February 26, 2024

Janet L. Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

RE: REG–117631–23

Introduction

On behalf of North America's Building Trades Unions (NABTU), its fourteen affiliated national and international unions, and the over three million construction industry skilled craft professionals we represent, I write to express our strong concerns regarding the recent notice of proposed rulemaking (NPRM) issued by the Department of Treasury (Treasury or The Department) for the clean hydrogen production tax credit under Section 45V as enacted by the Inflation Reduction Act of 2022.

Our members applaud the Biden Administration's whole of government approach to addressing the climate crisis facing our nation and the singular focus it places on the commitment to creating good, middle class sustaining union jobs. As the voice of those who have built our nation's energy infrastructure and continue to work every day to provide our country with the energy it demands, the inclusion of the so called "three pillars" in the NPRM is in clear opposition to the original congressional intent of the underlying legislation. While we acknowledge the dire need to ensure the expansion of clean hydrogen production for this Swiss Army Knife like energy resource, the inclusion of these requirements will result in severe unintended negative consequences on a job creating sector on the verge of generational change for our environment and the unionized construction industry.

Congress has recognized the distinct worth of this dynamic energy source, supporting the expansion of hydrogen through both the Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act (IIJA). Both pieces of legislation provided a clear outline for federal support and echoed the broad applicability of the industry with no mention of incrementality or hourly matching clauses, two concepts which if required, would have drastically altered the legislation's structure. Our comments will focus on the negative effect of these requirements on our members and the industry writ large, particularly as they relate to our members anticipated work on numerous Department of Energy (DOE) supported Regional Clean Hydrogen Hubs (RCHH) across the country.

Department of Energy - Regional Clean Hydrogen Hubs

A word of caution on the severity of this rule. NABTU has been made aware of multiple instances across the country where companies have either withdrawn their proposed hydrogen projects or are planning to do so from RCHH applications due to the proposed rule by Treasury.

To make matters worse, the longer deliberation of this rule goes on, the more our developer partners who are engaged in conversations with DOE on hydrogen hubs or are actively working with our membership on the ground, will lose the financial confidence to continue project development.

As advocates for the men and women we represent, the negative effects of implementing these rules translate to one singular result, lost jobs. In the Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) hub in California where there are an anticipated 130,000 direct construction jobs alone, our members are positioned to secure project labor agreements on all of the phase one projects. Additionally, in the Mid-Atlantic Clean Hydrogen Hub (MACH2) in Pennsylvania, Delaware, and New Jersey our members are eagerly awaiting the 14,400 direct construction jobs the hub will create. Similar future employment opportunities are seen across a majority of the RCHH which possess strong labor protections.

Temporal Matching

Under the proposed rulemaking, Treasury would require taxpayers to transition on January 1, 2028, from an annual matching scenario utilizing energy attribute certificates (EACs) to an hourly matching system. This transition to matching generation within the same hour that the hydrogen electrolyzer is in operation poses multiple concerns.

First and foremost, among these concerns is that as of now there is no nationally available nor industry-wide recognized tracking system in North America that has the ability to provide hourly matching capabilities across renewable energy resources. In addition to this, Treasury makes no reference to a hard timeline when such a system might be widely available but instead presumes that such technology will be developed. The effect of such an assumption has created an extreme degree of uncertainty. This uncertainty is further compounded by the negative financial impact of the requirement as noted in the New York State Energy Research and Development Authority's (NYSERDA) letter to the Treasury Department dated August 3, 2023, which stated that a "preliminary look at work being performed on hydrogen for Connecticut indicates that hourly matching would approximately double the cost of clean hydrogen as compared to annual matching."

Secondly the transition timeline of 2028 to hourly matching does not align with the anticipated construction timeline for DOE's Hydrogen Hub Program meaning that as these hubs come online and begin production, they must immediately be prepared to enter into an hourly matching scenario. This financially significant requirement is one that was not contemplated in the submission of the original hydrogen hub application. It is highly unlikely that the requirement will not have a substantial chilling effect on the ongoing negotiations between hub applicants and DOE.

We recommend that the Treasury remove the hourly matching standard, or at the very least make no such requirement until a nationwide platform is readily available across all

regions and has been established, reviewed, and approved by the Department and by stakeholders. If such a format is developed and industry recognized, we would urge Treasury to include language in a final rule stipulating a substantial lead time for developed projects to meet hourly matching requirements.

Incrementality

The concept of incrementality (or additionality as it is commonly known) is by no means a pillar to stand the hydrogen industry upon. Instead, it is an active hamstringing of this promising sector. The proposed rule's structure of allowing clean power generators who begin production within 36 months of the date that the hydrogen production facility is placed in service, or new capacity added to existing power generators is in clear opposition to congressional intent and stands to stunt the development of the Department of Energy's own Regional Clean Hydrogen Hub Program.

