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Ms. Vivian Hayes
U.S. Department of the Treasury
Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Hispanics in Energy (“HIE”) Comments On – Internal Revenue Service, Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property to the Department of Energy, Notice of Proposed Rulemaking; Dkt. REG-117631-23 (88 Fed. Reg. 89220; Dec. 26, 2023)

Dear Ms. Hayes:

The Hispanics in Energy¹ (“HIE”) submits the following comments on the Internal Revenue Service, Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property to the Department of Energy, Notice of Proposed Rulemaking; Dkt. REG-117631-23 (88 Fed. Reg. 89220; Dec. 26, 2023) (“NOPR”). The NOPR sets forth the Internal Revenue Service’s (“IRS”) proposal to establish the requirements for qualification to receive certain tax credits under IRS Code Section 45V of the Inflation Reduction Act of 2022 (“IRA”), and more particularly Section 13204 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022).

I. EXECUTIVE SUMMARY OF HIE’S COMMENTS

As currently drafted, the NOPR disregard’s President Biden’s Executive Order 14008 establishing the Justice40 Initiative intended to benefit disadvantage communities. As set forth below, the IRS’s exclusion in the NOPR of nuclear power and natural gas will severely harm Hispanic communities’ access to affordable clean energy, continue to unfairly place Hispanic communities at an economic disadvantage to access well-paying jobs and contracting opportunities, and undercut the U.S. Department of Energy’s (“DOE”) commitment to implement the Justice40 Initiative. Hispanic communities make up a large portion of the population in many

¹ Barnes & Thornburg LLP, HIE’s pro bono general counsel, assisted in the preparation of these comments.

of the proposed seven hydrogen hubs, and it is a community that has suffered from inequities intended to be remedied by the Justice40 Initiative. Separately, the NOPR does not include any metrics and reporting requirements on beneficiaries of the Section 45V tax credit that align with the Justice40 Initiative. HIE urges the IRS to establish a framework of metrics and reporting requirements similar to what some states have adopted to ensure equity flows to disadvantaged communities and businesses intended to benefit under the IRA and Justice40 Initiative.

Set forth below, we outline: (I) the interests of HIE; and (II) HIE’s comments specific to the NOPR for the IRS’s consideration.

II. INTERESTS OF HIE

HIE is a community-driven, public benefit non-profit corporation established to facilitate and advocate for Hispanic inclusion in America’s energy industry. Hispanics represent 18.9 percent of the American population, making them the largest minority group in the US.² However, Hispanics remain vastly underrepresented in energy occupations that require education and/or training in the science, technology, engineering and math (“STEM”) disciplines. HIE gathers experienced Hispanic leaders to foster diversity, equity, and inclusion in the energy sector through various channels. Through their members’ experience, HIE serves as a trusted resource to the energy industry, utility companies, federal, state and local municipalities, communities, and elected and appointed officials with responsibility for energy-related policies and practices.

In recent years, HIE has focused its strength and influence to further its mission-pillars including public policy, governance of energy organizations, procurement of supplier diversity, augmenting energy employment opportunities, workforce-development training, Spanish-language access, and combating climate change through environmentally friendly initiatives. More specifically, the Board of Directors adopted three short-term strategic initiatives to drive Hispanic inclusion in the energy sector: (a) increased contracting of Hispanic businesses with energy companies; (b) development of training and jobs opportunities rooted in energy STEM through collaborations with Hispanic-Serving Institutions (“HSI”) nationwide; and (c) increasing the representation of Hispanics in corporate-governances positions within the industry.

HIE has spurred meaningful progress towards advancing Hispanic inclusion and interests within the energy industry in several respects. In the California utility sector, for example, HIE’s efforts to increase business between Hispanic-owned businesses and the energy industry has helped increase spending with diverse firms from \$1 billion in 2003 to \$10 billion as of 2022. The organization also has executed a Memorandum of Understanding with the U.S. Hispanic Chamber of Commerce to further increase the amount and value of Hispanic-owned business contracts with energy companies.

To strengthen the Hispanic workforce and educate future Hispanic leaders in the industry, HIE has, for example, partnered with the Hispanic Association of Colleges and Universities, which

² HIE and Hispanic statistics referenced in this Section are sourced from HIE, *2022 Annual Report*, available at https://www.hispanicsinenergy.com/uploads/1/7/8/1/17811909/final_hie_annual_report_for_2022.pdf (last visited Feb. 19, 2024).

represents the higher education institutions that educate more than 67 percent of Hispanic college students. This partnership has resulted in grants and investments by Dominion Energy, Southern Company, and Exelon to HSIs to advance Hispanic leadership in the energy sector, totaling millions of dollars. In Illinois, HIE set the ground work for the creation of the Illinois Utility Business Diversity Council, an organization formed among Illinois utility companies to monitor and drive an increase of spend with minority, women, and veteran suppliers.³

Additionally, HIE has hosted thought leadership summits across the nation and will host its second legislation summit in Washington, D.C. on February 28 and 29, 2024, with the support of the DOE.

III. HIE'S COMMENTS FOR THE IRS'S CONSIDERATION

HIE offers the following comments and concerns, and requests that the IRS engage in continuing dialogue on these critical hydrogen and clean energy issues. Based on the critical omissions and shortcomings identified below, HIE respectfully requests that the IRS revise the NOPR: (1) to extend credits to clean hydrogen production facilities that utilize nuclear power and natural gas energy sources; and (2) to provide quantifiable metrics to help ensure that Justice40 Initiative requirements are met.

