REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY, PACIFIC GAS & ELECTRIC COMPANY AND SAN DIEGO GAS & ELECTRIC COMPANY ON THE BIOENERGY MARKET ADJUSTING TARIFF (BIOMAT) PROGRAM REVIEW AND STAFF PROPOSAL

January 4, 2019

I. INTRODUCTION

Southern California Edison Company, Pacific Gas & Electric Company and San Diego Gas & Electric Company (the Joint IOUs) applaud industry support for broad cost allocation given that the BioMAT program is intended to benefit all California residents, not just bundled IOU customers. In these reply comments, the Joint IOUs provide more detail around cost allocation and address various comments on the price adjustment mechanism, simplifying program administration, program eligibility, and other items various parties raised in opening comments.

II. COST ALLOCATION

In their opening comments, The Alliance for Retail Energy Markets, Direct Access Customer Coalition, and Joint CCAs (DA/CCA Parties) singularly focus on Energy Division Staff's proposal to fairly allocate BioMAT procurement costs to all benefitting customers. The DA/CCA Parties claim the proposal is not detailed enough, that the Commission has already litigated this issue, and that the legislature minimized the cost allocation for which Direct Access (DA) and Community Choice Aggregators (CCA) parties are responsible. These assertions are without merit, as described below. The Joint IOUs acknowledge the supportive comments by Dairy Cares, Public Advocates Office, Humboldt State University, Agricultural Energy Consumers Association and Green Power Institute.

The DA/CCA Parties claim that the Staff Proposal provides "scant justification" and "no details" to support the cost allocation proposal.[1] Per D.14-12-081, the Commission is reviewing the BioMAT program. Energy Division staff is appropriately supporting this effort by developing a straw proposal and soliciting stakeholder input.[2] Staff provides a clear and well-articulated reason to support its recommendation that broad cost allocation is appropriate: "BioMAT is one of several policy mechanisms geared toward achieving statewide air quality, climate, waste diversion, and public safety goals – goals that support the health and well-being of all Californians. The achievement of these goals results in societal benefits for bundled and unbundled IOU customers alike."[3] The Joint IOUs concur with Cal Advocates that, "It is unfair to impose the costs of this expensive form of energy only on IOU bundled ratepayers when *all* customers stand to benefit from the achievement of statewide climate, waste diversion, and public safety goals that BioMAT is intended to achieve."[4]

In disparaging Energy Division's reasoning, the DA/CCA Parties demonstrate their unfamiliarity with the broader policy context. To cite just one example: in 2015, Governor Brown declared a

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[1] DA/CCA Parties Comments, pp. 2.4.

[2] *See* Staff Proposal, p. 22, Question 16: "Do you support the proposal to allocate BioMAT procurement costs through a non-bypassable charge to all California ratepayers? a. If yes, how should BioMAT procurement costs be allocated? Provide explanation and justification for your proposal."

[3] *Id*. p. 18.

[4] Cal Advocates Comments, p. 14.

state of emergency due to massive tree die off and required, among other things, that the CPUC "consider adjustments to the BioMAT Program . . . [and] evaluate the need for revisions"[5] to ensure disposal outlets existed for hazardous trees. Governor Brown then, in 2017, provided further direction that the CPUC "review and update its procurement programs for small bioenergy renewable generators to **ensure long-term programmatic certainty for investor-owned utilities** and project developers, as well as benefits **to ratepayers**"[6] (emphasis added). This and numerous state policy documents support Energy Division's framing of the BioMAT program.

Next, the DA/CCA Parties express "dismay[] that they have had to expend resources to address this issue" because the Commission already ruled on cost allocation in D.14-12-081 and D.16-10-025. [7] Yet the DA/CCA Parties fail to acknowledge that the facts underlying those decisions have changed, which warrants reconsideration. In 2014, the Commission rejected the notion of using broad cost allocation for BioMAT contracts, reasoning that the "significance of the SB 1122 procurement obligations in the context of the IOUs' overall Renewable Portfolio Standard (RPS) procurement obligations, much less in the context of IOUs' total procurement requirements to serve their customers" was too small to necessitate such cost recovery.[8] Yet up until 2015, only two CCAs had launched.[9] Then in 2016, the Commission decided to extend the cost allocation to all benefitting customers for the new high hazard fuels BioMAT category per the Governor's proclamation because of its similarity to the existing BioMAT contracts.[10] By 2017, the energy supply landscape had drastically changed, and Energy Division reported that up to 85% of the historical retail customer base of the three IOUs could leave utility bundled service procurement in the near future to have their energy provided by alternative energy providers or other non-IOU sources, principally CCAs.[11] Now, PG&E forecasts that 54% of load in its service area will be served by CCA and DA service providers in 2019.[12] SCE and SDG&E face similar load departure trajectories, with Los Angeles County and the City of San Diego also

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[5] See Governor Edmund G. Brown, Jr., October 30, 2015. Proclamation of a State of Emergency, https://www.gov.ca.gov/wp-content/uploads/2017/09/10.30.15_Tree_Mortality_State_of_Emergency.pdf

[6] Executive Order B-52-18, https://www.gov.ca.gov/wp-content/uploads/2018/05/5.10.18-Forest-EO.pdf.

