Congress of the United States
Washington, DC 20510

6/28/24

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Yellen:

We write regarding the proposed rulemaking by the Treasury Department and Internal Revenue Service (IRS) implementing the section 45V credit to produce clean hydrogen (REG-117631-23).

California continues to be a global leader in the transition to a green economy. We have successfully reduced statewide emissions below 1990 levels, with over 40,000 MW of zero-emissions resources currently serving the grid. Looking forward, the California Air Resources Board developed the world's first comprehensive plan to achieve carbon neutrality by 2045. Crucial to this strategy is the creation of a robust green-hydrogen industry to decarbonize our critical hard-to-electrify sectors, including California's expansive data center, cement, manufacturing, passenger-aviation, and goods-movement industries.

We support establishing hydrogen incentives that could expedite California's net-zero transition and facilitate other states in following suit. Specifically, the section 45V hydrogen production credit enacted as part of the Inflation Reduction Act (IRA) has the potential to attract significant private investment into California's emerging hydrogen sector, creating thousands of well-paying jobs while reducing carbon emissions substantially.

As the proud host of the Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) hydrogen hub, we have a strong interest in the successful implementation of the tax credit. The ARCHES hub is expected to leverage a federal award of up to $1.2 billion to attract over $11 billion in state, local, and private investment, creating more than 220,000 family-sustaining jobs across the state in partnership with organized labor groups. Additionally, we expect to see these projects result in $380 million in direct community and workforce development funding in association with local organizations.

With those objectives in mind, we are concerned that, without modifications, the proposed guidance promulgated in December 2023 will hold back investment in prospective hydrogen facilities, including the 39 planned ARCHES projects set to break ground in California. Specifically, we believe that the proposed "three-pillar" criteria of incrementality, deliverability, and temporal matching are particularly determinantal to our state and our producers' ability to access the section 45V tax credit.

Of particular concern, the proposed incrementality requirement would only consider renewable electricity to be "zero-emissions" if it comes from a new generation facility. We fully endorse the objectives of incentivizing renewable electricity generation, but the current mandate does not account for the considerable efforts that states like California are making toward reducing grid emissions, as well as the economic reality in areas where curtailment of excess clean electricity —resulting from the over-generation of solar energy during the day—is an increasing necessity.

California has begun requiring that any new electricity generation added to the grid must be renewable. Accordingly, the California Public Utility Commission has approved plans for 86,000 MW of new renewable resources by 2035. Any prospective hydrogen producers intending to build additional generation capacity to comply with the incrementality requirement would be placed at the end of the California Independent System Operator's interconnection queue and face an estimated waiting period of five years for approval. As a result, prospective California electrolysis projects would face significant delays that may lead producers to look to other states or switch to dirtier forms of hydrogen generation, like natural gas reformation, undermining the section 45V credit's emissions-reduction objectives.

Additionally, California's expanding renewable capacity means that the state must curtail an increasing amount of renewable resources during non-peak hours, pushing these facilities below their maximum output when electricity demand is low. This energy is often wasted even though consumers are still required to pay for it in most instances. Although the excess, curtailed capacity could be used to produce electrolytic hydrogen, the current proposed regulations would not treat the curtailed electricity as renewable for purposes of calculating the tax credit, thereby discouraging its productive use.

Households in California and across the country continue to contend with high energy prices, and the potential for hydrogen production from curtailed electricity offers a vital opportunity to lower consumer costs while offsetting high-emissions fossil fuels. However, the proposed incrementality restriction would prevent hydrogen producers from leveraging an important mechanism to increase long-term energy affordability, instead requiring curtailed solar electricity to be wasted or exported to neighboring states.

These issues present significant challenges to the growth of California's hydrogen sector. We urge the Treasury Department and IRS to provide an alternate compliance pathway for California and any other states with firm commitments to achieve a 100% zero-emissions electricity grid.

We appreciate your continued leadership in developing green-hydrogen incentives and look forward to working with you to ensure that the section 45V tax credit is implemented in a way that maximizes its potential.

cc: The Honorable Jennifer Granholm, Secretary, U.S. Department of Energy
Mr. John Podesta, Senior Advisor to the President for Clean Energy Innovation and Implementation

Sincerely,

Josh Harder
Member of Congress

Jim Costa
Member of Congress

Jared Huffman
Member of Congress

Salud Carbajal
Member of Congress

Anna G. Eshoo
Member of Congress

Ro Khanna
Member of Congress