Congress of the United States

Washington, DC 20515

November 19, 2024

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

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

Dear Secretary Yellen and Commissioner Werfel,

We write to express our strong support for the development of a clean hydrogen economy in the United States, and the critical role of the Department of Energy's (DOE) Regional Clean Hydrogen Hubs program, as well as the final Section 45V Clean Hydrogen Production Tax Credit (45V) rule. However, we are concerned that the current proposed implementation of 45V threatens to undermine these efforts and our nation's competitiveness in this emerging global industry.

The United States stands at a critical juncture in the global race to develop clean hydrogen technology and infrastructure. As nations around the world invest heavily in hydrogen as a key component of their decarbonization strategies, it is imperative that the United States maintains its leadership position. The clean hydrogen industry represents not only an opportunity to combat climate change, but also a chance to create tens of thousands of high-quality jobs, drive economic growth, and ensure America's energy security in the decades to come. However, we face fierce competition, particularly from China, which is rapidly scaling up its hydrogen capabilities and threatens to dominate the global market. China's state-backed approach and massive investments in clean energy technologies have already given them an advantage in sectors like solar panels and battery production. The United States has taken steps to advance our competitive edge in these sectors through the Inflation Reduction Act (IRA), Bipartisan Infrastructure Law (BIL), and the CHIPS and Science Act, and we must ensure that we maintain our leadership in hydrogen as well as we transition to a green economy.

We are concerned that the overly prescriptive and narrow requirements in the proposed 45V rule pose a serious risk to hydrogen projects across the country. Hub leaders estimate that up to half of all projects nationally could be cancelled if the current proposed rule is finalized without changes. This would result in the loss of billions of dollars in private sector investments, thousands of potential clean energy jobs, and substantial unrealized reductions in CO2 emissions. We've met with many companies who have chosen to build projects in the United States due to the incentives Congress enacted in the BIL and IRA, particularly 45V. If the guidance is too restrictive, it would severely hamper our ability to compete globally and could allow countries like China to surpass us in this critical technology.

Consistent with Congress's intent in the IRA, we urge you to consider a more nuanced, regionally-flexible approach that recognizes the varying energy landscapes across our nation. Many states have already implemented robust clean energy policies and carbon pricing mechanisms that inherently limit emissions across all sectors. Imposing additional strict federal guidelines in these regions may be redundant and counterproductive.

Specifically, we recommend:

> **1. Providing flexibility in incrementality requirements, particularly for states with existing clean energy mandates.** As proposed, the incrementality requirements are unnecessarily strict and will significantly limit the production of clean hydrogen that should otherwise qualify for the 45V credit. Treasury's current approach would weaken the potential benefits for hydrogen production to improve grid efficiency, reliability, and resiliency. Without sufficient improvements to incrementality

requirements, projects will face delays in their development schedules that will cause many to simply drop out entirely – something we've witnessed already.

2. Recognizing the value of existing clean energy resources, such as hydropower and nuclear, in hydrogen production by allowing production from curtailed capacity from hydropower and nuclear facilities that will be coupled with on-site hydrogen electrolyzers to count towards incrementality requirements. This change will send a positive signal to the market and incentivize a broader range of large and small projects to come online, enabling the further disaggregation of hydrogen production nationally and helping provide more clean fuel options in areas not directly served by an existing hydrogen hub.

3. Allowing for a gradual implementation of stricter standards to enable the industry to scale up effectively, including a pause in hourly matching requirements until 2032. As we've seen the European Union take steps to also delay temporal matching, this will also provide local power providers the time needed to adjust to these standards. Without a delayed compliance timeline that allows providers to substantially change their financial models, the production tax credit will likely be entirely out of reach for many projects and cause even more projects to drop out.

4. Considering regional variations in renewable energy availability and grid characteristics when determining compliance requirements. We request you consider that some flexibility may be necessary to ensure access to clean power. Since our national grid is already stretched too thin in many places and has plenty of complexity in how it currently operates to buy/sell power to geographically distributed customers, strict regulations on how and where power can be used adds an additional complication that could cause a project to not have access to the power they need.

A final rule that reflects a more measured approach to implementing 45V would enable rapid scaling of clean hydrogen production while leveraging existing clean energy resources. It would also maintain our competitiveness in the global hydrogen market, where other countries are also pursuing more flexible policy approaches. By implementing supportive policies and fostering innovation in hydrogen production, storage, and end-use applications, the United States can secure its position at the forefront of this crucial industry, driving both environmental and economic benefits while maintaining our technological edge on the world stage.

The short-term priority must be to ramp up deployment to drive down costs and achieve the scale necessary for hydrogen to fulfill its crucial role in decarbonization. Overly strict guidelines in the near-term risk stifling this nascent industry before it can reach its full potential, and ceding ground to international competitors who are aggressively pursuing hydrogen development.

We urge you to carefully reconsider the proposed 45V guidance, taking into account the potential loss of significant private sector investments and broader economic implications. A balanced approach that supports both emissions reductions and the growth of a clean hydrogen economy is essential for meeting our climate goals, maintaining American leadership in clean energy innovation, and ensuring our national security through energy independence.

Thank you for your attention to this critical matter. We stand ready to work with you to ensure the success of our nation's clean hydrogen initiatives and to solidify America's position as a global leader in this transformative technology.

Sincerely,

Suzan K. DelBene
Member of Congress

Kim Schrier, M.D.
Member of Congress

Frank J. Mrvan
Member of Congress

Jimmy Panetta
Member of Congress

Jim Costa
Member of Congress

Marc A. Veasey
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