



February 12, 2014

U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Re: Comments of the National Hydropower Association (NHA) on the Finance Committee's Energy Tax Reform Discussion Draft

To the Committee:

The National Hydropower Association (NHA)¹ appreciates this opportunity to comment on the need for continued federal tax policy support of renewable energy technologies – particularly hydropower and marine and hydrokinetics (MHK) – in response to the energy tax reform discussion draft released by former Chairman Baucus late last year.

Whether in the context of comprehensive tax reform or tax extenders discussions, NHA reiterates its strong support for federal policy that provides a predictable market signal in support of hydropower project deployment. Good policy will leverage significant private investment, stimulate job creation, and provide local economic and environmental benefits across the country.

As such, NHA urges the Congress to adopt policies consistent with the following general principles (further specific comments on the discussion draft follow).

Deployment: The primary goal of tax incentives for renewable energy should be to accelerate the actual deployment of new projects.²

Certainty: To truly drive new hydropower project deployment, with its longer permitting, licensing and construction timeline,³ tax policy must provide an unambiguous incentive that is available either on a permanent basis or for a long, well-defined period of time.

¹ NHA is the non-profit national association dedicated exclusively to advancing the interests of the U.S. hydropower industry, including conventional, pumped storage and marine and hydrokinetic technologies. NHA's members include public utilities, investor owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants and attorneys.

² For the hydropower industry, the term "new projects" also includes efficiency improvements at existing hydro projects, adding capacity to both existing hydro projects and at existing non-powered dams, as well as new greenfield projects.

³ The integrated licensing process (ILP), the default federal process for hydropower development takes 5-5.5 years. While FERC is the lead agency, the process can also involve federal hydropower project owners, such as the Bureau of Reclamation and the Army Corps of Engineers, federal resource agencies, state resource agencies, tribes, interested

Efficiency: Tax policy for renewable energy must treat all sectors fairly. In terms of rates, eligibility standards and credit periods, Congress should not make arbitrary distinctions between generation types. Similarly, each of the renewable energy technologies experience different development challenges (as highlighted above for hydropower) and Congress should ensure that all sectors are able to efficiently access the incentives and make them work for developers.

Flexibility: Federal tax policy must recognize and account for the differences in the types of project ownership structures and adopt a suite of incentives that work for those various owner types.⁴

Expeditious Action: With the current lapse of the production and incentive tax credits and the exhaustion of funds under the Clean Renewable Energy Bonds (CREBs) program, developers and other industry observers report a sharp slowdown in pursuit of project development. Congress must move forward promptly to address the issue.

Specific Comments on the December Discussion Draft

NHA continues to review the discussion draft and to discuss it with our membership. However, upon our initial review, we were pleased to see much of what is proposed in Subtitle A-Clean Energy Tax Credits aligns with the general principles as described above, and is a positive approach for the future to address long standing inadequacies under the current system of incentives for hydropower deployment.

Addressing incentive parity for hydropower is a key component of energy tax reform draft

Since the first inclusion of hydropower resources under the production tax credit in the Energy Policy Act of 2005, NHA has sought credit rate parity for hydropower. Eligible hydropower resources currently receive only one-half the PTC as most other renewable technologies, such as wind and geothermal.

The proposal of a clean energy production tax credit in 2017, tied to a greenhouse gas emissions rate standard, provides a technology-neutral mechanism to determine the credit benefit for individual projects. NHA agrees with the analysis contained in both the Committee's summary document and the Joint Tax Committee's technical explanation that under this structure hydropower projects should receive the full PTC credit; and supports the direction of the proposal to establish parity across the sectors.

However, until 2017, the proposal keeps in place the two-tiered credit rate system. NHA believes tax policy fairness and equity requires the parity issue be addressed immediately (as it was in

stakeholders and the public. This complex, comprehensive process is intensive, multi-layered and can take up to 26 steps as outlined at: <http://ferc.gov/industries/hydropower/gen-info/licensing/ilp/flowchart.pdf>.

⁴ For hydropower, project owners and developers span the sectors of industry with investor owned utilities, public power and independent power producers all owning existing assets as well as pursuing new projects. No one incentive will work across this broad cross section of the industry.

2009 for the investment tax credit and Section 1603 grants program with the passage of American Reinvestment and Recovery Act). While the 3-year transition period with an extension of the incentives under the existing rules provides, at a minimum, some certainty to project planners, developers and financiers, it does not serve to fully maximize project deployment in the hydropower sector through these intervening years.

Retention of ITC election is needed

NHA supports the discussion draft's proposal to retain the ability to elect the investment tax credit – though in 2017 the ITC rate would fall to 20 percent. For many hydropower project developers, the ITC option is the more attractive incentive, particularly until the PTC rate disparity for hydropower is eliminated.

For example, one NHA member company's analysis of earlier tax proposals found that for their portfolio an ITC extension provides the greatest value. The company reported at the time that an extension of the ITC would allow them to move forward on 83 percent of the MWs in their portfolio. With the PTC extended, but with no parity provided, the company estimated only 26 percent of their projects would move forward.

