November 4, 2022

Southern Alliance for Clean Energy
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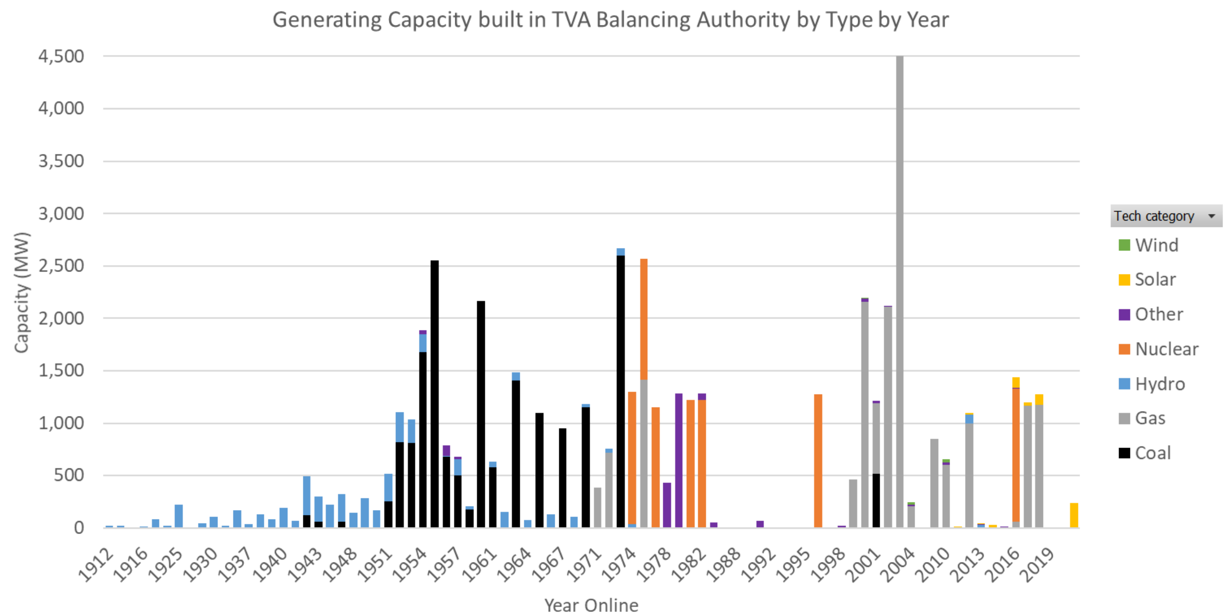
Re: SACE Response to Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits [Notice 2022-50]

The Southern Alliance for Clean Energy (SACE), a non-profit was founded in 1985, and has been advocating for clean energy across the Southeast, including in the region served by the Tennessee Valley Authority (TVA). Since the TVA is explicitly mentioned in § 6417, we appreciate the opportunity to submit some background on TVA and clean energy, based on our advocacy history.

TVA is a public power provider, serving customers across parts of seven states, by providing wholesale electricity to 153 municipal and cooperative utilities as well as directly serving large industrial customers and federal institutions. TVA performs least-cost planning at least every five years to lay out a plan for future resources to meet electricity needs, a process that is overseen by TVA's primary regulator, the TVA Board of Directors.

The section of US Code that governs TVA is generally known as the TVA Act, though TVA is mentioned in other parts of the code as well. In addition to the requirements about least-cost planning, TVA is also prohibited from entering into contracts for longer than 20 years, and is limited in how it can exchange power with other utilities. The TVA Act also established a "Fence" around its service territory and an "anti-cherrypicking clause" that together are interpreted to mean that only TVA can supply power to its customers "within the fenceline," that TVA cannot sell power "outside of the fenceline." TVA's utility customers have historically had a range of full requirements contracts that require customers to purchase all of their power from TVA, with most terms being similar but having termination clauses that ranged from 5 to 20 years. In recent years most of TVA's utility customers have signed a "never-ending contract" with TVA, which includes an evergreen 20-year termination clause and allows utility customers to self-generate up to 5% of their average load with most resources, or up to 3% with solar resources. The legality of those contracts under the TVA Act is currently being litigated.



Data source: U.S. Energy Information Administration

TVA's generating mix has reflected larger electric utility sector trends, with the utility starting primarily on hydroelectric generation before 1950, building a significant amount of coal in the 1950s and 1960s, a boom of nuclear in the 1970s and into the early 1980s, before moving to build gas starting in the late 1990s. The small amount of solar and wind that has been added in recent years is primarily if not exclusively through power purchase agreements, and is not owned directly by TVA, since TVA has historically not been able to take advantage of tax credits for these generating resources. One exception to this was the Buffalo Mountain wind farm, where TVA installed three TVA-owned wind turbines in eastern Tennessee as a demonstration project. Those turbines have since been decommissioned.

TVA completed its last least-cost planning process, called an Integrated Resource Plan (IRP), in 2019. It is due to start its next IRP in 2023 to be completed in 2024. The process usually takes 18-24 months to complete. It is important that TVA is able to model the costs of developing their own renewable and clean energy resources, and have insights into the impact of its utility customers taking advantage of elective payments, in this upcoming IRP. Because inputs to an IRP are often developed in the early stages of an IRP, clarity on how TVA and its utility customers can use elective payments under § 6417 in the first quarter of 2023 would be ideal.

Additionally, all of TVA's 153 municipal and cooperative utility customers are tax-exempt organizations. Some of these utility customers have considered or are considering terminating their contracts with TVA to generate their own power, and if they chose to do so would be eligible for elective payments for clean resources, authorized by the Inflation Reduction Act.

Therefore TVA's utility customers, whether actively considering becoming independent from TVA or not, would benefit from clarity on elective payments as a current or former TVA customer.

TVA has closed 58 coal generators at 9 locations since 2010, and both rural and urban areas in TVA suffer high energy affordability burdens. The ability for TVA and its utility customers to use the elective payments program immediately and to the highest degree possible, could do much to both ease energy affordability burdens and provide economic development across the region without compromising local air and water.