September 27, 2023

<u>Via Electronic Filing</u>

Internal Revenue Service
CC:PA:LPD:PR (Notice 2023-29)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Offshore Wind Procuring States' Comments on the Inflation Reduction Act of 2022's Energy Community Bonus Credit for Offshore Wind (Notice 2023-29)

The Connecticut Department of Energy and Environmental Protection, Maryland Energy Administration, Massachusetts Executive Office of Energy and Environmental Affairs, New Jersey Board of Public Utilities, New York State Energy Research and Development Authority, and Rhode Island Office of Energy Resources are the lead state energy agencies of six Atlantic States engaged in offshore wind procurement. On behalf of our states, we submit these comments to the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) to urge you to fully exercise your authorities under the Inflation Reduction Act of 2022 (IRA) to address the impacts of unprecedented inflation, supply chain constraints, and high interest rates, caused by Russia's invasion of Ukraine and the COVID-19 pandemic, which threaten the ongoing development of the U.S. offshore wind industry. In these comments, we request that Treasury and the IRS issue guidance <u>within the next 30 days</u> that ensures broad availability of the IRA's Energy Community Bonus Credit to the Investment Tax Credit (ITC) and Production Tax Credit (PTC) for offshore wind. This guidance is particularly needed in the current economic climate for offshore wind to provide the opportunity for cost relief and cost certainty needed to build offshore wind projects in the U.S.

In recent weeks, economic pressures from supply chain constraints, inflation, and high interest rates have already resulted in the announced cancellations of 2.4 gigawatts (GW) of previously procured U.S. offshore wind project contracts[1] and the failure of an Atlantic State solicitation for new offshore wind.[2] Without the guidance we request, up to 10.8 additional GW of our States' previously procured offshore wind projects in the Atlantic are at risk, as are pending and upcoming procurements for up to 13 GW of new offshore wind. We urge you to take action, using the tools available under the IRA, to address these economic challenges, ensure offshore wind projects are as competitive as possible, and enable both States and the federal government to meet our respective deployment targets for this resource.[3] By issuing guidance that fully deploys the IRA's clean energy tax credits for offshore wind, Treasury and the IRS will further ensure the IRA's goals of delivering significant domestic manufacturing, labor, and community benefits through offshore wind are met.

Our comments here focus specifically on the need for updated guidance that clarifies and ensures broader availability of the Energy Community Bonus Credit to the ITC and PTC. While not the focus of our comments here, we also urge Treasury and the IRS to issue further guidance on the Domestic Content Bonus Credit that will similarly ensure broad availability of that tax credit, which together with the Energy Community Bonus Credit is needed to help overcome the

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[1] "SouthCoast Wind joins Commonwealth in scraping power contracts," *The Salem News* (June 6, 2023), https://www.salemnews.com/news/southcoast-wind-joins-commonwealth-in-scraping-power-contracts /article_0a06a318-04a4-11ee-80d8-4f03ada52794.html.

[2] Rhode Island Energy, "Rhode Island Energy not moving forward on sole bid received in most recent offshore wind solicitation" (July 18, 2023) (news release), https://news.pplweb.com/news-releases?item=137899.

[3] *E.g.*, President Biden's goal of 30 GW of U.S. offshore wind by 2030. The White House, *FACT SHEET: Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs* (March 29, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/.

current economic challenges for offshore wind. Finally, on March 14, 2023, States submitted comments urging Treasury and the IRS to clarify that offshore wind-related transfer and power conditioning equipment, as well as associated land-based distribution and transmission needed to interconnect these projects, are ITC eligible, and we reiterate that request here.[4]

I. States' Roles in Advancing Offshore Wind

We greatly appreciate and support the Biden Administration's commitment to build a U.S. offshore wind industry that will grow domestic labor and manufacturing and advance equity and environmental justice in our communities. Through our State procurement authorities, States and our regulated utilities are critical to advancing these goals. Indeed, States are responsible for 100% of the commitments to build offshore wind in the U.S. to date, through contracts backed by States' electric ratepayers.

