INTERcity TRANSIT

February 23, 2024

Commissioner Danny Werfel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: Comments on proposed regulations implementing Section 45V as amended by the Inflation Reduction Act of 2022 (IRS REG-117631-23)

Dear Commissioner Werfel:

Intercity Transit is submitting this statement in response to proposed regulations concerning the Production Tax Credit (PTC) included in the Inflation Reduction Act of 2022 (IRA). We are concerned that the proposed regulations will stifle hydrogen production in Washington State instead of jump-starting production of green hydrogen as the legislation intends. This in turn will negatively impact our ability to obtain green hydrogen needed to support our services at a cost we can afford.

Intercity Transit (IT) is the public transportation provider for the Olympia, Washington metropolitan area, serving greater Thurston County and connecting with services in Pierce, Mason, Grays Harbor, and Lewis counties. IT is committed to eliminating greenhouse gas (GHG) emissions in its fleet over the next few decades consistent with federal, state, and local agency regulations, objectives, and procurement policies.

Transit has few options to eliminate its GHG emissions. As we've learned, battery limitations and charging logistics make Battery Electric Buses (BEB) impractical for much of the service we offer and the operational reliability we require. Hydrogen-powered fuel cell electric buses (FCEB) are an essential component of our zero-emission transition plan.

That is why we are concerned with some of the proposed regulations in Section 45V. Specifically, we are concerned that some of the proposed regulations will effectively deny the Production Tax Credit (PTC) to small producers like Lewis County Transit at the very forefront of this state's clean hydrogen production efforts. Especially in these early years while hydrogen production scales up, the PTC is an essential factor in the complex funding equation underpinning the emerging green hydrogen production market. Without reliable access to affordable green hydrogen, IT's commitment to a zero emission future risks delay, higher costs, or both.

Section 45V is complex legislation well outside our typical considerations. We call your attention to these three points, acknowledging there may be other concerns we have not yet fully grasped.

Reconsider Greenhouse Gas Emissions Scoring Requirements

As we understand the proposed regulations, the PTC effectively penalizes green electrolytic hydrogen production in Washington State due to the recommended scoring mechanisms for GHG emissions.

GHG emissions attributed to the power used to produce hydrogen is a factor in the PTC determination. That makes sense; it should be a factor in PTC determination. However, **we believe an exception should be made in how that emission is calculated.**

As written, the rule for GHG scoring would penalize Washington's hydrogen producers by the way in which emissions associated with hydrogen production are calculated. Section 45V does not account for Washington's demonstrated climate commitment – its aggressive policies and robust investment strategies – instead forcing upon it an aggregate emission calculation for a much larger region.

The proposed regulations require GHG emission calculations for the power used to produce hydrogen to be based on grid calculations by the regional entity responsible for ensuring a reliable Bulk Electricity System. In our case that is the Western Electricity Coordinating Council (WECC). The WECC includes 14 western states, two Canadian provinces, and Northern Baja Mexico.

Washington is recognized as a national leader in state legislation curbing GHG emissions. It has made tremendous progress towards a cleaner grid.[1] The problem with the approach as proposed in Section 45V is that it would make Washington, which has regulated and invested heavily to achieve a clean grid, use the aggregated GHG grid emissions for the vast WECC region. This includes many states that rely on coal for energy production and puts Washington's hydrogen producers at a distinct disadvantage. Coal will not power hydrogen production in Washington State. The PTC should amplify the taxpayers' clean energy investments and policies; it should not penalize Washington for its climate commitment.

We concur with those who argue that it is desirable to establish in policy the types of laws that qualify producers in certain states for this exception. Section 45V should establish a process that allows Treasury to review the laws in question to ensure that the additional electricity

[1] Washington's landmark 2019 Clean Energy Transformation Act ("CETA") committed all electric utilities serving retail customers in the state to eliminate coal-fired generation by 2025,[1] provide carbon-neutral electricity by 2030,[1] and by 2045, provide 100% clean (renewable or non-emitting) electricity. CETA applies at the utility level, whether the utility produces the electricity itself or buys it from another generator. Utilities in Washington are aggressively procuring new renewable electricity from existing and augmented hydropower, solar, and wind and installing more and more energy storage.

generated or procured in that state for hydrogen production is truly clean. With that assurance it can then grant exemptions in the scoring requirements based on those findings. This would offer much needed predictability and foreseeability to green hydrogen producers like Lewis County Transit and other early producers across Washington that are making significant and complicated financial considerations in which PTC is a big factor. It is important that the PTC not penalize these producers or else it will be harder and more expensive for IT and other regional transit providers to obtain hydrogen for its FCEB fleet.

