ACORE
AMERICAN COUNCIL ON RENEWABLE ENERGY

January 22, 2024

Via Electronic Submission

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

Comments in Response to Notice of Proposed Rulemaking
Section 48 – Definition of Energy Property and Rules Applicable to the Energy Credit: REG-132569-17

Dear Office of Associate Chief Counsel,

The American Council on Renewable Energy ("ACORE") respectfully submits these comments in response to the U.S. Department of the Treasury ("Treasury or "Department") and Internal Revenue Service ("IRS") request for public comment in response to the notice of proposed rulemaking containing proposed regulations on the Investment Tax Credit (ITC) under Section 48 of the Internal Revenue Code ("proposed regulations").

Expanded by the Inflation Reduction Act of 2022 ("IRA") to include critical emerging industries such as offshore wind and large-scale battery storage, in addition to its long-standing incentives for solar, onshore wind, and other key sectors, the section 48 ITC is a cornerstone of the law's sweeping clean energy tax package and testament to its impressive technological breadth. As such, we commend Treasury for swiftly promulgating interim rules that can help taxpayers understand and leverage this vital credit in the short term. Treasury's continued issuance of timely guidance is fundamental to maximizing the IRA's success, and we look forward to our ongoing work with the Department in this realm. The comments that follow are in furtherance of our shared goal to ensure that guidance simultaneously upholds standards of effectiveness, common understanding, and practicability, broadly reflecting positions held within and across ACORE's diverse membership.

1. Rules Concerning Separate Ownership of Energy Property

ACORE members active in key transaction spaces, including offshore wind and standalone battery storage, have highlighted concerns with a limitation under the proposed regulations whereby a taxpayer who claims eligible property, such as certain power conditioning and transfer equipment (e.g., subsea export cables), under the section 48 ITC must be the same taxpayer who owns the associated energy property. We respectfully ask Treasury to lift this harmful restriction in the final rules.

The underlying statute neither requires, nor does previous guidance support, an approach that makes the ITC available exclusively to generation owners, but this would seemingly be the effect of the proposed regulations, which specifically state that "property owned by a taxpayer is an integral part of an energy property *owned by the same taxpayer* if it is used directly in the intended function of an energy property as provided by section 48(c) of the Code and as described in paragraph (e) of this section, and is essential to the completeness of the intended function," providing further that "[a] taxpayer may not claim the section 48 credit for any property that is an integral part of the taxpayer's energy property that is not owned by the taxpayer."[1]

Third-party ownership of energy property has a strong basis in relevant tax law and the growth of emerging clean technologies at large. As a preliminary matter, the preamble to the proposed regulations does not explain why Treasury and the IRS believe that this "ownership rule" is warranted. In fact, the preamble provides that "Section 48 and the existing regulations thereunder are silent regarding whether the components of an energy property can be owned by multiple taxpayers." The statement in the preamble is technically accurate but perhaps too narrow. Section 48(a)(5)(D)(i)(II), which allows a taxpayer to elect the energy credit in lieu of the production tax credit of section 45, provides that qualified property includes "property... *used* as an integral part of the …facility." Although the statute is silent on ownership, the term "used" implies that consistent ownership of the energy facility and its integral components is not required.

[1] Prop. Reg. § 1.48-(f)(3)(i).

The energy credit of section 48 is a component of and a successor to the more broadly based investment credit under section 38 and should be evaluated in the context of its precedents. Treasury regulation section 1.48-1(d)(4) (definition of section 38 property) discusses property that is "used as an integral part" of certain activities that qualified for the investment credit. The regulation does not impose an ownership requirement. To the contrary, the last sentence of paragraph (4) provides that "Property will be considered used as an integral part of one of the specified activities if so used either by the owner of the property or by the lessee of the property."

Treasury and the IRS should not impose restrictions that are not provided in the statute or past guidance and practices. Nothing in the preamble or the text of the proposed regulations indicates why this change in policy is warranted. There were no statutory changes to section 48 provided by Congress in the IRA that would compel or even suggest adoption of the ownership rule.

The ownership rule of the proposed regulations causes policy and practical issues. First, a component is either integral to the operation and function of energy property or it is not. The identity of the owner of the property does not change the nature of the property. Further, the ownership requirement puts pressure on the distinction between energy components that are functionally interdependent (to which the ownership rule does not apply) and integral property (to which the ownership rule would apply) and complicates common business planning and structures.

