Comment from Savion, LLC

On behalf of Savion, LLC, thank you for the opportunity to comment. Our attached comments express our interests and concerns in this matter. If you require any further information, please contact me at mwalter@savionenergy.com or (573) 590-2255.

SAVION
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November 4, 2022

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

RE: Notice 2022-51

To Whom it May Concern,

Savion, LLC is a Shell Group portfolio company operating on a stand-alone basis with a growing portfolio of more than 23 GW. Savion is one of the largest, most technologically advanced utility-scale solar and energy storage project development companies in the U.S. and is headquartered in Kansas City, Missouri with employees spread across the country.

We are grateful to the Internal Revenue Service for the opportunity to comment on the important rules that are being developed after the passage of the Inflation Reduction Act of 2022. As members of both the Solar Energy Industries Association (SEIA) and the American Clean Power Association (ACP), we agree with the majority of the comments those two associations have filed in this and other IRA-related proceedings; however, as a company with a relatively large portfolio of projects located on former mine lands and other brownfields, we felt an obligation to add some specific comments to Notice 2022-51. Additionally, Savion feels that the new labor and domestic content requirement rules deserve special attention as they are promulgated and have offered our thoughts and experiences to ensure those provisions see a smooth implementation.

If there is any additional expertise or data we can provide to the IRS during this time, please don't hesitate to contact myself for connection with the relevant leaders at Savion. We truly appreciate the hard work and leadership that those at the IRS are putting into these important proceedings and look forward to participating further as we are able.

Sincerely,

Mark Walter
Senior Director of Legislative & Regulatory Affairs
Mwalter@savionenergy.com – (573) 590-2255

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Prevailing Wage & Apprenticeship Requirements

Savion recognizes that § 45(b)(6)(B)(ii) of the Inflation Reduction Act of 2022 creates a 60 day timeclock for projects to qualify for the full 30% Investment Tax Credit (ITC) or $25 Production Tax Credit (PTC) without needing to comply with the newly created prevailing wage and apprenticeship requirements after the IRS has printed guidance on those areas in the Federal Register. While Savion fully supports the new labor requirements that Congress has created for clean energy industries, there is also a significant concern regarding the timing, details, safe harbor mechanisms, and compliance reporting requirements that has material impacts on project economics. This is most acutely felt by near-term projects – projects anticipating the start of construction within the next 1-3 years – that may already have firm agreements in place for the sale of energy and purchase of materials.

With this in mind, Savion supports a full notice and comment period from the IRS regarding prevailing wage and apprenticeship requirements prior to the promulgation of what is contemplated as "guidance" under § 45(b)(6)(B)(ii). The input of the many industries impacted by these rules will be critical to ensuring that IRS develops transparent, workable, clear, and understandable rules for the smooth implementation of the new programs.

When the full notice and comment period begins, Savion would like to ensure that the following topics are thoroughly addressed:

- IRS should clarify the timeframe for which the apprenticeship requirements will apply.
    - Savion believes the requirement should only pertain to physical construction phase.
- IRS should clarify definition of "good faith effort".
    - To support local workforces, Savion believes that "good faith effort" should be clarified to mean the company has identified and contacted apprenticeship programs *in the same state*.

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Energy Communities

The creation of the new Energy Communities bonus programs is an exciting opportunity to expand the benefits of the energy transition to communities which may be particularly challenged by the move from a fossil-fuel based electric system to one focusing on renewable generation. As such, it requires a careful approach to the definitions involved to ensure the maximum impact. Below are Savion's suggestions to carry out Congress's intent:

- Savion strongly believes that the term "previous year" in § 45(g)(11)(B)(II) should be defined as part of a more holistic program to pre-approve projects similar to what the American Clean Power Association (ACP) has suggested in their comments.
    - In their comments, ACP recommends that projects be allowed to apply for designation as an Energy Community up to five years before construction of the project commences. In that timeframe, the term "previous year" would mean "the year before the project applies for Energy Community designation."
    - Because these projects require years of planning including contracting with counterparties, financing, and making capital outlays for equipment which may have years of lead time, it is important for projects to have a grasp on whether or not they will be eligible to qualify as an Energy Community long before construction begins. ACP's application framework helps provide the IRS and renewable energy projects with the necessary clarity.
- Savion believes that an entire project should be eligible for the brownfield designation if at least 10% of the project is located on land which falls under the definition of brownfield as defined by 42 U.S.C. 9601(39) based on acreage.
    - Additionally, Savion encourages the IRS to apply a liberal interpretation of the phrase "may be" in 42 U.S.C. 9601(39) in order to ensure that lands which may be otherwise complicated for redevelopment purposes are given the greatest possible chance to participate.
- Additionally, Savion believes the IRS should clarify that qualified facilities which commence construction at any point after the passage of the Inflation Reduction Act should be able to qualify for the Energy Community bonus credits.
- Lastly, Savion believes that the IRS should clarify that in non-MSA areas, industry employment metrics should be based on county-level data rather than rolled up to non-MSA averages for the purposes of Energy Community designation.

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Domestic Content

Savion believes that the implementation of the new domestic content and manufacturing requirements should be done with care, transparency, and heavy stakeholder participation. While efforts are underway to create and expand existing domestic manufacturing capabilities for components critical to solar and energy storage facilities, such investments take years to be fully operational. Therefore, it is important that these provisions are implemented in a way to honor the intent of Congress without significantly impeding renewable energy development while domestic manufacturing and supply chains mature.

Savion recommends the following with regards to the implementation of the domestic content provisions of the Inflation Reduction Act of 2022:

- Savion strongly supports the comments of both the Solar Energy Industry Association (SEIA) and the American Clean Power Alliance (ACP) which state that the IRS use 49 C.F.R. § 661 and related Federal Transit Administration ("FTA") Guidance letters and other interpretation of these regulations to guide the application of the IRA's domestic content provisions.
    - The FTA statutory framework has years of interpretation, case law, and industrial knowledge to draw from to give the renewable energy sector clarity and direction and we urge the IRS to leverage this body of law for the implementation of the Inflation Reduction Act.
- Savion strongly supports SEIA's position that any and all interconnection property, including any transmission equipment that extends beyond the fence line of the Qualified Facility, should not be required to meet the Domestic Content or Steel & Aluminum standards outlined in the IRA.
    - Additionally, any high voltage equipment, up to and including the main power transformers for a project, should not be required to meet the domestic content or steel & iron requirements.
- Savion supports SEIA's approach to use the Buy America definition of "manufacturing" from 49 CFR § 661.
    - Under 49 CFR § 661, "Manufactured process" means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

- Savion support's SEIA's definition of U.S. Steel & Iron from the Office of Management and Budget's (OMB) guidance.
    - Per OMB guidance, iron and steel produced in the United States "means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States."
- Lastly, Savion support's ACP's request for IRS to issue waivers for the Domestic Content and Steel & Aluminum provisions if the project owner can demonstrate a lack of availability.

Savion very much appreciates the opportunity to provide comments on the implementation of this impactful legislation.