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February 26, 2024

Mr. Douglas W. O'Donnell
Deputy Commissioner for Services and Enforcement
CC:PA: LPD:PR (REG–117631–23)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: IRS Docket-IRS-2023-0066: REG–117631–23, Section 45V Credit for the Production of Clean Hydrogen

Dear Deputy Commissioner O'Donnell:

Thank you for the opportunity to provide comments on the Internal Revenue Service (IRS) and Treasury Department proposed regulations for the Section 45V clean hydrogen production credit as established under the Inflation Reduction Act of 2022.

Zero6 Energy (Zero6) is based in Minnesota and has additional offices in Wisconsin and Illinois. Zero6 has a 30 year history developing and owning clean energy projects such as wind and solar. Our engineering subsidiary (PEC, LLC) is a nationally recognized expert in electrical and mechanical engineering and works for multiple large utilities and independent power producers. Over the past five years, our work assisting biofuel companies to decarbonize and realize the value of carbon reduction from federal and state incentives such as the California Low Carbon Fuel Standard (LCFS) has led us to develop and engineer low carbon hydrogen production. We are in the late stages of development and engineering of the 20MW Dakota Renewable Hydrogen electrolyzed hydrogen production plant and an associated 99MW wind farm that will supply a large Sustainable Aviation Fuel (SAF) refinery in South Dakota. We understand well the opportunities and complexities of powering hydrogen electrolyzers from renewable energy sources. Having spent the last three years designing an adjacent wind farm that has nameplate electrical capacity over 4 times greater than the hydrogen electrolyzer load, we know it is not possible to achieve the full value of the 45V tax credit without the ability to utilize some amount of offsite Renewable Energy Credits that are not required to be matched on an hourly basis.

Zero6's comments on the proposed regulations for Section 45V relate to our planned Dakota Renewable Hydrogen facility. In February 2023, Zero6 selected and placed orders from Cummins to supply American-made electrolyzers from Cummins' facility in Fridley, Minnesota. Our shovel ready project is one of the critical early movers helping to push forward the low carbon hydrogen industry in America. The draft rules for Section 45V regarding incrementality and temporal matching requirements put our Dakota Renewable Hydrogen project at risk and we strongly urge Treasury and the IRS to reconsider these requirements.

The Section 45V credit is needed to help support new low carbon hydrogen production based on current economic constraints and market realities. The final regulations must provide clarity and certainty for projects that are already significantly advanced like our Dakota Renewable Hydrogen project. Clean energy producers like ourselves that have been making investments, planning projects, purchasing equipment, and supporting American manufacturing and construction jobs, should not be penalized for moving first and making progress. The final regulations should support, not stifle, our existing investment and development that is accelerating deployment of hydrogen electrolyzer projects. Therefore, we urge the IRS and Treasury to ensure a clear approach and rational rules for advanced projects that can achieve commercial operation before January 1, 2028.

The proposed regulations would require clean power generators (such as a wind farm) to begin commercial operations within three years of a hydrogen facility being placed into service to be considered new incremental sources of clean power. It is not reasonable to require large-scale projects, especially projects already in an advanced stage, to be placed in service within three years to the date. Instead, Treasury and the IRS should permit greater latitude and permanent grandfathering for hydrogen electrolyzer projects that can achieve commercial operation before January 1, 2028.

The proposed rule also requires time matching of clean electricity generation with clean hydrogen production, allowing annual matching until 2028. Because systems and technologies are currently lacking for hourly matching, we urge Treasury to allow hydrogen production projects that achieve commercial operation by January 1, 2028, to retain the option to continue to use annual matching throughout the project's lifespan. It is not reasonable that clean electricity and hydrogen producers with advanced projects today be required to design and deploy a system now that relies on mechanisms that do not exist and may not be known for years to come.

Finally, the proposed rule requires clean electricity sourced for hydrogen production to come from the same region as the hydrogen producer, as defined by the Department of Energy's DOE's National Transmission Needs Study. Our planned Dakota Renewable Hydrogen facility, associated wind farm, and partner's Sustainable Aviation Fuel refinery is in a South Dakata area served by both the Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) grids. We ask Treasury and the IRS to ensure a correct and consistent definition of these independent system operators and regional transmission organizations (ISO/RTO) to ensure all incremental clean electricity throughout the SPP region can be matched with hydrogen production in SPP.

Yours truly,

Clay Norrbom
President

Cc: Senator Amy Klobuchar, Senator Tina Smith, Senator Mike Rounds, Senator John Thune