Hold Agencies Harmless for GHG Changes Attributable to GREET Model Refinements

There is a lot of uncertainty around the various verification measures necessary to claim the 45V credit, the taxpayer forms required to claim the credit, and how the 45VH2-GREET model described in the proposed regulations will be used to determine eligibility for applicable percentages of the 45V credit. IT agrees with the Hydrogen Fuel Cell Bus Council (HFCBC) that clear and concise guidance is needed to fully understand the implications for producers of the various verification methods proposed in the regulations.

For example, as written, the proposed rules regarding application of the GREET model suggest that a producer like Lewis County Transit will not know from year to year whether it has to procure additional Energy Attribute Certificates (EACs) or change its operating hours in order to avoid losing its PTC simply because the annual GREET model changed.

A producer's GHG emission rate can change annually, whether its operations have changed or not. Lack of clarification about how the GREET model will be applied injects an unnecessary element of risk and uncertainty into complex financial considerations that go into production investments. This creates volatility and uncertainty in the financial equations that can directly affect the availability and cost of green hydrogen for off-takers like Intercity Transit.

We support a "no fault" exception for increases in GHG emission rates attributed to changes in the GREET model or its background data. This will support the complex feasibility assessments project developers need to obtain financing and hydrogen sales agreements by reducing this risk volatility and incentivizing public investment in hydrogen production for transit and other heavy transportation off-takers.

We also support the concept of a de minimis exception to the lifecycle GHG emissions rate requirements for small-scale producers to receive 100% of the PTC.

We are aware that a neighboring transit agency, Lewis County Transit, has included this concept in their agency's comment letter. We have been working with Lewis County and other transit agencies across the Pacific Northwest region to collaborate on the creation of a regional hydrogen industry, including small-scale production, distribution, and off-takers, to support transit and other transportation needs, and small-scale production is critical in the development of such an industry. FCEBs are available now, and small scale-production will

allow transit agencies to implement those vehicles in small numbers, thus reducing emissions much sooner than waiting until large scale production is developed.

Obtaining the maximum PTC rate is crucial for small production facilities, and encouraging a proliferation of smaller producers around the nation will broaden the market for small and initial off takers like transit agencies operating FCEBs.

Use Annual or Daily Matching for Temporal Requirements, Not Hourly

The proposed regulations would replace the daily matching requirements for PTC with hourly matching requirements in 2028. The logic behind this is that electricity needed for green hydrogen production needs to coincide with the availability of solar and wind energy production. This will make hydrogen production uneconomical outside of select times of day, unnecessarily driving down production capacity which in turn will drive up hydrogen costs.

Washington's hydropower produces electricity 24/7, whether there is consumer energy demand or not. Excess energy is spilled off. This means that hydrogen producers can capture that unused energy generated during off-peak hours to produce hydrogen and store this clean energy for use when and where it is needed. Proposals to use hourly matching for PTC generation will slow clean hydrogen growth, slow hydrogen cost reduction, and slow end-use deployment. This will drive hydrogen costs up at the time when IT and other regional transit providers are growing our FCEB fleets. Higher energy costs will slow capacity to transition regional fleets to zero emission vehicles.

We support efforts to replace the 2028 hourly matching requirements with annual or daily matching. The proposed hourly matching will discourage hydrogen production at the very time we are replacing diesel powered vehicles with hydrogen powered vehicles and need to procure increasing amounts of reliable, affordable green hydrogen.

We concur with the HFCBC that net energy metering (NEM) is potentially a good example for hydrogen production that merits closer investigation. NEM can do for hydrogen what it did for residential and commercial solar a decade ago, in this case spurring investment in green electrolytic hydrogen production and achieving the "at scale" production benefits of lower costs and greater availability. Reliable access to affordable green hydrogen underpins IT's ability to eliminate its GHG emissions.

In conclusion, IT is looking to hydrogen as a critical link in its decarbonization strategy and the PTC must do more to stimulate investment interest in green hydrogen. Absent effective tax policy that drives producer investment, IT will be hard pressed to obtain the green hydrogen needed to power our zero emission fleets.

We cannot meet our decarbonization goals unless we have reliable access to affordable hydrogen, plain and simple. We encourage Treasury to use Section 45V to incentivize green hydrogen production with reasonable framework, and support expanded access to the

affordable clean energy we need to eliminate the greenhouse gas emissions of our transit system.

Thank you for your consideration of this vitally important but complex topic.

Sincerely,

Emily Bergkamp
General Manager