Resolution 24-11
Sponsors: Northern California Power Agency; Seattle City Light; Northwest Public Power Association; Sacramento Municipal Utility District

In Support of Flexible Clean Hydrogen Credits

As the nation seeks to promote the use of cleaner fuels and lower the intensity of greenhouse gas (GHG) emissions, Congress made its intent clear that hydrogen production is a national priority. In 2023, the Department of Energy selected seven regional clean hydrogen hubs across the country. These hubs will receive portions of the $7 billion allocated by the Infrastructure Investment and Jobs Act. Congress went further in its support of hydrogen in 2022 by establishing the Clean Hydrogen Production Tax Credit. The combination of the hydrogen hubs and the new tax credit will incentivize the production of clean hydrogen and help producers reduce the lifecycle GHG emissions of hydrogen production.

The Inflation Reduction Act (IRA) enacted a new tax credit for US-produced clean hydrogen under both Section 45V and Section 48 of the Internal Revenue Code. Specifically, the IRA created the Clean Hydrogen Production Tax Credit providing a 10-year incentive for qualified hydrogen projects up to $3.00 per kilogram. Projects have the option to take the full credit under Section 45V or may elect to claim up to a 30 percent investment tax credit under Section 48. The level of the credit is based on the carbon intensity of the project, up to a maximum of four kilograms (kg) of carbon dioxide-equivalent (CO_2e) per kilogram of dihydrogen (H_2), with projects with carbon intensity below 0.45 kg CO_2e per kg H_2 eligible for the full $3.00 credit.

Congress provided clear instructions to the Department of Treasury and Internal Revenue Service (IRS) on how the new credit should operate. Even with this clarity, uncertainty remains as the Treasury and IRS consider further requirements beyond those set forth in the legislation. Generally, these relate to the determination of the GHG emissions rate that must be met to be eligible for the Clean Hydrogen Credit.

Of specific concern are proposed regulations issued by Treasury on December 26, 2023: Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property. The proposed rule would require that electricity used to produce clean hydrogen must come from new, i.e., additional, facilities for that electricity to be considered for purposes of the taxpayer's specific GHG emissions rate on which the credit is based. Any "additionality" requirement with respect to the Clean Hydrogen Credit would make renewable electricity more difficult to access and clean hydrogen more costly to produce—undermining the production of clean hydrogen and the reduction of GHG emissions, both of which Congress envisioned through the Clean Hydrogen Credit.

The additionality requirement will reduce the benefits that clean hydrogen can provide in balancing existing renewable generation resources. It will also slow the nation's hydrogen transition by exposing clean hydrogen adoption to the years-long backlog that currently exists in most interconnection queues for new renewable resources, whereas a production incentive without an additionality requirement would reduce the interconnection queues and make the existing system more efficient.

Furthermore, the proposed regulations indicate that the clean energy used to produce hydrogen, and the hydrogen itself, must be produced in the same hour to qualify for the credit. This "temporal matching" requirement poses several logistical problems for tracking and reporting, and it fails to consider circumstances in which contemporaneous generation and production are either inapplicable (such as biomass-fueled production of hydrogen) or inefficient (such as using excess solar generation to produce hydrogen that can firm intermittent resources).

NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association (APPA) believes that the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) should not impose additionality or temporal matching requirements when implementing the Internal Revenue Code (IRC) Section 45V Clean Hydrogen Credit; and

BE IT FURTHER RESOLVED: That APPA believes that requiring that clean electricity used to produce clean hydrogen must come from new (i.e., "additional") facilities for purposes of the IRC Section 45V Clean Hydrogen Credit would restrain the credit from reaching its full potential and intended purposes; and

BE IT FURTHER RESOLVED: That APPA believes that requiring hydrogen to be produced contemporaneously with clean energy misses opportunities for efficiency and innovation, as well as poses unnecessary challenges for entities otherwise eligible for the credit; and

BE IT FURTHER RESOLVED: That APPA believes that Treasury and the IRS should amend proposed regulations (issued on December 26, 2023) implementing IRC Section 45V Clean Hydrogen Credit to remove the proposed additionality and temporal matching requirements and make these rules consistent with congressional intent and goals, along with the clean-energy tax policies underlying the Clean Hydrogen Credit.

Adopted at the Legislative & Resolutions Committee Meeting
February 27, 2024

Sunsets in March 2032