



NineDot Energy
NYU Urban Future Lab
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November 4, 2022

SUBMITTED ELECTRONICALLY

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-49)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
United States Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Mr. William M. Paul
Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Notice 2022-49 | Request for Comments on Energy Investment Credit Under Section 48

Dear Ms. Batchelder and Mr. Paul:

Thank you for the opportunity to provide comments as the Internal Revenue Service (IRS) and the Treasury Department (Treasury) develop implementation guidance for new and modified tax provisions under Section 48 of the Internal Revenue Code.

NineDot Energy is a community-scale, clean energy storage developer with a growing portfolio of urban projects including projects in New York City. We create innovative energy solutions that support a more resilient electric grid, deliver economic savings, and reduce carbon emissions. We envision leveraging the tax credits in the Inflation Reduction Act (IRA) to dramatically scale deployment of clean energy solutions in urban and low-income communities.

As IRS and Treasury develop guidance for provisions under the IRA, NineDot recommends and encourages IRS and Treasury to consider the impact that these tax credits will have in low-income communities – in particular urban areas – and provide guidance that maximizes the benefits of these tax credits to communities who have been disproportionately impacted by climate change and air pollution.

NineDot Energy encourages the IRS to develop clear interpretations that align with Congressional intent to enable and grow private sector investments in clean energy. **Consistent with this intent, we urge the IRS to use this opportunity to write and implement guidance that will maximize the overall emissions reduction, while maximizing environmental justice, and low-income community benefits of the Section 48 credit.**

Specifically, IRS should supply additional guidance with respect to the meaning of “installed in connection” as relates to the low-income community ITC rate. IRS should interpret that phrase to include energy storage technologies that operate in connection with solar energy property. This will ensure community energy storage projects, particularly those in densely-populated urban areas where deployment of large-scale solar facilities are impracticable due to land use and availability, are eligible for the low-income increased credit when they are placed in service.

We strongly encourage IRS to issue guidance that clarifies that the IRA §13103 amendment to the Section 48 Energy Credit and provide taxpayers multiple avenues to satisfy the “in connection with” standard including, but not limited to, satisfying the standard (1) if energy storage is bundled as a part of an overall photovoltaic (PV) installation, (2) if the energy storage can be charged with a co-located PV even if less than all of the charge is sourced to that co-located PV, or (3) by procuring Renewable Energy Credits (RECs) to satisfy any minimum solar charge threshold that is needed to meet the “in connection with” standard.

Clarifying the eligibility of these energy storage systems will expand clean energy access and savings to low-income households with guaranteed savings subscriptions. If, for example, rules require subscribers to be located in the same utility territory as the projects, millions of low-income households that live in dense urban areas will not have access to the financial benefits generated by clean energy projects.

These community energy storage services can be deployed within urban communities where community-scale solar deployments are impracticable. If co-location of the storage and solar are not required, community energy storage projects can be installed on parcels smaller than 10,000 square feet, whereas community solar projects typically require one million square feet. This will bring the benefits of the credit to traditionally excluded communities and the systems can also be interconnected to the most vulnerable and underserved parts of the grid, including in low-income areas of New York City.

Community-scale energy storage (5 megawatts and smaller) is already an eligible technology in New York State’s Community Distributed Generation program. These incentives help launch projects that increase clean energy adoption and private investment in New York City, one of the country’s most challenging locations for clean energy deployment. These projects also reduce costs for low-income customers, including “energy burdened” families who pay more than 6% of pre-tax income on energy costs. In New York City alone, this includes 1.6 million low-income

residents or 460,000 families.¹ Clear IRS guidance on the interpretation of §13103 can unlock a massive opportunity to support community-scale clean, resilient, energy projects that provide guaranteed financial benefits to low-income households in urban settings across the country.

Ensuring the eligibility of urban, community-scale energy storage is also a long-term investment in clean energy generation and environmental justice. Community-scale energy storage charges from the grid when power is cleaner and cheaper, and discharges at times of higher demand when inefficient and more carbon-intensive “peaker” plants would otherwise need to be run. Rapid deployment of community-scale energy storage will help enable the retirement of older, more-polluting peaker plants that have been primarily sited near disadvantaged communities, further enhancing the benefits of energy storage projects like NineDot’s New York City operations.

Urban community-scale energy storage supports a more flexible and robust power grid and enables more variable renewable energy, including solar and offshore wind, to match electricity demand patterns. Storage will increase the reliability and resilience of local electric grids while providing cleaner and less expensive electricity. Without guidance that works with the topographical constraints of urban areas, clean electricity, and its attendant pollution reductions, may struggle to reach these communities and fail to power a significant portion of their energy demand.

