Supplemental Comments of the
Business Council for Sustainable Energy

RE: Department of Treasury and Internal Revenue Service Notice 2022-49, Clean Energy Generation Incentives in the Inflation Reduction Act

December 21, 2022

The Business Council for Sustainable Energy (BCSE) offers this set of supplemental comments in response to Internal Revenue Service (IRS) Notice 2022-49. The Notice addresses the development of guidance implementing clean energy generation incentives authorized under the Inflation Reduction Act (117-169) for renewable electricity production in Section 45 of the tax code, energy investment in Section 48, and other clean electricity credits.

BCSE appreciates the invitation by the Department of Treasury and IRS for interested parties to submit comments after the November 4, 2022 deadline and recognizes the Department's effort to work with BCSE and its members to fully understand and implement the statute.

About the BCSE

The BCSE, founded in 1992, is a broad-based clean energy trade association. Its members span many industry sectors, including energy efficiency, energy storage, natural gas, renewable energy, sustainable transportation and emerging decarbonization technologies. BCSE also has an independent small- and medium-size businesses initiative under its banner, the Clean Energy Business Network (CEBN). Together, the BCSE and CEBN represent a broad array of the clean energy economy, from Fortune 100 companies to small businesses working in all 50 states supporting over 3 million U.S. jobs. As a diverse coalition, not all members take a position or endorse the recommendations in this submission.

Clean Energy Incentives under the Inflation Reduction Act Represent a Historic Milestone

BCSE believes that the clean energy incentives included in the Inflation Reduction Act (IRA) represent a historic milestone, which was decades in the making. The IRA will put the U.S. on a path to meet its greenhouse gas emission reduction goals with strong and long-term federal policy support. By deploying a broad portfolio of clean, homegrown energy technologies we can increase and strengthen U.S. energy security, create millions of U.S. jobs, and cut greenhouse gas emissions. The long-term and predictable credits will have great impact and will provide the public policy certainty businesses urgently need, leading to steady economic growth and new job creation.

Clear, Expeditious Guidance Needed

BCSE appreciates the Treasury Department's effort to expeditiously develop guidance to provide clarity and certainty to taxpayers and other stakeholders, while following the statutorily required administrative steps and being responsive to public input. The recommendations below were informed by the comments submitted by the Solar Energy Industries Association (SEIA). BCSE touches on several aspects of SEIA's comments and requests thoughtful consideration of the entire SEIA submission.

Recommendations for Program Design for Facilities Placed in Service in Connection with Low-income Communities

With regard to program design issues related to facilities placed in service in connection with low-income communities, BCSE recommends an approach that:

(1) recognizes that low-income customers have different circumstances and different needs;
(2) is based on existing, implementable, and successful state incentive programs; and
(3) recognizes the different business models of qualified companies that serve low-income customers.

Further, program design should ensure access to the program's benefit regardless of where an applicant lives geographically, or their dwelling situation.

BCSE recommends that a first-come, first-served, rolling application process be adopted. Under this process, qualified projects that meet predetermined eligibility requirements would be able to reserve a capacity allocation and then claim a tax credit. After program launch, the capacity would be available until reservations consume total annual program capacity, then projects would be placed on a waitlist. In the event that the program is oversubscribed, any capacity surrendered by a project that did not reach completion would then be made available to projects on that waitlist.

Of note, the IRA caps the capacity for this bonus credit at 1.8 gigawatts. As the existing number of low-income customers across the country far exceeds the total capacity allocated for this tax credit, BCSE supports expanding the capacity threshold at some point through further legislative action.

Confirm that Grid Charging Does Not Disqualify Stand Alone Storage Project Eligibility

Treasury and the IRS should confirm that grid charging for standalone storage does not disqualify the storage project from the Investment Tax Credit (ITC) or trigger recapture. The text of the IRA contains no such limitation, and the definition of "energy storage technology" in § 48(c)(6)(A) speaks only to technology that "receives … energy," without regard to the source from which it was received.

80/20 Rule Should Not Hinder Storage Capacity Additions

To the extent that the 80/20 rule continues to apply to retrofitted or repowered facilities, it should be construed in a manner that does not interfere with additional energy storage capacity being added to existing facilities or expansion of existing energy storage facilities, including claiming the ITC for new or expanded energy storage technologies or new microgrid controllers. If a project is allowed to claim ITC and/or Production Tax Credit for a repowered project, the basis should be the fair market value of the repowered project.

Conclusion

Thank you for the opportunity to share additional views from the on this notice. Should you wish to discuss these comments further, please contact BCSE President Lisa Jacobson via email at ljacobson@bcse.org.