November 16, 2022

Submitted via Regulations.gov

Internal Revenue Service
CC:PA:LPD:PR (Notices 2022-49, -50, -51)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Joint Comments of the Clean Energy Organizations on the Requests for Comments on Guidance on Certain Clean Energy Tax Credits Under the Inflation Reduction Act

The American Clean Power Association ("ACP"), American Council on Renewable Energy ("ACORE"), Advanced Energy Economy ("AEE"), and Solar Energy Industries Association ("SEIA") are the national non-profits and trade associations (collectively, "Clean Energy Organizations")[1] representing various segments of the U.S. clean energy industry. Our members promote environmentally responsible development of distributed and utility-scale clean energy, storage, and related technologies. We are committed to working with federal agencies, environmental and conservation organizations, Tribal governments, state agencies, and other stakeholders to achieve this goal. On behalf of our member companies, we appreciate the opportunity to provide these comments on the Treasury Department ("Treasury") and Internal Revenue Service's ("IRS") request for comments on energy guidance under the Inflation Reduction Act ("IRA").

On November 4, 2022, ACP, ACORE, AEE, and SEIA each submitted separate responsive comments to the Notices 2022-46 through 2022-51. Those comments offer robust recommendations on how proper implementation of the clean energy tax credits under the IRA will accelerate clean energy deployment and carbon emission reduction, consistent with the IRA, while invigorating the U.S. clean energy workforce and supply chain. On behalf of our member companies, we appreciate the opportunity to provide these joint comments highlighting areas of alignment with respect to key areas for prompt and workable guidance.

[1] The statements of interest for the Clean Energy Organizations are attached at the end of this letter.

I. Introduction

The IRA represents a monumental investment in the nation's energy transition—an investment that promises to deliver enough clean energy to power every home in America by 2030, while supporting jobs, domestic manufacturing, economic growth, and U.S. global competitiveness. Clear, workable, and flexible guidance is the key to incentivizing taxpayers and the clean energy industry to deploy projects in a timely manner—and at levels that will ensure the IRA lives up to its promise to drive domestic jobs and manufacturing, as well as reduce carbon emissions.

The Clean Energy Organizations urge Treasury and IRS to consider the following guiding principles for all aspects of IRA implementation now and over the longer term. We strongly support guidance that is:

- Clear, consistent, durable, and can be easily interpreted and applied across technologies where possible;

- Flexible and accommodating of reasonable interpretations of the IRA where feasible;

- Consistent with congressional intent to foster a robust domestic manufacturing base that supports clean energy deployment, creates jobs, onshores critical supply chains, and strengthens our national security; and

- Supportive of the IRA's core principles of equity and environmental justice in order to ensure a just energy transition that will benefit the communities most in need of expanded economic opportunities and lower impacts from the development of energy infrastructure.

To ensure the incentives in the IRA make these clean energy investments a reality, we highlight three specific areas in which prompt guidance from Treasury and IRS will be essential to provide sufficient market certainty for tax credits to incentivize clean energy deployment:

- Issuing guidance regarding provisions of the Code related to clean energy generation initiatives, as amended and added by the IRA, is needed before business decisions can be cemented that will kick-start the development process.

- Guidance is needed on new sections of the Code, as added by the IRA, that allow taxpayers to qualify for increased credits if certain requirements are satisfied; these credit enhancements will spur even greater clean energy investment than the status quo and help ensure a domestic supply chain emerges to meet the demand created by the IRA.

- Guidance on the elective credit transfer provisions will help support tax equity financing for clean energy projects, expanding the base of potential investors and supporting greater deployment.

The Clean Energy Organizations appreciate the robust and broad public engagement that Treasury and IRS are engaging in with taxpayers and stakeholders to inform guidance implementing the clean energy tax provisions in the IRA. We encourage this deliberative and transparent process to continue. In that spirit, prior to issuing final guidance, we urge Treasury and IRS to publish draft guidance for notice and comment on requirements for the clean energy tax credits. In particular, we respectfully request that Treasury and IRS issue draft guidance for the prevailing wage and apprenticeship requirements, low-income community bonus tax credits (in light of the 180-day deadline, among other reasons), direct payment of tax credits (Section 6417), and transferability of tax credits (Section 6418), as well as providing reasonable time for public comment on such draft guidance before issuing final guidance.

