

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue )  
Implementation and Administration of )  
California Renewables Portfolio Standard Program. )  
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Rulemaking 15-02-020  
(Filed March 6, 2015)

**BIOENERGY ASSOCIATION OF CALIFORNIA’S COMMENTS ON THE  
DRAFT TARIFF, STANDARD CONTRACT, AND RELATED DOCUMENTS  
IMPLEMENTING DECISION 14-12-081**

DATED: March 6, 2015

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The Bioenergy Association of California (BAC) submits these comments on the utilities’ Draft Tariff, Standard Contract, and Related Documents Implementing Decision 14-12-081. Although the utilities made a number of modifications to their ReMAT tariff and related documents, additional changes are necessary to meet the goals and requirements of SB 1122 (Rubio, Statutes of 2012, chapter 612).

As described more fully below, BAC urges the following changes to the utilities’ tariff, standard contract and related documents implementing Decision 14-12-081:

- A. The utilities must revise their definition of “affiliate” to be consistent with D. 13-05-034 and D. 14-12-081.
- B. The utilities must remove automatic cancellation provisions from the PPA Template, particularly for reasons beyond the seller’s control.

- C. The PPA Template should allow multiple contract changes in a ten- to twenty-year contract.
- D. The requirement for “developer experience” should be modified to reflect the early stage of small-scale bioenergy development.
- E. The transfer of greenhouse gas reductions should not include reductions greater than carbon neutrality.
- F. The need to clarify that BioMAT projects may also receive EPIC and other grant funds.
- G. The need for consistency across utilities to fairly implement the Statewide Pricing Mechanism.
- H. The need to limit changes to the ReMAT tariff and contract (PPA) to those changes necessary to implement the BioMAT, as directed by D. 14-12-081.
- I. The need to make references and citations accurate and consistent.
- J. If the requirement for Guaranteed Energy Production is not removed, then BAC recommends changes to the penalty provisions related to GEP.

BAC is an association of more than 50 public agencies, local governments, energy and waste companies, private investors, environmental groups and others working to promote sustainable bioenergy development. BAC members represent every sector of bioenergy, including each of the categories in SB 1122, investors, regulatory agencies and other public and private sector members interested in bioenergy development. BAC members were also involved in the development and passage of SB 1122.

SB 1122 was enacted to incubate the small-scale bioenergy industry and to reflect its unique operational characteristics. As the California Energy Commission (CEC) stated in the 2013 Integrated Energy Policy Report, the purpose of SB 1122 is “to spur

development of pre-commercial small bioenergy projects.”<sup>1</sup> [emphasis added] To do so, SB 1122 requires the Commission to direct the utilities to “develop standard contract terms and conditions that reflect the operational characteristics of the projects”<sup>2</sup> [emphasis added] as distinct from other ReMAT projects such as solar and wind power.

BAC recommends the changes below related to specific aspects of the Utilities’ proposed tariff and PPA Template that are not compatible with the unique operational characteristics of small-scale bioenergy in California in order to meet the goals of SB 1122.

**A. The Utilities’ Proposed Tariff Must Correct the Definition of Affiliate to be Consistent with D. 13-05-034 and D.14-12-081.**

BAC recognizes that the definition of “Affiliate” is important to the determination of the minimum number of bidders since affiliated parties do not count as separate entities for purposes of reaching the minimum number of bidders. The definition of “Affiliate” in D. 13-05-034 and D.14-12-081 states that:

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party.<sup>3</sup>

This definition makes sense to ensure that enough separately controlled bidders are participating in the SB 1122 program to avoid market manipulation.

While the Utilities’ proposed tariff adopts this definition, its provisions for counting bidders goes beyond the definition of “affiliate” adopted in the ReMAT and confirmed in D.14-12-081. The proposed tariff states that:

If an Applicant or its Affiliates *have any ownership interest* (based on the information provided by and attested to by the Applicant in PPR Section

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<sup>1</sup> 2013 Integrated Energy Policy Report, Draft Lead Commissioner Report,” October 2013, at page 59. CEC-100-2013-011-LCD.

