

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-3359-INV

Investigation of the standard-offer contract
between Vermont Renewable Gas, LLC and the
Standard Offer Facilitator

REPLY BRIEF OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE

On January 23, 2025, the parties in the above-captioned matter filed briefs with the Vermont Public Utility Commission (“Commission”) responding to a number of questions surrounding the 2.2 MW electric generation facility (“Project”) proposed by Vermont Renewable Gas, LLC (“Petitioner”) and its eligibility for the “farm methane” category of the standard offer program. The Department of Public Service (“Department”) has reviewed the parties’ filings and submits this reply brief to further address (1) the eligibility of the Project’s feedstocks, and (2) the intended scope of the farm methane standard offer category.

I. The Project’s Feedstocks

As discussed in the Department’s initial brief, a threshold question this case is whether the woody feedstocks proposed for the Project qualify as products, byproducts, or wastes of “agricultural operation[s]” under 30 V.S.A. § 8005a, considering the definition of “farming” under 10 V.S.A. § 6001(22).¹ The Petitioner has described four categories of feedstocks, and the first two appear generally aligned with § 6001(22) or existing Commission orders.² The third and fourth

¹ See 30 V.S.A. § 8005a(2)(d).

² Categories (1) and (2), as described in the Petitioner’s testimony, appear to consist of specific crop types and tree crops grown for energy production. See Evan Dell’Olio, Vermont Renewable Gas, LLC, pf. at 20 (12/12/24); see also 10 V.S.A. § 6001(22)(A) (listing crops); *Order Re: Farm Methane Eligibility*, Docket 7533, Order of 03/28/11 at 2-3 (discussing energy crops).

categories appear closely related, and include timber (or timber byproducts) harvested from woodlots on farms (“timber feedstocks”).³ When forested land is owned by a farm, but is used for logging or timber harvesting generally placed under the umbrella of forestry, it is not clear that those practices should be considered as part of an agricultural operation. The challenge is where to draw the line between “farming” and other uses in assessing the Project’s timber feedstocks.

The brief of the Vermont Agency of Agriculture, Food, and Markets (“AAFM”) has provided additional context and guidance on this issue, including the agency’s interpretation of key terms as used in Vermont. AAFM indicates that products, byproducts, or wastes from trees harvested on farm property should be considered derived from an agricultural operation to the extent that the trees are harvested for on-farm use.⁴ However, “AAFM does not consider logging for non-farm purposes to constitute ‘farming’ within the meaning of 30 V.S.A. § 6001(22).”⁵ Nor does AAFM support an interpretation that construes “the natural growth of trees (or ‘fiber’) for pulp or any other forestry use” as farming.⁶ The Department defers to the interpretations put forward by AAFM, and supports the reasoning reflected in its brief. Considering the above, and in the absence of other information, the Department views the proposed timber feedstocks as products, byproducts, or wastes of forestry rather than farming.⁷

While the timber feedstocks do not appear to be products of “farming” based on current information, AAFM has noted that “agricultural operation” is a distinct, undefined term which

³ See Evan Dell’Olio, Vermont Renewable Gas, LLC, pf. at 20 (12/12/24). The Petitioner’s category (3) is described as “wood fiber from timber purposefully harvested from woodlots on farms and grown for energy production.” *Id.* This suggests both the use of timber harvested from farm woodlots and an unspecified overlap with category (2).

⁴ See AAFM’s Brief at 7, 10 (1/27/25).

⁵ *Id.* at 8.

⁶ *Id.* at 8-9.

⁷ See *id.* at 10 (“Petitioner also plans to utilize woody biomass harvested from farms’ woodlots from logging and/or forestry activities.”).

could be subject to a broader interpretation in the context of the standard offer program.⁸ Specifically, AAFM suggests that “agricultural operation” could include forestry activities on farms if the term is intended to capture the full scope of activities that a farm business entity may engage in.⁹ On the other hand, “if the statute is intended to be tethered to a farm’s specific farming activities instead of its broader ‘operations’, then forestry activities on farms likely do not generate eligible feedstock.”¹⁰

The Department defers to AAFM’s expertise on what could be considered an “agricultural operation,” and notes that term has been construed narrowly thus far for purposes of the farm methane category. The Commission considered farm methane eligibility in a 2009 Order (“Implementation Order”), referring to the definition of “farming” under 10 V.S.A. § 6001(22) and establishing the requirement that 51% of a plant’s feedstocks must be derived from agricultural operations.¹¹ That requirement was largely based on the recommendation that a plant using agricultural products, byproducts and wastes “principally from the farm” should be eligible.¹² The Implementation Order suggests that the Commission has understood “agricultural products” and “agricultural operations” to be specifically tied to farming activities.¹³

This is particularly evident when considering that the Commission has required only 51% of feedstocks to come from agricultural operations, with the remaining 49% from other sources. As recognized in the Implementation Order, “the practice of using non-agricultural feedstock provides

⁸ See *id.* at 1–2, 7; see also 30 V.S.A. § 8005a(2)(d).

⁹ See AAFM’s Brief at 7, 9, 11.

¹⁰ See *id.* at 11.

¹¹ *Second Order Re: Implementation Issues*, Docket No. 7533, Order of 10/28/09 at 4–6. The Petitioner has also acknowledged the Commission’s prior orders and the relevance of 10 V.S.A. § 6001(22) in determining feedstock eligibility. See Petitioner’s brief at 7, 9 (1/23/25).

