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November 9, 2022

Ms. Holly Porter
Associate Chief Counsel (Passthroughs and Special Industries)
U.S. Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203, P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Comments of the National Hydropower Association on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50)

Dear Ms. Porter:

The National Hydropower Association ("NHA") is a non-profit national association dedicated to securing hydropower as a clean, carbon-free, renewable, and reliable energy source that provides power to an estimated 30 million Americans. Its membership consists of more than 300 organizations, including public and investor-owned utilities, independent power producers, equipment manufacturers, and professional organizations that provide legal, environmental, and engineering services to the hydropower industry.

NHA promotes innovation and investment in all waterpower technologies, including conventional hydropower, marine and hydrokinetic power systems, and pumped storage hydropower to integrate other clean power sources, such as wind and solar. NHA appreciates the opportunity to submit the following comments in response to this notice.

Background on Hydropower

NHA's members own and roughly 85% of the U.S. hydropower generating capacity, which includes over 100 Gigawatts ("GW") of hydropower and pumped storage capacity.

The nation's existing hydropower infrastructure, combined with new project deployment opportunities, are critical resources for achieving the Administration's climate policy goals that underly the Inflation Reduction Act's[1] ("IRA") clean energy tax package. Hydropower is a clean, flexible, and reliable energy source that supports an estimated 72,000 well-paying jobs in the United States.[2] The sector also generates more than 6 percent of the country's utility-scale electricity and nearly one third of all utility-scale renewable power. In addition, pumped storage,

[1] Public Law 117-169, 136 Stat. 1818 (August 16, 2022).
[2] U.S. Department of Energy, U.S. Hydropower Workforce: Challenges and Opportunities (October 2022). https://www.energy.gov/eere/water/articles/new-report-highlights-hydropower-industrys-demand-new-diverse-talent

which is a long duration energy storage asset, provides over 90 percent of energy storage on the grid.

Approximately one-third (281) of U.S. Federal Energy Regulatory Commission ("FERC") hydropower operating licenses are scheduled to expire by 2030 and almost half by 2035 (459).[3] These 459 licenses include over 9,000 megawatts of hydropower capacity, which translates into 22 million metric tons of carbon dioxide emissions avoided per year, electricity for 4.8 million homes and avoided emissions from nearly 5 million cars annually.[4] The licenses also include nearly 8,400 megawatts of pumped storage capacity, which accounts for 38 percent of the nation's total energy storage capacity, which is 400 percent more energy storage capacity than that of all battery installations constructed from 2010 to 2020.[5]

The hydropower provisions under the IRA clean energy tax package are critical to supporting these existing hydropower resources. Many hydropower assets, particularly smaller projects, are struggling to remain economic, with some projects considering decommissioning. They are unable to compete with other renewable resources that receive more favorable treatment (e.g., under state renewable portfolio standards ("RPS")) and are not always valued and fully compensated in the regional markets for the grid services they provide. The loss of any renewable generation only sets back the goal of the IRA to increase renewable deployment and reduce carbon emissions. As such, implementation of the hydropower provisions is key for the industry and the nation's decarbonization goals.

The National Hydropower Association (NHA) submits the following comments on Elective Payment of Applicable Credits and Transfer of Certain Credits ("IRA").[6]

1. Elective Payment of Applicable Credits (§ 6417) Comments

NHA was pleased to see Congress apply the direct pay option to the extension of the existing §45, §48, and §48C credits and to the new technology-neutral clean energy credits (§45Y and §48E), which provides support to hydropower project development by tax-exempt entities such as public power utilities and rural electric cooperatives. In fact, public ownership (including public utility districts, irrigation districts, states, and rural cooperatives) accounts for approximately 24% of installed capacity of the U.S. hydropower fleet. Without direct pay, the IRA would have left untapped a significant portion of the growth potential available in the hydropower sector.

For public power entities to take advantage of these credits through direct pay, the IRS should endeavor for simplicity in guidance and in the waiver process. The direct pay provision is unlike any previous program that public power entities have used in support of their project

[3] National Hydropower Association, *17 GWs of Hydropower at Risk* Fact Sheet.
[4] *Id.*
[5] *Id.*
[6] Internal Revenue Service. (2022). Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50).

developments, such as the Clean Renewable Energy Bonds ("CREBs") or Build America Bonds ("BABs") for which the sector had much greater familiarity. In addition, there are several new layers of complexity in claiming the tax credits, including the domestic content rules, wage and apprenticeship requirements, and energy community and low-income community qualifications. Overly complex guidance implementing these new requirements could create millions of dollars of paperwork and tax consulting fees – money that could be better spent on the project itself or returned to customers in the form of lower rates. It could also present a barrier to access particularly for smaller entities that do not have sophisticated tax policy resources in-house or the financial capabilities to hire outside counsel.

NHA encourages the IRS to utilize short and simple forms for accessing the elective payment. For example, IRS Form 8849, "Claim for Refund of Excise Taxes" is an example of a single page form that is simple, even if the underlying schedule used to calculate the credit is long.

1.1 Credit election timing

Timing of credit election is also an important issue for public power and municipal utilities. The IRA provides that a credit election by a tax-exempt entity is to be made no later than such date as determined appropriate by the Secretary. Notice 2022-50 further asks what factors should be considered when providing guidance on the due date of the election for tax-exempt entities. NHA suggests that the IRS allow eligible entities to delay the election up to the point that the asset is placed in service. Due to the extensive compliance provisions for tax-exempt entities regarding domestic content (and recent supply chain and labor issues) the extra flexibility could be beneficial if plans change or are delayed.

Finally, the IRA allows for waivers where domestically sourced components would increase project cost by more than 25% or domestically sourced components are not available in sufficient quantity or quality. The implementation of the waiver provisions is critical as the IRA limits, in some cases significantly, the amount of the credit if facilities do not meet the requirements. For entities that benefit from direct pay to avoid a domestic content penalty, the development, approval, and use of simple waivers would be beneficial. Without such waivers, projects could be delayed either by uncertainty or a lengthy waiver approval process.

Thank you very much for considering these comments. NHA would welcome the opportunity to discuss these issues further with IRS.

Sincerely,

*/s/ Michael Purdie*______

Michael Purdie
Director of Regulatory Affairs and Markets