SUNPOWER®

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Submitted via Regulations.gov

Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: SunPower Corporation Recommendations to Treasury

We appreciate the opportunity to provide these comments to the U.S. Department of Treasury ("Treasury") and the Internal Revenue Service's ("IRS"). SunPower Corporation is one of the nation's leading providers of residential solar, battery storage and energy services serving American residential consumers (individuals, families, homeowners, and renters). SunPower employees and our partners have kitchen table conversations with consumers every day. Because our technology is installed for the distinct purpose of serving people at home, SunPower is focused on providing and communicating the clean energy benefits of the Inflation Reduction Act (IRA) directly to American consumers. We are committed to working with federal agencies, environmental and conservation organizations, Tribal governments, state agencies, and other stakeholders to ensure the consumer benefits of the IRA reach as many Americans – from all walks of life – as quickly and effectively as possible.

Residential rooftop solar represents a large portion of energy deployment in this country and a quickly growing part of our national economy. Residential solar accounted for 29 percent of all installed solar capacity nationally and 36 percent in California (the largest solar market in the U.S.).[1] According to the US Solar Market Insight Report for Q3 2022, an estimated 7.2 gigawatts (GW) *additional* residential solar is expected to be installed between 2023 and 2027 as a result of the IRA, which equates to approximately 900,000 more homes with residential solar. When compared to other solar project types and sizes, residential rooftop solar has a relatively fast installation timeframe, making it one of the most expedient ways to realize electric generation from clean energy resources. According to the Solar Energy Industries Association National Solar Jobs Census 2020, there were 154,610 jobs in solar in 2020, with 84,948 (or 55%) in residential solar alone. The jobs that residential solar provides are local to where residential projects are installed, which means people are living and working in the communities where consumers are being served.

About SunPower

SunPower is an American company established in 1985. We provide American residential consumers with the bill savings and resiliency benefits of distributed solar, battery storage, electric vehicle (EV) chargers, and utilize these technologies to provide electric grid services. We also provide consumers with

[1] Wood Mackenzie/SEIA US Solar Market Insight Report Q3 – 2022.

associated financial products, including loans and equipment leases, to enable access to this critical technology. We are committed to diversity, equity and inclusion as exemplified by our industry-leading 25x25 Initiative. This initiative is designed to ensure the benefits of distributed solar and storage serve all Americans.

SunPower currently serves more than 440,000 U.S. residential customers. Our business represents 11 percent of the total U.S. residential solar market.[2] We employ approximately 2,000 employees in 10 states and the District of Columbia in addition to the 2,000+ employees and contractors who work for Blue Raven Solar, a company wholly owned by SunPower, that does business in 40 cities across 21 states. We also work with a robust network of more than 700 dealers – primarily independent, small business - located in 45 states who, collectively, employ more than approximately 14,000 people. SunPower and/or our dealers are licensed to do business in 49 states plus the District of Columbia.

Five examples of SunPower's recent business partnerships include those with General Motors (GM), KB Home, First Solar, IKEA and OhmConnect. The SunPower-GM collaboration includes developing a new home energy system that will enable GM electric vehicles to provide backup energy to a home when properly equipped. SunPower is GM's preferred EV charger installation provider and its exclusive solar provider. This collaboration brings together SunPower's home energy expertise and installation capabilities with GM's leadership in EV and battery technology to help provide customers with more resilient, sustainable and cost-effective energy.

Our partnership with KB Home is focused on building sustainable microgrid communities whereby SunPower and KB Home have partnered to create first-of-their-kind, more sustainable, resilient, and low-cost communities. With respect to our supply chain, we are in late-stage discussions with First Solar to supply our customers with the world's most advanced residential solar panel, manufactured in the US. With respect to our sales and marketing, we have teamed up with IKEA to make residential solar easier to access. And, finally, with respect to grid services, we are collaborating with OhmConnect to enhance grid resiliency.

