CLECO | Cleco Power LLC
Energizing Your Tomorrow

2030 Donahue Ferry Road
P. O. Box 5000
Pineville, LA 71361-5000
318-484-7400
www.cleco.com

February 26, 2024

The Honorable Janet L. Yellen
U.S. Secretary of the Treasury
Internal Revenue Service
CC:PA:LPD:PR (REG-117631-23)
Room 5203, P.O. Box 7604
Ben Franklin Station
Washington DC 20044

RE: Proposed Regulations, Section 45V Credit for Production of Clean Hydrogen (REG-117631-23)

Dear Secretary Yellen,

On behalf of Cleco Corporate Holdings LLC, I am writing to express serious concerns about proposed regulations released on December 26, 2023 implementing the Internal Revenue Code section 45V Hydrogen Production Tax Credit. The proposed rules will significantly impede the growth of hydrogen production in the State of Louisiana. Of particular concern are the three pillars of temporal matching, deliverability, and incrementality, as well as the decision to divide the MISO region into two parts, leaving a very small geographic footprint from which projects in Louisiana, Mississippi, Arkansas, and Texas may draw electricity (the "Delta Region").

Cleco Corporate Holdings LLC is a regional energy holding company that conducts its regulated business operations through Cleco Power. Headquartered in Pineville, Louisiana, and in business since 1935, the company has approximately 1,300 employees. Cleco Power is a regulated electric public utility that owns 9 generating units with a rated capacity of 3,035 megawatts and operates 946 megawatts on behalf of its generation partners. Assets also include 1,335 miles of transmission lines and 12,152 miles of distribution lines. Cleco Power uses multiple generating sources and multiple fuels to serve approximately 293,000 customers in 24 of Louisiana's parishes through its retail business and supplies wholesale power in Louisiana and Mississippi. Cleco Power is committed to decarbonizing our generation portfolio and incorporating cleaner technologies that address the needs of our customer's load requirements in an affordable and reliable manner.

Prior to release of the proposed rules, over $20 billion had been earmarked by investors to develop clean hydrogen projects in Louisiana. Since their release, pending projects have been put on hold as developers try to determine whether they can comply with the three pillars and move forward with projects as planned. Developers also are looking at neighboring states that may have more options for sourcing electricity to meet the stringent requirements, including a larger region that provides more diverse renewable resource technologies from which to draw the electricity. They also are considering moving their investment dollars to non-US projects in Europe and elsewhere, where production tax incentive requirements are not so stringent. Further, even if projects move forward, the three pillars will increase costs to produce clean hydrogen, impose significant administrative burdens to ensure that they are met, and impose substantial risks of falling out of compliance due to outside factors beyond the control of the hydrogen producers.

Further consideration/clarification by the Department of Treasury ("Treasury") and the Department of Energy ("DOE") of the following issues regarding the three pillars would be helpful for advancing hydrogen development in the Delta Region.

1. Temporal Matching: Battery Energy Storage Systems ("BESS"). It is unclear how renewable capacity will be accounted for with BESS. It seems that the credit may be tied to when the BESS is charged by the renewable resource and not when the hydrogen facility needs to apply the capacity for the actual production from the plant. For a green hydrogen production facility that plans to run primarily on renewable energy, the ability to operate hourly will be jeopardized if the retail provider cannot support hourly renewable capacity (i.e., intermittent cloud coverage) and an aligned BESS program is not in place. The lack of clear guidance allowing BESS matching to occur when the energy is used to produce hydrogen hurts the economics of the project due to the lack of load stability. A rule allowing BESS matching at the time of hydrogen production is necessary.

2. Deliverability: Regional Map. MISO is the only territory impacted by the regional map introduced by the DOE, having been divided into two regions, the Midwest Region and the Delta Region. As a result, the ability to support hourly matching in the Delta Region based on renewable capacity is limited to parts of Louisiana, Arkansas, Mississippi, and Texas. Solar capacity is the only true renewable option available within the Delta layout. Four nuclear facilities are located within the region but the incrementality requirement as it is currently drafted makes nuclear a non-viable option as a source of energy. Options like virtual power purchase agreements tied to other MISO locations are unavailable, eliminating wind energy support from more fruitful locations in the Midwest, or the northern part of the MISO region. Hourly and seasonal diurnal profiles for wind projects in, say, North Dakota and Illinois, which are materially different from solar profiles in Arkansas, Louisiana, Texas, and Mississippi, should be considered to create a more levelized renewable energy stack. Limiting deliverability to such a small territory unfairly restricts hydrogen production in Louisiana.

3. Incrementality: Existing Assets. The support of all existing, wind, solar, and nuclear facilities is crucial to promoting clean hydrogen. The accelerated growth needed from the renewable space to keep up with hydrogen development will be challenged by supply, construction costs, and insufficient transmission. Extending the life of wind, solar, and nuclear plants already operating is consistent with overall environmental objectives and should be incorporated in the guidance. This could be accomplished in a number of ways, including grandfathering existing facilities, at least for a certain period of time; allowing a percentage of energy greater than the proposed 5 percent to be derived from existing facilities; allowing the COD date of carbon capture equipment ("CCS") to qualify as newly placed in service energy generation; and not subjecting facilities retrofitted with CCS to the 80/20 rule. By allowing these assets to participate in the hydrogen sector, more MWh for around-the-clock support will be available. Allowing energy from nuclear, in particular, will facilitate operations during hours when plants are less able to obtain EACs from wind and solar facilities.

   Treasury has requested comments on whether the addition of CCS to existing fossil power generation resets the COD as it relates to the incrementality test. We request that Treasury adopt this policy. The addition of CCS to existing fossil generation meets the policy goals of the clean hydrogen tax credit by generating new, low-carbon intensity power. This power should be

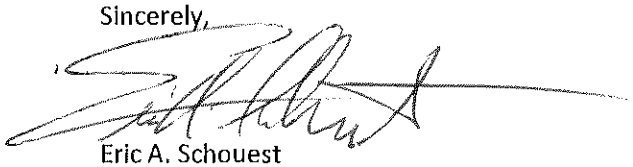
considered incremental because it was neither generated nor capable of being generated prior to the addition of CCS and results in no induced grid emissions.

To encourage the retrofitting with CCS of existing fossil generation facilities, we request that Treasury exclude such retrofits from the 80/20 rule. Generally, the cost of the CCS will not be at least 80 percent of the value of the updated facility. The focus should be on the reduction in induced emissions and not to impose an arbitrary and inflated threshold of cost to do so.

As the Department of Treasury commences to draft final regulations, I urge you and your staff to reconsider how the implementation of Section 45V is structured, including eliminating the three-pillar approach. The statute includes no mention, let alone requirement, of a three-pillar concept imposing onerous additionality, timing, and location rules. If Treasury insists on retaining the three pillars, the rules should be significantly modified to reflect the practicalities and challenges of complying with the rules. As noted, among those options would be allowing more time to comply with the rules, grandfathering of existing facilities, greater tolerance percentages for electricity from existing facilities, allowing acquisition of energy from outside the immediate region, facilitating the use of CCS, and allowing energy to be sourced in ways to avoid the additional costs of redundancy, including clarification of how energy storage fits into the three-pillar regime.

Thank you for the opportunity to provide these comments. Please contact Eric Schouest, Vice President of Marketing & Governmental Affairs at (985) 867-4658 with any questions or for further discussion.

Sincerely,



Eric A. Schouest
Vice President
Marketing & Government Affairs