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VIA HAND DELIVERY, UPS AND E-MAIL: DOCKET@ENERGY.STATE.CA.US; RPSTRACK@ENERGY.STATE.CA.US

California Energy Commission
Dockets Office, MS-4
RE: Docket No. 11-RPS-01 and Docket No. 02-REN-1038
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512

Re: RPS Proceeding: Comments of Abengoa Solar, Inc and BrightSource Energy, Inc. on proposed revisions to the California Energy Commission's Guidebook on RPS Eligibility, Docket Nos. 02-REN-1038 and 11-RPS-01

To Whom It May Concern:

California has demonstrated an unparalleled commitment to the generation of renewable energy, including utility-scale solar facilities. The California Energy Commission (CEC) in particular has played an instrumental role in implementing this commitment, both in siting renewable energy facilities and in setting forth eligibility standards for renewable energy technologies through the *Renewables Portfolio Standard Eligibility Guidebook* (*Guidebook*).

A draft of the Guidebook (*Draft Guidebook*) currently available for public comment[1] is intended, among other things, to implement the changes to the de minimis provisions of the Renewables Portfolio Standard ("RPS") enacted by AB 1954 (Skinner; Stats 2010, ch. 460) ("AB 1954"). BrightSource Energy, Inc. and Abengoa Solar, Inc. are among the companies deploying solar thermal technologies that could help meet California's RPS objectives by using de minimis amounts of nonrenewable fuels, as discussed in AB 1954. We are therefore pleased to offer the following comments on the CEC staff's recently proposed changes to the *Guidebook*, which are either embodied in the *Draft Guidebook* or otherwise open for comment.

Our comments advance the following four themes:

(1) AB 1954 specifies that only nonrenewable fuels actually used to <u>generate</u> electricity count against the de minimis threshold;

(2) The law does not permit disallowing de minimis nonrenewable fuel use as part of RPS credit;

(3) RPS objectives would be best served by allowing facilities certified as "de minimis" nonrenewable fuel users to make up exceedances over the de minimis threshold in the future, especially where the exceedance is for reasons beyond the generator's reasonable control; and

[1] Available at http://www.energy.ca.gov/2011publications/CEC-300-2011-008/CEC-300-2011-008-SD.pdf.

(4) AB 1954's test for "significant" increase in energy output is defined by the statute as relative to the output that would have been expected from the nonrenewable fuel alone, and not, as was discussed in the Staff Workshop, relative to the total output of the plant.

In addition, we thank the staff for their acknowledgment during the workshop that the RPS qualification for solar thermal storage and other on-site, integrated storage is not in question. We also have some additional, minor comments on the *Draft Guidebook*.

These comments have been submitted via hand delivery, overnight UPS and email (docket@energy.state.ca.us, rpstrack@energy.state.ca.us) in accordance with the staff's comment notice and instructions given at the staff's October 21, 2011 workshop.

I. BACKGROUND ON THE RPS & DE MINIMIS PROVISION

The purposes of California's RPS are to: "promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels" as well as to "ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts and by reducing in-state fossil fuel consumption." Pub. Util. Code § 399.11(b), (c). From the outset of the RPS program, California has recognized that the use of some de minimis amount of nonrenewable fuel at renewable energy facilities can assist in achieving these goals.

Prior to January 1, 2011, Public Utilities Code Section 399.12(e)(3) provided: "No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity, as determined by the Energy Commission, shall result in the creation of a renewable energy credit." In AB 1954, the Legislature amended this provision to clarify when de minimis quantities of fossil fuel can be used in the generation of renewable energy and to specify conditions under which a renewable energy generator can use greater de minimis quantities of certain nonrenewable fuels[2] to maximize the generation of renewable energy and reduce variability in electrical output. AB 1954 makes clear, if it were not previously, that the purpose of this provision is to further the underlying goals of the RPS as a whole—not merely to focus on generation from renewable fuel, but to focus on what we can do to improve the economic and environmental performance of the generation supply. As discussed in more detail below, solar thermal technologies are well positioned to use nonrenewable fuels precisely for these purposes.

