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Submitted via Federal e-Rulemaking Portal

CC:PA:LPD:PR
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Subject: Comments regarding IRS REG-112339-19 – Proposed regulations regarding the credit for carbon oxide sequestration under section 45Q of the Internal Revenue Code

Dear Sir or Madam:

These comments are submitted by Glenrock Energy, LLC (“Glenrock”) in response to proposed regulations (REG-112339-19) regarding the credit for carbon oxide sequestration under section 45Q of the Internal Revenue Code (the “Proposed Regulations”).

Glenrock Statement of Interest

Glenrock is engaged in the ownership, operation and redevelopment of oil properties in Converse County, Wyoming. As a part of its redevelopment program, Glenrock proposes to equip coal-fueled electricity generating station(s) in Wyoming with post-combustion carbon capture equipment. Glenrock intends to use captured anthropogenic carbon dioxide (“CO₂”) to implement enhanced oil recovery (“EOR”) at Glenrock’s oil properties—and potentially fields owned and operated by other(s).

Glenrock's program will generate substantial tax revenue for the State of Wyoming and County of Converse, provide numerous other economic and social benefits, and establish a “blueprint” for carbon capture and storage in Wyoming and elsewhere in the United States. Installation and operation of carbon capture equipment at coal-fueled electricity generating station(s) will provide for the continued and efficient operation of existing, critical infrastructure in a more environmentally friendly fashion. The CO₂ captured will facilitate development of currently stranded conventional oil reserves via EOR.¹ As a result, carbon capture and EOR will preserve or create thousands of jobs. Economic benefits will be amplified as coal-fueled generating stations and other value chain participants are economic anchors of many rural Wyoming communities. By providing for the continued operation of coal-fueled generating stations,

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¹ It is estimated that Wyoming fields contain up to 1.6 billion barrels of currently stranded oil that would be producible via EOR through CO₂ injection (source: Advanced Resources International, Inc., September 2018).

implementation of carbon capture will also sustain electric-grid reliability throughout the region.

Related to the implementation of carbon capture and EOR at a single location in 2020 through 2027, Glenrock plans to invest up to \$900 million in capital expenditures. Carbon capture equipment represents the single largest component, or approximately 50% of projected capital expenditures. Revenue from the sale of captured carbon oxides alone would be insufficient to justify such an investment. Rather, successful realization of Glenrock's project will depend on the support provided by the section 45Q tax credit. Projected sales of CO₂ in combination with the section 45Q tax credit are required to generate adequate economic returns to obtain private-sector financing.

Glenrock appreciates the efforts of the Treasury Department and IRS in developing Proposed Regulations that afford the level of certainty that is required to obtain private-sector financing and move forward the carbon capture projects of Glenrock and other developers. Glenrock previously provided comments on July 1, 2019 in response to IRS Notice 2019-32.

Glenrock offers the following comments relating specifically to the Proposed Regulations, in accordance with the request for comments contained in the Notice of Proposed Rulemaking published in the Federal Register on June 2, 2020.

Glenrock Comments

1. General

Glenrock believes that the Proposed Regulations are consistent with the tax credit's purpose of encouraging and incentivizing investment in carbon capture and storage equipment. The Proposed Regulations provide certainty regarding the availability of the tax credit, while maintaining flexibility to accommodate developing technologies, commercial arrangements, and investment structures.

2. Secure geological storage

Glenrock supports CSA/ANSI ISO 27916:19, a standard adopted by the International Organization for Standardization (ISO) and endorsed by the American National Standards Institute (ANSI), as an alternative to subpart RR for establishing secure geological storage for UIC Class II wells using qualified carbon oxide for EOR. Glenrock agrees with the assessment of the Treasury Department and IRS that CSA/ANSI ISO 27916:19 will lessen compliance costs and other potential impediments to advancing carbon capture projects. Requiring EOR operations to "opt-in" to subpart RR reporting—e.g., obtaining and operating under a U.S. Environmental Protection Agency ("EPA") approved monitoring, reporting, and verification ("MRV") plan—

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would create unnecessary regulatory risk, added compliance expense, and insufficient flexibility to accommodate EOR operations.

