

Statement on behalf of bp America, Inc.
**IRS Public Hearing on REG–132569–17: Definition of Energy Property and
Rules Applicable to the Energy Credit**

February 20, 2024 – 10 am EST

10 minutes

Thank you for the opportunity to provide comments today related to the Section 48 Investment Tax Credit for qualified biogas property.

My name is Robert Guido, I'm Senior Manager for Global Tax Policy at bp America.

My statement will highlight bp's US investments in biogas and renewable natural gas production through our subsidiary, Archaea Energy.

Importantly, it will also explain how the proposed regulations and follow-on technical correction, if not changed, could have a significant negative effect on our plans to further develop biogas projects and ultimately hinder important efforts to reduce methane emissions and decarbonize the American economy. In addition, the proposed regulations would put strain on projects currently in our development pipeline for which capital investment decisions have already been made and where prevailing wage jobs and apprenticeship program development are already underway.

I would like to begin by providing some background on bp and our biogas portfolio.

bp is investing in America's energy system as we transition from an international oil company to an integrated energy company. With \$150 billion invested in the US since 2005, we employ more than 30,000 people and support more than 275,000 jobs. We have a bigger footprint here than anywhere else in the world, and we're proud to be a trusted partner for secure, affordable and reliable energy.

As part of our transformation into an integrated energy company, in December 2022, we completed the acquisition of Archaea Energy, the largest producer of renewable natural gas in the country. Archaea expands bp's presence in the US biogas industry, enhancing our ability to support customers' decarbonization goals and progressing our aim to reduce the average lifecycle carbon intensity of energy products sold. Properly cleaned and conditioned biogas (i.e., RNG) can be used beneficially for transportation fuel, home heating fuel or sustainable aviation fuel, and for lower-emission natural gas power plants already operating in the US. Archaea is also researching and developing additional uses for the byproducts of cleaned and conditioned biogas, such as clean CO2 for industrial processes.

Archaea has a significant development pipeline of more than 80 projects and continues to look at opportunities to increase the portfolio through strategic relationships within the public and private sectors. In the near term, Archaea has a goal of bringing up to 35 plants online by the end of 2025 with each facility costing between \$14 – \$65 million – depending on plant size – for a total anticipated capital commitment in excess of \$500 million a year over the next several years. Archaea’s current projected development schedule for new facilities in calendar year 2024 alone could result in avoiding approximately 1 million metric tons of CO2 equivalent greenhouse gas emissions per year, equivalent to the CO2 emissions of almost 226,000 cars, per the Environmental Protection Agency's calculator.

A well-designed biogas ITC will increase the likelihood that the numerous biogas plants in bp’s development portfolio will be constructed by allowing such projects to remain cost competitive. The proposed regulations, as drafted, could materially affect Archaea’s anticipated US investment to build out dozens of biogas facilities across the US, including in Kentucky, Montana, Colorado, Alabama, North Carolina, Pennsylvania, Texas, California, Georgia, Virginia, Michigan and Indiana.

Underpinning the construction and operation of these facilities are US jobs. On average, each facility constructed by Archaea would create an estimated 100 prevailing wage jobs and will develop the next generation of biogas construction workers through apprenticeship programs. In addition to onsite construction work, each plant will be supported by Archaea staff including but not limited to: a project management team, site and civil engineering team, facility operational staff, and multiple third-party contractors involved with inspections, site and earthwork construction, mechanical and electrical construction, and commissioning and permitting work.

Turning now to the proposed regulations, while we appreciate the technical correction issued by Treasury last Friday which allows taxpayers to include cleaning and conditioning equipment as an “integral part”, we believe this does not go far enough in that it still requires taxpayers to own all parts of a qualified biogas system to claim the ITC. Without further clarification on functional interdependence and multiple ownership the vast majority of landfill gas to RNG plant operators will not be eligible to benefit from the ITC in regards to the critical cleaning and conditioning components.

First, on functional interdependence, we believe that for the regulations to reflect Congressional intent and the express statutory inclusion of “cleaning and conditioning equipment” in qualified biogas property in IRC §48(c)(7)(B), this equipment should be characterized as “functionally interdependent” – that is, the placing in service of both the biogas collection and the cleaning and conditioning equipment is required to fulfill the intended function of the qualified biogas property. Together both the gas collection system and cleaning and conditioning equipment constitute the entire biogas system with such cleaning and conditioning equipment being a necessary component that ensures the productive use of the biogas with a methane content of at least 52% beyond uses of such product that are already incentivized in other parts of the Internal Revenue Code.

We therefore recommend redefining cleaning and conditioning equipment as functionally interdependent with the gas collection components of a biogas facility.

Second, on multiple ownership, Treasury should address the constraints the proposed rules place on projects where separate components of an energy property are owned by distinct taxpayers.

As context, in the landfill-based biogas industry, it is common for distinct taxpayers to hold separate ownership interests in the gas collection system and the cleaning and conditioning components of the system. Separate ownership of these two discrete components of the overall system is common for numerous reasons, including but not limited to regulatory concerns and financial and capital investment constraints. For example, landfill owners and wastewater treatment plants are often willing to sell their raw biogas to taxpayers owning the cleaning and conditioning equipment but may not want to bear construction or operational risks nor incur capital expenditure costs associated with the biogas cleaning and conditioning equipment. Further, a biogas project developer may be unwilling or unable to own even a de minimis fractional ownership in a gas collection system that is inextricably connected to the operations of a landfill or wastewater treatment plant.

To recognize the industry norm of multiple ownership and ensure taxpayers owning landfill gas systems are eligible to claim the ITC, we recommend two further changes.

Treasury should remove the “fractional interest” multiple-ownership rules for taxpayers that own different functionally interdependent components of the same unit of energy property, as well as the two examples dealing with geothermal energy that illustrate this unnecessary requirement. There is no underlying policy reason to distinguish biogas energy projects where unified ownership of all parts of the biogas system is standard from landfill biogas energy projects where different ownership is not only common but, in many cases, required.

Finally, Treasury should remove or clarify the 80/20 rule. It is likely that most systems will fail the 80/20 test if this valuation metric is applied on the entire system rather than separate components owned by different taxpayers which were likely placed in service at different times. We recommend the 80/20 rule apply to taxpayers only to the extent that use of both the new and used property originated with that same taxpayer, and not when separate taxpayers own different components comprising a biogas system.

In closing, we appreciate the effort Treasury has made in applying the ITC regime to biogas. However, we have serious concerns about the characterization of cleaning and conditioning equipment, the application of the fractional ownership rules, and the 80/20 rule. Accordingly, we respectfully request that Treasury revise the proposed regulations to address these concerns. Given the December 31, 2024, deadline to begin construction on qualified biogas property, time is of the essence, and we urge Treasury to issue final regulations as soon as possible. In the meantime, bp will supplement our comments made here today with an additional comment letter outlining the concerns addressed just now.

Thank you again for allowing me to appear today and I welcome any questions you may have.