<sup>2</sup> PU Code 399.20(f)(2)(B).

<sup>3</sup> Proposed Decision at page 60 and footnote 83, quoting Appendix A to PG&E’s contract.

E.1(c)(3)), in a Project, the Project will be attributed to the Applicant(s) for purposes of this provision. [emphasis added]<sup>4</sup>

As an emerging industry, SB 1122 qualifying projects have limited sources of financing. Requiring that project Applicants and their Affiliates have no overlap at all, even minor, non-controlling, ownership stakes is likely to prevent successful implementation of SB 1122 in Categories two and three, where there are very few market participants.<sup>5</sup> For example, if Company A has a controlling interest in one project and provides important, but minority and non-controlling equity finance to two otherwise completely independent projects, all three projects would be considered a single entity simply because of their common investor. While Company A has no ability to dictate management decisions or otherwise exercise control of the two additional projects, the utilities' proposed language would exclude the other two projects for the purposes of reaching the minimum number of bidders and triggering price adjustments.

This additional barrier to bioenergy development is not called for in D.14-12-081 and would seriously undermine the implementation of SB 1122. For early stage projects, maintaining the utilities' proposed language would put significant restrictions on the ability for essential project finance and the ability for investment firms, private investors, progressive banks, and equipment vendors to participate in promoting the growth of this sector.

Recommendation:

BAC supports the definition of "Affiliate" in D.13-05-034 and confirmed in D.14-12-081, but urges the Commission to require the utilities to strike the phrase cited above that refers to having "any ownership interest" as overly broad and not consistent with those Decisions. Specifically, BAC proposes the following change to Section H.a. of PG&E's proposed BioMAT tariff and related sections in SCE's and SDG&E's tariffs :

If an Applicant(s) or its Affiliates are an Applicant or Affiliate of another Project,  
~~have any ownership interest (based on the information provided by and attested~~

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<sup>4</sup> Section H.a. of PG&E's ReMAT Tariff.

[http://www.pge.com/includes/docs/pdfs/b2b/energysupply/wholesaleelectricssuppliersolicitation/standardcontractsforpurchase/ReMAT\\_Tariff.pdf](http://www.pge.com/includes/docs/pdfs/b2b/energysupply/wholesaleelectricssuppliersolicitation/standardcontractsforpurchase/ReMAT_Tariff.pdf).

<sup>5</sup> *Final Consultant's Report* at pages 1-1, 4-3 and 4-4; BAC's Comments at page 12; Placer County Air Pollution Control District Comments.

~~to by the Applicant in PPR Section E.1(c)(3)), in a Project, the ProjectSCE will be attributed to the Applicant(s) for purposes of this provision.~~

**B. The Auto-Cancellation Provisions in the PPA Template Must be Revised, Particularly for Reasons beyond Seller's Control.**

The PPA Template contains cancellation provisions for delays, whether or not the delays were within the Seller's control or caused by the utility/buyer. These provisions will prevent projects from getting financing and, therefore, prevent successful implementation of SB 1122.

The proposed PPA Template requires that a project become operational within 24 months of the effective date of the contract, with the possibility of no more than a six-month extension even if additional delays are caused by the utility or causes outside the seller's control such as force majeure. The proposed PPA template allows no more than 6 month extensions for Permitting Delays (Section 1.1.2.1), Transmission Delays (Section 1.1.2.2), Force Majeure (Section 1.1.2.3), or if the Seller elects to pay Daily Delay Liquidated Damages (Section 1.1.2.4).

Project developers may be subject to Transmission Delays and other delays from the Utilities that are not under their control. BAC members have experienced Utility delays caused from the inability to schedule inspections in a timely manner and from changes in the Utility employee managing the project. For delays that are out of the control of the project developer, it is unfair to limit the time extension for a pre-determined fixed period of time.

