

DOCKETED

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BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
Business Meeting)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A, 1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 25, 2015
10:00 A.M.

Reported by:
Kent Odell

APPEARANCES

Commissioners Present

Robert B. Weisenmiller, Chair
Karen Douglas
Andrew McAllister
David Hochschild
Janea Scott

Staff Present:

Rob Oglesby, Executive Director
Kourtney Vaccaro, Chief Counsel
Michael Levy, Staff Counsel
Jared Babula, Staff Counsel
Kevin Bell, Senior Staff Counsel
Alana Mathews, Public Advisor
Nancy Fletcher
Taylor Rhodes, Chief Counsel's Office
Mazi Shirakh, Building Energy Efficiency Standards
Peter Strait

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Abigail May	3
Heather Raitt	4
Taylor Rhodes	5
Suzie Chan	6
Tim Olson	7
Brian Fauble	8
Pierre du Vair	9
Matthew Ong	
Sharon Purewal	10
Laura Zaninovich	11
Cheryl Closson	12
James Lee	13
Heather Bird	14

Others Present (* Via WebEx/Phone)

Valerie Winn, Pacific Gas and Electric Company (PG&E)
Manuel Alvarez, Southern California Edison (SCE)
*Wade Sorola, Clean Fuel Connection
*Jeff Serfass, California Hydrogen Business Council
Patrick Splitt, APP-TECH
*Matthew Christie, Chair, Board of Directors of CABEC

APPEARANCES (Contin.)

*George Nesbitt, Energy Consultant, HERS Rater,
HERS Verifier, and Building Performance Contractor
Max McKinney, EACS, Inc.
Floyd Vergara, Chief, Industrial Strategies Division,
California Air Resources Board
Chuck White, Private Consultant, representing
Waste Management
Tim Carmichael, California Natural Gas Vehicle Coalition
Ryan Kenny, Clean Energy
Andy Foster, COO, Aemetis Corporation
*Bruce Melgar, COO, UrbanX
Anna Doty, Environmental Defense Fund
Rick Moore, Edgar and Associates
*John Shears, Center for Energy Efficiency and
Renewable Technologies
*Lisa Mortenson, Co-Founder and CEO, Community Fuels
*Julia Levin, Bioenergy Association of California
*Harry Simpson, Crimson Renewable Energy
*Paul Relles, CR&R, Inc.
*Jennifer Case, New Leaf Biofuel
*Joe Gershen, California Biodiesel Alliance
Kevin Miller, Materials Diversion Administrator,
Solid Waste Manager, City of Napa
*Clyde Murley, Solar Program Manager, Community College
League of California
Dennis Domaille, Board of Directors, Mammoth Community
Water District
Patrick Hayes, General Manager, Mammoth Community
Water District
*Charlene Wardlow, Ormat
Corey Jackson, Program Director, California Lighting
Technology Center at U.C. Davis

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1 COMMISSIONER MCALLISTER: Great, so I've
2 reviewed this item and am very comfortable with
3 moving forward. Thanks for being here today.

4 I'll move Item 6.

5 COMMISSIONER DOUGLAS: Second.

6 CHAIRMAN WEISENMILLER: All those in
7 favor?

8 (Ayes.) This item passes 5-0. Thank
9 you.

10 So let's go on to Item 7, Alternative and
11 Renewable Fuel and Vehicle Technology Program,
12 15-OIR-2. Tim Olson, please.

13 MR. OLSON: Thank you, Commissioners.
14 Today staff is seeking your approval of an
15 emergency action to modify a Regulation in
16 Section 3103 of Title 20 that provides guidance
17 to expand funds under the Alternative and
18 Renewable Fuel and Vehicle Technology Program, we
19 refer to that as the ARFVT.

20 The main purpose of the program is to
21 reduce greenhouse gases and petroleum dependents
22 by stimulating the growth of alternative fuels in
23 California. The existing 3103 Regulation
24 requires companies that receive ARFVT grants or
25 other funds to discount carbon credits received

1 from programs to reduce greenhouse gas emissions,
2 such as the ARV Low Carbon Fuel Standard,
3 commensurate with the value of the ARFVT funding
4 received by the California projects. Compliance
5 with the existing credit discounting requirement
6 places 19 ARFVT project recipients in immediate
7 economic harm because the value of the credits
8 are substantial sources of revenue, which if lost
9 affect business operations or possible decisions
10 to close plants.

11 We estimated the total investment of
12 those projects equal \$442 million and they're for
13 biofuel and biomethane production, and that is
14 subject to the carbon credit discounting
15 requirement. Of that amount, \$135 million from
16 the Energy Commission and \$307 million from the
17 private investment match. This represents
18 roughly 25 percent of all funding awards since
19 2009.

20 Our analysis included a detailed look at
21 the cost structure of several projects and we
22 found in some instances up to 36 percent of
23 annual revenue would be lost by project
24 recipients to comply with the Regulation.