A. The Proposed Section 45V Credit for Production of Clean Hydrogen Regulation Disregards the Justice40 Initiative's Requirements

In 2021, the Biden Administration issued the “Justice40 Initiative” through Executive Order 14008, which set the goal that 40 percent of certain Federal investments, including investments in climate change, clean energy, and energy efficiency, flow to disadvantaged communities.⁴ This Justice40 Initiative applies to both new and existing Federal programs. When the IRA was passed, the Administration explicitly noted that investments associated with the IRA in clean energy and energy efficiency projects fall within Justice40 “covered programs.”⁵ A “covered program” is a Federal government program that falls within the scope of the Justice40 Initiative because its investments can benefit disadvantaged communities in one of the initiative's seven enumerated sectors. Moreover, any agency's implementation of a covered program requires consulting stakeholders, involving community stakeholders when determining program benefits, and ensuring accurate and measurable data reporting on the benefits delivered to disadvantaged communities through the program.⁶

Under the Justice40 Initiative, agencies receiving Federal funding can determine whether a “community” is “disadvantaged” in several ways. A “community” is defined as either a “group of individuals in geographic proximity to each other” or a “geographically dispersed set of

³ Illinois Utilities Business Diversity Council, *available at* <https://iubdc.com/> (last visited Feb. 22, 2024).

⁴ The White House, *Justice40: A Whole-of-Government Initiative*, *available at* <https://www.whitehouse.gov/environmentaljustice/justice40/> (last visited Feb. 19, 2024).

⁵ *Id.*

⁶ *Id.*

individuals (such as migrant workers)” that as a group experience common conditions.⁷ A “disadvantaged” community may qualify through pertinent group characteristics such as, but not limited to, low income, high poverty, high unemployment or underemployment, racial and ethnic residential segregation, linguistic isolation, disproportionate impacts from climate change, job loss through energy transition and access to healthcare.⁸ Here, the DOE identifies disadvantaged communities as ones that are: (i) at or above the 90th percentile for energy cost or PM_{2.5} in the air; and (ii) at or above the 65th percentile for low income.⁹

The Justice40 Initiative does not pose a limit on the number of covered programs in a particular industry. Since its adoption, the DOE alone has identified over 140 covered programs that meet one of the seven investment categories. Some of the covered programs include the Hydrogen Research, Development, and Demonstration Program (focused on improving technologies), the Building Technologies Office (concentrated on enabling a decarbonized energy and power sector through residential and commercial building projects), and the Clean Hydrogen Electrolysis Program (focused on the development and deployment of efficient, durable and cost-reducing clean hydrogen through electrolysis).¹⁰

Each agency is responsible for establishing methodologies to calculate the Federal benefits and consult with stakeholders to ensure such benefits arise from an applicable covered program and reach disadvantaged communities. In particular, the methodologies must include the metrics that the agency is using to measure covered program benefits. Subsequently, the agency is also responsible for reporting on the benefits accumulated by tracking the targeted beneficiary channels compared to the actual beneficiaries.¹¹

The proposed hydrogen hubs come under the purview of the DOE, via its Office of Energy Justice and Equity, which has identified eight policy priorities to guide the Justice40 implementation:

- Decrease energy burden in disadvantaged communities (“DACs”);
- Decrease environmental exposure and burdens for DACs;
- Increase parity in clean energy technology (e.g., solar and storage) access and adoption in DACs;

⁷ Office of Management and Budget, *Memorandum: Interim Implementation Guide for the Justice40 Initiative*, available at <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf> (last visited Feb. 19, 2024) (“Interim Guide”).

⁸ *Id.*

⁹ Council on Environmental Quality, *Climate and Economic Justice Screening Tool*, available at <https://screeningtool.geoplatform.gov/en/methodology#3/33.47/-97.5> (last visited Feb. 19, 2024).

¹⁰ DOE, *DOE Justice40 Covered Programs*, available at <https://www.energy.gov/justice/doe-justice40-covered-programs> (last visited Feb. 19, 2024).

¹¹ See Interim Guide.

- Increase access to low-cost capital in DACs;
- Increase clean energy enterprise creation and contracting (MBE/DBE) in DACs;
- Increase clean energy jobs, job pipeline, and job training for individuals from DACs;
- Increase energy resiliency in DACs; and
- Increase energy democracy in DACs.

In addition, the DOE requires parties to submit a Community Benefits Plan (“CBP”), as part of all Bipartisan Infrastructure Law and Inflation Reduction funding opportunities announcements. CBPs are based on a set of four core policy priorities:

- Engaging communities and labor;
- Investing in America’s workforce;
- Advancing diversity, equity, inclusion, and accessibility; and
- Implementing the Justice40 Initiative.

Per the DOE’s guidance, these key principles, when incorporated comprehensively into project proposals, will help ensure broadly shared prosperity in the clean energy transition.

B. The IRS’s Blanket Exclusion in the NOPR of Nuclear Power and Natural Gas Will Severely Harm Hispanic Communities’ Access to Affordable Clean Energy, Continue to Unfairly Place Hispanic Communities at an Economic Disadvantage to Access Well-Paying Jobs and Contracting Opportunities, and Undercut DOE’s Commitment to Implement the Justice40 Initiative

The IRS’s blanket exclusion in the NOPR of nuclear power and natural gas directly harms DACs and, in particular, Hispanic communities located in and around the proposed hydrogen hubs.

