



**FILED**  
11-19-13  
11:35 AM

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

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.

Rulemaking 11-05-005  
(Filed May 5, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON  
STAFF PROPOSAL ON IMPLEMENTATION OF SENATE BILL 1122 AND  
ACCEPTING CONSULTANT REPORT INTO THE RECORD**

**1. Background**

Senate Bill (SB) 1122, (Rubio) Stats. 2012, ch. 612, adds to Pub. Util. Code § 399.20 a requirement that investor-owned utilities (IOUs) must collectively procure at least 250 megawatts (MW) of generation eligible for the California renewables portfolio standard (RPS) from bioenergy generation projects that commence operation on or after June 1, 2013 and meet the criteria set in the statute.<sup>1</sup>

As part of the process of implementing SB 1122, Energy Division staff commissioned a report from consultants Black & Veatch titled "Small-Scale Bioenergy: Resource Potential, Costs, and Feed-in Tariff Implementation

---

<sup>1</sup> New Section 399.20(f)(2)-(4). All further references to sections are to the Public Utilities Code unless otherwise noted. The text of Section 399.20, as amended by SB 1122, is attached to this Ruling as Attachment A.

Assessment.” (consultant report.)<sup>2</sup> A draft version of the report was published in April 2013. Energy Division staff held an informal workshop to discuss the draft report on May 2, 2013. After the workshop, staff solicited informal party comments, submitted to staff and served on the service list of this proceeding in June 2013, but not filed in this proceeding. The consultant report was revised in October 2013. Staff now proposes that the final consultant report be included in the record of this proceeding.

## **2. Staff Proposal**

Attached to this ruling as Attachment B is the Staff Proposal for Implementation of SB 1122 (staff proposal). The staff proposal includes two attachments, both of which are intended to be part of the staff proposal on which comments are filed.<sup>3</sup>

Parties are asked to comment on the staff proposal, responding to the questions set forth in this ruling and providing any additional comments they deem necessary, in accordance with the guidance provided below.

## **3. Comments**

Comments should respond to the staff proposal and the questions posed in this ruling. Comments should be complete in themselves and address the staff proposal. Comments should not discuss the April 2013 draft consultant report or

---

<sup>2</sup> The final version of this report, dated October 31, 2013, is attached to the accompanying staff proposal as Attachment 1. The report is also available on the Commission’s web site, at [http://www.cpuc.ca.gov/assets/CPUCBioEnergyReport\\_103113.htm](http://www.cpuc.ca.gov/assets/CPUCBioEnergyReport_103113.htm).

<sup>3</sup> The attachments are: The consultant report (Attachment 1) and an overview of the ReMAT pricing mechanism (Attachment 2).

incorporate by reference or attach a party's prior informal comments to staff regarding the draft consultant report.

Comments should be as specific and precise as possible. Legal arguments should be supported with specific citations. All comments should use publicly available materials (for example, the public description of a transaction in a resolution adopted by the Commission). All comments should specifically identify, with respect to each question, whether the potential sources of information addressed in the response to the question are public or confidential. If both public and confidential sources of information are identified, the comments should clearly identify which are public and which are confidential.

Parties may identify and comment on issues that are not addressed in the staff proposal or the questions below. Commenters doing so should clearly identify and explain the relevance of the additional issue(s).

Comments of not more than 40 pages may be filed and served not later than December 20, 2013. Reply comments of not more than 20 pages may be filed and served not later than January 16, 2014.

#### **4. Questions for Comments**

The following questions are intended to guide parties in providing comments. Please identify the particular question or questions, if any, to which a comment responds. A response may address several questions, so long as all the questions in the group are clearly identified. If a comment does not respond to a question, but rather to an element of the staff proposal directly, please identify the specific part of the staff proposal that is being addressed. It is not necessary to reproduce either the question or the section of the staff proposal, so long as it is clear what question or section the comment addresses and the specific question or section is identified. (*e.g.*, "section 1.6.8. of the staff proposal").