25 It appears that Biofuel and Biomethane

1 project funding recipients face the greatest risk
2 of adverse economic impact and several submitted
3 comment letters verifying this economic harm,
4 which are located in Appendix B of the White
5 Paper supporting documents for this item.

6 Many of the projects are located in the
7 economically disadvantaged communities of San
8 Joaquin and Sacramento Valleys which would also
9 lose employment and tax revenue from the impacted
10 projects.

11 Since the initiation of the ARFVTP
12 program, several factors related to Biofuel and
13 Biomethane have changed, compelling us to revisit
14 and revise the existing 3103 Regulation. Costs
15 of Biofuel and Biomethane production plants have
16 increased, Federal and State Government
17 incentives vary from year to year creating
18 investment uncertainty, and international and
19 national fuel market conditions have changed. As
20 a result, the success of California low carbon
21 biofuel and biomethane projects requires both
22 government financial incentives designed to
23 support the biofuel production, like ARFVT, and
24 the full value of revenue from the Low Carbon
25 Fuel Standard credits.

1 We are justifying the emergency
2 regulation as an action to eliminate economic
3 harm faced by these companies. This economic
4 harm directly translates into decreased
5 availability of biofuels and biomethane in the
6 market, thus potentially impeding achievement of
7 the State's greenhouse gas emission reduction
8 goals.

9 Two other factors help justify the
10 proposed action, 1) no other state or local
11 government agency discounts credits for
12 regulations to reduce greenhouse gases or air
13 pollutants related to grant funding. Today we
14 have a representative from the ARB, the ARB is
15 directed by statute to provide guidance on these
16 matters, and we have a representative here to
17 talk about that. They also submitted a letter in
18 our docket.

19 Another argument here is discounting
20 credit results in a non-level playing field for
21 California projects, placing them at an economic
22 disadvantage compared to imports of Low Carbon
23 biofuels and biomethane from competing projects
24 located in other states and countries. Several
25 Midwest states provide grants and other financial

1 support to biofuel and biomethane producers in
2 their states, but do not discount the LCF credits
3 for low carbon fuel delivered to California, or
4 renewable fuel standard credits for any biofuel
5 or biomethane project.

6 It is worth noting that the proposed
7 emergency regulation does not affect any other
8 aspect of the ARFVT Regulations which remain the
9 same as before.

10 Upon approval by the Energy Commission,
11 staff will submit the Emergency Rulemaking
12 package to the Office of Administrative Law, five
13 days after posting the Notice of Emergency
14 Rulemaking Action. The Office of Administrative
15 Law allows for public comment up to five calendar
16 days after the rulemaking action is submitted.
17 Later this spring 2015, staff will initiate
18 regular rulemaking to make the emergency
19 regulation permanent.

20 We are available to respond to questions
21 and appreciate allowing us to bring this issue
22 forward for resolution. Also, Lisa DeCarlo is
23 here from our Legal Office help answer questions.

24 CHAIRMAN WEISENMILLER: Great. So let's
25 start with the Air Resources Board, and then

1 we'll go through folks in the room, then switch
2 over to folks on the line.

3 Great, thank you. Good morning, Chair
4 Weisenmiller and Commissioners and Commission
5 staff. I'm Floyd Vergara, I'm the Chief of the
6 Industrial Strategies Division at the Air
7 Resources Board. My division portfolio covers a
8 number of the key AB 32 programs, including Cap-
9 and-Trade and Low Carbon Fuel Standard, which is
10 why I'm here.

11 We have been working diligently with your
12 staff, they're fantastic to work with, and we've
13 had a number of very collaborative and productive
14 discussions with them. We are strongly
15 supportive of this proposed Emergency Rulemaking.
16 As you heard from Tim, we believe the potential
17 impacts are pretty substantial and so we are very
18 interested in the rulemaking. We offer our
19 continued assistance to work with staff to craft
20 the best possible regulatory language. I don't
21 have anything other than that, we did submit a
22 comment letter. I'll be happy to take any
23 questions you might have.

24 CHAIRMAN WEISENMILLER: Okay,
25 Commissioners, before we go to the next card,

1 does anyone have any questions on that specific
2 letter? No, fine. So thank you. So let's go to
3 Chuck White next.

4 MR. WHITE: Thank you very much, Chairman
5 and Commissioners. Chuck White, I retired from
6 Waste Management, but now I'm a private
7 consultant and I am representing Waste Management
8 here today. What Tim said is really true, it's
9 really a huge economic challenge to produce
10 alternative fuels for a whole variety of reasons,
11 not the least of which in our case, price of
12 natural gas has fallen to really low levels and
13 has stayed low.