All seven of the hydrogen hubs proposed by the Biden Administration have the potential to significantly impact Hispanic communities. (See HIE, Demographics of America’s Hydrogen Hubs – Justice40 Implications, which is attached to these comments as **Exhibit A**.) For example, the Gulf Coast hydrogen hub in Texas serves a population that is 40.2 percent Hispanic and includes the second-largest network of HSIs nationwide behind California. (Ex. A.)

Similarly, the Midwest hydrogen hub in Indiana, Illinois, and Michigan, which intends to leverage nuclear power and natural gas to decarbonize industrial sectors, serves a 16.3 percent Hispanic population and robust network of HSIs led by a formidable Hispanic professional

network in Chicago. (*Id.*)¹² While Justice40 benefits can still reach these populations through other renewable energy investments, the exclusion of nuclear and natural gas will delay intended benefits to Hispanic communities from hydrogen energy and the economic and clean energy benefits intended under Justice40 Initiative. Hispanic communities in these areas will be arbitrarily and irreparably harmed and prejudiced by the NOPR’s limits on the incentives to use nuclear power and natural gas to support these hydrogen hubs. The NOPR’s limits are plainly and unreasonably inconsistent with the IRA and the letter and spirit of the Justice40 Initiative.

In particular, the creation of the seven hydrogen hubs squarely fall in the seven categories of covered programs under Justice40:

- Climate change;
- Clean energy and energy efficiency;
- Clean transit;
- Affordable and sustainable housing;
- Training and workforce development;
- Remediation and reduction of legacy pollution; and
- The development of critical clean water and wastewater infrastructure.

For example, according to the White House, the “Climate Change” category includes reducing greenhouse gas emissions and local pollutants, creating community resilience plans, increasing technical assistance, and engaging disadvantaged communities.¹³ The “Clean Energy and Energy Efficiency” category includes increasing energy efficiency programs and resources, and deploying clean energy, including renewable community energy resources. Both the nuclear power and natural gas sectors provide these and additional types of benefits to disadvantaged Hispanic communities across the country, and the NOPR’s proposal to unreasonably deny the tax credit advantage to these sectors weakens and burdens the mission of HIE and its members.

Hispanic communities nationwide meet the definition for energy-disadvantaged communities because of the high cost of energy, poor air quality, and low income level present throughout Hispanic communities. For example, the DOE—citing a study by Energy Efficiency for All (representing 12 state coalitions for energy justice)—has reported that Hispanic communities are energy marginalized and face a median energy burden 24 percent higher than that

¹² See also World Nuclear News, *Nuclear To Be a Part of US Clean Hydrogen Hubs*, available at <https://www.world-nuclear-news.org/Articles/Nuclear-to-be-part-of-US-clean-hydrogen-hubs> (last visited Feb. 20, 2024) (“World Nuclear News”).

¹³ See Interim Guide.

of White households.¹⁴ Hispanics are also underrepresented in the workforce, representing only 18 percent of U.S. clean energy workers.¹⁵ Additionally, within the sector, Hispanics represent a larger proportion of installers and electricians, while Whites hold more than 80 percent of the management and sales jobs.¹⁶ With the surging number of HSIs and Hispanic professional organizations in the U.S., today’s statistics demonstrate that the Hispanic population is ready and willing to work more extensively in this sector, including its more lucrative positions, but has not historically been given the full and unfettered opportunity to do so.

As is outlined in further detail below, the closely intertwined nature of Hispanic participation (and potential participation) in the energy industry and the nuclear power and natural gas sectors underscores that supporting nuclear power and natural gas is truly a “win-win-win.” Such an approach provides environmental and economic benefits to the U.S. and can spur substantial investment in the Hispanic and other underserved communities.

1. **Allowing Nuclear Power and Natural Gas to Access the Benefits of the NOPR Will Accelerate the Growth of Clean Hydrogen**

Affording reasonable terms for both nuclear power and natural gas energy sources to qualify for the tax benefits available under the NOPR will contribute to the expansion of clean hydrogen in several ways. The support and advancement of nuclear energy research and companies expedites the growth of clean hydrogen energy because nuclear is already developed and ready for clean energy implementation. As a carbon-free source of energy, nuclear power has an obvious long-term role in reducing global carbon emissions. For example, nuclear power supplies 30 percent of South Korea’s electricity, a figure that the country is seeking to increase by 50 percent to reach emissions targets.¹⁷ Supporting nuclear energy will buttress the development of hydrogen power through known synergies between the two energy sources.¹⁸

Likewise, allowing the natural gas sector to access the benefits of the NOPR supports the important role that the sector’s participants play in serving as an important bridge in any transition to carbon-free renewable energies. Such effects include these companies’ efforts to meet

¹⁴ DOE, *Empowering the Hispanic Community Through Home Energy Rebates and Training*, available at <https://www.energy.gov/scep/articles/empowering-hispanic-community-through-home-energy-rebates-and-training> (last visited Feb. 19, 2024).

¹⁵ DOE, *Latino Power: The Future of the Clean Energy Workforce*, available at <https://www.energy.gov/eere/articles/latino-power-future-clean-energy-workforce> (last visited Feb. 20, 2024).

¹⁶ Utility Dive, *E2: The Face of Clean Energy Is Predominantly White and Male*, available at <https://www.utilitydive.com/news/report-the-face-of-clean-energy-is-predominantly-white-and-male/606502/> (last visited Feb. 20, 2024).

