BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 18-07-003 (Filed July 12, 2018)

REPLY COMMENTS OF DAIRY CARES ON THE BIOENERGY MARKET ADJUSTING TARIFF PROGRAM REVIEW AND STAFF PROPOSAL

Brian S. Biering
Ellison Schneider Harris & Donlan LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: bsb@eslawfirm.com

Attorneys for Dairy Cares

January 4, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 18-07-003 (Filed July 12, 2018)

REPLY COMMENTS OF DAIRY CARES ON THE BIOENERGY MARKET ADJUSTING TARIFF PROGRAM REVIEW AND STAFF PROPOSAL

In accordance with Rule 14.3 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, Dairy Cares[1] provides the following reply comments in response to opening comments of parties on the Energy Division BioMAT Program Review and Staff Proposal.

DISCUSSION

I. The Commission Should Not Adopt a Renewable Auction Mechanism.

In response to whether the Commission should adopt a Renewable Auction Mechanism ("RAM") as recommended in opening comments of the Joint IOUs, Dairy Cares respectfully opposes this position. The arguments presented in favor of a RAM are generic, and overlook the unique challenges and benefits of biomethane projects.

[1] Formed in 2001, Dairy Cares (www.dairycares.com) is a coalition of California's dairy producer and processor organizations, including the state's largest trade associations representing dairy farmers (California Dairy Campaign, California Farm Bureau Federation, Milk Producers Council and Western United Dairymen), other cattle ranchers (California Cattlemen's Association), the largest milk processing companies and cooperatives (including California Dairies, Inc., Dairy Farmers of America-Western Area Council, Hilmar Cheese Company, and Land O' Lakes, Inc.), and others with a stake in the long-term environmental and economic sustainability of California dairies. Some producers represented by Dairy Cares' members currently produce and/or use dairy biomethane while others are considering developing facilities to produce and/or use dairy biogas in the future.

For example, the Joint IOUs assert that the RAM process will enable a blind auction that will allow for competition, employ the Least Cost Best Fit methodology used in RPS solicitations, and "enable facilities to offer a lower price as efficiencies in the projects are realized".[2] This argument disregards the challenges for BioMAT projects identified in the staff's program review. As the Bioenergy Association of California ("BAC") observes, "[f]ocusing on price elasticity at this point is not at all helpful to advancing the fundamental program goal of accelerating market development (and competition, which requires more market participants).[3] The Public Advocates' Office argues "there is no evidence that a RAM format would bring about increased project contracting, result in more competitive prices, or streamline the bioenergy procurement process. If BioMAT participation is low because of barriers to project development, transitioning to a RAM format will not necessarily address these issues."[4]

Biomethane project development, particularly for Category 2 projects, is not at a point at which the Commission can achieve "better market pricing" through a blind auction. Indeed, the more likely outcome of switching to an auction mechanism would be to increase uncertainty and further erode participation, since projects with different feedstocks and project economics would be forced to compete with each other on price. Complex projects dependent on project-specific financing arrangements would lack the predictability and certainty of a feed-in tariff price. Developers with little experience would likely underestimate their costs, driving the auction clearing price down and increasing the likelihood of project failure and dropouts. The Least Cost Best Fit methodology, which was adapted to take advantage of solar PV projects' ability to

[2] Joint IOU Opening Comments, p.2.
[3] BAC Opening Comments, p.6.
[4] PAO Opening Comments, p.7.

respond to location-based price signals, is not appropriate for BioMAT projects, which are often either sited at or near the fuel source or in response to other location-specific considerations.[5]

The Joint IOUs' "administrative efficiency" argument is similarly inapt here. The Joint IOUs' desire to avoid "concurrent review of applications in different stages" is essentially an argument against a feed-in tariff approach, which is meant to afford an ongoing opportunity for projects to submit applications for eligible projects. Dairy biomethane projects are, by definition, more complex and likely more time-intensive to review than solar or wind projects. That characteristic of this market does not justify replacing the feed-in tariff approach with a conventional price-based auction, which would sacrifice program diversity and environmental benefits for expediency in program administration.

II. Dairy Cares Supports the Inclusion of an Inflation Adder.

BAC suggests that an inflation adder would help address risk, which can inhibit program participation and result in higher project price estimates.[6] Dairy Cares agrees with BAC's reasoning and encourages the Commission to adopt this modest but meaningful change to the pricing mechanism.

III. Allowing Directed Biogas to Count for Program Participation is Consistent with the Statutory Goals of the BioMAT Program.

FuelCell Energy ("FCE") requests clarification that directed biogas projects are eligible to participate in BioMAT as long as they meet all applicable fuel source and quality requirements.[7] Dairy Cares supports this request, and strongly disagrees with the Joint IOUs

[5] Ironically, while advocating an LCBF mechanism, the Joint IOUs advocate excluding directed biogas, which would further restrict siting options for eligible BioMAT projects.

[6] BAC Opening Comments, p.11.

[7] FCE Opening Comments, pp.7-8.

assertion that "directed biogas is not a renewable fuel."[8] Directed biogas is a renewable fuel in California, provided it meets the applicable RPS requirements. As FCE points out, this is appropriately reflected in the BioMAT program decisions and contracts.[9] Any suggestion otherwise is unfounded. Energy generation for every BioMAT project cannot be sited at the fuel source, and the use of pipeline biogas may be the least costly and most effective means of generating renewable energy from an eligible BioMAT project. Dairy Cares supports the eligibility of directed biogas for Category 2 Projects, provided that the renewable natural gas is procured through an off-take agreement with an in-state renewable natural gas project. This requirement is necessary to ensure that the environmental benefits of the BioMAT program are enjoyed by the ratepayers who pay for the program.