Multiple commenters have also pointed to IRS PLR 8341057, which found that co-owner tenants in common may elect separate methods of depreciation for their respective ownership share, in addition to IRS PLR 201536017, which authorized each co-owning taxpayer to claim the 30 percent solar ITC for their individual share of expenditures related to photovoltaic (PV) panels, equipment, and installation.[2,3] Moreover, Rev. Rul. 78-268 also supports the notion that proportionate ITC allocations to co-owners of an electric generating facility are allowable even if some of the co-owners of said facility are considered ITC ineligible.[4]

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[2] PLR 8341057 (July 1983).
[3] PLR 201536017 (September 2015).
[4] Rev. Rul. 78-268, 1978-2 C.B. 10 (1978).

In Rev. Rul. 78-268 and GCM 39142, the IRS reaffirmed this holding outside the context of co-ownership, such as with respect to parties involved in a partnership or tenants in common regardless of whether a Subchapter K election has been made.[5] Prominent legal cases have led federal courts to the same conclusion, including the United States Tax Court in *Samis v. Comm'r:*

> "Bearing in mind the basic objective which Congress sought to achieve by means of the investment credit…the separate ownership of the energy plant in the present circumstances is wholly irrelevant."[6]

Beyond their departure from well-established precedent, rules that foreclose access to the ITC by parties other than the owner of the entire energy property would also wrongfully discourage the expansion of new market opportunities that the IRA is designed to accelerate, including the specialization of new firms in services related to particular units of equipment and activities such as the installation of community/networked geothermal district heating systems and individual batteries or storage devices to complement residential solar systems. Additionally, offshore wind transactions may bring together private developers to construct and maintain generating equipment (e.g., turbines) alongside one or more government or private entities focused on the buildout of needed transmission and distribution infrastructure solutions (e.g., onshore and offshore substations and subsea export cables), which underpin critical ongoing efforts to coordinate the buildout of a more efficient backbone or meshed grid alternatives. Awarding the ITC to only one of these parties is likely to delay such efforts with the potential to deter cross-sector and multi-jurisdictional collaboration.

This restrictive element of the proposed regulations also contradicts the flexible approach Treasury took regarding "shared property," whereby "[m]ultiple energy properties (whether owned by one or more taxpayers) may include shared property that may be considered an integral part of each energy property so long as the cost basis for the

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[5] GCM 39142 (June 1983).
[6] Samis *v.* Comm'r of Internal Revenue, 76 T.C. 609, footnote 6 at 623 (1981).

shared property is properly allocated to each energy property."[7] In this way, Treasury has taken the apparent view that the use of energy property that is an integral part of another energy property owned by a different taxpayer, such as a battery storage system co-located with a solar project, does not disqualify ITC eligibility for either individual, but the separate ownership of integral components that comprise a single unit of energy property, such as offshore wind turbines and the requisite substation equipment, is altogether disqualifying.

Respectfully, ACORE finds this position erroneous and liable to create confusion or stagnation within the industry, especially as the facts above are less a question of ownership than a mere substitution of definitional terms. The underlying question of separate ownership itself is a technological and financial one that varies from project to project and should remain under the purview of developers and their associated partners.

Recommendation: ACORE respectfully urges the Department to provide in the final regulations that components treated as integral to an energy property or qualified investment facility for purposes of the section 48 ITC are eligible to be claimed by the taxpayer, regardless of whether such taxpayer also owns the energy property.

2. Rules Concerning Qualified Interconnection Costs

ACORE generally supports Treasury's implementation of the statutory provisions involving qualified interconnection costs. Section 48(a)(8)(B) defines "qualified interconnection property," with respect to an energy project that is not a microgrid controller, as any tangible property (i) which is part of an addition, modification, or upgrade to a transmission or distribution system that is required at or beyond the point at which the energy project interconnects to such transmission or distribution system in order to accommodate such interconnection; (ii) either constructed, reconstructed, or erected by the taxpayer or for which the cost with respect to the construction, reconstruction, or erection of such property is paid or incurred by such taxpayer; and (iii)

[7] Prop. Reg. § 1.48-9(f)(3)(i).

the original use of which, pursuant to an interconnection agreement, commences with a utility.[8]

To qualify, the costs of interconnection property must be paid or incurred in connection with the installation of energy property with a maximum net output not greater than 5 megawatts, measured in alternating current, (MWac). This approach, which the proposed regulations adopt, is consistent with the underlying statute as amended by the IRA and stands to help the developers of clean energy projects defray significant network upgrade costs that can act as a barrier to their construction. As the proposed regulations and statutory definition above also correctly affirm, the ITC can cover the costs of upgrades to a transmission or distribution system that is required at or beyond the point at which an energy project comprised of multiple low-output energy properties interconnects to such transmission or distribution system.

