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November 2, 2016

Mr. Mark A. McCall
Executive Director, Loan Programs Office
1000 Independence Avenue SW
Washington, DC 20585-0121

Re: Comments of Sundrop Fuels, Inc. to Proposed Changes to 10 CFR Part 609 Loan Guarantees for Projects That Employ Innovative Technologies (RIN 1901-AB38)

Dear Mr. McCall:

Thank you for the opportunity to submit the following comments in response to the proposed changes to 10 CFR Part 609 Loan Guarantees for Projects That Employ Innovative Technologies (RIN 1901-AB38).

Background

Sundrop Fuels, Inc. ("SDF" or "Sundrop Fuels") is the Sponsor of Sundrop Fuels SD1, LLC ("SD1") an Applicant under the Title XVII Loan Program. SD1 filed its Part II Submission under DOE's Federal Loan Guarantees for Renewable Energy Projects and Efficient Energy Projects Solicitation (DE-SOL-0007154) on April 13, 2016. SD1's application includes the proposal to construct, own and operate the Rapides Station Biofuels Plant, a first-of-a-kind advanced biorefinery with a nameplate capacity of 16,500 barrels per day. The biorefinery will convert sustainable biomass and natural gas into 87 octane drop-in gasoline and will produce approximately 230 million gallons of gasoline per year. The plant will be located in Rapides Parish, LA, near the town of Alexandria.

The Rapides Station Biofuels Plant will substantially reduce lifecycle greenhouse gas (GHG) emissions and will provide significant economic benefits to the state of Louisiana. During construction, the plant is projected to directly create almost 11,000 full-time jobs and will create over 400 permanent full-time jobs during its 25+ years of operations. Additionally, the reduction in lifecycle GHG emissions from the plant when compared to conventional petroleum refining is equivalent to removing about 100,000 automobiles from the highways each year.

Comment #1: Sundrop Fuels strongly supports the purpose and intent of the proposed amendments.

Proposed Rulemaking Reference: Section I – Introduction and Background:

DOE proposes to amend the existing regulations as described in Section II of this proposed rule. The proposal is intended to provide increased clarity and transparency, reduce paperwork, and provide a more workable interpretation of certain statutory provisions in light of DOE's experience with operation of the Title XVII program.

Sundrop Fuels Comment:

SDF strongly supports DOE's effort to provide increased clarity and transparency in the operation of its Title XVII loan program. It is our opinion that many of the definitions act to clarify the intended process and that many of the proposed amendments are reflective of market-based approaches to project financing.

We also note that the market for financing complex energy infrastructure projects is dynamic and requires creative and flexible solutions that meet both the risk management requirements of lenders and practical requirements of project developers. We encourage the DOE to continue to develop flexible and market-based solutions for its Applicants in order to meet the objectives of the Title XVII loan program.

Comment #2: Sundrop Fuels requests clarification and revision of the proposed changes to the competitive process for evaluating completed Applications which would require completed Applications to be evaluated against ***potential*** projects that ***may*** become the subject of an Application.

Proposed Rulemaking Reference: Section 609.5(a):

In reviewing completed Applications, and in prioritizing and selecting those as to which a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, any applicable Solicitation, and this part. Applications will be considered in a competitive process, i.e. each Application will be evaluated against other Applications responsive to the Solicitation. DOE may compare an Application to Applications related to other projects that DOE reasonably believes may become the subject of an Application. [Emphasis added].

Sundrop Fuels Comment:

Currently, DOE has a well-defined process of accepting and competitively evaluating Applications based on a series of due dates that establish a sequence of "queues" for evaluating the merits of each Application based on the Applicant's place in the queue.

> "In reviewing completed Applications, and in prioritizing and selecting Projects for due diligence review, DOE will apply the criteria set forth in Title XVII, the 1703 Regulations, and this Solicitation. For each round of review, submissions will be considered in a competitive process (i.e., each submission will be evaluated against all other submissions responsive to this Solicitation that are filed during the corresponding round of review)."

Section IV, Part H of the Loan Guarantee Solicitation Announcement, Renewable Energy Projects and Efficient Energy Projects; DE-SOL-0007154

The current structure provides an objective and understandable process of competitively evaluating Applications while also providing all Applicants with the commercial incentive to submit qualified projects for review as quickly and efficiently as possible. More importantly, it also provides Applicant's with a basic understanding of the timing for the DOE's evaluation of the Application. Because the loan application process can be lengthy and costly, this queueing process provides Applicants with a basis for planning for continued project development activities (and the related capital required to do so). This is the program structure under which Sundrop Fuels submitted its Part II Application.

