Power and Utilities: Quarterly Insights

Second Quarter 2023

Introduction

In this edition of Power and Utilities: Quarterly Insights, we highlight the latest developments with the Inflation Reduction Act and the results of our Large Energy User Survey. We also continue our regular quarterly features on what to watch at the SEC, the FASB, and the FERC as we look ahead to the remainder of 2023.

Industry updates

Industry updates

Inflation Reduction Act

Key accounting and tax updates

The IRA provides significant extensions, expansions and enhancements of numerous energy-related tax credits that relate to investments in qualifying property and production of qualifying energy or energy-related products. These credits are intended to incentivize investments by companies in a clean energy future. The IRS has continued to issue IRA-related notices throughout the first and second quarter that provide further clarification on key aspects of the climate and energy-related credits included in the Act. Final regulations addressing items discussed in the recent notices are expected to be issued later in the year. The following are some of the key provisions in recent notices most likely to impact power and utilities companies

Notice	2023-29 – Energy Community Bonus Credit	2023-17 – Environmental justice and solar wind capacity limitation	2023-38 – Domestic Content Credit	2023-44 – Section 48(c) Advanced Energy Project Credit
Issued	**April 2023**	**February 2023**	**May 2023**	**May 2023**
Impact	Provides interim guidance on the bonus credit for locating a facility in an energy community (as defined within the notice). The notice provides clarity on when and whether projects, based on location and timing of construction, are eligible for the bonus credit. See our Tax insights: *IRS preliminary guidance on energy community bonus credit* for more information.	Provides guidance on the Section 48 energy investment credit (Low-Income Communities Bonus Credit Program), including project eligibility requirements for location and capacity, as well as how the credits will be allocated. See our Tax insights: *Guidance issued on allocating environmental justice solar and wind capacity information* for more information.	Provides interim guidance in advance of proposed regulations on the domestic content bonus credit and a process to assess products, components and subcomponents used in the construction of clean energy production facilities or property. See our Tax insights: *IRS provides guidance on domestic content bonus energy credit* for more information.	Provides additional details on eligibility, application requirements, and selection criteria for the program for credits for advanced energy projects. See our Tax insights: *Additional guidance on Section 48C energy credit allocations* for more information.

Industry updates

Inflation Reduction Act

Spotlight on CAMT

Despite the interim guidance issued by the IRS in Q1 2023, questions have been raised by taxpayers about certain provisions of the CAMT, including how to determine whether an entity is an “applicable corporation” subject to the CAMT and if it is, how adjusted financial statement income (AFSI) used in calculating the CAMT should be determined. To help address some of the uncertainty, the IRS and Treasury issued Notice 2023-42 in June 2023, which provides relief from estimated tax penalties for failure to make a sufficient and timely payment of estimated income tax with respect to a corporation’s CAMT liability. To benefit from the waiver, affected taxpayers must complete Form 2220 and comply with certain filing requirements, even if they do not owe any estimated tax penalty. See our Tax insights: IRS provides relief of estimated tax penalties for the CAMT for specific requirements and more information.