¹⁷ Bloomberg, *Korea Sees Need for More Nuclear Power Plants to Hit Net Zero*, available at <https://www.bloomberg.com/news/articles/2024-02-16/korea-sees-need-for-more-nuclear-power-plants-to-hit-net-zero> (last visited Feb. 20, 2024).

¹⁸ International Atomic Energy Agency, *Exploring Synergies Between Nuclear and Renewables: IAEA Meeting Discusses Options for Decarbonizing Energy Production and Cogeneration*, available at <https://www.iaea.org/newscenter/news/exploring-synergies-between-nuclear-and-renewables-iaea-meeting-discusses-options-for-decarbonizing-energy-production-and-cogeneration> (last visited Feb. 20, 2024).

pollution-reduction goals outside of reductions in greenhouse gas emissions. Additionally, providing support to the natural gas sector can unlock additional value, such as supporting efforts to develop carbon capture and sequestration projects.

2. Ensuring a Role for Nuclear Power in Producing Hydrogen Benefits HIE’s Members Through Accelerating the Justice40 Initiative Benefits

Limiting the ability of nuclear power to access the benefits of the NOPR will slow down the advancement of hydrogen energy at three hubs, in particular—the Midwest, Mid-Atlantic, and Heartland hydrogen hubs—and correspondingly result in lost economic-investment, employment, and workforce-development opportunities, throttled efforts to reduce carbon emissions, and reduced investment in area Hispanic communities. Conversely, including nuclear will incentivize the development of clean hydrogen in these regions and will accelerate the eight policy priorities articulated by the DOE and advance robust CBPs, which are sorely needed in Hispanic DACs and mandated by the Justice40 Initiative objectives.

The Mid-Atlantic hydrogen hub, encompassing Pennsylvania, Delaware, and New Jersey, contains a population that ranges from 8 to 21 percent Hispanic, and intends to develop renewable hydrogen production facilities from renewable and nuclear electricity. (Ex. A.)¹⁹ This hub intends to deploy established and innovative electrolyser technologies, which will allow for the continued production of low-emission hydrogen, and provide economic opportunities for a workforce significantly comprised of Hispanic DACs. For example, New Jersey has a 23 percent Hispanic population that continues to grow.²⁰ The state also has three active nuclear power plants, two of which (PSEG Nuclear Salem and Hope Creek) produce nearly half of the state’s electricity and account for 85 percent of its carbon-free generation.²¹ These facilities are obvious starting points for hydrogen power production and are located in areas that must meet the criteria of DOE’s CBPs. Indeed, New Jersey is the home of numerous HSIs ready to develop the workforce, including Rutgers University. (Ex. A.) The New Jersey Hispanic Chamber of Commerce’s partners and members include Bloom Energy, Enbridge, Air Liquide, DuPont, Ørsted, and others.²² The Mid-Atlantic hydrogen hub is well positioned to advance the Justice40 Initiative and serve Hispanic DACs, but is hamstrung by the NOPR’s current limitation on nuclear power.

Similarly, the Midwest hydrogen hub, situated in Illinois, Indiana, and Michigan, also

¹⁹ See also World Nuclear News.

²⁰ New Jersey Monitor, *New Census Data Details New Jersey’s Growing Diversity*, available at <https://newjerseymonitor.com/2023/09/22/new-census-data-details-new-jerseys-growing-diversity> (last visited Feb 20, 2024); see also Rutgers University: New Jersey State Policy Lab, *Population Density and New Jersey’s Two Largest Racial/Ethnic Minority Groups in 2020*, available at <https://policylab.rutgers.edu/population-density-and-new-jerseys-two-largest-racial-ethnic-minority-groups-in-2020> (last visited Feb. 20, 2024).

²¹ Public Service Enterprise Group, *PSEG Nuclear: Keeping Electricity Rates Affordable*, available at <https://corporate.pseg.com/AboutPSEG/companyinformation/thepsegfamilyofcompanies/psegnuclearllc> (last visited Feb. 20, 2024)

²² *Id.*; see also World Nuclear News.

intends to use nuclear, along with renewables and natural gas, to produce hydrogen.²³ This hydrogen hub also meets DOE’s criteria for a CBP that aligns with the Justice40 Initiative by serving Hispanic DACs. The hub’s population on average is 16.5 percent Hispanic, and the region includes several HSIs, including University of Illinois Chicago, Indiana University – Northwest, and Northeastern Illinois University. (Ex. A). Together with the network of regional Hispanic Chambers of Commerce, and array of energy enterprise partners like Constellation Energy, ExxonMobil and Plug Power, the Midwest hydrogen hub is also well positioned to make a profound impact on the underserved Hispanic population.²⁴

The Midwest hub would include Constellation Energy’s construction of the world’s largest nuclear-based hydrogen production facility. Constellation’s project is estimated to create over 1,400 good-paying jobs while spurring hundreds of additional jobs with potential off-takers. Considering nuclear power is a proven carbon-free technology with obvious hydrogen synergies, which overlap with Hispanic DACs and professional workforce opportunities in both the Midwest and Mid-Atlantic regions, allowing nuclear power to access the benefits of the NOPR would further support the hydrogen hubs in each region. Such support is critical to advancing the Justice40 Initiative, and can offer untold benefits to the region’s Hispanic populations.

Allowing utilization of nuclear plants for hydrogen production also provides a pathway for ensuring the relicensing and continued operation of nuclear units in future decades. Roughly one-third of the nation’s nuclear plants will require license renewal by the early 2032, just as hydrogen production is scaling up and financial support through the Section 45U production tax credit is expiring. Restricting the ability of nuclear power to participate in hydrogen production increases the risk of premature closure of nuclear plants and the concomitant loss of the economic, environmental, and community benefits they provide.

