



November 4, 2022

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

RE: Comments of the Hopi Utilities Corporation on IRS Notice-2022-51

To Whom It May Concern:

On behalf of the Hopi Utilities Corporation (HUC), a corporation chartered and wholly owned by the Hopi Tribe, I hereby submit these written comments in response to IRS Notice 2022-[49] related to request for comments regarding the Inflation Reduction Act. The Hopi Tribe is located in the state of Arizona. The Tribe has over 12,000 tribal members, and over 1,542,306 acres on the Hopi Reservation.

The Hopi Tribe is a historically underserved community that is experiencing extreme economic hardship due to coal plant closures. Over 30% of homes on the reservation do not have access to electricity or running water, and the poverty rate on the Reservation is significantly higher than in other areas of northern Arizona. In 2019, the NGS Coal plant and Kayenta Mine complex were closed, reducing the Tribe's annual revenue by 85%. Now, HUC and the Hopi Tribe are working to build on previous efforts to develop new clean energy projects to create new revenue, jobs, and expand electricity access on the Reservation.

The Hopi Tribe has pursued clean energy project opportunities for more than a decade, including efforts to develop and deploy wind, solar, and microgrid projects on the Reservation. Up to now, these efforts have been almost entirely dependent on federal financial assistance, such as grants. These clean energy projects have included feasibility studies for large energy projects and installation of small, facility-scale solar and microgrid projects that power single buildings or remote well sites. The Tribe is also pursuing utility-scale solar projects as energy and revenue generating projects but due to Investment Tax Credit (ITC) and Production Tax Credit (PTC) rules that limit the Tribe's ability to capture the full value of these projects, the Tribe has been forced to participate in these projects as the landlord, with no ownership interest in the projects located on Hopi Trust lands. This structure limits the Tribe's potential revenue and puts control of the Tribe's major economic assets in the hands of external companies.

With the newly enacted Inflation Reduction Act, the Tribe now has opportunities to develop, deploy, own and control clean energy projects on the Reservation that will serve to meet the Tribe's clean energy and economic development goals and can help the Tribe contribute to the United States' overall clean energy goals. Our comments are submitted in the context of trying to take full advantage of the new authorities, tax benefits, and opportunities the IRA is intended to create for tribes.

Specific Comments

Sec.3.01 Prevailing Wage Requirements

Q.(1) Treasury should allow tribes to set their own prevailing wage scales, as is authorized under many other federal government programs. For example, HUD's NAHASDA and ICDBG programs authorize tribes to substitute tribal wage scales for Davis-Bacon Act prevailing wage requirements. Because many tribes are in very rural - or remote - locations, the Davis-Bacon Act wage scales are inappropriate and ill-fitting for tribal workforces. Allowing tribes to set their own prevailing wage scales both supports tribal sovereign authority to regulate their own labor and wage requirements but also acknowledges a more appropriate wage scale for tribal lands in very rural and remote circumstances.

Q.(3) If tribal prevailing wages are used, typical documentation includes certified tribal wage scales, as approved by the tribal government, TERO compliance agreements, or other tribal government information.

Sec.3.04 Energy Communities

Q.(1) Tribes can meet the definition of energy communities in many ways. Treasury should clarify that projects must be primarily or substantially located within an energy community or on land owned by that energy community to qualify for the energy community increased credit amount.

Q.(2) Any tribal community that has a brownfield site, as defined under CERCLA, should be designated an energy community.

Again, thank you for the opportunity to present comments on behalf of the Hopi Utilities Corporation.

Sincerely,

Carroll Onsaie
President, Hopi Utilities Corporation