January 4, 2019

Mr. James McGarry
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: <u>Reply Comments on BioMAT Staff Proposal</u>

Dear Mr. McGarry:

The Bioenergy Association of California (BAC) submits these Reply Comments on the Commission's BioMAT Program Review and Staff Proposal. BAC's Reply Comments concern three general areas:

- BAC agrees with the state and federal agencies' opening comments that the BioMAT program is critical to achieve the state's climate change, air quality and wildfire reduction policies.
- BAC agrees with the state agencies and other parties that urge the Commission to focus on changes that increase BioMAT program participation and accelerate small-scale bioenergy development.
- BAC agrees with parties' comments in support of deadlines and other changes that would increase certainty and accelerate program implementation.
- BAC disagrees with parties that support changes to the pricing mechanism or eligibility requirements that would make it harder for the BioMAT to meet the requirements of SB 1122 and other important state policies.

BAC's specific reply comments are below.

I. BAC AGREES WITH PUBLIC AGENCY COMMENTS THAT THE BIOMAT IS NEEDED TO MEET IMPORTANT STATE POLICIES.

BAC agrees with the opening comments of the state, federal and local public agencies, all of whom agree that the BioMAT program is important to meet multiple state policies. As the state's Sierra Nevada Conservancy noted in its opening comments:

> "The BioMAT program is an important mechanism to implement statewide policies regarding climate, waste diversion, and public safety. It is likewise critical in meeting the state's forest health goals as identified in the Governor's Executive Order, the Forest Carbon Plan and legislation passed this year. In the 6 years since the passage of SB 1122, the need to restore forest health and protect against catastrophic wildfire has only become more urgent and climate change projections offer dire consequences if we fail to act appropriately. Increasing wood and biomass processing infrastructure is a critical component of restoring and protecting forest and watershed health."[1]

Similarly, the California Department of Food and Agriculture notes in its opening comments that the BioMAT is an important program to help meet the dairy methane reduction requirements of SB 1383 (Lara, 2016). CDFA urges the Commission, therefore, to extend the program and only adopt those changes that simplify procurement and expand program participation.[2]

The United States Forest Service, which manages most of California's forest lands and the watersheds that produce most of the state's water and hydropower supplies, and the Placer County Air Pollution Control District also noted in their opening comments that the BioMAT program is important to reduce wildfire and air pollution from burning of forest waste, provide baseload renewable energy, and create jobs in rural regions.[3]

II. BAC AGREES WITH MOST PARTIES THAT CHANGES SHOULD FOCUS ON SIMPLIFYING AND ACCELERATING BIOMAT PROGRAM PARTICIPATION.

BAC agrees with the Sierra Nevada Conservancy, CDFA and many other parties that changes to the BioMAT program should focus on simplifying the program and accelerating project development. As the Sierra Nevada Conservancy, CDFA, Generate Capital and other parties commented, changes to the BioMAT should focus on increasing certainty, simplifying procurement, and accelerating the execution of

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[1] Sierra Nevada Conservancy Opening Comments on BioMAT Staff Proposal, at page 1.

[2] California Department of Food and Agriculture opening comments, at page 1.

[3] United States Forest Service Opening Comments, at page 1; Placer County Air Pollution Control District opening comments at page 1.

Power Purchase Agreements.[4] BAC agrees with the Small Business Utilities Advocates and Agricultural Energy Consumers Association that changes should focus on simplifying the pricing mechanism and making it more predictable.[5]

Given the low program participation to date, the Commission should only consider changes to the program that accelerate and increase participation in the BioMAT.

III. MOST OF THE PROPOSED CHANGES TO THE PRICING MECHANISM WOULD STIFLE, RATHER THAN INCREASE, BIOMAT PARTICIPATION.

BAC agrees with the Sierra Nevada Conservancy that the Commission has been very focused on reducing rate-payer costs when the fundamental problem is the need to increase and accelerate program participation. SB 1122 was enacted six years ago and still only a small fraction of the required megawatts have been procured at this point. To the extent that the Commission is focused on the pricing mechanism, it should be – as all the public agencies urged in their opening comments – to simplify the pricing mechanism and provide greater certainty, which will encourage more rapid implementation of SB 1122.

