Tyler & Carmeli, P.C.

Attorneys At Law
1 AAA Drive, Suite 204
Robbinsville, New Jersey 08691
Phone: (609) 631-0600 Fax: (609) 631-0651

November 16, 2015

Via publiccomments@njcleanenergy.com
New Jersey Clean Energy Program
New Jersey Boad of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625

Re: Straw Proposal – Fiscal Year 2016 Sustainable Biopower Incentive Program

Dear Sir or Madam:

These comments are submitted on behalf of Trenton Biogas, LLC ("Trenton Biogas"). As the Board and staff are likely aware, Trenton Biogas has been a dedicated member of the New Jersey recycling and business community for the past decade. The company has spent hundreds of thousands of dollars of its own capital to plan, permit and develop the former Mercer County Sludge Management Facility into the state's first high volume, food residual, recycling center. The project will produce clean renewable energy, reduce the emissions of greenhouse gases from landfills, as well as the State's dependence on solid waste landfills, and significantly increase the percentage of recycling attained by Mercer County.[1] The strategic location of the facility in Trenton, New Jersey provides a central location for the generation of biomass fuels between New York City and Philadelphia, to enable the wider community to participate in protecting the environment and minimizing the use of fossil fuels.

[1] In addition, by taking over the defunct Mercer County Sludge Management Facility, Trenton Biogas has already, and will continue in the future to, significantly reduce the burden now borne by local taxpayers for the debt service on what was a "white elephant" facility.

Critical to the development of this project, and others, is the availability of opportunities for entities to participate in programs like the Sustainable Biopower Incentive Program ("SBIP"). In order to continue to encourage the use of private monies for investment in these projects, it is critical that programs constructed like the SBIP be as available as possible to supplement private capital investment.

As evidenced by the proposal, in 2014, Trenton Biogas submitted the only application to the solicitation. Its application was denied for the stated reason that the solicitation's eligibility requirements on net metering and interconnection had not been met and because a contract for the system's installation was not yet executed. Trenton Biogas supports the logic of the current proposal which would eliminate the net metering and interconnection requirements. Trenton Biogas further recommends that any requirement to submit a signed contract for the system's installation also be eliminated.

As proposed, the program will expand eligibility to new projects, capacity additions and equipment to improve or enlarge existing projects. Since many existing biomass-based generating operations are struggling with a variety of gas cleaning issues, expanding the program in this manner will significantly reduce its potential for success and is, in effect, ignoring the goal of funding combined heat and power projects to encourage expanded use of biomass-based fuels.

The proposal would provide an incentive structure of up to $2.00 per watt, but also cap grant eligibility at $1,000,000.00 no matter how big the project. Hence, a project which might generate two megawatts and thus, be eligible for a $2,000,000.00 grant/rebate might be capped, even if there were no other applications in the pipeline in a given fiscal year. The Board should retain the discretion to award a single project more than $1,000,000.00 if, in fact, the grant money would otherwise not be utilized. Alternatively, the Board could wait until the end of the fiscal year and then, revisit projects under a relaxed cap if excess monies were available.

With respect to the eligibility requirements, the proposed limitation on applications from projects which are also eligible for grants for the Energy Resilience Bank ("ERB") should be eliminated. As stated, that eligibility criterion is completely arbitrary, as no basis for it has been stated in the proposal. Furthermore, projects which produce sustainable biopower might benefit from both programs for different types of equipment, both of which are necessary to a successful project. For example, electrical switchgear or interconnection equipment might be funded by the ERB, while the actual generators and ancillary equipment are funded through the SBIP. Furthermore, a multiple generator project producing, for example, three megawatts might consist of several generators. There is no reason articulated in the proposal or logically, which warrants preclusion of an application for one or two generators funded by the SBIP, while other generators are funded through the ERB.

Trenton Biogas has no comments on the other eligibility criteria or on the technical requirements. However, Trenton Biogas suggests that if it appears grant monies will not be utilized in full, or perhaps even if they will be, a portion of the monies be set aside to create a guaranteed floor for renewable energy credits ("REC's") for biogas-produced electric power. By establishing a threshold limit for the value of REC's, the Board would be increasing the ability of biogas power producers to finance their projects by inviting certainty as to a minimum value for project-related REC's. The anticipated revenue would then become "bankable," enhancing the ability of investors to develop biogas projects.

Trenton Biogas appreciates the opportunity to comment on this proposal and encourages the Board to move forward on it as quickly as possible. Any questions can be address to the undersigned at the address above, or to Brian Blair, Chief Operating Officer of Trenton Biogas at (856) 693-6540. Thank you in advance for your time and consideration of these comments.

