

November 4, 2022

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2022-47)  
Room 5203  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044

SUBMITTED ELECTRONICALLY via Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov)

Re: Notice 2022-47

Request for Comments on Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X

The National Rural Electric Cooperative Association (“NRECA”) respectfully submits the following comments in response to Notice 2022-47, the “Request for Comments on Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X”. These comments are intended to provide the broad perspective of NRECA’s member electric cooperatives to the energy generation incentives contained in the Inflation Reduction Act (IRA) of 2022.

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America’s electric cooperatives are built by and owned by the people that they serve and comprise a unique sector of the electric industry. Electric cooperatives operate at cost and without a profit incentive. From growing regions to remote farming communities, electric cooperatives serve 42 million people (one of every eight electric consumers), powering 21 million businesses, homes, schools, and farms in 48 states and across 56 percent of the nation’s landmass.

NRECA’s members include 831 distribution cooperatives and 63 generation and transmission (G&T) cooperatives. Distribution cooperatives are the foundation of the electric cooperative network; they were built by their communities and deliver electric service and other services to their consumer-members, who are the end-users of electric service. The G&T cooperatives generate or purchase wholesale power on behalf of their distribution-cooperative members. Collectively, G&T cooperatives serve 80 percent of the nation’s distribution cooperatives. Other distribution cooperatives obtain wholesale power from other sources in the electric-power sector. Distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

Electric cooperatives are an integral part of the nation’s transmission and distribution infrastructure. Cooperatives own and maintain 2.6 million miles, or 42 percent of the nation’s electric transmission and distribution lines, including over 44,000 miles of transmission lines. In 2017, cooperatives served an average of eight customers per mile of line and collected annual revenue of approximately \$19,000 per mile; other utility sectors averaged 32 customers and \$79,000 in annual revenue per mile.

Electric cooperatives generate about five percent and deliver about 12 percent of the nation’s electricity. Cooperatives rely on a broad portfolio of fuels, including clean and renewable resources, as well as energy-efficiency

measures, to maintain safe, reliable, and affordable power for their communities. For 2020 (the latest complete year for which figures are available) cooperatives' aggregate retail sales of electricity were derived from a fuel mix consisting of 32 percent natural gas, 28 percent coal, 22 percent renewables, 16 percent nuclear, and two percent other.

Unlike the rest of the electric sector, cooperatives sell the majority of their electricity (54 percent of 2020 energy sales) to residential consumers rather than commercial businesses. It is vitally important to these households that electric system reliability be maintained and that electric rates remain affordable. Many consumers in rural communities depend on cooperative-delivered electricity for winter heating. Rural households often lack access to natural gas, and alternative fuels like propane and heating oil are comparatively expensive. Moreover, many consumers in rural communities are less affluent than those in other parts of the nation. In 2019, the median household income for electric cooperative consumer-members was 11 percent below the national average. Electric cooperatives serve consumer-members in 92 percent of the nation's 395 "persistent poverty" counties.

Passage of the IRA will, for the first time, provide electric cooperatives parity with for-profit utilities, which have long enjoyed tax credits to develop wind, solar and other renewable energy projects. Historically, not-for-profit electric cooperatives have not had access to those credits because most of them do not pay federal income taxes. Direct-pay incentives will have a major impact on electric cooperative plans to develop new energy technologies, including carbon capture, nuclear, energy storage, renewables; as well as maintain existing facilities as incentivized under the IRA.

## **Comments**

### **.01 Section 45X Advanced Manufacturing Production Credit.**

(1) Section 45X(a)(3)(B)(i) allows a taxpayer to make an election to treat a sale of components by such taxpayer to a related person as made to an unrelated person. Is guidance needed to clarify the meaning of the terms "unrelated person" and "related person"? If so, how should these terms be clarified?

***There is a unique relationship between a G&T cooperative and its distribution cooperative members. As provided above, NRECA's members include 831 member-owned local distribution cooperative systems and 63 G&T cooperatives that supply wholesale power to their distribution cooperative owner-members. Approximately 20% of distribution cooperatives rely on other sources of supply from the electric utility industry. As a result of the G&T and distribution cooperative relationship, NRECA urges the IRS to consider a definition of unrelated person that accounts for the unique characteristics of its members and does not impair their eligibility to utilize direct pay tax credits under the IRA.***

***We believe the IRS should clarify that the term "unrelated person" will be interpreted consistent with existing provisions of the Code and with prior guidance that the IRS has issued in connection with other tax incentives for electric generation.***