[7] DA/CCA Parties Comments, p. 2.

[8] D.14-12-081, p. 63.

[9] Resolution E-4907, p 2.

[10] D.16-10-025, pp. 27-28.

[11] CPUC Staff White Paper, Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework (May 2017) p. 3. The White Paper states that "the estimate of 85% load departure is based on 15 to 20 million consumers being served by CCA, Direct Access, or Customer-sited generation like rooftop solar (see p.3, footnote 2).

[12] Joint Utilities Exhibit IOU-1 in Rulemaking 17-06-026 ("Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment"), p. 1-17, Table 1-2.

creating CCAs.[13] The DA/CCA's weariness is not a legitimate reason to ignore critical facts about equity in procurement costs.

The time is ripe for the Commission to reconsider cost allocation for BioMAT. The Commission recognized this in D.18-10-019 (PCIA OIR), where it did not reject broad cost allocation for policy-based procurement programs as incorrectly implied by the DA/CCA parties, but instead pointed the utilities to seek fair cost allocation for programs "in the proceeding approving such procurement."[14] Consistent with this direction, the Joint Utilities seek fair cost allocation for BioMAT contracts in this proceeding. Without fair cost allocation among all benefitting customers, 15% of the remaining bundled service customer load could end up paying for 100% of the costs of BioMAT contracts that benefit all Californians. It is this result that the Energy Division's cost allocation proposal seeks to avoid.

Despite these load departure facts, of which the DA/CCA Parties are well aware, they nevertheless argue that California law prohibits the Commission from modifying BioMAT to recover the costs from all benefitting customers, including DA and CCA customers. The DA/CCA Parties claim that SB 1122 directs that "benefits accrue solely to the IOUs" and thus departed load customers cannot accept Resource Adequacy (RA) and RPS benefits.[15]

The Joint IOUs disagree. First, the Commission's prior decisions on this matter are not binding precedent and the Commission can – and should – examine whether the existing cost recovery mechanism is reasonable in light of the changes in the California market that have seen a substantial increase and acceleration in load departure from the IOUs' procurement service since these earlier decisions were issued. Second, the Staff's proposal cannot be reasonably read to propose that only the costs, and not the benefits, of BioMAT resources be allocated to departing load customers. Indeed, all broad cost allocation mechanisms adopted by the Commission have ensured that all customers pay their fair share of the costs and receive their fair share of the benefits of resources from which they benefit. For example, the Cost Allocation Mechanism (CAM) allocates the net costs of RA resources broadly to all customers and allocates the RA compliance attributes on a pro-rata basis to all customers' load-serving entities. The recently adopted Tree Morality Nonbypassable Charge (TM-NBC) decision, to which the DA/CCA parties cite, is another mechanism that allocates the costs and benefits of TM-NBC resources to all benefitting customers by offsetting the market revenues realized from such resources, including through energy, RA and Renewable Energy Credit (REC) sales, from the costs (*i.e.*, a net cost allocation).

Third, the statutory provisions for BioMAT are not a bar to fair and reasonable cost recovery of BioMAT costs through a broad cost allocation mechanism. The Commission has wide discretion

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[13] *See* "Response of the County of Los Angeles to Optional Homework Assignment in Preparation for the March 8 Workshop on PCIA Reform" and "Response of the City of San Diego to Optional Homework Assignment in Preparation for the March 8 Workshop on PCIA Reform" filed February 16, 2016 in A.14-05-024.

[14] D.18-10-019, p. 153.

[15] DA/CCA Parties Comments, p. 5.

to interpret the statutory provisions to ensure that bundled service customers' rates are "just and reasonable."[16] As the DA parties concede, PU Code Section 399.20 is largely "silent" on cost recovery; and contains no express bar to broad cost allocation.[17] Section 399.20(h) and (i), which direct that all kWh purchases from a BioMAT facility shall count towards the IOU's RPS annual procurement targets and RA requirements, would be satisfied under a mechanism that counts all the kWh purchased by the IOU *on behalf of bundled service customers* toward the IOU's RPS and RA requirements. This is particularly just and reasonable in circumstances that exist today, where the IOUs are already long on RA and RPS, in part as a result of departing load.

