

September 11, 2024

The Honourable Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance
Department of Finance Canada
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Dear Minister Freeland:

WaterPower Canada is writing to provide its comments in relation to the legislative proposal issued by Finance Canada in August 2024 regarding the Clean Electricity Investment Tax Credit (ITC).

WaterPower Canada (WPC) is the national industry association representing the Canadian hydroelectricity sector. Our members include both public and private hydropower producers, equipment manufacturers, engineering and construction firms and other suppliers of goods and services for the hydropower industry.

We are pleased that the Government of Canada is moving forward with the implementation of the ITC for the electricity sector, but we are disappointed with the complexity that remains in aspects of the proposed legislative framework.

We are pleased that the ITC specifically addresses both large and small conventional hydropower development as well as hydroelectric pumped storage, as the deployment of all these technologies will be essential to meeting our greenhouse gas reduction goals. The ITC framework does not appear to distinguish between green electricity for grid and industrial application; we believe this is important for mining and smelting operations that depend on clean electricity.

WaterPower Canada has previously provided comments regarding the implementation of the ITC¹ and its associated Labour Requirements² through the consultation for these proposals, and as part of the House of Commons 2025 Pre-Budget Consultation³.

¹ https://waterpowercanada.ca/wp-content/uploads/2023/10/WaterPower-Canada_ITC-Submission_Oct-23-2023.pdf

² https://waterpowercanada.ca/wp-content/uploads/2024/07/WaterPower-Canada_ITC-and-Labour-Requirements-Consultation_Sept-8-2023.pdf

³ https://waterpowercanada.ca/wp-content/uploads/2024/08/WPC-2025-Budget-Submission_FINA-Committee_August-2024-final_version.pdf

We have discussed the complexity and limitations of the proposed legislative framework in previous comments, so this submission will focus on outstanding key issues, as noted below:

1. Eligible Province

ITC's should be available to clean electricity projects in all provinces and territories, whether or not they are designated. The environmental benefits of a clean-energy project accrue from its development, regardless of whether its province commits to a net-zero target on a specific timeline. As previously noted, other legislative tools can address net-zero targets.

2. Timing Issues

Given the long planning and construction intervals for large-scale projects, we are disappointed with the expiry of the ITC on December 31, 2034. It is unlikely that large hydro projects could be completed within this time horizon. This reduces the utility of the ITC for the largest projects with the most GHG reduction potential, particularly given the current inefficiencies in federal environmental assessment and permitting processes.

Costs for hydropower projects should be eligible for the ITC if construction starts before December 31, 2034, irrespective of the date of completion.

3. Financing Vehicles

In our view, the decision to limit availability of the ITC to the most common forms of business structures, with limitations on limited partnerships and commercial trusts, undermines the utility of the ITC.

This is particularly the case for large energy projects, where flexibility is required to address financing and regulatory requirements, or to enable the participation of indigenous groups in a project.

While we understand the desire to avoid unintended tax planning consequences through the implementation of the ITC, we do not believe this is a sufficient reason to avoid enabling participation by commercial trusts, project finance for a limited partnership, or leaseback arrangements, all of which are currently used in Canada for large scale projects.

Given the diversity of potential financing structures that could be used for clean electricity developments, at a minimum we recommend the Department add an exception to permit approval of bona fide entities as eligible for the ITC on a case-by-case basis if they don't conform to the most common structures contemplated for the ITC.

4. Qualifying Corporations

As with the lack of flexibility provided for financing vehicles, a similar issue arises with tax exempt entities. The ITC should be available to all levels of subsidiaries of Crown, municipal, or indigenous corporations.

We recommend the Department also provide an exception to permit approval of bona fide entities on a case-by-case basis as noted above in 3) for unique situations involving qualifying corporations.

5. Preliminary Work

As preliminary work, including project planning, feasibility studies, and environmental assessment, are necessary parts of any project, they should be an eligible cost and not be excluded.

6. Labour Requirements

We have commented extensively on the unnecessary complexity of the labour requirements, and reiterate that parties not involved with the ITC, notably contractors and unions, are the parties to construction collective agreements. Similarly, hiring of apprentices are also matters for contractors and unions, not project owners. The labour requirements represent an unnecessary distraction from the ITC's objective as an incentive to get clean electricity projects built and detract from the essential goal of establishing a productive and efficient worksite.

7. Transmission and Distribution

While large-scale upgrades to intra-provincial transmission and distribution systems will be required to achieve our net-zero aspirations, we remain disappointed that the current ITC is focused only on interprovincial transmission systems.

The definition of “qualified interprovincial transmission equipment” should be amended to specifically include high-voltage direct current (HVDC) transmission equipment, as this equipment is frequently used between provinces.

Current examples already deployed in Canada include connections between

- Alberta and Saskatchewan
- Québec and Ontario
- Québec and New Brunswick, and
- Newfoundland and Labrador and Nova Scotia.

The availability of the ITC should also be confirmed for intra-provincial transmission lines that are required to interconnect a generating facility to the transmission grid. These ‘generator leads’ may be either high voltage ac or HVDC transmission facilities.

8. Refurbishment

While we appreciate the complexity of concisely defining refurbishment compared to sustaining capital investments in an existing facility, we believe this concept should be explained in greater detail in an interpretation bulletin or other policy document that provides additional guidance to project proponents and operators.

9. Definition of Hydro-electric Facilities

While the definition of hydro-electric facilities provided in Class 43.1 of Schedule II of the *Income Tax Regulations*, is suitable for small facilities, it currently does not include essential features that are often found in larger facilities. For example, the current definition does not include gated spillways, diversion works, tunnels, geotechnical improvements, or mandated safety equipment. The current definition also refers to assets in the singular, when practically all larger plants are multiple unit installations, with multiples of the items current listed in the definition.

The definition of pumped hydroelectric energy storage facilities in Class 43.1 is more general, and in our view, more appropriate than the restrictive language in the current definition of small hydro-electric facilities.

We recommend that Class 43.1 be amended to include

“a hydroelectric generating facility, including turbines, generators, transmission equipment, powerhouses, dams, spillways, reservoirs, fishways and fish bypasses, and related structures required for the safe and reliable production of electric power and its transmission to the bulk electric system.”

We thank you and your department for the opportunity to participate in this process and are available to address any questions or clarifications that may be needed regarding this submission.

Sincerely,



Lorena Patterson
President and CEO

cc. Honorable Jonathan Wilkinson, MP, Minister of Natural Resources
André Bernier, Director General – Energy Systems Sector, NRCan