

Message

From: Minge, John C [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A467EFF6BEB4CE59F292FE3A25FD8C] [REDACTED]
Sent: 17/10/2019 20:44:28
To: Yeilding, Cindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=177049344af2433483f35665757451c4] [REDACTED] Stricker, Jane [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=462191a081454d9da55eda67c27cc4e5] [REDACTED]
Subject: Re: CONFIDENTIAL: Proposed edit to Chapter 3 section on 45Q recapture provision language

Thanks Cindy and Jane -

Before it goes too far, I think I could weigh in with my opinion. The only person who raised this was Jan S. - the steering committee agreed to work language to reduce reputation risk (provide explanation to why this is necessary and shouldn't be confused or muddled with liability provisions) - but they did not agree to modify the policy for 3 year recapture.

That said, the steering committee has generally been supportive of the CSC recommendations. It is difficult to see this getting resolved cleanly without the CSC supporting it. Feels like Jan is digging in deeper, and my guess is she will get Gretchen's support (and the fact she's digging in probably means she has Gretchen's blessing now).

I could also call Gretchen- but that is a riskier strategy.

My sense is the CSC supports this - Shell is the only one who doesn't (and outside of reputation, they have no other rationale- just want to be silent.). We have not been taking the position of punting difficult issues, and we shouldn't start now.

From my perspective, we could do more on the words to explain directly- and describe this issue, and why the CSC agreed. Could even say their were some alternative views.

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From: Yeilding, Cindy <[REDACTED]@bp.com>
Sent: Thursday, October 17, 2019 1:10:02 PM
To: Minge, John C <John.Minge@bp.com>; Stricker, Jane [REDACTED]@bp.com>
Subject: CONFIDENTIAL: Proposed edit to Chapter 3 section on 45Q recapture provision language

Dear John and Jane,

Agree with being silent for a day or so to see how this plays out. Would like to frame options for path forward in case it doesn't resolve over email:

Options:

- 1). Hold to "no changes" principle: already agreed by CSC/Steering Committee (not sure this does us any good- we have and will likely be changing other language so would be inconsistent with the process)
- 2). Reconvene key players (via telecon) to debate options, agree path forward, and if any changes, socialize with CSC

Potential outcomes:

- a. No change to existing language
- b. Jan's proposed language
- c. Debate and agree compromise language

d. Eliminate and remain silent on topic.

3). As a CCUS leadership team, make an (informed decision) and move on (not recommended unless option 2 fails).

I'm not sure if/how this is playing out in other areas (Energy Advance Center?). Should we have a quick word with Jim Nolan to discuss?

Thanks, cindy

Confidential

From: Scott Anderson <[REDACTED]@edf.org>
Sent: Thursday, October 17, 2019 11:22 AM
To: Powell, Guy A <[REDACTED]@exxonmobil.com> <[REDACTED]@shell.com>
Cc: Stricker, Jane <[REDACTED]@bp.com>; Blevins, Susan K <[REDACTED]@exxonmobil.com> <[REDACTED]@rff.org>;
Yeilding, Cindy <[REDACTED]@bp.com>; Minge, John C <[REDACTED]@bp.com> <[REDACTED]@c2es.org>
Subject: RE: FOR COMMENT: Proposed edit to Chapter 3 section on 45Q recapture provision language

You and I had a lot of discussion in Chicago, and a few others looked closely at what you and I came up with, but there really wasn't a lot of discussion by the full CSC. I think the question ought to be which approach is better.

From: Powell, Guy A <[REDACTED]@exxonmobil.com>
Sent: Thursday, October 17, 2019 11:17 AM
To: [REDACTED]@shell.com; Scott Anderson <[REDACTED]@edf.org>
Cc: [REDACTED]@bp.com; Blevins, Susan K <[REDACTED]@exxonmobil.com>; [REDACTED]@rff.org;
[REDACTED]@bp.com; [REDACTED]@bp.com; [REDACTED]@c2es.org
Subject: RE: FOR COMMENT: Proposed edit to Chapter 3 section on 45Q recapture provision language

We landed this recommendation a month ago, after much discussion and debate. I do not support changing at this point. Guy

Guy A. Powell
Corporate Strategic Planning
Exxon Mobil Corporation

[REDACTED]
Irving, TX 75039
[REDACTED]

