



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

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Order Instituting Rulemaking to Continue
Implementation and Administration, and
Consider Further Development, of California
Renewables Portfolio Standard Program.

Rulemaking 15-02-020
(Filed February 26, 2015)

**CENTER FOR BIOLOGICAL DIVERSITY'S OPENING COMMENTS
ON PROPOSED DECISION IMPLEMENTING PROVISIONS OF
GOVERNOR'S PROCLAMATION OF A STATE OF EMERGENCY RELATED
TO TREE MORTALITY AND SENATE BILL 840 RELATED TO THE
BIOENERGY FEED-IN TARIFF IN THE RENEWABLES PORTFOLIO
STANDARD PROGRAM**

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SUMMARY OF RECOMMENDATIONS

1. The Proposed Decision should be modified to require that all HHZ fuels used in Category 3 facilities meet the definitions and criteria for “byproducts of sustainable forest management” adopted in D.14-12-081.
2. The Proposed Decision should not accelerate pricing for all Category 3 facilities, but rather should adopt a “price screen” restricting price acceleration to facilities primarily using HHZ fuels.
3. The Commission should commit to a specific timeline for development of a third-party fuels verification program.

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GOVERNOR’S PROCLAMATION OF A STATE OF EMERGENCY RELATED TO
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FEED-IN TARIFF IN THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

The Legislature and the Governor, through SB 1122 and the Governor’s October 30, 2015 Emergency Proclamation, have chosen to require ratepayers to subsidize certain forest management activities in California through mandatory purchases of bioenergy at prices well above the market cost of electricity from other renewable sources. As the Center for Biological Diversity (“Center”) has pointed out in this and other proceedings, bioenergy—particularly from forest-sourced biomass—is not only more expensive than other renewables, but also far less efficient and even more carbon-intensive than the fossil-fueled generation renewables are supposed to replace. The Center understands that the wisdom and efficacy of SB 1122 and the Emergency Proclamation are beyond the scope of the Proposed Decision (“PD”) at issue here. However, given the high economic and environmental costs of bioenergy, both SB 1122 and the Emergency Proclamation should be implemented in a narrowly tailored way so as to protect both ratepayers and the environment.

As currently drafted, the PD does not take a narrowly tailored approach. Instead, the PD proposes to expand the list of fuels eligible for use by Category 3 BioMAT facilities beyond the “byproducts of sustainable forest management” authorized by statute and prior Commission decision. The PD also accelerates the pricing structure for all Category 3 facilities regardless of whether they use any fuel from “high hazard zones” (“HHZ”), thus exceeding both the scope of and the authority granted under the Emergency Proclamation. Finally, the PD misses an opportunity to expedite the already overdue development of third-party verification procedures essential to protect ratepayers and the environment. As discussed in detail below, the PD should

be modified to correct these shortcomings.

I. “Sustainable Forest Management” Restrictions Should Apply to HHZ Fuels

The PD should be revised to clarify that all fuel obtained from HHZ areas must comply with at least one of the four subcategories of “byproducts of sustainable forest management” identified in D.14-12-081. As drafted, the PD simply adds “fuel from HHZ as an eligible fuel source under Category 3 of the BioMAT program.” (PD at 9.) The PD does not, however, find that all fuel from HHZ represents “byproducts of sustainable forest management” within the meaning of Public Utilities Code section 399.20(f)(2)(A)(iii). The PD would thus allow HHZ fuels to skirt the definition of “byproducts of sustainable forest management” adopted in D.14-12-081 in order to achieve compliance with statutory requirements.

