



# GEOTHERMAL RISING POLICY

POWERING OUR RENEWABLE FUTURE.

Geothermal Rising Comments  
August 21, 2024

**Via regulations.gov**

The Honorable Aviva Aron-Dine  
Acting Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Danny Werfel  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Margie Rollinson  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: **Proposed Treasury Regulations on Section 45Y Clean Electricity  
Production Credit and Section 48E Clean Electricity Investment  
Credit (REG-119283-23)**<sup>1</sup>

Dear Ms. Aron-Dine, Mr. Werfel, and Ms. Rollinson:

Geothermal Rising submits these comments to the Department of the Treasury (“Treasury”) and the Internal Revenue Service regarding the proposed regulations concerning the clean electricity production credit under section 45Y and clean electricity investment credit under section 48E (“48E Credit”) of the Internal Revenue Code.<sup>2</sup>

Geothermal Rising is a leading trade association dedicated to the advancement and promotion of geothermal energy. Geothermal Rising is a key player in the global geothermal industry, promoting the development and use of geothermal energy as a vital component of the world’s clean energy

---

<sup>1</sup> Definition of Energy Property and Rules Applicable to the Energy Credit, 88 Fed. Reg. 82,188 (Nov. 22, 2023).

<sup>2</sup> All section references are to the provisions of the Internal Revenue Code of 1986, as amended, or Treasury regulations thereunder, unless otherwise specified.



# GEOTHERMAL RISING POLICY

## POWERING OUR RENEWABLE FUTURE.

future. Through its various programs and initiatives, the association supports the industry's growth, fosters innovation, and helps shape policies that benefit the environment and society.

With the historic passage of the Inflation Reduction Act, Congress intentionally and significantly expanded opportunities for the development of geothermal resources.<sup>3</sup> And Congress did so for good reason: Geothermal generation facilities provide clean, baseload power that is critical to meeting emissions reductions goals while maintaining grid reliability. We applaud Treasury's recognition of Congressional intent by including geothermal facilities in the list of Non-C&G Facilities that categorically have a GHG emissions rate of not greater than zero.

However, unless the proposed regulations are modified or clarified in two discrete matters, taxpayers that make investments to further develop their geothermal fields or expand or upgrade existing geothermal facilities could be denied credit eligibility.<sup>4</sup> We thus strongly urge Treasury to revise the proposed regulations to avoid this unintended outcome, which would be inconsistent with Congressional intent, the statutory text, and the twin aims of reducing emissions while maintaining grid reliability.

### **1. Geothermal Rising urges Treasury to provide alternatives to “nameplate” capacity.**

Section 48E allows taxpayers to claim the 48E Credit with respect to expansions or modifications to a pre-existing facility, but only to the extent that such expansions or modifications result in an increased amount of electricity produced at the facility. The proposed regulations, however, appear to limit credit eligibility to investments that increase “nameplate” capacity.

Though nameplate capacity can sometimes serve as a reliable proxy for measuring an increase in electricity generated, it does not always—and generally does not in the context of geothermal facilities. A geothermal facility consists of production wells, injection wells, steam lines, and steam turbines. Each of these components, not just the turbines which establish “nameplate” capacity, can be improved through capital investment to increase the level of steam production and the level of the facility's electricity production.<sup>5</sup>

Therefore, Geothermal Rising requests that Treasury clarify the proposed rule to—as required by the statute—make eligible for the credit those investments that increase the amount of electricity produced at the facility, including those that increase or replenish geothermal energy sources,

---

<sup>3</sup> In a colloquy, Senate Finance Committee Chairman Wyden and Senator Cortez Masto emphasized that geothermal facilities are intended to be eligible for the technology-neutral clean energy tax credits. See 168 Cong. Rec. S4051, S4212 (daily ed. Aug. 6, 2022). Chairman Wyden described geothermal power production is appropriately treated as “emissions free,” involving *de minimis* amounts of naturally occurring noncombustion emissions. *Id.*

<sup>4</sup> Geothermal Rising supports the comments filed by Calpine Corporation, which address these two issues in detail. See Calpine Corporation, Comments on Proposed Treasury Regulations on Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit (REG-119283-23) (Aug. 2, 2024) (“Calpine Comments”).

<sup>5</sup> Calpine Comments at 9-10.



# GEOTHERMAL RISING POLICY

## POWERING OUR RENEWABLE FUTURE.

such as investments in new production, monitoring or injection wells and efficiency improvement projects.

### 2. Geothermal Rising urges Treasury to eliminate the Excluded Cost Rule.

The proposed regulations include a new rule—the “Excluded Cost Rule”<sup>6</sup>—that would render “qualified property” placed into service at an existing facility ineligible for the ITC unless that qualified property is a major component of a facility-level, extensive retrofit.<sup>7</sup> This new requirement is contrary to the statutory text and, as a practical matter, could exclude many critical geothermal investments from credit eligibility. Given the capital-intensive nature of geothermal development, few new components added to existing qualified facilities could clear the cumbersome 80/20 hurdle because no individual component, no matter how impactful for overall energy output (e.g., drilling a new injection well), could rival the total costs of the original project. Thus, we request that the final regulations eliminate the Excluded Cost Rule.

\* \* \*

We look forward to working with Treasury and IRS to ensure that the proposed Section 48E regulations fulfill Congress’ goal of encouraging continued investment in development and expansion of geothermal generation technology.

Sincerely,

Bryant Jones, PhD  
Executive Director  
Geothermal Rising

---

<sup>6</sup> See Prop. Reg. § 1.48E-4(c)(5).

<sup>7</sup> The proposed regulations do so by introducing the new term “unit of qualified facility” defined as “all functionally interdependent components of property . . . owned by the taxpayer that are operated together and that can operate apart from other property to produce electricity.” Prop. Reg. § 1.48E-2(b)(2)(i). The proposed regulations go on to require that “costs incurred for new components of property added to used components of a unit of qualified facility may not be taken into account for purposes of the section 48E credit unless the taxpayer satisfies the 80/20 Rule by placing in service a unit of qualified facility for which the fair market value of the used components of property is not more than 20 percent of the total value of the unit of qualified facility taking into account the cost of the new components of property plus the value of the used components of property.” Prop. Reg. § 1.48E-4(c)(5).