January 22, 2024

Douglas W. O'Donnell, Deputy Commissioner for Services and Enforcement
U.S. Secretary of the Treasury
Internal Revenue Service
CC:PA:LPD:PR (REG—132569—17)
Room 5203, P.O. Box 7604
Ben Franklin Station, Washington, D.C., 20044

RE: Request for Comments on Notice of Proposed Rulemaking (Proposed Treasury Regulations Sections 1.48-9 & 1.48-14)

Dear Mr. O'Donnell:

Anbaric Development Partners, LLC ("**Anbaric**") submits these comments in response to the U.S. Department of the Treasury's ("**Treasury**") above referenced request to issue guidance under Section[1] 48, as amended by Section 13102 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 ("**IRA**"). The preamble to the Proposed Treasury Regulations promulgated under Section 48 ("**Proposed Regulations**") notes that the existing Treasury Regulations under Section 48 have not been amended since 1987.[2] As such, the Proposed Regulations offer important guidance and a rare opportunity to comment on policy affecting an industry that has dramatically evolved in recent decades.

Anbaric specifically requests Treasury's clarification that, for purposes of Section 48 and the Proposed Regulations, an HVDC power system (as described below) is either (A) a "unit of energy property"[3] or (B) a "functionally interdependent component" of an offshore wind facility.[4] In either case, the owner of an HVDC power system should be eligible for the Section 48 ITC (as defined below) without the requirement that the system be co-owned by the same party that owns the offshore wind turbines.

As discussed below, HVDC power systems possess unique traditional generator-like capabilities in addition to and beyond power conditioning and transfer equipment that is classified as integral parts of energy property. Our comments aim to equip Treasury with a technical understanding of these characteristics so that this type of property can be

[1] All references to "Section" or "§" herein are to a section of the Internal Revenue Code of 1986, as amended and restated.
[2] REG–132569–17, 82188, 82188 (Nov. 17, 2023).
[3] *See* Prop. Treas. Reg. § 1.48-9(f)(2)(i).
[4] *See* Prop. Treas. Reg. § 1.48-9(f)(2)(ii).

more accurately categorized as a unit of energy property. This designation would effectively except HVDC power systems from the limitations on ownership under the Proposed Regulations[5], aligning better with industry drivers and policy goals.

Further, and in the alternative, these comments outline why an HVDC power system – if not a unit of energy property independently – is properly categorized as a "functionally interdependent component" rather than an "integral part" of an energy property, as the Proposed Regulations categorize all power conditioning and transfer equipment. As such, an HVDC power system should separately qualify for the Section 48 ITC without the requirement that the system be co-owned by the same party that owns the offshore wind turbines.[6]

Finally, there is no requirement in the Code that all components of an offshore wind energy project be owned by a single taxpayer. The policy implications – and choice – to disallow separate ownership has wide ranging implications that would raise costs, increase equipment needs and development risks and elevate environmental impacts that could materially impede the goals of the Biden Administration and several states.

This comment has four parts:

- Part I describes Anbaric's business, summarizes how offshore wind generation systems operate and explains how HVDC power systems function and the kinds of electricity that they produce.

- Part II suggests that a thorough understanding of an HVDC power system's technological capabilities would lead Treasury to conclude that such a system independently qualifies for the Section 48 ITC, either because it constitutes a "unit of energy property" or a **"**functionally interdependent component" of an offshore wind facility.[7]

- Part III explains that allowing for separate ownership of an HVDC power system either as a "unit of energy property" or a "functionally interdependent component" of an offshore wind facility helps achieve important policy goals of the Biden Administration, including accelerating the growth of the offshore wind industry and fortifying the electrical grid while minimizing environmental impacts and ratepayer costs.

- Part IV summarizes our position and provides our concluding views.

[5] *See* Prop. Treas. Reg. § 1.48-14(e)(2).
[6] *See* Prop. Treas. Reg. § 1.48-14(e)(2).
[7] Anbaric expresses no view as to whether HVAC delivery systems qualify for the Section 48 ITC.

I. Anbaric's Track Record

Anbaric[8] develops, finances and builds large electric transmission lines linking regional wholesale markets, utility scale storage projects, as well as delivery systems, such as export cables and associated power conditioning and transfer equipment, that deliver offshore wind to the terrestrial grid. Anbaric's offshore projects' design consists of export cables and power conditioning equipment employing either high voltage alternating current ("**HVAC**") or high voltage direct current ("**HVDC**") technology. The company helped spearhead the development of two onshore 660 megawatt ("**MW**") HVDC projects – the Neptune Regional Transmission System (operational in 2007) and the Hudson Transmission Project (operational in 2013). More recently, Anbaric sold 1200 MW of offshore wind delivery system assets to Southcoast Wind in 2021. The company's experience includes designing and developing shared, open-access transmission systems and onshore upgrades to unlock terrestrial renewables and build a grid that meets the challenges of the clean energy transition. Over the last six years, Anbaric has expanded into providing delivery systems to bring electricity generated from wind turbines located offshore to the onshore electric grid.