Unfortunately, many of the proposed changes in the Staff Proposal would increase uncertainty and, therefore, slow down program implementation, instead simplifying and accelerating program participation as the Staff Proposal states the goal is of the proposed changes.

A. Parties Are Correct that No Evidence Supports Moving to a RAM Style Program – In Fact, Quite the Opposite.

BAC agrees with the dairy parties, fuel cell companies, Small Business Utility Advocates and Public Advocates that moving to a RAM style program would increase uncertainty and likely cause further delays in the BioMAT program. As Public Advocates stated in its opening comments, there is no evidence that moving to a RAM style program would help lower prices or increase participation. As the Green Power Institute noted in its opening comments, the BioRAM has not been successful at stimulating new, small-scale bioenergy projects. This is precisely why California enacted SB 1122, because existing programs – including the RAM program – had failed to spur new, small-scale bioenergy projects, which is the focus of the BioMAT.

[4] Sierra Nevada Conservancy Opening Comments at page 2; Generate Capital Opening Comments at pages 1-2; Agricultural Energy Consumers Association Opening Comments at page 2.
[5] Small Business Utility Advocates Opening Comments at page 2.

B. If the Goal is to Accelerate BioMAT Implementation, the Commission Should Adopt a Simple, Fixed Price Feed-In Tariff.

BAC agrees with the majority of parties' opening comments – including all of the parties that represent project developers, investors, and several public agencies – that the Commission should move to a much simpler, fixed price Feed-In Tariff (FIT) program.[6] Doing so would accelerate project development as long as the fixed price is at or above current program prices. As Generate Capital, Camptonville Community Partnership and other parties noted, investors need certainty and only a fixed price FIT can provide that certainty.[7]

C. The Commission Should Consider Prices in the Larger Context of Emissions Reductions, Wildfire Reduction and Other Rate-Payer Savings and Benefits.

BAC agrees with the Sierra Nevada Conservancy and United States Forest Service opening comments that BioMAT costs should be viewed in a larger context. As all of the public agency comments noted, the BioMAT is an important program to help reduce the most damaging climate pollutants, known as Short-Lived Climate Pollutants, required by SB 1383. As the Sierra Nevada Conservancy points out, BioMAT Category 3 will also help to reduce the far greater costs of wildfire, which threaten lives and homes and livelihoods. Wildfires also cause significant rate-payer costs and, as SNC and the USFS noted, those costs are likely to increase substantially in the coming years. Looking at BioMAT costs in the abstract, therefore, is misleading since the BioMAT doesn't just produce energy. It also helps to reduce potent climate pollution, wildfire and air pollution, while providing baseload renewable energy, which is increasingly valuable as the state moves to meet the requirements of SB 100 (de León, 2018).

BAC agrees with the Sierra Nevada Conservancy's opening comments, which stated that:

> "In light of the increasing costs and impacts of catastrophic wildfires, this analysis of ratepayer benefits should be viewed in a more comprehensive manner. While we can all appreciate any impact on the ratepayers' utility bill, this should be considered in the context of the overall threat to life, property, and the ecosystem services represented by healthy forests. In the wake of California's 2018 fires season, the financial survival of the IOUs themselves has been questioned based on potential liability for wildfire damage. Given the acknowledged role that forest bioenergy

[6] Opening comments of Agricultural Energy Consumers Association, PCAPCD, SNC, Generate Capital, Bloom, SBUA, and FCE.
[7] Opening comments of Generate Capital and Camptonville Community Partnership.

energy infrastructure can play in reducing wildfire risks and improving watershed health, these projects must be encouraged and promoted. The excess costs that might result from more favorable pricing and procedures are dwarfed by the very real wildfire liability costs facing the IOUs."[8]

