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COMMITTEES:
FINANCE
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SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510

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The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

The Honorable Jennifer Granholm
Secretary
US Department of Energy
1000 Independence Ave. SW
Washington DC 20585

Dear Secretary Yellen and Secretary Granholm:

I write to you today regarding the implementation of key tax credits in the Inflation Reduction Act (IRA) to ensure that forthcoming guidance supports the communities and workers that have powered our Nation. Congress intended the energy communities bonus credit for the clean energy Investment Tax Credit (ITC) and Production Tax Credit (PTC) to give private clean energy developers an incentive to locate their new clean energy investments in energy communities and at former fossil fuel energy sites. So called "brownfield sites" that were formerly dedicated to fossil fuel production or power generation and which may require remediation are ideal sites for new renewable energy projects, such as wind, solar, and battery storage, because of their pre-existing connections to the power grid and existing workforce and infrastructure. However, I am concerned that the guidance Treasury is adopting will result in some former natural gas plants sites not qualifying for the energy communities bonus as intended.

As one of the primary authors of the energy communities bonus tax credit, it was my and the Finance Committee's intention to allow former fossil fuel power generation sites to be redeveloped using the energy communities bonus credit as an incentive. However, as currently proposed, the rule would prevent this.

The Inflation Reduction Act relies on the definition of a brownfield under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; 42 U.S.C. § 9601(39)) to provide categorical eligibility for energy community bonus credits. However, in its rule interpreting the IRA energy community credits, Treasury provides for some exemptions to this eligibility in order to prevent bad actors and polluters from accessing federal tax dollars, just as the exemptions function under CERCLA. While I agree that it is appropriate to prevent bad actors from accessing federal tax dollars, I believe there may be some situations where clean energy developers not party to site contamination and who are committed to purchasing and remediating a site should be eligible to access energy communities credit. Developers considering site acquisition and development need clarity from Treasury prior to site acquisition that they will be able to access energy communities bonus credits once the required remediation work is approved. Situations such as this provide a double benefit by first undertaking environmental cleanup and subsequently investing in the community and I ask that Treasury provide guidance clarifying their eligibility in this regard and under such circumstances. The Environmental Protection Agency has issued guidance with similar nuances that may help inform IRS guidance.[1]

In addition, the Treasury Department should consider the impacts of the exclusions and how they interact with a site's brownfield designation. For example, EPA has recognized that the breadth of the exclusory language may result in unintended ineligibility of certain sites that should be eligible for brownfield funding and has interpreted the language to allow for such eligibility, particularly with respect to certain sites permitted under the Solid Waste Disposal Act, Toxic Substances Control Act, and the Clean Water Act.[2] Virtually all operating natural gas power generation facilities have permits under the aforementioned laws to enable their operations. Yet, by cross-referencing CERCLA exemptions, Treasury potentially excludes otherwise eligible sites from the brownfield designation. Where environmental remediation and development are possible, Treasury should ensure eligible brownfields are not excluded based on their permitting needs under the aforementioned laws.

According to the Energy Information Administration, coal and natural gas plants account for 98 percent of the 15.6 gigawatts of U.S. electricity capacity retirements in 2023.[3] This leaves a sizable gap in our energy-generation capacity and a hole in the economies that depended on these plants for jobs and tax revenue. The energy communities bonus credit is the mechanism by which we may fill these gaps with good-paying, clean energy jobs.

To that end, I urge the Department of the Treasury and the Internal Revenue Service (IRS) to issue guidance allowing developers and operators committed to brownfield site remediation and development and those seeking to redevelop retired and retiring natural gas power plants to access IRA energy community bonus credits. If Treasury does not issue these clarifications, our economy risks missing out on potential investments and job creation in the communities that need it the most and our climate stands to miss out on clean energy development. Energy communities in my home state of Pennsylvania have powered our Nation for generations. Issuing clarifications will enable them to continue this legacy.

Thank you for your attention to this important matter. I look forward to working with you to meet our climate goals while protecting and supporting the workers and communities that powered our Nation through industrialization.

Sincerely,

Bob Casey

Robert P. Casey, Jr.
United States Senator

[1] https://www.epa.gov/sites/default/files/2018-10/documents/web-content-info-on-site-eligibility.pdf
[2] Ibid.
[3] https://www.eia.gov/todayinenergy/detail.php?id=55439