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February 28, 2020

Re: Comments of POET LLC on the Transportation and Climate Initiative's Draft Memorandum of Understanding and Prospective Model Rule

SUBMITTED VIA THE ONLINE PORTAL

POET, LLC ("POET") hereby submits these comments on the Transportation and Climate Initiative's ("TCI") Draft Memorandum of Understanding ("MOU"), which also describes the provisions that could be included in the prospective Model Rule. As detailed in our November 2019 comments on the TCI's Framework for a Draft Regional Policy Proposal ("Framework")—which we incorporate by reference here— biofuels are poised to provide a critical means for achieving the TCI's goals of delivering a cleaner and more resilient transportation system, reducing greenhouse gases ("GHGs") and other harmful pollutants, and benefiting those communities that are disproportionately burdened by air pollution. POET strongly supports and looks forward to contributing to TCI's objectives of addressing the unique and varied community-based, environmental and climate-related challenges presented by the transportation sector.

POET is one of the world's largest biofuel producers, with 27 state-of-the-art facilities that produce close to 2 billion gallons of corn starch and cellulosic ethanol, as well as other biorefined products. POET was recently recognized by *Fast Company* magazine as one of the most innovative transportation companies in the United States. POET is deeply committed to decarbonizing transportation and developing cleaner, affordable alternatives to fossil fuels. We believe biofuels can play a critical role in TCI's program to achieve a net zero-carbon future.

I. The prospective Model Rule's definition of "affected fuel" is appropriate and consistent with other climate policies.

POET supports the prospective Model Rule's definition of "affected fuel" and proposed point of regulation. Both proposals harmonize well with other fuel programs, particularly in California. The Model Rule's definition of "affected fuel" regulates the fossil fuel component of gasoline and diesel only, which reflects the approach taken by California's Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms ("cap-and-trade program"). Under California's cap-and-trade program, any carbon dioxide ("CO_2") emissions from the combustion of biodiesel and ethanol do not result in an allowance obligation.[1] In addition, the Model Rule's definition of "affected fuel" is consistent with international, federal, and state GHG emissions

[1] CAL. CODE REGS. tit. 17, § 95852.2(a)(5), (6) (2019).

accounting and regulatory policies that recognize that the combustion of biofuels result in net zero CO_2 emissions.[2]

II. The prospective Model Rule's point of regulation is appropriate and consistent with other climate policies.

The Model Rule's proposed point of regulation also is consistent with the approach taken by the California cap-and-trade program. The California program imposes allowance surrender obligations on suppliers of reformulated gasoline blendstock for oxygen blending and distillate fuel oil as well as suppliers of liquefied petroleum gas.[3] Similarly, the MOU would regulate "state fuel suppliers," which includes "position holders" and "enterers." Position holders are the owner of the fuel when it is delivered across the rack, while enterers are owners of affected fuels delivered into a participating jurisdiction from a facility in another jurisdiction. In other words, both the California cap-and-trade program and the prospective TCI Model Rule identify the same fuel suppliers as the points of regulation. This approach is both familiar and administratively efficient. Therefore, POET urges the TCI to finalize the point of regulation in the ultimate Model Rule to avoid the challenges stakeholders would face by having to adhere to multiple standards and definitions in different jurisdictions.

III. The "Regulated Entity Compliance and Flexibility" provision of the prospective Model Rule should require banked credits to be used within a finite time period to avoid common issues associated with unlimited credit banks.

POET acknowledges that the compliance period, banking, and offset measures within the "Regulated Entity Compliance and Flexibility" provision of the Model Rule are flexibility mechanisms intended to moderate costs resulting from the initial cap level. However, it is important to ensure that any flexibility mechanisms are designed in such a way that they are consistent with the environmental and equity objectives of the TCI.