Very truly yours,

George J. Tyler

GJT/tlg

From:	Tammy Groner on behalf of George Tyler
To:	publiccomments@njcleanenergy.com
Cc:	pjoseph@pajoseph.com; wbrianblair@gmail.com
Subject:	Straw Proposal - Fiscal Year 2016 Sustainable Biopower Incentive Program
Date:	Monday, November 16, 2015 4:16:41 PM

As a supplement to the comments submitted today (November 16, 2015), on behalf of Trenton, Biogas, LLC, please consider the following additional comment:

Application Process: As currently proposed, an application that is deemed incomplete is immediately removed from the queue. Once the applicant remedies the deficiencies by submitting the necessary items to make the application complete, the application will be time-stamped a second time, thus placing it at the end of the queue. We suggest that an applicant be provided a fifteen (15) day window to correct any deficiencies, and as long as those deficiencies are corrected within that fifteen (15) day window, the application will not be removed from the queue. This will allow applicants to correct administrative and/or simple deficiencies that could be rapidly corrected. In those circumstances, the applicant should not be required to be placed at the end of the queue.

We appreciate your consideration of this additional comment. If you have any questions, please feel free to contact the undersigned at any time.

Thank you,
George J. Tyler

George J. Tyler, Esq.
Tyler & Carmeli, P.C.
1 AAA Drive, Suite 204
Robbinsville, New Jersey 08691
(609) 631-0600 – Phone
(609) 631-0651 – Fax
gtyler@tcglaw.com

State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P. O. BOX 003
TRENTON, NEW JERSEY 08625

November 16, 2015

By Hand Delivery and Electronic Mail
Honorable Irene Kim Asbury, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: Fiscal Year 2016 Sustainable Biopower Incentive Program
Staff Straw Proposal Issued October 26, 2015**

Dear Secretary Asbury:

Please accept this original and ten copies of Comments submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-captioned matter. Copies of the comments are being provided to all parties on the e-service list by electronic mail and hard copies will be provided upon request to our office.

We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.

Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By: Sarah H Steindel
Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

SHS/sm

c: publiccomments@njcleanenergy.com
OCE@bpu.state.nj.us
Elizabeth Ackerman, BPU
B. Scott Hunter, BPU
Marisa Slaten, BPU
Jerome May, BPU
Cynthia Covie, BPU
Rachel Boylan, BPU
Caroline Vachier, DAG
Veronica Beke, DAG

Fiscal Year 2016 Sustainable Biopower Incentive Program
Staff Straw Proposal Issued October 26, 2015

Rate Counsel Comments

November 16, 2015

The New Jersey Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("BPU" or "Board") Office of Clean Energy ("OCE" or "Staff") for the opportunity to provide comment on Staff's October 26, 2015 Straw Proposal (the "Straw Proposal") for a Sustainable Biopower Incentive Program for Fiscal Year 2016 ("FY16").

OCE is proposing two major changes to the Biopower program which has a budget of $3.0 million for FY16.[1] First, OCE is proposing to return to an open enrollment process in which qualified applicants are awarded administratively determined rebate amounts on a first-come, first served basis. Second, OCE is proposing to expand eligibility for the program, which is currently limited to new projects to (1) capacity additions to existing projects and (2) equipment to improve the efficiency or performance of existing projects.[2] Rate Counsel has concerns about expanding the program to allow incentives for non-performing or under-performing facilities.

<u>Rate Counsel Comments</u>

I. Return to Administratively Determined Rebates

Rate Counsel does not support the proposed return of this program to an open enrollment program with administratively determined rebates. As detailed in the Straw Proposal, through the 18-month 2012-2013 program period administratively determined incentives were offered for biopower projects under OCE's Renewable Energy Incentive Program.[3] In Fiscal Year 2014 the program was changed to one in which incentives were determined and projects selected based on

[1] Straw Proposal, p. 3.
[2] Straw Proposal, p. 1.
[3] Straw Proposal, p. 2.

a competitive solicitation.[4] Since that time, three solicitations, one in Fiscal Year 2014 and two in Fiscal Year 2015, have resulted in only four applications, including one re-submission, and no awards.[5] The Straw proposal notes some factors that may have contributed to the lack of interest in the program and concludes that "[i]n view of the preference that stakeholders recommend for the open enrollment program with a prescriptive rebate, Staff and the [Market Manager] are recommending a return to that format for FY2016."[6] Rate Counsel disagrees with Staff's recommendation for several reasons.