Industry updates

Inflation Reduction Act

Other IRA-related updates and insights

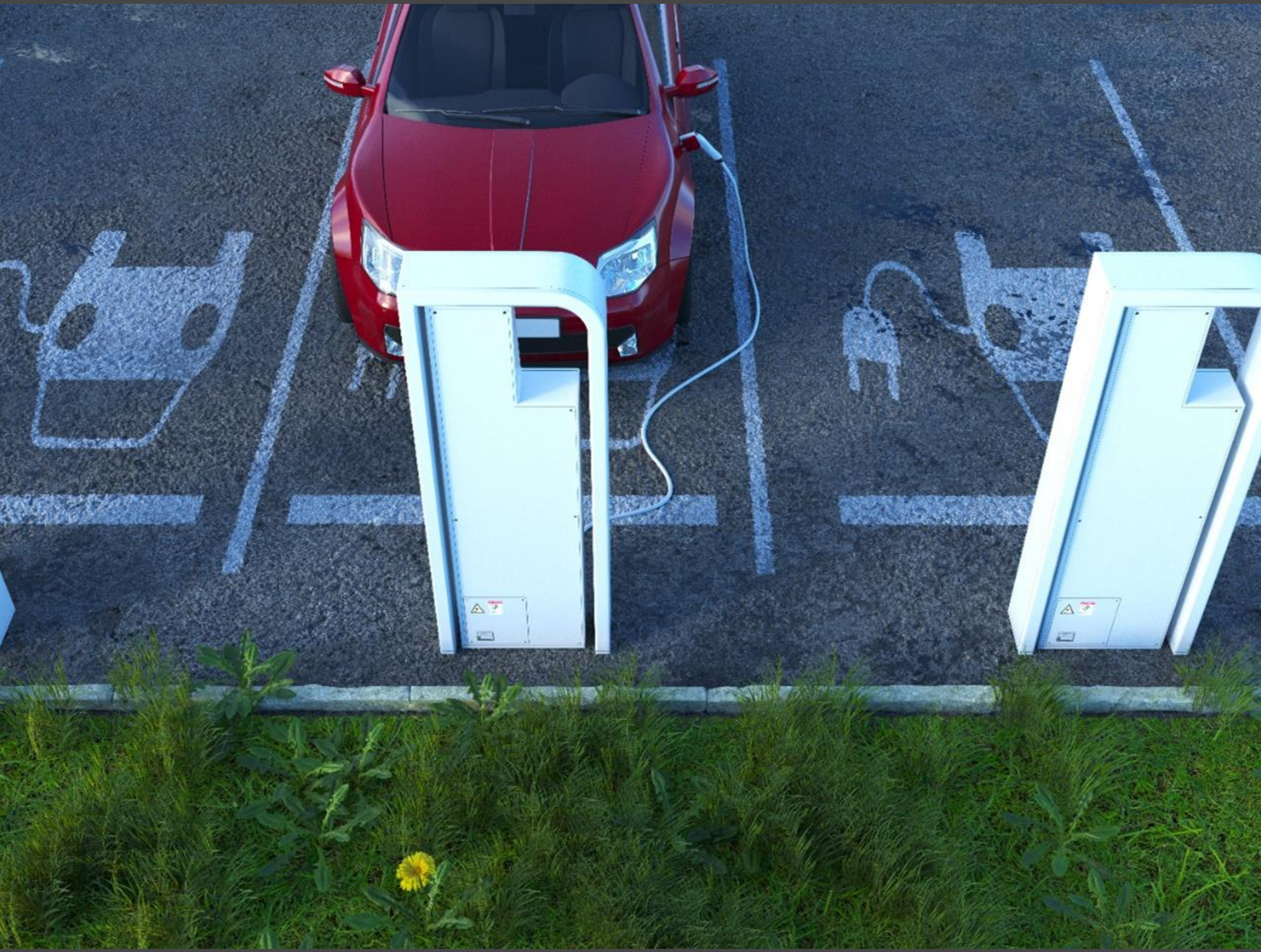
Most of the credits under the IRA may be transferred for cash to another taxpayer and certain credits may be monetized through a “direct-pay” option from the government. In addition to the notices issued by the IRS during the first and second quarter, the IRS also issued temporary and proposed regulations on the methods by which these tax credits may be monetized.

- **Direct Pay (“Elective Pay”) proposed regulations** - Elective Pay (also known as “direct pay”) allows applicable entities (as defined within the proposed standard), — including tax-exempt and governmental entities that would otherwise be unable to claim these credits because they do not own federal income tax — to benefit from some clean energy tax credits by treating the amount of the credit as a payment of tax. The amount would then be refunded to them by the IRS as no federal income tax is due. These proposed and temporary regulations provide guidance on applicable entities, applicable tax credits and pre-filing registration requirements. See our Tax insights: Regulations address direct payment of energy tax credits for more information.
- **Transferability proposed regulations** – Transferability allows a taxpayer that generates certain clean energy tax credits to elect to transfer (i.e., sell) all or a portion of a tax credit to an unrelated third-party transferee (i.e., buyer) in exchange for cash. These proposed and temporary regulations provide guidance on qualifying transfers, amount of qualifying credit transfers, time and manner requirements, as well as recapture periods and pre-filing registration requirements. See our Tax insights: Regulations address transfers of energy tax credits for more information.

