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The Honorable Janet Yellen
Secretary
United States Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

February 26, 2024

RE: Internal Revenue Service; REG-117631-23; Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Electric to Treat Clean Hydrogen Production Facilities as Energy Property; 88 FR 89220 (Dec. 26, 2023).

Secretary Yellen:

Washington Gas is pleased to provide comments on the Department of Treasury ("Treasury")[1] and Internal Revenue Service's (IRS) notice of proposed rulemaking regarding regulations concerning proposed regulations relating to the credit for the production of clean hydrogen and the energy credit, as established and amended by the Inflation Reduction Act of 2022[2]

Washington Gas also acknowledges the submissions made by the American Gas Association, the Business Council for Sustainable Energy and the Fuel Cell and Hydrogen Energy Association, among others. Washington Gas highlights specific comments in these submissions in our comments below and urges the consideration of the general issues and recommendations included in these submissions.

Washington Gas is a regulated natural gas utility that provides safe, reliable natural gas service to more than 1.2 million customers in the District of Columbia, Maryland, and Virginia. The company has been providing energy to residential, commercial, and industrial customers for over 175 years.

Washington Gas is committed to reducing greenhouse gas (GHG) emissions within its own operations while helping our customers and jurisdictions meet their respective emissions reduction targets. Our emissions reduction strategy is predicated upon applying innovative technology, practices and policy that can achieve emissions reductions throughout our operations – from gas supply to transmission/delivery to customer usage, as well as in our fleet

[1] For ease of reference Treasury and the IRS will be referred to herein, collectively, as "Treasury."

[2] *Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property*, REG–117631–23, 88 Fed. Reg. 89220 (Dec. 26, 2023).

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and facilities. We have a unique ability to leverage our extensive network of pipeline infrastructure and related storage and operational assets to facilitate the delivery of lower-carbon fuels, including renewable natural gas and hydrogen. Our near-term goal is to source 10% of our supply from such lower carbon sources by 2030[3]. We have recently finalized agreements with two in-territory municipal producers of RNG and are actively working in multiple venues to promote the market for hydrogen.

Washington Gas Supports the Use of Hydrogen and Low Carbon Gases to Reduce GHG Emissions

On December 26, 2023, Treasury issued the Proposed Rule to amend its regulations and implement elements of the Inflation Reduction Act of 2022 ("IRA")[4]. Specifically, the issuance includes proposed regulations regarding the clean hydrogen production tax credit under section 45V of the Internal Revenue Code ("45V Credit"). The 45V Credit, enacted by the IRA, is part of an energy initiative and is the primary tax incentive for the production of clean hydrogen. The level of the 45V Credit varies depending upon the amount of GHG emissions released during the hydrogen production process. Section 45V of the Internal Revenue Code does not include specific details on the methodology that Treasury should apply to determine the GHG emissions of production processes. Hence, the Proposed Rule includes the suggested specifics related to the 45V Credit.

Hydrogen Production and Gas Delivery Infrastructure Will Reduce Economy-Wide Emissions

Washington Gas believes that the production, transportation, storage, and end-use of lower-carbon fuels, including hydrogen and renewable natural gas, can support pathways to low-carbon energy systems and help reduce economy-wide emissions.

Though much attention has been focused on hydrogen production technologies and applications, it is critical to support the delivery systems that enable safe, cost-efficient distribution of hydrogen for end-use consumption. It is important to recognize that natural gas can enable the acceleration of access to hydrogen because it can serve as a hydrogen carrier, which is it can be blended with hydrogen and delivered to customers through existing networks. Through their existing networks and expertise in building infrastructure, gas utilities like Washington Gas can be a catalyst to scale up production and demand for hydrogen. The industry is actively engaged in growing the hydrogen market to facilitate lower-carbon energy systems and to expand the potential of hydrogen to reduce emissions from end-use applications, including industrial,

[3] https://www.altagas.ca/sites/default/files/2023-12/ALA_2023_ESG_REPORT.pdf, p.9

[4] Public Law 117-169, 136 Stat. 1818 (August 16, 2022).

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transportation, commercial and residential uses.

The gas system's ability to integrate high-value sources of energy like hydrogen and RNG is a critical component of our nation's ability to reach ambitious GHG reduction goals.

Treasury Should Address RNG for Hydrogen Production

Washington Gas considers RNG to be a "ready now" and particularly valuable gas that can be used to help lower emissions related to the direct use of natural gas. However, we also believe that though the Proposed Rule does not directly regulate RNG or other fugitive sources of methane for hydrogen production, the rule does appear to indicate an unduly restrictive approach for qualifying RNG production pathways. We would ask that Treasury expeditiously resolve uncertainty related to its use for 45V credit purposes. We encourage Treasury to take a broad look at RNG and, in turn, support AGA's proposal to ask Treasury to refresh the GREET model to broadly recognize the lifecycle benefits of multiple feedstocks that produce RNG. With respect to RNG, Washington Gas supports AGA's definition that views RNG as "pipeline compatible gaseous fuel derived from biogenic or other renewable sources that has lower lifecycle carbon dioxide equivalent (CO2-eq) emissions than geological natural gas."[5]

Washington Gas also has concerns about Treasury's proposed "first productive use" framework, which appears to restrict existing biogas facilities from becoming feedstocks for hydrogen production or forgo the facility's carbon intensity value and instead require reliance on the carbon intensity value of fossil natural gas. Adopting this framework is a disincentive for RNG hydrogen projects specifically and limits the options and flexibility for RNG developments more generally. The framework also presents timing challenges relating to synching the initial sale of RNG with the in-service date of the facility that projects may find difficult or impossible to satisfy.