IV. Dairy Cares Does Not Agree that there Are Risks of Increased Ammonia Levels for Category 2 Projects.

The Center for Biological Diversity, Sierra Club, and Partnership for Policy Integrity ("Environmental Groups") comments are critical of the BioMAT program generally, and recommend program changes that would restrict the scope of the program going forward. Dairy Cares urges the Commission to examine the Environmental Groups' underlying assumptions and arguments.

As an example, the Environmental Groups state that biogas projects using anaerobic digesters have been shown to "…produce digestate that increases ammonia by 81 percent, in addition to releasing methane and nitrous oxides."[10] However, the study cited as support for this statement relied on 2013-14 data obtained from two dairies in Wisconsin, raising significant

[8] Joint IOUs Opening Comments, p.12.
[9] FCE Opening Comments, p.7.
[10] Environmental Groups Comments, p.3.

questions as to its relevance to California dairy farms, which operate under entirely different environmental standards and practices.[11] Dairy digester projects in California are constructed and operate much differently than those in Wisconsin and do not create conditions that would increase ammonia production. For example, as part of the California Department of Food and Agriculture's grant program for dairy digester projects, developers are scored on their ability to reduce odor causing pollutants, such as ammonia.[12] A qualitative analysis conducted by the SB 1383 Dairy Digester Working Group concluded that "[d]airy digesters add to environmental protection by decreasing ammonia, H_2S, and other emissions. As a result, digesters improve local air quality."[13] Moreover, digester projects in California are required to meet higher environmental standards compared to many other jurisdictions due to California's strict requirements under CEQA and California air laws.

V. The Commission Should Not Require a Demonstration of a Net-Reduction in Criteria Pollutants for Program Participation.

In Opening Comments, the National Fuel Cell Research Center ("NFCRC") argues that a "preference be established for BioMAT projects that create net criteria pollutant emissions reductions directly or through qualified local offsets included in the bid price."[14] Section 5.4 of the pro-forma BioMAT PPA requires the seller to "obtain any governmental authorizations and permits required for the construction and operation." These requirements incorporate compliance with local air district rules, which may in turn require the permit applicant to secure emissions offsets. Moreover, the

---

[11] See M.A.Holly et al., *Greenhouse gas and ammonia emissions from digested and separated dairy manure during storage and after land application,* Vol. 239 Agriculture, Ecosystems and Environment at p.411.

[12] See CDFA Dairy Digester Research and Development Program 2019 Request for Grant Application, p.37, available at: https://www.cdfa.ca.gov/oefi/ddrdp/docs/2019DDRDP_Draft_RGA.pdf.

[13] See Dairy Digester Working Group Final Report, p.5, available at: https://arb.ca.gov/cc/dairy/dsg2/dsg2_final_recommendations_11-26-18.pdf.

[14] NCFRC, p.3.

statutory framework for the BioMAT program requires that payments under BioMAT Contracts "shall include all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located."[15] Given these requirements, BioMAT projects that need to purchase emissions offsets will have cost recovery for those costs, whereas projects that have no emissions offsets costs (e.g., fuel cells) will still be able to benefit from the emissions offsets cost recovery provisions because the BioMAT offer price is uniform within each project category. In other words, the BioMAT Program already includes an implicit mechanism that benefits projects that may create net criteria pollutant emission reductions.

In addition to being unnecessary, NFCRC's proposal for prioritizing projects that create net reductions in criteria pollutants would also create considerable administration challenges. It is not clear how project developers would demonstrate net reductions in criteria pollutants or how the net reduction could calculated or verified. Moreover, the proposal for developers to include the price of "qualified local offsets" lacks clarity. It is not clear what would constitute a qualified local offset, how a developer would value such offsets in deciding whether to participate in the BioMAT program, or how the program administrators could confirm that the offer price includes a qualified local offset value.

Finally, NCFRC argues that its proposal is consistent with AB 617, but fails to acknowledge that AB 617 implementation is already underway at the California Air Resources Board ("ARB"). The ARB is developing new criteria and toxics monitoring and reporting requirements and a

[15] Cal. Pub. Util. Code Sec. 380(d)(1).

Community Air Protection Program.[16] Like other stationary sources, BioMAT projects may be subject to the new AB 617 reporting requirements and community protection programs. The Commission should not duplicate these programs through new and unnecessary administrative requirements for BioMAT program participation.

CONCLUSION

Dairy Cares appreciates the opportunity to provide these reply comments and looks forward to working with the Commission, utilities, and other stakeholders towards the successful implementation and extension of the BioMAT program.

Dated: January 4, 2019

Respectfully submitted,

/s/

Brian S. Biering
Ellison Schneider Harris & Donlan LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: bsb@eslawfirm.com

Attorneys for Dairy Cares

[16] See Draft AB 617 Reporting Regulations, available at: https://ww2.arb.ca.gov/rulemaking/2018/proposed-regulation-reporting-criteria-air-pollutants-and-toxic-air-contaminants; See ARB Community Air Protection Program, available at: https://ww2.arb.ca.gov/our-work/programs/community-air-protection-program.