From: [REDACTED]@shell.com [mailto:[REDACTED]@shell.com]
Sent: Thursday, October 17, 2019 10:49 AM
To: [REDACTED]@edf.org; Powell, Guy A <[REDACTED]@exxonmobil.com>
Cc: [REDACTED]@bp.com; Blevins, Susan K <[REDACTED]@exxonmobil.com> <[REDACTED]@rff.org>;
[REDACTED]@bp.com; [REDACTED]@bp.com; [REDACTED]@c2es.org
Subject: RE: FOR COMMENT: Proposed edit to Chapter 3 section on 45Q recapture provision language

My suggestion for edits are noted in blue below. I appreciate that you don't want to change the recommendations, but we should consider how the recommendations read when placed at the front of the document without any of the background from the chapters. In fact, Jan Mares pointed this out for one of the other recommendations and you all accepted that easily. For recapture, I believe that we are setting ourselves up for unnecessary criticism by wording of the recommendation. Shell prefers to be silent on recapture and I note that this will likely resolve itself through the 45Q comments that have already been provided. In fact, the IRS guidelines will likely be issued before the report is circulated. The action that I noted from the CSC on October 4th was that the recommendation and chapter would at least make visible the rationale (i.e. financing for owner of capture). Hence, my recommended edits below.

1. Establish that “beginning construction” is satisfied when the taxpayer has spent or incurred 3% of the expected total expenditure and construction continues without interruption for 6 years.
2. Clarify options for demonstrating secure geological storage as it related to CO₂ via EOR. One potential option that has attracted significant stakeholder interest is ISO 27916. Utility of the standard for 45Q purposes has more to do with implementation than with the substance of the standard. The IRS should assess implementation issues and potential utility of this standard.
 1. Make credit transferable to encourage tax equity investment. The tax credit should be transferable, in full or in part, to any party that has a vested interest in the capture project including project developer, the party capturing the CO₂ or the entity that stores the CO₂.
 2. Specify terms for the recapture of tax credits to allow financing and encourage investment by the owner of capture equipment. The recapture terms should require that the taxpayer continue to comply with a Treasury recognized method for demonstrating secure geologic storage and has a plan to remediate leaks of CO₂ should they occur.

~~Provide that the tax credit will not be subject to recapture for longer than 3 years^[1] after the time of injection provided that the taxpayer continues to comply with a Treasury recognized method for demonstrating secure geologic storage and has a plan to remediate leaks of CO₂ should they occur; or has by contract required another party to continue to comply with Treasury recognized method for demonstrating secure geologic storage and requires such party to remediate leaks of CO₂ should they occur.~~
3. Clarify that additional carbon dioxide capture capacity placed in service after the BBA should be based on the average of the amount of CO₂ captured in the 3-years prior to enactment of the BBA or the facility’s nameplate annual capacity.

Paragraph From Chapter 3 (pg 36): (edited text in red)

Since its original enactment in 2008, Section 45Q has included a requirement that the Treasury, in consultation with the EPA, DOE, and DOI, issue regulations related to claiming these tax credits. The Treasury issued guidance in 2009 but has not yet issued regulations. As a result, the requirements necessary to access the 45Q tax credits has been unclear. For example, clarity has been needed since 2009 on options for demonstrating “secure geological storage” for CO₂ used in EOR. Post-BBA, that concern continues, but clarification is also needed regarding how credits can be transferred between parties, and what constitutes “beginning construction,” and recapture of tax credits. As noted previously, the 45Q tax credit is earned by the taxpayer who owns the carbon capture equipment. The ability to obtain financing for such projects requires some certainty regarding the value and duration of the tax credits. In most cases, however, the owner of the capture equipment is not the entity that utilizes or stores the CO₂. Lack of clarity regarding the transfer of credits between parties and recapture provision have the potential to create a barrier to financing for the owner of the capture equipment, even when that owner is not the entity utilizing or storing the CO₂. It is therefore important that the Treasury establish terms for recapture of the 45Q tax credits. Additionally, carbon capture projects may be economically attractive when tax credits are considered, but may have negative operating profits in the absence of consideration of tax credits: that could create a challenge unless the IRS clarifies that its “economic substance doctrine” does not apply.^[1] Resolving these requirements through new rules provided by the IRS will reduce uncertainty for investors, helping to enable the development of CCUS projects needed to begin widespread deployment. On June 5, 2019, the IRS issued Notice 2019-32 stating that Treasury and IRS intend to issue regulations under Section 45Q and solicited

^[1] Where: Current year (time of injection) + 2 = 3 years.

