



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
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February 26, 2024

U.S. Department of The Treasury
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington D.C., 20044

Re: Comments to Notice of Proposed Rulemaking REG-117631-23
Section 45V Credit for Production of Clean Hydrogen;
Section 48(a)(15) Election to Treat Clean Hydrogen Production
Facilities as Energy Property

The Pennsylvania Public Utility Commission (PaPUC) welcomes the opportunity to comment on the Internal Revenue Service's (IRS) proposed regulations regarding the tax credits for the production of clean hydrogen and the election to treat the property of a clean hydrogen production facility as "energy property" for purposes of the energy credit. These tax credits, meant to provide an incentive for taxpayers to produce clean hydrogen for productive use, can serve as an important element of the Commonwealth of Pennsylvania's maintenance of a reliable grid while the generation mix changes.

The PaPUC regulates public utilities operating in the Commonwealth of Pennsylvania, including electric distribution companies and, to a lesser extent, electricity suppliers. Pennsylvania is a member State of the PJM Interconnection Regional Transmission Organization (RTO), which coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia. The PaPUC must work with other states, other RTOs, the North American Electric Reliability Corporation, Reliability First, and the federal government to ensure the continued provision of adequate, safe, and reliable electric service.¹

¹ See 66 Pa.C.S. § 2805(a).

Although the PaPUC does not currently regulate producers of hydrogen or electricity generators, the PaPUC has an interest in the availability of reliable and reasonably-priced electric distribution throughout Pennsylvania. The PaPUC supports the development of the Appalachian Regional Clean Hydrogen Hub (ARCH2) and the Mid-Atlantic Clean Hydrogen Hub (MACH2), proposed networks for the production, storage, and distribution of clean hydrogen as a fuel source and a component of the energy portfolio that Pennsylvania can offer the national electric grid.

Like most states, generation development in Pennsylvania is dominated by lower emissions resources.² Although wind and solar power dominate current interconnection queues³ and provide very inexpensive energy, they are intermittent and non-dispatchable (that is, renewable energy sources that are not always available due to fluctuations in weather conditions). Consequently, Pennsylvania still needs significant dispatchable energy sources to ensure that consumers receive reliable electricity service. The hydrogen production tax credits have the potential to allow Pennsylvania to maintain traditional carbon-free resources as the transition to renewable energy sources progresses. As such, we support the removal of overly complex barriers to allow Pennsylvania and other latecomers to compete with States such as Texas and California, which have existing hydrogen infrastructure already meeting the proposed regulatory criteria.

Hydrogen may play a major role in maintaining dispatchability by absorbing electricity, which would otherwise be curtailed, and storing it for later use. Supporting hydrogen production can induce competition between battery and hydrogen technologies, leading to improvements for both. Hydrogen has technological features batteries do not, including the ability to produce hydrogen with any electric source and to store and move hydrogen as an energy carrier from the production facility to offsite consumption facilities. Hydrogen has other industrial uses as well, including in ammonia production and steelmaking. These industrial offtakes provide an alternative revenue source besides electric generation, improving the resilience of the hydrogen industry.

Although the benefits of clean hydrogen production are clear, the complexity and restrictiveness of the proposed regulations may serve to frustrate the goal of encouraging production in Pennsylvania. The regulations seemingly disincentivizes hydrogen production using natural gas, which is the bridge to reducing emissions. Small producers in particular may lack the resources needed to comply with the proposed technical and verification requirements and therefore be unable to successfully claim the credits. If the complexity of the proposed regulations discourages the production of clean hydrogen, it would frustrate the possibility of the hydrogen economy moving forward. In addition, the complexity could frustrate one of the major benefits of hydrogen over batteries (being able to be produced with a hydrolyzer and functionally any electric source). While the

² 2022 Pennsylvania State Infrastructure Report, Slide 10, available at <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2022/2022-pennsylvania-state-infrastructure-report.ashx>.

³ *Id.* at Slide 9.

PaPUC recognizes that some of the complexity of the proposed regulations is a function of the terms of the Inflation Reduction Act of 2022 and thus is not in the IRS's control (for example, classification levels and independent verification), within that rubric, the IRS seems to add complexity beyond that which is necessary.

The proposed regulations are overly restrictive with respect to the limitations on the hydrogen production feedstocks and infrastructure that would qualify for 45V credits. The prioritization of recently constructed sources of energy for hydrogen production creates competitive barriers for the ARCH2 and MACH2 hubs. For example, the proposed regulations discourage the production of hydrogen utilizing natural gas, an abundant resource in Pennsylvania, and effectively bar nuclear power as a qualifying feedstock. The complexity and restrictiveness of the proposed regulations could hamper the ability of Pennsylvania to fully participate in the hydrogen economy.

The PaPUC therefore supports the IRS's efforts to implement the Section 45V and 48(a)(15) credits to encourage the production of clean hydrogen. However, the PaPUC respectfully requests that the IRS simplify the proposed regulations and make them less restrictive. This will increase the likelihood of uptake by producers of all types and sizes and will allow Pennsylvania and a transitional hydrogen industry to reap the full benefits of the 45V credit.

Respectfully submitted,

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