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J. Nathan Jensen  
Vice President and General Counsel



April 1, 2013

**VIA UPS OVERNIGHT**

Hon. Brad R. Hill, Administrative Presiding Justice  
Honorable Associate Justices  
Fifth District Court of Appeal  
2424 Ventura Street  
Fresno, CA 93721

**Re: Application for Leave to File Letter Brief as Amici Curiae Combined with Letter Brief in Support of Continued Implementation of the Low Carbon Fuel Standard: *POET, LLC v. California Air Resources Board* (Court of Appeal Case No. F064045)**

Dear Administrative Presiding Justice Hill and Associate Justices:

Please accept this application for leave to file this letter brief as amicus curiae from Clean Energy, in support of Respondents in the above-entitled action. This application and brief are submitted in response to a February 26, 2013 transmittal to parties in the case *POET, LLC et al. v. California Air Resources Board et al.* (Court of Appeals Case No. F064045).

Clean Energy has been an active participant in the rulemaking process for the California Low Carbon Fuel Standard (LCFS) and is currently selling fuels that can be used for compliance with the standard. Accordingly, Clean Energy submits this letter brief to alert the court to the importance of keeping the LCFS in operation and preserving ongoing regulatory certainty that underpins major investments already made and planned throughout California.

**APPLICATION**

Clean Energy is North America's leading company in clean transportation, with headquarters in Seal Beach, California and operations worldwide. Among its operations, Clean Energy produces renewable natural gas (RNG) for delivery to the nation's pipelines, manufactures and installs both compressed and liquefied natural gas vehicle fueling equipment, and own, operates and maintains stations for vehicle fueling. Compressed natural gas (CNG), liquefied natural gas (LNG), and RNG creates greenhouse gas reductions of up to 88% as compared to petroleum fuel products and Clean Energy intends to use these savings to generate credits worth millions of dollars annually under the LCFS. Clean Energy has several ongoing investments for the build-



out of additional natural gas infrastructure throughout California. The LCFS creates a unique economic incentive to Clean Energy and companies like ours to reduce the carbon intensity of our fuels and make those fuels available in the California market.

The court's February 26 letter asked, among other questions: "8.A. Based on the three assumed CEQA violations, should this court allow the LCFS regulations to remain operative pending CARB taking the corrective action necessary to achieve CEQA compliance?" A court order enjoining the operation of the standard would have a significant impact on the short and long term success of the LCFS, and in turn, on Clean Energy's business investments and interests. We therefore submit this letter to protect our ongoing business interests.

A copy of this application and letter brief has been served on the parties to this case, as set forth in the attached proof of service (California Rules of Court 8.200(c)(4)).

Based on the foregoing, amici respectfully request that this Court grant this application to file their amici curiae letter, the substance of which follows.

## ARGUMENT

### **THE LCFS HAS ALREADY STIMULATED MAJOR INVESTMENTS IN ALTERNATIVE LOW CARBON FUELS**

The LCFS is a technology-neutral policy that encourages companies to invest in low-carbon fuels technology to meet increasingly stringent performance targets over time. Companies with the potential to exceed this target, like Clean Energy, can sell credits to regulated entities who can't meet the target, creating a strong financial incentive for lower-carbon fuel innovation.

According to the Q3 2012 Quarterly report of the LCFS progress, released December 31, 2012, even at a rather early stage of implementation, major investments have already resulted in emissions reductions credits generated by a range of alternative fuel sources, including natural gas.<sup>1</sup> Cal. Air Resources Board, LCFS Reporting Tool Quarterly Data Summary – Report No. 3 (Dec. 31, 2012) pp. 1. These emissions reductions credits have been generated since the regulation was enacted two years ago, and a suspension of the standard would immediately impact that value.

Clean Energy continues to make investments to reduce the carbon intensity of its fuels and create the necessary infrastructure for delivering these fuels. A major part of making these investments is the expectation that the LCFS will create future demand for Clean Energy's emissions reducing product. In 2012, we recognized \$2.9 million of revenue through the sale of LCFS credits, and based on the implementation of the LCFS to date,

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<sup>1</sup> The market for LCFS credits increased from just under 300,000 credits in Q1 2011 to just under 400,000 credits in Q3 2012.



we expect the sale of LCFS credits will generate revenue for our business at least through 2020. Halting the standard at this point would therefore jeopardize our long term business interest.

