



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

January 18, 2007

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ULIC: 48A.00-00

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

I am responding to your and Senator Rockefeller's letter of December 20, 2006, to the Secretary of the Treasury about the allocation of tax credits under the Qualifying Advanced Coal Project Program of the Energy Policy Act of 2005 (EPACT) to integrated gasification combined cycle (IGCC) projects using bituminous coal.

The tax credits are available under section 48A of the Internal Revenue Code (the Code), which the Congress enacted as part of EPACT. Under section 48A of the Code, the Secretary of the Treasury, in consultation with the Secretary of Energy, was required to establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies. On March 13, 2006, the IRS published Notice 2006-24, which established the qualifying advanced coal project program. This notice was developed in consultation with the U.S. Department of Energy (DOE) and was approved by the Treasury Department's Office of Tax Policy. I am enclosing a copy of the notice.

Under the notice, we were permitted to consider a project under the qualifying advanced coal project program only if the DOE certified the project for feasibility and consistency with energy policy goals. See section 4.01 of Notice 2006-24. If the DOE certified a project, we allocated the tax credits according to the procedures in section 4 of the Notice. Under these procedures, credits were first allocated within each class of projects to projects that were entitled to priority under section 48A(e)(3)(B) of the Code. In the case of IGCC projects using bituminous coal as a primary feedstock, the requested allocation of credits for priority projects exceeded the total credit available for these projects. For that situation, section 4.02(4)(b) of Notice 2006-24 set forth a formula to allocate the credit among the projects. The formula allocated the total credit available for IGCC bituminous coal projects (\$267 million) to the projects having the highest ratio of total nameplate generating capacity to requested allocation of credits.

For the 2006 allocation round, DOE certified four IGCC bituminous coal projects. Each of these projects was entitled to priority and requested the maximum amount of the credit permitted for an IGCC bituminous coal project (\$133.5 million). Initially, the applicants' information about total nameplate generating capacity was inconsistent in that some were at gross output and others were at net output, and none were at the same optimal operating conditions. To resolve these inconsistencies, we requested and received from the applicants the total of the numbers to be stamped on the nameplate of each generator to be used for the project (i.e., "total nameplate generating capacity") at International Standards Organization (ISO) conditions (that is, at 59°F, 60% humidity, and 14.7 psia). Applicants provided the information regarding total nameplate generating capacity under penalties of perjury. Because each of the four projects requested the maximum credit permitted (\$133.5 million) for an IGCC bituminous coal project, we allocated the total credit available for these projects (\$267 million) to the two projects with the highest total nameplate generating capacity at ISO conditions. Thus, the process we used to allocate the credits, which relied on detailed information provided by the applicants under penalties of perjury, appropriately took total nameplate generating capacity into account in accordance with the rules set forth in Notice 2006-24. We will consider your comments about the nameplate generating capacity as we continue to evaluate and administer the program.

In addition, you commented on the provision in Notice 2006-24 allowing for no appeal of the awards of the credit. Because the Code limits the total amount of credits that can be awarded, appeal rights would deny certainty to successful applicants. This lack of certainty could indefinitely delay progress on the projects receiving allocations and thereby frustrate Congress' intent in enacting these credit provisions.

I hope this information is helpful. If you have any questions, please contact me at ()

or

at () .

Sincerely,

Clarissa C. Potter

Clarissa C. Potter
Deputy Chief Counsel (Technical)

Enclosure



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