



**UPSTATE NIAGARA  
COOPERATIVE, INC.**  
FARMER OWNED

July 1, 2022

Dear Climate Action Council Members,

On behalf of Upstate Niagara Cooperative, Inc., I am writing to provide comments on the Climate Action Council's Draft Scoping Plan that will be used to provide New York State with the framework and path to meet the goals of the Climate Leadership and Community Protection Act (CLCPA) that was passed into law.

Upstate Niagara Cooperative, Inc. is owned by 270 dairy farmers who are predominately located in New York. To facilitate the marketing and distribution of our farmer-owner's milk, the Cooperative owns and operates 8 dairy manufacturing facilities (7 in New York) and employs nearly 1,700 people. These employees are dedicated to making wholesome and nutritious dairy products that are sold to retail, foodservice, schools, government institutions, and hospitality partners across New York and the nation.

Given the nature of Upstate Niagara's work, we fully recognize the need for sustainability. It's at the very heart of our business and has been for generations. Our progressive farmers are stewards of the land and have continuously worked to implement more sustainable practices on the farm, and our processing plants have done similarly.

Upstate Niagara operates under a spirit of continuous improvement. Always striving and working to do better. To this end, Upstate Niagara has already:

- Engaged Rochester Institute of Technology's P2i and established an Environmental Management System and conduct regular third-party environmental audits to help the Cooperative be more environmentally conscious.
- Created a recycling program at our largest manufacturing facility more than 10 years ago to reduce solid waste headed to landfills. This initiative has resulted in tons of waste being diverted away from landfills for recycling, reuse, and energy creation. In 2021, this facility directed over 93% of its solid waste away from landfills. With this framework proven out, we are expanding this initiative to the remainder of our plants;
- Begun procurement of post-consumer recycled packaging where approximately three quarters of the corrugate supplied by our largest supplier was made from recycled materials, with the vast majority being post-consumer waste;

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- Undertaken initiatives that have reduced the amount of resin in our packaging. In one example, the amount of resin used for this yogurt cup was reduced by 30% without impacting food safety or structural integrity. This change resulted in a 22% reduction in the number of pallets utilized and corrugate needed. It's reduced the number of trucks on the road delivering the product to us annually and resulted in a 30% reduction in corresponding CO2 emissions. This also positively impacted our employees and efficiencies as we handle 22% fewer cartons to open and dispose of and less pallets to move each year. We've seen results like this from 5 additional packaging improvements that have been made in recent years.
- Continuously improved the average energy intensity throughout our facilities, which in turn has led to a 22% decrease in CO2 equivalent at the fluid milk plants and a 6% decrease in CO2 equivalent at the cultured dairy product plants;
- Invested in technologies to improve our distribution fleet efficiency and improved the miles traveled per gallon amongst our light and heavy-duty vehicles by 13.5%;
- Enhanced route efficiencies which resulted in over 545,000 less miles driven by distribution vehicles in our fleet;
- Minimized food waste by donating nearly 3 million servings of dairy foods to local food banks and pantries over the past three years; and
- Been involved in discussions to create an anerobic biodigester near two of our manufacturing facilities that would convert organic and other plant waste streams to biogas, which can be cleaned and tapped into existing natural gas infrastructure.

These are only some of our sustainability achievements. While we are proud of these accomplishments, we also share them to demonstrate that sustainable practices happen naturally and without mandates as a business works to become more efficient and has the means to invest in new technologies as they become market-ready and scalable to meet the needs of industry.

Upstate Niagara Cooperative, and the larger dairy industry, are uniquely situated to serve as a part of the solution to many of the State's concerns. With that said, **the Council must recognize that a regulatory framework and policy requirements must not outpace the technological and economic feasibility of meeting the goals.**

New York is not an island and many of the state's farms and businesses compete around the country and around the world for business - Upstate Niagara included. While the plan does seem to recognize this, it also seems to make significant assumptions around the pace with which these technologies, some of which do not yet exist, will be brought to market with the scale necessary for wide-spread implementation. If regulations are implemented faster than technology allows or are not reasonably aligned with regulations in other states, we can do irreparable economic damage to our state's business reinvestment and employment.

### **Our Experience with a Large-Scale Electrified Manufacturing Facility**

Upstate Niagara recently explored a greenfield project that would expand our operations. We originally set out to make the plant as climate friendly as possible with cutting edge technologies and using fully renewable energy sources. In tandem, the project was scoped with today's best available technologies using traditional energy sources. To pursue the more climate-friendly manufacturing plant, it would have increased the total project cost by over 50%. This was primarily driven by the cost of industrial electric boilers and infrastructure required to support them. Unfortunately, the economics of that investment and the customer's willingness-to-pay the large costs associated with the climate friendly facility simply do not work.

