“For purposes of this subpart, the term "energy property" means any property-

(A) which is-

- (i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,
- (ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight, or electrochromic glass which uses electricity to change its light transmittance properties in order to heat or cool a structure, but only with respect to property the construction of which begins before January 1, 2025,
- (iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,
- (iv) qualified fuel cell property or qualified microturbine property,
- (v) combined heat and power system property,
- (vi) qualified small wind energy property,
- (vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to property the construction of which begins before January 1, 2035,
- (viii) waste energy recovery property,

- (ix) energy storage technology,
- (x) qualified biogas property, or
- (xi) microgrid controllers,

- (B) (i) the construction, reconstruction, or erection of which is completed by the taxpayer, or
  - (ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,
- (C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and
- (D) which meets the performance and quality standards (if any) which-
  - (i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and
  - (ii) are in effect at the time of the acquisition of the property.”

Importantly, in § 48(A), energy properties are listed with an ‘or’ conjunction, which clarifies that each property is individual and distinct based on its generation or storage assets. Determining whether the domestic content requirements are met should be evaluated on an asset-by-asset basis; it should not be determined by looking at the entirety of a project that includes multiple assets and asset types. The former interpretation aligns the language with legislative intent to promote manufacturing in the United States while also promoting investments in microgrids and other mixed-asset-class projects. The latter interpretation is unlikely to change the value of the ITC for a particular project but would create significant complexities and costs associated with legal structuring and staging of projects.

Guidance should align with an asset-by-asset analysis of the domestic content of qualified property. As an example, a PV solar array that would meet the domestic content requirements if built as a standalone PV solar array should retain that eligibility when integrated into a microgrid, even if certain other components of the microgrid do not meet the domestic content requirements and even if the microgrid project as a whole does not meet those requirements. The PV solar array provides a greater benefit to the community when it is incorporated into a microgrid by ensuring that those communities will have the ability to continue to serve their communities in times of disaster.

The domestic manufacturing channels are more robust for some asset classes than others. Microgrids should not be disadvantaged because they incorporate assets that have both mature and immature US manufacturing operations. Although there is an exception contemplated in the text of the legislation for assets that are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality, it is likely that, without guidance clarifying the asset-by-asset basis, the tax equity markets will discount the value of the ITC due

to uncertainty in interpreting this exception and the ambiguity in the application of the domestic content requirements.

Similarly, guidance is sought to clarify that, although individual energy property assets may be subject to different ITC levels and bonus credits, when these various assets are incorporated into a single site and controlled by a single microgrid controller, they can be owned by the same project company and constructed pursuant to a single construction contract. The alternative approach would result in significant additional legal and accounting costs without creating any additional value.

It is in the spirit of the law to bring manufacturing of clean energy assets to the United States, but is not in the spirit that the success of one asset be held back by the progress still to be made by other complementary assets.

### **Conclusion**

Scale Microgrid Solutions is grateful for the opportunity to provide input to the Treasury and IRS on IRA implementation. It is Scale's reading and recommendation that the 'qualified property' of a given asset be considered separate from the additional qualified properties that it may be co-located and interoperational with.