3. Ensuring a Role for Natural Gas in Producing Hydrogen Benefits HIE’s Members Through Accelerating the Justice40 Initiative Benefits

Limiting the ability of natural gas to access the benefits of the NOPR will slow down hydrogen production in other regions that also encompass underserved Hispanic populations. For example, the Gulf Coast hydrogen hub intends to produce hydrogen using natural gas with carbon capture and sequestration and renewable energy.²⁵ This hub is centered on Houston, TX, which boasts a 44.8 percent Hispanic population. (Ex. A.) Allowing these investments to access the NOPR’s benefits will also help ensure that investment into energy education and training of the Hispanic workforce continues through several local HSIs, including the University of Houston,

²³ See World Nuclear News.

²⁴ The Heartland hydrogen hub in the states of Minnesota, North Dakota, and South Dakota also intends to use nuclear power, in addition to other regional energy resources, to advance clean hydrogen production. While this region has a proportionally smaller Hispanic population than the other two above-described hydrogen hubs employing nuclear energy, this region also can lean on professional networks like the Minnesota Latino Chamber of Commerce to drive investment in and encourage the Hispanic community to increase their involvement in the energy industry.

²⁵ See also Hart Energy, *US Unveils Recipients of \$7 Billion for Hydrogen Hubs*, available at <https://www.hartenergy.com/exclusives/us-unveils-recipients-7-billion-hydrogen-hubs-206783> (last visited Feb. 20, 2024) (“Hart Energy”).

Rice University, and Galveston College. This hub intends to partner with energy companies like ExxonMobil and Chevron, which, through support from the HSIs, will lean into and develop opportunities for the underrepresented Hispanic workforce in the hydrogen energy sector.

In 2021, Hispanic workers made up 21.9 percent of the oil field workforce in the U.S. with lower average wages compared to White workers.²⁶ However, as more companies transition towards renewables, the Hispanic workforce is at risk of professional stagnation without transitional opportunities. Supporting local and regional Hispanic Chambers of Commerce, such as the Houston Hispanic Chamber Commerce and the Texas Association of Mexican American Chambers, can create continued opportunities for HSI-trained Hispanic individuals to pursue sustainable and long-term careers in the renewable energy sector.

The California hydrogen hub is another center for clean energy opportunities in a region that boasts the highest Hispanic population as compared to any other hydrogen hub. 40.3 percent of the population is Hispanic, but Hispanics are also much more likely than White counterparts to live in poor air quality areas. (Ex. A.) In 2018, according to a California State Senate report, 44 percent of Hispanics lived in communities with poor air quality compared to roughly 25 percent of non-Hispanics.²⁷ This population is exactly the kind of population that the Justice40 Initiative intends to serve. Thus, the California hydrogen hub presents a nearly perfect combination of education institutions, professional networks, and business partners that can benefit Hispanic participation in the hydrogen hub's mission to deliver sustainable energy sources to the region.

The California hydrogen hub intends to produce hydrogen from renewable energy to decarbonize transportation and port operations and partner with Chevron, Amazon and others.²⁸ This hub will include California's Central Valley, where many towns feature populations that exceed 50 percent Hispanic. In all, California has 171 HSIs, including 110 community colleges, 22 universities (including 5 of the 8 University of California campuses), and many others. (Ex. A.) The hub also hosts well-established Hispanic Chambers of Commerce, including the California Hispanic Chambers of Commerce, the Los Angeles Latino Chamber of Commerce, and the Bakersfield Hispanic Chamber, that stand ready to support the growing Hispanic workforce.²⁹ Allowing natural-gas based energy sources to access the benefits of the NOPR will allow for more dynamic investment into Hispanic education, training and labor opportunities within the energy sector for a population that has been historically underserved and environmentally vulnerable.

The Midwest hydrogen hub referenced above also plans to leverage natural gas, in addition

²⁶ Zippia, *Oil Field Worker Demographics and Statistics in the US*, available at <https://www.zippia.com/oil-field-worker-jobs/demographics/> (last visited Feb. 20, 2024).

²⁷ Sacramento Bee, *Latinos Are More Likely To Live In Polluted Communities. A New Law Could Help*, available at <https://www.sacbee.com/news/politics-government/capitol-alert/article163625348.html> (last visited Feb. 20, 2024).

²⁸ DOE, *Biden-Harris Administration Announces \$7 Billion For America's First Clean Hydrogen Hubs, Driving Clean Manufacturing and Delivering New Economic Opportunities Nationwide*, available at <https://www.energy.gov/articles/biden-harris-administration-announces-7-billion-americas-first-clean-hydrogen-hubs-driving> (last visited Feb. 20, 2024).

²⁹ *Id.*

to nuclear power and other renewables, to develop hydrogen resources. As explained, the significant Hispanic population in this region, coupled with its historic environmental and economic poverty, aligns well with the Justice40 Initiative and its intended beneficiaries.³⁰

* * *

In sum, allowing nuclear power and natural gas to access the benefits of the NOPR will plainly advance the Biden Administration’s Justice40 Initiative goals in Hispanic communities. Many of the proposed regional hydrogen hubs both seek to use nuclear power and natural gas in heavily populated Hispanic regional communities, HSIs, and regional Hispanic professional development networks. The anticipated and significant projected investments into these hydrogen hubs has the potential to significant redound to the benefit of many Hispanic communities. These investments will greatly benefit the Hispanic communities by driving diversity in the energy sector, provide economic and environmental benefits to underserved Hispanic communities, and increase access to clean, reliable, low cost energy.

