AMERICAN PUBLIC POWER ASSOCIATION
Powering Strong Communities

August 5, 2025

The Honorable Kenneth J. Kies
Department of the Treasury
1500 Pennsylvania Ave., NW, Room 3120
Washington, DC 20220

Dear Assistant Secretary Kies:

On behalf of the American Public Power Association (APPA), I am writing today to ask the Department of the Treasury (Treasury) and Internal Revenue Service (IRS or Service) to discuss two time sensitive issues related to federal tax incentives for existing nuclear power generation – first, guidance for the section 45U zero emission nuclear power production credit itself, including the definition of gross receipts under Section 45U(b)(2)(A)(ii)(I); and second, guidance related to the definition of a foreign-influenced entity that could affect public power utilities' ability to claim the 45U credit. The country is experiencing a dramatic increase in electricity demand and guidance in these areas will help ensure that nuclear power generation owned by public power utilities remains available to serve those needs.

Background

APPA is the national trade organization representing the nation's 2,000 not-for-profit, community-owned electric utilities. Public power utilities are in every state except Hawaii. They collectively serve over 55 million people in 49 states and five U.S. territories. Public power utilities are load-serving entities, with the primary goal of providing the communities they serve with safe, reliable electric service at the lowest reasonable costs, consistent with good environmental stewardship. While public power utilities serve some of the nation's largest cities, nearly 1,600 of the 2,000 in operation serve rural communities.

Public power utilities own 8,027 megawatts of the nation's 99,435 megawatts of nuclear power generating capacity. These public power utility owners of nuclear power generating capacity include municipal utilities providing retail service to more than 5 million homes and businesses and joint action agencies that provide wholesale power to nearly 300 other municipal utilities. These utilities both own and operate nuclear reactors outright or partner with other utilities (including other public power utilities, rural electric cooperatives, investor-owned utilities, and merchant generators) to co-own facilities. In addition, 153 public power utilities and rural electric cooperatives located in the Tennessee Valley purchase power generated by the Tennessee Valley Authority (TVA), which owns and operates several nuclear power plants.

Section 45U provides a production tax credit for electricity produced and sold after December 31, 2023, and before December 31, 2032, by nuclear facilities placed in service before August 16, 2022. Public power utilities, including TVA, can access this credit by electing payment under section 6417.

The Need for Gross Receipts Guidance

The section 45U credit amount is reduced by a "reduction amount," which is calculated in part based on the "gross receipts" from electricity produced by the facility. Section 45U(b)(2)(A)(ii)(I) specifies that the relevant gross receipts are those derived "from any electricity produced by such facility (including any electricity services or products provided in conjunction with the electricity produced by such facility) and sold to an unrelated person during such taxable year." Accordingly, the determination of gross receipts is critical to calculating the allowable credit under section 45U.

To date, Treasury and IRS have not provided guidance on the definition of gross receipts for purposes of this reduction amount. The absence of such guidance creates uncertainty for taxpayers, given the diversity of revenue models applicable to public power owners of nuclear facilities, including (1) revenues from electricity and related markets administered by independent system operators and regional transmission organizations; (2) the use of nuclear power in service of retail customers; and (3) the wholesale sale of power to customer municipalities.

In addition, under section 6417, a credit generally may not be claimed on an amended return filed after the relevant due date (including any extension of time to file). As a result, an "applicable entity" operating on a calendar year basis seeking to claim elective payment for generation in calendar year 2024, must file no later than November 15, 2025. Also, an applicable entity filing such a return faces a substantial penalty if it overstates the credit owed on such a return: generally, a penalty equal to 20 percent of the overstated amount of the credit.

Given the uncertainty surrounding section 45U, including the definition of gross receipts, the quickly approaching November 15, 2025, filing deadline, and substantial penalties for credits later deemed to be an overpayment, the need for guidance is paramount and time sensitive. As such, to provide clarity to taxpayers and improve administrability of the credit, APPA asks that Treasury and the IRS expeditiously issue guidance on the definition of gross receipts under Section 45U(b)(2)(A)(ii)(I).

The Need for Foreign Entity of Concern Debt Test Guidance

Section 45U was amended to deny credits to foreign prohibited entities for taxable years beginning after December 31, 2025. Under new section 7701(a)(51) of the tax code, a foreign prohibited entity includes a foreign-influenced entity, which is defined in relevant part as "an entity … with respect to which, during the taxable year … at least 15 percent of the debt of such entity has been issued, in the aggregate, to 1 or more specified foreign entities."

We do not think any public power utility attempting to claim the existing nuclear tax credit would exceed this 15-percent debt test. By way of background, of $4.2 trillion in municipal debt outstanding as of June, roughly $4.1 trillion is domestically held, with the remaining $100 billion held by the rest of the world and only a fraction of that potentially owned by "specified foreign entities."

However, the statutory language establishing the 15-percent debt test appears ambiguous and without guidance public power utilities may not be able to reasonably rely on the statutory language to claim the section 45U tax credit when making financial and operational decisions after December 31, 2025. Accordingly, we strongly urge Treasury and the IRS to issue timely guidance for our members to apply the 15-percent debt test. We would welcome the opportunity to work with Treasury and the IRS to develop practical rules that meet the letter and spirit of this test.

Conclusion

Again, we believe guidance in these areas will help ensure that nuclear power generation owned by public power will remain economic and available as baseload generation. Thank you for your consideration and please feel free to contact me at jgodfrey@publicpower.org, (202) 256-7710.

Sincerely,

John Godfrey
Senior Government Relations Director