BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 18-07-003 (Filed July 12, 2018)

REPLY COMMENTS OF SMALL BUSINESS UTILITY ADVOCATES ON BIOENERGY MARKET ADJUSTING TARIFF (BIOMAT) PROGRAM REVIEW AND STAFF PROPOSAL

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I. INTRODUCTION

On October 30, 2018, Energy Division served the "Bioenergy Market Adjusting Tariff ("BioMat") Program Review and Staff Proposal" ("Staff Proposal") on the service list of this proceeding. On December 7, 2018, Small Business Utility Advocates ("SBUA") submitted opening comments on the Staff Proposal. Pursuant to the Energy Division email extending the time for reply comments to January 4, 2019, SBUA submits the following reply comments.

- The Commission should reject the proposal to implement a renewable auction mechanism.
- Applicants should have 30 days, not 5, to address deficiencies in a contract, commencing with the date the IOUs provide notification of the defects.
- Program eligibility should be extended to incremental generation.
- The Commission should reject the proposal to set a 24-month window when sellers cannot reenter the program queue after they terminate a contract.
- The Commission should clarify the distinction between Category 1 and Category 2 projects and the situations when directed biogas is eligible for the BioMAT program.

- High Hazard Zone fuel for Category 3 projects need to account for the periodic nature of the High Hazard Zone designation and impact this may have on development of additional facilities.
- Costs should be allocated to all customers through non-bypassable charges.
- Individual projects should not have to demonstrate lifecycle greenhouse gas emissions benefits.
- The Commission should adopt a Feed-in-Tariff because this will simply project development.
- If the Commission does not adopt a Feed-in-Tariff, then it should change the market-depth requirement from five to three unaffiliated participants.
- The Commission should extend the program, grant a 12-month extension to delayed projects, and set a 30-day deadline for contract execution.

II. DISCUSSION

A. Joint IOUs Comments

Comments submitted by the Investor-Owned Utilities ("IOUs") seem designed primarily to increase the burdens on third parties proposing BioMAT projects. Those burdens would be especially difficult for small businesses developing BioMAT projects, or small developers. The IOUs do make a few helpful suggestions, which SBUA also addresses below.

i. RAM (renewable auction mechanism)

For one thing, the IOUs want to transition to a renewable auction mechanism (RAM), which would be much more difficult for small businesses to navigate than the current system. The IOUs are willing to assert unconvincing arguments in support for this position, such as:

> Currently, the IOUs conduct a deep dive review of all applications as they come in. This has led to a continual application review process, necessitating concurrent review of applications in different stages. This causes inefficiencies, and the IOUs can project scenarios where the process would become even more inefficient if activity in the program increases.[1]

This argument—that simultaneously reviewing all the applications in tandem, under a single deadline, would be easier for the IOUs than spreading out the reviews through the year— is without support. The IOUs have failed to demonstrate how the current process of reviewing applications on a rolling-basis, which spreads out application review throughout the year, is more burdensome than reviewing all applications in tandem under a single deadline.

The IOUs' other arguments in support of a RAM are likewise unconvincing. The IOUs primarily support transitioning to a RAM because they believe that this mechanism promotes competition and leads to administrative efficiencies.[2] According to the IOUs, a RAM proposal will provide for a competitive solicitation process, provide more certainty in the IOU resource allocation planning process, and provide a more efficient process when compared to the current process of reviewing applications as they are submitted.[3] However, the Staff Proposal indicates that the RAM proposal "could result in uncompetitive solicitations if there are a low number of bidders."[4] The IOUs claim the RAM would enable program participants to "offer a lower price as efficiencies in the projects are realized,"[5] but, if, as contemplated by the Staff Proposal, a RAM proposal results in uncompetitive solicitations, then program participants would have no incentive to offer a lower price even as efficiencies materialize.

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[1] Joint IOUs Comments, at 3.
[2] *Id.* at 2.
[3] *Id.* at 2-3.
[4] Staff Proposal, at 15.
[5] Joint IOUs Comments, at 2.

