



December 13, 2017

The Honorable Mitch McConnell
Majority Leader, United States Senate
S-226 The Capitol
Washington, DC 20510

The Honorable Orrin Hatch
Chairman, Senate Finance Committee
SH-104
Washington, DC 20510

The Honorable Paul Ryan
Speaker of the House of Representatives
H-232 The Capitol
Washington, DC 20515

The Honorable Kevin Brady
Chairman, House Committee on Ways & Means
1101-CHOB
Washington, DC 20515

Dear Majority Leader McConnell and Speaker Ryan and Chairmen Hatch and Brady:

As businesses and organizations working in clean energy, we are writing to convey recommendations on the Tax Cuts and Jobs Act as conferees work to reconcile the House and Senate versions of the legislation.

Our companies and associations are working across the spectrum of clean energy technologies, including energy efficiency, natural gas, renewable energy, advanced transportation, and storage, among others. Our industries support over 3 million jobs across the country, many of those in manufacturing, and represent the major growth sectors of the U.S. energy economy. We note that in providing these comments, we do not speak for all of the individual businesses and organizations within the Clean Energy Business Network, but wish to express the views of the undersigned members and outline some of the general challenges facing our industries.

We believe that to maintain a diverse portfolio of energy resources, energy tax measures should be structured such that benefits are provided to all qualifying technologies in accordance with the energy, environmental, and other public benefits they generate, and allow fuel sources to compete on an even playing field. Furthermore, consistent and predictable tax policy is fundamental to investment and job creation. Unfortunately, the energy tax landscape in recent years has been rife with uncertainty, due to numerous short-term extensions, expirations, and retroactive extensions of credits for a number of industries. This has put significant strain on our businesses, employees, and clients.

The House version of the Tax Cuts and Jobs Act includes energy provisions that change the tax treatment of a range of energy technologies—some favorably and some in an extremely problematic manner. The Senate version of the bill does not have an energy title, but it includes provisions that would negatively impact energy financing and deployment for certain energy sources. We urge Congress to address these issues in conference on the legislation, or in a separate year-end tax extenders bill.

Comments on House Version of the Tax Cuts and Jobs Act:

- **Investment Tax Credit extension:** We are pleased that the House version of the legislation would restore incentives for non-solar technologies that have previously accessed the Investment Tax Credit (ITC) that expired on December 31, 2016, including fuel cells, combined heat and power, small wind, and geothermal. However, the House legislation unfortunately does not clarify ITC eligibility for waste heat to power or energy storage, two industries that have been competitively disadvantaged by their inability to access the credit. We urge Congress to reinstate these credits in conference or in a subsequent tax extenders bill.

- **Other expired clean energy credits excluded from bill:** We are greatly disappointed that the House bill does not restore the Production Tax Credit (PTC) for technologies such as biogas, biomass, waste to energy, hydropower, and marine and hydrokinetic energy. It similarly does not restore other credits for energy efficiency (including 179d) and alternative fuels. We urge Congress to reinstate these credits in conference or in a subsequent tax extenders bill.
- **Detrimental changes to ITC, PTC, and EV credits:** We are concerned that the House legislation would alter current law impacting the solar and wind industries, as developed in a bipartisan agreement enacted at the end of 2015. Specifically, the House bill would change the underlying IRS guidance and current inflation adjustment for the PTC and the commence construction requirements for both the PTC and ITC. The House bill would also rescind the electric vehicle credit. We urge conferees to strike these provisions.

Comments on Senate Version of the Tax Cuts and Jobs Act:

- **Silence on energy credits:** The Senate legislation does not include an energy title, and we encourage conferees to incorporate the above-referenced recommendations in conference. If these issues are not addressed in the tax reform legislation, we urge Congress to move forward on a tax extenders bill before year's end.
- **BEAT:** The Senate legislation contains a new tax called the Base Erosion Anti-Abuse Tax (BEAT). The way the provision is drafted, many multi-national companies, banks, and investors would be unable to utilize the ITC and PTC. These provisions would apply to both new and existing projects, casting significant uncertainty for existing deals and potentially devastating tax equity markets for future projects. We urge conferees to resolve this problem.
- **Corporate AMT:** Because the Senate bill would retain but not lower the corporate Alternative Minimum Tax (AMT), it would be equivalent to the new corporate tax rate (20%), rendering many business credits unusable. Even provisions included in the bill for certain "specified credits" such as the PTC are inadequate, limiting the credit's use to the first 4 years of power production. As a result, any wind project already placed in service would effectively lose the value of all or most of its remaining PTC. We urge conferees to address this problem to ensure corporations are able to fully utilize clean energy credits for the duration that Congress intended.

Maintaining business certainty for investment, job training and job creation is paramount to all of our industries. We appreciate the opportunity to comment on Congress' tax cut proposals, and look forward to working with you to make the tax code more efficient, protect existing investments, and provide an appropriate transition to new tax laws.

Thank you for your consideration of our views.

Sincerely,

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CC: House and Senate conferees on Tax Cuts and Jobs Act

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