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Submitted via Federal eRulemaking Portal

Internal Revenue Service
CC:PA:01:PR (REG-119283-23)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: IRS Docket No. REG-119283-23 – Comments in Response to Proposed Rulemaking Relating to Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit

The Connecticut Department of Energy and Environmental Protection, Maine Governor's Energy Office, Maryland Energy Administration, Massachusetts Executive Office of Energy and Environmental Affairs, New Jersey Board of Public Utilities, New York State Energy Research and Development Authority, and Rhode Island Office of Energy Resources (States) appreciate the opportunity to submit comments to the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) in response to proposed regulations under Section 45Y and Section 48E of the Internal Revenue Code, published in the Federal Register (89 FR 47792) on June 3, 2024.[1] These comments supplement comments filed with Treasury and the IRS on January 22, 2024, by the aforementioned States, in response to proposed regulations under Section 48 of the Internal Revenue Code.[2]

As outlined below, a final rule in this docket will materially affect consumer costs associated with state-led offshore wind procurements that result in the construction of qualified

[1] According to the proposed rule, Sections 45Y and 48E will generally replace Sections 45 and 48 of the Internal Revenue Code.

[2] *See* Comments submitted by the Connecticut Department of Energy and Environmental Protection, Maine Governor's Energy Office, Maryland Energy Administration, Massachusetts Executive Office of Energy and Environmental Affairs, New Jersey Board of Public Utilities, New York State Energy Research and Development Authority, and Rhode Island Office of Energy Resources on the Definition of Energy Property and Rules Applicable to the Energy Credit, available at https://downloads.regulations.gov/IRS-2023-0054-0196/attachment_1.pdf.

offshore wind facilities placed in service after December 31, 2024. As such, these regulations will have a direct impact on the continued growth of the U.S. offshore wind industry, the achievement of state and federal offshore wind targets and associated decarbonization goals and requirements, and grid reliability across multiple planning regions along the Atlantic Coast.

The States represented here are national leaders in the development of offshore wind, responsible for most of the commitments to build offshore wind facilities along the Atlantic Coast, specifically through long-term contracts backed by the States' electric ratepayers. Through the Investment Tax Credit (ITC), Production Tax Credit (PTC), and associated bonus tax credits made available to qualified offshore wind facilities, the federal government serves as an essential partner in facilitating the viability of offshore wind projects and accelerating the development of this industry. In these comments, consistent with comments filed by the States on January 22, 2024, the States (1) express their strong support for the proposed treatment of an offshore wind facility's integral power conditioning and transfer equipment as ITC eligible, and (2) underscore the importance of practical, forward-looking regulations that *do not* condition ITC eligibility for integral power conditioning and transfer equipment on whether the power conditioning and transfer equipment and the offshore wind facility are owned by the same taxpayer.

The States strongly oppose the inclusion of a requirement in the final rule that integral power conditioning and transfer equipment must be owned by the same taxpayer as the offshore wind facility in order to qualify for the ITC. Such a requirement frustrates the Inflation Reduction Act's goal of accelerating the development of offshore wind and unreasonably inhibits the States' use of innovative and competitive approaches to procuring power conditioning and transfer equipment separate from the procurement of offshore wind generation in an effort to leverage scale and efficiency for the benefit of consumers—both in terms of cost reductions and increased reliability through higher deployment levels. In addition to these comments, the States

support comments filed by the Offshore Wind Delivery Coalition in this docket that explain how the proposed regulation runs counter to practical considerations for the offshore wind industry and IRS precedent on separate ownership of different components of qualified energy property.

I. ITC Eligibility for Integral Power Conditioning and Transfer Equipment

The States urge Treasury and the IRS to adopt in the final rule the proposal to treat an offshore wind facility's power conditioning and transfer equipment as an integral part of a qualified offshore wind facility, rendering it "energy property" and therefore eligible for the ITC.