SunPower comments to Treasury and IRS

The following are our high-level comments to Treasury and IRS that will allow companies like ours ensure the accelerated delivery of IRA benefits to millions more Americans through the rapid deployment of our clean energy technology – especially residential solar and battery storage. These recommendations are grounded in the need for transparency, consistency, certainty, and efficiency to provide individuals and families with broad eligibility and streamlined access to residential clean energy.

Section 25D Residential Clean Energy Credit

[2] Wood Mackenzie/SEIA US Solar Market Insight Report Q3 – 2022. SunPower's 11 percent residential market share represents SunPower, Blue Raven Solar, and our dealers.

- **Clarify that total cost and eligible expenses in the basis of the energy property are defined broadly to include all reasonable costs associated with installing solar or storage in compliance with local codes and best practices.**
  The total cost or overall cost of construction should be inclusive of the cost to install solar or storage in compliance with local codes and best practices. For storage installation this can include the installation of heat alarms, gypsum board (drywall), panelboards and sub-panelboards and associated upgrades and other building code requirements. For solar and storage installation this can include panelboard and sub-panelboard upgrades, and permit and interconnection application fees. In the case of new or larger system capacity upgrades, panelboard or sub-panelboard upgrades can also be necessary in order to "enable the installation and use of" such a system, and guidance that all such expenses can be included in basis would be helpful to both consumers and installers.

- **Confirm that battery storage, when paired with solar, can charge directly from the grid, regardless of installation date.**
  Any storage installed in 2023 or later should no longer adhere to any requirement for the storage facility to be powered by any minimum amount of renewable energy for purposes of recapture. Treasury should also confirm that storage technologies installed prior to January 1, 2023, are no longer subject to any rule requiring the storage facility to be powered by any minimum amount of renewable energy for the purposes of recapture either. Otherwise, battery storage paired with solar installed any time before or after December 31, 2022, will be required to be charged from a solar array for five years to avoid recapture, but standalone battery storage installed the very next day – January 1, 2023 - would be able to be charged directly from the grid in any amount. This is contrary to Congressional intent, as evidenced by its expansion of the ITC to cover energy storage. And it will hamper residential solar companies' ability to deploy the power from their customers' storage devices when the grid is facing critical capacity shortfalls.

- **Confirm that battery storage, when paired with solar, is not subject to any system size or capacity limitations.**
  Existing IRS guidance for solar paired storage qualifying facilities does not include any system size or capacity limitations. Only standalone battery storage qualifying systems should be subject to the minimum 3 kilowatt hour (kWh) in statute.

- **Eligible costs should include roof repairs and replacements when connected to Section 25D qualifying equipment**
  The costs of roof repairs or replacements that occur in conjunction with an installation of a system that is eligible for Section 25D should be included as eligible costs. Roof replacement or repairs fall within the definition of eligible labor costs and solar panels as states in I.R.C. 25D(e). Specifically, within I.R.C.25D(e)(2), "no expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) of subsection (d) solely because it constitutes a structural

component of the structure on which it is installed." Additionally, not allowing roof repairs or replacements as eligible costs has equity implications. For example, many older single and multi-family homes (which disproportionally house low-income residents) need roof repairs or replacement before solar can be installed. So long as the sale of the Section 25D eligible system is dependent upon the repair or replacement of the roof, those repair or replacement of the roof costs should be eligible.

- **A retrofit or addition to an existing qualifying facility should be considered a new qualifying facility.**
  If a single-family or multifamily home that already has a qualifying facility has a retrofit or addition to that qualifying facility installed (for example, the addition of a battery storage system, or an expansion of the solar system), then just the retrofit or addition to that qualifying facility (in this example case, the battery storage system only, or the expansion of the solar system only) should be considered a new qualifying facility.

