7130 W. Grandridge Blvd., Ste. A
Kennewick, WA 99336-7725
(509) 735-1000
TryTri-Cities.org

February 26, 2024

The Honorable Janet Yellen Secretary U.S. Department of the Treasury Internal Revenue Service 1500 Pennsylvania Ave NW Washington, DC 20220	Mr. John Podesta Senior Advisor to the President for Clean Energy Innovation and Implementation The White House 1600 Pennsylvania Ave NW Washington, DC 20500

RE: IRS REG-117631 Proposed Rule, Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Properties

Dear Secretary Yellen and Senior Advisor Podesta,

On behalf of communities in Benton and Franklin Counties in Washington state, the Tri-City Development Council (TRIDEC) and Energy Forward Alliance (EFA) strongly agree with the intent of the proposed Section 45V regulations to promote investment in new, carbon-free resources to support hydrogen production. TRIDEC and EFA – a wholly-owned subsidiary focused on achieving our community's vision for a clean energy future – are proud of the role regional organizations and companies are playing in the development of a clean hydrogen economy. Our organizations have an important stake in the hydrogen economy in Washington state, which has enacted one of the most stringent clean energy standards for electric power delivery in the country.

Despite our alignment with the goal of the proposed regulations, we have concerns that the application of the "three pillar" approach would cause significant complications for electrolytic hydrogen development at scale in Washington. Simply, the approach lacks a mechanism to account for the unique energy generation and balancing characteristics of our region, and the policy environment that hydrogen infrastructure owners and end-users must operate in.

The policy environment for infrastructure owners and hydrogen end users in Washington differs from that of operators in many other states. Specifically, hydrogen producers and consumers in Washington must operate within our state's robust clean electricity and GHG emissions limitations. Washington's Clean Energy Transformation Act (CETA) and Climate Commitment Act (CCA) act together to ensure that new loads will be served with clean electricity sources and that overall emissions, including emissions from imported electricity, will not increase.

Our state's policies are intended to decarbonize electric power delivery to ratepayers by 2045. The targets established in these laws are aggressive and require that the region's electric utilities more than double current system capacity of non-emitting resources by 2030; and more than triple these resources by 2045.

Washington's policies focus on decarbonization at a grid level, and they place the onus on electric utilities and major industrial customers to pursue least-cost, policy-compliant resources that will benefit all utility ratepayers. The policies also tacitly assume that the region's abundant supply of private- and federally-operated hydropower power generation – which supplies approximately two-thirds of the region's power – will continue to support and shape electric power deliveries and the addition of new carbon-free resources on the grid.

As proposed by the U.S. Department of Treasury ("Treasury"), incrementality and temporal matching requirements – specifically hourly matching – do not recognize the contribution of abundant, carbon-free power in Washington, and will drive over-build in the region that will result in project delays and substantial increases in the cost of producing hydrogen.

As it relates to cost, the sum impact of the "three pillar" approach is estimated to add significant cost to H2 projects. In addition to increased cost, projects will also face significant delays in the regional transmission queue, which currently averages four to six years for new projects. Delays of this magnitude in Washington mean that a hydrogen producer is incentivized to cannibalize existing carbon-free projects in the transmission queue for use in qualifying Section 45V hydrogen generation – not for broader grid decarbonization.

TRIDEC and EFA suggest that Treasury strongly considers a mechanism that accommodates hydrogen producers that operate in states with strong decarbonization policies. Under such an accommodation, producers would be deemed to have satisfied the "three pillars" if the project owner and its partnering suppliers (including electric utilities) meet the following conditions:

a) The state in which the Section 45V facility is located has enacted an enforceable 100% clean electricity standard;
b) That the date of such enforceable compliance standard is no later than 2050; and
c) Electricity used to meet the facility's hydrogen production meets the tax credit carbon intensity requirement on an annual basis.

We also suggest two specific changes in addition to the recommendations above:

a) Allow Section 45V producers the ability to use the 45VH2-GREET model in effect at the beginning of construction for the entirety of the credit's applicability or the model in effect the first day of the taxable year in which the hydrogen it produced. Locking in such certainty as to the credit's value is critical. The model should also use statewide averages for carbon intensity, instead of interconnect-wide average values.
b) Utilize current Federal Energy Regulatory Commission (FERC) power markets as the basis for regional energy sources, instead of the National Renewable Energy Laboratory Transmission Study. The FERC power markets – specifically, the Western Electricity Coordinating Council in the Pacific Northwest Region 1 – provide a more suitable standard, as these regions more accurately capture the market activities taking place in a region. In Washington, utilities and power purchasers regularly schedule energy delivery from more diverse geographic regions, where renewable energy generation capacity factors may align better with the load profile of end users.

Absent a mechanism that deems producers in states with strong, enacted decarbonization policies to have satisfied the requirements of the Section 45V's suggested three-pilar approach, the tax policy proposed prevents the development of electrolytic hydrogen development at-scale and places hydrogen producers in direct competition with residential, commercial, and industrial electric ratepayers in the region for the same carbon-free resources.

Better alignment of Section 45V with our region's aggressive carbon reduction policies will help provide the certainty that Washington state can participate in, and lead, the clean hydrogen economy. As such, we strongly urge the U.S. Treasury Department to reconsider and revise its proposed guidance on the hydrogen production tax credit. We thank you for your consideration on this important matter and appreciate the opportunity to provide comments.

Sincerely,

Karl Dye
President & CEO
Tri-City Development Council

Sean V. O'Brien
Executive Director
Energy Forward Alliance