C. The NOPR Does Not Include Any Metrics and Reporting Requirements on Beneficiaries of the Program, Which the IRS Must Ultimately Include to Ensure That Justice40 Requirements Are Met

The NOPR does not outline any accountability measures, or even concepts, to ensure that the participants that receive tax credits under 45V are also delivering on efforts that support the Justice40 Initiative. HIE strongly urges the IRS to adopt an accountability framework to apply to program participants, with such metrics to ensure that the IRS and any external reviewers can comprehensively track the program’s investments and how such investments are contributing to the Justice40 Initiative and progress under applicable CBPs.

To do so, HIE encourages the IRS to establish stakeholder working groups with HIE and other non-profit and/or trade associations representing disadvantaged communities generally (or those in the energy sector) to ensure meaningful participation in the development of an accountability framework and appropriate and actionable metrics under the same. In connection with and/or following these efforts, the IRS should subject any accountability proposals from these working groups to public notice and comment so that any accountability framework incorporates meaningful participation by those who would ultimately report under such a framework.

The IRS need not “re-invent the wheel” here. As one example, several states, like Illinois and Maryland, require that regulated energy companies report yearly spending with minority, woman, and veteran suppliers in order to meet certain minimum spend requirements.³¹

Illinois in particular is worth highlighting. In 2016, the Illinois legislature enacted “Future

³⁰ The Appalachian hydrogen hub, covering West Virginia, Ohio and Pennsylvania, intends to leverage natural gas to produce low-cost hydrogen. Here, too, allowing natural gas to access the benefits of the NOPR will spur investment and training that can help underserved Hispanic populations in the region’s energy sector.

³¹ 220 Ill. Comp. Stat. 5/5-117; see also Md. P.S.C., *Public Conference 52: Supplier Diversity*, available at <https://www.psc.state.md.us/supplier-diversity/> (last visited Feb. 22, 2024).

Energy Jobs Act” (Public Act 99-906) (“FEJA”), to increase the state’s commitment to renewable energy. In 2021, the Illinois legislature enacted the “Climate and Equitable Jobs Act” (Public Act 102-0662) (“CEJA”), which set the goal that Illinois will be 100 percent carbon-free by 2050.

To ensure the equitable distribution of opportunities spurred by this law, CEJA: (1) requires that the developers of CEJA-related projects engage contractors that are owned by and/or employ members of underrepresented communities; and/or (2) limits access to certain program opportunities to developers that are owned by and/or employ members of such communities.³²

Each of these program features have corresponding registration and ongoing measurement and reporting requirements, which form the program’s accountability framework. Specifically, CEJA created an equity accountability system mandating minimum equity standards for the program’s opportunities and procurements. The Minimum Equity Standard (“MES”) requires that 10 percent of the work on projects in the program be performed by companies that are owned by and/or employ members of underrepresented communities. That target will increase to 30 percent by 2030.

Under CEJA:³³

- Participants must file a “Compliance Plan” annually, which outlines how they will achieve compliance with the MES going forward, and must additionally report on whether they achieved compliance in the prior year;
- The administrator of the Illinois program must review these Compliance Plans under an established, written protocol;
- The administrator is authorized to require that participants undertake corrective actions, including entering into agreements to outline the timing of corrective actions, if they have not (or there is a risk that they may not) achieve the MES; and
- For participants that are unable to achieve the MES despite several opportunities to cure, the administrator is authorized to suspend their participation in the program’s opportunities and procurements.

There are many other examples that HIE can share in any stakeholder workshops or other public participation opportunities with the IRS. At bottom, the IRS must have a mechanism in place to ensure that the entities benefiting from the tax credits outlined in the NOPR are accountable to the IRS and the public regarding the impact of their projects on Justice40 Initiative efforts and the underrepresented communities where such projects are located.

HIE stands ready to engage in dialogue with the IRS, the DOE, and any other federal

³² See, e.g., State of Illinois, *Energy Workforce Equity Portal*, available at <https://energyequity.illinois.gov/>, and *Energy Equity: Resources*, available at <https://energyequity.illinois.gov/resources.html> (last visited Feb. 24, 2024).

³³ Illinois, *Guide to the Equity Accountability System & Illinois Shines*, available at <https://illinoisshines.com/wp-content/uploads/2023/04/Guide-to-EAS-and-Illinois-Shines-April-14-2023.pdf> (last visited Feb. 22, 2024).

agencies to assist in the development of an accountability framework and appropriate and actionable metrics under the same. The magnitude and importance of the NOPR deserves no less.

Respectfully submitted,



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EXHIBIT A



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February 11, 2024

Demographics of America’s Hydrogen Hubs – Justice40 Implications

*Seven sites awarded up to \$7 billion by the DOE and
Impact on Underserved Hispanic Communities*

California Hydrogen Hub (ARCHES): Located in California, this hub focuses on producing hydrogen from renewable energy and biomass to decarbonize transportation and port operations. Key partners include Air Liquide, Amazon, Brookfield Renewable US, Chevron, and others. [Biden-Harris Administration Announces \\$7 Billion For America’s First Clean Hydrogen Hubs, Driving Clean Manufacturing and Delivering New Economic Opportunities Nationwide | Department of Energy](#)

2020 Hispanic Population – Source: U.S. Census Bureau Quick facts

	Total Population	Percent Hispanic	Number Hispanic
California	39,538,212	40.3	15,933,899
• Los Angeles	3,822,238	48.1	1,838,498
• Riverside	2,418,177	52.0	1,257,452
• Long Beach	451,307	44.1	199,026
• Bakersfield	410,647	52.9	217,232
• Fresno	542,252	50.5	273,837
• Modesto	218,467	42.6	93,066
• Stockton	321,819	45.2	145,462

Note: The project will be developed through the Central Valley corridor with many towns with over 50% Hispanic populations.