14 We built one of the first commercial-
15 scale landfill gas to LNG plants at our Altamont
16 facility, producing one of the lowest carbon
17 fuels in California in partnership with Linde.
18 And we actually had plans to build others, in
19 fact, we had received a very substantial grant
20 offer from this Energy Commission. There were a
21 whole variety of factors that led us to have to
22 decline that grant, not the least of which was
23 the very low price of natural gas, the incredible
24 uncertainty in the revenue that we could derive
25 from both the LCFS and the RFS2, which in the

1 last several years as you're probably aware has
2 fluctuated widely. But also the uncertainty,
3 even if we were able to get revenue from the LCFS
4 and the RFS2, would this Rule 3103 possibly limit
5 the amount of revenues that we could achieve.

6 Now Waste Management and other similar
7 parties are not obligated parties under either
8 the RFS2 or the Low Carbon Fuel Standard; we're
9 voluntarily trying to produce low carbon fuels
10 from the resources that are available to us with
11 the intent of generating credits, and then
12 selling them to the obligated parties who are
13 ultimately required to obtain them.

14 So it's really important for us to be
15 able to have a clear understanding that there
16 aren't going to be limitations on our ability to
17 get maximum value from both the value of the fuel
18 and the value of the credits. We've been talking
19 about this issue for three years and I was so
20 glad to see this thing come up on your agenda
21 today, and I'm hoping that you will proceed in
22 adopting the Emergency Regulations and finish the
23 process because it's going to be so important to
24 continue to establish and provide incentives for
25 us to produce fuels now and in the future.

1 So I would urge you, in particular, the
2 Paragraph 1 and 3 of your Subdivision D,
3 Paragraph 1 provides clear that if you're an opt
4 end provider of a Low Carbon Fuel Standard,
5 you're not limited because you've received a
6 grant from giving up any of those values or
7 credits, and then paragraph 3 is more broadly
8 worded for other types of incentive programs such
9 as the RFS2 and others. So those are really key
10 and important for Waste Management and other
11 folks in our similar position to proceed and
12 produce low carbon alternative fuels in
13 California, for California. Thank you very much.

14 CHAIRMAN WEISENMILLER: Thank you. Tim
15 Carmichael.

16 MR. CARMICHAEL: Good morning,
17 Commissioners. Tim Carmichael with the
18 California Natural Gas Vehicle Coalition. Let me
19 start with thank yous to Commissioner
20 Weisenmiller, Commissioner Scott, and Tim Olson
21 for your recent efforts on this issue.

22 Chuck mentioned and I have to say I was
23 surprised when I looked at my own correspondence
24 on this issue, it literally was three years ago
25 this month that I and some of my members started

1 to engage with the Commission on this issue. So
2 I could say time flies when you're having fun, or
3 I could say you've undertaken a very deliberative
4 process to get to this point, but we're very
5 pleased, very very pleased, that we're here
6 today.

7 Others will speak to the financial harm
8 that Tim referenced, but I want to mention that
9 the context for this and the concept of the
10 discount, you know, we spend a lot of time
11 talking about all of our accomplishments
12 collectively, CEC, ARB and the various industries
13 and advocates that are working on trying to
14 modernize our transportation sector, but for all
15 of our efforts to date, we're still talking about
16 less than 10 percent of our transportation fuels
17 that aren't petroleum. And that's remarkable.
18 I'm a kid in some respects in this industry, and
19 I've been working on it for more than 20 years,
20 and yet we're still at less than 10 percent.

21 My point is we're still needing to throw
22 every tool and incentive and option that we can
23 throw at this to grow alternative fuels and grow
24 alternative technologies in transportation. And
25 that was our belief three years ago and it's our

1 belief today, that combining incentives is a good
2 idea, this should not be discounts, it's not
3 helpful, and it's not surprising that we've
4 gotten to a point where there's dozens of
5 companies that are being financially impacted by
6 this, and it's time to make the adjustment.

7 We appreciate the staff's work on this
8 and we urge your adoption of the staff's
9 recommendation.

10 CHAIRMAN WEISENMILLER: Thank you. Ryan
11 Kenny, Clean Energy.

12 MR. KENNY: Good morning, Chairman,
13 members of the Commission. My name is Ryan
14 Kenny. I'm with Clean Energy, we are the
15 nation's largest provider of natural gas
16 transportation fuel. I'm here to offer support
17 to the Emergency rule to change Rule 3103, and we
18 ask that the amendment clearly not impose any
19 restrictions on the sale of LCFS credits by
20 voluntary producers of Low Carbon Fuels that have
21 received AB 118 grant funding.

22 It's critical that our industry is
23 allowed to participate at AB 118 funding without
24 losing any ability to benefit from the LCFS in
25 terms of credit generation. AB 118 funds were

1 designed to accelerate low carbon fuel adoption,
2 not to conflict or create an either/or situation
3 between incentives and the program.