Finally, Washington Gas agrees with the Business Council of Sustainable Energy (BCSE) that there is no need to impose regional geographic restrictions for RNG because of the interconnectivity of the natural gas pipeline value chain and long-established delivery tracking systems. As BSCE mentioned, the entire North American natural gas pipeline system is the proper geographic scope for the 45V tax credit, and the federal Renewable Fuel Standard (RFS) program typically sets the market for RNG "credits" on a national level.

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[5] American Gas Foundation, *Renewable Sources of Natural Gas: Supply and Emissions Reduction Assessment* (Dec. 2019), at p. 1, available at https://gasfoundation.org/wp-content/uploads/2019/12/AGF-2019-RNG-Study-Full-Report-FINAL-12-18-19.pdf

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Book and Claim

Washington Gas supports the use of book and claim of environmental attributes for the use of RNG to offset the carbon intensity of hydrogen production. Under the proposal, for purposes of the section 45V credit, hydrogen producers using RNG, or fugitive methane would be required to acquire and retire corresponding attribute certificates through a book and claim system that can verify in an electronic tracking system that all applicable requirements are met.[6]

Furthermore, according to Treasury these rules would apply to the use of certificates with both direct and nondirect claims of RNG or fugitive methane use[7]. The proposed rule states that direct use would involve the production of hydrogen with a direct exclusive pipeline connection to a facility that generates RNG or from which fugitive methane is being sourced, while nondirect use would involve producing hydrogen using RNG or fugitive methane sourced from a commercial or common-carrier natural gas pipeline.

Due to legal and definitional issues relating to the term "commercial or common-carrier natural gas pipeline," Washington Gas asks that Treasury adopt the definitional language submitted by the AGA in their comments. Specifically, AGA proposed deleting the phrase "commercial or common-carrier natural gas pipeline" and using the term "natural gas pipeline or facility."

The Proposal Should Recognize Reductions from Certified Natural Gas

The extraction and production of natural gas accounts for the largest amount of methane emissions in the natural gas value chain. As large buyers of natural gas, local distribution companies like Washington Gas can help stimulate significant reductions in emissions relating to the extraction and production of natural gas by purchasing gas that has been certified to meet very low emission intensity standards. Including Certified Natural Gas in the 45VH2-GREET model would incentivize lower emissions at the well head and reward those who are working to reduce upstream emissions as much as possible. Therefore, the tool should be modified to include Certified Natural Gas and should use a different methane leakage rate for certified natural gas.

[6] Proposed Rule at 89239.

[7] *Id.*

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Washington Gas Supports Blending Hydrogen into the Existing Gas System

Washington Gas supports efforts that will further the development and deployment of hydrogen production, transportation, and blending into the gas pipeline network. This includes support for programs relating to safety, management and training, and hydrogen-enabled gas applications in all end-use sectors, including non-blended hydrogen distributed to end-users.

Natural gas blended with hydrogen has been used safely in various natural gas distribution systems around the world for decades and presents important opportunities to lower the emissions intensity of the energy gas distribution utilities safely, and reliably delivers to customers. Washington Gas is engaged in industry efforts that will support the evaluation and testing of its pipelines for blending opportunities while also beginning to explore dedicated hydrogen delivery infrastructure. Such efforts will be needed to support a hydrogen enabled economy. Our extensive natural gas infrastructure provides an important potential opportunity to store and deliver renewable gas and hydrogen gases to reach our service territory and national GHG reduction goals.

Project Developer Investment Decisions Require Lifecyle Emissions Certainty

Washington Gas requests that the proposed regulations be modified so that developers are not required to update project lifecycle emission calculations based upon annual updates to the current or successor GREET model. Such an approach would introduce great uncertainty and could significantly reduce the value of the tax credit as a project financing mechanism, thus deterring investment. Instead, we agree with recommendations included in the comments of the Fuel Cell and Hydrogen Energy Association and Business Council for Sustainable Energy that would revise the definition to permit the taxpayer to rely upon the most recent GREET model for the taxable year in which the final investment decision ("FID") is reached for the full credit period; or, if there is an updated GREET model that best computes the lifecycle GHG emissions rate based on the taxpayer's facts and circumstances, then the taxpayer may have the option to use an updated GREET model during the credit period.

Conclusion

Washington Gas respectfully requests that the Department of Treasury and Internal Revenue Service consider these comments on this matter and revise the Proposed Rule as discussed herein. Any questions should be directed to Jennifer Stettner, Federal Affairs Manager at jstettner@washgas.com

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