

September 8, 2023

The Honourable Chrystia Freeland, MP
Deputy Prime Minister and Minister of Finance
Government of Canada
90 Elgin Street
Ottawa, ON K1A 0G5

Re: Draft Investment Tax Credits and Labour Requirements Consultation

WaterPower Canada is Canada’s national industry association representing the hydropower industry. We represent utilities, equipment manufacturers, constructors, consultants, and associated industry partners. We are pleased to have the opportunity to provide input towards the draft Clean Technology Investment Tax Credit (Clean Tech ITC), the Carbon Capture, Utilization and Storage Investment Tax Credit (CCUS ITC) and the proposed labour requirements released on August 4th, 2023.

Overall, WaterPower Canada is very supportive of ITCs to encourage investment in clean electricity projects. It is essential that the federal government support a meaningful portion of the costs associated with the unprecedented investment needed to rapidly decarbonize our electrical grid and electrify our economy. These are costs that would otherwise be borne by utilities and passed along to consumers of electricity. Electricity must be kept affordable through this transition. ITCs can also help keep Canadian electricity and electricity intensive industry competitive as the US IRA implements a range of similar tax credits.

We are deeply concerned, however, that the ITCs' provisions, including some of the labour ones, will severely limit their practical availability and that the potential benefits associated with the ITCs will not be realised.

Hydropower projects are major sources of high-quality employment within Canada. These projects typically operate under collective bargaining agreements. However, it is critically important to understand the current and anticipated market for skilled labour is incredibly tight which will make meeting the anticipated energy transformation a challenge.

With respect to the Clean Tech ITC:

- The Clean Tech ITC should be extended to tax exempt entities, and
- it should be available on a “cost incurred” basis rather than the proposed “available to use” approach.

While the Clean Electricity ITC draft legislation has not yet been released, we expect its labour requirements to be similar for the Clean Tech ITC.

Our following comments focus on the proposed labour requirements:

1. Eligible Collective Agreement

The proposed legislation outlines the concept of an ‘industry standard’ without clarifying what the industry standard is. In many provinces, multi-employer collective agreements are in place between Construction Labour Relations Associations (CLRAs) and building trades unions, but these construction agreements are not the bases for agreements between electric utilities and their trades workers.

Further, a project labour agreement covering an eligible investment and established under provincial labour relations legislation is not necessarily based on CLRA agreements as indicated in the draft legislation.

A collective agreement established pursuant to a provincial special project order under applicable provincial labour relations legislation should not have to be based on that province’s multi-employer agreements to be eligible. This is an unnecessary limitation on agreements that frequently go beyond the multi-employer agreements to ensure labour stability on long-term large-scale projects.

We therefore recommend:

- a) That proponents be deemed to have met the labour requirements if the project’s construction labour simply falls under an eligible collective bargaining agreement.
- b) The definition of an ‘eligible collective agreement’ be expanded to include a collective agreement negotiated between the operator of a designated work site and its own employees without reference to a multi-employer (construction) agreement.
- c) The definition of an ‘eligible collective agreement’ relating to project labour agreements be modified to read ‘a project labour agreement that covers the work associated with the investments eligible for the specified tax credits and that is (a) based on agreements described in subparagraph (i) or (b) enacted through a provincial special project order.

2. Reduced or Regular Rate

The draft legislation provides a drastic reduction in the availability of the tax credit if a developer opts out of the labour requirements (a drop from 15% to 5% if the labour provisions were to apply to the clean electricity ITC). As the labour provisions are currently proposed, we are very concerned that many projects will be unable to meet the provisions. We are particularly concerned that smaller projects like facility retrofit investments may have more difficulty complying.

For those that cannot comply, the significant administrative burdens and penalties may outweigh the potential benefits associated with a 5% credit. We recommend that the requirements be modified as discussed within this document and that the penalties be reduced (to a minimum tax credit of 10%). Further, the approach should be modified to provide a sliding scale of benefits for developers between 15% and 10%.

3. Prevailing Wage Requirements

As noted above, the prevailing wage requirements omit employees of the owner/operator. Owner/operator trades workers play an essential role in certain aspects of designated works, particularly during start-up and commissioning of a project.

