INFORMAL COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS, DIRECT ACCESS CUSTOMER COALITION, AND JOINT COMMUNITY CHOICE AGGREGATORS ON ENERGY DIVISION'S BIOMAT PROGRAM REVIEW AND PROPOSAL
December 7, 2018
R.18-07-003

The Alliance for Retail Energy Markets[1] ("AReM"), Direct Access Customer Coalition[2] ("DACC"), and Joint CCAs[3] ("DA/CCA Parties") provide these informal comments on the *Bioenergy Market Adjusting Tariff (BioMAT) Program Review and Staff Proposal* ("Report") issued by the California Public Utilities Commission's ("Commission") Energy Division staff ("Staff") on October 30, 2018. The DA/CCA Parties address Staff's proposal to revise the current method of cost recovery for the BioMAT program.

BACKGROUND AND INTRODUCTION

The Commission adopted the BioMAT program in response to Senate Bill ("SB") 1122,[4] which in part required the investor-owned utilities ("IOUs") to procure electricity from certain types of bioenergy facilities under standard contract terms and conditions.[5] The IOUs' bundled customers pay the costs of the electricity procured by the IOUs through the BioMAT program and receive all associated benefits of such procurement.

[1] AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members respect to the issues addressed herein.
[2] DACC is a regulatory alliance of educational, commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.
[3] The Joint CCAs Include: California Choice Energy Authority, Marin Clean Energy, Peninsula Clean Energy Authority, Pioneer Community Energy and Sonoma Clean Power Authority.
[4] Stats. 2012, Ch. 612.
[5] Public Utilities Code Section 399.20(f)(2). All further statutory references are to the Public Utilities Code, unless otherwise stated.

Under the Commission's Power Charge Indifference Adjustment ("PCIA") customers that departed bundled service ***after*** an IOU's execution of a BioMAT agreement pay the above-market portion of the BioMAT agreement through the PCIA. It is only customers that departed bundled service ***prior to*** an IOU's execution of a BioMAT agreement that have avoided cost-responsibility for the BioMAT agreement. The Staff's proposal would change this long-established cost-recovery paradigm.

Staff proposes to revise the method of cost recovery to require ***all*** customers to pay for the BioMAT resources procured by the IOUs through a non-bypassable charge ("NBC"). The Report provides scant justification or explanation for this recommended change in Commission policy. In brief, Staff argues that an NBC is appropriate, because the BioMAT program "results in societal benefits" for all customers. Staff provides no details on how the NBC would be structured or applied. In addition, Staff is silent on whether it proposes to allocate the benefits associated with the IOUs' procurement to all customers, such as credits toward meeting Renewable Portfolio Standard ("RPS") targets and Resource Adequacy ("RA") requirements. Currently, those benefits accrue solely to the IOUs and their bundled customers. Aside from these practical deficiencies, there are statutory and recent regulatory considerations that strongly weigh against universal application of BioMAT costs to all customers.

As discussed in detail below, the DA/CCA Parties strongly oppose revising the current cost recovery method. Moreover, the DA/CCA Parties are dismayed that they have had to expend resources to address this issue when the Commission has previously considered and rejected similar cost-sharing mechanisms for the BioMAT program at

least three times -- the most recent only two months ago.[6] Staff has completely failed to justify deviation from Commission precedent.

THE CURRENT COST RECOVERY SHOULD REMAIN IN PLACE

1. The Commission has previously rejected cost-sharing proposals for the BioMAT program.

The Commission determined in Decision ("D.") 14-12-081 in the RPS Rulemaking ("R.") 11-05-005 that the costs of the BioMAT program were to be recovered solely from the IOUs' bundled customers.[7] The Commission made this determination after considering cost-sharing proposals by several parties, including one by San Diego Gas & Electric Company ("SDG&E") for adoption of an NBC similar to the cost allocation mechanism ("CAM").[8] The Commission concluded as follows:

> These proposals all miss the mark. They overstate the significance of the SB 1122 procurement obligations in the context of the IOUs' overall RPS procurement obligations, much less in the context of IOUs' total procurement requirements to serve their customers. Each IOU will receive cost recovery for its bioenergy FiT procurement expenses, just as it does now for ReMAT procurement expenses. If these expenses threaten an IOU's ability to meet its overall RPS procurement obligations within any cost containment mechanisms that may be established, the IOU could address that threat through the cost containment process. **There is no good reason to create a complex cost allocation sub-process within the general RPS procurement and expenditure limitation processes.**[9]

The Report makes no attempt to resolve this "complex cost allocation sub-process" identified as an issue by the Commission in D.14-12-081.