In response to IRS’s request for information, NineDot provides the following feedback:

IRA Addition of Special Programs for Certain Facilities Placed in Service in Connection with Low-income Communities (§§ 48(e) and 48E(h))

(1) Sections 48(e)(4)(A) and 48E(h)(4)(A) require the Secretary to establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities. In establishing such program, the Secretary must provide procedures to allow for an efficient allocation process.

(a) What should the Treasury Department and the IRS consider in providing guidance regarding the application process for taxpayers seeking an allocation of the environmental justice capacity limitation?

The Treasury Department and IRS should consider allocations and overall program guidance that provide benefits to taxpayers that provide service in urban areas, or Metropolitan Statistical Areas (MSAs) with a high population density, to ensure equitable distribution of environmental justice capacity limitation allocations across the country. Community solar and wind projects generally require significant land area, inherently limiting access for urban low-income communities.

The program should have clear rules that ensure that suppliers have adequate information to submit successful proposals that address the environmental justice goals of the program. The application process should require applicants to identify projected environmental justice benefits including the reduction in need for peaker plant energy production and the concomitant reduction in criteria air pollutant and greenhouse gas emissions, and grid resilience, reliability, and capacity in low-income communities.

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<https://climate.cityofnewyork.us/wp-content/uploads/2022/10/Understanding-and-Alleviating-Energy-Cost-Burden-in-NYC-Aug-2019.pdf>

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Proposed projects should be near-term, with achievable benefits within the term of the legislation to ensure the success of the program.

(4) What mechanisms exist for a taxpayer to demonstrate that at least 50 percent of the financial benefits of electricity produced by an applicable facility which is part of a low-income economic benefit project are provided to households within certain income thresholds?

One practical consideration of relevance in urban environments with an older affordable housing building stock is the prevalence of master-metered buildings. In order to not exclude low-income residents living in master-metered affordable housing buildings that are sub-metered for electricity, a mechanism should be provided to ensure project eligibility if the building certifies the benefit is provided to individually sub-metered low-income tenants within the building. For community energy subscription allocations, each individual apartment unit within a multi-unit residential building with a single master-metered utility account is considered a separate participant for meeting allocation requirements.

(5) Is guidance needed to clarify the meaning of the term “financial benefit”?

Yes. NineDot believes additional clarification about the allocation of “financial benefits” is needed to ensure the intended financial benefits are allocated to low-income ratepayers. NineDot recommends the IRS provide guidance that the benefits be calculated using the following definitions and calculation:

- **“Financial benefits”** are the net electricity cost savings produced as measured in dollars savings that are allocated to a beneficiary; this is consistent with the language in section 48E that financial benefits include electricity provided at a below-market rate.
- **“Net Electricity Savings”** is defined as the difference between the billed value of allocated electricity and the price paid for allocated electricity by low-income households.
- **Calculation:** Based on the above definitions, the formula for calculating the portion of financial benefits delivered to low-income customers is: [share of net electricity savings as measured in dollars allocated to all low-income beneficiaries]/[total net electricity savings of the project as measured in dollars].

(8) Please provide comments on any other topics relating to the environmental justice capacity limitation under §§ 48(e) and 48E(h) that may require guidance.

When distributing environmental justice capacity allocations, the Treasury Department and the IRS should ensure an appropriate distribution to both urban and rural communities. IRS and Treasury should consider the specific constraints of urban deployment of solar facilities due to limited land availability and other siting impracticalities within an MSA which could result in a lack of access of low-income communities within these areas to guaranteed subscriber savings. Specifically, we encourage the Treasury Department and IRS to adopt guidance that allows community energy storage facilities that provide benefits to low-income communities, that connect with solar or wind generation of any type and any size, be eligible for the supplemental energy credit for facilities in low-income communities. Guidance should ensure that benefits are available to both urban and rural communities.

Thank you again for the opportunity to provide feedback on the implementation of these transformational programs that will spur investment and speed the deployment of clean energy solutions in communities across the country.

Sincerely,

A handwritten signature in black ink, appearing to read "David Arfin", written over a horizontal line.

David Arfin, CEO
NineDot Energy

About NineDot Energy

Founded in 2015, NineDot Energy is a New York City-based clean-tech developer that designs and deploys community-scale energy generation and battery storage projects. NineDot Energy creates innovative energy solutions that support a more resilient electric grid, delivers economic savings, and reduces carbon emissions. NineDot is on track to meet or exceed its goal to deploy projects supplying 400 MW in and around New York City by the end of 2026.