

Comment from Calpine Corporation

Please find attached the comments of Calpine Corporation on IRS Notice 2022-50 concerning Elective Payments of Applicable Credits and Transfer of Certain Credits. Thank you for the opportunity to submit these comments. Please contact Steven Schleimer at Steven.Schleimer@calpine.com with any questions concerning these comments.



**CALPINE
CORPORATION**

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November 4, 2022

Via Federal eRulemaking Portal

The Honorable Lily Batchelder
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Douglas O'Donnell
Acting Commissioner
Deputy Commissioner (Services and Enforcement)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

William M. Paul, Esq.
Acting Chief Counsel
Principal Deputy Chief Counsel
Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Elective Payment of Applicable Credits and Transfer
of Certain Credits in Response to IRS Notice 2022-50

Dear Ms. Batchelder, and Messrs. O'Donnell and Paul:

Calpine Corporation (Calpine) submits the following comments with respect to tax credits under the Inflation Reduction Act (IRA)¹ to the U.S. Department of the Treasury's (Treasury) and the Internal Revenue Service (IRS). The IRA enacted several tax credits, including Section 45, 45Y, 48, and 48E of the Internal Revenue Code of 1986, as amended (the "Code"). On October 5, 2022, the IRS published six notices requesting for comments from taxpayers. In response to Notice 2022-50, this letter responds to the request for comments regarding the elective payment of applicable credits and transfer of certain credits.²

¹ Pub. Law 117-169, 136 Stat. 1818 (August 16, 2022).

² Calpine is concurrently submitting a comment letter in response to Notice 2022-49.

I. Background

Calpine operates the largest fleet of natural gas combined-cycle and combined heat and power facilities in the United States. Calpine is also the nation's largest producer of renewable geothermal electricity. Together, its generation resources are capable of delivering approximately 26,000 megawatts (MW) of clean, reliable electricity to customers and communities in 19 U.S. states and Canada, with more than 75 power plants in operation or under construction. Calpine also operates and is developing battery storage projects, with 40 MW in operation and 1,500 MW in development.

Calpine has long supported federal and state efforts to address climate change and reduce greenhouse gas (GHG) emissions, including those from the power sector. Calpine, in particular, supports Treasury's efforts to promulgate regulations that further the purpose of the IRA and promote efficiency, certainty, and clarity for taxpayers seeking to construct new renewable power facilities and claim tax credits, as well as administrative efficiency for the IRS.

Calpine continues to seek opportunities to expand its production of renewable geothermal energy and develop projects that address climate change and reduce GHG emissions, including carbon capture, utilization and storage (CCUS) projects that would achieve greater than 95 percent (%) reductions in emissions from gas-fired generation that will be needed to support the integration of renewables and maintain reliability as we transition to a decarbonized electricity sector, as well as energy storage projects that will resolve the intermittent nature of other renewable generation resources. Calpine has several battery storage facilities under construction or in development and continues to work toward expanding its geothermal capacity, which, unlike other renewable resources, can generate electricity on a nearly continuous basis. The investment tax credit and production tax credit greatly aid these development opportunities.

Over the past decade, tax credits intended to foster renewable and low-emissions generation within the electricity sector were too limited in duration or value to accelerate the transition to a zero-emissions electricity sector on the pace and scale needed to support the United States' nationally determined contribution submitted pursuant to the Paris Agreement and President Biden's goals of achieving a zero-carbon electricity sector by 2035. The IRA changes that and positions the United States to achieve these ambitious objectives, as the electricity sector will increasingly be relied upon and demand for electricity increases to support the decarbonization of other sectors, including transportation and buildings.

Calpine welcomes the opportunity to provide these comments, with the goal of ensuring that the electricity sector and investment community receive the assurance and guidance they will need to meet the moment and deliver the GHG-reduction, job-creation and environmental-justice benefits offered by the IRA.

