



April 23, 2018

Clerk of the Board
California Air Resources Board
1001 I Street, Sacramento, CA 95814

Re: Proposed Amendments to the Low Carbon Fuel Standard Regulation

Dear Air Resources Board Members and Staff,

DTE Biomass Energy Inc. (DTEBE) appreciates the opportunity to provide written feedback on the Proposed Amendments to the Low Carbon Fuel Standard (LCFS) Regulation posted March 6, 2018. As part of DTE Energy, a utility holding company based in Southeast Michigan, DTEBE is a developer, owner, and/or operator of 21 renewable energy projects throughout the United States. Our portfolio includes four Renewable Natural Gas (RNG) projects. Together, these four projects provide over two million MMBtus of RNG to California each year.

DTEBE appreciates the work done by CARB to strengthen the Low Carbon Fuel Standards Program (LCFS) and we support many of the proposed amendments. However, there are areas in the proposed amendments that may cause unexpected difficulty for producers of RNG. DTEBE has highlighted these areas below, and we hope that CARB will consider our recommendations when looking to address these areas in the proposed amendments.

RNG Storage Timing Limitations for Environmental Attributes

The proposed amendments include a timing limitation to claim the environmental attributes of stored RNG, as outlined in 95488.8 (i)(2). According to the amendment, if a quantity of RNG is injected into the pipeline in one calendar quarter, the quantity claimed for LCFS reporting must be matched to natural gas sold as vehicle fuel in California no later than the end of the following calendar quarter. We think this two-calendar quarter limitation is extremely constrained for RNG projects and may cause business difficulties during the registration period.

At the beginning of any RNG project, three months of operating data must be provided to obtain a provisional fuel pathway. If the project begins commercial operations at the end of a calendar quarter, the three-month data collection period would occupy most of the subsequent quarter. This leaves a month or less to prepare the provisional pathway application materials and submit them to CARB. This is an extremely tight timeframe to work with CARB and obtain a provisional pathway before a project loses rights to its environmental attributes. Furthermore, a project will have stored a significant amount of RNG from production during the data collection period. Even if a provisional pathway is granted before the second calendar quarter ends, the full volume of stored RNG may not be able to be sold in the time remaining, resulting in a financial penalty to

the project. In practice, this timing limitation will cause RNG producers to delay their projects in order to begin commercial operations at the beginning of a quarter, causing a delay in bringing RNG to the California market.

DTEBE recommends extending the time period that newly registered projects can claim the associated environmental attributes. We suggest that CARB consider extending the time period limitation to claim environmental attributes for newly registered projects. RNG projects that are applying for a provisional pathway should be able to claim the associated environmental attributes for their stored RNG for the current and subsequent calendar quarters, beginning when a provisional pathway is awarded to the project. This removes the financial risk of any unexpected complications or delays that may arise during the registration process. It ensures that CARB and the project owner can work together to obtain all the necessary project information during provisional pathway registration without the threat of sacrificing environmental attributes on any RNG that has already been produced during the registration process.

Buffer Account and Margin of Safety Value

In 95488.4 (a), the amendment proposes that a pathway applicant can add a “conservative margin of safety” value to their Carbon Intensity (CI) to ensure that a project’s natural variability does not cause it to operate above its certified CI. Fuel producers are required to maintain an operating CI beneath their certified CI to maintain compliance in the LCFS program, based on 24 months of production data. It is our understanding that any project greenhouse gas reductions that are verified above the margin of safety or operating CI value will generate credits that are placed into the Buffer Account. Any project that generates verified emissions reductions beyond their operating CI sacrifices those emissions to the Buffer Account.

DTEBE supports the development of a Buffer Account for the LCFS program. The implementation of a Buffer Account should provide credit buyers with confidence and improve the liquidity of the LCFS program. However, DTEBE has concerns about how the margin of safety operates for RNG pathways. The margin of safety is used to increase a project CI and ensure that a project stays below its certified CI. While this system may be appropriate for fuel production that operates at a steady state with little CI variability, this system is problematic for dairy RNG projects. The CI of dairy RNG projects faces some amount of variability that is out of the project operator’s control. A variety of factors can cause fluctuations in CI including temperature patterns, the efficiency of gas production, and the ratio of milking to non-milking cows. Forcing dairy RNG projects to maintain a healthy margin of safety to ensure LCFS compliance may result in sacrificing material project value for dairy RNG projects, especially in the initial project years when project variability is being fully determined by the project operator.

