



## King County

# Metropolitan King County Council

### STAFF REPORT

<b>Proposed No.:</b>	2022-0157	<b>Name:</b>	Mike Reed
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### SUBJECT

Agreement for the sale of biofuels, and associated environmental attributes, generated at the South Wastewater Treatment Plant in Renton.

### SUMMARY

In 2016, the Council approved legislation authorizing the sale of biomethane generated from wastewater. Those sales were authorized consistent with the “biofuels” program provided for by the Federal Clean Air Act, which requires processors of petroleum and other transportation fuels to incorporate defined volumes of certain renewable fuels into the transportation fuels that they produce and market. The Act also establishes a market for environmental credits for the generation and utilization of such biofuels, as a means of encouraging and accounting for the required biofuels.

The Council's authorization, which was continued in 2019, is scheduled to expire on July 1, 2022. The Executive has transmitted legislation which would authorize biomethane sales to a new vendor, Blue Source LLC. The proposed contract would allow continued productive utilization of wastewater-derived biomethane, while increasing revenue to support agency programs and services.

The County's Wastewater Treatment Division (WTD) generates biomethane through its wastewater treatment process. Proposed Ordinance 2022-0157 would authorize the execution of contract with Blue Source LLC to sell biomethane generated at the South Treatment Plant in Renton, together with associated environmental attributes, for use as a renewable transportation fuel.

### BACKGROUND

**Federal Energy Independence and Security Act.** The Federal Clean Air Act was amended in 2005 and 2007<sup>1</sup> to, among other things, support the use of renewable fuels in fuels intended for transportation use. In particular, the 2007 amendments, known as the “Energy Independence and Security Act”, required the EPA Administrator to “ensure that transportation fuel...contains at least the applicable volume of renewable fuel,

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<sup>1</sup> 42 USC Chapter 85 II A Sect. 7545 (o) Renewable Fuel Program  
<https://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapII-partA-sec7545.htm>

advanced biofuel, cellulosic biofuel, and biomass-based diesel”; such fuel blend is to “achieve at least a 20 percent reduction in lifecycle greenhouse gas emissions.”

In sum, the legislation created an obligation on the part of gas importers, producers and others to incorporate renewable fuels (“biofuels”) into their marketed stream of fuels, such as petroleum, natural gas and other fuels used in transportation. The use of these biofuels is intended to reduce the volume of greenhouse gas emissions from the transportation sector. Cellulosic biofuels, derived from cellulose, hemicellulose or lignin, were required to have at least 60 percent less lifecycle greenhouse gas emissions than an established baseline. Specific identified volumes to be incorporated into the nation’s transportation fuel supply each year were specified in the law.

As a means of accounting for, as well as incentivizing the generation and use of renewable fuels, the measure included provision for a system of tradeable environmental credits—units of value that would be associated with gallons of renewable fuel produced, in order to provide an incentive to renewable fuel generators to produce and market the fuel.

“The Administrator may issue regulations providing: (i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports additional renewable fuels specified by the Administrator; and (ii) for the use of such credits by the generator, or the transfer of all or a portion of the credits to another person.”<sup>2</sup>

Based on this act, the Environmental Protection Agency (EPA) developed a Renewable Fuels Standard (“RFS”) program that, among other things, features “fuel pathways” for each fuel source and fuel use seeking to qualify under the Act. EPA has identified “biogas from municipal wastewater treatment facility digesters” as a feedstock for an approved Renewable Compressed Natural Gas/Liquefied Natural Gas/Electricity pathway for cellulosic biofuel.

**Biofuels from the WTD South Plant in Renton.** King County’s Wastewater Treatment Division (WTD) processes an average flow of 65 million gallons of wastewater daily. The process generates about 2.63 million therms of methane gas annually.<sup>3</sup>

In 2016, Council approved Ordinance 18363, which authorized an agreement with IGI Resources, for the sale of renewable fuel for the transportation industry and the generation and monetizing of environmental credits authorized by the Energy Independence Security Act. These credits, known as “Renewable Information Numbers” (“RINs”), are generated through the production of renewable fuel such as wastewater-processing biofuel. That agreement with IGI was refined and updated in 2019; at that time, an expiration date of July 1, 2022 was established.<sup>4</sup>

The sale of biomethane to IGI Resources has generated more than \$29,000,000 for King County since early 2017, according to the Executive.

