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

Via Federal eRulemaking Portal: http://www.regulations.gov

Subject: bp America Inc. Technical Comments on Notices 2022-49 and 2022-51

Office of Associate Chief Counsel:

We respectfully submit comments to the US Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") pursuant to Notices 2022-49 and Notice 2022-51, which requested specific comments on issues arising under §§ 45, 45U, 45Y, 48, and 48E of the Internal Revenue Code (Code) as modified by the Inflation Reduction Act of 2022 ("IRA") and prevailing wage and apprenticeship, domestic content and energy community requirements for increased or bonus credit amounts relating to §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E and 179D.

bp's Renewable Energy Projects and Ambitions in the United States

bp is a global integrated energy company with a significant footprint in the US. In the US, bp employs more than 12,000 people and supports about 245,000 jobs. Between 2005 and 2021, bp invested more than $130 billion in the US and in 2021 alone, our operations contributed about $60 billion to the US economy. We have a larger economic footprint in the US than anywhere else in the world.

bp seeks to provide the world with secure, affordable and lower carbon energy. Our ambition is to be a net zero company by 2050 or sooner, and to help the world get to net zero. A key part of bp's strategy is low carbon electricity and energy. By 2030, bp aims to have developed around 50 gigawatts (GW) of net renewable generating capacity globally. As it has in the past and in light of the IRA, we envision making many investments in the US.

bp has a diverse and growing portfolio of renewable energy projects in the US, including solar and both onshore and offshore wind. bp Wind, our onshore wind energy business, has a gross generating capacity of 1.7 GW across seven states. Our 50/50 solar joint venture company Lightsource bp has 2.2 GW of developed projects in the US, as well as a development pipeline of 20 GW. In July 2021, bp closed a deal to acquire 9 GW of solar development projects in the US from 7x Energy across 12 states.

bp has a growing offshore wind portfolio in the US and internationally. In January 2021, bp entered into a strategic partnership with Equinor to develop offshore wind projects in the US, including two major lease areas located in waters off New York and Massachusetts. The partnership is now developing up to 4.4 GW of wind generation through two projects – Empire Wind and Beacon Wind – and together the companies are pursuing further growth in the US offshore wind market.

bp is collaborating on hydrogen produced both through renewable electricity (green hydrogen) and natural gas paired with carbon capture and storage ("CCS") (blue hydrogen). By the end of this decade, bp aims to have a 10% market share of low-carbon hydrogen – both green and blue – in core markets such as the US.

bp Supports American Clean Power ("ACP") and Solar Energy Industries Association ("SEIA") Technical Comments

Both ACP and SEIA have provided comments pursuant to the IRS and Treasury Notices. We believe the technical comments contained in the ACP and SEIA comment letters accurately reflect our position and if guidance was promulgated consistent with these comments, we would have the clarity and direction we need as we continue to expand our renewables business in the US.

In addition to the comments ACP and SEIA have provided, we urge the IRS and Treasury to provide the following guidance.

Suggested Additional Guidance:

Offshore Wind Property

Notice 2022-49 at 3.02(2)(d) - Please provide comments on any other topics relating to the § 48 credit that may require guidance.

We urge the IRS and Treasury to issue guidance confirming that the following types of property comprising an offshore wind project are an integral part of the qualified investment credit facility and enable the functioning of wind energy property as defined by § 48(a)(5)(D)(i)(II), Treas. Reg. § 1.48-1(d)(4), and Treas. Reg. § 1.48-9(e) and are therefore eligible for the investment tax credit.

1) The property comprising an offshore wind project up to the point of interconnection, which includes the offshore substation, the undersea export cables, and onshore project substation and transformer, as this property is owned by the same project company, inside the perimeter of the project, integral to the production of electricity and the functioning of the wind energy property and is not used for electrical transmission.

2) Dedicated vessels owned by the project company and used not only to construct, but also to operate and maintain an offshore wind project are property integral to the production of electricity and the functioning of the wind energy property.

Wage and Apprenticeship – Offshore Energy Projects, Geographic Location and Safety

Notice 2022-51 at .01-2 Prevailing Wage and Apprenticeship Requirement

.01(1) Section 45(b)(7)(A) provides that a taxpayer must ensure that any laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, are paid wages at rates not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, which is commonly known as the Davis-Bacon Act. Is guidance necessary to clarify how the Davis-Bacon prevailing wage requirements apply for purposes of § 45(b)(7)(A)?