D. No Need to Change "Affiliated Applicants" Definition or Queue Management.

BAC agrees with the Sierra Nevada Conservancy, Agricultural Energy Consumers Association, Dairy Cares, Maas Energy and many other parties that there is no reason to change the definition of "affiliated applicants" at this point. As the staff's BioMAT Program Review noted, there is no evidence of collusion or market manipulation. There is simply no reason to try to fix something that is not broken, particularly when many other parts of the program do require fixing. BAC urges the Commission to heed the comments of the state agencies and other parties that urge the Commission to focus on changes that simplify and accelerate program implementation rather than trying to fix things that are not broken.

Similarly, BAC agrees with the dairy parties that there is no reason to change the queue management process at this point since there is no evidence that the current rules are hurting the program or allowing market manipulation.

IV. THE COMMISSION SHOULD ONLY CHANGE DEADLINES AND TIMELINES THAT HELP TO ACCELERATE BIOMAT IMPLEMENTATION AND COMPLY WITH STATE LAW.

A. Program End Date

BAC agrees with most of the parties that submitted opening comments that the Commission should extend the BioMAT program end date.[9] BAC agrees with the opening comments of the Placer County Air Pollution Control District and the Camptonville Community Partnership that there is no legal justification for ending the program before all 250 megawatts have been procured, as required by Public Utilities Code section 399.20(f)(2) and BAC urges the Commission to remove the program end date altogether, which is the only way to be consistent with the requirements of SB

[8] Sierra Nevada Conservancy's Opening Comments at pages 1-2.

[9] Opening comments of Agricultural Energy Consumers Association, Dairy Cares, PCAPCD, Camptonville Community Partnership, Sierra Nevada Conservancy.

1122. As the Placer County Air Pollution Control District stated in its opening comments:

> "The Program should not have an expiration date, as there is no language within SB 1122 or other sections of the FiT statutes that would allow for the obligations of this law to expire due to the passage of time. Any Program expiration is contrary to the statute and should be removed."[10]

If the Commission believes it should set a program end date, despite the absence of an end date in statute, then BAC would prefer the proposal by Agricultural Energy Consumers Association, Dairy Cares and Maas Energy to set the program end date in 2030 to align with the requirements of SB 1383, the state's Climate Change Scoping Plan and the Forest Carbon Plan.[11] Setting another five-year end date when the program is moving so slowly clearly contradicts the requirements of SB 1122.

B. Interconnection Timelines

BAC agrees with the comments of Generate Capital that interconnection costs and timelines for interconnection are significant barriers to BioMAT projects.[12] BAC also supports the recommendation of Placer County Air Pollution Control District to adopt mechanisms that prevent the utilities from unnecessarily delaying the interconnection of BioMAT projects.[13] As Generate Capital – a major investor in bioenergy projects – notes, interconnection delays and high interconnection costs are a major barrier to BioMAT project development and should be addressed without causing additional regulatory uncertainty.[14]

BAC reminds the Commission that the California Air Resources Board has also urged the Commission to remove barriers to interconnection and accelerate interconnection of small-scale bioenergy projects to help meet the state's climate and other goals. CARB does this in numerous places in the *Short-Lived Climate Pollutant Reduction Strategy*, stating that:

> "Practical solutions must be developed and implemented to overcome barriers to . . . grid interconnection . . . State agencies, utilities, and other stakeholders need to work immediately to identify and resolve remaining obstacles to connecting distributed electricity to the grid"[15]

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[10] Placer County Air Pollution Control District opening comments at page 3.
[11] Opening comments of AECA at page 4, Dairy Cares at pages 6-7, and Maas Energy at page 6.
[12] Opening comments of Generate Capital at page 1.
[13] Placer County Air Pollution Control District opening comments at page 2.
[14] Generate Capital opening comments at page 1.
[15] *Short-Lived Climate Pollution Reduction Strategy,* adopted by the California Air Resources Board in March 2017, at pages 3-4. Available at: https://www.arb.ca.gov/cc/shortlived/meetings/03142017/final_slcp_report.pdf.