We now (A) summarize how offshore wind projects operate and (B) explain how HVDC power systems function and the kinds of electrical energy that they produce.

A. Offshore Wind Generation

An offshore wind facility relies on several interconnected processes to deliver carbon-free and affordable electricity safely. Generally, (1) offshore wind turbines are connected to offshore collector stations by lower voltage alternating current ("**AC**") array cables; (2) offshore collector stations condition electricity for HVAC or HVDC export cables, either stepping up voltage in the case of AC or converting AC to direct current ("**DC**") power and increasing voltage in the case of DC; and if an HVAC delivery system is used, (3) HVAC export cables link offshore collector stations to an onshore substation which then may convert voltage levels (if needed) and deliver power to the onshore grid.[9]

B. Production of Electrical Energy by HVDC Power Systems

If an HVDC delivery system is used, the third step above is more involved. Different functions occur and electrical energy of multiple kinds is produced. At a simple level, the AC power produced from offshore wind turbines is converted to DC power in an offshore

[8] Anbaric, https://anbaric.com/.

[9] *Offshore Wind Energy Facility Characteristics*, Walt Musial, NATIONAL RENEWABLE ENERGY LABORATORY (a national laboratory of the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy) (March 5, 2018), available at https://www.boem.gov/sites/default/files/renewable-energy-program/What-Does-an-Offshore-Wind-Energy-Facility-Look-Like.pdf.

converter station and then HVDC export cables link that converter station to an onshore converter station which converts the DC power back to AC and then an AC cable delivers that AC power to an onshore substation. While this conversion of electricity from AC to DC back to AC is being performed (as a practical matter, it continuously occurs in fractions of a second) the HVDC delivery system engages in a range of other functions to create different types of electrical energy and provide ancillary services to the grid.

As set out above, HVAC power systems typically deliver electricity, whether as part of the electrical grid or as part of an offshore wind facility's power conditioning and transfer equipment. However, as part of their voltage converters, which are multi-hundred million dollar installations[10], HVDC power systems not only transport power but also perform a wide range of other functions traditionally associated with electricity-*generating* plants. For example, HVDC power systems can (1) provide frequency response and voltage support that is necessary for the stability and functioning of the electrical grid and (2) add or absorb reactive power to the electrical grid. These abilities are currently provided by spinning generating units, such as gas fired or other thermal plants. In addition to serving as delivery systems for offshore wind, HVDC power systems allow for the retirement of such traditional thermal generation and reduces the need to place additional reactive power equipment, such as shunt capacitors or static synchronous compensators, on the AC delivery system system.

Similar to thermal generating units, HVDC power systems can "blackstart" a power grid, a key service.[11] Blackstart is a designation given to a generating unit that is used to provide initial power to a load and start other generators on a dark grid in the case of a black out, like the one the eastern United States experienced in August of 2003. These blackstart connections are then further connected to bring sections of the grid up and repower the grid. Again, by providing blackstart service, HVDC power systems enable the retirement of traditional thermal generation and supply an important service as the nation transitions from a thermal based to a low-carbon grid.

In addition to their similarities with electricity generating plants, HVDC power systems, when joined together, are controllable and can be used to direct energy on the grid regardless of power system impedance, which is what results in power flow direction.

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[10] CABLE TECHNOLOGY NEWS (accessed Jan. 22, 2024), available at https://www.cabletechnologynews.co.uk/wp-content/uploads/2016/02/siemens_converter.jpg (image of an HVDC onshore voltage source converter); MARINE INSIGHT (accessed Jan. 22, 2024), available at https://www.marineinsight.com/wp-content/uploads/2015/08/DolWin-beta-platform.png (image of an offshore HVDC voltage source converter).

[11] *See The Operational and Market Benefits of HVDC to System Operators*, THE BRATTLE GROUP at 21 (Sept. 2023), available at https://www.brattle.com/wp-content/uploads/2023/09/The-Operational-and-Market-Benefits-of-HVDC-to-System-Operators-Full-Report.pdf (describing blackstart and other HVDC power system capabilities).

II. Unique technological capabilities distinguish an HVDC power system as a "unit of energy property" or a "functionally interdependent component" of an offshore wind facility that qualifies for the Section 48 ITC.

