A PUBLIC AGENCY
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November 22, 2022

The Honorable Lilly Batchelder
Assistant Secretary
U.S. Department of Treasury
Washington, DC 20220

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
Washington, DC 20224

RE: Notice 2022-49: Request for Comments on Certain Energy Generation Incentives
Notice 2022-50: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits
Notice 2022-51: 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 Assistant Secretary Batchelder and Commissioner Rettig:

The Northern California Power Agency (NCPA) appreciates this opportunity to provide comment on the Notices issued by the Department of the Treasury (Treasury) and Internal Revenue Service (IRS) requesting comments on various provisions of the recently enacted Inflation Reduction Act related to energy tax incentives and the "direct pay" aspects of those incentives.

NCPA is a Joint Powers Authority (JPA) established under California law to provide power supply, transmission, energy scheduling, and other services to our 16 member utilities. Our members are all not-for-profit electric utilities, including municipal utilities, special purpose districts, and a rural electric cooperative. NCPA is eligible under applicable law to issue tax-exempt bonds to finance facilities on behalf of our members, which elect which projects to participate in.

NCPA is a member of the American Public Power Association (APPA) and associates ourself with the comments submitted by APPA on November 4, 2022. These comments highlight issues of particular importance to NCPA and our members.

Overview

Since its inception, NCPA has been a leader in the development of green resources, including geothermal and hydropower generation – the only baseload and dispatchable renewable resources available at the time of their development. We also own and operate the Lodi Energy Center (LEC), a fast-start combined cycle project that, at the time of construction was the cleanest natural gas-fired power plant in the country and has been used for integrating intermittent renewable energy projects and providing grid reliability services. NCPA is in the process of repowering LEC to utilize a blend of green hydrogen and natural gas, with the intent of operating exclusively on clean hydrogen by 2035.

Despite this impressive record of clean power project development, NCPA and our members have been hampered and disadvantaged by the inability to directly utilize incentives available under the Tax Code to for-profit entities. For instance, the City of Healdsburg, a city of 11,000 residents sought to build a floating solar project on the ponds of its water treatment plant. The City's inability to directly utilize Section 45 tax incentives, forced Healdsburg to execute a Power Purchase Agreement (PPA) with a private developer. Had Healdsburg been able to directly capture the tax incentives, the utility would have realized significant savings and the City would have been able to avoid allowing private party access to critical city-owned infrastructure.

NCPA joins other public power utilities in commending Congress for providing equity in the nation's clean energy tax policies by establishing a mechanism—direct pay—that enables not-for-profit, consumer-owned utilities to receive tax incentives for clean energy investments. NCPA also applauds the definitional expansion to include energy storage projects and for the long-term extension of the incentives to provide needed investment certainty.

The effectiveness of these statutory changes will be greatly influenced by the implementation decisions and NCPA welcomes the opportunity to provide Treasury and the IRS with additional information in response to the relevant Notices.

Eligibility of Joint Powers Authorities as "Unrelated Party"

NCPA members formed the agency to achieve needed economies of scale, resource diversity, and expertise. NCPA engages in project-based financing, and our members elect which projects to participate in and the level of project ownership. NCPA operates on behalf of our members, but is distinct from our members.

Eligibility for Section 45 tax credits requires that power be sold to an "unrelated party." We believe there is no question that NCPA meets this test; however, given the importance of clarity, NCPA requests that Treasury stipulate that all joint powers authorities, also known as joint action agencies, are considered unrelated parties and are eligible to finance qualified projects on behalf of their members, and most importantly, are able to receive the direct pay incentives associated with power sales to its members.

Domestic Content Requirement

The IRA adds a domestic content requirement for clean energy tax incentives. This requirement provides a bonus incentive for private developers, but is a requirement for direct pay eligibility. Consequently, the implementation of domestic content rules—and the exceptions from those rules—are particularly important to public power.

As noted above, NCPA is in the process of repurposing LEC to utilize green hydrogen, including the construction of an on-site electrolyzer that will utilize surplus renewable energy to produce green hydrogen. Today, there is negligible manufacturing capability for hydrogen equipment. Coupled with supply chain issues plaguing the electric utility sector, availability of domestic production of major equipment is unlikely for those near-term direct pay eligible projects. Treasury should establish a simple, safe harbor mechanism for projects like LEC to certify a waiver from the domestic production requirement.

In addition, as detailed in APPA's comments, inflexible application of the 25% cost increase requirement for exemption from the domestic content requirement would have the perverse outcome of favoring privatization of those projects that don't meet the 25% test, but the domestic content requirement makes private financing more economic.

Timing of Eligibility Determination, Financing and Direct Pay Refund

Typically, utilities receive construction financing to build a project. For public power utilities, we often utilize municipal bonds. The direct pay provisions include a credit reduction for tax-exempt financing. As detailed by APPA's comments, entities may choose to utilize a mix of taxable and tax-exempt financing to maximize financial benefits to their consumers.

Treasury guidance that provides a mechanism for public power systems to certify direct pay eligibility will greatly aid in overcoming conflicts in the timing associated with eligibility determination and project financing.

In addition, NCPA echoes the call by APPA for claiming the credit and filing for refunds.

Thank you in advance for consideration of NCPA's comments. We would also welcome the opportunity to participate in any working groups created to further implementation of "direct pay." If you have any questions, please feel free to reach out to me at randy.howard@ncpa.com or (916) 781-4200.

Sincerely,

Randy S. Howard
General Manager
Northern California Power Agency