BAC disagrees with the utilities and other parties that support the staff proposal to extend COD by 12 months whether or not there is a valid reason for the utility delay. Once developers secure financing and invest in a project, delays are expensive and can jeopardize project viability, state and federal grants, local permitting requirements, and other contractual obligations. While BAC supports the concept that if there is good cause for the utility delay, then the developer should be granted up to a 12-month extension in COD, but the utilities should not be allowed to use this 12-month extension without justification for the delays that they cause. Otherwise, the timeline would simply be extended by 12 months on many projects and developers will be left with finance charges and potential legal liabilities for the delay.

BAC supports a 12-month extension of COD if, and only if, the utility has good cause for the delay and presents an explanation of that cause for the Commission's approval. As noted above, these projects are critical to meet important state policies and delays should only be allowed in rare circumstances and if truly justified.

C. 30-day Deadline for PPA Execution

BAC agrees with the comments of Agricultural Energy Consumers Association, Maas Energy, Bloom, and Fuel Cell Energy that there should be a firm, 30-day deadline for contract execution. BAC would prefer that the deadline be only 15 days since this is a standard contract, but supports a 30-day deadline as better than no deadline. BAC urges the Commission to adopt an enforcement mechanism or interconnection ombudsman to ensure that the utilities are in fact meeting the deadline for contract execution.

V. THE COMMISSION SHOULD NOT CHANGE ELIGIBILITY REQUIREMENTS THAT EXCEED STATUTORY REQUIREMENTS OR INCREASE PROGRAM COSTS.

BAC agrees with the public agencies, forest and dairy parties, Green Power Institute, Bloom and others that the Commission should not adopt additional eligibility requirements at this time. Several of the changes proposed by staff would add new eligibility requirements that go beyond the statutory requirements of SB 1122 and for which there is no justification. Many of these proposed requirements would cause further delays, expenses and uncertainty when the program is already suffering from low participation. BAC urges the staff to drop all proposals to revise eligibility requirements until there are far more market participants in the small-scale bioenergy sector. When there are more proposed projects than megawatts, it would make sense to adopt criteria for prioritizing projects. At this stage, however, the highest priority should be increasing participation to meet the requirements of SB 1122 and not

adopting requirements that fall outside of that statute and would actually make it harder to meet the requirements of statute.

A. BAC Agrees with Parties that Adding a Greenhouse Gas Quantification Requirement is Unnecessary and Would Impede Progress.

BAC agrees with the state and federal forest agencies, Placer County Air Pollution Control District, the dairy parties, Green Power Institute and Bloom Energy that there is no reason to add a greenhouse gas (GHG) quantification requirement at this stage. SB 1122 does not require this and the Commission does not impose this requirement on any other category of RPS eligible projects, so imposing this only on BioMAT projects would put an unfair and anti-competitive burden on small-scale bioenergy projects that already required by law.

As the United States Forest Service and Sierra Nevada Conservancy both stated in their opening comments, the BioMAT program is important to reduce greenhouse gas and Short-Lived Climate Pollutant (black carbon) emissions from wildfire. The *California Forest Carbon Plan* makes clear that bioenergy projects using forest waste – the focus of Category 3 projects – reduce black carbon and methane emissions by 98 percent compared to open burning of forest waste.[16] Individual projects must already address climate emissions in their environmental (CEQA) analyses. Requiring them to do more than that – when there is no statutory requirement to do so - would only add expense and further delays to an undersubscribed program.

BAC also agrees with the dairy parties' opening comments that the state has already determined that dairy biogas projects are carbon negative and no additional analysis should be required of individual projects.[17] The California Air Resources Board has conducted extensive lifecycle analyses of the carbon emissions from dairy biogas and determined that dairy biogas is the lowest carbon fuel of any kind[18] – significantly lower emission than solar or wind power – so there is no reason to require individual dairy projects to conduct a similar analysis that would only add costs and delays.