Section 48 allows a taxpayer that owns a "qualified facility" (as defined under Section 45(d)) to elect to claim the Section 48 investment tax credit ("**ITC**")[12] in lieu of the Section 45 production tax credit ("**PTC**"). If the taxpayer makes an election, the qualified facility will be treated as part of a qualified investment credit facility and any qualified property which is part of the qualified investment credit facility will be considered energy property eligible for the Section 48 ITC.[13] A "qualified investment credit facility"[14] includes a facility using wind to produce electricity.[15] "Qualified property" means depreciable tangible property that is used as an integral part of the qualified investment credit facility.[16]

The IRA extended the pre-existing Section 48 ITC to wind projects that begin construction before the end of 2024, while also enacting a new, tech-neutral ITC under Section 48E that becomes available in 2025.[17] The Section 48E ITC can be claimed for a "qualified facility" which is used for the generation of electricity and for which the anticipated greenhouse gas emissions rate is not greater than zero. Offshore wind facilities are eligible for the Section 48E ITC because they emit no greenhouse gases. With the enactment of the Section 48E ITC and the approaching phase-out of the Section 48 ITC, taxpayers will require consistent guidance from Treasury during the transition.

A. An HVDC power system constitutes a "unit of energy property" under Section 48 and the Proposed Regulations.

As discussed below, an HVDC power system (1) is "wind energy property" due to its unique traditional electric generator-like capabilities and (2) meets the definition of a "unit of energy property" because it can operate apart from other energy properties within a larger energy project.

[12] I.R.C. § 48(a)(1).
[13] I.R.C. § 48(a)(5)(A).
[14] I.R.C. § 48(a)(5)(C) (The wind facility must be placed in service after 2008 and construction must begin before January 1, 2025.).
[15] I.R.C. § 45(d)(1) (The wind facility must be placed in service after December 31, 1993 and construction must begin before January 1, 2025.).
[16] I.R.C. § 48(a)(5)(D) (The qualified property must be constructed, reconstructed, erected or acquired by the taxpayer and the original use of the qualified property must begin with the taxpayer.)
[17] I.R.C. § 48E(b)(3)(A).

1. Due to its extensive power system capabilities that replicate power generator functions, an HVDC power system is "wind energy property".

Treasury Regulations define "wind energy property"[18] as consisting of several components: a windmill, wind-driven generator, storage devices, power conditioning equipment, transfer equipment and parts solely related to the functioning of those items.[19] As explained in Part I of this comment, an HVDC power system possesses several of the characteristics of "wind energy property" and should qualify for the Section 48 ITC on its own rather than needing to be a part of a wind turbine, which cannot independently perform some of the functions of a traditional thermal power generator.

Part I explained the multiple functions of HVDC power systems. Beyond delivering offshore wind power to shore, HVDC power systems have attributes of traditional thermal generation, including (1) providing frequency response and voltage support that is necessary for the stability and functioning of the electrical grid; (2) adding or absorbing reactive power to the electrical grid; and (3) restarting the grid after a power failure with "blackstart" capability. Individually, and even more importantly, taken together, these attributes replicate capabilities of thermal power generating units and are sufficiently robust so that HVDC power systems can accelerate the retirement of otherwise essential thermal generating units.

2. An HVDC power system is a "unit of energy property" because it can operate apart from other energy properties within a larger energy project.

The Proposed Regulations define a "unit of energy property" as "all functionally interdependent components of property that are operated together *and that can operate apart from other energy properties within a larger energy project*."[20] This definition mirrors others provided in Treasury Regulations under Section 263 where, for purposes of personal property, all the components that are functionally interdependent comprise a single unit of property.[21] However, in the case of plant property[22], such as power plants, a "unit of property" is further divided into smaller units comprised of each component (or group of components) that performs a discrete and major function or operation within the

[18] Treas. Reg. § 1.48-9(e).
[19] Treas. Reg. § 1.48-9(e).
[20] Prop. Treas. Reg. § 1.48-9(f)(2)(i) (emphasis added).
[21] Treas. Reg. § 1.263(a)-3(e)(3)(i).
[22] Treas. Reg. § 1.263(a)-3(e)(3)(ii)(A) (Plant property means "functionally interdependent machinery or equipment, other than network assets, used to perform an industrial process, such as manufacturing, generation, warehousing, distribution, automated materials handling in service industries, or other similar activities.").

functionally interdependent machinery or equipment.[23] For example, a power plant includes one pulverizer that grinds coal, a single boiler that produces steam, one turbine that converts the steam into mechanical energy and one generator that converts mechanical energy into electrical energy.[24] The "unit of property" in this example is each component that performs a discrete and major function within the plant. As such, each of the pulverizer, boiler, turbine and generator is a separate unit of property.

Each component of an offshore wind facility that performs a discrete and major function or operation within functionally interdependent equipment should similarly be considered a "unit of property". Applying this subdivision approach to the definition of "wind energy property" would not only be consistent with Section 263 but would allow each component to be considered a "unit of energy property".

