December 2, 2022

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-58)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Via Federal eRulemaking Portal: http://www.regulations.gov

**Subject: Clean Energy Fuels Corp. Technical Comments on Notice 2022-58**

Office of Associate Chief Counsel:

Pursuant to the request for comments on the new provisions in §45V and §45Z of the Internal Revenue Code ("Code") as added to the code by §§13204 and 13704 of the Inflation Reduction Act of 2022(IRA), we are seeking confirmation and/or clarification, pursuant to Section 3.02 of IRS Notice 2022-58 on qualification and calculation under §45Z of the production tax credit.

Clean Energy Fuels is a leading North American provider of renewable natural gas (RNG) used in transportation. When the company was founded over 20 years ago, Clean Energy provided geologic natural gas for use in motor vehicles to help urban areas achieve their state and regional attainment goals under the federal Clean Air Act. Today, Clean Energy owns, operates, or supplies RNG through 560 stations nationwide in 42 states and fuels over 45,000 motor vehicles daily – providing primarily RNG to private and public truck fleets, transit fleets, refuse fleets as well as port and airport vehicles. By 2025, we expect one hundred percent of the fuel dispensed by Clean Energy to its customers will be RNG sourced from organic waste. Clean Energy also constructs, operates and maintains fueling stations that dispense hydrogen for use in transportation, which can also be powered by RNG.

In order to satisfy the demand for RNG as a transportation fuel by Clean Energy's customers, Clean Energy has also been involved with RNG production primarily from agricultural sources and landfills. Clean Energy has brought to these RNG projects private capital while partnering with dairy farms and refuse companies. The California Air Resources Board (CARB) has since

determined that RNG produced from these sources delivers on average a carbon-negative transportation fuel for all the natural gas vehicle (NGV) customers statewide.
The Inflation Reduction Act of 2022 (IRA) presents a significant opportunity to reduce greenhouse gas (GHG) emissions as the country moves to decarbonize its economy. Using RNG as a substitute for diesel fuel in heavy-duty (HD) trucks can make significant inroads towards achieving this goal today. Clean Energy believes it is Congress' intent to use the PTC and the ITC to incentivize carbon neutral fuels like RNG that can also support zero emission vehicle fueling.

With regard to Notice 2022-58, the guidance and/or clarification we believe is needed most quickly and most important include the following:

- We respectfully seek confirmation that the clean fuel production tax credit under §45Z can be claimed on transportation fuel produced from qualified biogas property as defined in §48(c)(7) for which an investment tax credit under §48(a) is claimed.

- §45Z(d)(5) defines the term "transportation fuel" as a fuel which is suitable for use as a fuel in a highway vehicle or aircraft. Clarification is needed on the type of vehicles included in the category of "highway" vehicle. Are there any limitations to consider for classifying a vehicle as a "highway" vehicle?

In addition to the above request for clarification, we believe guidance is also needed in the following area:

- We believe that any lifecycle analysis on the emission rate under § 45(b)(1)(B) should consider the avoidance of methane emissions as part of the full lifecycle analysis. As such, clarification is needed on whether the emissions rate for fuel can be a negative amount since the production process of renewable natural gas absorbs more $CO_2$ than the amount of $CO_2$ RNG emits when used. This calculation is used for example in Argonne National Laboratory's Greenhouse gasses, Regulated Emissions, and Energy use in Technologies (GREET) Model. If the use of the GREET model is acceptable to the IRS and the emissions rate can be determined to be a negative amount, this will mean the emissions factor calculated under §45Z(b)(5) can exceed 1. If this is the case, is there a limit to the emissions factor (i.e., maximum number that the emissions factor can claim)?

- We would also like to receive an IRS clarification on whether "respective ownership interests in the gross sales from such facility" under §45Z(f)(2) refers to "each member's percentage of capital interest in the facility" or "each member's proportional interest in the

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capital account of the partnership that holds the facility at the beginning of the year based on which profits and losses are allocated to each member". Receiving such a clarification would help us understand whether the gross sales are allocated based on taxpayer's ownership of a capital interest or profits interest in a partnership.

**Conclusion**

Clean Energy appreciates the opportunity to submit these written comments and we look forward to receiving further guidance from the IRS as we view our industry as a strong pathway to decarbonization of the US economy. Please reach out to me or our VP of Federal Government Affairs, Scott Lane, at scott.lane@cleanenergyfuels.com to discuss any of the above items if needed.

Respectfully Submitted,

Robert M Vreeland

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