Comment on Proposed Rule for Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property

Governor Whitmer established the Michigan Infrastructure Office to ensure that federal resources sent to Michigan are used efficiently and effectively in service of repairing, rebuilding, and reimagining Michigan's Infrastructure. Our office believes that investments in these critical assets, from roads and water to sustainable transportation – are crucial to our shared prosperity.

In October 2023, President Biden announced that a Michigan-backed clean hydrogen hub consortium, the Midwest Alliance for Clean Hydrogen (MachH2), won up to $1 billion from the U.S. Department of Energy (DOE) to build the Midwest Hydrogen Hub. Michigan's approach to the clean hydrogen hubs opportunity was informed by a September 2022 report prepared by the University of Michigan's Center for Sustainable Systems. The report, "Hydrogen Roadmap for the State of Michigan," served as a high-level assessment intended to help guide planning and future detailed analysis of a Michigan "hydrogen ecosystem" that encompasses production, delivery, storage, and end-use applications. According to the report, clean hydrogen can help decarbonize Michigan's heavy industry and heavy transportation sectors.

These comments are intended to highlight the need for the rules to clarify how the 45V tax credit applies to nuclear power plants that are (1) restarting after having previously ceased operations or (2) extending their operations past license expiration as a result of demand for clean power to produce clean hydrogen.

Palisades Nuclear Plant

The Palisades Nuclear Plant (PNP) was a nuclear plant in Covert Township in Southwest Michigan (Van Buren County) that began operations in 1971. PNP permanently ceased operations on May 20, 2022. In early 2023, Holtec, the owner of PNP, expressed an interest in returning the plant to an operational status. The State of Michigan has provided $150 million in state funding in support of efforts to restart PNP and Holtec is working closely with the U.S. Department of Energy's Loan Program Office to obtain the capital necessary to finance a restart. To provide oversight, the United States Nuclear Regulatory Commission (NRC) has established the Palisades Nuclear Plant Restart Panel, which guides staff efforts to review, inspect, and confirm that PNP is ready to be returned to an operating facility.

Whether PNP restarts depends on its compliance with the relevant safety, security, and environmental requirements and on whether its owner can develop and implement a diverse, robust market to serve with PNP. Whether a restarted nuclear facility meets the incrementality requirements of paragraph (d)(3)(i) is significant for the future of PNP's market opportunities and clean power in the State of Michigan.

Under the guidance as written, the incrementality requirement for a unit of electricity is satisfied if the electricity generation facility that produced the unit has a commercial operations date (COD) no more than 36 months before the hydrogen production facility that uses the unit of electricity. The guidance further defines COD to be "the date on which a facility that generates electricity begins commercial operations." Because PNP originally began commercial operations in 1971, the Department of Treasury (Treasury) might reasonably conclude that electricity produced by a restarted PNP does not satisfy the incrementality requirement because its COD did not fall within the 36-month window, making any clean hydrogen derived from restarted PNP power ineligible for the 45V credit. Alternatively, the Treasury might reasonably apply a new commercial operations date for the restarted PNP as the date of its recommenced operations– effectively treating it as a new nuclear facility.

The Treasury should correct this ambiguity. As written, prospective buyers who wish to purchase power from PNP cannot reliably ascertain whether any electrolytic hydrogen powered by energy attribute certificates (EACs) from a restarted PNP would be eligible for the 45V credit. That lack of confidence will undermine the marketability of power from a restarted nuclear plant, reducing the likelihood that its owner can develop and implement a viable business model.

Treasury can meaningfully improve the likelihood that PNP reopens by making it clear that EACs from a restarted nuclear plant satisfy the additionality requirement.

Cook Nuclear Plant

Donald C. Cook Nuclear Plant (CNP) is a nuclear power plant in Bridgman in Southwest Michigan (Berrien County). The plant is owned by American Electric Power (AEP) and operated by Indiana Michigan Power, an AEP subsidiary. It has two reactors and is capable of producing 2.2 GM of electricity. The NRC renewed the operating licenses of both reactors on August 30, 2005. Unit One's operating license will expire in 2034 and Unit Two's will expire in 2037.

AEP could apply for a further extension of CNP's operating licenses. Similar to PNP, that decision depends not only on its satisfaction of relevant safety, security, and environmental requirements, but also on whether AEP can develop and implement a viable business model well into the 2030s for CNP. Whether a newly relicensed nuclear plant meets the incrementality requirements of paragraph (d)(3)(i) matters for the future of CNP and clean power in the State of Michigan (and the other states that CNP serves).

Nuclear power plants are at risk of closure all across the United States. To keep the clean power provided by the continued operation of existing nuclear plants available to US consumers, the Treasury Department should treat nuclear power that would have been disconnected but for the availability of the 45V as incremental power for purposes of paragraph (d)(3)(i).

The Treasury should issue guidance allowing a nuclear power plant to satisfy the incrementality requirement if it can demonstrate that its re-licensure or restart is attributable in whole or in part to EACs derived from its power being eligible for the 45V credit.