4 Past CEC AB 118 solicitations have
5 suggested that Grantees would have to forego the
6 value of credits in proportion to the level of
7 grant assistance provided by AB 118 funds. This
8 puts the potential biofuel producer in the
9 impossible position of choosing between obtaining
10 capital to build their project, or having
11 sufficient future revenue to make the production
12 of biofuel economically sustainable.

13 We feel it is critical for the CEC staff
14 to change their interpretation of the program so
15 the funds can support the development and
16 adoption of low to ultra-low carbon fuels as
17 originally intended. In our business, our
18 industry, it is important to have regulatory
19 certainty and that's vital to the success of our
20 industry. The uncertainty of how Rule 3103 has
21 been interpreted over the life of any project has
22 been problematic, and thus we support the change
23 for the rule. Thank you.

24 CHAIRMAN WEISENMILLER: Thank you. Andy
25 Foster.

1 MR. FOSTER: Thank you. I'm Andy Foster
2 with Aemetis Corporation. We own the state's
3 largest Ethanol production facility down in Keyes
4 in Stanislaus County. Tim mentioned most of the,
5 all of the Ethanol plants in California are in
6 areas with high unemployment and so we are
7 looking at this and we support the staff's
8 recommendations. We appreciate your
9 consideration of this. We think it's a very
10 important issue.

11 A week ago the Ethanol Producers in
12 California were joined together to kick off our
13 in-state sorghum growing program where we intend
14 to begin the transition to alternative
15 feedstocks, and it's critical for us to move
16 forward, that this change be made because the
17 economic incentives will be removed from us to
18 continue to invest in new technologies. I think
19 all the speakers have hit the major points, but
20 we applaud your consideration and strongly
21 encourage your adoption. Thank you.

22 CHAIRMAN WEISENMILLER: Thank you for
23 being here. Let's go to EDF.

24 MS. DOTY: Good morning, Commission.
25 Anna Doty with the Environmental Defense Fund. I

1 would like to echo the previous comments and
2 speak in support of the Resolution to adopt the
3 Emergency Regulation modifying funding
4 restrictions in the Alternative Fuel and Vehicle
5 Technology Program and eliminate the requirement
6 for credit discounting.

7 EDF advocates for the efficient and
8 intelligent design of policies that provide
9 market signals to reduce environmental pollution.
10 Within this workload for many years we've helped
11 design, analyze, implement and defend the
12 policies in the state that stimulate production
13 and use of low carbon fuels that deliver public
14 health, environmental and economic benefits to
15 the state.

16 Over the past eight years, the
17 Transportation Fuel System in California has seen
18 impressive movement towards fuel diversification.
19 As this has occurred, new businesses,
20 technologies and business models have sprung up
21 throughout the state. In our 2014 analysis, we
22 showed over 300 Clean Transportation Fuel
23 companies in the state, and there are surely more
24 than that today. Similarly, our profiles of
25 individual industrial sectors such as the

1 biodiesel sector have shown that clean
2 transportation companies have a ripple effect
3 throughout the company because they support
4 traditional companies located throughout the
5 value chain.

6 Finally, our analysis of alternative fuel
7 benefits document huge savings in California and
8 from improved public health, reduced GHG
9 emissions, and improved energy security.

10 It's without a doubt that California has
11 done a tremendous amount to assist the
12 development of alternative fuels, and it's
13 equally obvious that AB 8 and AB 118 programs are
14 playing a huge role in moving those fuels from
15 bench-scale to pre-commercialization volumes.

16 However, for most fuel providers to reach
17 commercialization and compete with traditional
18 liquid fossil fuels, they must be able to imbed
19 the value of the reduced carbon fuels provide
20 into their bottom line, requiring credit
21 discounting simply because a provider receives a
22 grant to help stimulate business development,
23 undermines this need and reduces the change these
24 companies are going to be able to sustain their
25 production of low carbon fuels.

1 California is moving towards a system of
2 policies and regulations that reward fuels based
3 on greenhouse gas reductions accordingly by
4 requiring fuel producers discount their value of
5 their fuel by discounting the credits they
6 receive by selling the fuel; the current form of
7 alternative fuel program regulation runs counter
8 to established state policy and runs the risk of
9 jeopardizing the multitude of benefits these
10 fuels bring to the state.

11 We're supporting the Commission's effort
12 to overturn this piece of the regulation and
13 thank you for your time.

14 CHAIRMAN WEISENMILLER: Thanks for being
15 here. I believe there is no one else in the room
16 with comments. Oh, please, come up.

17 MR. MOORE: Chair, members of the
18 Commission, my name is Rick Moore, I work with a
19 company called Edgar and Associates here in
20 Sacramento. I've worked with the Energy
21 Commission on a couple of projects that have been
22 funded, Transportation Fuel projects, one with
23 Blue Line Scavenger in South San Francisco and
24 one that's before you today with the City of
25 Napa.