¹² See *Second Order Re: Implementation Issues*, Docket No. 7533, Order of 10/28/09 at 4–6.

¹³ See *id.*

significant benefit and . . . to entirely exclude the use of such feedstocks would limit the flexibility” of farm methane projects.¹⁴ In other words, under the current interpretation of “agricultural operation,” feedstocks from non-farming activities can be appropriate for an eligible farm methane facility – as the minority of inputs rather than the majority. The Department has not identified a reason to depart from this interpretation.

For the reasons above, and consistent with AAFM’s interpretation of 10 V.S.A. § 6001(22), the Department finds that the Petitioner’s proposed timber feedstocks¹⁵ as currently described represent products, byproducts or wastes of forestry rather than farming. The Department defers to AAFM as to what could constitute an “agricultural operation” with the understanding that, as currently interpreted by the Commission, the term does not appear to extend beyond farming activities.

II. The Intended Scope of the Farm Methane Category

The parties in this case were also asked to address whether the broader concept for the Project is consistent with the requirements and intent of the farm methane standard offer category. As the Department has said, the concept advanced by the Petitioner is inconsistent with the historic understanding of the category and its current implementation, which has revolved around anaerobic digestion.¹⁶ However, the Department’s brief acknowledged the ambiguity surrounding eligibility and how the impacts to intended beneficiaries may pull against each other in evaluating whether new technologies or methods of producing methane fit the intended scope and purpose of the category.¹⁷

¹⁴ *Id.* at 6.

¹⁵ These are the feedstocks outlined in the Petitioner’s testimony under categories (3) and (4), specifically the wood and associated byproducts harvested from farm woodlots. *See* Dell’Olio pf. at 20 (12/12/24).

¹⁶ *See* Department’s Brief at 5–6, 9 (1/23/25).

¹⁷ *Id.* at 9–12.

The Department remains concerned that expanding the farm methane category beyond anaerobic digestion could create significant adverse impacts to ratepayers, undermining the intended protections and energy goals incorporated in the standard offer program. The unique treatment of the category, where the standard offer is perpetually available to eligible plants and the benefits of renewable energy credits are excluded from utility portfolios, imposes a high cost on ratepayers with no limit on the potential for further costs. In the context of the wider program, and as indicated in the Department’s brief, this treatment only makes sense if the category was intended to accomplish specific objectives related to a niche group of plants.¹⁸ Additional legislative material identified by Green Mountain Power also illustrates the intent for a category with limited, if not expressly restricted scope.¹⁹

Act 159 of 2010, “An act relating to renewable energy” (“the Act”), amended the standard offer program established only a year earlier. The legislative findings outlined in the Act highlight the “significant and unique benefits” of “agricultural methane electric generation plants, sometimes called ‘cow power.’”²⁰ Farm methane projects are discussed in some detail, as plants “producing electricity through anaerobic digestion of wastes from farm animals and other sources.”²¹ The Act’s findings also credit early farm methane projects with “paving the way” for the entire standard offer program, given that those projects had “hosted studies and pilot projects . . . generated significant public interest in renewable energy . . . [and] received extensive national

¹⁸ See *In re Southview Assocs.*, 153 Vt. 171, 175 (1989) (courts avoid an interpretation which would “render the legislation ineffective or irrational”) (citation omitted); see also *Town of Killington v. State*, 172 Vt. 182, 189 (2001) (“When the plain meaning of statutory language appears to undermine the purpose of the statute, we are not confined to a literal interpretation, but rather must look to the broad subject matter of the statute, its effects and consequences, and the purpose and spirit of the law to determine legislative intent.”) (citation omitted).

¹⁹ See Green Mountain Power’s Response to the Commission’s Request for Briefing at 3–4 (1/23/25).

²⁰ Act No. 159, Sec. 2 (Vt. Leg. 2010), available at: <https://legislature.vermont.gov/Documents/2010/Docs/ACTS/ACT159/ACT159%20As%20Enacted.pdf>.

²¹ See *id.*

and international” attention, all while benefitting the farm economy and working landscape.²² It is apparent that the Legislature was focused on supporting new and existing projects, understood at the time to be anaerobic digester plants. The farm methane category can be seen as the Legislature’s embrace of these plants, which had proven their value in practice before the standard offer program existed.

Considering the above, together with prior Commission orders and the relevant statutory language, the Department maintains that the eligibility of the Petitioner’s concept may depend on whether it can occupy the same niche or strike a similar balance of interests and benefits to the historic entrants in the category. As previously noted, the benefits of anaerobic digester plants have been widely recognized. The Petitioner’s concept is entirely new to Vermont, and the farm methane category was not intended to serve as a testing ground at ratepayers’ expense.

III. Conclusion

For the foregoing reasons, the Department recommends that the Commission evaluate the Project’s feedstock consistent AAFM’s interpretation of “farming” under 10 V.S.A. § 6001(22). On the information available, the Petitioner’s proposed timber feedstocks should be considered products, byproducts or wastes of forestry rather than farming. The Department continues to recommend that the Commission resolve the threshold feedstock issue before turning to the broader eligibility questions surrounding the Petitioner’s proposed Project. To the extent those questions require resolution, the Department recommends gathering additional information to better assess the implications of this new technology, particularly for electric ratepayers, and its compatibility with the farm methane category.

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²² *See id.*

DATED at Montpelier, Vermont this 13th day of February 2025.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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