Accounting Considerations

Accounting for credits included in the IRA may require reporting entities to make certain policy elections based on their specific facts and circumstances and the nature of the credits received. While the credits are described in the Internal Revenue Code and may be claimed on an income tax return, the credits may not always be in scope of ASC 740, Income taxes. The manner in which many of the credits in the IRA may be monetized, including direct pay, make some of these credits more akin to government grants. Therefore, each credit must be analyzed carefully to determine the appropriate accounting model. Refer to our In depth: Account for Inflation Reduction Act energy incentives for more information, including features of each of the credits and key considerations for determining the appropriate accounting model.

PwC 2023 US Large Energy User Survey



PwC 2023 US Large Energy User Survey

We asked more than 1,000 executives and business leaders about their plans for energy efficiency, carbon reduction and related investments to understand their energy needs and priorities better. Respondents to our PwC 2023 US Large Energy User Survey included commercial and industrial (C&I) companies across manufacturing, transportation, retail, consumer products and several other industries.

>90%	of commercial and industrial customers need support to help them meet their energy initiatives and goals.
74%	of commercial and industrial customers have comprehensive energy strategies in place.
46%	expect a greater proportion of electricity to come from on-site generation or battery storage in the next two years.

The survey highlights that America's most energy-intensive industries want to reduce energy, cut costs, move to more renewable energy sources and adopt other clean energy technologies. Further, while commercial and industrial companies are making progress, the have a desire to do more and need support. This is a potential untapped opportunity for energy and utility companies to help their largest commercial and industrial customers achieve their goals while also leading their own transitions to cleaner energy. These opportunities continue to grow even for the energy and utilities companies that are already developing and offering energy and renewables-related services to customers. Read more about these findings and other observations about customer priorities, regional goals and the top obstacles commercial and industrial company C-suite executives face in our full report available here.

Accounting, reporting and SEC updates

Accounting, reporting, and SEC updates

SEC updates

ESG rules

Rules related to environmental, social and governance (ESG) topics have been a high-profile priority for the SEC in recent years. The SEC has previously proposed rules related to climate disclosures and cybersecurity risk governance and has communicated that it intends to propose new rules on disclosure requirements related to human capital and corporate board diversity.

In June 2023, the SEC released its Spring 2023 regulatory agenda which includes details of the topics and timing of the actions that the Commission plans to take. The agenda continues to suggest a focus by the Commission on climate change, cybersecurity, and human capital disclosures with their prioritization of these topics indicated for 2023, and corporate board diversity expected in 2024.

See the SEC's full regulatory agenda here.

Erroneously awarded compensation

In October 2022, the SEC adopted final rules related to erroneously awarded compensation. The final rules direct stock exchanges to establish listing standards to require companies to adopt policies to recover erroneously awarded compensation when there is a required restatement of the financial statements, including both "Big R" restatements and "little r" revisions.

In June, the SEC approved the proposed listing standards. The new listing standards will be effective beginning on October 2 and require that listed companies enact compliant recovery policies by December 1. Calendar year end companies will be required to disclose their policies beginning with their 2023 Form 10-K. Companies should review the new rules and their current policies together with legal counsel and other advisors and make necessary changes to ensure that their compensation and clawback policies are in compliance with the new standards.

Accounting, reporting, and SEC updates

SEC updates

Recent comment letter trends

Each quarter, PwC analyzes comment letters issued by the SEC's Division of Corporation Finance to registrants, identifies the common topics commented on and provides examples of comments within those topics. These trends are published on an overall basis and by industry. See the most recent themes for the Energy, Utilities and Resources industry here: Comment Letter Trends – Energy, Utilities, and Resources.