The proposed regulations are correct in establishing that interconnection costs can include those incurred to modify or upgrade an existing transmission system to accommodate interconnection for energy properties with a maximum net output not greater than 5 MWac, though minor refinements are needed to guarantee the efficacy of this approach in two respects.

First, Congress specified that the ITC for qualified interconnection property only be available for property installed in connection with energy property with a maximum output not greater than 5 MWac, but the interchangeable use of two distinct electrical concepts – maximum net output in AC and nameplate generating capacity – in the proposed regulations could lead to misinterpretation and unintentionally exclude otherwise qualifying interconnection property.

> *Example.* Consider solar energy property (a string of panels) with a maximum DC output of 6 MW, and an inverter with a maximum AC output of 5 MW. This corresponds to an inverter loading ratio of 1.2:1, well in line with industry norms. Based upon the plain text of section

[8] See also Prop. Reg. §1.48-14(g)(2).

> 48(a)(8)(A), interconnection property installed in connection with this energy property should be eligible for the qualified interconnection property ITC, as the maximum output measured in AC does not exceed 5MW. However, under proposed section 1.48-14(g)(3), interconnection property installed in connection with this energy property would not be eligible, because the nameplate capacity would be above 5MW.

Second, the proposed regulations did not address a complicated aspect of determining ITC eligibility, which concerns situations in which the owner of energy property receives reimbursement or revenue for eligible interconnection property, notwithstanding regions of the country with a "participant funding" mechanism (e.g., generators must fully fund network upgrades without reimbursement). In other cases, utilities will reimburse the taxpayer for all or a portion of the interconnection costs, usually over a 20-year period. Moreover, there are circumstances in which a future interconnection customer pays for the use of interconnection property by reimbursing the taxpayer, who is the initial interconnecting customer, and therefore the taxpayer would have no ability to foresee, with respect to such future customer, "[t]he likely amount or timing of any such payment credit, or service ... at the time the first taxpayer interconnects to the utility's transmission system," as stated in the proposed regulations.[9]

Recommendation: ACORE respectfully asks Treasury to refer in the final rules only to output in AC, without presuming that nameplate capacity perfectly corresponds to it. This distinction specifically applies to solar, as the nameplate capacity is documented in DC, and the final output is reduced by 20-30 percent through the DC to AC inverter.

ACORE primarily recommends that the ITC for interconnection property avoid accounting for any reimbursements paid in later years to the taxpayer. The Department could incorporate a mechanism to avoid the taxpayer receiving a greater amount in reimbursements than paid for the interconnection costs net of the ITC, such as through a recapture mechanism.

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[9] Prop. Reg. § 1.48–14(g)(6).

Should the Department decide to account for reimbursement of interconnection costs, we respectfully ask Treasury to clarify the distinction between *reimbursement by a utility* (under a tariff or other means in place at the time the investment in the energy property and qualified interconnection property occurs) and *compensation by another transmission system user.* In the first case, taxpayers can still receive the ITC and then refund the IRS for the relevant portion of the ITC on an annual basis as the reimbursement for qualified interconnection property is received from the utility, such as by treating the ITC as a fixed percentage of each reimbursement installment. For example, if the utility is reimbursing a taxpayer over a 10-year time frame, then 10 percent of the ITC, or 3 percent of the initial project cost, could be reimbursed each year.

In the alternative case of funding from future interconnection customers, the taxpayer does not have certainty as to when such funding would be received. In this case, to improve the administrability of the ITC overall, we further recommend that Treasury's final rules take the approach of booking the costs of interconnection property as *revenue* rather than *reimbursement,* which would be consistent with longstanding industry practice.

3. Rules Concerning the Statutory Term "Energy Project"

Some ACORE members have raised concern that the term "energy project," as used in the proposed regulations, is overly broad and risks limiting the compliance pathways available under several key IRA provisions tied to its meaning, including the domestic content bonus, energy communities bonus, and PWA requirements.