The RAM proposal also would reduce price certainty,[6] so it is unclear how the IOU planning process would benefit. The possible reductions in competition and price certainty would be particularly burdensome for small businesses who do not have the resources to overcome these barriers. Therefore, the Commission should not implement a RAM proposal.

ii. Five-day deadline for providing additional information

The IOUs propose that program participants have only five days to provide all information to be cured after an IOU notifies the participant about deficiencies in the contract.[7] Though SBUA agrees that expediency in contract execution is desirable, implementing such a narrow window of five days to cure defects is infeasible and unnecessarily burdensome on program participants, particularly small businesses who tend to have a lack of redundant staff and who would be burdened by such a narrow window. Instead of implementing a five-day deadline, SBUA recommends implementing a 30-day deadline by which applicants need to provide all necessary information, after the IOU notifies the applicant about the deficiencies.

iii. Incremental generation

The IOUs raise several concerns with extending BioMAT eligibility to incremental generation from existing sources that can be addressed in a manner that will benefit the BioMAT program. First, the IOUs indicate that extending program eligibility to incremental generation from existing units adds "unnecessary complexity" to the program as a whole.[8] According to the IOUs, if incremental generation is allowed to count for the program, then "the project would have to be interconnected and metered separately."[9] But, this problem can be addressed by

[6] Staff Proposal, at 15.
[7] Joint IOUs Comments, at 7 ("the Joint IOUs propose that all information to be cured by a program participant must be provided within five business days of being notified by the IOU about deficiencies").
[8] *Id.* at 8.
[9] *Id.*

requiring an expanded project to accept either the pricing for the original project or the pricing available for the expansion, whichever is lower. An agreement to accept the lower of the two prices would eliminate the need to meter the original and the expansion separately.

Second, the IOUs indicate that extending eligibility to incremental generation "could result in a windfall for developers executing PPAs with pricing contemplated for new facilities."[10] However, given that the BioMAT program has had great difficulty attracting sufficient capacity, the IOUs' concern seems misplaced. It is not clear how much additional capacity will be available from incremental generation, but any such generation that is offered may help reduce the BioMAT prices under the current process.

Lastly, the IOUs raise concerns regarding the impact on customer bills. According to the IOUs, Bio-MAT eligible facilities could "break up into multiple incremental projects in order to participate in a higher priced program, resulting in a windfall for developers to the detriment of IOU customers."[11] While SBUA appreciates the IOUs' concerns with their customers' bills, this problem can be easily solved by limiting the total capacity of the project to the 5 MW limit proposed by Staff, or 3 MW, if the Public Advocates Office is correct that the 3 MW limit on contracts is imposed by statute.[12]

iv. Reentering the program if a contract is terminated

The IOUs propose setting a 24-month window when sellers who terminate a BioMAT contract cannot reenter the program queue.[13] The 24-month window, or any other lengthy timeframe, seems to be an unnecessary restriction. A contract may be terminated for any number of reasons, other than gaming pricing. The concern raised by the IOUs can be addressed by

[10] *Id.* at 9.
[11] *Id.*
[12] Public Advocates Comments, fn. 17, at 5.
[13] Joint IOUs Comments, at 13.

specifying that a project terminating a contract and then reapplying will be eligible for either the original contract price or the currently available price, whichever is lower.

v. Clarifications needed from the Commission

SBUA agrees with the IOUs that the Commission should clarify the definition of Category 1 and 2 projects. First, the distinction between Category 1 and Category 2 causes confusion.[14] The Commission should provide clarification for Category 2 projects and indicate these projects can use feedstocks that could be used to produce biogas, and that the difference between Category 1 and Category 2 projects using those feedstocks is that Category 1 involves anaerobic gasification, while Category 2 involves direct or indirect combustion. Second, the Commission should clarify the definition for "agricultural premise."[15] SBUA suggests that the definition refer to land zoned for agriculture or a property adjacent to agricultural land.