HVDC power systems in particular can operate apart from other energy property in a larger energy project. These characteristics demonstrate that, consistent with Section 263, an HVDC power system would be correctly categorized as a "unit of energy property" under the definition of "wind energy property". Each unit of property should be eligible for the Section 48 ITC and there should be no requirement for each unit of property to be co-owned by the same taxpayer or group of taxpayers.

B. In the alternative, if Treasury determines that an HVDC power system does not constitute a "unit of energy property", its technological attributes qualify it as a "functionally interdependent component" of an offshore wind facility under Section 48 and the Proposed Regulations.

While not specifically addressed in Section 48, the IRS has instructed that functionally interdependent components are considered components of energy property eligible for the Section 48 ITC.[25] Components of property are functionally interdependent if the placing in service of each of the components is dependent upon the placing in service of each of the other components in order to generate electricity.[26] Functionally interdependent components of property that can be operated and metered together and can begin producing electricity separately from other components of property within a larger energy project will be considered "an energy property".[27] As such, property that is "functionally interdependent" to the generation of electricity is treated as a unit of energy property.[28] For example, an electricity-generating wind turbine, its tower and its

[23] Treas. Reg. § 1.263(a)-3(e)(3)(ii)(B).
[24] *See* Treas. Reg. § 1.263(a)-3(e)(6), example 5.
[25] Notice 2018-59, 2018-28 I.R.B. 196.
[26] Prop. Treas. Reg. § 1.48-9(f)(2)(i).
[27] Rev. Rul. 94-31, 1994-1 C.B. 16; REG–132569–17, 82188, 82198 (Nov. 17, 2023).
[28] Notice 2018-59, 2018-28 I.R.B. 196, Section 7.01(1); REG–132569–17, 82188, 82198 (Nov. 17, 2023).

supporting pad comprise all components of property that are functionally interdependent to a wind farm.[29]

An HVDC power system does not produce its own electricity but modifies electricity in the several ways described above. Some of these can be separate energy products produced by traditional generators and are compensated apart from simple energy in electricity markets. HVDC power systems can make these other energy products from wind turbine energy or from other grid sources. Therefore, it can begin producing some of these energy products when connected to the grid before being connected to an offshore wind farm or when the offshore wind energy farm is not producing electricity.

With regard to qualified offshore wind property, the preamble to the Proposed Regulations provides that functionally interdependent components do not include export cables and power conditioning and transfer equipment, such as subsea cables and voltage transformers necessary to condition electricity for use on the electrical grid.[30] We believe this conclusion in the Proposed Regulations is inaccurate with regard to HVDC power systems. This element of the Proposed Regulations appears to be based on an understanding that power conditioning and transfer equipment can only provide the function of interconnecting wind turbines to a larger grid. This posture is understandable given the complexity of power systems and the fact that a number of generator-like functions and other power system capabilities that HVDC power systems possess are not widely discussed outside of power engineering circles.

Similar to an individual wind turbine in a wind farm operating apart from other wind turbines, HVDC power systems can operate separately. An HVDC power system is "functionally interdependent" because it has a range of power system functions beyond simple power conditioning and, including voltage, regulation, blackstart and directing power flows, even before a wind turbine is attached to it. For example, one wind turbine or 500 wind turbines can be attached to an HVDC power system; and while the HVDC power system is necessary for an offshore wind facility to move electricity to a larger power system, as discussed above, the HVDC power system has important power system functions of its own without the wind turbines. As such, HVDC power systems should be considered functionally interdependent components of an offshore wind facility.

[29] *See* Notice 2013-29, 2013-20 I.R.B. 1085.
[30] REG–132569–17, 82188, 82205 (Nov. 17, 2023).

1. Because an HVDC power system is not an "integral part" of an energy property under Section 48 and the Proposed Regulations, it is more appropriately categorized as a "unit of energy property" or a "functionally interdependent component" of an offshore wind facility, which separately qualifies for the Section 48 ITC.

For purposes of the Section 48 ITC, property owned by a taxpayer is an "integral part" if it is used directly in and is essential to the completeness of the intended function of the energy property.[31] Consistent with prior IRS guidance[32], the Proposed Regulations dictate that "property that is an integral part of energy property includes power conditioning equipment and transfer equipment used to perform the intended function of the energy property."[33]

Under the Proposed Regulations, power conditioning equipment includes transformers, inverters and converters which modify the characteristics of electricity into a form suitable for use, transmission or distribution.[34] Transfer equipment includes equipment that permits the aggregation of energy generated by components of energy properties and equipment that alters voltage in order to permit transfer to a transmission or distribution line, such as wires, cables and combiner boxes that conduct electricity.[35] The Proposed Regulations also deem roads that "are integral to the activity performed by the energy property such as onsite roads that are used for equipment to operate and maintain the energy property" to be an integral part of an energy property.