#### **4.1. Staff Proposal on Elements other than Price**

##### **A. Eligibility**

1. Do you agree with the staff proposal that a generation project that meets the criteria of SB 1122 may not seek a contract pursuant to the renewable market adjusting tariff (ReMAT) tariff that applies to projects that do not meet the criteria of SB 1122? Please provide legal and practical reasons for your choice.
2. If you believe that a project that meets the criteria of SB 1122 may participate in either the ReMAT tariff that applies only to such projects, or in the ReMAT tariffs that apply to projects that do not meet the criteria of SB 1122, please describe how participation in the tariffs could be administered to minimize the risk that participation of SB 1122-eligible projects would increase prices under the general ReMAT tariffs. Please be specific and provide quantitative examples.

##### **B. Allocation by Share of Peak Demand**

1. If you do not agree with the staff proposal to use the method in Decision (D.) 12-05-035 to allocate the SB 1122 requirements to the three large utilities<sup>4</sup>, please propose another method. Please provide legal justification and quantitative examples.

##### **C. Commencing Operations**

1. Do you agree with the staff proposal to use the definition of "commercial on line date" found in the California Energy Commission's (CEC) *RPS Eligibility Guidebook* (7<sup>th</sup> ed.,

---

<sup>4</sup> In accordance with the authority granted by Section 399.20(c), the Commission has exempted the small and multi-jurisdictional utilities (Bear Valley Electric Service, Liberty tower, and PacifiCorp) from participation in the feed-in tariff (FIT) program. D.12-05-035 at Conclusion of Law 38 and Ordering Paragraph 10.

April 30, 2013) (*Eligibility Guidebook*)<sup>5</sup> for purposes of implementing the requirement in Section 399.20(f)(2) that a generation facility must "commence operation on or after June 1, 2013" to meet the criteria set out in SB 1122? Why or why not? Please provide both legal and practical justifications for your response.

2. If you do not agree with the staff proposal to use the CEC's "commercial on line date" definition, please propose an alternative method to implement the "commence operations" requirement in Section 399.20(f)(2) and provide both legal and practical justifications for the proposal.

#### **D. Bioenergy Categories**

The staff proposal addresses the provisions of SB 1122 that characterize the fuels for generation facilities that will meet the statutory criteria for inclusion in the 250 MW procurement requirement set by SB 1122. Although SB 1122 adds a specific definition of "bioenergy" in Section 399.20(f)(4),<sup>6</sup> most other terms used in the descriptions of the allocation of the 250 MW in Section 399.20(f)(2)(A) are without statutory definition.

Parties are asked to comment on each element of the staff proposal with respect to the definition and characterization of the different bioenergy categories. Comments should:

- be specific;

---

<sup>5</sup> The *Eligibility Guidebook* may be found at <http://www.energy.ca.gov/portfolio/documents/index.html>.

<sup>6</sup> Section 399.20(f)(4) provides:

For the purposes of this subdivision, 'bioenergy' means biogas and biomass.

- state whether the comment agrees or disagrees with the staff proposal for characterization and definition on that point;
  - provide relevant legal authority;
  - describe with particularity relevant commercial practice; and
  - provide any other information necessary to support the position advanced in the comments about characterization and definition for the particular element being discussed in each category.
1. Biogas, including the following sources. Please address each source separately.
    - a. Wastewater treatment;
    - b. Municipal organic waste diversion;
    - c. Food processing; and
    - d. Codigestion
  2. Bioenergy from
    - a. Dairy
    - b. Other agricultural sources
  3. Bioenergy using byproducts of sustainable forest management.

#### **E. Allocations Among Categories**

Section 399.20(f)(2)A) requires that the Commission allocate the MW to be procured by the IOUs among the fuel categories set out in the statute:

- 110 MW from “biogas from wastewater treatment, municipal organic waste diversion, food processing, and codigestion;”
- 90 MW from “dairy and other agricultural bioenergy;”
- 50 MW from “bioenergy using byproducts of sustainable forest management.”

Please comment on the following possible methods of allocation. Please provide analysis based on both legal and practical factors.