The consequence of not meeting the Guaranteed Commercial Operation Date is a termination of the contract that may occur after significant (if not all) capital has been deployed for construction. The ability for a Utility to unilaterally delay a project that will result in contract cancellation is unacceptable to potential investors who bear the risk if utilities exercise these unilateral provisions. Placer County Air District provides in its Comments a report that documents a series of interviews that substantiate the concerns of the financial industry when it comes to automatic cancellation base on dates that are contingent on interconnection completion. BAC shares this concern and supports the

comments of Placer County Air District related to the automatic and unilateral cancellation provisions in the utilities' proposed PPA template.

Despite recent changes to the interconnection process, there are still considerable uncertainties and delays associated with interconnection for small-scale bioenergy facilities which are rarely, if ever, eligible for the interconnection fast track process. After the project has completed interconnection review, it can get into the queue to participate in the SB 1122 program. A project could, however, be in any stage of negotiating the General Interconnection Agreement (GIA) when it enters into a PPA, which could take several months to agree upon. The project would then still be within the acceptable time parameters of Rule 21, but the clock would be ticking against the commercial operation date deadline. Additionally, proposed contract language includes no recognition of possible time delays that could occur after the execution of the GIA. BAC members have had direct experience with very long delays that occurred after the execution of the GIA. The buyer/utility can essentially take as long as it chooses to actually connect the project to the grid, yet that time could still be accrued against the guaranteed operation date requirement.

The problem is exacerbated for projects in Categories 2 and 3 of SB 1122, and for Category 1 projects in rural areas, which will have more complicated interconnection issues due to the remote nature of these projects. If a project fails to complete the process in 30 months, the PPA can be cancelled by the buyer/utility, even if the delays were the fault of the buyer/utility.

Recommendation:

Cancellation and liquidated damages should not be allowed as a result of utility caused delays or delays that are beyond the control of the seller. BAC recommends amending Section 1.1.2.2 as follows:

Subject to Section 1.1.4, if Seller has taken all commercially reasonable actions (including but not limited to Seller's timely filing of required documents and payment of all applicable fees, and completion of all electric System Upgrades

needed, if any) to have the Project physically interconnected to the Transmission/Distribution Owner's distribution system, but fails to secure any necessary commitments from CAISO or the Transmission/Distribution Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"), then the Guaranteed Commercial Operation Date shall be extended ~~six (6) months~~ equal to the Transmission Delay;

BAC recommends amending Section 1.1.2.3 as follows:

In the event of Force Majeure or delay caused by Buyer, without regard to Transmission Delay or Permitting Delay<sub>1</sub> ("Force Majeure Delay"), the Guaranteed Commercial Operation Date shall be extended on a day-to-day basis for a cumulative period equal to the delay caused by Force Majeure or by the Buyer; ~~of not more than six (6) months~~; provided that Seller complies with Section 10; ~~or~~

BAC also recommends amending Force Majeure in the BioMAT PPA Definition Section by deleting subsection (f):

~~(f) Any delay in providing, or cancellation of, interconnection service by a Transmission/Distribution Owner or the CAISO, except to the extent such delay or cancellation is the result of a force majeure claimed by the Transmission/Distribution Owner or the CAISO.~~

To mitigate the risk of auto-cancellation, BAC recommends the following amendment to Section 13.3:

Except as otherwise set forth in Section 13.2.2.14 above, if an Event of Default has occurred, the non-defaulting Party shall have the right to: (a) send Notice, designating a day, no earlier than five (5) days after such Notice and no later than twenty (20) days after such Notice, as an early termination date of this Agreement ("Early Termination Date"); (b) accelerate all amounts owing between the Parties; (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date; (d) collection any Settlement Amount under Section 13.5; and (e) if the defaulting party is the Seller and Buyer terminates the Agreement prior to the start of the Commercial Operation Date, Buyer shall have the right to retain (or if the Collateral Requirement has not been provided, collect) the entire Collateral Requirement. Defaulting Party shall have the right to contest the Early Termination Date consistent with Section 18.