^[1] Recently filed comments of Hunton AK law firm for 45Q, on page 12/17 and 13/17.

public comments on many aspects of the credit, including secure geologic storage, start of construction, transferability, and recapture, which were top priorities identified by this study.

From: Scott Anderson <[REDACTED]@edf.org>
Sent: Thursday, October 17, 2019 6:33 AM
To: Powell, Guy A <[REDACTED]@exxonmobil.com>
Cc: Stricker, Jane <[REDACTED]@bp.com>; Sherman, Jan B SERC-UPU/N/L <[REDACTED]@shell.com>; Blevins, Susan K <[REDACTED]@exxonmobil.com>; Jan Mares <[REDACTED]@rff.org>; Yeilding, Cindy <[REDACTED]@bp.com>; Minge, John C <[REDACTED]@bp.com>; <[REDACTED]@c2es.org>
Subject: Re: FOR COMMENT: Proposed edit to Chapter 3 section on 45Q recapture provision language

Simply saying that Treasury establish terms for recapture seems to better represent the views of the group as a whole than the "three years so long as x and y" language.

Sent from my iPhone

On Oct 17, 2019, at 2:00 AM, Powell, Guy <[REDACTED]@exxonmobil.com> wrote:

This looks good

Sent from my iPhone

On Oct 16, 2019, at 9:12 PM, Stricker, Jane <[REDACTED]@bp.com> wrote:

All,

As a follow-up to the action list from today's CSC call, below is a proposed edit to Chapter 3 that attempts to more thoroughly describe the context for the recommendation regarding the request for clarity on the recapture provision. The intent is to explain the need for clarity (in the form of the 3 year limit) on the recapture provision. I think I have accurately described the issue as discussed during the SC meeting on October 4th, but please let me know if this misses the mark.

Paragraph From Chapter 3 (pg 36): (edited text in red)

Since its original enactment in 2008, Section 45Q has included a requirement that the Treasury, in consultation with the EPA, DOE, and DOI, issue regulations related to claiming these tax credits. The Treasury issued guidance in 2009 but has not yet issued regulations. As a result, the requirements necessary to access the 45Q tax credits has been unclear. For example, clarity has been needed since 2009 on options for demonstrating "secure geological storage" for CO₂ used in EOR. Post-BBA, that concern continues, but clarification is also needed regarding how credits can be transferred between parties, and what constitutes "beginning construction." As noted previously, the 45Q tax credit is earned by the taxpayer who owns the carbon capture equipment. The ability to obtain financing for such projects requires some certainty regarding the value and duration of the tax credits. In most cases, however, the owner of the capture equipment is not the entity that utilizes or stores the CO₂. Lack of clarity regarding the recapture provision has the potential to create a barrier to financing the owner of the capture equipment, even when that owner is not the entity utilizing or storing the CO₂. It is therefore important that the Treasury establish terms for recapture of the 45Q tax credits. Additionally, carbon capture projects may be economically attractive when tax credits are considered, but may have negative operating profits in the absence of consideration of tax credits: that could create a challenge unless the IRS clarifies that its "economic substance doctrine" does not apply.^[1] Resolving these requirements through new rules provided by the IRS will reduce uncertainty for investors, helping to enable the development of CCUS projects needed to begin

^[1] Recently filed comments of Hunton AK law firm for 45Q, on page 12/17 and 13/17.

widescale deployment. On June 5, 2019, the IRS issued Notice 2019-32 stating that Treasury and IRS intend to issue regulations under Section 45Q and solicited public comments on many aspects of the credit, including secure geologic storage, start of construction, transferability, and recapture, which were top priorities identified by this study.

As noted during the call, the recommendations as written in the chapter and the executive summary have been endorsed by both the CSC and the Steering Committee and I have not made any changes to those.

Thanks,

Jane Stricker
Director of Risk Management
BP America, Inc.

[REDACTED], Houston, TX 77079

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