1. Allocate MW in each category to each IOU by the IOU's share of statewide peak demand. (This is the method shown in the final consultant report as Table 5-1, reproduced in the staff proposal as Table 1-2.)
2. The allocation proposed by staff, at p. 31 of the staff proposal, which is based on Table 5-4 of the consultant report.
3. Another allocation method. Please describe the method with particularity and provide numerical examples.

**F. Compliance with Bioenergy Category**

1. Do you agree with the staff proposal that at least 80% of the fuel for a bioenergy generation facility must be sourced from resources that fall within the resource category pursuant to which the generation facility obtains its contract with an IOU? Why or why not? Please discuss commercial practice, legal, and administrative issues.
2. If you do not agree with the staff proposal, please provide another method for determining compliance of fuel sources. Please provide examples from commercial practice, if relevant. Please provide quantitative examples, if relevant.
3. Do you agree with the staff proposal that the contracting IOU should determine the relevant category of fuel sources at the time that a generator submits a program participation request form for the SB 1122 tariff? Why or why not? Please discuss commercial practice, legal, and administrative issues.
4. If you do not agree with the staff proposal, please provide another time and/or process for determining the relevant category of fuel sources. Please provide examples from commercial practice, if relevant. Please provide quantitative examples, if relevant.

5. Do you agree with the staff proposal that it is necessary to monitor the fuels used by a generation facility under the SB 1122 tariff during the life of the facilities' contract with an IOU? Why or why not? Please discuss commercial practice, legal, and administrative issues.
6. Do you agree with the staff proposal that monitoring of the fuels used by a generation facility under the SB 1122 tariff should be accomplished by annual reports from the generator to the IOU with which it has a contract? Why or why not? Please discuss commercial practice, legal, and administrative issues.
7. If you do not agree with the staff proposal, please provide another method for monitoring the fuels used. Please provide examples from commercial practice, if relevant.
8. Do you agree with the staff proposal that the IOUs' joint FIT contract should be revised to include the requirement of annual reporting by generators on their fuel use? Why or why not? Please discuss commercial practice, legal, and administrative issues.
9. If you do not agree with the staff proposal, please provide another method for ensuring that fuel use is monitored. Please provide examples from commercial practice, if relevant.
10. How should a requirement for annual reporting on fuel use by generators be enforced? For example, by liquidated damages established in the contract? By another contract damages measure? By cancellation or curtailment of the contract? By other means? Please provide legal and practical justifications for your choice, including any relevant examples.
11. If you do not believe an annual reporting mechanism is appropriate, please provide another method of enforcing any required provision of information on fuel use by generators. Please provide legal and practical justifications for your choice, including any relevant examples

## **5. Staff Proposal on Pricing**

The staff proposal builds on the existing ReMAT pricing structure to develop an application for generation facilities described by SB 1122. This section asks questions about the elements of the staff proposal on pricing, as well as more general questions about pricing for the 250 MW of capacity included in the SB 1122 allocations.

1. Do you agree with the staff proposal that there should be a single, statewide price for generation in each statutory category of bioenergy? Why or why not? Please discuss commercial practice, legal, and administrative issues.
2. If you do not agree with the staff proposal that there should be a single, statewide price for generation in each statutory category of bioenergy, please provide another option for the price structure for SB 1122-eligible generation. Explain in detail the differences between your proposal and the staff proposal. Please discuss commercial practice, legal, and administrative issues, and provide quantitative examples.
3. Do you agree with the staff proposal that the ReMAT “starting price” should be the same for each of the three statutory bioenergy categories? Why or why not? Please discuss commercial practice, legal, and administrative issues.
4. Do you agree with the staff proposal that the ReMAT starting price for each of the three bioenergy categories should be \$124.66/MWh (prior to Time of Delivery adjustment factors)? Why or why not? Please discuss commercial practice, legal, and administrative issues.
5. If you do not agree with the staff proposal’s treatment of the starting price for the three bioenergy categories, please provide another option for the ReMAT starting price for SB 1122-eligible generation. Explain in detail the differences between your proposal and the staff proposal. Please discuss commercial practice, legal, and administrative issues, and provide quantitative examples.