**ADDITIONAL LONG TERM REGULATORY CERTAINTY IS NEEDED TO GROW THOSE FUELS INTO FULLY COMMERCIALIZED FUEL STREAMS AND TO PREVENT CURRENT INVESTMENTS FROM BEING PREMATURELY STRANDED**

Even though the investments made by our company are beginning to deliver demonstrable emissions benefits in addition to significant fuel volumes, these investments are well below what is needed to grow alternative fuel industries to full commercial scale production. Rather, to initiate full commercialization of ultra low carbon fuels, like renewable natural gas, a stable long term investment is needed throughout the fueling landscape. This investment must not only include fuel production facilities, but also the infrastructure needed to get the fuel into vehicles. This is why the LCFS is so important – it provides a long term investment signal to create a robust alternative fuel market in a reasonable timeframe.

In the event the LCFS operations were enjoined, even if for a limited duration, Clean Energy's business would be negatively impacted. Not only would the market for credits we have developed under the standard become instantly unstable, the value of credits would also likely drop. Additionally, incentives to invest in projects that can deliver more low carbon would be reduced. Clean Energy experienced this chilling effect first hand when a federal trial court enjoined the LCFS temporarily in 2012, causing a major entity that had contracted to purchase \$1.2 million of credits from us to later indicate an intent to back out of the contract due to regulatory uncertainty.<sup>2</sup> Fortunately, in that case the 9th Circuit quickly stayed the injunction minimizing the potential damage.

As evidenced by our own first-hand experience, freezing implementation of the LCFS at this critical juncture would have highly negative consequences for many actors in the alternative fuel industry who have been operating in good faith to create the emissions reductions California businesses need for LCFS compliance.

**Conclusion**

CARB's LCFS program is an integral part of California's overall commitment to combating the effects of climate change on public health and the environment. The standard also creates an incentive structure that fuel companies like Clean Energy can utilize to provide real solutions. The structure of the LCFS provides a market signal to

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<sup>2</sup> Declaration of Harrison Clay in Support of Defendants and Defendant-Intervenors' Motion to Stay Preliminary Injunction and Judgments Pending Appeal, Rocky Mountain Farmers Union et al v. Goldstene et al., Case no. 1:09-CV-02234-LJO-DLB.



invest in low-carbon fuels and infrastructure – an investment signal which must not be interrupted.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Nathan Jensen".

J. Nathan Jensen  
Vice President and General Counsel

cc: All parties as listed in the attached Proof of Service

**DECLARATION OF SERVICE BY U.S. MAIL**

I am employed in the County of Orange, State of California. I am over the age of eighteen and am not a party to the within action; my business address is 3020 Old Ranch Parkway, Suite 400, Seal Beach, California 90740.

On April 01, 2013, I served the foregoing document described as:

Application for Leave to File Letter Brief as Amici Curiae Combined with Letter Brief in Support of Continued Implementation of the Low Carbon Fuel Standard: *POET, LLC v. California Air Resources Board* (Court of Appeal Case No. F064045)

on the interested parties in this action, as designated on the attached Service List for this case.

**[ X ] BY U.S. MAIL**

I am "readily familiar" with the firm's practice of collection and processing correspondence for U.S. Mail. It is deposited with the U.S. Mail on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**[ X ] BY ELECTRONIC MAIL**

I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 01, 2013, at Seal Beach, California

  
Gina M. Leong

**SERVICE LIST**

*Poet, LLC, et al v. California Air Resources Board, et al.*  
California Fifth District Court of Appeal

Supreme Court of California  
Office of the Clerk, First Floor  
350 McAllister Street  
San Francisco, CA 94102  
**[Four (4) copies]**  
**Via U.S. Mail**

Honorable Jeffrey Y. Hamilton, Jr.  
Judge of the Superior Court  
c/o Appeals Clerk  
Fresno County Superior Court  
1130 O Street  
Fresno, CA 93721  
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