We believe the IRS and Treasury should consider the unique characteristics of offshore energy projects and provide clarity and flexibility to taxpayers in guidance for determining prevailing wages for laborers and mechanics on projects that are not located in a specific geographic locality, but rather at sea.

For such projects, the taxpayer should pay the prevailing wages determined for the specific occupation of the laborer or mechanic applicable at the location of the port from which a majority of the laborers or mechanics are based for purposes of offshore construction, alteration, or repair.

In the event the location of the port does not have sufficient wage data for a specific occupation, the taxpayer may use prevailing wage data from another geographic location within 100 miles of the port, subject to a wage determination by the Department of Labor ("DOL"), but any later DOL determination would only apply prospectively.

.02(2)(b) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement. (b) What factors should be considered in administering and promoting compliance with this good faith effort exception?

We believe two specific factors should be considered in administering the good faith effort exception in the event taxpayers have applied for apprentices from a registered program and cannot find a suitable apprentice.

> **Geographic location**: Many states administer apprenticeship programs as do labor unions, industry bodies, and, in some instances, corporations that meet apprenticeship programs guidelines and have been registered by the DOL Office of Apprenticeship. However, in some geographic localities it may be difficult or impossible for employers to locate qualified apprentices that meet the proximity needs of the project on which they will work. Under such circumstances, taxpayers who have requested an apprentice and found none that reasonably satisfies the proximity needs of the project (i.e. within 100 miles of the project site) should be considered compliant under the good faith effort exception.

According to the Office of Apprenticeship, in 2021 there were 11 states with less than 2,000 active apprentices.[1] Many of these states are located in the Midwest where onshore wind and solar projects may be located as the industry grows to meet renewable electricity demand.

We believe the IRS and Treasury should provide guidance consistent with SEIA's comments that, to comply with the good faith effort exception, a company need only request apprentices from registered apprenticeship programs in relevant occupations that have a physical office within 100 miles of the project site and are available for work through a registered apprenticeship program in the state where the project site is located.

Safety: bp is fully committed to ensuring safe and reliable operations in all that we do, and the health and safety of bp employees, contractors, related personnel and the communities in which we operate are our top priority. We therefore believe another important factor in administering the good faith effort exception should be safety.

In determining whether an apprentice is qualified and suitable for a project, as a general matter we believe the requested apprentice should have completed certified safety training and meet the project safety requirements that employers require of all other workers at the specified project site. The time spent by the apprentice to learn the safety protocols should count toward the total labor hours requirement. If an apprentice does not or cannot demonstrate compliance with such safety standards, a taxpayer should be excused under the good faith effort exception from the hours that an apprentice would have worked, at least until the apprentice program can promptly provide a substitute. Any such substitute should be provided within five business days.

For example, employers in the offshore energy industry generally require workers on offshore projects to learn to reduce the risk of death and injury when working to install offshore platforms and operating heavy equipment, as well as first aid procedures in the event of a safety incident. Employers typically require workers to complete Basic Offshore Safety Induction and Emergency Training, a survival course that the Offshore Petroleum Industry Training Organization has approved. Employers may also require workers to complete Helicopter Underwater Emergency Training, which provides training on how to escape from a helicopter during an emergency maritime landing, and Further Offshore Emergency Training, which provides training on advanced survival skills and firefighting techniques.

[1] Alaska, Delaware, Idaho, Kansas, Maine, Montana, North Dakota, Oklahoma, South Dakota, Vermont and Wyoming.

Domestic Content

Notice 2022-51 at 3.03 – Domestic Content Requirement

(1)(c) Should the definitions of "steel" and "iron" under 49 C.F.R. 661.3, 661.5(b) and (c) be used for purposes of defining those terms under §§ 45(b)(9)(B) and 45Y(g)(11)(B)? If not, what alternative definitions should be used?

We urge the IRS and Treasury to apply the recommendations that ACP proposed in its response to this question. In particular, its recommendation to use Federal Transit Administration ("FTA") precedent as a guideline for applying steel and iron requirements. The ACP comment letter provides that the IRS and Treasury:

> should clarify that the steel or iron requirements are limited to "construction materials made primarily of steel or iron" that have a structural, load-bearing, or support function, such as "structural steel or iron, steel or iron beams and columns."[2] These requirements also should not apply to steel or iron used as components or subcomponents of manufactured products.