***Specifically, the IRS has interpreted, and issued guidance regarding, the definition of "related person" contained in Section 45(e)(4) applicable in the context of the renewable electricity production credit. This tax credit is available for sales of power, under Section 45(a)(2)(B), "by the taxpayer to an unrelated person." Section 45(e)(4) defines "related person" in the following terms:***

***"Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling***

***electricity to an unrelated person if such electricity is sold to such a person by another member of such group.”***

***Under this definition, two persons are related if they would be treated as a single employer under IRS regulations, with the additional caveat that two corporate entities filing a consolidated tax return will be treated as unrelated if one corporate entity sells power to the other corporate sibling. NRECA urges the IRS to clarify that the term “unrelated person” as used in Section 45 will be interpreted consistent with the definition of “related person” in Section 45(e)(4). While the implied double negative (defining “unrelated person” by what they are not) may be considered awkward, we believe this is the best alternative, in lieu of creating a new definition for this purpose. Importantly, adoption of this definition would clarify that a G&T cooperative and its distribution cooperative members to which it sells electricity are unrelated as they could not be considered a single employer under IRS regulations.***

***Regardless of what definition of “unrelated person” the IRS adopts, NRECA urges the IRS to explicitly affirm the same clarification for the Production Tax Credit under Section 45 that it has adopted in interpreting “unrelated person” in the context of other tax incentive programs. The IRS has issued guidance on what an “unrelated person” means in connection with at least two other tax benefits. In revising Notice 2006-40, IRS provided guidance on the definition of “unrelated person” in the context of Section 45J tax credits for the production of electricity at advanced nuclear power facilities, which were only available for sales to an “unrelated person.” In this Notice, the IRS stated:***

***“Electricity will be treated as sold to an unrelated person for this purpose if the ultimate purchaser of the electricity is not related to the person that produces the electricity. The requirement of a sale to an unrelated person will be treated as satisfied in these circumstances even if the producer sells the electricity to a related person for resale by the related person to a person that is not related to the producer.”***

***Accordingly, the IRS has acknowledged that a sale to a related person would not necessarily disqualify the sale from the tax benefit so long as the related person was engaged in a resale to an unrelated person. With this revised Notice, the IRS also introduced the concept of an “ultimate purchaser” and whether the tax benefit beneficiary is related to the “ultimate purchaser.” The IRS subsequently extended this logic to tax credits under Section 45 for electricity produced from open-loop biomass, citing its revision to Notice 2006-40, and applying that logic in Notice 2006-88.***

***Applying this guidance to the G&T cooperative model demonstrates that sales of electricity from a G&T cooperative to its distribution cooperative members constitute sales to an unrelated person. This is because a sale of electricity to a distribution cooperative by its G&T cooperative is made for the distribution cooperative to resell the electricity to its own members. Under this clarification, it is the end-use-member of the distribution cooperative who would serve as the “ultimate purchaser” of the electricity. The G&T cooperative would not be related to the “ultimate purchaser,” thus confirming the eligibility of the G&T cooperative for this tax benefit. We urge the IRS to adopt this guidance requiring only that the “ultimate purchasers” of the electricity be unrelated to the producer of such electricity for purposes of the Production Tax Credit under section 45.***

(2) Section 45X(d)(4) provides that for purposes of § 45X, a person is treated as having sold an eligible component to an unrelated person if such component is integrated, incorporated, or assembled into another eligible component which is sold to an unrelated person. How should “integrated, incorporated, or assembled” be determined?

(3) What factors should the Treasury Department and the IRS consider in determining what information or registration is necessary for purposes of preventing duplication, fraud, or any improper or excessive credit amount, as referenced in § 45X(a)(3)(B)?

- (4) Is guidance needed regarding the capacity-to-power ratio in § 45X(b)(4)? If so, what guidance?
- (5) Is additional clarification needed regarding the definitions of an “eligible component” in § 45X(c)?
- (a) How should the amount of the § 45X credit be calculated for components that could be used in systems of varying capacities?
  - (b) In such cases, how should verification of the applicable credit amount be demonstrated?
- (6) Section 45X(c)(4) identifies “related offshore wind vessels” as one of the qualifying “wind energy components.”
- (a) What should the requirements be for establishing that a vessel is for offshore wind development?
  - (b) Where it is uncertain how much a vessel will be used for offshore wind, how should such situations be addressed?
- (7) Section 45X(c)(6) identifies “applicable critical minerals,” and includes minimum purity percentages by mass.
- (a) How should purity percentages be determined?
  - (b) Should an independent third party be required to verify the results?
  - (c) If so, what qualifications should be required of an independent third-party providing such verification?
- (8) Is guidance needed regarding the definitions of “converted” and “purified”?
- (9) Is guidance needed regarding the apportionment and pass-thru of credit amounts to beneficiaries of estates or trusts as provided in § 45X(d)(3)?
- (10) Please provide comments on any other topics under § 45X that may require guidance.