If the proposed rule is adopted as written (to include *projects that DOE reasonably believes may become the subject of an Application*), we are concerned that it will act to further delay an already lengthy process. Of greater concern is that it could act to put qualified projects in "limbo" while the DOE awaits the filing of Applications on future projects (Applications that may or may not be filed on projects that may or may not be more qualified than Applications that the DOE currently has available for review). This would place many highly qualified projects in jeopardy since the majority of these projects require continued development during the DOE application process. Without a clear understanding of a reasonable timeline for review and approval, it is difficult for many Applicants to attract the required capital to maintain the project development activities necessary to deliver a successful project to the DOE and its equity investors. The impact of this change would be a longer and more opaque process, fewer projects that would be able to withstand the additional timing delays, and greater market uncertainty about the DOE loan guarantee program.

We urge the DOE to reconsider the proposed language Section 609.5(a) and eliminate the provision that would allow the DOE to compare filed Applications to potential Applications that have not yet been filed. We fully understand and respect the DOE's need to advance only highly qualified projects through its loan review process so that it maintains the quality of its loan portfolio, but qualified projects should not have to compete against potential projects that may or may not actually be the subject of a future Application.

If the DOE finds itself in the position that it has more qualified projects than it has funding available in its guarantee authority, the DOE has the option to request additional guarantee authority from Congress as it did in its Fiscal 2017 Congressional Budget request where it was stated that:

> *"In addition, the LPO is requesting $4,000,000,000 in new loan guarantee authority under the Title XVII program due to the strong market response to the Advanced Fossil Energy Projects Solicitation and the Renewable Energy and Efficient Energy Projects Solicitation. LPO forecasts that all remaining loan guarantee authority made available under these solicitations will be closed or committed by the end of FY 2016. LPO has applications in the application pipeline for Title XVII. Additional loan authority under Title XVII for LPO will further signal to the market that LPO is focused on continuing to fund innovative technologies that meet the program mission. LPO anticipates that the market will respond to future, new conditional commitments with an increasing volume of applications."*

Department of Energy FY 2017 Congressional Budget Request Volume 3, page 741

Since the advancement of as many qualified projects as possible is in the best interests of the DOE, would enhance the mission of the LPO, and would ensure its position as a long-standing and permanent solution for U.S. project financing and commercial deployment, it is our view that it is unnecessary to evaluate qualified Applications against potential and/or future Applications. We urge the DOE to retain its current "queueing" process for the review and evaluation of Applications.

Comment #3: Sundrop Fuels strongly requests clarification of the "Risk-based-charge" which appears to be duplicative of the credit subsidy fee that is currently in place and urges the DOE not to impose this additional fee on recipients of the DOE's Title XVII loan guarantees.

Proposed Rulemaking Reference: Section 609.11 (c) and Section 609.2 (a) [definition of *Risk-based charge*]:

609.11 (c) In order to encourage and supplement private lending activity DOE may collect from Borrowers for deposit in the United States Treasury a non-refundable Risk-Based Charge which, together with the interest rate on the Guaranteed Obligation that LPO determines to be appropriate, will take into account the prevailing rate of interest in the private sector for similar loans and risks. The Risk-Based Charge shall be paid at such times and in such manner as may be determined by DOE, but no less frequently than once each year, commencing with payment of a pro-rated payment on the date the Guarantee is issued. The amount of the Risk-Based Charge will be specified in the Loan Guarantee Agreement.

609.2 (a) Risk-based charge - Risk-based charge means a charge that, together with the principal and interest on the guaranteed loan, or at such other times as DOE may determine, is payable on specified dates during the term of a Guaranteed Obligation.

Sundrop Fuels Comment:

The Title XVII Loan Program currently charges two fees to compensate the DOE for the credit risk it assumes. First, it charges a Credit Based Interest Rate Spread for Title XVII (see DOE website http://energy.gov/sites/prod/files/2015/04/f21/Credit-Based_Interest_Rate_Spread_7.9.14.pdf) based on the credit rating of the Applicant's project. Second, The DOE charges a Credit Subsidy Fee to directly compensate the DOE for the specific credit risks of the Applicant's project. Together, these two fees compensate the DOE for the credit exposure it takes when it funds new or significantly improved technologies that are ready for commercial deployment.