### **C. Need to Allow Multiple Changes to Contract Quantity in 10- to 20-Year Contracts.**

Unlike solar and wind power, bioenergy depends on an organic, variable feedstock that can change seasonally or from year to year, depending on conditions outside the

seller's control. Allowing only one change in a one- to two-decade long contract is not realistic or even desirable for many bioenergy projects. Because bioenergy depends on variable fuel sources, subject to natural and regulatory conditions beyond developers' control, additional changes may be legally required or otherwise necessary. For instance, in the forest sector, climate changes, wildfire, new findings on forest sustainability and other issues could all impact the availability and cost of fuels for a particular facility. In the agricultural sector, changing crop production, the availability of water (which affects crop choices and output) in any given year, and other significant events can have enormous impacts on which fuels are available and when, and can vary greatly from year to year which, in turns, affects energy production.

In addition, wastewater treatment facilities, solid waste processing facilities, landfills and other bioenergy facilities operate under quickly changing regulatory requirements that could affect both the availability of fuels and the energy production capacity of these facilities. For example, in the South Coast Air Quality Management District, some wastewater treatment facilities may be forced to shut down existing generators and flare their biogas because new emissions standards for internal combustion engines require technologies that may not be available, reliable or affordable for public agencies. Since these are public agencies providing essential public services, they require the flexibility to make adjustments that will best protect the environment, public health and safety, as well as public finances.

Similarly, for bioenergy from diverted urban organic waste, the regulatory framework is likely to change multiple times over the next ten to twenty years and may necessitate more than one change to contract quantities for bioenergy.<sup>6</sup> For other bioenergy facilities using urban organic waste, there are almost certain to be regulatory changes affecting the amount and type of organic waste that will be available which will, in turn, affect bioenergy production.<sup>7</sup>

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<sup>6</sup> See, eg, Assembly Bill 323 (Chesbro, 2013), which would require commercial organics recycling. See also, the *Climate Change Scoping Plan First Update, Discussion Draft for Public Review and Comment*, released by the California Air Resources Board, October 2013.

<sup>7</sup> Id.

In addition, many of these facilities – including public agency developers – have changing needs for onsite energy and their ability to use the energy onsite is critical to these agencies and developers. Such changes in onsite demand affect the amount of energy that is available for export. Allowing additional onsite use of the energy may also provide additional grid benefits by reducing transmission needs to and from projects.

Recommendation:

BAC recommends allowing one change in the first two years of the contract (consistent with the utilities' recommendations, but expanding the change to the first two years), and one additional change in contract quantity for every 5 years of contract duration. Proposed changes are shown below. The first change (beginning with “update decrease”) returns the language to the language in the ReMAT contract. The remaining changes incorporate BAC's recommendations.

2.2 Contract Quantity. The “Contract Quantity” during each Contract Year is the amount set forth in the applicable Contract Year in the “Delivery Term Contract Quantity Schedule”, set forth in the Cover Sheet, which amount is net of Station Use, and, for Excess Sale arrangements, Site Host Load. Seller shall have the option to update decrease the Contract Quantity for any or all Contract Years of the Delivery Contract Quantity Schedule one (1) time if the Contract Capacity is adjusted based on the Demonstrated Contract Capacity within ten (10) Business Days of Buyer's Notice of such adjustment to the Contract Capacity or the date of the Engineer Report, as applicable. Updates to the Delivery Contract Quantity Schedule may occur two (2) times for a ten (10) year contract, three (3) times for a fifteen (15) year contract, and four (4) times for a twenty (20) year contract. Additionally, Seller may provide Notice to Buyer during Contract Year 1 or Contract Year 2 of the Delivery Term to request a one (1) time decrease to the Contract Quantity for any or all Contract Years in the Delivery Term Contract Quantity Schedule. Upon Buyer's approval, the adjusted amounts shall thereafter be the applicable Delivery Term Contract Quantity Schedule.