Notable trends this quarter include the following:

- Non-GAAP measures continue to be an area of focus for the staff and represent the top area of comment for the industry
- The SEC continues to comment on climate change matters, representing the fifth most common topic for the industry.

Accounting and reporting updates

Making investments in IT? Here's how the FASB's software costs project could impact your company

The FASB's project on accounting for and disclosure of software costs aims to modernize existing guidance and enhance transparency regarding software costs. The project's initial scope involved a review of the existing accounting models for software used solely for internal purposes (including on-premise and cloud-based services) and software marketed externally to customers, particularly whether costs associated with acquiring, developing, or modifying the software should be capitalized or expensed. In April 2023, the FASB directed the focus toward further investigating a single capitalization model. Deliberations are ongoing, and power and utility companies making IT investments should stay informed about future developments, including potential clarification or changes to the existing capital versus expense assessment and enhanced disclosure requirements.

Recently issued standards

In March 2023, the FASB issued ASU 2023-02, *Investments – Equity Method and Joint Ventures (Topic 323): Accounting for Investments in Tax Credits Structures Using the Proportional Amortization Method (a consensus of the Emerging Issues Task Force)*. Equity interests in certain renewable power plant entities and related renewable energy tax credit programs may now be accounted for using the proportional amortization method of accounting (PAM), if the criteria in ASC 323-740-25-1 are met. The guidance in ASU 2023-02 is effective for public business entities for fiscal years beginning after December 15, 2023. For all other entities, the guidance is effective one year later. Early adoption is permitted. For details on the key considerations related to adoption of this standard, refer to our In depth, *FASB changes accounting for tax credit investments*.

Accounting, reporting, and SEC updates

More required disclosures may be on the way

The FASB has continued its focus on projects aimed at enhancing the disaggregation of financial reporting information in the income statement, statement of cash flows, and the notes to the financial statements. In the following table we summarize some of the key presentation and disclosure projects with broad potential impacts:

Project	Next milestone and estimated timing	Potential impact
Disaggregation - Income statement expenses	Exposure draft - Q3 2023	Additional disclosures of disaggregated information on certain income statement expense captions
Interim Reporting–Narrow-Scope Improvements	Exposure draft - Q3 – Q3 2023	Clarifies when the guidance in ASC 270 is applicable and improving the navigability of the required interim disclosures
Improvements to income tax disclosures	Final standard - Q4 2023	Disaggregation of income tax disclosures related to income taxes paid and the rate reconciliation For more, listen to our podcast FASB income tax disclosure proposal: What you need to know.
Segment reporting	Final standard - Q3 2023	Additional disaggregation of reportable segment disclosure, including expenses
Statement of cash flows	Research (ongoing)	Improvements in the statement of cash flows that would provide additional decision-useful information for investors and other allocators of capital

In assessing the potential impacts of proposed guidance, companies should consider not only industry specific nuances, but also changes that may be needed to management's existing processes and controls.

CARS Corner

CARS Corner

Breaking News:

As we have previously shared on prior editions of CARS Corner, FERC had issued a Notice of Proposed Rulemaking (NOPR) that would update the FERC Uniform System of Accounts (USoA) for certain renewable and storage assets, as well as other matters. On June 29th, FERC issued Order 898 which represents its final order in this matter. Order 898 is effective January 1, 2025, on a prospective basis. The final order generally follows the Notice of Proposed Rulemaking (NOPR) that was previously issued. In addition to new subfunctions and accounts for wind, solar, and other renewable generating assets, the order establishes a new functional class for energy storage assets and creates new accounts for computer hardware, software, and communication equipment. The order also creates new accounts and codifies the accounting for environmental credits. Impacted companies will want to begin evaluating the new order and considering the impact it may have on financial reporting, ratemaking, processes and systems, including potential depreciation study impacts.

