FuelCell Energy
3 Great Pasture Road
Danbury, CT 06810
www.fuelcellenergy.com

December 2, 2022

Via Federal eRulemaking Portal (www.regulations.gov)
Department of the Treasury
1500 Pennsylvania Avenue
Washington, D.C. 20220

Re: Multiple Requests for Comment on the Implementation of the Inflation Reduction Act of 2022, Notice IRS-2022-58

Dear Secretary Yellen,

This letter has been prepared by FuelCell Energy, Inc., a global leader in clean energy manufacturing, in response to your request for comment on the Inflation Reduction Act ("IRA"), issued in the Federal Register on September 4, 2022. FuelCell Energy thanks the Department of Treasury ("Treasury" or "Department") for the opportunity to provide written comments regarding the implementation of this critical legislation.

Undoubtedly, Congressional passage and enactment of the IRA marked a fundamental change in the United States related to the federal government's view on a wide variety of policies, including those that dictate and govern the way we are investing in and driving changes across the energy sector.

Key Questions Presented

In an effort to be responsive to DOE's request to highlight the key questions that commenters have and to identify those that need immediate guidance, FuelCell Energy has identified three key questions which are stated here and are more fully detailed in the comments below.

1. What is necessary for an existing facility claiming the ITC under Sec. 48 of the Internal Revenue Code, which is modified to produce clean hydrogen, to capture the IRA 45V production credit without making the facility ineligible for either or both?
2. Is it necessary for projects be comprised of two distinct taxable entities, one for ITC under Sec. 48 and one for PTC under 45V or can a single entity avail itself of both credits?
3. If a single entity is allowed to seek credits under both provisions, what requirements, administrative or otherwise, would be necessary to establish a successful filing?

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FuelCell Energy Overview

FuelCell Energy is proud to be among the companies that have been dedicated to clean energy innovations since our inception five decades ago. The company was founded in the United States in 1969, by two scientists devoted to pursuing technological innovations that address a wide variety of energy priorities through patent-protected U.S. innovation, compound combinations that produce and use energy in ways that are smarter and cleaner. It is important to note that the strength of FuelCell Energy's technologies is that they can be combined in ways to achieve multiple objectives and to provide a myriad of benefits.

As examples, our current product portfolio includes two dynamic electrochemical platforms: molten carbonate and solid oxide. The platforms are similar in many ways, but they also have unique capabilities. Importantly, both can support power generation and combined heat and power applications from a variety of fuels, including natural gas, renewable biogas, or hydrogen.

These fuel cells react with fuel electrochemically, without combusting the fuel, which avoids emissions produced by fuel combustion such as oxides of nitrogen, oxides of sulfur, and particulate emissions. As you know, these are emissions that impact air quality in communities in real time. In the electrochemical process, fuel and air are reacted in separate chambers in the fuel cell stack. As a result, the reactions producing CO_2 happen before the fuel is mixed with air while the CO_2 remains concentrated and easy to remove. Both molten carbonate and solid oxide fuel cell systems can benefit from this unique feature, with modifications enabling the capture of their own CO_2 for use or sequestration before it is emitted into the air. FuelCell Energy's molten carbonate fuel cell is unique in its ability to also capture CO_2 from an external source, such as a power plant or an industrial boiler just to name a couple. Our solid oxide fuel cell can operate on pure hydrogen as a feedstock, emitting zero CO_2, which will become increasingly important as the uses of hydrogen for fuel become more widely adopted, and which complements the nation's current emphasis on deploying technology that enables hydrogen-based energy storage. We are also currently commercializing a solid oxide electrolyzer that will produce hydrogen from power and water, which will be well suited to partner with renewable energy projects and/or hydrogen storage infrastructure.

Simply put, our multi-featured platforms can be configured to provide multiple value streams, including electricity, hydrogen, high grade heat including steam, water, and CO_2 for sequestration and or utilization. At FuelCell Energy, we believe these innovative technologies are aligned with specific policy objectives outlined in the IRA. In addition, we believe our overall objectives for our customers and communities are also consistent with many of the provisions contained in the IRA:

- Providing clean energy and supporting decarbonization objectives – both in terms of platform capability and delivered output streams.
- Helping to achieve a market for sustainable hydrogen – through multiple platform solutions that take into account the cost of electricity, the availability of renewable fuels, and the scarcity of water to create hydrogen at or near the point of use.

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- Increasing resiliency and reliability through local, clean, and sustainable solutions that can produce power at the point of use, not reliant on long-distance transmission lines and removing other above ground risk associated with local distribution networks.
- Supporting resiliency through 24/7 power availability,
- Promoting energy security and utilization of American IP and American manufactured technology; and
- Creating multiple value streams – electricity, hydrogen, thermal, water, and carbon separation.

Per the Department's request, the balance of this letter includes both general observations and comments on specific provisions contained in the IRA.

General Comments:

As noted, passage of the IRA demonstrated a significant commitment on the part of the federal government to change the way in which we consider, design, and implement energy and other policies in the U.S. For companies like FuelCell Energy, a global technology firm committed to using innovations worldwide to fuel energy advancement, enactment of this comprehensive legislation was unrivaled. Our current customers, industry partners, and prospects have become acutely focused on understanding the intent and the letter of the legislation.

Since the IRA's passage, FuelCell Energy has received customer requests and inquiries related to the incentives contained therein. It is imperative that guidance from the Department outlines the appropriate interpretation of the IRA's key provisions. Because the energy tech industry, specifically companies like FuelCell Energy, are rapidly developing new technologies and extending the usefulness of our existing decarbonization platforms, clarity on how to decipher these provisions will better incentivize investments by customers of all sizes and distinct energy needs.