In particular, POET encourages the TCI to consider the risks associated with allowing unlimited credit banking. Unlimited banking complicates the ability to adjust the emissions cap later to make the program more environmentally protective. This issue arose with respect to the Regional Greenhouse Gas Initiative ("RGGI"), where policymakers faced challenges in adjusting the emissions cap in light of the large quantity of outstanding banked allowances.[4] RGGI entities banked a significant number of emission allowances under the initial emissions cap, which resulted in actual emissions exceeding the modified caps in later years.[5] Moreover, a

[2] *See U.S. Energy Information Administration, Monthly Energy Review, Environment Section, Section Note,* U.S ENERGY INFO. ADMIN. (June 2019), https://www.eia.gov/totalenergy/data/monthly/pdf/sec12_n.pdf; *Low Carbon Fuel Standard*, CALIFORNIA AIR RESOURCES BOARD, https://ww3.arb.ca.gov/fuels/lcfs/background/basics-notes.pdf, at p. 18.
[3] CAL. CODE REGS. tit. 17, § 95811(d), (e) (2019).
[4] JONATHAN L. RAMSEUR, CONG. RESEARCH SERV., R41836, THE REGIONAL GREENHOUSE GAS INITIATIVE: BACKGROUND, IMPACTS, AND SELECTED ISSUES 6 (2019), available at https://fas.org/sgp/crs/misc/R41836.pdf.
[5] *Id.* at 7

point of debate for policymakers when updating the program was how to address the impact of tighter caps on the monetary value associated with the banked allowances.[6]

Large or unlimited credit banks also weaken the market signal of the cap for businesses that could provide GHG emission mitigation services, such as the greater use of biofuels. As a cautionary tale, POET points to the experience with the Renewable Fuel Standard ("RFS") banking provisions. Even though the RFS only allows regulated entities to bank Renewable Identification Numbers ("RINs") for one year, the overall structure of the RFS has resulted in the accumulation of 3.48 billion carryover RINs in 2020.[7] The enormous RIN bank has complicated efforts to modify the program and has discouraged GHG emission mitigation undertakings, such as the investment in biofuels, that would have otherwise occurred. Unlimited banking would lead to an even more dramatic accumulation of credits than the RFS's bank, and the TCI should be aware of the potential risks that stem from this proposed provision.

While POET recognizes the need for some flexibility mechanisms, POET recommends that the Model Rule require banked credits to be used within a finite time period.

IV. The MOU should include guidance on how to invest proceeds, including recommendations to invest in biofuels.

POET appreciates the discretion and flexibility that the MOU affords participating jurisdictions to decide how to invest proceeds from the cap-and-invest program. Nonetheless, providing information and guidance on the types of mitigation activities that can be accomplished through the use of investment proceeds would maximize the benefits of the TCI initiative. We see great value in the collective effort to provide ideas and information on how to invest proceeds.

As a world leader in biofuel production, POET offers two investment suggestions that would aid TCI jurisdictions in achieving their goal to expand low-carbon and clean mobility options to communities disproportionately harmed by climate change and transportation pollution. These suggestions were first introduced in POET's November 2019 comments on the Framework.

First, funds can be invested in the deployment of blender pump equipment and additional retail gas station tanks that can support a higher concentration of blended fuel (up to E85). For gas stations that do not have newer E10 fuel distribution equipment that is compatible with E15, investment funds could support programs that assist with upgrading older gas station equipment and facilitating broader product offerings such as E85.

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[6] *Id.*

[7] Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes, 85 Fed. Reg. 7016 (Feb. 6, 2020) (to be codified at 40 C.F.R. pts. 79–80), available at https://www.govinfo.gov/content/pkg/FR-2020-02-06/pdf/2020-00431.pdf.

Second, funds can be invested in tax credits for retailers to sell E15 or higher blends. Motorists in all communities would benefit from the availability of these blends because the resulting stabilized gas prices and lower tailpipe emissions would improve affordability and public health, especially in vulnerable communities.

We recommend including these and other investments that can provide substantial mitigation and equity benefits as an illustrative list for use by participating jurisdictions.

V. Conclusion

POET appreciates the opportunity to comment on the MOU and prospective Model Rule. Biofuels can significantly reduce CO_2 emissions from cars and trucks in TCI jurisdictions, benefit low-income communities disproportionally impacted by pollution, and help moderate the impact of the CO_2 cap on prices at the pump to further the TCI's environmental and equity objectives. POET continues to look forward to participating in ongoing TCI stakeholder discussions.

If you have any questions or would like additional information, please contact Shai Sahay, Senior Regulatory Counsel at POET, at shailesh.sahay@poet.com.