March 14, 2023

Submitted via ca.gov

Liane M. Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Tier 2 Pathway Application No. B0369

Dear Chair Randolph,

The Association of Irritated Residents, Leadership Counsel for Justice & Accountability, Central Valley Defenders of Clean Water & Air, Animal Legal Defense Fund, Center for Food Safety, and Food & Water Watch (collectively, "Commenters") write in opposition to Montauk Energy Holdings, LLC, and Clean Energy's Tier 2 pathway application. As Commenters have explained through numerous comments, the Petition for Rulemaking to Exclude All Fuels Derived from Biomethane from Dairy and Swine Manure from the Low Carbon Fuel Standard Program (included and incorporated here as Exhibit A), and the Petition for Reconsideration (included and incorporated here as Exhibit B), the California Air Resources Board's ("CARB") treatment of factory farm gas under the Low Carbon Fuel Standard ("LCFS") is flawed and staff's assessment of this application is no different. CARB cannot certify this application.

Commenters oppose this application for several reasons. First, the application incorporates an unlawfully truncated system boundary that ignores feedstock production at the four source factory farms owned by the Bettencourt Dairies, which confine a total of 15,700 cows, and other emissions such as those from storage and disposal of digestate, resulting in artificially low Carbon Intensity (CI) values and inflated credit generation. A fuel pathway life cycle analysis must take into account "feedstock production" and "waste generation, treatment and disposal."[1] In addition to the evidence provided in Exhibits A and B, more recent research indicates that emissions from factory farm gas production are significantly higher than currently appreciated, with especially high emissions from digestate storage.[2] This recent study did not consider additional emissions from digestate handling and application, which is another potentially large source of emissions resulting from factory farm gas production that must be included in the pathway life cycle analysis.[3] Yet, CARB and the pathway applicants ignore these and other emissions at B2 Dairy, B5 Dairy, B6 Dairy and Crossbred Dairy in Wendell and Jerome, Idaho. In other words, this application dramatically undercounts the greenhouse gas emissions associated with this fuel by failing to apply the required "well-to-wheel" analysis.

[1] Cal. Code Regs. Tit. 17 §§ 95481(a)(66), 95488.7(a)(2)(B).
[2] Semra Bakkaloglu et al., *Methane Emissions Along Biomethane and Biogas Supply Chains Are Underestimated*, 5 ONE EARTH 724–736 (June 17, 2022), https://www.sciencedirect.com/science/article/pii/S2590332222002676.
[3] *Id.* at 728; Michael A. Holly et al., *Greenhouse Gas and Ammonia Emissions from Digested and Separated Dairy Manure During Storage and After Land Application*, 239 AGRIC. ECOSYSTEMS & ENV'T 410, 418 (Feb. 15, 2017), https://doi.org/10.1016/j.agee.2017.02.007.

Concurrently, this application overcounts environmental benefits by ignoring that this is, in one factory farm owner's words, "***lucrative***" feedstock production.[4] Idaho Dairymen's Association Executive Director Rick Naerebout has noted with approval oil companies' increasing sponsorship of dairy manure digestor facilities in Idaho because they make manure a "revenue stream" for the dairy industry.[5] Liquified manure rotting anaerobically in massive waste "lagoons" is not an unavoidable and natural consequence of animal agriculture operations. This system and the methane emissions that it causes are the result of the Bettencourt Dairy's intentional management decisions designed to maximize profits and externalize pollution costs. CARB cannot ignore that the emissions the pathway applicants claim as captured from this factory farm's lagoons are intentionally created in the first place.[6] The manure handling practices at this facility are integrated parts of generating and using factory farm gas. Thus, the gas generated at this facility is an intentionally produced product and cannot now be claimed as "captured" to secure a lucrative negative CI value.

Second, CARB has failed to ensure that the additionality requirements of Health and Safety Code section 38562 are met.[7] If CARB had done so, it would have concluded that the methane capture at issue is patently not additional. The applicants acknowledge that the digester system (and associated emission reductions) at the Bettencourt Dairies, built by agribusiness giant Cargill, has existed since 2011 and would continue to exist without the LCFS.[8] The project also participates in the federal RFS program, and B2 Dairy, B5 Dairy and B6 Dairy have participated in the California Cap and Trade Offset Program.[9] Accordingly, any purported emission reductions associated with this digester has already been occurring and presumably will continue to occur with or without being subsidized by the LCFS program. Stated differently, these are emission reductions that "otherwise would occur."[10] Thus, certification of this pathway with this proposed CI value would openly violate section 38562 by crediting nonadditional reductions.