States exercise our offshore wind procurement and contracting authorities consistently with our responsibilities to ensure affordable, reliable, and clean electricity for our residents and businesses. Numerous State and federal analyses deem offshore wind as critical to achieving affordable and reliable electricity as our nation transitions to a zero-carbon grid.[5] However, as with any new industry, the costs to early adopting States are higher than costs will be in the future, after the U.S. offshore wind industry matures. Through the ITC and PTC, the federal government is an essential partner in lowering the initial costs to States' ratepayers and enabling

[4] Comments of State Commenters in Response to Notice 2022-49 (Mar. 14, 2023).

[5] *See e.g.,* U.S. Department of Energy, *Advancing Offshore Wind Energy in the United States: U.S. Department of Energy Strategic Contributions Toward 30 Gigawatts and Beyond* (March 2023), https://www.energy.gov/sites/default/files/2023-03/advancing-offshore-wind-energy-full-report.pdf; Connecticut Department of Energy and Environmental Protection, *Integrated Resources Plan* (October 2021), https://portal.ct.gov/-/media/DEEP/energy/IRP/2020-IRP/2020-Connecticut-Integrated-Resources-Plan-10-7-2021.pdf.

the early procurements needed to grow a domestic offshore wind industry. In supporting the early buildout of the supply chain and trained workforce, these procurements will in turn lower the costs of future offshore wind deployments, not just to our States but to others as well.

Indeed, the industry is at work in our states now. In Massachusetts, the Port of New Bedford is buzzing with construction activity for the 800 MW Vineyard Wind 1 project. In Rhode Island, offshore wind foundation and engineering work is being performed at ProvPort for the 704 MW Revolution Wind project. In Connecticut, blades and nacelles have arrived at the New London State Pier in preparation for installation of the 132 MW South Fork Wind project in New York, and the Revolution Wind project is on schedule for assembly and delivery from New London in 2024. In New York, a steel fabricator is manufacturing secondary steel components to support a host of offshore wind projects across the East Coast including South Fork Wind, Sunrise Wind (924 MW), Revolution Wind, and Ocean Wind 1 (1,100 MW). In addition, five ports are in development across the State of New York—in Albany, Coeymans, New York City, and Long Island—to support primary component manufacturing, staging and marshaling of projects, and establishing Operations and Maintenance headquarters. In particular, the Port of Coeymans in New York is actively fabricating and assembling components for the Sunrise Wind project. In New Jersey, monopiles are currently being fabricated at the Port of Paulsboro for the Ocean Wind 1 project. Construction is also underway at the New Jersey Wind Port which is an offshore wind purpose-built port for co-located marshaling and manufacturing. In Maryland, Sparrows Point Steel, a monopile foundation manufacturing facility, is under development at Tradepoint Atlantic, the marshaling port for Maryland's MarWin (248 MW), Momentum Wind (809 MW), and Skipjack Wind 1 and 2 (120 MW and 846 MW) offshore wind projects. Development is also underway for subsea cable and tower manufacturing facilities in Maryland.

II. Current Economic Headwinds

Unfortunately, the progressive reductions we saw in the cost of new offshore wind contracts between 2016 and 2022, from an industry ramping up to scale, abruptly reversed course over the last year, impacting the next rounds of projects needed to achieve State and federal offshore wind goals. Offshore wind projects now face extraordinary inflationary pressures stemming from Russia's invasion of Ukraine and lingering supply chain disruptions from the pandemic. Instead of a continued decline or even stabilization of total project costs, these projects now face significant price spikes. Particularly pressing for this industry is the competition for labor, supplies, and financing with European nations as they seek to build new clean energy to replace fossil fuel imports from Russia. These unprecedented inflation and supply chain constraints affect not only procurements of early-stage offshore wind resources but also projects with already-approved State procurement contracts which, absent intervention, are at risk of failing in the present economic landscape. Without federal action to counteract these economic pressures, the U.S. offshore wind industry is at great risk of stalling because States' ratepayers may be unable to absorb these significant new costs alone.