A. Solar thermal technology

California's RPS goals can be furthered with least overall energy system expense and emissions when solar thermal technologies use de minimis quantities of nonrenewable fuels. This is because the solar thermal technologies function much like a traditional power plant, as they use heat to produce steam, which turns a turbine and produces electricity. Solar thermal technologies harness the power of the sun by using mirrors to direct concentrated sunlight toward a heat receiver to produce steam either directly or indirectly. The steam is then fed into conventional steam turbine generators, which can provide multiple reliability-related services in addition to energy, including frequency and voltage support, reactive power

[2] Specifically, "natural gas or hydrogen derived by reformation of a fossil fuel." Pub. Res. Code § 399.12(h)(3)(C).

and, in principle, the capability to provide ramping and regulation, as needed by the off-taker. These similarities to conventional power generation units allow a solar thermal facility to incorporate de minimis quantities of fossil fuels to augment steam production when the sun is providing insufficient thermal energy, increasing efficiency and reducing intermittency.

Using supplemental gas, solar thermal technologies can ensure the turbine receives consistent, high-quality steam, allowing it to operate at a more efficient rate and convert more solar energy into electricity. Gas use can reduce, or eliminate, the need for ancillary load balancing services, including during morning and afternoon ramps as well as during periods of insufficient insolation (intermittencies), and can help maintain on-peak availability. With its ability to self-supplement its primary energy source (i.e., solar radiation), a solar thermal facility places fewer demands on peaking combustion units and is therefore able to reduce costs and emissions compared to other types of renewable resource generation facilities, or to the facility itself were it not to deploy the de minimis nonrenewable fuel.

B. Contributions of solar thermal projects to California's realization of its RPS goals

By reducing the need for reliability services, de minimis nonrenewable fuel use can reduce system costs and emissions. Modeling of system operations and reliability at 20-33% RPS show an increasing need for operational flexibility and ancillary services, including currently unpriced power system services such as inertia and primary frequency response.[3] The change in energy supply as variable wind and solar units increasingly displace conventional units will add considerable complexity to maintaining a reliable grid under a 33% RPS, due to variable energy output across the operating day, significant ramps, and varying abilities to forecast performance. The resulting pressure on the grid will be exacerbated as generation resources that traditionally have provided those services are retired, whether due to age or to regulatory issues, such as once-through cooling, and potentially more costly as remaining units are operated to support integration of variable units and not at optimal economic and emission levels.[4]

Solar thermal's ability to use small quantities of conventional fuel to augment its operations, as well as its thermal inertia, enable it to be dispatched during operating hours and to respond to system operator needs, thus reducing its own integration requirements. The addition of storage to later solar thermal projects, building on the operational experience with the first few large-scale plants without storage, will enhance solar thermal units' ability to supply the system with needed integration services and wholesale market value. These characteristics likely will increase in value as future system needs are clarified,

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[3] These future needs are being examined through a number of initiatives at the CAISO, including the renewable integration market and product review, with papers available at http://www.caiso.com/2b3d/2b3d8b92f940.html.

[4] The operation of conventional power plants to support integration of wind and solar could become more costly under the carbon emissions constraints, such as those required by AB 32, in part as the expected displacement of emissions by renewable energy could be reduced by the operation of gas plants in less efficient manners (at or near minimum operating levels, to provide reserves and flexibility, and with frequent cycling over the operating day. The net emissions impact will be calculated by the CAISO 33% RPS simulations after the "all gas" benchmark case is completed.

through ongoing studies by the California Independent System Operator Corporation ("CAISO"), the National Renewable Energy Laboratory ("NREL"), and others.[5]

The analysis of these considerations in resource planning for the future power system has only begun in earnest over the past two years, but the evidence to date, including the most recent CAISO studies,[6] suggests that solar thermal plants deploying de minimis nonrenewable fuel bring potential value in every aspect of operations and reliability. There is already sufficient data to show that a de minimis nonrenewable fuel use by a solar thermal plant could provide substantial assistance in mitigating operational needs, particularly in high-stress hours, including enhanced ability to respond to system operator needs.

In addition to using nonrenewable fuel to supplement generation of electricity, solar thermal technologies use nonrenewable fuels for operations and maintenance activities that do not themselves produce electricity. These uses of nonrenewable fuels displace grid electricity that would otherwise be employed, allowing greater efficiency and reduced cost to consumers. Specifically, solar thermal technologies may use nonrenewable fuels for purposes of (1) preventing heat transfer fluids and other working fluids (such as molten salts in storage systems) from approaching their freezing points (freeze protection); (2) "blanketing" the turbines at night to prevent water condensation and prevent potential damage to the turbine during periods of inactivity and cooling (turbine protection); (3) preheating receiver tubes to shorten time to solar electricity production after sunrise or after system outages (system start-up); and (4) maintaining enthalpy in high and pressure temperature steam during periods of intermittent clouds (heat keeping).