6. Do you agree with the staff proposal that, with the exception of the statewide price for each category and the new starting price, the ReMAT structure should apply without modification to generation facilities eligible under SB 1122? Why or why not? Please discuss commercial practice, legal, and administrative issues.
7. If you do not agree with the staff proposal to maintain all other ReMAT features, please provide another option for the treatment of SB 1122-eligible generation in ReMAT. Explain in detail the differences between your proposal and the staff proposal. Please discuss commercial practice, legal, and administrative issues, and provide quantitative examples.
8. Should the standard power purchase agreement (PPA) for projects under the FIT, approved in D.13-05-034, be modified for projects eligible under SB 1122 with respect to any terms other than price and annual reporting of fuel use? For each proposed modification, please provide:
  - a. The relevant language in the current FIT PPA (in full);
  - b. The proposed new PPA language (in full);
  - c. The justification for the proposed new language, with reference to commercial practice, legal, and administrative issues.

## **6. Other Issues**

The implementation of SB 1122 is likely to address issues beyond those specifically set out in the staff proposal. Please comment on the following topics, with reference to commercial practice, legal, and administrative issues.

1. What, if any, types of bioenergy generation projects that would not be categorized as “baseload” projects pursuant to D.12-05-035, currently exist in California? Please provide specific examples, including the name of the project, its location, its capacity, and its fuel sources.
2. What, if any, types of bioenergy generation projects that would not be categorized as “baseload” projects pursuant to D 12-05-035, currently exist in other states? Please provide

- specific examples, including the name of the project, its location, its capacity, and its fuel sources.
3. What, if any, types of bioenergy generation projects that would not be categorized as “baseload” projects pursuant to D.12-05-035, currently exist in other countries? Please provide specific examples, including the name of the project, its location, its capacity, and its fuel sources.
  4. To be eligible for a tariff under Section 399.20, a generation facility must be “located within the service territory of, and developed to sell electricity to, an electrical corporation. . .” (Section 399.20(b).) Should the Commission interpret this locational requirement to allow a generation facility eligible under SB 1122 to use fuel feedstock from a source outside the utility’s service territory? (For example, a biomass generation facility in the service territory of SCE contracts with a provider of byproducts of sustainable forest management that are collected from areas in the service territory of PG&E.) Why or why not? Please discuss commercial practice, legal, and administrative issues.
  5. Section 399.20(f)(2)(C) provides that the Commission should coordinate, to the maximum extent feasible, any incentive or subsidy programs for bioenergy with the agencies listed in subparagraph (A) of paragraph (3)<sup>7</sup> in order to provide maximum benefits to ratepayers and to ensure that incentives are used to reduce contract prices.
    - a. What incentive programs, whether local, state, or federal, currently exist that might reasonably be available to a generation project eligible under SB 1122? Please provide specific information about the legal authority for the program, the government agency(ies) by which the program is administered, and the nature of the incentives offered.

---

<sup>7</sup> These agencies are: CEC, Air Resources Board, CAL FIRE, Department of Food and Agriculture, and Department of Resources Recycling and Recovery.

6. Please identify any requirements, practices, or other operational issues that may arise in the implementation of SB 1122 that may impact the utilities' obligation under Section 451 to, among other things, provide the safe operation of their services. Please be specific and provide examples from California or other states, if relevant.
7. Please provide comments on any other issues of significance in the Commission's implementation of SB 1122. Please provide specific references to any statutes or regulations that are relevant to these comments. Please provide quantitative examples, if relevant.

**IT IS RULED** that:

1. Comments of not more than 40 pages in response to this ruling and the Staff Proposal may be filed and served not later than December 20, 2013.
2. Reply comments of not more than 20 pages may be filed and served not later than January 16, 2014.
3. The final consultant report entitled "Small-Scale Bioenergy: Resource Potential, Costs, and Feed-In Tariff Implementation Assessment," prepared by Black & Veatch, dated October 31, 2013, and attached to the Staff Proposal as Attachment 1, is accepted into the record of this proceeding.

Dated November 19, 2013, at San Francisco, California.

\_\_\_\_\_  
/s/ ANNE E. SIMON  
Anne E. Simon  
Administrative Law Judge