III. Need for Expeditious Federal Action Under the IRA

The IRA exists to address these issues: to accelerate domestic progress on clean energy technologies like offshore wind and to combat the impacts of inflation on the U.S. economy on those technologies. In addition to the IRA's base clean energy tax credits for offshore wind—the ITC and PTC—the law's Domestic Content and Energy Community Bonus Credits provide Treasury and the IRS with powerful tools to ensure continued momentum in offshore wind by enabling States' ratepayers and the U.S. offshore wind industry to weather the current economic headwinds. For qualifying projects, each bonus tax credit can help offset 10% of the costs of a new offshore wind farm, providing up to 50% in cost support when combined with the 30% base ITC or PTC. By deploying these clean energy tax credits, including the Domestic Content and Energy Community Bonus Credits, to their full extent, Treasury and the IRS can ensure U.S. households and businesses and the domestic offshore wind industry emerge stronger, with reduced energy costs, greater electric reliability, and enhanced U.S. manufacturing production and jobs, for the long term.

Treasury's and the IRS's current clean energy tax credit guidance, while helpful, may be insufficient to achieve these outcomes because the lack of clarity is holding back investment and long-term commitments in offshore wind development. We share concerns raised by the U.S. offshore wind industry that Treasury's and the IRS's current guidance too narrowly interprets the ITC, PTC, and bonus tax credits, presenting a barrier to investment by needlessly raising uncertainty.[6] As a result, Treasury's and the IRS's current guidance does not provide the economic support and clarity needed by, and intended to be provided by, the IRA to the offshore wind industry—and, in turn, State purchasers of offshore wind energy.

Treasury and the IRS must act quickly to address these deficiencies to ensure more of the current and near-term generation of offshore wind projects in the U.S. can fully qualify for the Energy Community Bonus Credit as well as other complementary clean energy tax credits under the IRA, consistent with the language and purposes of the Act. By providing greater certainty around these tax credits to offshore wind developers, Treasury and the IRS can help counteract the current inflationary, supply chain, and interest rate pressures faced by the industry and enable

[6] American Clean Power Association, Expanded Offshore Wind Eligibility for Energy Communities Bonus. Letter to The Honorable Lily L. Batchelder Assistant Secretary for Tax Policy Department of the Treasury (September 25, 2023) ("ACP Comments").

States to move forward with offshore wind in a manner that both protects ratepayers and buttresses the industry.

In the absence of improved guidance that enables offshore wind developers to rely on the IRA's clean energy tax credits, developers will assume that these tax credits will not be accessible, leading to higher project costs offered in State procurements. These higher costs in turn will be passed on to States' ratepayers as the costs developers must recoup to finance and bring offshore wind to market. Facing such costs, States will be forced to choose between rejecting projects (or watching previously procured projects fail), thereby stalling the development of U.S. offshore wind and making both State and federal climate and clean energy goals more difficult (or potentially unattainable), and the risk of burdening ratepayers with long-term contracts for potentially unaffordable energy. States are facing these decisions on both previously procured but now economically at-risk offshore wind projects and potential new procurements that collectively represent nearly 80 percent of President Biden's 30 GW offshore wind goal. Potential losses or delays in these projects would further endanger subsequent generations of U.S. offshore wind by removing the steady, predictable ramping of offshore wind projects that suppliers need to stand up new U.S. manufacturing facilities and the associated domestic workforce.

We urge Treasury and the IRS to prevent these harmful outcomes, which are not intended by the IRA, and to exercise your IRA authorities now to support offshore wind deployment and help build a sustainable domestic offshore wind industry and labor force that will provide economic development and relief to impacted communities for decades to come. Critically, this clarifying guidance is needed now and cannot wait until Treasury and the IRS initiate and complete formal rulemaking processes for the IRA's clean energy tax credits, which are not expected to kick off until 2024. States and developers are facing key decisions, which must be made within the coming weeks on offshore wind projects and procurements, leaving little time to address these challenges. Deferring fixes to 2024 rulemakings would mean that even favorable rules could come too late for relevant decision-making windows.

IV. Requested Energy Community Bonus Credit Guidance from Treasury and the IRS

We appreciate the work Treasury and the IRS have put into developing guidance for the IRA's clean energy tax credits thus far. In the comments that follow, we request specific additional guidance from Treasury and the IRS on the Energy Community Bonus Credit to ensure this bonus tax credit is available to the fullest extent allowed and intended by the IRA for offshore wind and to help maximize the IRA's benefits to State ratepayers, impacted communities, and domestic offshore wind workers and industry.