This argument was well summarized in a November 6, 2023, letter to the Department signed by 11 Senators and led by Senator Maria Cantwell from Washington State who in reference to incrementality stated that the overly stringent requirements "could 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." The letter goes on to reassert an argument from, the Washington State Department of Commerce who in their July 14, 2023, claimed that additionality could "complicate the development of electrolytic hydrogen production."

NABTU strongly recommends that the Administration remove these incrementality requirements as they are currently proposed. If the Administration is to include some form of incrementality, there should be strong consideration for the exclusion of power sources which would be highly unlikely to be permitted, constructed, or developed within the timeline of the statute. Power sources under this classification may include nuclear and hydropower plants, along with others who have historically seen extreme long lead times for final power production. These two sectors particularly would effectively be dismissed under the NPRM from hydrogen production in our country.

Secondly, we would recommend that if this concept were to be advanced by the Administration, it must be done in a manner which does not impact the current investment so desperately needed to kickstart the hydrogen economy in this country. This can be mitigated through the substantial delay of incrementality requirements. This delay could allow for much of the DOE's RCHH programs to begin construction and would align more closely with the original applications submitted by these critical stakeholders.

It must be said that even if industry partners were interested in implementing incrementality or the transition to hourly matching, one thing is certain, the timetables are far too swift. These timetables ignore both the potential for a lack of nationwide availability for an hourly matching system and as it relates to incrementality the compounding delays in permitting and connection to the grid that regions across the country are already seeing to

bring clean electricity online. Many regions across the country have backlogs of hundreds of gigawatts worth of renewables and storage waiting in their interconnection que. As the ARCHES Hub in California stated in their letter dated August 23, 2023,

> "To provide 100% clean electricity our state will need to build 148,000 MW of clean energy resources by 2045 – increasing our already robust clean electricity capacity by 400% over the next two decades. We believe these targets are achievable, but if hydrogen projects require additionality above and beyond our 100% RPS (Renewable Portfolio Standards) requirements, it will be impossible to interconnect them in a timely and cost-effect manner without disrupting our carefully calibrated energy system."

With investment into grid infrastructure severely below the necessary values to expedite this process and with substantial legislative permitting reform remaining a proverbial can kicked down the road, it is unlikely that abundant new renewable sources can be brought online in time to satisfy incrementality, hourly matching, and the nation's eager demand for hydrogen production.

Additional Concerns

Treasury in their NPRM offers little insight into the handling of blue hydrogen produced through using natural gas or other fugitive methane sources. This key color to the rainbow of hydrogen production will be used in a number of the Regional Clean Hydrogen Hubs across the country and is critical to ensuring the anticipated job growth of these hubs is fully realized.

A foundational component of the congressional intent of this tax credit was its focus on maintaining a technology neutral approach. This technology neutral approach must be maintained regardless of the type of energy source used to produce hydrogen. That is to say that if a hydrogen producer is able to demonstrate their carbon intensity regardless of the color associated, these producers should be eligible for the full benefit of the tax credit. This is applicable for natural gas producers and other forms of production including but not limited to coal mine methane and renewable natural gas which are currently not contemplated by the NPRM.

While some may argue that blue hydrogen production has the capability of accessing the 45Q tax credit for carbon capture and should not gain full access to this credit, this argument does not take into account that in many scenarios the financial benefit of the 45V tax credit can greatly outweigh that of 45Q. Additionally, the benefit of the 45Q tax credit does not account for upstream carbon mitigation measures taken by producers outside of carbon capture technology.

NABTU recommends that Treasury maintain the foundational congressional intent of this tax credit and allow for the full tax credit to be accessed by hydrogen producers when they can certify their carbon intensity regardless of their feedstock. The Department should create a way forward for lower carbon intensity production pathways either not contemplated by the GREET Model or by the guidance itself to access this tax credit and to prove their emissions rates upstream.

Conclusion

As this Administration endeavors to lead our nation to a clean energy future, the production and use of hydrogen will be critical for decarbonizing a wide swath of industries. To stunt the expansion of this promising industry through the inclusion of incrementality and hourly matching requirements will be to directly stifle the creation of good union jobs, hamstring the greening of our grid, and ignore the clear congressional intent demonstrated through the IRA and IIJA. Talk of the potential of a hydrogen network in this country has gone on for decades, and now is not the time to deny this dream from becoming a reality.

We thank you for your consideration of these comments and for your continued support for NABTU's three million members, and 14 affiliated unions who have built this nation, its middle-class, and are dedicated to growing both.