1 You know, on very large products where
2 the match fund amount is large compared to the
3 grant funded portion, and if the credits
4 generated before the termination of the agreement
5 are not really significant over what would be
6 considered the life of the project, it may not
7 have a significant impact on the investability of
8 the project; however, it has other significant
9 effects. One of them is that the entity
10 generating the credits has to consider whether
11 they should bank those credits, or whether they
12 should wait until later when it won't be
13 discounted, when in fact you would want those
14 credits to come into the market when they're most
15 valuable, when they're most needed to meet the
16 goals of the Low Carbon Fuel Standard.

17 Another issue is that the entity may need
18 that revenue early in the project. There's also
19 the fact that the goal is to promote low carbon
20 intensity fuels. I'd initially thought that the
21 difference in the market value and the discounted
22 value had gone to the Energy Commission to invest
23 in future programs. I found out I was mistaken,
24 that in fact it in effect subsidizes obligated
25 parties in their efforts to meet their regulatory

1 mandates, which I think runs counter to the
2 intent. So that concludes my comments. Thank
3 you.

4 CHAIRMAN WEISENMILLER: Thank you.
5 Anyone else in the room? So let's go on line to
6 John Shears.

7 MR. SHEARS: Hello?

8 CHAIRMAN WEISENMILLER: We can hear you.

9 MR. SHEARS: Oh, okay. Yeah, my name is
10 John Shears, I'm with the Center for Energy
11 Efficiency and Renewable Technologies and have
12 been involved with the program since the drafting
13 of the original language for AB 118.

14 I just wanted to offer a little
15 historical perspective and I think when the
16 Regulations were first promulgated, the thinking
17 and the understanding was based around a more
18 sort of halcyon view of Biofuels before all of
19 the challenges faced with getting low carbon
20 biofuels to market were really realized with the
21 law coming into effect originally back in 2007.

22 Also a lot of the stakeholders at the
23 time were exercising an overabundance of caution
24 in terms of what they thought would be a program
25 that might be a little too helpful in allowing

1 the oil industry to comply with the Low Carbon
2 Fuel Standard and it was thought that, in fact,
3 this type of approach with the apportionment of
4 credits as a function of the CEC funding level
5 would better incentivize the industry, and
6 obviously that's counter to what really happened.

7 So that being said, I just want to speak
8 in support of the proposed resolution and
9 measures to move forward with an Emergency
10 correction to the situation and the subsequent
11 rulemaking to make permanent the adoption of the
12 proposed changes to 3103. Thank you.

13 CHAIRMAN WEISENMILLER: Thank you. Lisa
14 Mortenson, Community Fuels.

15 MS. MORTENSON: Yes, can you hear me?

16 CHAIRMAN WEISENMILLER: Yes.

17 MS. MORTENSON: Hello, this is Lisa
18 Mortenson, I'm the Co-Founder and CEO of
19 Community Fuels. Thank you to the Commissioners
20 and the Energy Commission staff for bringing
21 attention and awareness to this issue.

22 I do appreciate the opportunity to join
23 you by phone today, of course I regret that I'm
24 not able to be there in person.

25 The Alternative and Renewable Fuel and

1 Vehicle Technology Program is very important and
2 it has served as a catalyst to drive more private
3 investment into California for clean fuel
4 development. The Energy Commission is doing
5 great work on this program.

6 Community Fuels is a company that
7 designed, built and we operate an advanced bio
8 refinery at the Port of Stockton, and we are
9 honored to have received multiple CEC grant
10 awards to help support key projects at the site.

11 Section 3103 in my opinion is
12 inconsistent with the goals of the program, which
13 include reducing harmful emissions and displacing
14 petroleum with alternative and renewable fuels.
15 We operate in a very competitive market with
16 razor-thin margins. California producers, in
17 particular, have higher operating costs, which
18 put us at a disadvantage when you compare us
19 against huge volumes of imports that come in from
20 other states and also other countries. This
21 higher cost of doing business in California is an
22 existing and unfortunately it's an ongoing
23 challenge for in-state. So to reiterate, it's
24 very important that we look for the credit values
25 that will support in-state production.

1 We produce a high quality biodiesel fuel
2 that is primarily sold to regulated parties,
3 those being major oil companies and refiners.
4 The fuel that we sell is sold with all credits
5 attached. These regulated parties are not going
6 to purchase fuel from Community Fuels if it
7 doesn't have all the credits attached because the
8 reason that they're buying that fuel is to meet
9 multiple compliance requirements. It's not just
10 the Low Carbon Fuel Standard, but also to meet
11 requirements under the Renewable Fuel Standard
12 and also Cap-and-Trade.

13 So discounting the credits as is required
14 in Section 3103 creates a structurally difficult
15 issue for us since we do not charge a separate
16 cost or a separate line item for the credits.
17 But I would ask you to consider that, even if we
18 were to develop some sort of creative method to
19 track and discount credit values, I'd ask you to
20 think about who benefits from discounting those
21 credit values. Discounting the credit values
22 would result in savings for those regulated
23 parties and it would result in decreased revenues
24 and lower margins for in-state biofuel producers.
25 When you net that out, what this rule does is it

1 results in a direct financial benefit to
2 obligated parties at the direct expense of small
3 in-state producers.