Hispanic Serving Institutions Ready to Develop the Workforce

California is home to 171 Hispanic Serving Institutions and is fully prepared to educate and train the hydrogen workforce needed for ARCHES. These include:



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- With over 110 community colleges, it is the country's largest network of community colleges. This includes the Los Angeles Trade-Technical College.
- With 22 university companies, California State University offers engineering and other STEM-related degrees. These include Bakersfield State College, CSU Los Angeles, and many others.
- Five of the 8 University of California campuses are Hispanic-serving institutions, including UC Irvine, UC Merced, UC Davis, and others impacted by this project.
- Many private universities, including Santa Clara University, University of the Pacific, and many others, also hold that designation.

Hispanic Chambers of Commerce Ready to Promote Business Opportunities

- California Hispanic Chambers of Commerce
- Los Angeles Latino Chamber of Commerce
- Latin Business Association
- Orange County Hispanic Chamber
- Inland Empire Hispanic Chamber
- Bakersfield Hispanic Chamber
- Fresno Hispanic Chamber
- Madera Hispanic Chamber
- Stockton Hispanic Chamber
- Sacramento Hispanic Chamber

Gulf Coast Hydrogen Hub (HyVelocity H2Hub): Centered in the Houston region, this hub plans to produce hydrogen using natural gas with carbon capture and renewable energy. Major industry players leading this hub include Exxon, Chevron, Air Liquide, Mitsubishi Power Americas, Orsted, AES, and Sempra Infrastructure. [Biden awards \\$7 billion for seven hydrogen hubs in climate fight plan | Reuters](#)

2020 Hispanic Population – Source: U.S. Census Bureau Quick facts

	Total Population	Percent Hispanic	Number Hispanic
Texas	29,145,459	40.2	11,716,474
• Houston	2,302,878	44.8	1,031,689



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- Galveston 357,117 26,8 95,707

Hispanic Serving Institutions Ready to Develop the Workforce

While Texas has the second largest number of Hispanic-serving institutions behind California, only Houston area colleges and universities are listed here.

- University of Houston
- University of St. Thomas
- San Jacinto College
- Alvin Community College
- Rice University
- Galveston College

Hispanic Chambers of Commerce Ready to Promote Business Opportunities

- Texas Association of Mexican American Chambers
- Houston Hispanic Chamber of Commerce
- Hispanic American Business Association of the Gulf Coast
- RGV Hispanic Chamber of Commerce
- Corpus Christi Hispanic Chamber of Commerce

Mid-Atlantic Hydrogen Hub (MACH2): This hub, located in Pennsylvania, Delaware, and New Jersey, focuses on developing renewable hydrogen production facilities. Key partners include Air Liquide, Bloom Energy, DuPont, Enbridge, and Ørsted, among others. [US Unveils Recipients of \\$7 Billion for Hydrogen Hubs | Hart Energy](#)

2020 Hispanic Population – Source: U.S. Census Bureau Quick facts

	Total Population	Percent Hispanic	Number Hispanic
Pennsylvania	12,961,683	8.6	1,112,124
<ul style="list-style-type: none"> Philadelphia 	1,567,258	15.7	246,059



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Delaware	1,031,890	10.3	106,284
• Wilmington	8,162	23.4	1,909
New Jersey	9,290,841	21.9	2,034,694
• Newark	305,552	37.2	113,665

Hispanic Serving Institutions Ready to Develop the Workforce

- Northampton Community College
- Reading Area Community College
- Lehigh Carbon Community College
- Goldey-Beacom College
- Rutgers University
- Montclair State University
- William Paterson University
- Bergen Community College
- Many others ...

Hispanic Chambers of Commerce Ready to Promote Business Opportunities

- Greater Philadelphia Hispanic Chamber of Commerce
- Pittsburgh Metropolitan Area Hispanic Chamber of Commerce
- Maryland Hispanic Chamber of Commerce
- Delaware Hispanic Chamber of Commerce
- Statewide Hispanic Chamber of Commerce of New Jersey

Midwest Hydrogen Hub (MachH2): Situated in Illinois, Indiana, and Michigan, this hub intends to decarbonize various industrial sectors. Partners include Air Liquide, Ameren Illinois, Constellation Energy



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Corp., Exxon Mobil, and Plug Power, among others. [US Unveils Recipients of \\$7 Billion for Hydrogen Hubs | Hart Energy](#)

2020 Hispanic Population – Source: U.S. Census Bureau Quick facts

	Total Population	Percent Hispanic	Number Hispanic
Illinois	12,549,689	18.3	2,296,593
• Chicago	2,746,352	29.0	796,442
Indiana	6,832,442	7.9	539,762
• Gary	69,972	5.7	3,988
Michigan	10,077,674	21.9	2,034,694
• Detroit	639,111	7.5	47,933

