Submitted electronically on June 30, 2023
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RE: Connecticut Green Bank, Connecticut Department of Energy and Environmental Protection, and Connecticut Housing Finance Authority Comments to IRS Proposed Rules REG–110412–23 published on June 1, 2023

Connecticut Green Bank ("Green Bank"), Connecticut Department of Energy and Environmental Protection ("DEEP"), and Connecticut Housing Finance Authority ("CHFA", collectively with Green Bank and DEEP being the "Parties") respectfully submit the following comments in response to Internal Revenue Service ("IRS") Proposed Rules, REG–110412–23, Additional Guidance on Low-Income Communities Bonus Credit Program, published on June 1, 2023 (the "Proposed Rules"). The Parties worked with Connecticut Department of Housing in drafting these comments. Capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Proposed Rules.

The IRA contains a number of provisions that are intended to encourage investments in clean energy and that could significantly improve Parties' ability to satisfy their statutory mandate, including the Low-Income Communities Bonus Credit Program. As the Treasury Department considers additional guidance regarding these provisions, we urge you take into account the considerations described below.

<u>BACKGROUND ON SOLAR ON AFFORDABLE MULTIFAMILY PROPERTIES IN CONNECTICUT</u>

Connecticut incentivizes solar through two programs, Non-Residential Renewable Energy Solutions (NRES) and Residential Renewable Energy Solutions (RRES). Until 2021, multifamily properties with five or more units were eligible for NRES. However, NRES has limited capacity and is competitive in nature, generally resulting in lower incentives and less projects than RRES. It also doesn't offer a mechanism for sharing credits with tenants. In 2021, the Connecticut General Assembly passed Public Act 21-48 which allowed qualifying affordable multifamily properties to participate in RRES. It also required that an "appropriate" share of the benefits from a project be shared with the tenants. In an ensuing docket, the Connecticut Public Utility Regulatory Authority (PURA) made several determinations to implement Public Act 21-48 within the RRES program:

1) affordable multifamily projects must take service under the RRES Buy-All Sell-All ("BASA") tariff. The BASA tariff requires a front of the meter interconnection and electrons flow directly into the grid. Solar system owners receive a fixed $/kWh compensation from the utility that compensates the owner for both the energy and Renewable Energy Credits produced by the facility. This innovative structure makes it easier for Affordable Multifamily Solar Projects to be built. By moving the repayment risk from the building owner to an investment grade utility it will be easier for building owners to get long-term debt to finance solar and make it easier for third party owners to get comfortable owning these systems.

2) the term “appropriate”, for purposes of sharing the benefits of a project with tenants, means at least 20% of the benefits of the project must be shared with tenants. The concept of ‘benefits’ was determined as the overall value of the BASA tariff. As discussed later in these comments, Connecticut therefore already has a tenant benefit-sharing requirement built into an affordable multifamily project which must be accounted for when determining the value of an “equitable” sharing of benefits for purposes of being a “qualified low-income residential building project”.

<u>Section l 1: Financial Benefits for Qualified Low-Income Residential Building Projects</u>

The Treasury department and the IRS proposed to reserve allocations under this category exclusively for applicants that would equitably pass on net energy savings by distributing equal shares among the qualified residential property’s units that are designated as low-income under the covered housing program, or by distributing proportional shares based on each dwelling unit’s electricity usage.[1]

In Connecticut, before implementing Public Act 21-48, PURA received comments from multiple industry stakeholders including the Green Bank and DEEP, Solar Connecticut, PURA’s office of consumer counsel, and Sunrun, a leading residential and multifamily solar installer. Informed by these comments PURA reviewed multiple distribution methods of the benefits from a project. PURA’s final decision required that benefits be distributed equally to all building tenants, regardless of income. The Parties encourage the Treasury Department and the IRS to include this disbursement method in the definition for Equitable distribution of Net Energy Savings. The Connecticut structure has several advantages. Connecticut’s distribution method encourages reduced energy consumption, because the savings received from the facility are not tied to usage, a feature which facilitates the administration’s climate goals. The other distribution method described in the notice of proposed rulemaking involves passing on equal shares among the low-income units. The Parties, having previously explored that proposed method in detail, believe it would pose a prohibitive administrative burden for private sector facility owners and program administrators and make it more difficult to secure support from tenants and property owners.