4 So I do urge you to consider the real
5 world impacts of Section 3103, and to modify this
6 so that it does not apply to California biofuel
7 producers. And most importantly, I do want to
8 thank you for all that you do in supporting clean
9 fuels in California. In today's business
10 climate, it is certainly an uphill battle
11 producing clean fuels in California, and we
12 sincerely appreciate the support from the Energy
13 Commission. Thank you.

14 CHAIRMAN WEISENMILLER: Thank you. Julia
15 Levin.

16 MS. LEVIN: I think it's good afternoon
17 now. Julia Levin on behalf of the Bioenergy
18 Association of California. I just want to echo
19 all of the previous comments in support of this
20 rule change to Section 3103, and I particularly
21 want to thank Commissioner Scott for her
22 leadership on this and Tim Olson and other staff
23 for responding to what has been a very serious
24 barrier for the green fuels industries, and I
25 think that this rule change will help to move

1 alternative and low carbon fuels forward and it
2 will help to meet not just the Low Carbon Fuel
3 Standard, but now the Governor's call for a 50
4 percent petroleum reduction. So I thank the
5 Commission and we strongly support the change in
6 the rule.

7 CHAIRMAN WEISENMILLER: Okay, thank you.
8 Harry Simpson.

9 MR. SIMPSON: Oh, hello. Harry Simpson
10 with Crimson Renewable Energy. I'd like to thank
11 the Chairman, Commissioner, and staff for the
12 opportunity to speak today. We're one of the
13 largest in-state producers of biodiesel in
14 California with our plant in Bakersfield,
15 specifically we produce a very low carbon scoring
16 biodiesel mostly from used cooking oil, as well
17 as corn oil from Ethanol plants and inedible
18 animal fats, as well.

19 First, I really would like to thank CEC
20 staff such as Tim Olson, Jim McKinney, and Bill
21 Kinney and Commissioner Scott for their active
22 engagement with us and various other stakeholders
23 on the issues surrounding 3103 Regs and working
24 hard to fix this problem.

25 As you've heard today, the 3103 Regs were

1 really never meant to penalize or dis-incentivize
2 producers of alternative transportation fuels who
3 do not use the carbon credits associated with
4 their production to meet their own statutory
5 carbon production requirements under AB 32 or
6 LCFS.

7 The 3103 Regs were meant to prevent major
8 oil companies and other AB 32 and LCFS obligated
9 parties from taking advantage of funding from the
10 Alternative and Renewable Fuels and Vehicle
11 Technology Program to produce alternative fuels
12 that they would need to meet their own carbon
13 reduction requirements.

14 And as you've heard from CEC staff and
15 various industry participants, and NGOs, that the
16 way that the 3103 Regs are currently crafted
17 creates several highly negative consequences.
18 One of the major goals is to stimulate the in-
19 production of low carbon alternative
20 transportation fuels, one of the major goals of
21 AB 118. And the 3103 Regs are doing the exact
22 opposite of that. They dis-incentivize
23 alternative fuel producers from pursuing such
24 projects and substantially harm those that
25 receive funding and are trying to produce and

1 market alternative transportation fuels in
2 California.

3 The ability to receive the full value,
4 the full economic benefit of the LCFS credits is
5 critical for alternative fuel producers for
6 several reasons: by discounting the value of
7 credits proportionate to the funding received,
8 the 3103 Regs can effectively render an
9 alternative fuel production project to be
10 economically nonviable on multiple levels. The
11 full value of the credits are necessary to ensure
12 sufficient operating cash flow and to achieve
13 profitability, both of which are critical to
14 attracting the necessary equity capital and/or
15 debt funding needed to build a project, even when
16 AB 118 funding is part of the equation.

17 The 3103 Regs penalize an alternative
18 fuel producer and, even more so, those who
19 produce very low carbon fuels, since the producer
20 loses proportionally greater economic value from
21 ever lower carbon scores and the higher value of
22 carbon credits associated with that very low
23 carbon fuel.

24 This is especially true in the market
25 conditions we have seen recently. In the case of

1 our plant and biodiesel in general, we're
2 competing with petroleum diesel pricing which
3 some of you may know has reached a five-year low
4 in January. Competing against petroleum fuels in
5 the market really means that all biodiesel
6 producers have to sell their biodiesel at a
7 discount relative to petroleum diesel to
8 incentivize the utilization and blending of
9 biodiesel. The discount is also necessary to
10 cover the added cost for storing and blending
11 biodiesel, whether that happens at a bulk fuel
12 terminal, at refinery rack, or at a truck stop.