To that end, we believe the State will need to make policy decisions that will not be destructive to the investment decisions companies are making today. Projects like the one described here take years to develop and see to fruition, and companies prefer to make investments where there is more regulatory certainty. A constantly changing and evolving regulatory landscape is not conducive to business investment in the State. This is particularly true when the level of investments being contemplated are in excess of several hundred million dollars.

It is incredibly difficult to fathom all the ways that the CLCPA and the Draft Scoping Plan will impact our business. The costs will be immense. Below, we will provide thoughts and comments on only a few of the topics included in the plan, but it is noteworthy that our concerns are numerous and grow with every discussion we have on the topic.

### **The Push for Zero Carbon Electricity & the Gas System Transition**

Our dairy manufacturing plants will likely be considered intensive energy users. When it comes to our manufacturing plants, natural gas is the most efficient, cleanest burning fuel to power boilers and spray dryers, and other necessary equipment to convert milk that comes off the farm every day into consumable or storable dairy foods.

While we recognize that the transition to zero carbon electricity and energy sources is central to meeting the CLCPA goals, there are a few items we believe that the State should consider:

- As we transition residential energy over to renewable electricity as the primary energy source for homes, this will dramatically reduce the number of users on the gas system and result in fixed costs being spread over fewer users. It will be very costly for industrial users to bear the cost of supporting the entire gas-delivery infrastructure to energy intensive users. This will further erode Upstate Niagara and the dairy industry's ability to compete with other dairy manufacturers around the country. Without a vibrant and viable dairy processing industry in the state, New York's dairy farms and the rural fabric of upstate New York would be at risk.

- **New York's energy must match the consistency and reliability of today's utility services.** Increased reliance upon electricity which utilizes above ground transmission lines makes the State's infrastructure at greater risk from interruption from weather-related or other types of negative events. While the plan sets out to improve the climate to reduce the risk of such events, we must also recognize that these events are likely to continue.
- It is a critical and essential component of any transition plan to have the same level redundancy and security that a full spectrum of energy sources can provide. To that end, we cannot underscore enough the importance of a consistent and reliable supply.
- This is especially critical if we move boilers and other critical operating infrastructure to electrical energy sources. Grid failures and brown outs caused by increased demand places significant risks on the 24/7 dairy supply chain.
- If Upstate Niagara was asked to reduce electricity consumption to reduce stress on the grid, it would ultimately impact our ability to provide critical manufacturing capacity to the region's dairy farmers who produce a perishable product that must flow off the farm in a timely fashion. By taking equipment offline, it would increase waste, reduce energy efficiencies, and result in food insecurity while having an overall negative impact on our company and our employees.
- The reality of the situation is that today's existing electrical infrastructure cannot withstand the massive influx of demand that will result from mandating zero emissions passenger vehicles, let alone the demand from future mandates of zero emissions light and heavy-duty vehicles. Forcing the industrial sector onto electricity compounds these issues. To that end, as we pursue more renewable energy sources it is likely that it will require significant investments in battery capacity to handle periods without sun and wind availability. Before fully pursuing this path, we believe it necessary that the State complete full lifecycle analysis on the proposed technologies that includes end-of-life analysis. This analysis must also factor in all economic and social benefits. We cannot move forward on policies that meet only societal benefits when economics will be what determines the success or failure of any proposed regulation.
- When it comes to including hydrogen gas in the natural gas stream, best available technologies have found that 10% is achievable, but largely not economically feasible. There are dairy companies in Europe that are exploring the inclusion of higher percentages of hydrogen gas, but thus far have not found success in doing so. It's also worth noting that it requires energy to create hydrogen gas, which creates a circular reference that makes achieving positive impacts difficult.

## Transportation

Upstate Niagara Cooperative utilizes 19 independent contract haulers to collect milk at the farms and deliver that milk to dairy manufacturing plants throughout New York and across the mid-Atlantic region. Additionally, the Cooperative owns and/or operates a fleet of over 250 heavy and light duty trucks that distribute dairy products to customers. While current specifications for light and heavy-duty trucks seem to indicate similar truck weights, we have significant concerns with regard to how far these vehicles can travel on a charge. Currently, the best electric vehicle technology in this space suggests 250 miles. It's worth noting that we have many routes that go beyond this on a daily, weekly, and monthly basis. Combine this with regulations on driver hours, limited charging infrastructure and there is a very real risk of severely reduced efficiency and downtime.

