



November 4, 2022

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

Submitted Via Regulations.gov

Re: Notice 2022-51 (October 5, 2022), "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 Sir or Madam:

Headquartered in Atlanta, SolAmerica Energy, www.solamericaenergy.com, is a leading provider of solar energy and storage solutions.

The company specializes in the development and engineering, procurement, and construction (EPC) of turnkey and cost-effective ground-mount, rooftop and parking canopy solar systems designed to meet the distributed generation needs of utilities and large commercial and industrial facilities. This work includes land acquisition, permitting, development engineering, environmental studies, power project commercialization, system performance maintenance and carbon reduction monitoring.

Since its founding in 2009, SolAmerica Energy has developed or constructed hundreds of megawatts of solar projects in 14 states and in over 100 counties. Its clients include some of the nation's largest utilities, independent power producers and businesses. The company has over 40 employees, mostly based in Georgia, with diverse professional backgrounds including project finance, construction, engineering, legal and project development.

SolAmerica Energy has been especially active in promoting pro-solar energy policy in our home state, with my colleague Tully Blalock serving as the Georgia Solar Energy Industries Association's policy co-chair.

SolAmerica Energy is already seeing the positive impact of the clean energy tax credit provisions of the Inflation Reduction Act (IRA) – truly a game-changer for the power sector. Our on-the-ground experience since the enactment of the IRA informs our comments focused on both the "previous year" and related data vintage guidance and also the "located in" definition for "energy communities." Clarity and certainty on these low-profile but crucially important definitional issues is necessary for successful planning, financing, and development of solar energy projects across the U.S.



“Previous Year”

.04 Energy Community Requirement.

(3) Which source or sources of information should the Treasury Department and the IRS consider in determining a “metropolitan statistical area” (MSA) and “non-metropolitan statistical area” (non-MSA) under § 45(b)(11)(B)(ii)? Which source or sources of information should be used in determining whether an MSA or non-MSA meets the threshold of 0.17 percent or greater direct employment related to the extraction, processing, transport, or storage of coal, oil, or natural gas, and an unemployment rate at or above the national average unemployment rate for the previous year? What industries or occupations should be considered under the definition of “direct employment” for purposes of this section?

Under Section 45(b)(11)(B)(ii)(II), a metropolitan statistical area (“MSA”) or non-metropolitan statistical area (“NMSA”) that meets the direct employment or local tax revenue requirements also must have “an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary).” The parenthetical in the statutory language suggests that Congress has given the Secretary flexibility to implement this provision consistent with the IRA’s goal of incentivizing clean energy development.

SolAmerica Energy recommends that Treasury define the “previous year” as, *at the election of the taxpayer*, any of—

1. 2021, *i.e.*, the year before enactment,
2. 2022, *i.e.*, the year of enactment,
3. The year before a project begins construction, *or*
4. The year before a project is placed in service.

The “previous year” flexibility for the taxpayer recommended here is necessary because of the timing gap, which can be 24 months or more, between project budgeting, pricing and bidding on the one hand and commencement of construction and operation on the other.

The recommended “previous year” flexibility allows for certainty about a given long-lead-time project’s Energy Community status, which in turn allows for a more efficient and competitive market for project developers, project owners, and utility customers. An efficient and competitive market for project development ultimately benefits the U.S. ratepayers with lower rates.

The recommended “previous year” flexibility also helps address the potential problem of unemployment data gaps and inconsistencies across geographies, noting both the national data and the MSA and NMSA data should always be from the same period.

Once the taxpayer determines which year it will use, the project should be “locked in” as an “energy community” project. For example, if the taxpayer uses 2021 annual average unemployment rate data (*i.e.*, the latest currently available) to qualify and commences



construction in 2023, but the unemployment rate declines to below the national average in 2022 after the decision to construct has been made, the project should still qualify for the energy community adder based on the 2021 data.

This concept of data vintage flexibility is also vitally important for the other datasets and geographical definitions referenced in the “energy community” definition (*i.e.*, MSA & Non-MSA Boundaries & Census Tract Boundaries). Treasury should provide the same flexibility for these other datasets and geographical definitions as well.

--

“Located In”

.04 Energy Community Requirement.

(1) Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community. What further clarifications are needed regarding the term “located in” for this purpose, including any relevant timing considerations for determining whether a qualified facility is located in an energy community? Should a rule similar to the rule in § 1397C(f) (Enterprise Zones rule regarding the treatment of businesses straddling census tract lines), the rules in 26 C.F.R. §§ 1.1400Z2(d)-1 and 1.1400Z2(d)-2, or other frameworks apply in making this determination?

SolAmerica Energy notes there will be cases in which less than 100% of a given project is located within energy community boundaries. In these cases we recommend Treasury adopt a greater than or equal to 50% test for the full project to receive credit. The 50% test should be based on both physical location (*i.e.*, footprint percentage located within energy community) and project cost percentage-based tests (*i.e.*, equipment cost percentage located within energy community), with the taxpayer having the flexibility to choose either methodology. Importantly, the equipment and components installed to interconnect the project with the power grid or other offtake should count under either test methodology, noting interconnection is integral to any project.

Should less than the mandated percentage of a project be located within an energy community, Treasury should allow such project to receive partial credit based on the percentage of the project located within the energy community, using either of the physical location or cost percentage-based tests, at the taxpayer’s option, to determine such percentage.



190 Ottley Dr NE, Studio H, Atlanta, GA 30324

Thank you for the opportunity to submit these comments. If you have any questions, please contact me at dstevenson@solamericaenergy.com or (404) 579-4955.

Sincerely,

A handwritten signature in blue ink that reads "Dan Stevenson". The signature is written in a cursive style with a large, stylized "D" and "S".

Dan Stevenson