With regard to the 2017 ITC rate specifically, NHA's believes Congress should retain the 30 percent level. One member's analysis of the ITC benefit found that the 30 percent rate is a value of about 26 percent of total project costs. However, once again, NHA's primary concern would be that the incentive (at whatever credit level) provides equal treatment across all eligible technologies within the structure of the proposal.

Incentive phase-out should consider resource planning needs of utilities

The clean energy tax credit proposal contains a phase-out over several years "once the greenhouse gas intensity of the U.S. electricity generation declines to the point that it is 25 percent cleaner than 2013."⁵ NHA has never taken a position on a phase-out and declines to do so at this time. However, we would note that some hydro industry members, particularly utilities with long-term integrated resource planning (IRP) requirements, are concerned how any such phase-out would impact/interact with their IRP process and their ability to recover investments in projects that could abruptly be rendered less economic.

For example, a utility may be in the middle of a multi-year IRP process for which they are modeling the influence of the clean energy credit and making decisions based on the ability to utilize the credit at full level. If the phase-out trigger occurs after those decisions have been made and contracts entered into, the impact on the utility could be significant.

To address this concern, one solution may be to include a delay in the phase-out for a period of time after the trigger point has been reached. This would allow the IRP planning processes to "clear out" and allow all future decisions to be considered and made with full knowledge of the

⁵ Discussion Draft summary P.4.

changed circumstances. Again, this is an issue that affects the level of long-term certainty the proposal provides.

Clean energy credit proposal expands eligible hydro projects and increases deployment

NHA raises a point for clarity with regard to the types of projects that would be eligible for the clean energy credit in 2017. For hydropower resources, under the current eligibility criteria, only efficiency improvements and capacity additions at existing hydropower projects, additions of capacity to non-generating dams, and MHK projects qualify.

As we read the proposal, this would continue for the 3-year transition period. However, in 2017 under the new clean energy credit, any new hydro project, including greenfield projects, would qualify. This approach is similar to that taken by recent clean energy standard (CES) proposals. NHA supported that concept in that context and supports it here as well.

Furthermore, ensuring consistency in the application of the program's eligibility requirements and the environmental performance formulas is key to providing the most certainty to project developers. The implementation of the formulas, in particular, should be made as simple and as clear as possible in the authorizing language of the statute.

NHA believes that the statute should make clear that facilities classified as having zero emissions in Table 1 of the Staff Discussion Draft (i.e., hydropower, 100% landfill gas, wind, solar and nuclear) should be deemed to qualify for the maximum clean electricity credit rate without having to undergo an additional administrative process by the Environmental Protection Agency. The potential of a protracted delay as a result of such a process would only increase uncertainty regarding the availability of the credit and negatively affect deployment.

NHA also raises another point for clarification: how does the proposal take into account the “begin construction” change adopted by Congress in the beginning of 2013? That change did not include a deadline for when projects must be online in order to claim the credit. For projects that satisfied the “begin construction” criteria in 2013, but may not come online until 2017, what credit rate, particularly under the ITC, would they be able to claim?

Further elaboration needed on deployment incentives for the public power sector

Finally, NHA notes that, although a preliminary proposal, the discussion draft focuses on the PTC and ITC, with no current contemplation or inclusion of policies applicable to the public power sector. The proposal does allow for CREBs to be issued through 2016 and presumably additional re-allocations could be made during this time period. However, no new funding is provided for the program and it is terminated at the end of 2016.⁶

Consistent with the principles outlined above, no energy tax reform proposal would be complete without action taken on incentives for project development that include mechanisms that can be

⁶ NHA raises similar concerns with the 48C credit for advanced energy projects. Several hydropower equipment manufacturing companies utilized the credit, which was also over-subscribed, has not received any additional funding, and under the proposal is slated to terminate in 2017.

effectively utilized by the public power sector. Rules allowing flexible allocation of credits between public power utilities and investors are one potential option.

Also, almost 25 percent of the original CREBs allocations were in support of hydropower projects and several NHA public power members successfully utilized the program to bring projects online. In addition, the CREBs program was significantly over-subscribed even at the original level of funding. Some NHA members also report experiencing frustration with the CREBs program, as well as Build America Bonds (BABs), and would seek to explore effective alternatives.

Conclusion

Hydropower is the country's largest renewable electricity provider, generating approximately 7 percent of total electricity in the United States in 2013. This represents over half of all U.S. renewable electricity generation.

NHA believes tremendous opportunities exist to further increase deployment of hydropower resources to realize our national clean energy, job creation, and environmental goals.

In order to fully realize hydropower's deployment potential, stable and predictable tax policy support for project deployment is needed. NHA believes the clean energy tax credit proposal contained in the discussion draft is a great step forward.

We thank you for the opportunity to comment on the draft and offer to serve as a resource for, and work with, the Committee to further refine the proposal.

Sincerely,

A handwritten signature in cursive script that reads "Linda Church Ciocci". The signature is written in black ink on a white background.

Linda Church Ciocci
Executive Director