Section 45L New Construction Credits

- **When the Department of Energy ("DOE") implements a successor program to the zero energy ready homes program, the successor program should become the new requirement for the highest incentive in Section 45L.**
  Given the January 1, 2023 deadline in § 45L(c)(1)(B), it should be confirmed that there is the ability to toll the effective date in the event the Department of Energy intends to update its Zero Energy Ready home program or install a successor program after January 1, 2023, and confirm that if the DOE revises or updates its zero energy ready home program, a dwelling unit that is certified under such revised or updated program must meet the requirements of this section.

Section 48E Clean Electricity Investment Credit

- **Treasury and IRS should specify which costs qualify under interconnection costs.**
  Interconnection property should include all items, studies and improvements necessary to apply for and connect the facility to the utility distribution or transmission system. Such property may include any type of interconnection application fees, panelboard or sub-panelboard upgrades, and any upgrades necessary to reliably connect the system, software and database costs (e.g., dynamic load management or communications software). Residential systems can demonstrate eligible interconnection costs through a combination of the customer contract (which, for example, accounts for panelboard and sub-panelboard upgrades) and utility interconnection documents.

- **Eligible costs should include roof repairs and replacements when connected to Section 48 qualifying equipment**
  The costs of roof repairs or replacements that occur in conjunction with an installation of a system that is eligible for Section 48 should be included as eligible costs. Not allowing roof

repairs or replacements as eligible costs has equity implications. For example, many older single and multi-family homes (which are disproportionally housing low-income residents) need roof repairs or replacement before solar can be installed. So long as the sale of the Section 48 qualifying facility is dependent upon the repair or replacement of the roof, those repair or replacement of the roof costs should be eligible.

- **A load controller used on a single-household's solar plus storage power system should qualify under the definition of "microgrid" controller**
  The definition of "microgrid" in the Act should be construed broadly, and it should be made clear that it applies to both classic microgrids, which could involve many households or businesses, as well as what are commonly known as "nanogrids," which usually involve a single household. Treasury should also make clear that based on the Act's definition of microgrid, a load controller used on a single-household's solar plus storage power system is a "microgrid controller" as that term is used in the Act.

- **Confirm that battery storage, when paired with solar, can charge directly from the grid, regardless of installation date.**
  Any storage installed in 2023 or later should no longer adhere to any requirement for the storage facility to be powered by any minimum amount of renewable energy for purposes of recapture. Treasury should also confirm that storage technologies installed prior to January 1, 2023, are no longer subject to any rule requiring the storage facility to be powered by any minimum amount of renewable energy for the purposes of recapture either. Otherwise, battery storage paired with solar installed any time before or after December 31, 2022, will be required to be charged from a solar array for five years to avoid recapture, but standalone battery storage installed the very next day – January 1, 2023 - would be able to be charged directly from the grid in any amount. This is contrary to Congressional intent, as evidenced by its expansion of the ITC to cover energy storage. And it will hamper residential solar companies' ability to deploy the power from their customers' storage devices when the grid is facing critical capacity shortfalls.

- **A retrofit or addition to an existing qualifying facility should be considered a new qualifying facility.**
  If a single-family or multifamily home that already has a qualifying facility has a retrofit or addition to that qualifying facility installed (for example, the addition of a battery storage system, or an expansion of the solar system), then just the retrofit or addition to that qualifying facility (in this example case, the battery storage system only, or the expansion of the solar system only) should be considered a new qualifying facility.

- **Confirm that battery storage, when paired with solar, is not subject to any system size or capacity limitations.**

Existing IRS guidance for solar paired storage qualifying facilities does not include any system size or capacity limitations. Only standalone battery storage qualifying systems should be subject to the minimum 5 kilowatt hour (kWh) in statute.

Section 48E Domestic Content Bonus Credit

- **Ensure that solar paired with storage is considered a single qualifying facility for purposes of domestic content bonus credit.**
  For the purposes of the domestic content bonus credit as stated in IRC §45(b)(9)(B)(iii) a solar paired storage system, which under existing IRS guidance qualifies as a single qualifying facility for the purposes of the ITC, should continue to be considered a single qualifying facility. Current guidance allows for solar paired storage systems to qualify as a single qualifying facility for the distinct reason that a customer purchases the qualifying facility within the same contract.