Similarly, we believe it is critically important for Congress, the Administration, and all agencies responsible for implementation of the legislation to continue to consider and account for all new energy technologies that will contribute to the diversification of the energy sector in the U.S. A parallel obligation exists for industry leaders and innovators to enable the government to achieve the nation's energy goals thus its contribution to our singular climate. As this relates to FuelCell Energy specifically, we believe we perform our share of this responsibility by providing the Department, other agencies, and Congress with timely information related to regulatory implementation and delivering products that are focused on empowering the world with clean energy.

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Specific Provisions: Clean Hydrogen Production Credits

FuelCell Energy welcomes the 45V Clean Hydrogen Production Credit and believes this credit will enable tremendous strides to be made in building out the clean hydrogen infrastructure required to reach the policy objectives in the IRA and to fulfill the Department of Energy's Clean Hydrogen Roadmap.

FuelCell Energy's primary focus is Section 13204 of the Inflation Reduction Act that allows for the modification of a facility placed in service prior to January 1, 2023. Understanding what modifications to existing facilities are permissible to become eligible for the 45V credit is critical to unlocking a significant number of existing clean energy production centers and transforming them into hydrogen production hubs.

Section 13204 of the Inflation Reduction Act, page 338, line 6 is quoted in pertinent part below:

> *(3) MODIFICATION OF EXISTING FACILITIES.— Section 45V(d), as added and amended by the preceding provisions of this section, is amended by adding at the end the following new paragraph:*
> *(4) MODIFICATION OF EXISTING FACILITIES.—For purposes of subsection (a)(1), in the case of any facility which—*
> > *(A) was originally placed in service before January 1, 2023, and, prior to the modification described in subparagraph (B), did not produce qualified clean hydrogen, and*
> > *(B) after the date such facility was originally placed in service—*
> > > *(i) is modified to produce qualified clean hydrogen, and*
> > > *(ii) amounts paid or incurred with respect to such modification are properly chargeable to capital account of the taxpayer, such facility shall be deemed to have been originally placed in service as of the date that the property required to complete the modification described in subparagraph (B) is placed in service.*

Subsection (a)(1) cited in the above excerpt references the section of the IRA's 45V credit that specifies the timeline for a project to be placed in service while maintaining eligibility to receive the 45V credit.

Section 13204 of the Inflation Reduction Act, page 329 line 23 is quoted in pertinent part below:

> *(a) AMOUNT OF CREDIT.—For purposes of section 38, the clean hydrogen production credit for any taxable year is an amount equal to the product of—*

> *(1) the kilograms of qualified clean hydrogen produced by the taxpayer during such taxable year at a qualified clean hydrogen production facility during the 10-year period beginning on the date such facility was originally placed in service, multiplied by*
> *(2) the applicable amount (as determined 7 under subsection (b)) with respect to such hydrogen.*

FuelCell Energy interprets these sections to mean that a new clean hydrogen producing project must be placed in service after January 1, 2023 to be eligible for the 45V production tax credit. That same project can be eligible for that credit for up to 10 years after the "date such facility was originally placed in service." Additionally, an existing facility, built prior to January 1, 2023, may be modified to produce clean hydrogen if the original facility had not been producing hydrogen and if the newly created hydrogen meets the requirements for carbon intensity determined under the GREET model. If that modified facility meets those requirements, the date the facility was "originally placed in service" will be considered to be the date on which the hydrogen production assets are added to the facility.

If our interpretation is correct, FuelCell Energy is interested in understanding how this change in the "placed in service" date might impact the ability of the facility to receive an investment tax credit under Sec. 48 of the Internal Revenue Code. For example, FuelCell Energy manufactures fuel cells that can operate using biomethane to produce zero emissions electricity, consistent with the standards of the GREET model. Prior to the IRA's passage, FuelCell Energy projects were eligible to seek an ITC under Sec. 48 of the IRC. FuelCell Energy asks Treasury for clarity on how an existing facility claiming the ITC under Sec. 48 could be modified to produce clean hydrogen to qualify for the 45V production credit without rendering the facility ineligible for either or both credits.

Conclusion

As the Department well knows, a vast amount of technical and other information is necessary for the Treasury and other federal agencies to implement the IRA and to unleash the new climate transition economy. This response to Treasury's Request for Comment is intended to share insight from the energy technology sector, which is both rapidly changing and capable of making an outsized contribution to energy advancement in the U.S. and around the world. Importantly, we believe that this sector's capabilities align with many of the policies included in the IRA, and we reiterate our gratitude to the Department for allowing us the opportunity to share these insights and ask these questions.

At FuelCell Energy, we are particularly proud of our history as an energy technology innovator and we celebrate the men and women on our team who have, for decades, been driven to create and share new technologies that produce multiple value streams for our customers worldwide. We are

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proud to source the vast majority of our technical manufacturing equipment (i.e., the equipment we use daily that we have not invented) almost exclusively from U.S. based manufacturers across the country. We are also proud that we have an opportunity to demonstrate our commitment to empower a world with clean energy by partnering with the Department of State to deliver our differentiated highly efficient electrolysis platform to Ukraine for the production of hydrogen and ammonia, demonstrating America's technology leadership around the world.

We thank you for the opportunity to submit these comments and appreciate your willingness to consider our recommendations. Should you need any additional information, Alexandrea Isaac, FuelCell Energy's Senior Counsel (aisaac@fce.com) can provide more information as needed.

Sincerely,

Jason Few, President and CEO

cc: Lilyanne H. McClean, Senior Vice President, Global Public Policy and Government Affairs