Dairy has a unique set of challenges given the overall perishability of the product. This requires refrigerated trailers and today these are reliant upon diesel. Given the goal to utilize zero fossil fuels in New York, these vehicles will also need to transition. These trailers will need to be able to assure a consistent temperature to ensure food safety. Additionally, it is not uncommon for us to long-haul product to the West Coast at a distance over 2,000 miles. At a 250-mile capacity, this will require 8 or more stops to charge along the route. Depending on how quickly the charge can occur, the added charging time will result in customers/consumers getting dairy products with very little code date remaining on the product. This would effectively close us out of west coast markets and limit the amount of milk we can receive from our farmer-owners.

In addition to the negative competitive effects this will have, it will require a delicate balance between labor, charging, distance, and managing code life. We manage these today, but it's worth noting that a 100-gallon tank of diesel provides significantly more flexibility than a 250-mile range can provide. Furthermore, given the snow loads in western and upstate New York, we also have serious concerns about this transition.

Will there be a requirement for out-of-state trucking companies to use the same technologies being mandated upon New York companies to enter New York?

Current projections on the costs of these types of vehicles are three times the current cost of a diesel truck. Thus, the adoption of zero-emissions vehicles for light and heavy-duty transportation needs will be heavily dependent upon the economics and the availability of infrastructure to support the transition. Appendix A of the draft scoping plan also recognizes significant and specific challenges the industry will experience. Upstate Niagara tends to agree with several of these points and would like to underscore the uncertainty that financial institutions have with the technology and how to navigate the high upfront costs of the technologies. What's the useful life? Will current depreciation schedules reflect this? Can these investments be made without significantly impacting the operating companies? All of these issues and questions need clarity before the state plans a path forward, rather than providing out right mandates by a certain date.

## **Waste and Packaging**

Our farmer-owners have always been very committed to providing affordable and nutritious foods to consumers and to their communities. They are committed to being good stewards of the land and a partner in sustainability efforts. To that end, we recognize the importance programs like the proposed Extended Producer Responsibility plans can have in meeting the State's environmental goals and that we as dairy food manufacturers can be part of the solution. The Scoping Plan places critical importance on the creation of an extended producer responsibility (EPR) program. Several of the EPR proposals currently under discussion by the legislature and proposed by the Governor during the budget negotiations raise significant concerns.

New York must recognize that all products are not equal simply because the packaging contains similar materials. Dairy and food products are notoriously low-margin and additional costs are not easily passed through the supply chain. The ramifications of not appropriately balancing the costs of EPR could result in food insecurity for the state and diminished ability to respond to the State's food needs in times of crises. Passing these increased costs on to consumers could also serve to negatively impact low-income households who rely on feeding programs such as SNAP and WIC. The increased costs of EPR on food and dairy poses a very real possibility of increasing hunger in the State.

In the EPR plans being considered, it would put the sole responsibility of recycling costs on the producers and/or brand owners. Upstate Niagara would be considered a 'producer' as we manufacture jugs for fluid milk. We would also be considered a 'Brand Owner' for the packaging associated with internal brands. Ultimately, participation in a Producer Responsibility Organization is a tax on packaging that is meant to offset municipalities costs of handling waste. Meanwhile, there is no uniform standard or requirement for municipalities, villages, towns, or counties to participate in recycling programs and consumers bear no responsibility for recycling the products they consume.

Upstate Niagara recognizes the State's desire to be a leader on this issue. However, a federal solution is necessary to prevent companies from being required to comply with a patchwork of state regulations. If the State continues to pursue an EPR program, we encourage them to review the International Dairy Foods Association position on Sustainable Packaging. It provides a thorough discussion on the key tenets required to make sure that an EPR plan includes fairness to all stakeholders, transparency, and consistency.

Before regulating a path forward for EPR, the State should complete a needs assessment to guide the regulatory framework and be the foundation of any future legislation. A needs assessment and law requiring compliance should not be joined together. Additionally, should any future law require a separate Council or Board be created and empowered to implement a future EPR, it will be critical that members selected represent businesses involved in the supply chain and not just advocacy entities so that the technological and economic feasibility of recommendations can be given due consideration. To minimize the impact on

the State's leading agricultural industry, it remains critical that dairy and food manufacturing have a seat at the table.

## **Agriculture & Forestry**

The dairy industry's commitment to sustainability has spanned decades and there's been significant strides made in reducing our environmental footprint. This is evidenced in several works published in the Journal of Animal Science. According to the National Milk Producers Federation review of the literature, "By 2007 producing a gallon of milk used 90 percent less land and 65 percent less water, with a 63 percent smaller carbon footprint than in 1944.<sup>1</sup> And in 2017, producing a gallon of milk required 30% less water, 21% less land, and a 19% smaller carbon footprint than it did in 2007." But the dairy industry hasn't rested on its laurels and the achievements of the past. The industry has set aggressive new environmental sustainability goals to become greenhouse gas neutral or better, optimize water usage, and improve water quality by 2050. New York and Upstate Niagara's farmer members will play a critical role in helping the industry achieve that goal.