Hispanic Serving Institutions Ready to Develop the Workforce

- University of Illinois Chicago
- Elmhurst
- Elgin Community College
- Northeastern Illinois University
- College of Lake County
- City Colleges of Chicago
- Several more in Illinois
- Indiana University – Northwest
- Gosehn College
- Calumet College of St. Joseph
- No HIS noted in Michigan

Hispanic Chambers of Commerce Ready to Promote Business Opportunities

- Illinois Hispanic Chamber of Commerce



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- Aurora Regional Hispanic Chamber of Commerce
- Greater Fort Wayne Hispanic Chamber
- Indianapolis Hispanic Chamber of Commerce
- Michigan Hispanic Chamber of Commerce
- West Michigan Hispanic Chamber

Pacific Northwest Hydrogen Hub (PNW H2): Located in Washington, Oregon, and Montana, this hub plans to utilize the region's renewable resources to produce clean hydrogen. Partners include Air Liquide, Amazon, Mitsubishi Power Americas, and others. [Biden awards \\$7 billion for 7 hydrogen hubs in climate fight plan | Reuters](#)

2020 Hispanic Population – Source: U.S. Census Bureau Quick facts

	Total Population	Percent Hispanic	Number Hispanic
Washington	7,812,880	14.0	1,093,803
• Seattle	749,256	7.5	56,194
• Spokane	230,160	7.2	16,571
Oregon	4,233,358	14.4	609,603
• Portland	635,067	10.3	65,411
Montana	1,122,878	4.5	50,529

Hispanic Serving Institutions Ready to Develop the Workforce

- Heritage University
- Big Bend Community College
- Walla Walla Community College
- Yakima Valley College
- Warner Pacific University
- Treasure Valley Community College



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- New Hope Christian College
- Several others, but none in Montana.

Hispanic Chambers of Commerce Ready to Promote Business Opportunities

- Greater Washington Hispanic Chamber of Commerce
- Tri-Cities Hispanic Chamber of Commerce
- NCW Hispanic Chamber of Commerce
- Seattle Latino Metropolitan Chamber of Commerce
- Hispanic Metropolitan Chamber in Portland, OR
- Hispanic Chamber of Montana

Heartland Hydrogen Hub: Covering Minnesota, North Dakota, and South Dakota, this hub aims to decarbonize agricultural production and promote clean hydrogen use in various sectors. Partners include Xcel Energy, Marathon Petroleum Corp., and TC Energy, alongside the University of North Dakota’s Energy & Environmental Resource Center. [US Unveils Recipients of \\$7 Billion for Hydrogen Hubs | Hart Energy](#)

2020 Hispanic Population – Source: U.S. Census Bureau Quick facts

	Total Population	Percent Hispanic	Number Hispanic
Minnesota	5,706,494	6.0	342,389
<ul style="list-style-type: none"> • Minneapolis • St. Paul 	425,096 311,518	9.9 8.6	42,084 26,790
North Dakota	572,591	4.6	26,339
South Dakota	919,318	4.9	45,046

Hispanic Serving Institutions Ready to Develop the Workforce

- There are no Hispanic Servings Institutions in these states



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Hispanic Chambers of Commerce Ready to Promote Business Opportunities

- Minnesota Latino Chamber of Commerce

Appalachian Hydrogen Hub (ARCH2): This hub, spanning West Virginia, Ohio, and Pennsylvania, aims to leverage the region's natural gas supplies for hydrogen production. Key partners include Battelle, Air Liquide, The Chemours Co., Clearway Energy Group, and several others. [US Unveils Recipients of \\$7 Billion for Hydrogen Hubs | Hart Energy](#)

2020 Hispanic Population – Source: U.S. Census Bureau Quick facts

	Total Population	Percent Hispanic	Number Hispanic
West Virginia	1,770,071	2.1	37,171
Ohio	11,759,331	4.5	529,169
• Columbus	907,971	6.7	60,834
Pennsylvania	12,961,683	8.6	1,112,124
• Philadelphia	1,567,258	15.7	246,059

Hispanic Serving Institutions Ready to Develop the Workforce

Note: There is overlap with the information above since the Pennsylvania area is impacted by two different hydrogen hub projects. Also, there is no Hispanic chamber in West Virginia or Ohio that is apparent.

- Northampton Community College
- Reading Area Community College
- Lehigh Carbon Community College
- Goldey-Beacom College



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- Rutgers University
- Montclair State University
- William Paterson University
- Bergen Community College
- Many others ...

Hispanic Chambers of Commerce Ready to Promote Business Opportunities

Note: There is overlap with the information above since two different hydrogen hub projects impact the Pennsylvania area. Also, there is no Hispanic chamber in West Virginia or Ohio that is apparent.

- Greater Philadelphia Hispanic Chamber of Commerce
- Pittsburgh Metropolitan Area Hispanic Chamber of Commerce
- Maryland Hispanic Chamber of Commerce
- Delaware Hispanic Chamber of Commerce
- Statewide Hispanic Chamber of Commerce of New Jersey
- Virginia Hispanic Chamber of Commerce

Sources:

1. Census information extracted from: [U.S. Census Bureau QuickFacts: United States](#)
2. Information on Hispanic Serving Institutions: [Hispanic Serving Institutions in Ohio - Search \(bing.com\)](#)
3. Information on Hispanic Chambers of Commerce: [Local Hispanic Chambers \(ushcc.com\)](#)
4. Seven Hydrogen Hub descriptions source noted in the paragraph of each respect hub.