**D. The Requirement for Developer Experience Should be Modified to Reflect the Early Stage of Small-Scale Bioenergy Development.**

BAC urges the Commission to adjust the requirement for Developer Experience<sup>8</sup> given the small size and “pre-commercial” stage of the bioenergy industry in California, as well as the need for robust market competition. Increasing the number of market participants is critical to launch SB 1122 and to implement the program successfully. Limiting eligible bidders to developers based on the size of previous projects they have developed will exclude numerous developers that have received EPIC, US DOE and other grants to demonstrate bioenergy technologies and help move companies and technologies from pre-commercial to commercial scale, which is also the goal of SB 1122. Similarly, not allowing developers that have successfully completed projects under 1 MW to bid into SB 1122 with projects over 1 MW will significantly limit the number of eligible project sizes that are between 1-3 MW and, therefore, increase the costs of SB 1122 substantially by requiring a larger total number of projects and more small projects, which are likely to be more expensive per MW.

For example, a developer with experience developing a 750 kilowatt (kW) project may elect to develop a 2.25 megawatt (MW) project by placing in parallel three (3) 750kW systems. This technique can lower project costs by utilizing modular and scalable technology and by providing redundancy for periods of regularly scheduled maintenance. The current Developer Experience provision jeopardizes the opportunity for a developer to utilize this cost-saving technique because the developer may not meet the requirement necessary to build a project greater than one (1) MW project.

Recommendation:

BAC recommends the following changes to Section 7 of the utilities’ Proposed Tariff:

Developer Experience: The Applicant must provide to [PG&E, SCE, or SDG&E] ~~PG&E~~ an attestation that at least one member of its development team has: (a) completed the development of at least one project of similar technology ~~and capacity;~~ or and (b) experience with interconnection of an electric generator of similar technology to the grid. For the purposes of this paragraph, a “member of the development team” means an active participant who is responsible for the engineering design, construction, or operation of the Project. ~~begun construction of at least one other bioenergy project of similar technology and capacity. A project less than 1 MW will be deemed to be similar capacity to a Project up to 1~~

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<sup>8</sup> Decision 12-05-035, section 10, page 69.

~~MW. A project between 1 MW to 3 MW will be deemed to be a similar capacity to a Project up to 3 MW. For example, for a 3 MW Project, a project of similar capacity cannot be smaller than 1 MW.~~

#### **E. The Transfer of Greenhouse Gas Reductions Should not Include Reductions Greater than Carbon Neutrality.**

The Commission acknowledged in D. 13-11-024 that it should revisit the issue of how to account for greenhouse gas reductions associated with biomethane projects in the SB 1122 proceeding.<sup>9</sup> This is important for SB 1122 projects that may have carbon negative emissions (emissions reductions that go beyond carbon neutrality) and where the project developers can use carbon offset credits or other compensation for the reductions beyond zero to reduce the costs of SB 1122 projects to ratepayers. The California Air Resources Board (CARB) has categorized fuel from diverted municipal organic waste as carbon negative<sup>10</sup> and is likely to re-categorize fuel from dairy projects as carbon negative. Both of these feedstocks are eligible for SB 1122. CARB also has a carbon offset protocol for dairy biogas.<sup>11</sup>

The Utilities' proposed PPA Template, in Section 3.1.1.2, incorrectly transfers all greenhouse gas reductions from SB 1122 projects to the Utilities, even where the reductions may go beyond carbon neutrality (result in carbon negative projects and/or the generation of carbon credits). This denies bioenergy projects the monetary benefit of carbon negative emissions and will, therefore, make the lowest carbon projects less attractive financially, which would contradict the intent of SB 1122 and AB 32.

Although the purchase of REC's is intended to include all "Green Attributes," that term is limited to greenhouse gas reductions that ensure a project is carbon neutral (zero greenhouse gas reductions).<sup>12</sup> This concept is supported by the definition of "Green

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<sup>9</sup> D. 13-11-024, adopted November 14, 2013, at page 26.

<sup>10</sup> See, <http://www.arb.ca.gov/fuels/lcfs/reportingtool/registeredfacilityinfo.htm>.

<sup>11</sup> Available at: <http://www.arb.ca.gov/cc/capandtrade/protocols/livestock/livestock.htm>.

<sup>12</sup> Id., at page 24.

