Memo

To: US Treasury and IRS

From: Steven G. Hyde, President, and CEO

CC:

Date: February 16, 2024

Re: Proposed Rule on Hydrogen Tax Credit 45V [comprehensive comments, submitted as Attachment 1 regulations.gov]

We at the Genesee County Economic Development Center (GCEDC) applaud the intent of the Inflation Reduction Act (IRA) to incentivize investments in clean energy technologies that are vital to our national decarbonization, energy security, and job creation goals. With that said, the portion of the IRA that focuses on clean hydrogen is particularly close to our local interests, a green hydrogen producer, Plug Power, is making significant investments to build a 74-ton per day green hydrogen production facility at our STAMP Mega-Site Industrial Park located in Upstate New York. The site is focused on returning advanced manufacturing enterprises to Upstate New York in a sustainable manner, given that a significant portion of the electric power that energizes companies locating at STAMP is from hydropower generated at the New York Power Authority's (NYPA) Niagara Hydropower project. The local community and broader region are very excited at the prospects for green hydrogen to help decarbonize such fossil fuel intensive sectors as transportation, warehousing, steel manufacturing et. al.) all while adding jobs and boosting our regional economy in Upstate New York.

We are submitting our public comments today regarding the proposed rules for the 45V Hydrogen Production Tax Credit. We believe the rules as proposed are overly constraining and will greatly limit the ability of innovative early adopter firms to qualify. In their current form, they appear to contradict Congressional intent and plain statutory text by limiting early adopter firms that will not be able to quality for the 45V credit. If adopted as proposed, many projects around the country, that were started before the proposed rules were issued, are likely to be scuttled, cancelled, or reduced in scope. It is likely that investors who are incentivized by the IRA benefits for producing green hydrogen will turn away from the technology and toward other opportunities and related federal benefits that may support less beneficial societal outcomes.

Listed below are five specific concerns that we would ask you to consider when adjusting the proposed rules to better align with the intent of the statute and enable and advance considerable clean hydrogen production and end use adoption:

1) **Grandfathering Protections:** The final regulation should include grandfathering provisions that (i) allow hydrogen producers to rely on the regulatory framework in place at the onset of the facility's construction through the producer's ten-year Section 45V credit; and (ii) exempt from the incrementality, time-matching, and deliverability requirements those clean hydrogen projects that began construction after passage of the IRA but prior to the publication of the final regulation in the Federal Register.

2) **Clean Energy Standards:** New York has implemented among the most ambitious clean energy standards in the United States, which is codified in the Climate Leadership and Community Protection Act (CLCPA). The CLCPA requires New York to source 70% of its electricity from renewable resources by 2030 and 100% of electricity from clean (non-emitting) resources by 2040. To the extent that the development of green hydrogen projects would increase load and result in induced emissions, the impact would be temporary, declining significantly by 2030 and disappearing by 2040. In addition, the Plug Power project at STAMP is located near NYPA's Niagara Hydropower project and in a region of the state with a low average emissions intensity of electricity. Thus, the Plug Power project is likely to cause only minimal induced emissions upon operation, which will decline significantly by 2030 and be eliminated by 2040.

Genesee County Economic Development Center
99 MedTech Drive, Suite 106, Batavia, New York 14020
Phone: 585-343-4866 Fax: 585-343-0848
Email: gcedc@gcedc.com Web: www.gcedc.com
The GCEDC / GGLDC is an equal opportunity provider & employer

3) **Meaningful Access to Clean Baseload Power:** Though GCEDC respectfully maintains that the proposed incrementality requirement would exceed Congress' delegation of authority to Treasury in Section 45V and violate the Administrative Procedure Act, if Treasury is nevertheless inclined to include an incrementality requirement in the final rules, at the very least, that requirement should be modified to afford several pathways for hydrogen producers to access hydroelectric, nuclear, and other clean baseload power resources. The Notice of Proposed Rulemaking seeks comments on several alternative frameworks. See 88 Fed. Reg. at [pages 35-47]. GCEDC appreciates Treasury's willingness to consider these alternatives and submits that, at a minimum, any incrementality framework must include: (i) an allowance of 10% of a power producer's minimal-emitting generation (e.g., nuclear and hydroelectric); (ii) risk of relicensing and curtailment exceptions; and (iii) an option for hydrogen producers to submit data demonstrating zero or minimal induced grid emissions in any given case (or category of cases). We respectfully suggest that the full suite of alternative incrementality metrics must be included.

4) **Access to Energy Imports from Adjacent Regions to Satisfy Any Deliverability Requirement.** As with incrementality and temporal matching, there is no basis in Section 45V for the imposition of any additional deliverability requirements. But if such a requirement is imposed, it certainly must allow for reliance on power from adjacent regions. If a hydrogen producer can prove that power produced from a generator outside of the producer's qualified facility's region is delivered into the same region as the facility, then the hydrogen producer should be allowed to utilize EACs from that generator outside of the region.

5) **Annual Aggregation of all Hydrogen is Impermissible and Any Verified Amount of Qualified Clean Hydrogen Should be Eligible for the Section 45V Credit**. Proposed §1.45V-4(a) must be modified to allow a qualified clean hydrogen production facility to claim the Section 45V credit for any amount of hydrogen produce over any period within a given year. As drafted, the proposed provision would require a taxpayer to include all hydrogen produced each year in the calculation of the average emissions intensity to determine eligibility for the 45V Credit.

To conclude, the constraining nature of the 45V proposed rules have potential to cause collateral damage for the community, the region and industries locating at the STAMP Mega-Site. As Plug Power is helping to develop shared infrastructure at STAMP and should its project and investments at STAMP be negatively impacted by the constraining nature of the proposed 45V rules, it could harm the development of critical and necessary infrastructure that will serve the entire site. As a result, this could have a negative impact on other projects under consideration for the site. For example, GCEDC is actively working with semiconductor firms that are considering locating at STAMP. The restrictive nature of the 45V proposed rules could in fact hamper GCEDC's ability to attract CHIPs Act supported projects, which would negatively impact the re-shoring of semiconductor investments and job creation in those critical sectors as well.