

January 22, 2024

Submitted via Federal eRulemaking Portal

Internal Revenue Service
CC:PA:LPD:PR (REG-132569-17)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington DC 20044

Re: IRS Docket No. REG-132569-17 – Comments in Response to Proposed Rulemaking on the Definition of Energy Property and Rules Applicable to the Energy 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 48 of the Internal Revenue Code published in the Federal Register (88 FR 82188) on November 22, 2023. These comments supplement comments filed with Treasury and the IRS on March 14, 2023, by several of the aforementioned States.¹ As outlined below, a final rule in this docket will materially affect consumer costs associated with state-led offshore wind procurements, which will have a direct impact on the continued growth of the U.S. offshore wind industry and the achievement of state and federal offshore wind targets.

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

¹ See Comments of the State Commenters to the Department of Treasury and the Internal Revenue Service Regarding Certain Energy Generation Incentives, available at <https://www.regulations.gov/comment/IRS-2022-0023-2150>.

coast, specifically through long-term contracts backed by the States' electric ratepayers. Through the Investment Tax Credit (ITC), Production Tax Credit (PTC), and bonus tax credits, the federal government serves as an essential partner in facilitating the viability of offshore wind projects and accelerating the development of this growing industry. In these comments, 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 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 oppose the inclusion of a requirement in the final rule that the 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 is nowhere to be found in the statutory language or prior iterations of the ITC and frustrates the Inflation Reduction Act's goal of accelerating the development of offshore wind. Further, requiring single ownership is antithetical to the proposed treatment of power conditioning and transfer equipment as essential and integral to the functioning of an offshore wind facility and unreasonably inhibits the use of innovative and competitive structures to procure integral power conditioning and transfer equipment that can leverage scale and efficiency for the benefit of consumers.

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 qualified offshore wind energy property.

The proposed regulations adopt a framework whereby components of an offshore wind facility that are either (i) "functionally interdependent" with 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. Section 1.48-9(f)(3) of the proposed regulations 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. Additionally, the States find the example provided in Section 1.48-9(f)(5)(iii), *Example 3. Qualified offshore wind facility*, to be particularly illuminating and useful in illustrating the numerous project components that are considered integral parts of an offshore wind facility.² 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. This is critically important to the States, as the components of power conditioning and transfer equipment represent a significant portion (up to 40%) of the total cost of an offshore wind facility. The proposed framework’s recognition that all such components are “energy property” and therefore fully eligible for the ITC will help reduce the cost barriers associated with offshore wind projects, increasing the likelihood that state-led solicitations will result in the procurement and construction of these important new resources. The success of the States’ efforts will help ensure that the offshore wind industry and its supply chains are able to build strong foundations in the U.S.

In comments filed in March 2023, several of the States advocated for power conditioning and transfer equipment to be treated as ITC eligible.³ Since that time, multiple offshore wind

² Definition of Energy Property and Rules Applicable to the Energy Credit (REG-132569-17), 88 FR 82188, <https://www.federalregister.gov/documents/2023/11/22/2023-25539/definition-of-energy-property-and-rules-applicable-to-the-energy-credit>.

³ See *supra* note 1 at pp. 8-13.

projects with ratepayer-backed contracts have been cancelled for economic reasons. As the States continue to pursue their goals and requirements for offshore wind, these project failures only serve to underscore the importance of Treasury and the IRS clarifying in the final rule that integral power conditioning and transfer equipment is ITC eligible. A final rule consistent with this proposal will help ensure that the States, which have shouldered much of the burden of establishing an offshore wind industry in the U.S., are able to achieve vital cost savings for their ratepayers in upcoming offshore wind procurements. Such a final rule will also give states in the early stages of their offshore wind deployment journeys confidence in continuing to lead on offshore wind. In the long term, extending ITC eligibility to integral power conditioning and transfer equipment will allow the States to leverage the cost savings provided by this eligibility and deploy offshore wind more quickly and in larger quantities than would otherwise be possible. In so doing, Treasury and the IRS can play a critical role in ensuring that progress continues to be made toward the Biden Administration's 30 GW by 2030 offshore wind goal.