- **49 C.F.R. § 661 and related Federal Transit Administration ("FTA") Guidance letters and other interpretation of these regulations should guide the application of the IRA's domestic content provisions.**
  Based on the FTA's application of 49 C.F.R. § 661, domestic content is determined by first identifying the: (i) end product; (iii) components, and (iii) subcomponents. This same three-tiered approach should be adopted. Under the FTA approach, qualifying facilities, like a residential solar facility, would be categorized as a manufactured end product. Components of that end product would include those articles delivered to and fully integrated into the qualifying facility. For example, in the case of a residential solar facility, manufactured products would include only solar modules, battery storage (if applicable), inverters, racking, and monitoring systems, and would not include installation and labor costs. As such, those components listed in the prior sentence should be treated as manufactured products. In addition, subcomponents of these manufactured products (e.g., fasteners) should not have to comply with the 100% U.S. iron and steel requirement.

- **Clarify that 'completion of construction' includes consideration of delays by the utility and/or the authority having jurisdiction (AHJ).**
  Either of the two alternatives described below should be allowed as acceptable definitions of 'completion of construction' to ensure that projects are not held to construction delays that are outside of their control and outside the definition of 'qualified facility.'

  Alternative 1:
  The "completion of construction date" should be the same as the placed in service date, but only if the qualified facility would be considered the same upon completion of construction as it would be when placed in service – i.e., when mechanical completion and interconnection to a transmission facility have been accomplished. In other words, interconnection equipment, other utility equipment, etc., that may connect to the qualified

facility after completion of construction but before mechanical completion should not be considered part of the qualified facility.

Alternative 2:
The date of authority having jurisdiction (AHJ) inspection to determine the year to which a project must meet domestic requirements can be used as the "completion of construction" date given that utility upgrades have the potential to push a project to the following year which could trigger a higher domestic content requirement.

- **Clarify that a 'component of a qualified facility' is the same as the definition of 'component' in 49 C.F.R. 661.3 and that a representation from the manufacturer certifying domestic content manufacturing is sufficient evidence for eligibility.**
"Component of a qualified facility" should be defined consistent with the definition of "component" in 49 C.F.R. § 661.3. In addition, it should be confirmed that the components of the solar power plant end product are the solar modules, accompanying battery storage, inverters, etc. Certification from the manufacturer to the purchaser demonstrating that they meet the domestic content qualifications should be allowed to be submitted in order to qualify for the domestic content adder. It would be detrimental to solar companies to require evidence through submission of supply agreements which include proprietary and competitively sensitive information.

- **A retrofit or addition to an existing qualifying facility should be considered a new qualifying facility for the purposes of domestic content requirements.**
If a single-family or multifamily home already has a qualifying facility installed, for example a rooftop solar system, and a new qualifying facility is added to the home, (for example, a battery storage system, or an expansion of the solar system), then only the new qualifying facility, (in this example case, the battery storage system only, or the expansion of the solar system only), should be held to the domestic content bonus credit requirements. Such clarification is critical for both consumers and installers when navigating how the Section 48 domestic content bonus credit would apply to a project.

- **Confirm that, as directed by statute, qualifying facilities will be eligible starting January 1, 2023.**
Qualifying facilities should be eligible for the energy communities bonus credit on or after January 1, 2023, retroactively, even if there is not yet Treasury or IRS guidance issued prior to January 1, 2023.

Section 48E Labor Requirements

- **Qualified facilities should be determined based on the maximum amount of alternating current ("AC") they can send out to the grid.**
In order to receive an increased credit amount, qualified facilities should be determined based on the maximum amount AC that they can send out to the grid (i.e., post-inverter for inverter-

based resources). Facilities that include, for example, generation and storage assets that exceed 1 megawatt AC ("MWAC") could still qualify provided that their inverter(s) are not capable of sending out 1 MWAC or more. This can be an inverter configuration or can be a commercial limit based on an interconnection agreement with the interconnecting utility. For purposes of this provision, the 1 megawatt should be defined as 1 megawatt of *real* power, not as *apparent* or *reactive* power.