Our States strongly support the economic and environmental justice goals of the Energy Community Bonus Credit: to help revitalize communities that have historically depended on, and been impacted by, local fossil fuel industries such as coal-fired power plants and environmental contamination, through new clean energy investment and job creation. We appreciate the initial guidance Treasury and the IRS issued on April 4, 2023, clarifying via the "nameplate test" that an offshore wind project is eligible for this bonus tax credit if the project's land-based power conditioning equipment closest to the wind farm's point of interconnection is located in an Energy Community.[7] However, we urge Treasury and the IRS to expand the Energy Community

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[7] IRS, *Energy Community Bonus Credit Amounts under the Inflation Reduction Act of 2022*, Notice 2023-29 (April 4, 2023), https://www.irs.gov/pub/irs-drop/n-23-29.pdf. Treasury and the IRS also issued additional guidance on the Energy Community Bonus Credit on June 15, 2023. IRS, *Energy Community Bonus Credit Amounts under the Inflation Reduction Act of 2022*, Notice 2023-45 (June 15, 2023), https://www.irs.gov/pub/irs-drop/n-23-45.pdf.

Bonus Credit eligibility guidance further to recognize offshore wind projects' broader geographic footprints and benefits and to encourage additional investments and job creation from offshore wind in Energy Communities.

Offshore wind development has the potential to bring significant jobs to U.S. communities, beyond the jobs associated with these projects' land-based points of interconnection and power conditioning equipment. This includes new, well-paying jobs in manufacturing, crewing, development, and other fields in the communities that host ports and operations and maintenance facilities for offshore wind projects. Recognizing these broader job creation opportunities—and providing incentives to locate these jobs in Energy Communities—is consistent with the IRA's purposes, including the Energy Community Bonus Credit provisions of the statute. Expanding the current guidance from Treasury and the IRS in this way would both encourage the investment and creation of well-paying jobs in Energy Communities and help overcome the current economic barriers facing offshore wind due to inflation, Russia's invasion of Ukraine, and continued supply chain disruptions from the pandemic.

Accordingly, we support the U.S. offshore wind industry's proposals that Treasury and the IRS issue updated guidance that would add the following additional eligibility pathways for offshore wind projects to qualify for the Energy Community Bonus Credit.[8]

A. Use of Marshaling and Operations and Maintenance Ports Located in Energy Communities to Stage, Crew, Construct, or Maintain Offshore Wind

An offshore wind project that utilizes a marshaling or operations and maintenance port located in an Energy Community should be able to qualify for the Energy Community Bonus

[8] *See* ACP Comments.

Credit on the basis of this port utilization. Ports are integral to the development of offshore wind, and incentivizing offshore wind projects to utilize and make associated investments in ports located in Energy Communities will bring substantial economic and jobs benefits to these areas. Accordingly, we strongly support the U.S. offshore wind industry's proposed qualification criteria, which would provide an additional pathway to qualify for the Energy Community Bonus Credit if: (1) an offshore wind energy project's marshaling or operations and maintenance port that is "an integral part" of the provision of electrical energy[9] is located within an Energy Community; and (2) the taxpayer has made direct investments or incurred expenditures with respect to the qualifying port.

A project that meets these two conditions should be eligible to receive the Energy Communities Bonus Credit for its full nameplate capacity. With respect to the second condition, we support the industry's proposal to require that an offshore wind project's direct investments or incurred expenditures at either a marshaling or operations and maintenance port total at least five percent of the total capital onshore expenditures paid or incurred at the time the offshore wind project is placed in service in order to be eligible for the Energy Communities Bonus Credit.[10] With respect to the first condition, as discussed in the offshore wind industry's comments, navigational and/or access channels that adjoin a port and are necessary for vessels to support an offshore wind energy facility, by providing access for offshore wind vessels to the port, should be considered integral property and, in turn, part of the port for determining eligibility for the Energy Communities Bonus Credit.[11] We further support the industry's request

[9] Treas. Reg. Section 1.48-1(d).

[10] ACP Comments at 9-10.

