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Via Electronic Submission

Internal Revenue Service
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Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Comments of Talus Renewables in Response to Notice of Proposed Rulemaking
Section 45V Clean Hydrogen Production Credit, REG–117631–23

Talus Renewables, Inc. ("Talus"), appreciates the opportunity to submit the following comments in response to the U.S. Department of the Treasury ("Treasury") and Internal Revenue Service ("IRS") notice of proposed rulemaking that provides guidance ("proposed regulations") for implementation of the Clean Hydrogen Production Credit ("H2PTC") under section 45V of the Internal Revenue Code, as amended by the Inflation Reduction Act of 2022 ("IRA").

Background

Talus is an energy technology company that has pioneered the first commercial, modular, "green" ammonia production system. Talus locally produces low-cost, carbon-free ammonia at or near the point of use, creating value for agriculture, mining, and maritime shipping, with applications in renewable energy storage and power generation. Talus's systems operate on intermittent renewable power and are fully containerized and modular, enabling rapid deployments and scaling. TalusAg, is the division of Talus Renewables that focuses on green ammonia production for the agriculture sector.

Comments

1) Section 45V(a) provides that the H2PTC is available "during the 10-year period" beginning on the date that a qualified clean hydrogen production facility is placed in service, provided that construction of that facility commenced prior to January 1, 2033.

   Particularly for hydrogen production systems that incorporate a significant amount of novel technology or are designed in new or novel configurations, there is a higher degree of technical risk and thus higher likelihood that a system may encounter more frequent and/or more protracted service interruptions. For this reason, Talus urges Treasury and the IRS to develop rules under which, if certain conditions are satisfied, there may be a tolling of the 10-year term. Although a variety of circumstances may justify tolling, in the very least, Talus recommends inclusion of the following:

(A) Circumstances beyond the reasonable control of the operator/owner of the qualifying clean hydrogen production system (e.g., force majeure events); and

(B) At the election of the taxpayer, up to six single-month periods (which may be consecutive or not) during which the qualifying clean hydrogen production system operates for any reason at a 30% or less capacity factor.

2) In determining the emissions associated with the consumption of electricity from specific power sources, 45VH2-GREET assumes that 4.9% of generated electricity produced is lost in transmission and distribution prior to consumption.[1] While this adjustment may be sensible to apply in areas of the country with the highest rates of grid congestion, a blanket assumption would inadvertently penalize and, by extension, disincentivize, clean hydrogen project configurations with direct transmission connections. Talus requests that the Treasury and IRS clarify that 4.9% line loss assumption does not apply to electricity generation facilities that are directly connected to a hydrogen production facility.

3) The proposed regulations provide that the requirements to record the acquisition and retirement of qualifying Environmental Attribute Credits ("ECAs") in a qualified EAC registry or accounting system apply regardless of whether the electricity generating facility is grid connected, directly connected, or co-located with the hydrogen production facility. However, Talus respectfully urges Treasury and the IRS to clarify that this requirement does not apply to renewable generation assets tied directly to qualified clean hydrogen production facilities insofar as both the hydrogen production facility and the relevant renewable generation is "islanded" (i.e., there is no grid connection to either the electricity generation or hydrogen production facilities). In this scenario, both the electricity generated and hydrogen produced are self-evidently emissions-free and the annual production verification report would contain sufficient evidence to support these facts.

4) Talus urges Treasury and the IRS to adopt a very short-term "grandfathering" allowance for qualified clean hydrogen production projects placed in service before January 1, 2026, whereby such projects would be exempt from the incrementality requirement and be permitted to source power and related EACs from renewable energy generation facilities that commenced construction prior to the current 36-month lookback period. This phase-in approach to the incrementality requirement would incent early movers and accelerate development of clean hydrogen projects and help foster the economies of scale necessary to creating an industry with long-term viability. This balanced and reasonable concession would also more closely align with the E.U. Delegated Acts, which also includes a 36-month lookback window for new resources but does not require incrementality until January 1, 2028 (two years later than what Talus proposes in this instance), and exempting projects placed in service before that date with a 10-year grandfathering period thereafter.

5) The proposed regulations indicated that the DOE National Transmission Needs Study regions will be used to derive grid regions for purposes of the deliverability requirement included within the H2PTC but did not appear to contemplate "distributed-scale" qualified clean hydrogen productions systems such as those deployed by Talus, which may be moved to different locations and/or regions over the 10-year credit period. Talus's modular system design, which facilitates portability, is a fundamental

[1] U.S. Dept. of Energy, Guidelines to Determine Well-to-Gate Greenhouse Gas (GHG) Emissions of Hydrogen Production Pathways using 45VH2-GREET 2023 (Dec. 2023) ("DOE 45VH2-GREET Guidelines"), §§ 2.4.1 (Emissions of Electricity Generation) and 3.2 (Accounting for Electricity in 45VH2-GREET 2023).

and critical feature of the system and the company's business model (which benefits Talus' customers as well). Treasury and the IRS should avoid discriminating against business models involving local production and consumption, particularly given that entirely avoiding or minimizing post-production transportation delivers significant additional carbon avoidance benefits relative to larger centralized production. Accordingly, Talus requests confirmation that system location and, therefore applicable grid region, may change over the course of the 10-year credit period without impacting credit eligibility.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact Pierson Stoecklein at pierson@talusrenewables.com if you have any further questions.