Congress of the United States

Washington, DC 20515

November 21, 2024

The Honorable Janet L. Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Ave N.W.
Washington DC, 20220

Dear Secretary Yellen:

We are writing to request that the Biden-Harris Administration broaden the eligibility for the Section 45Y and Section 48E tax credits — the Production Tax Credit and Investment Tax Credit, respectively, established by the Inflation Reduction Act — to include combined heat and power (CHP) and other energy efficiency measures. To achieve the goals of the administration's landmark climate legislation, we must incentivize deployment of every emissions-reducing technology. The Treasury Department's proposed rule for these tax credits unfortunately jeopardize the realization of the IRA's goal of reducing emissions in the power sector by 75% by 2032.

The proposed rule risks eliminating any combustion and gasification technologies from qualification for these tax credits, even if they achieve significant emissions reductions compared to the electricity grid currently or in the coming decades. In particular, the lifecycle analysis used in the proposed IRS rules for the technology-neutral tax credits (Internal Revenue Code sections 45Y and 48E) does not require comparison between a given facility's greenhouse gas (GHG) emissions and those that would have been emitted but for that unit's operation. This despite the assessment of the total system GHG emissions being standard under both the widely-accepted Greenhouse Gas Protocol's project-based emissions accounting and the guidance and tools the Environmental Protection Agency (EPA) provides to states to assess the benefits of renewable energy and energy efficiency projects.

CHP units can operate in one of two modalities – either as a "topping" cycle, where fuel is combusted to make power and the waste heat is recovered meet local thermal loads, or as a "bottoming cycle" where an existing source of wasted energy (for example, a flare in a chemical plant) is recovered to generate electricity or useful thermal energy. For topping cycles, the greenhouse gas impact is that associated with fuel combustion minus emissions displaced when prior sources of electricity and thermal energy are no longer operated. For bottoming cycles where no marginal fuel is combusted, the only greenhouse gas impact comes from the displacement of alternative energy sources.

Since a full environmental accounting for these assets must include direct point source emissions and the reduction of on- or off-site avoided sources, Treasury's tax incentives should do the same.

We urge that the final rules allow energy efficient natural gas-fired CHP to qualify and incorporate the EPA's method of assessing its emission reductions by comparing it to grid emissions in each region of the country.

We commend the Biden-Harris Administration's bold actions to tackle the climate crisis, including investments to spur a clean energy economy. In advancing those investment, the Treasury Department must broaden the eligibility for the Section 45Y and Section 48E tax credits to promote the deployment of more technologies to achieve the essential carbon reductions we all strive for.

Sincerely,

Sean Casten
Member of Congress

Bradley Scott Schneider
Member of Congress