The Proposed Regulations provide an example describing an offshore wind facility that is comprised of 150 turbines; array cables that carry the electricity to an offshore substation where a transformer steps up the voltage and a converter converts it to direct current; subsea export cables that transport the electricity to an onshore substation that converts the electricity back into AC; a transformer and associated switchgear that transforms the electricity into electrical grid voltage; and an intertie that takes the electricity from the onshore substation to the point of interconnection with the electrical grid. As currently drafted, "[a]ll components of the [offshore wind facility], up to and including the transformer and switchgear housed in the onshore substation, are *either functionally interdependent components of an energy property or integral parts of an energy property*."[36]

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[31] Prop. Treas. Reg. § 1.48-9(f)(3)(i).
[32] Notice 2018-59, 2018-28 I.R.B. 196, Section 7.02(1).
[33] Prop. Treas. Reg. § 1.48–9(f)(3)(ii).
[34] *Id*.
[35] *Id*.
[36] Prop. Treas. Reg. § 1.48-9(f)(5)(iii) (emphasis added).

While the example is helpful, it fails to detail which components are considered "functionally interdependent" and which are considered "integral parts" of the energy property. Moreover, as is to be expected for the sake of simplicity, it does not describe in detail the complete functionality of these complex components. As such, the example does not dictate that an HVDC power system must be considered an integral part of an offshore wind facility.

Although HVDC power systems can serve as power conditioning and transfer equipment, these power systems are also characterized by their unique capabilities that extend beyond those limited functions. As discussed above, HVDC power systems share several similar attributes with electricity-generating plants that can blackstart a power grid and perform a range of traditional electricity modifying generator functions that even a wind-generating turbine cannot provide on its own. On the other hand, simpler power conditioning and transfer equipment systems and roads perform only certain limited functions. In contrast to these examples of what is considered an "integral part" of an energy property, an HVDC power system's characteristics present meaningful differences and additions beyond the ability to condition and transfer power that support characterizing it as "functionally interdependent" under the Proposed Regulations.

C. As a "unit of energy property" or a "functionally interdependent component", the ownership limitations of the Proposed Regulations do not apply to an HVDC power system.

Section 48 does not prohibit separate ownership, creating space for Treasury to promulgate rules that take into account practical aspects of the clean energy industry.[37] Moreover, the Proposed Regulations permit co- or joint ownership of energy property. According to the preamble to the Proposed Regulations, "[i]f Taxpayer A owns only power conditioning and transfer equipment that is an integral part of an energy property owned by unrelated Taxpayer B, Taxpayer A would not be eligible for the [Section 48 ITC]. However, this would not prevent Taxpayer B from claiming a [Section 48 ITC] on the basis of the energy property that it owns. In addition, if unrelated taxpayers Taxpayer A and Taxpayer B jointly own power conditioning and transfer equipment that is an integral part of a qualified offshore wind facility, but only Taxpayer B owns the unit of energy property (that is, the qualified offshore wind facility), only Taxpayer B may claim the [Section 48 ITC]."[38] The Proposed Regulations do not provide (and we have not been able to identify) further justification as to why co- or joint ownership is acceptable while separate ownership is not.

[37] *See* I.R.C. § 48.
[38] REG–132569–17, 82188, 82205 (Nov. 17, 2023); Prop. Treas. Reg. § 1.48-14(e)(2).

Section 48 and the existing regulations thereunder are silent regarding whether the components of an energy property can be owned by multiple taxpayers.[39] Prior IRS guidance has been interpreted to stand for the proposition that fractional interests in common tenancies should be treated as separate assets for federal income tax purposes.[40] Relying on that guidance and as alluded to in the preamble to the Proposed Regulations, commenters have previously requested (1) the adoption of a rule that, if components of energy property are owned by separate taxpayers, each taxpayer would be eligible for the Section 48 ITC to the extent of their cost basis in the components of energy property that they own and (2) clarification that power conditioning and transfer equipment is eligible for the Section 48 ITC even if owned by a separate entity from the entity that owns the offshore wind turbines or if the power conditioning and transfer equipment is shared between multiple offshore wind facilities as part of a shared transmission solution.[41] These prior comments echo the prevalent industry-driven concerns described herein.