DTEBE recommends implementing a system to share this value with the project operator by splitting any verified emissions above the margin of safety or certified CI value equally between the project and the Buffer Account. Sharing these verified emissions reductions will provide a positive incentive for all projects in the LCFS program to set a solid margin of safety value as part of their ongoing participation in the LCFS program. The ability to recapture some of this project value will help ensure that project operators implement margin of safety values that generously capture project variability. Positively reinforcing the use of a healthy margin of safety value should reduce the number of projects that are out of compliance because of an unexpected increase in

their verified CI. Sharing value will also reward continual improvement of project CI by helping projects to realize some of the improvement value generated when a project outperforms their certified CI faster than they would by adjusting their CI in subsequent operating years.

Conflict of Interest Rules for Third-Party Verifiers

DTEBE supports the implementation of a third-party verification system for the LCFS program. Ensuring honest behavior and accurate reporting is of the utmost importance to maintain a healthy and stable LCFS program. Adding third-party verification will help to maintain the ongoing integrity of the LCFS program. However, DTEBE believes that the conflict of interest provisions may be too broad and result in difficulty obtaining verification services for large companies like DTE.

In 95503, CARB outlines a variety of conditions that would constitute a high level of conflict of interest for potential third-party verification providers. 95503 (b)(2)(U) states:

“Expert services to the entity required to contract for verification services, a trade or membership group to which the entity required for verification services belongs, or a legal representative for the purpose of advocating the entity required to contract for verification services interests in litigation or in a regulatory or administrative proceeding or investigation.”

DTEBE believes this provision is too broad and does not accurately reflect high-level conflict of interests for fuel producers. The structure of this provision suggests that any firm who has provided expert services for a project owner in the past is now unable to act as a verification body for the LCFS program. For an entity such as DTEBE, with a long history in the biofuels industry and a broad portfolio of RNG projects, this may limit the potential number of verifiers that can be utilized for the LCFS program. Furthermore, DTEBE is part of a Fortune 500 company, DTE Energy, which contracts for a variety of expert services from a variety of firms. DTE Energy also has memberships in various trade and industry groups, both in the RNG space and unrelated to its RNG activity, that could each represent a conflict of interest under this rule language. The Renewable Fuels Standard Quality Assurance Protocol (QAP) program, which has a similar structure to the proposed LCFS verification program, has only three approved Q-RIN verifiers. This low number severely limits a project operator’s choice of Q-RIN verifiers and stifles competition for these services. We are concerned that language in this conflict-of-interest provision could lower viable options for LCFS verifiers to a similar level, especially for large firms such as DTEBE. Eliminating this provision in whole or in part, or narrowing its scope to more accurately reflect the expert services and trade/membership group relationships that reflect a conflict of interest, would help ensure that DTEBE has an adequate supply of firms available to provide high-quality verification services. We propose the adopting some form of the following amended language below:

“Expert services to the entity required to contract for verification services solely with respect to a specific project or a legal representative for the purpose of advocating the entity required to contract for verification services interests in litigation or in a regulatory or administrative proceeding or investigation.”

Revising the Temporary FPC for Dairy RNG

In 95488.9 (b)(4), CARB is proposing an amended list of temporary pathways for fuels with indeterminate CIs. The pathway for dairy or food/green waste is awarded a temporary CI of 0, which does not adequately represent the greenhouse gas benefits associated with dairy RNG projects. DTEBE understands that the purpose of the temporary fuel pathways is to allow producers to sell at an extremely conservative CI unless they are willing to undertake the process to certify a project specific pathway. However, a temporary pathway of 0 for dairy RNG projects downplays the significant carbon benefit provided by dairy projects. Dairy RNG projects obtain a strong CI in the LCFS program because of their beneficial use of otherwise released methane and their destruction of other harmful climate pollutants. Even a conservative CI should better reflect the negative carbon benefits of these projects. A more accurate temporary pathway will help provide dairy RNG producers safety if any problems arise during the registration period or if they are facing the expiration on claims for their environmental attributes on stored RNG. DTEBE suggests that CARB consider developing a unique temporary pathway for dairy RNG that more accurately reflects the negative carbon value of dairy RNG projects rather than grouping these projects with food waste and assigning a non-representative CI. DTEBE is happy to work with CARB and other stakeholders in the RNG industry to provide quantitative analysis and production data to develop a unique temporary CI for dairy RNG projects that is more reflective of the significant climate benefits these projects bring about.

Conclusion

DTEBE would like to applaud Air Resources Board Members and Staff for their work in developing thoughtful and targeted amendments for the LCFS program. We look forward to working with California Air Resources Board to continue realizing GHG reductions in California through the continued use of RNG. Please do not hesitate to reach out to me or my colleagues with any questions or concerns you may have about these comments.

Sincerely,



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