II. Areas of Common Interest

We briefly highlight some of the most important areas of common interest among the comments that we individually submitted. Specifically, the Clean Energy Organizations see strong alignment on the following issues, which are summarized at a high level below and expanded upon in our individual comments:

- ***Labor provisions.*** Implementation of the IRA's provisions related to prevailing wage and apprenticeships, which are unprecedented new tax policies, should include clear guidance to provide the regulatory certainty needed to prevent a slowdown of renewable energy project development and execute deals that will benefit workers, businesses, and the environment. Guidance should address multiple topics raised in our respective comments, including, but not limited to, identifying compliance requirements; defining key terms, such as construction, alteration, and repair, consistent with their plain meanings and lists of qualifying activities; providing confirmation that taxpayers can rely on reasonable decisions where worker classifications are overlapping, ambiguous, or unavailable; setting a reasonable geographical limit on how far from a construction site a taxpayer must seek apprentices to satisfy the good faith exception; and confirmation that the IRS will administer compliance similar to other tax code provisions, except in the case of errors discovered and corrected in a reasonable time period. Omission of these considerations could make implementation unworkable for companies even when they are making every effort to comply.

- ***Domestic content.*** Consistent with the text of the IRA, Treasury should confirm that the "Buy America" regulations, 49 C.F.R. § 661 *et seq.*, will apply for purposes of meeting the domestic content bonus credit requirements. Treasury should also confirm that when these regulations are applied to renewable energy products, the relevant "end product" will include, at a minimum, the qualified facility or qualified energy product.
- ***Energy communities.*** The Clean Energy Organizations urge Treasury to rely on existing information related to energy communities maintained by the Bureau of Labor Statistics, the Office of Management and Budget, and the Mine Safety and Health Administration, where such information is available and reliable. We also urge definitive guidance on which vintages of relevant statistical areas or census tracts will be used for purposes of claiming the energy communities bonus credit.
- ***Low-income communities.***[2] Treasury and IRS's program design for its allocated low-income community bonus credits should accommodate openness to all participants who can demonstrate certain project maturity and eligibility requirements, be available to applicants on a rolling basis, and reflect the realities of current markets for residential, community, and commercial renewable projects.
- ***Advanced manufacturing.*** Treasury and IRS should define the term "produce" with reference to existing IRS guidance, and confirm that contract manufacturers used by taxpayers will not affect eligibility for 45X credits upon agreement by the contractor and satisfaction of the benefits and burdens test.
- ***Interconnection ITC.*** For purposes of the 5 MW_{AC} threshold for projects qualifying for the interconnection investment tax credit, we recommend that Treasury and IRS measure the "maximum net output" of the energy property as the lesser of the maximum allowable power at the point of interconnection to AC transmission or distribution lines or the combined maximum net output of all inverters.

III. Conclusion

We appreciate the opportunity to provide these supplemental comments to help swiftly implement key provisions of the IRA, consistent with our recommended guiding principles and shared priorities. We look forward to continuing to work closely with Treasury, IRS, and the administration on these issues to capitalize on this once-in-a-generation opportunity to create a more sustainable and prosperous nation.

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[2] ACP takes no position on the low-income community provisions.

Sincerely,

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American Clean Power Association

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President & CEO
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Clean Energy Organizations' Statements of Interest

ACP is the national trade association representing the renewable energy industry in the United States, bringing together hundreds of member companies and a national workforce located across all 50 states with a common interest in encouraging the deployment and expansion of renewable energy resources in the United States. By uniting the power of wind (both land-based and offshore), solar, storage, and transmission companies and their allied industries, we are enabling the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system.

ACORE is a 501(c)(3) national nonprofit organization that works to unite finance, policy and technology to lead the transition to a renewable energy economy. ACORE supports Treasury's efforts to solicit robust and broad public engagement on critical clean energy tax incentives in the IRA. Prompt completion of implementation guidance fleshing out key program details is the critical first step to maximizing the impact of the IRA and achieving U.S. greenhouse gas emissions reductions. Our member companies, which include clean energy investors, developers, manufacturers, utilities, and corporate buyers, are awaiting clarity to assess how best to structure transactions and utilize incentives under the new law.

AEE is a national association of businesses committed to making the energy we use secure, clean, and affordable. AEE is the only industry association in the United States that represents the full range of advanced energy and transportation technologies and services, both grid-scale and distributed. Advanced energy includes energy efficiency, demand response, energy storage, wind, solar, hydroelectric, nuclear, electric vehicles, chargers, software, and more. Today, our industry employs 3.2 million American workers. Our member companies provide all the products and services necessary to decarbonize our economy cost-effectively. They have a combined market capitalization of approximately $3 trillion.

SEIA is committed to building a strong solar industry to speed the country's energy transition and address the climate crisis. As the national trade association for the U.S. solar energy industry, which employs more than 230,000 Americans, we represent over 1,000 organizations that manufacture, install, and support the development of solar energy. We firmly believe that the clean energy transition must be based on principles of equity and opportunity. These values are infused throughout our organization and ones we are actively working to advance within our industry.