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The Honorable Kevin Brady  
301 Cannon House Building  
Washington, DC 20515

The Honorable Mike Thompson  
231 Cannon House Building  
Washington, DC 20515

April 15, 2013

### Via email

RE: Comments for Energy Tax Reform Working Group

Dear Representatives Brady and Thompson:

On behalf of the members of the American Biogas Council (ABC), I appreciate the opportunity to submit the following written comments regarding energy tax reform. The ABC commends the Ways and Means Committee for its thoughtful approach in forming working groups and for soliciting input from a variety of stakeholders.

The American Biogas Council is the first and only industry association in the United States dedicated to maximizing the production and use of biogas from organic waste. Our member companies include municipalities, digester designers, equipment providers, farmers, natural gas providers, waste management companies, engineering and law firms, non-profits, universities and other organizations covering the entire biogas supply chain. As you may know, anaerobic digesters turn waste into baseload renewable energy. They break down organic waste—including manure from livestock operations, wastewater treatment sludge, and municipal solid waste—to produce biogas (a combination of methane, carbon dioxide, and trace amounts of other gases), which can then be turned into electricity or used as a substitute for natural gas in transportation or heating. The U.S. has only begun to build its biogas industry, which has experienced considerable success abroad. In fact, the methane in renewable biogas could displace as much as 10-15 percent of current fossil natural gas use by 2025-2035. In rural and urban areas alike, the members of the ABC are creating jobs, reducing waste, and maximizing the

efficient use of local resources to make base-load, renewable energy.

As the working group and full committee navigate the many conflicting interests in the tax reform process, the ABC would like to emphasize two points: 1) in the absence of comprehensive federal energy policy, energy tax provisions effectively advance important public policy goals; 2) Congress should adopt targeted mechanisms to reward innovative technologies like biogas that improve energy security and environmental quality.

### 1) Federal tax policy remains a primary tool to advance federal energy policy

Federal energy tax policy has been an effective and important means to deploy renewable energy, including biogas technology. Over the past decades, Congress has used the tax code to encourage domestic energy production, raise revenue, and capture costs of externalities not otherwise valued by the market.

The ABC supports a tax code that is simple, transparent, and encourages investment and growth. Removing energy tax incentives in the absence of substantive federal non-tax policies such as feed-in tariffs, a clean energy standard, or well-funded grant programs would decrease our energy security and fail to reduce pollution. In general, lower corporate rates and fewer deductions—while perhaps beneficial to larger, well-established industries with significant revenues—will not drive investments in innovative and emerging technologies like biogas. Many biogas developers are small businesses or agricultural producers that do not have large tax appetites.

In fact, this lack of tax appetite was the primary reason why the biogas industry embraced the 1603 Cash Grant in Lieu of Tax Credits Program. Tax equity investors are mostly interested in large-scale projects (\$50 million and larger) while agricultural anaerobic digester projects typically cost between \$500,000 and \$10 million. The transaction costs can become prohibitive for smaller biogas projects. For those that do occur, a sizeable share of the credit goes to the equity investor rather than the project. Despite these inefficiencies, the election to take a 30% investment tax credit (ITC) in lieu of the Renewable Electricity Production Tax Credit (26 U.S.C. §45) remains critical to the successful scale-up of the biogas industry. The production tax credit (PTC) and ITC remain the most valuable incentives for the commercialization of landfill gas to energy and biogas technology.

The primary importance of tax policies is only reinforced by the absence of other federal mechanisms to address these market failures. USDA Farm Bill programs that have helped the biogas industry like the Rural Energy for America Program (Section 9007) face severe funding shortfalls. At the same time, federal policy does not adequately account for externalities like greenhouse gas emissions or nutrient runoff that impose other costs on taxpayers. Inversely, the markets systematically undervalue important ancillary benefits of biogas, including distributed generation, odor control, fuel diversity, and public health impacts. While an imperfect system, tax incentives for biogas and renewable energy help account for these externalities undervalued by the market.

One efficient way to account for the external costs caused by pollution is with a tax designed to increase the cost of different energy sources in proportion to the environmental harm they cause. Today, instead we simply incentivize renewable energy production. These federal tax incentives for renewable energy are the most

important driver today for deploying technologies that reduce our dependence on foreign oil, improve environmental quality, and create domestic jobs. And in the absence of better policy, they must be continued.

2) The Tax Code can be improved to provide targeted, objective-based incentives for innovative technologies that enhance our energy security and reduce pollution.

Tax provisions that create jobs, enhance energy security, and reduce pollution should continue. But renewable energy tax provisions can be improved to ensure technology-neutrality and support for maturing industries. The ABC's suggestions for improving energy tax policy revolve around two core principles: a) targeted, technology-neutral incentives (including parity for all forms of biogas use); and b) predictability and stability for investors and businesses.

*a. Technology Neutrality*

Most of the favorable tax provisions to fossil fuels were written into the U.S. Tax Code as permanent provisions. By contrast, many renewable energy tax provisions were implemented through energy bills and contain expiration dates that limit their usefulness. Allowing renewable tax provisions to lapse while ignoring the permanent provisions in the code for fossil energy would not accomplish meaningful reform.