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 different taxpayer than 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 even if it is owned by a separate entity from the entity that owns the offshore wind facility or shared between multiple offshore wind projects. In comments filed in March 2023, several of the States highlighted the importance of ensuring that power conditioning

and transfer equipment remains ITC eligible regardless of who owns the equipment.⁴

Maintaining ITC eligibility for power conditioning and transfer equipment irrespective of the ownership structure will provide states with greater flexibility “to pursue financially and environmentally optimal offshore wind solutions with fewer impacts on affected communities.”⁵ A single offshore wind developer has little incentive to optimize the size or locations of power conditioning and transfer equipment for other offshore wind developers to utilize; doing so could jeopardize the project’s economics and competitiveness in an offshore wind solicitation. The States, however, may value such an optimized approach because a larger yet separate procurement of power conditioning and transfer equipment capable of delivering the output of two or more offshore wind facilities is less wasteful and will likely result in efficiencies that provide lower overall costs to consumers, reduced environmental impacts (i.e., fewer cables traversing sensitive marine ecosystems), efficient use of constrained cable corridors, and fewer disruptions to communities than if each offshore wind facility develops its own, separate set of power conditioning and transfer equipment.

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 by more than 40% to New Jersey ratepayers to bring offshore wind generation online.⁶ In addition,

⁴ See *supra* note 1 at p. 8.

⁵ *Id.* at 11.

⁶ 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).

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.⁷ Other coastal states from New England to 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.

As proposed, however, the rule disincentivizes the competitive solicitation of optimal power conditioning and transfer equipment separate from the competitive solicitation of offshore wind generation, because it could lead to separate ownership of the power conditioning and transfer equipment, rendering it ineligible for the ITC. Instead, under the proposed regulation, states would be incentivized to procure offshore wind generation and its power conditioning and transfer equipment through the same solicitation to ensure they are owned by a single taxpayer, which could lead to suboptimal results for states and their ratepayers. This runs counter to the States' interests as stewards of their natural resources in minimizing adverse impacts to or degradation of the marine and upland environment. If the rule disadvantages separate procurements by requiring common ownership, the outcomes – multiple installations of power conditioning and transfer equipment, likely sited in coastal areas – will adversely affect states and their ratepayers. This may also 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 and integral, ITC-eligible power conditioning and transfer equipment.⁸

⁷ New York Public Service Commission, Case 22-E-0633, Order Addressing Public Policy Requirements for Transmission Planning Purposes (June 22, 2023).

⁸ For example, the overall cost of ITC-eligible energy property procured using an optimized approach should be smaller than the cost of ITC-eligible energy property procured using a non-optimized approach (i.e., a single, larger set of power conditioning and transfer equipment will receive less of the ITC overall than two smaller sets of power conditioning and transfer equipment that in the aggregate have a higher cost).

Regardless of which entity owns the power conditioning and transfer equipment, electricity generated by the offshore wind facility will be unable to reach the transmission system until construction of the power conditioning and transfer equipment is complete. Put differently, the essential and integral nature of power conditioning and transfer equipment to the functioning of an offshore wind facility is unchanged if it is developed through a separate procurement and owned by a separate taxpayer from the taxpayer that owns the offshore wind facility. A final rule that provides ITC eligibility for integral power conditioning and transfer equipment regardless of ownership presents the best opportunity for the States to obtain the most efficient and optimized procurement of offshore wind facilities and associated power conditioning and transfer equipment, helping to lower costs for state ratepayers and federal taxpayers and resulting in a more environmentally sound and equitable deployment of offshore wind-related equipment.

Finally, the States support comments filed by the Offshore Wind Delivery Coalition in this docket that explain how this proposed regulation runs counter to the Inflation Reduction Act and IRS precedent on separate ownership of different components of qualified energy property. Such a regulation also runs counter to the States' clean energy policies and, if finalized, would impede the growth of the U.S. offshore wind industry. 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 integral power conditioning and transfer equipment is ITC eligible no matter what entity owns the equipment.

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,



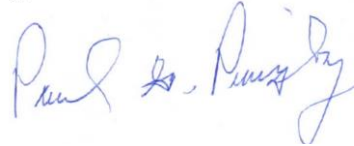
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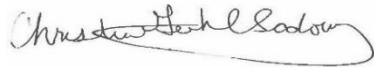
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