The Proposed Regulations state that "[a] taxpayer must directly own at least a fractional interest in the entire unit of energy property for a [S]ection 48 [ITC] to be determined with respect to such taxpayer's interest. No [S]ection 48 [ITC] may be determined with respect to a taxpayer's ownership of one or more separate components of an energy property if the components do not constitute *a unit of energy property*. However, the use of property owned by one taxpayer that is an integral part of an energy property owned by a second taxpayer will not prevent a [S]ection 48 [ITC] from being determined with respect to the second taxpayer's energy property."[42] The preamble to the Proposed Regulations explains further that if the taxpayer owns both the unit of energy property and at least a portion of the related power conditioning and transfer equipment, that taxpayer would be able to calculate the Section 48 ITC on the eligible basis of the energy property. However, if power conditioning and transfer equipment owned by one taxpayer is an integral part of an energy property owned by an unrelated taxpayer, the taxpayer that owns the power conditioning and transfer equipment would not be eligible for the Section 48 ITC.[43]

As discussed above, an HVDC power system should be considered either (1) a "unit of energy property" or (2) a "functionally interdependent component" of an offshore wind facility (rather than an "integral part"). Either designation would effectively except HVDC power systems from the limitations on ownership under the Proposed Regulations,

[39] REG–132569–17, 82188, 82204 (Nov. 17, 2023).
[40] Rev. Rul. 78–268, 1978–2 C.B. 10.
[41] REG–132569–17, 82188, 82205 (Nov. 17, 2023).
[42] Prop. Treas. Reg. § 1.48-14(e)(2) (emphasis added).
[43] REG–132569–17, 82188, 82205 (Nov. 17, 2023).

removing a costly impediment to the Section 48 ITC and potential success of an offshore wind project.

First, "[a]ny property that [is a unit of energy property] is part of an energy property regardless of where such property is located."[44] The Proposed Regulations provide that co-located energy properties still qualify as "separate energy properties"[45] and may claim distinct tax credits. For example, if a wind facility (eligible for the Section 45 PTC) that is co-located with an energy storage facility (eligible for the Section 48 ITC) share power conditioning and transfer equipment that is considered an integral part of the energy storage facility, each facility may claim the desired tax credits, respectively, if they otherwise qualify. The idea that closely-related energy properties can be owned by different taxpayers has footing elsewhere, such as the 1603 Program: Payments for Specified Energy Property in Lieu of Tax Credits. Guidance issued by Treasury under this program confirmed that a renewable electricity conversion system would constitute qualified property "even if under different ownership" than the remainder of the qualified property.[46] As such, denoting a HVDC power system as a "unit of energy property" and permitting separate ownership would not contravene past or present tax positions.

Second, several descriptions of this ownership limitation in the Proposed Regulations seem to indicate that it would only apply in the context of an integral part of energy property. Indeed, the preamble, language under Proposed Treasury Regulations section 1.48-14(e)(2) and examples fail to expressly address the rule with respect to functionally interdependent components.[47] The absence of such a discussion could suggest that this rule simply does not apply in the latter case, which would be consistent with the treatment applied to a unit of energy property; however, clear guidance would be required to provide sufficient comfort to taxpayers on this point.

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[44] Prop. Treas. Reg. § 1.48-9(f)(4).

[45] Prop. Treas. Reg. § 1.48-9(f)(5)(ii), example 2.

[46] *See* "Payments for Specified Energy Property in Lieu of Tax Credits Under the American Recovery and Reinvestment Act of 2009, Frequently Asked Questions and Answers," number 34, available at https://home.treasury.gov/system/files/216/A-FAQs0411-general.pdf.

[47] *See e.g.*, REG–132569–17, 82188, 82205 (Nov. 17, 2023) ("If the taxpayer owns both the unit of energy property and at least a portion of the related *power conditioning and transfer equipment*, that taxpayer would be able to calculate the section 48 credit on the eligible basis of the energy property, including the taxpayer's basis in the *integral power conditioning and transfer equipment*.") (emphasis added); Prop. Treas. Reg. § 1.48-14(e)(2) ("However, the use of property owned by one taxpayer that is an *integral part* of an energy property owned by a second taxpayer will not prevent a [S]ection 48 [ITC] from being determined with respect to the second taxpayer's energy property.") (emphasis added); Prop. Treas. Reg. § 1.48-14(e)(4)(iii), example 3 ("X and Y each own a 50% fractional ownership interest in the step-up transformer. The step-up transformer is an *integral part* of both the wind energy property and the solar energy property[.]") (emphasis added); Prop. Treas. Reg. § 1.48-14(e)(4)(iv), example 4 ("X owns a wind energy property that is a unit of energy property and property that is an *integral part* of the wind energy property, specifically a transformer where the electricity is stepped up to electrical grid voltage before being transmitted to the electrical grid through an intertie.") (emphasis added).

III. Several public policy considerations support qualifying independently developed and owned HVDC power systems for the Section 48 ITC.

