

Alert | Energy Project Finance & Development



June 2023

IRS Releases Guidance and FAQ on Energy Communities under the Inflation Reduction Act

On June 15, 2023, the Internal Revenue Service released [Notice 2023-45](#) clarifying previous guidance issued in [Notice 2023-29](#), which is summarized in our April 2023 [GT Alert](#) and described certain rules the IRS intended to include in proposed regulations for qualifying for the energy community bonus production tax credit (PTC) rate and investment tax credit (ITC) amount under the Inflation Reduction Act of 2022 (IRA).

Notice 2023-29 included a Special Rule for Beginning of Construction in Section 4.01(2), which allows a project's location to be considered an energy community—for the duration of the credit period for PTC or the placed in service date for ITC—if the taxpayer begins construction in an energy community as of the date the project establishes the beginning of construction. The IRS modified Notice 2023-29 with an online update to address the question of whether the Special Rule for Beginning of Construction would apply to projects that began construction before 2023. However, the new guidance in Notice 2023-45 more formally clarifies the Special Rule for Beginning of Construction only applies to taxpayers that begin construction on or after January 1, 2023.

Notice 2023-45 also addresses confusion pertaining to the Safe Harbor for Brownfield Sites under Section 5.02 of Notice 2023-29 for projects with a nameplate capacity of 5 MW (AC) or less. The IRS will accept that such projects will be considered located in a brownfield site if a Phase I Environmental Site

Assessment identifies the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Additionally, the IRS posted [frequently asked questions](#) related to energy communities, timing, location, and brownfield sites. The FAQs explain that a coal-fired electric generating unit that switched to a different source for its fuel without being listed as retired will not be considered a retired coal-fired electric generating unit for energy community purposes. The FAQs also explain that for energy community qualification purposes, a brownfield site is delineated according to the boundaries of the entire parcel of real property.

Lastly, the IRS released [Notice 2023-47](#) with lists of information that taxpayers can use to determine whether their projects meet the Statistical Area category or the coal closure category for purposes of the energy community adder. These lists are provided in [Appendix 1](#) (adding Richland County, Ohio as an energy community not previously included in Appendix B to Notice 2023-29), [Appendix 2](#) (updating the MSAs and non-MSAs that qualify as energy communities by meeting the Fossil Fuel Employment threshold and the Unemployment Rate requirement), and [Appendix 3](#) (adding census tracts for the closed coal category and adjoining tracts not previously included in Appendix C to Notice 2023-29).

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