Ratemaking incentives for cyber security investments

In April, FERC issued a final rule in its Docket for Incentives for Advanced Cybersecurity Investment (E-1-RM22-19-000). The final rule provides a new mechanism for promoting cybersecurity investments by rewarding utilities for proactively enhancing their cybersecurity programs beyond the mandatory requirements of the North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) reliability standards. This final rule follows two different notices of proposed rulemaking (NOPR) issued over the last few years on this topic and also completed FERC's mandate to develop such an incentive under 2021's Infrastructure Investment and Jobs Act. The final rule provides rate making incentives for expenditures specifically related to participation in the US Department of Energy Cybersecurity Risk Information Sharing Program and internal network monitoring within a utility's cyber systems. It also provides an avenue for case-by-case investments (including those related to early compliance with the new cybersecurity reliability standards) to be approved by FERC. This list of preapproved investments qualifying for the incentive will be periodically updated by FERC.

Unlike the original NOPRs, which contemplated incentives for both capital and O&M investments in cybersecurity programs, the final rule only addresses O&M investments and provides for a deferral over a period of up to five years. FERC indicated that the majority of the eligible investments would be O&M related, and as a result, did not believe an incentive return on capital investments was necessary. Only investments that materially improve a regulated entity's cybersecurity program and that are incremental to investments required by the NERC CIP reliability standards or by law will qualify for the incentive.

The final rule may provide an opportunity for certain "Software-as-a-Service" cyber subscription costs to be deferred for FERC reporting under this program. Electric utilities subject to FERC jurisdiction should evaluate their cybersecurity plans in light of this final rule and consider their rate making options or implications.

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Other insights

Recent publications

Power and utilities: US Deals 2023 midyear outlook	Today's SEC climate disclosures – how do you measure up?	The quarter close – second quarter 2023

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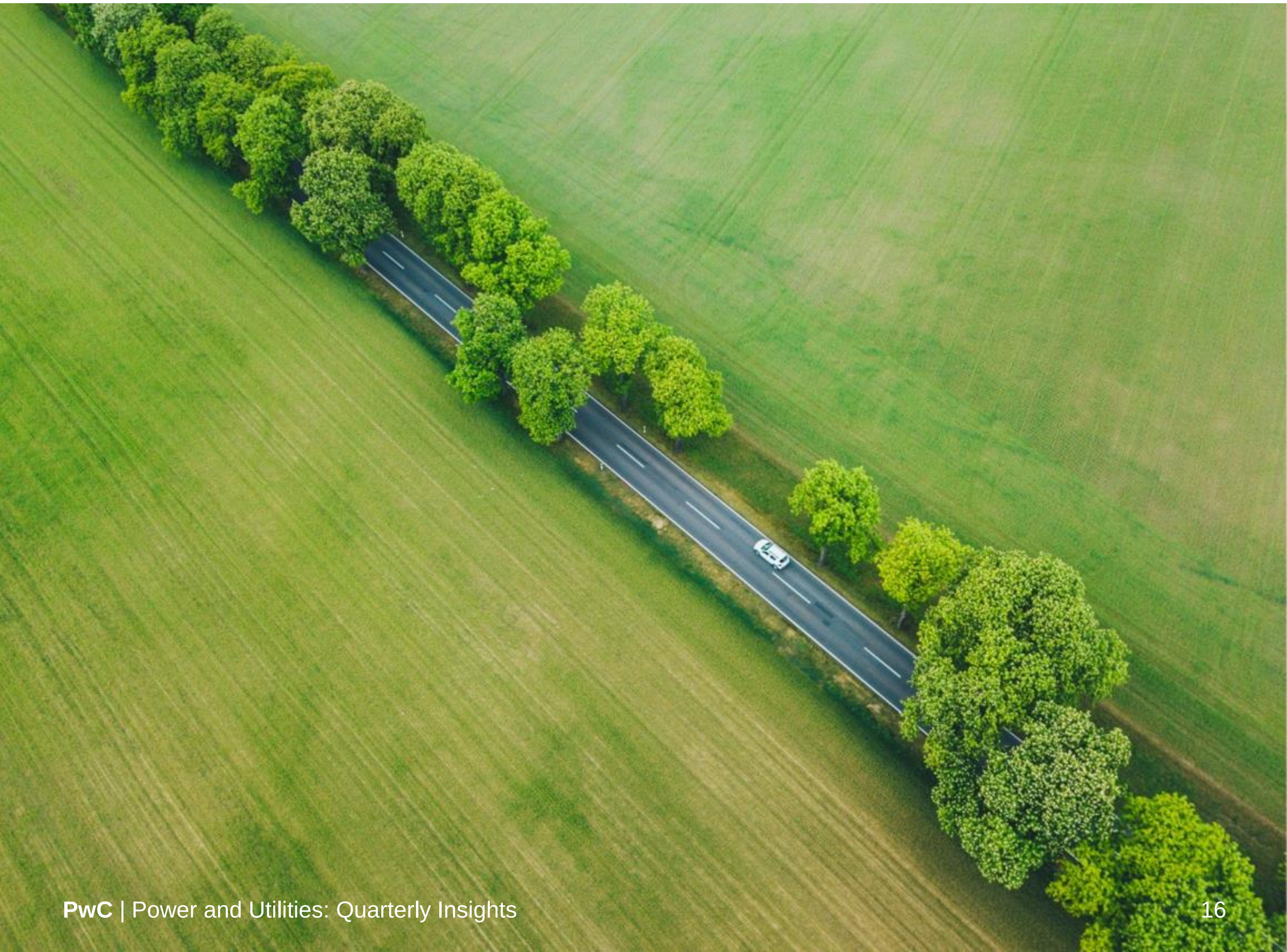