The DA/CCA Parties also claim that equitable cost allocation would infringe on their PU Code Section 366.2(a)(5) statutory right to be "solely responsible for all generation procurement activities on behalf of [its] customers." A broad cost allocation does not impede the ability of CCAs to do their own generation procurement, as DA/CCA parties claim. That is because a broad cost allocation mechanism does not need to entail an allocation of the generation attributes of the BioMAT resources to CCA or DA service providers. Rather, the energy, RA and RECs procured by the IOU on behalf of departing load customers can be offered for sale into the market and the resulting revenues can offset the costs of the BioMAT resources, such that DA and CCA customers pay only the net costs of the BioMAT resources. This is consistent with what the Joint Utilities have proposed in various proceedings, and the Commission has recently approved.[18] Allocating net costs for policy-based procurement does not infringe on CCA rights to procure to serve their load. CCAs will still procure to serve their load; however, their customers will pay for their share of the net costs of the air quality, climate, waste diversion, and public safety benefits generated from the BioMAT program.

The Joint IOUs support Staff's broad cost allocation proposal because it ensures equity in cost allocation across bundled service and departed load customers, consistent with legal mandates in P.U. Code Section Sections 365.2, 366.2 and 366.3. As previously discussed, the Joint Utilities believe broad cost allocation could be achieved through the Public Purpose Program (PPP) charge,[19] using a net cost allocation as discussed above.

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[16] *See* P.U. Code Section 451.

[17] DA/CCA Parties Comments, p. 5.

[18] *See e.g.*, D.18-12-003 adopting the new TM-NBC, pursuant to which the IOUs will seek to sell the energy, RA and RPS benefits of the TM-NBC contracts and any resulting revenues will offset the costs for all benefitting customers.

[19] Some parties, such as GPI, support cost allocation but recommend it be done via distribution charges. The Joint IOUs support using the PPP charge because it will recover costs from *all* customers. If the costs are recovered through distribution charges, Net Energy Metering customers will be able to largely avoid paying for these costs.

III. PRICING MECHANISM

As various parties stated in their opening comments, it is apparent that the current price adjustment mechanism needs to change.

The Joint IOUs continue to support the transition from the current price adjustment mechanism to a RAM competitive solicitation. As described in the Joint IOUs' opening comments on the BioMAT Program and Staff Proposal, utilizing a competitive solicitation like the RAM process is a better mechanism to promote competition, which will result in lower costs for customers.

If a RAM process is not adopted, the Joint IOUs support the Staff Proposal for fixing the current price adjustment mechanism, as outlined in our opening comments.[20] With the current mechanism, prices are currently locked in at a high rate without any realistic chance of them adjusting downward. Fixing the mechanism to enable opportunities for price decreases allows customers to benefit from the ability of facilities to realize future project efficiency benefits associated with the program.

An example of potential efficiency benefits that could be achieved with a RAM mechanism is the proposal to increase the cap on deliveries and payments under the BioMAT PPA from 3 MW to 5 MW. [21] Several parties were in favor of this and pointed to the efficiency gains and ability for facilities to accept lower prices in the program.

> The Green Power Institute (GPI) states, "…It also reduces their overall cost of electricity production, *and thus their trigger price*."[22]
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> The California Biomass Energy Alliance (CBEA) states, "…it would enhance the facility's economics, *thus allowing it to accept a lower PPA price*."[23]
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> Small Business Utility Advocates (SBUA) states, "The Commission should consider having a *lower price for generation over 3 MW* in order to reflect the economies of scale."[24]

Under the current price adjustment mechanism (or a similar mechanism) where prices are "locked in," customers would not realize cost reduction benefits, and program developers would

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[20] Joint IOU Opening Comments, Section II(G), p. 6.

[21] While some parties disagreed that legislative change is required to remove the three MW cap on deliveries and payments under BioMAT PPAs for facilities larger than three MW, several parties appropriately recognize that legislative change *would be* required. In addition to the Joint IOUs, the following parties acknowledged in their comments that a change is statute is required: BAC, Environmental Groups, FCE, Maas, Placer APCD, Public Advocates Office.

[22] GPI Comments, p. 2.

[23] CBEA Comments, p. 3.

[24] SBUA Comments, p. 3.

have an opportunity for windfall revenues if the Legislature allowed an increase in deliveries from BioMAT facilities to the grid from 3 MW to 5 MW.