II. Notice 2022-50, Comment pertaining to Elective Payment of Applicable Credits and Transfer of Certain Credits

Question 3.03(6) With respect to the elections under § 6417(d)(1)(B), (C), or (D): (a) What, if any, issues could arise when an entity makes an election under § 6417(d)(1)(B), (C), or (D) and what, if any, guidance is needed with respect to such issues? (b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Section 6417(d)(1)(C) provides that taxpayers other than applicable entities may make a direct pay election with respect to any taxable year in which a taxpayer has, after December 31, 2022, placed in service carbon capture equipment at a qualified facility. Section 6417(d)(3)(C)(i)(II)(aa) provides that, for taxpayers who make such election under 6417(d)(1)(C), the direct pay election for carbon oxide sequestration will apply to the taxable year in which such equipment is placed in service and the four subsequent taxable years which end before January 1, 2033. Section 6417(d)(3)(C)(i)(II)(bb) provides that “in any other case,” the election shall apply to the taxable year and subsequent taxable years that are within the 45Q credit period under section 45Q(a)(3)(A) and (4)(A), which is generally twelve years from the date that the carbon capture equipment is placed in service. Section 6417 does not define “placed in service” for purposes of claiming direct pay for the any of the elections provided in sections 6417(d)(1)(B), (d)(1)(C), or (d)(1)(D).³

Sections 6417(d)(1)(E)(i)-(ii) provide that the direct pay election for section 45V, 45Q, and 45X shall be made at such time and in such manner as Treasury may provide as long as no election is made after December 31, 2032. Section 6417(h) provides that Treasury shall issue regulations or other guidance as necessary to carry out the purpose of the direct pay statute, “including guidance to ensure that the amount of the payment or deemed payment made under this section is commensurate with the amount of the credit that would be otherwise allowable (without regard to section 38(c)).”⁴

Calpine asks that Treasury clarify whether taxpayers can claim direct pay for a full five taxable years. The statute states that taxpayers can make the election in the taxable year that the equipment is placed into service and will be treated as having made the election for the four subsequent taxable years. However, section 45Q adopts a “year” convention, meaning the credit is available for a twelve-year period beginning on the date the equipment is placed in service. Moreover, the regulatory authority under section 6417(h) instructs the IRS and Treasury to write regulations ensuring the amount of the direct payment is commensurate with the amount of the credit that would be otherwise allowable. Read together, it is not clear whether taxpayers who place carbon capture equipment into service on a date after the beginning of the taxable year can claim direct

³ Treasury has previously exercised regulatory authority to define the term “placed in service.” *See, e.g.*, Treas. Reg. § 1.46-3(d)(1) (withdrawn pursuant to T.D. 8474, 58 Fed. Reg. 25556–25558 for other reasons). *See also* 45Q(f)(6) (providing a carbon capture threshold amount to define “placed in service”). Accordingly, Treasury could write a rule here defining “placed in service” in a way that ensures taxpayers receive direct pay for five full taxable years, rather than four taxable years plus only a partial taxable year.

⁴ Section 38(c) generally limits the amount of credit available to 75 percent of tax liability.

pay for a full five years from the date the equipment is placed in service, or for only a fraction of the first year, plus the next four taxable years.

A rule providing for a full five years of direct pay would provide the flexibility needed for the industry to place equipment into service as soon as possible, which is consistent with the IRA's animating objective of reducing emissions at the earliest date. The availability of tax credits is critical to the development of CCUS projects and a convention that would accord section 45Q's twelve-year crediting period with the five-year direct-pay period would increase the viability and significantly improve the economics of CCUS projects.

Expressing such a convention in guidance would also ensure that CCUS projects electing direct pay receive the same benefit as those employing complex tax equity structures, which is a fundamental objective of the IRA's direct pay provisions. Moreover, a convention that allows taxpayers to claim direct pay for a full five years following the date that equipment is placed into service removes the arbitrary distinction between placing equipment in service on the first day of a taxable year, versus some other day of the year, and avoid delays in commercial operation of CCUS projects that were scheduled to optimize the tax benefits received by such projects under the IRA.

CCUS projects provide a unique opportunity to reduce emissions, create high-quality jobs, and provide demonstrable benefits for the communities in which they reside. Accordingly, Calpine would request that the IRS provide guidance on the direct-pay provisions that amplifies the IRA's ultimate objectives of supporting CCUS projects and does not delay the implementation of such projects.

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Please contact me at 713-830-2000 or Steven.Schleimer@calpine.com with any questions regarding these comments.

Sincerely,



Steven Schleimer
Senior Vice President,
Government and Regulatory Affairs