13 So the end result is that when you factor
14 in the full value of LCFS credits and Federal law
15 RFS RINs, the biodiesel after you subtract out
16 the value of those credits and Federal Law or
17 RINs, has to be able to sell about 20 to 40 cents
18 on the delivered basis relative to petroleum
19 diesel. So if you can't receive the full value
20 of the LCFS credits for each gallon produced and
21 sold, an AB 118 funded producer cannot compete in
22 the marketplace against petroleum diesel.

23 Additionally the 3103 Regs renders an AB
24 118 funded production plant in California
25 effectively unable to compete against non-AB 118

1 funded in-state producers or without a state or
2 overseas alternative diesel producers. These
3 other producers can take full advantage of the
4 economic value of any carbon credits associated
5 with their fuel, and that's the defining
6 difference, but keep in mind that as Lisa and
7 others have mentioned, out-of-state and overseas
8 alternative fuel producers already enjoy
9 significant labor and other operating cost
10 advantages relative to a producer in California.
11 Additionally, these producers typically benefit
12 from additional tax credits or production
13 incentives from their state or country.

14 CHAIRMAN WEISENMILLER: Could you wrap
15 up?

16 MR. SIMPSON: I thought Tim did a great
17 job of doing all that, so in closing we fully
18 support the proposed modifications to the Section
19 3103 Regs and we urge the Commission to adopt the
20 emergency action today to modify these Regs.
21 Thank you.

22 CHAIRMAN WEISENMILLER: Thank you. Paul
23 Relles, CR&R, Inc.

24 MR. RELLES: CR&R Incorporated is
25 building one of the largest biogas products in

1 North America, in Paris, Riverside County,
2 California to produce renewable fuel. We've
3 received some \$4.82 million in AB 118 grants and
4 more recently a \$3 million grant from CalRecycle
5 to incentivize the development of our 320,000 ton
6 per year facility that will conservatively
7 produce four million gallons of renewable natural
8 gas annually. The first phase of the project is
9 well under construction and should be operational
10 by late summer or early fall of this year.

11 CR&R's concern with the current language
12 is that it effectively negates the value of the
13 grants that we have received from the CEC and
14 CalRecycle. If the current language in Section
15 1303 were to stand, CR&R could effectively lose
16 3.5 years of critical revenue, representing the
17 combined LCFS and RFS revenues that we might have
18 to forego to offset the value of our grants.

19 This lost revenue would result in a
20 negative net income after tax for the project,
21 for the same period of time. We are certain that
22 the CEC in adopting the current language did not
23 intend to negate the value of the grants it has
24 made to incentivize the development of
25 alternative fuels, which in our case involves the

1 production of renewable natural gas from source
2 separated municipal food and green waste. Like
3 others, we applaud the Commission for taking up
4 the language problem in Section 1303 at today's
5 meeting, and we implore you to revise the
6 language and thus remove the cloud over the CEC's
7 alternative fuel incentive efforts.

8 And in closing, I'd like to thank
9 Commissioner Scott, in particular, and Tim Olson
10 for their efforts to address this problem. Thank
11 you very much.

12 CHAIRMAN WEISENMILLER: Thank you.
13 Jennifer Case.

14 MS. CASE: Good afternoon, everyone.
15 Thank you for giving me the time to address the
16 Commission today. Thank you to Tim Olson and the
17 Commissioners for addressing this very important
18 issue. I am one of the founders of New Leaf
19 Biofuel in San Diego. We are a recipient of AB
20 118 funds for a project to increase biodiesel
21 production at our bio refinery in San Diego.

22 I will not take up too much time because
23 all the preceding speakers pretty much hit every
24 point I would have made, but just that we offer
25 overwhelming support of this emergency regulation

1 so that we can continue to do what we're doing
2 reducing the carbon in California by producing
3 low carbon biodiesel and being able to obtain the
4 credits that we deserve and that our competitors
5 are able to produce from out of state. So thank
6 you very much to everyone for your efforts on
7 this, and I do support the emergency regulation.

8 CHAIRMAN WEISENMILLER: Thank you. Now,
9 is there anyone else on the line who wants to
10 comment at this stage?

11 MR. GERSHEN: Yes.

12 CHAIRMAN WEISENMILLER: Please identify
13 yourself and go ahead.

14 MR. GERSHEN: Joe Gershen here with the
15 California Biodiesel Alliance. Thanks for the
16 opportunity to speak about this very important
17 issue and thanks also to Tim Olson and
18 Commissioner Scott and staff.