Attributes” in the Definition section and in Section 3.1.1.1 of the Utilities’ proposed PPA Template. Section 3.1.1.1 includes the language required by D.13-11-024:

For all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient renewable and environmental attributes of biomethane production and capture to ensure that there are *zero (0) net emissions* associated with the production of electricity from the generating facility using the biomethane.<sup>13</sup> [emphasis added]

However, Section 3.1.1.2 goes beyond this provision by requiring:

If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller’s procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

Section 3.1.1.2 would not allow projects that reduce biomethane beyond carbon neutrality to receive the financial benefit of those additional reductions, which will make dairy and diverted municipal organic waste projects more expensive to ratepayers.

Further, while the Commission adopted standard terms for the transfer of “Green Attributes,” once SB 1122 was adopted, the Commission acknowledged that it should revisit the issue of how to account for greenhouse gas reductions associated with biomethane projects in the SB 1122 proceeding.<sup>14</sup> As D.13-11-024 stated:

“The Commission has not fully explored how the “net zero emissions” concept will be put into practice in the context of RPS compliance. The Commission’s implementation of SB 1122 (Rubio, Stats. 2012, ch. 612), adding 250 MW of generation from bioenergy sources to the feed-in tariff program authorized by Section 399.20, is a logical opportunity to explore this concept further.”<sup>15</sup>

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<sup>13</sup> Id.

<sup>14</sup> D. 13-11-024, adopted November 14, 2013, at page 26.

<sup>15</sup> Id.

We agree with D.13-11-024 and encourage the Commission to revise the Utilities' proposed PPA Template to limit the transfer of greenhouse gas emissions to carbon neutrality and to allow developers to retain the right to any greenhouse gas reductions that exceed carbon neutrality (where the California Air Resources Board has determined that the fuel is carbon negative and/or offers carbon offsets for greenhouse gas emissions beyond carbon neutrality).

Recommendation:

We urge the Commission to strike the language in the Utilities' proposed PPA Template that requires sellers to transfer all greenhouse gas reductions, even if they go beyond zero net emissions (result in carbon negative projects). Specifically, BAC recommends the following changes to the proposed PPA Template section 3.1.1.2:

~~For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.~~

**F. Need to Clarify that SB 1122 Projects May also Receive EPIC and Other Grant Funds.**

Section 4.3.1 appears to prohibit SB 1122 eligible projects from receiving EPIC grants, which would contradict the purpose of both the EPIC grants and SB 1122, which is to commercialize the small-scale bioenergy industry. In fact, this Commission required that at least 20 percent of EPIC's Technology Demonstration and Deployment funds be

allocated to bioenergy projects specifically to help implement SB 1122 and contain the program costs.

Recommendation:

Either clarify that Section 4.3.1 of the Utilities' proposed PPA Template does not prohibit projects from receiving EPIC grants or strike the following language:

“Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073) ~~and/or other similar California ratepayer subsidized program relating to energy production~~ or rebated capacity costs with respect to the Facility and Seller does not maintain a Program Participation Request for the Project in the Renewable Market Adjusting Tariff program (as established by CPUC Decision 13-05-034).”

**G. Consistency across Utilities is Important with the Statewide Pricing Mechanism**

With the adoption of a Statewide Pricing Mechanism, it is critical that the BioMAT Tariff and PPA are consistent across all three Utilities. The proposed BioMAT PPA has, in several locations, proposed different requirements for projects in PG&E, SCE, or SDG&E territory. To maintain a competitive environment between all projects in the queue, it is critical that all projects are treated equally under the BioMAT program. A level playing field is critical for the successful implementation of the Statewide Pricing Mechanism. In the list below, BAC identifies areas in the Tariff and PPA where Utilities have proposed language that sets different requirements by Utility territory.

- BioMAT Tariff Section 5.5
- BioMAT PPA Cover Sheet Section xviii
- BioMAT PPA Section 2.7.5
- BioMAT PPA Section 2.7.6
- BioMAT PPA Section 2.7.7
- BioMAT PPA Section 11 – Guaranteed Energy Production
- BioMAT PPA Appendix C – Time of Delivery (TOD) Rate Schedule
- BioMAT PPA Appendix D – Forecasting and Outage Notification Provisions

- BioMAT PPA Appendix E – Telemetry Requirements

Recommendation: BAC recommends that the Commission require the Utilities to conform to a single Tariff and PPA to ensure fair competition across the state.