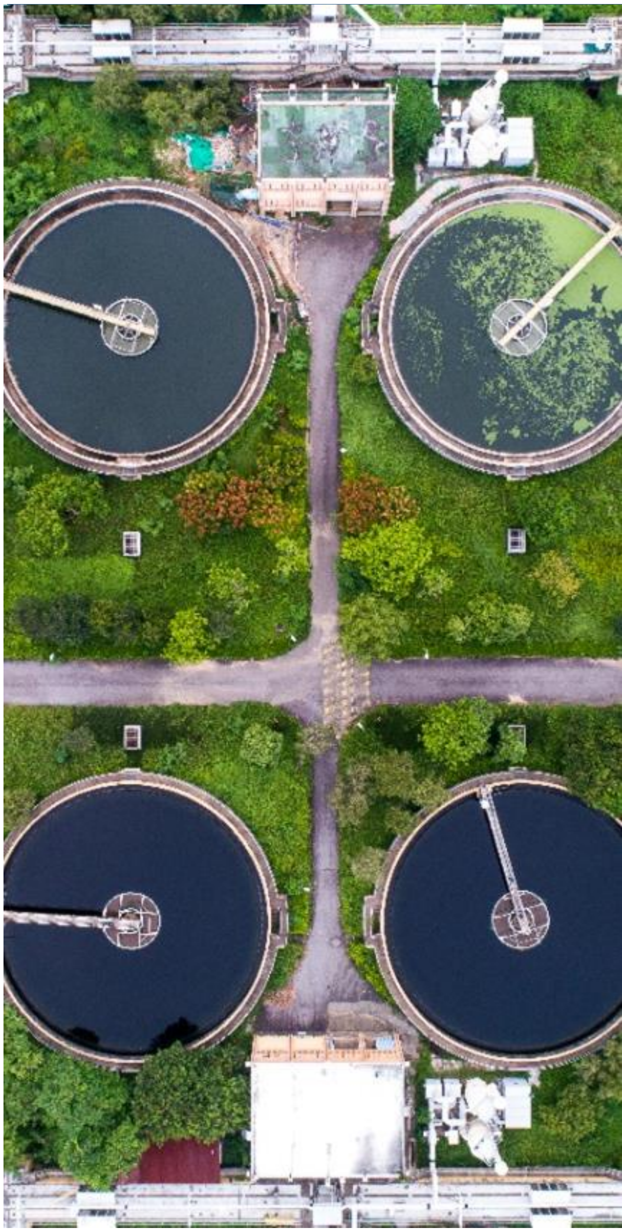

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