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<sup>2</sup> 42 USC Chapter 85 II A Sect. 7545 (o) 5 (A) Credit Program

<sup>3</sup> [Facts about the King County regional wastewater system - King County](#)

<sup>4</sup> Ordinance 18928

King County has continued to explore opportunities to maximize the county benefit from biomethane sales in preparation for the expiration of the current contract.

## **ANALYSIS**

**Proposed Contract.** On April 19, 2022, the Executive transmitted a new proposed agreement with a vendor known as Blue Source, LLC, as an attachment to Proposed Ordinance 2022-0157. The key benefit of this proposed contract is an increase in the proportional share of the Renewable Information Numbers credits to King County, and thus a larger proportional revenue stream to the county.

The agreement consists of three contract documents: General Terms and Conditions for the Sale and Purchase of Natural Gas; Special Provisions; and Transaction Confirmation.

Key elements of the agreement include the following:

### *General Terms and Conditions.*

- Any gas purchase and sale transaction could be effectuated in an electronic transmission or telephone conversation, with the offer and acceptance constituting agreement of the parties. The confirming party would confirm a telephone transaction by sending the other party a transaction confirmation within three business days. The seller would sell, and the buyer would purchase, the contract quantity of gas for the transaction according to the terms of the contract, meeting the pressure, quality and heat content requirements of the buyer. The buyer would remit the amount due by the Payment Date, or within 10 days after receipt of the invoice.
- The contract may be terminated on 30 days written notice, but would remain in effect until the expiration of the latest delivery period of any transaction.

### *Special Provisions.*

- Each party would waive all right to trial by jury in any action arising out of this contract. The venue for any suit or legal action would be the Superior Court of Washington for King County, or the US District Court for the Western District of Washington.
- Where the negotiations process is prescribed to resolve disputes, the parties would seek to resolve disputes through negotiations between senior executives with authority to settle the controversy; either party would be able to seek interim relieve to preserve its rights or protect its property during the resolution process.

### *Transaction Confirmation.*

- The RIN Share means 90% of the RIN Value for RINs generated in connection with vehicle fuel use outside California, which is allocated to the seller, and 82% of the RIN Value for RINS for fuel use inside California, allocated to the seller.
- The buyer would have an obligation to purchase all biogas and environmental attributes from the project up to 1,300 MMBTU per day. The seller would have an obligation to sell all biogas and environmental attributes produced by the project; seller may retain the right to 10% of all biogas and environmental attributes

produced by the project each month. RIN valuations are based on Cellulosic Biofuel RIN prices determined by 1) the Argus D3 index; 2) revenue realized by the buyer's RIN marketing affiliate, or 3) the greater of 90 percent of the Argus D3 index or the average of daily posted prices for the Argus D-5 Index.

- The Delivery Period begins on July 1, 2022, and continues through June 30, 2025. The contract can be extended for up to two additional one-year terms upon mutual agreement.
- The seller would provide to the buyer all required documentation to certify that the Environmental Attributes sold were from a Cellulosic Biofuel eligible to generate RINS and create a low Carbon Intensity pathway for generation of Low Carbon Fuel Standard (LCFS) Credits, and assist with the certification of RINS, Q-RINS, or LCFS Credits.
- The buyer would be responsible for registering with the EPA and complying with relevant regulatory provisions including pathway registration, RIN generation, and progress and compliance reporting.
- The buyer would be responsible for registering with the California Air Resources Board (CARB) and complying with the relevant regulatory provisions of the LCFS. The buyer would determine the number of LCFS Credits eligible to be generated and would generate LCFS Credits associated with Environmental Attributes deliveries under this Transaction Confirmation; the seller has no rights to LCFS Credits.
- In the event of a breach in the obligation to deliver or receive biogas that results in an inability or failure to generate RINs or LCFS Credits, the amount due to the non-breaching party in connections with RINs and LCFS Credits would be calculated as provided in the Transaction Confirmation.
- If the implementation of new laws or changes to existing laws or administration or interpretation of laws occurs and the affected party is unable to avoid the inability to perform, the affected party would be entitled to terminate this transaction confirmation subject to the stated conditions.