The PD references, but misconstrues, the Center’s comments on this issue. (PD at 9.) Since the parties submitted comments on the Staff Proposal, the California Department of Forestry and Fire Protection (“CalFIRE”) has designated expansive new areas of “Tier 2” HHZ. Tier 2 encompasses broad areas of forest, including areas that do not have tree mortality above background levels and do not pose any hazards to property, life, or infrastructure within the meaning of Ordering Paragraph 2 of the Emergency Proclamation.¹ The Center’s comments opposed creating an additional, separate eligibility category for HHZ fuel not only because such a category is likely unnecessary, but also because “an additional ‘high hazard zone’ category would defeat the purpose and limitations of the specific cross-references embedded within the existing subcategories [of ‘sustainable forest management’ under D.14-12-081], all of which

¹ CalFIRE, Tree Mortality Viewer, at <http://egis.fire.ca.gov/TreeMortalityViewer/> (visited October 17, 2016). CalFIRE describes “Tier Two High Hazard Zones” as “zones defined by watersheds (HUC 12) that have significant tree mortality, combined with community and natural resource assets. Work at the Tier 2 level supports broader forest health and landscape level fire planning issues.” Letter from Ken Pimlott, Director of CalFIRE, to Michael Picker, President of the Public Utilities Commission (April 6, 2016). The Commission has already taken official notice of both the Tree Mortality Viewer and the Pimlott letter. (PD at 8 & n.16.)

identify established programs, with particular safeguards”² Moreover, the Center submitted these comments at a time when the only HHZs designated on CalFIRE’s map delineated areas where dead trees posed immediate hazards to public safety, property, and infrastructure.³ The Center’s comments simply pointed out that removal of trees from these zones (now designated “Tier 1” zones on CalFIRE’s map) would likely comport with the “byproducts of sustainable forest management” definition adopted in D.14-12-081. However, with the dramatic expansion of CalFIRE’s map to include “Tier 2” HHZs where trees may not even be dead or dying, much less pose any actual hazard, it is far less clear that removal of trees from these expanded areas will be consistent with D.14-12-081 and Public Utilities Code section 399.20.

Adding “fuel from HHZ as an eligible fuel source” for Category 3 facilities thus creates a potential loophole in the statutorily mandated definition of “sustainable forest management.” The HHZs, particularly Tier 2 HHZs, are geographical, while the definitions of “sustainable forest management” adopted in D.14-12-081 are operational. Under the PD, facilities using any and all fuel removed from a HHZ—regardless of whether the trees removed were dead or posed a hazard, and regardless of whether fuel removal complied with the “sustainable forest management” provisions of the statute and D.14-12-081—would nonetheless be eligible for use by Category 3 facilities. Declaring any and all fuel from HHZs eligible, regardless of whether the practices used to obtain that fuel represent “sustainable forest management,” would thus contravene the requirements of Public Utilities Code section 399.20(f)(2)(A).

Accordingly, the PD should be modified to make clear that fuel obtained from HHZs must meet one or more of the definitions of “byproducts of sustainable forest management”

² Comments of the Center for Biological Diversity on the Energy Division Staff Proposal to Implement Governor’s Emergency Proclamation on Tree Mortality at 7-8 (Feb. 26, 2016).

³ See *id.* at 8 (citing Emergency Procl., Ordering Paragraph 2).

adopted in D.14-12-081. Changes to the PD’s Findings of Fact and Conclusions of Law necessary to implement this modification are shown in Appendix A.

II. The Emergency Proclamation Does Not Authorize the Commission to Adjust the Pricing Mechanism for All Category 3 Facilities

The PD proposes to accelerate the price adjustment mechanism for all Category 3 facilities, regardless of whether they actually use HHZ fuels. (PD at 12-15.) This proposal exceeds authority granted under the Emergency Proclamation, which requires the Commission to “take expedited action to ensure that contracts for new forest bioenergy facilities *that receive feedstock from high hazard zones* can be executed within six months, including . . . consideration of adjustments to the BioMat [*sic*] Program”⁴ The Emergency Proclamation thus grants no authority to adjust the BioMAT program for Category 3 facilities that do not “receive feedstock from high hazard zones.” The PD’s approach—proposing adjustments “without the complications attendant on incentives for the use of HHZ fuel” (PD at 12)—also impermissibly expands the basic purpose of the Emergency Proclamation: to create “incentives for the use of HHZ fuel” by requiring ratepayers to subsidize facilities using that fuel.

