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AMERICA'S UNIONS

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February 26, 2024

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Mr. John Podesta
Senior Advisor to the President for Clean Energy Innovation and Implementation
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: REG-117631-23

Proposed Rules—Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property

Dear Secretary Yellen and Senior Advisor Podesta:

On November 22, 2023, I wrote to you on behalf of the AFL-CIO and our affiliated unions to express our concerns about forthcoming guidance on the Section 45V hydrogen production tax credit. With our affiliates, we represent millions of working people across the clean energy, fuels, infrastructure and transportation sectors—workers who are ready for good union jobs in clean hydrogen.

After reviewing the proposed Section 45V guidance released December 26, we continue to have deep concerns. These are about how the proposed guidance will affect our members and potential jobs, and whether the guidance will enable clean hydrogen to scale so that the United States can meet its emissions targets. We urge you to revise the proposed guidance so that we can achieve our shared goal: standing up a clean American hydrogen industry with good union jobs.

Union members are looking forward to hundreds of thousands of good union jobs in hydrogen.
Last year's announcement of preliminary awards to seven regional hydrogen hubs was welcome and inspiring. Our members were and are excited by the potential of this new industry to create and secure hundreds of thousands of good union jobs, while building a clean energy economy. They have high expectations after participating in the hydrogen hub application process, which required hub proponents to provide estimates of jobs numbers and economic benefits. They are concerned, however, that the proposed guidance will affect the promise of hydrogen jobs they thought were forthcoming.

The proposed guidance adds requirements that will restrict access to the tax credit and affect hydrogen jobs.
Section 45V of the Inflation Reduction Act sets out four levels of tax credits, with larger tax credits going to projects with lower life cycle emissions. The proposed guidance goes beyond the statute and adds requirements that are likely to restrict hydrogen producers and the regional hydrogen hubs to either the lowest level of the production tax credit or none at all. These unworkable requirements include additionality and temporal matching.

Adding more requirements to the tax credit will have consequences for jobs and workers. Hydrogen is a new industry in the United States and not yet commercially viable. Incentives, such as the tax credits, are necessary to support the industry while it scales and brings down costs. If there is uncertainty about whether incentives will be available, or if incentives are inadequate, companies will pull back from projects and there will be fewer jobs. Indeed, we have heard from some state and local labor bodies that this is already happening, due to concerns about the proposed guidance.

Restricting access to production tax credits can also affect competitiveness. For example, the Pacific Northwest hydrogen hub will produce hydrogen for use as fuel in cleaner industrial production. Products from West Coast industry are exposed to competition from China and other lower cost Asian countries. Fewer federal incentives for hydrogen production means higher hydrogen (fuel) prices for industrial users, resulting in higher prices for clean manufactured goods, less competitiveness and ultimately fewer jobs.

Requiring additionality will make it harder for some regional hydrogen hubs to access the full tax credit, thereby jeopardizing the jobs these hubs are set to create.
I share the concerns expressed by 11 senators in their November 6 letter to Secretary Yellen. They identified additionality as overly stringent and likely to "raise costs, suppress hydrogen production, feedstock and production pathway innovation, and private-sector investment, while discriminating against some regions based on their existing clean energy mixes."[1] Moreover, the additionality requirement does not appear in the statute and conflicts with congressional intent to quickly scale an affordable hydrogen production supply chain.

[1] https://subscriber.politicopro.com/f/?id=0000018b-ab2e-d7df-abbb-ef6fb5ca0000

Requiring additionality will have particularly negative impacts on hydrogen hubs that will rely mostly or wholly on green electricity, such as the ARCHES hydrogen hub in California and the Mid-Atlantic Clean Hydrogen Hub (MACH2). Under the proposed guidance, these hubs would have to ensure that the electricity from which the hydrogen is made comes from new and additional clean generation capacity. But in both California and the mid-Atlantic states, long permitting times and backlogs in interconnection queues make it impossible to build new capacity on the same time scale as the launch of the hubs. This is even more true for highly regulated generation technologies such as hydropower and nuclear power.

Should the Department of the Treasury decide to retain elements of additionality in the final rule, we suggest that (a) there should be a much longer phase-in period—three years is not enough; and (b) the requirement should not apply to nuclear or hydro due to the uniquely long lead times for projects that employ these technologies.

The proposed matching requirements are unworkable in their current form.
The proposed guidance would require an as yet undetermined and undeveloped hourly matching tracking system to be implemented for hydrogen production facilities to take advantage of the 45V tax credit. This hourly matching requirement is being developed outside the text of the Inflation Reduction Act and thus was not available to the hydrogen hub applicants at the time that they submitted their proposals to the Department of Energy. Moving the goal posts on the standards to which producers need to adhere adds uncertainty to their ability to produce hydrogen at the time, speed and price initially proposed.

The text of the 45V production tax credit already includes strict requirements for life cycle emissions in order to receive any tax credit from the government. Like the additionality requirement, the temporal matching rule is superfluous to the goal of reducing emissions. If Treasury elects to move forward with this problematic regulation, it is critical that it only be implemented after stakeholders have the opportunity to vet any proposed tracking technology, provide feedback to relevant agencies, and receive adequate lead time to incorporate the new system into existing business and production plans.

Blue hydrogen is a key part of a clean energy future that can create and secure tens of thousands of jobs. The proposed rule should support it.
Blue hydrogen, or hydrogen produced with natural gas as feedstock and carbon capture and sequestration (CCS) of CO2 emissions, will be an important lower cost source of supply for the hydrogen industry. Recognizing this, DOE awarded preliminary grants to five hydrogen hubs that will have blue hydrogen as a significant part of their production strategies.

Union members in natural gas- and coal-rich states such as Ohio and Pennsylvania are looking to blue hydrogen projects as a source of family-sustaining, lower emissions jobs. Our members and their congressional representatives are now concerned that these projects may not qualify for a sufficient level of tax credit or any at all.

The forthcoming guidance for 45V can do more to address these concerns. For example, the rule can make it clear that hydrogen producers may blend conventional natural gas with ultra-low carbon intensity coal mine methane, to bring down the life cycle emissions of blue hydrogen projects and allow access to a higher amount of tax credit. It would also be helpful for Treasury to reiterate that blue hydrogen projects can qualify for the 45V tax credit and to tie this to CCS rates, upper limits for emissions from energy use, etc. This technology-neutral approach not only reflects congressional intent but also ensures that energy communities can fully participate in the new low-carbon energy production economy as promised by President Biden.

In closing, I would like to stress that the AFL-CIO and our members are fully committed to a clean energy economy that is built, manufactured, transported and maintained with good union jobs. We want to see the nascent hydrogen industry flourish. We ask you to ensure that the final guidance for Section 45V supports this industry, rather than holding it back.

Sincerely,

Elizabeth H. Shuler