Consistent with proposed regulations under Section 48 of the Internal Revenue Code, the proposed Section 48E regulations adopt a framework whereby components of an offshore wind facility that are either (i) "functionally interdependent" upon other components, or (ii) an "integral part" of the offshore wind facility, are considered "energy property" and therefore included in the cost basis of the offshore wind facility for purposes of calculating the allowable ITC. The States strongly support final adoption of this framework and ITC eligibility for an offshore wind facility's integral power conditioning and transfer equipment. Proposed Section 1.48E-2(b)(3)(ii) makes clear that power conditioning and transfer equipment is an integral part of an offshore wind facility, essential to its completeness and used directly in the performance of an offshore wind facility's intended function. In addition, the States find the examples provided in Section 1.48E-2(b)(3)(ii) useful in illustrating the numerous project components that are considered integral parts of an offshore wind facility.[3] As an integral part of an offshore wind facility, power conditioning and transfer equipment is rightly considered "energy property" and therefore fully eligible for the ITC.

[3] Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit (REG-119283-23), 89 FR 47792, https://www.federalregister.gov/documents/2024/06/03/2024-11719/section-45y-clean-electricity-production-credit-and-section-48e-clean-electricity-investment-credit.

Full eligibility is critically important to the States, as power conditioning and transfer equipment represents a significant portion (up to 40%) of the total cost of an offshore wind facility. The proposed framework's recognition that integral power conditioning and transfer equipment is "energy property" and therefore fully eligible for the ITC will help reduce the cost barriers associated with offshore wind development, increasing the likelihood that state-led solicitations will result in the procurement and construction of these important new resources at a lower total cost to consumers. The success of the States' procurement efforts is vital to the growth of the industry, investment in its supply chains, and realization of critical cost declines as deployments scale. These resources are not only critical to the States' decarbonization goals and requirements but also key to enhanced grid reliability in the procuring States and the broader transmission planning regions in which these procurements are occurring.[4]

II. Separate Ownership of Integral Power Conditioning and Transfer Equipment

The States urge Treasury and the IRS to reconsider restrictions relating to ITC eligibility for integral power conditioning and transfer equipment that is owned by a separate taxpayer from the owner of the offshore wind facility to effectuate lower costs for ratepayers and taxpayers.

While the proposed regulations acknowledge the integral nature of power conditioning and transfer equipment, they condition ITC eligibility on whether the equipment is owned by the same taxpayer as the offshore wind facility. The States urge Treasury and the IRS to remove this restrictive condition and affirmatively clarify that integral power conditioning and transfer equipment is ITC eligible regardless of whether it is owned by a separate entity from the entity that owns the offshore wind facility or whether it is shared between multiple offshore wind

[4] *See, e.g.*, ISO New England, "Operational Impact of Extreme Weather Events: Final Report on the Probabilistic Energy Adequacy Tool (PEAT) Framework and 2027/2032 Study Results" (Dec. 2023), https://www.iso-ne.com/static-assets/documents/100006/operational_impact_of_exteme_weather_events_final_report.pdf, at 233 ("Timely additions of . . . offshore wind . . . are critical to mitigate energy shortfall risks that result from significant winter load growth and retirements").

facilities. An offshore wind facility's power conditioning and transfer equipment is no less integral to its functioning or essential to its completeness if it is owned by a separate taxpayer from the taxpayer that owns the offshore wind facility.

Maintaining ITC eligibility for integral power conditioning and transfer equipment irrespective of the ownership structure will provide states with greater flexibility to pursue economically, technically, and environmentally sound offshore wind solutions with fewer impacts on affected communities. As proposed, the regulations promote a single ownership model that incentivizes each offshore wind facility to develop its own set of power conditioning and transfer equipment to ensure all integral components are owned by the same taxpayer and remain ITC eligible. This model risks an inefficient, more costly, and more disruptive buildout of duplicative and/or inefficiently sized power conditioning and transfer equipment up and down our coastlines. The final regulations must, instead, promote (and not disincentivize) innovative or competitive approaches to development of offshore wind delivery equipment, which could lead to lower overall costs to consumers, reduced environmental impacts (e.g., through efficient sizing and consolidation of equipment, resulting in fewer cables traversing sensitive marine ecosystems), optimal use of constrained cable corridors, and fewer disruptions to communities.