<u>Section l 1A: Facility and Qualified Residential Property Have Same Ownership</u>

In scenarios where the facility and the qualified residential property have the same ownership, the Treasury Department and the IRS propose to define the financial value of net energy savings as the financial value equal to the greater of: (1) 25 percent of the gross financial value of the annual energy produced or (2) the gross financial value of the annual energy produced minus the annual costs to operate the facility. Gross financial value of the annual energy produced is calculated as the sum of (a) the total self-consumed kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building’s metered price of electricity and (b) the total exported kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building’s volumetric export compensation rate for solar and wind kilowatt-hours.[2]

The Parties request clarification from Treasury to ensure that a front of the meter volumetric tariff compensation rate, such as Connecticut’s Residential Renewable Energy Solutions Buy-All-Sell-All tariff (“BASA Tariff”), may be included in the gross financial value calculation described above. For projects

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[1] https://www.federalregister.gov/d/2023-11718/p-27
[2] https://www.federalregister.gov/d/2023-11718/p-29

where the facility and qualified residential property have the same ownership the Parties believe that the BASA tariff $/kWh revenue would count under the gross financial value of the annual energy produced under part b "the total exported kilowatt-hours produced by the qualified solar and wind facility multiplied by the applicable building's volumetric export compensation rate for solar" but would like clarity so that developers in Connecticut, like the Green Bank, can have confidence when applying for an allocation of Capacity Limitation.

Section l 1B: Facility and Qualified Residential Property Have Different Ownership

In scenarios where the facility and the qualified residential property have different ownership and the facility owner enters into a power purchase agreement or other contract for energy services with the qualified residential property owner, the Treasury Department and the IRS propose to define net energy savings as equal to the greater of: (1) 50 percent of the financial value of the annual energy produced by the facility which accrues to the owner of the qualified residential property in the form of utility bill credit and/or cash payments for net excess generation or (2) the financial value of the annual energy produced by the facility which accrues to the owner of the qualified residential property in the form of utility bill credit and/or cash payments for net excess generation minus any payments made by the building owner to the facility owner for energy services associated with the facility in a given year.[3]

The contract structure commonly associated with a front of the meter tariff is a solar site lease, not a power purchase agreement. In a solar site lease structure, property owners receive savings in the form of an annual lease payment or a percentage of tariff revenue, instead of discounted electricity. A front of the meter tariff, like Connecticut's BASA tariff, is advantageous to the Low-Income Communities Bonus Credit Program goal "to increase adoption of and access to renewable energy facilities in low-income and other communities with environmental justice concerns". With compensation coming from investment grade utilities, facility owners can avoid time and resources spent underwriting property owners and receive better terms from lenders and other investment partners. These benefits make qualified residential property projects more economically attractive, allowing projects to be built that would otherwise offer too small of a financial return. Given these advantages, the Parties encourage the Treasury Department and IRS to consider this tariff program, and the solar site lease contract structure, before finalizing this guidance.

The Parties are seeking clarity and minor revisions to the definition of Net Energy Savings for projects where the facility and the qualified residential property have different ownership, to ensure projects using the BASA Tariff and other front of the meter programs are considered. Considering this program structure, the Parties propose that the first definition of net energy savings be amended to reference "*the total* financial value of energy produced by the facility that accrues to the owner of the qualified residential property, *or the facility owner, the tenants, or a combination thereof*". To meet Connecticut's Affordable Multifamily solar tariff guidelines, at least 20% of the BASA tariff revenue must go to the tenants. The rest of the revenue can be allocated between the facility owner and the property owner in whatever manner is requested. The Parties expect a typical project could work like this: 25% of the financial value is distributed to tenants, 20% of the value is allocated to the property owner, and 55% is allocated to the Green Bank as the facility owner. A different approach would have all of the revenue not distributed to the tenants allocated to the Green Bank as facility owner with a fixed annual solar

[3] https://www.federalregister.gov/d/2023-11718/p-31

lease payment paid to the property owner. As currently written, a case could be made that the financial value that accrues to the owner of the property may be as small as the percentage of tariff revenue allocated to them instead of the full financial value produced by the facility in a given year. Without the suggested change developers in Connecticut and other jurisdictions will face confusion and a smaller percentage of financial value will be distributed to Low-Income tenants.