Section 48E Energy Communities Bonus Credit

We are generally aligned with the Solar Energy Industries Association (SEIA) more detailed comments to the "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," Notice 2022-51 (Oct. 5, 2022). Please consult SEIA's comments for our recommendations regarding Section 48 energy communities.

However, SEIA did not capture one critical issue in their comments related to prevention of recapture risk and associated consumer protection. The designated energy community that is available at date of the customer contract execution associated with a qualifying facility should determine eligibility for the energy communities bonus credit, even if that designated energy community changes at any point in the future. This will ensure that customers receiving benefits associated with these qualifying facilities, and the companies selling the qualifying facilities to them, can reasonably rely upon qualification for the energy communities bonus credit at the time of sale.

- **Confirm that, as directed by statute, qualifying facilities will be eligible starting January 1, 2023.**

  Qualifying facilities should be eligible for the energy communities bonus credit on or after January 1, 2023, retroactively, even if there is not yet Treasury or IRS guidance issued prior to January 1, 2023.

Section 48E Low-Income Community and Low-Income Economic Benefit Project Bonus Credit

- **Confirm that, as directed by statute, any qualifying facility that meets the requirements for the low-income community or low-income economic benefit project bonus credit on or after January 1, 2023, and ultimately receives Treasury approval, is eligible for the bonus credit regardless of when Treasury issues program guidance.**

  According to IRA statute, the low-income and low-income economic benefit project bonus credits are effective as of January 1, 2023. However, the statute also provides that Treasury has 180 days from the date of enactment to issue guidance. In the case that there is no registration or application process available on January 1, 2023, Treasury should confirm that applications can be submitted from that date retroactively.

- **Establish a program that is open to all, transparent, quick, and easy to use.**

Because the low-income bonus credits are limited to 1.8 gigawatts annually, the program should be designed with clear minimum capacity set-asides by facility type (single-family, multifamily, and off-site community solar) with an open pool available to those qualifying facilities should they exceed the minimum allocation within their set-aside. The following categories and minimum set-asides should be established:

Recommended Eligible Project Categories and Minimum Set Aside Amounts	
Qualified Solar & Wind Facilities	**Minimum Set Aside**
Single-Family Residential Facilities	30% (540 MW)
Multifamily Residential Facilities	10% (180 MW)
Community Facilities	30% (540 MW)
Open Pool – for all qualified facilities once the minimum set asides have been reserved	30% (540 MW)

We disagree with one component of SEIA's comments on this subject. Importantly, the multifamily category should include *all* eligible multifamily project types. It should not be limited to just federally funded affordable housing projects.

Treasury should establish a web-based interface to track capacity allocations (similar to PowerClerk used by the NYSun program). This approach will help taxpayers and installers by providing transparency into how to apply, how the adder capacity will be allocated, and how quickly capacity is being filled. All of the program design components in these comments are dependent upon this web-based interface.

The program should be designed as a first-come, first-served basis with a rolling project-by-project application period. Once the minimum set aside allocated capacity is fully reserved, any subsequent applications would be placed on a waiting list.

The program should adopt specific deadlines for project completion based on project type. These deadlines should be:

- Single-family residential qualifying facilities should be granted a one-year initial reservation period.
- All other qualifying facility types should be granted a two-year initial reservation period.
- All qualifying facilities being installed on new construction residential and non-residential facilities (including those that are part of a qualified low-income residential housing project) should be granted an additional year in their initial reservation period. This would account for the time needed to construct the single-family or multi-family residential building.
- All projects should be permitted one six-month extension to the initial reservation period.

If a project is not completed within the specified timeline, the reserved allocated capacity should be relinquished and returned to the category and minimum set-aside from which it was reserved.

