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Commissioner Danny Werfel
Department of the Treasury
Internal Revenue Service
77 K Street, NE
Washington, DC 20002

Via Electronic Submission: www.regulations.gov

In Re: Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property; IRS 2023-0066 and REG–117631–23

Dear Commissioner Werfel,

The Utility Workers Union of America (UWUA) is a national labor organization whose roughly 45,000 members operate and maintain every form of utility service across 24 states. The UWUA's members work in the facilities and assets of public, (municipal and cooperative) investor, and privately owned electric and gas utilities, water and wastewater services, municipal services, and other energy related services across the country.

After reviewing the proposed Section 45V guidance released on December 26, we write to express concern about how the proposed guidance will affect our membership's ability to find new opportunities based on this emerging technology. We urge you to revise the proposed guidance to better achieve the goal of creating a new industry with high-road family and community-supporting union jobs.

The announcement of preliminary awards to seven regional hydrogen hubs was a hopeful sign to our union as thousands of our members were excited by the potential to create hundreds of thousands of jobs that could be organized and brought into the labor movement while building a clean energy economy. Their participation in the hydrogen hub application process, which required hub proponents to provide estimates of job numbers and economic benefits created high expectations with many of our Locals.

Concern is now growing, however, that the proposed guidance will effectively curtail the hydrogen jobs they thought were forthcoming. As many of these Locals are situated in areas of the country that have been hard hit by the country's move away from coal, this is particularly discouraging to contemplate.

Tens of thousands of our former members have lost their jobs over the past 15 years as coal-fired power generation has been phased off the grid. As such, new economic opportunities in the affected geographic areas will be critical to demonstrate that government understands this crisis. A crisis, moreover, that has been created in these communities by poorly thought-out policy choices now requires concrete action at scale to begin the rebuilding process. Should the hydrogen industry not come to fruition at any meaningful scale due to further bad policy design, it will only further demonstrate to these workers and their families that the agenda being pursued is not one that is aimed at their lives.

Section 45V of the Inflation Reduction Act sets out four levels of tax credits, with larger tax credits going to projects with lower life cycle emissions. However, the proposed guidance *goes beyond the statute* and adds requirements of additionality and temporal matching that are likely to discourage hydrogen producers to either the lowest level of the production tax credit or none at all.

Hydrogen is a new industry in the US and is not yet commercially viable. Incentives, such as these tax credits are necessary to support the industry while it scales and brings down costs. If there is uncertainty about whether incentives will be available, or if incentives are inadequate, companies will pull back from projects and there will be fewer jobs. Indeed, we have already seen some of our largest employers begin to back away from investment in this technology as they view the further requirements set out in this guidance as being completely unworkable in practice.

Requiring additionality will stop potential producers from accessing the full tax credit, thereby jeopardizing the jobs that would otherwise be created. Additionality is overly stringent and would serve only to raise costs, suppress hydrogen production, and chill private-sector investment. Further, the additionality requirement does not even appear in the statutory authorization putting it in conflict with congressional intent to quickly scale hydrogen technology.

A second primary concern we see is that the proposed matching requirements are also unworkable in practical application. The proposed guidance would require an as yet wholly undeveloped hourly matching tracking system to be created and implemented for hydrogen production facilities to take advantage of the 45V tax credit.

This hourly matching requirement is also outside the text of the Inflation Reduction Act and thus was not factored into proposals already made to the Department of Energy. Moving the goalposts on the standards is already creating uncertainty sufficient to cause potential investors to rethink participation in this nascent industry at all. Far easier and more economical to simply proceed with business as usual rather than risk an ever-moving policy target.

Just as with the additionality requirement, the temporal matching rule is superfluous to the goal of reducing emissions. If the government elects to move forward with this problematic regulation, it is imperative stakeholders be given the opportunity to vet any proposed tracking technology, provide feedback to relevant agencies, and receive adequate lead time to incorporate the new system into existing business and production plans. Even allowing for that possibility, we judge that many of our employers will simply choose to continue business as usual rather than wade into entirely new technologies with entirely new regulatory regimes that can change at any time.

Our third concern is whether so-called ‘blue hydrogen’ will be retained as a key part of the clean energy future, one that can create *and retain* tens of thousands of jobs. The proposed rule should support it. Blue hydrogen, or hydrogen produced with natural gas as a feedstock and carbon capture and sequestration (CCS) of CO2 emissions, will be an important lower-cost source of supply for the hydrogen industry. If the sort of job loss that we have seen in the coal sector begins to occur in the gas industry, energy transition in the U.S. – already seen as picking winners and losers – would become truly calamitous to the economic well-being of works, families and communities in these energy-rich areas of the country.

Union members in natural gas- and coal-rich states such as Ohio and Pennsylvania are looking to blue hydrogen projects as a source of family and community-sustaining, jobs but are becoming increasingly concerned that these projects may not qualify for a sufficient level of tax credit or any at all. The forthcoming guidance for 45V can do more to address these concerns.

Taking a technology-neutral approach would reflect congressional intent and ensure that energy communities can fully participate in the new low-carbon energy production economy at meaningful scale. At the UWUA, we are fully committed to a clean energy economy that is built, manufactured, transported, operated, and maintained with high-road union labor.

To date, our union's experience in the energy transition has been overwhelmingly negative due to the impact of coal-fired power generation steadily going away. Time now to turn that trajectory around and demonstrate real commitment to those workers and communities most in danger of being impacted by poor policy design.

We welcome the opportunity to discuss our comments and recommendations. If you have any questions or wish to discuss this with us, we can be reached at landerson@uwua.net. Thank you for your consideration.

Respectfully submitted,

James T. Slevin
National President
Utility Workers Union of America, AFL-CIO