BAC agrees with the Green Power Institute's opening comments that project specific GHG assessments are very difficult technically and would add significant expense and delays.[19] BAC also agrees with the Green Power Institute that the Legislature and the

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[16] *California Forest Carbon Plan*, adopted by CalEPA, CalFire and California Natural Resources Agency in March 2018, at page 135, Figure 19. Available at: http://resources.ca.gov/wp-content/uploads/2018/05/California-Forest-Carbon-Plan-Final-Draft-for-Public-Release-May-2018.pdf.

[17] Agricultural Energy Consumers Association and Maas Energy opening comments.

[18] Lifecycle of dairy biomethane under the Low Carbon Fuel Standard. See, https://www.arb.ca.gov/fuels/lcfs/.

[19] Green Power Institute opening comments at pages 5-8.

California Air Resources Board have already determined that bioenergy projects reduce climate emissions – both GHG and SLCP – and that is why the state enacted SB 1122.

BAC also agrees with GPI and Bloom that no other RPS eligible resources are required to provide GHG quantification, so there is no reason to do so for small-scale bioenergy projects. Nothing in the RPS or SB 1122 calls for or warrants this additional requirement, which would add a burden to only one RPS eligible sector, putting it at competitive disadvantage. This is particularly misguided when there are so few BioMAT eligible projects in development. As many parties noted in their opening comments, all changes at this stage should focus on simplifying and accelerating BioMAT implementation, not adding additional requirements that are not called for by statute and not needed given the analyses already done by the Air Resources Board and other agencies with climate expertise.

B. BAC Agrees with Forest Agencies and Other Parties that the Commission Should Not Require HHZ Fuel in Category 3.

BAC agrees with the forest and air quality agencies that there is no reason to require Category 3 projects to use High Hazard Zone fuel when the state is actually moving away from that designation and imposing this requirement would increase Category 3 project costs.[20] As the Sierra Nevada Conservancy explained, the HHZ designation was for the purpose of complying with Governor Brown's 2015 Emergency Order focused on tree mortality. That order has since been replaced with Governor Brown's 2018 Executive Order, which focuses on long term forest sustainability.

Public Utilities Code section 399.20(f)(2)(A)(iii) is not limited to HHZ fuel and there is no justification for the Commission to limit Category 3 to HHZ fuels when the state's forest agencies have moved to a broader focus on forest sustainability. The Commission should defer to the state and federal agencies with expertise in this area and not impose additional restrictions that will only slow progress in Category 3 and make the projects that do move forward more expensive. BAC agrees with the Green Power Institute's opening comments that the HHZ requirement for BioRAM projects is not working and has only increased those projects' fuel costs. There is simply no reason to impose a HHZ requirement at this stage of the BioMAT program.

Like with the proposed GHG requirement, BAC is concerned that staff is proposing additional restrictions and burdens when the fundament challenge for the BioMAT program is low program participation. The highest priority should be to increase

[20] See opening comments of the Sierra Nevada Conservancy, Placer County Air Pollution Control District, United States Forest Service and Camptonville Community Partnership.

program participation. The Commission certainly should not adopt additional – and unnecessary – requirements that will further delay program implementation.

C. BAC Agrees with Parties that the Commission Cannot Increase the Allowable Export Size Without Legislation.

BAC agrees with the opening comments of the utilities, Public Advocates, and Placer County Air Pollution Control District that the Commission cannot increase project export capacity to 5 MW without legislation. The Public Utilities Code is extremely clear on this point, requiring that BioMAT projects have:

> "an effective capacity of not more than three megawatts, with the exception of those facilities participating in a tariff made available pursuant to paragraph (2) of subdivision (f)."[21]

AB 1923 amended section 399.20 to allow projects with an effective capacity of 5 MW, but still limits project export capacity to 3 MW in unambiguous terms. The law limits the BioMAT to projects that export "no more than three megawatts to the grid at any time."[22]

Given that changing the export capacity would require changing legislation, BAC urges the Commission not to explore this at this time. In addition to changing legislation, increasing the MW capacity of BioMAT projects would require other changes that will only add further delays and uncertainty in the near term. As many parties commented, stability and predictability are critical at this point to meet the over-arching goal of increasing program participation to meet the procurement requirements of section 399.20.