The PD’s mere expectation that Category 3 facilities “will make every reasonable effort to maximize the use of HHZ fuel,” combined with its vague assurance that the Commission will “monitor the use of HHZ fuel” to determine whether this expectation is being met, are insufficient to ensure that the modifications proposed in the PD will remain within the bounds authorized by the Emergency Proclamation. Category 3 facilities can be expected to source whatever fuels are least expensive.⁵ HHZ fuels, particularly fuels from Tier 2 areas far from

⁴ Emergency Proclamation, Ordering ¶ 9 (emphasis added).

⁵ As the Black and Veatch Final Report on SB 1122 implementation found, “the cost of generation from [forest biomass] facilities can vary considerably based on the cost assumptions used. Of particular importance is the feedstock cost; projects located at facilities with an ample supply of inexpensive feedstock, such as those at sawmills and nut processing facilities, will

roads and infrastructure, will likely be far more expensive than other fuels due to increased transport and processing costs.⁶ For example, two of the counties with the highest resource potential for Category 3 biomass (Humboldt County and Mendocino County) have very few HHZs designated in either Tier 1 or Tier 2.⁷ Given the high cost of biomass transport and processing, it is not reasonable to expect that any Category 3 facilities in these areas will use meaningful amounts of HHZ fuel. There is thus no reason to expect that given the choice between less expensive non-HHZ fuels and more expensive HHZ fuels, every Category 3 facility will nonetheless “maximize the use of HHZ fuel.” Indeed, the evidence in the record supports a contrary expectation.

The PD thus imposes potential burdens on ratepayers—and creates a potential windfall for bioenergy generators electing to use less expensive fuels—that has not been justified under either D.14-12-081 or the Emergency Proclamation. The Emergency Proclamation should not be used as a justification for special treatment of Category 3 facilities as a whole without any regard to whether those facilities are actually using HHZ fuels.

The Center thus recommends that the PD be modified in one of two ways. First, the PD could be revised simply to refrain from making any modifications to the BioMAT program; the Emergency Proclamation by its terms requires only that the Commission “consider”

have much lower LCOEs compared to facilities that must procure material from further away.” (Black & Veatch, Final Consultant Report: Small-Scale Bioenergy: Resource Potential, Costs, and Feed-In Tariff Implementation and Assessment at 4-4 (“Black & Veatch”).) The Black & Veatch report was accepted into the record of R.11-05-005 on November 19, 2013. (R.11-05-005, Administrative Law Judge’s Ruling Seeking Comments on Staff Proposal on Implementation of Senate Bill 1122 and Accepting Consultant Report into the Record at 12.) The record in R.11-05-005 was subsequently transferred to this proceeding. (R.15-02-002, Order Instituting Rulemaking at 4 (March 6, 2015).)

⁶ See Black & Veatch at 4-4.

⁷ Compare Black & Veatch at A-7 (Fig. A-2) and B-1 to B-2 (Table B-1) with Tree Mortality Viewer, at <http://egis.fire.ca.gov/TreeMortalityViewer/>.

modifications, not that modifications be adopted.⁸ Alternatively, if the Commission elects to modify the BioMAT program in response to the Emergency Proclamation, it should ensure that any modifications apply only to facilities primarily using HHZ fuels (for example, a minimum of 80%). The practical objections outlined in the PD to treating facilities primarily using HHZ fuels differently from other Category 3 facilities are not compelling. The Commission has already approved a “price screen” allowing for separate price adjustments for “dairy” and “other agricultural” bioenergy facilities within Category 2 to reflect the higher cost of generation from dairy waste; projects bidding into the separate “dairy” category also are required to use dairy waste exclusively.⁹ There is no reason the Commission could not adopt a similar “price screen” approach here, along with a similar requirement that facilities receiving the benefits of BioMAT modifications in response to the Emergency Proclamation use primarily (if not exclusively) HHZ fuels.

Changes to the PD’s Findings of Fact and Conclusions of Law consistent with this latter recommendation are shown in Appendix A.

