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Good News for Offshore Wind Blows in With New Guidance From the Treasury and IRS

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The Inflation Reduction Act of 2022 (IRA) includes several tax credits to encourage investment in renewable energy projects, including an Investment Tax Credit (ITC) that is worth up to 30% of the overall project cost. The developer of a renewable energy project can receive a bonus of up to 10% on top of the ITC for a qualified facility that is located or placed in service in an “energy community.” One type of area that can qualify as an energy community under the IRA — the one most relevant to offshore wind projects — is an area that has significant employment or local tax revenues from fossil fuels and a higher-than-average unemployment rate.

In order to apply the criteria to offshore wind facilities, the US Department of Treasury initially proposed that an offshore wind project would be deemed to be located or placed in service at the place closest to the point of interconnection (POI) where there is land-based equipment that conditions the energy generated by the offshore wind project for transmission, distribution, or use.

Stakeholders in the offshore wind industry believed, however, that this approach did not adequately reflect the original intent of the IRA as it neglected to take into account the long-term benefits of activity related to offshore wind projects at locations, particularly ports, that were not at the POI.

Responding to stakeholder advocacy over the past several months, on March 22, the Internal Revenue Service (IRS) released updated guidance in IRS Notice 2024-30 (the Notice). The Notice permits projects with multiple POIs to qualify for the bonus credit, so long as one of the POIs is within an energy community. Stakeholders believe that this will be key in developing the shared transmission infrastructure that will be required for effective use of offshore wind energy.

Further, the Notice permits offshore wind facilities to attribute their nameplate capacity to additional property — namely, to supervisory control and data acquisition system (SCADA) equipment owned by the owner of the offshore wind project and located in an EC Project Port (as defined in the Notice). SCADA equipment is property that is used to remotely monitor and control the operations of the offshore wind project. The SCADA system is effectively the nerve center for an offshore wind project.

An “EC Project Port” is defined in the Notice as a port that is used either full or part time to facilitate maritime operations necessary for the installation or operation and maintenance of the offshore wind project, and that has a significant long-term relationship with the project's owner by virtue of ownership or lease arrangements. The personnel based at the port need to include staff who are employed by, or who work as independent contractors for, the project's owner and who perform functions essential to the project's operations. Staff based at the port will be considered to perform functions essential to the project's operations only if they collectively perform 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.

Finally, the Notice adds two industry codes from the North American Industry Classification System (NAICS) to those that are used to determine a community meets the IRA's required percentage of its workforce who are employed in the extraction, processing, transport, or storage of coal, oil, or natural gas. These additional NAICS codes designate oil pipeline infrastructure and natural gas distribution infrastructure. These additional codes are intended to bring the benefits of the energy community bonus credit to more communities and the IRS has amended its list of energy communities accordingly.

Advocates note that the updated guidance in the Notice represents a more holistic approach to the energy communities bonus credit that will give offshore wind project developers more flexibility in identifying ports for their investment, The increased flexibility will bring the economic benefit of the offshore wind industry to more communities, which will ultimately reduce the cost burden to ratepayers.

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