VI. THE COMMISSION SHOULD ADOPT ADDITIONAL INCENTIVES AND CLARIFY PROGRAM RULES TO ACCELERATE COMPLIANCE WITH STATUTORY REQUIREMENTS.

BAC agrees with the Staff Proposal's stated goals to increase program participation and urges the Commission to coordinate with other state, federal and local agencies to ensure that those agencies provide incentives to help support BioMAT projects. As noted in BAC's opening comments, we also urge the Commission to adopt additional incentives in the Electricity Program Investment Charge, from the electric utilities' Cap & Trade revenues, and interconnection incentives similar to those adopted for pipeline biogas projects.

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[21] Public Utilities Code section 399.20(b)(1).

[22] Public Utilities Code section 399.20(f)(2)(E)(1).

In addition to allocating financial incentives to BioMAT projects, BAC agrees with other parties that the Commission should clarify and revise some of the BioMAT program rules to facilitate program participation.

A. Allow Greater GEP Flexibility.

BAC agrees with the dairy parties that the Commission should allow greater flexibility for Guaranteed Energy Production, which will reduce project costs and risks for developers.[23]

B. Explicitly Allow LCFS Credits and Clarify Allocation of those Credits when BioMAT Power is Used as Vehicle Fuel.

BAC agrees with Generate Capital and the dairy parties that the Commission should explicitly allow BioMAT projects to receive LCFS credits if the exported power is used for vehicle charging.[24] This would be consistent with other RPS eligible projects that receive both RPS and LCFS credits, and could help to reduce rate-payer costs if projects can also obtain revenues from LCFS credits. BAC urges the Commission to workshop this issue so that it can explicitly authorize BioMAT projects to receive LCFS credits and can clarify how those credits will be allocated.

C. Clarify CAISO Requirements for BioMAT projects.

BAC agrees with the opening comments of Maas Energy that the Commission should not require the CAISO NRI and meter requirements. As Maas Energy points out, the CAISO itself does not require these for projects that are smaller than 10 MW and adding these requirements would significantly increase delays and project costs with no obvious benefit to the grid.[25]

D. Definition of "Strategically Located" and Need for Interconnection Incentive Program.

BAC agrees with the opening comments of the Placer County Air Pollution Control District that the definition of "strategically located" for interconnection purposes needs clarification and revision to support the requirements of SB 1122.[26] BAC supports the clarifications proposed by the Placer County Air Pollution Control District and also urges the Commission to adopt additional incentives for BioMAT interconnection costs similar to the incentives adopted for pipeline biogas. In D.15-06-029, the Commission set

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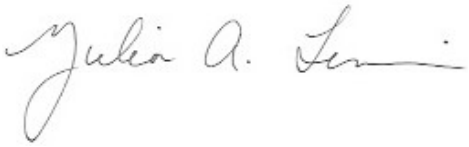
[23] Opening Comments of Agricultural Energy Consumers Association and Dairy Cares.
[24] Opening Comments of Generate Capital, Agricultural Energy Consumers Association, Dairy Cares, and Maas Energy.
[25] Maas Energy opening comments at page 10.
[26] Placer County Air Pollution Control District's opening comments at pages 4-5.

aside $40 million to help fund pipeline biogas interconnection costs.[27] BAC urges the Commission to establish a similar incentive program to help fund the costs of BioMAT interconnection and to allow the utilities to rate-base those costs.

Thank you for the opportunity to provide these reply comments on the Staff Proposal.

Sincerely,



Julia A. Levin
Executive Director

[27] Decision 15-06-029, adopted on June 11, 2015 in R.13-02-008.