Costs associated with these workers are capitalized as part of the job, but they are employees of the owner/operator and are covered by the owner/operator's collective agreement with the employees' union.

Some owner/operator trades positions fall within the Red Seal trades, so it is important that a compliance mechanism exist for these workers. Our recommendation above including owner/operator workers would address this issue.

The attestation requested in (b) of the Prevailing wage requirements for an owner/operator's own employees who are Red Seal workers is not reasonable, as those workers have been hired subject to their own terms and conditions, including collective agreements. Paying bonuses or top-ups to comply with the terms and conditions of the construction workers' contracts is not a workable compliance mechanism.

Similarly, we are unclear as to what 'reasonable steps' an owner/operator could take to ensure workers of a contractor who is already party to a collective agreement could take to modify the terms of that existing collective agreement.

In our view, reporting purported failures to pay prevailing wages to the Minister of Finance will create an administrative nightmare. The 'prevailing wages' determination is based on the collective agreement, which can be readily audited without input from the job site and pay issues for individual workers is addressed through an existing dispute resolution (grievance) process between the applicable worker and their employer. In short, the federal Minister of Finance should have no role in adjudicating collective agreement matters.

4. Indexation of Prevailing Wages

We do not support the automatic indexation of expired collective agreements when an underlying reference agreement has expired. Firstly, the CLRA agreements are used by many contractors and unions, so their expiry for any significant period is very unlikely. More importantly, wage matters are addressed by the collective agreements and their parties.

5. Apprenticeship Requirements

We note that the proposed legislation indicates that an incentive claimant is expected to make 'reasonable efforts' to ensure that apprentices work at least 10% of the total hours worked during the year at a designated work site, but the legislation provides no guidance as to what those reasonable efforts might be. Some complicating factors include:

- a) Collective agreement that are based on model agreements as noted above, already have terms and conditions associated with the numbers of apprentices on a given job,

- b) Given the pay scales for tradespersons, contractors already have an incentive to utilize apprentices where possible,
- c) The composition of the trades work force is established by the contractors completing the work based on their requirements for specific skills and experience, not the owner/operator.

We believe that the apprenticeship requirements as drafted are an unnecessary intrusion into matters that are best managed within the scope of applicable collective agreements. The draft requirements also provide no compliance mechanism to address the possibility the targeted level of apprentices might not be available for a job.

Given the significant shortage of trades workers in Canada, Investments by developers to increase the supply of apprentices through outreach and training should be considered as reasonable efforts and recognized as part of the labour requirements.

6. Top-Up Amount

The concept of top-up payments to workers is unworkable in our view. The owner/operator is not the employer of these workers, and the workers are already paid in accordance with a collective agreement. The proposed approach is both commercially unworkable and administratively burdensome, and in our view, addresses a problem that does not exist.

As noted above, once the collective agreement is confirmed to be eligible, individual pay matters are addressed through the administration of the applicable collective agreement, not through intervention of the Minister of Finance for the Government of Canada.

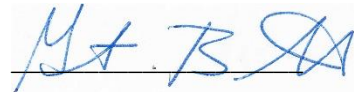
In summary, our principal recommendations are:

- 1) A collective agreement established through a special project order under provincial labour relations law should be accepted as an eligible collective agreement,
- 2) Workers of the owner/operator of a designated work site should be deemed to have met the prevailing wage requirements unconditionally,
- 3) Indexation of prevailing wages should be addressed within applicable collective agreements, not through a tax credit requirement,
- 4) The apprenticeship and wage top up requirements are unworkable as ITC criteria, and are best left to applicable collective agreements,
- 5) The incentive should be based on a sliding scale or progressive approach as opposed to the 'all or nothing' approach embodied in the draft legislation.

WaterPower Canada agrees with the Government of Canada's objective to incent investment in projects that advance our climate change goals but does not agree with their use as a compliance mechanism to enforce labour objectives. Developers should be rewarded for making good faith efforts to comply with labour and apprentice participation targets.

We would be pleased to meet with representatives of your department to discuss these points further.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Bennett", is written over a light blue horizontal line.

Gilbert Bennett
Interim President

cc. The Honourable Jonathan Wilkinson, MP, Minister of Energy and Natural Resources