We request that the DOE clarify that the "Risk-based charge" is referring to the Credit Based Interest Rate Spread for Title XVII and is not intending to impose a new fee. Further we request that the DOE clarify that it is not intending to increase the interest rate spreads beyond the spreads published in the above referenced document.

Sundrop Fuels strongly believes that the Credit Based interest Rate Spread and the Credit Subsidy Fee fully compensates the DOE for its credit risks and is consistent with other programs of similar nature and intent. The imposition of an additional fee would dramatically and negatively affect the economics of a number of otherwise qualified projects. This would make it difficult for the projects' Sponsors to raise the equity required to support the development of these important projects which in turn would undermine the goals of the loan program to promote and deploy new and innovative energy technologies. Additionally, it would severely limit the ability of Applicant's to access the commercial lending marketplace for co-lending with the DOE.

Comment #4: Sundrop Fuels requests clarification of the types of co-financing and subordination arrangements that would be acceptable to DOE. Specifically, we request clarification of apparent inconsistencies between Section 609.8 (c)(2) and Section 609.8 (c)(3) of the proposed rule. Additionally, we request that DOE modify Section 609.8 to provide for the ability for a co-lender to include the requirement for a refinancing after the facility has become fully operational (a common requirement in commercially-financed development projects).

Proposed Rulemaking Reference: Section 609.8 (c)(2) and Section 609.8 (c)(3):

Section 609.8 (c)(2): The Borrower shall be obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other debt of a Borrower over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the Eligible Project's major physical assets, as calculated in accordance with U.S. generally accepted accounting principles and practices. The non-guaranteed portion (if any) of any Guaranteed Obligations must be repaid pro rata, and on the same amortization schedule, with the guaranteed portion.

Section 609.8 (c)(3): If any financing or credit arrangement of the Borrower or relating to the Eligible Project, other than the Guaranteed Obligations, has an amortization period shorter than that of the Guaranteed Obligations, DOE shall have determined that the resulting financing structure allocates to DOE a reasonably proportionate share of the default risk, in light of:

- *(i). DOE's share of the total debt financing of the Borrower,*
- *(ii). Risk allocation among the credit providers to the Borrower, and*
- *(iii). Internal and external credit enhancements.*

Sundrop Fuels Comment:

There appears to be a conflict between Section 609.8 (c)(2) and Section 609.8 (c)(3). Section 609.8 (c)(2) appears to expressly require that the nonguaranteed portion of any Guaranteed Obligations must be repaid pro rata, and on the same amortization schedule, with the guaranteed portion (with no exceptions). Alternatively, Section 609.8 (c)(3) appears to provide for exceptions to this requirement under certain conditions. We request that DOE clarify that Section 609.8 (c)(3) modifies and expands the general rule described in Section 609.8 (c)(2).

We also request that the DOE consider expanding the financing terms under which the DOE would accept a co-lending arrangement. The ability to commercially finance a portion of an Applicant's project costs is beneficial to both the DOE and to the Applicant. To be successful, the structure of the Guaranteed Obligation must be responsive to industry-standard requirements of commercial lenders.

The large majority of the commercial lending project finance market is based on a "mini-perm" loan structure (i.e., a loan that has a tenor of between 5 and 10 years with an underlying amortization profile based on a longer dated profile, typically 20 years). These commercial financings are structured so that the commercial lender assumes the construction, commissioning and ramp-up risks. After these projects are fully operational, they are generally refinanced with long-term debt. Accordingly, we request that DOE modify Section 609.8 to allow for commercial co-lenders to provide mini-perm structured loan facilities which would have the same amortization schedule as

the guaranteed portion of the facility but with a shorter loan tenor and a related refinancing requirement at maturity of the mini-perm facility.

Conclusion

We appreciate the opportunity to comment on the proposed changes to 10 CFR Part 609, Loan Guarantees for Projects That Employ Innovative Technologies (RIN 1901-AB38). The DOE's Loan Program office serves the vital mission of assisting in the deployment of new and innovative technologies that can have a dramatic impact on lifecycle GHG emissions. We respectfully request that the DOE consider our comments as it begins the process of finalizing the proposed rules.

Very truly yours,

Sundrop Fuels, Inc.

Wayne W. Simmons
President and Chief Executive Officer