

May 3, 2023

Via Electronic Submission

Office of Associate Chief Counsel
(Passthroughs & Special Industries)
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Re: Letter in support of SEIA comments in response to Notice 2023-29

Dear Office of Associate Chief Counsel:

The American Council on Renewable Energy (ACORE) writes this letter in support of comments from the Solar Energy Industries Association (SEIA) responding to Notice 2023-29, which provided guidance on the energy communities (EC) bonus amount under the Inflation Reduction Act of 2022 (IRA).

ACORE is a national nonprofit organization that unites finance, policy and technology to accelerate the transition to a renewable energy economy. ACORE's membership spans renewable energy technologies and constituencies, including developers, manufacturers, top financial institutions, major corporate renewable energy buyers, grid technology providers, utilities, professional service firms, academic institutions, and allied nonprofit groups. We greatly appreciate the opportunity to provide these additional comments to the Department of Treasury, both underscoring our position on the recent special rule for energy communities as well as supporting SEIA comments below.

Clarification Around "Special Rule for Beginning of Construction" – Sec. 4.01(2)

ACORE members have expressed significant concern regarding a change to the safe harbor standard initially outlined in Notice 2023-29. As first published on April 4, 2023, the Notice stated that projects beginning construction in an area defined as an EC would continue to qualify for the duration of the credit period (PTC) or placed-in-service date (ITC). On April 7, the Department amended its Notice to provide that the special rule is applicable only to projects beginning construction after January 1, 2023. This arbitrary change has no basis in the statute that Congress enacted yet would hurl projects beginning construction before that date into financial limbo and penalize developers for responding to market signals. To maximize renewable energy deployment in energy communities, a priority we are confident the Department shares, we respectfully request Treasury to establish that safe harbor treatment ***extends to projects beginning construction in energy communities as of August 16, 2022***, the date on which IRA was signed into law by President Biden.

Fossil Fuel Tax Revenue, Statistical Area and Other Clarifications

ACORE wholeheartedly agrees with SEIA on its arguments regarding local fossil fuel tax revenue data:

- Treasury should consider all available local government revenue sources related to fossil fuel production as eligible for the 25 percent local tax revenue determination.

- Treasury should authorize local government coalitions to petition the Secretary for a statistical area (SA) declaration, which will help to fill the centralized data gap that exists currently and, crucially, afford communities a say in how they are defined.

As SEIA explains, it is important for Treasury to clarify the following regarding statistical areas (SAs):

- Treasury should provide assurance that the statistical areas delineated in Appendix A to Notice 2023-29 will remain unchanged by future updates to core-based SAs.
- Appendix B of the Notice also omits several highly relevant North American Industry Classification System (NAICS) codes used for direct employment in fossil fuel production. ACORE agrees with SEIA that Treasury should incorporate the nearly half a million workers employed under these codes into the numerator of its fossil fuel employment ratio calculations.
- ACORE joins SEIA in asking whether Treasury will issue an update regarding future situations in which County Business Patterns reveal additional SAs that meet the 0.17 employment threshold and whether taxpayers can claim the EC credit in such SAs accordingly.

ACORE echoes SEIA's requests for several other points of clarification:

- As with SAs in Appendix A, Treasury should specify whether it plans to use 2020 Census tracts moving forward.
- Locational data sources for coal mines or coal-fired generating units (CFEGU) do not reflect the wide areas these facilities may span and, therefore, Treasury should clarify whether their physical extension into other census tract(s) will mean that such tracts, and those adjacent, qualify for the EC bonus.
- We also request more clarification regarding the definition of “irregular information” with respect to CFEGUs, the adoption of an uncertainty proxy for determining CFEGU coordinates based on their level of precision, and equal treatment between CFEGUs and closed coal mines regarding ministerial corrections to location data.
- ACORE would appreciate further direction from Treasury regarding whether taxpayers can claim the EC bonus for projects in a census tract after a mine closure or plant retirement but before the requisite updates by Treasury and, additionally, whether former coal-fired generators now using different fuel sources may qualify as “retired.”
- In seeking clarification on brownfield site boundaries, we echo SEIA's recommendations to adopt the EPA's definition of mine-scarred land,” work with EPA and state agencies to ensure that brownfield databases are updated, and correct the Phase I Assessment to require taxpayers to confirm the presence of a hazardous substance, pollutant, or contaminant.

ACORE looks forward to continuing to work with the Department in support of its efforts to issue swift and effective guidance, which is critical to maximizing the benefits of IRA. We remain encouraged by the duration of EC qualification, clarity that offshore wind projects can qualify when interconnection facilities are located in ECs, and the inclusion of a new mapping tool. ACORE is hopeful and confident that these efforts will be furthered by consideration of the requests above.

Please do not hesitate to contact me at nyholm@acore.org with any additional requests you may have.

Sincerely,

/s/

Allison Nyholm

Vice President, Government Affairs

American Council on Renewable Energy