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Energy Community Tax Credit Boost Will Benefit Wind Sector

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On March 22, the U.S. Department of the Treasury and the Internal Revenue Service issued Notice 2024-30, which modifies prior guidance on energy community enhancements.

It further clarifies (1) when offshore wind facilities are treated as "located in" an energy community, and (2) the requirements for a statistical area category of the energy community safe harbor provided in Notice 2023-29, as previously modified by Notice 2023-45 and Notice 2023-47.

Under the Inflation Reduction Act, projects located in an energy community qualify for enhanced credit amounts for several clean energy tax credits, including investment tax credits under Sections 48 and 48E, and production tax credits under Sections 45 and 45Y.

Notice 2023-29 provided rules for determining what constitutes an energy community and whether property is located in an energy community. The Treasury and the IRS intend to include the rules in forthcoming proposed regulations concerning energy communities.

The regulations will apply to taxable years ending after April 4, 2023. Until the proposed regulations are issued, taxpayers may rely on the rules in Notice 2023-29, as modified by Notice 2023-45, Notice 2023-47 and Notice 2024-30.

Expansion of Nameplate Capacity Test Attribution Rules for Offshore Facilities

A project or facility is considered located in or placed in service within an energy community if it meets either the nameplate capacity test or the footprint test. A project or facility that has a nameplate capacity is considered located in or placed in service within an energy community if 50% or more of its nameplate capacity in megawatts — consisting of energy-generating units — is in an energy community.

Notice 2023-29 provided that if a facility or project with offshore energy generation units has nameplate capacity but none of the applicable energy-generating units are in a census tract; a metropolitan statistical area, or MSA; or

a nonmetropolitan statistical area, or non-MSA, then the nameplate capacity test for such facility or project is applied by attributing all the nameplate capacity of such facility or project to the land-based power conditioning equipment that conditions energy generated by the facility or project for transmission, distribution or use, and that is closest to the point of interconnection.

Notice 2024-30 expands the rule to provide that, in that scenario, the nameplate capacity test for such facility or project is applied by attributing all the nameplate capacity of such facility or project to:

- "Any land-based power conditioning equipment that conditions energy generated by the [facility or project] for transmission, distribution, or use before the energy is transmitted to the point of interconnection (or in the case of a facility or project with multiple points of interconnection, any land-based power conditioning equipment that conditions energy generated by the facility or project for transmission, distribution, or use before the energy is transmitted to one of the multiple points of interconnection)"; or
- Any facility or project supervisory control and data acquisition, also known as SCADA, equipment located in a port used at least part time to facilitate maritime operations necessary for the installation or operation and maintenance of the facility or project, with a significant, long-term relationship with the facility or project — e.g., ownership or a lease of at least 10 years — and at which staff employed by, or working as independent contractors for, the taxpayer that owns the facility or project are based and perform functions essential to the facility's or project's operations.

Functions essential to the project's operations include all 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."

The revision provides flexibility to attribute the nameplate capacity to any land-based power conditioning equipment for the facility or project — not just that closest to the interconnection point — and clarification for projects or facilities with multiple interconnection points that the land-based power conditioning equipment associated with any interconnection point can be used.

Two Additional NAICS Codes for Statistical Area Category Communities

The statistical area category of energy communities includes each MSA and non-MSA that (1) has — or had at any time after Dec. 31, 2009 — 0.17% or greater direct employment (fossil fuel employment), or 25% or greater local tax revenues (fossil fuel tax revenue) related to the extraction, processing, transport or storage of coal, oil or natural gas; and (2) has an unemployment rate at or above the national average unemployment rate for the previous year, in each case as determined by the secretary of the Treasury.

Notice 2023-29 describes the IRS' process for determining fossil fuel employment, pursuant to which the number of people employed in the industries identified by specific 2017 North American Industry Classification System, or NAICS, codes is divided by the total number of people employed in the area, in each case as specified in the annual county files of the County Business Patterns, published by the U.S. Census Bureau.

Notice 2024-30 modifies the NAICS codes identified in Notice 2023-29 for determining fossil fuel employment by adding two additional NAICS codes: No. 2212 — Natural Gas Distribution, and No. 23712 — Oil and Gas Pipeline and Related Structures Construction.

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Prior IRS guidance on the energy community bonus included appendices of MSAs and non-MSAs that meet the fossil fuel employment test, as well as those that qualified as energy communities as a result of meeting both the fossil fuel employment test and the unemployment rate requirements for the previous year.

As a result of the updates to the specified NAICS codes, Notice 2024-30 includes a new Appendix 1, which lists additional MSAs and non-MSAs that meet the fossil fuel employment test but were not included in Appendix B to Notice 2023-29, and a new Appendix 2, which lists additional MSAs and non-MSAs that qualify as energy communities that were not included in Appendix 2 to Notice 2023-47.

Summary

Notice 2024-30 is timely. Until the IRS publishes an updated appendix based on 2023 unemployment data. Appendix 2 now provides the most up-to-date information for determining whether projects that have been or will be placed in service in 2023 or the beginning of 2024 qualify for the energy community enhancement based on the statistical area category.

In addition, the expansion of the attribution rule for the nameplate capacity test for offshore facilities is a win for the offshore wind industry, which stands to see more projects qualify for the energy community bonus, a particularly valuable bonus in the investment tax credit context due to the capital-intensive nature of offshore wind projects.

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