Public policy considerations and practical implications affecting offshore wind projects, such as (A) cost and risk-sharing and (B) industry expertise and business focus, support removing the requirement that an HVDC power system be co-owned as part of the offshore wind facility in order to claim the Section 48 ITC. As described below, the owner of an HVDC power system should be eligible to claim the Section 48 ITC separate from the owner of the offshore wind turbine.

A. Cost & Risk-Sharing

Although the Biden Administration has shown overwhelming support for offshore wind efforts[48], taxpayers are understandably concerned about developing future projects due to increasing costs and expensive delays. In fact, the development of two large-scale offshore wind energy projects was withdrawn in October 2023.[49] Additional regulatory uncertainty and limitations on ownership will only exacerbate the challenges facing industry participants.[50]

Risk-appetite and economical business positions are key considerations when planning an offshore wind development. For example, an offshore wind facility can cost up to $4,000 per kilowatt to build in 2023.[51] Restricting the ability to claim the Section 48 ITC to a single taxpayer places independently-developed components at a tax-disadvantage. This approach needlessly increases costs and shifts the significant project development risk to a single taxpayer while also requiring a developer to deploy capital to build export cables and power conditioning and transfer equipment just to retain ITC-eligibility for that equipment. Conversely, removing limitations on ownership for components of an offshore wind facility, including power conditioning and transfer equipment, that are individually owned by developers allows for more efficient power delivery system design by

[48] *National Clean Energy Action Month*, *2022,* THE WHITE HOUSE (Sept. 30, 2022), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/30/national-clean-energy-action-month-2022/ Accessed January 16, 2024.

[49] *Ørsted ceases development of its US offshore wind projects Ocean Wind 1 and 2, takes final investment decision on Revolution Wind, and recognises DKK 28.4 billion impairments*, ØRSTED (Oct. 31, 2023), https://orsted.com/en/company-announcement-list/2023/10/oersted-ceases-development-of-its-us-offshore-wind-73751.

[50] *Offshore Wind Faces More Financial Turbulance in 2024*, Heather Richards, ENERGYWIRE (Jan. 8, 2024), available at https://www.eenews.net/articles/offshore-wind-faces-more-financial-turbulence-in-2024/; *U.S. Offshore Wind: Still Affordable?*, Roger Conrad, FORBES (Jan. 26, 2023), available at https://www.forbes.com/sites/greatspeculations/2023/01/26/us-offshore-wind-still-affordable/?sh=7919f3a7e20e.

[51] *America's Wind-Farm Revolution is Broken*, Carol Ryan, THE WALL STREET JOURNAL (Sept. 7, 2023), available at https://www.wsj.com/business/energy-oil/americas-wind-farm-revolution-is-broken-fa82d64e.

decreasing the number of cables, on and offshore substations, siting risks and costs while providing the multiple, generating-unit like benefits of HVDC power systems.

Expanding eligibility for the Section 48 ITC based on separate ownership will allow for a more cost-efficient model of owning large offshore wind projects. As opposed to a radial cable connection to each wind farm, this approach provides the ability for multiple wind farms to connect to a transfer and conditioning system that can be separately solicited by policymakers to optimize a design that is best for ratepayers, taxpayers and the environment as well as the power system. Multiple studies show significant cost savings, power system reliability and environmental benefits when power transfer and conditioning equipment planning is decoupled from wind turbine procurement. For example, a 2023 study by the Brattle Group and DNV found that the estimated benefits of collaborative planning processes for offshore wind delivery for over 100 gigawatts of offshore wind generation include: (A) at least $20 billion in related cost savings; (B) 60-70% fewer shore crossings and necessary onshore upgrades; (C) approximately 2,000 (50%) fewer miles of marine transfer cable installations disturbing the seabed; (D) more competitive procurement outcomes, increased consumer savings, enhanced reliability and grid resilience; and (E) more timely investments in the local clean energy economy.[52] The United States government has made similar findings in the Atlantic[53] and Pacific[54], and the Department of Energy recently released its recommendations for offshore wind energy delivery in the Atlantic based on planned systems in lieu of single ownership radial interconnections bundled with wind turbine installations.[55] After beginning with bundled export equipment and wind turbine solicitations, several states, including New Jersey[56]

[52] *Brattle Consultants Highlight the Benefits of Collaborative Planning Process for Offshore Wind Transmission in New Report*, BRATTLE (Jan. 24, 2023), available at https://www.brattle.com/insights-events/publications/brattle-consultants-highlight-the-benefits-of-collaborative-planning-process-for-offshore-wind-transmission-in-new-report/.