19 So at the risk of being an echo chamber,
20 I'm very supportive of the proposed action to
21 modify the 3103 Regulations regarding funding
22 restrictions applicable to AB 118 grant award
23 recipients. This emergency rulemaking to
24 eliminate the restriction on using credits
25 generated by Projects that receive funding from

1 the ARFVT Program for those entities that
2 voluntarily opt into an emissions reduction
3 program is absolutely the right thing to do. I
4 believe this provision is totally contrary to the
5 intent and specific language of AB 118 and would
6 actually penalize rather than encourage award
7 recipients for doing what the program was set up
8 to promote and encourage, namely reducing carbon
9 emissions, displacing petroleum, improving air
10 quality, and creating jobs. It would also reward
11 carbon emitters who are typically required to buy
12 and deploy low carbon alternative fuels to obtain
13 LCFS credits in order to meet their compliance
14 obligation by effectively giving them a discount
15 on those credits, or the renewable fuel they are
16 attached to.

17 Additionally, rather than encouraging in-
18 state production of renewable fuels that have
19 been providing the overwhelming benefits to the
20 LCFS program, this provision actually dis-
21 incentivizes in-state low carbon fuel producers
22 and puts them at a distinct disadvantage to
23 producers from other states and countries who
24 actually enjoy incentive programs provided by
25 their host governments. And since these foreign

1 producers in many cases already enjoy a much
2 lower cost of production, as was pointed out by
3 several others on the calls today, then
4 California producers, it's easy to understand how
5 this provision really served to undermine the
6 benefits intended by AB 118 and the creation of
7 the ARFVTP Program. So again, I urge you to
8 adopt these emergency modifications, and thanks
9 again for letting me speak.

10 CHAIRMAN WEISENMILLER: Okay. One more
11 time, anyone else? Okay, it appears there's no
12 one else on the line or in the room, so let's
13 transition to conversation among the
14 Commissioners. Commissioner Scott.

15 COMMISSIONER SCOTT: Great. I just want
16 to say thank you to all of our commenters for
17 providing your feedback today, and I echo your
18 thanks to Tim Olson and Lisa DeCarlo for the
19 great work that they did. I've worked closely
20 with the team as they put this Emergency
21 Rulemaking Regulation together and I think that
22 they've done a good job crafting the Reg and on
23 the outreach for this.

24 I wanted to underscore a couple of the
25 points that Tim Olson made as he was speaking.

1 The first one was he said it is worth noting that
2 the proposed Emergency Regulation does not affect
3 any other aspect of the ARFVT Regulations, which
4 remain the same as before. I wanted to
5 underscore that for you all. The current
6 provisions, as you've heard throughout the
7 comments from industry and EDF and CEERT, without
8 the proposed changes, it would put California
9 companies at a competitive disadvantage and they
10 actually discourage the innovation that we are
11 trying to encourage.

12 I want to thank Floyd Vergara for being
13 here, thank you so much for coming over and for
14 your great work and engagement with our team.
15 Our team here at CEC did work carefully with Air
16 Resources Board on this language to ensure that
17 the exception here properly captures the
18 appropriate set of people.

19 And one other thing I'd like to
20 underscore is just a process point, and that's
21 that, you know, an Emergency Rulemaking is
22 followed by a regular Rulemaking and so there
23 will be more opportunities to continue the
24 dialogue and to take public comment as we go
25 through that regular rulemaking process.

1 So my recommendation for you all is that
2 we approve this Emergency Action to modify
3 Section 3103 of Title 20. Do you have questions?

4 Then I will move Item 7.

5 COMMISSIONER MCALLISTER: I'll second.

6 CHAIRMAN WEISENMILLER: All those in
7 favor?

8 (Ayes.) Item 7 passes 5-0.

9 Let's take a break. Let's be back at
10 1:30.

11 (Break at 12:25 p.m.)

12 (Reconvene at 1:32 p.m.)

13 CHAIRMAN WEISENMILLER: Good afternoon.
14 Let's start the Business Meeting with Item 8.
15 Woodland Joint Unified School District. Brian
16 Fauble, please.

17 MR. FAUBLE: Good afternoon,
18 Commissioners. My name is Brian Fauble. I'm
19 with Fuels and Transportation Division, Emerging
20 Fuels and Technologies Office.

21 Today staff is requesting approval of a
22 Proposed Grant Agreement with the Woodland Joint
23 Unified School District, which I'll refer to as
24 "the District" for a \$128,000 grant.

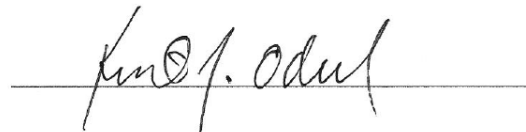
25 The proposed grant will install 16 Level

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And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March, 2015.

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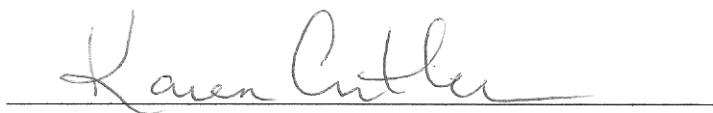
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IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March, 2015.

A handwritten signature in cursive script, reading "Karen Cutler", is written over a horizontal line.

Karen Cutler
Certified Transcriber
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