The overarching industry goal will likely support many of the initiatives set forth in the Agriculture & Forestry section of the Draft Scoping Plan. However, investments in these technologies or adopting more climate friendly practices in a more rapid fashion do not come without a cost. We commend the plan's recognition of this fact. As Programs are developed in the future, we must recognize that a farmers' ability to participate in markets created around this topic or opportunities for improvement must be shared across all dairy farm sizes and types. The cost of technologies can tend to favor farms of size and scale, but farms of all sizes must have opportunities to have a positive impact. This will necessitate the correct set of incentives and market factors be created. Said another way, the goal of sustainability must be achievable and return value to all farming stakeholders.

Several Upstate Niagara members have invested in cutting edge technologies that significantly improve their carbon footprint. In many cases, the credits gained are being sold into the renewable energy sector in other states as New York has consolidated their focus on renewable electricity rather than clean, renewable biogas. At times, New York's current laws and regulations disincentivize farms from making climate-friendly investments. For example, if a farm were to install an anaerobic digester and create renewable electricity, the state's laws will not allow them to reap the full value of the electricity they create due to issues with net-metering.

Additionally, if the State decides to pursue renewable gas credits the mechanism for pricing the renewable natural gas should not disincentivize the use of organic waste in the digester. Including these additional waste streams will maximize the digesters efficiency. Today, when farmers sell their gas credits to California, the

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<sup>1</sup> Capper, J.L., R.A. Cady, D.E. Bauman The environmental impact of dairy production: 1944 compared with 2007. 2009. Journal of Animal Science. 87:6 Pp 2160–2167. <https://doi.org/10.2527/jas.2009-178> 1

state requires the use of 100% manure to maximize returns rather than maximizing the energy created. New York State should also seek to incentivize the use of the gas in the proximity to where it is created to maximize efficiency, rather than utilizing additional energy for transfer into the pipeline.

Upstate Niagara also participates in the National Dairy FARM Program: Farmers Assuring Responsible Management™ created by the National Milk Producers Federation and Dairy Management, Inc. As part of this program, they launched the FARM Environmental Stewardship (ES) platform to provide a comprehensive estimate of GHG emissions and energy use on the dairy farms so that all parties are measuring utilizing the same assumptions and on the same basis of science. The platform also provides a toolbox of resources to help farms measure and improve their dairy's footprint. Upstate Niagara has utilized these tools since 2018 to measure our farms' greenhouse gas footprint through a statistical sampling procedure. Like all FARM programs, the ES platform is crafted to strive for continuous improvement and is subject to revision regularly to adapt the best science and measuring strategies for dairy farms.

### **The Risk of Perpetuating Disadvantaged Communities**

Given Upstate Niagara's role in the food supply chain, we believe that New York State will need to act nimbly to navigate the very real possibility that many of the CLCLP Draft Scoping Plan proposals will result in worsening conditions in disadvantaged communities that the Bill seeks to protect. While regulations are still being finalized to determine the full definition of the term 'disadvantaged community', it's entirely possible that poverty level will be one factor. Increased food costs have an outsized impact on low-income residents and disadvantaged communities.

There are only two ways to recoup the additional costs that will result from the proposed plan, via increases in state taxes or by increases in the costs of goods purchased by New Yorkers. Either way, these increased costs may well serve to perpetuate the status of disadvantaged communities.

### **Conclusion**

Upstate Niagara believes that we can all work together to create meaningful and significant impacts that will result in a cleaner planet for today and for generations to come. Upstate Niagara is committed to doing our part. Our track record vividly demonstrates our efforts and the natural ability of businesses to do the right thing when it is economically and technologically feasible to do so. In the short and long run, economics will drive every investment decision we make. Our Cooperative has to remain strong to continue to make investments and support our farmer members. To that end, we believe that the state will find better results supporting investments in these technologies and monetizing opportunities rather than limiting certain technologies or energy sources and taxing companies and consumers. We urge the State to develop a tangible, realistic plan that prioritizes today's best available technologies. This can occur in



tandem with the proving out of cutting-edge technologies. It's important that the plan have measurable milestones and allow for reassessment and realignment that doesn't result in a constantly evolving regulatory landscape.

Thank you for your consideration of our comments on the Draft Scoping Plan. We hope that you will reach out with any questions or to further engage our Cooperative in Plan development as we are uniquely situated to navigate farm-level concerns in addition to manufacturing.

Presuming that the State of New York can foster a business environment suitable to do so, our farmer-owners and employees will remain committed to providing nutritious dairy products for New Yorker's while ensuring a sustainable food supply for generations to come.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lawrence C. Webster".

Lawrence C. Webster  
Chief Executive Officer