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[5] The CAISO's preliminary study of system inertia and frequency response needs under a 33% RPS is anticipated for Q3 2011 (see discussion on pg. 12 of the CAISO's phase 2 of its renewable integration market development initiative, available at http://www.caiso.com/2b57/2b57efa839d50.pdf), while interconnection-wide studies have also begun. The recent CAISO integration studies conducted for the California Public Utilities Commission's (CPUC's) Long Term Procurement Plan (LTPP), likely underestimated the true system needs for regulation and load-following by 2020 for several reasons, including the longer intervals being studied that mask needs to address fluctuation over shorter time periods; assumption of a highly optimistic load reduction forecast for 2020; assumption of fully flexible dispatch of all gas plants (whereas there is substantial self-scheduling currently and economic reasons for dispatching these units for reasons other than to react to renewable intermittency); and the use of a Western Electricity Coordinating Council (WECC)-wide model that assumes interconnection-wide redispatch and, notably, higher levels of import and export than the CAISO system has ever experienced. Higher requirements would increase integration costs and could trigger the need for additional construction of gas peakers in the simulation to relieve operational constraints, as has been the case in earlier rounds of the CAISO modeling.

[6] See Testimony of Mark Rothleder, at http://www.caiso.com/Documents/R1005006_CAISO_LTPP_TestimonyErrata08102011_clean_final.pdf.

II. COMMENTS

A. AB 1954 specifies that only nonrenewable fuel used to generate electricity counts against the de minimis threshold

In recognition of the contribution that de minimis nonrenewable fuels make toward achieving California's RPS goals, facilities that deploy de minimis nonrenewable fuels are awarded renewable energy credits (RECs) for the full amount of their electrical output. A minimum of 2% counts toward renewable energy credit, and the CEC has authority to allow up to 5% nonrenewable fuel use pursuant to criteria specified by the statute. Pub. Util. Code § 399.12 (as amended by AB 1954).

Prior to AB 1954, the law stated that no electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity, could be counted as renewable. That prior language was vague regarding when the use of nonrenewable fuels would be considered "attributable" to producing electricity. In AB 1954, therefore, the Legislature clarified that what can be considered attributable is that which is "used to generate electricity in the same process through which the facility converts renewable fuel to electricity." The *Draft Guidebook*, in implementing AB 1954, must reflect that change in language.

Instead, the proposed changes in the *Draft Guidebook* include a new statement that would provide a more stringent counting regimen than that set forth in Section 399.12(e)(3). Specifically, the *Draft Guidebook* states that

> "all fuels or energy resources contributing thermal energy to the system that generates electricity . . . must be accounted for in the [de minimis] measurement methodology as contributing to generation. This includes, but is not limited to, startup, freeze protection, flame stabilization, supplemental firing, and any input of thermal energy meant to maintain, increase, or control the decrease of the thermal energy of the generating system."

(*Draft Guidebook* at 45.) This standard contradicts the relevant section of AB 1954 by encompassing gas uses that the statute explicitly excludes from the scope of de minimis nonrenewable fuel use. The law, as revised by A.B. 1954 is clear—only those fuels in fact used to actually <u>generate</u> electricity count against the de minimis threshold. Again, the CEC must give effect to the change in statutory language that resulted from AB 1954.

As established by the plain language of the statute, the de minimis nonrenewable fuel uses that count against the threshold include only the fuels used in the electricity generation process (the same process) or, more precisely, fuel burned by the electrical generation system while electricity is actually being generated by that system.

The statute does not allow for counting of nonrenewable fuels for operations and maintenance activities that are not directly related to the production of electricity and only displace grid electricity that would otherwise be employed to maintain solar thermal facilities and ready them for efficient conversion of solar energy to electricity. Specifically, gas used for freeze protection, turbine protection, system start-up, and heat keeping (see discussion above for more detail) are examples of how gas might be used for something other than electrical generation. The use of nonrenewable fuel to heat operations buildings and power maintenance equipment (e.g., mirror and panel washing trucks) does not result in the

generation of electricity. Just as these latter uses do not count against the de minimis threshold, neither should the former.

