

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

Order Instituting Rulemaking to Continue)	Rulemaking 15-02-020
Implementation and Administration, and)	(Filed February 26, 2015)
Consider Further Development, of)	
California Renewables Portfolio Standard Program.)	
_____)	

**REPLY COMMENTS OF THE BIOENERGY ASSOCIATION OF CALIFORNIA ON
THE ADMINISTRATIVE LAW JUDGE'S RULING
ON IMPLEMENTATION OF POTENTIAL LEGISLATIVE
CHANGES RELATED TO BIOMAT**

DATED: August 31, 2016

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The Bioenergy Association of California (BAC) submits these Reply Comments pursuant to the Administrative Law Judge's Ruling of August 17, 2016. Since the Ruling was issued, the Legislature has passed SB 840,¹ demonstrating both the Legislature's and the Governor's intention to facilitate the development of forest BioMAT projects to address the ongoing tree mortality crisis in California. The Governor's Emergency Proclamation² made clear that the rapidly growing crisis threatens public safety and important infrastructure, including utility infrastructure. It also threatens the state's

¹ Senate Bill 840, introduced by Committee on Budget and Fiscal Review, enrolled and presented to the Governor on August 26, 2016.

² Governor's Proclamation of a State of Emergency, dated October 30, 2015. Available at: https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf.

largest source of water and hydropower, and California's largest carbon sink, which is an important part of the state's overall climate strategy. SB 840 underscores the importance of accelerating forest BioMAT projects by revising requirements related to interconnection that made it impossible for forest BioMAT projects to remain in the BioMAT queue.

Given the urgency of the tree mortality crisis, which the Governor and Legislature have both addressed, the focus on BioMAT Category 3 ("forest BioMAT") should be to:

1. Enable forest BioMAT projects to execute PPA's and interconnect as quickly as possible to protect public safety, infrastructure, water supplies and other important resources.
2. Ensure project viability without imposing new requirements that impede forest BioMAT projects, impose punitive damages, unfairly allocate risk, or allow unnecessarily long utility delays.

Most of the parties' opening comments profess similar goals, but many of the solutions proposed would essentially impose a new set of burdensome regulations in place of the interconnection requirements that the Legislature revised in SB 840. Imposing new and unnecessary burdens on forest BioMAT projects would contravene the purpose of SB 840 and further delay implementation of the Governor's Emergency Proclamation.

BAC's responses to the specific comments and proposals are below.

1. Adopting or Accelerating the Adoption of a Higher Contract Price will Remove Most or All of the Concerns Related to Project Viability and Queue Clogging.

BAC agrees with the Opening Comments of Placer County Air Pollution Control District that increasing the offering price is critical and must be increased for the length of the forest BioMAT contract.³ As BAC noted in its Comments of February 26, 2016, forest BioMAT projects will require a much higher contract price than the current price of

³ Opening Comments of PCAPCD, filed August 24, 2016, at page 2.

\$127.72.⁴ Adopting that price will be the single most effective step the Commission can take to implement the Governor’s Emergency Proclamation and to address many of the concerns raised by parties in their opening comments on the Administrative Law Judge’s Order of August 17. Enabling projects to execute a PPA as soon as they enter the BioMAT queue is the most important component of project viability. It would also avoid the concerns expressed by parties that projects could clog the BioMAT or interconnection queues. Most importantly, it is the only way to meet the requirement of the Governor’s Emergency Proclamation to expedite contract execution within six months.⁵

2. The BioMAT Should Promote Viable Projects, but Not By Adopting New and Burdensome Interconnection Deposit Requirements.

BAC agrees with other parties’ opening comments that the BioMAT should promote viable projects.⁶ The utilities’ opening comments mistakenly assume, however, that interconnection deposits or costs are a good measure of project viability. Community-scale biomass projects seeking to participate in BioMAT Category 3 must develop a project that is financially attractive to equity partners and/or debt providers. Project financing of any type is provided to a project only if a wide variety of factors have been addressed, including site control, feedstock security, permitting success, capital costs, and a sufficient revenue stream to realize profitability over the duration of the financing term.

Interconnection is a sub-component of only one of those items: capital cost.