Specifically, the proposed regulations define "energy project" as "one or more energy properties (multiple energy properties) that are operated as part of a single energy project," providing further that "[m]ultiple energy properties will be treated as one energy project, if at any point during the construction of multiple energy properties" they are owned by a single taxpayer (subject to the related taxpayer rule provided in paragraph (d)(2) of this section) and any two or more of the following factors are present:

(i) The energy properties are constructed on contiguous pieces of land;

(ii) The energy properties are described in a common power purchase, thermal energy, or other off-take agreement or agreements;

(iii) The energy properties have a common intertie;

(iv) The energy properties share a common substation, or thermal energy off-take point;

(v) The energy properties are described in one or more common environmental or other regulatory permits;

(vi) The energy properties are constructed pursuant to a single master construction contract; or

(vii) The construction of the energy properties are financed pursuant to the same loan agreement."

The aggregation of multiple energy properties via the term "energy project" is appropriate *in certain contexts*, such as for determining beginning-of-construction, but should not be used arbitrarily as a means to group together a broad swath of energy properties in disparate technology classes, such as solar and battery storage, by virtue solely of their co-location and ownership by the same taxpayer "at any point during the construction of multiple energy properties." Such a sweeping interpretation undercuts their distinct eligibility under the ITC.

As a related matter, the underlying statute and proposed regulations lend ample support for another important clarification sought by numerous ACORE members: that offshore wind marshaling and operations and maintenance (O&M) ports are locations that may qualify an offshore wind project for purposes of the energy communities (EC) bonus credit. The IRA provides that an energy project must be located in an energy community to claim the bonus.[10]

10 See § 13102 (o)(14)(A) of the IRA.

Aside from their clear eligibility for purposes of that bonus credit under current precedent, offshore wind marshaling and O&M ports are locations that are essential both to the continued growth of the domestic offshore wind industry and the economic revitalization of energy communities in which these ports are located, which are critical to a just and equitable transition.

The definition of ”energy project” under the proposed regulations, specifically the “integral parts” category (i.e., consisting of property that is not a functionally interdependent part of the energy generation but is integral to operation of that unit of energy property) explicitly covers offshore wind marshaling and O&M ports. Treasury already established in previous guidance that an onshore substation for an offshore wind facility can serve as qualifying energy property for the energy communities bonus, which the proposed regulations confirm is due to the Department’s correct finding that such property is an “integral part” to the operation of the offshore wind facility. It follows that integral parts of energy property, if located in an energy community, qualify such property for the EC bonus accordingly. Offshore wind marshaling and O&M ports also inherently satisfy at least the second and fifth factors listed above, as such property is routinely described in common PPAs and shares common environmental and regulatory permits.

Recommendation: ACORE respectfully asks Treasury to limit the definition of “energy project” to like-categories and like-classes of energy property (e.g., multiple solar arrays or wind turbines) and avoid grouping the separate categories of energy property with energy storage technology for purposes of the domestic content bonus, energy communities bonus, and PWA requirements.

While we would appreciate unequivocal confirmation as soon as possible in advance of a final rulemaking on the EC bonus, ACORE in general respectfully urges Treasury to clarify that the location of offshore wind marshaling and O&M ports are locations that may qualify an offshore wind project for the energy community bonus consistent with the definition of “integral property” under the proposed regulations. ACORE looks forward to continued discussions with

Treasury on the significance of this treatment for advancing the domestic offshore wind industry and honoring the statutory intent of the IRA.

4. Application of the 80/20 Rule to the "Unit of Energy Property"

The Proposed Regulations provide for application of the 80/20 Rule to a "unit of energy property." The term "unit of energy property" means "all functionally interdependent components of property (as defined in paragraph (f)(2)(ii) of this section) owned by the taxpayer that are operated together and that can operate apart from other energy properties within a larger energy project (as defined in § 1.48–13(d))."[11] The "unit of energy property" is a subset of a larger energy project that also includes integral property such as eligible roads, power conditioning equipment, and transfer equipment as described in Prop. Reg. § 1.48-9(f)(3). Integral property is a separate category of qualifying property from the functionally interdependent unit of energy property.

The 80/20 Rule is applied only to the "unit of energy property." Where the retrofit of the unit of energy property satisfies the 80/20 Rule, the new capitalized costs included in the retrofit qualify for the ITC. In addition, any capital costs related to integral property that are incurred in connection with the retrofit qualify for the ITC, even though such costs are not taken into account for purposes of the 80/20 Rule.