The transmitted legislation is accompanied by a Fiscal Note (Attachment 4), which anticipates revenue of \$11,456,376 per biennium for the sale of biofuel and RINs as authorized by this measure.

King County's authorization of biomethane sales for transportation fuel purposes has resulted in increased revenue to the county and contribution of renewable biofuels to the nation's transportation fuel supply. The current proposal would carry forward and extend these environmental benefits, while increasing the revenue share for King County.

## **AMENDMENT**

Council's legal counsel and counsel from the Prosecuting Attorney's Office have reviewed the contract documents as transmitted and have consulted with the legal counsel from Blue Source LLC regarding clarifications to those contract documents. These revisions are incorporated into revised contract documents reflecting the lawyers' agreed changes as Attachment A Revised May 2022; agreed changes are summarized below.

### **General Terms and Conditions Clarifications.**

- Specifies the contract effective date to be the date of the final signature.
- Deletes references to the North American Energy Standards Board (“NAESB”) as the publisher of the General Terms and Conditions (“GTCs”). Since the proposed GTCs are not the standard NASB form, the parties agreed to reduce the number of interrelated portions of the overall contract by eliminating the Special Provisions document and incorporating the text into the GTCs. One additional clarification to the section 11.8 makes clear that if a force majeure event, that prevents the delivery or receipt of gas, continues uninterrupted for more than 180 days, either party may terminate the contract with no liability to the other party because of the force majeure event. Deletes the Special Provisions and incorporates them into the GTCs .

### **Transaction Confirmation Clarifications.**

- The definition of “D3 RIN”, described as a D3 Cellulosic Biofuel RIN, is clarified to note that it is “as established by the Federal Renewable Fuels Program”.
- The RIN Share provision that allows for the deduction of direct expenses including the portion of cash revenue from the sale of D3 RINs associated with Environmental Attributes delivered by the seller is revised to strike the inclusion of revenues from the sale of D3 RINs tied to such Environmental Attributes.
- The LCFS Credit Value provision that allows for the deduction of expenses including the portion of cash revenue from the sale of LCFS Credits associated with Environmental Attributes delivered by the seller is revised to strike the inclusion of revenues from the sale of LCFS Credits tied to such Environmental Attributes.
- Clarifies that no early termination damage calculation would take place for a termination under Force Majeure provisions.

### **ATTACHMENTS**

1. Transmittal Letter
2. Fiscal Note

### **INVITED**

- David Broustis, King County Energy Manager, Department of Natural Resources and Parks

**King County****Dow Constantine**

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March 25, 2022

The Honorable Claudia Balducci  
Chair, King County Council  
Room 1200  
C O U R T H O U S E

Dear Councilmember Balducci:

This letter transmits a proposed Ordinance that, if enacted, would authorize the Executive to execute a Biomethane Purchase and Sale Agreement (contract) between BlueSource, LLC (Bluesource), and the Wastewater Treatment Division (WTD) of the Department of Natural Resources and Parks (DNRP). Approval of this proposed legislation would allow WTD to continue to sell and monetize renewable natural gas and related environmental attributes originating from the South Wastewater Treatment Plant (South Plant), thereby supporting the local clean energy economy.

Biomethane is purified biogas, which meets or exceeds all natural gas quality standards. It is interchangeable with fossil-fuel-derived natural gas. King County has produced renewable biomethane energy at the South Plant, injecting the biomethane into the nearby natural gas pipeline for more than 30 years, making it the longest operating wastewater Renewable Natural Gas-to-pipeline facility in the country.