[53] *Atlantic Offshore Wind Transmission Study*, NATIONAL RENEWABLE ENERGY LABORATORY (a national laboratory of the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy) (accessed Jan. 20, 2023), available at https://www.nrel.gov/wind/atlantic-offshore-wind-transmission-study.html

[54] *West Coast Offshore Wind Transmission Planning*, DEPT. OF ENERGY, (accessed Jan. 20, 2023) available at https://www.energy.gov/gdo/west-coast-offshore-wind-transmission-planning.

[55] *An Action Plan for Offshore Wind Transmission Development in the U.S. Atlantic Region*, DEPT. OF ENERGY, (accessed Jan. 20, 2023) available at https://www.energy.gov/sites/default/files/2023-10/Atlantic-Offshore-Wind-Transmission-Plan-Report_October-2023.pdf.

[56] *State Agreement Approach*, STATE OF NEW JERSEY, B. OF PUB. UTILITIES (Apr. 26, 2023), available at https://www.nj.gov/bpu/pdf/boardorders/2023/20230426/8D%20ORDER%20OSW%202nd%20Transmission.pdf.

and the New England states[57], are now pivoting to planned energy delivery systems in collaboration with one another and the federal government.[58]

B. Industry Expertise & Business Focus

Input and innovation from expert industry participants is required at every stage of planning and constructing an offshore wind facility. Offshore wind turbines, offshore collector stations, array cables, HVAC export cables, onshore substations and voltage source converters each play a unique and essential role in an offshore wind facility. Each piece demands expertise throughout the manufacturing, installation and construction phases, which may not overlap with other pieces of equipment involved in the project. While developers and manufacturers share a common end goal (i.e., operation of the offshore wind facility), these parties still have separate lines of business and priorities that may not align with one another. Expanding eligibility for the Section 48 ITC based on separate ownership is necessary when considering the distinct roles played by developers and manufacturers in the offshore wind industry.

Access to the Section 48 ITC incentivizes cooperation between parties who service this industry with different expertise and offers policymakers that are correctly focused on infrastructure an opportunity to implement a framework that provides maximum benefits while minimizing costs, bringing a better balance to the risk profile of developing an offshore wind facility and increasing a potential project's chance of success while reducing environmental impact.

IV. Conclusion

The significant costs and extended procurement time associated with offshore wind projects emphasize the need for clear guidance from Treasury and would directly align with the ambitious climate agendas promoted by the Biden Administration and many

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[57] *NESCOE Submission Regarding Transmission Needs Driven by State and Federal Public Policy Requirements*, NEW ENGLAND STATES COMMITTEE ON ELECTRICITY (Apr. 28, 2023), available at https://www.iso-ne.com/static-assets/documents/2023/05/nescoe_order_1000_transmittal_2023.pdf; *Comments on ISO-NE's Draft 2024 Work Plan*, NEW ENGLAND STATES COMMITTEE ON ELECTRICITY (Apr. 11, 2023), available at https://nescoe.com/wp-content/uploads/2023/08/NESCOE-Comments-on-ISO-NE-2024-Work-Plan.pdf.

[58] *Letter to Dept. of Energy, Grid Deployment Office*, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., PJM INTERCONNECTION L.L.C., ISO NEW ENGLAND, INC. (June 27, 2023), available at https://www.iso-ne.com/static-assets/documents/2023/06/northeast_collaborative_doe_june_letters_combined.pdf; *Memorandum of Understanding by and among the U.S. Dept. of Energy, U.S. Dept. of the Interior, U.S. Dept. of Commerce and U.S. Dept. of Transportation and the States of Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina and Rhode Island*, THE WHITE HOUSE (Sept. 20, 2023), available at https://www.whitehouse.gov/wp-content/uploads/2023/09/Federal-State-MOU-on-East-Coast-Offshore-Wind-Supply-Chain-Collaboration.pdf.

states[59], including the target of developing 30,000 MW of offshore wind capacity by 2030.[60] Clarifying that an HVDC power system is either (A) a "unit of energy property" or (B) a "functionally interdependent component" of an offshore wind facility, in either case, (C) without a restriction disallowing separate ownership is a step in attaining this milestone by providing several industry participants with straightforward access to the Section 48 ITC.

Anbaric appreciates the opportunity to provide these comments for your consideration. Please contact Clarke Bruno at cbruno@anbaric.com with any questions or to discuss any of these suggested options.

Sincerely,

Clarke Bruno
Chief Executive Officer
ANBARIC DEVELOPMENT PARTNERS, LLC

[59] *Aligning Ambitions: State Strategies for Offshore Wind, Allegra Dawes & Sophie Coste*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Sept. 2023), available at https://www.csis.org/analysis/aligning-ambitions-state-strategies-offshore-wind (To date, several U.S. states have targets for 46,200 megawatts of offshore wind energy.).

[60] FACT SHEET: *Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs*, THE WHITE HOUSE (March 29, 2021), available at https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/.