



Submitted via Regulations.gov

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 Avenue NW
Washington, DC 20500

RE: IRS REG–117631–23 Proposed Rule, Section 45V Credit for Production of Clean Hydrogen;
Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property

Dear Secretary Yellen and Senior Advisor Podesta,

Washington Maritime Blue strongly agrees with the intent of the proposed Section 45V regulations to promote investment in new, carbon-free resources to support hydrogen production. In particular, we are aligned with the goal of displacing the incremental growth of fossil fuel combustion on the grid that may be necessary to meet increased electrolytic hydrogen loads. Our organization has an important stake in the hydrogen economy in Washington and Oregon, states which have enacted two of the most stringent clean energy standards for electric power delivery in the country.

Washington Maritime Blue (Maritime Blue) is a non-profit, strategic alliance formed to accelerate innovation and sustainability in support of an inclusive blue economy. With a mission to implement Washington State's Strategy for the Blue Economy delivered by Governor Jay Inslee's Maritime Innovation Advisory Council, we are a partnership between industry, public sector, research & training institutions, and community organizations. Maritime Blue works to create a world-class, thriving, equitable and sustainable maritime and ocean industry through knowledge sharing, joint innovation, entrepreneurship, commercialization, business and workforce development.

We are actively working with partners from across our region to understand, identify, and advance the decarbonization of our maritime sector through both electrification and green hydrogen derived e-fuels. In hard-to-decarbonize sectors like maritime, green H₂ production is anticipated to play a significant role in the transition away from fossil fuels. Maritime users are looking at H₂ for direct use with electric propulsion systems as well as as a feedstock for hydrogen-derived fuels including green ammonia, green methanol, and biofuels. With ports as the center of commerce for coastal states and transportation hubs, they bring the full breadth of green hydrogen use cases to a central location. Decarbonization of this hard-to-ebate sector and generation of green hydrogen either near ports or for use at these ideal locations will rely heavily on strong policy and incentives that foster an economically viable path for production.



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 and Oregon. 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 comply.

Washington and Oregon Clean Energy Policies: Suggestion for Closer Alignment with States Leading the Clean Energy Transformation

The policy environment for infrastructure owners and hydrogen end users in Washington and Oregon differs from that of operators in many other states. Specifically, hydrogen producers and consumers in Washington and Oregon must operate within the robust clean electricity and GHG emissions limitations of these states. 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. Oregon’s HB 2021 has similar restrictions, limiting GHG emissions associated with electricity from major providers, with no exception for new loads such as hydrogen production.

Broadly, these state policies are intended to decarbonize electric power delivery to ratepayers by the 2040s. 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.

The state 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, specifically hourly matching, requirements do not recognize the contribution of abundant, carbon-free power in Washington and Oregon, 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 and Oregon 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.

Maritime Blue suggests that Treasury strongly consider 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 specifics 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 FERC power markets as the basis for regional energy sources, instead of the NREL Transmission Study. The FERC power markets – specifically, the WECC in the Pacific Northwest region – provide a more suitable standard, as these regions more accurately capture the market activities taking place in a region. In Washington and Oregon, utilities and power purchasers regularly schedule energy delivery from more diverse geographic regions, where renewable 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 pillar 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 and Oregon 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,

A handwritten signature in black ink, appearing to read "J. Berger", is written over a light blue rectangular background.

Joshua Berger
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