The Proposed Regulations state: “For qualified enhanced oil or natural gas recovery projects in which the taxpayer determined volumes pursuant to CSA/ANSI ISO 27916:19, a taxpayer may prepare documentation as outlined in CSA/ANSI 27916:19 internally, but such documentation must be provided to a qualified independent engineer or geologist, who then must certify that the documentation provided, including the mass balance calculations as well as information regarding monitoring and containment assurance, is accurate and complete.” Glenrock recommends that the final regulations clarify the adjective “independent” noted in the sentence above relating to the individual or firm selected to provide certification. Specifically, Glenrock recommends that the final rules require that the “qualified independent engineer or geologist” may not be an employee of the taxpayer, but that such regulations not entail unnecessary restrictions beyond qualified and independent. Accordingly, a non-employee that is qualified and familiar with the operations and geology of the subject project—such as the taxpayer’s reservoir engineering firm—must be included in the selection process for providing the certification. The regulations should specify that a qualified engineer or geologist does not forfeit “independence” for purposes of certifying the required ISO documentation by reason of performing other services for the taxpayer. An unduly restrictive application of the term “independent” will narrow the pool of professionals available to provide certification, and by limiting competition would be likely to increase the cost of certification services. These incremental compliance costs would discourage investment and would be multiplied in situations where the carbon capture and the EOR value chain include multiple owners and/or multiple CO₂ off-takers.

Irrespective of implementation of Glenrock’s recommendation, Section 45Q would hold the taxpayer to a higher reporting standard compared to other sections of the Internal Revenue Code. We are aware of no other section that requires the taxpayer to obtain third-party certification. Section 43 requires certification, but does not require third-party certification. (Note also that the section 43 requirement is set forth by statute, rather than by regulation). In all situations, the taxpayer attests that the underlying information is accurate and correct by signing the return, and the IRS assesses and has authority to audit the information.

3. Credit Recapture

Glenrock supports the general framework established by the Proposed Regulations regarding credit recapture. A specific and finite recapture period is absolutely necessary for developers to obtain project-level financing of carbon capture and storage projects. The Proposed Regulations specify a five-year lookback period, with the recapture period ending upon the earlier of (i) five years after the last taxable year in which a section 45Q credit was claimed or (ii) the date monitoring ends under the requirements of subpart RR or CSA/ANSI ISO 27916:19.

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In order to further aid developers in obtaining project-level financing, Glenrock recommends a look-back period of three years, with a corresponding reduction in the recapture period. It is generally understood that CO₂ stabilizes upon cessation of injection, as the formation is generally at pressure equilibrium when CO₂ injection and oil production cease. Any leakage of CO₂ would be highly unlikely and would be detected within weeks—rather than years—of the time of injection. Shorter look-back and recapture periods would also lessen insurance costs to be borne by developers. The EPA implicitly has acknowledged a period of two to three years as an estimated period of stabilization in this context.² This recommended modification also would align with the statute of limitations applicable to the last taxable year in which the tax credit is claimed, which generally provides for a three-year audit window.

4. Contracts

Glenrock supports the approach taken by the Proposed Rules regarding contracts for the disposal, injection, or utilization of qualified carbon oxide. Specifically, the Proposed Rules require that such a contract include a mechanism for enforcement, while generally affording flexibility for the parties to tailor their agreements. This flexibility is necessary as there is no standard form of contract currently in use.

5. Allowing Tax Credit to Other Taxpayer(s)

The section 45Q tax credit is attributable to the person that owns the carbon capture equipment and physically or contractually ensures the capture and disposal, injection, or utilization of qualified carbon oxide. The Proposed Regulations provide that the taxpayer eligible to claim section 45Q credits may elect to allow the person that disposes, injects, or utilizes the qualified carbon oxide to claim the credit. Glenrock supports this flexibility to allow additional value chain participant(s) to claim the tax credit, as it will expand the amount of capital available to fund the installation of carbon capture equipment.

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² See Oxy Denver Unit CO₂ Subpart RR Monitoring, MRV Plan, Final Version, U.S. Environmental Protection Agency, December 2015: “At the conclusion of the Specified Period, Oxy will submit a request for discontinuation of reporting when Oxy can provide a demonstration that current monitoring and model(s) show that the cumulative mass of CO₂ reported as sequestered during the Specified Period is not expected to migrate in the future in a manner likely to result in surface leakage. It is expected that it will be possible to make this demonstration within 2 – 3 years after injection for the Specified Period ceases and will be based upon predictive modeling supported by monitoring data.” (page 33). It appears to be unclear what demonstration period the EPA anticipates for the most recently approved MRV plan, the plan for Core Energy. The period could be as short as zero. “After the end of the Specified Period [the end of the tax credit period], Core Energy anticipates that it will submit a request to discontinue monitoring and reporting. The request will demonstrate that the amount of CO₂ reported as stored “is not expected to migrate in the future in a manner likely to result in surface leakage” (§98.441).”

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6. Definitions

Glenrock supports the clarifications of certain definitions contained in the Proposed Regulations, including “qualified facility” and “carbon capture equipment.” These definitions are appropriately broad to apply to a range of facilities and recognize that there are different types of carbon capture equipment.

We thank the Department of Treasury and the Internal Revenue Service for your efforts and for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Manning", with a stylized flourish at the end.

Terrence R. Manning
Chief Executive Officer