December 2, 2022

Submitted via Regulations.gov

Internal Revenue Service
CC: PA: LPD: PR (Notice 2022-58)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: "Request for Comments on Certain Energy Generation Incentives," Notice 2022-58 (Nov. 2, 2022)

Tenaska is a leading independent energy company in the U.S., with expertise in natural gas and electric power marketing, energy management, development and acquisition of energy assets and operation of generating facilities. Founded in 1987, Tenaska has developed, managed and/or operated approximately 22 gigawatts (GW) of power generation. Its development portfolios include more than 23 GW of solar, wind and energy storage projects and its current operating fleet includes 7.5 GW of generating facilities.

CIP is a fund management company focused on greenfield clean energy infrastructure including offshore wind, onshore wind, solar PV, biomass and energy-from-waste, transmission and distribution, reserve capacity and storage, and other energy assets like Power-to-X. Founded in 2012, CIP is today a global leader, market pioneer and the largest financial sponsor with a dedicated energy infrastructure focus.

The purpose of our comments is to request a provisional determination for several zero greenhouse-gas emissions power generation facilities that we believe qualify under Section 48E, the "Clean Electricity Investment Credit." We believe that these projects meet the intent of the law, but several important legal uncertainties remain. We are writing to request a provisional emissions rate as allowed in Part 7, Sec. 13701(b)(2)(ii), to allow us to continue development of the project with certainty on the ITC eligibility. Below we address the three primary issues causing uncertainty and propose solutions to allow a determination that this project will qualify.

I. ISSUE 1: Lifecycle Greenhouse Gas Emissions rate

Request: We propose that the Treasury accept GHG emissions rates using an established methodology, specifically the GREET[1] model, to make a timely determination that a proposed fuel source produces zero or negative GHG emissions.

Background: One of the key fuel sources will be Renewable Natural Gas (RNG) produced from agricultural wastes (specifically manure) via anaerobic digestion. The U.S. Environmental Protection Agency (EPA) has not conducted a complete LCA analysis on this specific fuel

[1] **G**reenhouse gases, **R**egulated Emissions, and **E**nergy use in **T**echnologies (GREET). The GREET model is an analytical tool that simulates the energy use and emissions output of various vehicle and fuel combinations. The model is produced and updated by the Argonne National Laboratory.

pathway, but research cited by the EPA and widely used by other similar programs indicate that RNG from agricultural wastes will achieve a negative lifecycle GHG emissions rate.

This RNG procured from manure does not yet have an established lifecycle GHG emissions rate as determined by the EPA under the relevant section 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H))), as required by the IRA. This specific statute relates to the lifecycle GHG emissions rate under the EPA's Renewable Fuel Standard (RFS) program. The EPA has conducted several lifecycle Pathway Assessments for RNG and has made the blanket determination that RNG produced from agricultural digesters will achieve at least a 60% reduction.[2] Under the RFS program, there is no rationale to conduct a full LCA Pathway Assessment for manure-based agricultural digesters that produce RNG because this fuel already qualifies for the highest value RIN type (D3), which only requires a 60% reduction in lifecycle GHG emissions compared with petroleum gasoline or diesel.

Completing a full EPA LCA pathway assessment requires several years, perhaps from two to five years, which is prohibitively long and will prevent timely development of these projects. The time required to secure a full EPA LCA assessment will impair the timely completion of several near-term projects, and as such we request that EPA simply adopt the GREET model, which is already specifically allowed for in other technologies under the IRA (hydrogen), and commonly used in assessment LCA emissions rates under the Low Carbon Fuel Standards in California, Oregon, and Washington.

II. ISSUE 2: Can projects qualify by using a mix of fuels, if the net lifecycle analysis of the total fuel mix is less than or equal to zero?

Request: Clarify that projects that use multiple fuel sources are measured on the combined net emissions of the fuels.

Background: The relevant section of the IRA states that "In the case of a facility which produces electricity through combustion or gasification, the greenhouse gas emissions rate for such facility shall be equal to the net rate of greenhouse gases emitted into the atmosphere by such facility."

The law does not specifically address situations where multiple fuels may be used in combustion projects. An electric generation project could combust several fuels (biodiesel, renewable diesel), that do have a slightly net positive GHG emissions rate, and also utilize RNG, which could have a negative emissions rate. This combustion ratio of fuels could achieve a net zero or negative emissions rate. We seek clarity that this approach will be acceptable to qualify the facility.

III. ISSUE 3: Book-and-Claim Accounting Standard

Request: Confirm that a book-and-claim accounting standard can be used to purchase RNG fuel for power generation that is produced at a different location than where it is ultimately consumed by projects seeking to qualify under Section 13701.

Background: IRA Section 45Y does not explicitly address the use of offsite fuels for meeting the zero GHG emissions standard; but rather the law refers to rules for EPA's Renewable Fuel Standard (RFS). The RFS rules explicitly allow a pathway for the use of offsite RNG to qualify

[2] https://www.epa.gov/renewable-fuel-standard-program/approved-pathways-renewable-fuel#generally

as an eligible transportation fuel. In this structure, a transportation fuel user can purchase RINs generated by RNG produced offsite, if the same amount of RNG fuel is withdrawn from the natural gas system as at the point of actual consumption as that RNG purchased upstream. Specifically, the EPA guidance documents[3] state that "RIN generation must be based on the BTU of the pipeline quality biogas after treatment and prior to any blending with non-renewable fuel or injection into a pipeline. The producer must be able to demonstrate, through contracts or affidavits, a path of the treated volume (in BTUs) prior to blending with non-renewable to downstream CNG/LNG plants, and ultimately for use as transportation fuel." We presume that the same logic and structure would be used for qualifying a zero-carbon power generation facility, but we seek certainty on this issue. Following the same logic of the established RFS program that the IRA will follow, we believe that a project can match the amount of gas BTUs consumed onsite with the same BTUs of RNG that is procured offsite.

Further, a colloquy published in the Federal Register on August 6th, 2022, confirms this approach. Specifically, Senator Carper engaged in a colloquy with the Senate floor manager for the IRA, shortly before the Senate vote on the bill, confirming that "the intent of section 13701 allows the Secretary to consider indirect book and claim factors that reduce effective greenhouse gas emissions," and specifically whether buying renewable energy credits (RECs) to offset use of grid electricity when making hydrogen can offset the GHG emissions behind the grid electricity, the answer was "yes."

Thank you for your consideration of our comments and requests for clarification. We appreciate Treasury's efforts to implement the IRA and believe your favorable findings on these requests for clarification will help facilitate further reductions in our nation's greenhouse gas emissions consistent with the Inflation Reduction Act's intent.

If you have questions or would like to discuss further, please contact John Hejkal at jhejkal@tenaska.com or (402) 938-1671.

Sincerely,

Tim Hemig
Senior Vice President, Tenaska, Inc.

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Tim Evans
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Tim Evans
Partner, CIP

[3] "Guidance on Biogas Quality and RIN Generation when Biogas is Injected into a Commercial Pipeline for use in Producing Renewable CNG or LNG under the Renewable Fuel Standard Program"