#### **H. Per Instructions by D.14-12-081, Changes to the ReMAT PPA and Tariff Should Only Reflect Changes Necessary to Implement the BioMat.**

The utilities have proposed a number of changes without any explanation that were not called for by D.14-12-081, which directed the Utilities to conform the ReMAT Tariff and PPA to the BioMAT program (not to propose numerous additional changes that are not necessitated by or related to D.14-12-081). Several of the Utilities' proposed changes go beyond and/or are unrelated to the requirements of D.14-12-081 and would undermine the goals of SB 1122.

Recommendation:

BAC asks the Commission to reject the following proposed changes that were not required by D.14-12-081 (the Utilities' proposed additions are shown in blue underline and proposed deletions are shown in ~~red-strikeout~~):

1. BioMAT PPA Section 2.6.2

The Utilities' have proposed adding the following requirements:

"In no event shall Buyer be obligated to receive or pay for, in any ~~hour~~ Settlement Interval, any Delivered Energy that exceeds one hundred and ten percent (110%) of Contract Capacity, and the Contract Price for such Delivered Energy in excess of such one hundred and ten percent (110%) of Contract Capacity shall be adjusted to be Zero dollars (\$0) per kWh ("Surplus Delivered Energy"), and Seller shall not receive payment for such Surplus Delivered Energy. To the extent Seller delivers such Surplus Delivered Energy in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.

The Utilities provide no justification for this change, which does not address any bioenergy specific concerns and does not increase the opportunity for bioenergy project

success. The proposed language adds a penalty provision to the BioMAT PPA that does not exist in the ReMAT which is not appropriate to incubate an industry and is not a change specific to the implementation of BioMAT.

All other references to “Surplus Delivered Energy” as defined in this section should be rejected.

## 2. BioMAT PPA Section 2.6.3

The Utilities have proposed the following changes to Section 2.6.3:

“In any Contract Year, if the amount of delivered Energy exceeds one hundred ~~twenty~~twentyfive percent (~~120~~115%) of the annual Contract Quantity ~~amount~~, the Contract Price for such Delivered Energy in excess of such one hundred ~~twenty~~twentyfive percent (~~120~~115%) shall be adjusted to ~~be~~the lesser of (I) or (II) where (I) is seventy-five percent (75%) of the applicable Contract Price ~~and (II) is the~~ hourly DA Price at the Delivery Point.”

The Utilities provide no justification for this change regarding why this change and why it is necessary to modify it for BioMAT. The proposed changes to the standard ReMAT language are not specific to the implementation of BioMAT, do not address any operational or technical bioenergy-specific challenges, and expressly decrease the opportunity for bioenergy project success. This proposed change goes beyond the instructions provided in D.14-12-081.

## 3. BioMAT PPA Section 2.7.4

The Utilities added Section 2.7.4 to restrict payments to Seller to 105% of the Contract Price. This addition, which is entirely new, should be rejected.

The introduction of Section 2.7.4 severely restricts the ability of a project to utilize the TOD schedule. There is no justification as to how the addition of this section conforms the ReMAT to the BioMAT and is a significant deviation from the ReMAT which does not restrict the Seller’s opportunity to utilize the TOD rate schedule. There is no justification for this prohibitive restriction as bioenergy projects are capable of providing flexible power generation and therefore should be allowed to schedule deliveries based on TOD rate schedule, which reflects the Utilities’ value for the energy.

## 4. BioMAT PPA Section 5.8.5

The Utilities have added an entirely new Section 5.8.5 to the PPA requiring that:

“Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocol and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer and/or the CAISO, including to implement curtailments as set forth in Section 5.8.1 and in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all steps necessary to become compliant as soon as commercially reasonably possible.”