Interconnection is not the defining factor of viability as the utilities’ opening comments imply. For instance, SCE states incorrectly that “non-viable projects (those with higher costs identified in interconnection studies) should be encouraged to withdraw from the

⁴ Bioenergy Association of California’s Comments On Administrative Law Judge’s Ruling On The Staff Proposal To Implement The Governor’s Emergency Proclamation On Tree Mortality And Seeking Comment On The Staff Proposal, filed February 26, 2016 in R. 15-02-020, at pages 5-8.

⁵ Governor’s Proclamation of a State of Emergency, dated October 30, 2015, Section 9. Available at: https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf.

⁶ Opening Comments of PG&E at pages 3-4; SDG&E at page 6; Clean Coalition at pages 1-2 (all filed August 24, 2016 in R. 15-02-020).

BioMAT queue, rather than remain for an indefinite period of time while waiting for a PPA that will likely never materialize due to the high interconnection costs.”⁷ This statement implies that there are no other variables that determine viability, which is not accurate. There are hundreds of scenarios in which a site with a higher interconnection cost might be preferable to a site with a lower interconnection cost. For example. Site A has a \$300,000 interconnection cost and is a green field site. Site B has a \$3,000,000 interconnection cost but is the site of a former sawmill which has access roads, fire suppression infrastructure, truck scales, properly graded fuel storage, and conveyors onsite. While the interconnection cost at Site B is higher, Site B has substantial existing infrastructure that can be re-purposed with a value that far exceeds the difference in interconnection costs.

BAC disagrees with parties’ proposals to adopt new interconnection costs or deposit requirements that are claimed to be for the purpose of demonstrating project viability. Doing so would not provide an accurate measure of project viability and would completely negate the purpose of SB 840, which is to remove burdensome interconnection deposit requirements.

3. A Reasonable Deposit Based on Actual Costs Should be Required of Projects that Withdraw from the Interconnection Queue While Waiting for the BioMAT.

BAC agrees with the comments of Clean Coalition that financial securities should be equivalent to the basic deposit for the SIS, but Clean Coalition was mistaken about the amount of that deposit for forest BioMAT projects.⁸ As BAC noted in its opening comments, the cost of an SIS for distributed generation projects is \$10,000. BAC proposes a deposit in the amount of \$25,800, which includes the SIS deposit (\$10,000), the Interconnection application fee (\$800) and the Facilities Study Deposit (\$15,000). By requiring a deposit that is based on actual costs the developer will face upon execution of a PPA, this is a reasonable financial security that shows the developer’s ability to pay interconnection costs, but does not establish new and burdensome

⁷ SCE Comments, pages 6-7.

⁸ Opening Comments of Clean Coalition, filed August 24, 2016 in R. 15-02-020, at page 2.

financial requirements in place of the ones that the Legislature sought to remove with SB 840.

BAC also agrees with Clean Coalition that the deposit should be refundable if the project withdraws before executing a PPA⁹ (minus the \$800 application fee as suggested in BAC's opening comments). BAC opposes SDG&E's suggestion that deposits should be nonrefundable to absorb costs caused by nonviable projects.¹⁰ Since the changes required by SB 840 will not increase the number of nonviable projects, as explained above, changes to deposit requirements and refundability should not be based on this mistaken assertion.

BAC opposes PG&E's suggestion that the initial fees should be increased¹¹ as this could end up replacing one barrier with another and contradicts the goals of SB 840 and the Governor's Emergency Proclamation to expedite forest BioMAT projects, not to replace one obstacle with another.

4. Projects that Leave the Interconnection Queue Cannot Then Clog the Queue.

Both PG&E and SDG&E raise the rather surprising concern that allowing forest BioMAT projects to step out of the interconnection queue will somehow clog the interconnection queue.¹² Their concern seems to be based on two fundamental misunderstandings. First, as noted above, the utilities incorrectly assume that interconnection deposits are a good proxy for project viability and that by removing the deposit requirement, numerous nonviable projects will clog the interconnection queue. As BAC explained above, the interconnection deposit is not a good demonstration of project viability. More important, removing the requirement to remain in the interconnection queue should reduce the risk of clogging the queue, not increase it.

The utilities also suggest that projects could clog the interconnection queue by entering and leaving multiple times. This, too, makes no sense since a project will have to pay for an updated interconnection study each time it enters the queue and has no reason to re-enter the queue until (and if) it executes a PPA or a material change to the

⁹ Opening Comments of Clean Coalition at page 2.

