



April 15, 2013

The Honorable Kevin Brady
301 Cannon House Office Building
Washington, DC 20515

The Honorable Mike Thompson
231 Cannon House Office Building
Washington, DC 20515

Dear Representatives Brady and Thompson:

Thank you for your work and engagement on tax reform and for your leadership of the Energy Working Group. As you are well aware, these are extremely complex issues and we very much appreciate the diligent and open approach taken by you and the rest of the committee.

BrightSource Energy designs, develops and deploys concentrating solar power (CSP) thermal technology to produce high-value electricity and steam for power, petroleum and industrial-process markets worldwide.

BrightSource's power tower CSP technology is currently being deployed at the 377MW Ivanpah Solar Electric Generating System (ISEGS) in California's Mojave Desert. The project - which counts NRG Solar, Google and BrightSource as equity investors - is currently the largest solar thermal plant under construction in the world, with Bechtel Corporation acting as the Engineering, Construction and Procurement (EPC) contractor. The electricity generated by the project is enough to meet the average annual energy needs of 140,000 homes in California.

We appreciate the opportunity to provide the Energy Working Group with comments and suggestions. Our comments are focused on the Section 48 Investment Tax Credit (ITC), under which qualified commercial energy projects – solar, fuel cells, and small wind projects, as well as geothermal, microturbines, and combined heat and power projects – are eligible for a credit equal to 30% of the project's qualifying costs. We have three specific suggestions, each of which is discussed in greater detail below:

- Ensure that the ITC is insulated from any reduction or diminution through the process of fundamental tax reform;
- Ensure a level playing field for all renewable energy sources by applying the "Commence Construction" eligibility standard, which is currently enjoyed by the Sec. 45 Production Tax Credit (PTC) technologies, to the Sec. 48 ITC technologies; and
- Ensure that the ITC encourages investment in valuable new generation technologies such as solar/natural gas hybridization.

Ensure ITC is insulated from any reduction or diminution

Over time, consistent and predictable tax policies encourage investment and help lower the cost of energy delivered to American homes and businesses. This sensible approach to energy policy must apply to the renewable energy sector as it has for the fossil fuel and nuclear industries.

Utility-scale renewable power technologies are inherently capital-intensive, often (but not always) with relatively high construction costs and low operating costs. For this reason, renewable power technologies are typically more sensitive to the availability and cost of financing than are natural gas power plants, for example. The ITC has been instrumental in driving the growth of the solar industry and is performing exactly as intended. A stable and durable ITC will further enable a renewable energy industry that is creating jobs, bolstering competitiveness and enhancing our energy security.

Last month, the Solar Energy Industry Association (SEIA) and GTM Research issued an annual report that demonstrates this tremendous growth. In 2012, the market size of the U.S. solar industry grew from \$8.6 billion in 2011 to \$11.5 billion. Photovoltaic (PV) installations grew 76% over 2011, to total installations of 3,313 megawatts (MW) in 2012. As of the end of 2012, there were 7,221 MW of PV and 546 MW of concentrating solar power (CSP) on-line in the U.S. – enough to power 1.2 million homes. 2013 will see continued investment and growth in solar and related job creation because of the ITC.

It is important to note that a significant amount of private sector investment – as well as many utility power purchase agreements (PPA's) – have been modeled and predicated on the current ITC remaining in place through 2016 as the law is currently written. Any reduction in the ITC would chill private sector investment, undermine confidence in policy certainty and would likely result in many good renewable energy projects not going forward.

BrightSource strongly urges the Committee to protect the ITC from any effort to undermine this important policy.

Apply “Commence Construction” Standard to the ITC

As you know, the American Taxpayer Relief Act of 2012 that was enacted earlier this year provided a one year extension for the Production Tax Credit (PTC). That package also included two key benefits for projects utilizing the PTC:

- Allowing a project to “commence construction” by the end of 2013 in order to qualify for the credit; and
- Allowing the PTC technologies to opt into the Investment Tax Credit and claim a full credit.

We believe this is sound policy that will drive more private sector investment and job creation. We also believe this same change should apply to the ITC, enabling solar, fuel cells, and other energy technologies to take advantage of the greater certainty afforded by this improved eligibility standard. For the developers and financing partners who are planning projects in the coming months and years, it is vitally important that there be predictable policy among all of the clean energy technologies.