New York and New Jersey are already pursuing strategies that separate the procurement of power conditioning and transfer equipment from the procurement of offshore wind generation to identify a more efficient buildout of the systems needed to transfer offshore wind energy to shore. Indeed, the New Jersey Board of Public Utilities conducted a competitive solicitation for offshore wind energy delivery equipment and found that a holistic planning approach that required decoupled ownership of transfer equipment from the generation would reduce costs to

New Jersey ratepayers by more than 40% to bring offshore wind generation online.[5] In addition, New York is currently seeking high-capacity equipment to accommodate combined injections of offshore wind power from multiple sources to New York City interconnection points.[6] Other coastal states in New England and the Mid-Atlantic are considering similar approaches, acknowledging the need to develop this critical infrastructure in and around shoreline communities in the most cost-effective and least disruptive way possible.

Offshore wind is a critically important clean energy resource that involves unique development challenges and specialized equipment to deliver that energy to customers. The States recognize the benefits that can be gained through separate procurement of offshore wind generation and offshore wind delivery equipment, which could lead to separate ownership of the generation and delivery infrastructure. The expertise needed to develop offshore wind generation and its power conditioning and transfer equipment, especially as projects become more complex and located farther from shore, may require multiple developers with specialized experience developing certain project components. States must have flexibility to explore coordinated, innovative, and competitive approaches to soliciting and procuring offshore wind generation and delivery equipment without the risk that some integral components may lose ITC eligibility if not owned by the same entity. A final rule that extends ITC eligibility to an offshore wind facility and its power conditioning and transfer equipment regardless of ownership structure presents the best opportunity for states to develop this resource efficiently, responsibly, and cost-effectively, helping to lower costs for state ratepayers and federal taxpayers and resulting in a more environmentally sound and equitable deployment of offshore wind generation and delivery

[5] In the Matter of Declaring Offshore Wind Transmission to Support Offshore Wind a Public Policy of the State of New Jersey, 45, BPU Docket No. QO20100630 (Oct. 26, 2022).

[6] New York Public Service Commission, Case 22-E-0633, Order Addressing Public Policy Requirements for Transmission Planning Purposes (June 22, 2023).

equipment. Put simply, requiring offshore wind generation and delivery equipment to be owned by the same taxpayer could lead to suboptimal results for states and their ratepayers and impede the growth of the offshore wind industry. This runs counter to the States' policy goals and could lead to suboptimal results for Treasury and the IRS, as federal taxpayers as a whole stand to save under an optimized approach to the development of offshore wind.

We respectfully request that Treasury and the IRS reconsider the single ownership requirement of this proposed regulation to allow more ownership flexibility and clarify that an offshore wind facility's power conditioning and transfer equipment is ITC eligible no matter what entity owns the equipment. As outlined in the Offshore Wind Delivery Coalition's comments filed in this docket, the States have a unique ability to address concerns that Treasury and the IRS may have relating to ITC eligibility for independently owned power conditioning and transfer equipment. The States are either directly procuring or approving long-term contracts associated with the procurement of offshore wind and can therefore ensure that such procurements are conducted in accordance with conditions required of Treasury and the IRS for independent ownership. It is in the States' best interests to ensure that these conditions are adhered to so that our ratepayers can benefit from the full value of the ITC.

The States appreciate the opportunity to submit comments on the proposed regulations and welcome further discussion on any of the issues raised herein.

Respectfully submitted,

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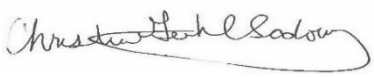

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