In 2016, legislation was approved providing for biomethane produced at South Plant to be sold to a third party. Doing so enabled King County to realize significantly more revenue than it previously had earned from the sale of South Plant biomethane to Puget Sound Energy. This proposed legislation is a replacement of the existing contract, which expires on June 30, 2022. The proposed legislation will create a public benefit by continuing to support the use of biofuels for transportation purposes, while increasing the revenue received by the County.

The proposed legislation would allow King County to continue to tap into the economic value of environmental attributes for renewable transportation fuels, known as renewable identification numbers (RINs), through the federal renewable fuel standard (RFS), and to possibly participate in Washington State's upcoming low carbon fuel standard program. Under the existing contract, biomethane has generated more than \$29,000,000 in revenue since the beginning of 2017. This proposed contract builds on the existing contract with a new contract partner, resulting in a higher percentage of the environmental attribute value being provided to King County.

The Honorable Claudia Balducci

March 25, 2022

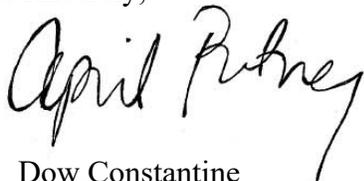
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The proposed legislation furthers the efficient, accountable regional and local government goal of the King County Strategic Plan. The legislation also furthers the Strategic Climate Action Plan by supporting the increased production of renewable natural gas.

Thank you for your consideration of this proposed Ordinance. This important proposed legislation helps King County build on our sustainability practices to ensure resources created by its treatment processes are directed towards beneficial uses for the County and our communities.

If your staff have any questions, please contact Sharman Herrin, Government Relations Administrator of the Wastewater Treatment Division in the Department of Natural Resources and Parks, at 206-477-5376.

Sincerely,

 for

Dow Constantine  
King County Executive

Enclosure

cc: King County Councilmembers  
    ATTN: Janine Weihe, Acting Chief of Staff  
        Melani Pedroza, Clerk of the Council  
Shannon Braddock, Chief of Staff, Office of the Executive  
Karan Gill, Deputy Chief of Staff, Office of the Executive  
Mina Hashemi, Council Relations Director, Office of the Executive  
Dwight Dively, Director, Office of Performance, Strategy and Budget  
Christie True, Director, Department of Natural Resources and Parks (DNRP)  
Kamuron Gurol, Division Director, Wastewater Treatment Division (WTD), DNRP  
Sharman Herrin, Government Relations Administrator, WTD, DNRP

2021/2022 FISCAL NOTE

Ordinance/Motion: 2022-XXXX
Title: Contract for Sale of South Treatment Plant Biomethane and Related Environmental Attributes
Affected Agency and/or Agencies: Wastewater Treatment Division, Department of Natural Resources and Parks
Note Prepared By: David Broustis
Date Prepared: 2/23/2022
Note Reviewed By:
Date Reviewed:

**Description of request:**

Revenue estimates from the sale of biogas and environmental attributes.
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**Revenue to:**

Agency	Fund Code	Revenue Source	2021/2022	2023/2024	2025/2026
DNRP: Wastewater Treatment Division			2,863,594	11,456,376	11,456,376
TOTAL			2,863,594	11,456,376	11,456,376

**Expenditures from:**

Agency	Fund Code	Department	2021/2022	2023/2024	2025/2026
TOTAL			0	0	0

**Expenditures by Categories**

	2021/2022	2023/2024	2025/2026
TOTAL	0	0	0

**Does this legislation require a budget supplemental? No.**

Notes and Assumptions:

- Biogas and environmental attribute generation and revenue based on 2019-2022 average: 268,722 MMBTU of pipeline-injected gas per year
- Sales price of \$21.31/MMBTU
- 1.1727 Renewable Identification Numbers (RINs) generated per therm of gas injected into the pipeline
- Revenue calculated at 90% of total RIN value to King County vs. 79.9% under the current contract
- Future market conditions and revenue stream are uncertain and may be volatile based on natural gas and RIN prices.