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RE: Connecticut Green Bank Comments - IRS Notice 2022-49

Connecticut Green Bank (“Green Bank”) respectfully submits the following comments in response to IRS Notice 2022-49 and the changes made to the Internal Revenue Code by the Inflation Reduction Act of 2022 (the “IRA”). As the nation’s first green bank, Green Bank leverages the limited public resources it receives to attract multiples of private investment to scale up clean energy deployment. Since its inception, the Green Bank has mobilized \$2.14 billion of investment into Connecticut’s clean energy economy at a 7.4 to 1 leverage ratio of private to public funds, supported the creation of 25,612 direct, indirect and induced jobs, reduced the energy burden on over 63,000 families and businesses, deployed over 494 MW of clean renewable energy, helped avoid 9.9 million tons of CO2 emissions over the life of the projects, and generated \$107.4 million in individual income, corporate, and sales tax revenues to the State of Connecticut.

Green Bank was authorized pursuant to Connecticut General Statutes Section 16-245n as “a body politic and corporate, constituting a public instrumentality and political subdivision of the State of Connecticut established and created for the performance of an essential public and governmental function. The Connecticut Green Bank shall not be construed to be a department, institution or agency of the state.” Green Bank is granted powers which it may use in furtherance of or in carrying out its purposes, including but not limited to, the ability to:

1. invest in, acquire, lease, purchase, own, manage, hold, sell and dispose of real or personal property or any interest therein, and
2. form subsidiaries, and transfer to any such subsidiary any moneys and real or personal property of any kind or nature. Any subsidiary may be organized as a stock or nonstock corporation or a limited liability company. Each such subsidiary shall have and may exercise such powers of said bank and such other powers provided to it by law.

The IRA contains a number of provisions that are intended to encourage investments in clean energy and that could significantly improve Green Bank’s ability to satisfy its statutory mandate, including the elective payment of applicable credits pursuant to Section 6417 of the Code. Allowing a political subdivision of a State and other tax-exempt entities to benefit from the applicable tax credits could allow the Green Bank to continue to deploy clean energy especially to underserved markets. As the Treasury Department considers additional guidance regarding these provisions we urge you take into account the considerations described below.

Notice 2022-49

.06 IRA Addition of Special Programs for Certain Facilities Placed in Service in Connection with Low-income Communities (§§ 48(e) and 48E(h))

(1) Sections 48(e)(4)(A) and 48E(h)(4)(A) require the Secretary to establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities. In establishing such program, the Secretary must provide procedures to allow for an efficient allocation process. (a) What should the Treasury Department and the IRS consider in providing guidance regarding the application process for taxpayers seeking an allocation of the environmental justice capacity limitation? (b) How can the application procedures and application process be made accessible to taxpayers? 15 (c) How can the process incorporate community input, engagement, and benefit for projects seeking an allocation of the environmental justice capacity limitation?

Green Bank believes that the overall program structure should first reserve allocations for each state to make sure that this credit is equitably distributed among all states and not just the largest markets. If the allocation is not subscribed in a particular state, it could subsequently become available for facilities in other states.

With regards to IRS guidance regarding the application process for taxpayers, Green Bank urges the IRS to:

1. Make the application process as simple as possible and not overly burdensome, so smaller distributed projects can also benefit
2. Make the application process as frequent as possible to enable more projects to qualify
3. Make the application review process occur at the state level to align with state programs that also seek to promote environmental justice
4. Provide a process that is fair and reasonable to smaller developers so that large developers focusing on larger projects rather than distributed deployment do not have an unfair advantage.

(2) What stage of completion, if any, should be required of the taxpayer at the time of application for or allocation of amounts of environmental justice capacity limitation (since the taxpayer will have four years to place the facility in service)?

There should not be a requirement for completion before application. For some projects, the allocation of this credit may be necessary to know if a project will be economically viable. Otherwise only larger and wealthier developers that can put capital at risk and will be in a better position to take advantage of the additional credit.

(4) What mechanisms exist for a taxpayer to demonstrate that the financial benefits of the electricity produced by an applicable facility are allocated equitably among the occupants of a low-income residential building project and do not impact the occupants' eligibility for their housing? Similarly, what mechanisms exist for a taxpayer to demonstrate that at least 50 percent of the financial benefits of electricity produced by an applicable facility which is part of a low-income economic benefit project are provided to households within certain income thresholds?

Regarding subsection (i) of the definition, the Treasury Department should include all state affordable housing programs, if they are not otherwise included in the list of covered housing programs, as may be identified from time to time by state agencies.

Regarding subsection (ii) of the definition, the Treasury Department should allow a taxpayer to demonstrate compliance by participation in a state electric tariff, or similar program, which has a requirement to share total financial benefit of the facility with the occupants. In Connecticut, to promote the equitable deployment of clean energy, affordable multifamily properties are eligible to obtain a higher tariff or volumetric compensation provided at least 20% of the total financial benefit is shared with the tenants of the dwelling. Acceptance into similar programs in other states, that align with the requirements of the IRA, should also provide a sufficient mechanism to demonstrate compliance. The same is true for current or future state community wind or solar programs that allocate benefits in alignment with the requirements of a low-income economic benefit project. A taxpayer could demonstrate compliance by providing proof of an accepted award or registration in such a state program.

(5) Is guidance needed to clarify the meaning of the term “financial benefit”?

Yes, guidance is needed. In states that have tariff programs for such facilities the financial benefit should include the value of the tariff awarded to such facility.

(6) What is a financial benefit of the electricity produced by an applicable facility other than electricity acquired at a below-market rate for occupants of low-income residential building projects and low-income economic benefit projects?

Connecticut has a solar tariff program in which the taxpayer may contract with the utility for the utility to purchase all of the power and renewable energy credits generated by the facility. Because the power is being purchased by the utility, financing such a facility with a power purchase agreement and thereby providing “financial benefit” in the form of discounted electricity is not feasible. Instead, to provide financial benefits to the customer or tenants an annual site lease payment is paid by the system owner to the tenants or customer. Therefore, CGB encourages IRS to adopt a broad definition for “financial benefit” which would satisfy with other monetary benefits to the households (i.e., site lease payments).