The “commence construction” provision now enjoyed by the PTC technologies is a more flexible and predictable standard than the “placed in service” standard, which continues to apply to the ITC

technologies. Applying the change to “commence construction” across the entire renewable energy portfolio will provide needed certainty so that utilities, communities, developers, and lenders have a higher degree of confidence in the development process and can make deliberate and thoughtful decisions about how to proceed with an energy project.

“Commence construction” is a superior policy mechanism that allows for the full and efficient utilization of both of these credits and ensures continued industry growth and deployment of all clean energy technologies. Tax policy should provide a level playing field rather than picking winners and losers – and it should not create artificial and market distorting deadlines that occur well in advance of the scheduled expiration.

As a company that is developing large scale solar projects, we face a high degree of risk based on events beyond our business control (e.g., unforeseen environmental mitigation, weather disruptions, litigation, etc.). Like fossil generation technologies, the planning, development, permitting and construction process for clean energy projects can take years to complete. Any unanticipated and unforeseeable delay in permitting or construction can put the clean energy project at risk of not meeting an arbitrary deadline, thus creating a high degree of uncertainty for both project sponsors and financiers alike.

Compared to a rigid “placed in service” deadline, a “commence construction” standard provides added certainty and flexibility to the development process. This policy change for the ITC will help accomplish the underlying objective of the incentive – the deployment of more solar and other renewable energy projects, more economic development, and the expanded use of clean energy resources nationwide.

Importantly, in coming utility RFP’s, all energy sources should, as much as possible, be competing on a level playing field. Under current law, the “commence construction” language does not extend to solar. As such, solar developers will be at a competitive disadvantage vis-à-vis other renewable energy projects covered by the PTC as well as fossil sources of energy. If we are to truly pursue an “All of the Above” policy, the “commenced construction” language should apply to all clean energy incentives, regardless of technology.

It is important to note that moving to a “commence construction” standard is simply a change in the eligibility standard; the tax credit cannot be claimed until the energy facility is placed in service, protecting taxpayers from risk. We request that the “placed in service” standard of eligibility be changed to a “commence construction” standard in the Section 48 Investment Tax Credit (ITC).

ITC and Solar/Natural Gas Hybridization

There are exciting opportunities to combine (hybridize) concentrating solar power with natural gas or coal in a single, integrated solar combined cycle (ISCC) facility. Such a plant matches and mixes high pressure steam that is generated via the solar field with the high pressure steam generated by domestic fossil fuels – this combined steam flows into the high pressure steam turbine and produces reliable, lower carbon power to utilities and other customers.

Currently, in the United States, ITC eligibility is available for the solar components of an ISCC plant (Applicable rule is 1.48-9(d)(6)). ITC eligibility is determined for each piece of equipment (e.g. boiler, solar power tower, etc.) rather than a binary yes/no answer for an entire plant. There is a threshold test



for each piece of equipment and each can only be eligible for the ITC if at least 75% of the BTU content that passes through is generated by the solar field.

If the 75% threshold is met, a piece of equipment is eligible at the ratio of solar BTU content to overall BTU content. For example, if an ISCC system is designed to operate on solar-only mode as well as combined cycle mode, the ratio is calculated as annual total solar BTU/annual total overall BTU. This ratio is estimated for each piece of equipment at placement in service when the ITC is awarded. The ratio is subject to annual tests for five years during which period the ITC is subject to recapture in the event that the initial solar ratio estimates are too high.

The current policy has the effect of discouraging the development and use of innovative – and financeable – projects like ISCC. Assuming that a plant meets the minimum threshold, the operator/owner is essentially penalized for each additional percent of natural gas used to power the plant. This arbitrary policy reduces flexibility and prevents plant owners from fully optimizing their asset.

An ISCC plant operator/owner should be encouraged to utilize the plant as efficiently and reliably as possible – and to meet the needs of both the customer and the grid operator – rather than adhere to subjective thresholds that are not based on either technology or market realities.

The ITC eligibility rules could be adjusted to better accommodate and support this emerging configuration of solar with domestic natural gas or coal technology. We would like to work with you and your colleagues to address this issue and to help form a pro-growth tax code that supports the renewable energy industry and delivers value to the taxpayer in the form of job creation, energy diversity and heightened global competitiveness.

Thank you for your consideration. We are happy to address any questions or provide additional information.

Sincerely,

Joseph Desmond
Senior Vice President
Marketing & Government Affairs
BrightSource Energy, Inc.