The Parties also request that the second definition of net energy savings be amended to say that "the *total* financial value of the annual energy produced by the facility which accrues to the owner of the qualified residential property, *or the facility owner, the tenants, or a combination thereof* minus any payments made, *or revenue allocated,* to the facility owner for energy services associated with the facility in a given year" to consider solar site lease structures in addition to power purchase agreements. As a result of the beneficial Affordable Multi-Family Solar tariff in Connecticut, the Green Bank is currently pursuing a solar site lease structure to install solar at affordable multifamily buildings and expects other developers to do the same. Under a lease structure, the facility owner (in this case the Green Bank), receives the requested proportion of the BASA Tariff revenue (a maximum of 80% as 20% must go to tenants) and then agrees to pay the property owner a fixed annual lease payment or a fixed percentage of the tariff revenue.

When defined in the manner described above, the Parties expect the first definition will be greater than the second definition in nearly all circumstances. The Parties imagine a typical category 3 project to look something like this: The Green Bank, or another developer, installs and owns a front of the meter solar facility at a qualified residential property that receives BASA Tariff compensation. The Green Bank receives 60% of the revenue, and the rest is allocated to the property owner and tenants (40%). The net energy savings would be 50% of the total financial value of the system, because 50% is greater than the total financial value of the system *minus* revenue allocated to the facility owner (100%-60%= 40%.) So, to receive an allocation of capacity limitation, at least 25% of the tariff revenue (50% of the net savings which is 50% of the total value) would have to be distributed equitably to occupants. This would require the Green Bank and other facility owners to allocate at least 25% of the tariff revenue to tenants, instead of the state required 20%, to receive an additional 20% investment tax credit. Using the Green Bank's solar project financial model, the Parties calculate that this trade off would *increase* the expected investment return of facility ownership and thereby incentivize facility owners to provide greater benefits to occupants. We believe that outcome aligns with the environmental justice goals of the State of Connecticut and the Biden administration.

DEFINITION OF "QUALIFIED LOW-INCOME RESIDENTIAL BUILDING PROJECT"

To qualify for category three of the Low-Income Communities Bonus Credit, a project must be installed on a residential rental building that participates in an affordable housing program. An "affordable housing program" includes (i) a covered housing program under the Violence Against Women Act of 1994, (ii) a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949; (iii) a housing program administered by a tribally designated housing entity; and (iv) other affordable housing programs as the Treasury Secretary may provide. It is the Parties understanding that this definition of "affordable housing program" covers a number of programs administered by the U.S. Department of Housing and Urban Development and U.S. Department of Agriculture, as well as properties participating in the Low Income Housing Tax Credit program overseen by the Treasury Department. However, Connecticut, like many other states, has state-level affordable housing programs. The Parties encourage the Treasury Department to take advantage of the authority granted in the IRA to the Treasury Secretary ((iv) other affordable housing programs as the Treasury Secretary may provide) to expand the definition of "affordable housing program" to include state affordable housing programs.

Section l 2: Financial Benefits in Qualified Low-Income Economic Benefit Projects

Applicants are responsible for proof-of-income verification and would be required to submit documentation upon placing the qualified solar and wind facility in service that identifies each qualifying low-income household, the output allocated to each qualifying low-income household in kW, and the method of income verification utilized. Applicants may use category eligibility or other income verification methods to qualify low-income households.[4]

The Parties propose revising this requirement to allow state agencies or utilities, instead of developers, to provide an attestation that a Low-Income Economic Development Project meets the low-income customer participation requirements. Connecticut's Shared Clean Energy Facility ("SCEF") Program is essentially the State's version of community solar. SCEF provides eligible electric customers with an opportunity to receive benefits from clean energy sources in Connecticut. As SCEF projects become operational, the state's utilities select eligible customers to enroll as subscribers. Subscribers will get a fixed monthly bill credit equal to $0.025 multiplied by their average monthly electric usage. This credit lasts for 20 years and provides a 100% bill credit discount rate as subscribers do not pay to enroll. The program supports the development of grid-tied clean energy generation and provides on-bill credits to customers that are primarily low or moderate-income ("LMI"). To overcome traditional barriers to developing low-income community shared solar projects, the SCEF program relies on Connecticut's investor-owned utilities to identify and enroll eligible LMI customers based on participation in utility financial hardship programs using an "opt-out" approach. The state's utilities are unable to share personal identifiable information ("PII") with private solar developers to meet the proposed documentation requirements of the Treasury Department.

Section ll C1: Additional Selection Criteria – 1. Ownership Criteria

e. Qualified Tax Exempt entity.