This addition, which is entirely new, should be rejected. This section is not a part of ReMAT, is not required by D.14-12-081, and does not address any bioenergy-specific technical or operational specifications and does not promote industry incubation. This proposed addition requires infrastructure and equipment upgrades and maintenance that are not required for ReMAT projects and are not necessary for the successful development of BioMAT projects. No justification is provided as to why this requirement is necessary to conform the ReMAT PPA to the BioMAT PPA. This requirement increases the costs to operate and maintain a BioMAT project and will increase the price of electricity generation and negatively impact ratepayers.

#### 5. BioMAT PPA Section 5.17

The Utilities have added the entirety of Section 5.8.17 to the PPA requiring that:

“Seller shall provide to Buyer, prior to commencement of any construction activities on the site, a report from an independent engineer (acceptable to both Buyer and Seller) certifying that Seller has a written plan for the safe construction and operation of the Facility in accordance with Prudent Electrical Practices.”

This addition, which is entirely new, should be rejected. This section is not a part of ReMAT, is not required by D.14-12-081, and does not address any bioenergy-specific technical or operational specifications and does not promote industry incubation.

## **I. References Need to be Consistent and Accurate**

BAC has identified a number of instances of incorrectly updated references to sections in the PPA. For example, BioMAT Section 12 (formerly ReMAT Section 14 in the Red-Lined PPA Template) has many references to Section 13 that should be reference to Section 12. This section is administrative and editorial in nature and dependent on whether the GEP section has been deleted for SCE.

## **J. The Guaranteed Energy Production Requirement Should be Removed or Penalty Provisions Related to GEP Should be Modified.**

BAC supports SCE's Petition to remove the Guaranteed Energy Production requirement for baseload projects, including SB 1122 projects, provided that the requirement is removed from all three utilities' contracts. Removing the requirement only from SCE's contracts would give projects located in SCE territory an unfair market advantage that would negatively impact projects in PG&E or SDG&E territory given the Statewide Pricing Mechanism.

As noted above, bioenergy feedstock is variable and may be out of seller's control. In addition, the small-scale bioenergy industry is still immature and on an operational learning curve. The *Final Consultant Report on Small-Scale Bioenergy*, prepared for this Commission to help implement SB 1122, notes the lack of an existing market for small-scale bioenergy and the likelihood of an "operational learning curve until greater experience is gained on these units in California."<sup>16</sup> The learning curve is critical to gain the commercial experience and scale needed to lower prices for small-scale bioenergy projects.

### Recommendation:

BAC urges the Commission to delete Section 11 of the utilities' proposed PPA Template. Alternatively, we recommend revising Section 11 to allow for 170 percent

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<sup>16</sup> *Small-Scale Bioenergy: Resource Potential, Costs, and Feed-In Tariff Implementation Assessment*, Final Consultant Report Prepared for the California Public Utilities Commission, October 31, 2013, at page 1-7.

fluctuation. BAC supports the utilities' recommended change to allow for a change in contract price during the first year of operation. BAC also recommends removing penalty provisions during the initial two-year period. Providing this flexibility would not increase costs of the program as the cost to replace power is almost certain to be lower than SB 1122 contract prices.

If the requirement for Guaranteed Energy Production is not removed, then BAC urges the Commission to revise the damages provision to reflect actual damages for failing to meet Guaranteed Energy Production requirements. The PPA Template's damages for failing to meet GEP appear to be punitive since they would exceed actual damages. Including punitive damages provisions seems contrary to the Legislature's intention to incubate the small-scale bioenergy industry in California.

## **CONCLUSION**

In D. 14-12-081, the Commission adopted several important changes to the ReMAT to reflect the requirements of SB 1122 and the current state of the small-scale bioenergy industry in California. Similarly, changes to the utilities' Proposed Tariff and PPA Template are necessary to reflect the operational characteristics of small-scale bioenergy and to meet the requirements of SB 1122. We urge the Commission to make the changes described above to ensure the successful implementation of SB 1122.

DATED: March 6, 2015

Respectfully submitted,

*/s/ Julia A. Levin*

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**VERIFICATION**

I am a representative of the non-profit organization herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6<sup>th</sup> of March, 2015, in Kensington, California.

*/s/ Julia A. Levin*

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