

January 6, 2023

Director General
Business Income Tax Division
Tax Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa ON K1A 0G5

Sent via email: labourconditions-conditionsdetravail@fin.gc.ca

Re: Consultation on Labour Conditions for Clean Tech and Clean Hydrogen Investment Tax Credits

Dear Sir or Madam:

I am writing on behalf of the members and staff of Energy Storage Canada (ESC) to provide feedback regarding the Consultation on Labour Conditions for the Clean Tech Investment Tax Credit (ITC). As we wrote in December, ESC applauds the Government's commitment, announced in the Fall Economic Statement (FES), to establish a new 30 percent refundable ITC for clean technologies, as well as the Clean Hydrogen ITC. Together the two initiatives will contribute to Canada's ability to keep pace with the United States in attracting private investment and will spur the needed deployment of decarbonization technology to support Canada's transition to net-zero. We were especially pleased to see that the ITC will apply to a broad range of energy storage technologies. We were also pleased to see a commitment in the FES to introduce additional measures to level the playing field with the United States.

We view the ITC as a critical driver for clean energy technologies such as storage, and key to maintaining Canada's competitiveness in attracting needed investment in these sectors. The U.S. ITC has been identified as one of the most important factors in the steady growth of the U.S. solar industry over the past decade and a half. And it is anticipated that a 30% energy storage ITC would increase U.S. storage deployments by 20-25% over the next five years.

The following are our comments on labour conditions for clean tech and clean hydrogen investment tax credits:

1. Are there modifications to the prevailing wage and apprenticeship rules introduced in the *Inflation Reduction Act* in the United States that should be considered in the Canadian context? If yes, how should they differ and why?

Canada should consider the factors in the IRA that could cause more harm than good (e.g., inducing further labour shortages, exacerbating inflation, etc.), which points to a made in

Canada approach. This should follow a prudent and thoughtful transition to new requirements, which should include incremental steps where need over time, for projects to adapt too.

For clarity, in Canada, we are experiencing a shortage of green skilled labour, and are actively developing folks as an industry. This means, our IPPs are aligned to pay prevailing wages and apprenticeships but added red-tape could reduce investor ability to bring projects to fruition, for little to no benefit.

Investors require a clear understanding of the rules to adopt and maintain. There are very clear and distinct differences in the US and Canadian labour markets, including population size and influence on available apprenticeships, specific project attributes (e.g., remoteness, and differing project size, different technology type, etc.).

- a. For example, in the United States, in broad terms the prevailing wage is determined in relation to an average wage paid to workers in a particular occupation employed on similar projects in the same area. What approaches could be used to determine the prevailing wage in Canada for the purpose of the proposed tax credits? What data and methodologies should be used in determining the prevailing wage in Canada for the proposed tax credits? How might the geographic area be defined when determining the prevailing wage?

A simple and clear approach with the ability to cure deficiencies provides the best path to causing the behaviour that the ITC intends, for example good faith exemptions where developers have undertaken commercially reasonable efforts to comply, but the apprentices were not available. Note that an existing and continuing labour shortage is expected, and creating uncertainty over how to comply with funding rules potentially harms the ability to create projects on the timeline expected.

- b. For example, in the United States, businesses must ensure that 10-15 per cent of total labour hours are performed by registered apprentices. What metric could apply in Canada to determine the appropriate contribution of apprentices to a project? Are there any other kinds of apprenticeship conditions that should be considered besides, or instead of percentage of hours worked?

We believe that demonstrating ongoing efforts hire and train are important and hope for a phased in approach to what is adopted. An industry initiative to fund / create apprenticeship programs could yield a better result, as its not forcing tic the box efforts. Further, clarity around rules that provide consideration for provincial regulations with clear compliance pathways would be welcomed.

2. What effects could requirements for paying prevailing wages and creating apprenticeship opportunities have on clean technology and clean hydrogen investment projects?

If carefully crafted, accepted, and implemented, a net positive effect with the requisite clarity around rules and clear compliance pathways.

3. What effects could conditions for paying prevailing wages and creating apprenticeship opportunities have on workers?

The labour market is already paying market wages for work therefore these requirements around wages and apprenticeship opportunities will likely have little or no impact on workers.

4. Are there certain occupations that the prevailing wage or apprenticeship conditions should (or should not) apply to (such as, in the case of apprentices, the 54 designated Red Seal trades)?

There are limitations under the US Inflation Reduction Act (IRA) on the roles and based on the amount of time spent on the worksite which could be applied to the Canadian labour market.