¹⁰ Opening Comments of SDG&E at page 5.

¹¹ Opening Comments of PG&E at page 4.

¹² Opening Comments of PG&E at pages 3-4; Opening Comments of SDG&E at page 4 and page 6.

distribution circuit is identified (e.g. new distributed power generating source comes online). BAC agrees with the comments of SDG&E and Clean Coalition that developers will have a financial interest in limiting the number of interconnection study agreements. As Clean Coalition stated, “SIS is performed by the utility on a fee for service basis, and this provides a clear incentive for the applicant to avoid excessive, repetitive studies.”¹³

5. Requiring Pre-Application Reports Every Six Months is a Reasonable Way to Ensure that Projects Monitor Changes in the Interconnection Queue.

BAC supports PG&E’s proposal to require projects that withdraw from the interconnection queue to file Pre-Application Reports every six months to monitor the queue until the project executes a PPA.¹⁴ This is a reasonable way to ensure that applicants monitor the interconnection queue and are apprised of changes before entering into a PPA.

6. Utilities Should Bear Equal Responsibility for Interconnection Delays.

BAC shares PG&E’s concerns about potential delays in meeting COD, but strongly disagrees with most of PG&E’s proposed solutions. BAC agrees with PG&E that developers should have to apply for a new interconnection study within 30 days of executing a PPA.¹⁵ Once the developer applies, however, most of the study requirements are in the utility’s – not the developer’s – control. The utility is responsible for determining 1) what interconnection requirements are necessary, 2) the interconnection schedule, and 3) the allocation of resources to complete interconnection. The applicant has no ability to control these factors. It is critical, therefore, that the Commission impose clear deadlines for the utility and an automatic review by the Commission when utilities or developers fail to meet deadlines.

The burden should be on the utility to demonstrate why a delay is necessary, which should be rare indeed since these projects are called for in the Governor’s Emergency Proclamation. As the Emergency Proclamation made clear, this is a state of emergency

¹³ Clean Coalition Comments at page 3.

¹⁴ PG&E’s Opening Comments at page 6.

¹⁵ PG&E’s Opening Comments at page 5.

and it is critical that both utility and developer remain on schedule and that the Commission intervene when interconnection for a forest BioMAT project is delayed. Utilities should not be allowed to cancel contracts nor should PPA's terminate automatically when delays are caused by factors outside the applicant's control, including factors within the utility's control.

BAC also opposes Clean Coalition's suggestion to prioritize projects that do not seek extensions of COD.¹⁶ The Legislature and Governor have made clear that forest BioMAT projects are a high priority and should be expedited to meet the requirements of the Emergency Proclamation and SB 840. Other priorities should not be adopted that may undermine the priority established by law and Emergency Order.

7. The Legislature has Revised the Interconnection Requirements for all Forest BioMAT Projects.

SDG&E proposes limiting the revised interconnection requirements to forest BioMAT projects in High Hazard Zones (HHZ's), but SB 840 revises the requirements for all forest BioMAT projects. HHZ's have been significantly expanded since the Governor issues the Emergency Order and CalFire has said they will continue to expand as the tree mortality crisis expands.¹⁷ CalFire has also said that HHZs will certainly not contract for at least five years.¹⁸ Given the Legislature's decision to revise the interconnection requirements for all forest BioMAT projects, and CalFire's projections about HHZ's, BAC urges the Commission to make changes pursuant to the Emergency Proclamation for all forest BioMAT projects, as SB 840 does. Creating separate requirements within a very small (50 MW total) category makes no sense at this point.

BAC thanks the Commission again for posing these questions in a timely manner and looks forward to working with the Commission, utilities and other parties to resolve

¹⁶ Opening Comments of Clean Coalition at pages 3-4.

¹⁷ Letter from CalFire Chief Ken Pimlott to the Commission, included as Attachment A to the Administrative Law Judge's Ruling of May 6, 2016 in R. 15-02-0202. Also available at: http://www.fire.ca.gov/treetaskforce/downloads/HHZ_ltr_to_CPUC_President_Picker.pdf.

¹⁸ Id.

these issues quickly so that forest BioMAT projects can be executed as required by SB 1122, the Emergency Proclamation and SB 840.

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Respectfully submitted,

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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 31st day of August, 2016, in Kensington, California.

/s/ Julia A. Levin

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