Although the plain language of the statute is clear and it is unnecessary to go any further, AB 1954's legislative history also provides strong evidence that the proposal in the revised *Draft Guidebook* to count toward the cap on de minimis "all fuels or energy resources contributing thermal energy to the system that generates electricity" is not a permissible interpretation of the law. (*Draft Guidebook* at 45 (emphasis added).) Thermal inputs applied during startup, to provide freeze protection, turbine blanketing, or flame stabilization, or to temporarily maintain system enthalpy, are used "to optimize reliable integration and efficiency of electrical production from eligible renewable energy resources." A.B. 1954, 2009-2010 Gen. Sess. (Ca. 2010) (Feb. 17, 2010 draft). As introduced, AB 1954 would have encompassed this concept within the de minimis nonrenewable fuels that count towards the threshold. However, this language was ultimately replaced by language that expressly limited the relevant de minimis nonrenewable fuel to fuel used "to generate electricity in the same process through which the facility converts renewable fuel to electricity." Pub. Util. Code § 399.12(e)(3). Accordingly, AB 1954 cannot be interpreted to count nonrenewable fuel used to optimize the system towards the facility's de minimis amount.

Any interpretation to include fuel used for any purpose other than "to generate electricity" is unworkable, as the cutoff between fuel uses that count toward the de minimis amount and those that do not would be inescapably arbitrary and exceedingly difficult to ascertain and administer. As noted above, fuel use "contributing to generation" could include the energy used to heat onsite facilities, the fuel used to power wash trucks, and the fuel used in vehicles to deliver workers and supplies to the facility. Under this approach, the energy used to prepare biomass fuels for use in the generation system would need to be counted as well. Cutting off the analysis at fuels used directly to generate renewable energy offers a more administratively manageable, reasonable and enforceable approach to measuring de minimis gas use.

Therefore, we recommend that the language on page 45 of the *Draft Guidebook*, regarding what inputs count towards the de minimis nonrenewable fuel use, should be modified to read as follows:

> For all thermal conversion technologies and all fuels or energy resources contributing thermal energy that add net enthalpy (energy, in the form of heat and pressure, that is to be converted to electrical energy) that is used by the system to generate electricity, and is not a separately metered input, must be accounted for in the measurement methodology as contributing the increment to generation resulting from that net enthalpy (i.e. to the extent that electricity is generated from the contribution of the additional energy, it should count).

We believe this change will encourage implementation of solar thermal technologies that can turn a de minimis amount of gas into a significant environmental benefit.

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B. De minimis certified facilities' use of nonrenewable fuel up to the allowed percentage counts as renewable energy, pursuant to statute

The law does not permit disallowing the allowed percentage (whether the statutory minimum of 2% or a higher percentage allowed by the CEC pursuant to the tests provided in AB 1954) of de minimis nonrenewable fuel use as part of RPS credit.

Public Utilities Code Section 399.12(e)(3), both before and after the enactment of AB 1954, clearly provides that only generation using nonrenewable fuels "beyond" (meaning more than) a de minimis amount shall not be counted as renewable generation. Without further legislative amendment, the CEC does not have authority to deny renewable energy credit for use of the de minimis percentage allowed for a facility certified for de minimis nonrenewable fuel use.

The *Draft Guidebook* nevertheless appears to suggest that the CEC will not give generators a grace allowance for the first 2% to 5% (whatever de minimis amount has been approved for the facility). If a generator exceeds its assigned threshold, the *Draft Guidebook* would have the buyer lose the RECs it had been credited and had counted on for compliance in an amount equal to the nonrenewable fuels use (and not just the exceedance). (*Draft Guidebook* at 45.) This would not only be very detrimental to the certainty buyers need to demonstrate RPS compliance, it would also create a perverse incentive for generators to refrain from using nonrenewable fuels to better serve the purpose of the RPS statute, for fear of going over the annual limit, as discussed further below. The incentives would be particularly mismatched, given that de minimis gas use depends on uncertain weather and annual output levels, making efforts to keep below the annual de minimis percentage equally uncertain.

C. Use of greater than allowed de minimis nonrenewable fuel use should be subject to a "cure" provision

To promote RPS goals, avoid harmful uncertainty to both buyers and sellers, and avoid undue administrative burden, facilities certified as "de minimis" nonrenewable fuel users that exceed their de minimis threshold should be allowed to make up exceedances over the allowed threshold in the future, especially where the exceedance is for reasons beyond the generator's reasonable control. As we pointed out in the workshop and in subsequent email correspondence with staff, a deduction of renewable energy credits already awarded to buyers is an overly harsh penalty relative to any perceived benefit, in light of the perverse incentive it would create for facilities to not use de minimis nonrenewable fuels to reduce intermittency and promote RPS goals, and considering the practical inability for a facility to know at all times whether it is above (or approaching) its limit. The following two examples illustrate how a facility operator, however scrupulous it may be, could be found after the fact to have exceeded the de minimis threshold- through no fault of its own.