[11] *Id.* at 9.

that Treasury and the IRS clarify that a port will be determined to be located in an Energy Community if the portion of the port that is integral to the offshore wind project is located in the Energy Community.[12]

To incentivize and ensure ongoing investment in and economic development benefits to Energy Communities hosting offshore wind ports, we also urge Treasury and the IRS to clarify that eligibility for the Energy Communities Bonus Credit on the basis of port utilization will not be limited to only the taxpayers that make initial investments in upgrading port facilities but will also apply to taxpayers that contemporaneously or subsequently utilize such ports consistent with the above criteria. This should include ensuring that once a port has been determined to be an Energy Community on the basis of being a brownfield that designation will also be available to other taxpayers so long as each taxpayer meets the utilization and investment and expenditure conditions above.[13]

Extending the Energy Community Bonus Credit's eligibility, as we request here, to include the location of a project's marshaling or operations and maintenance port would recognize the integral nature of these ports to the development and operations of offshore wind farms and, as further discussed in the U.S. offshore wind industry's comments, is consistent with Treasury's and the IRS's treatment of construction and servicing roads in determining onshore wind facilities' tax credit eligibility.[14] By recognizing this, Treasury and the IRS would also further achieve the IRA's goals of directing investment to Energy Communities that host ports and that would stand to benefit from job creation and environmental remediation if developers

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[12] *Id.* at 10.

[13] *See id.* at 15-17.

[14] *Id.* at 6-9.

are incentivized to use these sites to develop offshore wind. Providing this additional pathway to qualify for the bonus tax credit would also properly recognize the significant economic and jobs benefits that offshore wind projects can provide to Energy Communities beyond just the point where a project's power conditioning equipment may be located onshore.[15]

B. Projects with Multiple Points of Interconnection

Our States support Treasury's and the IRS's guidance providing a "nameplate test" pathway for offshore wind projects to qualify for the Energy Community Bonus Credit. We share the U.S. offshore wind industry's concern, however, that the current nameplate test is too narrow, in that it contemplates each offshore wind project as having a single point of interconnection to the land-based grid, when in fact some projects will have more than one such interconnection. We request that Treasury and the IRS amend the current "nameplate test" to enable projects with more than one point of interconnection to take advantage of the bonus tax credit. Specifically, we support the industry's proposal that the nameplate test be amended to allow a project to attribute all of its nameplate capacity to the land-based power conditioning equipment that conditions either 50 percent or at least 350 MW of the energy generated by the project for transmission, distribution, or use and that is closest to any point of interconnection.[16]

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[15] As further discussed in the industry's comments, although Treasury and IRS could choose to extend the tax base eligible for the IRA's clean energy tax credits to include a project's investments and expenditures at ports, our recommended guidance to provide an additional pathway to qualify for the Energy Community Bonus Credit does not necessitate doing so. *See id.* at 4-5 and 8. In fact, as the industry's comments note, "Treasury has already recognized this fact. For instance, even though it has not yet clarified that offshore wind energy powering conditioning equipment (substations) are qualifying energy property for the Investment Tax Credit (ITC), Treasury made them qualifying energy property for purposes of the credit bonus." *Id.* at 5.

[16] *Id.* at 17-18.

Providing this guidance is important to fill a gap in Treasury's and the IRS's current nameplate test and to ensure that the intended guidance applies to different project designs.

V. Conclusion

On behalf of our States, we appreciate your consideration of these issues and urge Treasury and the IRS to provide the guidance we request within the next 30 days. Ensuring that additional offshore wind projects have the opportunity to qualify for the Energy Community Bonus Credit is critical to help lower the current costs of offshore wind and to enable States to move forward with projects that will help to establish the offshore wind industry permanently in the U.S., bring significant new jobs and economic development opportunities to Energy Communities, and achieve both State and federal offshore wind deployment goals. We reiterate that with both States and offshore wind developers facing near-term project and procurement decisions, time is of the essence for Treasury and the IRS to provide tax credit guidance that meaningfully addresses the current economic challenges and enables offshore wind projects to move forward.

While not the primary focus of these comments, we also urge Treasury and the IRS to issue updated guidance that ensures broad availability of the Domestic Content Bonus Credit to offshore wind projects and that clarifies, as previously requested in States' March 14, 2023, comments, that offshore wind-related transfer and power conditioning equipment, as well as associated land-based distribution and transmission needed to interconnect these projects, are ITC eligible. Providing broad availability to the IRA's multiple, complementary clean energy tax credits is essential to keep offshore wind and our State and federal goals on track.

We would welcome the opportunity to further discuss and clarify any issues raised by our comments.

Respectfully Submitted,

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