Thus, for example, a wind nacelle should be considered a manufactured product even if it is made primarily of steel.

(2)(e) Does the treatment of subcomponents with regard to manufactured products need further clarification? If so, what should be clarified?

The IRS and Treasury should provide guidance consistent with ACP's comments provided in response to this question, which provides that the "IRS [and Treasury] should provide explicit clarity on which products are components, and which are subcomponents, for all covered technologies." We agree with ACP's analysis and proposed guidance of what constitutes a component and a subcomponent for both wind farms and solar projects.

Energy Community

Notice 2022-51 at 3.04 – Energy Community Requirement

(1) Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community. What further clarifications are needed regarding the term "located in" for this purpose, including any relevant timing considerations for determining whether a qualified facility is located in an energy community? Should a rule similar to the rule in § 1397C(f) (Enterprise Zones rule regarding the treatment of businesses straddling census tract lines), the rules in 26 C.F.R. §§ 1.1400Z2(d)-1 and 1.1400Z2(d)-2, or other frameworks apply in making this determination?

The purpose of the energy community uplift is to provide tax benefits to communities that have been impacted by the energy transition. As such, we propose that if any part of an energy project is located on land which would qualify as any of the three

[2] 49 CFR 661.5(c).

categories for energy communities (i.e., brownfield site, a qualifying metropolitan statistical area or non-metropolitan statistical area, or a qualifying census tract) pursuant to § 45(b)(11)(B), the project should be considered to be located in an energy community.

As an alternative, we support the ACP's proposal that projects be able to claim the enhanced credit for energy communities in the following situations.

> Specifically, for any of the three categories in section 13101 of the IRA, with respect to onshore projects, ACP recommends that projects be able to claim the enhanced credit for [projects in energy communities] if: (1) at least 10% of the total project is located in an [energy community], which can based upon the nameplate capacity of generation or storage, total project cost, or area by acreage; or (2) a substation of the project, or switchgear for projects that do not have a substation, is located in an [energy community] and the majority of the project's output is routed through the [energy community].

As a final alternative, we would recommend that, if any part of an energy project is located in an energy community, the investment tax credit or production tax credit would be increased by the percentage of the relative capitalized construction cost, nameplate generation, or area by acreage that is located within the energy community.

Specific to offshore wind, a port facility substantially used for staging and crewing for the project or at least one onshore substation should be the determining area for purposes of determining if the qualified facility is located in an energy community.

(2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?

42 U.S.C. 9601(39)(B) provides that the term brownfield site does not include certain facilities including those on the National Priorities List and more generally those that are the subject of administrative orders, court orders, or consent decrees. We seek clarification of two issues around these exclusions.

First, we seek guidance confirming that once a facility that was on the National Priorities List and/or was subject to an applicable administrative order, court order or consent decree under 42 U.S.C. 9601(39)(B), has either been delisted from the National Priorities List and/or the court orders or consent decrees are lifted thus resulting in the exemptions under 42 U.S.C. 9601(39)(B) no longer being applicable, such area, if otherwise qualifying as a brownfield site would then be eligible for the increased credit provided under § 45(b)(11)(B).

Second, we seek confirmation that if a site is located either in a qualifying metropolitan statistical area or non-metropolitan statistical area or a qualifying census tract, that also happens to be located on a brownfield site, that is excluded from the brownfield site definition based on 42 U.S.C. 9601(39)(B) (e.g., it was subject to an applicable court order, administrative order, or was on the National Priorities List), it would still be

eligible for the increased credit provided under § 45(b)(11)(B) based on it being located in a qualifying metropolitan statistical area or non-metropolitan statistical area or a qualifying census tract.

Conclusion

In summary, we reiterate our support for the comments provided by both ACP and SEIA and appreciate the opportunity to submit these comments. We would welcome the opportunity to meet with the IRS and Treasury to discuss these issues further as proposed and final rules are promulgated. Please reach out to Craig Boals or Andy Porter at craig.boals@bp.com and andrew.porter2@bp.com to discuss.

Respectfully submitted,

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