III. The Commission Should Commit to a Specific Timeline for Developing a Third-Party Fuels Verification Program

Given the high cost of the BioMAT program relative to other renewable energy programs, a robust third-party verification process is essential to ensure that the program remains within legislatively authorized boundaries and that ratepayers are not bearing unfair burdens. The PD’s proposed changes in response to the Emergency Proclamation, which allow costs to escalate even more quickly based on a perceived need to use forest biomass from particular locations, only underscore the need for rigorous verification of fuel sourcing.

The Commission has already recognized—but has not yet acted on—the need for third-

⁸ Emergency Proclamation, Ordering Paragraph 9.

⁹ D.14-12-081 at 56-57, 87 (Conclusions of Law ¶ 38).

party verification of fuels under the BioMAT program. In D.14-12-081, the Commission directed Energy Division to “investigate, through a workshop or other means, the possibilities for third-party verification of fuel use and/or third-party monitoring of fuel use. Such an investigation should be commenced within six months of the beginning of the first program period.”¹⁰ The first BioMAT program period began on February 1, 2016, and the fifth program period is already underway. The “investigation” directed by D.14-12-081 is thus already overdue.

Despite this fact, the PD expresses no sense of urgency. Rather, the PD simply reiterates that Energy Division “should conduct a workshop to solicit input and proposals for a third-party verification process for the entire BioMAT program.” (PD at 28, 31, 32-33.) Given that similar directory language in D.14-12-081 has not yet been implemented—and that the tree mortality emergency may even end before measures designed to address it can be evaluated—the Commission should establish a timetable and expected outcomes for the process. Specifically, Energy Division should be ordered (a) to conduct a workshop to solicit proposals for third-party verification within 60 days of the effective date of the decision and (b) to issue a staff proposal within 180 days of the effective date of the decision so that the Commission may institute a verification process within the next year.

The PD also proposes that bioenergy generators be required to note use of HHZ fuels on annual fuel use attestations filed with each IOU and that Energy Division be authorized to obtain reports and other information on fuel use. (PD at 14-15, 30, 31-32.) These measures alone are insufficient to ensure that modifications to the BioMAT program are implemented fairly. For example, the PD does not affirmatively require Energy Division to collect this information in a

¹⁰ D.14-12-081 at 74-75; *id.* at 92 (Order ¶ 7).

manner that would enable the Commission to monitor fuel usage meaningfully or take effective action. The process proposed in the PD also lacks transparency; parties and members of the public likely may not even know whether Energy Division is even collecting this information, much less what that information reveals. Instead, parties and the public should be provided with this information to the maximum extent practicable, subject to any legitimate confidentiality concerns. Accordingly, the Commission should require the utilities to file public reports, and serve those reports on parties to this and successor proceedings, concerning the use of HHZ fuels by Category 3 facilities every six months following the beginning of the first program period after the effective date of the decision.

Consistent with these recommendations, the Center proposes specific changes to the PD's Findings of Fact, Conclusions of Law, and Ordering Paragraphs in Appendix A.

Thank you for your consideration of these comments.

Date: October 17, 2016

Respectfully submitted,

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Appendix A:

Changes to Findings of Fact, Conclusions of Law, and Ordering Paragraphs

Proposed deletions are shown in ~~strike~~thru; proposed additions are underlined:

Findings of Fact

* * *

6. It is reasonable to include fuel from HHZ in the ~~BioMAT~~ category of “bioenergy from byproducts of sustainable forest management.” All fuel from HHZ used by Category 3 BioMAT facilities must comply with criteria established for “bioenergy from byproducts of sustainable forest management” in D.14-12-081.

* * *

8. It is reasonable to institute monthly BioMAT program periods only for Category 3 facilities that derive at least 80% of their fuels from HHZ on an annual basis, ~~only that will~~ so as to allow more frequent opportunities for forest bioenergy projects using HHZ fuels to submit bids for BioMAT PPAs during the period that the Emergency Proclamation is in effect, or until the time that the Category 3 BioMAT price for facilities using HHZ fuels first adjusts downward, whichever first occurs.