A. A Fixed-price Feed-in Tariff is not the solution

The Joint IOUs strongly oppose a fixed-price Feed-in Tariff, despite industry participant preference for a fixed price option at or above current prices. A fixed-price option would diminish competition to the detriment of customers.

This sentiment was supported by the Public Advocates Office. The original intent of the program was to create a competitive market structure. A fixed-price option would "eliminate the competitive market structure of the BioMAT program that is necessary to achieve the program's stated goal of market transformation."[25]

CBEA also opposes a fixed-price option and states they would "prefer to let the market determine where prices should go, rather than setting an arbitrary fixed price that might or might not fulfill BioMAT program goals."[26]

The Joint IOUs disagree with various claims in opening comments that customers benefit from an arbitrarily and administratively set fixed price. Placer County claims that if "the prices are locked at the current levels, then ratepayers are protected from uncompetitive solicitations."[27] SBUA recommends that "the Commission adopt the proposal for a fixed price Feed-in tariff as best suited to meet the needs for ratepayers."[28] Both of these parties fail to explain how customers would be protected and how their needs will be best met by paying prices for bioenergy that is already upwards of five times more expensive than other renewable energy procurement opportunities in the market.

IV. OTHER

A. Administrative Complexities

Several parties blame the IOUs for complicating and delaying the BioMAT program processes. Maas Energy Works insinuates the Joint IOUs are responsible for "unnecessarily prolonging project implementation."[29] Bioenergy Association of California (BAC) claims that "on numerous occasions, the IOUs have spent months without executing contracts, often while

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[25] Public Advocates Office Comments, p. 6.

[26] CBEA Comments, p. 2.

[27] Placer APCD Comments, p. 2.

[28] SBUA Comments, p. 2.

[29] Maas Energy Works Comments, p. 6.

simultaneously closing communication between the Applicant and the IOU so that the Applicant does not know what is happening."[30]

Inherent administrative complexities exist in the program that are not necessarily apparent to program participants. As discussed in the Joint IOU opening comments, the continuous and concurrent review of multiple applications resulting from the IOUs conducting a deep dive review of all applications as they are submitted has resulted in program inefficiencies.[31] Upon price acceptance, the IOUs provide counterparties with a list of items that need to be cured and counterparties often delay in providing the necessary information to the IOU to finalize a PPA for execution.

BAC's reference to delaying execution on "numerous occasions" fails to appreciate the concerns over the legal impact on BioMAT of the *Winding Creek* Court Decision.[32] This was an extenuating circumstance and not a repeat occurrence.

In addition, Fuel Cell Energy (FCE) mischaracterizes an interaction with SCE. In reference to its Tulare project, FCE claims that, "[d]espite the consent being a form document attached to the PPA, FCE was advised that it would take 60 days to receive approval of the consent from SCE. FCE's lender was willing to close, making the consent a post-closing deliverable, but SCE advised that to do so would constitute a default under the PPA. The delay in obtaining this consent and the necessary financing has caused a delay in the project." In reality, FCE sent SCE a draft consent that was incomplete, expecting to close its transaction within a few business days, which is unreasonable. Even in this instance, SCE returned to FCE the fully executed consent in 20 days (including the Thanksgiving holiday), well within the 30-day timeframe proposed for contract execution in the Staff Proposal and that FCE itself supports in its comments.[33]

B. Contract Quantity Flexibility

The Joint IOUs oppose the proposals from BAC, Maas Energy Works, and FCE to have flexibility in changing the annual MWh production under the BioMAT PPA. Allowing for this flexibility would have commercial impacts to the IOUs and cost impacts to customers.

Giving Sellers this flexibility provides them a free option – the Seller could opt not to deliver - without providing any compensation to the IOU for accepting the unknown quantity risk. It would mean that the IOUs would have less certainty in terms of RPS deliveries and would result in the IOUs having to 'over procure' resources to ensure they meet RPS requirements that these facilities contribute towards. The cost of over procurement would be absorbed by customers, all to allow these facilities the option to price arbitrage between alternate economic opportunities.

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[30] BAC Comments, p. 12.

[31] Joint IOU Opening Comments, Section II(B)2, p. 3.

[32] BAC Comments, p. 12.

[33] FCE Comments, p. 5.

Allowing adjustments to a project's Contract Quantity or to GEP performance requirements would not support the program's goal for administrative ease. The topic of contract quantity flexibility was discussed during the implementation of BioMAT. In D.14-12-081, the CPUC rejected this proposal because "it is an unnecessary complication to what is supposed to be a simple procurement mechanism."[34]

C. Fuel-Switching

Dairy Cares recommends exploring opportunities to provide project developers with more options to oscillate between electric generation, onsite vehicle fueling, and pipeline injections of renewable natural gas.[35] The Joint IOUs point to the concerns raised in our response above on contract quantity flexibility and note that any activity outside of electric generation is not consistent with the purpose of the BioMAT program.

