

Part III – Administrative, Procedural, and Miscellaneous

Energy Community Bonus Credit Amounts Under the Inflation Reduction Act of 2022

Notice 2024-30

SECTION 1. PURPOSE

This notice modifies Notice 2023-29, 2023-29 I.R.B. 1 (July 17, 2023), clarified by Notice 2023-45, 2023-29 I.R.B. 317 (July 17, 2023), by expanding the Nameplate Capacity Attribution Rule under section 4.02(1)(b) of Notice 2023-29 to include additional attribution property and by adding two 2017 North American Industry Classification System (NAICS) industry codes to the table in section 3.03(2) of Notice 2023-29 for purposes of determining the Fossil Fuel Employment rate (as defined in section 3.03(2) of Notice 2023-29). These modifications are set forth in section 3 of this notice.

SECTION 2. BACKGROUND

.01 In General. Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended §§ 45 and 48 of the Internal Revenue Code (Code)¹ to provide increased credit amounts or rates if certain requirements pertaining to energy communities are satisfied, and added new

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code.

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§§ 45Y and 48E, which provide increased credit amounts or rates for certain qualified facilities, energy projects, or energy storage technologies that satisfy similar requirements and that are placed in service after December 31, 2024.²

Notice 2023-29 describes certain rules that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to include in forthcoming proposed regulations for determining what constitutes an energy community, as defined in § 45(b)(11)(B) and as adopted by §§ 45Y(g)(7), 48(a)(14), and 48E(a)(3)(A), and for determining whether a qualified facility, an energy project, or energy storage technology is located in an energy community. Notice 2023-29 also provides that the Treasury Department and the IRS intend to propose that the forthcoming proposed regulations will apply to taxable years ending after April 4, 2023. Taxpayers may rely on the rules described in sections 3 through 6 of Notice 2023-29 until the proposed regulations are published.

Sections 45(b)(11), 48(a)(14), 45Y(g)(7), and 48E(a)(3)(A) provide the requirements that taxpayers must satisfy to qualify EC Projects (defined in section 2 of Notice 2023-29) for increased energy community bonus credit amounts or rates under those provisions of the Code. Section 2 of Notice 2023-29 provides that the term “EC Project” refers to: (1) a qualified facility eligible for a credit determined under § 45 or determined under § 45Y that is located in an energy community; (2) an energy project eligible for a credit determined under § 48, which may include qualified property for which a taxpayer has made a valid irrevocable election under § 48(a)(5) to treat such

² See § 13101(g) of the IRA for the energy community provisions under § 45(b)(11), § 13102(o) of the IRA for the energy community provisions under § 48(a)(14), § 13701(a) of the IRA for the energy community provisions under § 45Y(g)(7), and § 13702(a) of the IRA for the energy community provisions under § 48E(a)(3)(A).

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qualified property as energy property under § 48, that is placed in service within an energy community; or (3) a qualified investment with respect to a qualified facility or energy storage technology eligible for a credit determined under § 48E that is placed in service within an energy community.

Section 45(b)(11)(B) identifies three location-based categories of energy communities for purposes of §§ 45, 45Y, 48, and 48E, described in Notice 2023-29 as the Brownfield Category, the Statistical Area Category, and the Coal Closure Category. The Statistical Area Category includes a metropolitan statistical area (MSA) or non-metropolitan statistical area (non-MSA) that (1) has (or had at any time after December 31, 2009) 0.17 percent or greater direct employment (Fossil Fuel Employment) or 25 percent or greater local tax revenues (Fossil Fuel Tax Revenue) related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary of the Treasury or her delegate (Secretary)); and (2) has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary).

Section 4 of Notice 2023-29 provides generally applicable rules for determining whether a qualified facility is located in an energy community under §§ 45 or 45Y, and under §§ 48 and 48E, whether an energy project, qualified facility, or energy storage technology, as applicable, is placed in service within an energy community. Section 4.02 of Notice 2023-29 provides that an EC Project is treated as located in or placed in service within an energy community if it satisfies either the Nameplate Capacity Test under section 4.02(1) of that notice or the Footprint Test under section 4.02(2) of that notice.

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.02 The Nameplate Capacity Attribution Rule. Under the Nameplate Capacity Test, an EC Project that has nameplate capacity is considered located in or placed in service within an energy community if 50 percent or more of the EC Project's nameplate capacity is in an area that qualifies as an energy community. The Nameplate Capacity Test includes a Nameplate Capacity Attribution Rule (described in section 4.02(1)(b) of Notice 2023-29). The Nameplate Capacity Attribution Rule provides that if an EC Project with offshore energy generation units has nameplate capacity but none of the EC Project's energy-generating units are in a census tract, MSA, or non-MSA, then the Nameplate Capacity Test for such EC Project is applied by attributing all the nameplate capacity of such EC Project to the land-based power conditioning equipment that conditions energy generated by the EC Project for transmission, distribution, or use and that is closest to the point of interconnection. Section 3.01 of this notice expands the Nameplate Capacity Attribution Rule to include additional attribution property.