5. Has your organization encountered prevailing wage or apprenticeship conditions in other contexts, for example with respect to government contracts or programs, federally, provincially, locally or in other jurisdictions? If yes, what is your experience with these rules and are there any specific issues that should be noted when developing the labour conditions?

According to our members the US IRA wage and apprenticeship requirements are still too new to understand their impacts.

6. Employers would need to be able to demonstrate compliance with the labour conditions. What considerations should be taken into account in this respect when designing the conditions?

If the requirements are overly administrative and or restrictive, the time and effort to manage the rules and educate employees is not insignificant and may in fact push people to seek loopholes. The more that can be done to clarify how to prove compliance upfront, the more likely the ITCs are to have the desired effect. Our members are advising us that US guidelines have not been clear and are causing a lot of unnecessary uncertainty under the IRA. Canada should be as clear as possible as described in Question #1.

7. In certain situations, an employer could subcontract work to be performed. Are there specific limitations in applying labour conditions to a subcontractor?

The likelihood of subcontracting is relatively high. Furthermore, requirements that are not fully thought through may in fact delay good projects that deliver ratepayers value by coming online faster. There should be a minimum subcontractor size for these rules to apply, and developers should be able to rely on representations from their EPCs or if more specific for compliance is required, that clarity should be provided as soon as possible, and the rules should not take effect until at least 90 days after that clarification is provided.

8. Are there any circumstances for which exemption from the conditions should be considered, such as for certain types of investments or for certain locations? What reasons would justify these exemptions?

In the event a proponent can demonstrate there is insufficient local labour to meet the requirements, but a demonstrated effort to build up local competency. In the event there is a clear project cliff date for an ISO contract assets, time is of the essence and all efforts have been exhausted attempting good commercial faith to achieve the requirements, albeit unsuccessfully.

9. Should there be a threshold of investment required (or other metrics such as number of workers) for the labour conditions to apply? If so, what would be an appropriate threshold?

\$250MM CAD and greater.

Additional Comments:

To further inform our conversation with your officials, we wish to highlight several elements of the U.S. measures that we feel are critical to include in the design of Canada's ITC. Additionally, we also take this opportunity to provide an energy storage perspective on additional measures to keep pace with the Inflation Reduction Act (IRA). See under complimentary measures.

Adders

In the U.S. ITC, over and above the 30% credit, a 10% bonus credit is provided for projects that meet domestic content thresholds,¹ and an additional 10% is provided for projects located in "energy communities."² These include brownfield sites, communities dependent on coal or natural gas extraction, processing, or transport, as well as areas impacted by retirements of coal mines and generation.

An additional 20% (total potential credit of 60%--Including the 30% base + 10% domestic content) can potentially be added to the ITC for solar and wind projects located in certain low-income communities, near low-income residential buildings, or on Indigenous lands.

ESC would recommend that adders relevant to the Canadian context also be included in the development of the ITC, such as:

- Providing additional percentage for energy storage projects located on, or built-in partnership with, Aboriginal or First Nation communities, as well as northern and remote communities.
- To further differentiate the Canadian ITC, an adder for Long-Duration (8 Hours+) Energy Storage (LDES) should be implemented. Long-duration storage is especially critical for achieving net-zero goals, however current revenue mechanisms in Canadian energy markets do not sufficiently value long-duration assets. ESC recommends an adder of 20% for Long-Duration Storage technologies.

Stacking

There are very few restrictions in the IRA provisions on combining (or stacking) the U.S. ITC with other government benefit programs.³ The Canadian ITC should make it clear that stacking, such as with programs like the SREP or CIB financing, is allowed. ESC notes that projects will begin to build-in the ITC immediately. Therefore, any additional grant applications or government programs would come in

¹ See sections 45(b)(9), 48(a)(12), 45Y(g)(11) and 48E(a)(3)(B).

² See sections 45(b)(11), 48(a)(14), 45Y(g)(7), and 48E(a)(3)(A).

³ A notable exception is that solar and wind developers must choose between the ITC and the production tax credit (a mechanism that does not exist in Canada).

after the ITC and should ensure any additional funds secured would apply to the Net ITC project capital costs.

Eligibility

We have been assured that the Canadian ITC will cover a broad range of energy storage technologies, including stand-alone operations. This is an approach we strongly support.

Concerning eligible entities, it is important that non-taxable entities, in particular Indigenous groups, be eligible under the ITC. Eligibility of Indigenous groups would enable these groups to participate as partners in projects and would also align with provincial procurements criteria.

