

January 31, 2014

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Baucus:

At your request, the Biomass Power Association (BPA) would like to take this opportunity to share our views on the recently released Discussion Draft for energy tax reform. Energy tax reform is long overdue, and the Committee Staff Draft represents an important and thoughtful effort to provide long-term investor certainty and a “level playing field.” With the suggestions we discuss below, the proposal has the potential for creating an equitable approach to the promotion of low carbon energy.

### **Executive Summary**

BPA approves of the move to provide long-term stability to renewable facility developers, operators and investors, and embraces the use of environmental performance as the appropriate metric, provided that all qualifying technologies currently in Section 45 are treated fairly. To subject “open-loop biomass,” a thoroughly-vetted technology with widely acknowledged environmental attributes, to the vagaries of an administrative proceeding at the Environmental Protection Agency (EPA), only threatens to perpetuate the uneven playing field and will frustrate congressional intent to incentivize the development of meaningful amounts of baseload renewable energy. Further, the Draft should ensure that all qualifying facilities obtain production tax credits (PTC) for the full 10-year period.

### **About BPA**

BPA represents the Nation’s biomass power sector. Our members use sustainably-sourced organic waste materials such as residues and byproducts left over from forest harvests, farming, and the collection of urban wood to create electricity for sale to the grid (and heat) in over 20 states. Biomass energy systems convert these low value materials into electricity—enough for nearly 1 million homes while adding nearly \$1 billion to the Nation’s economy and sustaining rural economies through the preservation of working forests and farms. We estimate that the biomass industry employs or supports the employment of about 15,500 Americans nationwide, many who live in rural areas.

### **Energy Tax Reform Should Create a Predictable and Even Playing Field**

Under the law that expired on December 31<sup>st</sup> of 2013, BPA members’ facilities were generally eligible to participate in the section 45 PTC as qualified “open-loop biomass” facilities. Unfortunately, section 45 of the Internal Revenue Code has been plagued by the on-again, off-again cycle of expirations and extensions. This uncertainty has deprived capital-intensive technologies requiring long-permitting schedules (including such baseload power generators as biomass, hydropower and waste-to-energy) with the stability needed to develop projects.

Facilities utilizing technologies that can be developed in shorter time spans, such as solar and wind, become the favored option, creating an electrical grid that is heavily reliant on intermittent sources of electrical power. In addition, in those few instances when our members are successful in financing and building projects, the PTC rate that they receive under section 45 is only one-half that of other competing renewable technologies such as wind and geothermal. When utilities seek bids to satisfy their state renewable energy obligations, the different rates that are assigned to renewable technologies often work to our disadvantage.

### **Environmental Performance Standards Must Be Carefully Crafted**

We also appreciate the Draft's proposal to establish a tax credit rate based on a carbon metric, since we believe that energy tax reform can achieve both energy and environmental goals. In using a carbon metric, however, the Draft risks perpetuating an uneven playing field by qualifying selected technologies like wind and solar for the full credit on the basis of being deemed "carbon neutral" while possibly subjecting other technologies, like biomass, to an agency determination. We fear that the end result will be a preservation of the current status quo, where certain technologies have the benefit of regulatory certainty while others are mired in agency indecision and litigation.

The Committee needs to look no further than EPA's implementation of the Renewable Fuel Standard (RFS) to appreciate the uncertainties of "outsourcing" important policy decisions to Agency discretion. The RFS was enacted in 2007, but EPA still hasn't completed important rulemaking on qualifying certain fuels under the program, and when it does complete rulemaking, it is continually forced to litigate its findings. The result is a program that does not inspire confidence among investors, and the growth of the biofuels industry has suffered. We fear a similar result.

This is not to say that Congress needs to engage in its own "carbon accounting" when it comes to the biomass power industry. Thankfully, when it comes to open-loop biomass, both the science and the law are well settled.

In 2004, Congress expanded section 45 to include a number of technologies broadly viewed as favorable renewable energy sources that offered clear environmental benefits. Among those was "open-loop biomass," a defined term in the Code that includes low value "waste-like" organic materials whose alternative fate (open burning, disposal in a landfill or contributing to forest fires) was to be discouraged in favor of energy generation. The environmental and carbon benefits of these waste-like materials are broadly recognized by EPA, USDA, and by many states, where utilizing biomass energy is a key strategy in achieving air emission goals and fighting forest fires.

The Draft should not unwind the long established premise that open-loop biomass offers carbon benefits that are as important as, though different from, wind and solar. The carbon benefits of "waste" biomass are well recognized in the scientific community. For example:

- Tilman et al, "Beneficial Biofuels—The Food, Energy and Environmental Trilemma" *Science Magazine*, 17 July 2009 – such feedstocks are "biofuels done right" given their "lower life-cycle greenhouse emissions than traditional fossil fuels" (pg. 270);

- “Land Clearing and the Biofuel Carbon Debt,” *Science Magazine* 29 February 2008 – “‘waste biomass’ incurs little or no carbon debt and can offer immediate and sustained GHG benefits” (pg. 1235).

Most importantly, EPA, which continues to study a wide range of biomass fuels for their carbon impact, has made clear, in the context of implementing the Renewable Fuel Standard, that “renewable fuel produced from feedstocks consisting of wastes that would normally be discarded or put to a secondary use, and which have not been intentionally rendered unfit for productive use, should be assumed to have little or no land use emissions of GHGs.”<sup>1</sup>

### **All Qualifying Open-Loop Biomass Facilities Should Be Eligible for a 10-Year Stream of Credits**

Tax incentives for generating electricity from open-loop biomass have only been available since 2004, when Congress provided *both existing and new* facilities a production tax credit – but only for a five-year term and only at 50% of the rate of the PTC for wind energy. One year later, Congress lengthened the tax credit period from five years to ten years (for new facilities, while retaining the five-year period for existing facilities), but retained the 50% credit rate reduction. The credit period for that first community of qualified facilities expired in 2009, leaving many of the plants at risk of closure. Congress can address this inequity by extending from five to ten years the period for the facilities that were placed in service prior to 2004.

### **Conclusion**

In summary, the Draft is an important first step in providing long-term investor certainty while treating all technologies equitably. To achieve these goals, we urge the Committee to assign all qualifying technologies currently in the Code with the same credit value, and to ensure that all qualifying facilities receive the full ten years of tax credits.

We stand ready to work with the Committee on this important effort.

Sincerely,



Robert E. Cleaves, IV  
President & CEO

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<sup>1</sup> Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program; Final Rule." *Federal Register* 75, 58 (March 26, 2010): 14670-14904.