



November 3, 2022

VIA The Federal eRulemaking Portal at www.regulations.gov

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
P.O. Box 7604,
Ben Franklin Station
Washington, DC 20044

RE: Comments on Notice IRS-2022-0051

On behalf of Plug Power Inc. (“Plug”), please see the below responses to the Department of Treasury’s Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022.

Plug is a leading provider of end-to-end green hydrogen and fuel cell solutions. Through our Proton Exchange Membrane (“PEM”) fuel cell products, Plug successfully created the first commercially viable market for hydrogen fuel cells and has deployed more than 60,000 fuel cells to date. Plug is building an end-to-end green hydrogen ecosystem, from production, storage, and delivery to energy generation. Our capabilities cover all aspects of the entire hydrogen value chain. We are building the world’s first Green Hydrogen Highway, with plans to produce 500 tons of liquid green hydrogen per day by 2025.

i. Apprenticeship Requirement

- a. *Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?***

Plug respectfully requests clarification on apprenticeship requirements in the Section 48 Investment Tax Credit. Section 48(a)(11) provides that “[r]ules similar to the rules of section 45(b)(8) shall apply.” We recommend that the apprenticeship rules for the Section 48 ITC must be sufficiently flexible and tailored to accommodate the diverse range of energy property types within that framework.

The apprenticeship provisions at Section 45(b)(8) are couched within the Renewable Electricity Production Credit. However, Section 45 “qualified facilities” are, in many instances, demonstrably different in scope and size than numerous technologies and energy property-types in Section 48. For example, certain property types may be placed in service at disparate locations across the United States; and further, the construction, alteration, and repair of these properties may only require the deployment of a relatively small number of employees to a customer site, for a limited duration. Limited

project size and duration, combined with geographically dispersed customer sites, potentially creates administrative impracticalities in procuring and tracking apprentices at each specific customer site. Furthermore, employees assigned to a given project site may not be solely dedicated to a site for an extended duration; rather, they routinely service (either for construction, alteration, and repair) project sites across the United States. The construction, alteration, and repair of an energy property with limited personnel for onsite construction, alteration, and repair might unduly frustrate a taxpayer's ability to adhere to with apprentice hours and ratios cross referenced at Section 48(a)(11).

In addition to the statutory exceptions at Section 45(b)(8)(D), we believe that additional Section 48 ITC-tailored guidance would be beneficial. We recommend that a taxpayer, its contractors, and subcontractors may demonstrate compliance with Section 48(a)(11) through an aggregate measure of apprenticeship metrics across multiple energy properties within a tax year. This annual aggregation would afford flexibility across project sites, prevent unnecessary administrative impracticalities, and ensure company-wide compliance with statutory apprenticeship objectives.

Plug is appreciative of the opportunity to provide these comments. We are dedicated to supporting the Administration however necessary to ensure that the Inflation Reduction Act guidance on hydrogen tax incentives is successfully implemented. Please feel free to contact us with any comments or questions you may have regarding this submission or any other hydrogen related issue.