Sonoma Clean Power

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U.S. Department of the Treasury
Internal Revenue Service
Office of Chief Counsel, Passthroughs and Special Industries
1111 Constitutional Avenue NW
Washington, DC 20224

Subject: Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022 (Notice 2022-51)

Responding Entity: Sonoma Clean Power Authority

Respondent Contact: Ryan Tracey, Director of Planning and Analytics, 720-480-9641, rtracey@sonomacleanpower.org

Sonoma Clean Power (SCP) is a public power provider serving customers in Sonoma and Mendocino Counties in California. SCP serves over 230,000 customers with clean and reliable power through long-term contracts for solar, wind, and geothermal power. As a non-profit entity with an aggressive plan for the development of new renewable resources, SCP is very enthusiastic about the potential for the Inflation Reduction Act (IRA) to accelerate the deployment of new technologies and maintain energy affordability through tax credits (and importantly, the provision for public entities like SCP to monetize tax incentives traditionally reserved for private industry).

SCP is particularly interested in the applicability of IRA incentives to new geothermal development. SCP is currently negotiating cooperation agreements with three geothermal companies to pursue a joint initiative, the Geothermal Opportunity Zone ("GeoZone"), to develop 500 MW of new geothermal resources in its territory. Financial incentives from the IRA will be critical in enabling SCP and its partners to scale-up new technologies that address a key challenge in reaching high levels of decarbonization: proven renewable technologies such as solar and storage generate at far reduced capacities in the winter when demand is expected to increase as the penetration of transportation and building electrification grows.

SCP is submitting responses to three of the notices seeking public input on the IRA: Energy Generation Incentives (2022-49), Credit Monetization (2022-50), and Credit Enhancements (2022-51). Below are SCP's responses to the Credit Enhancements (2022-51) notice:

.03 <u>Domestic Content Requirement.</u>

(3b) 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 beuseful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?

A clear process, along with application requirements and expected response timeframe, should be established. The process should allow for prospective exceptions given that eligibility could influence the viability of projects. The Secretary should evaluate exceptions alongside the holistic procurement strategy for a project to ascertain whether a project intended to adhere to requirements where practical.

(c) Do the "sufficient and reasonably available quantities" and "satisfactory quality" standards need further clarification? If so, what should be clarified?

The IRS should clarify that the determination of quantity and quality will be made considering market conditions at the time a project applies for an exception, as opposed to a forecast of market conditions during construction. Specifically, applicants should not be expected to secure new manufacturing capability not in existence at the time of application. The assessment of availability should also be made for the specific characteristics of a material. As an example, a specific steel alloy may be necessary for a project that is not available domestically. The availability of that alloy, and not steel in general or an unsuitable substitute, should be used as the basis for evaluation.

.04 <u>Energy Community Requirement</u>

(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?

One of the key uncertainties in interpreting the definition of energy communities is the dependency on the unemployment rate relative to the national average for the previous year. It's unclear how "previous year" relates to a project development timeline. Given that a project's eligibility for the energy community bonus could determine its viability, the IRS should allow projects to lock-in energy community status early in the project development cycle.

(2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?

Although the definition of a brownfield site is clear, the IRS should issue guidance on the expected proximity of an eligible facility to an energy community. As an example, a requirement could be that an eligible facility be located in the same census tract as a brownfield. The determination of brownfield status should also not be dynamic—if remedial action on an adjacent brownfield is started during project development or operation, that should not impact the project's eligibility for the energy community bonus.

(3) Which source or sources of information should the Treasury Department and the IRS consider in determining a "metropolitan statistical area" (MSA) and "nonmetropolitan 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?

The IRS should use the US Census Bureau's County Business Pattern data for calculating direct employment in fossil fuel industries from 2010 onwards to assess eligibility for energy community status. The definition of non-MSA areas should align with the U.S. Bureau of Labor Statistics' definition. As an example, SCP's territory includes the North Coast Region of California Non-MSA, which encompasses four counties that should be totaled in assessing direct employment by fossil fuels. The industries considered under "direct employment" for the calculation should include NAICS codes 211 (Oil & Gas Extraction), 2121 (Coal Mining), 213 (Industries in the Support Activities for Mining), 23712 (Oil and Gas Pipeline and Related Structures Construction), 324 (Petroleum and Coal Products Manufacturing), 4247 (Petroleum and Petroleum Products Merchant Wholesalers), and 486 (Pipeline Transportation). To align with the statue, this assessment should be done each year starting in 2010 onwards. If even just a single year has direct employment in the industries in-scope greater than 0.17% of total employment, the assessed area should be eligible (pending the unemployment rate comparison).

(7) Please provide comments on any other topics relating to the energy community requirement that may require guidance

The definition of energy communities, particularly concerning interpretation of the employment provisions, is currently one of the most speculative aspects of the

Inflation Reduction Act. After finalizing its interpretation, the IRS should publish and regularly update a map of eligible energy communities to minimize uncertainty.