Moreover, the value of production tax credits for different renewable energy technologies varies, as do the expiration dates. Some technologies qualify for production tax credits, others for investment tax credits. We support efforts to provide parity between various technologies and would welcome the opportunity to work with the Committee to identify relevant technology-neutral criteria.

*i. Extending the PTC and preserving ITC election*

The ABC supports extending the Renewable Electricity Production Tax Credit (PTC) for biogas and preserving the election to take an ITC in lieu of the production tax credit. The PTC is a key driver in the growth of renewable energy projects utilizing open-loop biomass, landfill gas, or municipal solid waste. The PTC can enhance the economic viability of otherwise marginal projects when the ancillary benefits of the project are not easily monetized.

Congress made this credit more flexible in 2009, allowing eligible facilities to elect a 30% investment tax credit (26 U.S.C. § 48) instead. The ITC election is very important to many in the biogas industry as it is simpler to monetize. But even within our membership, the PTC works better for landfill gas, and the ITC works better for many anaerobic digester projects. Thus, we encourage the Committee to preserve the ability of businesses and investors to elect either the PTC or the ITC, providing parity across technologies.

*ii. Parity for all forms of biogas use: aligning incentives for fuel and electricity*

In addition to incentives for electricity generation from biogas, the tax code also includes provisions to encourage alternative fuels like biogas. The Alternative Fuel Excise Tax Credit (42 U.S.C. §6426) has been instrumental in accelerating the deployment of natural gas and biogas fueled heavy-duty collection vehicles. For instance, one ABC member operates 2,000 natural gas fueled collection vehicles across 28 U.S. states, the

largest heavy-duty natural gas fleet in the country. The alternative fuel excise tax credit helps companies continue to invest in alternative fueling infrastructure and production.

Currently, biogas producers developing transportation fuel projects cannot elect to utilize an ITC instead of the alternative fuel credit. Biogas producers can only claim the PTC or ITC if they generate electricity. Depending on the avoided cost the utility will pay to buy excess power (and if the utility is generating power from a plant that has long been depreciated, that can be quite low), a biogas producer may find it more economically feasible to forgo producing electricity and to use the biogas produced on-site for heating purposes. Or the producer could clean up the gas and inject it into existing natural gas pipeline infrastructure. Or the producer may decide to use the biogas as a vehicle fuel. Ideally, the tax code would incentivize the production of biogas and allow the producer to decide whether to produce electricity, thermal energy, transportation fuel, or compressed biogas injected into pipeline infrastructure. Consequently, the ABC supports the Biogas Investment Tax Credit Act of 2013 (HR 860) to provide parity for biogas production, no matter the final use. This is consistent with our earlier point that energy tax policy should focus on key objectives—reducing greenhouse gas emissions, reducing imported petroleum use, supporting emerging clean technologies, etc.—rather than various technology-specific provisions.

The ABC also would support a proposal from other advanced biofuel groups for an investment tax credit for all advanced biofuels, including biogas. This ITC option would more closely align the regimes for fuel and electricity production and stimulate private investment in advanced biofuels.

*b. Providing predictability for biogas investors and taxpayers*

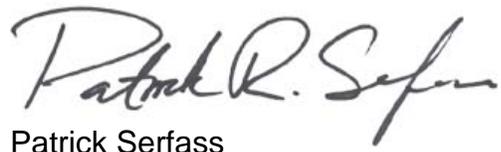
ABC members also urge Congress to extend renewable energy tax credits for a time horizon that aligns with the development cycle of energy projects, preferably for at least five years. One-year extensions are less costly in the short term than multi-year extensions but ultimately are more inefficient. Short-term extensions do not incentivize new projects because a project development cycle takes more than twelve months.

The ABC believes that renewable energy incentives should be structured so technology can be deployed and reach a level of maturity, thus ensuring direct subsidies are no longer needed. Some have discussed phasing out the Sec. 45 PTC over a period of time or implementing a cap either based on total cost (like the Section 48C Advanced Energy Manufacturing Tax Credits) or on megawatts installed. Section 1306 of the Energy Policy Act of 2005, which provides a tax credit for the first 6,000 megawatts of new nuclear power brought online through 2020, provides one possible basis for sunset of biogas tax incentives. The section provides predictability for investors with long-lead times and a focus on production levels instead of arbitrary dates. It also protects taxpayers with limits on expenditures.

While the government must make difficult fiscal decisions, we must also make targeted investments to grow our economy and increase our reliance on clean, domestic sources of energy. Emerging and underutilized technologies like anaerobic digestion increase our energy independence and create domestic jobs. Increasing deployment of these renewable technologies drives down capital costs over time, reducing the need for future subsidies. Tax incentives for biogas production and electricity from biogas achieve these aims and deserve support.

The ABC appreciates the opportunity to provide these comments and would be happy to answer any questions the Committee may have. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Patrick R. Serfass". The signature is written in a cursive style with a large, prominent initial "P".

Patrick Serfass  
Executive Director