D. LCFS Credits

There may be merit in the utilization of LCFS credits to help lower costs to customers. However, this will require more discussion during the workshop stage of the program.

E. Guaranteed Commercial Operation Date (GCOD)

The Joint IOUs support the Environmental Group's argument that if the proposal to extend GCOD by 12 months for circumstances beyond the seller's control is adopted, that "delays beyond the seller's reasonable control must be narrowly and strictly defined."[36] The Joint IOUs support defining "reasonable control" during the workshop phase.

The Joint IOUs, however, oppose the claim of Maas energy that "network upgrades" in general warrant a 12-month extension.[37] For example, there may be instances in which the developer's project is the cause of the need for network upgrades, while there may be other times when the network upgrades are not attributable to the developer. This demonstrates the need to establish a definition during the workshop phase.

F. Interim Procurement Targets

In opening comments, BAC states that the Commission should "set additional deadlines and interim procurement targets to ensure that the utilities are on track to procure 250 MW as required by SB 1122."[38] The Joint IOUs have no control over when projects show up for this

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[34] D.14-12-081, p. 68.

[35] Dairy Cares Comments, p. 2.

[36] Environmental Groups Comments, p. 9.

[37] Maas Comments, p. 6.

[38] BAC Comments, p. 18.

program and, therefore, do not see how this requested requirement could be operationalized. Therefore, the Joint IOUs oppose this request from BAC.

G. BAC Comments on Customer Cost

BAC continues to downplay the importance of protecting customers from high prices associated with the program:

> The fundamental problem with the BioMAT program at this stage is not the high cost to ratepayers since so few PPA's have been signed and even fewer projects have begun construction. The problem that all changes should be focused on solving is how to increase participation and accelerate the rate of procurement so that the utilities meet the requirements of SB 1122 on a much more timely basis than is likely with the current program. The impact so far on ratepayers has been less than de minimus and will continue to be so unless changes are made to accelerate project development. If and when there is a much greater number of participants in the BioMAT program, it would be appropriate to reconsider effects on ratepayers, but that is simply not the problem at this point.[39]

BAC argues that none of the state bills setting BioMAT program rules "set any cost caps on the program,"[40] inferring that increasing program participation should be the CPUC's sole focus. In addition to implementing SB 1122 and other bills, the CPUC has an overarching obligation to establish just and reasonable rates.[41]

BAC argues to lower the market depth from five to three, stating, "[a]llowing for the price to fluctuate more easily will help encourage participation and protect ratepayers from overpaying…"[42] The only way to protect customers from overpaying is to allow for downward adjustments to the price, yet BAC continues to ask for more and more revenues to their project developers. They advocate for a fixed price that is higher than the current price,[43] specifically calling out that there should be no price decreases in the program,[44] and suggesting that there should be an annual inflation adder incorporated into payments received under the BioMAT contract.[45]

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[39] *Id.* p. 10.

[40] *Id.* p. 3.

[41] *See* P.U. Code Section 451.

[42] BAC Comments, p. 8.

[43] *Id.* p. 8.

[44] *Id.*

[45] *Id.* p. 11.

BAC's bid for continued increases in revenues to project developers, without consideration of the effects on customers, is self-serving and unjustified.

H. Biogas

FCE expresses concern that "SCE does not consider projects operating on directed biogas to qualify under the BioMAT program because directed biogas is not a BioMAT-eligible fuel source" and state's "SCE's position is not consistent with precedent and well-established program requirements."[46] To the contrary, SCE's position is consistent with the intent and purpose of the BioMAT program. The BioMAT program is intended to facilitate the purchase of electricity generated from small, local bioenergy facilities using *onsite* biogas, not directed biogas. Section 4.3.13 of SCE's BioMAT PPA is applicable to pipeline biomethane projects coming from a *dedicated* pipeline, not common use pipeline. A dedicated pipeline transports one category of biogas from its site directly to the qualifying facility without any commingling of any other gas. A common use pipeline commingles biogas with natural gas. BioMAT is not designed to account for fuel withdrawn from a common use pipeline. The IOUs should only be paying for electricity generated from fuel resource categories specified in the PPA to be able to retire the associated RECs.

V. CONCLUSION

The Joint IOUs appreciate the opportunity to submit these informal reply comments.

Respectfully submitted,

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[46] FCE Comments, p. 2.