

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 16, 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 Department of Treasury and IRS' invitation to interested parties to submit comments after the November 4, 2022 deadline and appreciates 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 range of the clean energy economy, from Fortune 100 companies to small businesses working in all 50 states supporting over 3 million U.S. jobs.

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

BCSE believes the clean energy incentives under the Inflation Reduction Act (IRA) represent an historic milestone, which was decades in the making and 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 (GHG). The long-term and predictable credits will have great impact and will provide the public policy certainty business urgently needs, leading to steady economic growth and new job creation.

Clear, Expedient Guidance Needed

BCSE appreciates the Treasury Department's effort to expeditiously develop guidance to provide clarity and certainty to taxpayers and other stakeholders so the climate and economic benefits of this historic legislation can be felt as quickly as possible while following the statutorily required administrative steps and being responsive to public input. We appreciate the opportunity to submit additional comments as issues arise.

Innovation is Meant to Be Encouraged

The fuel neutral approach to clean energy generating credits in the IRA was designed expressly because Congress did not want to preclude any sources of clean energy, including new, innovative sources. As such, the Council requests a provisional determination for zero greenhouse-gas emission power generation facilities that are believed to qualify for credit under Section 48E, Clean Electricity Investment (ITC).

These projects meet the intent of the law, but legal uncertainties remain. A provisional emissions rate, as allowed in Part 7, Sec. 13701(b)(2)(ii), is being requested to allow these owners and operators to continue development of the project with certainty on the ITC eligibility.

Please see the following questions for which clarification is needed:

Allow the GREET Model to be Used for Calculating GHG Emissions Rates from RNG Projects

One of the key fuel sources for projects in question will be Renewable Natural Gas (RNG) produced from agricultural wastes (specifically manure) via anaerobic digestion. The U.S. Environmental Protection Agency (EPA) has not conducted a complete life cycle assessment on this specific fuel, therefore, this RNG procured from manure does not yet have an established lifecycle GHG emissions rate as determined by the EPA under the relevant section 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H))), as required by the IRA. But research cited by the EPA, and widely used by other similar programs, indicates that RNG from agricultural wastes will achieve a negative lifecycle GHG emissions rate. This specific statute relates to the lifecycle GHG emissions rate under the Renewable Fuel Standard (RFS) program.

The EPA has conducted several lifecycle Pathway Assessments for RNG and has made the blanket determination that RNG produced from agricultural digesters will achieve at least a 60% reduction in GHG emissions. Under the RFS program, there is no rationale to conduct a full LCA Pathway Assessment for manure-based agricultural digesters that produce RNG because this fuel already qualifies for the highest value Renewable Identification Number (RIN type D3), which only requires a 60% reduction in lifecycle GHG emissions compared with petroleum gasoline or diesel.

Completing a full EPA LCA pathway assessment requires several years, perhaps from two to five years, which is prohibitively long and will prevent timely development of these projects. The time required to secure a full EPA LCA assessment will impair the timely completion of several nearterm projects.

For these reasons, BCSE requests that EPA adopt the GREET model, which is already specifically allowed for other technologies under the IRA, and commonly used in assessment LCA emissions rates under the Low Carbon Fuel Standards in California, Oregon, and Washington.

Clarify that Projects May Qualify for the Credit by Using a Mix of Fuels if the Net Lifecycle Analysis of the Total Fuel Mix is Less than or Equal to Zero

The Treasury Department should clarify that projects which use multiple fuel sources are measured on the combined net emissions of the fuels. The relevant section of the IRA states that, "In the case of a facility that produces electricity through combustion or gasification, the greenhouse gas emissions rate for such facility shall be equal to the net rate of greenhouse gases emitted into the atmosphere by such facility." The law does not specifically address situations where multiple fuels may be used in combustion projects. An electric generation project could combust several fuels (biodiesel, renewable diesel), that do have a slightly net positive GHG

emissions rate, and also utilize RNG, which could have a negative emissions rate. This combustion ratio of fuels could achieve a net zero or negative emissions rate. The Treasury Department should clarify that this approach will be acceptable to qualify the facility for the credit.

Book and Claim Accounting Standards Should be Accepted to Purchase Offsite RNG

The Treasury Department should clarify and confirm that a book-and-claim accounting standard can be used to purchase RNG fuel for power generation that is produced at a different location than where it is ultimately consumed by projects seeking to qualify under Section 13701.

IRA Section 45Y does not explicitly address the use of offsite fuels for meeting the zero GHG emissions standard; but rather the law refers to EPA rules for the Renewable Fuel Standard (RFS).² The RFS rules explicitly allow a pathway for the use of offsite RNG to qualify as an eligible transportation fuel. In this structure, a transportation fuel user can purchase RINs generated by RNG produced offsite, if the same amount of RNG fuel is withdrawn from the natural gas system as at the point of actual consumption as that RNG purchased upstream. Specifically, in the EPA guidance documents³ RIN generation must be based on the British Thermal Units (BTUs) of the pipeline quality biogas after treatment and prior to any blending with non-renewable fuel or injection into a pipeline. The producer must be able to demonstrate, through contracts or affidavits, a path of the treated volume (in BTUs) prior to blending with non-renewable to downstream CNG/LNG plants, and ultimately for use as transportation fuel. We presume that the same logic and structure would be used for qualifying a zero-carbon power generation facility, but we seek certainty on this issue. Following the same logic of the established RFS program that the IRA will follow, we believe that a project can match the amount of gas BTUs consumed onsite with the same BTUs of RNG that is procured offsite.

Further, a colloquy between Senator Tom Carper and the Senate Floor Manager shortly before the Senate vote on the IRA, which can be found in the August 6, 2022 Congressional Record, confirms this. When asked whether section 13701 allows the Secretary to consider indirect book and claim factors that reduce effective GHG when buying renewable energy credits (RECs) to offset use of grid electricity when making hydrogen, the answer was, “yes.”

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.