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Subcommittee on Energy and Water Development, and Related Agencies

Congress of the United States
House of Representatives
Washington, DC 20515

February 21, 2024

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

Dear Secretary Yellen:

I write regarding the U.S. Department of Treasury's proposed rulemaking on the section 45V credit for the production of clean hydrogen (IRS and REG–117631–23).

The Inflation Reduction Act (IRA) laid the groundwork for incentivizing hydrogen production to decarbonize our economy and save our planet. The IRA supports clean hydrogen production as an integral part of that effort. Unfortunately, the Department of Treasury's proposed rule for the 45V Hydrogen Production Tax Credit would severely weaken the chance for widespread hydrogen adoption in areas like my district in Upstate New York.

Most significantly, the proposed rulemaking will severely limit the ability of innovative early adopters to qualify for the 45V production tax credit. In my region, industry leaders have made significant investments to build a 74-ton per day green hydrogen production facility at the STAMP Industrial Park. The STAMP site is a 1,250 acre green manufacturing mega-site focused on bringing advanced manufacturing enterprises back to Upstate New York with its power generated at the New York Power Authority's (NYPA) Niagara Hydropower project.

The spirit of the law is to spur innovation and adoption of cleaner energy technologies and yet the constraints of the 45V proposed rule have the potential to deter both clean energy and key technology manufacturers from locating at the STAMP Mega-Site and in upstate New York overall. Many prospective occupants at STAMP are relying upon the availability of green hydrogen to fuel their operations. Several semiconductor firms are considering locating at STAMP due to the potential availability of clean energy, and the strictness of the 45V proposed rules would hamper the ability of STAMP to attract semiconductor industry projects to the site.

Within the proposed rule, I am additionally concerned about the lack of a grandfathering provision. Facilities that have already begun construction are in no way exempt from the three pillars. This punishes first movers in the climate space who began investments before the rulemaking process began. I am further concerned that all facilities must switch to hourly time matching by 2028, even if they have already begun construction. I urge the Department of Treasury to reconsider these restrictions.

Lastly, I am concerned the final rule would practically prohibit projects powered by hydroelectric and nuclear power. There has only been one nuclear reactor deployed within the last three years in the United States and Upstate New York fully developed its hydroelectric resources decades ago. In my view, punishing the first regions to invest in clean energy like nuclear and hydropower would contradict our congressional intent during the passage of the IRA. I implore the Department of Treasury to consider alternative concepts that meaningfully include the use of existing nuclear and hydroelectric resources.

I implore the Department of Treasury and the Biden Administration to consider places like my district in Upstate New York, and the union jobs that power them in making decisions to broaden the scope of this tax credit.

Please move expeditiously to implement rulemaking for section 45V that accords with the intent of Congress and maximizes the potential for tax credit adoption and hydrogen ecosystem development.

Sincerely,

Joseph D. Morelle

Joseph D. Morelle
Member of Congress