We agree with this application of the 80/20 Rule in the limited cases where it is necessary for the retrofitted property to achieve a new original placed in service date.[12] The 80/20 Rule also appropriately applies to the purchase or acquisition of a retrofitted facility by a taxpayer other than the original user of the used property incorporated into the retrofitted facility in order to establish a new "original use" of the incorporated used property.

However, application of the 80/20 Rule should *not* apply in the case of additions and modifications to energy property that otherwise qualifies for

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[11] Prop. Reg. § 1.48-9(f)(2)(i).

[12] *See* Rev. Rul. 94-31 (applying the 80/20 Rule to qualified wind facilities results in a new "original placed in service date").

the ITC. The Proposed Regulations attempt to establish a entirely new rule that is at odds with the longstanding and well-established rule that capital additions or costs incurred with respect to eligible property qualifies for the ITC. Prop. Reg. § 1.48-9(f)(1) provides that "energy property also generally does not include equipment that is an addition or modification to an existing energy property." Treasury's new stated position then provides in Prop. Reg. §1.48-14(a)(2):

> *Excluded costs.* Costs incurred for new components of property added to used components of a unit of energy property may not be taken into account for purposes of the section 48 credit unless the taxpayer satisfies the 80/20 Rule (as provided in paragraph (a)(1) of this section) by placing into service a unit of energy property for which the fair market value of the used components of property is not more than 20 percent of the total value of the unit of energy property taking into account the cost of the new components of property plus the value of the used components of property.

The Proposed Regulations then provide an example involving a scenario in which *capital improvements* are made, but the 80/20 Rule is not satisfied:

> *Example 2. Capital improvements to an existing energy property that do not satisfy the 80/20 Rule*. X owns an existing unit of energy property for which the section 48 credit has been claimed and the recapture period for the section 48 credit has elapsed. The fair market value of the unit of energy property is $1 million. During the tax year, X makes capital improvements to the unit of energy property. The expenditures for such capital improvements total $300,000. X may not claim a section 48 credit for the $300,000 spent on capital improvements during the tax year because the capital improvements did not satisfy the 80/20 Rule.[13]

In this example, the capital improvements are deemed *not* to be eligible for the ITC because the 80/20 Rule is *not* satisfied. Respectfully, this example is wrong and the "excluded costs" rule is inconsistent with longstanding ITC precedent.

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[13] Prop. Reg. § 1.48-14(a)(3)(i), *Example 2*.

The longstanding rule, since the inception of the ITC in 1962, has been that capital additions of new property or improvements made by a taxpayer to eligible property owned by that taxpayer qualifies for ITC without regard to application of the 80/20 Rule. As applied to ITC property, the 80/20 Rule applies to the acquisition of property that includes both new and used components to determine whether the "original use" requirement applies to such property. If the 80/20 Rule is satisfied, then the taxpayer acquiring the property is deemed to satisfy the original use requirement.[14] As applied to PTC property, satisfaction of the 80/20 Rule results in a new original placed in service date.[15] The same would be true for ITC property for which qualification depends on a new original placed in service date.

Tracing the history of the original use requirement back, it is clear that capital additions qualify for the ITC. An example in Treas. Reg. § 1.48-2(b)(7) illustrates the proper interpretation of the original use requirement and the difference between a reconditioned or rebuilt unit of property previously in service and/or the use of "some used parts," on the one hand, and the addition of new property or capital improvements, on the other. It provides:

> *Example 5*. In 1962, a taxpayer buys from X for $20,000 an item of section 38 property which has been previously used by X. The taxpayer in 1962 makes an expenditure on the property of $5,000 of the type that must be capitalized. *Regardless of whether the $5,000 is added to the basis of such property or is capitalized in a separate account, such amount shall be taken into account by the taxpayer in computing qualified investment in new section 38 property for 1962.* No part of the $20,000 purchase price may be taken into account for such purpose.[16]

The example demonstrates that the taxpayer's additional expenditures (i.e., the taxpayer's costs for new components or capital improvements) are eligible for the ITC. Taxpayers and tax practitioners have long understood that capital improvements and new components added to an existing unit of property may receive the ITC – provided they are otherwise eligible. This

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[14] *See* Rev. Rul. 68-111, 1968-1 C.B. 29, *see also* Gen. Couns. Memo. 33054, 1965 WL 13497 (Aug. 2, 1965).
[15] *See* Rev. Rul. 94-31.
[16] Treas. Reg. § 1.48-2(c), *Example 5*.

rule, as stated for purposes of the ITC, has been repeatedly cited by Treasury, the IRS, and Congress in a number of contexts where original use is required.[17] The longstanding and often cited rule for capital additions to qualified property should not be changed by way of regulation where there has been no statutory change to the underlying law.