SBUA also agrees with the IOUs that the Commission should clarify the situations when "directed biogas" should be eligible for the BioMAT program.[16] The purpose of the program is to reduce GHG emissions and burning biogas that is already in the pipeline to serve general gas loads does not reduce emissions, since it will be replaced by fossil gas. Therefore, the Commission should limit eligibility of "directed biogas" for the BioMAT program to situations when the developer can demonstrate that production of the biogas is only economic if eligible for BioMAT payments.

B. High Hazard Zone (HHZ) Requirement

SBUA agrees with the Staff Proposal, IOUs, and Public Advocates Office that use of additional high hazard zone ("HHZ") fuel in Category 3 projects would be desirable.[17]

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[14] Staff Proposal, at 12.
[15] *Id.*
[16] *Id.* at 12-13.
[17] Staff Proposal, at 9-10; Joint IOUs Comments, at 9; Public Advocates Comments, at 12-13.

Unfortunately, the requirement that projects use 80% HHZ fuel may preclude the development of other facilities, and further slow the development of BioMAT Category 3 generation. The PUC must balance the desire to safely burn HHZ fuel and the desire to promote development of more BioMAT capacity.

Locational requirements would further complicate the development of Category 3 projects. If the objective is to burn HHZ fuel, requirements or incentives should concentrate on that objective, rather than adding additional constraints on project location. If a developer finds a site that is slightly farther from the HHZ, but that has other advantages, preventing the development of that site would not be desirable. In addition, SBUA agrees with Placer County Air Pollution Control District that "[w]ildfires happen in every corner of California" and the "HHZ fuel designation is temporary and updated periodically, so is not a fixed definition (or map) that project developers can rely on over the 20-year life of a BioMAT contract."[18] The periodic nature of HHZ designation further undermines the basis for the HHZ location and fuel proposals.

C. Cost Allocation

SBUA supports the proposed recovery of the net cost of the BioMAT program from all retail customers served by the utility's delivery system. Most parties who comment on this issue support the use of non-bypassable charges ("NBC"), other than the DA/CCA parties.

Since the purpose of the BioMAT program is primarily to reduce the global-warming effects of fossil-fuel combustion, the costs should be allocated to all customers on an equal cents/kWh basis. For some reason, the Commission's decision on allocation of the net costs of the Tree Mortality program requires the IOUs to design their TM NBC rate by "using the then-

[18] Placer County Air Pollution Control District, at 3.

current 12-month coincident peak demand basis for revenue allocation that is used for the cost allocation mechanism (CAM)."[19] Rather than using the 12-month coincident charges used in CAM, the Commission should allocate costs on an equal cents/kWh basis to bundled and unbundled customers alike.[20] As indicated in the Staff Proposal, this approach would promote equity because all customers would share the costs in addition to the benefits of the BioMAT program.

Allocation of Renewable Energy Credits ("RECs") to all Load Serving Entities ("LSEs") could also be equitable,[21] but this may be more complicated as it would require calculating proportionate shares between LSEs to the RECs.

D. Demonstrating Lifecycle GHG Benefits

Requiring individual project proponents to demonstrate the greenhouse gas ("GHG") emissions benefits, especially in the open-ended form discussed by the IOUs, would impose significant burdens and risks on small businesses attempting to develop BioMAT projects and may preclude any further development (which appears to be the preference of the Environmental Groups). If the Commission agrees with the Environmental Groups, that some types of BioMAT projects increase GHG emissions, it should take on the responsibility of overseeing the studies necessary to resolve this issue, as advocated by the Environmental Groups.[22] While the analysis laid out by the Environmental Groups is generally appropriate, including the need for the

[19] D.18-12-003, at 21.
[20] Staff Proposal, at 18.
[21] Dairy Cares Comments, at 8.
[22] The Environmental Groups suggest that the emissions of the BioMAT categories be compared to "the possible alternative fates of the biogenic feedstock material if not used for energy generation (e.g., if used as a woody product or simply left to decompose in the forest)." That perspective is reasonable, so long as the comparison reflects the mix of likely alternatives, including wildfire and actual storage practices for agricultural wastes. As the Environmental Groups argue, "bioenergy GHG emissions must be compared to emissions that otherwise would have occurred if the material were not used as fuel." However, SBUA does not understand the EG suggestion that "burning or on-site decomposition" are entirely counterfactual outcomes. Environmental Groups Comments, at 15-16.

