United States Senate

WASHINGTON, DC 20510

June 18, 2024

The Honorable Danny Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Commissioner Werfel and Secretary Yellen,

We write to express deep concerns with the proposed rule on the Section 45V tax credit for hydrogen[1] by the Internal Revenue Service (IRS) and the U.S. Department of the Treasury (Treasury). As proposed, the burdensome requirements necessary to obtain the hydrogen tax credit far exceed the statute. Efforts to inhibit such a nascent industry through overly restrictive Energy Attribute Certificate (EAC) requirements will surely backfire.

Opposition to the stringent requirements of the proposed guidance spans across our nation. All seven Regional Clean Hydrogen Hubs (H2Hubs) recently voiced concerns on the "proposed narrow guidance."[2] Specifically, the H2Hubs emphasized that, "these investments and jobs will not fully materialize unless Treasury's guidance, in its current form, is significantly revised, as many of the projects generating these investments and supporting jobs will no longer be economically viable."[3] At its core, "the proposed guidance poses a significant risk to the ability for the U.S. to be a global leader in the hydrogen economy."[4]

With the proposed rule, the IRS and Treasury strayed far away from the simple definition of clean hydrogen. In statute, qualified clean hydrogen is defined as "hydrogen produced through a process that results in a lifecycle greenhouse gas emissions rate of not greater than four kilograms of CO2e per kilogram of hydrogen."[5] Instead, IRS and Treasury set forth EAC requirements for "incrementality, temporal matching, and deliverability," more commonly known additionality, time-matching, and regionality, respectively.[6]

---

[1] See Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property, 88 Fed. Reg. 89220, December 29, 2023.
[2] See H2Hubs Letter to Treasury, February 26, 2024.
[3] *Id*.
[4] *Id*.
[5] P.L. 117-169
[6] See Note 1.

By requiring electricity used to produce hydrogen to be from new sources of clean power, the additionality restriction will undermine existing clean energy assets. Significant buildout of renewable energy to support hydrogen production will surely face permitting, supply chain, and inflation issues.[7] These challenges could easily delay hydrogen projects and lead to inefficiencies in the electric grid.

Similarly, by requiring tax credits to only apply when clean electricity is produced and consumed in the production of hydrogen simultaneously, hydrogen production with hourly time-matching becomes cost-prohibitive. Specifically, American Clean Power estimates that hourly time-matching requirements would increase the cost of hydrogen production between 20 and 150 percent.[8]

Furthermore, by requiring clean power to be sourced from a patchwork of regions identified in the Department of Energy's (DOE) National Transmission Needs Study, the proposed rule will cut off hydrogen projects from sources of clean electricity. DOE's map bifurcates several states, H2Hubs, and even Regional Transmission Organizations, which will be disastrous. As highlighted by Greater New Orleans, Inc. and a coalition of 23 local industry and university partners, "Adopting the defined regions for 45V delivery requirement contradicts the Needs Study's recommendations, undercuts national clean energy development, and has the potential to increase the cost of electrolytic hydrogen production."[9]

We hope you heed industry advice and revise the proposed rule to ensure flexibility for the hydrogen tax credit. The IRS and Treasury should not exceed the letter of the law to cater to a niche group. The viability of a robust nationwide hydrogen economy is at risk, as well as the $7 billion in investments made across seven H2Hubs.

Sincerely,

Bill Cassidy, M.D.

Bill Cassidy, M.D.
United States Senator

Mike Crapo

Mike Crapo
United States Senator

James E. Risch
United States Senator

Pete Ricketts
United States Senator

[7] Cleco, Comment Letter on Proposed Rule Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property, February 26, 2024.
[8] See "Green Hydrogen Deployment Brief," American Clean Power, November 2023.
[9] Greater New Orleans, Inc., Comment Letter on Proposed Rule Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property, February 25, 2024.