



Fuel Cell &
Hydrogen Energy
Association



December 4, 2012

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

The Honorable Max Baucus
Chairman, Senate Finance Committee
United States Senate
Washington, DC 20510

The Honorable Orrin Hatch
Ranking Member, Senate Finance Committee
United States Senate
Washington, DC 20510

Dear Majority Leader Reid, Republican Leader McConnell, Chairman Baucus, and Ranking Member Hatch:

On behalf of the thousands of companies and over 100,000 employees in our industries, we respectfully request a modification of the clean energy tax credits from a “placed in service” standard of eligibility to a “commence construction” standard in both the Section 45 Production Tax Credit (PTC) and in the Section 48 Investment Tax Credit (ITC).

The “commence construction” modification was included in S. 3521, the Family and Business Tax Cut Certainty Act of 2012, for the Section 45 technologies; this policy would provide added certainty for the utility-scale wind industry and other technologies that utilize the Production Tax Credit. We believe that this is sound policy and that this same modification should be made to the Investment Tax Credit, enabling solar, fuel cells, combined heat and power, small wind energy, and microturbines to benefit from the greater certainty afforded by this improved eligibility standard.

“Commence construction” is a superior policy mechanism that would allow for the full and efficient utilization of both the PTC and the ITC. Applying this sensible policy across the industries would ensure continued job growth and deployment of all clean energy technologies. It is also important to note that moving to a “commence construction” standard is simply a change in the eligibility standard; the tax credit cannot be claimed until the energy facility is placed in service, protecting taxpayers from any risk.

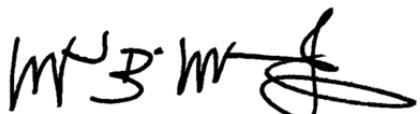
The planning, development, permitting and construction process for clean energy projects can take years to complete. Under the current “placed in service” requirement, clean energy projects need to be in the development pipeline years in advance of the actual deadline in order to qualify for the tax credit. Clean energy projects require business certainty for the multi-year development and construction timelines. Any unanticipated and unforeseeable delay in permitting or construction can put the clean energy project at risk of not meeting an arbitrary deadline, thus creating a high degree of uncertainty for both project sponsors and financiers alike. Compared to a rigid “placed in service” deadline, a “commence construction” standard

provides added certainty and flexibility that will allow more clean energy projects to move forward during the statutory duration of existing tax incentives. This furthers the underlying objective of the incentives – the deployment of more renewable energy projects and the expanded use of clean energy resources nationwide.

For the developers and financing partners who are planning projects in the coming months and years, it is vital that all of the clean energy technologies have a predictable policy in place. Developers utilizing the PTC or ITC face incredible amounts of risk based on events beyond their business control (e.g., unforeseen environmental mitigation, weather disruptions, litigation, etc.). The change to “commence construction” provides needed certainty so that utilities, communities, developers, and lenders have a higher degree of confidence in the development process and can make deliberate and thoughtful decisions about how to proceed with an energy project.

It is imperative that this “commence construction” modification be part of any tax extenders package and included in any year-end legislation. Thank you again for your commitment to the clean energy industries, which continue to help diversify our nation’s energy portfolio, promote competition in the energy markets, grow jobs across the country, and reduce energy prices for American families.

Sincerely,



Morry Markowitz, President & Executive Director
Fuel Cell and Hydrogen Energy Association



Rhone Resch, President and CEO
Solar Energy Industries Association



Joe Allen, Chairman
U.S. Clean Heat & Power Association