In the subsequent RPS rulemaking R.15-02-020, the Commission again

---

[6] D.18-10-019. See discussion below.
[7] D.14-12-081, p. 63.
[8] *San Diego Gas & Electric Company Comments in Response to Administrative Law Judge's Ruling Seeking Comments on Staff Proposal for Implementation of Senate Bill 1122 and Accepting Consultant Report Into the Record,* R.11-05-005, December 20, 2013, pp. 10-11.
[9] D.14-12-081, p. 63. Emphasis added.

considered cost-sharing proposals for the IOUs' BioMAT program and again rejected those proposals in D.16-10-025:

> The IOUs propose that "above market costs" of the changes to BioMAT to implement the Emergency Proclamation should be recovered from all customers in the IOU service territories through the Cost Allocation Mechanism (CAM). This idea is opposed by the DA/CCA parties, who advance several arguments about why CAM is not an appropriate method to allocate these costs.
>
> **It is, however, unnecessary to address the details of the CAM proposal on the merits, because the premise of the IOUs' proposal is not consistent with the basic structure of BioMAT.**[10]

Staff's recommended changes to the BioMAT program contained in the Report do not revise its "basic structure" of the BioMAT program. Moreover, Staff provides no explanation for how it proposes to craft a BioMAT NBC and how that proposed NBC could now be made "consistent with the basic structure of BioMAT," as required by D.16-10-025. Accordingly, Commission precedent should stand and Staff should remove its recommendation to modify cost recovery of the BioMAT program.

Finally, in the context of the Commission's recent reconsideration of the PCIA, the IOUs proposed to have BioMAT program costs, and other so-called "mandated" program costs recovered through a separate NBC from all customers. The Commission again rejected this proposal. Specifically, in D.18-10-019, the Commission stated as follows: "We are not persuaded to render these broad swathes of procurement non-vintaged here. Cost recovery for these and potential future procurement programs is best addressed in proceedings approving such procurement."[11] As such, the Commission determined, yet again, that the current cost-recovery construct may not be disturbed for previously approved BioMAT agreements.

---

[10] D.16-10-025, pp. 27-28; emphasis added.
[11] D.18-10-019, p. 153.

2. **SB 1122 allocated benefits solely to the IOUs.**

As noted above, the BioMAT tariff was created in response to SB 1122. SB 1122 provides significant details on the how the tariff must be structured and applied, but is silent on cost recovery. However, SB 1122 specifies that the benefits of the IOUs' procurement accrue solely to the IOUs.[12] Section 399.20(h) specifies that each kWh procured "shall count" toward the ***IOUs'*** RPS targets and Section 399.20(i) specifies that the capacity "shall count" toward the ***IOUs'*** RA requirements. Consistent with the Commission's long-standing cost allocation policy, those receiving the benefits should pay for the associated costs that gave rise to those benefits, which in the case of BioMAT program are the IOUs and their bundled customers only.

3. **Staff's proposal violates other statutes and Commission cost allocation policy.**

As noted above, Staff's proposal would violate Commission precedent by requiring customers of ESPs and CCAs to pay the costs of the BioMAT program, while receiving no benefits from that payment. Moreover, allocation of the benefits to ESPs and CCAs is prohibited by statute, which requires that the benefits accrue solely to the IOUs. Accordingly, Staff should remove its recommendation to modify cost recovery of the BioMAT program.

There are other statutory considerations that should be weighed in this context. SB 790 was adopted in 2011,[13] and provides guidance and clarification with respect to generation-related activities for CCAs. Section 366.2(a)(5), added by SB 790, states that ("[CCAs] shall be solely responsible for all generation procurement activities on behalf of the [CCA's] customers, except where other generation procurement arrangements are

[12] Section 399.20(h) and (i).
[13] Stats. 2011, ch. 599.

expressly authorized by statute." In other words, modifications of the BioMAT program, including cost-allocation programs, that implicate a CCA's "generation procurement arrangement" must come from the Legislature, not from Staff.

And, the Legislature knows how to allocate such costs if it so chooses. For example, in the context of SB 859,[14] which is discussed in passing in the Report,[15] the Legislature expressly directed the Commission to "ensure that the costs of any contract procured by an electrical corporation to satisfy the requirements of this section are recoverable ***from all customers*** on a nonbypassable basis."[16] The Commission is currently undertaking this task in Application 16-11-005 (and a proposed decision was issued in this proceeding on November 8, 2018 ("Tree Mortality PD")). Under the Tree Mortality PD, all customers, including customers served by ESPs and CCAs, would bear the net above-market cost of tree mortality-related power purchase agreements. As such, the Legislature knows how to direct that cost-recovery occur from ***all*** customers when it wishes to do so. In the context of the BioMAT program, the Legislature has not chosen to pursue universal cost-recovery, and the Staff should not contravene the Legislature's choice.

CONCLUSION AND RECOMMENDATION

The Commission adopted the BioMAT program in response to SB 1122 and determined that costs would be recovered solely from bundled customers in D.14-12-081. Staff proposes to revise this policy and require that the costs of the BioMAT program be recovered from all customers through an NBC. However, the Commission has repeatedly

[14] Stats. 2016, ch. 368.
[15] *See, e.g.,* Report at 25.
[16] Section 399.20.3(f); emphasis added (added by SB 859).

considered and rejected such cost recovery from ESP and CCA customers in previous decisions and the Report fails to address and resolve the issues with cost sharing identified in those previous decisions. Moreover, SB 1122 specifies that the benefits of the IOUs' procurement accrue solely to the IOUs. Recovering program costs from customers who receive none of the associated benefits is unfair, anti-competitive and inconsistent with Commission precedent and statutory directives. For these reasons and as detailed herein, the DA/CCA Parties respectfully request that the Staff remove its recommendation to modify cost recovery of the BioMAT program.