January 9, 2024

Dear Deputy Secretary Adeyemo, Secretary Granholm, and Deputy Secretary Graves:

The Inflation Reduction Act (IRA) creates, modifies, and expands tax credits that will accelerate the deployment of clean energy technologies, which provide crucial benefits in lowering energy costs, improving grid resilience, and reducing local air pollution. Importantly, elective pay, also known as "direct pay", allows tax-exempt entities such as governments and nonprofits to take advantage of clean energy tax credits directly for the first time. In addition, transferability enables developers of clean energy projects that lack tax capacity to sell their clean energy credits.

We, the undersigned, thank the Treasury Department for clarifying that territory governments are generally able to claim elective pay. **However, we are deeply concerned that U.S. territories will not be eligible for investment tax credits (ITCs) 30C, 45W, 48, 48C, and 48E, the tax credits for investments in clean electricity, energy storage, microgrids, commercial electric vehicles, charging infrastructure, grid upgrades associated with community solar interconnection, and more.** The notice of proposed rulemaking from the Treasury Department and the Internal Revenue Service (IRS) falls short of providing parity for projects in the territories, where these clean energy credits would have particular impact and importance due to the vulnerability of the island territories' electricity grids to natural disasters. In addition, providing equal access to benefits for energy storage and microgrids builds on the commitment of the Department of Commerce, and the Department of Energy, to ensure Puerto Rico's economic recovery and energy security while helping achieve the island's clean energy goals.

One of the significant modifications made in the IRA was the inclusion of stand-alone energy storage as an eligible project under the Section 48 ITC. This addition is a game-changing incentive for energy storage and batteries, which will enhance grid reliability and reduce reliance on fossil fuels. It is unacceptable that projects in the territories would be ineligible to receive tax benefits for storage, which would make crucial strides towards stabilizing the grid in the territories.

The electricity grids of the island territories are particularly vulnerable to extreme weather events and natural disasters, as seen by the devastating impacts of Hurricane Maria in Puerto Rico and the U.S. Virgin Islands, Typhoon Mawar in Guam, and more. The grid requires renewable deployment paired with energy storage to increase resiliency in the face of predicted future climate impacts. For example, according to the Department of Energy, Puerto Rico will need to increase solar and storage systems by 6–16x to transition to renewable energy and increase the resilience of the grid. Other excluded technologies, like solar microgrids and microgrid controllers, are essential for the territories to reliably provide power during outages and keep the lights on due to increasingly frequent and severe hurricanes.

In addition, entities in the territories seeking elective pay or transferability should have the option of using either the ITC or the Production Tax Credit (PTC) for clean electricity, like other entities in the mainland U.S. Having this choice has been shown to increase the value and efficacy of clean energy credits, as many different factors may make one credit type advantageous over the other. Entities in the territories should have the same flexibility to choose the credit structure that makes the most financial sense for them.

Lastly, excluding the territories from receiving ITCs means they cannot access certain ITC bonus credits. The bonus credit for certain solar and wind facilities placed in service in connection with low-income communities increases the credit amount by 10 or 20 percentage points. This is a lost opportunity in territories like Puerto Rico, which has a 40% poverty rate and only last year emerged from bankruptcy after the largest public debt restructuring in U.S. history. Residents there have struggled under austerity measures for years during the fiscal crisis and have seen their electricity costs increase sharply over the last two to three years with few real improvements in service.

In a memorandum from the White House, agencies have been instructed to "improve climate resilience to reduce vulnerability to natural disasters and ensure that underserved communities benefit from and participate in the clean energy economy, consistent with the administration's Justice 40 initiative." **Following these principles, Treasury and the IRS should clarify that the ITCs should be determined without regard to Section 50(b)(1)[1] for entities claiming elective pay or transferability where the property is used predominantly in a territory.** Treasury has the authority to do so, as the elective pay and transferability statutes state that Treasury shall issue "guidance as may be necessary to carry out the purposes of this section." Treasury has already used the authority in section 6417(h) to clarify that territory governments are generally eligible for elective pay; it should now clarify that projects in the territories are eligible for the full menu of clean energy credits when claiming elective pay or transferability.

Ensuring that projects in the territories have full access to monetization for the ITCs is within Treasury's authority, is consistent with the intent of the monetization provisions, and is crucial to equitably implementing and distributing the benefits of the Inflation Reduction Act.

Sincerely,

Alabama Interfaith Power & Light
Alianza for Progress
American Federation of Teachers
Alliance of Nurses for Healthy Environments
Battle Born Progress
Barrio Eléctrico
Capital Good Fund

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[1] Section 50(b)(1) is the statute that determines that ITC property cannot be used predominantly outside the United States unless the property is owned by a U.S. corporation or U.S. citizen. The definition of the United States and U.S. citizens, in this case, excludes U.S. territories and their residents, effectively excluding territories from accessing ITCs via elective pay or transferability.

Center for American Progress
Center for Public Enterprise
Ceres
Ciencia Puerto Rico
Clean Energy States Alliance
CLEO Institute
Climate Action Campaign
Climate Changemakers
Comprehensive Cancer Center, University of Puerto Rico
Cooperative Energy Futures
Dayenu: A Jewish Call to Climate Action
Earthjustice
Elders Climate Action
Electric Neighborhood Operator
Enel North America
Energy Allies
Environmental Defense Fund
Evergreen Action
Fundación Segarra Boerman
Georgia Interfaith Power and Light
Good Energy Collective
Green Latinos
Hispanic Federation
Inclusiv
Institute for Socio-Ecological Research
Interfaith Power & Light
La Mesa Boricua de Florida
Lawyers for Good Government
League of Conservation Voters
Los Angeles Alliance for a New Economy
Michigan Clinicians for Climate Action
Michigan League of Conservation Voters
Micronesia Climate Change Alliance
Mujeres de Islas
National Wildlife Federation
Natural Resources Defense Council
Oxfam America
Para la Naturaleza
People's Action
Physicians for Social Responsibility
Plug In America
Poder Latinx

Puerto Rico Conservation Trust Fund
Rewiring America
RMI
Sachamama
Sierra Club
Solar United Neighbors
SOULar Equity Project
The People's Justice Council
UndauntedK12
Union of Concerned Scientists
Zero Emission Transportation Association

CC:
John Podesta, Senior Advisor to President Biden for Clean Energy Innovation and Implementation
Tom Perez, Director of the White House Office of Intergovernmental Affairs
David Turk, Deputy Secretary, U.S. Department of Energy
Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Gary Grippo, Deputy Assistant Secretary for Public Finance
Neera Tanden, Domestic Policy Advisor to the President
Gretchen Sierra-Zorita, Director for Puerto Rico and the Territories, White House Office of Intergovernmental Affairs