Third, this application is a good example of how CARB's flawed approach is rewarding the biggest factory farm polluters and incentivizing their further expansion, which does more

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[4] Stacey Smart, *Deer Run Dairy wins national sustainability award*, DAIRY STAR (June 27, 2022), https://dairystar.com/Content/Home/Home/Article/Deer-Run-Dairy-wins-national-sustainability-award/80/254/18626 (emphasis added) ("Installed in 2011, the digester supplied power to nearly 600 homes. In 2020, the farm converted over to renewable natural gas that is injected into the pipeline, which Duane said is a more lucrative option.").

[5] Sean Ellis, *Idaho dairy manure digester facility could be first of several*, IDAHO FARM BUREAU FEDERATION (Nov. 5, 2021), https://www.idahofb.org/news-room/posts/idaho-dairy-manure-digester-facility-could-be-first-of-several/.

[6] *See* Emily Grubert, *At Scale, renewable natural gas systems could be climate intensive: the influence of methane feedstock and leakage rates*, 15 ENVTL. RES. LETTERS (Aug. 2020) ("This analysis shows that 1) RNG from intentionally produced methane, even from climate-neutral CO2 sources, has substantial climate impacts at methane leakage levels observed in the existing, mature biogas industry; (2) for any meaningful system scale, RNG is likely to be derived from intentionally produced methane; and (3) even RNG from waste methane can have negative climate impacts relative to the most likely alternative of flaring, not venting, the methane when leakage from RNG production and use exceeds flaring loss rates." (internal citations omitted)).

[7] *See* Ex. 1, Petition for Rulemaking, section III.A.2; Ex. 2, Petition for Reconsideration, section III.A.3.

[8] Application B0369 CARB Staff Summary at 2; DAIRY HERD MANAGEMENT, *Cargill Launches Second Idaho Power-Producing Digester* (March 26, 2010), https://www.dairyherd.com/news/cargill-launches-second-idaho-power-producing-digester.

[9] *Id*.

[10] Health & Saf. Code, § 38562, subd. (d)(2).

climate harm than good. The Bettencourt Dairies are not small family farms—they are large industrial dairy that confine 15,700 cows.[11] CARB should not allow these factory farms—or the applicants—to profit from the LCFS.

Fourth, this application is so opaque that it is impossible for Commenters or other stakeholders to meaningfully evaluate it.[12] The lifecycle analysis redacts information critical to understanding the CI calculation.

Finally, the inflated CI values CARB proposes here work an additional environmental injustice on California citizens who will be exposed to higher levels of pollution from fossil transportation fuel and dirty vehicles made possible by excessive credit generation at factory farms. CARB has acknowledged that pollution from transportation fuels inflicts a racially disparate impact, so this continued certification of fuel pathways with extreme negative CI values to allow more pollution from deficit holders contributes to this injustice.[13]

As this application highlights, CARB's unlawful and unjust administration of the LCFS program is causing environmental and public health harms not just in California, but to communities and ecosystems across the United States—in this case Idaho—by incentivizing and rewarding some of the worst factory farm practices by making them more "***lucrative***." If California is serious about being a climate leader, this is not the example to set.

Commenters request that CARB deny the application. To do otherwise will violate California law, further destroy the integrity of the LCFS market, undermine the state's climate change mitigation efforts, and harm communities in California and across the country.

Respectfully,

Emily R. Stewart
Litigation Fellow
Animal Legal Defense Fund
(707) 795-2533
estewart@aldf.org

[11] Application B0369 CARB Staff Summary at 2.
[12] Publicly posted application materials "must provide sufficient information to allow for meaningful stakeholder review." CAL. AIR RES. BD., LOW CARBON FUEL STANDARD (LCFS) GUIDANCE 20-051 (Apr. 2020), https://perma.cc/856Y-CVVZ.
[13] *See* 2020 Mobile Source Strategy at 26–27, https://ww2.arb.ca.gov/sites/default/files/2021-12/2020_Mobile_Source_Strategy.pdf.