As with the ownership rule, the application of the 80/20 rule to investment credits is novel. There is no suggestion of the rule in the pre-IRA statute, the IRA modifications, or the existing section 48 regulations. Further, it complicates planning for energy projects and requires a taxpayer that plans (or may be required to) modify its energy project in the future to overbuild initially to capture the full value of the credit. It also does not encourage taxpayers to replace or enhance obsolete or inefficient property, but rather to scrap valuable used property in favor of all new property.[18] Requiring application of the 80/20 rule risks creating disputes as to whether a subsequent investment is a new unit of property (and thus qualified for the energy credit) or a modification to an existing unit of property (and thus subject to the 80/20 rule). The 80/20 rule increases administrative complexity by requiring the valuation of used assets or components that likely do not have any secondary market comparisons. Most importantly, the 80/20 rule has limited application with respect to investment credits like the energy credit. An investment credit is intended to reward the capital investment in qualified property irrespective of whether that investment occurs initially or later in its lifespan.

The 80/20 Rule should apply to section 48 ITC property only in limited circumstances. First, the 80/20 Rule should apply to the acquisition of retrofitted or refurbished energy property by a taxpayer with respect to the issue of original use and original placed in-service date of such retrofitted property. This is the traditional application of the 80/20 Rule to ITC property

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[17] *See for example,* Treas. Reg. § 1.168(k)-1(b)(3)(i) (original use for bonus depreciation); *See also* Treas. Reg. § 1.168(k)-2(b)(3)(ii) (applying the same principles to later version of the bonus depreciation rules); Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 107th Congress*, at 218-219 n.208 (Jan. 24, 2003) (original use for bonus depreciation); *See* H. Conf. Rept. 108-755 (2004), at 149 n.425 (original use for transmission property).

[18] Consider the case of a taxpayer with used property worth $25x. The taxpayer could refurbish the property for $75x, or abandon the used property and build a new unit for $100x. Application of the 80/20 encourages the taxpayer to spend the additional funds because its net after-tax cost is only $70x.

going back to Rev. Rul. 68-111, 1968-1 C.B. 29. Second, the 80/20 Rule should be applied to retrofitted section 45 facilities that elect to be treated as section 48 energy property under section 48(a)(5). The 80/20 Rule applies to such retrofitted facilities because their qualification for the tax credit is based on achieving a new original placed in service date for the facility.

The 80/20 Rule and excluded costs should not apply to capital additions of otherwise eligible energy equipment or property to a taxpayer's existing energy property or project. For example, the owner of a solar energy project can make capital improvements to upgrade or replace existing solar modules or inverters and claim the ITC on such capital improvements when placed in service without regard to the 80/20 Rule. Another example is expanding the capacity of an existing battery storage property by adding additional new battery cells or other equipment to offset degradation over the life of the battery. In each case, capital additions of eligible property are made by a taxpayer. The original use of the new capital addition resides with the taxpayer. These capital additions or modifications qualify for ITC under existing rules. Treasury and the IRS should continue to adhere to this long-standing precedent.

Recommendation: ACORE respectfully asks Treasury that final regulations clarify the following points:

- Application of the 80/20 Rule should only apply to retrofits of existing property in situations involving the acquisition of a property that includes used components (i.e., the traditional application under Rev. Rul. 68-111, or where qualification depends on a property. incorporating used parts having a new original placed in service date (i.e., Rev. Rul. 94-31).
- Final regulations must confirm the longstanding rule that capital improvements and new components added to an existing unit of property may receive the ITC – provided they are otherwise eligible.
- Final regulations must delete Prop. Reg. §1.48-14(a)(2) providing for excluded costs where the 80/20 Rule is not satisfied, and all similar references, such as Prop. Reg. § 1.48-9(f)(1) providing that "[e]nergy property also generally does not include equipment that is an addition or modification to an existing energy property."

Thank you for the opportunity to submit these comments. ACORE holds your partnership and public service in the highest regard as we strive to promote full utilization of the IRA tax package.

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

Sincerely,
/s/
Lesley Hunter
Senior Vice President, Programs and Sustainable Finance
American Council on Renewable Energy