First, it is unclear whether the lack of applications is the result of the change to a competitive process. According to the Straw Proposal, based on informal discussions with stakeholders and discussion at the September 28, 2015 Working Group, three most frequently mentioned reasons for the lack of participation were: (1) changing budget priorities for public agencies that were affected by Superstorm Sandy; (2) the uncertainty of receiving an award based on a competitive process; and (3) difficulties encountered by public agencies in meeting the 60-day window for submitting applications under the solicitation process.[7] Staff also cited the availability of funding from other programs such as the New Jersey Energy Resiliency Bank and OCE's Combined Heat and Power("CHP")/Fuel Cell program as another factor that may have contributed to the lack of interest in the Biopower solicitations.[8] Of the reasons cited by Staff, two, i.e. the impacts of Superstorm Sandy and the availability of funds from other sources, are unrelated to the program's change to a competitive process.

Second, Staff's recommendation does not consider the interest of ratepayers in assuring that incentives are provided to the most cost-effective projects. It is not surprising that

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[4] Straw Proposal, p. 2.
[5] Straw Proposal, p. 2.
[6] Straw Proposal, p. 3-4.
[7] Straw Proposal, p. 3-4.
[8] Straw Proposal, p. 4.

prospective applicants would favor an open enrollment process with administratively determined incentive amounts. Such a process is more flexible and convenient for both applicants and program administrators than a competitive process. However, as Rate Counsel noted recently in the context of OCE's Renewable Electric Storage Incentive Program, a competitive process is more advantageous to ratepayers because it assures that funds are directed to the most cost-effective projects and provides more effective budget management and control.[9]

Third, it is not clear that the program as proposed will be successful in attracting applicants. OCE is proposing incentive levels of $2.00 per Watt for CHP projects and $1.00 per Watt for power generation only projects, subject to caps of 30% of total project costs and $1 million for any single project.[10] The proposed incentive levels were established to be "comparable to other incentives available in similar programs, i.e., NJCEP's Commercial and Industrial CHP/Fuel Cell Program."[11] OCE has provided no analysis to demonstrate that these are the appropriate incentive levels for biopower projects. In addition, the proposed $1 million entity cap would effectively limit the program to smaller projects. This may be contrary to the program's goals as larger projects have inherent economies of scale and thus are less expensive on a per kilowatt basis.

Finally, repeated changes in program structure undermine the objective of creating regulatory certainty. OCE's proposal would abandon the competitive process after only two fiscal years, in favor of another approach that may not be effective. Instead, OCE should investigate the underlying causes of the absence of biopower resources in New Jersey.

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[9] Rate Counsel Comments on Fiscal Year 2016 Renewable Electric Storage Incentive Program Straw Proposal, p. 2-4 (May 29, 2015).
[10] Straw Proposal, p. 6.
[11] Straw Proposal, p. 6.

Investigation may show that rebates are not effective given current market conditions, and that some other policy alternative should be considered.

II. Expanded Eligibility

With regard to eligibility, Rate Counsel has serious concerns about OCE's proposal to grant rebates for equipment that is designed to improve the performance and/or efficiency of existing biopower systems. As explained in the Straw Proposal, the qualifying equipment would include equipment "which cleans or removes impurities and/or contaminants from landfill gas, digester gas or other forms of sustainable biomass that qualify as Class I renewable energy under N.J.A.C. 14:8-2.5."[12] Based on the discussion at the September 28, 2015 meeting of OCE's Sustainable Biopower Working Group, it appears that a particular target of the proposed expanded program is landfill gas facilities that are not operating as designed due to siloxane contamination. [13] Siloxanes are silicon compounds found in cosmetics and other consumer products. When these products are disposed of in landfills, the siloxanes can become a component of the landfill gas, and can cause damage to electric generation equipment when the silicone is converted to silicon dioxide, or sand, during combustion.[14] As explained at the Working Group meeting, a number of technologies are available to remove siloxanes from the landfill gas prior to combustion.[15]

Rate Counsel objects to this proposed extension of eligibility because it would improperly shift the risk of economic loss from these facilities' investors to gas and electric utility ratepayers. This is not a proper use of ratepayer money. The risk of non-performing or

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[12] Straw Proposal, p. 4.
[13] See, Sustainable Biopower Working Group Meeting Notes – September 28, 2015, p. 2 (available at http://www.njcleanenergy.com/committees/biopower)
[14] http://www.ati-ae.com/resources/tech-talk/184-making-sense-of-siloxanes.html
[15]See, NRGTEK, Inc. Presentation for Sept. 28, 2015 Sustainable Biopower Working Group meeting (available at http://www.njcleanenergy.com/committees/biopower)

under-performing generation equipment is properly borne by the investors in the private companies that own, operate and are earning money from running these facilities. Funds collected from ratepayers for the purpose of encouraging renewable energy should not be used to indemnify for economic losses that result from facilities that are not performing as designed.