#### .02 Qualifying Advanced Energy Project Credit (§ 48C)

(1) Section 48C(c)(1)(A)(i), as amended by the IRA, includes additional types of equipment and property that may be produced or recycled at a project that re-equips, expands, or establishes an industrial or manufacturing facility.

- (a) Is guidance needed to define “equipment designed to refine electrolyze, or blend any fuel, chemical, or product which is renewable, or low-carbon and lowemission”? If so, how should this be defined?
- (b) Is guidance needed to define “property designed to produce energy conservation technologies (including residential, commercial, and industrial applications)”? If so, how should this be defined?
- (c) What should the Treasury Department and the IRS consider in determining “other advanced energy property designed to reduce greenhouse gas emissions”?

(2) Section 48C(c)(1)(A)(ii) adds to the list of eligible projects any project which re-equips an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20 percent through the installation of certain systems, including through the installation of energy efficiency and reduction in waste from industrial processes.

- (a) Is guidance needed to define “energy efficiency”? If so, how should this be defined?
- (b) Is guidance needed to define “reduction in waste from industrial processes”? If so, how should this be defined?

(c) Is guidance needed to define baseline criteria, boundary conditions and/or timeframe to determine achievement of the 20 percent threshold?

(3) What should the Treasury Department and the IRS consider in determining “any other industrial technology designed to reduce greenhouse gas emissions”? Is guidance needed to include eligibility of facilities currently producing industrial materials for use in the construction or alteration of buildings and infrastructure projects (such as concrete, steel, asphalt, and flat glass) that can be retrofitted to produce materials that have substantially lower levels of embodied greenhouse gas emissions?

(4) How should a qualifying advanced energy project substantiate its eligibility based on any of the available criteria, but particularly the criteria provided by § 13501 of the IRA?

(a) Are there industry guidelines currently in place that a taxpayer may use to demonstrate that a project reduces greenhouse gas or other pollutant emissions? If so, what guidelines?

(b) Are there existing industry guidelines or regulatory practices employed by local governments or states that a taxpayer may use to demonstrate that a project reduces greenhouse gas or other pollutant emissions, including submittal of environmental product declarations (EPDs) that include measurements of the embodied greenhouse gas emissions of the relevant material or product and conform with international standards?

(5) Section 48C(e) directs the Secretary to establish a program to consider and award certifications of qualified investments eligible for the § 48C credit.

(a) What should the Treasury Department and the IRS consider in determining the selection criteria for awarding the § 48C credit and to what extent should the Treasury Department and the IRS rely on precedent from previous experience administering the § 48C credit during previous allocation rounds provided in Notice 2009-72, 2009-37 I.R.B. 325 and Notice 2013-12, 2013-10 I.R.B. 543?

(b) What aspects of the previous allocation rounds of the § 48C credit should the Treasury Department and IRS consider revising in establishing a new § 48C program and administering it?

(6) Section 48C(e)(3)(C) provides, in part, that if any certification is revoked, the amount of the limitation under § 48C(e)(2) must be increased by the amount of the credit with respect to such revocation.

(a) Is guidance needed on revocation of certifications? If so, what guidance?

(7) Please provide comments on any other topics that may require guidance.

***Section 48(c)(1)(A) defines the term “qualifying advanced energy project” as including electric grid modernization equipment or components. Considering the significant supply chain issues in the electric industry, we urge the IRS to consider providing guidance that the manufacture of electric transformers would be considered grid modernization or components under the statute. Such guidance would be very beneficial to existing manufacturers of transformers and may entice new entrants to the field. Enhanced incentives for transformer manufacture could help alleviate the scarcity of transformers, reinforce national and grid security, and foster resilience and reliability of our electric system. Further, IRS should consider including incentives under this category for the material needed for transformers because of the limited domestic capacity to produce grain oriented electrical steel which is needed to manufacture transformers of all types. It is critical to our national security that the U.S. maintain as well as grow domestic capacity to produce grain oriented electrical steel. Significant supply chain delays are also being experienced for aluminum conductor steel reinforced cable (ACSR) which is another material important to grid modernization and resiliency projects.***

Thank you for your consideration of our comments. If you have any questions, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'RW', followed by a long horizontal flourish.

Russell D. Wasson  
Senior Director of Regulatory Affairs  
The National Rural Electric Cooperative Association