Example 1: Unforeseen circumstances.
A 250MW solar thermal plant is pre-certified as 100% RPS with a de minimis allowance of 4% nonrenewable fuels for enhancement of solar electricity production and network reliability. The plant operator is careful not to exceed 4% fossil fuel in any month in accordance with the calculation methodology approved by the CEC during the plant's RPS pre-certification process. By the end of November, the Western Renewable Energy Generation Information System (WREGIS) has issued RECs equivalent to 600,000 MWh of RPS-certified electricity. An unusually cloudy December reduces solar availability to well below the long-term average for December. The plant operator, seeing this reduction

in output, sharply reduces or eliminates fossil fuel use, increasing the plant's intermittency and its burden on the grid, causing greater need for conventional power and increased costs and emissions. The annual output of the plant for the year, as a result of the poor weather in December, is lower than had been anticipated. The year-end calculation of fossil fuel heat inputs, which consider those inputs in comparison to the total annual energy output, shows that nonrenewable fuels accounts for 4.2% of total heat inputs on an annual basis. According to the *Draft Guidance*, the buyer would not only have to somehow relinquish renewable energy credit it had been relying on for compliance and that had been issued to it through WREGIS in the amount of 24,000 MWh equivalent in RECs for January through November. This amounts to a sudden and unforeseen financial loss of over $1 million.

Example 2:
An 80MW biomass project is pre-certified as 100% RPS when using up to 2% nonrenewable fuels for flame stabilization. An independent engineer's report in connection with a year-end audit shows a lower heating value for the biogas used in the plant that year—or alternatively a higher heating value for the nonrenewable fuels—in comparison with the previous year, thus retroactively changing the expected ratio in terms of energy inputs from nonrenewable fuels and energy inputs from biogas. As a result, all RECs associated with the proportion of energy now attributable to the nonrenewable fuels used during the year will be withdrawn.

A generator cannot, as staff asked at the workshop, simply adjust supplemental gas use as it approaches the annual de minimis cap for the facility. As demonstrated by the examples provided above, because an operator will not know the total quantity of output until the end of the year, and because the operator must compare the total output to its fossil use to determine the percentage of fossil use, an operator cannot assess whether it is near the cap in real time.

In addition, during unexpected bad weather, intermittency would increase—a circumstance that is best handled for purposes of reducing overall system costs and emissions by using more gas onsite, rather than turning to offsite peaking generators. Under the proposed approach of the *Draft Guidebook,* the facility operator would have a perverse incentive to focus on staying below the cap rather than reducing intermittency, as the operator will not bear the costs of resorting to peaker generation (a classic tragedy of the commons problem).

We recommend that if a certified facility exceeds its nonrenewable fuel use limitations, the CEC should allow facility operators to "pay" for RECs awarded for output that was subsequently determined to exceed the de minimis threshold with renewable generation in the following year. In other words, if a generator experiences a shortfall in renewable energy generation, it should be carried forward, not corrected retroactively. The ability to make up RECs with future renewable generation from the plant's annual operation the following year will encourage investments to improve underperforming systems and will ensure that punitive fines and/or impractical restitution obligations (e.g., an obligation to go back to the market to procure RECs retroactively) do not result in financing hurdles or undue hardship to buyers who have counted on the RECs that they had received each month to meet their RPS compliance obligation.

D. AB 1954 establishes that a "significant" increase in renewable energy production justifying a higher de minimis threshold is relative to the output expected from the nonrenewable fuel alone, and not, as was discussed in the Staff Workshop, relative to the total output of the plant

Although not yet part of the circulating *Draft Guidebook*, staff at the workshop explained that they are considering how to define "significantly greater" generation, which is one of the criteria for securing a de minimis cap in excess of the minimum 2% established by statute. Specifically, to qualify for a de minimis cap of up to 5%, one of the factors that a generator/operator must demonstrate is "that the higher quantity of nonrenewable fuel will lead to an increase in generation from the eligible renewable energy facility that is significantly greater than generation from the nonrenewable fuel alone." Pub. Util. Code § 399.12(e)(3)(A). Reasoning that up to 5% is recognized as a de minimis amount, the staff proposed at the workshop "to define 'significant' as at least greater than 5 percent of generation from the non-renewable fuel alone." CEC Staff, Presentation on Proposed Revisions to the Renewables Portfolio Standard Eligibility Guidebook and the Overall Program Guidebook 60 (Oct. 21, 20011).[7] Notwithstanding the fact that the law defines 2%, not 5%, as a de minimis amount, the definition proposed by the staff is not problematic on its face. However, the explanation provided by the staff at the workshop was not consistent with the language of the statute.