One area that is unclear is whether the requirement that stationary electricity storage systems not use fossil fuels in their operation applies to the source of electricity used to charge the system. Most stationary electricity storage systems are connected to the electricity grid, rather than a specific power source—whether it be emitting or non-emitting. It is recommended that the requirement for electricity storage resources to not use fossil fuels in their operation be clarified such that it only applies to direct consumption of fossil fuels and does not apply to grid-based electricity used to charge the system. An example of an electricity storage resource that would not be eligible is the previous generation of compressed air energy storage systems that used modified gas turbines and directly consumed natural gas during operation (See the full rationale under the appendix).

Complementary measures

We hope the ITC will include measures equivalent to the above-noted provisions to help ensure investment does not flow to U.S. firms and developments rather than Canadian ones. In this regard, while we recognize that the scope of the ITC does not extend to other measures, we would note that the U.S. ITC is accompanied by:

- US\$30 billion in production tax credits to accelerate U.S. manufacturing of clean energy technologies
- US\$10 billion in tax credits to build clean energy manufacturing facilities.
- US\$60 billion to on-shore clean energy manufacturing to help bring down the cost of clean energy and relieve supply chain bottlenecks;
- Additional tax incentives for domestic manufacturing; and recently
- \$350 million in funding for the development of Long Duration energy storage technologies (averaging USD 35MM per project)⁴ and over \$1 billion in funding through the Energy Storage Grand challenge⁵.

While Canada has made some investments in the above-noted areas, they do not come close to matching the U.S. level of ambition. We would further note that the ITC commitment would be less ambitious than similar commitments benefitting CCUS. We would therefore urge that, at a minimum, Canada match the scope and scale of the U.S. ITC or preferably venture to exceed.

⁴ [US government launches US\\$350 million long-duration energy storage demonstration funding - Energy Storage News \(energy-storage.news\)](#)

⁵ https://www.energy.gov/sites/default/files/2021-07/Storage%20shot%20fact%20sheet_071321_%20final.pdf

Further, Energy Storage Canada would urge the Federal Government to follow the US in specific funding for the development and execution of Long Duration energy storage technologies and projects. Funding for the development of Long Duration energy storage technologies could be structured in several ways, including:

- Confirmation of eligibility for Long-Duration energy storage under the Canada Innovation & Investment Agency and/or the Canada Growth Fund
- A specialized Contract for Differences for Long-Duration energy storage projects that provides support for longer-duration projects through the Canada Growth Fund or;
- New funding for an Energy Storage demonstration envelope under the Energy Innovation Program housed at NRCan's Office of Energy Research & Development

Retroactivity

As of now, clean technology ITC would be retroactive to the date of Budget 2023. Accordingly, the Government of Canada should make the clean technology ITC retroactive to 2022, and provide that signal even before Budget 2023, to avoid instances where those deploying clean energy technologies choose to delay that deployment to wait for the full details of the ITC to be announced.

I hope we can arrange a time very soon to discuss these issues.

Sincerely,

A handwritten signature in cursive script that reads "Justin Rangooni".

Justin W. Rangooni
Executive Director

Appendix – Clarification Re: Stationary Energy Storage

One area that is unclear is whether the requirement that stationary electricity storage systems do not use fossil fuels in their operation applies to the source of electricity used to charge the system. Most stationary electricity storage systems are connected to the electricity grid and therefore have no direct ability to control the mix of generation resources that produces the electricity used to charge a stationary electricity storage system. If this requirement is meant to apply to electricity used to charge the storage system, the restriction could impair the ability of the storage system to operate when it most needed to maintain grid reliability and ultimately reduce deployment. For example, the proposed Ontario IESO Expedited Long-Term 1 contract is likely incompatible with an electricity storage resource that is only able to charge at times when no fossil fueled fired resources are operating.

In addition, such a requirement might drive a risk management preference by developers to only locate electricity storage in exclusively 'clean' grids, rather than in grids with a mixture of 'clean' and fossil resources. This type of selection would effectively limit electricity storage resources from achieving the highest CO₂ savings by optimizing use of the 'clean' resources to displace fossil resources, while being able to rely on occasionally charging from fossil resources to maintain reliability. It is important to note that under the upcoming Clean Electricity Regulation, fossil fuel generation would be allowed post-2035 under emergency situations.

It is recommended that the requirement for electricity storage resources to not use fossil fuels in their operation be clarified such that it only applies to direct consumption of fossil fuels and does not apply to grid-based electricity used to charge the system. An example of an electricity storage resource that would not be eligible is the previous generation of compressed air energy storage systems that used modified gas turbines and directly consumed natural gas during operation.