- **Clarify which data source will be used to determine low-income community bonus credit with specific citation for an available online resource. Ensure that areas qualifying as a low-income community at the contract execution date are not subject to recapture if the area ceases to be a low-income community thereafter.**

  Treasury should rely on the census tracts eligible for the New Markets Tax Credit, as described in IRC Section 45(e), and make the data used to draw the census tracts publicly available no later than December 31, 2022.

  In addition, it is important to address a critical issue related to prevention of recapture risk and associated consumer protection. The designated New Markets Tax Credit data that is available at date of the customer contract execution associated with a qualifying facility should determine eligibility for the low-income community bonus credit, even if that data changes at any point in the future. This will ensure that customers receiving benefits associated with these qualifying facilities, and the companies selling the qualifying facilities to them, can reasonably rely upon qualification for the low-income community bonus credit at the time of sale.

- **For single-family and multifamily projects, make the application and approval process quick and simple by streamlining application requirements.**
  Treasury should require basic application materials for on-site projects serving single-family or multifamily homes as these projects operate on much faster development cycles compared to larger off-site projects. To reduce duplication of materials submitted for eligibility, Treasury should establish a registration process for companies to submit documentation qualifying them to submit applications to reserve a credit allocation.

  The registration process should require companies to submit 1) business license, and 2) proof of or certificate of appropriate insurance. Next, to streamline the application and approval process to reserve capacity for single-family and on-site multifamily projects, Treasury should require 1) identifying information for the customer, installer, and the facility owner, and 2) a copy of the signed contract between the developing firm and property owner. The signed contract will clearly identify the address which is being used to qualify for the 10-percentage point bonus credit available to projects in a low-income community.

  Residential single-family and multi-family qualifying facilities should also be eligible for the 20-percentage point bonus credit available to low-income economic benefit projects, as long

as applicants demonstrate that at least 50% of the financial benefits of the project must go to income-eligible households.

Treasury should publish a list of low-income qualifying federal programs (for example, SNAP, Medicaid, SSI, TANF, Housing Choice Voucher Program, etc.) to be used as acceptable evidence of low-income status. The list of low-income qualifying federal programs should be the only requirement needed to demonstrate that at least 50% of the financial benefits of the project must go to income-eligible households.

With respect to qualified low-income residential building projects, an equitable allocation of the financial benefits should be the following: For the occupants of multi-family residential projects, the applicant can either (1) where the tenant units are individually metered and state and local interconnection rules so allow, allocate bill credits among all the customers living in the building based on a standardized share (generally based on unit square footage or similar basis not related to energy usage) of the project's annual output levelized monthly, or (2) where such crediting is not possible, such as in master metered buildings or in areas not permitting such credits, the property owner can commit to new incremental amenities or services available equitably to all tenants.

The criteria for approval of applications should be transparent and automatic. Predefined eligibility and application requirements are easy to administer, eliminate potentially complicated project evaluation decisions for Treasury, and have been used to successfully deploy solar in several states.

Section 45X Advanced Manufacturing Production Credit

- **Confirm that battery module encasing that meets industry standards be included in the definition of eligible battery module technology which qualifies for this advanced manufacturing production credit.**
  The assembly of a battery storage system should qualify as a battery module so long as the assembled product is certified by appropriate industry standards.

- **Require all eligible components to be certified or to comply with appropriate industry safety and/or performance standards.**

- **Include optimizers in addition to microinverters as eligible components.**

- **Issue guidance on the apportionment of the credits and confirm that the contractual owner of the design of the qualifying component is the sole qualifier for, and entitled to, the tax credit.**
  For the avoidance of doubt, if the owner of the design utilizes a contract manufacturer, the contract manufacturer would not qualify for, or be entitled to, the tax credit.

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Please also refer to comments submitted by the Solar Energy Industry Association (SEIA), Local Solar for All, and Advanced Energy Economy, which elaborate on many applicable sections of our comments in more detail.

Sincerely,

Suzanne Leta
Head of Policy and Strategy