A "qualified tax-exempt entity" for purposes of the Ownership Criteria is:

(2) Any state, the District of Columbia, or political subdivision thereof, any territory of the United States, or any agency or instrumentality of any of the foregoing.[5]

The Green Bank, as a quasi-public state agency, meets the ownership criteria and intends to develop and own affordable multi-family housing solar assets in the years to come. The Parties

[4] https://www.federalregister.gov/d/2023-11718/p-39
[5] https://www.federalregister.gov/d/2023-11718/p-66

appreciate Treasury's prioritization of these ownership entities that are committed to the administration's environmental justice goals.

Section ll D: Sub-Reservations of Allocation for Facilities Located in a Low-Income Community

The Treasury Department and the IRS propose to subdivide the 700 MW Capacity Limitation reservation for facilities seeking a Category 1 allocation with 560 megawatts reserved specifically for eligible residential behind the meter (BTM) facilities, including rooftop solar. The sub-reservation of a substantial portion of the allocation in Category 1 for eligible residential BTM facilities would help ensure that allocations are predominantly awarded to facilities serving residences and consumers, rather than facilities serving businesses.[6]

The Parties appreciate the Treasury Department and the IRS's efforts to set aside an allocation for residential rooftop solar. However, we believe that this guidance goes too far by defining residential rooftop solar as solely behind the meter ("BTM"). As mentioned previously in these comments, Connecticut's regulated utilities offer a front of the meter solar tariff for residential and commercial solar projects. Front of the meter residential solar projects, though somewhat rare in Connecticut, are particularly attractive for projects in low-income communities. In Connecticut, the Green Bank and other capital providers have shown that low-income homeowners are strong borrowers. However, convincing private capital providers to invest in these projects can still be difficult. That's why front of the meter residential systems, where the offtaker is an investment-grade utility, are more attractive to investors. Instead of using behind the meter to classify projects as residential, the Treasury Department and the IRS could use system size instead (perhaps a maximum of 25kw AC), or simply remove any reference to BTM. An updated definition could be "The Treasury Department and the IRS propose to define an eligible residential facility as a single-family or multi-family residential qualified solar and wind facility that does not meet the requirements for Category 3 and has a maximum net output of less than 25 Kilowatts as measured in alternating current".

The Parties also encourage the Treasury Department and the IRS to update the proposed requirement that applicants attest they have "appropriately sized the facility (to meet no more than 110% of historical customer load)". In Connecticut, residential systems can be sized in excess of historical customer load to account for the installation of whole-home heat pumps and or the purchase of an electric vehicle. Home electrification is a goal shared by the state of Connecticut and the federal government. DEEP is currently preparing to distribute High Efficient Electric Home Rebate Act rebates included in the Inflation Reduction Act. Those rebates are offered only to low- and moderate-income homeowners. Maintaining the current limit on system sizing would prevent those homeowners from installing a system that is correctly sized to meet the energy demands of an electrified home. As a result, the commentors propose that the Treasury Department and the IRS update the guidance so that applicants may exceed 110% of historical load in order to accommodate the installation of defined electrification projects.

SECTION II E: APPLICATION MATERIALS

Under the proposed application requirements, applicants must attest that "the facility has obtained all applicable Federal, State, Tribal, and local non-ministerial permits, or that the facility is not required to

[6] https://www.federalregister.gov/d/2023-11718/p-73

obtain such permits". Clarity should be provided on whether "local non-ministerial permits" includes such things as building and/or electrical permits. The Parties understand the desire for the Treasury Department and the IRS to receive applications for projects that are likely to move forward and therefore wouldn't encumber the limited capacity of the program only to not materialize. However, obtaining such permits requires a not insignificant expenditure of funds and investment of time in a project. Therefore, if all permits are required, many developers will be unlikely to invest in projects that need the low-income community bonus to be economically viable. Therefore, requiring such permits is potentially at odds with the guidance's stated broad goal of the Low-Income Communities Bonus Credit Program "to increase adoption of and access to renewable energy facilities in low-income and other communities with environmental justice concerns." This means that adoption of and access to renewable energy facilities would likely *not* be increased in these communities by the bonus credit, because only projects that are viable *without* the bonus credit would advance to the level of development required for the proposed application requirements.

The Parties appreciate the Treasury Department and IRS's efforts to solicit public comment on its Low-Income Communities Bonus Credit Program.

Sincerely,

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