Specifically, staff explained that, using a 100MW facility as an example, a facility would need to generate at least 105MW (to account for the 5% use of the nonrenewable fuel) plus another 5MW to account for the significantly greater (5%) generation, for a total of 110MW. We commented at the time that the statute does not support this interpretation.

The statute requires that the CEC look at the significance of the increase above and beyond the generation from the *non-renewable* fuel (a marginal amount)—not the total increase in generation above the nameplate for the renewable generation facility. The statute states the test as follows: " . . . the facility demonstrates that the higher quantity of nonrenewable fuel will lead to an increase in generation from the eligible renewable energy facility <u>that is significantly greater than generation from the nonrenewable fuel *alone*</u>". Pub. Util. Code § 399.12(e)(3)(A) (emphasis added).

Following staff's reasoning that anything above de minimis can be significant, if a de minimis threshold is 2-5%, the proper test would be an increase in generation that is 2-5% over the quantity of generation that would result solely from the combustion of the nonrenewable fuel use. We therefore propose that the CEC define "significant" to mean an increase in generation equivalent to 5% or more of the quantity of generation that would result solely from the combustion of the nonrenewable fuel.

E. The CEC should clarify that the questions raised regarding whether energy storage technologies are eligible for the RPS do not apply to solar thermal storage

Based on language in the *Draft Guidebook* that questioned the RPS eligibility of electricity coming from storage facilities, we initially had concerns that the CEC intended to restrict the RECs that might be earned for generation from stored thermal energy. (*See Draft Guidebook* at 10.) The staff clarified at the workshop that this was not their intent and that the language in the *Draft Guidebook* concerned only offsite storage facilities, in particular those that might comingle energy generated from renewable and nonrenewable sources. Provided that the language in the *Draft Guidebook* is clarified such that it cannot be interpreted to limit or discourage the use of solar thermal storage technologies, we have no further comment on this issue.

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[7] Available at http://www.energy.ca.gov/portfolio/documents/2011-10-21_workshop/presentations/Staff_Presentation_on_Proposed_Revisions_to_the_Renewables_Portfolio_Standard_Eligibility_Guidebook_and_the_Overall_Program_Guidebook_2011-10-21.pdf.

F. Miscellaneous comments

In addition to the comments above, we have the following observations on the *Draft Guidebook*.

(1) The language addressing requirements to conform to the WREGIS methodology (*Draft Guidebook at* 48) must be qualified. California law governs, first and foremost, the situations covered in the *Draft Guidebook*. In instances where the WREGIS methodology conflicts or is inconsistent with California law, California law must trump. In particular, any inconsistencies between the WREGIS methodology and California law with regards to the treatment of de minimis gas use should be resolved in favor of California law's treatment.

(2) The *Draft Guidebook* contains language that makes the options for methodologies used to calculate de minimis gas use ambiguous. Specifically, while the *Draft Guidebook* clearly says that the applicant can propose its own methodology, it later states while discussing the "pre-approved" methodologies, that there are two "possible" methodologies available to thermal non-combustion source like solar thermal. (*Draft Guidebook* at 45.) This language suggests that there are only two possible methodologies. We believe this language was meant to read "two possible pre-approved" rather than "two possible" methodologies. (*Draft Guidebook* at 45.)

III. CONCLUSION

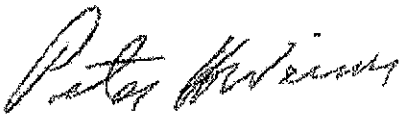
On behalf of Abengoa and BrightSource Energy, I would like to reiterate our appreciation for the CEC's, and in particular the staff's, hard work to improve the RPS eligibility guidance. The *Guidebook* is an invaluable tool that can only be enhanced by the incorporation of provisions that:

(1) count only nonrenewable fuels actually used to <u>generate</u> electricity toward the de minimis threshold;
(2) do not retroactively revoke RECs;
(3) allow generators to make up in the future RECs lost to exceedances; and
(4) define "significantly greater generation" from nonrenewable fuel use to mean a 5% increase in renewable energy output relative to that expected from the nonrenewable fuel alone.

We look forward to having further conversations with the staff to ensure that the guidance for de minimis gas use at renewable energy facilities in the forthcoming edition of the *Guidebook* implements these changes in accordance with the language of AB 1954 and to more fully achieve the objectives of California's RPS.

Thank you for your time and consideration.

Sincerely,



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