.03 NAICS codes used for determining the Fossil Fuel Employment rate. Section 3.03(2) of Notice 2023-29 provides that for purposes of determining whether an MSA or non-MSA is in the Statistical Area Category based on Fossil Fuel Employment, the relevant direct employment is determined by the number of people employed in the industries identified by the 2017 NAICS industry codes listed in the table in section 3.03(2) of Notice 2023-29. The Fossil Fuel Employment rate is determined as the number of people employed in the industries identified by the 2017 NAICS codes specified in the table and as listed in the annual County Files of the County Business Patterns (CBP) published by the Census Bureau, divided by the total number of people employed in that area. The Fossil Fuel Employment and total employment for each

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county in an MSA or non-MSA is aggregated for each year to determine whether the MSA or non-MSA meets the Fossil Fuel Employment threshold of 0.17 percent. Section 3.02 of this notice modifies the Fossil Fuel Employment rate determination by adding two NAICS codes to the table provided in section 3.03(2) of Notice 2023-29.

SECTION 3. MODIFICATION OF NOTICE 2023-29

.01 Modification of the Nameplate Capacity Attribution Rule. Section 4.02(1)(b) of Notice 2023-29 is modified to read as follows:

(b) Nameplate Capacity Attribution Rule. If an EC Project with offshore energy generation units has nameplate capacity but none of the EC Project's energy-generating units are in a census tract, MSA, or non-MSA, then the Nameplate Capacity Test for such EC Project is applied by attributing all the nameplate capacity of such EC Project to: (i) any land-based power conditioning equipment that conditions energy generated by the EC Project for transmission, distribution, or use before the energy is transmitted to the point of interconnection (or in the case of an EC Project with multiple points of interconnection, any land-based power conditioning equipment that conditions energy generated by the EC Project for transmission, distribution, or use before the energy is transmitted to one of the multiple points of interconnection); or (ii) any EC Project supervisory control and data acquisition (SCADA) equipment located in an EC Project Port. EC Project SCADA equipment is property owned by the taxpayer that owns the EC Project and is used to remotely monitor and control the EC Project's operations. An EC Project Port is defined as a port used either full or part-time to facilitate maritime operations necessary for the installation or operation and

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maintenance of the EC Project, and with a significant long-term relationship with the EC Project at which staff employed by, or working as independent contractors for, the taxpayer that owns the EC Project are based and perform functions essential to the EC Project's operations. A port will be considered to have a significant long-term relationship with the EC Project only if the taxpayer that owns the EC Project owns (in whole or in part) or leases (in whole or in part) under a lease agreement with a term of at least 10 years, the port in which the EC Project SCADA equipment is located. Staff employed by, or working as independent contractors for, the taxpayer that owns the EC Project will be considered based in an EC Project Port to perform functions essential to the EC Project's operations only if the staff perform (collectively, if not individually) all of the following functions: management of marine operations, inventory and handling of spare parts and consumables, and berthing and dispatch of operation and maintenance vessels and associated crews and technicians.

.02 Modification of the Fossil Fuel Employment rate determination by the addition of two NAICS codes.

(1) The table in section 3.03(2) of Notice 2023-29 is modified to read as follows (new codes in bold):

2017 NAICS code	Description
211	Oil and Gas Extraction
2121	Coal Mining
213111	Drilling Oil and Gas Wells
213112	Support Activities for Oil and Gas Operations
213113	Support Activities for Coal Mining
2212	Natural Gas Distribution
23712	Oil and Gas Pipeline and Related Structures Construction
32411	Petroleum Refineries

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4861	Pipeline Transportation of Crude Oil
4862	Pipeline Transportation of Natural Gas

(2) Appendix B to Notice 2023-29 provided the list of MSAs and non-MSAs that meet the Fossil Fuel Employment threshold described in § 45(b)(11)(B)(ii)(I) and section 3.03(2) of Notice 2023-29. Appendix 1 to this notice is a list of additional MSAs and non-MSAs that meet the Fossil Fuel Employment threshold described in Notice 2023-29 after including the two additional NAICS codes. Appendix 1 to this notice, Appendix B to Notice 2023-29, and Appendix 1 to Notice 2023-47 together provide the full list of MSAs and non-MSAs that meet the Fossil Fuel Employment threshold applicable to the period beginning on January 1, 2023.

(3) Appendix 2 to Notice 2023-47 is a list of MSAs and non-MSAs that qualify as energy communities because they meet the Fossil Fuel Employment threshold and have an unemployment rate at or above the national average unemployment rate for calendar year 2022 as described in § 45(b)(11)(B)(ii)(II) and section 3.03(3) of Notice 2023-29. Appendix 2 to this notice is a list of additional MSAs and non-MSAs that qualify as energy communities after including the two additional NAICS codes. Appendix 2 to this notice and Appendix 2 of Notice 2023-47 together provide the full list of energy communities in the Statistical Area Category for the period beginning on January 1, 2023. As provided in section 3.03(3) of Notice 2023-29, the energy community status for the MSAs and non-MSAs listed in Appendix 2 of Notice 2023-47 and Appendix 2 of this notice is effective as of January 1, 2023, and that status will continue until the list is updated based on unemployment rates for calendar year 2023.

SECTION 4. APPLICABILITY DATE

Until the proposed regulations are published, taxpayers may rely on the rules

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described in sections 3 through 6 of Notice 2023-29, as previously clarified by Notice 2023-45 and modified by section 3 this notice, for taxable years ending after April 4, 2023.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2023-29 is modified as provided in section 3 of this notice. Except as provided in section 3 of this notice, this notice does not otherwise affect the guidance provided in Notice 2023-29.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).