Commission consultant to review assumed emission rates, it is not clear how their broad category of "leakage" can be usefully analyzed.[23] Any type of BioMAT project, which may be a subset of the categories currently used for program pricing, that the Commission finds does not reduce GHG emissions should be excluded from future contracting.

Determining greenhouse gas emissions, including all indirect effects, is a complicated and controversial process. It would not be realistic to expect each small project to conduct and defend those analyses. The Commission-led process described by the Environmental Groups would be much more appropriate.

E. Feed-in Tariffs (FIT)

The IOUs oppose the setting of feed-in tariffs ("FIT"), for fear that the rates will be too high.[24] Public Advocates Office opposes the setting of feed-in tariffs, for fear that the IOUs will procure too much renewable capacity. [25]

SBUA believes that a FIT would simplify development of BioMAT projects, especially for small businesses. Concerns about inaccurate rates can be addressed by providing for periodic review of the FIT prices based on time, every two or three years, or on the number or capacity of projects in the category under contract, such as six projects and 10 MW.

The Public Advocates Office objection that FITs will result in procurement of massive amounts of excessive renewables is difficult to reconcile with the State's commitment to 100%

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[23] Some of the Environmental Groups' criticisms of the CalFire GHG calculator are also difficult to fathom. The Environmental Groups criticize CalFire's decision to compute net reductions, rather than net emissions, even though those values are simply mathematical inverses of one another and would lead to the same conclusions. The same is true for whether the system emissions are added to the net reduction, subtracted from the net emissions, or compared to the net emissions. The Environmental Groups are correct that the avoided fossil emissions should reflect any portion of the displaced energy that would have come from renewable resources, but that calculation should use marginal emissions, not the average that the Environmental Groups suggests. The Environmental Groups is correct that any increase in carbon sequestration in wood products should be limited to the increment resulting from the biomass project, which may be negative. *Id*. at 18-21.

[24] Joint IOUs Comments, at 5.

[25] Public Advocates Comments, at 6.

renewable generation. The State has yet to reach its goal of 100% renewable generation and until that occurs, program aspects that encourage renewable procurement should be favored. In addition, the Commission may factor in what level of tariff is needed to avoid undesirable results including over-procurement if this is in fact undesirable.

F. Market Depth

Several parties support the Staff Proposal's proposed change in the market-depth requirement from five unaffiliated participants to three,[26] while the Public Advocates Office opposes the change. If the CPUC adopts the FIT approach, as SBUA advocates, this parameter is no longer critical to rate-setting.

However, if the pricing structure remains in largely the current form, SBUA supports the transition to the three-participant target. To improve the prospects of participation by small businesses and reduce market manipulation, SBUA also supports expansion of the definition of affiliated projects, to count family members and interlocking boards as affiliated, as advocated by the Public Advocates Office.[27]

G. Annual Energy Output Flexibility

SBUA agrees with Agricultural Energy Consumers Association ("AECA"), Dairy Cares, and Maas Energy on the benefit of allowing greater flexibility in annual output, reflecting variation in feedstock availability and other opportunities for using biogas and on-site generation.

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[26] Public Advocates Comments, at 1; California Biomass Energy Alliance Comments, at 1; Bioenergy Association of California Comments, at 7.
[27] Public Advocates Comments, at 8.

F. Extension of Program and Delayed Projects and Deadline for Contract Execution

SBUA also joins the various parties who propose the extension of the program, 12-month extension of delayed projects, and the 30-day deadline for contract execution.

III. CONCLUSION

SBUA thanks the Commission staff for the time dedicated to this matter and looks forward to continuing to engage with the other parties to this proceeding.

Dated: January 4, 2019

Respectfully Submitted,

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