* * *

11. It is reasonable to require forest bioenergy generation facilities using HHZ fuels in the BioMAT program to make ~~annual~~ quarterly reports to the IOU with which they contract on the use of HHZ fuel in those facilities. It is also reasonable to require the IOUs to file public reports, containing the maximum amount of information practicable concerning the use of HHZ fuels by Category 3 facilities consistent with the IOUs’ obligations to protect confidential data, and to serve those reports on the service lists for this and successor proceedings no less

frequently than once every six months following the beginning of the first program period after the effective date of this decision.

Conclusions of Law

* * *

2. In order to make resource definitions in the BioMAT program consistent with the Emergency Proclamation, “fuel from high hazard zones” should be added to types of fuel that are in the eligible for use by Category 3 BioMAT category of facilities only to the extent such fuels comply with criteria established for “bioenergy using byproducts of sustainable forest management.” in D.14-12-081.

3. In order to allow more effective use of the BioMAT program in response to the tree mortality emergency, the BioMAT program periods for Category 3 facilities that derive at least 80% of their fuels from HHZ on an annual basis should be accelerated to be monthly, rather than bimonthly, for a period ~~for Category 3 (forest bioenergy)~~ of time that should end when the Emergency Proclamation ends, or the BioMAT Category 3 price for facilities using HHZ fuels first adjusts downward, whichever first occurs.

* * *

7. In order to provide information on the effectiveness of the BioMAT program in addressing the tree mortality emergency, BioMAT forest bioenergy generation facilities ~~should be required to~~ shall report annually quarterly to the IOU with which they contract on their use of HHZ fuel.

8. In order to develop reliable reporting methods for fuel use in the BioMAT program, including the use of HHZ fuel, the Director of Energy Division should, ~~as soon as~~ practicable within 60 days of the effective date of this decision, convene a workshop to begin

work on the use of third-party verification of fuel use. Energy Division should issue a staff proposal within 180 days of the effective date of the decision so that the Commission may institute a third-party verification process within one year of the effective date of the decision.

9. In order to allow the Commission to evaluate the effectiveness of the BioMAT program in addressing the tree mortality emergency, the Director of Energy Division should be authorized to obtain regular reports from the IOUs on the use of HHZ fuel in BioMAT forest bioenergy generation facilities and any other information necessary to evaluate the BioMAT program. In addition, the IOUs should be required to file public reports, containing the maximum amount of information practicable concerning the use of HHZ fuels by Category 3 facilities consistent with the IOUs' obligations to protect confidential data. The IOUs should be required to file and serve those reports in this and any successor proceedings no less frequently than once every six months following the beginning of the first program period after the effective date of this decision.

* * *

Ordering Paragraphs

* * *

2. The Director of Energy Division ~~is authorized to~~ shall take appropriate steps, including but not limited to holding a workshop within 60 days of the effective date of this proceeding and issuing a staff proposal within 180 days of the effective date of this proceeding, to develop standards and a format for third-party verification of fuel sources used by generators participating in the bioenergy feed-in tariff program, including verification of reports of use of fuel from High Hazard Zones designated pursuant to the Proclamation of a State of Emergency issued by the Governor on October 30, 2015.

3. The Director of Energy Division ~~is authorized to~~ shall take appropriate steps, including but not limited to requesting information and/or regular reports from Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, to collect information that will aid the Commission in evaluating the effectiveness of the changes made to the bioenergy feed-in tariff by this decision in addressing the statewide tree mortality emergency declared in the Proclamation of a State of Emergency (October 30, 2015). Beginning no later than six months after the commencement of the first BioMAT program period following the effective date of this decision, and every six months thereafter, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must file and serve, in this proceeding and any successor proceeding(s), reports containing the maximum amount of information practicable concerning the use of HHZ fuels by Category 3 facilities consistent with obligations to protect confidential data.

VERIFICATION

I am the attorney for the Center for Biological Diversity, the party filing the foregoing document. The officers of said party are absent from the County of Alameda, California, where I have my office, and I make this verification for said party for that reason. 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 that the foregoing is true and correct.

Executed this 17th day of October, 2016, at Oakland, California.

/s/ Kevin P. Bundy _____

Kevin P. Bundy